

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10305 HOUSE JUDICIARY



**STATE OF ALASKA**

**2001**

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**APPEALS AND GRIEVANCES**

**TOTAL CLAIMS PROCESSED- 1,105,956**

**TOTAL APPEAL AND GRIEVANCES- 110**

**Actives- 46**

**Retiree-64**

**Total overturned- 21 or 19%**



# **STATE OF ALASKA GRIEVANCES**

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## **2001 GRIEVANCES BY CATEGORY**

### **22 PROGRAM COMPLAINTS**

**9 SLOW CLAIMS PROCESSING**

**4 EXCLUSIONS**

**3 CLAIM PROCESSING ERROR**

**2 MEMBER COPAY**

**2 CLAIM PROCESSING ERROR**

**1 MEMBER MATERIALS**

**2 BALANCE BILLS**

**1 ? MEDICAL CARE**



# **STATE OF ALASKA - APPEALS**

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## **2001 APPEAL REASONS BY CATEGORY**

**17 DENTAL**

**16 NON COVERED BENEFITS**

**14 TRAVEL**

**10 UCR**

**3 VISION**

**2 RX/DME**

**2 DIAGNOSTIC SERVICES/SURGEY**

Kimberly Ann Ressler, RN, MSN, FNP  
PO Box 84471  
Fairbanks, AK 99708

April 9, 2002

Dear Representative Norman Rokeberg, Chair, House Judiciary Committee

I am writing to express my strong opposition to Senate Bill 37 which is scheduled to be heard in the House Judiciary Committee on Wednesday, April 10, 2002.

I am concerned that negotiated contracts might contain language that would limit my patient's ability to choose a nonphysician professional as their healthcare provider. As an advanced practice nurse, I am able to deliver quality health care to the people of the Fairbanks community. I practice in an urgent care setting with a physician available for telephone consultation. Throughout the state of Alaska, nurse practitioners and physician assistants assess, diagnose, and treat both acute and chronic illness in all age groups. They are a critical link in providing cost-effective health care for many people where access is limited.

I view Senate Bill 37 as an attempt to limit the scope of practice for nonphysician professionals as negotiated contracts may contain wording that specifies that care may only be given by a physician. Let the patients choose their own healthcare provider. Senate Bill 37 only adds to the bureaucracy of health care legislation to regulate a process that already can take place. Thank you for your time and consideration.

**VOTE NO ON SENATE BILL 37!!**

Sincerely,



Kimberly A. Ressler, RN, MSN, FNP

home phone 907-458-7118 e-mail: kimressler@gci.net

**DEPARTMENT OF VETERANS AFFAIRS  
ALASKA VA HEALTHCARE SYSTEM AND REGIONAL OFFICE  
2085 DEBARR RD  
ANCHORAGE AK 99508**

**PRIMARY CARE CLINIC**

**FAX TRANSMISSION**



**DATE:** 4/9/02

**FROM:** MARY KUTNEY & YVONNE STEVENSON

**TELEPHONE NUMBER:** 907-257-4950

**FAX NO.:** 907-257-7454



You should receive \_\_\_\_\_ page(s) including the cover sheet.  
If you do not receive all the pages, please call (907) 257-4954.



**MESSAGE TO:** NORMAN Fokeberg

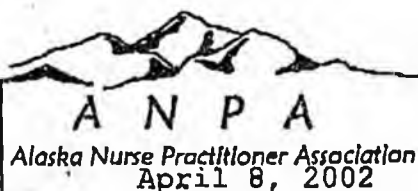
**LOCATION:** Judiciary Committee Chair

**FAX NO.** (907) 465-2040

**COMMENTS:**

VOTE NO 8B 37

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2207 East Tudor Road, Suite #34  
Anchorage, Alaska 99507  
907-222-6847

Mr Norman Rokeberg, Chair, House Judiciary Committee:

As the President of the Alaska Nurse Practitioner Association I am writing to express our strong opposition to Senate Bill 37 which is scheduled to be heard in the House Judiciary Committee on Wednesday, April 10, 2002 at 1:00 PM.

The current House Labor & Commerce CS has deleted those sections allowing physicians to negotiate prices, eliminating only the most blatant attempts at price-fixing. There remain, however, many ways that consumer costs may increase and access may decrease. Negotiated contracts could contain "quality" or "safety" provisions that might limit or eliminate consumers ability to choose a nonphysician professional as their healthcare provider.

Senate Bill 37 in any form is unnecessary. According to the January 18, 2002 letter from the Federal Trade Commission to Representative Lisa Murkowski "...current antitrust law already permits physicians to work collectively on legitimate quality of care issues. "Physicians could look to strengthening current statute language, specifically Chapter 21.07.010, Patient and Health Care Provider Protection (also known as the Alaska Patient's Bill of Rights), in order to meet their goal of allowing balanced negotiations with insurance companies.

If enacted Senate Bill 37 would create an unnecessary layer of expensive bureaucracy to regulate an activity that can already take place.

Thank you for your time to review this issue

PLEASE VOTE NO ON SENATE BILL 37!

Sincerely,

*Mary M. Kutney MSN RN FNP*

Mary M. Kutney MSN, RN, FNP  
President Alaska Nurse Practitioner Association

April 8, 2002

Norman Rokeberg (Room 118)  
Chair  
House Judiciary Committee

Dear Sir:

I am writing to express my strong opposition to Senate Bill 37 which is scheduled to be heard in the House Judiciary Committee on Wednesday, April 10, 2002 at 1:00pm.

The current House Labor & Commerce CS has deleted those sections allowing physicians to negotiate prices, eliminating only the most blatant attempts at price-fixing. There remain, however, many ways that consumers' costs may increase and access may decrease. Negotiated contracts could contain "quality" or "safety" provisions that might limit or eliminate consumers ability to choose a non-physician professional as their healthcare provider.

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**VOTE NO ON SENATE BILL 37!**

 Yvonne Stevenson FNP

Yvonne Stevenson, RNC, MSN, FNP  
Family Nurse Practitioner



April 9<sup>th</sup> 2002

Girdwood Clinic  
P.O. Box 1130  
Girdwood, Alaska 99587

To:  
Norman Rokeberg, Scott Ogan John Coghill, Jeannette James, Kevin Meyer, Ethan Berkowitz, Albert Kookesh.

RE: Senate Bill 37

Please vote NO on Senate bill 37. This bill could allow provisions excluding non-physician providers such as Nurse Practitioners from providing needed care to consumers in their communities. This would have a devastating effect on many small communities. Here in Girdwood the only clinic providing urgent care and family practice is by a Nurse Practitioner. I am writing to express my strong opposition to Senate Bill 37, which is scheduled to be heard in the House Judiciary Committee on Wednesday, April 10, 2002 at 1:00 PM.

The current House Labor & Commerce CS has deleted those sections allowing physicians to negotiate prices, eliminating only the most blatant attempts at price-fixing. There remain, however, many ways that consumers' costs may increase and access may decrease. Negotiated contracts could contain "quality" or "safety" provisions that might limit or eliminate consumers ability to choose a nonphysician professional as their healthcare provider.

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If enacted Senate Bill 37 would create an unnecessary layer of expensive bureaucracy to regulate an activity that can already take place. **VOTE NO ON SENATE BILL 37!**

Sincerely,

A handwritten signature in black ink that reads "Kerry Dorius FNP". The signature is written in a cursive, flowing style.

Kerry Dorius FNP

April 9, 2002

Representative Norman Rokeberg  
State Capitol, Room 118  
Juneau AK 99801-1182

Dear Representative Rokeberg:

RE: Senate Bill 37

I am writing to express my strong opposition to Senate Bill 37, which is scheduled to be heard in the House Judiciary Committee on Wednesday, April 10, 2002 at 1:00 PM.

I am gravely concerned about the effect of this bill on access to healthcare and the costs of healthcare. I believe it will limit access by allowing only certain providers with the negotiating powers provided in this bill to obtain lucrative contracts, and block their "competitors" from an equal share of the market of healthcare consumers. In practical terms, I could lose the provider I choose because she or he is not a part of the negotiated contract. I find this unfair from a consumer viewpoint.

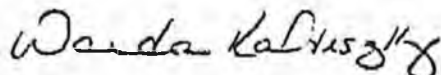
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If enacted Senate Bill 37 would create an unnecessary layer of expensive bureaucracy to regulate an activity that can already take place.

**THIS BILL IS BAD PUBLIC POLICY! VOTE NO ON SENATE BILL 37!**

Sincerely,



Wanda Katinszky, RN, BSN, MS  
MSW Graduate Student  
University of Alaska Anchorage  
2931 Legacy Drive  
Anchorage AK 99516

5654 Chilkoot Ct  
Anchorage AK 99504  
April 10, 2002

**Representative Norman Rokeberg  
Chair, House Judiciary Committee**

I am writing to express my strong opposition to Senate Bill 37 which is scheduled to be heard in the House Judiciary Committee on Wednesday, April 10, 2002 at 1:00 PM.

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If enacted Senate Bill 37 would create an unnecessary layer of expensive bureaucracy to regulate an activity that can already take place.

I urge you to vote NO on Senate Bill 37!

Sincerely,

Patricia Hong, RN

**Subject: SB 37**

**Date:** Wed, 10 Apr 2002 19:32:25 -0800

**From:** "nancy felton" <endrd@alaska.net>

**To:** <Heather\_Nobrega@Legis.State.Ak.Us>

Dear Representative Foberg,

I am writing to you in regards to Senate Bill 37. I request that you oppose the bill. Nurse Practitioners provide care to many underserved populations as well as providing a choice for individuals' health care needs. It will be detrimental to Nurse Practitioners in this state if this bill is passed. The current antitrust law already provides physicians the ability to work collectively. Please share this with the House Judiciary Committee. - Nancy Felton,ANP

**Subject:** [Fwd: Oppose SB 37]  
**Date:** Wed, 10 Apr 2002 08:46:34 -0800  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

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**Subject:** Oppose SB 37  
**Date:** Wed, 10 Apr 2002 01:26:45 -0800  
**From:** Lisa Howe Kocur <lisah@acsalaska.net>  
**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

SB 37 should be opposed! Besides being unnecessary, it is unreasonable. Very often the Nurse Practitioners, Nurse Anesthetists, and Physicians Assistants have skills and experience equal to or greater than a physician, and at a much more reasonable cost. As a self employed (and uninsured) Alaskan, I shudder to think of the rise in medical costs that would be associated with this bill. Please put this one to rest for good!

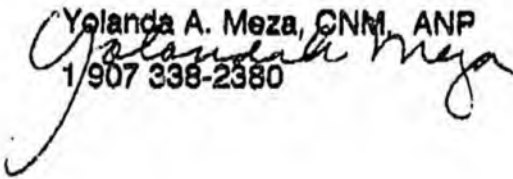
Lisa H. Kocur

4/9/02

House Judiciary committee  
Norm RoKeberg, Chair

As a long time Nurse Midwife/Advanced Nurse Practitioner, I have enjoyed the autonomy of private practice in Alaska. I feel SB 37 is bad legislation and will effect consumers ability to choose a non-physician as their health care provider and therefore preventing me from a livelihood that I have depended on for the past 12 years. I've read the Federal Trade Commission's report and their findings and recommendations are compelling and wish that you would VOTE NO ON SB 37.

Yolanda A. Meza, CNM, ANP

  
1 907 338-2380

4/9/02

House Judiciary committee

As a long time Nurse Midwife/Advanced Nurse Practitioner, I have enjoyed the autonomy of private practice in Alaska. I feel SB 37 is bad legislation and will effect consumers ability to choose a non-physician as their health care provider and therefore preventing me from a livelihood that I have depended on for the past 12 years. I've read the Federal Trade Commission's report and their findings and recommendations are compelling and wish that you would VOTE NO ON SB 37.

Yolanda A. Meza, CNM, ANP

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HCS CS SB 37 (L&C)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title Physician Negotiations with Health Insurance BRU Insurance (116)  
Component: Insurance Operations  
Sponsor Senator Kelly  
Requester House Judiciary Component No. 354

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill requires the director of insurance to determine the number of individuals covered under health benefit plans in Alaska. A health benefit plan is now defined as a health care insurer instead of an employee welfare benefit plan. The division already collects covered lives data from health care insurers for purposes of reporting under AS 21.06.110. Therefore, any cost to modify the survey form, compile and report this data would be absorbed within existing division resources.

Prepared by: Robert A. Lohr, Director Phone 907-269-7900  
Division: Insurance Date/Time 4/10/02 11:46 AM  
Approved by: Deborah B. Sedwick, Commissioner Date 4/10/2002  
Agency: Department of Community & Economic Development



Principal Life  
Insurance Company

VIA FACSIMILE & REGULAR MAIL

April 10, 2002

The Honorable Norm Rokeberg  
Chair, House Judiciary Committee  
Alaska House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

RE Opposition to Collective Negotiation by Physicians, S.B. 37

Dear Representative Rokeberg:

I am writing on behalf of the Principal Financial Group to urge you and your committee members to oppose S.B. 37, a bill that permits collective negotiation by competing physicians with health benefits plans. The Principal is a leader in offering businesses, individuals and institutional clients products and services, including life and health insurance, retirement and investment services, and mortgage banking through its diverse family of financial service companies. We provide medical, dental, or vision insurance to over 10,000 Alaskans through Principal Life Insurance Company.

The Principal opposes this legislation because it will be very detrimental for consumers in your state. Competition is essential in order to provide quality health services on a cost-effective basis. Existing antitrust laws provide adequate flexibility for physicians, hospitals and health professionals to work together to organize networks and other provider delivery systems and distinguish themselves in ways that will benefit customers. However, S.B. 37 will ultimately cause health care costs to increase, while doing very little, if any, to improve the quality of health care for Alaskans.

Vigorous enforcement of federal and state antitrust laws is also essential if health plans are to enter new communities and continue to expand their presence by developing innovative, cost effective health care programs. Health care plans must be able to contract with quality providers without facing boycotts, price-fixing, artificial ethical restraints on the ability of doctors to enter into contracts, or local provider monopolies.

We strongly believe that enactment of S.B. 37 will diminish competition. In addition, any weakening of current antitrust laws will hamper efforts to control health care costs as health plans seek to contract with high-quality providers and reward care that is delivered both effectively and efficiently.

I hope you will consider our views and oppose this legislation. If you have any questions please call me or Martha Crist at 1-800-325-2532. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "James M. Crawford".

James M. Crawford  
Director, Government Relations  
515-247-5480  
[crawford.jim@principal.com](mailto:crawford.jim@principal.com)

JMC:klp

cc Judiciary Committee  
Merle Pederson

Jeff Tindall  
Martha Crist

Mailing Address: Des Moines, Iowa USA 50392-0001 (515) 247-5111

**Summary**  
**Talking Points HCS CSSB 37(L&C)**

**Introduction**

The primary mission of the Alaska Division of Insurance is protect Alaskan insurance consumers. We oppose this legislation because:

1. The bill is simply unnecessary since the Patients Bill of Rights already addresses the issues raised by the physicians regarding quality of care.
2. It will increase the cost of health insurance and thereby the number of uninsured Alaskans.
3. It will discourage insurers from entering or remaining in the Alaska market.
4. Specific problems regarding health insurance benefits should be addressed by the legislature, not health care providers for the protection of insured Alaskans.

**Who the bill applies to:**

- Less than 20% or about 115,000 Alaskans are covered under insured health plans in Alaska. This means that the remaining 80% or about 500,000 people are either uninsured or covered under a health plan that is not subject to SB 37.
- This bill also does not apply to the federal employee program, State of Alaska, Medicaid, Medicare, Indian Health Service or other government payors as well as the largest private employer plans in the state, which are self-funded.
- This bill would harm those Alaskans that are most vulnerable, small Alaskan employers and individual families that purchase insurance through a health care insurer.

**Stated Need for this bill is Quality of Care**

1. Quality of care issues were addressed in the Patients Bill of Rights that became effective July 1, 2001.
2. Under the Patients Bill of Rights the provider contract must protect the ability of the provider to communicate openly regarding treatment options. There is strong and clear language that would prohibit insurers from imposing "gag orders" or discouraging a provider from discussing all appropriate options including higher cost options.
3. Why do insurers contract with providers? Primarily to get lower cost health care services for their insureds and to protect their insureds by assuring that a provider they contract with is properly licensed, has the proper credentials and maintains medical malpractice insurance.
4. Alaska has no HMOs and limited managed care. Health insurers in Alaska do not provide care. They are payors, not health care providers and they do not make medical decisions. What they decide is what services will be covered under an insurance contract with an Alaskan insured?

April 10, 2002

**Stated Need for bill related to FTC Action against Alaska Healthcare Network (AHN) in Fairbanks**

- Settlement agreement issued April 28, 2001
- AHN's actions:
  1. resulted in a wide range of payors unable to secure physician contracts and thus unable to do business in the Fairbanks area.
  2. restrained price and other competition among physicians in the Fairbanks area and thereby harmed consumers by increasing prices for physician services
  3. limited competition among health plans.
- This bill appears to try to use the State Action Doctrine to accomplish what the FTC found harmful to insurers and consumers.

**Physicians want to define medical necessity**

- An extremely small number of claims are denied on the basis of medical necessity During the first quarter of 2002 Blue Cross estimated that the percentage of claims denied due to medical necessity was roughly .02%. Aetna's number is also very low.
- The Alaska Patients Bill of Rights requires internal appeal and external appeal processes and sets forth timeframes for the reviews to provide protections to Alaskans specifically in regard to medical necessity decisions.
- As the chair is aware the definition of medical necessity was a contentious issue when the Patient's Bill of Rights was being drafted. The parties could not agree on a definition and there is no reason to believe that this bill would change that. The process in the Patient's Bill of Rights to allow these decisions to be made in a fair and objective manner by a third party through external review is the most appropriate way to handle this contentious issue for the benefit of insured Alaskans.

**Physicians assert that Insurers have Market Power and it is Increasing**

- In the last eight years the market share of the top three insurers in the group health market has not increased They were Blue Cross, Aetna and Principal Life.
- In fact it has declined by 5% during that period.

Therefore, IN ALASKA there has not been a significant change in the insurance market and insurers market power has not been increasing. This may be the case in the lower 48 particularly with HMOs but it is not the case in Alaska. **If there is a problem in the Alaska market the solution should be tailored to Alaska's market, not using some national model that doesn't even make sense for Alaska.**

**Physicians assert that the bill will attract new insurers to Alaska**

- Alaska has a small remote population which results in a small base over which to spread administrative costs making it difficult to be competitive and make money, this is the reason why insurers are not attracted to Alaska's market
- To put Alaska's market in perspective, Alaska's health insurance market represents less than .2% of the indemnity market in the U.S.
- The two insurers that pulled out of the individual and small group markets in 2000 left because their Alaska business was not profitable

April 10, 2002

- Insurers that the division has talked with about the bill have stated that allowing physicians to collectively negotiate with insurers would actually be a deterrent to entering and staying in the Alaska insurance market

**Physicians assert that insurers only allow referrals to contracted providers**

- The Patients Bill of Rights requires adequate referrals including referrals to providers not under contract with the insurer in order to receive medically necessary or specialty care
- The division reviews health insurance contracts to make sure that provisions for adequate referrals are made. If no contracted provider is available (reasonable distance from the insured) then the insurer must pay benefits to an available provider that is not under contract, as if the provider, were under contract.
- The division considers it a violation of the unfair trade practice to reimburse a provider not under contract at a lower rate if a provider under contract is not available. In fact the Division imposed a significant fine on an insurer that was reimbursing insureds at out-of-network rates when a network provider was not available in the service area of the insured.

**Physicians assert that insurers have a take it or leave it attitude**

- According the Kaiser Family Foundation comparison of physicians per 100,000 population Alaska ranks 49<sup>th</sup> at 186. The U.S. average is 285, Washington is 272, Oregon is 266. This fact indicates that there is relatively little competition between providers in Alaska with the result that insureds and insurance companies pay higher costs for health care services in Alaska and that providers have little incentive to contract with insurers to reduce their charges.
- In fact Health care costs in Alaska are approximately 30% higher than in Washington.
- Insurers in Alaska base their reimbursement on a usual, customary and reasonable (UCR) charge basis in compliance with Alaska regulations. If there are few providers providing a particular health care service, those providers essentially set the reimbursement rate for the health care service under a UCR system.
- In a non-competitive health provider market like Alaska, providers clearly do not need to contract in order maintain viable businesses. As the only provider in some cases they get patients regardless of whether they contract with an insurer.
- **Alaska is not a competitive market for health care providers and they are not at a disadvantage in negotiating contracts with health plans.**

**Exclusion of MEWAs**

The H L&C amendment to remove MEWAs from the definition was suggested the Alaska State Medical Association who is working with the Alaska Physicians and Surgeons on this bill. It is interesting to observe that the physicians that so stongly support this legislation do not want to be subject to its provisions.

**Conclusion**

The Division of Insurance whose primary mission is protect Alaskan consumers is opposed to this legislation since

April 10, 2002

1. The bill is simply unnecessary since the Patients Bill of Rights already addresses the issues raised by the physicians regarding quality of care
2. It will increase the cost of health insurance and thereby the number of uninsured Alaskans.
3. The bill will discourage insurers from entering or staying in the Alaska market.
4. Specific problems regarding health insurance benefits should be addressed by the legislature, not health care providers for the protection of insured Alaskans.

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HCS SB 37 (L&C)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title "An Act relating to collective negotiation by BRU Centralized Admin Svcs.  
physicians with health benefit plans.... Component Retirement & Benefits  
 Sponsor Senator Kelly  
 Requester House Judiciary Component No. 64

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This version of the bill does not include self-insured plans; it will not apply to the State plans. It will have no fiscal impact on the State.

Prepared by: Guy Bell, Director  
 Division: Retirement & Benefits  
 Approved by: Jim Duncan, Commissioner  
 Agency: Department of Administration

Phone 465-4471  
 Date/Time 4/10/02 1:40 PM  
 Date 4/10/2002



Principal Life  
Insurance Company

VIA FACSIMILE & REGULAR MAIL

April 10, 2002

The Honorable Norm Rokeberg  
Chair, House Judiciary Committee  
Alaska House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

RE Opposition to Collective Negotiation by Physicians, S.B. 37

Dear Representative Rokeberg:

I am writing on behalf of the Principal Financial Group to urge you and your committee members to oppose S.B. 37, a bill that permits collective negotiation by competing physicians with health benefits plans. The Principal is a leader in offering businesses, individuals and institutional clients products and services, including life and health insurance, retirement and investment services, and mortgage banking through its diverse family of financial service companies. We provide medical, dental, or vision insurance to over 10,000 Alaskans through Principal Life Insurance Company.

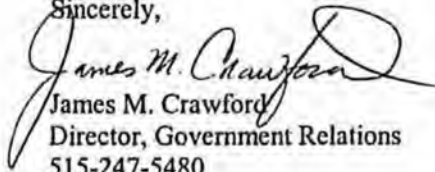
The Principal opposes this legislation because it will be very detrimental for consumers in your state. Competition is essential in order to provide quality health services on a cost-effective basis. Existing antitrust laws provide adequate flexibility for physicians, hospitals and health professionals to work together to organize networks and other provider delivery systems and distinguish themselves in ways that will benefit customers. However, S.B. 37 will ultimately cause health care costs to increase, while doing very little, if any, to improve the quality of health care for Alaskans.

Vigorous enforcement of federal and state antitrust laws is also essential if health plans are to enter new communities and continue to expand their presence by developing innovative, cost effective health care programs. Health care plans must be able to contract with quality providers without facing boycotts, price-fixing, artificial ethical restraints on the ability of doctors to enter into contracts, or local provider monopolies.

We strongly believe that enactment of S.B. 37 will diminish competition. In addition, any weakening of current antitrust laws will hamper efforts to control health care costs as health plans seek to contract with high-quality providers and reward care that is delivered both effectively and efficiently.

I hope you will consider our views and oppose this legislation. If you have any questions please call me or Martha Crist at 1-800-325-2532. Thank you.

Sincerely,

  
James M. Crawford  
Director, Government Relations  
515-247-5480  
[crawford.jim@principal.com](mailto:crawford.jim@principal.com)

JMC:klp

cc Judiciary Committee  
Merle Pederson

Jeff Tindall  
Martha Crist

Mailing Address: Des Moines, Iowa USA 50392-0001 (515) 247-5111



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To start the appeals process (formerly referred to as grievance), the member or provider/representative acting on behalf of the member submits an oral or written request asking for a change in the initial determination decision regarding:

- n Certification of health care services;  
(e.g., pre-certification, concurrent review, emergency services)
- n Claim payment
- n Plan interpretation
- n Benefit determinations
- n Eligibility

The member, or provider/representative on behalf of the member, has 180 days after receipt of a coverage decision to file an appeal, unless otherwise required by law.

Within five business days of receipt of a written appeal, an acknowledgment letter is sent. This letter states that the member, provider, and facility will receive a response no later than 30 days from receipt of the appeal.

For all types of appeals, if the member, provider, or facility submitted information, a comprehensive review letter explaining the reason for the appeal determination is sent no later than 30 days from receipt of the information. If no information was submitted, a comprehensive review letter explaining the reason for the denial is sent no later than 30 days from receipt of the appeal.

Expedited appeal determinations are made within 72 hours.

The customer resolution team reviews non-clinical denial appeals with assistance, if needed, from their supervisor. For cases involving denials of coverage based on medical necessity, the customer resolution team forwards the case to the appropriate clinical business unit for review. The specific steps in our decision-making process may include a review of the following:

- n Applicable policy or contract language
- n Claims and utilization management guidelines and policies

- n Relevant medical and dental records

The following may be involved in the appeals process:

- n Attending provider, if willing to cooperate
- n Benefit, risk policy, and claim personnel
- n Customer service professionals
- n Legal/compliance
- n Our medical or dental policy personnel
- n Our technology assessment and policy staff about investigational or other status
- n Providers in the same or similar specialty as the attending provider
- n Others, as appropriate to the issues raised by the appeal

If an appeal is denied, the written notice includes all specific reasons for the denial, including the clinical rationale, reference to applicable plan provisions, medical and dental information reviews, and any other applicable appeal procedures that may be available.

The member, or provider/representative on behalf of the member, has 180 days after receipt of a decision to request a Level II appeal.

If the member or provider/representative on behalf of the member is not satisfied with the outcome of the Level I appeal decision they may submit a written request for further appeal review. For clinical appeals the second level review is performed by a practitioner who typically treats the condition, performs the procedure, or provides the treatment under review and was neither involved in the original denial of coverage determination or Level I appeal. The practitioner must hold a current unrestricted license to practice medicine and be board certified by a specialty board of Medical Specialties.

If a Level II appeal is denied, the written notice includes all specific reasons for the denial, including the clinical rationale, reference to applicable plan provisions, medical and dental information reviews, and any other applicable appeal procedures that may be available.

Every business unit has procedures for documenting

the review process for each appeal.

Each regional customer resolution team records and tracks all appeal activity. Quarterly activity on appeals is monitored at the regional or local market level. These reports include: number of Level I and II appeals, member identifier (ID number), member state of residence, type of appeal, dates of receipt of appeal and other communications, levels of review for each appeal, timeframes of responses, final decision and providers involved, and turnaround time in days.

When the customer is claim fiduciary, we are not responsible for the appeal or final claim determination. Upon receipt of an appeal, we will review the appeal and any additional information that has not previously been reviewed to determine whether the denial decision should be changed. If an obvious error in the initial claim determination is discovered, or if the additional information justifies payment of the claim, the initial denial is reversed and the claim is processed for payment. If this is not the case, a letter is sent to the member informing him/her that the appeal must be sent to the customer/claim fiduciary for final determination. We provide to the customer/claim fiduciary, via a copy of the denial letter, the rationale for the decision. We are also responsible for supplying to the claim fiduciary, upon request, any additional information and all documentation (including medical reviews, whether by our own medical directors or outside consultants) relating to the decision.

In the event new information is received after the appeal has been sent to the customer, the information will be reviewed again by the person who made the initial denial determination, and by the appropriate medical director. The medical director's opinion would then be provided to the customer.

We also offer an external review program that may be elected as an additional service.

We have developed a process that gives members the option of requesting an objective and timely external review of certain coverage denials. Once our internal grievance resolution process is exhausted, members may appeal the decision if the coverage denial is based on our determination that the requested service or treatment is not medically necessary or is experimental or investigational, and the cost of the service or treatment at issue the member is financially responsible exceeds \$500. A member or physician, on the member's behalf, may request an external review within 60 days after the internal process has been exhausted.

An external review organization refers the case for review by a neutral, independent physician with appropriate expertise in the area in question. After all necessary information is submitted, the external reviewer decides within 30 days of the request. Expedited

reviews are available when a member's physician certifies that a delay in service would jeopardize the member's health. Once the review is complete, we abide by the decision of the external reviewer.

We have access to the following two external review organizations: HAYES Plus, Inc. and Maximus (formerly The Center for Health Dispute Resolution, a.k.a. CHDR). Both external review organizations use board-certified physician reviewers and take an evidence-based approach to reviewing coverage decisions.

**S B**

**8 1**



# Alaska State Legislature

SENATOR  
**GENE THERRIAULT**

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Senate District Q

Senate

## **Senate Bill 81**      **"An Act relating to the nonademption of property transfers; and providing for an effective date."**

**Sponsor:**      **Senator Gene Therriault**

### **Sponsor Statement**

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Senate Bill 81 corrects a section of law that was enacted by the Twenty-first Legislature regarding the rules of construction applicable to wills and other governing instruments.

Section 1 of House Bill 275, signed into law in July of 2000, changed a rule of construction that outlines what happens when a request in a will cannot be carried out. Section 2 of House Bill 275 was meant to take the same rule of construction being applied to wills and apply it to revocable trusts, which are commonly used as will substitutes. The language as adopted, however, was not correctly modified to apply to trusts and still refers to terms used in the drafting of wills. This bill clarifies the wording of AS 13.12.712 to apply it to revocable trusts.

## CSSS House Bill 275 (JUD)

Sponsor: Representative Gene Therriault

### Sponsor Statement

---

House Bill 275 further refines the Uniform Probate Code to continue enhancing the estate planning climate in the State of Alaska. By a nearly unanimous vote in both the House and Senate, in 1996 the Twentieth State Legislature passed a major overhaul of the laws that had governed decedent's estates, guardianships, transfers and trusts since 1972. The changes, based on the 1990 version of the national Uniform Probate Code, as subsequently amended in 1991 and 1993, were made to adapt our laws to the increasing complexity of family structure and investment alternatives that have developed in recent decades. House Bill 275 proposes further revisions to clarify ambiguities, simplify the probate procedure, and minimize tax consequences.

Much of the language is derived from statutes of other states and reflects a consensus of ideas agreed upon by Alaskan estate planning lawyers who have met informally over the last two years to discuss possible improvements.

#### Section 1

This section changes a very limited rule of construction contained in the 1993 Uniform Probate Code enacted by the Legislature in 1996.

"Nonademption of specific devises" pertains to the rules that apply when a person creating a trust or will (the decedent) designates that a specific person (specific devisee) is to receive a specific gift (specific devise), and the request is unable to be carried out, because, for example, the decedent lost or sold the gift. The question is whether, when a decedent designates a specific gift, the decedent means to give specifically *that gift* or whether the decedent would want the person to receive the *value* of the gift in the absence of the gift. Section 1 of HB 275 deals with the specific instance of nonademption when a decedent has sold the specific devise prior to the decedent's death and is still owed money for the property. Under current law, if the property were sold and the decedent received full payment before death, the payment would be distributed equally between all parties because the identity of the property, and thus its designation as a specific devise, is presumed to have been lost. If, however, the property were sold and the decedent did not receive full payment before death, the payment received after death and any promissory note would go to the specific devisee. Under HB 275 the payment received after the decedent's death and any promissory note

would not go to the specific devisee. Instead, the payment and any promissory note would be treated in the same manner as all other property that the decedent owned, and would be distributed equally among the beneficiaries. The rationale for the change is that the question of who ultimately receives the proceeds should not depend on whether the decedent received full or partial payment before death.

For example, Susan Smith provides in her will that her son David Smith is to receive the family farm and the remaining property in her estate is to be divided equally between David and his brothers and sisters. In this case, the family farm is the specific devise. Under current law, if Mrs. Smith sold the farm prior to her death and received cash for the transaction, at her death the money would be included in the estate and shared equally between all the children. If, however, Mrs. Smith sold the farm and received a seller-financed note because the buyer was unable to obtain sufficient third-party financing, when Mrs. Smith dies, David would receive the balance of the promissory note owed to Mrs. Smith, to the exclusion of his brothers and sisters. These sections change that result and would treat the promissory note in the same manner as all other property Mrs. Smith might own. The promissory note would be shared equally by all the children. As this is only a rule of construction that controls in the absence of other language, if Mrs. Smith really wants the balance of the promissory note to go to David to the exclusion of the other children, she could state this in her will or trust.

**Section 2, 13.12.712** makes the rules of construction under 13.12.606 applicable to trusts.

### **Section 2, 13.12.720**

This section relates to the new family-owned business deduction of Internal Revenue Code section 2057. Section 2057 provides an additional estate tax deduction for the owners of family businesses. This provision follows a similar statute found in Michigan law. It is meant to provide a correct tax result by having this deduction taken into account under a provision that defines the credit shelter trust so the deduction will not be wasted on a marital bequest. It is an important provision, especially in Alaska where so many businesses are family owned.

### **Section 3**

This section would change the amount of interest that is paid on a pecuniary devise, and would usually allow more time for the trust or will to be settled before interest begins accruing.

A pecuniary devise is a gift of a monetary amount, whether given outright or placed in trust for the beneficiary. Our present statute states interest must be paid on a pecuniary devise and begin one year after the appointment of a personal representative. Interest is set at the legal rate, which is presently 10.5%. This is unrealistically high and does not take into account that interest rates fluctuate. It can also shortchange other heirs. For instance, Mrs. Smith leaves \$100,000 in trust for the benefit of her grandchild and leaves the rest of her estate in equal shares to her children. If a federal estate tax return is required, and taxes must be paid, the \$100,000 cannot be distributed to the grandchild until the personal representative has received a closing letter from the IRS. Typically it might be 2-3 years after a decedent's death before the closing letter is received. Under present law the interest payment made to the grandchild will come out of the children's share of the estate, for no other reason than that federal bureaucracy makes it impossible for the estate to be distributed

within a year. This section changes the interest rate from 10.5 % to a variable rate taken verbatim from AS 45.45.010(b) and commonly referred to as the discount borrowing rate.

In addition, an adverse generation-skipping transfer tax can result if appropriate interest as defined by state law isn't paid in a timely manner. The principle consequence is that a trust that might otherwise be shielded from generation-skipping transfer tax may now be subjected to it. HB 275 changes the time at which interest begins to accrue from one year after a personal representative is appointed to two years after the decedent dies. This amendment allows the administrator more time to fund pecuniary bequests when the estate may still be in the process of being audited by federal tax authorities, which in turn gives the personal representative more time to settle the estate.

Our present statute comes from Uniform Probate Code Provision promulgated in 1963. Many states, such as Washington, do not require the payment of interest on pecuniary devises.

#### Section 4

This section also pertains to interest on a pecuniary devise. It adds a new section stating that no interest must be paid on a pecuniary marital bequest, but that a pro-rata portion of the income earned by the estate must be credited to the pecuniary marital bequest from the date of death. The provision requiring the payment of income comes from a similar provision found in Virginia law. This provision assures Alaskans that a trust established for the benefit of a spouse will meet the "all the income" requirement established by Internal Revenue Code sections 2056(b) and 2523(f), which is required of trusts qualifying for the marital deduction.

Although this section eliminates the requirement that any interest be paid on a pecuniary marital bequest, this section nonetheless meets the appropriate interest requirement set forth in the generation-skipping transfer tax regulations. Lastly, it should be noted that, under recently promulgated federal regulations governing the allocation of estate and trust income to separate shares, the payment of interest would not only increase the amount that must be paid to a pecuniary marital bequest, (a result one generally wants to avoid because more property will ultimately be subjected to estate tax), but unnecessarily creates taxable income for the family with no corresponding deduction to the estate.

#### Section 5

This section gives the personal representative more discretion over how to distribute the residuary estate assets to heirs, as long as it is "in the best interests of the distributees." For example, it would allow the personal representative to make non pro-rata distributions of assets. This means if an estate consists of two assets of equal value and there are two heirs, the personal representative could distribute one asset entirely to one heir and the other asset entirely to the other heir instead of having to make a distribution of 1/2 of each asset to each heir. This section allows the personal representative to use this method of funding even though the authority for doing so might be absent in the will or trust. As a result better tax planning is possible. This section follows North Carolina legislation.

## Section 6

This adds a new section to Chapter 36, Trust Administration. AS 13.36.153 is meant to provide a beneficial interpretation to a document that would otherwise produce a negative tax consequence in the limited circumstances addressed by this section. To achieve this, it limits distributions by a person who is not an independent trustee, (for example, a person who is both a trustee and beneficiary), by requiring an "ascertainable standard" relating to maintenance and support.

As an example, presume the settlor of a trust wants to benefit his spouse. He wants to name his spouse as trustee and also wants to give his spouse as many rights to the trust assets as possible without having the trust assets included in his spouse's gross estate for federal estate purposes. Internal Revenue Service regulations state that, in her position as trustee, the spouse can possess the right to distribute principal, provided that right is limited by an ascertainable standard." The regulations state an ascertainable standard will be found if the spouse is given the power to use principal for her "support in reasonable comfort." However, the regulations also provide that a right to use principal for "her comfort, welfare, or happiness" is not limited by the requisite standard. While most people would think there is no meaningful difference between "support in reasonable comfort" and "comfort, welfare, or happiness," the use of the latter phrase would create the unwanted consequence of having the trust principal included in the spouse's estate for federal estate tax purposes. Section 6 prevents inadvertently triggering this horrendous tax result by providing that, unless specifically stated in the trust document, the spouse would only have the right to distribute principal to herself in a manner limited to an ascertainable standard.

This section also provides that principal and income can not be used to discharge an individual legal obligation of certain trustees who are not independent trustees.

Furthermore, these provisions would apply to a trustee who is related or subordinate to the person who has the right to remove and replace a trustee. Were it not for these provisions an unintended and harmful tax result would occur. This section is taken principally from Colorado law.

## Section 7

In order to make favorable marital deduction and generation-skipping tax elections, it is necessary to be able to split a single trust into two trusts. The beneficial interests in each trust remain the same, the only difference is that the two trusts will be administered separately. This section provides that, under certain conditions, a trustee may divide a trust into two or more separate trusts as long as the resulting trusts are substantially identical in terms to the existing trust. This provision will allow a trustee to make favorable tax elections whether it relates to the marital deduction or to an allocation of generation-skipping transfer tax exemption. Trust instruments drafted subsequent to the changes in tax law that necessitate the ability of a trustee to divide trusts most likely include a provision stating the trustee can divide a trust. However, this provision might not exist in a trust created before or shortly after the change in the tax law. This section assists individuals affected by trusts lacking this provision. Typically the trustee making these elections will be the surviving spouse, who will also be named as the lifetime income beneficiary of the trust. Because the surviving spouse is also a beneficiary, she may benefit personally from the election. Subsection (a) states nonetheless a trustee can split the trust to make tax elections even though the trustee, in the trustee's dual status of beneficiary, might personally benefit from the election.

This section follows Washington legislation.

#### **Section 8**

This section states that certain asset distribution provisions applicable to the administration of a probated estate also apply to the administration of a revocable trust following the death of the settlor of the trust. The provisions that apply are: AS 13.16.540, Distribution; order in which assets appropriated; abatement. AS 13.16.545, Right of retainer. AS 13.16.550, Interest on general pecuniary devise. AS 13.16.560, Distribution in kind; valuation; method; and AS 13.38.030(a), a provision pertaining to when an income beneficiary becomes entitled to the income from a trust.

#### **Section 9**

This section relates back to Sections 6 and 7. Section 9 describes those individuals who for some unforeseen reason might want to elect out of these sections. While it can be fairly stated no one aware of the tax implications of electing out would do so, this section nonetheless defines who the "parties in interest" would be if a decision to opt out is made.

#### **Section 10**

This section provides that in those trusts where the spouse is entitled to all the income earned by a trust paid no less frequently than annually, and a marital deduction is claimed for the trust, the spouse has the power to require the trustee to make the trust assets produce income. This simple provision is a required statement in all trusts intending to qualify for the marital deduction. This section provides the required language for those trusts lacking this provision.

#### **Section 11**

This section ends the confusion over the ability to transfer real property to or from a trust in the name of the trust, whether or not the trustee is actually named on the deed. In addition, this section provides protection for good faith purchasers who purchase property held in the name of a trust.

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 81  
 (S) Publish Date: 2/26/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to the nonademption of BRU Civil Division  
property transfers; and providing for an effective date." Component Commercial Section  
 Sponsor Senator Therriault  
 Requester Senate Judiciary Committee Component No. 2211

**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						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

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)

SB 81 makes a technical correction to a drafting error which occurred in HB 275, passed in 2000. Generally, the purpose behind HB 275 and this bill is to make the law applicable to wills also applicable to trusts. It generally provides that a beneficiary of a trust who was supposed to get a particular piece of property will still get the equivalent to the property even though the property itself may no longer exist.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone 465-5370  
 Division Attorney General's Office Date/Time 2/21/01 3:31 PM  
 Approved by: Kathryn Daughhelee for Bruce M. Botelho, Attorney General Date 2/21/01  
 Agency Department of Law

For distribution information, call the Governor's Legislative Office

# STATE OF ALASKA

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

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ANCHORAGE, ALASKA 99501-5903  
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February 14, 2001

Honorable Gene Therriault  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

Re: SB 81

Dear Senator Therriault:

You have asked for a letter from the Department of Law regarding SB 81. SB 81 amends AS 13.12.712 to correct a problem discovered during the last legislative session when this particular statute was created. In particular, existing sections (b), (d) and (e) of AS 13.13.712 make no sense within the context of a trust. SB 81 appears to amend AS 13.13.712 to properly reflect the purpose for the entire statute, namely the nonademption of specific transfers in trusts.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By: *Mary Ellen Beardsley*  
Mary Ellen Beardsley  
Assistant Attorney General

MEB/

cc: Chrystal Smith, AGO, Juneau  
Deborah Behr, AGO, Juneau  
Shari Kochman, Office of the Governor

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Mailing Address:  
P.O. Box 24-2903  
Anchorage, AK 99524-2903

To: Rep. Rokeberg

Fax Number: 907 465-2040

Re SB 81

Date: 4/20/01

Time: 3:45

Pages (excluding this cover page) 1

Message: Requested explanation. I thought the explanation contained in the last 2 paragraphs had been incorporated in the Spensen Statement, but apparently not. Hope this helps.

## EXPLANATION FOR SB 81

House Bill No. 275, Section 1, as passed by the Twenty-First legislature in the Second Session amended AS 13.12.606(a). This section changed a very limited rule of construction contained in the 1993 Uniform Probate Code as enacted by the Legislature in 1996. Section 1 is a rule of construction applicable only to wills. A companion provision was found in Section 2 of this bill. Section 2 was meant to apply the same rule of construction as found in AS 13.12.606(a) to revocable trusts, which are commonly used as will substitutes. Section 2 created a new AS 13.12.712. The wording of that section, as now enacted into law, contains language which could only apply to individuals making wills and which could not apply to settlors of revocable trusts. This bill clarifies the wording of AS 13.12.712 to address revocable trusts.

This section provides for certain nonademption rules.

"Ademption" refers to a general rule of construction that applies when the person creating a trust (settlor) designates that a specific person is to receive a specific item of property, and the request is unable to be carried out, because, for example, the settlor has sold the property prior to death. The general rule is that the specific bequest is adeemed (extinguished) if the specific property does not exist at death of the settlor.

However there are a few instances when the specific bequest is not adeemed. AS 13.12.712 (a) describes those circumstances. These are when (1) the property has been condemned and a condemnation award for the taking of the property remains unpaid at death; (2) there has been an insured casualty claim and the insurance proceeds remain unpaid at death; (3) there is a specific bequest of a promissory note but the note is foreclosed upon prior to death. In each of these circumstances the beneficiary of the specific bequest would receive what remained of the specifically bequeathed property and any of the additional unpaid proceeds described above. Subsection (b) is meant to address a situation where a settlor makes a specific bequest but subsequently becomes incompetent and the trustee then proceeds to sell the specifically bequeathed property. In this instance the intended recipient of the specifically bequeathed property is entitled to other property of equal value.

**S B**

**8 2**



# LEGAL SERVICES

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

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

## MEMORANDUM

April 2, 2001

**SUBJECT:** CSSB 82(STA) (2001 Revisor's Bill)

**TO:** Representative Norman Rokeberg, Chair  
House Judiciary Committee

**FROM:** Pamela L. Finley *PLF*  
Revisor of Statutes

The following is a sectional analysis of CSSB 82(STA), the 2001 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

... shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

**Sections that delete, repeal, or update obsolete provisions:** Section 24 repeals provisions that have become obsolete through other legislative action .

**Sections that correct errors or oversights:** Sections 1 - 4, 6 - 9, 11 - 15, and 17 - 23 correct errors or oversights.

**Sections that improve the form or substance of the law:** Sections 5, 10, and 16 propose amendments to improve the form or substance of the statutory law of Alaska.

## SECTIONAL ANALYSIS

Section 1 corrects an erroneous cross-reference in AS 06.05.005(a)(3). The statute currently referenced (AS 06.05.345) concerns the articles of incorporation, whereas AS 06.05.344 addresses approvals of state banks.

Section 2 changes the definition of "minor" in AS 13.06.050(29) (the Uniform Probate Code) from those persons 19 years of age and older to those persons 18 years of age and older. The uniform act indicates that states adopting it should insert the age of majority in the definition of "minor". When AS 13.06.050 was enacted in 1972, the age of

majority was 19. However, the age of majority (established in AS 25.20.010) was changed in 1977 from 19 years to 18 years of age. At that time, the definition of "minor" in AS 13.06.050 should also have been amended but was not. This bill section makes that change.

Section 3 corrects an error in a spanned reference exempting aquatic farms and hatcheries from certain other statutes relating to fisheries. Chapter 145, SLA 1988 enacted AS 16.40.100 - 16.40.199, which authorize and regulate aquatic farms and hatcheries. That same act enacted AS 16.05.930(g), which exempted activities authorized by a permit under AS 16.40.100 or 16.40.120 from AS 16.05.330 - 16.05.720. (AS 16.05.330-16.05.430 concern sport fishing and hunting and AS 16.05.440 - 16.05.720 concern commercial fishing.) However, in another 1988 act, AS 16.05.720 was repealed and replaced by AS 16.05.722 and 16.05.723, which meant that the end of the spanned reference in AS 16.05.930(g) became incorrect. The 1993 revisor's bill (sec. 5, ch. 6, SLA 1993) corrected this error by substituting "AS 16.05.723" for "AS 16.05.720". Unfortunately, sec. 5, ch. 6, SLA 1993 also changed the beginning of the spanned reference from "AS 16.05.330" to "AS 16.05.440". In all likelihood, this error was caused by duplicating the amendment in sec. 3, ch. 6, SLA 1993, which amendment correctly began with "AS 16.05.440" and also changed "AS 16.05.720" to "AS 16.05.723". At any rate, the sectional analysis of the 1993 revisor's bill makes it clear that the only change intended was the change from "AS 16.05.720" to "AS 16.05.723". To return the text to the language as enacted, this bill section reinstates "AS 16.05.330" at the beginning of the spanned reference in AS 16.05.930(g). For reasons explained in the attached memo of George Utermohle, this amendment should not have any practical effect on fish and game licensing.

Section 4 corrects an error in ch. 67, SLA 1992 by substituting "fee paid by the client" for "fee paid the client" in AS 21.27.560(a). A fee paid the client would be an illegal rebate. This correction was requested by the Department of Law.

Section 5 expands a spanned reference in AS 21.42.500 so that more sections can be easily added to AS 21.42 in the future. It also has the effect of supplying a definition of "health care insurer" and "health care insurance plan" for AS 21.42.400, which was added last year.

Section 6 amends AS 21.54.160(4)(A) to give the correct term as used in federal law and to correct a typographical error in the reference to the federal citation.

Section 7 corrects a cross-reference to federal law in AS 21.56.050(d)(3). Currently the statute refers to a federal law (42 U.S.C. 300) that governs grants for family planning services. The federal law that defines and sets requirements for health maintenance organizations is 42 U.S.C. 300e and therefore AS 21.56.050(d)(3) is amended to reference 42 U.S.C. 300e. This amendment corrects an error in ch. 39, SLA 1993.

Section 8 amends AS 23.40.215(c) to conform to the change made to AS 23.40.215(b) by ch. 15, SLA 2000. Before the 2000 amendment, subsection (b) provided for submission to, and approval or disapproval by, the legislature of the monetary terms of a collective bargaining agreement subject to the Public Employees' Retirement Act. Subsection (c) exempted agreements between school districts or REAAs and their employees from the requirement of legislative approval. Chapter 15, SLA 2000 deleted the "approval" provision from subsection (b) and amended the submission provision. However, chapter 15, SLA 2000 did not amend subsection (c), which still exempts the agreements of school districts and REAAs from "approval by the legislature." Since subsection (b) no longer requires legislative approval, subsection (c) doesn't make much sense. Based on the assumption that subsection (c) was intended to exempt school districts and REAAs from subsection (b)'s submission and approval provisions, this bill section amends subsection (c) to refer to submission to the legislature rather than approval by the legislature.

Section 9 corrects a cross-reference in AS 24.45.041(a)(7). There is no definition of "spousal equivalent" in AS 39.50.030(g); the definition of "spousal equivalent" that applies to AS 39.50.030(g) is found in AS 39.50.200(a), and so the cross-reference is changed accordingly. This corrects an error in ch. 74, SLA 1998.

Section 10 changes "section" to "subsection" in AS 38.04.900(c) in order to make the language more accurate. The term "interested person" appears only in subsection (c).

Section 11 changes "section" to "subsection" in the last sentence of AS 38.05.810(i). The last sentence authorizes sales for less than appraised market value. Because the title of the law that enacted subsection (i)---ch. 97, SLA 1992---referred to port authorities rather than land disposals in general, the last sentence of subsection (i) could legally apply only to the port authority provisions of subsection (i). This amendment makes that clear by correcting the error in ch. 97, SLA 1992.

Section 12 amends AS 38.05.821(a) to give the full proper citation in a reference to a federal law.

Sections 13 and 14 correct an error in the Alaska Coordinate System of 1927. As originally enacted, AS 38.20.060(10) did not contain the "as" that these amendments delete. In ch. 152, SLA 1984, when AS 38.20.060(10) was amended and duplicate language was added as (b)(10), the "as" appeared, although it was not shown as being inserted as new language. These two bill sections correct that typographical error by deleting the "as" that was erroneously added in 1984.

Section 15 corrects an error in AS 38.35.120(a)(1) as amended by ch. 56, SLA 2000. Before amendment by ch. 56, AS 38.35.120(a)(1) consisted of three parts. First it required certain lessees to assume the duties of a common carrier; secondly it provided a limited exemption from the common carrier provision; and thirdly it required the lessee to refrain from unjust or unreasonable discrimination and to take the oil or natural gas

that the Regulatory Commission of Alaska shall find to be reasonable in the lessee's performance of its duties as a common carrier. Chapter 56 added another limited exemption from the common carrier provision, but it was inserted at the end, so that the prohibition against unreasonable discrimination as a common carrier ended up in the paragraph providing the exception from the common carrier provision. This bill section moves the language so that the two exceptions from the common carrier provision are next to each other.

Section 16 defines "commissioner" as the commissioner of natural resources and defines "director" as the director of the division of lands for the purposes of AS 38.95.075 and 38.95.080, which relate to trapping cabin permits. Although the division of lands is currently administering these statutes, the statutes themselves do not contain applicable definitions of the terms "commissioner" and "director". This bill section supplies those definitions.

Section 17 amends the last sentence of AS 40.15.050 so that the verb ("are") agrees with the subject ("streets, alleys, or thoroughfares"). The verb was correct in the 1953 enactment, but incorrect in the 1962 codification. The other changes are purely editorial.

Section 18 changes a reference to the "division of land and water management" to the "division of lands," which is the correct name under AS 38.05.005.

Section 19 corrects a typographical error in ch. 34, SLA 1990 in the definition of "riparian area" in AS 41.17 (commonly known as the Forest Practices Act). Without this amendment, a literal reading of the term "riparian" (which commonly means "pertaining to the bank of a river") would include the river itself as well as shores or banks of rivers that were not necessarily fish water bodies. The amendment in this bill section makes the definition consistent with other related provisions of the Forest Practices Act, especially AS 41.17.118 and 41.17.119. Although the error is found in the original Governor's bill, the references in the Governor's transmittal letter to protection of "fish streams" and "streamside areas" also suggest that "or" should have been "of". See 1989 House Journal 1476 (May 3, 1989).

Section 20 corrects a minor grammatical error in AS 43.40.100(4), which is the definition of "user" in the motor fuel tax statutes. The word "either" is removed because it should be used only when "one of two" is intended, and there are three possible ways of being a "user" under AS 43.40.100(4).

Section 21 corrects an inaccurate cross-reference in AS 44.81.245(9). The equitable permit owner's right to nominate a person to assume the loan is established by AS 44.81.250(c), not AS 44.81.245. This corrects an error in ch. 34, SLA 1996.

Section 22 corrects an error in a cross-reference in AS 44.85.320(a) (Alaska Municipal Bond Bank Authority) by changing "appointed under this section" to "appointed under AS 44.85.310". AS 44.85.310, not AS 44.85.320, authorizes appointment of a trustee.

This error occurred in a floor amendment to HB 75 (which became ch. 79, SLA 1975) in which a section was deleted and following sections renumbered, but internal references to sections were not conformed. In addition, paragraph (6) is amended so that it fits the structure of the introductory language.

Section 23 corrects an error in ch. 113, SLA 2000, last year's Uniform Commercial Code revision. The amendment removes a reference to "(c) of this section" from AS 45.29.702(b). There is no "(c) of this section". What was subsection (c) in the model act became a temporary law section---section 34, ch. 113, SLA 2000. (It provides that the Act does not affect actions, cases, or proceedings commenced before the effective date of the Act.) Section 25 makes this correction effective July 1, 2001 because that is the effective date of AS 45.29.702.

Section 24 repeals AS 08.20.180(b), which provides for four-year renewals of a chiropractor's license. This corrects an omission in ch. 94, SLA 1987, which amended AS 08.01.100(a) to require biennial renewals for licenses covered by AS 08.01. Chapter 94, SLA 1987 made conforming amendments in many statutes, but omitted AS 08.20.180(b). The regulation covering these licenses (12 AAC 02.150) specifies biennial renewals, so this repeal should not affect existing practice. This section also repeals AS 14.43.310(b)(2), AS 18.65.250, AS 39.50.200(b)(17), and AS 44.19.110 - 44.19.122, all of which relate to the Governor's Commission on the Administration of Justice. This commission was established as a conduit of federal money and an entity to administer local efforts under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. However, the underlying federal provisions were omitted in the 1984 general revision enacted in P.L. 98-473, 98 Stat. 2077, and therefore no longer exist. (See explanatory note following 42 U.S.C.S. 3711.) The Department of Law requested that AS 44.19.110 - 44.19.122 be repealed since the commission no longer exists. AS 18.65.250 is repealed because it authorizes receipt of money from the commission and neither the money nor the commission exists. AS 14.43.310(b)(2) is repealed because it establishes an advisory committee for awarding the Carroll L. "Butch" Swartz Memorial Scholarship, the advisory committee to consist of three members of the defunct commission. (Although the Department of Law indicated that the Carroll L. "Butch" Swartz Memorial Scholarship has not been funded, other references to that scholarship are left in the statutes since future funding is always possible; only the advisory committee is repealed.) A copy of the statutes to be repealed is attached.

Section 25 makes section 23 effective July 1, 2001, the effective date of AS 45.29.702.

Section 26 gives the rest of the act an immediate effective date.

**TEXT OF REPEALED STATUTES**

AS 08.20.180(b):

(b) License renewal fees are due every four years.

AS 14.43.310(b)(2):

(2) three members of the Governor's Commission on the Administration of Justice selected annually by the commission from among its membership, for the Carroll L. "Butch" Swartz memorial scholarship;

AS 18.65.250:

Sec. 18.65.250. Financial assistance.

(a) The Governor's Commission on the Administration of Justice has the authority to assist political subdivisions and police departments in meeting the costs involved by extending financial assistance for travel, per diem, tuition, and other costs.

(b) Only those political subdivisions and police departments complying with AS 18.65.130 - 18.65.290 are eligible for financial assistance authorized under AS 44.19.116. This subsection applies only to those funds made available for providing minimum police standards.

AS 39.50.200(b)(17):

(17) Governor's Commission on the Administration of Justice (AS 44.19.110);

AS 44.19.110:

Sec. 44.19.110. Establishment of the commission. The Governor's Commission on the Administration of Justice is established in the Office of the Governor.

AS 44.19.112:

Sec. 44.19.112. Membership of the commission. The commission is composed of 13 members, to include the following: the attorney general, the commissioner of public safety, the commissioner of health and social services, the chief justice of the supreme court, the public defender, one member from each house of the legislature, four other residents of the state chosen by the governor so as to give reasonable geographic and urban-rural balance, including representation from the major ethnic groups of the state, from units of local government and from other groups concerned with the administration of justice in the state, and two other residents of the state representing citizens and professional and community organizations related to delinquency prevention. Members serve at the pleasure of the governor.

AS 44.19.114:

Sec. 44.19.114. Compensation and per diem. Members of the commission receive no salary for their service on the commission but are entitled to per diem and travel expenses authorized by law for boards and commissions.

AS 44.19.116:

Sec. 44.19.116. Grants and other aid. The commission may apply for, receive and utilize grants, gifts, and other funds and aids for the execution of its programs. Grants, gifts, and other funds may be received from the federal government and from other public and private sources.

AS 44.19.118:

Sec. 44.19.118. Commission as state planning agency. The commission shall act as the state planning agency under the Federal Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

AS 44.19.120:

Sec. 44.19.120. Duties of state planning agency.

(a) As the state planning agency, the commission has the responsibility of coordinating and planning in Alaska, the federal, state, and local efforts under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(b) The commission is authorized to investigate state and local needs and seek funding for

(1) development of more effective crime prevention programs and techniques;

(2) development of programs to aid the courts in the field of criminal adjudication;

(3) development of programs to rehabilitate offenders and prevent recidivism.

(c) The commission shall assist the planning and coordination of criminal justice personnel in the Departments of Law, Health and Social Services, and Public Safety, the public defender's office, and other appropriate agencies in a manner which projects the necessary and advisable allocation, utilization, qualifications, and coordination of criminal justice personnel at the state and local level.

(d) In order to facilitate interagency communication and cooperation, the commission shall hold interagency conferences for the discussion and planning of law enforcement, crime prevention, criminal adjudication, and offender rehabilitation programs and personnel for the Departments of Law, Health and Social Services, and Public Safety, the public defender's office, and the court.

AS 44.19.122:

Sec. 44.19.122. Staffing.

(a) The attorney general may, with the approval of the governor, select a director for the execution of the program entrusted to the commission by AS 44.19.116 - 44.19.120.

(b) The director may employ personnel necessary to carry out functions assigned by this chapter. Notwithstanding any other provisions of law, personnel appointed under this section, with the exception of the director, are members of the classified service as set out in AS 39.25.100.

**MEMORANDUM**

November 21, 2000

**SUBJECT:** Aquatic Farming Triennial License  
**TO:** Pamela Finley  
Revisor of Statutes  
**FROM:** George Utermohle  
Legislative Counsel

You have asked whether a person who operates an aquatic farm or hatchery under AS 16.40.100 - 16.40.199 is subject to the aquatic farming triennial license under AS 16.05.340(a)(14).

The answer to your question appears to be no.

A person may not operate an aquatic farm or hatchery for shellfish or aquatic plants or obtain stock for an aquatic farm or hatchery without first obtaining the appropriate permit issued under AS 16.40.100 or 16.40.120, respectively, by the commissioner of fish and game.

AS 16.05.340(a)(14) establishes an aquatic farming triennial license.<sup>1</sup> The fee for the license is \$400. On its face, the triennial aquatic farming license seems applicable to anyone engaged in aquatic farming. However, there is no statutory requirement that a person who has an aquatic farm or hatchery permit under AS 16.40.100 - 16.40.199 must obtain the aquatic farming triennial license.

AS 16.05.340(a) establishes numerous licenses, permits, and tags, and sets out fees for those licenses, permits, and tags. Except for a few notable exceptions<sup>2</sup>, AS 16.05.340(a) does not impose a requirement that a person must obtain any of those licenses, tags, or permits. There is no provision in AS 16.05.340(a) that requires a person to obtain the aquatic farming triennial license. Unless there is a separate requirement for an aquatic farming triennial license outside of AS 16.05.340(a), a person should not be required to obtain the license.

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<sup>1</sup> AS 16.05.340(a)(14) states:  
(14) Aquatic farming triennial license..... 400

<sup>2</sup> AS 16.05.340(a) does contain requirements that a person must obtain big game tags, waterfowl conservation tags, and anadromous king salmon tags before taking certain big game, waterfowl, and anadromous king salmon.

Under AS 16.05.330(a)(3)<sup>3</sup> a person who is engaged in the farming of fish, fur, or game must have the appropriate license in the person's actual possession, unless an exemption is permitted under AS 16.05. This provision would apparently require a person who operates an aquatic farm for purposes of farming fish to have the appropriate licenses or tags. The terms "aquatic farming" and "fish farming" are largely synonymous in referring to the cultivation of aquatic life for human uses, except that "aquatic farming" is probably broader in that it may encompass farming of aquatic plants in addition to farming of fish. Absent a more specific provision in statute, the requirement that a person must possess a fish farming license in order to engage in fish farming is probably satisfied by obtaining an aquatic farming triennial license.

If it were not for the definition of "fish or game farming" under AS 16.05.940(15)<sup>4</sup>, a person who operates an aquatic farm or hatchery for shellfish would probably have to obtain the aquatic farming triennial license in order to satisfy the requirement of AS 16.05.330(a)(3). However, for purposes of AS 16.05.330(a), "fish" does not include shellfish as defined under AS 16.40.199. Thus a person who operates an aquatic farm or hatchery for shellfish is not subject to the license requirement of AS 16.05.330 and is not required to obtain a separate license, such as the aquatic farming triennial license under AS 16.05.340(a)(14), in order to engage in aquatic farming of shellfish.

Similarly, there is apparently no requirement that an aquatic farmer engaged in farming aquatic plants is required to obtain the aquatic farming triennial license. The requirement under AS 16.05.330(a)(3) that a person engaged in fish farming must possess the appropriate license does not apply because fish farming does not include farming of aquatic plants.

AS 16.05.330(a) apparently applies only to a fish farmer engaged in the farming of finfish (i.e., fish other than shellfish as defined under AS 16.40.199). A finfish farmer

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<sup>3</sup> AS 16.05.330(a)(3) states:

(a) Except as otherwise permitted in this chapter, without having the appropriate license or tag in actual possession a person may not engage in

...

(3) the farming of fish, fur, or game; or

...

<sup>4</sup> AS 16.05.940(15) states (emphasis added):

(15) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water that is completely enclosed by a generally escape-proof barrier; **in this paragraph, "fish" does not include shellfish, as defined in AS 16.40.199;**

could obtain the aquatic farming triennial license under AS 16.05.340(a)(14) in order to satisfy the licensing requirement imposed by AS 16.05.330(a)(3).

In 1988, when the legislature authorized aquatic farming under AS 16.40, the legislature took steps to assure that persons engaged in aquatic farming were not subject to licensing under AS 16.05.330(a) or 16.05.340(a). First, the legislature granted an exemption from several provisions of AS 16.05 to persons engaged in aquatic farming under AS 16.40. Among the statutes made inapplicable to aquatic farms authorized under AS 16.40 were AS 16.05.330 and 16.05.340. See, sec. 8, ch. 145, SLA 1988 which enacted AS 16.05.930(g).<sup>5</sup> Second, the legislature amended the definition of "fish or game farming" under AS 16.05.940 to exclude shellfish as defined under AS 16.40.199. See, sec. 9, ch. 145, SLA 1988.

The only reason that there is now any question whether an aquatic farmer must obtain an aquatic farming triennial license is due to actions taken by the legislature in 1990 and 1993. The first legislative action amended AS 16.05.340(a)(14) to convert the fish farming biennial license into the aquatic farming triennial license. See, sec. 10, ch. 211, SLA 1990. When AS 16.05.340(a)(14) was amended in 1990, aquatic farms under AS 16.40 were exempt from the renamed license because of the exemption granted to aquatic farms and hatcheries by AS 16.05.930(g).<sup>6</sup> See, footnote 5, for the 1990 text of AS 16.05.930(g). The aquatic farming triennial license under AS 16.05.340(a)(14) and the fish farming license requirement under AS 16.05.330(a)(3) were two provisions expressly made inapplicable to persons who held aquatic farm or hatchery permits under AS 16.40. Also in 1990, the definition of "fish or game farming" (applicable to AS 16.05) excluded shellfish from the definition of "fish" and the fish farming licenses requirement under AS 16.05.330(a)(3) was inapplicable to farming of aquatic plants.

If the legislature had intended the new aquatic farming triennial license to apply to persons who held aquatic farm and hatchery permits under AS 16.40 in 1990, the legislature would have to (1) amend the exemption granted to aquatic farms under AS 16.05.930(g), (2) amend the definition of "fish or game farming" under AS 16.05.940(15) to include shellfish as defined under AS 16.40.199, and (3) amend the

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<sup>5</sup> In 1990, AS 16.05.930(g) stated:

(g) AS 16.05.330 - 16.05.720 do not apply to an activity authorized by a permit issued under AS 16.40.100 or 16.40.120, or to a person or vessel employed in an activity authorized by a permit issued under AS 16.40.100 or 16.40.120.

<sup>6</sup> The amendment of the biennial fish farming license into the triennial aquatic farming license in 1990 is a virtual nullity. At that time the triennial aquatic license was not applicable to aquatic farming of shellfish and aquatic plants due to AS 16.05.930(g) and other provisions. Also, the license was not applicable to aquatic farming of finfish because earlier during that session of the legislature, the legislature had enacted a permanent ban on finfish farming. AS 16.40.210; Ch. 91, SLA 1990.

licensing requirement under AS 16.05.330(a)(3) to include aquatic plants. The legislature did none of these things, thus I must conclude that in 1990 the aquatic farming triennial license was not intended to apply to aquatic farms and hatcheries subject to AS 16.40.

The second action taken by the legislature complicates the issue of whether operators of aquatic farms and hatcheries must obtain an aquatic farming triennial license but does not change my conclusion. In 1993, as part of the Revisor's Bill for that year, the legislature adopted an amendment to AS 16.05.930(g) that had the effect of eliminating the exemption from AS 16.05.330 - 16.05.430 originally granted to aquatic farmers in 1988.<sup>7</sup> Sec. 5, ch. 6, SLA 1993. The amendment made aquatic farmers subject to applicable provisions of AS 16.05.330 - 16.05.430. However, as discussed above, there are no provisions of AS 16.05.330 - 16.05.430 that make the fish farming requirement of AS 16.05.330(a)(3) or the aquatic farming triennial license under AS 16.05.340(a)(14) applicable to aquatic farms and hatcheries under AS 16.40. More than the elimination of the exemption from AS 16.05.330 - 16.05.430 is necessary to subject aquatic farms and hatcheries to the aquatic farming triennial license. AS 16.05.330(a) and 16.05.940(15) would also have to be amended in the manner described above.<sup>8</sup> The legislature has not made these additional changes.

**It is my conclusion that an aquatic farming activity authorized by a permit issued under AS 16.40 is not subject to the aquatic farming triennial license and that a**

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<sup>7</sup> AS 16.05.930(g) currently reads:

(g) AS 16.05.440 - 16.05.723 do not apply to an activity authorized by a permit issued under AS 16.40.100 or 16.40.120, or to a person or vessel employed in an activity authorized by a permit issued under AS 16.40.100 or 16.40.120.

<sup>8</sup> There is a possibility that the elimination of the exemption from AS 16.05.330 - 16.05.430 that was originally contained in AS 16.05.930(g) may have been a mistake. First of all, the Revisor's Bill is intended to cure technical errors and oversights in the statutes that cannot be fixed editorially and require legislative action to fix. The Revisor's Bill is not intended to address policy issues such as whether aquatic farms should be exempt from the licensing provisions of AS 16.05.330 - 16.05.430. The Sectional Analysis of the bill prepared by the Revisor of Statutes stated that AS 16.05.930(g) was amended to "correct internal references that should have been changed when AS 16.05.720 was repealed and AS 16.05.722 and 16.05.723 were added by ch. 46, SLA 1988." House Journal Supplement, No. 4, Alaska State Legislature, February 17, 1993, page 2. This explanation for the change to AS 16.05.930(g) does not make any mention of making a substantive change to the exemption granted by that subsection. Instead it refers only to a technical change made necessary by a wholly unrelated amendment to provisions related to penalties for commercial fishing violations. Thus the elimination of the exemption from the licensing provisions of AS 16.05.330 - 16.05.430 that was granted to aquatic farms and hatcheries under AS 16.05.930(g) may have been an unintended typographical or editorial error.

Representative Norman Rokeberg, Chair  
April 2, 2001  
Page 12

**person cannot be required to obtain an aquatic farming triennial license for an activity covered by a permit issued under AS 16.40.100 - 16.40.199.**

It may be useful to amend AS 16.05.930(g) to provide that AS 16.05.330 - 16.05.430 do not apply to activities authorized under AS 16.40.100 - 16.40.199 so that in the future the exemption is clear without having to resort to interpretation of several different statutes to determine whether aquatic farms and hatcheries under AS 16.40 are required to obtain the aquatic farming triennial license.

If I may be of further assistance, please advise.

PF: glc  
01-292.glc

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSB 82(STA)  
(S) Publish Date: 3/7/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title: 2001 Revisor's Bill BRU: \_\_\_\_\_  
Sponsor: RIs/Legislative Council Component: \_\_\_\_\_  
Requester: Senate State Affairs Component Number: \_\_\_\_\_

**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						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: SENATE STATE AFFAIRS COMMITTEE Phone 465-4522

Senator: /s/ SENATOR THERRIault Date 2/20/01  
Committee Chair

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 16, 2001

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200  
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P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

The Honorable Norman Rokeberg, Chair  
House Judiciary Committee  
Capitol Building, Room 118  
Juneau, AK 99801

Re: CSSB 82(STA) (2001 Revisor's Bill)

Dear Representative Rokeberg:

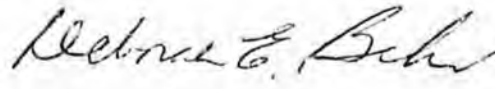
We appreciate the opportunity to provide comments on CSSB 82(STA) (2001 revisor's bill).

We believe that the bill makes important technical improvements to Alaska law. We have detected no technical problems with the bill.

If you need more information, please let me know.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Deborah E. Behr  
Assistant Attorney General

DEB:jf

cc: Shari Kochman, Deputy Legislative Director, Office of the Governor  
Chrystal Smith, Legislative Contact, Dept. of Law  
Pam Finley, Revisor of Statutes, Legislative Affairs Agency

**S B**

**g g**





# ALASKA STATE LEGISLATURE

Senator Rick Halford

*President of the Senate*

*While in Session:*  
State Capitol  
Juneau, AK 99801-1182  
907-465-4958

*While in Interim:*  
P.O. Box 670190  
Chugiak, AK 99567  
907-694-4958

## Sponsor Statement Senate Bill 99

"An Act relating to the DNA identification registration system."

In 1995, Alaska passed House Bill 27, establishing a DNA database as a tool to help the law enforcement community identify perpetrators of violent crimes, especially sexual offenders. Senate Bill 99 will expand the database to include samples from convicted burglars.

DNA evidence has proven to be very effective for identifying, capturing and convicting repeat criminals. All 50 states have laws requiring DNA testing of convicted sex offenders, and sharing information with other states has helped Alaska make convictions on cases that have not been solved for years.

Alaska's current statute requires testing of anyone convicted of a felony against a person. During debate on the original legislation, there was discussion of including burglary. At the time, there were no definitive studies showing a connection between burglary and consequent violent offenses, so House Bill 27 did not require testing for burglars.

As the databases expanded, statistics have shown there is a relationship between burglary and violent crimes. A recent Florida study shows that 52% of murderers and sex offenders had a previous burglary conviction. In Virginia, the first state to establish a DNA database, their experience has shown that more than half of the DNA matches from crime scenes of rapes and murders are from samples of convicted burglars. At this time, 25 states include convicted burglars in their DNA registries.

By testing convicted burglars, we will allow law enforcement officials to stop a violent criminal the first time, before other innocent people are victimized. I appreciate your support of this legislation.

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: SB 99  
(S) Publish Date: 3/14/01

Revision Date/Time (Note if correction): 3/9/01 Dept. Affected: Administration  
Title: "An Act relating to the DNA identification registration system." BRU: Legal and Advocacy  
Sponsor: Senator Halford Component: Public Defender  
Requester: (S) Judiciary Component Number: 1631

**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						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>

<b>CAPITAL EXPENDITURES</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

See attached sheet.

Prepared by: Barbara Brink, Director Phone (907) 334-4414  
Division: Public Defender Agency Date/Time 03/09/01  
Approved by: Jim Duncan, Commissioner Date 3/9/01  
Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

This bill adds burglary or a felony attempt to commit burglary to the list of crimes for which, after conviction, a defendant can be required to give a DNA sample. This bill will most likely have fiscal impact on the Public Defender Agency. Failing to comply with a valid request to provide a DNA sample is already a Class A misdemeanor. See A.S. 11.56.760. The Agency is likely to be appointed to represent people accused of this crime.

Currently the Public Defender Agency has few of these cases. If the sampling program becomes more widespread with the inclusion of additional crimes and more samples being requested, more refusals will undoubtedly be prosecuted. In that case there could be a significant fiscal impact on the Public Defender Agency. Over 680 people were arrested for burglary in Alaska in 1999 (Crime Reported in Alaska, 1999, Department of Public Safety).

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 99  
(S) Publish Date: 3/1/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Dept. of Public Safety  
Title: An Act relating to the DNA identification BRU: AST-Detachments  
registration system Component: AST-Detachments  
Sponsor: Senator Halford  
Requester: Senate Judiciary Committee Component Number: 2325

## 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						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

## FUND SOURCE (Thousands of Dollars)

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

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)

This bill is not expected to have a fiscal impact.

Prepared by: Lt. Steve Dunnaqan Phone (907)269-4532  
Division: Alaska State Troopers Date/Time 2/26/01 12:00 AM  
Approved by: Commissioner Glenn G. Godfrey Date 2/26/01  
Agency: Department of Public Safety

For distribution information, call the Governor's Legislative Office

Page 1 of 1

**COMMITTEE COPY**

(Rev 2/7/2001 OMB)

**ALASKA NETWORK ON  
DOMESTIC VIOLENCE AND SEXUAL ASSAULT**

130 Seward, Rm 209  
Juneau, Alaska 99801

(907) 586-3650 ph  
(907) 463-4493 fx

To: Senator Halford  
From: Lauree Hugonin *LH*  
Date: 3/20/01  
Re: Support for SB99

The Alaska Network on Domestic Violence and Sexual Assault (Network) is the statewide coalition of community domestic violence and sexual assault intervention programs for Alaska. Twenty full member and five supporting member programs provide shelter, advocacy, crisis intervention, and, information and referral services to victims seeking assistance in ending the violence being perpetrated against them. The Network works to promote institutional and systemic change necessary to end violence against women.

**The Network supports the passage of SB99.** SB99 will allow the department of public safety to collect for inclusion into the DNA registration system a blood sample, oral sample, or both from a person convicted of burglary or a felony attempt to commit burglary. Studies conducted in the lower 48 have shown that a high percentage of people who commit burglaries also commit sexual assault.

On a per capita basis, Alaska continually ranks in the top three of the nation with the highest rate of sexual assault. Entering DNA into the database from people who are *convicted* of burglaries when the correlation to sexual assault is strong makes sense. The database affords law enforcement the opportunity to quickly identify a suspect as well as to quickly drop someone from the list of suspects if the dna does not match samples in the database. This tool will hopefully assist in the successful resolution of many of the sexual assault cases in the state.

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# STATE OF ALASKA

## DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 111200  
JUNEAU, ALASKA 99811-1200  
PHONE: (907) 465-4322  
FAX: (907) 465-4362

March 19, 2001

The Honorable Rick Halford  
President, Alaska State Senate  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear President Halford:

This letter is in response to questions I received from your office concerning the state's DNA registration system and the national Combined DNA Index System (CODIS).

Question #1: How are samples collected

Current law (AS 44.41.035) directs the Department of Public Safety to establish a DNA identification registration system consisting of blood or oral samples drawn from individuals convicted of certain specified crimes. For the past several years the Department of Public Safety has been exclusively collecting oral samples. These samples are being collected by correctional, probation, parole or peace officers and submitted to the State Crime Laboratory. The Laboratory assigns a unique identifying number to the sample and records sample information. The identity of the person from whom the sample was collected is also verified by comparing the thumbprint included in the collection kit to fingerprint records maintained by the State.

DNA profiles are generated and entered into the Combined DNA Index System (CODIS) and the National DNA Index (NDIS) for law enforcement purposes established by the FBI under the authority of the federal DNA Identification Act of 1994. This National DNA Index System became operational in 1998.

Question #2: Describe how samples are "typed" and placed into the computer: note the 13 point match

Information entered into CODIS is limited to the unique sample number assigned by the Laboratory and the DNA profile consisting of a series of numbers for the 13 DNA markers required for entry into CODIS. The name of the individual from whom the sample was collected is not entered into CODIS.

Markers are basically different locations (loci) on the DNA molecule, which have a high degree of variability among humans. There are many markers that could be used to identify a person. Law enforcement has standardized on the "13 markers." This way laboratories can compare information.

President Halford  
March 19, 2001  
Page 2

These particular markers do not reveal information relating to medical predispositions or race.

Question #3: Who has access to samples; how are they handled

Access to the CODIS database is strictly limited to the CODIS State Administrator and authorized DNA analysts. Because our Laboratory participates in the National DNA Index System, Alaska's CODIS users must be approved by the NDIS Custodian at the FBI. All CODIS users must submit a Privacy Act Explanation Form, Fingerprint Cards, Background Data Information Form, Questionnaire for National Security Personnel and a CODIS User Information form. Passing an FBI security check is also required.

The Laboratory has been awarded a federal grant to eliminate the backlog of convicted offender samples which have not been entered into CODIS. The samples being sent to the certified contract laboratory consist of a small cutting of biological material in tubes numbered with a code. The contract laboratory has no information about the origin of any sample. The DNA profiles generated are returned to the Crime Laboratory and any sample remaining at the contract laboratory is destroyed.

The National DNA Identification Act also specifies the type of information that may be maintained in the National DNA database as well as disclosure requirements. We would be remiss if we did not address concerns raised by privacy advocates that the DNA data and/or DNA samples may be used inappropriately or for unauthorized purposes. The DNA Act explicitly defines as follows who can access the DNA data and DNA samples in the National DNA database and for what purposes:

- (a) to criminal justice agencies for law enforcement identification purposes;
- (b) in judicial proceedings, if otherwise admissible pursuant to applicable statutes and rules;
- (c) for criminal defense purposes, to a defendant who shall have access to samples and analyses performed in connection with his/her case; and
- (d) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes. 42 U.S.C.A. § 14132(b)(3).

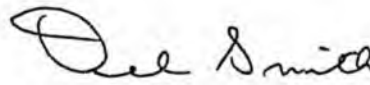
President Halford  
March 19, 2001  
Page 3

Question #4: How are samples stored

DNA samples from convicted offenders are stored in a secure laboratory freezer, sealed in envelopes with tamper-proof tape, under the control of the State Crime Laboratory's evidence section.

Please do not hesitate to call if you, or your staff, have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Glenn G. Godfrey".

Glenn G. Godfrey  
Commissioner

**STATE DNA DATABASE LAWS  
QUALIFYING OFFENSES**

<i>State</i>	<i>Sex Offenses</i>	<i>Offenses Against Children</i>	<i>Murder</i>	<i>Assault &amp; Battery</i>	<i>Robbery</i>	<i>Kidnapping</i>	<i>Burglary</i>	<i>Attempts</i>	<i>Juveniles</i>	<i>All Felonies</i>
ALABAMA	✓	✓	✓	✓	✓	✓	✓	✓		✓
ALASKA	✓	✓	✓	✓	✓	✓		✓	✓	
ARIZONA	✓	✓	✓	✓	✓		✓	✓	✓	
ARKANSAS	✓	✓	✓	✓	✓	✓	✓		✓	
CALIFORNIA	✓	✓	✓	✓		✓		✓	✓	
COLORADO	✓	✓	✓	✓	✓	✓	✓		✓	
CONNECTICUT	✓	✓				✓				
DELAWARE	✓	✓						✓		
FLORIDA	✓		✓	✓	✓		✓	✓	✓	
GEORGIA	✓	✓	✓	✓	✓	✓	✓	✓		✓
HAWAII	✓	✓	✓							
IDAHO	✓	✓	✓	✓	✓			✓	✓	
ILLINOIS	✓	✓	✓		✓	✓	✓	✓	✓	
INDIANA	✓	✓	✓	✓	✓	✓	✓			
IOWA	✓		✓	✓		✓	✓			
KANSAS	✓	✓	✓					✓	✓	
KENTUCKY	✓									
LOUISIANA	✓	✓	✓	✓		✓		✓	✓	
MAINE	✓	✓	✓	✓	✓	✓	✓	✓	✓	
MARYLAND	✓		✓	✓	✓					
MASSACHUSETTS	✓	✓	✓	✓	✓	✓	✓			

<i>State</i>	<i>Sex Offenses</i>	<i>Offenses Against Children</i>	<i>Murder</i>	<i>Assault &amp; Battery</i>	<i>Robbery</i>	<i>Kidnapping</i>	<i>Burglary</i>	<i>Attempts</i>	<i>Juveniles</i>	<i>All Felonies</i>
MICHIGAN	✓		✓			✓				
MINNESOTA	✓		✓	✓	✓	✓	✓	✓	✓	
MISSISSIPPI	✓	✓								
MISSOURI	✓	✓	✓	✓		✓				
MONTANA	✓	✓	✓	✓	✓	✓		✓	✓	
NEBRASKA	✓	✓	✓							
NEVADA	✓	✓	✓	✓			✓	✓		
NEW HAMPSHIRE	✓								✓	
NEW JERSEY	✓	✓	✓	✓		✓		✓	✓	
NEW MEXICO	✓	✓	✓	✓	✓	✓	✓		✓	✓
NEW YORK	✓		✓	✓	✓	✓	✓			
NORTH CAROLINA	✓		✓	✓	✓	✓				
NORTH DAKOTA	✓	✓						✓		
OHIO	✓	✓	✓			✓		✓	✓	
OKLAHOMA	✓	✓	✓	✓						
OREGON	✓	✓	✓				✓	✓	✓	
PENNSYLVANIA	✓	✓	✓					✓	✓	
RHODE ISLAND	✓	✓	✓							
SOUTH CAROLINA	✓	✓	✓	✓	✓	✓	✓		✓	
SOUTH DAKOTA	✓	✓	✓	✓	✓	✓	✓	✓		
TENNESSEE	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
TEXAS	✓	✓	✓	✓			✓		✓	
UTAH	✓	✓	✓	✓		✓				

<i>State</i>	<i>Sex Offenses</i>	<i>Offenses Against Children</i>	<i>Murder</i>	<i>Assault &amp; Battery</i>	<i>Robbery</i>	<i>Kidnapping</i>	<i>Burglary</i>	<i>Attempts</i>	<i>Juveniles</i>	<i>All Felonies</i>
VERMONT	✓	✓	✓	✓	✓	✓	✓	✓		
VIRGINIA	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
WASHINGTON	✓	✓	✓	✓	✓	✓		✓	✓	
WEST VIRGINIA	✓	✓	✓	✓	✓	✓	✓			
WISCONSIN	✓	✓	✓	✓	✓	✓	✓			✓
WYOMING	✓	✓	✓	✓	✓	✓	✓	✓		✓
TOTALS	50	41	44	35	27	32	25	26	24	7

## Va. Man Receives Life Sentence for '92 Slaying

Va. DNA Database Led Police to Suspect Eight Years After Shopkeeper's Death

By Tom Jackman  
Washington Post Staff Writer  
Tuesday, April 3, 2001; Page B02

A Leesburg man who repeatedly stabbed a popular Old Town Alexandria shopkeeper to death in 1992, but wasn't arrested until eight years later, was sentenced in Fairfax County Circuit Court yesterday to life in prison.

Mack Reaves III, 31, apologized to the family of Marilyn M. Bandera, who was killed in her Belle Haven home March 18, 1992. Reaves wept as he spoke, much as he did last summer in his taped confession to Fairfax detectives. Reaves's attorneys played the tape for Circuit Court Judge Jane Marum Roush yesterday to show that their client was remorseful.

Prosecutors charged Reaves with capital murder and planned to seek the death penalty. But Bandera's family told Commonwealth's Attorney Robert F. Horan Jr. that they did not support capital punishment; so when Reaves offered in February to plead guilty to capital murder in exchange for an agreement by Horan not to seek death, Horan consented.

All that was left yesterday, then, was for defense attorneys to try to persuade Roush to suspend some time from the life sentence required by law. Several of Reaves's relatives and friends testified on his behalf, saying that his parents were alcoholics who fought violently and abandoned Reaves and his brother, Vance, when both were younger than 10.

The brothers slept in the bed of a pickup truck for more than two years because going inside their empty Southeast Washington apartment was spooky, Vance Reaves said yesterday.

Bandera, a mother of three, owned Canvas Cutters, two canvas goods stores in Old Town Alexandria. Friends described her as vivacious and outgoing, devoted to her children, and a frequent volunteer for the Salvation Army and the elderly. Horan called her "a warm human being who was the light of many lives."

On the day of the murder, Bandera apparently went home for lunch. Her husband, John, found her body in the foyer about 1:30 p.m., when he stopped at home on his way to the dentist. Court records indicate that Bandera, 45, was stabbed more than 150 times.

For years, detectives had no leads. But they did have traces of someone's blood, apparently from a fierce struggle between Bandera and her killer.

In 1996, Reaves pleaded guilty to robbing a gas station. His blood was taken for entry into the state DNA databank but, because of a backlog, probably wasn't entered immediately.

Fairfax homicide detectives periodically resubmitted their unknown blood sample, and last summer got a match with Reaves's DNA.

By then, Reaves was out of prison. Detectives picked him up, and he confessed. He said he had been walking through Belle Haven that day in 1992, knocking on doors looking for work. When he reached Bandera's house, he said, he forced his way in, intending to rob her. "I just lost it," he said.

At yesterday's sentencing, Horan criticized "the usual litany of sociological excuses for violent behavior. It's what I call the 'Blame It on the Bad Upbringing School.' . . . He made the choices that got him here."

In a letter to the judge, John Bandera wrote: "Anyone capable of doing what he has done should never be free to prey on innocent people." Bandera declined to comment after the hearing.

Roush did not suspend any of Reaves's sentence, and he imposed 10 years for attempted robbery. Reaves will be eligible for parole in 25 years, Horan said, because the crime occurred before Virginia abolished parole.

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BOB EDWARDS, host:

This is MORNING EDITION from NPR News. I'm Bob Edwards.

DNA is best known for proving the innocence of people who have been wrongly convicted and getting them out of prison. A quieter, more profound revolution is happening at the crime scene, where investigators are gathering evidence in developing their suspects. Virginia leads the nation with 140,000 criminal profiles in its DNA data bank. NPR's Barbara Bradley reports.

BARBARA BRADLEY reporting:

It was her first night back in Charlottesville. The senior at the University of Virginia, who asked not to be identified, fell asleep, but was awakened by someone moving around in her room. She reached out and felt the barrel of a gun. 'Where is your wallet?' the man said.

Unidentified Woman #1: I was so flustered at that point, I had no idea where I'd put my wallet. I was like, 'It's either on the floor of my bedroom or in my car.' And he said, 'Well, how much do you have in it?' and I said, 'I only have \$5.' And he said, 'Well, that's not enough. You're going to pay.'

BRADLEY: That was when he raped her. He made her take a shower and walked her down to the kitchen, where he drank a beer. All the time, she was blindfolded.

Unidentified Woman #1: I saw an outline of him. Like I could tell that he was about 5'10", fat, African-American, male, you know, mid-20s. That's about all I could tell. And so I could have never picked him out of a lineup, ever.

BRADLEY: Charlottesville police developed a list of about 40 suspects, but quickly ruled them out. A few weeks later, Lieutenant Chip Harding, who is the chief of investigations, got a phone call from the Virginia Department of Forensic Science. They were testing semen from the girl's sheets and saliva from the beer can. The DNA profile matched one in the state data bank.

Lieutenant CHIP HARDING (Charlottesville Police Department): And I can remember getting the call from forensic scientists in Richmond and--it's emotional now, even talking about. But dropping the phone and just jumping up and down and going, 'Oh, my God, I can't believe this. We know who did this to her.'

BRADLEY: It turned out that the man had a criminal record, not for sexual assault, but for gang-related violence. But since Virginia takes DNA samples from every convicted felon, his name and Social Security number popped up. The man was convicted. This kind of result has radically changed the way police work in Charlottesville, Virginia. Sergeant Ralph Barfield(ph), who heads up forensic investigations, is almost breathless with examples. The rapist who blew out a candle before attacking his victim. The candle had his saliva. The burglar who wore a pair of socks on his hands, left no fingerprints, but the discarded socks contained his skin cells. They found a bank robber who dropped his ski mask, and identified a murderer from the sweat in his baseball cap. Barfield says it's nothing like the old days.

Sergeant RALPH BARFIELD: You know, you had to have a half-dollar size amount of blood just to get a blood type. Now--oh, it's so nice now. Now I don't have to have blood at all. You know, you drink from your coffee cup. I know how to handle your coffee cup, I got your DNA. You and I shake hands. I know how to handle it. I've got your DNA. As long as I know how to do my part, collecting and the packaging and storing and transporting to prevent the cross-contamination, I got you. I got you.

BRADLEY: Barfield says another beauty of DNA is that it never grows old. In that sense, he says, it's a better witness than people, whose memories fade over time.

(Soundbite of alarm sounding; door opening)

Sgt. BARFIELD: This one is referred to as the archive room, and the only thing that goes into this room are cases on appeal, unsolved cases.

BRADLEY: The room is the size of a garage and stacked to the ceiling with evidence kits from unsolved murders and rapes, five, 10, 15 years old. Barfield points to a rape kit.

Sgt. BARFIELD: Sooner or later with the data bank, his blood's going to show up in that data bank, and we'll come back for him.

BRADLEY: Virginia has, by far, the largest data bank of all the states, and now it's paying off not just in solving crimes, but in preventing them. The reason is the link between property crimes and rape.

Unidentified Woman #2: Negative 131. I need you to start towards 810 Harris Street, southern State, for a phone-in alarm showing general burglar. I'll get you another unit as soon as one clears.

BRADLEY: It's only breaking and entering, but Barfield sends a forensic detective to the crime scene anyway.

(Soundbite of briefcase being opened)

BRADLEY: The trailer home door has been kicked in. The DVD is missing. There's no broken glass, no blood, no fingerprints, no DNA. But Barfield says they always send a forensic detective, because if the burglar had left his DNA, he could easily show up as a rapist.

Sgt. BARFIELD: Another thing we've learned is that guys that start out doing burglary, they're just a thief, they're just breaking into your house to steal your stereo, but lo and behold, your wife, your daughter, your girlfriend happens to be there and they stumble into them and it becomes a crime of opportunity and they go, 'Oh, well.' What we've found is so many of the burglars are going from burglary, they move up to rape.

BRADLEY: Paul Ferrara says that's borne out by statistics. Ferrara is the director of Virginia's Department of Forensic Science and the man credited with putting Virginia on a scientific fast track. Ferrara says more than half the rapists they have caught were already in the data bank, not for sexual assault, but for burglary. He says that's why Virginia takes the DNA of all felons. If you don't, he says, you give someone a free rape. But Ferrara says there's a problem. Most states are just beginning to create their own data bank, so all a felon has to do to elude detection is leave Virginia.

Mr. PAUL FERRARA (Director, Virginia Department of Forensic Science): Somebody who finds themselves in our DNA data bank may be well inclined to take his criminal activities to some other state, thinking that, 'Well, I've got to get out of Virginia because, you know, I'm forever in that data bank, and I move or do anything and I'm going to get nailed. So I'll go to a neighboring state or I'll go out on the West Coast.'

BRADLEY: Several states have no data bank at all; many are just getting going. Christopher Asplin, who heads a national commission on the future of DNA, says there are more than a million violent offenders who should be in a DNA data bank, but aren't because of cost.

Mr. CHRISTOPHER ASPLIN: One example is we know that we have in excess of 180,000 rape kits across the country which should be DNA tested, and those profiles should be put in the database but have not. Essentially what you have is a very powerful technology, a very powerful database that just doesn't have enough data in it.

BRADLEY: Congress passed a bill to gives states \$170 million, but that money wasn't included in the budget, so Virginia is forging ahead on its own.

Ms. LISA SHERMYER (Virginia Department of Forensic Science): What you're seeing right now is you're seeing laboratory tables where the examiners are working. They're looking at evidence from criminal cases, looking for things like blood.

BRADLEY: Lisa Shermyer(ph), at the Virginia Department of Forensic Science, shows off a roomy, new laboratory. She says just getting a useable sample can take a month. It's then mathematically translated into what looks like a bar code and entered into the data bank.

Ms. SHERMYER: When you find that needle in a haystack, it's a good day. It's an even better day when that needle hits on a convicted felon in the data bank. You're suddenly the one providing investigative information to the police, and that's a really good feeling.

BRADLEY: The computer searches two sets of data banks. One has the DNA of all convicted felons in Virginia. The other includes DNA from all unsolved crimes. Just before 4 PM, Shelly Smith(ph) positions herself in front of the computer.

Ms. SHELLY SMITH: When I received the case, the information that I received was that the victim had been drugged by an unknown individual and then raped.

BRADLEY: There's no suspect in the case, since the woman never saw the perpetrator, and so the data bank is, for now, their only hope.

(Soundbite of typing)

Ms. SMITH: What is going on?

BRADLEY: Smith enters the information. We wait for several long seconds. I ask how long this generally takes.

Ms. SMITH: It's going to take a while.

Unidentified Woman #3: Generally...

Ms. SMITH: Oh, my. I got a hit.

BRADLEY: The DNA matches the profile of a convicted felon. It will be double-checked before Smith calls up the detective who submitted the DNA. This is really only the beginning of the case. Police have to track down the man and build a case against him. But all in all, a one-in-a-billion match is a pretty good place to start. Barbara Bradley, NPR News, Charlottesville, Virginia.

EDWARDS: The time is 19 minutes past the hour.

In the next half-hour of MORNING EDITION, Ossie Davis and Ruby Dee on their partnership on and off stage.

Mr. OSSIE DAVIS: We were one of the lucky ones where the thing that brought us together kept us together--the profession, being actors.

BOB EDWARDS, host:

In Hawaii, cross-examination is under way in a Navy court of inquiry into last month's deadly submarine crash. Lawyers for the officers involved are trying to poke holes in the Navy's investigation. That investigation, which was completed in only a few days, led to the court of inquiry now under way in Pearl Harbor. The accident happened when the USS Greeneville struck a Japanese fishing boat while surfacing, killing nine people. NPR's Andy Bowers reports the sub's commander and his second in command are questioning the evidence against them.

## DNA Typing in Action: Databasing in the Commonwealth of Virginia

*Editor's Note: To highlight progress in implementation of STR typing and DNA databasing, Profiles in DNA introduces a new feature spotlighting work by various states in the U.S.A. and other countries to solve and prosecute crimes through DNA typing. In this issue, we focus on the tremendous success that the Commonwealth of Virginia has achieved not only in the size of their growing database but also in terms of solving several violent crimes and preventing others through "hits" in that state's DNA database.*

In 1989 the Commonwealth of Virginia was the first state in the U.S. to pass a DNA databasing law, which required only certain sex and violent offenders to provide samples for inclusion in a DNA databank. In 1990, the law was expanded to include all felons. However, at that time, funding was granted only to type the samples that fell under the original 1989 statute. Six years later the law was expanded to include juveniles over the age of 14 who were found guilty of any crime that would constitute a felony if that crime were committed by an adult. DNA typing is performed by the Virginia Division of Forensic Science (DFS), which is a nationally accredited forensic laboratory system serving all state and local law enforcement agencies, medical examiners and Commonwealth's Attorneys in Virginia but is not part of any law enforcement agency. To get an inside perspective on the success of Virginia's program, we spoke to three key figures in this state's database implementation: Paul Ferrara, Director of the Virginia DFS; Jeffrey Ban, Forensic Biology Section Chief; and Kevin McElfresh, Vice President of Operations, The Bode Technology Group. Below are excerpts from our conversations with these men.

### PAUL FERRARA, DIRECTOR, VIRGINIA DIVISION OF FORENSIC SCIENCE

Paul Ferrara joined the DFS 20 years ago and has been the Director since 1985. Under his leadership, the DNA typing and databasing program in the Commonwealth of Virginia has grown to become the largest database in the U.S.

*Could you provide some history of DNA typing in Virginia?*

**Dr. Ferrara:** The Commonwealth of Virginia was the first state to pass a



Figure 1. The new Central Laboratory of the Virginia Division of Forensic Science is located in downtown Richmond, Virginia.

*The Commonwealth of Virginia was the first state to pass a DNA databasing law in 1989 because Virginia's General Assembly recognized that DNA databasing would be a powerful technology for prosecutors and a tremendous investigative tool.*

DNA databasing law in 1989 because Virginia's General Assembly recognized that DNA databasing would be a powerful technology for prosecutors and a tremendous investigative tool. One year later (in 1990) they expanded the law, and sample collection began in earnest.

In a landmark case, DNA testing led to the conviction of Timothy Spencer for raping and murdering four women during a 10-week period in 1987. The Spencer case is notable for a number of reasons. Spencer was the first criminal convicted of capital murder on the basis of DNA evidence. Prior to committing these rapes and murders, Spencer had been convicted of an earlier burglary charge. Had he been in the database from his burglary charge, he would have been identified after the first rape and murder. Thus, his additional crimes would have been prevented. The case graphically demonstrated the efficacy of DNA typing technology. Further, the case established part of the rationale for the General Assembly to pass a resolution requesting that the Virginia State Crime Commission perform a study to determine whether expansion of the database to include other convicted felons (e.g., burglars) would be a worthwhile effort. Based on the report of the Commission, the statute was expanded to include all felons in the database.

In the early years of the database--from 1989 to July 1998--the database consisted of restriction fragment length polymorphism (RFLP) profiles. The first success of the database came in August 1993 with less than 1,000 profiles in the database. A "cold hit" (i.e., when there is no suspect for a crime, but DNA from biological material taken from the crime scene matches that of a convicted felon in the database) was identified as a known sex offender. This case was the first demonstration of the power of felon databases when there is no suspect known for a given crime.

While that early database topped out with less than 15,000 profiles and 31 cold hits made, more than 180,000 samples were collected over that 9-year period. In July 1998 funding was granted for using STR typing for all of the samples to be entered into the database. A contract was arranged with The Bode Technology Group to work on the large number of samples waiting to be included in the database. From July 1998 to the present, DNA typing using the *GenePrint*<sup>®</sup> PowerPlex<sup>™</sup> 1.1 System has been performed for all samples in the database.

*How successful has Virginia's database been?*

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**Dr. Ferrara:** The DNA typing and databasing program in Virginia has been extremely successful. What is truly remarkable is how much was accomplished in the first six months that STR typing was performed. In the time from July 1998 to the end of the year, 30,000 profiles had been generated, and there are over 55,000 profiles at present. In the first four months of 1999, there have been 2 hits in January, 3 in February and 7 each in both March and April. The contractor, The Bode Technology Group, is adding to the database at a rate of approximately 8,000 per month. A best guess, based upon the current rate of expansion of the database and hits generated, is that there may be as many as 100 hits on the database in 1999. The implementation of the database provides tremendous savings in terms of police investigative time and prevention of future crimes. The savings in terms of lives and investigative time are inestimable.

*The implementation of the database provides tremendous savings in terms of police investigative time and prevention of future crimes. The savings in terms of lives and investigative time are inestimable.*

*Have you been surprised by the results with Virginia's database?*

**Dr. Ferrara:** In terms of the number of hits on the database, we are not surprised. The number of hits is strictly a function of the size of the database. What has been fascinating and somewhat remarkable is that greater than sixty percent of the hits from violent offender cases match database samples from convicted burglars--not violent offenders. This points to the fact that many violent offenders have been guilty of earlier nonviolent property crimes. Thus, a database that does not include property crime offenders limits its overall efficacy.

*To what do you attribute the success of the database?*

**Dr. Ferrara:** Clearly, the success of the database rests on two factors: first, the size of the convicted felon database, and second, concentration on DNA typing of crime scene material from cases where there is no suspect. Although there is a tendency to focus on cases where there are suspects going to trial, we must run biological samples from cold crime scenes. It's a problematic situation. The database has grown, but we must redouble our efforts to run crime scene samples soon after a crime has been committed.

There is a serious problem we must address. The demand for DNA testing is outstripping the ability of the laboratory to perform the tests. With approximately 200 cases received every month, the backlog increases. While the crime rate may be constant or decreasing, the number of samples to be analyzed is increasing.

*What explains this increase in the number of samples?*

**Dr. Ferrara:** Cases are much more complex today than ever before. Because the STR technology is so sensitive, we are able to perform testing on a much greater number of samples that the earlier technology could not handle. With STR analysis, a case examiner usually needs to process about ten, and sometimes as many as 20-50, samples per case.

*How and when will the capabilities of laboratories in the U.S. meet the*

## Dogged detective work, DNA crack 5-year-old killing

By Sheila Toomey  
Daily News Reporter

*(Published October 31, 2000)*

They found her body on a Sunday morning five years ago, wearing a purple tank top and silver necklace, dumped at the edge of Ship Creek where it runs through the warehouse district near Yakutat Street.

They identified her from her tattoos and her jail record: Doris Ann Hainta, 34, a longtime street hooker carrying a double load of drug and alcohol addiction. Everybody called her Sunny, but someone strangled her.

Homicide investigators worked the slim leads they had as hard as they could. A witness saw a blue van backing to the edge of the creek and a man dumping something there. Police took plaster casts of tire tracks and crawled around on their hands and knees taking paint scrapings from a post and hoping to pick a bit of evidence from the muddy ground.

They spent weeks talking to prostitutes and their customers, checking alibis and stopping blue vans. After a while, the investigation lagged. She was probably killed by someone who bought her services, police figured, someone with no other connection to her, the toughest kind of homicide to solve.

But Anchorage police had an ace up their sleeve. Hainta had been raped or had consensual sex shortly before she died, so if the police ever identified a suspect, they had a DNA sample.

Last month, technicians at the state crime lab matched the DNA to a man in North Carolina. And on Monday the Anchorage district attorney charged Eugene Poirier, 33, with first-degree murder. An arrest warrant with bail set at \$1 million will be faxed south and served on Poirier at the Nash Correctional Facility, where he is doing 22 years for a murder he committed after leaving Alaska.

Assistant District Attorney Adrienne Bachman said Alaska will seek to extradite Poirier and will try him for Hainta's death. Charging documents filed Monday say he has confessed to strangling her in the back of a blue van he used in his carpet business.

If Poirier is convicted here, he will be returned to North Carolina to serve out his sentence there then returned to do his Alaska time, Bachman said.

In Oklahoma, where Hainta was born, her sister Emma Hainta was surprised to hear that anyone in



Anchorage police detective Scott Jessen traveled to North Carolina to confront Eugene Poirier with evidence against him in the killing of Doris Ann Hainta. Poirier eventually admitted strangling Hainta. (Jim Lavrakas / Anchorage Daily News)

Anchorage still cared about solving her sister's slaying and was pleased someone's been charged in Sunny's death.

The family often tried to talk Sunny into coming home. She became a prostitute in her teens and seemed unable to get out of the life, Emma Hainta said. She came to Alaska in the mid-1980s to start a new life. But it didn't work.

"She had no confidence," Hainta said. "She didn't have the drive to do anything different."

The family, which includes an ex-police chief, didn't approve of her life but they loved and accepted her, Hainta said.

"I always thought it would be AIDS that would get her. I was prepared for that. I knew one day she would be knocking at my door."

The Hainta case, old and cold, was solved because police officers stationed at opposite sides of the continent made an extra effort and because in March the Alaska State Scientific Crime Detection Laboratory began using DNA technology capable of making positive identifications.

The first break was a 1998 computer message from Det. Sgt. Julie Gibson of the Iredell County sheriff's office, a blind query to police departments in cities where Poirier had lived before he showed up in North Carolina in 1997. A 16-year-old girl, Christy Rambo, a neighbor of Poirier and his wife, had been strangled in August of that year, her body dumped by the side of a country road about five miles from the trailer park where she and Poirier both lived. She'd been doused with gasoline and set on fire.

Poirier was one of several suspects. Could Anchorage police check him out? Gibson asked.

Poirier's name had not surfaced in the Hainta investigation, but when Sgt. Mike Grimes, then head of homicide, looked at him, bells rang. He owned a blue van. His uncle had a business close to where Hainta's body was found.

If Anchorage had no suspects in Hainta's death, Iredell County had too many in the Rambo case: her boyfriend, another man she told friend had made threats, and a man she said had raped her and was set to testify against the following week. Poirier and his wife were casual friends with Rambo, and he had been seen talking to her in his driveway before she disappeared. But he wasn't at the top of the list until he started acting "pretty odd," Gibson said. "He pushed himself into the investigation. We had to almost push him away from us. He just stayed in our face ... so we paid him a little more attention."

Then Poirier turned up on a convenience store security video buying gasoline about an hour after Rambo disappeared, less than an hour before someone spotted her still-burning body.

He eventually admitted the killing but refused to give any details, Gibson said. He was charged with first-degree murder, a death penalty case. But questions were raised about the admissibility of the confession, and last October the district attorney accepted a plea to second-degree murder. Because he had no prior record, Poirier got the minimum mandatory sentence, 22 years without parole.

While Poirier was still awaiting trial, Anchorage police detective Larry Arend, who was originally in charge of the Hainta case, asked Iredell sheriffs if they could send a sample of Poirier's blood north. They could.

At the time, Alaska's crime lab was certified only for six-point DNA matches. They got a six-point match on Poirier, Bachman said. But legal identification in criminal cases requires 13 points of match. It cost from \$1,000 to \$2,000 to have the test done in a private lab. Anchorage police don't have the money to do them all, said Anchorage detective Scott Jessen, who took over the case when Arend retired.

Poirier was in prison, not a danger to other women and the test could wait, police reasoned.

By March, the crime lab staff was trained and the DNA operation accredited. And it had a one-year backlog of cases involving violent crimes. Each test takes six weeks, said lab director George Taft. Jessen pushed. In September, the Hainta results were certified: Poirier was a match.

With what looked like a solid case, Chief Duane Udland sent Jessen to North Carolina.

"Gene, howya doing?" Jessen said to Poirier. "I'm from Anchorage."

In an office at the prison, Poirier denied knowing Hainta or even where Yakutat Street was. Jessen laid the DNA report on a table in front of him. "This line is semen from Doris," he said. "This is your blood. They match."

It took awhile, but eventually Poirier said he killed Hainta. He picked her up on Fourth Avenue, near the old Hub Bar, according to the account of his confession in the charging document. After having sex, Hainta "spazzed out" on him, he told Jessen. She wanted more money and tried to hit him with a tack hammer. He took the hammer away from her, wrapped an electric cord around her neck and strangled her.

Jessen isn't finished. Poirier spent a lot of time driving around the country. With two murders known, he wonders, what are the chances of more unsolved cases out there? Both victims were strangled, both were Native American -- Hainta was Kiowa. That's the kind of detail the FBI puts in a computer. Jessen has asked them to check their files.

Reporter Sheila Toomey can be reached at [stoomev@adn.com](mailto:stoomev@adn.com) or 257-4341.

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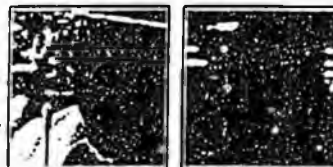
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February 19, 1998

### DNA Databanks Giving Police Powerful Weapon: The Instant Hit

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- [DNA Tests Free Two Men Convicted of Rape in '83 \(Dec. 4, 1997\)](#)



By CAREY GOLDBERG

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

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

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

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

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

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