

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10275 HOUSE JUDICIARY

120

interviewed expressed frustration that while they spend the time to submit data reports to DMHDD, they receive little for their efforts.

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

While the number of clients served does not reflect the amount of service delivered, we believe that a significant element of grant funding decisions should be based on the historical number of clients served in an area. Currently, it appears DMHDD bases its grant funding allocations primarily on how much a provider was granted in prior years.

Current Status of Prior Recommendation

Since the previous report, DMHDD has installed a new data system, ARORA. This system is capable of capturing the individual client data, but DMHDD has found it difficult to actually collect and use the data for grant management decisions. Problems surrounding the collection of data from providers have included technical difficulties, providers' inability to submit data in a timely fashion, and a lawsuit ostensibly filed to protect the confidentiality of client data.

DMHDD has been ineffective in its efforts to collect comprehensive client information. The information services section is in frequent contact with providers regarding data submissions or lack thereof. Non-compliant providers also receive periodic reminders of their reporting obligations from the division director, but the division has been reluctant to become more assertive with these providers. While financial sanctions for providers that will not submit the required data would likely be the most effective method to gain compliance, the division is concerned with the effect these sanctions might have on consumers.

Legislative Audit's Current Position

The division's inability to collect comprehensive client data continues to limit its ability to use the management information system for grant funding decisions, ensure that services are not dual billed, or offer providers feedback about services and the associated costs. While we recognize that other sources of information, as discussed in the Reports Conclusions section, provide a context in which to review client data, that information is not an adequate substitute for comprehensive client data.

Many of the data problems are the result of provider noncompliance with specific grant requirements. To remedy this noncompliance, DMHDD may be forced to institute financial sanctions by withholding grant funds from grantees determined to be out of compliance with data submission requirements.

DMHDD is currently restructuring its data processing section, exploring possibilities to facilitate data submission, and discussing potential sanctions for providers that do not comply with data submission requirements. Though we view these efforts as steps in the

right direction, the actual implementation status of the recommendation remains limited. In addition to current efforts to obtain client data, we encourage DHSS to consider its long-term data needs and assess whether a system that collects only mental health data is cost effective when many clients receive services from multiple divisions.

APR 19 2001

ALASKA MENTAL HEALTH BOARD

TONY KNOWLES, GOVERNOR
STATE OF ALASKA

431 N. Franklin, Suite 200
Juneau, Alaska 99801
Office: (907) 465-3071
Fax: (907) 465-3079

April 19, 2001

Honorable Hugh Fate
Alaska House of Representatives
State Capitol, Room 416
Juneau, Alaska 99801-1182

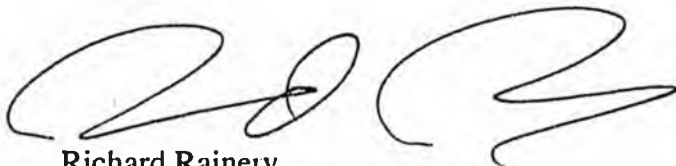
Dear Representative Fate:

The Alaska Mental Health Board (AMHB) is the state agency charged by statute with planning for Alaska's public mental health system and with advocating for Alaskans with mental illnesses. By law, at least half of the AMHB's appointed members must be Alaskans with mental illnesses or family members of these Alaskans. The central goal of the AMHB is to design and advocate for a consumer-oriented system of services.

Issues surrounding collection of data related to public mental health services and the protection of the confidentiality of that data have occupied the AMHB for a number of years. HB 174 requires the reporting of confidential client data to the state. The bill addresses confidentiality issues that have prompted hesitation by service providers to report client records by according the same level of confidentiality required for medical records to mental health records and protecting providers who report this data to the state. Consumer rights are protected by requirements that the state manage and use mental health records appropriately. The AMHB is on record supporting responsible collection of client data, most recently in Resolution 01-01 (enclosed). The AMHB must have accurate, complete data in order to perform its statutory duties of system planning and evaluation.

I appreciate this opportunity to apprise you of the AMHB's support for HB 174. Please let me know if you have any questions or wish any further information.

Sincerely,



Richard Rainery
Acting Executive Director

cc: Anne Henry, DMHDD

Alaska Mental Health Board

Resolution in Support of the Division of Mental Health and Developmental Disabilities

Collection of Provider Data

Resolution 01-01

Whereas, the Department of Health and Social Services (DHSS) agreed to community mental health providers' request to use their internal data gathering programs to collect data to be linked to the ARORA management information system; and

Whereas, consumer and consumer advocates, providers, the Alaska Mental Health Board (AMHB), the Alaska Mental Health Trust Authority (AMHTA), the DHSS and the Legislature agree consumer data must be collected; and

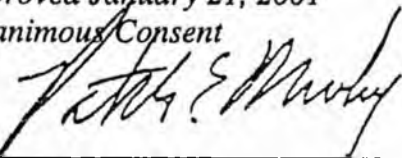
Whereas, the Division of Mental Health and Developmental Disabilities (DMHDD), despite several attempts at accommodating various providers over several years, has been unable to collect usable consumer data from a number of community mental health providers; and

Whereas, the AMHB and DMHDD have been facilitating a multi-year performance measures project, bringing together providers and consumers, reaching agreement on those measures which will provide the best data to improve services and increase system accountability, many of which are part of the ARORA data system;

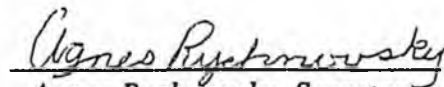
Now therefore be it resolved that the Alaska Mental Health Board supports the development by DMHDD, in conjunction with the stakeholder community, of a provider data collection plan to be included as a grant condition beginning July 1, 2001.

Approved January 21, 2001

Unanimous Consent



Pat Murphy, Chair


Agnes Rychnovsky, Secretary

NAMI of Fairbanks, Alaska, Inc.

*P.O. Box 72543, Fairbanks, AK 99707
(907) 456-4704*

April 18, 2001

RE: SB 135
HB 174

On behalf of NAMI of Fairbanks, Alaska, Inc., I am writing in support of the above mentioned bills. After reading HB 174, it seems to meet the needs of the state to be able to acquire information to better measure the performance of providers. This would also ensure the health and safety of mental health consumers, and still protect their rights to confidentiality.

NAMI of Fairbanks, Alaska, Inc. is a local non-profit organization whose mission is education, advocacy and support for people with mental illness and their families. As well as keeping abreast of legislative issues affecting our members, we offer general support meetings for consumers, families and friends, and a second support meeting for mental health consumers who are working on recovery skills. Another goal of our organization is to work with provider agencies for the best care for our members, and to educate the public to work towards removing the stigma associated with these illnesses.

Sincerely,

Jacquelyn Pananen
President
NAMI of Fairbanks, Alaska, Inc.

Subject: SB 135, HB 174

Date: Fri, 20 Apr 2001 10:07:07 -0800

From: "Jeri Lanier" <fcsajeri@mosquitonet.com>

Organization: Family Centered Services of Alaska

To: "Hugh Fate" <Representative_Hugh_Fate@legis.state.ak.us>

RECEIVED
APR 20 2001

Dear Representative Fate,

I just wanted to write you a short note and ask that you support HB 174 and accompanying bill SB 135. These are the Mental Health Confidentiality bills. A lot of hard work has gone into the writing of these bills, and last I heard from other consumers as well as NAMI Fairbanks, they satisfy all the concerns with the confidentiality pieces. I do know that we have to meet federal requirements with tracking information, and there will never be a 100% fool proof method to do this, but I do participate in the Federal Block Grant stuff for the last 2 years and we are in danger of losing funding if we do not get something up and running. Many of us worked hard to address all the issues that we could, and we are satisfied that these bills will meet our needs.

If you have any questions please feel free to contact me.

Sincerely

Jeri B. Lanier

Natural Support Specialist/Parent Advocate

Family Centered Services of Alaska, Inc.

620 5th Avenue, Fairbanks, AK 99701-4512

Phone: 907-474-0890 ext. 124 Fax: 907-451-8945

E-mail: fcsajeri@mosquitonet.com

Member of Alaska Mental Health Board

Chair, Children's Sub-Committee

jerilanian@mosquitonet.com

HB

177

Moved by
Berkowitz
FAILS

AMENDMENT #1

OFFERED IN THE HOUSE
TO: CSHB 177(STA)

BY REPRESENTATIVE BERKOWITZ

1 Page 1, line 1, following "Act":

2 Insert "increasing the civil penalties and amending the criminal penalties for
3 violation of Alaska's campaign finance statutes;"

4

5 Page 2, following line 5:

6 Insert a new bill section to read:

7 "* Sec. 3. AS 15.13.390(a) is amended to read:

8 (a) A person who fails to register when required by AS 15.13.050(a) or who
9 fails to file a properly completed and certified report within the time required by AS
10 15.13.040(d) - (f), 15.13.060(b) - (d), 15.13.080(c), 15.13.110(a)(1), (3), or (4), (e), or
11 (f) is subject to a civil penalty of not more than \$100 [\$50] a day for each day the
12 delinquency continues as determined by the commission subject to right of appeal to
13 the superior court. A person who fails to file a properly completed and certified report
14 within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil
15 penalty of not more than \$1000 [\$500] a day for each day the delinquency continues
16 as determined by the commission subject to right of appeal to the superior court. A
17 person who violates a provision of this chapter, except a provision requiring
18 registration or filing of a report within a time required as otherwise specified in this
19 section, is subject to a civil penalty of not more than \$100 [\$50] a day for each day the
20 violation continues as determined by the commission, subject to right of appeal to the
21 superior court. An affidavit stating facts in mitigation may be submitted to the
22 commission by a person against whom a civil penalty is assessed. However, the
23 imposition of the penalties prescribed in this section or in AS 15.13.380 does not
24 excuse that person from registering or filing reports required by this chapter."

1

2 Renumber the following bill section accordingly.

3

4 Page 2, following line 30:

5 Insert new bill sections to read:

6 **** Sec. 5.** AS 15.56.012(c) is amended to read:

7 (c) Campaign misconduct in the first degree is a **class C felony** [CLASS A
8 MISDEMEANOR].

9 *** Sec. 6.** AS 15.56.014(c) is amended to read:

10 (c) Campaign misconduct in the second degree is a **class A** [CLASS B]
11 misdemeanor.

12 *** Sec. 7.** AS 15.56.016(b) is amended to read:

13 (b) Campaign misconduct in the third degree is a **class B misdemeanor**
14 [VIOLATION]."

Moved by
Berkowitz
FAILS

AMENDMENT #2

OFFERED IN THE HOUSE BY REPRESENTATIVE BERKOWITZ
TO: CSHB 177(STA)

1 Page 1, line 2, following "statutes;":
2 Insert "applying certain campaign finance restrictions to ballot propositions and
3 questions;"

4
5 Page 2, following line 5:

6 Insert a new bill section to read:

7 "* Sec. 3. AS 15.13.040(d) is amended to read:

8 (d) Every individual, person, or group making a contribution or expenditure
9 shall make a full report, upon a form prescribed by the commission, of

10 (1) contributions made to a candidate or group and expenditures made
11 on behalf of a candidate or group

12 (A) as soon as the total contributions and expenditures to that
13 candidate or group reaches \$500 in a year; and

14 (B) for all subsequent contributions and expenditures to that
15 candidate or group in a year whenever the total contributions and expenditures
16 to that candidate or group that have not been reported under this paragraph
17 reaches \$500;

18 (2) [UNLESS EXEMPTED FROM REPORTING BY (h) OF THIS
19 SECTION,] any expenditure whatsoever for advertising in newspapers or other
20 periodicals, on radio, or on television; or, for the publication, distribution, or
21 circulation of brochures, flyers, or other campaign material for any candidate or ballot
22 proposition or question."

23
24 Renumber the following bill section accordingly.

1

2 Page 2, following line 30:

3 Insert new bill sections to read:

4 **"* Sec. 5.** AS 15.56.014(a) is amended to read:5 (a) A person commits the crime of campaign misconduct in the second degree
6 if the person7 (1) knowingly circulates or has written, printed or circulated a letter,
8 circular, or publication relating to an election, to a candidate at an election, or an
9 election proposition or question without the name and address of the author appearing
10 on its face;11 (2) [EXCEPT AS PROVIDED BY AS 15.13.090(b),] knowingly
12 prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for
13 television or radio announcement, or other communication intended to influence the
14 election of a candidate or outcome of a ballot proposition or question without the
15 words "paid for by" followed by the name and address of the candidate, group, or
16 individual paying for the advertising or communication and, if a candidate or group,
17 with the name of the campaign chair;18 (3) knowingly writes or prints and circulates, or has written, printed
19 and circulated, a letter, circular, bill, placard, poster, or advertisement in a newspaper,
20 on radio or television21 (A) containing false factual information relating to a candidate
22 for an election;

23 (B) that the person knows to be false; and

24 (C) that would provoke a reasonable person under the
25 circumstances to a breach of the peace or that a reasonable person would
26 construe as damaging to the candidate's reputation for honesty, integrity, or the
27 candidate's qualifications to serve if elected to office.28 * Sec. 6. AS 15.13.010(d), 15.13.040(h), 15.13.065(c), 15.13.084(1), 15.13.090(b), and
29 15.13.140 are repealed."



Alaska State Legislature

HOUSE OF REPRESENTATIVES
Alaska State Capitol Juneau, Alaska 99801-1181

SPONSOR STATEMENT

COMMITTEE SUBSTITUTE FOR HOUSE BILL 177 (STA)

"An Act placing special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; and requiring disclosure of the true source of campaign contributions."

In 1999, the Alaska Supreme Court in ACLU v. State upheld Alaska's ban on political contributions and independent expenditures by corporations and labor unions. But the court also held that entities must be allowed to make independent expenditures if "(1) they cannot participate in business activities, (2) they have no shareholders who have a claim on corporate earnings, and (3) they are independent from the influence of business corporations." The court also suggested that entities, which meet these three criteria, must be permitted to make political contributions.

The committee substitute for House Bill 177 clarifies that non-group entities that meet these three criteria may make contributions and independent expenditures. It also subjects them to the same rules--including contribution limits and reporting requirement--as other groups that participate in political campaigns.



Alaska State Legislature

HOUSE OF REPRESENTATIVES
Alaska State Capitol Juneau, Alaska 99801-1181

SECTIONAL ANALYSIS

COMMITTEE SUBSTITUTE FOR HOUSE BILL 177 (STA)

"An Act placing special interest organizations within the definition of 'group' for purposes of Alaska's campaign finance statutes; and requiring disclosure of the true source of campaign contributions."

Section 1: Adds a new section to uncodified law by giving this bill a short title: Full Disclosure of Campaign Finance Act.

Section 2: Amends AS 15.13.040(b). Contributions, expenditures, and supplying of services to be reported. This section requires groups to disclose the contributor of contributions in excess of \$100. Contributor is defined as the true source of the contribution. The true source of income is the original source of the contribution.

Section 3: Amends AS 15.13.400(5). Definitions. The definition of group is amended to include special interest organizations that fall within the mandatory exception to corporate contribution bans identified in *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), by incorporating, into statute, the three part test cited by the Alaska Supreme Court in *State v. Alaska Civil Liberties Union*, 978 P.2d at 612.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 177
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: An act placing certain special interest BRU: Alaska Public Offices Commission
groups within the definition of "group..." Component: _____
Sponsor: House Rules Committee
Requester: House State Affairs Committee Component Number: 70

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	42.5	0.0	0.0	0.0	0.0	0.0
Travel	4.1	2.5	2.5	2.5	2.5	2.5
Contractual	23.2	23.2	23.2	23.2	23.2	23.2
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	70.8	26.7	26.7	26.7	26.7	26.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	70.8	26.7	26.7	26.7	26.7	26.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	70.8	26.7	26.7	26.7	26.7	26.7

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporarily	1	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Brooke Miles Phone 907-276-4176
Division: Alaska Public Offices Commission Date/Time 3/21/01 1:31PM
Approved by: Jim Duncan, Commissioner Date 3/21/01
Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

This is staff's estimate of the fiscal impact of HB 177. The Commission will not have an opportunity to review the legislation and staff's recommendation for a fiscal note until their next meeting on March 29th and 30th, 2001.

SB 177 amends the financial disclosure law and will result in additional costs to the Commission.

This bill will permit a proliferation of non-group entities described by the Alaska Supreme Court in its decision in State of Alaska v. Alaska Civil Liberties Union [ACLU]. Current regulations have narrowly interpreted this area of law and set forth a process through which non-profit corporations may qualify to participate in election campaign activities. HB 177, however, does not prescribe a procedure for the entities to "qualify" or to certify that they, in fact, meet the 3-part test set out by the Alaska Supreme Court in ACLU and referenced in this measure.

In the first year only, additional personal service funding is required to pay for a temporary regulations specialist to promulgate regulations implementing the changes.

Travel funding will enable staff to educate persons involved with non-group entities about the campaign disclosure law.

The Commission's staff anticipates that this legislation will result in an increase of public inquiries and complaints. Contractual funding is to pay for revisions of the written materials and postage and educational materials to cover an anticipated increase in investigation costs.

Supply funding is to pay for paper, printing and postage.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 15, 2001

SUBJECT: True Source of Funds (HB177)

TO: Representative Brian Porter
Speaker of the House of Representatives
Attn: Tom Wright

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You asked about the term "true source." Essentially, this term requires that, when contributions to a candidate are made through a third party conduit, something which is generally prohibited but might be attempted by someone seeking to evade the campaign contribution limits, the identity of the original source of the contribution be disclosed.

Alaska law requires groups to disclose the source of all contributions over \$100 that they receive, including the name and occupation of the contributor. AS 15.13.040(b). Federal law has a similar requirement, 2 U.S.C. 434(b)(3), and both federal law and Alaska law prohibit a person or group from making a contribution in the name of another person, 2 U.S.C. 441(f), AS 15.13.074(b).

The federal law has been interpreted to require disclosure of the "true source" of political contributions, rather than just the name of the person in whose name the money is given.¹ In U.S. v. Hsia, the "true source" was a non-profit religious organization not eligible to make political campaign contributions. Instead of contributing directly, this organization worked with the defendant, Hsia, who solicited contributions for the campaign from numerous individuals, who were then reimbursed by the religious organization. Hsia also arranged to channel funds from a foreign national who was ineligible to make campaign contributions through a number of individuals. The court concluded that the federal statute's "demand for identification of the 'person . . . who makes a contribution' is *not* a demand for a report on the person in whose name money is given; it refers to the true source of the money."²

¹ U.S. v. Hsia, 176 F.3d 517, 524 (D.C. Cir. 1999), interpreting 2 U.S.C. sec. 434(b)(3) and 2 U.S.C. 441(f); *see also* U.S. v. Kanchanalak, 192 F.3d 1037 (D.C.Cir. 1999).

² *Id.* (emphasis in original)

Representative Brian Porter
March 15, 2001
Page 2

In another recent federal case, corporate employees, friends, and family members were solicited to make campaign contributions to designated candidates, and those contributions were then reimbursed by the corporation.³ The defendants responded to the indictment by arguing that the anti-conduit provision in 2 U.S.C. 441(f) was unconstitutional. The third circuit found this argument frivolous⁴, noting that "[p]roscription of conduit contributions (with the concomitant requirement that the true source of contributions be disclosed) would seem to be at the very core" of the United States Supreme Court's analysis in Buckley v. Valeo, 424 U.S. 1 (1976), and concluded that the federal prohibition on conduit contributions served a compelling state interest.⁵

KLK:glc
01-242.glc

Enclosure

³ Mariani v. Federal Election Commission, 212 F.3d 761 (3rd Cir. 2000).

⁴ *Id.* at 765.

⁵ *Id.* at 775.

LEGAL SERVICES

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 21, 2001

SUBJECT: Nonprofit Groups and Alaska Campaign Finance Law (HB 177,
Work Order No. 22-LS0406\O)

TO: Representative Pete Kott, Chair
House Rules Committee

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

The purpose of this memo is to clarify the legal landscape surrounding House Bill 177. This bill would include non-group entities qualified to make campaign contributions and expenditures in the definition of "group," making them subject to the same limits and disclosure requirements as groups. In case this provision is found unconstitutional, this draft also contains a contingent amendment which would only require non-group entities to disclose their funding sources and expenditures. It also includes a clause clarifying that "contributor" means the true source of funds rather than the nominal contributor for purposes of the group disclosure requirement.

Buckley v. Valeo: the Foundation of Campaign Finance Law

Buckley v. Valeo¹ is the source of modern campaign finance law. In that case, the Supreme Court upheld some parts of the federal election campaign act, and invalidated others. That decision established the validity of contribution limits, and disclosure requirements. Contribution limits can be justified to the extent they are narrowly tailored to prevent corruption or the appearance of corruption. Disclosure requirements can be justified by the state's interest in providing information about candidates and their funding sources to voters. Buckley v. Valeo rejected expenditure limits, including limits on independent expenditures expressly advocating the election or defeat of a candidate, limits on personal expenditures by candidates, and limits on total campaign expenditures.²

¹ Buckley v. Valeo, 424 U.S. 1 (1976).

² Although expenditure limits cannot be imposed universally, some states have incorporated them into public financing schemes, whereby a candidate is eligible to receive matching funds if the candidate voluntarily agrees to abide by expenditure limits. These voluntarily expenditure limits have been upheld. See Rosenstiel v. Rodriguez, 101 F.3d 1544 (8th Cir. 1996), Kennedy v. Gardner, 1999 WL 814273 (D.N.H. Sept. 30, 1999).

Representative Pete Kott, Chair
House Rules Committee
March 21, 2001
Page 2

The basic principles of Buckley remain good law, but they have been refined in the intervening years. Contribution limits are generally permissible, but there are two important exceptions. Even though business corporations and unions may be prohibited from contributing to candidate campaigns, contributions and independent expenditures by corporations and unions to influence the outcome of *initiative* campaigns can not be barred.³ Also, there is new case law suggesting that contributions by political parties to their own candidates can not be limited.⁴ In both cases, courts have concluded that corruption does not pose a real threat, so there is no sufficient justification for burdening speech.

Buckley v. Valeo distinguished between "express advocacy" and "issue advocacy" for purposes of regulating independent expenditures. "The government can regulate express advocacy but issue advocacy cannot be prohibited or regulated."⁵ Even statutes regulating communications that "unambiguously refer to a candidate" or "implicitly advocate the success or defeat" of a candidate have been deemed irreconcilable with the first amendment as interpreted in Buckley v. Valeo, since they attempt to regulate more than just express advocacy.⁶ Similarly, a regulation prohibiting corporations from making independent expenditures for communications using the name or likeness of a candidate within 45 days of an election was held to be overbroad.⁷ In this context, "regulation" covers disclosure laws as well as attempts to ban certain independent expenditures outright.

"Express advocacy" is limited to "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'"⁸ Many courts have taken this as a bright line

³ First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978); Montana Chamber of Commerce v. Argenbright, No. 98-36256 (9th Cir., Sept. 26, 2000).

⁴ Missouri Republican Party v. Lamb, 227 F.3d 1070 (8th Cir. 2000) held that limiting the amount a political party could contribute to its own candidates violated the first amendment. Meanwhile, the tenth circuit has concluded that a federal law limiting coordinated expenditures by political parties and candidates for Congress is unconstitutional. Federal Election Commission v. Colorado Republican Federal Campaign Committee, 213 F.3d 1221 (10th Cir. 2000), *certiorari granted* 121 S.Ct. 296, 69 USLW 3249 (U.S. Oct. 10, 2000). Neither of these cases are controlling precedent in Alaska, however, the United States Supreme Court has agreed to review the Colorado case. Oral argument was held Wednesday, February 28. If the Colorado decision is upheld, the constitutionality of AS 15.13.070(d) will need to be reviewed.

⁵ Planned Parenthood Affiliates v. Miller, 21 F.Supp.2d 740, 743 (E.D.Mich. 1998), *interpreting* Buckley v. Valeo, 424 U.S. 1 (1976) and Massachusetts Citizens for Life, 479 U.S. 238 (1986).

⁶ Citizens for Responsible Government State Political Action Committee v. Davidson, 2000 WL 1902427 at 14 (10th Cir. Colo. Dec. 26, 2000); Vermont Right to Life Committee, Inc. v. Sorrell, 221 F.3d 376, 387 (2nd Cir. 2000).

⁷ Planned Parenthood Affiliates v. Miller, 21 F.Supp.2d 740 (E.D.Mich. 1998)

⁸ Buckley v. Valeo, 424 U.S. at 44, n. 52.

Representative Pete Kott, Chair
House Rules Committee
March 21, 2001
Page 3

standard requiring the use of "magic words" expressly advocating the election or defeat of a candidate.⁹ The Ninth Circuit has interpreted this aspect of the Buckley decision more broadly than other courts, finding the context and timing of a communication relevant to whether the communication constitutes express advocacy.¹⁰ Oregon has adopted the Ninth Circuit's view,¹¹ but the state of Washington has rejected the contextual approach.¹²

State v. Alaska Civil Liberties Union: Evaluating the Validity of Alaska' Campaign Finance Law

Alaska's campaign finance law was challenged, and largely upheld, by the Alaska Supreme Court in State v. Alaska Civil Liberties Union.¹³ That decision did, however, point out a problem with two sections, AS 15.13.074 and AS 15.13.135, which, combined with the limited definition of "group" in AS 15.13.400(5), could be read as prohibiting not only business corporations and unions, but also non-business entities from making contributions and independent expenditures for express advocacy. That goes against federal precedent, which holds that you cannot bar an entity from making campaign contributions if the entity meets the following criteria:

- 1) it doesn't participate in business activities;
- 2) it has no shareholders with a claim on corporate earnings; and
- 3) is independent from the influence of business corporations.¹⁴

⁹ See for example Perry v. Bartlett, 231 F.3d 155, 160-161 (4th Cir. 2000) (rejecting a statute regulating communications made with an intent to influence the outcome of an election as overbroad); Faucher v. Federal Election Commission, 928 F.2d 468, 472 (1st Cir. 1991) (interpreting Buckley as providing a "bright-line express advocacy test").

¹⁰ Federal Election Commission v. Furgatch, 807 F.2d 857, 865 (9th Cir. 1987) ("We conclude that speech need not include any of the words listed in Buckley to be express advocacy under the [Federal Election Campaign] Act, but it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate.")

¹¹ State ex rel Crumpton v. Keisling, 982 P.2d 3 (Or. App. 1999) ("The heart of the Furgatch approach, as applied to the Oregon law, is to determine whether the nature of the publication *as a whole* is clearly to support or oppose an candidate for office. the purpose is not to search for magic words--which careful drafters can, as in this case, usually avoid--but to find the essential message that the publication communicates to the reader.")

¹² Washington State Republican Party v. Washington State Public Disclosure Commission, 4 P.3d 808, 820-821 (Wash. 2000).

¹³ State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999).

¹⁴ *Id.* at 612, citing the exception established in Massachusetts Citizens for Life, 479 U.S. 238 (1986) as described in Federal Election Commission v. Survival Education Fund, 65 F.3d 285, 291 (2d Cir. 1995)

Representative Pete Kott, Chair
House Rules Committee
March 21, 2001
Page 4

So, the court mandated that the statutes be read to permit non-group entities that meet these three criteria to contribute and make independent expenditures.

The Alaska legislature may have anticipated this result when it included the following applicability provision in the 1996 campaign finance reform act¹⁵:

If a court determines, that under the federal or state constitutions, *persons who are not individuals* must be allowed to contribute to candidates or groups, then the requirements, monetary limitations, and restrictions of AS 15.13. are applicable to those persons.

APOC has recognized the existence of this provision, but has interpreted its own regulations to permit certain nonprofit entities to report as individuals rather than groups, thus avoiding the source of funding disclosure requirement in AS 15.13.040(b).¹⁶ House Bill 177 clarifies this point by including non-group entities that meet the three criteria in the definition of group.

Treating "Non-Group Entities" Like Groups

Like Alaska's Supreme Court, state and federal courts across the country are just beginning to come to terms with the implications of Massachusetts Citizens for Life and other recent developments in the area of campaign finance relating to what the Alaska Supreme Court called "non-group entities". I do not see anything in Alaska case law or controlling federal precedent that would prevent treating qualified these entities like other groups under Alaska's campaign finance laws.

I must caution you, however, about a recent federal district court case which held that a nonprofit group engaging in express advocacy could be regulated, but not to the same extent as PACs and other groups whose primary purpose was influencing elections.¹⁷ That Alabama decision is not binding in Alaska, and it is only a United State District Court decision, so it may be appealed. It is the only decision I have found that directly addresses this point; I do not know whether other courts will follow its lead. If the Alaska court were to follow the Alabama court's reasoning, it might conclude that the change made by the enclosed bill was overbroad.

According to the Alabama court, nonprofit corporations can be required to disclose contributions and independent expenditures for express advocacy.¹⁸ Significantly, the

¹⁵ 1996 SLA ch. 48, sec. 30 (emphasis added).

¹⁶ APOC opinion no. AO99-04-CD (August 26, 1999).

¹⁷ Richev v. Tvson, 120 F.Supp.2d 1298, 1320 (S.D.Ala. 2000) (citing Federal Elections Commission v. Massachusetts Citizens for Life, 479 U.S. 238, 262 (1986) for the proposition that "a non-commercial, non-stock corporation whose major purpose is not to nominate or elect a candidate cannot be regulated as extensively as a political committee").

¹⁸ *Id.* at 1319.

Representative Pete Kott, Chair
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court found no problem with requiring disclosure of the identity of contributors, unless the nonprofit corporations could show "a reasonable probability that the compelled disclosure of a [group's] contributors' names will subject them to threats, harassment, or reprisals from either government officials or private parties."¹⁹

However, the court also found that the registration, organizational, and record-keeping requirements of the Alabama statute could not justifiably be extended to nonprofit corporations because they were not "narrowly tailored." In other words, they imposed more of a burden on the nonprofit corporations than could be justified by the state's interest in information and disclosure.²⁰ This raises a question about application of statutes including AS 15.13.050 (registration), AS 15.13.060 (treasurers), and AS 15.13.086 (authorized expenditure makers) to non-group entities. Still, the Alabama decision involved a group supporting a ballot measure, not a candidate, and there is some chance that the corruption rationale available in regulating candidate races might be raised in defense of broader application of the campaign finance statutes to nonprofits.

House Bill 177 incorporates non-group entities into the definition of group, but also includes a contingent amendment simply making them subject to the disclosure requirement in AS 15.13.040(b) in case the broader approach is found unconstitutional by a court with jurisdiction in Alaska. This bill does not make any provision to address potential constitutional problems in AS 15.13.050, 15.13.060, and 15.13.086.

Contributions through Conduits

Under current law, groups are required to disclose the name and occupation of the contributor for all contributions over \$100 that they receive. AS 15.13.040(b). Disclosure requirements of this nature have repeatedly been upheld at the federal level because they provide information to voters, deter corruption, and help detect violations of other campaign finance laws.²¹ Disclosure cannot always be demanded; "whenever identification and fear of reprisal would deter speech, the first amendment protects anonymity."²² However, to justify an exception to campaign disclosure requirements, a group must affirmatively show a "reasonable probability" that disclosures would subject [its] contributors to "threats, harassment, or reprisals."²³ Alaska case law reflects this same basic approach.²⁴

¹⁹ *Id.* at 1323, quoting Bucklev v. Valeo, 424 U.S. 1, 74(1976) (emphasis in original), following NAACP v. Alabama, 357 U.S. 449 (1958).

²⁰ *Id.* at 1316-1317.

²¹ Bucklev v. Valeo, 424 U.S. 1 (1976).

²² Goland v. United States, 903 F.2d 1247, 1259-60 (9th Cir. 1990) (citing Talley v. California, 362 U.S. 60 (1960), and NAACP v. Alabama, 357 U.S. 449 (1958)).

²³ *Id.* at 42.

²⁴ Veco International v. APOC, 753 P.2d 703 (Alaska 1988) (summarizing Messerli v. State, 626 P.2d 81 (Alaska 1981), which upheld the identification requirement for independent expenditures in support of ballot measures, and remanded the case for the lower court to determine whether Mr. Messerli had a special need for anonymity).

Sec. 15.13.040. Contributions, expenditures and supplying of services to be reported.

(a) Except as provided in (g) of this section, each candidate shall make a full report, upon a form prescribed by the commission, listing the date and amount of all expenditures made by the candidate, the total amount of all contributions, including all funds contributed by the candidate, and for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor and the date and amount contributed by each contributor. The report shall be filed in accordance with AS 15.13.110 and shall be certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every individual, person, or group making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, of

(1) contributions made to a candidate or group and expenditures made on behalf of a candidate or group

(A) as soon as the total contributions and expenditures to that candidate or group reaches \$500 in a year; and

(B) for all subsequent contributions and expenditures to that candidate or group in a year whenever the total contributions and expenditures to that candidate or group that have not been reported under this paragraph reaches \$500;

(2) unless exempted from reporting by (h) of this section, any expenditure whatsoever for advertising in newspapers or other periodicals, on radio, or on television; or, for the publication, distribution, or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question.

(e) The report required under (d) of this section shall contain the name, address, principal occupation and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission by the contributor no later than 10 days after the contribution or expenditure is made. A copy of the report shall be furnished to the candidate, campaign treasurer or deputy campaign treasurer at the time the contribution is made.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

(g) The provisions of (a) of this section do not apply if a candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than \$2,500 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than \$2,500 in seeking election to

office, including both the primary and general elections; and

(3) makes expenditures totaling not more than \$2,500 in seeking election to office, including both the primary and general elections.

(h) The provisions of (d)(2) of this section do not apply to one or more expenditures made by an individual acting independently of any group and independently of any other individual if the expenditures

(1) cumulatively do not exceed \$250 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not political signs is not determinative of whether the owner customarily does so for political signs.

Sec. 15.13.400. Definitions.

In this chapter,

(1) "candidate"

(A) means an individual who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices; and

(B) when used in a provision of this chapter that limits or prohibits the donation, solicitation, or acceptance of campaign contributions, or limits or prohibits an expenditure, includes

(i) a candidate's campaign treasurer and a deputy campaign treasurer;

(ii) a member of the candidate's immediate family;

(iii) a person acting as agent for the candidate;

(iv) the candidate's campaign committee; and

(v) a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of the candidate;

(2) "commission" means the Alaska Public Offices Commission;

(3) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that are rendered to the candidate or political party;

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage;

(ii) services provided by an accountant or other person to prepare reports and statements required by this chapter; or

(iii) ordinary hospitality in a home;

(4) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

(B) does not include a candidate's filing fee or the cost of preparing reports

and statements required by this chapter;

(5) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

(6) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of an individual;

(7) "independent expenditure" means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate;

(8) "individual" means a natural person;

(9) "person" has the meaning given in AS 01.10.060, and includes a labor union and a group;

(10) "political party" means

(A) an organized group of voters that represents a political program and that nominated a candidate for governor who received at least three percent of the total votes cast at any one of the last five preceding general elections for governor; and

(B) a subordinate unit of the organized group of voters qualifying as a political party under (A) of this paragraph if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, election district, or precinct;

(11) "publicly funded entity" means a person, other than an individual, that receives half or more of the money on which it operates during a calendar year from government, including a public corporation.

Sec. 15.13.070. Limitations on amount of political contributions.

(a) An individual or group may make contributions, subject only to the limitations of this chapter and AS 24.45, including the limitations on the maximum amounts set out in this section.

(b) An individual may contribute not more than

(1) \$500 per year to a candidate, to an individual who conducts a write-in campaign as a candidate, or to a group that is not a political party;

(2) \$5,000 per year to a political party.

(c) A group that is not a political party may contribute not more than \$1,000 per year

(1) to a candidate, or to an individual who conducts a write-in campaign as a candidate; or

(2) to another group or to a political party.

(d) A political party may contribute to a candidate, or to an individual who conducts a write-in campaign, for the following offices an amount not to exceed

(1) \$100,000 per year, if the election is for governor or lieutenant governor;

(2) \$15,000 per year, if the election is for the state senate;

(3) \$10,000 per year, if the election is for the state house of representatives; and

(4) \$5,000 per year, if the election is for

(A) delegate to a constitutional convention;

(B) judge seeking retention; or

(C) municipal office.

(e) This section does not prohibit a candidate from using up to a total of \$1,000 from campaign contributions in a year to pay the cost of

(1) attendance by a candidate or guests of the candidate at an event or other function sponsored by a political party or by a subordinate unit of a political party;

(2) membership in a political party, subordinate unit of a political party, or other entity within a political party, or subscription to a publication from a political party; or

(3) co-sponsorship of an event or other function sponsored by a political party or by a subordinate unit of a political party.

HB

179

Adopted

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 179(JUD), Draft Version "L"

1 Page 1, line 8, following "of":

2 Insert "at least \$200 but not more than"

3

4 Page 1, line 9:

5 Delete "shall suspend the full amount of the fine and"

6 Insert "may suspend a portion of the fine imposed under this subsection that

7 exceeds \$200 if the court requires the person to pay for education or treatment

8 recommended by the court and shall"

*See amendment
#11 too.*

Adopted

AMENDMENT #2

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 179(JUD), Draft Version "L"

1 Page 2, lines 19 – 21:

2 Delete "The following conditions of probation apply:

3 (1) the person shall pay for and enroll in a juvenile alcohol safety
4 action program;

5 (2)"

6 Insert "The court may require the person to pay for and enroll in a juvenile alcohol
7 safety action program. The court shall impose the following conditions of probation:

8 (1)"

9

10 Renumber the following paragraphs accordingly.

11

12 Page 7, line 15:

13 Delete "has enrolled"

14 Insert ", if required to participate"

15

16 Page 7, line 16:

17 Delete "and"

18 Insert "has"

19

20 Page 9, line 22:

21 Delete "has enrolled"

22 Insert ", if required to participate"

23

24 Page 9, line 23:

1

Delete "and"

2

Insert ", has"

~~10/1/01~~
Action rescinded

AMENDMENT #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 179(JUD), Draft Version "L"

1 Page 1, line 10, following "section":

2 Insert "The court may require a person convicted under this subsection
3 to comply with ~~the jurisdiction of~~ a community diversion panel. In this
4 subsection, "community diversion panel" means a group approved for ~~treatment~~ ^{adjudication}
5 of ~~alcoholism~~ ^{of} persons under 21 years of age by the Department of Health and
6 Social Services"

#4. Amendment

Offered by Berkowitz
WITHDRAWN

Amend Section 1:

(b) Upon probable cause of a violation of (a) of this section by a person who has not been previously convicted of such violation or previously subject to an order under this section, a peace officer shall apply to the district court for an injunction against the person. Such injunction shall restrain the person from violating section (a) and may

- (1) order the subject to participate in or comply with the treatment plan of a rehabilitation program;
- (2) prohibit the subject from consuming alcohol, inhalants, or intoxicating substances;
- (3) prohibit the subject from driving or seeking a driver's license;
- (4) order the subject to pay court costs.

Amend Section 2 (Add a new subsection):

(c) Violation of this order may be punishable by a fine of 1,000 and 40 hours of community work.

Adopted

AMENDMENT #5

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG
TO: CS HB 179 (JUD)

Page 2, Line 14

Delete: "by the end of the next business day"

Insert: "within five working days"

Page 3, Line 27, after "revocation"

Insert: "within five working days"

AMENDMENT #6

OFFERED IN THE HOUSE
TO: CS HB 179 (JUD)

BY REPRESENTATIVE ROKEBERG

Conceptual Amendment

Require the driver's license of a repeat minor consumer to be revoked for three months.

Adopted

AMENDMENT #*LeB*

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG
TO: CSHB 179(JUD), Draft Version "L"

1 Page 2, line 3:

2 Delete "and"

3

4 Page 2, line 4, following "(2)":

5 Insert "revoke the person's driver's license for three months;

6 (3) take possession of the person's driver's license; and

7 (4)"

8

9 Page 3, lines 20 - 25:

10 Delete all material.

11 Insert "suspended incarceration. If the person was convicted under (c) or (d) of this
12 section, the court shall revoke the person's driver's license for an additional six months
13 beyond the revocation imposed under (c) or (d) of this section. A court revoking a person's
14 driver's license under this"

15

16 Page 5, line 4:

17 Delete "AS 04.16.050(d)"

18 Insert "AS 04.16.050(c), (d),"

19

20 Page 5, line 10:

21 Delete "AS 04.16.050(d)"

22 Insert "AS 04.16.050(c), (d),"

23

24 Page 5, lines 28 - 31:

1 Delete all material.

2 Insert "AS 04.16.050(c) or (d) shall revoke the person's driver's license or"

3

4 Page 6, line 2:

5 Delete "AS 04.16.050(d)"

6 Insert "AS 04.16.050(c) or (d)"

7

8 Page 9, line 16:

9 Delete "habitual"

10

11 Page 9, line 17:

12 Delete "AS 04.16.050(d)"

13 Insert "AS 04.16.050(c) or (d)"

14

15 Page 9, line 18:

16 Delete "AS 04.16.050(d)"

17 Insert "AS 04.16.050(c) or (d)"

18

19 Page 11, line 27:

20 Delete "habitual"

21

22 Page 11, line 28:

23 Delete "AS 04.16.050(d)"

24 Insert "AS 04.16.050(c) or (d)"

25

26 Page 11, line 30:

27 Delete "AS 04.16.050(d)"

28 Insert "AS 04.16.050(c) or (d)"

Adopted

AMENDMENT # 7

OFFERED IN THE HOUSE
TO: CS HB 179 (JUD)

BY REPRESENTATIVE ROKEBERG

Page 5, Line 24

Delete: "may not"

Insert: "shall"

Adopted

AMENDMENT #8

OFFERED IN THE HOUSE
TO: CS HB 179 (JUD)

BY REPRESENTATIVE ROKEBERG

Page 1, Line 13

Delete: "(e)"

Insert: "(b)"

Page 2, Line 7

Delete: "(e)"

Insert: "(c)"

Page 2, Line 7

Delete: "or under this subsection"

Adopted

AMENDMENT #9

OFFERED IN THE HOUSE
TO: CS HB 179 (JUD)

BY REPRESENTATIVE ROKEBERG

Page 2, Line 19 after "later."

Insert: The defendant may not refuse probation.

Adopted

AMENDMENT #10

OFFERED IN THE HOUSE
TO: CS HB 179 (JUD)

BY REPRESENTATIVE ROKEBERG

Page 3, Line 18

Delete: "shall"

Insert: "may"

Page 3, Line 18 - 219

Delete: "if the person was convicted under (c) of this section"

~~XXXXXXXXXX~~

Amendment # 11

Adopted as Amended

Section 1. AS 04.16.050(b) is amended to read:

(b) A person who violates (a) of this section and who has not been previously convicted or granted a suspended imposition of sentence under (1) of this subsection, is guilty of minor consuming or in possession or control [A VIOLATION]. Upon conviction in the district court, the court [MAY]

(1) may grant a suspended imposition of sentence under AS 12.55.085 and place the person on probation for one year or until the person is 21 years of age, whichever is later, if the person has not been convicted of a prior version of this section. Among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel which may include counselling, education, treatment, community work service and payment of fees. In this subsection, "community diversion panel" means a youth court or other group approved by the court to dispose of cases involving violations of this section; or

or Dept of H+SS

(2) shall impose a fine of at least \$200 but not more than \$600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation under (c) of this section. The court may suspend a portion of the fine imposed under this subsection that exceeds \$200 if the person is required to pay for education or treatment required under (c) of this section[NOT LESS THAN \$100].

can "previously convicted" include a diversion panel?

418179
Bob H+SS, LAW

Amendment to
Amendment

~~JY~~

~~OY~~

~~EN~~

~~MY~~

~~KN~~

~~BN~~

~~RY~~

22-LS0564\L
Ford
4/4/01

CS FOR HOUSE BILL NO. 179(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to underage drinking and drug offenses; and providing for an effective
2 date."

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

4 * **Section 1.** AS 04.16.050(b) is amended to read:

5 (b) A person who violates (a) of this section and who has not been
6 previously convicted is guilty of minor consuming or in possession or control [A
7 VIOLATION]. Upon conviction in the district court, the court shall [MAY] impose a
8 fine of \$600 and require the person to attend alcohol information school if the
9 school is available. The court shall suspend the full amount of the fine and place
10 the person on probation under (e) of this section [NOT LESS THAN \$100].

11 * **Sec. 2.** AS 04.16.050 is amended by adding new subsections to read:

12 (c) A person is guilty of repeat minor consuming or in possession or control if
13 the person is on probation under (e) of this section or has been previously convicted,
14 and the person violates (a) of this section. Upon conviction in the district court, the

1 court shall

2 (1) impose a fine of \$1,000 and require at least 48 hours of community
3 work; and

4 (2) suspend up to \$500 of the fine and place the person on probation
5 under (e) of this section.

6 (d) A person is guilty of habitual minor consuming or in possession or control
7 if the person is on probation under (e) of this section or under this subsection, or has
8 been previously convicted twice, and the person violates (a) of this section. Habitual
9 minor consuming or in possession or control is a class B misdemeanor. Upon
10 conviction, the court may impose an appropriate period of imprisonment and fine and
11 place the person on probation under (e) of this section and shall

12 (1) impose at least 96 hours of community work;

13 (2) revoke the person's driver's license for six months;

14 (3) by the end of the next business day, notify the agency responsible
15 for the administration of motor vehicle laws of the revocation; and

16 (4) take possession of the person's driver's license.

17 (e) The court shall place a person sentenced under (b), (c), or (d) of this
18 section on probation for one year, or until the person is 21 years of age, whichever is
19 later. The following conditions of probation apply:

20 (1) the person shall pay for and enroll in a juvenile alcohol safety
21 action program;

22 (2) the person shall pay for and successfully complete any education or
23 treatment recommended;

24 (3) the person may not consume inhalants or possess or consume
25 controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);

26 (4) the person shall timely complete any community work ordered, as
27 provided in (f) of this section; and

28 (5) other conditions the court considers appropriate.

29 (f) A person ordered to perform community work under this section shall
30 perform the work within 120 days of the entry of judgment for a conviction. The court
31 may expand the time period for up to 30 days upon a showing of good cause. The

1 person shall submit verification of completion of community work to the clerk of court
2 on a form provided by the court. If the verification is not provided within the time
3 period required by this subsection, the court shall, within 30 days, schedule further
4 proceedings in the case to determine whether a violation of probation has occurred.

5 (g) The treatment recommended by a juvenile alcohol safety action program
6 for a person placed on probation under (e) of this section may include a period of
7 inpatient treatment if the judgment specifies the maximum period of inpatient
8 treatment authorized. A person who has been recommended for inpatient treatment
9 may make a written request to the sentencing court for review of the referral. A
10 person shall make a request for review within seven days after the recommendation
11 and shall specifically set out the grounds upon which the request for review is based.
12 The court may order a hearing on the request for review.

13 (h) The juvenile alcohol safety action program to which a person is referred
14 under this section shall inform the court or a minor's juvenile probation officer if the
15 person fails to submit to evaluation or fails to complete successfully any education or
16 treatment recommended. If the court finds that the person has failed to perform
17 community work as ordered, to submit to evaluation, or to complete successfully the
18 education or treatment recommended, the court shall impose the suspended fine if the
19 person was convicted under (c) of this section, and may impose any period of
20 suspended incarceration. If the person was convicted of repeat minor consuming or in
21 possession under (c) of this section, the court shall revoke the person's driver's license
22 for six months and take possession of the person's license. If the person was convicted
23 of habitual minor consuming or in possession under (d) of this section, the court shall
24 revoke the person's driver's license for an additional six months beyond the revocation
25 under (d) of this section. A court revoking a person's driver's license under this
26 subsection shall notify the agency responsible for the administration of motor vehicle
27 laws of the revocation.

28 (i) When considering the financial resources of a minor for purposes of
29 determining eligibility for court-appointed counsel under this section, the court shall
30 consider the resources of both the defendant and the defendant's parent or guardian,
31 unless the court finds good cause to treat the defendant's or the defendant's parent's or

1 guardian's resources as being unavailable to the defendant.

2 (j) A driver's license revocation under this section is consecutive to a
3 revocation imposed under another provision of law, but is concurrent with a
4 revocation under another provision of law based on a prior conviction, adjudication of
5 delinquency, or informal adjustment under AS 47.12.060.

6 (k) In this section,

7 (1) "driver's license" has the meaning given in AS 28.40.100;

8 (2) "juvenile alcohol safety action program" means

9 (A) a juvenile alcohol safety action program developed and
10 implemented or approved by the Department of Health and Social Services
11 under AS 47.37;

12 (B) any other alcohol education or treatment program approved
13 by the Department of Health and Social Services under AS 47.37 if a program
14 described in (A) of this paragraph is not available in the community in which
15 the person resides; or

16 (C) a program or counseling approved by the court if a program
17 or treatment described in (A) of this paragraph is not available in the
18 community where the person resides;

19 (3) "previously convicted" means a conviction or an adjudication as a
20 delinquent for a violation of AS 11.71, AS 28.35.030, 28.35.032, 28.35.280 -
21 28.35.290, or a law or ordinance in another jurisdiction with substantially similar
22 elements.

23 * Sec. 3. AS 04.16.180(a) is amended to read:

24 (a) Except as provided in AS 04.11.015, AS 04.16.025, 04.16.050
25 [AS 04.16.050(b)], 04.16.051, 04.16.200 - 04.16.210, and AS 04.21.065, a person who
26 violates a provision of this title or a regulation adopted by the board is guilty, upon
27 conviction, of a class A misdemeanor. Each violation is a separate offense.

28 * Sec. 4. AS 21.89.027 is amended to read:

29 **Sec. 21.89.027. Motor vehicle insurance following driver's license**
30 **revocation.** (a) Notwithstanding AS 21.36.210, an insurer offering insurance in this
31 state may not (1) refuse to issue or renew motor vehicle liability insurance coverage;

1 (2) cancel an existing policy of motor vehicle liability insurance; (3) deny a covered
2 claim; or (4) increase the premium on a motor vehicle liability insurance policy if the
3 refusal, cancellation, denial, or increase results only from the fact that the person's
4 driver's license was revoked under AS 04.16.050(d) or (h) [AS 28.15.183 OR
5 28.15.185] for possession or consumption of alcohol in a situation where the person
6 was not driving and was in violation of AS 04.16.050(a) [AS 04.16.050] or a
7 municipal ordinance with substantially similar elements.

8 (b) The provisions of (a) of this section may not prevent an insurer from
9 underwriting or rating based upon loss experience in the same manner as it would for a
10 person who has not had the person's driver's license revoked under AS 04.16.050(d)
11 or (h) [AS 28.15.183 OR 28.15.185].

12 * Sec. 5. AS 28.15 is amended by adding a new section to read:

13 **Sec. 28.15.176. Administrative revocation of license to drive for**
14 **consumption or possession of alcohol or drugs.** (a) The department shall revoke
15 the driver's license or permit, privilege to drive, or privilege to obtain a license of a
16 person not yet 18 years of age for

17 (1) six months when notified of an informal adjustment under
18 AS 47.12.060(b)(4) and shall revoke the person's driver's license or permit, privilege
19 to drive, or privilege to obtain a license for an additional six months when notified of
20 an unsuccessful adjustment under that paragraph;

21 (2) the time period specified in AS 28.15.185(b) when notified of an
22 informal adjustment under AS 47.12.060(b)(5).

23 (b) Notwithstanding the provisions of AS 28.20.240 and 28.20.250, the
24 department may not require proof of financial responsibility before restoring a
25 person's privilege to drive under this section.

26 * Sec. 6. AS 28.15.181 is amended by adding a new subsection to read:

27 (i) A court convicting a person under

28 (1) AS 04.16.050(c) shall revoke the person's driver's license or permit,
29 privilege to drive, or privilege to obtain a license if the person is subject to revocation
30 under AS 04.16.050(h); and

31 (2) AS 04.16.050(d) shall revoke the person's driver's license or

1 permit, privilege to drive, or privilege to obtain a license as provided in
2 AS 04.16.050(d).

3 * Sec. 7. AS 28.15.183(a) is amended to read:

4 (a) If a peace officer has probable cause to believe that a person who is at least
5 14 years of age but not yet 21 years of age has [POSSESSED OR USED A
6 CONTROLLED SUBSTANCE IN VIOLATION OF AS 11.71 OR A MUNICIPAL
7 ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, POSSESSED OR
8 CONSUMED ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL
9 ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS,] operated a
10 vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit to a
11 chemical test under AS 28.35.285, and the peace officer has cited the person or
12 arrested the person for the offense, the peace officer shall read a notice and deliver a
13 copy to the person. The notice must advise that

14 (1) the department intends to revoke the person's driver's license or
15 permit, privilege to drive, or privilege to obtain a license or permit;

16 (2) the person has the right to administrative review of the revocation;

17 (3) if the person has a driver's license or permit, the notice itself is a
18 temporary driver's license or permit that expires 10 days after it is delivered to the
19 person;

20 (4) revocation of the person's driver's license or permit, privilege to
21 drive, or privilege to obtain a license or permit, takes effect 10 days after delivery of
22 the notice to the person unless the person, within 10 days, requests an administrative
23 review;

24 (5) if the person has been cited under AS 28.35.280 or under
25 AS 28.35.285, that person, under AS 28.35.290, may not operate a motor vehicle,
26 aircraft, or watercraft during the 24 hours following issuance of the citation.

27 * Sec. 8. AS 28.15.183(c) is amended to read:

28 (c) Unless the person has requested an administrative review, the department
29 shall revoke the person's driver's license or permit, privilege to drive, or privilege to
30 obtain a license or permit, effective 10 days after delivery to the person of the notice
31 required under (a) of this section, upon receipt of a sworn report of a peace officer

1 (1) that the officer had probable cause to believe that the person is at
2 least 14 years of age but not yet 21 years of age and has violated one of the offenses
3 described in (a) of this section;

4 (2) that the peace officer has cited or arrested the person for
5 [(A)] a violation of [AS 11.71, AS 04.16.050,] AS 28.35.280 [,]
6 or 28.35.285 [;] or

7 [(B) POSSESSION OR USE OF A CONTROLLED
8 SUBSTANCE OR ALCOHOL IN VIOLATION OF] a municipal ordinance
9 with substantially similar elements;

10 (3) that notice under (a) of this section was provided to the person; and

11 (4) describing the circumstances surrounding the offense.

12 * Sec. 9. AS 28.15.183(g) is amended to read:

13 (g) Except as provided under (h) of this section, the department may not issue
14 a new license or reissue a license to a person whose driver's license, permit, or
15 privilege to drive has been revoked under this section unless the person has enrolled
16 in a juvenile alcohol safety action program, as defined in AS 04.16.050, and
17 successfully completed any education or treatment recommended [IS
18 ENROLLED IN AND IS IN COMPLIANCE WITH, OR HAS SUCCESSFULLY
19 COMPLETED,

20 (1) AN ALCOHOLISM EDUCATION OR REHABILITATION
21 TREATMENT PROGRAM APPROVED UNDER AS 47.37, IF THE
22 REVOCATION RESULTED FROM POSSESSION OR CONSUMPTION OF
23 ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL ORDINANCE
24 WITH SUBSTANTIALLY SIMILAR ELEMENTS, FROM OPERATING A
25 VEHICLE AFTER CONSUMING ALCOHOL IN VIOLATION OF AS 28.35.280,
26 OR FROM REFUSAL TO SUBMIT TO A CHEMICAL TEST OF BREATH IN
27 VIOLATION OF AS 28.35.285; OR

28 (2) A DRUG EDUCATION OR REHABILITATION TREATMENT
29 PROGRAM, IF THE REVOCATION RESULTED FROM POSSESSION OR USE
30 OF A CONTROLLED SUBSTANCE IN VIOLATION OF AS 11.71 OR A
31 MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS].

1 * Sec. 10. AS 28.15.183(i) is amended to read:

2 (i) A person whose driver's license, permit, or privilege to drive was revoked
3 under this section may apply for reinstatement of the person's driver's license as
4 provided in this subsection. A person may apply to the department for reinstatement
5 by filing a written request for review of the revocation imposed under this section with
6 the department. The department shall issue a new license or reissue the person's
7 driver's license

8 [(1)] as provided under AS 28.15.211(d) if the department finds that

9 (1) [(A)] the application for reinstatement is filed at least one year after
10 the person's license, permit, or privilege was revoked;

11 (2) [(B)] the person complies with (g) of this section; and

12 (3) [(C)] the person has not violated a provision of this title or a
13 regulation of the department since the revocation [; OR

14 (2) IMMEDIATELY IF

15 (A) THE OFFENSE DESCRIBED UNDER (a) OF THIS
16 SECTION FOR WHICH THE PERSON WAS CITED OR ARRESTED IS
17 NOT PROSECUTED OR THE PROSECUTION RESULTS IN DISMISSAL
18 BY A COURT; OR

19 (B) A COURT OR JURY FINDS THAT THE PERSON IS
20 NOT GUILTY OF THE OFFENSE DESCRIBED UNDER (a) OF THIS
21 SECTION FOR WHICH THE PERSON WAS CITED OR ARRESTED].

22 * Sec. 11. AS 28.15.184(g) is amended to read:

23 (g) The hearing for review of a revocation by the department under
24 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years
25 of age but not yet 21 years of age and whether the person [POSSESSED OR USED A
26 CONTROLLED SUBSTANCE IN VIOLATION OF AS 11.71 OR A MUNICIPAL
27 ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, OR POSSESSED
28 OR CONSUMED ALCOHOL IN VIOLATION OF AS 04.16.050 OR A
29 MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS,]
30 operated a vehicle after consuming alcohol in violation of AS 28.35.280 [,] or refused
31 to submit to a chemical test of breath in violation of AS 28.35.285.

1 * **Sec. 12.** AS 28.15.185(a) is amended to read:

2 (a) A person [WHO IS AT LEAST 13 YEARS OF AGE BUT NOT OLDER
3 THAN 17 YEARS OF AGE] is subject to revocation, under (b) of this section, of the
4 person's driver's license or permit, privilege to drive, or privilege to obtain a license if
5 the person

6 (1) is at least 13 years of age but not yet 21 years of age and is
7 convicted of or is adjudicated a delinquent minor by a court for

8 [(1)] misconduct involving a controlled substance under AS 11.71 or a
9 municipal ordinance with substantially similar elements; or

10 (2) is at least 13 years of age but not yet 18 years of age and is
11 convicted of or is adjudicated a delinquent minor by a court for an offense
12 involving the illegal use or possession of a firearm that is punishable under AS 11 or a
13 municipal ordinance with substantially similar elements.

14 * **Sec. 13.** AS 28.15.185 is amended by adding a new subsection to read:

15 (e) In addition to revocation imposed under this section, a court that
16 adjudicates a delinquent minor for habitual minor consuming or in possession or
17 control under AS 04.16.050(d) shall revoke the minor's driver's license, privilege to
18 drive, or privilege to obtain a license as provided in AS 04.16.050(d).

19 * **Sec. 14.** AS 28.15.211 is amended by adding a new subsection to read:

20 (g) The department may not issue a new license or reissue a license to a
21 person whose driver's license has been revoked under AS 04.16.050, AS 28.15.183, or
22 28.15.185 unless the person has enrolled in a juvenile alcohol safety action program
23 and successfully completed any education or treatment recommended. In this
24 subsection, "juvenile alcohol safety action program" has the meaning given in
25 AS 04.16.050.

26 * **Sec. 15.** AS 47.12.030(b) is amended to read:

27 (b) When a minor is accused of violating a statute specified in this subsection,
28 other than a statute the violation of which is a felony, this chapter and the Alaska
29 Delinquency Rules do not apply and the minor accused of the offense shall be
30 charged, prosecuted, and sentenced in the district court in the same manner as an
31 adult; if a minor is charged, prosecuted, and sentenced for an offense under this

1 subsection, the minor's parent, guardian, or legal custodian shall be present at all
2 proceedings; the provisions of this subsection apply when a minor is accused of
3 violating

4 (1) a traffic statute or regulation, or a traffic ordinance or regulation of
5 a municipality;

6 (2) AS 11.76.105, relating to the possession of tobacco by a person
7 under 19 years of age;

8 (3) a fish and game statute or regulation under AS 16;

9 (4) a parks and recreational facilities statute or regulation under
10 AS 41.21;

11 (5) AS 04.16.050, relating to possession, control, or consumption of
12 alcohol, except for conduct constituting habitual minor consuming or in
13 possession or control under AS 04.16.050(d); and

14 (6) a municipal curfew ordinance, whether adopted under
15 AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its
16 ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for
17 the violation of a municipal curfew ordinance, the court shall allow a defendant the
18 option of performing community work; the value of the community work, which may
19 not be lower than the amount of the fine, shall be determined under AS 12.55.055(c);
20 in this paragraph, "community work" includes the work described in AS 12.55.055(b)
21 or work that, on the recommendation of the municipal or borough assembly, city
22 council, or traditional village council of the defendant's place of residence, would
23 benefit persons within the municipality or village who are elderly or disabled.

24 * Sec. 16. AS 47.12.060(b) is amended to read:

25 (b) When the department or the entity selected by it decides to make an
26 informal adjustment of a matter under (a)(2) of this section, that informal adjustment

27 (1) must be made with [MAY NOT BE MADE WITHOUT] the
28 agreement or consent of the minor and the minor's parents or guardian to the terms and
29 conditions of the adjustment; [.]

30 (2) must give [IN ADDITION, THE DEPARTMENT OR ENTITY
31 SHALL GIVE] the minor's foster parent an opportunity to be heard before the

1 informal adjustment is made; [.]

2 (3) must include notice that [AN] informal action to adjust a matter is
3 not successfully completed unless, among other factors that the department or the
4 entity selected by it considers, as to the victim of the act of the minor that is the basis
5 of the delinquency allegation, the minor pays restitution in the amount set by the
6 department or the entity selected by it or agrees as a term or condition set by the
7 department or the entity selected by it to pay the restitution;

8 (4) for a violation of habitual minor consuming or in possession or
9 control under AS 04.16.050(d) must include an agreement that the minor
10 perform 96 hours of community work, provide that the minor's driver's license
11 or permit, privilege to drive, or privilege to obtain a license be revoked for six
12 months, and provide that the driver's license or permit, privilege to drive, or
13 privilege to obtain a license be revoked for an additional six months if the
14 informal adjustment is not successful because the minor has failed to perform
15 community work as ordered, or has failed to submit to evaluation or successfully
16 complete the education or treatment recommended; the department or an entity
17 selected by the department shall notify the agency responsible for issuing driver's
18 licenses of an informal adjustment under this paragraph or of an unsuccessful
19 adjustment described in this paragraph;

20 (5) of an offense described in AS 28.15.185(a)(1) must include an
21 agreement that the minor's driver's license or permit, privilege to drive, or
22 privilege to obtain a license be revoked as provided in AS 28.15.185(b); the
23 department or an entity selected by the department shall notify the agency
24 responsible for issuing driver's licenses of an informal adjustment under this
25 paragraph.

26 * Sec. 17. AS 47.12.120 is amended by adding a new subsection to read:

27 (k) A court that adjudicates a delinquent minor for habitual minor consuming
28 or in possession or control under AS 04.16.050(d) shall revoke the minor's driver's
29 license or permit, privilege to drive, or privilege to obtain a license as provided in
30 AS 04.16.050(d). A court that adjudicates a delinquent minor for an offense involving
31 a controlled substance under AS 11.71 or involving a firearm under AS 11 shall

1 revoke the minor's driver's license or permit, privilege to drive, or privilege to obtain a
2 license as provided in AS 28.15.185.

3 * **Sec. 18.** AS 47.37.040 is amended by adding a new paragraph to read:

4 (20) develop and implement or designate, in cooperation with other
5 state or local agencies, a juvenile alcohol safety action program that provides alcohol
6 and substance abuse screening, referral, and monitoring of persons under 18 years of
7 age who have been referred to it by

8 (A) a court in connection with a charge or conviction of a
9 violation or misdemeanor related to the use of alcohol or a controlled
10 substance;

11 (B) the agency responsible for the administration of motor
12 vehicle laws in connection with a license action related to the use of alcohol or
13 a controlled substance; or

14 (C) the department after a delinquency adjudication that is
15 related to the use of alcohol or a controlled substance.

16 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 APPLICABILITY. This Act applies to offenses committed on or after the effective
19 date of this Act, except that references to previous convictions include convictions occurring
20 before, on, or after the effective date of this Act.

21 * **Sec. 20.** This Act takes effect July 1, 2001.

Amendment #1 . Adopted

Delete Section 1 and replace with:

***Section 1.** AS 04.16.050(b) is amended to read:

(b) A person who violates (a) of this section and who has not been previously convicted is guilty of minor consuming or in possession or control [A VIOLATION].

Upon conviction in the district court, the court shall [MAY] impose a fine of \$600 [NOT LESS THAN \$100]. The court shall suspend the full amount of the fine, and place the person on probation under (e) of this section.

Delete Section 2 and replace with:

***Sec. 2.** AS 04.16.050 is amended by adding new subsections to read:

(c) A person is guilty of repeat minor consuming or in possession or control if the person is on probation under (b) of this section or has been previously convicted, and the person violates (a) of this section. Upon conviction in the district court, the court shall impose a fine of \$1000 and at least 48 hours of community work service. The court shall suspend a portion of the fine up to \$500, and place the person on probation under (e) of this section.

(d) A person is guilty of habitual minor consuming or in possession or control if the person is on probation under (c) of this section or this subsection, or has been twice previously convicted, and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (e) of this section, and shall

- (1) impose at least 96 hours of community work service;
- (2) revoke the person's privilege to drive for six months, and by the end of the next business day shall notify the division of motor vehicles of the revocation;
and
- (3) take possession of any driver's license or permit.

(e) A person sentenced under (b), (c) or (d) of this section shall be placed on probation for one year, or until the person turns 21, whichever is later. The conditions of probation are:

- (1) that the person pay for and enroll in a juvenile alcohol safety action program;
- (2) that the person pay for and successfully complete any education or treatment recommended;
- (3) that the person not consume inhalants, or possess or consume controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);
- (4) that the person timely complete any community work service ordered, as provided in (f) of this section; and
- (5) any other condition the court considers appropriate.

(f) Community work service ordered under this section must be performed within 120 days of the entry of judgment for a conviction. The court may expand the time period for up to 30 days upon a showing of good cause. The person shall submit verification of completion of community work service to the clerk of court on a form provided by the court. If the verification is not provided within the time period required

by this subsection, within 30 days the court shall schedule further proceedings in the case to determine whether a violation of probation has occurred.

(b) The treatment recommended by a juvenile alcohol safety action program under (b), (c) or (d) of this section may include a period of inpatient treatment if the judgment specifies the maximum period of inpatient treatment authorized. A person who has been recommended for inpatient treatment may make a written request to the sentencing court for review of the referral. The request for review shall be made within seven days of the recommendation, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(h) The juvenile alcohol safety action program to which a person is referred under this section shall inform the court or a minor's juvenile probation officer if the person fails to submit to evaluation or fails to successfully complete any education or treatment recommended. If the court finds that the person has failed to perform community work service as ordered, or has failed to submit to evaluation or successfully complete the education or treatment recommended, the court shall impose the suspended fine and may impose any period of suspended incarceration. If the person was convicted of repeat minor consuming or in possession under (c) of this section, the court shall also revoke the person's privilege to drive for six months, and shall take possession of any driver's license or permit. If the person was convicted of habitual minor consuming or in possession under (d) of this section, the sentencing court or juvenile court shall revoke the person's privilege to drive for an additional six months beyond the revocation under (d) of this section. A court revoking the privilege to drive under this subsection shall notify the division of motor vehicles.

(i) In this section,

(1) "juvenile alcohol safety action program," means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37, if a program described in AS 04.16.050(g)(1) is not available in the community in which the person resides; or

(C) a program or counseling approved by the court, if a program or treatment described in AS 04.16.050(g)(1)(A) or (B) is not available in the community where the person resides;

(2) "previously convicted" means a conviction or an adjudication as a delinquent for a violation of AS 28.35.030, 28.35.032, AS 28.35.280 -- 28.35.290, AS 11.71, or a law or ordinance in another jurisdiction with substantially similar elements;

(3) "privilege to drive" means a driver's license or permit, or privilege to obtain a driver's license or permit.

Delete Section 4 and replace with:

* **Sec. 4.** AS 28.15 is amended by adding a new section to read:

Sec. 28.15.176. Administrative revocation for minors who consume or possess alcohol or drugs. (a) The department shall revoke the privilege to drive of a minor for

(1) six months, when notified of an informal adjustment under AS 47.12.060(b)(4), and shall revoke the minor's privilege to drive for an additional six months when notified of an unsuccessful adjustment under that statute;

(2) the time period specified in AS 28.15.185(b), when notified of an informal adjustment under AS 47.12.060(b)(5).

(b) The department may not issue a new license or reissue a license to a person whose privilege to drive has been revoked under AS 04.16.050, AS 28.15.183 or AS 28.15.185 unless the person has enrolled in a juvenile alcohol safety action program and successfully completed any education or treatment recommended.

(c) A revocation under AS 04.16.050 is consecutive to a revocation imposed under another provision of law, but is concurrent with a revocation under that statute based on a prior conviction, adjudication of delinquency or informal adjustment under AS 47.12.060.

(d) Notwithstanding the provisions of AS 28.20.240 and 28.20.250, the department may not require proof of financial responsibility before restoring a person's privilege to drive under this section.

(e) In this section,

- (1) “juvenile alcohol safety action program,” has the meaning given in AS 04.16.050;
- (2) “privilege to drive” has the meaning given in AS 04.16.050;

Delete Section 5 and replace with:

***Sec. 5.** AS 28.15.181 is amended by adding a new subsection to read:

(i) A court convicting a person under AS 04.16.050(c) or (d) shall revoke the person’s privilege to drive as provided in AS 04.16.050. As used in this subsection, “privilege to drive” has the meaning given in AS 04.16.050.

Add a new Section:

***Sec. ____.** AS 28.15.183(g) is amended to read:

(g) Except as provided under (h) of this section, the department may not issue a new license or reissue a license to a person whose driver’s license, permit, or privilege to drive has been revoked under this section unless the person has enrolled in a juvenile alcohol safety action program, as defined in AS 04.16.050, and successfully completed any education or treatment recommended [IS ENROLLED IN AND IS IN COMPLIANCE WITH, OR HAS SUCCESSFULLY COMPLETED,

- (1) AN ALCOHOLISM EDUCATION OR REHABILITATION TREATMENT PROGRAM APPROVED UNDER AS 47.37. IF THE REVOCATION RESULTED FROM POSSESSION OR CONSUMPTION OF ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, FROM] OPERATING A VEHICLE AFTER

CONSUMING ALCOHOL IN VIOLATION OF AS 28.35.280, OR FROM REFUSAL TO SUBMIT TO A CHEMICAL TEST OF BREATH IN VIOLATION OF AS 28.35.285; OR

(2) A DRUG EDUCATION OR REHABILITATION TREATMENT PROGRAM, IF THE REVOCATION RESULTED FROM POSSESSION OR USE OF A CONTROLLED SUBSTANCE IN VIOLATION OF AS 11.71 OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS].

Delete Section 13 and replace with

***Sec. 13.** AS 47.12.060(b) is amended to read:

(b) When the department or an entity selected by it decides to make an informal adjustment of a matter under (a)(2) of this section, that informal adjustment **(1) must be made with** [MAY NOT BE MADE WITHOUT] the agreement or consent of the minor and the minor's parents or guardian to the terms and conditions of the adjustment;[.]

(2) must give [IN ADDITION, THE DEPARTMENT OR ENTITY SHALL GIVE] the minor's foster parents an opportunity to be heard before the informal adjustment is made;[.]

(3) must include notice that [AN] informal action to adjust a matter is not successfully completed unless, among other factors that the department or entity selected by it considers, as to the victim of the act of the minor that is the basis of the delinquency allegation, the minor pays restitution in the amount set by the department or the entity selected by it or agrees as a term

or condition set by the department or the entity selected by it to pay the restitution;

(4) for a violation of habitual minor consuming or in possession under AS 04.16.050(d), must include an agreement that the minor perform 96 hours of community work service and that the minor's privilege to drive be revoked for six months, as if the minor had been adjudicated delinquent, and that the privilege to drive be revoked for an additional six months if the informal adjustment is not successful because the minor has failed to perform community work service as ordered, or has failed to submit to evaluation or successfully complete the education or treatment recommended. The department or entity selected by it shall notify the division of motor vehicles of an informal adjustment under this paragraph, and of an unsuccessful adjustment described in this paragraph;

(5) of an offense described in AS 28.15.185(a) must include an agreement that the minor's privilege to drive be revoked as provided in AS 28.15.185(b), as if the minor had been adjudicated delinquent. The department or entity selected by it shall notify the division of motor vehicles of an informal adjustment under this paragraph.

Add a new section:

*Sec. _____. AS 47.37.040 is amended by adding a new paragraphs to read:

(20) develop and implement or designate, in cooperation with other state or local agencies, a juvenile alcohol safety action program that provides alcohol and substance abuse screening, referral, and monitoring of persons under 21 years of age who have been referred to it by a court in connection with a charge or conviction of a violation or misdemeanor related to the use of alcohol or a controlled substance, by the division of motor vehicles in connection with a license action related to the use of alcohol or a controlled substance, or the division of juvenile justice after a delinquency adjudication that is related to the use of alcohol or a controlled substance.

Amendment #2. adopted

Conceptual amendment

delete treatment / JSAP
require education course } for 1st time offenders

Adopted

AMENDMENT #3

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG
TO: HB 179

This is a conceptual amendment.

Add a new subsection to AS 04.16.050 stating:

When considering the financial resources of a minor for purposes of determining the eligibility for court-appointed counsel, the court shall consider the resources of both the defendant and the defendant's parents, unless the court finds good cause to treat their resources as being unavailable to the defendant.

ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4990
Fax: (907) 465-2040

Heather M. Nobrega
Counsel to Committee

Sponsor Statement for HB 179

In 1994, the Legislature enacted the "Use It, Lose It" law (AS 28.15.183) for minors who are caught possessing or using alcohol. If a minor is caught using alcohol, his/her driver's license would be administratively revoked for a period of time.

In December, in a case called *State v. Niedermeyer*, the Alaska Supreme Court found that taking away a minor's driver's license for possession or consumption of alcohol or a controlled substance, without giving them a trial, was in violation of a minor's constitutional right to due process.

If a minor is caught using alcohol or drugs, they are sent a letter from the DMV stating that the DMV will not revoke their license until there has been a court conviction for the offense. At present, the district attorney's office is not prosecuting minors caught for consumption of alcohol, because the court system is not prepared to handle jury trials for this type of case.

The effect of the *Niedermeyer* decision is that minors now go virtually unpunished for possessing or consuming alcohol. The maximum penalty that may currently be enforced on minors who are caught consuming or possessing alcohol is a \$100 fine.

This law will impose appropriate punishments on minors who use alcohol, and will be a deterrent to minors when they consider drinking. Statistics show that the earlier a person begins drinking, the more likely they are to have problems with alcohol later in life. By sending a message early to minors that their actions will not go unpunished, we hope to deter alcohol problems in the future.

This bill will establish a graduated system of punishment for minors who are caught consuming, possessing or controlling alcohol. On a minor's first offense, he/she would be subject to a fine of between \$200-600, and at least 24 hours of community work service. On a minor's second offense, the minor would be guilty of repeat minor consuming and would be subject to a fine of between \$500-1000, and at least 48 hours of community work service. A minor's third offense would cause them to be guilty of habitual minor consuming. This is a class B misdemeanor, which results in up to a \$1000 fine and 90 days in jail. In addition, the minor will lose his/her license for a period of six months, will be required to complete at least 96 hours of community work service, and will be required to receive alcoholism treatment.

The committee urges your support of this bill.

ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4990
Fax: (907) 465-2040

Heather M. Nobrega
Counsel to Committee

Sectional Analysis for HB 179

- Section 1:** Establishes penalty for first time minors caught consuming, possessing or controlling alcohol.
- Section 2:** Establishes penalty for minors caught consuming, possessing or controlling alcohol for a second time.
- Establishes penalty for minors caught consuming, possessing or controlling alcohol three or more times.
- Sets forth when a license revocation is consecutive vs. concurrent.
- Defines "previously convicted."
- Section 3:** Conforms statute number.
- Section 4:** Creates a statute, AS 28.15.176, that allows for administrative revocation of licenses for minors who consume or possess alcohol or drugs.
- Section 5:** Requires the court convicting a minor of habitual consuming to revoke the minor's license.
- Section 6:** Removes possession or use of a controlled substance, and possession or consumption of alcohol from the current administrative revocation of license statute, AS 28.15.183.
- Section 7:** Same as Section 6.
- Section 8:** Deletes the requirement of immediate renewal of a license if there is no prosecution, the prosecution results in a dismissal, or the person is found not guilty.

- Section 9:** Removes possession or use of a controlled substance, and possession or consumption of alcohol from the administrative hearing process for revocations under AS 28.15.183.
- Section 10:** Amends the ages when a court can revoke a minor's license for misconduct involving a controlled substance, or for an offense involving illegal use or possession of a firearm.
- Section 11:** Adds habitual minor consuming, possessing or control to the list of offenses that require the court to revoke a minor's license.
- Section 12:** Exempts minor consuming, possessing or controlling alcohol from the juvenile justice system. Habitual minor consumers are excluded from this exemption, however, and are to be placed in the juvenile justice system on their third or subsequent offense.
- Section 13:** Requires that when making an informal adjustment of a delinquent minor, the informal adjustment: (1) must be made with the agreement and consent of the minor and minor's parents; (2) must give the minor's foster parents an opportunity to be heard; (3) must include notice that restitution will be necessary; (4) for a violation of habitual consuming, possession or control, must include an agreement that the minor perform 96 hours of community work service, and have their license revoked for six months, and (5) for an offense described in AS 28.15.185 (a)(1), must include an agreement that the minor's license be revoked as if the minor has been adjudicated delinquent.
- Section 14:** Requires the court adjudicating a delinquent minor for possession, consumption or control of alcohol, for an offense involving a controlled substance, or involving a firearm to revoke the minor's license.
- Section 15:** Makes this act applicable to offenses committed on or after the effective date. Except that references to previous convictions includes convictions occurring before, on or after the effective date.
- Section 16:** Effective date is July 1, 2001.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 179

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Minor Consuming BRU Alaska Court System
 Component Trial Courts
 Sponsor House Judiciary
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	95.1	95.1	95.1	95.1	95.1	95.1
Travel						
Contractual	49.9	49.9	49.9	49.9	49.9	49.9
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	145.0	145.0	145.0	145.0	145.0	145.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	145.0	145.0	145.0	145.0	145.0	145.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	145.0	145.0	145.0	145.0	145.0	145.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time	2	2	2	2	2	2
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 179 makes several changes to the minor consuming alcohol (MCA) laws. Sections 1 and 2 of the bill increase the fines for first and second offenses and provide for mandatory community work service (CWS). Section 3 of the bill makes third and subsequent offenses a class B misdemeanor and provides for mandatory CWS, alcohol treatment, and driver's license revocation. The bill removes those provisions in current law that provide for the revocation of an offender's driver's license for non-criminal violations of the MCA law.

The Department of Law estimates that 4800 people a year will fall under the terms of this bill. Because the Department of Law believes that mandatory CWS triggers the right to appointed counsel and a jury trial, this note assumes that all MCA cases will be treated much like misdemeanors. Because MCA cases already require a court appearance, the only significant difference for the court system between a MCA violation and an MCA being treated like a misdemeanor is the costs associated with jury trials. The misdemeanor trial rate is approximately 1%. This note, therefore, reflects the costs associated with 48 misdemeanor jury trials.

Prepared by: Douglas Wooliver Phone 463-4750
 Division: Alaska Court System Date/Time 3/22/01 @ 4:30 P.M.
 Approved by: Stephanie Cole Date _____
 Agency: Alaska Court System

For distribution information, call the Governor's Legislative Office

Alaska Court System
 Fiscal Note Calculations for HB 179

<u>District Court:</u>	FY02	FY03	FY04	FY05	FY06
25 Jurors 1.0 Days for Selection	625	625	625	625	625
7 Jurors for 1.5 Days of Court	263	263	263	263	263
6 Jurors for .5 Days of Deliberation	75	75	75	75	75
Deliberation Meal \$11/12 jurors + bailiff	77	77	77	77	77
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total per District Court Trial	1,040	1,040	1,040	1,040	1,040
Proposed # District Court Trials	48	48	48	48	48
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Estimated Cost of District Court Trials	49,896	49,896	49,896	49,896	49,896
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
District Court Judge (7 months*)	70,586	70,586	70,586	70,586	70,586
In-Court Clerk (7 months*)	24,498	24,498	24,498	24,498	24,498
Personnel Costs	95,085	95,085	95,085	95,085	95,085
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total Jury and Personnel costs for 48 Misdemeanor Trials	144,981	144,981	144,981	144,981	144,981
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>

*48 trials X 3 days/trial = 144 work days/20 workdays per month = 7 months

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 179
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to underage drinking and drug offenses; and providing for an effective date." BRU Criminal Division
 Sponsor House Judiciary Committee Component 3rd Judicial Dist: Anch; 3rd Judicial Dist: Outside Anch; 4th Judicial Dist
 Requester House Judiciary Committee Component No. 2201;61;79

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	151.1	151.1	151.1	151.1	151.1	151.1
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	28.0	28.0	28.0	28.0	28.0	28.0
Supplies	4.0	4.0	4.0	4.0	4.0	4.0
Equipment	26.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	209.1	183.1	183.1	183.1	183.1	183.1

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	209.1	183.1	183.1	183.1	183.1	183.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	209.1	183.1	183.1	183.1	183.1	183.1

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	4	4	4	4	4	4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 179 would change the minor consuming or in possession statutes as follows: For a 1st offense, the fine would be increased from \$100 to between \$200 and \$600, and the minor would be required to perform at least 24 hours of community work service. For a 2nd offense, the fine must be between \$500 and \$1,000, and at least 48 hours of community work service will be imposed. A 3rd and subsequent offense would be a class B misdemeanor, with the penalty of loss of driving privileges for six months, mandatory alcohol treatment, and at least 96 hours of community work service.

The bill makes numerous other changes relating to minor consuming; however, the changes listed above are the ones that will have a fiscal impact on the Department of Law. This is because the imposition of mandatory community work service for minor consuming or in possession or control, whether for a first or subsequent offense, will entitle all those minors to a jury trial and public counsel.

Prepared by: Joan M. Kasson Phone 465-5370
 Division Attorney General's Office Date/Time 3/22/01 11:22 AM
 Approved by: Kathryn Dauqhettee for Bruce M. Botelho, Attorney General Date 3/22/01
 Agency Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 179

ANALYSIS CONTINUATION

The Division of Motor Vehicles reports that prior to the *Niedermeyer* decision, they revoked about 4,800 drivers' licenses per year for alcohol violations by minors. Not all these violations were pursued in court, because many police officers believed it was better and easier to simply refer the matter to DMV for license revocation. We will assume, however, that now all such violations will result in a citation being filed in court.

Under these circumstances, those citations would come to the Department of Law, and a file would be opened. We believe that in approximately 1 percent of the cases the defendant would request a jury trial. We believe that the estimated 50 new jury trials statewide could be handled within existing Criminal Division resources.

The division could not, however, absorb the increased clerical duties associated with opening nearly 5,000 new files each year, and dealing with the paperwork and pleadings in all those cases. We would need to add four Administrative Clerk II positions: one each in Anchorage, Palmer, Bethel, and Fairbanks, for a total first-year cost of \$209,059, including one-time equipment costs of \$26,000.

Component	Position	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Criminal Division: 3rd Judicial District: Anchorage (2261)							
	100 1 Admin Clerk II	34.8	34.8	34.8	34.8	34.8	34.8
	200						
	300	7.0	7.0	7.0	7.0	7.0	7.0
	400	1.0	1.0	1.0	1.0	1.0	1.0
	500	6.5					
	Total 1004 General Fund	49.3	42.8	42.8	42.8	42.8	42.8
Criminal Division: 3rd Judicial District: Outside Anchorage (2279)							
	100 1 Admin Clerk II	34.8	34.8	34.8	34.8	34.8	34.8
	200						
	300	7.0	7.0	7.0	7.0	7.0	7.0
	400	1.0	1.0	1.0	1.0	1.0	1.0
	500	6.5					
	Total 1004 General Fund	49.3	42.8	42.8	42.8	42.8	42.8
Criminal Division: 4rd Judicial District (2201)							
	100 2 Admin Clerk II	81.4	81.4	81.4	81.4	81.4	81.4
	200						
	300	14.0	14.0	14.0	14.0	14.0	14.0
	400	2.0	2.0	2.0	2.0	2.0	2.0
	500	13.0					
	Total 1004 General Fund	110.4	97.4	97.4	97.4	97.4	97.4
Total		209.1	183.1	183.1	183.1	183.1	183.1

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 179
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: An Act relating to underage drinking and BRU: Alcohol & Drug Abuse Svcs
drug offenses Component: Alcohol/Drug Abuse Grants
 Sponsor: House (JUD)
 Requester: House (JUD) Component Number: 1239

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	1,010.5	1,010.5	1,010.5	1,010.5	1,010.5	1,010.5
Miscellaneous						
TOTAL OPERATING	1,010.5	1,010.5	1,010.5	1,010.5	1,010.5	1,010.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,010.5	1,010.5	1,010.5	1,010.5	1,010.5	1,010.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	1,010.5	1,010.5	1,010.5	1,010.5	1,010.5	1,010.5

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 179 creates a class B misdemeanor crime of "habitual minor consuming." Upon conviction the court is to require the individual to receive treatment specified under AS 28.35.030(h). AS 28.35.030(h) is geared toward the sentencing of adult DWI offenders. ASAP is responsible for the screening, referral and subsequent monitoring of person who need substance abuse education or treatment. Those persons needing treatment would be referred to existing treatment providers in their community. This fiscal note would fund the necessary treatment expansion to meet the demand.

The existing service system for youth is under capacity and this new demand must be met with increased service capacity. The need to provide treatment to the expected 1,048 new cases requires expansion of the treatment capacity for youth.

Prepared by: Ernie Turner Phone 465-2071
 Division: Alcohol and Drug Abuse Date/Time 3/26/01 1:04 PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/26/01 1:04 PM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

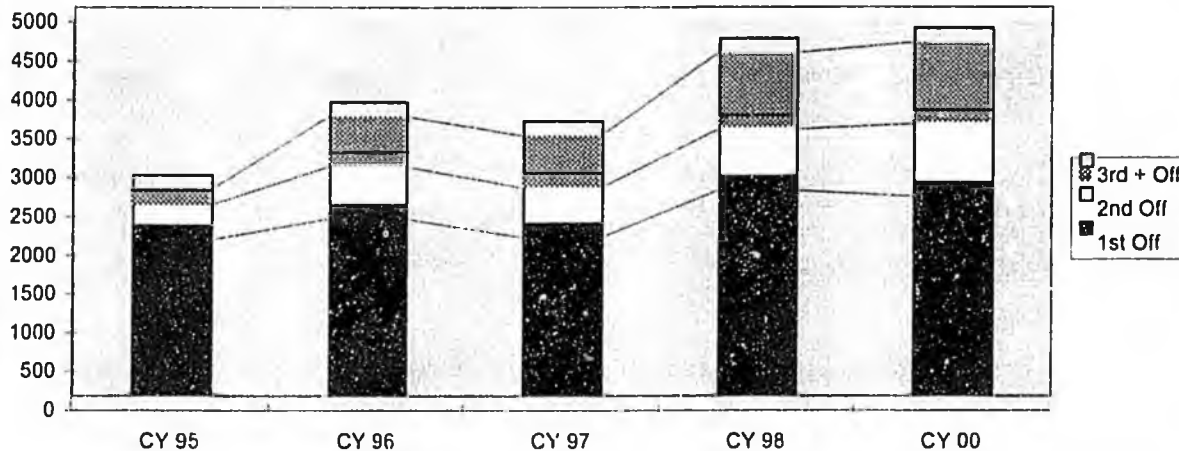
ANALYSIS: (continued)

For youth who have committed their third offense, after the fines and community work services sanction from the first and second offenses, must be considered to be at high risk. Thus all should be referred to some level of treatment. For many youth this may only require brief interventions and for some possible residential placement. It is difficult to predict what the level of care required would be for the expected number of persons. In the Division presentation to the Judiciary committee on HB 4, the Division indicated that the costs per adult treated was \$1,854. This would include care from detox to brief interventions averaged across all levels of care. No similar figures exist for treatment of youth. This request is based on our estimate that we could provide appropriate levels of care for these persons by using an average that would be a little more than half the adult costs. This estimate results in the need for \$975 per youth estimated to be affected by this bill. Thus for the estimated 1,048 new persons needing some level of treatment (third offenses), a total treatment cost of \$1,010,500 is projected.

The Division of Motor Vehicles has been keeping records of the number of youth who lose their driver's license under existing statutes since CY 95. As review of this data indicates that in CY 2000 1,048 youth lost their driver's license due to having had their third minor consuming or minor in possession offense. Since the number of youth with a third offense has grown each year since CY 95 we would project that under this crime we could expect to see that many youth being sent to ASAP under this bill.

As can be seen by the data from the Division of Motor Vehicles (shown in the chart below), it indicates that over the past years the number of youth losing their driving licenses for minor consuming has been increasing. The number that have lost their license for second and third or more offenses has also risen. The chart below is from this data and clearly shows that the number of youth that could be determined to be guilty of "habitual minor consuming" would be high.

Comparison of the number of youth who have lost their driver's license due to 1st, 2nd, or 3rd MC/MIP offense in CY 1995, 1996, 1997, 1998 and 2000



FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 179
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: An Act relating to underage drinking and BP.U: Alcohol & Drug Abuse Svcs
drug offenses Component: Alcohol Safety Action Program
 Sponsor: House (JUD)
 Requester: House (JUD) Component Number: 305

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	63.5	63.5	63.5	63.5	63.5	63.5
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	63.5	63.5	63.5	63.5	63.5	63.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	63.5	63.5	63.5	63.5	63.5	63.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	63.5	63.5	63.5	63.5	63.5	63.5

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 179 creates a class B misdemeanor crime of "habitual minor consuming." Upon conviction the court is to require the individual to receive treatment specified under AS 28.35.030(h). AS 28.35.030(h) is geared toward the sentencing of adult DWI offenders. The existing Alcohol Safety Action Program (ASAP) program does not serve minors (persons under 18). ASAP functions not as treatment but as the monitor of compliance with conditions of the court as part of the sentence. The ASAP office in Anchorage provides the ASAP services in Anchorage as well as providing oversight and technical assistance to other grantee ASAP statewide. This position will work on establishing new standards for dealing with youth under this program for both Anchorage and other programs statewide. These standards would establish how the ASAP programs will make certain that the screening and referral process is appropriate for these person convicted under this new crime.

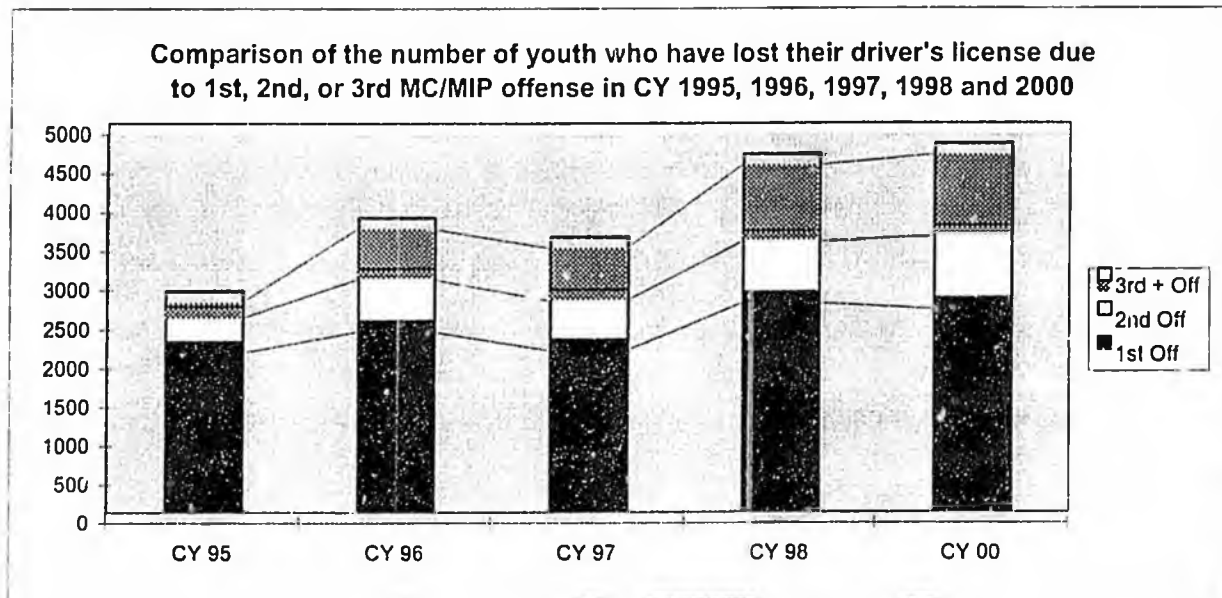
Prepared by: Ernie Turner Phone 465-2071
 Division: Alcohol and Drug Abuse Date/Time 3/26/01 1:08 PM
 Approved by: Elmer A. Lindstrom, Special Assistant Date 3/26/01 1:08 PM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

The Division of Motor Vehicles has been keeping records of the number of youth who lose their driver's license under existing statutes since CY 95. As review of this data indicates that in CY 2000 1,048 youth lost their driver's license due to having had their third minor consuming or minor in possession offense. Since the number of youth with a third offense has grown each year since CY 95 we would project that under this crime we could expect to see that many youth being sent to ASAP under this bill.

As can be seen by the data from the Division of Motor Vehicles (shown in the chart below), it indicates that over the past years the number of youth losing their driving licenses for minor consuming has been increasing. The number that have lost their license for second and third or more offenses has also risen. The chart below is from this data and clearly shows that the number of youth that could be determined to be guilty of "habitual minor consuming" would be high.



FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 179
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
Title: An Act relating to underage drinking and BRU: Alcohol & Drug Abuse Svcs
drug offenses Component: CAASA Grants
Sponsor: House (JUD)
Requester: House (JUD) Component Number: 1413

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	426.0	426.0	426.0	426.0	426.0	426.0
Miscellaneous						
TOTAL OPERATING	426.0	426.0	426.0	426.0	426.0	426.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	426.0	426.0	426.0	426.0	426.0	426.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	426.0	426.0	426.0	426.0	426.0	426.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 179 creates a class B misdemeanor crime of "habitual minor consuming." Upon conviction the court is to require the individual to receive treatment specified under AS 28.35.030(h). AS 28.35.030(h) is geared toward the sentencing of adult DWI offenders. Alcohol Safety Action Program (ASAP) functions not as treatment but as the monitor of compliance with conditions of the court as part of the sentence. The existing ASAP program does not serve minors (persons under 18). Based on DMV data about youth the lose their driver's license due to MC/MIP, we are projecting that an additional 1,048 person statewide would be found guilty under this bill and referred to ASAP programs. Current ASAP programs are under funded and could not absorb this increase without increased funding. These funds would allow the Division to fund programs that would be specific for the person guilty of "habitual minor consuming."

Prepared by: Ernie Turner Phone 465-2071
Division: Alcohol and Drug Abuse Date/Time 3/26/01 1:12 PM
Approved by: Elmer A. Lindstrom, Special Assistant Date 3/26/01 1:12 PM
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

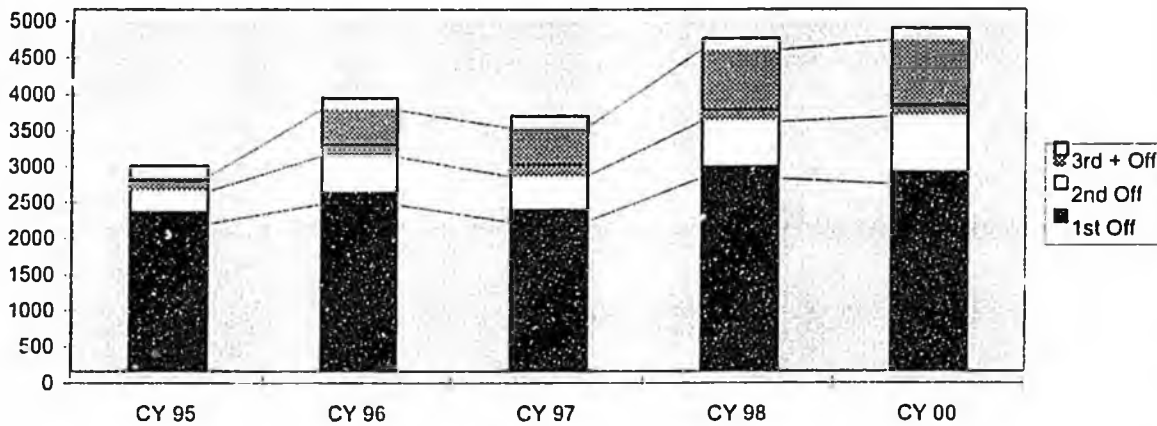
ANALYSIS: (continued)

AS 47.37.045 established the Community Action Against Substance Abuse program. Under this program 47.37.045(7) allows for the funding of "youth assessment and referral programs that provide substance abuse screening services to and monitor compliance with a minor required to participate in..." alcohol or drug education or treatment. As such these funds are requested under that grant component.

The Division of Motor Vehicles has been keeping records of the number of youth who lose their driver's license under existing statutes since CY 95. As review of this data indicates that in CY 2000 1,048 youth lost their driver's license due to having had their third minor consuming or minor in possession offense. Since the number of youth with a third offense has grown each year since CY 95 we would project that under this crime we could expect to see that many youth being sent to ASAP under this bill.

As can be seen by the data from the Division of Motor Vehicles (shown in the chart below), it indicates that over the past years the number of youth losing their driving licenses for minor consuming has been increasing. The number that have lost their license for second and third or more offenses has also risen. The chart below is from this data and clearly shows that the number of youth that could be determined to be guilty of "habitual minor consuming" would be high.

Comparison of the number of youth who have lost their driver's license due to 1st, 2nd, or 3rd MC/MIP offense in CY 1995, 1996, 1997, 1998 and 2000



FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 179
 () Publish Date: _____
 Dept. Affected: Administration
 BRU: Legal & Advocacy Service
 Component: Public Defender Agency
 Component Number: 1631

Revision Date/Time (Note if correction): _____
 Title: "An Act relating to underage drinking and drug offenses; and providing for..."
 Sponsor: House Judiciary Committee
 Requester: House Judiciary Committee

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	273.1	273.1	502.6	502.6	502.6	502.6
Travel	9.3	9.3	16.8	16.8	16.8	16.8
Contractual	68.9	68.9	124.6	124.6	124.6	124.6
Supplies	5.8	5.8	10.6	10.6	10.6	10.6
Equipment	22.8	2.2	21.7	4.1	4.1	4.1
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	379.9	359.3	676.3	658.7	658.7	658.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	379.9	359.3	676.3	658.7	658.7	658.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	379.9	359.3	676.3	658.7	658.7	658.7

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	3	3	6	6	6	6
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would increase the penalties for the offense of Minor Consuming or in Possession of Alcohol (MCA). Under current law, MCA is a violation punishable by a \$100 fine. A minor cited for MCA was also subject to an administrative drivers license revocation under AS 28.15.183 (the "use it, lose it" law). However, in a recent Alaska Supreme Court case, State v. Niedermeyer, the "use it, lose it" law was found to violate due process. The court decided that a minor has a right to a jury trial and court-appointed counsel before a license can be revoked for MCA.

Under this bill, for a first offense, the fine would be increased from a mandatory minimum of \$100 to \$200-\$600. A mandatory minimum of at least 24 hours of community work service would also be imposed.

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 Division: Public Defender Agency Date/Time 03/28/01
 Approved by: Jim Duncan, Commissioner Date 3/28/01
 Agency: Department of Administration

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HB 179, Fiscal Note continued

For a second offense, the mandatory minimum fine is \$500. (The maximum fine would be \$1,000.) The mandatory minimum community work service is 48 hours.

A third offense (habitual MCA) would be a class B misdemeanor. A mandatory minimum of at least 96 hours of community work service would also need to be imposed. The court also must revoke a minor's drivers license or privilege to drive for six months.

The juvenile delinquency statutes would be amended so that habitual (third offense) MCA would be handled by the Division of Juvenile Justice and juvenile courts.

The Public Defender Agency will have a major fiscal impact from this bill the way it is currently drafted. The Alaska Court of Appeals in *Booth v. State*, 903 P.2d 1079 (Alaska App. 1995) decided that before community work service can be imposed a defendant has a right to a jury trial and court-appointed counsel. Therefore, because minors convicted of first and second offense MCA would have to perform community work service as part of their sentence, the Public Defender Agency would be appointed in these cases as well as the habitual (third offense) MCA's.

Another factor that must be taken into account is whether minors who have prior convictions under the current law would be subject to prosecution under the second offense or habitual MCA provisions should this bill become law. The Public Defender Agency does not believe that this would happen because the prior convictions would have been obtained without minors being advised that they had a right to court-appointed counsel.

The Division of Motor Vehicles reported that prior to the Niedermeyer decision, about 4,800 driver's licenses were revoked under the "use it, lose it" statutes. This figure is about the same as the number of court cases noted in a recent needs assessment study done by the Department of Health and Social Services (DHSS). According to the DHSS study, 4300 MCA cases were filed in 1998 and 4983 were filed in 1999. Therefore, the Public Defender Agency estimates there will be 4,800 new cases filed per year.

It is difficult to estimate how many of these cases the Public Defender Agency will be appointed to. In the initial year (FY 2002), there will probably be mostly first offenses, although some minors will accumulate second and third offenses as the year goes on. The penalties are not as great, but, with a prospect of a \$200 mandatory minimum fine and 24 hours of community work service, there will be a significant percentage of minors who will request an attorney. Even if only 30% of the minors request an attorney, the Public Defender Agency will have 1440 new cases. Under national standards, a Public Defender attorney should handle no more than 400 new misdemeanor cases per year. These cases will be less difficult than the average misdemeanor, so we will increase this number to 600 new first and second offense MCA's per year per attorney. To handle this caseload, the Public Defender Agency will need two full-time attorneys and one half-time attorney. According to the DHSS report, the majority of these cases are filed in Anchorage, Fairbanks, and Palmer. We would place the half-time attorney in Anchorage because it would be easier to hire a part-time attorney for Anchorage. The other two attorneys would be placed in Fairbanks and Palmer.

By FY 2004, we can expect that a greater percentage of the cases will be third-offense habitual MCA's. We will be appointed in more of these cases, and our lawyers will be able to handle fewer of these more difficult cases. Assuming Public Defender Agency appointment in 50% of 4800 cases, we will have 2400 new cases. If each attorney can handle 500 new cases per year, we will need two additional lawyers, for a total of four full-time and one half-time attorney. We would place the two additional attorneys in our Anchorage and Bethel offices.

The cost per attorney includes clerical support and one-time equipment costs in the initial year.