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directly rather than taking it through Appellate. And if that looks promising, all things considered we should have something, oral arguments in front of the Supreme Judicial Court sometime in January or February. Which effectively enjoins my database for the rest of the fiscal year in Massachusetts.

That is, of course, the first shot across the front of the ship. We will see what happens when the dynamite goes off at the end.

Now with respect to what I'm here to do for you today, I want to take you through four types of backlogs. You may not have considered all of them, so I just want to set the ground rules.

There are convicted offender samples which have been collected. There are those which are owed. There is new casework received by laboratories. And then there are old cases that laboratories either have on hand or in their heads somewhere with detectives or DAs. That we will call cold cases.

I won't address postconviction testing, you've done that already.

Essentially, I'll use anecdotal information, because that's really all we have, from a few states that have some data about which I'm familiar. New York State's backlog of collected samples is around 7,000 with 3500 owed, and once things are up and running New York State will garner about 4,000 samples more per year.

Massachusetts has collected 2500 samples, is owed 11,500 in retrospective collections. Once we're done we should have about 1500 new samples per year coming into the system.

On the National basis, talking with Steve Misgoda (phonetic) of the FBI, about 250,000 samples have been tested from convicted offenders collected throughout the United States for RFLP. If you add those to the 350,000 backlog for RFLP, all of them need to be tested for STRs.

So essentially you have 600,000 samples that have been collected in the U.S. Backlog that need STR testing. You also have about a million samples, anecdotally speaking, that are owed to the system of convicted offender collections.

In our best estimate at this time, if the laws didn't change anywhere, would be about 100,000 new cases submitted for convicted offenders per year that would require testing.

I should also point out that somewhere, did you receive a handout of my presentation slides? Good, so you don't have to take too many notes. It's been a long time since I was a student.

COMMISSIONER DAVIS: What do you mean by owed?

MR. SELAVKA: Owed means they are convicted offenders who are index offenders and who owe the system a blood or a buccal swab.

MADAM CHAIRMAN ABRAHAMSON: So it hasn't been collected yet.

MR. SELAVKA: They have not been collected, that's correct.

As far as casework goes now the numbers become a bit more anecdotal even in the convicted offenders samples. Essentially about 23,000 samples of casework forensic DNA typing were done in the United States in 1998. About 6,000 backlogged case samples remain according to Steve Misgoda.

We really don't have a feel for how many in the future we should expect. I'm estimating, again based on anecdotal information, that the number of cases received by laboratories today and those that we may receive by 2001 might triple, based on investigators greater use of technology and our greater sensitivity.

Go ahead, Jan.

COMMISSIONER BASHINSKI: Is that 22,000 cases or 22,000 samples?

MR. SELAVKA: I believe they are samples tested.

COMMISSIONER BASHINSKI: So maybe 1/5th as many cases.

MR. SELAVKA: Let me take that back. These are samples that could go in CODIS so they are cases. I apologize.

COMMISSIONER FERRARA: You're talking about casework DNA samples.

MR. SELAVKA: No, these are cases, because these are CODIS ready cases if you will. This is from the summer survey for CODIS.

COMMISSIONER BASHINSKI: Unsolved case profiles is what you're talking about.

MR. SELAVKA: Casing that could be submitted to CODIS.

COMMISSIONER FERRARA: So it would have to be cases because we ran that many samples in Virginia alone last year.

MR. SELAVKA: Yes, sir. I apologize. So those are cases.

What we don't know even more so than this and unexplored is how many cold cases are testable. We don't really have a good sense at the National level, but we know there are probably a lot of cases.

We don't really know what the impact of the DNA Advisory Board's recommendations are going to be on the recruitment of scientists, retention of those scientists, and productivity in the laboratories. We're probably going to bog down our laboratories in meeting the new higher quality standards. And the testing technologies we anticipated as you have heard about already will have an impact on our ability to do testing and casework and databanks.

When it comes to laboratorians, if we take the world view and sort of talk with the FBI about this issue, what would be the future of the number of samples that could present themselves to CODIS for testing and entry.

If we look at all felonies in the United States, it could be as much as around a million a year that could be presented to the system for testing and incorporation. If we look at all the rest, it would be around one and a half million.

The FBI is planning on CODIS being able to take an about a million convicted offenders a year. That way, if we are anywhere less than that we should have sufficient server-client capacity if you will.

Casework samples we don't have good numbers of suspect and no suspect cases. Some are survey anecdotes. But we do suspect if we tested all possible cases the number of cases that could be submitted to or run against CODIS could equal one and a half million a year.

Again, big load. They're planning on that at the FBI in terms of their client-servers architecture.

When it comes to prioritization, I want to set aside some apparent benefits and then sort of address the reality and take you through some examples. These again are my opinions and raised for discussion points and not as what you should do. You decide.

But the apparent benefits of prioritization include an increased potential efficacy of the tests that are run giving reasonable results and probative value to cases sooner than later. And it is good policy and looks good. It makes you feel good when you prioritize. It makes you feel like your doing something positive.

The reality is I think there are some cost benefit questions that have to be addressed. When you try to prioritize case work I think the reality is local politics and policies will always outweigh the National -- if they're anything less than standards, they will be outweighed by the local reality.

And because of that, there is really no national policy that's likely to overlay on top of the regional, local, municipal realities that already exist, of which prosecutor gets served first, which kind of high-profile case gets run over others. There will always be jurisdictional and political reasons why things get tested.

There are also some efforts underway to provide some funding and resources otherwise to the effort for casework prioritization and testing and that includes the DNA laboratory improvement program grant. They are now in phase four of a planned five year, five phase program. And also the state identification systems grants giving somewhere around $200,000 a year to most states in order to provide some infrastructure for testing for DNA as well as to other components of databasing.

Let's look at where the offenders are physically. The ones who we care about the most are those who are basically sentenced to time served, those who are on probation and parole, those in jails, and those in prisons.

The people that owe samples, as I have talked to people in other states and looked at my own situation, are those who are sentenced to time served. Almost all of them owe me samples. I don't have a lot of them. Probationer and parolees owe a lot of samples and people sentenced to jail terms owe me a lots of samples.

The places where I have been able to get my samples are in prisons, sort of descending order from there. Jail inmates, parolees and probationers. So the larger number of collections have come from prisons.

Our liability I would argue though, comes with the following considerations. The people sentenced to time served are a huge liability because they are under no supervision at all. Those on probation or parole are under moderate supervision, and those in jails are under moderate supervision as well.

You could look at liability at another way, too, from a social aspect. That is sexual predators might be seen as providing us with the highest liability in terms of collection. Those involved with crossover crimes in the younger part of their career could be our greatest liability.

When you add all these things together I think we have to ask the question how can prioritization alleviate this liability. That's really what prioritization is about.

You can imagine some schemes for doing prioritization. One could be a simple time basis. The first person out to hit the streets should be the first collected and then go backwards to

the last one out. Maybe we should look at their crimes in the likelihood of recidivism for those crimes and use that to govern how we collect. Perhaps we should look at the likelihood of a person committing a certain kind of offense and leaving biological samples behind.

All of these are strategies that could be used. The reality is we will still end up with National inconsistencies unless you can come up with a standard. We also are missing some very important data at the local and state level to allow us to do some of the prioritization schemes that we can imagine.

And the time that you would spend and the errors inherent in doing any selection of samples for people out of this process are going to have significant costs and perhaps a cost not just in monetary terms but programmatic.

These are thorny issues that we have to deal with. I have a proposed strategy in order to enhance CODIS' effectiveness significantly. If we remember the goal, and that is, I think, to rapidly populate CODIS with as many profiles as possible, especially for convicted offenders, but also in the case of trying to minimize the cost and errors involved in that rapid population and create a firm infrastructure for offender collections and casework efforts.

One way we could do this is with collected samples, rapidly test all of them using STR and commercial laboratories with essentially no prioritization. If we can do them quickly prioritization becomes immaterial.

On the other hand, for samples we are owed from convicted offenders, perhaps we should prioritize them on the amount of supervision on the audience being collected from. Those who already hit the street, get theirs first. Those under limited or short term supervision, get theirs next. And finally get those in prison.

We do need a robust mechanism to make this happen, and that's the last point I'll argue. What exactly is a robust method. If you haven't lived in the process of collecting these things, I'll take you through what it means to me.

First of all, there are three key points. We need to identify a person as early as possible that they owe a blood or a DNA sample. We have to somehow get people to take ownership of the collection process. And finally, we have to do a double identification and verification that that is the right person we collected from and they were supposed to have a collection because they were an index offender.

Who identifies these people? Well, it could be identified by district attorneys, judges, and clerks of the court. Jail administrators and wardens can identify these people. Probation directors and parole administrators also could be the identifiers. You notice the laboratory is not really involved in the early identification of these offenders. We are not there yet.

We need some tools for this identification to occur. There is a missing infrastructure for information management. MIS stands for Management Information Systems.

Clerks of the court generally have an automated process by which they put in the results of the case. Criminal history databases are built on that data. Many times, New York State and Massachusetts are two examples. I've talked to other states, too, the clerks don't always put it in there. It's not always accurate.

Sex offender registries in some states are linked to the DNA databank. That could be a missing link in some states.

Correctional management systems. When a person is received by a correctional institution

they're supposed to have some data of identity, the crime for which they're convicted and sentenced, and that could trigger the blood draw request.

The DAs have information systems available to them to track cases and look at sentences. And then finally, DNA databank administrators

None of these databanks in most states are linked. All of them contain somewhat different information.

In order to do the best job we need to link them. And that is a piece where perhaps you could specify or recommended some piloting, pilot projects or funding to try to assist in that.

Also, because of the turnover of personnel involved in the collection process and the identification process there is a constant retraining need. In New York, for example, we have a person set aside at the policy analyst level, the supervisor level, who does nothing but goes out and trains people how to do the collection properly and tries to get them exciting about doing it.

So it usually takes slides. I've got three of her slides here. She goes out to the correctional facilities and tries to get them excited about the fact that for once they can try to keep future crimes from happening as opposed to taking care of people who are already convicted of crimes. Tries to get them excited about giving these criminals, these sex offenders a place to live, a spacious home with many doors and a large scenic fenced in yard and something nice to wear such as this forest green all cotton two-piece ensemble with a matching jacket.

It seems trivial, but someone has to do it. The people turn over routinely enough we have to make it happen. That takes money. New York State happens to use Burn funds for that. Not every state has that kind of availability of funding.

When we talk about ownership of the collection process, the laws in most states do not specify who gets to go get that blood. Most of these look like unfunded mandates to the locals. And in many cases, frankly, they are.

Most of the efforts are poorly coordinated. Florida has one of the best systems, Virginia is doing a good job now, California is coming along, Illinois is doing a good job, but many of the others states, especially us late arrivers, don't have any procedures in place and are very poorly coordinated.

In many states it revolves around a person who acts like a point of light to get it done. In New York City state Jim O'Connell, if this guy got hit by a truck New York State's program would be in deep trouble. He essentially makes the whole division of correctional services program of collection happen.

The prisons have some infrastructure available to them already, such as correctional health care facilities and contracts, department of health and medical examiner health, hospitals that can do collections. They even have contractors. Contractors provide you with responsiveness, with competitiveness, so a good price and good response, good service, if you will. They often lower the cost overall of collecting these samples.

In Florida they've now got a contract to do collections at the courthouse for those who would be sentenced to time served, they can collect them before they hit the street. It's good thinking by Florida. They have a program set up for it. They have set aside money in their State budget. They are getting it done. Many other states, my past and current included, are not in that situation.

It's a bit thornier, it ties people in knots at the local level for probation and parole. The reason for this is there is really no health care structure for probation and parole. They're law enforcement orphans. They don't have the things that jail administrators have or prisons have.

We've really got them poorly designed for the task of doing collections. They have a lot of administrative burdens, they are responsible for a wide distribution of services, and they have very limited access to funding. They're usually very overworked and very underfunded. That is a place where we could use some money.

On the third essential element of doing early identification is taking a double identification and verification step. We have to do this. We have to make sure that if there is a hit against CODIS we have a person in the databank for which the candidate match is forwarded that was supposed to be there. We have to make sure the finger or thumbprint that was collected was verified against AFIS. We have to make sure the sentenced offense is an index offense in that State, and that they were sentenced after the time that the databank law went into effect. All of that is very important.

In New York State we continue to have problems with people. New York State's law doesn't allow you to collect from people who are convicted of attempted anything. If you rape someone, you're sentenced and convicted for rape, we get your blood, convicted and sentenced for attempted rape, we don't get your blood. But the jailers love to get blood, so they get them on attempts anyway.

Them we figure out, whoops, that's not the right guy, we have to do an administrative removal process and get that blood out of there.

We have some people who know in localities, the jailer knows that this guy's a dirty scumbag. And even if he is not convicted of an index offense, he'll collect him anyway because he knows he is going to do something down the road. Well, that's great, but it increases the cost to the system.

We are on the road and we want to do the right thing but we've got to have all the pieces of this puzzle in the right place at the right time.

Again the goal, rapidly populate CODIS, minimize the cost and errors and create a firm infrastructure.

There is money to do this with. I would argue again that I think the samples we have on hand, let's get them done quickly and populate CODIS. The other ones, let's prioritize and do a good job with them.

Overall a successful database again, you know this but just to remind you, it identifies the right person and exonerates the innocent. Gives us the ability to link cases and ultimately saves a lot of lives. That's why we are doing all this. That's why you're here.

You're going to cause a lot of people to think outside the box. What you do here is very important. It impacts everybody, laboratories and those that collect blood for CODIS especially.

I wanted to make sure I acknowledge people who helped me with this. That includes people in New York, people in Florida, and my lab for letting me be here.

Before I slide out I do have a little bit of time for questions to help you with anything I can then I will be leaving and the dust will settle later.

COMMISSIONER SCHECK: First, on the samples owed, are you telling us by intuition,

are you telling us by some data that those are mostly coming from people that are on parole, probation, time served, people on some form of supervised release in the community?

MR. SELAVKA: Anecdotally from the states are whom I most discussed, I'm most familiar. That's our data. Prisons are not a problem. Prisoners we are getting.

COMMISSIONER SCHECK: So in other words, it's the people that are on the street that could commit crimes which we could actually type with the database that we have to capacity to get and type at this point.

MR. SELAVKA: That is exactly the point. We want to get the ones under the least supervision first because they are the ones that can commit more crimes now and they are the ones whom we've had the most problems because of missing infrastructure elements.

COMMISSIONER SCHECK: Do you have any sense whatsoever of how many old unsolved cases there are that can be typeable.

MR. SELAVKA: There is a lot more hand waving on the number of cases for which we don't really know. I can only tell you, you know well in New York we tried to get that number. It's very hard to get at.

COMMISSIONER CLARKE: Doctor, on the convicted offender strategy, aren't those people who are on the streets who have done time served, aren't they going to be actually the most difficult to find and the costliest to obtain samples from as opposed to somebody who is under some type of supervision or in custody.

MR. SELAVKA: I think the first part of your statement is absolutely correct. They would be the ones that are most important to get. I don't think they're the most difficult, if we use Florida's very new example of how to go about this.

What we need is for the conditions of sentence, this basically means we have to work with district attorneys, clerks of the court, and judges. Work with them in order to make it a condition of sentence even when the sentence is time served, that they provide that blood prior to hitting the street.

COMMISSIONER REINSTEIN: I agree if there is a sentencing order they can make them do anything. But I thought you were talking about capturing samples of people who were already on the street and going back to get those old ones that have been released in the last several years.

MR. SELAVKA: I look at that question somewhat pragmatically. If we believe in recidivism we will see them again. And what we can do is try to create the traps to hold the person in a stranglehold until you get the blood the next time at the very worse. And at the best, send letters to the home of record and do the best to find these people. Notify them of their obligation to provide the blood.

In some jurisdictions we've had district attorneys who actually chase this problem down. They know where the guy lives and they get a bench warrant to go get it.

Again, this is a local problem. It's kind of like politics. It really comes down to an individual district attorney or assistant district attorney believing in the program and making it work.

Everything we do at the Federal level is about providing funding for them to do it. The states ultimately have to work with the localities to make it happen.

COMMISSIONER SMITH: Are all these backlogs blood backlogs or are some of these systems designed to do swabs?

MR. SELAVKA: There are definitely states that are doing buccal swabs. But I talk blood because that's the world I live in, but I believe more than equal states are moving to buccal swabs.

COMMISSIONER SMITH: This may seem tangential, but if in fact probation and parole agents have no contact with the people who are stated on probation or parole, then I'm not sure that the most important thing to do is to collect blood samples. It seems to me the most important thing in jurisdiction like that is to see to it that some contact is achieved. And if some contact were achieved, and it weren't blood we were trying to get, then maybe the kind of contact ought to include a brief swipe at the cheek I would think.

The idea that people hav no contact at all with their probationer or parole is in itself something really to worry about.

MR. SELAVKA: I hate to say this, but what I found in my two years experience in New York, and I'm sure I'm going to find in Massachusetts when I get enenjoined, the DNA databank is acting like a quality control measure for the entire system of criminal justice.

We are findings database errors in AFIS, we are finding criminal history errors, we are finding unreported crimes and sentences, and we are finding everything through the provisions of DNA samples. It's horrible, but it's reality.

COMMISSIONER BASHINSKI: You were talking about the unfunded mandate. Our estimates are with the new changes in our new databank law that it's going to cost -- these are blood draws -- about a million dollars to draw the samples, that is the first year, of the people that we don't have that we are supposed to have. And the legislature passed a law without any money in it. And it's an unfunded local mandate which it's supposed to come out of the department of justice's budget.

MADAM CHAIRMAN ABRAHAMSON: Is that California's department of justice?

COMMISSIONER BASHINSKI: Yes. Not Massachusetts.

The other issue is that we have I'd say about 25 percent of our sex offenders, they're registered sex offenders, no one knows where they are and they are supposed to register every year.

MR. SELAVKA: Yes, ma'am. That is why let's get our blood early on in the program and use that to find the sex offenders the next time around.

MADAM CHAIRMAN ABRAHAMSON: One of the issues before the Commission is whether we should propose that this backlog of samples collected should be put into CODIS and that we should put the money in to get this backlog into CODIS.

And the question that is arising is whether there are in these samples, whether you can prioritize them so that you get the ones that are on the street first or the ones going to be released first, et cetera.

Do you have any views on that versus putting the money into collecting samples now and then testing?

MR. SELAVKA: Yes, ma'am. I would think if the money is available, outside testing goes quickly enough that prioritization becomes moot. In the impact that those samples being populated into CODIS would have, it would be very quick compared to the number

of cases that need testing.

I think we will save money in the long run doing the previously selected offenders' samples. Just test them. Don't even brother trying to prioritize them.

There are a lot of missing data links, there's a lot of errors you can make. On the other hand, prioritizing the cases that need to have testing done in a way that tries to get those that will have the greatest probative value most quickly and challenge the database that you now populated with the other money and take the power of the database forward.

I think a little of both. Don't prioritize the collected samples, prioritize the owed samples, and definitely prioritize casework samples.

COMMISSIONER SCHECK: Did you just say prioritize everything? What are you going to do about the owed samples of the people on the street?

MR. SELAVKA: If the people who are on the street and under no supervision at all, you can do the best you can. But the money may better be spent in jails and people on probation and parole. If they are sentenced to time served, we could say they're the priority, but the amount of money it will take to get them may outweigh the benefit.

COMMISSIONER SCHECK: But people -- I guess I'm just confused about this. Why is it that you can't -- you have collected samples from people that are on probation and parole, right, and those were the first ones we typed in New York; true?

MR. SELAVKA: Yes.

COMMISSIONER SCHECK: And when we asked them, they said oh, you can't do that but then you made them do it. True?

MR. SELAVKA: Yes.

COMMISSIONER SCHECK: So it's not like you can't do it, it's just that somebody, your point of light or whoever it is in a particular State, makes you do it.

MR. SELAVKA: Let me say how I did it, maybe that would be helpful. Five summer interns. We had to go through it by hand on criminal history records. By hand. So most states will not have this availability and make it happen quickly.

If you have a blood sample in the freezer, I'm arguing test it. Don't bother prioritizing, test it. For those that are uncollected, prioritize them and go after the ones that you know are the low-hanging fruit. Get them first. Everybody gets five summer interns.

COMMISSIONER SCHECK: How much do five summer interns cost?

MR. SELAVKA: Zero. They are unpaid.

DIRECTOR ASPLEN: Were those subsequently tested? How long did it take to test those that you prioritized?

MR. SELAVKA: It's still ongoing.

DIRECTOR ASPLEN: So that wasn't a scenario where we are looking at the cost benefit analysis of testing them immediately like we are in a context of outsourcing. So under that context, we'd still be in that process. With the five interns.

MR. SELAVKA: As I was saying before about the local overlay, this is Federal money

being used for out-testing and it's RFLP, it's not a STR model, and it took a while. I would suppose if we had done the prioritization and followed up with STR testing we would have been done by now.

COMMISSIONER SCHECK: We couldn't use the money that we wanted to use to do STR testing, we had to use RFLP testing.

MR. SELAVKA: I'm not even going to touch that. I love the NIJ.

COMMISSIONER SCHECK: I'm not an administrator.

COMMISSIONER FERRARA: Carl, these individuals who owe samples, now the statutes across this country indicate that upon conviction a sample has to be taken, correct? And that is how most of them are phrased.

MR. SELAVKA: New York City says the sentenced offender shall provide. It doesn't say who is going to collect it, it doesn't say ask him, it just says he shall.

COMMISSIONER FERRARA: So what you're saying is the difficulty is with the way the statute is written.

MR. SELAVKA: Yes, sir.

COMMISSIONER FERRARA: And carried out. Not a funding issue necessarily.

COMMISSIONER SCHECK: It doesn't say who should collect it, you mean?

COMMISSIONER FERRARA: The law is inadequate in that it doesn't address one, that the sample should be taken upon conviction, and that who should do it. So the issue is the inadequacy of laws and the collection of samples in at least 49 states because we don't have it in Virginia. It can be done and it can be done right.

MR. SELAVKA: I agree.

COMMISSIONER FERRARA: I don't think it's a funding issue. I think our working group will get into it tomorrow and discover that most of the problem is that the officials in the states are not carrying out their duties, neither the jails or the prison officials. If eventually you shouldn't have anyone on probation or parole who owes a sample. They shouldn't have a sample when they got convicted or sentenced. And once you've done all those individuals you get caught up, you don't have a problem trying to track people down around the street.

COMMISSIONER THOMA: But, Paul, at the very origin what Jan was referring to with RAB1332 that just passed, there is no funding of it. With regard to the actual collection, it doesn't really matter whether it says exactly who should collect it or not. They are not funding whoever could do that collection.

COMMISSIONER FERRARA: No one got funded in Virginia. I collected 175,000 samples in corrections, no one has received one cent. A sample of blood is taken normally upon medical examination when a person goes to a jail or goes to correction. A second tube is drawn at no extra cost and a sample is in the databank. 175,000 samples have been collected without one cent of money for the collection.

So I don't see that money is an excuse. It's a problem of the statute and the way it's written and enforced and carried out.

DIRECTOR ASPLEN: Hold on. We are going to have a entire discussion tomorrow on

sample collection, we're going to have another presentation on sample collections, the road blocks to that and then we will discuss it more in the context with our database discussion. That's exactly why we did this so we would engender this kind of discussion, but I need to let Carl go because he literally has to catch a plane.

So if we could save the rest of this discussion until tomorrow I would call back the postconviction folks.

COMMISSIONER ABRAHAMSON: Let's thank Carl.

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...Gerald Parker—then in a California ...on a parole violation stemming from a ...sentence for raping a child—was charged ...the rapes and murders of five women ...December 1978 and October 1979 ...murder of a fetus during a rape in ...DNA samples from the crime scenes ...through California's sexual assault/ ...offenders database, and four of the ...were found to have been committed by ...perpetrator. After DNA tests linked ...the victims, he confessed to the crimes. ...confessed to a similar, fifth crime for ...Kevin Lee Green had been wrongly ...ted and had served 16 years in prison.

...day's law enforcement officer has learned to look rou... fingerprints to identify the perpetrator of a crime, that ...r needs to think routinely about evidence that may ...NA. Recent advancements in DNA technology are ...law enforcement officers to solve cases previously ...be unsolvable. Today, investigators with a fundamen... ...edge of how to identify, preserve, and collect DNA ...properly can solve cases in ways previously seen only ...ion. Evidence invisible to the naked eye can be the key ...a residential bur... ...ual assault, or ...der. It also can ...dence that links ...rime scenes to ...in a small town, ...gle State, or ...s the Nation. ...on the stamp of ...reatening letter ...lls shed on a ligature of a strangled victim can be ...with a suspect's blood or saliva sample. Similarly, ...cted from the perspiration on a baseball cap discard... ...st at one crime scene can be compared with DNA in ...abbed from the bite mark on a different rape victim.

Where Is DNA Contained in the Human Body?

DNA is contained in blood, semen, ...cells, tissue, organs, muscle, ...cells, bone, teeth, hair, saliva, ...cus, perspiration, fingernails, ...feces, etc.

Similar to fingerprints

DNA is similar to fingerprint analysis in how matches are determined. When using either DNA or a fingerprint to identify a suspect, the evidence collected from the crime scene is compared with the "known" print. If enough of the identifying features are the same, the DNA or fingerprint is determined to be a match. If, however, even one feature of the DNA or fingerprint is different, it is determined not to have come from that suspect.

This brochure will explain DNA and the related identification, preservation, and collection issues that every law enforcement officer should know.

What Is DNA?

DNA, or deoxyribonucleic acid, is the fundamental building block for an individual's entire genetic makeup. It is a component of virtually every cell in the human body. Further, a person's DNA is the same in every cell. For example, the DNA in a man's blood is the same as the DNA in his skin cells, semen, and saliva.

DNA is a powerful tool because each person's DNA is different from every other individual's, except for identical twins. Because of that difference, DNA collected from a crime scene can either link a suspect to the evidence or eliminate a suspect, similar to the use of fingerprints. It also can identify a victim through DNA from relatives, even when no body can be found. And when evidence from one crime scene is compared with evidence from another, those crime scenes can be linked to the same perpetrator locally, statewide, and across the Nation.

Forensically valuable DNA can be found on evidence that is decades old. However, several factors can affect the DNA left at a crime scene, including environmental factors (e.g., heat, sunlight, moisture, bacteria, and mold). Therefore, not all DNA evidence will result in a usable DNA profile. Further, just like fingerprints, DNA testing cannot tell officers when the suspect was at the crime scene or for how long.

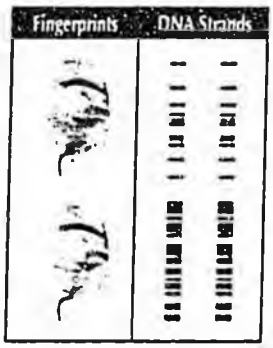
Where can DNA evidence be found at a crime scene?

DNA evidence can be collected from virtually anywhere. DNA has helped solve many cases when imaginative investigators collected evidence from nontraditional sources (see "Identifying DNA Evidence"). One murder was solved when the suspect's DNA, taken from saliva in a dental impression mold, matched the DNA swabbed from a bite mark on the victim. A masked rapist was convicted of forced oral copulation when his victim's DNA matched DNA swabbed from the suspect's penis 6 hours after the offense. Numerous cases have been solved by DNA analysis of saliva on cigarette butts, postage stamps, and the area around the mouth opening on ski masks. DNA analysis of a single hair (without the root) found deep in the victim's throat provided a critical piece of evidence used in a capital murder conviction.

Evidence Collection and Preservation

Investigators and laboratory personnel should work together to determine the most probative pieces of evidence and to establish priorities. Although this brochure is not intended as a manual for DNA evidence collection, every officer should be aware of important issues involved in the identification, collection, transportation, and storage of DNA evidence. These issues are as important for the first responding patrol officer as they are for the experienced detective and the crime scene specialist. Biological material may contain hazardous pathogens such as the human immunodeficiency virus (HIV) and the hepatitis B virus that can cause potentially lethal diseases. Given the sensitive nature of DNA evidence, officers should always contact their laboratory personnel or evidence collection technicians when collection questions arise.

Identifying DNA Evidence



Since only a few cells can be sufficient to obtain useful DNA information to help your case, the list below identifies some common items of evidence that you may need to collect, the possible location of the DNA on the evidence, and the biological source containing the cells. Remember that just because you cannot see a stain does not mean there are not enough cells for DNA typing. Further, DNA does more than just identify the source of the sample; it can place a known individual at a crime scene, in a home, or in a room where the suspect claimed not to have been. It can refute a claim of self-defense and put a weapon in the suspect's hand. It can change a story from an alibi to one of consent. The more officers know how to use DNA, the more powerful a tool it becomes.

Evidence	Possible Location of DNA on the Evidence	Source of DNA
baseball bat or similar weapon	handle, end	sweat, skin, blood, tissue
hat, bandanna, or mask	inside	sweat, hair, dandruff
eyeglasses	nose or ear pieces, lens	sweat, skin
facial tissue, cotton swab	surface area	mucus, blood, sweat, semen, ear wax
dirty laundry	surface area	blood, sweat, semen
toothpick	tips	saliva
used cigarette	cigarette butt	saliva
stamp or envelope	licked area	saliva
tape or ligature	inside/outside surface	skin, sweat
bottle, can, or glass	sides, mouthpiece	saliva, sweat
used condom	inside/outside surface	semen, vaginal or rectal cells
blanket, pillow, sheet	surface area	sweat, hair, semen, urine, saliva
"through and through" bullet	outside surface	blood, tissue
bite mark	person's skin or clothing	saliva
fingernail, partial fingernail	scrapings	blood, sweat, tissue

Contamination

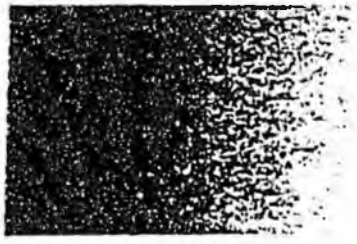
Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary when identifying, collecting, and preserving DNA evidence. DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches the area that may contain the DNA to be tested. Because a new DNA technology called "PCR" replicates or copies DNA in the evidence sample, the introduction of contaminants or other unintended DNA to an evidence sample can be problematic. With such minute samples of DNA being copied, extra care must be taken to prevent contamination. If a sample of DNA is submitted for testing, the PCR process will copy whatever DNA is present in the sample; it cannot distinguish between a suspect's DNA and DNA from another source.

Transportation and storage

When transporting and storing evidence that may contain DNA, it is important to keep the evidence dry and at room temperature. Once the evidence has been secured in paper bags or envelopes, it should be sealed, labeled, and transported in a way that ensures proper identification of where it was found and proper chain of custody. Never place evidence that may contain DNA in plastic bags because plastic bags will retain damaging moisture. Direct sunlight and warmer conditions also may be harmful to DNA, so avoid keeping evidence in places that may get hot, such as a room or police car without air conditioning. For long-term storage issues, contact your local laboratory.

To avoid contamination of evidence that may contain DNA, always take the following precautions:

- Wear gloves. Change them often.
- Use disposable instruments or clean them thoroughly before and after handling each sample.
- Avoid touching the area where you believe DNA may exist.
- Avoid talking, sneezing, and coughing over evidence.
- Avoid touching your face, nose, and mouth when collecting and packaging evidence.
- Air-dry evidence thoroughly before packaging.
- Put evidence into new paper bags or envelopes, not into plastic bags. Do not use staples.



National Commission on the Future of DNA Evidence

Identifying ***DNA Evidence***

Elimination samples

As with fingerprints, the effective use of DNA may require the collection and analysis of elimination samples. It often is necessary to use elimination samples to determine whether the evidence comes from the suspect or from someone else. An officer must think ahead to the time of trial and possible defenses while still at the crime scene. For example, in the case of a residential burglary where the suspect may have drunk a glass of water at the crime scene, an officer should identify appropriate people, such as household members, for future elimination sample testing. These samples may be needed for comparison with the saliva found on the glass to determine whether the saliva is valuable evidence. In homicide cases, be sure to collect the victim's DNA from the medical examiner at the autopsy, even if the body is badly decomposed. This may serve to identify an unknown victim or distinguish between the victim's DNA and other DNA found at the crime scene.

When investigating rape cases, it may be necessary to collect and analyze the DNA of the victim's recent consensual partners, if any, to eliminate them as potential contributors of DNA suspected to be from the perpetrator. If this is necessary, it is important to approach the victim with extreme sensitivity and provide a full explanation of why the request is being made. When possible, the help of a qualified victim advocate should be enlisted for assistance.

COmbined DNA Index System—CODIS

CODIS (COmbined DNA Index System), an electronic database of DNA profiles that can identify suspects, is similar to the AFIS (Automated Fingerprint Identification System) database. Every State in the Nation is in the process of implementing a DNA index of individuals convicted of certain crimes, such as rape, murder, and child abuse. Upon conviction and sample analysis, perpetrators' DNA profiles are entered into the DNA database. Just as fingerprints found at a crime scene can be run through AFIS in search of a suspect or link to another crime scene, DNA profiles from a crime scene can be entered into CODIS. Therefore, law enforcement officers have the ability to identify possible suspects when no prior suspect existed.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. SB 201

Revision Date 4/5/00
Dept. Affected Public Safety
Title An Act relating to violations of an order to submit to deoxyribonucleic acid . . . effective date."
BRU AK. State Trooper - Detachments
Component AK. State Trooper - Detachments
Sponsor Rules by Request of the Governor
Requester Senate Judiciary Committee
Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill is not expected to have a budgetary impact.

Prepared by: Royce Veller, Special Assistant
Phone 465-2649
Division Office of the Comissioner
Date/Time 4/5/00 12:00 AM
Approved by Commissioner Ronald L. Otte
Date 4/5/00
Agency Department of Public Safety

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SB 200
was read the first time and referred to the Judiciary and Finance Committees.

Indeterminate fiscal note published today from Department of Administration. Zero fiscal notes published today from Department of Corrections, Department of Law, Department of Public Safety.

Governor's transmittal letter dated January 18:

Dear President Pearce:

As part of the state's continuing efforts to control drug abuse, I am transmitting a bill that adds ketamine hydrochloride as a Schedule IVA controlled substance to the Alaska statutes relating to misconduct involving controlled substances.

Ketamine hydrochloride is a synthetic drug that was developed in the 1960s as an anesthetic. It is commonly used by veterinarians. It was used as an anesthetic on the battlefield during the Vietnam War and considered a desirable anesthetic under battlefield conditions because it takes effect quickly and is remains effective for a relatively short period. However, experience with the drug has shown that upon awakening, humans often experience hallucinations, agitation, and delirium. Currently the drug is being abused because of these side effects.

Ketamine hydrochloride has been listed as a controlled substance in other states such as New York, California, New Jersey, and Illinois, where abuse of the drug is prevalent. Although the drug is not yet common in Alaska, a veterinary clinic in Fairbanks was recently burglarized, and one of the alleged perpetrators admitted that the purpose of the break-in was to steal ketamine hydrochloride. Adding the drug to scheduled controlled substances will give law enforcement the necessary tool to help control its abuse in our state.

SB 200
I urge your prompt and favorable consideration of this bill.

Sincerely,
/s/
Tony Knowles
Governor

SB 201
SENATE BILL NO. 201 BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR, entitled:

> "An Act relating to violations of an order to submit to deoxyribonucleic acid (DNA) testing, to court orders and conditions of parole to collect samples for DNA testing, to removal of material from the DNA identification registration system; and to the collection and processing of samples from certain burglary perpetrators for the DNA identification registration system; and providing for an effective date."

was read the first time and referred to the Judiciary and Finance Committees.

Indeterminate fiscal note published today from Department of Administration. Zero fiscal note published today from Department of Public Safety.

Governor's transmittal letter dated January 18:

Dear President Pearce:

Using DNA identification is an increasingly effective tool for law enforcement investigation. This bill I transmit today expands the state's ability to use this method for detecting and abating the conviction of serious crimes by allowing the state to obtain DNA samples from convicted burglars.

SB 201

In 1995 Alaska adopted a DNA identification registration system. In this program persons convicted of most felony offenses against a person, and minors 16 years of age or older adjudicated delinquent for similar crimes, must provide a DNA sample to the Department of Public Safety for testing. Most other states in the country have a similar system of obtaining DNA samples from persons convicted of serious crimes. Since 1995 the technology and research into the uses of this information has grown rapidly. Research in other states into the criminal history of persons convicted of homicide and serious sexual assault has shown that over half the persons convicted of homicide or sexual assault were convicted of burglary before their convictions for the more serious crimes. DNA information from burglary convictions would be invaluable to law enforcement in the investigation of subsequent, more serious crimes against a person.

The bill also allows juvenile and adult correctional, probation, and parole officers and peace officers to collect oral DNA samples. The collection technology has improved so that a simple, inexpensive, non-obtrusive kit allows the tested person to take an oral swab without the need of a medical professional. If a blood sample is required, it would still be taken by a medical professional.

Penalties are provided for failure to cooperate with these sample requests. The bill also clarifies the procedures for removal of DNA material from the identification registration system, specifying that a court order is necessary for such removal.

I urge your prompt and favorable consideration of this bill.

Sincerely,
/s/
Tony Knowles
Governor

SB 202

SENATE BILL NO. 202 BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR, entitled:

> "An Act amending the definition of 'personal injury' for awards by the Violent Crimes Compensation Board to include emotional harm."

was read the first time and referred to the State Affairs, Judiciary and Finance Committees.

Zero fiscal note published today from Department of Public Safety.

Governor's transmittal letter dated January 18:

Dear President Pearce:

I am transmitting a bill amending the definition of "personal injury" for awards by the Violent Crimes Compensation Board to include emotional harm.

Current state law defines "personal injury" for purposes of violent crime compensation as including only actual bodily harm. This definition is inconsistent with federal law, however, which recognizes emotional harm as a personal injury and ties federal funding to programs that cover these mental health needs.

For many victims, the emotional harm suffered as a result of victimization is far more significant than actual bodily harm. This is particularly true for victims of sexual assault and abuse. And in other cases, such as dependants of homicide victims, no physical injury has been suffered at all, but emotional harm is certainly present. Victims should be eligible for compensation for treatment for emotional harm; this bill will allow for that compensation.

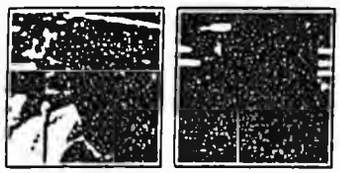
I urge your prompt and favorable action on this measure.

Sincerely,
/s/
Tony Knowles
Governor

February 19, 1998

DNA Databanks Giving Police Powerful Weapon: The Instant Hit

Related Article
- DNA Tests Free Two Men Convicted of Rape in '83 (Dec. 4, 1997)



By CAREY GOLDBERG

BOSTON -- Of all the new thrills that DNA analysis offers forensic scientists, nothing seems to beat what they call a "cold hit": when a computer discovers the identity of a killer or rapist by matching DNA from blood, semen or saliva left at a crime scene with a DNA profile in a database. A criminal is fingered by his own genes.

Until now, cold hits have come sporadically, mainly in several states where DNA forensic work is most advanced, totaling about 200 nationwide. But federal and stat experts say they will soon be cropping up much more often.

In the last several weeks, they say, two DNA logjams have been broken. The FBI and state laboratories have finally set new technical standards for testing DNA strands, allowing the development of a national system of quicker, cheaper testing to steam ahead. And the links of that system are starting to be hooked up: In December, eight states in the DNA vanguard began using FBI software that lets them pool their data on line for the first time, enabling them to identify criminals across their borders. Within minutes, they scored their first hit, linking a convicted sex offender in Illinois to a 1989 rape and attempted murder in Wisconsin, the bureau said.

"It's starting to grow geometrically," said David Coffman, the DNA database administrator for Florida, which has chalked up nearly half the country's hits. "For the first time, DNA labs are leading the investigators to the right person," as opposed to testing the DNA of known suspects.

The largest hurdle to establishing an American DNA database like the pioneering one in Britain, which holds hundreds of thousands of samples and has scored thousands of hits, is money -- for adding equipment and personnel, gathering hundreds of thousands of samples, analyzing and entering them, plowing through current backlogs and converting existing databases to new technology.

"It comes down to a cost-benefit analysis," said Christopher Asplen, an

assistant U.S. attorney who is executive director of the National Commission on the Future of DNA Evidence, which Attorney General Janet Reno recently created. "How much money are we willing to put into the system to reduce the backlog so that we can use DNA more quickly and more effectively to solve and prevent crimes?"

The mounting momentum behind DNA databases, however, is also pushing forward objections to DNA evidence. Last week in Massachusetts, for example, a judge halted the gathering of blood samples for DNA profiling from thousands of prison inmates, probationers and parolees after several sued the state, arguing that it was an illegal search and seizure performed without proper safeguards.

Although similar challenges in other states have failed, civil liberties questions continue to come up as states move ahead, including issues of who, exactly, must submit to testing, and who can have access to the data.

In the aftermath of the DNA debacle at the O.J. Simpson murder trial, in which the defense accused the Los Angeles Police Department of contaminating DNA evidence, concerns also linger over whether the police and laboratory workers are being properly trained to handle such potentially damning evidence.

Still, financing is a burning question for DNA overseers like Dr. Paul Ferrara of Virginia's Division of Forensic Science, whose groundbreaking DNA program has been given a $10 million budget for the next three years and who believes it will take $500 million to establish a full-fledged national databank.

"We still have backlogs of six months or more before we can get to every case," Ferrara said. "How many crimes that we took a year to solve could have been solved in a week? And how many further offenses, rapes or murders, were committed by that individual in the meantime?"

In Florida, Coffman recalled, a convicted rapist was just eight days away from being paroled in 1995 when his DNA sample was finally entered into the databank. It was found to match evidence left at the horrific rape, mutilation and murder of another woman more than three years earlier.

That is the difference DNA databanks can make, said Walter Rowe, a professor of forensic sciences at George Washington University who has advised the federal government on dispensing some of the $25 million that Congress allotted to DNA databases in 1994.

A national database, "God knows, may turn out to have an enormous impact," Rowe said, "if you reflect that rapists tend to be repeaters and studies have shown that most of the violent crime is committed by a very small number of criminals. If we're able to identify these guys and send them away, or if, instead of convicting the guy for one sexual assault we get him for 10 and he goes away for the rest of his life, think about the impact that will have on the safety of citizens."

Indeed, no one, not even those who have challenged DNA sample-gathering in court, deny that the databases can be heaven-sent crime-fighting tools. And DNA can work on prisoners' behalf as well. Already, 53 convicts have been exonerated after DNA testing was applied to the evidence in their cases, said Barry C. Scheck, whose Innocence Project at Yeshiva University's Benjamin Cardozo School of Law helped many of them gain freedom.

Rather, the main lingering questions about DNA testing and databases concern who should have to give samples and how those samples are handled.

The very existence of a DNA database smacks more of a Big Brother-ish assault on privacy than the existence of the national computerized network of fingerprints, civil libertarians say. Taking blood is much more invasive than fingerprints, they point out, and DNA carries so much more information -- information subject to abuse by insurance companies or even geneticists seeking the gene for something like pedophilia.

Furthermore, said Benjamin Keehn, a Boston public defender representing some of the inmates who have challenged the DNA collection here, "It's a very dangerous slippery slope" to round up thousands of convicts, probationers and parolees, as Massachusetts was doing, on the argument that they are likelier to commit a crime.

"Why not round up poor people?" Keehn asked. "Poor people are more likely to commit a crime, so shouldn't we have their DNA on file? Of course, there are benefits every time you get a cold hit. There are going to be dramatic success stories. But where does it stop? Why not take DNA samples at birth?"

In South Dakota, DNA samples are taken upon arrest, like fingerprints. Virginia, which has the most comprehensive database nationwide, with 160,000 samples gathered though only 10,000 have been analyzed, now gathers samples from all convicted felons, and even some juveniles.

And that, Ferrara argued, is the way to go. More than half of his cold hits from the crime scenes of rapes and murders came from felons who had previously been convicted only of breaking and entering or burglary, he said.

Scheck, who helped defend O.J. Simpson, advocates that states write into their DNA database laws that the data can be used by law enforcement agencies "for identification purposes only" to avoid abuses. Many states, like Massachusetts, have left their language more vague.

Two states, in fact, have not even passed database laws. But the two, Vermont and Rhode Island, are expected to finally join the other 48 this legislative session. Many other states have simply not allocated much money to their DNA databases, so large backlogs of unanalyzed samples have developed.

Even those that have kept up, however, will now have to start converting their samples from the old technique, known as Restriction Fragment Length Polymorphism, to a new method, Short Tandem Repeat, or STR. That faster, less expensive method looks at areas of the DNA strand that are generally considered something like "junk" DNA and do not determine an individual's traits.

It is a giant conversion task, experts say, but promises a great payoff. Technology has so advanced from the days when testing each DNA sample took weeks and cost several hundred dollars, they say, that in the near future, sample analysis will be largely automated, take only hours and eventually cost as little as $10.

The technology has also advanced in that it can analyze far tinier quantities of biological evidence -- even the saliva from a cigarette butt or envelope flap and the sweat from a hatband, said Terry Laber, supervisor of the DNA unit of the Minnesota Bureau of Criminal Apprehension.

In some ways, he said, DNA evidence has already surpassed fingerprints in usefulness, and Minnesota's state crime laboratory now does DNA testing at all crime scenes, including mere burglaries.

Whether or not it beats fingerprinting, DNA evidence is especially valuable because of the types of crime scenes where it is usually found, said Harlan Levy, a former New York City prosecutor who wrote "And the Blood Cried Out" (Avon 1997) about the power of DNA evidence.

"They're murder cases and sexual violence cases," he said. "The kinds of cases where people care very dramatically about identifying the people who committed them and getting them off the street. And DNA databanks make that possible."

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National Conference of State Legislatures

NCSL LEGISBRIEF

Briefing Papers on the Important Issues of the Day

JANUARY 2000 VOLUME 8, NUMBER 5

Using DNA to Fight Crime

By Donna Lyons

DNA technology today holds both questions and answers for criminal justice.

No longer the fingerprint of the future, DNA technology today holds both questions and answers for criminal justice. DNA (deoxyribonucleic acid) provides a biological identifier that, to date, has been used mostly in prosecuting defendants charged with violent crimes. The advent of state data banks containing DNA samples from convicted offenders opens the door for its use to identify and arrest criminals. Although some experts encourage fully tapping this crime-fighting potential, others are concerned about violations of civil liberties in genetic profiling.

All states allow collection of DNA samples from certain convicted offenders.

All states allow collection of DNA samples from certain convicted criminals. In 31 states, people convicted of many serious crimes must provide a DNA sample for the state database, and 19 states require specific sex offenders to do so. New Mexico, Tennessee, Virginia and Wyoming require a DNA sample from all felons. Lawmakers in New York and Illinois approved legislation this year to expand DNA testing to serious offenders and not just sex offenders. New York's measure includes drug offenders among those who must provide a DNA sample. In 19 states, certain juvenile offenders also must provide samples. Implementation of a 1997 Louisiana law to expand testing to people arrested in certain sex crimes has been delayed in order to upgrade the state police laboratory. Similar measures have been introduced, but not advanced, elsewhere.

Eleven states have statutory language addressing admissibility of DNA evidence in criminal cases, while courts in all states make case-by-case judgments on its use. DNA tests can help prove innocence as well as guilt. Laws in Illinois, Minnesota and New York specifically provide for post-conviction motions for DNA testing. Similarly, availability of DNA technology may prompt review of statutes of limitations on prosecuting cases. In New York, legislation currently is pending to extend from five to 10 years prosecution of rape based on DNA testing.

State public safety agencies generally administer the DNA offender database.

State public safety agencies generally administer the DNA offender database. Forensic labs under those agencies are responsible for processing samples, as well as handling crime scene evidence and defendant DNA samples. Most state laws prohibit anyone not in the criminal justice system from getting information from the DNA database. But privacy concerns have been raised about potential uses of the information, which often can be stored indefinitely. Thus far, state and federal courts have approved state policies to collect and preserve DNA samples from convicted criminals. Expansion of testing to arrestees would raise new issues as to when taking DNA constitutes an allowable search.

Referenced Legislation

New York—1999 A 9037
Louisiana—La. Rev. Stat. Ann. § 15:601-620 and 1999 La. HCR 40
Illinois—1999 Ill. Laws, P.A. #91-528
Minnesota—1999 Minn. Laws, Chap. 216, Art. 3
New York —N.Y. Criminal Procedure Law § 440.30
New York—1999 S 974 enrolled and A 349

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DNA databases in 18 states are connected to the National DNA Index System developed by the FBI. A blend of forensic science and computer technology, the system allows crime laboratories to electronically exchange and compare DNA profiles. Analysis of saliva, blood, semen or hair can be compared with that of a suspect and with other unsolved cases. The national system also can help solve cases where there is no suspect by comparing DNA evidence to samples provided by convicted offenders.

It is this investigative use of DNA analysis that has the greatest promise for identifying and stopping repeat criminals, especially sex offenders. However, current capability in states to collect and analyze samples lags behind the crime-fighting potential that has emerged with database laws and the national system. The FBI has identified a backlog of some 500,000 unanalyzed samples collected from convicted offenders. In addition, it is estimated that up to 1 million more samples are owed to the system, but as yet are uncollected. These include people held in corrections facilities, as well as other people on probation or parole. Often, the process by which samples are obtained does not have a system to prioritize collection from criminals in or about to be released to the community. Further, most state and local crime laboratories were designed and equipped for crime-scene evidence analysis. DNA profiling is a distinct, add-on lab capability that still is being developed in most places. Contributing to these improvements is $40 million authorized by Congress under the DNA Identification Act of 1994. Some states are contracting with private laboratories capable of high-volume, "robotic," or mechanical, DNA profiling of samples for databases.

Most state and local crime labs were designed and equipped for handling crime-scene evidence, not for the high-volume, more "robotic" processing of offender samples for databases.

Addressing these practical concerns has been among the first recommendations of a National Commission on the Future of DNA Evidence, established by the U.S. attorney general in 1998. As the immediate imperatives in adapting crime-fighting to the burgeoning science of DNA, the group has called for improvements in crime scene collection and preservation of potential DNA evidence, and streamlined capability for retrieving and analyzing samples.

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The National Commission on the Future of DNA Evidence—http://www.ojp.usdoj.gov/nij/dna

The National Institute of Justice—http://www.ojp.usdoj.gov/nij

Central Florida, the development of new divisions in one department, and the reorganization of agencies within another. All child-abuse cases will be handled by the Sheriff's Office. According to one source, the number of these cases being reported to authorities is three times what it was before the Kayla McKean Child Protection Act was implemented this past summer. At the Sheriff's Office, Sheriff Eslinger plans to take advantage of Web resources. When bank alarms are tripped, for example, Seminole's police technology should soon allow officers to monitor video images taken by cameras in banks via laptop computers. In addition, Seminole law enforcement agents are focused specifically on working more closely with the community.

"Digital Video For ATM Security Catching On"
American Banker (02/01/00) P. 9; Stock, Helen

Banks are increasingly junking their videotape systems and replacing them with digital video storage devices to increase automated teller machine (ATM) security. Several large banks, including Wells Fargo and Chase Manhattan, are piloting the new technology at various ATM locations. Security experts say that digital video storage, where images are saved as computer files instead of on videotape, allows images to be viewed thousands of times at the same quality and avoids the deterioration that comes with pictures stored on videotapes, which can often fade and become fuzzy after only five uses. New regulations in New York, spurred by an attack captured by an ATM camera whose tape quality was too poor to aid police, require that videotapes be reused only 12 times and be discarded after one year of operation. The regulations also encourage banks to find other ways to make sure image-quality is improved. Although digital video storage systems are about 50 percent more expensive than analog videotape systems, many proponents contend that they will cost banks less money in the long run.

"Forensic Lab Scientists Lead Fight Against Crime"
Vancouver Sun (01/29/00) P. B1; Margoshes, Dave

More cases are being solved through the use of forensic science, which is saving police and the Canadian government millions of dollars in investigation and court time, since most criminals change innocent pleas to guilty once DNA links them to the crime. A network of six forensic labs in Halifax, Ottawa, Winnipeg, Edmonton, and Vancouver is run by the Mounties, and many of these labs process DNA samples from across Canada. Scientists at these labs have honors degrees in science and work in chemistry, toxicology, alcohol, firearms, and document sections. Since it is almost impossible to leave the scene of a crime without leaving DNA evidence, forensic science has changed the way police go about solving crimes. In June, solving cases using this type of evidence will get even easier because a national DNA database will be operational with DNA samples recorded from all criminals convicted of

major crimes. DNA evidence also has the ability to eliminate suspects, which happens in about 25 percent to 30 percent of the cases, explains Jean Rodney, a veteran Regina lab scientist. DNA analysis is an expensive process that takes about two months to complete. Lab administrators are often frustrated by budget cuts and downsizing that limit what the lab can accomplish. Some cities with backlog DNA samples that have yet to be processed are turning to private labs like Helix Biotech, which charges C$1,000 per sample and can get testing done much faster.

"Missing Children System in Works: Banning Police, Working on Reports of Recent Kidnap Attempts, Say the "TRAK" Technology Will Speed Data to Other Agencies"
Press-Enterprise (01/25/00) P. B01; Olson, Krista

Banning, Calif., police are making an effort to acquire a new, high-tech computer system called "TRAK," which would enable them to send a photo across the country in a matter of minutes. TRAK, which stands for Technology to Recover Abducted Kids, is a computer, scanner, and printer that produces color images that can be simultaneously transmitted to schools, police stations, Internet addresses, and fax numbers. The system can be employed to find kidnapped children, missing people, and fugitives, as well as to report disasters and ongoing events. The Banning police department began raising money for the system several months ago, as it has to meet the $3,900 mark to match a grant it received. Chevron also donated $500 dollars toward the acquisition of TRAK.

"Printrak Teams With TRW to Provide Public Safety Communications System for Ohio"
Business Wire (01/27/00)

Printrak, the world's leading provider of digital justice solutions, has just been awarded a $10.8 million contract with TRW to create a public safety response system for the Ohio Multi-Agency Radio Communications System. The contract is the biggest ever received by the Boulder Division of Printrak. Printrak will integrate its computer-aided dispatch and records management system with the information systems platforms of TRW. The system will be used by many state agencies, which will allow for communications between departments. Richard Giles, Printrak president and CEO, said that the collaboration with TRW is yet "another great opportunity to leverage our leading edge technology for multiple state agencies."

"Scottish Prison Service Uses SPSS Software to Identify Problems"
M2 Presswire (01/31/00)

A survey of Scottish prisoners and workers was processed by software developed by statistics-oriented technology company

"Rape Case DNA Tests the Limits; Milwaukee Uses Genetic Evidence to File Warrants in Unsolved Crimes"
Los Angeles Times (02/11/00) P. A1; Slater, Eric

Milwaukee investigators and prosecutors have been running DNA tests on sex crime cases that have skirted the statute of limitations and have been issuing warrants based on the genetic makeup of the perpetrator. There is currently a strong possibility that even if a suspect is eventually caught, his or her defense can argue that the warrant is an end-run around the statute of limitations, but these prosecutors cannot bear the thought of horrible crimes going unsolved. State-run DNA databanks are hampered by a paucity of funding, a great backlog of untested samples, and incompatibility between different systems. The national FBI system is hampered because some states do not even have DNA databanks. In addition to the database difficulties and testing delays, there are 1 million convicted offenders who should have by law been tested but were not, and another half million who were tested but never had their genetic profiles entered into the database. The Milwaukee initiative is unusual in that DNA profiling has almost exclusively been used around the nation as a final proof against those already suspected of the crime. The existing problems and delays in utilizing DNA technology have so far hampered the great potential DNA offers as a crime fighting tool.

HB 296

No: 1

FISCAL NOTE

Bill Version: CSHB 296(L&C)

(H) Publish Date: 2/9/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction)

Title: Uniform Partnership Act

Sponsor: Judiciary

Requester: House Labor and Commerce

Dept. Affected: Community & Econ. Dev.

BRU: Banking, Securities, and Corporations

Component: Banking, Securities, and Corporations

Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY00) cost: ______

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by: Franklin T. Elder, Director — Phone 465-2521

Division: Banking, Securities and Corporations — Date/Time 1/31/00 8:16 AM

Approved by Commissioner: Deborah B. Sedwick — Date 1/31/00

Agency: Community and Economic Development

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(Rev 10/96) fiscnform.xls/OMB

SPONSOR STATEMENT
for
HB 296, UNIFORM PARTNERSHIP ACT

1/31/2000

Alaska currently has the 1914 version of the Uniform Partnership Act promulgated by the National Conference of Commissioners on Uniform State Laws. HB 296 updates that law.

The bill proposes enactment of the NCCUSL's 1994 comprehensive revision, and picks up its 1996 provisions on limited liability partnerships, along with a 1997 amendment by the NCCUSL. Making minor adjustments to accommodate Alaska drafting style requirements, HB 296 closely tracks the national version.

The changes reflect modern business practices and more than eight decades of court decisions and scholarship.

A fundamental aspect of the revision is the recognition of a partnership as a separate legal entity (the "entity" concept), and not merely as an aggregate of individuals (the "aggregate" concept). (Current law is a confusing blend of the two.) This principle is reflected in many provisions.

HB 296 recognizes the primacy of the partnership agreement over statutory rules, except for certain rules protecting specific partner interests in the partnership. It

addresses the fiduciary obligations of loyalty, due care, and good faith. It allows partners control and flexibility to meet their business needs, but defines "partnership" as a distinct entity. This bill also allows for the continuity of life of the partnership so that the partnership no longer dissolves every time a partner leaves. It also provides new rules for conversion and merger so that partnerships may convert to a limited partnership and vice versa, or may merge with another partnership or limited partnership.

The 1996 amendments on limited liability partnerships provide limited liability for general partners of a registered limited liability partnership. They provide greater protection to partners against personal liability than is the case under most of the existing state limited liability partnership statutes. Limited liability partnerships can be created simply by filing a registration statement. However, individual partners are personally liable for any injury they cause, and their personal assets are available to satisfy a judgment against them.

The bill integrates the nationally uniform version of the limited liability partnership law into the nationally uniform version of the regular partnership law, thus significantly improving upon Alaska's 1996 enactment on limited liability partnerships and facilitating the use of Alaska partnership law. It helps bring Alaska into the modern business world.

* * * * *

Uniform Partnership Act (1997)

- A Summary of Summaries -

Because of the complex chronology of the Uniform Partnership Act since its initial revision in 1992, this short summary does two things, 1) it provides a short history of the revision process, and 2) it provides a short summary of the 1997 Amendment. An initial revision of the 1914 Uniform Partnership Act was promulgated in 1992. It was officially amended in both 1993 and 1994. In 1996, the Limited Liability Partnership Amendments to the Uniform Partnership Act were promulgated. In 1997, a short amendment was added to Section 801. **This progression through revision and amendment is now all together in one final act called the Uniform Partnership Act (1997).**

A summary of both the Uniform Partnership Act (1994) and the Limited Liability Partnership Amendments to the Uniform Partnership Act were prepared as separate documents. Both of these summaries are part of the materials explaining the Uniform Partnership Act (1997), and should accompany this document. If you do not find the two summaries accompanying this document, call the ULC national office at 312 915 0195 or FAX it at 312 915 0187 or send an e-mail to nccusl@nccusl.org. Any of these modes of communication will get you the full array of summaries.

The 1997 amendment to Section 801 of the Uniform Partnership Act reflects the changes in tax policy unveiled by the Internal Revenue Service in late 1996. Section 801 is the basic section in the Uniform Partnership Act governing dissolution of the partnership. The Uniform Partnership Act (1994) provided a safe harbor for a term or particular purpose partnership from dissolution when a partner dissociated. A majority in interest of the remaining partners could agree to continue the partnership within 90 days after the dissociation. This agreement saved the partnership from dissolution and winding up. In 1994, this was considered the most that could be done for the continuation of the partnership under the tax rules at that time.

Under the 1997 amendment, a partner's dissociation in a term or particular purpose partnership no longer triggers a dissolution and winding up, unless a majority in interest of partners agree to continue. The partnership continues under the 1997 amendment unless at least half the remaining partners move by express will to dissolve the partnership within 90 days after the initial dissociation. Only then is there a dissolution and winding up. The new rule favors the continuity of the partnership more than the old rule does. The new tax rules have simply eliminated the old concern for continuity of life as a corporate characteristic, making the new rule favoring continuity of a partnership feasible.

A Few Facts About
THE UNIFORM PARTNERSHIP ACT (1994)(1996)(1997)

PURPOSE: This act revises the Uniform Partnership Act of 1914. The 1994 act establishes a partnership as a separate legal entity, and not merely as an aggregate of partners. It recognizes the primacy of the partnership agreement over statutory rules, except for specific rules protecting specific partner interests in the partnership. The 1994 act explicitly addresses the fiduciary responsibilities of partners to each other, providing for express obligations of loyalty, due care, and good faith. The act was amended in 1996 and 1997 to provide limited liability for partners in a limited liability partnership.

ORIGIN: Completed by the Uniform Law Commissioners in 1994, and amended in 1996 and 1997.

APPROVED BY: American Bar Association

ADOPTIONS OF UPA (1992)(1994):

Connecticut
Florida
West Virginia
Wyoming

ADOPTIONS OF UPA WITH 1996 and 1997 AMENDMENTS:

Alabama
Arizona **
Arkansas *
California **
Colorado
Delaware
District of Columbia
Hawaii
Idaho
Iowa
Kansas
Maryland
Minnesota
Montana
Nebraska
New Mexico
North Dakota
Oklahoma
Oregon
Puerto Rico **
US Virgin Islands
Vermont
Virginia **
Washington

2000 INTRODUCTIONS:

For any further information regarding the Uniform Partnership Act (1994)(1996)(1997), please contact John McCabe or Katie Robinson at 312-915-0195.

** *Limited Liability Partnership Equivalent*

(1/1/00)

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

UNIFORM PARTNERSHIP ACT – QUICK CHRONOLOGY

1914 – Original Uniform Partnership Act

1992 – Promulgation of Uniform Partnership Act (1992) by Uniform Law Commissioners

1993 – Amendments to Uniform Partnership Act (1992)
Becomes Uniform Partnership Act (1993)

1994 – Amendments to Uniform Partnership Act (1993)
Becomes Uniform Partnership Act (1994)

1996 – Amendments to Uniform Partnership Act (1994)
Adds Limited Liability Partnership. Becomes Uniform Partnership Act (1996)

1997 – Amendment to Uniform Partnership Act (1996), Section 801
Becomes Uniform Partnership Act (1997)

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195

For Immediate Release:

Revised Uniform Partnership Act Reflects Modern Business Practices
28 Jurisdictions Have Now Updated Venerable 80-year-old Partnership Law

January 2000 -- Partnership law in the United States has been derived from only one source--the Uniform Partnership Act (UPA), originally promulgated in 1914 by the National Conference of Commissioners on Uniform State Laws, and subsequently enacted in 49 states. The more recent Revised Uniform Partnership Act (RUPA), was approved by the Conference in 1994, bringing the law of partnerships in line with modern business practices and trends while retaining many of the valuable provisions in the original act. It was amended in 1997 to provide limited liability for partners in a limited liability partnership.

Adopted with the newest amendments in 21 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, and without the limited liability partnership amendments in four additional states, RUPA is the only revision since the original was promulgated. It governs the relations among general partners and between the partners and the partnerships.

RUPA makes basic revisions to several subjects in the Uniform Partnership Act. For example, it clearly expresses the primacy of the partnership agreement. That agreement is any agreement between the partners, whether written, oral or implied, concerning the partnership. An important concept of RUPA is that it operates, for the most part, as a default statute for matters that are not covered by the partnership agreement.

An important feature of the Revised Uniform Partnership Act is that it moves away from the aggregate approach to partnership law, and instead adopts an entity approach. RUPA states that a partnership is an entity distinct from its partners--thus achieving greater partnership stability under this more modern approach. A partnership may sue and be sued in the partnership name; property may be acquired in the partnership name as well.

The partner's interest is viewed as a separate group of rights and liabilities associated with participation in the partnership. No partner has an interest in specific property of the partnership. Creditors of a partner may attach the interest of a partner, but may not attach specific partnership property.

RUPA also changes the rule on the dissolution of a partnership. Partnership breakups under RUPA do not require a dissolution every time a partner leaves. In most cases, a partnership may buy out the interests of a partner who leaves. A term partnership will not dissolve so long as one-half of the partners choose to remain. RUPA also establishes and defines the scope of the partners' duties of care and loyalty, and the obligation of good faith and fair dealing.

The 1997 amendments to the Uniform Partnership Act provide greater protection to general partners of a registered limited liability partnership than is the case under most of the existing state limited liability partnership statutes.

The National Conference of Commissioners on Uniform State Laws is now in its 109th year. The organization comprises more than 300 lawyers, judges, and law professors, appointed by the states as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft proposals for uniform and model laws and work toward their enactment in their legislatures. Since its inception in 1892, the group has promulgated more than 200 acts, among them such bulwarks of state statutory law as the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Partnership Act.

For further information, please contact John McCabe or Katie Robinson at 312-915-0195, or Gabrielle Bamberger at 212-333-5222.

HB 310

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 310

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Economic Development

Title: An Act relating to the Alaska Insurance Guaranty Association; and amending Rule 24, Alaska Rules of Civil Procedure. BRU: Insurance; Component: Insurance

Sponsor: H L&C)

Requester: H L&C) Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr Phone 269-7900

Division: Insurance Date/Time 2-18-00 1:59 PM

Approved by Commissioner Deborah B. Sedwick Date 2-18-00

Agency: Community & Economic Development

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(Rev 12/99) 2000\hbm\fn\0440

ALASKA INSURANCE GUARANTY ASSOCIATION
HB 310

The AIGA is a statutory association of insurance companies (carriers) who are licensed (or "admitted") to write property and casualty insurance, including Workers Compensation, in the state of Alaska. Some classes of insurance are excluded. All licensed insurance companies are required to be members under the Act.

The AIGA functions through a Board of Directors. The Board has contracted with a third party to administer the day-to-day operation of the AIGA under a written Plan of Operations.

In general, the AIGA provides a mechanism to pay certain covered claims of those insurance carriers who have been declared insolvent by a court. An amount is assessed to each member of the Association and the collected assessment is used to pay the claims of the insolvent carrier. The assessment is based on the amount of premium a company collects on Alaskan insurance policies.

A receiver is generally appointed by the Court in the insolvent carrier's state of domicile. The receiver, similar to an executor, of the estate of the insolvent company attempts to sell off the assets of the carrier and gather liquid assets from all possible sources. The receiver also sets a date after which he/she will not allow any additional claims against the estate. This date is referred to as the *bar date*. The deadline is typically less than a year.

By comparison, no deadline exists for insureds or claimants to file a claim against the AIGA. In the past the lack of a deadline, or "bar date," has resulted in situations where the AIGA was still receiving and paying claims after the deadline for filing claims for recovery against the estate of the insolvent insurer had passed. In such situations, the cost of these old claims is borne solely by subsequent purchasers of insurance through premium surcharges

After paying expenses and claims of the estate, the receiver distributes funds to the AIGA to reimburse for claims and administrative expenses paid. A receiver will review each claim submitted by the AIGA for reimbursement and denies recovery on claims filed with the AIGA after the bar date established by the receiver. This is necessary to allow a fixed date on which to calculate the prorata amounts to be distributed to each creditor of the estate.

When collected assessments and recovered funds from the receiver exceed the amount needed to pay claims and administrative expenses of the AIGA for that particular insolvency, then the excess funds are refunded to the membership in proportion to the amount originally assessed.

The act allows members to recoup the assessments they pay through surcharges on insurance premiums charged policyholders. Historically, the AIGA has recovered millions of dollars from liquidators/receivers of insolvent members. The recovery is rarely 100% on the dollar. Thus, recovery of assets from the estate of insolvent insurers plays a direct role in reducing the cost of property and casualty insurance to Alaska policyholders.

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE COMMITTEE

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

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

MEMORANDUM

TO: The Honorable Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Representative Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: April 16, 2000

RE: House Bill 310 - Alaska Insurance Guaranty Association

Please schedule HB 310 for a hearing before your committee.

Attached are:

1. CSHB 310 (L&C)
2. Zero fiscal note
3. Sponsor Statement provided by Alaska Guaranty Association
4. Sectional Analysis provided by Alaska Guaranty Association
5. Bill History
6. Information sheet, entitled "Alaska Insurance Guaranty Association" dated February 22, 2000, from AIGA.
7. The bill was developed with the assistance and cooperation of the Division of Insurance and that Division is supportive of the legislation.

Thank you for your prompt consideration of this request.

SPONSOR STATEMENT FOR CSHB 310

This bill amends the Alaska Insurance Guaranty Association Act, AS 21.80.010 *et seq.* The Act provides a mechanism to protect policyholders and claimants in the event of the insolvency of a property and liability insurer licensed to sell policies in Alaska. The current statutory scheme was enacted in 1970 and was based on the 1969 National Association of Insurance Commissioners' (NAIC) State Post-Assessment Insurance Guaranty Association Model Bill. The NAIC model act has undergone a series of amendments to reflect lessons learned at a nationwide level from application of the model act to actual insolvencies during the ensuing years. CSHB 310 updates the Alaska Act to bring it into conformance with the 1996 NAIC Post-Assessment Property and Liability Insurance Guaranty Association Model Act. In so doing, the Act becomes better suited to meet its intended purpose of protecting Alaska policyholders and claimants. Updating the Act to comply with the model act provides the added benefit of uniformity among the states in terms of this type of legislation. The Alaska Division of Insurance and the Alaska Insurance Guaranty Association support CSHB 310.

Submitted by: Alaska Guaranty Association
February 2, 2000

Submitted by: [illegible]
February 2, 2000

SECTION-BY-SECTION ANALYSIS OF CSHB 310

As used herein, "the Alaska Act" or "Act" refers to the Alaska Insurance Guaranty Association Act, AS 21.80.010 *et seq.*

As used herein, "the Model Act" refers to the National Association of Insurance Commissioners' 1996 Post-Assessment Property and Liability Insurance Guaranty Association Model Act.

As used herein, "the AIGA" refers to the Alaska Insurance Guaranty Association created by AS 21.80.040.

Section 1.

Amends AS 21.80.010, "Purpose," to bring into conformance with Section 2 of the Model Act. The primary change is to specify an intent to minimize, consistent with the limitations contained in the Act, a claimant's or policyholder's financial loss related to an insolvency. Prior national litigation experience under the existing language ("avoid financial loss") showed insureds were trying to argue that the language should be read to avoid *any* financial loss, despite limitations within the Act. The phrase regarding detection and prevention of insolvencies is being deleted consistent with changes to AS 21.80.110, whereby the AIGA's role in that regard is reduced.

Section 2.

Repeals and reenacts AS 21.80.020, "Applicability," to bring into conformance with Section 3 of the Model Act. Experience has shown the existing language is not definite enough in specifying what types of insurance are not covered by the Act. The amendment expands on the categories of insurance and other indemnity agreements not covered by the Act. As explained by the NAIC's comment to Section 3:

> This bill focuses on property and liability kinds of insurance and therefore exempts those kinds of insurance deemed to present problems quite distinct from those of property and liability insurance. The bill further precludes from its scope certain types of insurance that provide protection for investment and financial risks.

The Alaska Life and Health Insurance Guaranty Insurance Association Act, AS 21.79.010 *et seq.*, provides coverage for some of the lines excluded by this provision. Unlike the Model Act, the amendment preserves existing coverage under the Alaska Act for ocean marine insurance, and preserves an existing exclusion for a risk retention group formed under 15 U.S.C. 3901-3906. Subsection (10) adds an exclusion not found in the Model Act. It is adopted from an Idaho statute, and indicates that for policy reasons, there is no coverage for any type of insurance written on a retroactive basis to cover known losses which existed when the insurance was bound.

Section 3

Amends AS 21.80.030, "Construction," to bring into conformance with Section 4 of the Model Act. The amendment deletes the word "liberally." Prior national litigation experience showed courts were using the presence of this word to justify the extension of coverage under similar acts in such a manner as to disrupt the balance between reducing the financial loss of claimants/policyholders of an insolvent insurer and increasing the expense of insurance coverage to the purchasers of insurance generally.

Section 4.

Amends AS 21.80.040, "Creation of association " to simply rename "board of directors" to "board of governors," which is consistent with the appellation used in the Alaska Life and Health Insurance Guaranty Insurance Association Act. It also avoids confusion with references within the Act to the Director of Insurance. This change is also seen in subsequent sections where the board members are presently referred to as "directors."

Section 5

Amends AS 21.80.040, "Creation of association," by adding a new subsection. The language comes from the definition of "member insurer" in Section 5.H(2) of the Model Act. The language is placed here to avoid putting substantive law in a definition section. It makes clear when a member insurer is no longer liable for assessments as to new insolvencies, and when it remains liable even though its license has expired or been terminated. The intent is to eliminate certain objections by members as to their liability for assessments.

Section 6

Amends AS 21.80.050, "Board of governors," to bring into conformance with Section 7 of the Model Act. The primary change is to allow for up to two public members to be appointed to the board at the discretion of the Director of Insurance. Limitations on who can serve as a public member are given. There are related changes on how vacancies on the board are to be filled, with the board filling vacancies of member insurers, and the Director filling public member vacancies. The existing language provides that the board consists of between five and nine members. This amendment adds a requirement for the plan of operation to establish the exact number of members currently comprising the board within that range. This will allow the Director of Insurance to know whether vacancies exist on the board. "Persons" is changed to "members" to reflect the actual practice that AIGA members, and not individual persons, serve as board members.

Section 7

Amends AS 21.80.060, "Powers and duties of the association," to bring into general conformance with Section 8 of the Model Act. Subsection (a)(1) removes past ambiguity by providing a bright line test for when the AIGA becomes obligated, i.e., when an order of

liquidation is entered. A policy decision regarding the allocation of the AIGA's limited resources is reflected by removal of the requirement for a claim to exceed $100 to be covered, and the addition of a limitation that a claim for unearned premiums may not exceed $10,000 per policy. A deadline, or bar date, is also added for when a claim must be filed with the AIGA to be covered. This prevents a situation the AIGA has faced in the past where a claim is made against it after the time when the AIGA can make a subrogation claim against the insolvent estate for reimbursement. A bar date is found in virtually every other state's insurance guaranty acts.

Subsection (a)(3) deletes existing language referencing AS 21.80.110 because it is superfluous. An existing ambiguity is also cured by specifying that the applicable "preceding year" to be used in calculating assessments is the calender year "preceding the assessment." This also reflects the AIGA's actual practice. Language allowing a financially-troubled member to be "exempt" from an assessment is deleted as unnecessary given the fact assessments in Alaska are passed through directly to insureds, and thus, an assessment would not impair the financial position of the member. Language is also added to make clear the AIGA is empowered to decide in what order claims are paid. This reduces the risk of suits stemming from dissatisfaction with the order chosen. New language also addresses the AIGA's ability to collect on assessments that had been deferred because of a member insurer's financial condition, and how other member insurers who have to cover a deferred assessment can later recoup the excess assessment they may have paid. An assessment should not be paid where it would drive an insurer closer to insolvency, and a member who has to pay extra because of some other member's inability to do so should be able to get paid back when the deferment ends.

Subsection (a)(5) deletes certain existing language given a corresponding deletion to AS 21.80.080. The deleted language is replaced with new language recognizing the right of the AIGA to control the defense of a covered claim. If the AIGA is the one paying the claim, it should be allowed to control the direction of the defense of the claim, including identity of defense counsel. This reflects the AIGA's existing practice.

Subsection (b)(7) is deleted. It has never been part of the Model Act, and it is uncertain what it adds beyond what would be authorized under subsection (b)(3).

Section 8.

Amends AS 21.80.070(c), "Plan of operation," to bring into conformance with Section 9 of the Model Act. Requires the plan of operation to establish procedures for handling assets received from the estate of an insolvent insurer, and to require board members to designate an individual as their representative on the board, as well as the alternate or substitute representative for the appointed person. Such requirements place reasonable bounds on the discretion of the board in its operations.

Section 9.

Amends AS 21.80.080, "Duties and powers of the director," to bring into conformance with Section 10 of the Model Act. In so doing, the former requirement for the AIGA to notify insureds

of insolvent insurers of the insolvency and their rights under the Act is deleted. This role has historically been accomplished by the Division of Insurance itself, or through the receiver for the estate of the insolvent insurer.

Section 10.

Amends AS 21.80.090(a), "Effect of paid claims," to bring into conformance with Section 11.A of the Model Act. The changes are limited to stylistic clarifications and cross-referencing changes in the next section.

Section 11.

Amends AS 21.80.090(b), "Effect of paid claims," to bring into conformance with Section 11.C of the Model Act. Adds language recognizing the AIGA's status as a claimant in the estate of the insolvent insurer as to amounts paid out by the AIGA to satisfy covered claims against the insolvent insurer, and also grants the AIGA the right to receive distributions under applicable liquidation statutes with a priority equal to what the claimant would have been entitled. Such rights allow the AIGA to recoup some or all of the amounts it pays to satisfy covered claims, and thus not overburden the system or Alaska insureds. A clarification is made that although a receiver is bound by the AIGA's determinations or settlements which release the AIGA's liability to a claimant, this does not extend to claim amounts alleged to exceed the AIGA's statutory limit. This primarily comes up when there is a dispute as to the amount of the AIGA's statutory limit as to certain claims. If the receiver contends the AIGA paid more than its statutory limit, the amendment makes clear the receiver may seek review of the issue by the court, and is not automatically bound by the amount of the AIGA's payment.

Section 12.

Creates new section AS21.80.095, "Prohibited claims." The language comes from the Model Act's definition of "covered claim," and is also present in existing AS 21.80.180(3). The language is placed in a separate section to avoid putting substantive law in a definition section.

Section 13.

Amends AS 21.80.100(a), "Nonduplication of recovery," to bring into conformance with Section 12.A of the Model Act. Makes clear that the obligation of a claimant to exhaust other available insurance coverage before seeking a recovery from the AIGA extends to insurance available from insurers other than those who are members of the AIGA.

Section 14.

Repeals and reenacts AS 21.80.110, "Prevention and detection of insolvencies," to bring into conformance with Section 13 of the Model Act. Makes the AIGA's role in advising the Director on insurer insolvency and reporting discretionary. The changes reflect actual practice and avoid the appearance of any conspiracy by the board against an impaired member.

Section 15.

Amends AS 21.80.120, "Examination of the association," to change the due date for the AIGA to file its certified financial report. The report is prepared by an outside auditing firm. By not having it due until after April 15, the AIGA obtains the report at a cheaper price. The due date also coincides with the board's annual meeting, when the report is provided to the Director.

Section 16.

Amends AS 21.80.150, "Immunity," to bring into conformance with Section 17 of the Model Act. Clarifies that immunity is provided not only for action taken, but for any failure to act. Also expressly extends immunity to an alternate or substitute representative of a board governor.

Section 17.

Amends AS 21.80.160, "Stay of proceedings and reopening of default judgments," to bring into general conformance with Section 18 of the Model Act, except it was felt a 90-day stay, rather than the six months specified in the Model Act, would be sufficient as the remaining language would allow extensions to be sought. Also gives the AIGA the right to waive a stay of proceedings. Under this section, a stay of proceedings is automatic. The waiver option provides a quick and easy way to allow a suit to continue where the AIGA sees that to be advantageous.

Sec 18.

Repeals and reenacts AS 21.80.180, "Definitions," to bring into conformance with Section 5 of the Model Act. Adds definitions for "affiliate," "claimant," "control," and "resident." These terms are contained within language being added to the Act under previous sections.

Section 19.

This section provides a transitional provision regarding how the amendments will affect the existing terms of the board of governors.

HB

318

Alaska State Legislature

DURING SESSION
STATE CAPITOL, ROOM 501
JUNEAU, AK 99801-1182
(907) 465-4843 (800) 892-4843
FAX: (907) 465-3871

WEB SITE
http://www.akrepublicans.org/Bunde.htm

REPRESENTATIVE CON BUNDE
District 18

VICE-CHAIR: HOUSE FINANCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

DURING INTERIM
716 W. FOURTH AVE.
ANCHORAGE, AK 99501-2133
(907) 269-0181
FAX: (907)269-0184

E-MAIL
Representative_Con_Bunde@legis.state.ak.us

Sponsor Statement

HB 318
"An Act relating to property disposal by law enforcement agencies."

Common law, the basis of modern-day law, provides that a private individual who finds property and takes the responsibility to give it into safekeeping has a greater right to claim that property than anyone else other than the true owner of the property. This makes sense. Unfortunately, Alaska Statute provides less than clear guidance to state departments about what they may do when an individual finds property and turns it in.

HB 318 affects property that is lost, mislaid, or delivered to a private individual by mistake, and turned in to a law enforcement agency, and is unclaimed by the rightful owner for one year.

HB 318:

- Allows private individuals who responsibly deliver property to a law enforcement agency to own that property after one year if possession of that property by that private individual is otherwise legal.
- Would not affect any municipal ordinance.
- Provides clear guidance to state law enforcement agencies.
- Encourages individuals to turn property into law enforcement agencies to find the rightful owner.

The Alaska Department of Public Safety and the Alaska Department of Revenue support this legislation, and I urge your support.

Alaska State Legislature

Representative Con Bunde
District 18

Vice Chair: House Finance Committee
Member: Legislative Budget & Audit Committee

Analysis of HB 318 – "Return Found Property to Finder"

HB 318:

1) **Is based on Common Law:**

   a) Provides that a finder of lost property who takes the responsibility to give the in to safekeeping, acquires title to the found property against all but the true owner.
   b) Lost property is property unintentionally lost by the true owner
   c) Treasure trove is coin, money, or other precious commodities concealed in the earth and is treated as lost property in the U.S.
   d) Mislaid goods are those which were intentionally placed by the owner where they were found (safe deposit boxes, banks, stocks, etc) and then forgotten or left. The finder of misplaced property does not have right of possession, but is considered to be holding the goods for the true owner.

2) **Clarifies current Alaska Statute 12.36, "Disposition of Recovered or Seized Property, which only covers**

   a) property used as evidence of a crime,
   b) property used in a children's court proceeding, and
   c) when the property is subject to state or federal forfeiture laws

3) **In all other instances, under AS 12.36.040, any unclaimed property that is a gun:**

   a) must be sold to a federally licensed gun dealer

4) **HB 318 will:**

a)	only affect property that is not evidence of a crime	(AS 12.36)
b)	only affect property that is legal to possess	(lines 9 & 10 of bill)
c)	provides clear guidance to law enforcement officials	(Dept. of Public Safety)
d)	encourage people to turn property in to proper law enforcement officials	(Dept. of Public Safety)
e)	only affect private individuals	(line 5 of the bill)

5) **HB 318 will not affect:**

a)	property loaned to or held by museums (HB 218)	(AS 14.57 covers HB 218)
b)	property found within municipalities or boroughs	(lines 11 – 14 of the bill)
c)	prehistoric, archaeological, historical, Native, or similar property --	(AS 41.35.200 -- the Historic Preservation Act)
d)	property that is not legal to be possessed, or people who may not possess certain property (sawed off shotguns, moon rocks, convicted felons, etc.)	(Line 10 of the bill)
e)	companies, institutions, banks, state employees who find property in the course of their job	(Line13 – "private individual")
f)	Intangible property, i.e.: bonds, safe deposit boxes	(AS 34.35, Uniform Unclaimed Property Act")

6) **The Department of Public Safety supports this legislation.**

7) **There is a zero fiscal note.**

Analysis

MEMORANDUM

State of Alaska

Department of Revenue, Office of the Commissioner

TO: Representative Con Bunde

DATE: Jan. 27, 2000

PHONE: 465-5469

FROM: Larry Persily
Deputy Commissioner

SUBJECT: HB 318

The Department of Revenue has reviewed House Bill 318 (An Act Relating to Property Disposal by Law Enforcement Agencies) and believes it would not affect the operations of the Unclaimed Property Section at the department's Tax Division.

Please let me know if I can offer any additional information on the bill or our unclaimed property operations.

D.O.R. Position

HB

368

No: 3

FISCAL NOTE

Bill Version: HB 368
(H) Publish Date: 2/11/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date: 2/7/00
Title: "An Act relating to release of persons before trial..."

Sponsor: Rules Committee
Requestor: Governor

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

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2 003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	26.8	26.8	26.8	26.8	26.8	26.8
TRAVEL	1.0	1.0	1.0	1.0	1.0	1.0
CONTRACTUAL	3.2	3.2	3.2	3.2	3.2	3.2
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	6.5	0.6	0.6	0.6	0.6	0.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	38.0	32.1	32.1	32.1	32.1	32.1
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GP	38.0	32.1	32.1	32.1	32.1	32.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	38.0	32.1	32.1	32.1	32.1	32.1

Estimate of any current year (FY 00) cost: $ -0-

POSITIONS:

FULL-TIME						
PART-TIME	1	1	1	1	1	1
TEMPORARY						

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

Prepared by: Barbara Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date: 2/7/00

Approved by Commissioner: Bob Poe
Agency: Department of Administration
Date: 2/7/00

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Fiscal Notes

ANALYSIS: (continued)

This bill creates a new misdemeanor offense: Violation of Condition of Release. In addition, the bill provides for "performance bonds." Under current practice, when people are released on bail, judges routinely impose conditions of release in addition to an "appearance bond." If they fail to appear, they can be charged with a crime and the appearance bond can be forfeited. Currently, if defendants appear as ordered but violate conditions of release, they are generally returned to jail. If this bill becomes law, defendants would be charged with a new offense (Violation of Condition of Release) and be required to forfeit performance bonds.

This bill would affect Public Defender Agency operations. We represent many people in bail hearings every day. We did a rough study of court calendars in Anchorage, Fairbanks, Palmer, and Kenai for a ten-day period last year. We covered 335 bail and arraignment hearings just in that period. Most defendants who are released on conditions do not violate conditions. But given the volume, there are a substantial number who will. The Public Defender Agency will need additional staff to handle the increased workload in bail hearings and new misdemeanor cases this bill would cause.

Anchorage is our busiest court location for bail hearings. The addition of a half-time Associate Attorney I on our Anchorage staff would enable us to meet handle the additional workload this bill would cause.

No: 2

FISCAL NOTE

Bill Version: HB 368
(H) Publish Date: 2/11/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
Title An Act relating to release of persons before trial and before sentencing or serviceof sentence; relating... BRU Administration and Operations
Component All
Sponsor Rules Committee
Requester Governor Component No. #0694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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 (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation creates the new crime of "violation of condition of release." The Dept. of Corrections believes this new crime will have a small impact on the number of offenders in DOC custody and therefore is submitting an indeterminate fiscal note. Under current law, if offenders violate their conditions of release they cannot be arrested unless a new crime is committed. This presents a problem for law enforcement and public safety. If passed, this legislation would allow for an immediate arrest and return to custody of violators and a decrease in the risk to the public safety. Under current law the offender would eventually be returned to custody. This is simply a more efficient method of removing an offender from the community immediately upon violation as opposed to waiting for the offender to be brought before the Court. If an offender is convicted of this new crime, they will most likely recieve a concurrent sentence. A small fraction may recieve sentences in addition to their original conviction resulting in a small cost to DOC.

Prepared by: Candy Brower, Legislative Liaison Phone 465-3307
Division Commissioner's Office Date/Time 2/9/00 10:05 AM
Approved by Commissioner Margaret M. Pugh Margaret M. Pugh Date 2/8/00
Agency Dept. of Corrections

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No: 1

FISCAL NOTE

Bill Version: HB 368
(H) Publish Date: 2/11/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction)
Title "... relating to release of persons before trial and ... to the offense of violation of conditions of release ..."
Sponsor Rules Committee
Requester Governor

Dept. Affected Law
BRU Criminal Division
Component 1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Component No. 2198-99;2201/03/61/79

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill adopts stronger enforcement measures to encourage persons released before trial, imposition of sentence, or service of sentence to abide by conditions of release. One of the enforcement measures included in the bill is the creation of a new crime. The bill provides that it is a class A misdemeanor for a person to violate release conditions if the person is charged with a felony, and a class B misdemeanor to violate conditions for a person charged with a misdemeanor. Currently, although it is a crime to wilfully fail to appear as ordered by the court, there are few options for violation of other release conditions except incarcerating the person.

The bill also clarifies the law as it relates to performance bonds, and the forfeiture of the posted security on violation of conditions of release; provides that the court may find a third-party custodian in contempt for failure to report immediately a defendant's violations of conditions of release; and clarifies the court may order a person begin their

Prepared by: Joan M. Kasson — Phone 465-5370
Division Attorney General's Office — Date/Time 2/9/00, 10:07 AM
Approved by Commissioner — Bruce M. Botelho, Attorney General — Date 2/9/00
Agency Department of Law

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ANALYSIS CONTINUATION

sentence at a later date that when the sentence is imposed.

The Department of Law does not anticipate a fiscal impact from passage of this legislation. The department already appears in court when conditions of release are violated to try and get the person's release revoked by the court, and passage of this bill will not increase the time commitment already required.

FRED'S BAIL BONDING
Fred Adkerson • 2550 Denali Street, Suite 1302 • Anchorage, AK 99503 • (907) 276-3443 • Fax (907) 274-2245

Re. HB 368

HB 368 sponsored by the Governor and Department of Law is a bad bill and should be rejected as agreed upon by the Court of Appeals of the State of Alaska on February 18th, 2000 (Opinion Nr. 1661 Lonis vs. State of Alaska) in which Judge Zervos of Ketchikan tried to uphold a performance bond but the Court of Appeals found this to be unacceptable.

HB 368 will increase jail overcrowding and add to the Taxpayers' burden. For example, approximately 70% of the prisoners at CIPT in order to make bail are required to have some sort of performance requisite and/or Third Party Custodianship which either delays or prevents their ability to bail. This in turn adds to the jail overcrowding problem for which the Taxpayer foots the bill.

For your information, Alaska is the only State in the Nation requiring Third Party Custodians. Getting rid of the Third Party Custodian requirement would greatly reduce jail overcrowding; and at the same time allow defendants their constitutional right to reasonable bail as is already delineated in the Alaska Statutes. Elimination of the Third Party Custodian requirement would free bed space to accommodate incoming prisoners. And, this would help eliminate Department of Corrections having to send prisoners outside, e.g., to Arizona.

Getting rid of the Third Party Custodian requirement, alone, would save the State of Alaska millions of dollars.

FRED ADKERSON

STATE OF ALASKA

April 17, 2000

DEPARTMENT OF LAW

The Hon. Robin Taylor
Chair, Senate Judiciary Committee
Alaska State Legislature
State Capitol, Room 30
Juneau, Alaska 99801

CRIMINAL DIVISION

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

☒ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-1043

☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2054
PHONE: (907) 269-6250
FAX: (907) 269-6270

Re: CSHB 368 (JUD) am

Dear Senator Taylor:

Committee Substitute for House Bill 368 (JUD) am passed the Alaska House of Representative on April 14, 2000, with a vote of 34 to 0 for passage. It has been assigned to the Senate Judiciary Committee. I am writing to request that the bill be scheduled at your earliest convenience.

Most people charged with a crime are released before trial, and often persons convicted are released before sentence is imposed or awaiting appeal. The courts, in addition to setting bail to insure the person appear when required, often require the person to abide by conditions of release. The safety of the victims often depends on the person abiding by these conditions. The referenced bill gives courts and law enforcement important tools to encourage people to abide by conditions. The bill adopts a class a misdemeanor for violating conditions of release – a class A misdemeanor if the person is charged with a felony, and a class B misdemeanor if the person is charged with a misdemeanor. The municipalities of Anchorage and Juneau have found similar ordinances very useful in enforcing conditions of release.

The bill specifically allows the court to impose performance bonds. Although the courts have used this tool for many years, the Alaska Court of Appeals recently held that because there is no specific statutory authority for performance bonds, and they may not be used. The bill also specifically provides that a third party custodian may be held in contempt for failing to notify the court that a person in their custody has violated release conditions. Additionally, CSHB 368 (JUD) am clarifies that t court has statutory authority to order a defendant to report to serve a sentence at a date after the sentence is imposed.

Thank you for your consideration of this request.

Sincerely,
BRUCE M. BOHELHO
ATTORNEY GENERAL

By: Anne D. Carpeneti
Assistant Attorney General

CSHB 368 (JUD)
RELEASE OF DEFENDANTS

- **PURPOSE**: Allow release of defendants before trial or imposition of sentence, or pending appeal, and at the same time protect victims and the public by giving courts tools to enforce conditions of release;

- **Third party custodians**: Allows third party custodians who have promised the court to immediately report any violation of release conditions to authorities to be held in contempt if the defendant violates the conditions, the custodian knows about it, and the custodian fails to report the violation immediately;

- **Performance bonds**: Allows the court to order a defendant to pay money into the registry of the court, to be returned if the defendant abides by conditions of release. If the defendant fails to abide by release conditions, the money must be forfeited if the defendant violated a condition by contacting a victim or witness; and may be forfeited it the defendant violates another condition, such as drinking alcohol after being ordered to abstain from alcoholic beverages;

- **Misdemeanor for violation of condition of release**: Makes it a crime to violate a condition of release (a class A misdemeanor if the person is charged with a felony; a class B misdemeanor if the person is charged with a misdemeanor). Both the MOA and the CBJ have similar misdemeanors, and both say it is a good tool to encourage defendants to obey release conditions. (Note: it is already a felony to fail to appear in connection with a felony charge, and a misdemeanor to fail to appear for a misdemeanor);

- **Reporting to jail at time after sentencing**: Provides the statutory authority for the current practice of ordering a defendant to report to serve a term of imprisonment at a date after sentence is imposed;

- **Return of forfeited security**: Amends the court rule to provide that property forfeited for failure to appear or other violation may be returned if the violation was due to circumstances beyond the control of the defendant or, if the defendant had contact with a victim or witness in violation of a condition, the contact was not knowing or intentional on the defendant's part.

HB 369

No: 1

FISCAL NOTE

Bill Version: HB 369
(H) Publish Date: 3/3/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____
Dept. Affected Law
Title "An Act relating to property exemptions under the Alaska Exemptions Act; and providing for an effective date."
BRU Civil Division
Component Collections & Support
Commercial
Sponsor Representative Harris
Requester House Labor and Commerce Committee
Component No. 2210;2211

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

HB 369 increases the homestead property exemption, whether in bankruptcy or affected by executions, from $54,000 to $250,000. In addition, current law limits the exemption applied to property held in joint ownership, and used as principal residence by at least one of the owners or their dependents, to $54,000 in total. This bill will entitle each owner to the $250,000 exemption. In addition to existing exemptions for certain personal property, an individual exemption of $8,075 for cash and defined liquid assets would be permitted under this bill.

The Department of Law does not anticipate this bill will have a fiscal impact on its collection of debts owed the state, because the debts are either excepted from this statute, or secured.

Prepared by: Joan M. Kasson — Phone 465-5370
Division Attorney General's Office — Date/Time 2/25/00, 1:37 PM
Approved by Commissioner Bruce M. Botelho, Attorney General — Date 2/25/00
Agency Department of Law

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CORRECTION

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

No: 1

FISCAL NOTE

Bill Version: HB 369
(H) Publish Date: 3/3/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

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Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

HB 369 increases the homestead property exemption, whether in bankruptcy or affected by executions, from $54,000 to $250,000. In addition, current law limits the exemption applied to property held in joint ownership, and used as principal residence by at least one of the owners or their dependents, to $54,000 in total. This bill will entitle each owner to the $250,000 exemption. In addition to existing exemptions for certain personal property, an individual exemption of $8,075 for cash and defined liquid assets would be permitted under this bill.

The Department of Law does not anticipate this bill will have a fiscal impact on its collection of debts owed the state, because the debts are either excepted from this statute, or secured.

Prepared by: Joan M. Kasson — Phone 465-5370
Division: Attorney General's Office — Date/Time 2/25/00, 1:37 PM
Approved by Commissioner: Bruce M. Botelho, Attorney General — Date 2/25/00
Agency: Department of Law

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COMMITTEE COPY

AlaskaUSA
Federal Credit Union

April 12, 2000

Honorable Robin Taylor, Chair
Alaska State Senate Judiciary Committee
Alaska State Capitol, Room 211
Juneau, Alaska 99801

Dear Senator Taylor:

Alaska USA Federal Credit Union is the leading provider of consumer credit in the State of Alaska. Since its inception in 1948, the credit union has extended over $7 billion in credit to members. Currently, Alaska USA has over 155,000 members in Alaska, and another 65,000 members in the Lower 49 and overseas, many of whom joined while living in Alaska.

We are very concerned about the implications of H.B.369, which amends the Alaska Exemption Act, and is scheduled for hearing before Senate Judiciary on Monday, April 17th. This legislation significantly increases exemptions eligible for protection under Alaska's bankruptcy code. If passed, this legislation could have a chilling effect on the availability and cost of credit to Alaskans as well as have an adverse effect on financial institution reserves. I also note with some concern that to date, the record does not show any input from creditors has been sought or provided with respect to this legislation.

The increasing rate and cost of bankruptcy is a problem not only here in Alaska, but across the country. As you probably are aware, the U.S. Congress has been working for several years to improve the balance between debtor and creditor rights in the federal bankruptcy code. This reform legislation is now before a conference committee and is likely to be implemented in the next few months. In contrast to this effort to achieve balance, H.B.369 clearly tilts the scales far to the benefit of the debtor, exceeding both the federal standards and that of most States.

The public policy behind bankruptcy is to provide individuals hopelessly in debt beyond their ability to repay, the opportunity to get a fresh start. It was never intended to be a financial or estate planning tool, nor a means of protecting personal assets at the expense of lenders who advanced funds in good faith. To provide asset protection beyond a reasonable level invites abuse and fails to satisfy this public policy notion. The exemption levels in H.B.369 clearly exceed any standard of reasonableness. Under the proposed legislation, joint home owners would be entitled to retain $500,000 in home equity, all forms of retirement savings, over $8,000 in cash as well as increased levels of personal property. These allowable exemptions exceed the net worth of most working Alaskans who routinely satisfy their financial obligations.

According to the Sponsor's statement, the purpose of this legislation is to protect individuals from claims "that might have arisen from a rogue jury verdict or a catastrophic medical illness." Our experience is that bankruptcy resulting from these circumstances is minimal. In fact, only 5% of Alaska USA's total loans subject to bankruptcy over the last six years were the result of medical circumstances. We have no evidence that any were the result of "rogue verdicts." However, should a judgement be rendered against

an individual, the answer is in appeal, not in the transfer of that obligation to the public. Additionally, while we are sympathetic to individuals experiencing medical emergencies, the doctors and hospitals that advanced treatment in good faith should not be expected to bear the financial burden for individuals with the means to pay. In short, this legislation re-writes laws affecting the many to address the concerns of the few.

Alaska USA has incurred loan losses of over $9,585,000 as a result bankruptcies during the last six years. Because credit unions are financial cooperatives, these losses translate into a cost of $61.84 per member in Alaska. This number impacts and penalizes all members through increased cost, and reduced availability, of credit. Fortunately, many of the individuals declaring bankruptcy have successfully re-established credit and have achieved financial stability as a result of the second chance that the current law provides. However, it is an insult to those who manage their credit, pay their bills on time and live within their means to ask them to subsidize debtors declaring bankruptcy while protecting assets far in excess of the average Alaskan's net worth.

We urge your thoughtful analysis of the public policy reflected in this legislation to determine its effects on Alaskans and Alaskan creditors. We believe that in its current form the bill invites the opportunity to use bankruptcy as a financial planning tool to avoid repayment of debts, instead of the purpose for which it is intended. We ask that the legislation not be advanced until its financial implications are investigated and input provided by the creditor community. We would be pleased to work with the bill's sponsor and interested parties during the interim to explore what changes to the current law may be warranted.

I have enclosed an analysis of this legislation that was provided by two of the leading bankruptcy attorneys in Alaska. This summary points out the potential impact of this legislation and may assist in putting these issues in perspective.

Sincerely,

Nancy Bear Usera
Senior Vice President
Corporate Development

Cc: Members, Alaska State Senate Judiciary Committee
Members, Alaska Credit Union League
Alaska Bankers Association
Alaska State Hospital and Nursing Home Association

Howard & Margo Morgan

April 16, 2000

Senator Robin Taylor
Chairman Judiciary Committee
Alaska State Legislature

RE: HB 369

Dear Senator Taylor:

My wife and I would like to go on record as approving the passage of HB 369, an Act Relating to Property Exemptions.

As long time Alaskans, who were in the building business during the eighties when real estate was going south along with the Alaskan economy, we can speak with experience as the banks tried many times to foreclose on our house, even though we never missed a payment in over 20 years. Fortunately, as our building business was going under, we were able to keep the banks from taking the house, but we lost everything else including our building business and all investment property. We avoided bankruptcy , but it has taken us many years to recover. Since most long time Alaskans have the majority of their estate tied up in the value of their home, it only makes sense to increase the exemption allowed, especially today as appraisals and values have gone up many times over the years, Most states exempt a persons homestead, and we feel that Alaska should too. I thank you for your kind consideration.

Sincerely,

Howard Morgan
Margo Morgan

Howard Morgan and Margo Morgan

cc: Senator Sean Parnell,
Our Senator, District I

4910 Byrd Ln. Anchorage, Ak 99515 (907)243-5681 Fax (907)245-1574

Subject: House Bill 369(JUD)
Date: Mon, 17 Apr 2000 10:31:45 -0800
From: Dennis Fenerty <fenertyd@groheggers.com>
To: Senator Dave Donley <Senator_Dave_Donley@legis.state.ak.us>,
Senator Johnny Ellis <Senator_Johnny_Ellis@legis.state.ak.us>,
Senator Rick Halford <Senator_Rick_Halford@legis.state.ak.us>,
Senator Robin Taylor <Senator_Robin_Taylor@legis.state.ak.us>,
Senator John Torgerson <Senator_John_Torgerson@legis.state.ak.us>

Senators,

I have been a creditors' rights lawyer in Alaska for more than 15 years, representing mostly institutional lenders. I understand that the above referenced bill increases the homestead exemption to $250,000 per owner, $500,000 per married couple, and it also allows an exemption for life insurance and annuities of up to $250,000. This radical change will have unintended consequences of significant import. I urge you not to pass this bill into law.

The homestead exemption is rarely of use to homeowners when they get into financial difficulties, since most home owners have mortgaged their homes close to the full value. When financial problems arise, the homeowners will preserve the home only if they cure mortgage defaults, and there is typically little equity available beyond the mortgage to benefit the typical homeowner. When someone has paid down their mortgage, the current exemption shields significant equity, protecting reasonably valuable homes.

The benefits of this legislation will not, in fact, reach the targeted audience, the typical working stiff homeowner. The benefits will flow to those with very expensive homes. Assuming there is a mortgage in place when the homeowner gets into financial difficulty, the present exemption protects homes of a value that working class homeowners own. These homeowners already have all the protections they need. The increased exemption will protect those who own mansions.

Besides protecting very expensive homes, the increased exemption will create an invitation for people who anticipate financial difficulties to muster funds to buy annuities or life insurance, or to make large payments against the mortgage (creating greater equity to shield with the now larger exemption), rather than using those funds to pay creditors. The increased exemption will be exploited mostly by people who will convert non-exempt assets into exempt assets for the purpose of avoiding paying their creditors. This is nothing we should encourage.

Mortgage lenders will not suffer; rather, unpaid vendors and consumer lenders will. Vendors who perform services or supply materials are not in the business of extending credit. They typically bill on a "due on receipt" basis and they expect immediate payment. When the invoice is not paid, they sue. To collect, they bring pressure to bear by threatening the debtor's assets. This bill puts important assets beyond reach. These small vendors can not do without payment. They will be forced out of business.

This bill will ultimately make credit more difficult and costly to get. Consumer lenders will be forced to take into account the fact that borrowers will be able to put significant assets beyond the reach of creditors. The costs of consumer credit will go up as dollars recovered on claims decline. Consumer lenders will also take fewer risks, making loans to fewer people, denying scarce credit to those already least likely to have access to credit.

It is difficult to understand who will benefit from this bill that is truly deserving of the generous

benefits of the bill. The national audience has a vivid picture of the person who benefits from a large homestead exemption, based on a report aired some time ago on the television show *60 Minutes*. Florida and Texas, with their unlimited homestead exemptions, were painted as states that favor unsavory characters who cheat working stiff creditors while living in mansions. This is not a desirable image for Alaska to seek.

Thank you for taking the time to consider this comment.

Dennis G. Fenerty

ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 110, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Sponsor Statement

HB 369

This bill increases the dollar amount of specified assets which an Alaskan resident can retain free of creditor claims. It also provides protection for certain assets not previously covered by existing law. The protection which this bill affords Alaska residents is by no means as expansive as the laws of other states but is a vast improvement over our existing law. The justification for an exemption lies in a public policy decision that certain assets should be beyond the reach of creditor claims if a person is unable to repay the creditor. For instance the homestead exemption expresses a public policy decision that an individual is entitled to keep a certain amount of equity in a home free of a creditor claim that might have arisen from a rogue jury verdict or a catastrophic medical illness. At the same time it should be noted an exemption statute has no effect on a lender who secures the debt because the debt will always be repaid to the extent of the collateral securing the loan.

HB 369 changes the dollar amounts of our existing exemption statute with respect to the homestead exemption and life insurance. The homestead exemption is increased from the present amount of $63,000 to $250,000 per individual. This dollar amount tracks the same dollar amount which is exempt from federal income tax on the sale of a residence. At the present time 13 states give its citizens greater homestead protection than that given to Alaskan residents. Of these 13 states, Florida, Iowa, Kansas, Oklahoma and Texas give its citizens an unlimited homestead exemption. This bill also increases the exemption for the cash value of all life insurance policies and/or annuity contracts owned by an individual to $250,000 and provides an unlimited exemption for the proceeds on a life insurance contract or annuity paid to a beneficiary. This furthers the public policy goal of providing financial protection for the insured's beneficiaries in the event of death, as well as providing an additional means of saving for retirement.

Several new exemptions are provided for in this bill. The first of these pertains to reserves established by condominium associations. At the present time these are not protected. If a creditor of an association were to receive a judgment in excess of the insurance coverage maintained by the association and the reserves were taken by the creditor, there would be no money left to pay the common bills or provide for the repair of common structures. This could result in a dislocation of the residents and a potentially huge problem for the public. Residents of condominium associations should have the security of knowing their dues will be used for the purposes intended.

Second, HB 369 adds deferred compensation plans established for government employees as a protected retirement asset. Current law is grossly unfair to governmental employees because deferred compensation plans, which are akin to the 401(k) plans found in private enterprise, do not have any protection under current law. This section would put governmental 457 plans on an equal footing with other retirement plans.

Third, there is a new exemption which allows an individual to retain a minimal amount of cash which might be necessary to pay for the following month's rent and living expenses. This dollar amount follows the exemption now found for cash under federal bankruptcy law.

HB 369 – Changes to "Exemptions" statute

In Summary, CSHB 369 Amends AS 09.38 to:

- Increase the dollar amount of specified assets
- Provide new protection to certain assets not currently covered

What is the Exemption Statute? AS 09.38 – The state exemption statute delineates what assets are protected from creditors when a person is sued and loses and has a judgement entered against him.

It could also apply in some cases of bankruptcy, if the person opts state exemptions instead of federal exemptions.

Specifically, CSHB 369 will:

- Increase the homestead exemption to $250,000 per individual Sec 1
- Increase the exemption for the cash value of life insurance policies and/or annuity contracts owned by the individual to $250,000 Sec 7
- Provides an unlimited exemption on the proceeds of a life insurance contract or annuity paid to a beneficiary Sec 8
- Increases from 6 months to 2 years to trace assets that an individual could have claimed under the exemption Sec 14
- Increases the maximum allowed for various property exemptions currently in statute Sec 6, 10, 11, 12, 15

New exemptions proposed by CSHB 369:

- Reserves kept by condominium associations Sec 4
- Government employee's deferred compensation plans Sec 5
- Limited cash and liquid asset exemption of up to $8075. Sec 6
- Changes how certain revocable trusts are treated Sec 16

The bill also repeals indexing provisions currently in statute (AS 09.38.115) which the Judiciary committee determined were no longer needed and a burden to the Dept. of Labor. Sec 17

Proposed Property Exemption Comparisons - CSHB 369

Effect	Exemption Category	Federal Bankruptcy Exemption	Current Alaska Exemption	Proposed CSHB 369 Exemption	Proposed Modifications
Change	Homestead	$16,150 (each debtor owner)	$62,100 (aggregate)	$250,000 (each owner, husband/wife=$500,000) 2 years on proceeds	$250,000 aggregate (6 months on proceeds)
No Change	Motor Vehicle	$2,575 (in one vehicle)	$3,450 (vehicle cannot exceed $23,000 in value)	$3,600 (vehicle cannot exceed $24,000 in value)	
No Change	Household Goods	$ 8,625	$ 3,450	$ 3,600	
No Change	Jewelry	$ 1,075	$ 1,150	$ 1,200	
No Change	Tools of the Trade	$ 1,625	$ 3,200	$ 3,360	
Change	Life Insurance		$ 11,500	$ 250,000	
No Change	Any Property	$850 plus up to $8,075 of any unused homestead exemption			
No Change	Earnings/Liquid Assets		$402.50 per week or $1,610 per month	$420.00 per week or $1,680 per month	
New	Medical Savings Accounts			Unlimited	
New	Condominium Assn Reserves			Unlimited	
New	Govt Employee Deferrred Comp			Unlimited	
New	Liquid Assets			$ 8,075	
New	Revocable Trusts			Can be treated as individuals with all the same exemptions as above	No "double-dipping" and cannot exceed amount of personal exemptions

April 18, 2000

ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 110, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Summary Sectional Analysis
CSHB 369 (Jud)

Sec. 1 raises an individual's homestead exemption to $250,000.

Sec. 2 eliminates the "aggregate value" restriction currently on homestead exemption.

Sec. 3 stops the court from ordering a home sold if the value of the property is less than the court award.

Sec. 4 protects funds held by a condominium association.

Sec. 5 extends protection to deferred compensation plans of government employees and to funds held in medical savings accounts.

Sec. 6 updates exemption amounts for various personal properties, which are currently indexed by the Dept. of Labor.

Sec. 7 provides a limited cash/liquid assets exemption of $8,075, which is the amount allowed by federal law in bankruptcy proceedings.

Sec. 8 provides a $250,000 exemption for life insurance policy and annuity contracts for the individual.

Sec. 9 provides an unlimited life insurance/annuity exemption if payable to a beneficiary of the individual.

Sec. 10 updates an exemption for weekly net earnings.

Sec. 11 updates a monthly income exemption for individuals who do not receive weekly or monthly earnings.

Sec. 12 increases the exemption for an individual who is a household's sole provider.

Sec. 13 adds protection for condo association dues in bankruptcy proceedings.

Sec. 14 increases from 6 months to 2 years the time period in which an individual can trace property that has been transferred, but which could have been claimed under the exemption.

Sec. 15 updates the exemption from claims of crime victims.

Sec. 16 applies coverage to revocable trusts.

Sec. 17 includes repealers for the life insurance provision changed by sec. 9 and to eliminate indexing provision, which is currently done by the Dept. of Labor.

Sec. 18 provides an immediate effective date.

Summary of changes made by House Judiciary committee:

The committee removed the indexing provision (AS 09.38.115). In conjunction with that repealer, they updated in statute a number of exemption amounts that have been indexed in regulation since 1982. These amounts are found in sections 6, 10, 11, 12, and 15.

HB 372

Amdt to Am #1 HB372 - Amend to H.a

AS 12.55.005 is amended to read:

New *Section 1. AS 12.55.005 is amended to read:

Sec. 12.55.005. Declaration of purpose. The purpose of this chapter is to provide the means for determining the appropriate sentence to be imposed upon conviction of an offense. The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute as provided in this chapter. In imposing sentence, the court shall consider

(1) the seriousness of the defendant's present offense in relation to other offenses;
(2) the prior criminal history of the defendant and the likelihood of rehabilitation;
(3) the need to confine the defendant to prevent further harm to the public;
(4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety;
(5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct; [AND]
(6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms **; and**
(7) the restoration of the victim and the community.

Add to Section #2

*Sec. 2. AS 12.55.045(f) is amended to read:

(f) If a court proposes to order a defendant to pay restitution under this section of **more** [LESS] than $5,000, and the defendant's sentence **includes** [DOES NOT INCLUDE] a period of unsuspended incarceration exceeding 90 days, the court may take into account at the time of sentencing the defendant's present and future ability to pay the restitution proposed. The court shall presume that the defendant has the ability to pay the amount proposed unless the defendant at the sentencing hearing establishes by **clear and convincing** [A PREPONDERANCE OF THE] evidence the inability to pay the amount proposed.

*Sec. 3. AS 12.55.045 is amended by adding new subsections to read:

~~(h) In imposing restitution under this section, the court may require the defendant to make restitution by means other than the payment of money.~~

Add: to Section #2

(i) An order of restitution made under this section is a condition of the defendant's sentence and, in cases in which the court suspends all or a portion of the defendant's sentence, the order of restitution is a condition of the suspended sentence. If the court suspends imposition of sentence under AS 12.55.085, the order of restitution is a condition of the suspended imposition of sentence.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 372

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections

Title An Act relating to criminal sentencing and restitution. BRU Administration and Operations

Component All

Sponsor Rep. Dyson

Requester House Judiciary Committee Component No. #0694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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 (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

If passed, this legislation would allow victims and offenders or communities and offenders to negotiate an agreed sentence for an offense and allow for restitution to be made by means other than money. This bill would not include offenses against a person. An agreed sentence could be less than the presumptive sentence for a felony because reaching such an agreement will be a mitigating factor under AS 12.55.155(d).

It is difficult to predict what kind of a fiscal impact this would have on the Department of Corrections. We have no way of knowing how often this would occur and what the outcome would be. Therefore, the Department of Corrections is submitting an indeterminate fiscal note.

Prepared by: Candy Brower, Legislative Liaison Phone 465-3307

Division Commissioner's Office Date/Time 3/2/00 5:02 PM

Approved by Commissioner Margaret M. Pugh Margaret M. Pugh Date 3-2-00

Agency Dept. of Corrections

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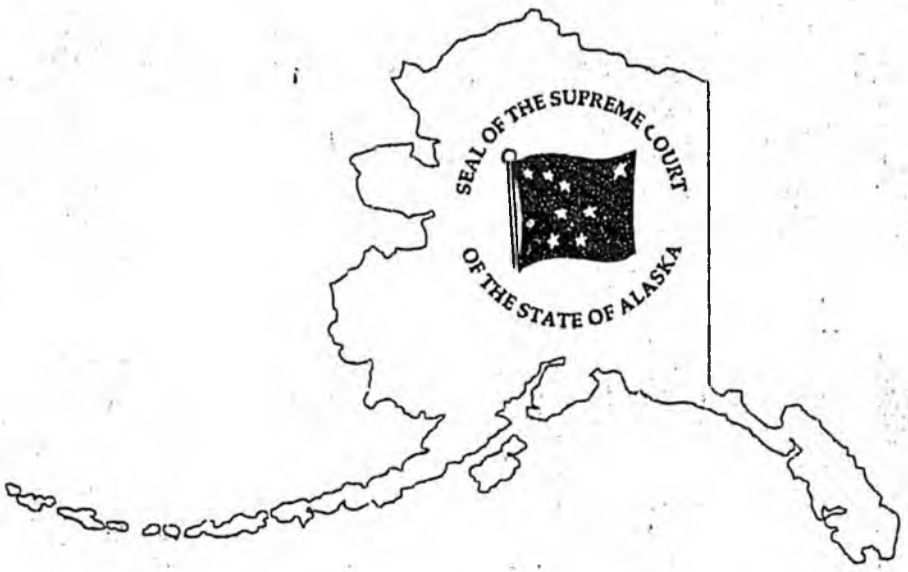
Key points about House Bill 372

- HB 372 – is post conviction, it does not interfere with the adjudication process
- HB 372 is crafted to be permissive, without being proscriptive
- The gate into and out the provisions of HB 372 is guarded by judicial review
- HB 372 is good for lower income folks because it allows them an option to pay by other than monetary means
- HB 372 is victim-friendly, offender allowed and judicially scrutinized.
- HB 372 intends to extend some of the strengths of the youth court model to non-violent adult offenders.
- HB 372 applies to non-violent offenders only, the penalties for crimes against persons, domestic violence, or arson where a life is threatened, can not be negotiated.
- By allowing non-violent offenders to work off their sentence, we reserve more prison beds for offenders who are a real threat to public safety.
- There will be some offenders who do not respond to the community sentencing option, for these we have a well established correctional system.
- Page 1 line 9-10 specify that whatever sentence is produced by negotiation much also comply with sentencing guidelines we already have in place – we are not undoing presumptive or mandatory sentencing.
- In section 3, HB 372 is adding one additionally mitigating factor to the 17 existing ones that may be considered by a court in mitigating the form the sentence takes.
- Because we have attempted to be non-proscriptive, some crimes that would be available to negotiate are technically impractical to do so: indecent exposure for example.
- Instead of detailing a multi-page laundry list of do's and don'ts it seems best to say: "No negotiation for serious arson, violent person to person crime or instances of domestic conflict (defined as one household member victimizing another), all others ***may*** be considered by the court and the victim or his/her community."

THE STATE OF THE JUDICIARY



A MESSAGE BY
CHIEF JUSTICE WARREN W. MATTHEWS
TO THE SECOND SESSION OF THE
TWENTY-FIRST ALASKA LEGISLATURE
MARCH 8, 2000