

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10307 HOUSE JUDICIARY

- AS 24.65.180 limits judicial challenge of the victims' advocate's actions.
- AS 24.65.190 provides immunity against civil action to the victims' advocate and staff.
- AS 24.65.200 provides evidentiary privilege against being compelled to testify to the victims' advocate and staff.
- AS 24.65.210 sets out a criminal penalty for obstruction of the victims' advocate's duties.
- AS 24.65.250 contains definitions applicable to this chapter.

Section 7 of the bill specifies that the Victims' Advocate and staff are in the exempt category.

Section 8 of the bill provides option of adopting longevity pay provisions to the Victims' Advocate.

Section 9 of the bill excepts OVR employees from using the conditional service retirement benefit for legislative employees.

Section 10 of the bill expands PFD ineligibility to a person who has been convicted of a misdemeanor and has one prior felony conviction.

Section 11 of the bill amends the public notice statute to conform with the changes in Section 9 and provides that the proceeds of the PFD forfeiture may be used to fund the Office of Victims' Rights and for grants to nonprofit victims' rights organizations.

Section 12 of the bill exempts regulations promulgated by the OVR from gubernatorial review.

Section 13 of the bill exempts the victims' advocate from record keeping requirements.

Section 14 of the bill requires that sunset review of agencies consider interaction with OVR.

Section 15 of the bill names OVR as state agency for purposes of state publications.

Sections 16 - 18 of the bill provide notice of court rule changes.

Section 19 of the bill specifies that section 3 of the bill is not intended to interfere with any constitutional rights.

Section 20 of the bill allows the Director of LAA to purchase supplies and equipment and establish office space for the new OVR in FY 01 to allow for the opening of the office in FY 02.

Sections 21 and 22 of the bill are the effective date clauses.

FISCAL N

STATE OF ALASKA
2001 LEGISLATIVE SESSION

No. 4
Bill Version: CSSB 105(JUD)
(S) Publish Date: 3/14/01

Revision Date: _____
Title: "An Act relating to victims' rights;
relating to establishing an office of victims' rights;
Sponsor: Senator Halford
Requestor: Senator Halford

Department Affected: Legislature
BRU: Legislative Council
Component: Council and Subcommittees

Component Number: 783

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07
PERSONAL SERVICES	11.4	425.3	425.3	425.3	425.3	425.3
TRAVEL	0	4.5	4.5	4.5	4.5	4.5
CONTRACTUAL	7.6	30.4	30.4	30.4	30.4	30.4
SUPPLIES	0.5	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	44.4	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	63.9	462.2	462.2	462.2	462.2	462.2

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE <u>PFD Fund -1050</u>	63.9	462.2	462.2	462.2	462.2	462.2
TOTAL	63.9	462.2	462.2	462.2	462.2	462.2

POSITIONS:

FULL-TIME	1	7	7	7	7	7
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary) CSSB105(JUD) establishes an Office of Victims' Rights in the Legislative Branch of Government. The Victims' Advocate will be nominated by the Victims's Advocate Selection Committee. The 5 year appointment is effective if approved by two-thirds of the members of the legislature in a joint session. The Legislative Affairs Agency will acquire office space, purchase furnishings, and hire one clerical worker in FY02 for the office. For purposes of this fiscal note, staff for the office will be 2 attorneys, 1 paralegal and 3 clerical personnel. The Legislative Affairs Agency will provide administrative support services for payroll, accounting, teleconferencing, supply, maintenance and data processing within existing budgets. This bill adds the Office of Victims' Rights to the three other programs under AS 43.23.028(b) requiring annual appropriation from the PFD Fund.

Prepared By: Karla Schofield, Deputy Director *Karla Schofield* Phone: 465-3852
Division: Administrative Services Date: 3/8/01

Approved By: Pamela A. Varni, Executive Director *Pamela Varni*
Agency: Legislative Affairs Agency Date: 3/8/01

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov., & Impacted Agency(ies).

COMMITTEE COPY

Expenses of the Victim's Advocate Selection Committee will be absorbed within existing budgets.

SB105
#4

Personal Services

Director	Range 26A	92,373	
2 Attorneys	Range 23A	157,516	
1 Paralegal	Range 16A	51,454	
1 Secretary	Range 14A	45,713	
1 Secretary	Range 12A	41,067	
1 Secretary	Range 10A	37,167	
		<u>425,291</u>	425.3

Travel

Travel for the Executive Director

3 in state trips to attend meetings	2,895	
1 out of state trip to meet with victims' rights organizations in other states	<u>1,605</u>	
	4,500	4.5

Contractual Services

Phones	3,600	
Postage	3,000	
Copier Maintenance	600	
Membership Dues	500	
Subscriptions	500	
Office Space - 1,000 sq ft	<u>22,200</u>	
	30,400	30.4

Supplies

Office Supplies	<u>2,000</u>	
	2,000	2.0

FY 03 - 06 Annual Cost 462.2

Equipment

7 desktop computers	14,700
3 printers	4,926
1 copier	8,500
7 Phones	4,550
Fax machine	600
3 Executive desks	4,500
4 Administrative desks	2,800
7 chairs	3,150
3 side chairs	600
4 chairs for waiting clients	<u>84</u>
	44,410

FY 02 Equipment Cost 44.4

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: SB 105
(S) Publish Date: 3/1/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title: Victims' Rights / Prisoners' PFDs BRU: Revenue Operations
Sponsor: Senator Halford Component: Permanent Fund Dividend
Requester: Senate Judiciary Committee Component Number: 981

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (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)

As it relates to the Alaska Permanent Fund Dividend Division, this legislation expands the reach of state statute to withhold dividends from Alaskans convicted of criminal offenses. The legislation (Section 9, AS 43.23.005(d)) would expand the number of non-eligible Alaskans to include people convicted or incarcerated on a misdemeanor charge during the dividend eligibility year if they also have a prior conviction for a felony. Existing statute already denies the dividend to applicants convicted or incarcerated during the eligibility year on a felony charge or his or her third misdemeanor.

The Dividend Division does not expect this legislation to have a fiscal impact on the operating budget of the dividend program.

It is not possible to estimate the number of applicants who might lose their dividend eligibility under this legislation. However, it should be noted that denying dividends to some of the applicants covered by this legislation could actually deny the funds to creditors of those applicants, including the Child Support Enforcement Division, state student loan program, private businesses and others.

Prepared by: Nanci A. Jones, Director Phone 465-4785
Division: Permanent Fund Dividend Division Date/Time Feb. 22, 2001, 1 p.m.
Approved by: Larry Persily, Deputy Commissioner Date Feb. 24, 2001
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

Page 1 of 1

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 105
 (S) Publish Date: 3/1/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to victims' rights; . . . an office of BRU Criminal Division/Civil Division
victims' rights; . . . compensation of victims of violent crimes . . ." Component Human Services
 Sponsor Senator Halford 1st-4th Jud Dist, Crim Apps/Spec Lit
 Requester Senate Judiciary Committee Component No. 2198-99/2261/79/01/03/06

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						
TOTAL OPERATING	0.0	*****	*****	*****	*****	*****

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	*****	*****	*****	*****	*****

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Part-time						
Temporary						

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

SB 105 establishes in the legislative branch the Office of Victims' Rights, directed by the victims' advocate, effective July 1, 2002. The victims' advocate will advocate on behalf of crime victims in felony cases in the courts of the state and investigate complaints of crime victims in felony and certain class A misdemeanor cases that they have been denied their rights under the constitution and laws of the state.

The potential fiscal impact from enactment of this law on the Department of Law is dependent on the philosophy and depth of involvement of the victims' advocate. At a minimum, the length of time required for cases in which the victims' advocate participates will increase, simply by virtue of having an additional attorney involved. The potential that the victims' advocate will be at odds with the prosecutor over matters involving trial strategy, tactics, and plea negotiations would add additional time and expense. These costs are speculative, and the department cannot assign a cost without additional experience.

Prepared by: Joan M. Kasson Phone 465-5370
 Division Attorney General's Office Date/Time 2/27/01 12:15 PM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 2/27/01
 Agency Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 105
(S) Publish Date: 3/1/01

Title: An Act relating to victims' rights; relating to estab-
lishing an office of victims' rights; relating to compensation....
Sponsor: Senator Halford
Requester: Senator Judiciary
Dept. Affected: Corrections
BRU: 271
Component: Administrative Services
Component Number: 697

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	43.5	43.5	43.5	43.5	43.5	43.5
Travel						
Contractual	0.5	0.5	0.5	0.5	0.5	0.5
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment	2.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	47.0	44.5	44.5	44.5	44.5	44.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	47.0	44.5	44.5	44.5	44.5	44.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL						

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Section 9 of this legislation amends AS 43.23.005(d) which would deny PFD eligibility for people who are convicted and incarcerated for a misdemeanor and they had been previously convicted of a felony, or two or more misdemeanors. The Department of Corrections has previously asked for a Statistical Technician I position to accommodate appeals and information requests resulting from PFD denials. The data and word processing unit will be unable to carry out their daily operations if more appeals and computer programming are added without a position.

Prepared by: Candace Brower Phone 465-4652
Division: Commissioner's Office Date/Time 2/22/01 9:30 AM
Approved by: Margaret Pugh Date 2/22/01
Agency: Department of Corrections

For distribution information, call the Governor's Legislative Office

Grief Recovery®

Janice Lienhart
2051 Glacier Street
Anchorage, Alaska 99508

Phone: 907 337-0407
Fax: 907-337-5308
Email: miko@gci.net

March 9, 2001

Senator Rick Halford
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Halford:

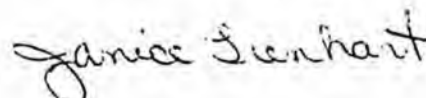
Thank you for reintroducing The Victims' Rights Bill, Senate Bill 105. I have worked with victims of crime for over 15 years receiving 258 hours of training in the field of victim services. To augment my training, I have experienced victimization and therefore have an added dimension to a victim's needs.

SB 105 provides legal assistance to victims of crime. Victims deserve legal representation but it is cost prohibitive. This bill provides legal assistance when their rights are violated and it does not take money from the general budget. Senator Halford, aware of the budget constraints, has creatively come up with funding, by using permanent fund dividends from repeat criminals. This is as it should be!

Legal representation for victims of crime is one of the topics discussed at National Organization of Victim Assistance Conferences (NOVA). About three or four years ago, I discussed the issue of legal representation with Senator Halford and shortly thereafter, he came up with this legislation. It is creative, cost effective and guarantees victim's rights.

I am impressed with the strides Alaska is taking in meeting victims of crime's needs. Department of Corrections, Department of Law, US Attorney's office and I understand the Department of Juvenile Justice is pursuing a victim service coordinator. Alaska is one of the leading states in victim's rights. Of the 35 states that have enacted Constitutional Amendments, only seven have included juveniles in their amendments. If Alaska enacts SB 105, I can see other states using Alaska as a model for their states. We will be the leader for victim's rights.

Sincerely,



Janice Lienhart
Victim Service Advocate
Grief Recovery Specialist



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

Senate Bill 105
Office of Victims' Rights

State Justice Agency Financial Information

Department of Law - Criminal Division

	FY 00 Actual	FY 01 Authorized	FY 02 Budget
BRU total	12,556.4	13,144.4	14,747.8

Department of Administration - Legal and Advocacy Services

	FY 00 Actual	FY 01 Authorized	FY 02 Budget
Public Advocacy	8,883.5	8,947.8	9,827.4
Public Defender	9,428.0	9,510.3	11,013.9
BRU total	18,311.5	18,459.1	20,843.3

The above represents annual state spending of \$ 35,589,100 for publicly funded criminal defense and state prosecution.

The Office of Victims' Advocacy, established by Senate Bill 105, has a projected annual funding level of approximately \$507,000.

may 1998

U.S. Department of Justice
Office of Justice Programs
Office for Victims of Crime



New
Directions
from the
Field:
*Victims' Rights and Services
for the 21st Century*

NCJ 170600

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #12

Victims of crime should receive assistance in exercising their participatory rights. Advocates should be available to explain rights to victims, help them to exercise those rights and, when necessary, serve as their representatives in court and other key justice processes when victims are underage or incapacitated or if representation is otherwise appropriate.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #18

Victims should have standing to enforce their rights, and sanctions should be applied to criminal and juvenile justice professionals who deny victims their fundamental rights.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #19

States and the federal government should create compliance enforcement programs, sometimes referred to as victim ombudsman programs, to help facilitate the implementation of victims' rights.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #23

Criminal and juvenile justice agencies should establish a means of monitoring their own compliance with crime victims' rights laws and require public documentation showing that victims were provided their rights or indicating an appropriate reason why they were not. In addition, independent audits should be conducted of state and federal agency compliance with victims' rights laws.

May 1998

U.S. Department of Justice
Office of Justice Programs
Office for Victims of Crime



Office for Victims of Crime

OVC

Advocating for the Fair

Treatment of Crime Victims

Report

**VICTIMS' RIGHTS
COMPLIANCE EFFORTS:**

***EXPERIENCES IN
THREE STATES***

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Minnesota

The OCVO enabling legislation defines appropriate methods of conducting investigations, including acting as a liaison between victim and agency, promoting activities that strengthen criminal justice systems, preventing violations of a victim's right, and establishing procedures for referral to appropriate victims' services agencies.

In response to citizens' complaints, OCVO officials may make recommendations to the agency to rectify the situation. These recommendations range from contacting the agency on behalf of the victim and expressing concern about the issue at hand to voicing concern about the investigation of a case by law enforcement officials or suggesting model policies that the agency can employ to assure victims' rights are honored. If authorities do not accept the recommendations of the ombudsman, however, the OCVO has no enforcement or disciplinary powers. The ombudsman's principal means to secure remedial action is through making public, to both the legislature and the press, the action or inaction of an agency.

Typically, once a complaint is reported, the OCVO staff assesses the needs of the victim, determines whether referrals should be made to other agencies, and informs the complainant of the most appropriate manner for resolving the grievance. The OCVO next gathers information from the agency against which the victim alleges wrongdoing. Based on the information gleaned in the investigation, the investigator must determine whether any statute, policy, or practice was violated, or if mistreatment occurred. The investigator must determine the most appropriate resolution to the problem, plan for any subsequent follow-up with either the agency or the victim, and present the findings to the ombudsman for her review and approval.

With several years of fielding calls from victims and investigating alleged cases of mistreatment and unlawful behavior, OCVO officials have developed a variety of methods in responding to victims' concerns. OCVO officials like to respond to victims' concerns with "assists," or contact with the criminal justice official whose action is in question. Often this contact makes the criminal justice official aware that his action was not well received by the victim. Upon making this realization, most practitioners attempt to rectify their behavior immediately.

Another common method that the OCVO employs to assist victims of crime is to aid in clarifying for victims why the criminal justice system operates the way it does and why criminal justice practitioners make the decisions they do. For example, in a case where a victim's mother learned the prosecutor was not planning to bring charges against her daughter's assailant, the OCVO staff reviewed the case and the prosecutor's reasoning for declining prosecution. As a result of the OCVO investigation, the prosecutor sent a letter to the victim and explained in detail his reasoning for not bringing charges. While still disappointed in the charging decision, the mother better understood the prosecutor's reasoning in not trying the case.

Finally, the office, through its ability to make recommendations on policies and procedures that dictate the actions of criminal justice agencies, can affect systemic change as well. Once, when receiving three separate complaints involving one county's prosecutor and victim/witness program, OCVO investigators conducted a systemic investigation of the county's program. They recommended a needs assessment to determine if the county should restructure its current services, or if it needed more funding and increased staff. The recommendation was forwarded to the DOC, which conducted the assessment. The DOC has completed its analysis and currently is working with the county to help it meet its goals of improved services to crime victims.

- recommending legislative changes to laws affecting victims of crime.¹⁴⁸

The types of cases in which the ombudsman and her staff may intervene and investigate reflect the broad statutory authority of the OCVO. Since 1992, the OCVO has documented and intervened on several cases ranging from perceived mistreatment of victims by criminal justice officials, to those where OCVO officials worked with law enforcement investigators and a victim's wife after the exhumation of the victim's body to determine definitively the cause of his death.

The Minnesota statute allows OCVO staff to intervene on a victim's behalf when he feels that he is not being treated appropriately by the criminal justice system. Many complaints are resolved by "assists," when a victim's concerns may be addressed quickly by an OCVO investigator contacting the criminal justice official whose action is in question. One example of this type of victim complaint came from a homicide victim's mother who felt that she was not receiving timely information regarding the status of the investigation into her daughter's death. The mother did not contact the OCVO with a specific victims' rights violation, but perceived that she was being mistreated by the law enforcement agency because she was unable to obtain information on the status of the case.

OCVO officials resolved the complaint quickly by contacting the lieutenant in charge of the investigation to relay the mother's concerns. The lieutenant was receptive and agreed to contact the victim's family. According to OCVO records, the very next day, the

victim's mother advised OCVO officials that a representative of the law enforcement agency contacted her, apologized for any mistreatment, and promised to notify her in a timely fashion of the progression of the case. According to the OCVO account, she was satisfied with the action and requested that the OCVO terminate its action on the complaint.¹⁴⁹

OCVO officials note that resolving complaints with assists, as with this example, is fairly common, and that concerns about poor treatment — not only victims' rights violations — are repeatedly brought to the attention of OCVO officials by crime victims in Minnesota.¹⁵⁰

Another common method that the OCVO employs to assist victims of crime is to aid in clarifying for victims why the criminal justice system operates the way it does and why criminal justice practitioners make the decisions they do. One example of this sort came from a sexual assault victim's mother who contacted the OCVO when she learned that the prosecutor assigned to her daughter's case did not intend to bring charges against the assailant.

The OCVO reviewed the case and the prosecutor's reasoning for declining prosecution. As a result of the OCVO investigation, the prosecutor sent a letter to the victim and explained in detail his reasoning for not bringing charges. While still disappointed in the charging decision, the mother better understood the prosecutor's reasoning in not trying the case.¹⁵¹

Other complaints received by the OCVO relate to direct violations of Minnesota's Victims' Bill of Rights. In Minnesota, crime victims have the right to request notification from corrections officials when offenders are released from custody. In one situation, an assault victim contacted the OCVO seeking assistance when he could not get a consistent response from officials concerning the release date of his assailant.

When OCVO officials inquired, they found that the offender's history and circumstances were complex: during the period of time the assailant was on probation for assault against the complainant, he was charged with attempted murder in another county. To resolve the assault victim's complaint, OCVO officials worked with the offender's case worker to compile a lengthy case history of the offender, summarize his charges, sentences, and release dates, and forward that information to the complainant.¹⁵²

A more unusual example of the OCVO's powers to intervene emerged in a case where the cause of death of a victim was concluded incorrectly by law enforcement officials. In 1991, police officials found the body of a deceased man in his automobile, which had veered off the highway. Law enforcement officials and the medical examiner determined his cause of death was accidental.¹⁵³ However, after the man was buried, workers at a wreckage yard found in his car a cap pierced by a bullet hole, indicating that the man's death may not have been accidental, but may have been caused by a gunshot wound.¹⁵⁴ His body

¹⁴⁸ 1995–1996 BIENNIAL REPORT, *supra* note 100 at p. 5.

¹⁴⁹ 1993–1994 BIENNIAL REPORT, *supra* note 106, at p. 12.

¹⁵⁰ 1993–1994 BIENNIAL REPORT, *supra* note 106, at p. 12.

¹⁵¹ 1995–1996 BIENNIAL REPORT, *supra* note 100, at p. 28.

¹⁵² 1995–1996 BIENNIAL REPORT, *supra* note 100, at p. 26.

¹⁵³ 1993–1994 BIENNIAL REPORT, *supra* note 106, at p. 11–12.

¹⁵⁴ Maureen M. Smith, *Ombudsman Helps Crime Victims Find Peace*, Minneapolis Star Tribune, Jan. 3, 1994 [hereinafter *Peace*].

was exhumed and a second autopsy revealed that he in fact had been shot.¹⁵⁵

The OCVO intervened using a variety of techniques. The OCVO negotiated with the law enforcement agency on behalf of the victim's wife to resolve the concerns that arose from the case investigation, and provided training on victims' rights and the effects of victimization to employees of the law enforcement agency in question.

Perhaps most importantly, the OCVO met with the victim's wife and representatives of the law enforcement agency, who afforded her the opportunity to express her dissatisfaction with them and receive their apology. This acknowledgment of error was significant for the victim's wife. "It doesn't matter if a case lands on its feet," the ombudsman was quoted as saying after this case was resolved.

"The victim suffered a lot during that whole process. She was angry and upset."¹⁵⁶ Meeting with representatives of the law enforcement agency she gave her the satisfaction of knowing that this tragedy would not happen to another family, that officers were trained, and that policies were developed to ensure more accurate investigations, according to the OCVO.¹⁵⁷

Finally, the office, through its ability to make recommendations on policies and procedures that dictate the actions of criminal justice agencies can affect systemic change as well. One example of this type of intervention occurred when the OCVO received three separate complaints involving one county's prosecutor and victim/witness

program. All three victims reported poor service from these criminal justice agencies, and had specific complaints that ranged from excessive trial delays to little or no communication with victims.

Because the complaints were so similar in nature, OCVO investigators conducted a systemic investigation of the county's program. They recommended a needs assessment to determine if the county should restructure its current services, or if it needed more funding and increased staff. The recommendation was forwarded to the DOC, which conducted the assessment. The DOC has completed its analysis, and currently is working with the county to help it meet its goals of improved services to crime victims.¹⁵⁸

The OCVO, in its *Biennial Reports*, has documented "words of praise" from crime victims whom the office has assisted. A sampling of these comments which follow is reflective of the goals of the office to ensure fair and responsive government service to crime victims in a professional manner:¹⁵⁹

- "The investigator showed compassion to my needs and handled my complaint with professionalism. She is an asset to your office."
- "You provide a much needed service."
- "Just having someone skilled to look at our case was comforting."
- "The complaint was investigated quickly and efficiently."

It also publicly commends criminal justice agencies that

provide exceptional service to victims or who have undergone tremendous improvement in their delivery of services to victims. Criteria for selection for a public commendation are: flexibility, creativity, timeliness of response, cooperation, and commitment to share information with victims.¹⁶⁰

THE EVOLUTION OF THE OCVO

The OCVO office has evolved significantly since its inception, both with respect to leadership and mission. According to its *1995-1996 Biennial Report to Minnesota Policymakers*, the office has made several significant strides in the past decade. The scope of the ombudsman's oversight and investigative discretion, for example, grew after the legislature amended the state's Crime Victims' Bill of Rights to provide victims the right to give an impact statement and expanded a victims' right to notification and participation in the criminal justice process.¹⁶¹

As important, however, was the change that took place in 1992, with the appointment of the current ombudsman. Prior to 1992, the OCVO acted similarly to a victims' advocate, even though it was part of the criminal justice system. "Unlike a private [victims'] advocacy agency, this office is part of the [state's] system," according to the prior ombudsman.¹⁶² The OCVO mission and function has evolved since then to focus on neutrality and impartiality, which more clearly

¹⁵⁵ 1993-1994 BIENNIAL REPORT, *supra* note 106, at p. 11-12.

¹⁵⁶ *Peace*, *supra* note 154.

¹⁵⁷ 1993-1994 BIENNIAL REPORT, *supra* note 106, at p. 11-12.

¹⁵⁸ 1995-1996 BIENNIAL REPORT, *supra* note 100, at p. 27.

¹⁵⁹ 1995-1996 BIENNIAL REPORT, *supra* note 100, at p. 33.

¹⁶⁰ 1995-1996 BIENNIAL REPORT, *supra* note 100, at p. 34.

¹⁶¹ 1995-1996 BIENNIAL REPORT, *supra* note 100, at p. 19.

¹⁶² *One of a Kind*, *supra* note 104.

SB

161

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:

119 N. Cushman, Suite 211
Fairbanks, AK 99701
(907)-456-5081
Fax# (907)-456-8245



Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 102

REPRESENTATIVE JOHN COGHILL

Date: Sunday, May 06, 2001

To: Tam Cook, Director
Legal Services

From: Rynnieva Moss, Legislative Aide *RW Moss*

Re: CSSB 161(FIN) Version "W"

This bill was heard in House Judiciary today. Representative Coghill had a question in reference to the bill.

Representative Berkowitz stated he felt the intent language in Section 1 of this bill was unconstitutional because it violated the separation of powers. His reasoning is that the legislature can not enact a law that would prohibit the courts from paying a judge if that judge had a workload of cases taken under advisement more than sixty days old.

Could you comment on his opinion?

Thanks.

LEGAL SERVICES

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

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

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

MEMORANDUM

May 7, 2001

SUBJECT: Intent Section and Separation of Powers (22-LS0009\W)

TO: Representative John Coghill
Attn: Rynniva

FROM: Gerald P. Luckhaupt
Legislative Counsel

Question Presented: Is section 1 of the bill an unconstitutional invasion by the legislature of the separate powers of the judiciary?

Short Answer: No.

Discussion: Section 1 of this bill merely expresses the intent of the legislature. As intent language it has no substantive force or effect. As such, it does not and cannot invade the province of the judicial branch.¹

GPL:jhb
~~01-122-jhb~~

Post-It® Fax Note	7671	Date	Fri	# of pages	1
To	Rynniva	From	Jim Cook		
Co./Dept.	Rep. John Coghill	Co.	LAA - legal		
Phone #		Phone #			
Fax #	9258	Fax #			

¹ Similarly when a court opines that legislative review of a particular subject may be warranted the court is not invading the province of the legislative branch. See, e.g., *Crutchfield v. State*, 627 P.2d 196 (Alaska 1980) where the court in footnote 10 said: "The legislature may wish to review. . ."

Adopted

**HOUSE CS FOR CS FOR SENATE BILL NO. 161(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATE JUDICIARY COMMITTEE**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the withholding of salary of justices, judges, and magistrates;
2 relating to prompt decisions by justices, judges, and magistrates; relating to judicial
3 retention elections for judicial officers; and providing for an effective date."

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

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 INTENT. It is the intent of the legislature that the Alaska Supreme Court adopt rules
8 sufficient to require the judicial officers of the state to conduct their business promptly, with
9 the goal that virtually all trial court matters under advisement be decided within six months;
10 that a majority of appellate cases be decided within six months following the oral argument of
11 the case or, if there is no oral argument, within six months following the date that the case is
12 taken under advisement; that virtually all appellate cases be decided within one year following
13 the oral argument of the case or, if there is no oral argument, within one year following the
14 date that the case is taken under advisement; and that no appellate case takes longer than two

1 years following the oral argument of the case or, if there is no oral argument, following the
2 date that the case is taken under advisement.

3 * Sec. 2. AS 15.58.020 is amended to read:

4 **Sec. 15.58.020. Contents of pamphlet.** Each election pamphlet must contain

5 (1) photographs and campaign statements submitted by eligible
6 candidates for elective office in the region and the following explanation concerning
7 AS 15.58.050(2) for each judicial officer who has not been issued a salary
8 warrant:

9 This judicial officer was not issued one or more salary warrants. In order
10 for each judicial officer to receive a salary, state law requires the judicial officer
11 to file an affidavit that no matter has been uncompleted or undecided by the
12 judicial officer for a period of more than six months;

13 (2) information and recommendations filed under AS 15.58.050 on
14 judicial officers subject to a retention election in the region;

15 (3) a map of the house district or districts of the region;

16 (4) sample ballots for house districts of the region;

17 (5) an absentee ballot application;

18 (6) for each ballot proposition submitted to the voters by initiative or
19 referendum petition or by the legislature,

20 (A) the full text of the proposition specifying constitutional or
21 statutory provisions proposed to be affected;

22 (B) the ballot title and the summary of the proposition prepared
23 by the director or by the lieutenant governor;

24 (C) a neutral summary of the proposition prepared by the
25 Legislative Affairs Agency;

26 (D) statements submitted that advocate voter approval or
27 rejection of the proposition not to exceed 500 words;

28 (7) for each bond question, a statement of the scope of each project as
29 it appears in the bond authorization;

30 (8) a maximum of two pages of material submitted by each political
31 party;

1 (9) additional information on voting procedures that the lieutenant
2 governor considers necessary;

3 (10) for the question whether a constitutional convention shall be
4 called,

5 (A) a full statement of the question placed on the ballot;

6 (B) statements not to exceed 500 words that advocate voter
7 approval or rejection of the question;

8 (11) under AS 37.13.170, the Alaska permanent fund annual income
9 statement and balance sheet for the two fiscal years preceding the publication of the
10 election pamphlet.

11 * Sec. 3. AS 15.58.050 is amended to read:

12 **Sec. 15.58.050. Information and recommendations on judicial officers.**

13 No later than August 7 of the year in which the state general election will be held, the

14 (1) judicial council shall file with the lieutenant governor a statement
15 including information about each supreme court justice, court of appeals judge,
16 superior court judge, and district court judge who will be subject to a retention
17 election; the [. THE] statement must [SHALL] reflect the evaluation of each justice
18 or judge conducted by the judicial council according to law and must [SHALL]
19 contain a brief statement describing each public reprimand, public censure, or
20 suspension received by the judge under AS 22.30.011(d) during the period covered in
21 the evaluation; each [. A] statement may not exceed 600 words;

22 (2) administrative director of the Alaska Court System shall file
23 with the lieutenant governor information about the timeliness of opinions or
24 decisions in matters referred to each supreme court justice, court of appeals
25 judge, superior court judge, and district court judge who will be subject to a
26 retention election and the number of times each justice or judge has not been
27 issued a salary warrant due to the operation of AS 22.05.140(b), AS 22.07.090(b),
28 AS 22.10.190(b), or AS 22.15.220(c).

29 * Sec. 4. AS 22.05.140(b) is amended to read:

30 (b) A salary warrant may not be issued to a justice of the supreme court until
31 the justice has filed with the state officer designated to issue salary warrants an

1 affidavit that (1) no matter referred to the justice for opinion or decision has been
2 uncompleted or undecided by the justice for a period of more than six months
3 following the oral argument of the matter or, if there is no oral argument, for a
4 period of more than six months following the date the matter is taken under
5 advisement. The affidavit must be submitted under oath, must be in a form
6 approved by the Department of Administration, and must contain a statement
7 that the affiant is aware that making a false statement in the affidavit is
8 punishable as perjury under AS 11.56.200.

9 * Sec. 5. AS 22.07.090(b) is amended to read:

10 (b) A salary warrant may not be issued to a judge of the court of appeals until
11 the judge has filed with the state officer designated to issue salary warrants an
12 affidavit that (1) no matter referred to the judge for opinion or decision has been
13 uncompleted or undecided by the judge for a period of more than six months
14 following the oral argument of the matter or, if there is no oral argument, for a
15 period of more than six months following the date the matter is taken under
16 advisement. The affidavit must be submitted under oath, must be in a form
17 approved by the Department of Administration, and must contain a statement
18 that the affiant is aware that making a false statement in the affidavit is
19 punishable as perjury under AS 11.56.200.

20 * Sec. 6. AS 22.10.190(b) is amended to read:

21 (b) A salary warrant may not be issued to a superior court judge until the
22 judge has filed with the state officer designated to issue salary warrants an affidavit
23 that no matter referred to the judge for opinion or decision has been uncompleted or
24 undecided by the judge for a period of more than six months following the trial,
25 hearing, or oral argument of the matter or, if there is no trial, hearing, or oral
26 argument, for a period of more than six months following the date the matter is
27 taken under advisement. The affidavit must be submitted under oath, must be in
28 a form approved by the Department of Administration, and must contain a
29 statement that the affiant is aware that making a false statement in the affidavit
30 is punishable as perjury under AS 11.56.200.

31 * Sec. 7. AS 22.15.220(c) is amended to read:

1 (c) A salary warrant may not be issued to a district judge or magistrate until
2 the judge or magistrate has filed with the state officer designated to issue salary
3 warrants [,] an affidavit that no matter referred to the judge or magistrate for opinion
4 or decision has been uncompleted or undecided by the judge or magistrate for a period
5 of more than six months following the trial, hearing, or oral argument of the
6 matter or, if there is no trial, hearing, or oral argument, for a period of more
7 than six months following the date the matter is taken under advisement. The
8 affidavit must be submitted under oath, must be in a form approved the
9 Department of Administration, and must contain a statement that the affiant is
10 aware that making a false statement in the affidavit is punishable as perjury
11 under AS 11.56.200.

12 * Sec. 8. AS 22.20.300 is amended by adding a new subsection to read:

13 (b) Annually not later than January 31, the administrative director of the
14 Alaska court system shall report to the legislature on the number of matters in all the
15 courts of the state that have been (1) referred to a judicial officer for opinion or
16 decision and that have been uncompleted or undecided for a period of more than six
17 months following the oral argument of the matter or, if there is no oral argument, for a
18 period of more than six months following the date the matter is taken under
19 advisement, and (2) undecided for a period of more than one year following the oral
20 argument of the matter or, if there is no oral argument, for a period of one year
21 following the date the matter is taken under advisement. The administrative director
22 shall also provide a list of appellate cases decided during the preceding calendar year
23 that were undecided for a period of more than one year following the oral argument of
24 the case or, if there was no oral argument, for a period of more than one year
25 following the date the case was taken under advisement. This list shall include case
26 names, case numbers, and relevant and appropriate statistical information for each
27 case.

28 * Sec. 9. AS 39.25.080(b) is amended to read:

29 (b) The following information is available for public inspection, subject to
30 reasonable regulations on the time and manner of inspection:

31 (1) the names and position titles of all state employees;

- 1 (2) the position held by a state employee;
- 2 (3) prior positions held by a state employee;
- 3 (4) whether a state employee is in the classified, partially exempt, or
- 4 exempt service;
- 5 (5) the dates of appointment and separation of a state employee;
- 6 [AND]
- 7 (6) the compensation authorized for a state employee; and
- 8 (7) whether a salary warrant has been withheld from a justice,
- 9 judge, or magistrate under AS 22.05.140(b), AS 22.07.090(b), AS 22.10.190(b), or
- 10 AS 22.15.220(c).

11 * Sec. 10. This Act takes effect January 1, 2002.

*Amended
effective date*

CS FOR SENATE BILL NO. 161(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/4/01
Referred: Rules

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the withholding of salary of justices, judges, and magistrates;**
2 **relating to prompt decisions by justices, judges, and magistrates; relating to judicial**
3 **retention elections for judicial officers; and providing for an effective date."**

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8 sufficient to require the judicial officers of the state to conduct their business promptly, with
9 the goal that virtually all trial court matters under advisement be decided within six months;
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11 the case or, if there is no oral argument, within six months following the date that the case is
12 taken under advisement; that virtually all appellate cases be decided within one year following
13 the oral argument of the case or, if there is no oral argument, within one year following the
14 date that the case is taken under advisement; and that no appellate case takes longer than two

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2 date that the case is taken under advisement.

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4 **Sec. 15.58.020. Contents of pamphlet.** Each election pamphlet must contain

5 (1) photographs and campaign statements submitted by eligible
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8 warrant:

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10 for each judicial officer to receive a salary, state law requires the judicial officer
11 to file an affidavit that no matter has been uncompleted or undecided by the
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20 (A) the full text of the proposition specifying constitutional or
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22 (B) the ballot title and the summary of the proposition prepared
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3 (10) for the question whether a constitutional convention shall be
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5 (A) a full statement of the question placed on the ballot;

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 3 warrants [,] an affidavit that no matter referred to the judge or magistrate for opinion
 4 or decision has been uncompleted or undecided by the judge or magistrate for a period
 5 of more than six months following the trial, hearing, or oral argument of the
 6 matter or, if there is no trial, hearing, or oral argument, for a period of more
 7 than six months following the date the matter is taken under advisement. The
 8 affidavit must be submitted under oath, must be in a form approved the
 9 Department of Administration, and must contain a statement that the affiant is
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 17 months following the oral argument of the matter or, if there is no oral argument, for a
 18 period of more than six months following the date the matter is taken under
 19 advisement, and (2) undecided for a period of more than one year following the oral
 20 argument of the matter or, if there is no oral argument, for a period of one year
 21 following the date the matter is taken under advisement. The administrative director
 22 shall also provide a list of appellate cases decided during the preceding calendar year
 23 that were undecided for a period of more than one year following the oral argument of
 24 the case or, if there was no oral argument, for a period of more than one year
 25 following the date the case was taken under advisement. This list shall include case
 26 names, case numbers, and relevant and appropriate statistical information for each
 27 case.

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- 1 (2) the position held by a state employee;
2 (3) prior positions held by a state employee;
3 (4) whether a state employee is in the classified, partially exempt, or
4 exempt service;
5 (5) the dates of appointment and separation of a state employee;
6 [AND]
7 (6) the compensation authorized for a state employee; and
8 (7) whether a salary warrant has been withheld from a justice,
9 judge, or magistrate under AS 22.05.140(b), AS 22.07.090(b), AS 22.10.190(b), or
10 AS 22.15.220(c).

11 * Sec. 10. This Act takes effect ~~January 1, 2004.~~

JAN 1, 2002

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

SENATE JUDICIARY COMMITTEE**SPONSOR STATEMENT
SENATE BILL 161
(3/29/01)**

**"An Act relating to the withholding of salary of justices, judges, and magistrates;
relating to requiring prompt decisions by justices, judges, and magistrates;
and relating to judicial retention elections for judicial officers."**

SB 161 amends AS 22.05.140(b), AS 22.07.090(b), AS 22.10.190(b) and AS 22.15.220(c) to require judges to make decisions within four months instead of six months. It also requires Appellate Courts to make decisions within eight months. Additionally, it requires information to be published in the State Voter's Guide regarding the failure of any judge or justice to meet these time requirements.

Currently, under AS 22.05.140(b), AS 22.07.090(b), AS 22.10.190(b) and AS 22.15.220(c), judicial officers are required to file an affidavit that no case or matter has been uncompleted or undecided for a period of more than six months in order to receive their salary. AB 161 would require cases to be completed within four months for justice and judges to receive their salary. At the Appellate Court level, the time frame would be extended an additional four months for final decisions by the entire Court of Appeals or Supreme Court. The election pamphlet would be required to explain the procedure and indicate any judicial officer not issued one or more salary warrants.

The withholding of salary warrants is designed to ensure that justices and judges produce their decisions in a timely manner. Other states have similar laws. Unfortunately, there are Alaska Supreme Court cases that have been pending for over two years. The parties in these cases have completed their oral arguments and/or filing of the documents required and are simply waiting for the Supreme Court to make their decision. Justice delayed is truly justice denied.

This information is critical when voters are making decisions regarding the retention of judges. The public should be made aware of those justices and judges who are consistently late in making their decisions.



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

MEMORANDUM

May 5, 2001

TO: Representative Norm Rokeberg, Chair
House Judiciary

FROM: Senator Dave Donley, Co-Chair
Senate Finance Committee

RE: Hearing on CS SB 161 (fin), Timely Judicial Decisions/ Judges' Pay

Thank you for scheduling a Judiciary Hearing on CSSB 161 (Fin). Attached for inclusion in the committee packets is the Sponsor Statement to the legislation.

This legislation promotes timely judicial decisions by adopting legislative intent, clarifying existing statutes, and requiring a report to the legislature regarding the timeliness of decisions issued each year.

Additionally it requires information to be published in the election pamphlet about the number of times individual judges up for retention election have had their salaries withheld as a result of not issuing decisions in a timely manner.

The Court System, and Chief Justice Fabe in particular, was extremely helpful in drafting this legislation so it accomplished the goals desired in a manner consistent with the Court System's policies and procedures.

Co-Chair: Senate Finance Committee

Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chairman
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

SPONSOR STATEMENT COMMITTEE SUBSTITUTE FOR SENATE BILL 161 (Fin)

**"An Act relating to the withholding of salary of justices, judges, and magistrates;
relating to prompt decisions by justices, judges, and magistrates;
relating to judicial retention elections for judicial officers' and providing an effective date"**

CS SB 161(Fin) promotes timely judicial decisions. It first **adopts legislative intent** that the Supreme Court adopt rules that require judicial officers to conduct their business promptly. The intent language specifies that virtually all trial court matters under advisement should be decided within 6 months. For appellate cases, the intent states that a majority of appellate cases should be decided within 6 months, virtually all should be decided within one year and no cases should take longer than 2 years.

Secondly, the legislation **clarifies existing law relating to when a salary warrant of a judge is withheld for failure to issue a decision in a timely manner**. Currently under AS 22.05.140(b), AS 22.07.090(b), AS 22.10.190(b) and AS 22.15.220(c), judicial officers are required to file an affidavit that no case or matter has been uncompleted or undecided for a period of more than six months in order to receive their salary. CSSB 161(Fin) clarifies that this time period begins when oral arguments are concluded, or if there are no oral arguments, the date the matter is taken under advisement.

The withholding of salary warrants is in existing statute and is designed to ensure that justices and judges produce their decisions in a timely manner. Other states have similar laws. Unfortunately, there are Alaska Supreme Court cases that have been pending for over two years and **one case has been pending for over three years**. The parties in these cases have completed their oral arguments and/or filing of the documents required and are simply waiting for the Supreme Court justice to make their decision. Justice delayed is truly justice denied.

Third, CSSB 161(Fin) requires that information regarding the failure of any judge or justice to meet these time requirements be published in the state voter's guide. The timeliness in which judges make their decisions is critical information to voters who are making decisions regarding the retention of judges. The public should be made aware of those justices and judges who are consistently late in making their decisions. The election pamphlet would be required to explain the procedure and indicate any judicial officer not issued one or more salary warrants.

Fifth, this legislation requires the administrative director of the court system to report to the legislature on the timeliness of judge's decisions. The report will include a list of appellate cases decided during the preceding calendar year that were undecided for a period of more than one year and include case names, numbers and relevant statistical information for each case.

Fifth, it ensures public access to information about judicial warrants.

FISCAL NOTE

No. 3

Bill Version: CSSB 161(FIN)

(S) Publish Date: 5/4/01

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) 5/3/01 Dept. Affected _____
 Title No Pay for Judges Until Decision BRU Alaska Court System
 Component Trial Courts
 Sponsor Senate Judiciary
 Requester Senate Finance Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

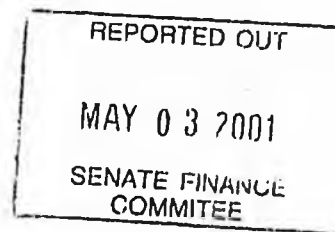
Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.



Prepared by: C.S. Christensen III, Deputy Administrative Director Phone 463-4736
 Division Alaska Court System Date/Time _____
 Approved by: Stephanie J. Cole, Administrative Director Date 5/3/01
 Agency Alaska Court System

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SB

166

Moved by
BenKowitz
FAILS

AMENDMENT^{#1}

OFFERED IN THE HOUSE

by Representative

TO: Senate Bill 166

1 Page 1, preceding line 4, insert:

2 **** Section 1.** The uncodified law of the State of Alaska is amended by adding a new
3 section to read:

4 **FINDINGS AND INTENT:** The legislature finds that, in order to ensure the people of
5 Alaska receive the best possible representation in the United States Congress and
6 Alaska's executive branch:

7 (a) Members of Congress and elected executives should seek election to other offices
8 after completing their current terms.

9 (b) In the event that Members of Congress and elected executives choose to pursue other
10 offices during their term in office, they should resign their current post to allow a
11 successor to vigorously pursue Alaska's interests."

12 Renumber following sections accordingly.

Not offered

AMENDMENT #2

OFFERED IN THE HOUSE

by Representative Berkowitz

TO: SB 166

- 1 Page 1, line 14, following "call a",
- 2 Delete "special primary"
- 3 Page 2, line 1,
- 4 Delete "election and a"

Moved
by Berkowitz
FAILS

AMENDMENT #3

OFFERED IN THE HOUSE

by Representative Berkowitz

TO: SB 166

- 1 Page 1, lines 9-13,
- 2 Delete all materials

Moved by
Berkowitz
FAILS

AMENDMENT #4

OFFERED IN THE HOUSE

by Representative

TO: Senate Bill 166

1 Page 1, line 1, following "filling":

2 Delete "by appointment"

3 Page 1, line 4, through page 2, line 3:

4 Delete all material and insert:

5 **** Section 1.** AS 15.40.010 is amended to read:

6 **Sec. 15.40.010.** Condition [CONDITIONS] and time of calling special election

7 [FILLING VACANCY BY APPOINTMENT]. When a vacancy occurs in the office of

8 United States senator, the governor [, WITHIN 30 DAYS,] shall, **by proclamation and**

9 **subject to AS 15.40.050, call a special election to be held on a date not less than 60**

10 **nor more than 90 days after the date the vacancy occurs** [APPOINT A

11 QUALIFIED PERSON TO FILL THE VACANCY]. However, if the [REMAINDER

12 OF THE TERM OF THE PREDECESSOR IN OFFICE WILL EXPIRE OR IF THE]

13 vacancy **occurs on a date that is less than 180 but more than 60 days before the date**

14 **of the primary election for the office** [WILL BE FILLED BY A SPECIAL ELECTION

15 BEFORE THE SENATE WILL NEXT MEET, CONVENE, OR RECONVENE], the

16 governor may not **call a special election** [FILL THE VACANCY].

17 *** Sec. 2.** AS 15.40.050 is amended to read:

18 **Sec. 15.40.050. Date of special election.** The special election to fill the vacancy shall be

19 held on the date of the first [GENERAL] election, **whether primary or general,**

20 [WHICH IS HELD MORE THAN THREE FULL CALENDAR MONTHS] after the
21 vacancy occurs if the vacancy occurs on a date that is less than 180 but more than 60
22 days before

23 (1) a primary election, other than the primary election for the office; or

24 (2) a general election.

25 * **Sec. 3.** AS 15.40.060 is amended to read:

26 **Sec. 15.40.060. Proclamation of special election.** The governor shall issue the
27 proclamation calling the special election at least 50 [80] days before the election.

28 * **Sec. 4.** AS 15.40 is amended by adding a new section to read:

29 **Sec. 15.40.075. Date of nominations.** Candidates for the special election shall be
30 nominated by petition transmitted to the director before the 21st day after the vacancy
31 occurs by

32 (1) the actual physical delivery of the petition in person;

33 (2) mail postmarked not later than midnight of that date; or

34 (3) telegram of a copy in substance of the statements made in the petition.

35 * **Sec. 5.** AS 15.40.030, 15.40.040, 15.40.080, and 15.40.090 are repealed.

36 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c)."



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

SENATE BILL 166

“An Act relating to the time of filling by appointment a vacancy in the office of United States senator”

Senate Bill 166 will provide Alaskans time to comment before a governor appoints an individual to a vacancy in the U.S. Senate. It is important to give the residents of Alaska an opportunity to voice their opinion on who is best suited to represent them in the U.S. Senate in the event of a vacancy occurring.

The Seventeenth Amendment of the United States Constitution grants state legislatures the exclusive authority to set the terms of temporary appointments to fill vacancies in the U.S. Senate. Senate Bill 166 amends current law to require a 5-day waiting period before the Governor may appoint an individual to fill a vacancy in the United States Senate

Alaskans currently have an opportunity to choose a new U.S. Senator by a special election if a vacated U.S. Senate term is longer than 30 months. They have no guarantee of an opportunity to indicate their opinion on a replacement, however, if the remaining term is less than that period. Alaskans are entitled to make their opinions known regarding this extremely important position.

This legislation simply ensures a brief period during which Alaskans can express their opinions to the governor about whom they believe is the best person for a vacant U.S. Senate position. The governor still retains the power of appointment, but Alaskans will be guaranteed an opportunity to comment before he does so.

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Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council

DD:dld

4/23/01

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United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5. **Power to enforce article.** The Congress shall have power to enforce by appropriate legislation, the provisions of this article.²²

ARTICLE XV.

§ 1. **Right to vote not to be abridged.** The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

§ 2. **Power to enforce article.** The Congress shall have power to enforce this article by appropriate legislation.²³

ARTICLE XVI.

Income tax. The Congress shall have power to levy and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.²⁴

ARTICLE XVII.

Election of Senators. The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.²⁵

ARTICLE XVIII.

§ 1. **National liquor prohibition.** After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

§ 2. **Power to enforce article.** The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

§ 3. **Ratification within seven years.** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the

22. Proposed by Congress on June 13, 1866, and declared ratified on July 28, 1868.

23. Proposed by Congress on February 26, 1869, and declared ratified on March 30, 1870.

24. Proposed by Congress on July 12, 1909, and declared ratified on February 25, 1913.

25. Proposed by Congress on May 13, 1912, and declared ratified on May 31, 1913.

Collateral references. — 25 Am. Jur. 2d, Elections, § 1 et seq.; 26 Am. Jur. 2d, Elections, § 1 et seq.; 38 Am. Jur. 2d, Governor, §§ 5-7; 63C Am. Jur. 2d, Public Officers and Employees, §§ 87, 90, 103; 77 Am. Jur. 2d, United States, §§ 9-10.

29 C.J.S., Elections, §§ 1(3), 70-74; 91 C.J.S., United States, § 15.

What is "public place" within requirement as to posting of election notices. 90 ALR2d 1210.

Sec. 15.40.010. Conditions and time of filling vacancy by appointment and special election. When a vacancy occurs in the office of United States senator, the governor, within 30 days after the date of the vacancy, shall

(1) appoint a qualified person who, if the predecessor in office was nominated by a political party, has been, for the six months before the date of the vacancy and is on the date of appointment, a member of the same political party as that which nominated the predecessor: in office to fill the vacancy temporarily until the vacancy is filled permanently by election; and

(2) by proclamation and subject to this chapter, call a special primary election and a special election to fill the vacancy for the remainder of the term of the predecessor in office if the predecessor's term would expire more than 30 calendar months after the date of the vacancy. (§ 8.01 ch 83 SLA 1960; am § 1 ch 30 SLA 1998)

Effect of amendments. — The 1998 amendment, effective May 9, 1998, rewrote this section.

Sec. 15.40.020. Qualification of appointee. [Repealed, § 1 ch 139 SLA 1967.]

Secs. 15.40.030, 15.40.040. Conditions for full, unexpired term appointment; conditions for part-term appointment and special election. [Repealed, § 6 ch 30 SLA 1998.]

Sec. 15.40.050. Date of special primary election and special election. (a) The special primary election to determine a candidate who represents a political party in a special election shall be held on the date of the first primary election that is held more than 30 days after the vacancy occurs.

(b) The special election to fill the vacancy shall be held on the date of the first general election that is held after the first primary election that is held more than 30 days after the vacancy occurs. (§ 8.05 ch 83 SLA 1960; am § 2 ch 30 SLA 1998)

Effect of amendments. — The 1998 amendment, effective May 9, 1998, rewrote this section.

Sec. 15.40.060. Proclamation of special election. The governor shall issue the proclamation calling the special election at least 80 days before the election. (§ 8.06 ch 83 SLA 1960)

Sec. 15.40.070. Term of elected senator. At the special election, a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States senate first meets, convenes, or reconvenes following the certification of the results of the special election by the director. (§ 8.07 ch 83 SLA 1960; am § 159 ch 100 SLA 1980)

Sec. 15.40.075. Determination of candidates; date of nominations. (a) Subject to (b) — (d) of this section, candidates for the special election shall be nominated as provided in AS 15.25.

- § 5. Effective date of sections 1 and 2.
 § 6. Ratification within seven years.

ARTICLE XXI.

- § 1. National liquor prohibition repealed.
 § 2. Transportation of liquor into "dry" state.
 § 3. Ratification within seven years.

ARTICLE XXII.

- § 1. Terms of office of the President.
 § 2. Ratification within seven years.

ARTICLE XXIII.

- § 1. Electors for President and Vice President in District of Columbia.
 § 2. Power to enforce article.

ARTICLE XXIV.

- § 1. Poll tax payment not required to vote in federal elections.

- § 2. Power to enforce article.

ARTICLE XXV.

- § 1. Succession upon death, resignation or removal of President.
 § 2. Vacancy in office of Vice President.
 § 3. Declaration by President of inability to perform duties.
 § 4. Declaration of President's disability by Vice President and other officers; determination of issue.

ARTICLE XXVI.

- § 1. Voting by persons eighteen years of age.
 § 2. Power to enforce article.

ARTICLE XXVII.

Compensation of Senators and Representatives.

Preamble.

WE THE PEOPLE of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.¹

ARTICLE I.

§ 1. **Legislative powers.** All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

§ 2. **House of Representatives; how constituted; power of impeachment.** The House of Representatives, shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.² The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five and Georgia three.

¹ The headings appearing in boldface type have been inserted in this reprint of the original Constitution. The arrangement, except for capitalization and spelling, follows the arrangement of the reprint in the Constitution of the United States (5th ed., 1952), published by the Library of Congress.

² See 14th amendment, § 2, and 16th amendment.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

§ 3. The Senate; how constituted; impeachment trials. [The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.]³

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; [and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies].⁴

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

§ 4. Election of Senators and representatives. The times, places and manner of holding elections for Senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

[The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.]⁵

§ 5. Quorum; journals; meetings; adjournments. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and

3. See 17th amendment.

4. See 17th amendment.

5. See 20th amendment, § 2.

Article 2. United States House of Representatives.

Section	Section
140. Condition and time of calling special election	180. Date of nominations
150. Condition for holding special election with primary	190. Requirements of petition for no-party candidates
160. Proclamation	200. Requirements of party petition
170. Term of elected representative	210. Selection of party nominees
	220. General provisions for conduct of special election

Collateral references. — 25 Am. Jur. 2d, Elections, § 1 et seq.; 26 Am. Jur. 2d, Elections, § 1 et seq.; 38 Am. Jur. 2d, Governor, §§ 5-7; 63C Am. Jur. 2d, Public Officers and Employees, §§ 87, 90, 103; 77 Am. Jur. 2d, United States, §§ 9-10.

29 C.J.S., Elections, §§ 1(3), 70-74; 91 C.J.S., United States, § 15.

What is "public place" within requirement as to posting of election notices. 90 ALR2d 1210.

Sec. 15.40.140. Condition and time of calling special election. When a vacancy occurs in the office of United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in general election years, the governor may not call a special election. (§ 8.21 ch 83 SLA 1960; am § 30 ch 69 SLA 1970)

Sec. 15.40.150. Condition for holding special election with primary. If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election, the governor shall, by proclamation, call the special election to be held on the date of the primary election. (§ 8.22 ch 83 SLA 1960; am § 31 ch 69 SLA 1970)

Sec. 15.40.160. Proclamation. The governor shall issue the proclamation at least 50 days before the election. (§ 8.23 ch 83 SLA 1960)

Sec. 15.40.170. Term of elected representative. At the special election, a United States representative shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States house of representatives meets, convenes, or reconvenes following the certification of the results of the special election by the director. (§ 8.24 ch 83 SLA 1960; am § 163 ch 100 SLA 1980)

Sec. 15.40.180. Date of nominations. Candidates for the special election shall be nominated by petition transmitted by (1) the actual physical delivery of the petition in person; (2) by mail postmarked not later than midnight of the filing date; or (3) by telegram of a copy in substance of the statements made in the petition to the director before the 21st day after the vacancy occurs. (§ 8.25 ch 83 SLA 1960; am § 19 ch 125 SLA 1962; am § 164 ch 100 SLA 1980)

Sec. 15.40.190. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election and shall state in substance that which is required for nomination petitions by AS 15.25.180. (§ 8.26 ch 83 SLA 1960; am § 165 ch 100 SLA 1980; am § 35 ch 85 SLA 1986)

NOTES TO DECISIONS

Ballot access requirement. — The amendment of a similar ballot access requirement increasing minimum signatures required from 1000 to 3 percent of votes cast in last election was held violative of free

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 166
 (S) Publish Date: 4/17/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Office of the Governor
 Title: "An Act relating to the time of filling by BRU: Executive Operations
appointment a vacancy in the office of United States Senator." Component: Executive Office
 Sponsor: Senators Donley, Taylor
 Requester: Senate Rules Committee Component Number: 6

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	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (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)

SB166 has no fiscal impact on the Office of the Governor.

Prepared by: Michael A. Nizich, Administrative Director Phone 465-3876
 Division: Administrative Services Date/Time 4/12/01 12:00 AM
 Approved by: David Ramseur Date 04/12/2001
 Agency: Office of the Governor

For distribution information, call the Governor's Legislative Office

Subject: SB 166

Date: Sat, 28 Apr 2001 02:06:12 -0800

From: "Randy Ruedrich" <raraep@pci.net>

To: "Representative Norm Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

I support SB 166 "An Act relating to the time of filling by appointment a vacancy in the office of United States senator."

Please advise me of your committee's hearing date for this important bill. I want to testify in support of the bill and urge its swift passage into law.

This is good Republican legislation in my opinion.

Randy Ruedrich
Chairman RPA

SB

169



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Sponsor Statement

for

CS SB 169 (FIN)

February 27, 2002

Senate Bill 169 amends AS 47.12.030 to automatically waive juveniles over 16 years of age to adult court when they are charged with a violent felony against a person because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin.

The language used to determine whether a crime is a "hate crime" is the exact language contained in AS 12.55.155 (22) that is used as an aggravating factor when sentencing adults. The Governor's Tolerance Commission report recommends the legislature, "pass hate crime legislation to include crimes against individuals based upon race, religion, disability, ethnicity/national origin. . ." This legislation is consistent with the Tolerance Commission's recommendations.

Violent hate crimes are particularly dangerous and destructive to our communities. This legislation ensures public accountability of those persons accused and increases deterrence of such future crimes. While juveniles waived to adult court under AS 47.12.030 are tried and convicted as adults, **it is against federal and state law to incarcerate a juvenile with adults.** There has never been an incident in Alaska's history of a juvenile being abused by an adult in any Alaskan prison.

The juvenile justice system has no public accountability. Current law requires that the identity and court records of persons tried in juvenile court be kept confidential. We need public accountability for such crimes so Alaskans can be sure that justice is accomplished.

The Department of Health and Social Services, Division of Juvenile Services has suggested that the use of Alaska's dual sentencing law would be a suitable substitute for this legislation. However, the dual sentencing law, since its inception two years ago, is obviously not working since it has **never been utilized.**

Senate Bill 169 sends a clear message to juveniles that Alaskans and Alaska's justice system will not tolerate hate crimes. Moving these crimes of particular concern against society and our communities to adult court will ensure public accountability that justice is done.

DD/kk:ja

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SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

**Offenses committed by a minor 16 years of age
resulting in the automatic waiver to adult court
if the offense occurred because of the victim's race, sex, color, creed,
physical or mental disability, ancestry or national origin
under changes made by CSSB 169(Fin)**

- AS 11.41.130. Criminally negligent homicide – Class B felony
- AS 11.41.210. Assault in the second degree – Class B felony
- AS 11.41.220. Assault in the third degree – Class C felony
- AS 11.41.260. Stalking in the first degree - Class C felony
- AS 11.41.420. Sexual assault in the second degree – Class B felony
- AS 11.41.425. Sexual assault in the third degree – Class C felony
- AS 11.41.436. Sexual abuse of a minor in the second degree – Class B felony
- AS 11.41.438. Sexual abuse of a minor in the third degree – Class C felony
- AS 11.41.458. Indecent exposure in the first degree – Class C felony
- AS 11.41.510. Robbery in the second degree – Class B felony
- AS 11.41.520. Extortion – Class B felony
- AS 11.41.530. Coercion – Class C felony

Notes:

Offenses under current law for which a minor 16 or older is automatically waived to adult court:

- unclassified and Class A felonies that are crimes against a person;
- Arson in the first degree (class A felony that is a crime against property);
- and Class B felonies that are crimes against a person provided that the minor allegedly used a deadly weapon and was previously adjudicated as a delinquent or convicted as an adult

Unclassified and Class A Felonies for Crimes against a person:

Assault in the First Degree	Manslaughter
Kidnapping	Robbery in the First Degree
Murder in the first degree	Sexual Assault in the First Degree
Murder in the second degree	Sexual Abuse of a minor in the first degree

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SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Explanation of Adult vs. Juvenile Delinquency Sentences related to Senate Bill 169

by
Senator Dave Donley
May 7, 2001

There are no mandatory minimum sentences for Class B or Class C felony first time offenders. Class C felonies are punishable by "not more than 5 years" and Class B felonies by "not more than 10 years". Presumptive sentencing for both classes only occurs after multiple felony convictions as follows:

Class C	2 nd offense – 2 years	3 rd offense – 3 years
Class B	2 nd offense – 4 years	3 rd offense – 6 years

Juveniles convicted as delinquents are sentenced to not more than 2 years, not to exceed their 19th birthday, with hearings optional to impose 2-year extensions, not to exceed their 19th birthday. It is possible to impose 1 year of supervision past the 19th birthday if the court deems it is in the best interest of the juvenile and the public.

CONFIDENTIALITY: The only time a juvenile's identity or court records can be made public is if they are subjected to the dual sentencing law but the current dual sentencing law has NEVER been used in its two years of existence.

DD/kk:jj

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Distributed by Senator Dave Donley SB 169

Title 47. WELFARE, SOCIAL SERVICES AND INSTITUTIONS
Chapter 47.12. DELINQUENT MINORS

Sec. 47.12.030. Provisions inapplicable.

(a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120. The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

- (1) that is an unclassified felony or a class A felony and the felony is a crime against a person;
- (2) of arson in the first degree; or
- (3) that is a class B felony and the felony is a crime against a person in which the minor is alleged to have used a deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an adult, in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony; in this paragraph, "deadly weapon" has the meaning given in AS 11.81.900 (b).



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Differences between Class A Misdemeanors and Class C Felonies in Crimes Against a Person Pertaining to CSSB 169 (Fin)

Class C Felony	Class A Misdemeanor
<p>Sec. 11.41.220. Assault in the third degree. A person commits the crime of assault in the third degree if that person Recklessly causes physical injury to another person by means of a dangerous instrument</p> <p>places another person in fear of imminent serious physical injury by means of a dangerous instrument;</p> <p>with intent to place another person in fear of death or serious physical injury to the person or the person's family member makes repeated threats to cause death or serious physical injury to another person</p>	<p>Sec. 11.41.230. Assault in the fourth degree. A person commits the crime of assault in the fourth degree if that person Recklessly causes physical injury to another person</p> <p>by words or other conduct that person recklessly places another person in fear of imminent physical injury.</p> <p>with criminal negligence that person causes physical injury to another person by means of a dangerous instrument</p>
<p>Sec. 11.41.458. Indecent exposure in the first degree. (a) An offender commits the crime of indecent exposure in the first degree if</p> <ul style="list-style-type: none"> • the offender violates AS 11.41.460(a); • while committing the act constituting the offense, the offender knowingly masturbates; and • the offense occurs within the observation of a person under 16 years of age. 	<p>Sec. 11.41.460. Indecent exposure in the second degree. An offender commits the crime of indecent exposure in the second degree if the offender knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offensive, insulting, or frightening effect the act may have.</p> <p>(b) Indecent exposure in the second degree before a person under 16 years of age is a class A misdemeanor.</p>

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Class C Felony	Class A Misdemeanor
<p>Sec. 11.41.438. Sexual abuse of a minor in the third degree. An offender commits the crime of sexual abuse of a minor in the third degree if being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender</p>	<p>Sec. 11.41.440. Sexual abuse of a minor in the fourth degree. An offender commits the crime of sexual abuse of a minor in the fourth degree if being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender</p>
<p>Sec. 11.41.260. Stalking in the first degree. A person commits the crime of stalking in the first degree if the person violates AS 11.41.270 and</p> <ul style="list-style-type: none"> • the actions constituting the offense are in violation of a condition of probation, release before trial, release after conviction, or parole; • the victim is under 16 years of age; • at any time during the course of conduct constituting the offense the defendant possessed a deadly weapon; • the defendant has been previously convicted of a crime under this section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section, AS 11.41.270, or AS 11.56.740; or • the defendant has been previously convicted of a crime, or an attempt or solicitation to commit a crime, under (A) AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460, AS 11.56.810, AS 11.61.120, or (B) a law or an ordinance of this or another jurisdiction with elements similar to a crime, or an attempt or solicitation to commit a crime, under AS 11.41.100 - 11.41.250, 11.41.300 - 11.41.460, AS 11.56.810, or AS 11.61.120, involving the same victim as the present offense. 	<p>Sec. 11.41.270. Stalking in the second degree A person commits the crime of stalking in the second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member.</p>



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

OPPOSITION TO DEPARTMENT RECOMMENDATION NO "DUAL SENTENCING"

- * DHSS has been extremely reluctant to call upon AS 47.12.065, the existing optional Dual Sentencing Law, even though the provision was enacted specifically as a compromise between those who demanded greater accountability on the part of young lawbreakers (victims of crime & the legislature), and those who promised the utilization of the provision in exchange for continued inclusion in the process (DHSS)
- * Since becoming "effective" on July 1, 1998, the optional Dual Sentencing Provision (AS 47.12.065) has **never** actually been utilized.
- * Representatives of the Department of Law have stated that AS 47.12.065 has little or no value in its current form.
- * It has been stated to my staff that the Department has only **once** attempted to utilize the provision in over two years, but it failed because the D.A. chose not to proceed.
- * With neither the DA nor DHSS have utilized the "Dual Sentencing Provision" in its current form, it seems highly unlikely that they would be any less reluctant to use it in the future.
- * The sponsor seeks to hold young adults who commit heinous crimes more accountable to deter future crime, while the DHSS seems determined to continue the old, failed juvenile delinquency system

Distributed By Senator Donley CSSB 169 (FIN)

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Tolerance Commission

December 6, 2001

The Honorable Governor Tony Knowles
3rd Floor, State Capitol
Juneau, AK 99801

Dear Governor Knowles:

The following pages contain the recommendations of the Commission on Tolerance. You formed the commission with the instructions that we travel the state, hear personal accounts of discrimination and intolerance, and recommend ways the state can respond.

We held 11 public meetings in Anchorage, Juneau, Kodiak, Fairbanks, Bethel, Kotzebue and Kenai. We met in facilities ranging from the Egan Center in Anchorage to the Borough Assembly Chambers in Kotzebue. We gathered in office buildings, libraries, and community centers.

The Commission heard heartbreaking testimony of discrimination and injustice, expressions of frustration at a system in which many feel they are not full participants, and demands for positive action.

The Commission's report focuses on four major areas: education, institutions, economic concerns and the judicial system. Each section contains findings and recommendations based on the testimony heard and research conducted.

The report also includes a Community Action Guide, offering ways each Alaskan can take personal responsibility to work toward a society that celebrates diversity. The guide illustrates many of the positive actions Alaskans are already taking to combat intolerance.

On behalf of the commissioners, thank you for appointing us to this Commission and giving us the opportunity to listen to Alaskans. We look forward to assisting you in any way we can in presenting our findings to the Legislature and others.

Sincerely,

Rev. Chuck Eddy, Chair

Excerpt from Governors Commission on Tolerance Final Report

Pass Hate Crime Legislation

Finding: Alaska's statutes regarding punishment for crimes motivated by bias or hate are limited, too lenient, and do not offer positive approaches to preventing further offenses. Alaska law enforcement officials and the public are unaware of the extent of hate crimes in our state because there is no requirement to report these crimes.

Recommendation: Pass hate crime legislation to include crimes against individuals based upon race, religion, disability, ethnicity/national origin, gender, sexual orientation, and economic status. Consider establishing a separate criminal charge for hate crimes, as opposed to the current provisions that allow only a harsher sentence for a crime in which hate is a factor.

Recommendation: Encourage sentencing in hate crime cases to include cultural diversity/sensitivity training for the offender.

Recommendation: Require all law enforcement agencies to compile and report hate crimes to appropriate authorities.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSB 169(FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An Act relating to the nonapplicability BRU Administration & Operations
delinquency laws to certain minors accused of certain... Component All
 Sponsor Senator Donley
 Requester House Judiciary Component No. 694

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						
TOTAL OPERATING	***	***	***	***	***	***

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

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

FUND SOURCE (Thousands of Dollars)

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

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 legislation would automatically waive minors aged 16 and older into the adult system for commission of a felony crime against a person in which the minor is alleged to have directed the conduct constituting the crime at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin.

 At this time we have no way of knowing how many offenders might be included in this group. We are therefore submitting an indeterminate fiscal note.

Prepared by: Candace Brower Phone 465-4652
 Division: Commissioner's Office Date/Time 2/28/02 1:44 PM
 Approved by: Margaret Pugh, Commissioner Date 2/28/02
 Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS SB 169 (FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: HATE CRIMES AND JUVENILE WAIVERS BRU: Juvenile Justice
 Component: Probation Services
 Sponsor: DONLEY
 Requestor: HOUSE (JUD) Component Number: 2134

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES (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--do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: _____

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)

Sixteen and seventeen year olds impacted by this legislation would be treated as adult offenders. As a result there would be no fiscal impact to the department if this legislation were to become law.

Prepared by: Susan M. Taylor, Administrative Manager IV Phone 465-1385
 Division: Juvenile Justice Date/Time: 03/05/2002
 Approved by: Elmer A. Lindstrom, Deputy Commissioner Date: 03/06/2002
 Agency: Department of Health & Social Services

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907-274-3611 Fax 907-276-7989

March 1, 2002

The Honorable Rick Halford
President of the Senate
State Capitol Room 111
Juneau, AK 99801

The Honorable Brian Porter
Speaker of the House of Representatives
State Capitol Room 208
Juneau, AK 99801

The Honorable Gene Therriault,
Chair, Senate State Affairs Committee
State Capitol Room 121
Juneau, AK 99801

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

RE: Support for SB 163 – Hate Crimes Legislation; Opposition to SB 169

Dear Senate President Halford, Senator Therriault, Speaker Porter, and Rep. Rokeberg:

I am writing to you on behalf of the Alaska Federation of Natives to express our strong support for SB 163, entitled *"An Act relating to the commission of an offense or a juvenile delinquency act involving the victim's race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin; relating to sentencing, informal adjustment, and adjudication for those offenses and acts; relating to a diversity tolerance program for certain juvenile delinquency acts; relating to a civil cause of action for certain acts involving discriminatory harassment."* This "Hate Crimes" bill was introduced by Senator Georgianna Lincoln, and is co-sponsored by Senators Davis, Ellis, Hoffman and Elton.

AFN believes that hate crimes are serious, well-documented problems that remain inadequately recognized and largely unaddressed in this state. While the Alaska Legislature has condemned hate crimes (Legislative Resolve 27, July 7, 2001), and called on the citizens of the state to likewise condemn hate crimes and racism, we believe much more needs to be done. This fact is reflected in the final report of the Governor's Commission on Tolerance. That Commission held 11 public meetings around the state and heard testimony of discrimination and injustice. The Commission concluded that

Letter re: SB 163
March 1, 2002
Page 2 of 3

"Alaska's statutes regarding punishment for crimes motivated by bias or hate are limited, too lenient, and do not offer positive approaches to preventing further offenses." It went on to recommend that the legislature pass hate crimes legislation that would address crimes against individuals that are based upon race, religion, disability, national origin, gender, and sexual orientation. It recommended changes in the law that would encourage cultural diversity/sensitivity training for offenders and consideration of a separate criminal charge for hate crimes, as opposed to the current law which simply allows harsher sentences for crimes in which hate is a factor. AFN supports these recommendations and believes that SB 163 addresses each of them.

SB 163 expands the legal protection given to those of our citizens who are most vulnerable to attack because of prejudice. The bill incorporates much of what was proposed by the Governor in SB 200. It creates a separate criminal charge for hate crimes and expands the law to cover crimes targeting a victim's sexual orientation; it clarifies that the law may apply even if the offender mistakenly perceived the victim to fall into one of the listed attributes; it imposes mandatory minimum sentences for hate crime misdemeanors; prohibits the suspension of imposition of sentences in hate crime cases and requires sanctions for juveniles who commit hate crimes, including retribution in the form of community work service and referral to diversity tolerance programs. Finally, the bill creates a civil cause of action that would allow the victims of such crimes to sue their attacker or the parents or guardian of a juvenile attacker.

SB 163 has been assigned to the Senate State Affairs, Judiciary and Finance Committees, but to date has not been scheduled for a hearing in any of these committees. We have heard some say that SB 169 sufficiently addresses the hate crimes issue. That bill has passed the Senate and is now scheduled for a hearing in the House Judiciary Committee on March 6, 2002. Unfortunately, SB 169 does not adequately deal with the issue of hate crimes. We believe that every Alaskan has the right to live in an environment free of the terror brought on by hate violence, and that Alaska's laws need to be expanded and strengthened so that prosecutors have an additional set of tools to reinforce society's moral response to such crimes. Hate crimes have no place in a civilized society, and for that reason the issue needs to be addressed in a comprehensive way. SB 169 does not do that. It only provides for harsher punishment for some juveniles (those over the age of 16) who commit certain felony crimes that target the victims based on their race, sex, color, creed, physical or mental disability, ancestry, or national origin. It does not include alternative sentencing and rehabilitation for young hate crime offenders. Studies have shown that early intervention and education can help prevent future crimes of this nature. SB 163, unlike SB 169, contains provisions that require juveniles who commit hate crimes to participate in a diversity tolerance program or other educational program and to perform a minimum of 100 hours of community work.

SB 163 offers a more comprehensive approach to the problem. It would significantly increase the ability of state law enforcement agencies to work together to solve and prevent a wide range of hate crimes committed because of bias based on race,

Letter re: SB 163
March 1, 2002
Page 3 of 3

color, national origin, religion, sexual orientation, gender or disability of the victim. The bill is a thoughtful, measured response to the problem. For that reason we strongly urge your support for SB 163 and ask that you oppose passage of SB 169.

Thank you for your consideration and assistance on this important issue.

Sincerely,



Julie Kitka
President

JK/chd

Cc: Senator Georgianna Lincoln, Sponsor, SB 163
Senator Bettye Davis, co-sponsor
Senator Johnny Ellis, co-sponsor
Senator Lyman Hoffman, co-sponsor
Senator Kim Elton, co-sponsor
Senate State Affairs Committee members
House Judiciary Committee members
Members of the Bush Caucus

Subject: [Fwd: Judicial Committee Hearing on SB 169]
Date: Fri, 15 Mar 2002 08:01:54 -0900
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: Judicial Committee Hearing on SB 169
Date: Thu, 14 Mar 2002 13:16:30 -0900
From: "Sandy Wassilie" <swassilie@seward.net>
To: <Representative_Norman_Rokeberg@legis.state.ak.us>
CC: <Representative_Scott_Ogan@legis.state.ak.us>,
<Representative_Jeannette_James@legis.state.ak.us>,
<Representative_John_Coghill@legis.state.ak.us>,
<Representative_Kevin_Meyer@legis.state.ak.us>,
<Representative_Ethan_Berkowitz@legis.state.ak.us>,
<Representative_Albert_Kookesh@legis.state.ak.us>

Representative Norman Rokeberg
Chairman, House Judicial Committee

Dear Representative Rokeberg:

Thank you for hearing legislation regarding hate crimes. This problem and particularly the underlying issues of prejudice, stereotyping and bullying that goes on in our schools and communities need to be addressed systematically. I do not feel that trying and punishing juveniles as adults as SB 169 establishes really gets to these issues. At best it isolates individuals who may or may not be dangerous, but the problems persist.

As an educator, a lifelong citizen of Alaska, and a member of a mixed ethnic family, I witness that juveniles mirror what their parents and elders believe and act within the limits of what their neighborhood or community tolerates. I would prefer a more progressive criminal proceeding where the juveniles are tried as juveniles and sentenced to a community based program which may include that they face their victims and see the consequences of their actions. In this way, their families and communities become more involved, and some meaningful change of attitude, not just behavior but attitude as well, may be put into action. I believe we already have laws where juveniles are tried as adults for dangerous crimes of murder and sexual assault and where they coexist with hate crimes, then these laws come into effect.

I believe SB 163 contains a comprehensive approach, and it is my hope you will hear this bill as well.

Sincerely,
Sandra P. Wassilie
High Tide Writing
P.O. Box 1576
Seward, AK 99664

Phone: 907-224-3950
Fax: 907-224-3950 (call first)
Cell: 907-362-1568

swassilie@seward.net

Subject: [Fwd: SB 169]

Date: Mon, 18 Mar 2002 11:36:34 -0900

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

Subject: SB 169

Date: Mon, 18 Mar 2002 09:55:06 -0900

From: "Millie Eskey" <millieeskey@gci.net>


To: "Albert Kookesh" <Representative_Albert_Kookesh@legis.state.ak.us>, "Ethan Berkowitz" <Representative_Ethan_Berkowitz@legis.state.ak.us>, "Kevin Meyer" <Representative_Kevin_Meyer@legis.state.ak.us>, "John Coghill" <Representative_John_Coghill@legis.state.ak.us>, "Jeannette James" <Representative_Jeannette_James@legis.state.ak.us>, "Scott Ogan" <Representative_Scott_Ogan@legis.state.ak.us>, "Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>


SB 169 does not deal with the issues of hate crimes. We want every issue of hate crimes to be addressed and therefore support SB 163. With your support we could eliminate hate crimes in Alaska. If hate crime in Alaska is ignored it will destroy us all.

Please look at the following attachments and know that we know that SB 169 is not sufficient enough!!

Thank you.

Mildred N. Eskey, President
Alaska Native Sisterhood, Camp # 87
Anchorage, Alaska

	<u>Della Brown Murder Case.xls</u>	Name: Della Brown Murder Case.xls Type: Microsoft Excel Worksheet (application/vnd.ms-excel) Encoding: base64 Download Status: Not downloaded with message
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	<u>DELLA BROWN CASE UPDATE.doc</u>	Name: DELLA BROWN CASE UPDATE.doc Type: WINWORD File (application/msword) Encoding: base64 Download Status: Not downloaded with message
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Subject: [Fwd: Senate Bill 169.doc.HJC]
Date: Mon, 18 Mar 2002 11:36:57 -0900
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: Senate Bill 169.doc.HJC
Date: Mon, 18 Mar 2002 10:35:09 -0900
From: "Doloresa Cadiente" <doloresa@ptialaska.net>
To: "Albert Kookesh" <kookesh@ptialaska.net>,
"Representative Ethan Berkowitz" <Representative_Ethan_Berkowitz@legis.state.ak.us>,
"Representative Jeannett James" <Representative_Jeannette_James@legis.state.ak.us>,
"Representative John Coghill" <Representative_John_Coghill@legis.state.ak.us>,
"Representative Kevin Meyer" <Representative_Kevin_Meyer@legis.state.ak.us>,
"Representative Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>,
"Representative Scott Ogan" <Representative_Scott_Ogan@legis.state.ak.us>



Office of the Grand President

Doloresa Cadiente

Alaska Native Sisterhood

Grand Camp

March 18, 2002

To: The House Judiciary Committee

Re: SB 169

My name is Dolores Cadiente; I am the Grand President of the Alaska Native Sisterhood Grand Camp, representing the Alaska Native Sisterhood Camps. The Alaska Native Sisterhood (ANS) formed immediately following the Alaska Native Brotherhood (ANB), however the Sisterhood didn't officially organize as a constituent part of the Brotherhood until 1923 and is warmly known as the backbone of the ANB.

The Alaska Native Brotherhood and Alaska Native Sisterhood Grand Camp is comprised of 138 delegates

from 46 ANB and ANS chartered local Camps from communities within the State of Washington, throughout Southeast Alaska including Anchorage, 25 ANB and ANS Executive Committee men and women, and 12 ANB and ANS Grand Officers for a possible total of 175 voting members at the annual convention to conduct business and elect Officers for the work year.

Mr. Chairmen, and members of the committee, the Sisterhood would like to go on record to state that SB 169 does not adequately address the issue of hate crimes and urge you to consider the passage of a more meaningful hate crime bill that would include a more comprehensive approach to deter crimes of hate by incorporating the recommendation of the Tolerance Commission. As Civil Rights Leader Elizabeth Peratrovich said in her testimony during 1945 to Honorable men like yourself, "No law will eliminate crimes but, at least you as legislators, can assert to the world that you recognize the evil of the present situation and speak your intent to help us overcome discrimination." As President of the Alaska Native Sisterhood I don't believe that SB 169 is the answer if your intent is to help overcome discrimination. Your most serious consideration for a more comprehensive solution is greatly appreciated.

Gunalcheesh, Howa, and Thank You for all that you do for the people of the State of Alaska.

In Sisterhood,

Doloresa Cadiente, Grand President

Alaska Native Sisterhood Grand Camp

9621 Glacier Highway

Juneau, Alaska 99801

(907) 789-0272

ANOTHER ONE MILLIONTH REASON TO PASS THE 'HATE LAW' CRIME"

This report is to be submitted to the Grand Camp President Doloresa Cadiente

Report: January 18, 2002

Attendance: Millie Eskey, President ANS; Harriet Belcal, Vice President ANS; Eva Tennison, Chaplain ANS; Daisy Keenak Paggott, Member ANS; Kirkland Scott Piggott Daisy's Husband; Dolores Martinez, Victims for Justice, Inc. 1057 W. Fireweed, Ste 101, Anchorage, Alaska 99503 (907) 278-088; Advocate for Daisy. Wesley Dick, ANB.

Alaska Native Sisterhood, Camp# 87 attended a hearing in a rape, murder Case of the daughter of Daisy Keenak Piggott: Della Brown. We went in Support of our sister Daisy.

Background: Three Boys: Daniel Troxel, Timothy Beckett and Jonathan McCune were approached by Joshua Allen Wade to participate In a murder of Della Brown, of which all three refused to participate In such a crime. Approximately 3-days later or so Joshua Wade Approached the three boys to show them the body of Della Brown. The 3-boys turned J. Wade into the police.

All three of the young men were in one jail Cook Inlet jail because the 3-boys were in an armed robbery charge and have been threatened of their lives and family lives if they testify. According to the paper they are unsure who is threatening them. (01/19/02 Anchorage Daily News)

The 3-boys are claiming the 5th AMENDMENT:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor shall private property be taken for public use without just compensation." As the January 19th, Anchorage Daily Newspaper state these 3-witnesses "are important to the state's case against Joshua Wade in the rape and beating to death of Della Brown, whose body was found in September 2000 in a shack in Spenard."

Judge Mike Wolverton ordered a CLOSED hearing for January 31, 2002, 8:30 AM in the morning for Troxel, 9:30 for Beckett and 10:30 for McCune, because they refused to attend the trial of 01/18/02 AND are now claiming the 5th amendment. Judge says he will meet privately with each witness and their lawyers, then decide if they can testify for the prosecution

The Judge Wolverton also set February 8, 2002, Friday, 10:30 AM for a "Continued Motion Hearing".

Judge Wolverton set March 4, 2002 as the tentative TRIAL DATE Only in the event it is DUABLE. Note too sure if it can be solidified as the Date of the TRIAL.

DELLA BROWN MURDER CASE AS OF 2/6/02 ANCHORAGE DAILY NEWS NEED TO READ THE NEWSPAPER FOR MORE DETAILS.

Background: Joshua Wade accused of murdering Della Prown.
Raped and beat Della Brown to death.
Killed Della on September 2, 2000.
Attorney Cynthia Strout.

Daniel Troxell and Timothy Beckett the two most important witness'es in the case
Are claiming the fifth amendment.

The two were in an armed robbery on January 2001, three times robbed Spenard
Motel. Spenard Motel qualifies as interstate commerce because of
Out-of-state guests. This now involves the Federal Government.
The Feds have stiffer sentences than the State of Alaska for armed
Robbery.

There may be a possibility of Wade killing four other native women.
No evidence as yet.

Judge Mike Wolverton ruled Thursday that this clash of
Constitutional rights means Troxel and Beckett can't be forced to
Testify at Wade's murder trial unless the State gives them immunity,
Which in this case would mean dismissing the robbery charges.
And, with no state charges hanging over them, Troxel and
Beckett would have no legal right to plead the fifth in the
Wade trial, Mary Ann Henry, Assistant District Attorney,
Said. Judge Wolverton did not agree. Federal prosecutors
Also would have to give them immunity, the judge said.
That's not going to happen, Feldis said. Henry said,
There are other legal ways the tape can be used at Wade's trial, plus
The state has other evidence against him. Defense attorney Cynthia
Strout said the state doesn't have a good case against Wade,
Her client, with or without the tape.

UPDATE ON ANS:

On 2/8/02 10:30AM there is to be a "Continued Motion Hearing:"
Daisy Keenak Piggott called me about having a legislature
Calling ANS/ANB to give their opinion on changing the law
Regarding the 5th amendment. So, this type of incident would not
Happen again. Even though, it would not help Daisy at this
Time. Daisy gave me the name of Kathy Jasper at 269-6358 Paralegal.
Kathy said to give the list to Mary Ann Henry at the hearing.
The list of names will be called by the legislator (possibly Spenard, not
Sure as yet) to ask them on their opinions of changing the law regarding
The 5th amendment.

So far the following are volunteering to be called for whatever reason
To help Daisy:

Frank Dennis, ANB, President, Camp # 33: 332-7080
Eva Tennison, Chaplin, ANS, Camp 87: 333-7500
Millie Eskey, President, ANS, Camp 87: 338-5982
Jessica Knox: Member ANS Camp 87: 338-1985
Cindy Vallejo, Treasurer, ANS Camp 87: 333-7500
Arnold Didrickson 276-0600
Monica Wolf, First Grand Vice President ANS: 245-9233
Elizabeth Webber, ANS Camp 87: 344-2307
Ruth Willard, T & H Central Council: 272-4885

Mary Moreno, ANS Camp 87: 245-2710
Arnella Osborne-Horsford: 222-0587
Cecelia Tavelaro, Second Vice President Grand Camp: 830-2745
Sonya Fairbanks, Sargent of Arms, ANS Camp 87: 243-3465
Maggie Fairbanks: 243-3465
Janet Graham: 349-1403
Jane (Igtanlog) Goldbach: 563-7912
Eva Merrifield:
Virginia Hudson:

Joseph A. Garoutte, Legal Advocate, of
Alaska Native Justice Center at 121 West Fireweed, Phone Number 278-1122,
Fax Number 278-1121 is going with her to tomorrow's hearing 2/8/02 10:30 AM.
Alaska Native Justice said they have \$50,000.00 for the 5-Alaska Native
Women killed. She has no other details.

Daisy will be going to the new Victims for Justice building, Dolores Martinez
At 278-0988, meetings to seek help to get over this tragic death of her
Daughter Della Brown.

Daisy Piggott and her sister Mary Montgomery (633-4747) Eagle River)
Are today forming a PRAYER GROUP.

UPDATE: 2/8/02 HEARING. Should have started 10:30 was
Delayed due to Black man Gregory Poindexter as sentenced Friday to
30 years in prison by Judge Elaine Andrews for kidnapping & raping 5 Native Women.
(SEE ANCHORAGE DAILY NEWS 2/9/02 FOR DETAILS)

11:42 am HEARING begins. Strout says loudly to Judge that "bad faith,
No evidence" Because Henry did not respond to the letter requesting
the names of the police officers with the tape and the wiring of the 3-young men.
And that there were no tapes! Henry says there are too much static, not audible.
To hear the testimony.

Judge Wolverton sets 3/8/02 for Evidentiary Hearing. And sets 3/11/02
For trial. Henry says trial is not going to happen.
Will appeal.

Gave list of names to Ms. Henry.

Summary Research on Juvenile Waiver

Children in adult correctional facilities suffer higher rates of physical and sexual abuse and suicide. Compared to those held in juvenile detention centers, youth held in adult jails are:

- 7.7 times more likely to commit suicide
- 5 times more likely to be sexually assaulted
- Twice as likely to be beaten by staff
- 50% more likely to be attacked with a weapon¹

Waiver proponents assert more severe punishment will result in reduced crime and greater public safety. However, research suggests juvenile waiver has exactly the opposite effect.

- A Florida study comparing recidivism rates for matched groups of youthful offenders (comparable on the basis of the number and seriousness of past and current offenses committed as well as sociodemographic characteristics) found that juveniles coming out of the adult system were more likely to re-offend, to re-offend earlier, to commit more subsequent offenses, and to commit more serious subsequent offenses than juveniles retained in the juvenile system.²
- A study of over 500 youth charged in Pennsylvania found that youths transferred to adult court are more likely to be convicted and incarcerated but their recidivism rates are higher than those who remain in juvenile court.³
- A study comparing 15-16 year olds charged with robbery in New York and New Jersey found that New York juveniles whose cases originated in criminal court were more likely to reoffend and to reoffend sooner than the New Jersey juveniles whose cases were heard in juvenile court.⁴

Idaho enacted a juvenile transfer statute for juveniles charged with certain serious crimes in 1981. Social scientists examined arrest rates for five years before and five years after the passage of the law and found no evidence that it had any deterrent effect on the level of juvenile crime in Idaho. In fact, when researchers compared arrest rates for the target offenses with those in Montana and Wyoming, which were similar demographically to Idaho, they found juvenile arrests for the targeted offenses actually increased in Idaho, while decreasing in the other two states.⁵

Two-thirds of children sentenced to adult prisons are released before they are 21 and more than 90% are released before age 30; upon release, re-offending occurs earlier and additional offenses tend to be more serious.⁶

¹ Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy, J. Fagan, M. Frost and T.S. Vivona, *Juvenile and Family Court*, No. 2, 1989.

² The Transfer of Juveniles to Criminal Court: Does It Make A Difference? D. Bishop, C. Frazier, L. Lanza-Kaduce, and L. Winner, *Crime & Delinquency*, Vol. 42 No. 2, April 1996.

³ Excluding Violent Youths from Juvenile Court: The Effectiveness of Legislative Waiver, David Myers, University of Maryland, 1999

⁴ The Comparative Advantage of Juvenile vs. Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders, Jeffrey Fagan, *Law and Policy*, Vol. 18# 1 and 2, Jan/Apr. 1996.

⁵ A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime, Eric L. Jensen and Linda K. Metsger, *Crime and Delinquency*, Vol. 40:96-104, cited in "Bishop, Donna. "Juvenile Offenders in the Adult Criminal System." 27 *Crime and Justice* 81 (2000)

⁶ Tragedy Grows Larger If Santana High School Shooter Is Charged As Adult, Nancy Gannon, News Advisory, Coalition for Juvenile Justice, March 6, 2001.