

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10090 SENATE JUDICIARY

IMPLEMENTATION OF LEGISLATION


Although each branch of government has core areas where it must act independently, there are also many areas of shared responsibility. These take many and varied forms. What I propose to do now is list a number of activities the court system took last year in response to legislative initiatives.

Mediation and Alternative Dispute Resolution

In 1997 you enacted legislation to encourage broader use of mediation. The Alaska Court System agrees with this goal. I will briefly describe the mediation programs which are now underway.

- The Third District has established a child custody and visitation mediation program. This is funded through a federal grant. The court provides trained mediators to low-income parents in order to help them resolve contested child custody or visitation issues. The program is in place in Anchorage, Fairbanks and Kenai, and is scheduled to begin soon in Southeast Alaska. So far our statistics show that 82 cases have been referred and that complete or partial agreements have been reached in about 70% of these cases.
- There are mediation programs for child-in-need-of-aid cases in Anchorage, Bethel, Fairbanks, Kenai, and Kotzebue. These are also

funded by a federal grant. Two months ago we provided 32 hours of specialized mediation training to 15 contract mediators. Two weeks ago the programs opened for business. We are anticipating a heavy demand for this service and we will be tracking referrals and resolutions.

- In Juneau, Presiding Judge Lary Weeks reports that the judges continue to order the mediation of many domestic relations cases by private mediators. A high percentage of mediated cases are partially or wholly resolved. 
- The Anchorage district court recently began a project using trained volunteer mediators to mediate small claims cases. The mediators make themselves available one day a week to any person who has a small claims trial scheduled.
- Also in Anchorage, a nonprofit corporation, the Resolution Center, is conducting a juvenile mediation program based upon principles of restorative justice. Under this program, when a youth is accused of a crime, Department of Health and Social Services intake officers evaluate the case to see whether it is appropriate for referral. If it is, and if the offender and the victim both agree to participate, a team of volunteer mediators conducts a meeting between the offender and the victim. At the

meeting, the victim relates the effects of the crime and the offender is expected to take responsibility for his or her actions. The victim and the offender often negotiate a sentence, which can include the payment of money, community work service and, necessarily, an apology. This program seems to be working well. It handled 104 cases in 1999.

⇒ Offenders paid over \$10,000 in restitution and the recidivism rate of offenders is said to be low.

- Also on the subject of mediation, the supreme court amended the rules of professional conduct governing lawyers. They must now inform their clients about mediation and alternative dispute resolution in any matter involving or expected to involve litigation. The court also facilitates private mediation by maintaining a directory of mediators on its home page.

Child Protection, Support and Custody

In 1998 the legislature made important changes in the child protection statutes. To reflect these changes, the supreme court has revised the rules governing child protection proceedings. We also added new provisions to ensure that these cases proceed expeditiously.


LOOKING TO THE FUTURE

Speaking to you 28 years ago, Chief Justice Boney remarked that Abraham Lincoln would feel very much at home in most of the courts in America, since they really haven't changed very much since he practiced law in the 1840's in Illinois. In many respects that is still true in Alaska and in the other states. I find it comforting in a way, because common law trials are well designed to achieve justice. But it is also worthwhile to reflect on a trend that might signal an important shift in the way courts do business.


→ I'm speaking of the restorative justice and therapeutic court movements. Nationally the best known therapeutic court is the drug court, although the same model has been applied to other types of chronic destructive behavior. In the therapeutic court a single judge is assigned a certain class of cases and the judge uses the threat of sanctions to compel compliance with a long term treatment plan. Nationwide some remarkable successes have been reported in drug courts. Recidivism is said to be greatly reduced. In the therapeutic court the judge retains active control over cases for a long period of time, and many hearings are scheduled to ensure that defendants are complying with rehabilitation plans. Thus therapeutic courts are labor intensive and expensive. But advocates say the added costs are much less, viewed overall, than the costs of recidivism experienced in the present system.

In Alaska, the only therapeutic court is the mental health court conducted in the Anchorage district court. This project focuses on misdemeanor offenders who suffer from mental disabilities. These people have historically cycled through the district court following arrests for disorderly conduct or trespassing. In the mental health court, treatment is ordered and monitored closely, as an alternative to incarceration. The project was started in 1998 as a collaboration between the court system, the Department of Corrections, and a number of law enforcement and social service agencies. The program is funded in part by a grant from the Alaska Mental Health Trust. To date, the mental health court has handled the cases of 139 people. Positive results have been achieved. For example, one evaluation studied 36 mental health court participants. In the year prior to their participation, these individuals spent collectively 3,062 days in jail. In the year of their participation in mental health court, jail days were reduced to 585. Alaska Psychiatric Institution days were similarly reduced. Much credit for the initiative that led to the establishment of the mental health court should go to District Court Judge Stephanie Rhoades. We hope to see the program continue, and we also hope that the model can be used outside of Anchorage.

We have recently completed a study of the feasibility of a drug court for Anchorage. This was found to be feasible and a federal grant to begin operating such a project has been applied for.



The term restorative justice refers to an approach to criminal sentencing that is intended to be therapeutic not only for the offender, but also for the victim and the community. The goals of restorative justice are sometimes described as accountability and rehabilitation for offenders, restitution and healing for victims, and for the community. In each case a plan involving punishment, rehabilitation, restitution, apology, and often absolution is agreed to by all concerned, and then implementation of the plan is closely supervised. In Alaska, one adaptation of restorative justice is the use of sentencing circles. These have been used most systematically by Mike Jackson, our magistrate in Kake. He convenes sentencing circles that use restorative justice principles and local customs and traditions. Magistrate Jackson has convened 20 circles to date, usually involving misdemeanor assault and alcohol-related crimes. He reports that the process has worked well in most cases and that some offenders have turned their lives around after years of problems.



We are encouraging therapeutic court and restorative justice initiatives. We will monitor the results. Only time will tell whether these movements become important permanent elements of the administration of justice in Alaska.

But I should add that the youth court movement is a specific example of restorative justice, and it seems to be well on its way to becoming a permanent feature of our justice system. The Anchorage and Fairbanks youth courts are well established.

Anchorage handled more than 400 cases last year and Fairbanks more than 100. Youth court defendants have performed many thousands of hours of community service. The recidivism rate in both programs is low, only around 10%. Youth courts are underway or in the process of development in many other communities. We continue to support the youth courts and applaud the efforts of the many volunteers who participate in their operation.

CONCLUSION

This concludes the substance of my report to you. It has been detailed, perhaps overly so, but I do not want this mass of detail to obscure the central point. The justice system in Alaska is functioning well. Cases are being promptly tried before judges who are fair and highly competent. Our non-judicial employees are doing an excellent job and their morale is good. Innovative initiatives to improve the system are underway, and we encourage them.

The Alaska Legislature has always supported the goal of providing the state with an outstanding justice system. We in the judiciary are also committed to that goal, and with your help we will continue to strive to achieve it.

On a personal note, I would like to observe that this year marks the end of my term as chief justice. This is the sixth time that I have given a State of the Judiciary

Sponsor Statement for House Bill 372 (FIN) AM H

Alaska's Constitution is one of the few state founding documents to specifically recognize restitution and rehabilitation as primary goals of the correctional services.

HB 372 is a small first step towards promoting the values of restorative justice, a philosophy that is proving a highly successful response for low-impact non-violent offenders in other states. The central theme of restorative justice is accountability for the offender, restitution for the victim and reconciliation for the community. These are big words to say that the offender says, "I'm sorry", the victim gets his car fixed, and the community is allowed the chance to meet the offender and enforce the sanction.

Once an offender is found guilty, the provisions of HB 372 would permit a judge to allow the victim and offender to work out a sentence that would make the victim, or the victim's community, as whole as possible. For instance, if the offender broke a window, the window should be replaced. HB 372 is careful to specify that only willing, non-violent offenders, may be considered for a community-based sentence and only with the victim's consent. Domestic cases, where one household member acts against another, are also exempt from negotiation. In all cases, if the victim wishes to invoke the criminal sanctions all they have to do is ask. Only with a court's approval would a community-based sentence have the force of law and should an offender fail to meet the requirements agreed to, the judge may always invoke the standard penal response. Judicial review of these cases is important to ensure that similar offenses are countered with proportionate sentences.

In cases where the victim wishes to be involved and repaid by a non-violent offender, it is our belief that a more cost-effective community response is possible while still upholding the state's primary interest in public safety.

It is worth noting that traditional societies world wide have almost universally focused their justice systems on forcing the perpetrator to restore the victim to a pre-offense condition, to the degree possible. All Alaska Native groups enforced restorative principles to some extent and the Tlingit and Haida Indians had elaborate protocols for adjudicating offenses. Several Alaska and Yukon judges are now working with local volunteers to arrange for community-based, or "circle" sentencing in a number of Alaska communities.

INNOVATIVE JUSTICE



MARC LESTER / Anchorage Daily News

"I had to see the place where he died," Arlene Soxie, a health aide from Unalakleet, told Anchorage police detective Joe Hoffbeck during a memorial visit to the Anchorage motel where her 30-year-old son was killed last November. Henry Ongtawasruk, diagnosed

as a teenager with schizophrenia, kept his appointments at the mental health court, but he exhibited such bizarre and occasionally violent behavior that his caseworker couldn't find a program or group home willing to accept him.

By SHEILA TOOMEY
Daily News reporter

The woman in the near empty courtroom wore handcuffs and the faded red of the psychiatric unit at Hilland Mountain prison. She was round and pretty and the red went well with her coal black hair.

Anchorage judges find new ways to slow the revolving door of defendants

Her diagnosis was "persistent psychosis," which means even strong medicine won't subdue all her symptoms. And sometimes she drinks too much. She was back in court because she attacked a therapist at the treatment center she was sent to after an earlier arrest.

"I really would like to find out why I do this," the woman told Judge Stephanie Rhoades.

She sounded puzzled, plaintive. "Me, myself, I don't have a good reason why I attack people," she said. "It's voices but it's not voices ... I don't want to have this," she said.

"Whatever it is."
A stranger to court procedure might not



District Judge Stephanie Rhoades tells a mentally ill defendant that it is a simple choice: Follow a few rules or go back to jail. Rhoades said the mental health court is the highest use of her judicial power to inch a chronic defendant toward a lawful, healthier life.

See Page A-4, DISTRICT COURT

Support

BOB HALLINEN / Anchorage Daily News

DISTRICT COURT: Judges tap new ways to solve old problems

Continued from Page A-1

have noticed that the judge and the defendant spoke directly to each other and at length. Her lawyer remained silent at her side. That's not the way it usually works.

□
In another courtroom on another day, a young man told Judge James Wanamaker that once he was able to drink all the time and still maintain a respectable life. He was a party animal in college, he said, but "I was a functional person, a hard-working guy."

No more. Thanks to his drinking, he had been arrested again, this time for malicious destruction of property.

"I really was trying hard," he said. He was polite and well spoken. He was in his 20s but the accelerated aging of the chronic boozier already showed in his face.

After an earlier arrest, the man signed on to Wanamaker's experimental naltrexone program. Naltrexone is a drug that kills the craving for alcohol in most people who take it as part of a sobriety program. It doesn't work with everyone and often not the first time.

Wanamaker could have sent the young man to jail for a couple of months and closed the case. He had broken the rules of his probation. But the judge knew relapse is part of recovery. He left the man in jail over the New Year's weekend, away from temptation. In another week, judge and defendant would talk again and work out new rehab plans.

□
In yet another courtroom,



common.

But District Court has always been a revolving door. So what has changed? Attitude, it seems. The current crop of judges is relatively new and less willing to accept doing business as usual.

With its big volume and scant prestige, District Court hasn't always attracted the best and the brightest. It was often a dead-end job; misdemeanor judges rarely got appointed to a higher court.

Seven of the nine current judges have been on the job for less than 10 years. Six of them were appointed by Gov. Wally Hickel between 1991 and 1994. Hickel said recently that he used a special standard for his District Court appointments. "That court deals with human problems, with families," he said. "I didn't care what the resume said. I wanted people who cared about people."

Whatever the reason, judges like Rhoades, Wanamaker and Ashman, with support from presiding Judge John Lohff and encouragement from the municipal prosecutor's office are crossing lines that judges rarely cross, using the power of the bench to convince and coerce recidivists into lawful lives.

SMALL STEPS

Rhoades, a former prosecutor named to the bench in 1992, runs the only officially supported and the most successful experiment to date.

The idea is simple: Identify defendants whose criminal behavior seems to be a result of mental illness. Put them on long-term bail or probation and supervise them closely as they take



District Judge Peter Ashman with defendants.



...HE HAS BROKEN THE RULES OF HIS PROBATION. But the judge knew relapse is part of recovery. He left the man in jail over the New Year's weekend, away from temptation. In another week, judge and defendant would talk again and work out new rehab plans.

□ In yet another courtroom, a group of people who rarely get to talk in court were invited to help Judge Peter Ashman fashion a sentence for a North Slope equipment operator, a hard-working father of five convicted of 15 alcohol-related crimes over a dozen years. Increasingly harsh punishment had not convinced him to change his behavior.

After much debate, the circle of family members, law enforcement officers, and people from victim groups concluded the defendant should be encouraged to continue his rehabilitation and spend only a minimum amount of time in jail.

The circle sentencing, an experiment by Ashman, took six hours over three days. People argue that the system can't spend so much time on a routine misdemeanor, the judge said later. "What takes so much time is processing the same people over and over again."

□ Once dismissed as "mondo misdemeanor," a place where meatball justice is doled out in five-minute servings to people who haven't done anything too awful, Anchorage District Court today is edgy and creative, almost visionary as courts go.

Rhoades' mental health court is one of only three in the country.

A few judges in other states are offering naltrexone to alcoholics as an alternative to more jail time, but the idea of judges expanding into areas usually reserved for social workers is not universally popular. Wanamaker and the municipal prosecutor's office got his program going with a minimum of official support.

Ashman's circle sentencing was an exploratory effort at therapeutic or restorative justice, something that is talked about in professional journals a lot more than it's used.

The blossoming of innovation at Fourth Avenue and K Street is the result of a handful of judges who are frustrated at seeing the same people show up in their courtrooms year after year charged with one petty crime after another. They say they think there must be a more effective way to deal with them.

These persistent customers are almost always "but for" cases: But for alcohol, but for drugs, but for mental illness, they would not be trespassing, destroying property, vandalizing some stranger's car or getting in fights with other people like themselves.

For these defendants, "it's clear the traditional approach doesn't work," Rhoades said.

Last year, the nine district judges handled 22,768 cases — drunken driving, domestic violence, minor assaults, trespassing, vandalism, shoplifting and small civil claims. The longest sentence possible for any single charge is a year. A few days or a few weeks are more

...Rhoades, a former prosecutor named to the bench in 1992, runs the only officially supported and the most successful experiment to date.



BOB HALLIEN / Anchorage Daily News

Laura Brooks, a caseworker for the Department of Corrections, recommends action for mentally ill defendants in Judge Stephanie Rhoades' courtroom. Brooks comes to court with the defendants and reports on their progress.

The idea is simple: Identify defendants whose criminal behavior seems to be a result of mental illness. Put them on long-term bail or probation and supervise them closely as they take small steps toward getting their lives under control.

These are people routinely subject to "mercy arrests" by police who worry about them freezing to death, hurting someone or getting hurt themselves. They are often homeless and are rarely focused enough to negotiate the social welfare system on their own. There is no place for them to go but jail.

America started emptying out its mental hospitals in the 1970s on the theory that, with some assistance, most patients could live in less restrictive, more humane settings. Unfortunately, the better settings rarely materialized and huge numbers of the mentally ill became victims of the streets.

Charged with trespassing or some other nuisance misbehavior, these chronic offenders plead no contest, do some jail time and are returned to their lives in the same or worse condition, primed for another arrest.

"These are the unwanted people," Rhoades said, people who hear voices, who speak to people who aren't there, who frighten a wary public, don't keep appointments and disrupt groups designed to help them.

Often they have stopped taking anti-psychotic drugs because the side effects are so bad. They sometimes substitute alcohol or a street drug, anything to blur the details of a fearful existence.

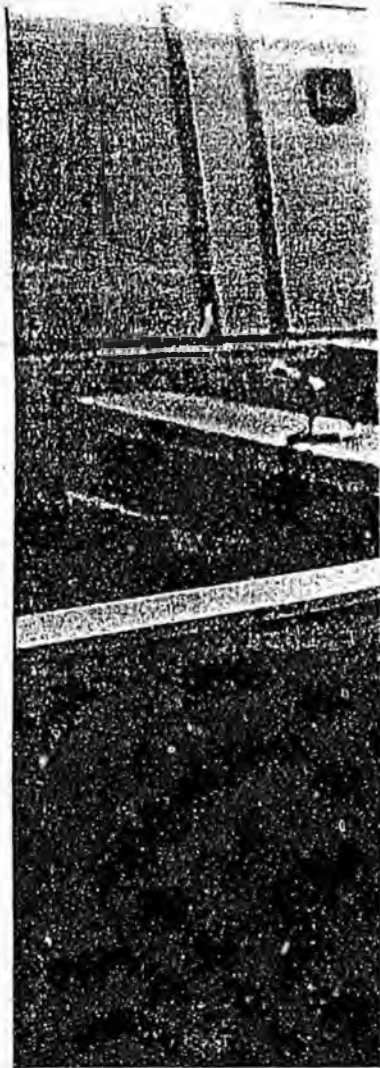
"I think self-medication is just the easier way to go for these folks," Rhoades said. "It's painful to be hearing voices and to be seeing things and to know what they are telling you to do is wrong." And when they get drunk or stoned, they get stupid like anyone else.

The Anchorage mental health court was started in 1998 with a grant from the Mental Health Trust and cooperation from the Department of Corrections. An analysis by corrections after a year of operation found that defendants who opt into the program get arrested less and spend significantly fewer days occupying expensive jail beds than those not in the program.

Rhoades convenes her special court for about an hour every Tuesday and Thursday. Judge Lohff holds a Wednesday session. On public notices, they're called CRP — the Coordinated Resources Project. "How would you like to see your name under something called 'mental health court?'" Rhoades said.

Defendants must volunteer for the project and be willing to waive trial or be finished with trial and ready for sentencing. Rhoades can revoke their bail and will eventually sentence them. This gives her leverage defendants understand and encourages compliance.

Forty defendants get the services of Laura Brooks, a caseworker for the Department of



To help reform DWI offenders, Dis for alcohol.

Corrections, paid for by the M Trust, which wants jail alternative the mentally ill. The rest have their lawyers and family to develop for them, which Rhoades approves.

Defendants are given an individual list, which Rhoades repeats with them. Are they reporting as therapy? To whoever monitors their housing? If not, why not? What their lives right now?

Brooks keeps tabs on the defendant. Alternative Services project, talks to their families and tries to simplify their dealings with agencies. She comes to court and reports their progress to Rhoades.

If someone does well, he or she gets an hour of applause, led by the judge. If delivered, they get a stern talker list, a tighter timeline. If they do badly, they might be sent back for a short reminder stay, then start over.

Most of the defendants who come to court are chronically ill. But it's a pleasure like Mandy Gershon, a 35-year-old of four whose mental health collapsed the weight of a back injury, fear and depression.

One day she found herself in a courtroom, charged with a misdemeanor arraignment, charged with holding a gun. "I was treated like a c

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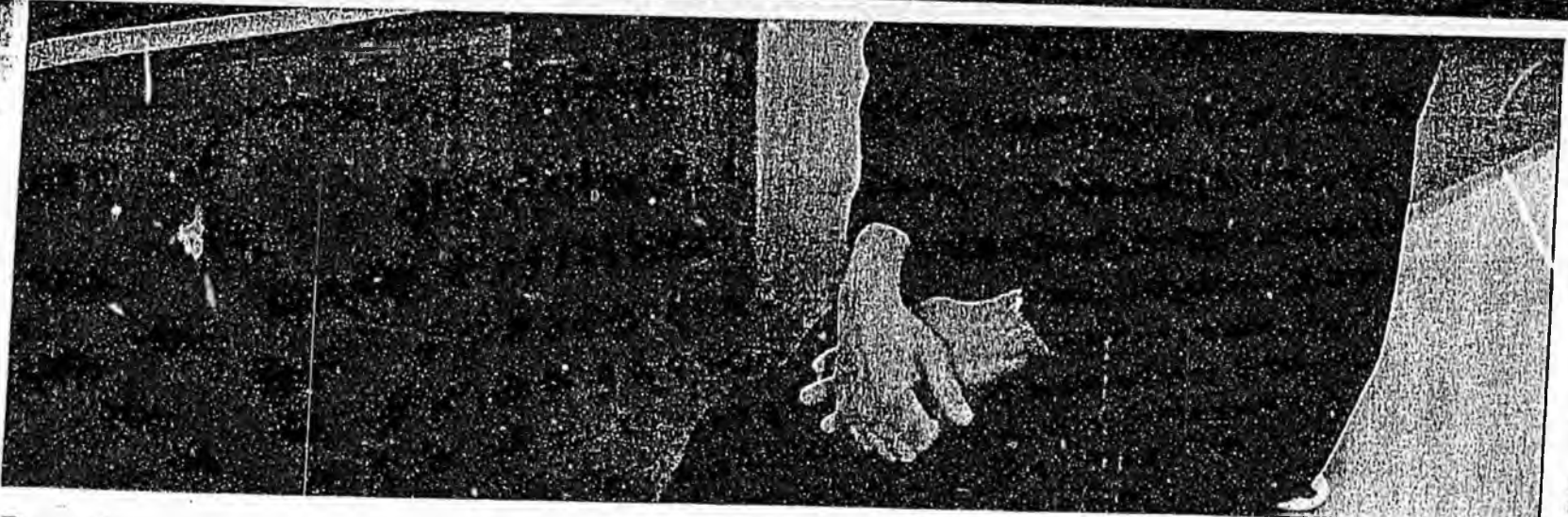
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BOB HALLINEN / Anchorage Daily News

To help reform DWI offenders, District Judge James Wanamaker instigated an experiment using the drug naltrexone, which helps kill the craving for alcohol.

Corrections, paid for by the Mental Health Trust, which wants jail alternatives offered to the mentally ill. The rest have to depend on their lawyers and family to develop a program for them, which Rhoades approves and monitors.

Defendants are given an individualized to-do list, which Rhoades repeatedly reviews with them. Are they reporting as scheduled to therapy? To whoever monitors their medication? Have they filled out an application for housing? If not, why not? What's going on in their lives right now?

Brooks keeps tabs on the defendants in the Jail Alternative Services project. She visits them, talks to their families and therapists, and tries to simplify their dealings with various agencies. She comes to court with them and reports their progress to Rhoades.

If someone does well, he or she gets a round of applause, led by the judge. If they haven't delivered, they get a stern talking to, a shorter list, a tighter timeline. If they've failed badly, they might be sent back to jail for a short reminder stay, then start over.

Most of the defendants who choose the program are chronically ill. But it also helps people like Mandy Gershon, a 35-year-old mother of four whose mental health collapsed under the weight of a back injury, family problems and depression.

One day she found herself at a misdemeanor arraignment, charged with discharging a gun. "I was treated like a criminal," she

said recently. "I think (the magistrate) read me as some crazy person on drugs. ... My self-esteem was so low I wanted to die. ... Not one person sat down and talked to me as a human being."

Luckily, Gershon's mother had heard of the mental health court, and her attorney, Rex Butler, got her case transferred to Rhoades. Butler and a psychologist worked up a treatment plan for Gershon, and Rhoades accepted it. Rhoades' court "treats the mentally ill the way they should be treated in the 21st century," Butler said.

The normal operating principle in District Court is to keep the cases moving or risk getting buried by them. Rhoades holds on to her CRP cases for as long as it takes to get a defendant plugged in to a support system that will help stop the criminal behavior or until the judge concludes that a defendant is not willing to take even small steps toward stability.

It's been almost a year since Gershon started treatment. She still reports to the judge, but she's on track and soon her case will be dismissed.

The difference between her two courtroom experiences was the difference between getting sicker and getting better, Gershon said. "I was literally touched to tears when the judge helped me get treatment."

FOR SOME, THERE IS NO PLACE TO GO

Gershon is not an average mental health

court defendant. She had a home, family nearby and a private lawyer. Henry Ongtowsruk, 30, did not.

Ongtowsruk, originally from the village of Wales, had had schizophrenia for about 16 years. His mother, a village health aide, tried for years to take care of him but finally had to admit she couldn't. He had been in and out of the Alaska Psychiatric Institute and had accumulated at least seven arrests since 1992, several for assault.

The latest charge was last year, malicious destruction of property, for kicking out a window at Southcentral Counseling. As a result, Southcentral kicked him out of its program, Brooks said.

His symptoms, never completely erased by medicine, included self-mutilation and sexual ritual.

When he did well, little children loved him, said his mother, who now works at the clinic in Unalakleet. He could sit and talk to them for hours.

"He did as well as his illness allowed," Brooks said. "When he was doing well, he was a sweet little guy. He tried."

He died in a cheap motel on Thanksgiving weekend, strangled by someone as yet unknown, police say.

He was living in the motel because there is no place in Anchorage for severely ill people like him to live; no program, no group home would take him. All it only admits people if they are an immediate danger to themselves or others.

in a motel that is clean but mentally ill, said Anchorage Joe Hoffbeck. He visited Rhoades as he investigated the death. He found many of the beds, not even watching television and with nothing to do.

In the months before Ongtowsruk took his medication for his court dates, Brooks said, Henry scale, he was doing it someone killed him.

PROMOTING INDEPENDENCE

Robed and looking downcast, Rhoades assumes a neutral tone that edges into sternness reminding that the judge

Out of her robes and in her court with dismay about how the judge treats the mentally ill.

"I have an interest because member who suffers from mental illness," she said. "I can't even cope with being arrested behavior attributable to his disease."

Born in Massachusetts, Rhoades' way through college that included managing a community analyzing grant budgets at the School and researching legislation in the state Senate.

"This program does not deal with serious offenders," she said. "Most of these folks functioning better not creating public safety risks."

In courtroom exchanges Rhoades adopts a paternalistic tone. "I grew up on welfare so I know how to grow up poor," she said, "but it is to have to seek help."

Rhoades said some of her criticism if this "social work" is a judge. To her, it is the highest social power, a persuasion/control that inches a chronic defendant, healthier, happier life.

"It's the psychology of what she sends to everyone who has a mental society," she said. "In life, the parents ... someone who will claim importance as much as penal importance to that reality."

Defense attorney Rex Butler pointedly: "For a smart person, it is in gear with what they have to do."

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HALLINEN / Anchorage Daily News
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District Judge Stephanie Rhoades presides over one of only three mental health courts in the country.

"It's hard to fault them for kicking the Henrys out," Brooks said. "They're not equipped to handle people like him."

So Ongtowsruk lived when he had money in a motel that is clean but houses many of the mentally ill, said Anchorage Police Detective Joe Hoffbeck. He visited and talked to the residents as he investigated Ongtowsruk's death. He found many of them lying on their beds, not even watching television, unsupervised and with nothing to do.

In the months before his death, Ongtowsruk took his medication and showed up for his court dates, Brooks said. "On the Henry scale, he was doing really well." Until someone killed him.

PROMOTING INDEPENDENCE

Robed and looking down from her bench seat, Rhoades assumes a no-nonsense manner, a tone that edges into stern if a defendant needs reminding that the judge is not pleased.

Out of her robes and in her office, she talks with dismay about how the system normally treats the mentally ill.

"I have an interest because I have a family member who suffers from a mental disability," she said. "I can't even imagine how he would cope with being arrested and jailed for behavior attributable to his disability."

Born in Massachusetts, Rhoades worked her way through college there in jobs that included managing a community law center, analyzing grant budgets at Harvard Medical School and researching legislation for the state Senate.

"This program does not deal with dangerous offenders," she said. "My goal is to have these folks functioning better, not offending, not creating public safety risks."

In courtroom exchanges with defendants, Rhoades adopts a paternal but respectful tone. "I grew up on welfare so I know what it's like to grow up poor," she said, "how demeaning it is to have to seek help."

Rhoades said some of her colleagues question if this "social work" is appropriate for a judge. To her, it is the highest use of her judicial power, a persuasion/coercion approach that inches a chronic defendant toward a lawful, healthier, happier life.

"It's the psychology of what a judge represents to everyone who has grown up in this society," she said. "In life, the judge is your parents ... someone who will consider compassion issues as much as penalties. There is an importance to that reality."

Defense attorney Butler puts it more succinctly: "For a smart person, it helps them get in gear with what they have to do."

"I'm not interested in holding their hands while they're going through this," Rhoades said. "I would like to promote their indepen-

dence, just like I promoted my own independence."

INNOVATIVE APPROACH

No one had to convince Judge Wanamaker that alcoholism is a physical addiction or that a predisposition is probably inherited. He had five uncles who were "raging alcoholics," and he grew up hearing dire warnings about a bad family gene.

So when a teacher at a school for judges mentioned naltrexone, a new anti-alcoholism drug, Wanamaker checked it out immediately. It seemed logical to him that a drug could change the brain chemistry that makes some people more vulnerable to addiction than others.

Last year, after months of research and a visit from a California judge who has been sentencing alcoholic defendants to naltrexone for four years, Wanamaker began offering it to a few selected repeaters. A mother with small children. A doctor. A bankrupt construction worker at the end of his rope.

So far, with 18 defendants in his little ad hoc program, Wanamaker is letting himself hope that the revolving door to the courthouse might one day spin a little slower.

It's too short a time and too small a sample for any big conclusions, but about 40 percent of his naltrexone people have stopped drinking and have not relapsed, Wanamaker said.

"On certain people, it hits a home run. It's astounding. ... They say, 'Judge, this is fantastic.' They've gotten brighter, more alert, more totally with it. They dress better, look you in the eye. They smile.

"How many times do people smile in court?"

Another 30 percent seem to be staying sober, but they claim the drug has nothing to do with it, Wanamaker said. Others relapse, and he has to issue warrants for their arrest.

Not every defendant is right for the naltrexone program. Under Alaska law, drunken drivers have to do at least some halfway house time. Some defendants have exhibited such aggressive or reckless behavior that they are a danger to the public and need to go to jail, he said. But the fact is, they all get out, usually in less than a year. If they go back to drinking, the cycle continues, and so does the danger to the community.

Wanamaker came to the bench in 1993 after a long career that included two years as Anchorage district attorney back in the 1960s. He was an assistant attorney general and in private practice for more than 20 years. He's a conservationist with expertise in resource law, a subject that doesn't come up much in "mondo misdemeanor."

At age 64, Wanamaker is hardly a young Turk, but he soon realized that just following the rules in his new job didn't work: three days

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□ Reporter She
adn.com.

for a first offense; 20 days for a second; 60 days for a third. Fines. Probation. Crowded jails, miserable families and no noticeable change in behavior by many of the defendants.

"We just put them through the mill."

Wanamaker didn't see any way out. Judges are not supposed to get involved. "We sentence people and turn them over to the professionals. I just said, 'Well it's a tough area. They're doing the best they can.'"

But it wasn't good enough, not for the people who kept drinking and getting arrested.

Since Wanamaker started his program last spring and started talking about it publicly, several treatment programs in Anchorage have added naltrexone to the options they offer.

"They should be serving this up in the jails," the judge said. "But that's a battle for another day."

There are problems with a judge orchestrating a rehab program, the first being time and the second money. Research, supervision and coordination require both. Wanamaker is looking for money to pay a part-time clerk to keep track of his naltrexone defendants. Tracking progress is essential to gauging success in any experiment.

To be effective, Wanamaker has to talk to each defendant every few weeks, which violates the get-'em-in, get-'em-out principle. But like Rhoades, Wanamaker said he thinks the authority of the bench is a crucial element in the mysterious and unpredictable mix that results in a longtime alcoholic finding the grit to stop drinking forever. However personable and supportive the judge is, the people who come before him stand convicted of a crime and he can send them to jail. Whatever conversation takes place, this subtext is always present.

There's an added urgency to Wanamaker's mission. A third drunken driving conviction within five years is now a felony. A second felony DWI conviction requires a two-year prison sentence, he said. Suspended sentences and probation are not allowed.

"I do these, and I just feel sick afterwards," Wanamaker said. "Because you know you're putting people in jail for a sickness."

JUSTICE SHOULD HEAL, NOT PUNISH

The underlying philosophy of American law is that crimes are offenses against public order or, as local indictments put it, "against the peace and dignity of the state of Alaska." This raises law enforcement above personal vengeance and promotes equality of treatment.

But it also creates a justice system run by hired experts, far removed from the people damaged by crime. Justice is handed down. People feel alienated from the system, said Judge Ashman.

operator did nothing wrong... immunity and stay-in... routine business. United States was his wish to... accusations

During the 1980s, legislatures around the country, including in Alaska, passed laws requiring prosecutors to keep victims informed. They ordered judges to let victims into closed hearings and invite them to speak at sentencings.

Ashman said he thinks it's time to move another step in some cases. Justice should heal and not just punish, he said. He points to a survey by the Vermont Department of Corrections that asked victims what they wanted from defendants. Full acceptance of responsibility, acknowledgment of guilt, full restitution, a commitment never to repeat the crime and that some good should come from it topped the list.

Violent predators were an exception, but those aren't the people who clog the calendars in District Court or pack the jails.

Last year Ashman invited the family of a DWI defendant to join the arresting police officer, the prosecutor and defense attorney, representatives from Mothers Against Drunk Driving, Victims for Justice and the Division of Family and Youth Services in a discussion circle. Tell me what to do with this man who has 15 alcohol related convictions, he said. Every possible sentence has been imposed against him over the years, but he always goes back to drinking and getting in trouble.

How can it possibly matter what I do?" Ashman said.

It took six hours over three days, and in the end the circle gave the defendant a standard, even lenient, sentence: 60 days in jail, the mandatory minimum. It was better for him to continue a rehab program he had relapsed from than to spend months in jail watching television, they concluded.

Why spend so much time and effort for a result that could have been dished out by any judge in a 10-minute hearing? Because the process affects what happens after everyone leaves the courthouse, said municipal prosecutor John Richard.

"What I learned from the mental health court project was that defendants notice the difference between being on an assembly line moving rapidly through the criminal justice system with nameless, faceless prosecutors, defenders and judges who could obviously care less or being in a room with people who know their names and care about the outcome.

"I think it is good that we are finding ways of dealing with people's individual problems individually, rather than just knee-jerk throwing them in jail ... rather than the cookie-cutter assembly-line approach to justice."

Ashman said there's another compelling reason for trying new approaches. It has to do with keeping good people on the bench. "Basically it's a lot about getting reinvested in the work," he said. "I don't want to turn into a bench bureaucrat."

□ Reporter Sheila Toomey can be reached at stoomey@adn.com.

Communities with Youth and Community Court Agreements February 2000

Youth Courts

- Anchorage
- Kodiak
- Mat-Su
- Kenai Peninsula
(Homer and Kenai)
- Fairbanks Northstar
- Nome
- Tetlin
- Sitka

Emerging Youth Courts

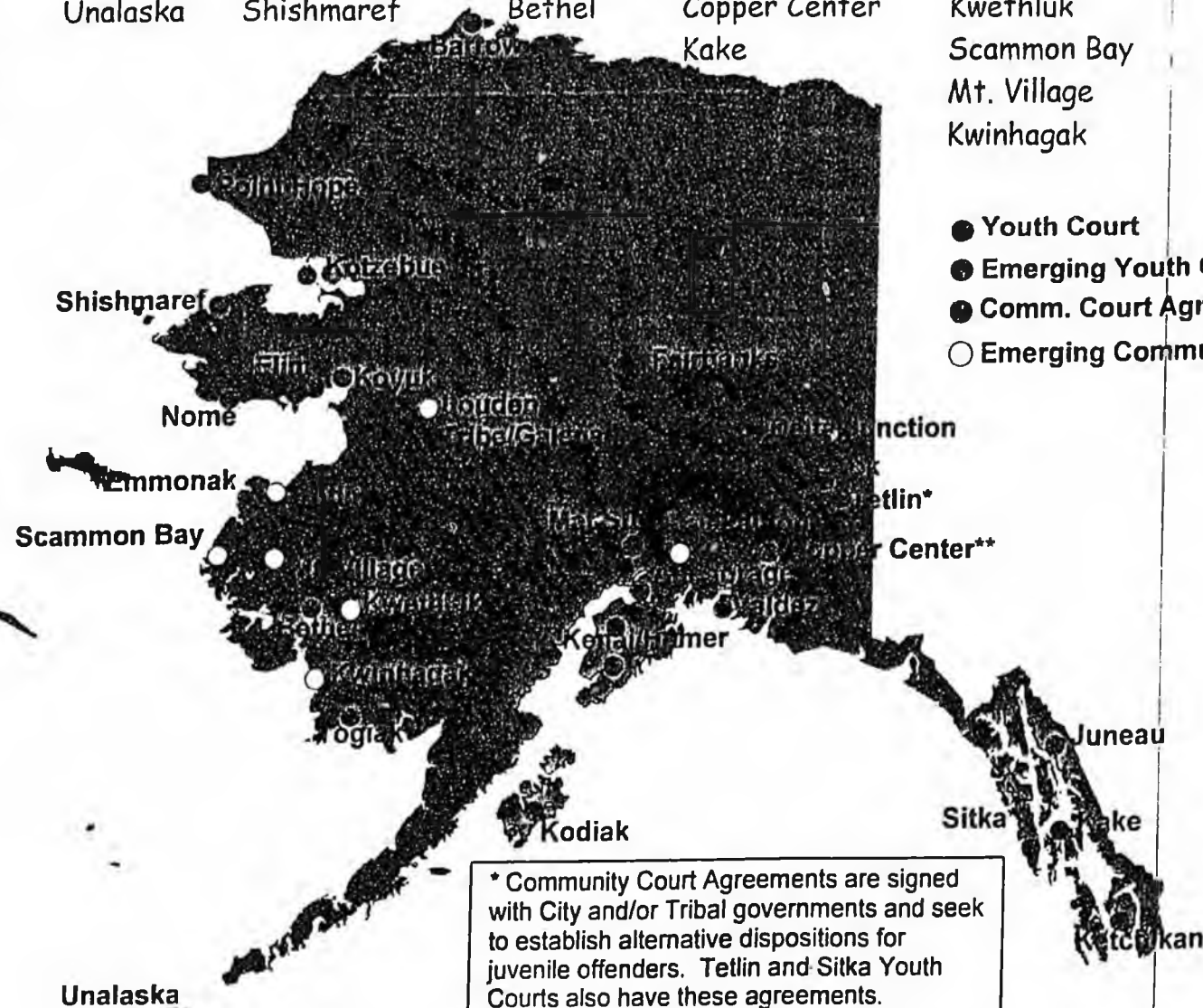
- Valdez
- Kotzebue
- Tok
- Unalaska
- Juneau
- Ketchikan
- Delta Junction
- Shishmaref

Comm. Court agreements

- Togiak
- Barrow
- Elim
- Bethel
- Point Hope
- Koyuk
- Emmonak
- Copper Center
- Kake

Emerging Comm. Courts

- Kotlik
- Louden (Galena)
- Chickaloon
- Kwethluk
- Scammon Bay
- Mt. Village
- Kwinhagak



- Youth Court
- Emerging Youth Court
- Comm. Court Agreement *
- Emerging Community Court

* Community Court Agreements are signed with City and/or Tribal governments and seek to establish alternative dispositions for juvenile offenders. Tetlin and Sitka Youth Courts also have these agreements.

** Copper Center's court is a circuit court covering the communities of Cantwell, Kluti Kaah, Gulkana, Gakona, and Tazlina.

2. Community Courts

The rapid development of tribal courts and youth courts has been accompanied by the emergence of hybrid forums that adjudicate juvenile crimes in the context of the local community. These courts represent an interesting partnership of city, state, and tribal governments. They recognize youth crime as a serious problem for both community life and cultural survival. Unlike the urban youth courts, community courts do not follow the model of the western court system nor do they use peer adjudication. They represent an agreement between the adults in a community to handle juvenile crime quickly and locally, in a manner appropriate to the local community and culture.

Each of these courts has a slightly different structure and a slightly different relationship with the state justice system. In 1996, the villages of Elim and Koyuk entered into agreements with the state to handle juvenile misdemeanors.¹¹ In Elim, juvenile cases were heard by the IRA council sitting as a court; in Koyuk, the IRA council appointed three tribal members to act as judges. These courts functioned for a brief period of time but fell into disuse. In 1997, the Native Village of Togiak and the City of Togiak began an unofficial collaboration with DFYS and the Alaska State Troopers to accept referral of juvenile misdemeanors to a panel of tribal elders. This court was in operation for a year before the state entered into a formal memorandum of agreement recognizing the court. In 1998, Barrow community groups worked to establish an elders' court to which juvenile misdemeanors could be referred. This court came quickly into operation, although it does not yet have an official memorandum of agreement with the state. Several other communities are discussing similar agreements with the state. The map at the end of this excerpt shows the location of existing and emerging community courts and youth courts.

A. Elim and Koyuk

In 1996, the State of Alaska entered into an agreement with the village councils of Elim and Koyuk to develop courts to handle youthful offenders. Koyuk did so under the authority provided by its village court ordinances, appointing three elders as judges. Elim acted under authority provided by its juvenile justice ordinances, which prescribe to the IRA council how to act as a court. Referrals came from the state troopers, VPSOs, and DFYS for misdemeanor cases where the juvenile was not already on probation. The state provided a limited amount of training, and Alaska Legal Services provided some procedural advice.

The first year of the program went well, with each village handling about three cases. When a case was referred, the council or court would meet with the parents and youth to discuss the youth's wrongdoing. If the youth was willing to admit the wrongdoing, the council or court would lecture the youth extensively, then work out an agreement with the parents and youth as to what the

¹¹ The agreements make an exception for misdemeanor sexual abuse of a minor, which must be handled in state court.

consequences would be.¹² Although procedures were available to hold a public hearing if the youth would not admit wrongdoing, all of the juveniles referred to the program were willing to admit their wrongs. A state trooper noted that the program worked well at first and seemed to have a deterrent effect, because juvenile problems dropped off substantially for a while. He also reported no enforcement problems, saying the juveniles were willing to comply with the conditions set by the court or council.

Both programs became inactive after the first year. In late 1998, state representatives met with community leaders in both villages to reevaluate the programs. In Koyuk, community leaders attributed the court's inactivity to the fact that the village had not had a VPSO for much of the time, and requested that the state suspend the agreement until a new VPSO is appointed. At the request of the village, the agreement was suspended in January 1999 with the hope of reactivating it later. In Elim, community leaders are looking for someone to head the program and keep it on track.

B. Togiak Community Court

¹² In Elim, community work service sometimes involves working on a local housing project. The village president noted that when the council heard cases in the 1940, community work service involved construction of the Iditarod Trail.

For several years, Togiak has had an elders' court using informal procedures and traditional counseling methods to handle a small number of cases. In early 1997, the Togiak Traditional Council entered into a cooperative agreement with the City of Togiak, the Alaska State Troopers, and DFYS to create the Togiak Community Court. The intent of the agreement is to improve the prosecution and rehabilitation of juvenile offenders at the village level for most misdemeanor offenses.¹³ Unlike the state, the Togiak court takes jurisdiction over children 8-12 years old, which allows it to deal with young offenders at an earlier stage.

Under this agreement, the principal responsibility for handling misdemeanor juvenile offenses rests with the Togiak Community Court. Allegations of misdemeanor offenses coming to the attention of the troopers, city police department, or VPSO are referred to the court. If the court determines that the matter is appropriate for disposition, the court clerk meets with the juvenile and parents to review the court's procedures. If the juvenile agrees to participate, DFYS is notified and asked to concur. If the court determines the matter is not appropriate, or if DFYS does not agree, the juvenile will be referred to DFYS for investigation and prosecution under state law. If the community court hears the case, it determines whether the juvenile is innocent or guilty, and if guilty fixes the appropriate punishment pursuant to city law. DFYS is notified by the court clerk of the disposition of the case and to what extent the sentence of the court was obeyed. The state court system can be used for reinforcement in the event that community court enforcement and rehabilitation is ineffective with respect to a particular offender. The community court clerk maintains records in a form that can be used in state court, should it prove necessary to prosecute an individual in the state court system.

The court handled about 35 cases its first year. DFYS handled only one case from Togiak during this period, which DFYS and the troopers attribute to the effectiveness of the court. DFYS estimates that ten of these offenses would have received a response from DFYS, while the other 25 would have gone unaddressed if not for the community court. The cases mostly have been curfew violations, criminal mischief, fourth-degree assault, trespass, and forcible entry. The community court also asked and received referral of one state probation violation.

The cases are heard by three tribal elders who act as judges. Using a small grant from the Governor's Conference on Youth and Justice, the elders have received several hours of training from the police officer who helped establish their court and the Barrow community court. The elders generally question the juveniles and their parents, ask them why they committed the crime, and discuss the implications of their behavior. Most cases result in a sentence of community work service and an order of restitution. The court reports a high rate of compliance.

To determine if the community court was having an effect, the local VPSO did a community

¹³ The cooperative agreement sets up a process of continuous consultation among the parties on how cases should be handled. It provides: "Each party shall give substantial deference to the views of the other party during such consultation and all decisions shall, to the maximum amount possible, be made on the basis of consensus." The cooperative agreement applies to all misdemeanor offenses committed under Alaska Statutes Title 11 (the criminal code), with the exception of fourth-degree sexual abuse of a minor.

survey, going house to house before the project started and following up one year later. The survey results were evaluated by the UAA Justice Center. Because the community court responded to more offenses than DFYS would have, the number of juvenile cases increased, but the community did not perceive this as an increase in crime. The community perceived itself as a safe place to live, both before and after the inception of the court.

C. Barrow Community Court

In early 1998, members of the Barrow community worked together to form a community court for juvenile offenses. The court is a cooperative effort among the City of Barrow, North Slope Borough police and youth services, Native Village of Barrow, ASNA, DFYS, Alaska Department of Law, and the state troopers. After considerable discussion about the form the court should take, Barrow decided to form an community court using elders as judges, similar to the Togiak model, rather than a youth court similar to the Anchorage model.

The court came together rapidly and held its first hearing at the end of June. At this hearing, a juvenile was prosecuted for a city curfew violation. The juvenile and his parents met with three elders and an interpreter, and the hearing flowed back and forth between Inupiaq and English. Most of the proceedings were translated at the time and all were recorded on tape. The family did not request confidentiality, and a number of community members came to witness the proceeding. One observer commented that it was a powerful emotional experience to watch elders to talk deeply with a child and his family about the importance of proper behavior for the family and for the community. The police officer in charge of the program said that parents like the concept of using an elders' court to intervene with youthful offenders before they get out of hand.

The Barrow Community Court now meets at least twice a month to hear cases. It expects to enter into a memorandum of agreement similar to the agreement governing the Togiak Community Court. If other villages are agreeable, jurisdiction might be extended so that youthful offenders who get in trouble while visiting Barrow can appear in front of the court there. DFYS has given the court a small grant to pay a stipend to the judges and to support training and coordination.

4. Other villages

Kotlik, Point Hope, and Galena are discussing establishment of community courts for juvenile offenses. The city of Kotlik includes three villages, Kotlik, Hamilton, and Bill Moore's Slough, a total of about 500 people. In December 1998, the mayor and 48 local residents met with state representatives to discuss formation of a community court and to request technical assistance. In Point Hope, community members are working with the same police officer who helped organize the community courts of Togiak and Barrow. In Galena, community members are discussing the concept of a community court for Galena and the surrounding area, combined with a leadership program for training local youth. In Bethel, Orutsaramiut Native Council has received a federal grant to develop a tribal court for juvenile offenders, which may receive referrals from DFYS.

COMMUNITY COURT AGREEMENT

Unde. AS 47.12.040, AS 47.12.060, and AS 47.12.120, the juvenile and the parents/guardian/custodian enter into the following agreement for informal diversion through the _____ Community Court.

1. The juvenile and parents/guardian/custodian have been advised of their rights and understand that any rights to a speedy trial are waived during the period of processing through this diversion action. All parties hereby consent to have the alleged offense(s) which occurred on _____ handled by the _____ Community Court.
2. The juvenile agrees to observe and obey all city, state and federal laws during this processing.
3. The juvenile agrees to attend school and follow school rules (or seek and maintain employment), obey the instructions of the parents/guardian/ custodian and seek permission before leaving or staying away from home
4. The juvenile agrees to participate in the program and to abide by the sentencing act set forth by the Community Court, understanding that the Community Court may not order removal from the home, formal state probation, or a formal state juvenile delinquency record.
5. Upon the juvenile's successful completion of this agreement the case will be adjusted and closed. If the juvenile fails to complete this agreement, he/she may be brought before the State Superior Court.
6. The juvenile and parent/guardian/custodian authorize DJJ Juvenile Intake or its designee to release, share and keep records for administrative purposes as necessary to coordinate the referral with diversion programs and to facilitate successful completion of any sentence imposed by Community Court. Otherwise information is confidential and shall be protected.

COURT DATE/ TIME: _____

Community Court Representative

Date

Juvenile

Date

Parent/Guardian/Custodian

Date

Juvenile Probation Officer

Date

HB

392

Alaska State Legislature

Representative Jim Whitaker

Session

Capitol Building, Room 13
Juneau, Alaska 99801
Phone: (907) 465-3004
Fax: (907) 465-2070



Interim

119 N. Cushman St. Suite 101
Fairbanks, AK 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Sponsor Statement HB 392 Continuances of CINA Hearings

HB392 acknowledges that, at the 48 hour temporary custody hearing during which the court determines whether a child is a "Child In Need of Aid", the parent or guardian of that child may request a continuance, and instructs the court to advise the parent or guardian of that right at the time of the hearing.

When the State takes action to protect the safety of a child, it is an emotionally charged and very confusing situation for a parent. Often, at the time of the first hearing, which occurs within 48 hours of the time the child is taken into custody, parents have not had an opportunity to see the allegations made against them. This legislature recognizes that parents may need time to comprehend and respond to those allegations. For this reason, HB392 ensures that parents and guardians are informed of their right to request a continuance.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 392

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "An Act relating to continuances for temporary BRU Civil Division
placement hearings ... emergency custody of a minor ..." Component Human Services
 Sponsor Representative Whitaker
 Requester House HESS Committee Component No. 2208

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 392 allows the parent of guardian of a minor to request the continuance of the temporary placement hearing for up to seven days in order to prepare a response to the allegation that the child is a child in need of aid. The bill further amends Rule 10, Alaska Child in Need of Aid Rules to parallel the statutory change.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date/Time 2/25/00, 4:49 PM
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 2/25/00
 Agency Department of Law

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 392

Revision Date/Time (Note if correction): _____ Dept. Affected: Health and Social Services
 Title: Relating to continuances in temporary placement BRU: Family and Youth Services
hearings following emergency custody. Component: FYS Management
 Sponsor: Rep. Whitaker COMPONENT SERIAL NO. 2306
 Requestor: House (HES) See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

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

OPERATING	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
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

CHANGES IN REVENUES ()

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
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	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Department if enacted.

Prepared by: Theresa Tunory, Director *[Signature]* Phone: 465-3191
 Division: Family and Youth Services Date/Time: 2/23/00 3:06 PM
 Approved by Commissioner: Karen Perdue, Commissioner *[Signature]* Date: 2/28/00
 Agency: Department of Health & Social Services

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HB

419

STATE OF ALASKA

Tony Knowles, Governor

Department of Labor and Workforce Development

OFFICE OF THE COMMISSIONER

P.O. Box 21149
Juneau, AK 99802-1149
Phone: (907) 465-2700
Fax: (907) 465-2784

April 17, 2000

The Honorable Robin Taylor
Chair, Senate Judiciary Committee
Capitol Building, Room 30
Juneau, AK 99801

Dear Senator Taylor:

Periodically, the Alaska Workers' Compensation Act has been amended to keep pace with changing conditions and to ensure that our program is fair and efficient. It has been 12 years since significant changes have been enacted. HB 419 contains further changes to the Act which have been recommended by the Workers' Compensation Ad Hoc Committee, represented by both employers and employees, to reflect the effects of inflation on benefits, recent court decisions and more efficient ways of handling our workers' compensation program.

Included in the changes are increases in benefits paid to injured workers, benefits that have lost value to inflation over the past 12 years. The bill also addresses Alaska Supreme Court decisions as to what benefits should be paid during the rehabilitation process and what the timeframe should be for requests for claim hearings.

Other changes would streamline the rehabilitation process, the signing of medical releases, and the dispute resolution process. Benefits would be increased for workers in the retraining process and new timelines set for the payment of medical bills. Provisions would update the wage benchmarks to which benefits are tied.

The changes in this bill have been endorsed by employee and employer representatives and provide for a more efficient and equitable workers' compensation system.

I am requesting that you schedule HB 419 for a hearing in the Senate Judiciary Committee.

Sincerely,



Ed Flanagan
Commissioner

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 99801-1152
Telephone: (907) 465-4954
Fax: (907) 465-2040

SPONSOR STATEMENT CSHB 419 (RLS) WORKER'S COMPENSATION

The House Labor and Commerce Committee introduced CSHB 419 (RLS) at the request of the Ad Hoc Committee on Workers Comp and the Department of Labor & Workforce Development. The bill updates and revises Alaska's Worker's Compensation law that was last extensively revised in 1988.

The Ad Hoc Committee on Workers Comp consists of representatives from management and labor. This committee reviews worker's comp laws and suggests necessary changes. The bill before you is a result of such review.

Workers' compensation is a system that compensated a worker for on-the-job injuries not proximately caused by the worker. It is meant to provide worker protection when that worker is injured on the job.

Among the changes set forth in HB 419 are: (1) an intent section so that the Legislature's thoughts on worker's compensation are plainly set forth; (2) assurance of continuous employee participation in any reemployment plan; (3) sets forth that the average weekly wage amount is tied to a percent rather than stated amount; (4) mandate of an annual update of the usual, customary and reasonable medical fee schedules; (5) formula for exact weekly compensation in statute so the worker's compensation statute may change as wages change in Alaska; and (6) raises from \$135,000 to \$177,000 the ceiling amount that is used to determine a disability payment.

The Legislative Audit Division recently released a special report on the Workers' Compensation Division. An area of concern was the cap on injury awards and burial costs as set out in the 1988 statute. Legislative Audit indicated that the benefits have eroded over time by inflation. The report also points out that the main thrust of the 1988 statute has been accomplished with workers compensation insurance rates falling 41.5% since 1989. Legislative Audit further estimates that the whole body value of \$135,000, with inflation, should be around \$189,600, more than the \$177,000 agreed to in compromises made by the Ad Hoc committee.

The overall goal of this legislation is to increase the caps (i.e., increase worker benefits), streamline the system, provide the Division with more tools, and provide the employer and the employee with a workers' compensation system fair to all.

ED04:4/16/00

I Job.

1-LS1418M.8
Ford
4/18/00

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSHB 419(RLS)

BY SENATOR DONLEY

- 1 Page 3, line 31, following ";;":
2 Delete "and"
3 Insert "[AND]"
- 4 Page 4, line 3, following "plan":
5 Insert "; and
6 (10) a provision requiring that, after a person has been assigned
7 to perform medical management services for an injured employee, the person
8 shall send written notice to the employee, the employer, and the employee's
9 physician explaining in what capacity the person is employed, whom the person
10 represents, and the scope of the services to be provided"

1 of impairment to the whole person as provided under (b) of this section. The
2 compensation is payable in a single lump sum, except as otherwise provided in
3 AS 23.30.041, but the compensation may not be discounted for any present value
4 considerations.

5 * Sec. 18. AS 23.30.215(a) is amended to read:

6 (a) If the injury causes death, the compensation is known as a death benefit and
7 is payable in the following amounts to or for the benefit of the following persons:

8 (1) reasonable and necessary funeral expenses not exceeding ~~\$3,300~~
9 [\$2,500];

Amend #2
~~5000~~
~~3000~~

10 (2) if there is a widow or widower or a child or children of the deceased,
11 the following percentages of the spendable weekly wages of the deceased:

12 (A) 80 percent for the widow or widower with no children;

13 (B) 50 [40] percent for the widow or widower with one child and
14 40 percent for the child;

15 (C) 30 [25] percent for the widow or widower with two or more
16 children and 70 [55] percent divided equally among the children;

17 (D) 100 [80] percent for an only child when there is no widow
18 or widower;

19 (E) 100 [80] percent, divided equally, if there are two or more
20 children and no widow or widower;

21 (3) if the widow or widower remarries, the widow or widower is entitled
22 to be paid in one sum an amount equal to the compensation to which the widow or
23 widower would otherwise be entitled in the two years commencing on the date of
24 remarriage as full and final settlement of all sums due the widow or widower;

25 (4) if there is no widow or widower or child or children, then for the
26 support of father, mother, grandchildren, brothers and sisters, if dependent upon the
27 deceased at the time of injury, 42 percent of the spendable weekly wage of the deceased
28 to such beneficiaries, share and share alike, not to exceed \$20,000 in the aggregate.

29 * Sec. 19. AS 23.30.220(a) is amended to read:

30 (a) Computation of compensation under this chapter shall be on the basis of an
31 employee's spendable weekly wage at the time of injury. An employee's spendable
32 weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An

Am. #3

1-LS1418M.9
Ford
4/18/00

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSHB 419(RLS)

BY SENATOR DONLEY

1 Page 3, line 31, following ";;":

2 Delete "and"

3 Insert "[AND]"

4 Page 4, line 3, following "plan":

5 Insert "; and"

6 (10) a provision relating to health insurance benefits that complies

7 with AS 23.30.047"

8 Page 5, following line 32:

9 Insert a new bill section to read:

10 **** Sec. 8.** AS 23.30 is amended by adding a new section to read:

11 **Sec. 23.30.047. Benefits for health insurance.** (a) An employer who pays
12 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185,
13 23.30.190, 23.30.200, or 23.30.215 and who provided health insurance to the
14 employee at the date of injury shall also reimburse the employee for health insurance
15 coverage for the employee and covered dependents, as provided in this section.

16 (b) Payment required under this section is equal to the employer's current
17 contribution for health insurance or the amount paid by the employee for replacement
18 coverage, whichever amount is less. Payment required under this section commences
19 when the employee's health insurance provided by the employer's contribution ceases
20 and shall continue until the employee is no longer receiving compensation described
21 in (a) of this section, or for 18 months, whichever period is shorter.

22 (c) Payment is not required under this section until the employee provides
23 proof of health insurance coverage. In this subsection, "health insurance" includes

- 1 (1) an individual policy of health insurance; or
- 2 (2) a notice of self-payment for continuance of coverage required
- 3 under 29 U.S.C. 1161 (Consolidated Omnibus Budget Reconciliation Act of 1985) or
- 4 under a union health or welfare trust agreement.

5 (d) If benefits required under this section are not paid within 30 days after the
6 employer receives a request for payment, the employer shall pay a penalty equal to
7 25 percent of the amount due."

8 Renumber the following bill sections accordingly.

9 Page 12, line 28:

10 Delete "2 - 19"

11 Insert "2 - 20"

12 Page 12, line 29:

13 Delete "20"

14 Insert "21"

15 Page 12, line 30:

16 Delete "21"

17 Insert "22"

HB 419
Side-by-Side Analysis

SB 278 Section & Alaska Statute Citation	Proposed Law	Present Law
Section 1	Quick, efficient, fair, etc.	The same.
Section 2 amends AS 23.30.041(g)	The employee's choice of a rehabilitation specialist must be made within 15 days.	The employee must notify the employer of a choice of a rehabilitation specialist within 10 days.
Section 3 amends AS 23.30.041(h)	Allows suspension of benefits for failure to give the employer timely notice of the choice of specialist.	There is no penalty for late notification.
Section 3 amends AS 23.30.041(h)	Reemployment plans require continuous participation by employees	Reemployment plans require a defined schedule, not continuous participation.
Section 3 amends AS 23.30.041(h)	Plans must maximize use of the employees' transferable skills.	An employee's technical skills are simply one element of the plan.
Section 3 amends AS 23.30.041(h)	An employee's medical stability to be determined by a Board-appointed physician or a physician retained by the employer, as well as by a treating physician.	An employee's medical stability is to be determined by a treating physician.
Section 4 amends AS 23.30.041(k)	Provides benefits in this section be called "compensation."	Benefits under this section are termed "wages."
Section 4 amends AS 23.30.041(k)	Increases the weekly benefit rate to 70% of employee's spendable weekly wage.	Weekly benefits under this section is 60% of the employee's spendable weekly wage.
Section 4 amends AS 23.30.041(k)	Allows an offset or reduction of compensation when compensation and wages exceed 80% of the spendable weekly wage.	Benefits are not reduced for wages earned for work in a reemployment plan.

	It suspends compensation when a lump-sum permanent partial impairment (PPI) payment has been made, until that PPI amount would have been paid out as weekly compensation benefits.	Uncertain if a PPI lump-sum paid before rehabilitation may be offset against benefits received during the reemployment plan.
	Bars entitlement to permanent total disability (PTD) benefits while an employee is engaged in a reemployment process, changing the law as interpreted by the Alaska Supreme Court decision in Meek v. Unocal Corp., 914 P.2d. 1276 (Alaska 1996).	All employees may be entitled to PTD benefits while an employee is engaged in a reemployment process when no compensation is provided.
Section 5 amends AS 23.30.041(l)	Increases the maximum cost of a reemployment plan to \$13,300.	The maximum cost of a reemployment plan is \$10,000.
Section 6 amends AS 23.30.041(n)	Permits an employer to suspend benefits if an employee fails to give the employer timely notice of the employee's choice of rehabilitation specialist under AS 23.30.041(g).	There is no penalty if an employee fails to give timely notice to the employer, concerning the employee's choice of rehabilitation specialist under AS 23.30.041(g).
Section 7 adds a new subsection, AS 23.30.041(r)	Permits an employee to waive reemployment benefits at any time, without having to go through a formal Compromise and Release (C&R) agreement.	An employee's entitlement to reemployment benefits may not be forfeited or waived without Board approval of a formal C&R agreement. Under 8 AAC 45.160 at present, waiver of vocational rehabilitation is presumed unreasonable.
Section 8 amends AS 23.30.095(f)	Requires the usual, customary and reasonable (UCR) medical fee schedule to be updated at least once a year.	The UCR medical fee schedule has no specific updating requirement.

<p>Section 9 adds new subsections, AS 23.30.095(l)&(m)</p>	<p>Delays the deadline for the payment of medical bills to 30 days. This changes the law resulting from the Alaska Supreme Court decision in Childs v. Copper Valley Electrical Association, 860 P.2d 1184 (Alaska 1993).</p>	<p>The Alaska Supreme Court decided in Childs v. Copper Valley Electrical Association, that payment on medical bills is due within 14 days under AS 23.30.155.</p>
<p>Section 10 amends AS 23.30.105(a)</p>	<p>Places a two-year time limit on the employee's right to request reemployment benefits.</p>	<p>AS 23.30.105(a) does not list reemployment benefits under the provision placing a two-year time limit on requests for benefits.</p>
<p>Section 11 amends AS 23.30.107(a)</p>	<p>Requires all requests for medical releases to be in writing, and to give notice of the employee's right to request a protective order from the Board.</p>	<p>Does not require requests for medical releases to be in any particular form; and does not require the employer to give notice of the employee's right to request a protective order from the Board.</p>
<p>Section 12 adds a new section, AS 23.30.108</p>	<p>Requires decisions concerning medical releases to be made in prehearing conferences by a Board designee, with a limited right of appeal to the Board for abuse of discretion.</p>	<p>Decisions concerning medical releases may be made in prehearing conferences or by the Board in a hearing. The Board reviews prehearing release decisions under a "preponderance of the evidence" standard.</p>
<p>Section 13 adds a new subsection, AS 23.30.110(h)</p>	<p>Restarts a two-year statute of limitations on an employee's right to pursue a claim, whenever the Board continues or cancels a hearing. This changes the law from the Alaska Supreme Court decisions in Tipton v Arco and Huston v Coho cases.</p>	<p>The Alaska Supreme Court decided in Tipton and Huston cases, that a request for a hearing completely stops the running of 110(c), the two-year statute of limitations on an employee's right to pursue a claim.</p>
<p>Section 14 adds a new subsection, AS 23.30.155(p)</p>	<p>Requires interest on late benefits to be paid at the rate used by the Alaska courts.(3% above the Jan. 2nd. prime)</p>	<p>Interest on late benefits are paid at the rate of 10.5 % under A S 45.45.010.</p>

<p>Section 15 amends AS 23.30.175(a)</p>	<p>Ties future maximum and minimum weekly compensation rates to the Alaska average weekly wage rate of the year preceding the injury. The maximum compensation rate would be 122% of the Alaska average weekly wage rate, and the minimum compensation rate would be 22% of the maximum compensation rate.</p>	<p>The maximum compensation rate is \$700 per wk \$154/\$110.</p>
<p>Section 16 adds a new section, AS 23.30.175(d)</p>	<p>Requires the annual determination of Alaska average weekly wage.</p>	<p>N/A</p>
<p>Section 17 amends AS 23.30.190(a)</p>	<p>Increases the whole-person value for permanent partial impairment ratings to \$177,000.</p>	<p>The whole-person value for a permanent partial impairment rating is \$135,000.</p>
<p>Section 18 amends AS 23.30.215(a)</p>	<p>Increases funeral expense benefits \$3,300. It also increases the combined benefits for a widow / widower with one child to 90% of the spendable weekly wage.</p>	<p>Funeral expense benefits are \$2,500. Combined benefits for a widow/widower with one child are 80% of the spendable weekly wage.</p>
	<p>It increases the combined benefits of a widow/widower with two children to 100% of the spendable weekly wage. I</p>	<p>The combined benefits of a widow/widower with two children is 80% of the spendable weekly wage.</p>
	<p>It increases the benefits to orphans to 100% of the spendable weekly wage.</p>	<p>The benefits of orphans are 80% of the spendable weekly wage.</p>
<p>Section 19 amends AS 23.30.220(a)</p>	<p>Incorporates overtime wages into the calculation of an employee's gross weekly wages. It bases the calculation of seasonal and temporary workers' gross weekly wages on earnings from the 12 months immediately preceding the injury.</p>	<p>Overtime and premium pay are excluded from the calculation of an employee's gross weekly wages. It bases the calculation of seasonal and temporary workers' gross weekly wages on earnings from the calendar year preceding the calendar year of injury.</p>

HB 419 Sectional analysis

Section 1 states the legislature's intent to provide quick, efficient, fair, and predictable benefits; its intent that the statute not be construed by the courts in any party's favor; and its intent to address the specific topics of sections 2-23.

Section 2 amends AS 23.30.041(g) to increase the deadline for the employee's choice of a rehabilitation specialist from 10 to 15 days, but subjects the employee to the suspension of benefits for failure to give the employer timely notice of the choice of specialist.

Section 3 amends AS 23.30.041(h) to require reemployment plans to require continuous participation by employees and to maximize the use of the employees' transferable skills. It also permits an employee's medical stability to be determined by a Board-appointed physician or a physician retained by the employer, as well as by a treating physician.

Section 4 amends AS 23.30.041(k) to change reemployment "wages" into a form of "compensation", allowing certain offsets and reductions. It increases the weekly compensation rate under this section from 60% to 70% of employee's spendable weekly wage. It also provides an offset of compensation when compensation and wages exceed 80% of the employee's spendable weekly wage. It suspends compensation when a lump-sum permanent partial impairment (PPI) payment has been made, until that PPI amount would have been paid out as weekly compensation benefits. It also bars entitlement to permanent total disability (PTD) benefits while an employee is engaged in a reemployment process, changing the law as interpreted by the Alaska Supreme Court decision in *Meek v. Unocal Corp.*, 914 P.2d. 1276 (Alaska 1996).

Section 5 amends AS 23.30.041(l) to increase the maximum cost of a reemployment plan from \$10,000 to \$13,300.

Section 6 amends AS 23.30.041(n) to permit an employer to suspend benefits if an employee fails to give the employer timely notice of the employee's choice of rehabilitation specialist under AS 23.30.041(g).

Section 7 adds a new subsection, AS 23.30.041(r), to permit an employee to waive reemployment benefits at any time, without having to go through a reemployment evaluation, and without having to go through a formal Compromise and Release (C&R) agreement. It removes the requirement for Board approval of the waiver under AS 23.30.012, and removes the Board's ability to modify the waiver under AS 23.30.130.

Section 8 amends AS 23.30.093(t) to require the usual, customary, and reasonable medical fee schedule to be updated at least once a year.

Section 9 adds new subsections, AS 23.30.093(l)&(m), increasing the deadline for the payment of medical bills from 14 to 30 days in conformity with the national industry standard. This changes the law resulting from the Alaska Supreme Court decision in *Childs v. Copper Valley Electrical Association*, 860 P.2d 1134 (Alaska 1993).

Section 10 amends AS 23.30.105(a) to place a two-year time limit on the employee's right to request reemployment benefits.

Section 11 amends AS 23.30.107(a) to require requests for medical releases to be in writing, and to give notice of the employee's right to request a protective order from the Board.

Section 12 adds a new section, AS 23.30.108, requiring decisions concerning medical releases to be made in prehearing conferences by a Board designee, with a limited right of appeal to the Board for abuse of discretion.

Section 13 adds a new subsection, AS 23.30.110(b), which restarts a two-year statute of limitations on an employee's right to pursue a claim, whenever the Board continues or cancels a hearing. This changes the law from the Alaska Supreme Court decisions in *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910 (Alaska 1996) and *Huston v. Coho Electric*, 923 P. 2d 913 (Alaska 1996).

Section 14 adds a new subsection, AS 23.30.155(p), requiring interest on late benefits to be paid at the rate used by the Alaska courts.

Section 15 amends AS 23.30.175(a), tying future maximum and minimum weekly compensation rates to the Alaska average weekly wage rate of the year preceding the injury. The maximum compensation rate would be 122% of the Alaska average weekly wage rate, and the minimum compensation rate would be 77% of the maximum compensation rate.

Section 16 adds a new section, AS 23.30.175(d), requiring the annual determination of Alaska average weekly wage.

Section 17 amends AS 23.30.190(a) to increase the whole-person value for permanent partial impairment ratings from \$135,000 to \$177,000.

Section 18 amends AS 23.30.215(a) to increase funeral expense benefits from \$2,500 to \$3,300. It also increases the combined benefits for a widow/widower with one child from 80% to 90% of the spendable weekly wage. It increases the combined benefits of a widow/widower with two children from 80% to 100% of the spendable weekly wage. It increases the benefits of orphans from 80% to 100% of the spendable weekly wage.

Section 19 amends AS 23.30.220(a) to incorporate overtime wages into the calculation of an employee's gross weekly wages. It bases the calculation of seasonal and temporary workers' gross weekly wages on earnings from the 12 months immediately preceding the injury, instead of from the previous calendar year.

Section 20 makes sections 2 & 6-13 retroactive in application, and sections 3-5 & 14-19 effective prospectively from July 1, 2000.

Section 21 authorizes the department to adopt regulations and/or emergency regulations necessary to carry out the changes in the statute.

Section 22 permits the department to begin adopting necessary regulations immediately.

Section 23 provides an effective date of July 1, 2000.

FISCAL NOTE

Bil. version: CSHB 419 (L&C)

(H) Publish Date: 3/29/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time 03/13/2000 Dept. Affected All State Agencies
 Title "An act relating to workers' compensation reform. BRU
 Component _____
 Sponsor House Rules Committee
 Requester House Labor & Commerce Committee Component No. _____

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	762.9	762.9	762.9	762.9	762.9	762.9
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	762.9	762.9	762.9	762.9	762.9	762.9

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	75.0	75.0	75.0	75.0	75.0	75.0
1016 Federal Incentive Payments	0.3	0.3	0.3	0.3	0.3	0.3
1133 Indirect Cost Reimbursement	0.1	0.1	0.1	0.1	0.1	0.1
1003 GF Match	18.7	18.7	18.7	18.7	18.7	18.7
1004 GF	372.4	372.4	372.4	372.4	372.4	372.4
1005 GF/Program Receipts	27.5	27.5	27.5	27.5	27.5	27.5
other (GF)	28.0	28.0	28.0	28.0	28.0	28.0
Other (Specify Type)	240.9	240.9	240.9	240.9	240.9	240.9
TOTAL	762.9	762.9	762.9	762.9	762.9	762.9

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Consolidation of statewide risk management costs to departments' personal services expense. See attached for detailed fund source amounts.

Prepared by: Joan Brown, Chief Budget Analyst Phone 465-4681
 Division Office of Management and Budget Date/Time 3/13/00 12:23 PM
 Approved by Director Annalee McConner Date 03/07/2000
 Agency Governor's Office

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COMMITTEE COPY

Workers' Compensation Reform

Fund Code	Fund Source	Category	Administra 105 9	Comm & Econ Dev 6 2	Correcio ns 93 0	Court System 13 5	Ed & Early Dev 11 2	Environm ental Conserva tion 10 0	Fish & Game 39 8	Health & Social Srvc 117 2	Labor & Workforce Dev 19 9	Law 8 3	Legisla ture 5 3	Military & Veterans Affairs 8 0	Natural Resources 40 4	Office of the Governor 3 7	Public Safety 7 2	Revenue 9 1	Transportati on & Public Facilities 194 2	Total
1002	Fed Rcpts	Fed	14	01	22		12	26	106	300	137	01		43	26	02	17	33	10	750
1016	Fed Incentive Payments Indirect Cost	Fed																03		03
1133	Reimbursement	Fed																01		01
1003	GF Match	GF	14	01	22	00	12	26	106	300	137	01	00	43	26	02	17	37	10	754
1004	GF	GF	04	01			02	06	02	144	08	00		07	03	03	06		01	187
1005	GF	GF	461	10	842	135	40	14	125	443	22	47	53	22	225	32	704	12	537	3724
1005	GF/PR	GF	104	20			02	09	13	09	02	01			55		13	05	42	275
1037	GF/Mental Health	GF	149		36		00			71		00								256
1118	Pioneers Homes Rcpts	GF	24																	24
		GF Total	742	31	878	135	44	29	140	667	32	48	53	29	283	35	723	17	580	4466
1007	IA Rcpts Advance College	Other	68	08	03		31	03	28	160	26	33		04	29		22	04	25	444
1011	Tuition Payment Fund Donated Commodity /	Other																00		00
1014	Handling Fee	Other					01													01
1017	Benefit Systems Rcpts	Other	23																	23
1018	Exon Valdez Oil Spill	Other						00	09						02					11
1021	Ag Loan Fund	Other													10					10
1023	FICA Admin Fund	Other	01																	01
1024	Fish & Game Fund	Other							79			00					06			85
1025	Science & Tech	Other		02																02
1026	Hwy Working Capital International Airports	Other																		149
1027	Revenue Fund	Other																00		340
1029	PERS	Other	37																	37
1031	Second Injury Fund Disabled Fishermans	Other									01									01
1032	Reserve Acct	Other									01									01
1033	Surplus Property	Other	03																	03
1034	TERS	Other	15																	15
1035	Veis Revolving Loan Fund Comm Fish Revolving	Other		00																00
1036	Loan Fund Real Estate Surety	Other		04																04
1040	Fund	Other		00																00

Fund Code	Fund Source	Category	Adminstr lion 105 9	Comm & Econ Dev 6 2	Correcio ns 93 0	Court System 13 5	Ed & Early Dev 11 2	Environm ental Conserva tion 10 0	Fish & Game 39 8	Health & Social Srvc 117 2	Labor & Workforce Dev 19 9	Law 8 3	Legislat ive 5 3	Military & Veterans Affairs 8 0	Natural Resources 40 4	Office of the Governor 3 7	Public Safety 77 2	Revenue 9 1	Transporta tion & Public Facilities 194 2	Total
1042	Judicial Retirement System	Other	00																	00
1045	Nat Guard Retirement System	Other	01																	01
1046	Student Revolving Loan Fund	Other																00		00
1049	Training & Building Fund	Other									01									01
1050	Perm Fund Dividend Fund	Other															02	06		08
1051	Rural Dev Initiative Fund	Other		00																00
1052	Oil/Haz Response Fund	Other						25												25
1053	ILTF	Other																00		00
1055	IA Oil & Haz	Other							00			01		02	00		01			04
1057	Small Bus Loan Fund	Other		00																00
1061	CIP Rcpl	Other	02	02	06		00	06	11	08				02	22			03	74 7	809
1066	Public School Fund	Other																00		00
1067	Mining Revolving Loan Fund	Other		00																00
1068	Child Care Revolving Loan Fund	Other		00																00
1069	Historical District Revolving Loan Fund	Other		00																00
1070	Fisheries Enhancement Revolving Loan Fund	Other		01																01
1071	Alternative Energy Revolving Loan Fund	Other		00																00
1075	Clean Water Loan Fund	Other						01												01
1076	Marine Hwy System Storage Tank Asst Fund	Other																		83
1079	Storage Tank Asst Fund	Other						02												02
1081	ISF	Other	12 8																	128
1092	MHTAAR	Other	01		01					15					06					23
1093	Clean Air Protection Fund	Other						06												06

HB419 and SB278

Workers' Compensation Reform

Fund Code	Fund Source	Category	Administra- tion	Comm & Econ- Dev	Correc-tio ns	Court System	Ed & Environm Early Dev	Environm Conserva- tion	Fish & Game	Health & Social Srvc	Labor & Workforce Dev	Law 83	Legislat ve 53	Military & Veterans Affairs 80	Natural Resources 404	Office of the Governor 37	Public Safety 772	Revenue 91	Transporta- tion & Public Facilities 1942	Total
	Mental Health Trust																			
1094	Admin	Other																01		01
	Children's Trust Fund																			
1098	Earnings	Other																00		00
	Alaska Drinking Water																			
1100	Fund	Other						01												01
	Aerospace Dev Corp																			
1101	Rcpts	Other		00																00
1102	AIDEA Rcpts	Other		05																05
1103	AJFC Rcpts	Other																		17
	Municipal Bond Bank																			
1104	Rcpts	Other																		00
1105	Perm Fund Corp Rcpts	Other													10					06
	Post-Secondary Ed																			
1106	Comm Rcpts	Other					21													21
1108	SDPR	Other	22		20		03	01	11	22	01	00			16		01	00	08	105
1109	Test Fisheries Rcpts	Other							14											14
	International Trade & Bus Endowment																			
1115	Income	Other		00																00
1141	RCA Rcpts	Other		08																08
1147	Public Bldg Fund	Other	02																	02
	Other		303	30	30	00	56	45	152	205	30	34	00	08	95	00	32	37	1352	2409
	Grand		1059	62	930	135	112	100	398	1172	199	83	53	80	404	37	772	91	1942	7629

FISCAL NOTE

II Version: CSHB 419 (L&C)
 (H) Publish Date: 3/29/00

STATE OF ALASKA
 2000 LEGISLATIVE SESSION

BILL NO.

Revision Date/Time (Note if correction): _____
 Title: Workers' Compensation

 Sponsor: House L&C
 Requestor: House L&C

Department Affected: Labor & Workforce Development
 BRU: Workers' Compensation
 Component: Workers' Compensation
 COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	6.7	6.7	6.7	6.7	6.7	6.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.7	6.7	6.7	6.7	6.7	6.7

CAPITAL						
---------	--	--	--	--	--	--

CHANGE IN REVENUE FUND SOURCE #						
------------------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	6.7	6.7	6.7	6.7	6.7	6.7
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (New Fund)						
TOTAL	6.7	6.7	6.7	6.7	6.7	6.7

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY00) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

Please See Attached

Prepared by: Paul Grossl, Director *Paul Grossl* Phone: 465-2790
 Division: Workers' Compensation Date/Time: 3/7/00 9:18 AM
 Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
 Agency: Department of Labor Date: 3/7/00

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 419

Title: An Act relating to the Alaska Workers' Compensation Act, including the weekly rate of compensation and minimum and maximum compensation rates, specifying components of a reemployment plan, adjusting benefits for permanent partial impairment, for reemployment plans, for rehabilitation benefits, for widows, widowers and orphans, and for funerals, calculation of gross weekly earnings for seasonal and temporary workers and for workers with overtime or premium pay, setting time limits for requesting a hearing or rehabilitation benefits, setting time limits for claims for compensation and for the rehabilitation process, setting time limits for payment of medical bills, waiver of rehabilitation benefits, obtaining medical releases and resolving discovery disputes, setting an interest rate for late compensation, and providing for updating the medical fee schedule; and providing for an effective date.

This bill will require that the Division of Workers' Compensation obtain an updated usual, customary, and reasonable medical fee schedule annually. It is anticipated that the additional cost for updating the schedule annually would be approximately \$6.7 per year. It is believed that the change in frequency of medical fee schedule updates will be the only increased cost associated with this bill.

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB419

2000 LEGISLATIVE SESSION

Revision Date (Note if correction) _____ Dept. Affected University of Alaska
 Title _____ BRU Statewide
 Worker's Comp _____ Component _____
 Sponsor House Labor & Commerce by Request
 Requestor _____ Component Serial No. _____

Expenditures/Revenues

OPERATING EXPENDITURES	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services					
Travel					
Contractual					
Supplies					
Equipment					
Land & Structures					
Grants & Claims	83.0	83.0	83.0	83.0	83.0
Miscellaneous					
TOTAL OPERATING	83.0	83.0	83.0	83.0	83.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES () ()	0.0	0.0	0.0	0.0	0.0
-----------------------------------	------------	------------	------------	------------	------------

FUND SOURCE

1002 Federal Receipts	3.2	3.2	3.2	3.2	3.2
1003 GF Match					
1004 GF	62.3	62.3	62.3	62.3	62.3
1005 GF/Program Receipts					
1037 GF/Mental Health					
1048 University Receipts	17.5	17.5	17.5	17.5	17.5
TOTAL	83.0	83.0	83.0	83.0	83.0

Estimate of any current year (FY00) cost: none

POSITIONS

Full-time					
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

Estimated impact based on 8.3 percent increase as determined by Carolyn Pearl, State Relations Executive, National Council on Compensation Insurance, Inc.

Prepared by Pat Pitney, Director Phone 474-2602
 Division UA Budget and Institutional Research Date 3/27/00
 Approved by Commis Pat Pitney, Director Date 3/27/00
 Agency UA Budget and Institutional Research

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ALASKA

LABOR-MANAGEMENT AD HOC COMMITTEE ON WORKERS' COMPENSATION

February 1, 2000

The Honorable Norman Rokeberg
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

The Alaska Labor-Management Ad Hoc Committee on Workers' Compensation is in its eighteenth year of service as a private citizen initiative group formed to fairly address concerns in regard to the Alaska Workers' Compensation system. It was through the efforts of the Ad Hoc Committee that major legislative reform was passed in 1988 and as well as continuing reform in 1995. Those measures have helped to stabilize the Workers' Compensation system for employers and employees .

The Ad Hoc Committee has been meeting again in an attempt to work through some issues related to workers' compensation. We have recently reached a resolution on several key items that form the basis of our proposed 2000 legislation. Our proposed legislation has had a preliminary review by the Division of Workers' Compensation. A summary of items in the bill is attached. Key elements of the bill include:

- Increases in basic benefits consistent with changes in wages. Future maximum and minimum weekly benefits will be tied to the average weekly wage.
- Increases to the maximum weekly benefit under the death benefit as the number of dependents increase.
- Expands wage calculations to include overtime wages.
- Increases the Vocational Rehabilitation Stipend from 60% to 70 % of the average weekly spendable wage.
- Enhances the Vocational Rehabilitation process by making the process more timely, avoiding duplication of benefits and setting a reasonable maximum time period to obtain benefits.

Representative Norman Rokeberg
February 1, 2000
Page 2

- Defines process and time frame in which to obtain reasonable medical releases.
- Clarifies a reasonable time frame in which a claim can be brought forward.

We thank you for your patience in allowing the Ad Hoc Committee to prepare our agreement and we look forward to your continued support in the future. Should you have any questions or require further information, do not hesitate to contact us.

Sincerely yours,

Willem Van Hemert
CRW Engineering Group

Sally Ann Carey
Natchiq, Inc

Judy Peterson & Mary Shields
Northwest Technical Services

John Garrett
Alyeska Pipeline

Kevin Dougherty
District Council of Laborers

Jim Robison
Former Commissioner of Labor

John Giuchici
International Brotherhood of Electrical Workers

David Ford
Alaska Ironworkers

cc: Governor Tony Knowles
Senator Jerry Mackie
Senator Tim Kelly
Representative Andrew Halcro

LEGISLATIVE AGENDA – YEAR 2000

MANAGEMENT

- Annual Updates – Medical Fee Schedule (09.30.070(a))
- Change Interest Rate to State Specified (095f)
- Medical Bill Payment Within 30 Days (095c)
- Clarification of Time Limitation on Bringing a Claim (110c)
- Reasonable Medical Releases (107a)
- Vocational Rehabilitation
 - Worker Right to Waive (041c)
 - Notice to Accept Re-Employment Benefit (041g)
 - Failure constitutes noncooperation (041n)
 - Transferable Skills (041h(2) / 041i)
 - Medical Stability by an Examining Physician (041h 7)
 - Wages Reduce Benefits Above TTD Limits (041K)
 - Credit for PPI if paid out lump sum (041k)
 - No PTD Benefits During Rehabilitation (041k)
 - 2- year limitation on requesting Voc Rehab (105a)

LABOR

- Increase PPI - \$177,000 (190a)
- Increase Death Benefit to 100% (215a)
 - Increase Funeral Expense - \$3,300
- Wage Calculations to Include Overtime (220a)
- Establish Weekly Max at 120% of Average Weekly Wage (175a)
- Establish Weekly Min at 22% of Weekly Max (175a)
- Increase Rehabilitation Stipend to 70% (041k)
- Increase Vocational Rehab to \$13,300 (041i)
- Clarify Seasonal / Temporary Worker (220a)
 - Change to Model Act – Last 12 Months

Paul



Carolyn Pearl, CPCU
State Relations Executive

(907) 485-2797
Via Facsimile

February 2, 2000

Paul Grossi
Director, Workers Compensation Division
State of Alaska
Department of Labor
P.O. Box 25512
Juneau, AK 99802-5512

Re: Proposed Alaska Benefit Changes

Dear Paul:

As you requested, NCCI has reviewed the impact of the workers compensation benefits changes under consideration in Alaska.

Based on the most recent information on the type, distribution and severity of injuries, and the nature of the proposed changes, we have determined that the impact of these changes on overall costs would be between 7.7% and 8.9%.

A number of the proposed changes are difficult to quantify, but could have an impact over time. The ultimate cost will depend on several factors including how any law change is enacted, interpreted and utilized.

I hope this information is helpful, however, please contact me if you have any questions, need additional information or if this proposal becomes legislation.

Sincerely,

Carolyn Pearl, CPCU
State Relations Executive

DOL-V.C.
JUNEAU FEB 08 2000

Law Offices of
Michael J. Jensen

12350 Industry Way, Suite 208
Anchorage, Alaska 99515

Tel (907) 277-8000
Fax (907) 522-8173

March 22, 2000

Members of House Labor and Commerce Committee
Alaska State Legislature
c/o The Honorable Representative Norman Rokeberg
State Capital
Juneau, Alaska 99801-1182

Via Fax
465-2040

Re: House Bill 419 - Testimony of Michael J. Jensen at March 20, 2000 hearing.

To Whom It May Concern:

For the past two years numerous hearings were held with Staff from the Governor's office and members of the workers' compensation Board. At these hearings many injured workers testified relating to the Governor and the Board their personal horror stories of neglect, nonpayment of benefits, invasion of privacy, loss of dignity and other complaints. I had hoped that after listening to these stories from all these workers and their families that legislation would have been offered to address their concerns.

These workers did not come to the Governor or the Board with a tin cup hoping for a handout. They simply wanted changes to the Act which would address their concerns. Regrettably this proposed legislation does not do this.

I do not want to condemn this effort. But I do the result. However, I wish to suggest ways to improve this legislation to meet some of the concerns expressed by these workers and the most recent legislative audit which found:

Circumstances have developed that limit the protection the legislature meant to be in place, and strictly enforced, to the benefit of workers.

At p.19

...such circumstances, that we believe are an unintended by-product of the 1988 amendments, have resulted in a situation where more consideration is provided to employers and insurance companies than to injured workers.

At p.19.

March 22, 2000
Page 2

I want to thank the ad hoc committee and Division of Workers' Compensation for their efforts on behalf of workers who have not seen an increase in benefits for almost 12 years. The labor members were able to take a step in the right direction as far as increasing TTD, PPI and death benefits. Regrettably what insurers are asking workers to give up in exchange for these amendments needs to be addressed.

I want to address only several sections which this proposed legislature seeks to amend namely sections 041(c) and 107.

A. Although the legislative audit found:

From our review, it appears the statute has succeeded in limiting access to reemployment benefits.

At p.35.

Instead of addressing this concern the proposed amendment to 041(c) adopts yet another way for workers to lose access to rehabilitation benefits. They will be asked to do this without any guarantee that such waiver is 1) informed and 2) made only with an appreciation of the seriousness of their disability. Workers need to have an appreciation of the seriousness of the injury before any waiver.

B. Although the audit found:

Provisions put in the 1998 statutes as part of a legislative desire to control, if not lower workers' compensation insurance rates have, over time, become increasingly contrary to the interests of injured workers.

Summary of Audit Report at p.1.

These provisions do not address this concern. Instead these amendments add new ways for insurers to cut off workers' compensation benefits.

C. Although the audit found that workers were frustrated with the complexity of the system, regulations and "associated timelines" at p.23. These proposed amendments do not address this concern. Instead they add at least two new time limits making the Act even more complex.

D. Although workers repeatedly expressed their frustration with the scope of information insurers sought to be released and the invasion of privacy issue

March 22, 2000
Page 3

involved these amendments give a tin ear to these concerns. Instead they add an additional sanction and new time limits.

These amendments leave decisions up to prehearing officers who in the past have been unaware of Board's decisions which clearly express the scope of permissible releases. The prehearing officers, with training, could be made aware of these past Board decisions. These decisions had made a lot of progress in protecting the valuable right of privacy and still insured adequate discovery for the insurers. But the Division has not had the funding to provide such training and there is no assurance that the prehearing officers will comply with these Board decisions.

In a recent example an unrepresented claimant was asked to release medical reports including those pertaining to a rape of which she had been a victim long before. The prehearing officer allowed release of these records. When this was brought to the attention of the past Division's Chief of Adjudications in a June 4, 1999 letter he could only respond that continuing education for the prehearing officer could not be provided due to lack of funding. No corrective action was taken.

This provision allowing for benefits to be cut off should be amended. The current system of review by the Board is the better alternative.

I respectfully request that the Committee members revisit the proposed amendments to 041(c), 041(n) and 170(a) and by amendment remove them. Such amendments would go a long way to improving this proposed legislation while not further eroding to an intolerable degree the disparities the legislative audit documents.

Thank you for your attention.

Michael J. Jensen

Intracorp
175 So. Franklin, Ste. 319
Juneau, AK 99801

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MAR 24 2000

March 23, 2000

Representative Norman Rokeberg
House Labor & Commerce
Standing Committee

RE: HB419

Dear Rep. Rokeberg and Members of Labor & Commerce Standing Committee,

I am a Disability Management Specialist who has been providing vocational services to Alaska injured workers since 1983.

I would like to address House Bill 419, Sec. 7, (r). I am in favor of this section, as it truly provides the injured worker to make the choice of whether he wants to receive reemployment benefits. One of the most frustrating parts of my job is to try to provide services to an injured worker who really does not want vocational assistance. Many injured workers do not function well in a system that imposes timelines and close monitoring. I repeatedly hear, "I have been able to get my job all my life, and I don't need any help now", but yet they are required or feel pressured to participate in plan development.

The fear that insurance companies will prematurely request someone to waive their benefits is unwarranted, as the section clearly states that the form will be prescribed or approved by the Board. I do not believe that the Board would allow an individual to waive rights prior to medical stability or an indication that a determination can be made as to whether the worker can return to his/her job at time of injury.

Thank you for the opportunity to have input on this bill.

Cordially,

B. Sue Roth, M.Ed, CRC, LPC
Disability Management Specialist

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MAR 23 2000

To All Senators & Congressmen;

I do not support any of the House or Senate bills that is dealing with **Workers Compensation** and **SHOULD NOT BE APPROVED**.

It will severely undermine the rights of **INJURED WORKERS** and their rights to receive benefits and compensation and will further reduce the ability to meet the needs of **Injured Workers**.

I am a prime example of the law as it now stands, and how the insurance companies rule the state. As most of you know I was injured Oct. 16, 1998 and not one person helped me after my injury with making a claim after the pain was so bad and went back to the doctor and they said there was no evidence.

After a MRI was done there was evidence of my injury and the insurance company wrote there was no evidence to support the claim. I have copies of every paper to back up this evidence. Then the doctor was told that he would not get paid anymore and he told me that he had to drop me. Left on the street basically with no medical and injured. If it were not for me being a Native I would not have gotten treatment.

Then the insurance company sending me to an EIME and come to find out she is an insurance lover, known by all in Anchorage, but no one will do anything about that. And she cannot read an MRI, for she would have seen the injury. Called it a neck strain and only needed therapy.

Now, it has taken a SIME that cost \$6,093.00 and a year and half later to find out the same thing that's on the MRI. You see how the system works, so why don't you do something about it? Are you scared of something? Or are you being bought off like the doctors here in the Anchorage area?

This nonsense has to **STOP NOW!** People are suffering and you just stand around and look in the mirror. The Natives that live in villages do not know how to do lots of things so the insurance companies take advantage of that. That is pure and simple prejudice! And you all know it! **SO PUT A STOP TO THIS INSANITY!** This case of mine is going to make history here in Alaska, because I am going to let all the media know the **TRUTH!** The **LEGISLATURE** is not caring, does nothing to help injured workers except keep passing bills **THAT HURT THE INJURED MORE!** What's the matter can't handle the truth?

Sincerely,

Robert M. Ferguson
16901 Meadow Creek Dr. #106
Eagle River, Alaska 99577

Cc: all legislatures
And any concerned



165-0924

Alaska State Legislature

Please enter into the record my testimony to the House Labor + Commerce committee name

committee on HB 419 Workers Comp. dated 3/17/00
bill/subject

Committee - prior to reviewing these or any changes in the Act I request you obtain the tapes of meetings which took place in Anchorage in 1993-94 from the stenographer as those of the former Board Meetings of the Workers Comp Board. The proposed changes by ADHOC ~~ADHOC~~ do not address real issues. The Division of W/C see to more than group fire clerks. The system is run by the insurance companies.

① Injured Workers still cannot get equal council-going up against the attorneys back the insurers spend on the attorneys.

② The Act addresses "excessive" customary fees for services yet the insurers spend incredible amounts for Paid Medical operations. Which most result in controversy.

③ Even the "safeguards" in the law to prosecute the insurer/adjuster for the minimal acts of breaking fid. The Division/Board does not charge the insured with it to the Division of Insurance as provided by the Act. There is no balance in the Act! It is observed that even the stipitem. Again listen to the testimony on the tapes. Read the Audit, Pray you never get injured on the job! Feel free to call me.

Signed: Judith A. ...
Testifier

Representing (Optional)
HC 33 Box 2894 / Wasilla AK 99654
 Address
907-373-2234
 Phone No.

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MAR 23 2000

P.O. Box 230029
Anchorage, AK 99523-0029
(907) 346-2474
FAX (907) 346-8345
Email: mtlservices@gci.net

MTL SERVICES

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MAR 21 2000

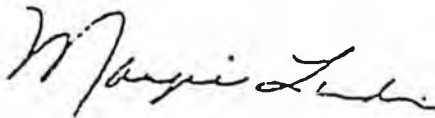
Fax

To:	Representative Norman Rokeberg	From:	Marjorie T. Linder
Fax:	(907) 465-2040	Pages:	3 to follow
Phone:	(800) 773-4968	Date:	03/20/00
Re:	Testimony you requested	CC:	[Click here and type name]

Urgent For Review Please Comment Please Reply Please Recycle

• Comments:

Thank you for asking me to submit today's testimony to the House Labor and Commerce Committee regarding HB 419. I've also supplied an example of what a worker who waives the reemployment benefit before medical stability can't know that he is waiving. His PPI can not be defined until after medical stability. The length and cost of his reemployment plan can not be determined until his PPI is determined. I suspect this waiver business won't hold up in the courts.



Margie Linder

TO: Representative Norman Rokeberg
Chairman, House Labor and Commerce Committee
FR: Marjorie T. Linder, M.A., CRC
RE: Testimony regarding HB 419
DATE: March 20, 2000

I am Marjorie Linder, a vocational rehabilitation counselor in the workers' compensation system. I served on the WCCA in 1988 and helped draft Section .041 of the current law. Because of my past involvement, I offer a unique perspective. I know that I had good intentions with these law changes, but, like Frankenstein, I helped to create a monster.

In 1988, there was the perception that the law was unbalanced in favor of injured workers. Premiums were on the rise. Thus, the law was overhauled and, since then, employers have enjoyed a 41.5% reduction in premiums, according to the recent legislative audit. There is no crisis for employers.

Unfortunately, injured workers have paid the price for their employers' tremendous savings in workers' compensation insurance. Today, only 300 out of 28,000 workers injured each year qualify for the reemployment benefit. Both a laborer and an office worker receive as little as \$9450 for a herniated disc despite the disparate ways that injury affects them. The reemployment benefit attempts to assist the laborer to learn to earn a living again because he, unlike the office worker, can't return to his job.

Workers with no ratable impairment are ineligible for retraining. This affects office workers, cannery workers, and others with repetitive stress injuries to their forearms, for instance.

Young Slope workers who are able to return to work at the fast foods job they held in high school are ineligible for the benefit. The wage disparity does not matter.

Workers whose job is described inaccurately with physical demands that are lower than the actual job are also found ineligible.

Instead of curing such problems with the present Act, Section 7 (r) of HB 419 seeks to further restrict access to retraining for injured workers. It "allows" workers to forfeit their reemployment benefits before they know whether they will need them and before they know how much they are worth to them. Once they have signed on the dotted line, they can not retract their waiver if they find they are unable to return to work or continue to work because of their injuries.

With no legal advice or explanation from anyone other than their claims adjusters, workers who don't typically read what they sign, who can't speak English, who are functionally illiterate, or who are on pain pills will sign these affidavits "as a matter of course" — a paper sandwiched among others.

At present, workers can already waive their benefit, but only after they reach medical stability, after they understand that the value of the benefit they are forfeiting, and after they have legal advice or advice from the workers' compensation board to assure they understand exactly what they are waiving. Unless they have signed a compromise and release, they can also retract their waiver if they find their new physical limitations prevent their ability to work. Under the present act, the reemployment benefit for uncooperative workers can easily be controverted. **No law changes need occur to make sure the reemployment benefit is voluntary. The mechanism for waiving the benefit is already in place without the passage of Section 7 (r).**

Section 7 (r) invites numerous negative consequences:

- The waiver's irrevocability will encourage numerous legal challenges. Like the Miranda warning has done, this waiver will tie up the legal system for years to come. That litigation will cost the State of Alaska money.
- Workers with no way to earn a living will lose their homes, their savings, and their buying power. That will hurt, not help Alaskan businesses.
- Section 7 (r) of this law is a veiled attempt by the insurance industry to get the State to supplement the benefits for which they collect premiums. Injured workers not adequately served by the comp system will be forced to obtain financial support for themselves and retraining from Public Assistance and DVR. That will cost the State of Alaska money.
- As time passes and their resources decrease, injured workers who are able, will accept inappropriate employment and put themselves, their co-workers, and their next employer at risk. All of us will suffer.
- If workers waive the benefit and their waiver is irrevocable, then subsequently find that they can not work, they may be eligible to be declared permanently and totally disabled. Employers will pay for a lifetime of benefits that could have been over in two years.

Therefore, I urge you to **remove Section 7 (r) from HB 419** to protect the people of Alaska and the State budget. One life is a precious thing to waste.

Let's do the math with a fictitious worker who is assumed to have a 5% permanent partial impairment rating at the time of the institution of the re-employment plan (10% is considered high for most in our system), a \$500/week comp rate, and a 2 year, \$13,300 rehab plan. Under this scenario, the worker will receive the following:

BENEFIT	TOTAL AMOUNT	Weekly Benefit
PPI (5 X \$1770) ¹	\$8,850	\$500 for 17.7 weeks
.041 (k) ²	\$37,935	Approx. \$450 for 84.3 weeks
Tuition, books, and supplies	\$13,300	For a program of up to two years in length
TOTAL WAIVED	\$51,235	

If the worker waives rehab, the PPI (permanent injury payout) increase of \$2100 (\$420 per percentage point) for the injured worker in PPI benefits under HB 419 is counterbalanced by a loss of \$51,235 in benefits. This represents the cost of the employee's support during retraining, as well as the expense of tuition, books, and supplies. The injured worker will be left with \$8850 in his pocket, if he has a 5% impairment award. If he can return to work, he can earn money and still keep this \$8850. If he can't, and he has waived the reemployment benefit, his vocational life will be forfeited for \$8850!

¹ Every point will be worth \$1770 if this legislation passes. Under the 1988 Act presently in effect, each percentage point for impairment of the whole person is \$1350. The new Act changes that to \$1770 per percentage point. Most ratings are under 10%. Examples: a cartilage tear in the knee = 4% WP, operated herniated disc = 10%, unoperated herniated disc = 7%, neck fusion = 10%.

² This is the so-called "rehabilitation stipend" that supports the worker during the program while he is being retrained and after his permanent impairment award has been doled out to him at his compensation rate.

Janel L. Wright
2945 Emory Street
Anchorage, AK 99508

March 20, 2000

Representative Norman Rokeberg

VIA FACSIMILE: (907) 465-2040

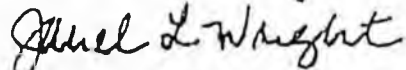
Dear Representative Rokeberg:

As an Alaskan with diabetes, I request that you withdraw your amendment to CS HB 298 for the following reasons:

- Adequate patient education is the cornerstone of good self-management and blood sugar control.
- It is impossible to estimate the number of hours a patient will need with a professional diabetes educator and dietician.
- The number of hours each individual should spend with a diabetes educator and dietician varies greatly, and is dependent upon the individuals needs.
- In limiting the hours of reimbursable patient education, those individuals with the greatest need for education are denied access.
- The advancements in treatment of diabetes that lead to healthier more productive lives for individuals with diabetes require access to education.
- Patient education is necessary to enable persons with diabetes to avoid complications of the disease.
- Patient education is far less expensive than the costs related to diabetes complications such as kidney failure, heart disease, blindness, nerve damage, and amputations.

Representative Rokeberg, thank you for considering my request that you withdraw your amendment to this important legislation. I look forward to your response.

Very truly yours,


Janel L. Wright

Post-It Fax Note	7671	Date	3/20/00	# of Pages	2
To	Norman Rokeberg	From	Betty A. Cross		
Co/Dept	J	Co	Crawford & Co		
Phone #		Phone #	907-561-5222		
Fax #	907-465-2040	Fax #	907-561-7383		

March 20, 2000

Representative Norman Rokeberg
State Capitol, Room 24
Juneau, AK 99801-1182

RF: House Bill # 419 (T.&C)

Dear Mr. Rokeberg:

I am a rehabilitation professional who is certified to provide vocational rehabilitation services at the request of the Department of Labor, Workers' Compensation Division, for injured workers in Alaska. I have also provided rehabilitation services to injured workers in Montana, Idaho, Washington, and Oregon, as well as other states. I have been practicing as a professional rehabilitation counselor since 1984.

I am very glad to see some of the proposed changes to the workers' compensation bill that provide increased benefits to injured workers in Alaska. This includes raising the allowed cost of re-training to \$13,300 from the current \$10,000. I feel that this is extremely important due to the rising cost of education, supplies, books, tools, and equipment.

I am concerned about a new section being added, Section 7 AS 23.30.041 (r), which allows an employee to "waive, at any time, any benefits under this section, including an eligibility evaluation and benefits related to a reemployment plan." I feel that injured workers may potentially be pressured by insurers to waive their benefits prior to a clear determination as to whether they may return to the time of injury job or other jobs in their previous 10 year work history. I believe that an injured worker should not be allowed to "waive" reemployment benefits unless they have completed a thorough "eligibility evaluation" to determine their return to work potential.

I have seen other states, such as Montana, "settle out" rehabilitation benefits by using a similar waiver. Later the Supreme Court came back and stated that it was "inappropriate" to settle out rehabilitation benefits and injured workers had to actually be provided the services. This legislation re-opened hundreds of previously settled cases thus incurring double the cost for rehabilitation. It became a settlement first and then rehabilitation services provided several years later.

Even if the state Alaska can prevent a similar occurrence as noted above, I believe the cost of rehabilitation will show up in other places. Those individuals who waive rehabilitation may show up applying for services through the State Department of Vocational Rehabilitation for retraining services and thus will increase the burden to the State of Alaska in this department. Some individuals who cannot return to their usual occupation may need to apply for Public Assistance, unemployment, or may need to take out high interest loans to engage in re-training on their own.

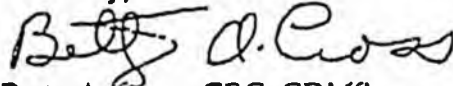


Betty A. Cross
Manager

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MAR 20 2000

In summary, I would like to see the above noted section deleted or amended to require an eligibility evaluation so that injured workers will know their return to work potential and if eligible for services, they understand what services they may be waiving.

Sincerely,

A handwritten signature in cursive script that reads "Betty A. Cross". The signature is written in black ink and is positioned above the typed name.

Betty A. Cross, CRC, CDMS

Alaska Injured Workers Alliance
P. O. Box 101093
Anchorage, Alaska 99510
907-278-3661 Of. 688-7708 Hm 229-5718 cell 688-7709 fax

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MAR 20 2000

March 20, 2000

Dear Labor & Commerce Committee Members,

I would like to speak to you today about House Bill 419. This bill is not in the best interest of workers. It is the same committee that formulated the 1988 changes that has devastated injured workers and their families. We now know conclusively by the Legislative Budget and Audit Report that just came out intentionally or not injured workers have and are being disadvantaged by the workers compensation system. Many workers have waited for medical care and been denied benefit while knowing that fee caps on workers attorneys did little or nothing to help them secure information regarding their rights and benefits. The worker has little or no help provided by the Division of Workers Compensation. We are now asking for your assistance to make this a more fair and just system.

We know that recent budget cuts have not helped this situation but complicated it yet even more. I hope that you will carefully review the Legislative Budget and Audit Report and see that changes can be implemented on the recommendation of the Audit team. We need to improve services, provide better enforcement of the current law, and straighten out penalty issues. If insurance companies regularly under report on the verified annual data and the division is not enforcing the penalties we could have more revenue to assist in securing better services. Defense attorneys are given more preferential treatment than to injured workers and their attorneys, the audit confirms this. We need to make this system fairer for all parties.

The average worker earning 155.00 per week makes below poverty wages, with no inflationary increases. With the rate proposals in the HB 419 it is not even keep pace with inflation in today's real money terms. None of the increases are based on today's real money terms and do not account for inflation. Why should we further complicate an already complicated matter? Why not use the L & B recommendations to first make the process more fairer to all parties then make constructive changes that reflect more real terms for workers. We need to move them past social services and delayed medical treatments and to enforcement even handed fairness to all parties.

Lastly we need better education programs geared for workers 28,000 claims per year and 10 Workers compensation Attorneys are not enough to cover the whole state. Better wages for worker attorneys would mean more attorneys. Fee caps for defense attorneys are essential. Education programs and technical assistance are only provided by The Alaska Injured Workers Alliance at this time. Workers need better access to information to make informed decisions about their rights and benefits. The Further away from Anchorage they are the less access to information workers have. We are not against anyone, but this system that was designed for workers long ago needs impute from the very disadvantaged workers. Not just a bunch of people who are supposed to represent our interest. With three quarters of the majority against workers from the start workers are looking to you to insure better benefits and safer working conditions in which to work. I hope that you will be sensitive to their needs and not just the people have control of their benefits.

Thank you for your time concerning this matter.

Sincerely,
Barbara Williams
Alaska Injured Workers Alliance

ALASKA INJURED WORKERS' ALLIANCE

Once again there is a bill relating to workers' compensation crafted by the Governor's Ad Hoc Committee on Workers' Compensation. Despite years of public testimony from injured workers that the Ad Hoc committee does not represent them, the Governor again excluded injured workers by appointing only industry and union agents to the committee. The following is a sectional analysis of this bill from the perspective of injured workers.

Section 1. INTENT

(a) This is the same intent of the legislature as stated in 1988. For anything more than a cut finger there is nothing quick, efficient, or fair with regard to injured workers. What is predictable is the non-delivery of indemnity and medical benefits to injured workers and the resultant cost savings to insurers who do not pass savings along to employers.

(b) The legislature again declares that the workers' compensation act must not be construed in favor of any party. This continues to undermine the presumption of compensability.

(c) A token increase in the state average weekly wage "more fairly compensate[s] injured workers" but does little to change the gross unfairness.

(d) The true intent of this subsection is to instate another procedural bar through which injured workers can be denied benefits. There is no objective evidence that paying injured workers reduced benefits does anything to encourage them to complete the rehabilitation process as quickly as possible and thus return to work in an expeditious manner. The division's annual reports show years of few to no injured workers retrained. Economic hardship is in reality just a further deterrent in an under funded, unrealistic program promoted by the legislature to further the insurance industry's goal of reduced costs.

(e) It is disingenuous for the legislature to cut the division's budget considering the division's gross deficiencies and then claim that it's enactments are to encourage quick, efficient resolution of any aspect of the act.

Section 2. AS 23.30.041(c)

(c) In the Alaska Workers' Compensation Act the word "notwithstanding" is a red flag warning injured workers that their rights have been removed. In this instance the legislature is removing an injured worker's right to a hearing wherein the board must decide whether a waiver is in the best interest of the employee. The legislature directs the board to prescribe or approve a form the employee would be using to shoot himself in the foot.

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MAR 20 2000

Section 3. AS 23.30.041(g),(b), and (i)

(g) The number of qualified rehabilitation specialists has been decreasing. Many refuse to work for certain insurance companies and/or adjusters. Adding five days to the time allowed for an injured worker to select a rehabilitation specialist, and then procedurally terminating his benefits for failure to perform within the meager time frame allowed, penalizes workers who are disadvantaged by their injuries and rewards insurers and adjusters for creating and maintaining a highly contentious environment for rehabilitation services.

(h)(2) Here the legislature adds the term "transferable skills" with out defining it or differentiating it from the other terms used in the same sentence. Since the rules of statutory construction require every word to have a specific meaning the question begs.

(h)(7) The date of "medical stability" has serious ramifications under the Act. "Predicting" it at all is medically questionable to begin with. Allowing non-treating physicians to promulgate guesses is even more so. Relying on the insurance company's physician's prediction to formulate a rehabilitation plan can result in a plan the injured worker refuses to cooperate in on the advice of his treating physician. Under AS 23.30.041(n) his benefits can thus be terminated by his insurer for following his doctor's advice.

(i) By adding a plan requirement for continuous participation by the employee, the legislature fails to recognize that the nature of an injured worker's injuries and resultant disabilities often prevent or otherwise interfere with an injured worker's ability to continuously participate in a plan. Again AS 23.30.041(n) allows the insurers to terminate benefits. The legislature is giving the insurance industry tacit authority to violate the Americans with Disabilities Act. The legislature also added a requirement to "maximize the usage[s] of the employees' transferable skills." These presumably are the same transferable skills the legislature has failed to define despite AS 23.041(q) which provides definitions for terms used in this section.

Section 4. AS 23.30.041(k) & (i)

(k) Increasing the stipend compensation rate from 60 to 70 percent does little to alleviate the economic hardship that adversely affects an injured worker's ability to participate in a reemployment plan. Few people can sustain a 30 percent loss in wages and maintain their financial commitments to mortgage holders. Being both handicapped and homeless does not increase an injured worker's ability or incentive to participate in a reemployment plan. Suspending benefits until an employer or insurer recoups a prior lump sum permanent partial disability[sic] payment defeats the purpose of stipend payments. Referring to a permanent partial disability does not encourage confidence in the legislature when the legislature itself abolished permanent partial disability in 1988 when it side stepped the entire concept of disability in favor of the more expedient "impairment."

Permanent total disability is generally prescriptive under AS 23.30.180(a) and does not consider involvement in the rehabilitation process as conclusive evidence to the contrary. Furthermore temporary total disability ends on the date of medical stability under AS 23.30.185. Therefore an injured worker with permanent total disability who is medically stable would receive neither TTD nor PTD benefits while in the reemployment process. Permanent disability precludes wage loss benefits if involved in a reemployment plan but temporary disability does not.

(l) There is no objective evidence that raising the \$10,000 cap on the cost of a reemployment plan to \$13,300 bears any closer relationship to the actual costs of plans any more than the arbitrary two year plan completion limit established under (k).

Section 5. AS 23.30.041(n)

(a) This additional means of non-cooperation allows the employer to terminate benefits before they have even started on grounds the employee may have no control over. An employee's choice of rehabilitation specialist is dependent upon the specialist's availability, acceptance, and ability to establish a rapport with the employee.

Section 6. AS 23.30.095

(c) There is no rational basis for requiring a physician or healthcare provider to submit a report within 14 days of treatment yet allowing employers to delay payments for 30 or more days. Simply telling the employee and provider in writing of the reason for not timely making payment does not comply with the controversy notice requirements of AS 23.30.0155(a).

Section 7. AS 23.30.095 (f)

(f) What is an "updated" usual, customary and reasonable medical fee schedule? Is a new fee survey conducted each year? What are the parameters of the survey? Does the schedule determine usual, customary, and reasonable fees or usual customary and reasonable care? Considering the legislative budget cutting, what is the fiscal cost and how will it affect service levels? All of these issues have been blurred by the administrative process recently used to adopt Medicare.

Section 8. AS 23.30.105(a)

The addition of AS 23.30.41 to this subsection should be in numerical order. While amending this section the last sentence should be amended to include compensable disability and/or impairment. Permanent partial impairment has been compensable under AS 23.30.190 since the legislature adopted it in 1988.

Section 9. AS 23.30.107(a)

(a)(i)(A) Should this be (a)(1)(A)? The request must include not only notice of the employee's right to petition for a protective order but also state that the petition must be filed within 14 days as now prescribed by this new statute. It should also state that three additional days must be added under 8 AAC 45.060 since the request was served by mail.

(B) AS 23.30.005(f) states, "Two members of a panel constitutes a quorum for hearing claims...." AS 23.30 makes no distinction between a claim or petition. Prehearing officers are not required to be licensed to practice law under the Administration Procedures Act. They do not constitute a quorum. They should not be given authority to "resolve disputes concerning releases of information." They would be determining the relevance of evidence. There is no greater issue in a claim than the evidence on which all other issues will be decided. The employee's constitutional right to privacy must be carefully weighed. Ex parte communication is the norm for prehearing officers. Prehearing officers issuing orders in the name of the board is a gross violation of due process guaranteed by both the state and federal constitutions. Stating that the employee's rights to benefits under the act shall be suspended makes suspension mandatory and potentially creates a penalty disproportionate to any prejudice or harm to the employer.

(C) No attempt is made in this legislation to establish any criteria for determining that good cause existed for the refusal to provide authority to obtain medical records. Did every employee waive their rights to due process and privacy the day they went to work?

(ii) Should this be (a)(2)? A prehearing officer issuing decisions and orders is an abuse of discretion in that they have no discretionary authority in the first place. It is a violation of due process to permit the board to "review" a prehearing officer's determination and uphold it without holding a hearing. Prehearings are not statutory requirements unless a party opposes a hearing request. Excluding evidence or arguments by statute from being presented at a hearing because it was not presented at a prehearing created by a regulation eliminates any distinction between legislative, administrative, and adjudicative law. Prehearing officers now have more authority than the legislature and the board combined.

Nothing in these proposed statutes stays the employer from suspending benefits when a petition for a protective order is filed. By requesting an employee to provide written authority to the employer to obtain medical records that is so overboard as to be offensive on its face the employer sets in motion a process that allows the employer to suspend benefits for months with impunity. What is an appropriate sanction for the employer's violation of the employee's constitutional rights?

Section 10. AS 23.30.110(c)

(c) The language added to this subsection is so ambiguous it loses all meaning. Filing a prehearing request suspends the time for filing a hearing request? In granting a last hour continuance the board should be considering issues of due process and manifest injustice to insure that the procedural requirements are not infringing on constitutional rights. The legislature should not be introducing confusing procedural bars to an employee's supposedly guaranteed benefits.

Section 11. A New Subsection (p) to AS 23.30.155

(p) It is hard to calculate interest when the statutes and regulations do not clearly establish when all of the various compensation and benefits are due. Who calculates the interest and who verifies its correctness?

Section 11. AS 23.30.175 (A second Section 11.?)

(a)(i) Should this be (a)(1)? The purpose of \$110.00 and \$154.00 per week thresholds used to determine an employee's weekly rate of compensation were never well reasoned. The insurance industry no longer needs this buffer. No objective evidence has been provided to substantiate any percentages. How does the Division of Employment Security calculate the Alaskan average annual wage. Fixing wage rates to the date of injury does not fairly compensate those employees who develop latent disability or impairment many years later. Radiation exposure at the age of 20 may cause no initial disability yet at 40 could be fatal. In twenty years the employee's wage rate may have tripled.

Section 12. AS 23.30.190(a)

(a) The \$135,000.00 whole person valuation established in 1988 was never based on any objective evidence. Its only rationalization was that by cheapening human value insurance companies could substantially cut losses. Raising the valuation to \$177,000.00 does not account for inflation since 1988 so the legislature is even further devaluing human existence. If the legislature is going to calculate the maximum compensation rate under their amendment to AS 23.30.175(a)(i)[sic] as a percentage of the Alaska average annual wage, why not set the whole person valuation at 500% of the same thing. Better yet, first determine the whole person impairment percentage for the loss of an arm in personal injury litigation cases, second determine the whole person impairment percentage for the loss of an arm, and third divide the personal injury valuation by the percentage of impairment to determine the whole person valuation. Take this valuation and divide it by the average annual wage to determine the percentage multiplier for future years. Of course it is much easier to simply ask the WCCA what they are willing to pay.

Section 13. AS 23.30.215(a)(1) and (2)

(a)(1) Was the \$2,500 funeral expense increased by 32% just to compensate for inflation or were present funeral costs actually reviewed to determine a realistic expense?

(a)(2) It pays to die. The insurance companies forgot to subtract off the salvage value of a dead body.

(b) This section was not changed to be consistent with changes being made to AS 23.30.175.

Section 14. AS 23.30.220(a)(4)

(a) Will overtime and premium pay be included at its full value or will only the hours be included at straight pay?

(b) The word "the"[sic] should be the word "then." Otherwise same as (a) above.

General Comments:

This Ad Hoc Committee compromise bill once again purports to be a balanced trade off between industry and labor. On the surface it appears to increase benefits for injured workers but in reality few will ever see these benefit gains. The procedural bars that have been introduced or strengthened will insure that fewer injured workers ever receive benefits in the first place. The brass ring on the merry-go-round can be changed to gold but the ride has been set up to insure that no one can reach it without falling off. You have paid for this ride with your constitutional rights. When the music stops, where will you be?

The Alaska Injured Workers Alliance
P. O. Box 101093
Anchorage, Alaska 99510
K. Scott McEntire President
907-337-8614

March 20, 2000

My name is Jerry Flock. I am an injured worker with an uninsured employer. You may have heard of my employer General Roofing. My employer paid 100.00 and a 38-caliber handgun to relieve them of the liability. Through this whole process the Alaska Workers' Compensation Board has done nothing to protect my rights or me. The only source of information that I have had is The Alaska Injured Workers Alliance. By passing House Bill 419 you are enforcing the fact that the division regularly works with employers and insurance companies as the Legislative Audit confirms to me.

I have had surgery that cost Public Assistance and not my employer. They have disposed of their responsibilities regularly and not only do I have to fear for my own safety but my families as well. You cannot possibly tell me that the DWC is doing all it can to fiercely access workers rights to medical care and benefits I am a prime example of how this can all go wrong. I urge you to follow the recommendations and clean up the workers compensation system and make it fair for all party's not just employers and insurance companies. My employer had let her policy lapse 16 times and one other employee broke his back while falling off a roof since my employer knew no one would enforce the laws to protect me and those like me. Proper enforcement is necessary to see that workers are protected. Two years ago when the Injured Workers Alliance started inquiring an alarming 60% over half of the state employers were uninsured. This must change. We also need better education programs and access to legal assistance to process our claims.

I urge you to see fit to protect all workers in this state and see that everyone is treated fairly and not denied due process. Due process escapes me to this day because no one will see that my employer pays my benefits and secures my medical care and possible retraining. I hope that you will remember me and be an active part of proper enforcement of these laws and new ones in the future.

Thank you for your time
Sincerely,
Jerry Flock
929-3599

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Dear Committee Members,

My name is Valerie. I have a brain injury. I recently had a surgery on my spine that relieved me of my headaches. I was unable to focus and was to the point of suicide. Please consider the Legislative Budget and Audit Recommendations before making the workers compensation laws any worse. If it had not been for The Alaska Injured Workers Alliance, I would not have legal council or had my surgery. They provide necessary services for people like me with cognitive disorders. We need a system that is fair to everyone not just insurance companies.

I hope that you will think of me and others like me when considering your decisions. Without information we cannot help ourselves and support our families. I have a twelve-year-old daughter who depends on me. I have to have my benefits to support my child and myself. I hope that you will see that this proccss is fair for everyonc. We need better education programs, tcthnical assistancc, and acccss to legal help. With out help people with brain injuries like mc don't and won't receive benefits. Thank you for your time.

Sincerely,
Valerie Welsh
332-5994

March 20, 2000

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MAR 20 2000

Dear Committee Members,

I am here to speak to you today concerning HB 419. As an injured worker in the Workers Compensation system for almost ten years I know how complicated it really is. We are asking you to review the Legislative Budget and Audit review on Workers Compensation and make better changes not the ones in this bill. They are insulting us by not even adding inflation in the weekly wages for workers. We need to support our selves and our families. My insurer and employer delayed my medical care and I had to have a total knee replacement due to untimely medical treatment. I have to go before the Workers Compensation Board tomorrow and beg that the rest of my injuries that happened all on 8/21/92 be covered. I have never had any problems with my back or other body parts until I was injured on the job. The whole process has been a nightmare for my family and me and resulted in a psycholological disability for me.

Better education programs are necessary for workers to be informed as to their rights and benefits. The Audit confirms that we are being disadvantaged. Please help us. Make the process fair for all parties not just the insurance companies and employers who are in control of our care.

We need your support in seeing that we are treated humanely and not mistreated as many of us are. We need you to protect us and not just listen to people who represent our interest. Those same interest would further reduce our benefits and tip the control of our health and welfare in favor of the insurance companies. We urge you to act fairly and evaluate the mess that is already in full swing. Make the process understandable and fairer. Increase our attorney fees to that more of us have access to legal help. Thank you for your time and attention to this most important matter.

Sincerely

Bruce W. Williams
P. O. Box 771754
Eagle River, Alaska 99577
907-688-7708

FROM : Law Office of Michael J Jensen FAX NO. : 907 522 8173

Mar. 07 2000 09:25AM P1

Law Offices of
Michael J. Jensen*Alaska Workers' Compensation
Steven Hulse*12350 Industry Way, Suite 209
Anchorage, Alaska 99515Tel (907) 277-6000
Fax (907) 522-8173

February 18, 2000

Via Facsimile
269-7461The Honorable Tony Knowles
Governor for the State of Alaska
550 W. Seventh Ave., Ste. 1700
Anchorage, AK 99501

Dear Governor Knowles:

You recently submitted a proposed amendment to the Alaska Workers' Compensation Act which you believe will adjust the Act, after 12 years without an adjustment for inflation. You are quoted as stating:

I don't think there are too many benefits programs in any aspect of government that go 12 years without an adjustment.

Anchorage Daily News, Section D-4, February 12, 2000.

I have practiced before the Alaska Workers' Compensation Board for over 15 years. I represent exclusively injured workers. I had the pleasure of first being introduced to you 15 years ago. I had been a supporter of yours ever since, even having walked the Fairview and Mountain View neighborhoods on numerous weekends in your 1994 campaign for Governor.

From your statement it is clear to me that you are unaware of the further erosion this Act will cause in the benefits of Alaska's injured workers. Since 1988 not only have workers' benefits not increased they have in fact been greatly reduced. A perfect example is the 1997 amendment to the Act which changed to a more restrictive version of the AMA Guides for the rating of permanent impairment. This has dramatically reduced the amount of permanent benefits which workers with permanent impairments receive. Another is the Supreme Court's decisions affirming the most draconian interpretation of the rehabilitation sections of the Act. The one Supreme Court case, Meek v. Unocal Corp., 914 P.2d 1276 (Alaska, 1996), which benefited workers by addressing a major oversight of the 1988 Act this legislation seeks to repeal.

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MAR 08 2000

FROM : Law Office of Michael J Jensen FAX NO. : 907 522 8173

Mar. 07 2000 09:25AM P2

February 18, 2000
Page 2

Ak W/c Alliance
JH

This proposed legislation will only further reduce the limited compensation benefits workers receive. It is true that some benefits will increase but the ad hoc committee's concessions to its management members will take away several very important benefits that workers still enjoy. The effect will be that it will reduce or eliminate the benefits they receive in the most severe cases requiring vocational rehabilitation.

The proposed legislation will take away the current protection afforded by Board oversight. These regulations authorize waivers of vocational rehabilitation only if determined to be in the employee's best interests. 8 AAC 45.160(c). This legislation takes this protection away.

This proposed legislation would do away with most of the hard fought privacy protection gained by groups such as the Alaska Injured Workers' Alliance. The Alaska Workers' Compensation Board has sought to protect this important right. Recent decisions are relgning in the abuse by a few adjusters or lawyers seeking release of medical and other personal information. The Board has done this while at the same time acknowledging the employer's need for relevant records pertaining to its worker's injury. This legislation reverses this delicate balance and takes away the progress made by workers. It returns the system to the abuses of the past.

This proposed legislation does away with benefits for the most disabled when they have reached medical stability and before they can obtain an impairment rating. Often the costs of these ratings must be initially borne by the worker which prevents the worker from obtaining a rating. This legislation would repeal the Meek decision which remedied this oversight in the 1988 Act.

This proposed legislation would not assure that workers' overtime, paid as part of their work, is considered in the calculation of compensation. It does not change the current practice of only considering overtime pay at the straight time rate. This is particularly onerous for Alaska injured workers who made a substantial part of their income from overtime.

There are other significant shortcomings in this legislation which take away from your stated intent of increasing workers' compensation benefits after twelve years without an adjustment. I strongly urge that you reconsider the legislation you have proposed. After twelve (12) years of living with the present Act, workers deserve benefits which allow them to "get back on their feet." They do not deserve to have these limited benefits cut any further.

Thank you for your attention.

FROM : Law Office of Michael J Jensen FAX NO. : 907 522 8173

Mar 07 2000 09:26AM F3

February 18, 2000
Page 3

pk W/C. Blumner
GA

Sincerely,



Michael J. Jensen

MJJ/wws

cc: Paul Grossi, Director, Alaska Workers' Compensation Division
Alaska Injured Workers' Alliance

Alaska W/c Alliance - ~~General Counsel~~

FINDINGS AND RECOMMENDATIONS

- 1) The Division of Workers' Compensation management should develop a strategic plan to better accomplish the agency's operating mission. Manual processing of much of the paperwork related to claims and payments is inefficient.

Strategic plan would have to reflect a commitment to real and relevant performance goals.

- 2) The Division of Workers' Compensation should propose legislative changes to improve in the workers' compensation laws.

- 1.) *Fixed benefit amounts have not kept pace with the inflation and the cost of living.*
- 2.) *Overtime and premium pay is excluded in the determination of spendable weekly wage.*
- 3.) *Interim compensation is allowed under limited circumstances.*

- 3). The Division of Workers' Compensation Director should increase outreach, education and technical assistance to injured workers with regard to their rights and responsibilities under the workers' compensation laws when a disputed claim occurs.

- 4.) The Division of Workers compensation Director should take proactive measures to identify and monitor uninsured employers.

- 1.) *Eliminate the backlog that contributes to significant inefficiencies.*
- 2.) *Fully resolve injuries reported as uninsured and corrected system data to promote accurate uninsured injury statistics.*
- 3.) *Develop amendments to AS 23.30.085 for legislative consideration that institutes penalties for filing insurance/adjuster notices in a timely manner.*

- 4.) *Documents the entirety of employer enforcement correspondence and effort.*
 - 5.) *Sought revisions to the Alaska business license*
 - 6.) *The legislature should consider amending 23.30.075 to empower the Alaska Compensation Board to sanction uninsured employers.*
-
- 6.) The Department of Commerce and Economic Development's Director of the Division of Insurance should implement policies and procedures that ensure timely enforcement of insurer compliance of the Workers' Compensation Act.
 - 7.) The Division of Workers' Compensation should improve overview of insurers' annual reports.
 - 8.) The Division of Workers' Compensation should adopt a methodology for accessing compensation report penalties that is consistent with statute.
 - 9.) The director of Workers' compensation should correct inappropriate administrative and accounting practices.
 - 10.) The director of Workers' Compensation should resolve the legality of "supplemental" benefits and rectify internal control weaknesses over such expenditures.
 - 1.) *Obtain the attorney general's opinion when accessing the legality of issuing supplemental benefits under AS 23.30.172 to individuals who no longer receive primary workers compensation benefits from their insurer.*
 - 2.) *Exercise a greater level of monitoring over the expenditure of supplemental benefits.*
 - 3.) *Adequately support benefit calculations based on workers wages.*
 - 11.) The Division of Workers' Compensation's reemployment benefits administrator should capture indelibility determination statistics for policymakers and stakeholders.
 - 12.) The Division of Workers' Compensation's director should seek legal clarification with regard to the methodology for accessing annual penalties.

Subject: HB419

Date: Tue, 14 Mar 2000 12:35:57 -0800

From: "Bob Sullivan" <rsullivan@gci.net>

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

From: Robert M. Sullivan
6635 Desiree Loop
Anchorage, AK 99507
Tel.#: (907) 344-7588
Fax#: (907) 349-8721
E-mail: rsullivan@gci.net

There are two major problems that I see with HB419, AS 23.30.041, Sec. 7, (r):

1. This section opens the door for insurance companies and employers to apply pressure to injured workers and employees to waive their rehabilitation benefit before they have a clear idea of whether or not they will need it.
2. The waiver, once signed and transmitted, is irrevocable, which eliminates a means for injured workers, who have waived their benefit, to seek reinstatement of the benefit, if it is found that they need it at a later date.

Should Sec. 7, (r) remain in this bill, and be passed by the legislature, I see several impacts that early irrevocable waivers of vocational rehabilitation benefits may have on injured workers, employees, and the community:

1. Injured workers who cannot return to their usual employment will be subject to returning to work in unskilled, low paying jobs; returning to their usual employment in a hurt condition; seeking other state and federal resources for support; or seeking additional medical services through the workers' compensation system in an effort to fix a medical problem that may not be entirely fixable.
2. Employers may decide to use the waiver of rehabilitation benefits form as a condition for employment.
3. Federal taxes and the state budget that support other rehabilitation programs will be used to take care of the disabled workers that should be the responsibility of the workers' compensation system, employers, and the insurance industry, and thus, stretching the resources of these alternative programs.
4. Productive tax paying citizens will be replaced by victims seeking assistance, which will erode the tax base, and increase the need for the general public to pick up the slack.
5. All of the above-mentioned problems will undoubtedly lead to increased litigation, because there will be many people who will take legal action to rectify their situation.

I hope there is something you can do to delete Sec. 7 (r) from this legislation.

Subject: HB419

Date: Thu, 9 Mar 2000 12:20:39 -0900

From: "Jim Sykes--AKPIRG" <akpirg@akpirg.org>

To: <Senator_Drue_Pearce@legis.state.ak.us>, <Representative_Brian_Porter@legis.state.ak.us>

DT: March 9, 2000

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

FR: Barbara Williams, Vice President

Alaska Injured Workers Alliance

Membership more than 500 injured workers

PO Box 101093, Anchorage, AK 99510

PH: 278-3661 FAX 278-9300 email: akpirg@akpirg.org

RE: HB419

After yesterday's discussion on HB 419 in the House Labor and Commerce Committee I am writing to urge you to review the Legislative Budget & Audit on Alaska Workers' Compensation. This piece of information is very critical to your understanding of why it is not in the best interest of workers for you to support this bill.

The audit points out that workers are disadvantaged by the current system and provided important recommendations as to a more fair and efficient delivery of benefits. The WCCA is specifically discussed on pages 11-16. This organization led the changes for the legislation that have penalized and harmed workers for the past 12 years. It is only through labor unions that WCCA can claim to represent injured workers, which is a small minority compared to the number of injured who do not belong to labor organizations. Roughly three-fourths of injured workers have no voice.

Change is driven by interest in pocketbooks rather than workers' interests. The audits present clear evidence confirming workers comp laws have not been meaningfully enforced. For example on page 43, "DWC's director should propose legislative changes to improve the balance in the workers' compensation laws." The succeeding page states that the director should increase outreach, education, and technical assistance to injured workers with regard to their rights and responsibilities under the workers' compensation laws when a disputed claim occurs. Proactive measures should be taken to identify and monitor uninsured employers. The DWC director should improve controls over the review of insurers' annual reports and should correct inappropriate Administrative and Accounting practices.

There needs to be adequate support for benefit calculations based upon worker's wages.

"Such circumstances, that we believe are unintended by-product of the 1988 amendments, **have resulted in a situation where more consideration is provided to employers and employers than to injured workers.**" The proposed legislation comes from the same group that brought amendments in 1988 which have proven detrimental to Alaska workers. That is why the audit is so important to understand before additional changes are made.

The need to educate workers is vital. Although most workers have no idea how to process their claims there are 28,000 claims per year. This is further complicated by a shortage of legal assistance to this disadvantaged group of individuals. The further away from Anchorage, Fairbanks, and Juneau the workers are the less information and legal assistance they have available to them. The insurance companies enjoy having an open wallet while fee caps restrict workers attorneys.

The recommendation section of this report alone raises a red flag and clearly indicates that the playingfield that legislators have intended to be fair has been administered unfairly. Workers, for whom this indemnity has been designed, have been disadvantaged by the administration. The lack of fair enforcement violates due process for injured workers.

Critical information that needs to go to injured workers appears to be bottled up in cooperation between the Division of Workers Compensation, Insurance companies and the WCCA. The net effect is that injured workers do not receive quick efficient, fair delivery of indemnity and medical benefits. There is no one in the process exclusively representing injured workers and their health care providers. The reason hundreds of people have contacted the Alaska Public Interest Research Group and the Alaska Injured Workers Alliance is because they are the only free source of information helping some of the 75% of injured workers and health care providers that are not represented by unions.

The scales of balance are tipped heavily against injured workers and we have a responsibility to correct that. I hope that we can count on your support for the recommendations from Legislative Budget Audit team. The information is accurate, reliable and gained from a thorough investigation. Since these changes will dramatically affect the lives of one of eight Alaska workers, they need to be done fairly with full consideration for available evidence. To view a full copy of the audit you may link to <http://legis.state.ak.us/legaud/web/pages/00audlis.htm> . Thank you.

Sincerely,

Barbara Williams, Vice-President

Alaska Injured Workers Alliance

LAW OFFICES OF

Kalamarides & Associates

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April 3, 2000

ATTORNEYS AT LAW
JOSEPH A. KALAMARIDES
ANDREW J. LAMBERT

LEGAL ASSISTANTS
PHYLLIS LAVITA
DOUGLAS JOHNSTON
Via: Fax & letter

Representative Norm Rokeberg
716 West 4th Avenue
Anchorage, AK 99501

Re: House Bill 419

Representative Rokeberg:

I am an attorney who practices workers compensation law. I have had the opportunity to review House Bill 419 regarding changes to the current workers' compensation act.

I have some serious concerns about section 7 of the bill. This provision provides that an employee can waive his right to re-employment benefits without approval by the Alaska Workers' Compensation Board required by AS 23.30.012.

This section would authorize adjustors to require waiver of re-employment benefits as a condition of payment of permanent partial impairment benefits. Ordinarily if no re-employment benefits are requested the law requires payment of permanent partial benefits in a lump sum. There is no signing of any documents. This is automatic.

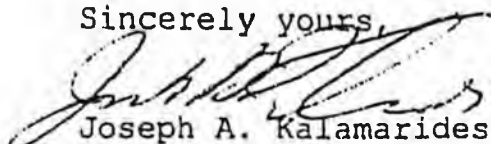
However if re-employment benefits are requested then permanent partial impairments are paid bi-weekly until the re-employment process is completed.

My concern is that the "unscrupulous adjustor" will require an individual who has not requested re-employment benefits to sign a waiver as a condition of payment of permanent partial impairment benefits. This would be an abuse of the system.

This would also lead to litigation before the board in setting aside the waiver, if the employee needed re-employment benefits later.

I therefore urge you to delete this provision of the bill.

Sincerely yours,


Joseph A. Kalamarides

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