

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10874 HOUSE JUDICIARY

Indiana—Burns Ind. Code Ann. § 35-46-1-5 (2003)

§ 35-46-1-5. Nonsupport of a child

(a) A person who knowingly or intentionally fails to provide support to the person's dependent child commits nonsupport of a child, a **Class D felony. However, the offense is a Class C felony if the total amount of unpaid support that is due and owing for one (1) or more children is at least fifteen thousand dollars (\$15,000).**

(b) It is a defense that the child had abandoned the home of his family without the consent of his parent or on the order of a court, but it is not a defense that the child had abandoned the home of his family if the cause of the child's leaving was the fault of his parent.

(c) It is a defense that the accused person, in the legitimate practice of his religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to his dependent child.

(d) It is a defense that the accused person was unable to provide support.

HISTORY: IC 35-46-1-5, as added by Acts 1976, P.L. 148, § 6; 1977, P.L. 340, § 88; 1978, P.L. 144, § 9; P.L.213-1996, § 4; P.L.123-2001, § 4.

Michigan—MCL § 750.165 (2003)

§ 750.165. Refusing to support wife or children as required by court order; violation as felony; penalty; exception; suspension of sentence; bond; "state disbursement unit" or "SDU" defined.

Sec. 165. (1) Refusing to support wife or children as required in decree of separate maintenance or divorce or order of court-If the court orders an individual to pay support for the individual's former or current spouse, or for a child of the individual, and the individual does not pay the support in the amount or at the time stated in the order, the individual is **guilty of a felony punishable by imprisonment for not more than 4 years or by a fine of not more than \$2,000.00, or both.**

(2) This section does not apply unless the individual ordered to pay support appeared in, or received notice by personal service of, the action in which the support order was issued.

(3) The court may suspend the sentence of an individual convicted under this section if the individual files with the court a bond in the amount and with the sureties the court requires. At a minimum, the bond must be conditioned on the individual's compliance with the support order. If the court suspends a sentence under this subsection and the individual does not comply with the support order or another condition on the bond, the court may order the individual to appear and show cause why the court should not impose the sentence and enforce the bond. After the hearing, the court may enforce the bond or impose the sentence, or both, or may permit the filing of a new bond and again suspend the sentence. The court shall order a support amount enforced under this section to be paid to the clerk or friend of the court or to the state disbursement unit.

(4) As used in this section, "state disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

HISTORY: Act 328, 1931, p 624; eff September 18, 1931.

Mississippi—Miss. Code Ann. § 97-5-3 (2004)

§ 97-5-3. Desertion or nonsupport of child under age eighteen

Any parent who shall desert or wilfully neglect or refuse to provide for the support and maintenance of his or her child or children, including the natural parent of an illegitimate child or children wherein paternity has been established by law or when the natural parent has acknowledged paternity in writing, while said child or children are under the age of eighteen (18) years shall be **guilty of a felony and, on conviction thereof, shall be punished for a first offense by a fine of not less than One Hundred Dollars (\$ 100.00) nor more than Five Hundred Dollars (\$ 500.00), or by commitment to the custody of the Department of Corrections not more than five (5) years, or both; and for a second or subsequent offense, by a fine of not less than One Thousand Dollars (\$ 1,000.00) nor more than Ten Thousand Dollars (\$ 10,000.00), or by commitment to the custody of the Department of Corrections not less than two (2) years nor more than five (5) years, or both, in the discretion of the court.**

HISTORY: SOURCES: Codes, 1930, § 861; Laws, 1942, § 2087; Laws, 1928, Ex. ch. 89; Laws, 1962, ch. 311; Laws, 1995, ch. 533, § 1, eff from and after July 1, 1995.

Attachment B

Arkansas Code Ann. § 5-26-401 (2003)
750 Illinois Comp Stat. 16/15 (2003)
Nevada Rev. Stat. §201.020 (2003)
62 New Hampshire Rev. Stat. Ann. § 639:4 (2003)

Arkansas—A.C.A. § 5-26-401 (2003)

§ 5-26-401. Nonsupport

- (a) A person commits the offense of nonsupport if he or she fails to provide support to:
- (1) His or her spouse who is physically or mentally infirm, or financially dependent; or
 - (2) His or her legitimate child who is less than eighteen (18) years old; or
 - (3) His or her illegitimate child who is less than eighteen (18) years old and whose parentage has been determined in a previous judicial proceeding; or
 - (4) His or her dependent child who is physically or mentally infirm.
- (b) (1) Nonsupport is a Class A misdemeanor, except that it is a Class D felony if:
- (A) (i) The person leaves or remains without the State of Arkansas for more than thirty (30) days while a current duty of support is unpaid.
 - (ii) Provided, it is an affirmative defense to a charge under this section that the defendant did not leave or remain outside the state with the purpose of avoiding the payment of support;
 - (B) The person has previously been convicted of nonsupport; or
 - (C) The person owes more than two thousand five hundred dollars (\$ 2,500) in past-due child support, pursuant to a court order or by operation of law, and the amount represents at least four (4) months of past-due child support.
- (2) Nonsupport is a Class C felony if the person owes more than ten thousand dollars (\$ 10,000) but less than twenty-five thousand dollars (\$ 25,000) in past-due child support, pursuant to a court order or by operation of law.
- (3) Nonsupport is a Class B felony if the person owes more than twenty-five thousand dollars (\$ 25,000) in past-due child support, pursuant to a court order or by operation of law.
- (c) The court may direct that a fine imposed upon conviction of nonsupport or a bond forfeited in connection with a prosecution for nonsupport be paid for the support and maintenance of the person entitled to support.
- (d) The municipal courts located in a county having a population in excess of two hundred thousand (200,000) inhabitants shall cause a warrant of arrest to be issued upon affidavit of a spouse or any person who is responsible for maintenance of dependent children which states that nonsupport has taken place.
- (e) Any person found guilty of nonsupport shall also be responsible for the court costs and administrative costs incurred by the court.
- (f) The state may take judgment against any defendant convicted of nonsupport for all moneys expended by any state agency for the support and maintenance of the person with respect to whom the defendant had a duty to support.
- (g) It is an affirmative defense to prosecution under this section that the defendant had just cause to fail to provide the support.

HISTORY: Acts 1975, No. 280, § 2405; 1983, No. 174, § 1; A.S.A. 1947, § 41-2405; Acts 1997, No. 1282, § 1; 1999, No. 1484, § 1.

Illinois—750 ILCS 16/15 (2003)

§ 750 ILCS 16/15. Failure to support

Sec. 15. Failure to support. (a) A person commits the offense of failure to support when he or she:

(1) willfully, without any lawful excuse, refuses to provide for the support or maintenance of his or her spouse, with the knowledge that the spouse is in need of such support or maintenance, or, without lawful excuse, deserts or willfully refuses to provide for the support or maintenance of his or her child or children in need of support or maintenance and the person has the ability to provide the support; or

(2) willfully fails to pay a support obligation required under a court or administrative order for support, if the obligation has remained unpaid for a period longer than 6 months, or is in arrears in an amount greater than \$ 5,000, and the person has the ability to provide the support; or

(3) leaves the State with the intent to evade a support obligation required under a court or administrative order for support, if the obligation, regardless of when it accrued, has remained unpaid for a period longer than 6 months, or is in arrears in an amount greater than \$ 10,000; or

(4) willfully fails to pay a support obligation required under a court or administrative order for support, if the obligation has remained unpaid for a period longer than one year, or is in arrears in an amount greater than \$ 20,000, and the person has the ability to provide the support.

(a-5) Presumption of ability to pay support. The existence of a court or administrative order of support that was not based on a default judgment and was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period.

(b) Sentence. A person convicted of a first offense under subdivision (a)(1) or (a)(2) is guilty of a Class A misdemeanor. A person convicted of an offense under subdivision (a)(3) or (a)(4) or a second or subsequent offense under subdivision (a)(1) or (a)(2) is guilty of a Class 4 felony.

(c) Expungement. A person convicted of a first offense under subdivision (a)(1) or (a)(2) who is eligible for the Earnfare program, shall, in lieu of the sentence prescribed in subsection (b), be referred to the Earnfare program. Upon certification of completion of the Earnfare program, the conviction shall be expunged. If the person fails to successfully complete the Earnfare program, he or she shall be sentenced in accordance with subsection (b).

(d) Fine. Sentences of imprisonment and fines for offenses committed under this Act shall be as provided under Articles 8 and 9 of Chapter V of the Unified Code of Corrections [730 ILCS 5/5-8-1 et seq. and 730 ILCS 5/5-9-1 et seq.], except that the court shall order restitution of all unpaid support payments and may impose the following fines, alone, or in addition to a sentence of imprisonment under the following circumstances:

(1) from \$ 1,000 to \$ 5,000 if the support obligation has remained unpaid for a period longer than 2 years, or is in arrears in an amount greater than \$ 1,000 and not exceeding \$ 10,000;

(2) from \$ 5,000 to \$ 10,000 if the support obligation has remained unpaid for a period longer than 5 years, or is in arrears in an amount greater than \$ 10,000 and not exceeding \$ 20,000; or

(3) from \$ 10,000 to \$ 25,000 if the support obligation has remained unpaid for a period longer than 8 years, or is in arrears in an amount greater than \$ 20,000.

(e) Restitution shall be ordered in an amount equal to the total unpaid support obligation as it existed at the time of sentencing. Any amounts paid by the obligor shall be allocated first to current support and then to restitution ordered and then to fines imposed under this Section.

(f) For purposes of this Act, the term "child" shall have the meaning ascribed to it in Section 505 of the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5/101 et seq.].

HISTORY:

Source: P.A. 91-613, § 15; 92-876, § 915.

Nevada—NRS § 201.020 (2003)

§ 201.020. Penalties; jurisdiction

1. Except as otherwise provided in subsection 2, a person who knowingly fails to provide for the support of his:

(a) Spouse or former spouse;

(b) Minor child; or

(c) Child who upon arriving at the age of majority is unable to provide support for himself because of his infirmity, incompetency or other legal disability that was contracted before he reached the age of majority, as ordered by a court, is guilty of a misdemeanor.

2. A person who violates the provisions of subsection 1 is guilty of a category C felony and shall be punished as provided in NRS 193.130 if:

(a) His arrearages for nonpayment of the child support or spousal support ordered by a court total \$ 10,000 or more and have accrued over any period since the date that a court first ordered the defendant to provide for such support; or

(b) It is a second or subsequent violation of subsection 1 or an offense committed in another jurisdiction that, if committed in this state, would be a violation of subsection 1, and his arrearages for nonpayment of the child support or spousal support ordered by a court total \$ 5,000 or more and have accrued over any period since the date that a court first ordered the defendant to provide for such support.

3. A prosecution for a violation of subsection 1 may be brought in a court of competent jurisdiction in any county in which:

(a) A court has issued a valid order for the defendant to pay child support or spousal support;

(b) The defendant resides;

(c) The custodial parent or custodian of the child for whom the defendant owes child support resides;

(d) The spouse or former spouse to whom the defendant owes spousal support resides; or

(e) The child for whom the defendant owes child support resides.

HISTORY: 1923, p. 287; CL 1929, § 10516; 1965, p. 1440; 1967, p. 474; 1969, p. 271; 1979, p. 1284; 1983, p. 1878; 1995, ch. 443, § 79, p. 1196; 1999, ch. 291, § 4, p. 1208; 1999, ch. 638, § 3, p. 3568; 2001, ch. 10, § 137, p. 278.

New Hampshire—RSA 639:4 (2003)

§ 639:4. Non-Support

I. A person is guilty of non-support if such person knowingly fails to provide support which such person is legally obliged to provide and which such person can provide to a spouse, child or other dependent. The fine, if any, shall be paid or applied in whole or in part to the support of such spouse, child or other dependent as the court may direct.

II. In this section, non-support shall be:

(a) A class B felony if the arrearage of support has remained unpaid for a cumulative period of more than one year;

(b) A class B felony if the amount of the arrearage is more than \$ 10,000;

(c) A class B felony if the obligor has been previously convicted of non-support under this section or if the obligor has been convicted of a similar criminal nonsupport offense in another state and the arrearage of support in this state has remained unpaid for a cumulative period of more than one year; or

(d) A class A misdemeanor in all other cases.

HISTORY: 1971, 518:1. 1977, 588:14, eff. Sept. 16, 1977. 1999, 327:1, eff. Jan. 1, 2000.

HB

517

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS
LABOR & COMMERCE COMMITTEE, CHAIRMAN
COMMUNITY & REG AFFAIRS COMMITTEE, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
ADMINISTRATIVE REGULATION REVIEW COMMITTEE, MEMBER

website <http://www.akrepublicans.org/Anderson.htm>




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PHONE: (907) 269-0265
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SESSION
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4939
1-800-465-4939
FAX: (907) 465-2418

Representative Tom Anderson

email: Representative_Tom_Anderson@legis.state.ak.us

Date: March 17, 2004
To: Representative Lesil McGuire, Chair
House Judiciary Committee
From: Representative Tom Anderson 
Re: HB 517

I respectfully request you schedule HB 517 for Senate Finance Committee pending referral from Senate Judiciary.

Enclosed for your consideration are:

1. HB 517
2. Sponsor Statement
3. Fiscal Note (DCED)
4. Communications of support
 - a. James L. Cloud, Senior VP Wells Fargo

Thank you for your consideration of this request.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 517 BY: Representative Tom Anderson

TITLE: "An Act relating to registration in beneficiary form of certain security accounts, including certain reinvestment, investment management, and custody accounts."

HB 517 will permit an investment management, custody account with a trust company or a trust division of a bank with trust powers to have a beneficiary designation take effect upon death of the owner.

Under current law, securities and brokerage accounts may have beneficiary designations take effect upon the death of the owner pursuant to the Uniform Transfer on Death [TOD] Security Registration Act. However, the current definition in Alaska statute of Security Account in the Uniform Act is not broad enough to include investment management or custody accounts, which are generally used by trust departments. The legislation will now allow all of these products to avoid probate by providing a statutory authorization to use a beneficiary designation. It will also put bank trust departments on an equal footing with brokerage firms.

The problem cannot be solved other than by statute. Several states, including California, Idaho, Iowa, Minnesota, and Washington, have enacted similar legislation in the last three years.

HB 517 will allow investment management or custody accounts, generally offered by trust departments in the banking industry, to compete on equal footing with brokerage accounts offered by brokerage companies. Further, the legislation will allow bank customers another opportunity for probate avoidance.

I urge your support for this legislation.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 517
(H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Security Account Beneficiary Designation RDU Banking, Securities & Corp (115)
Component Banking, Securities & Corp
Sponsor House Labor & Commerce
Requester House Labor & Commerce Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation would require owners and sellers of securities to register certain security accounts including certain reinvestment, investment management and custody accounts. It would also provide for an account to be opened before death that will be funded after death.

This legislation has no impact on the operations of the division.

Prepared by: Mark Davis, Director Phone (907) 465-2521
Division Banking, Securities & Corporations Date/Time 2/27/04 5:49 PM
Approved by: Edgar Blatchford, Commissioner Date 2/27/2004
Agency Department of Community & Economic Development



March 1, 2004

Honorable Tom Anderson, Chairman
House Labor and Commerce Committee
State Capitol (MS 3100)
Juneau, AK 99801

Dear Representative Anderson:

I am writing in support of HB 517. This is a technical amendment to current law that evens the playing field by allowing an investment management or custody account with a trust company or a trust division of a bank with trust powers to have a beneficiary designation that will take effect upon death of an owner.

From my perspective, I feel that this legislation is very consumer friendly and will avoid the drawn out procedures of probate. Many states around the country have recognized the need for this type of legislation and have amended their laws in the past year or two.

I would urge your committee's expedited review and urge the bill's passage. Should you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Cloud".

James L. Cloud
Senior Vice President

HB

533

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB533-ACS-TC-3-18-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title If Unreas. Agency Delay/Ct. Decides BRU Alaska Court System
 Component Trial Courts
 Sponsor House State Affairs
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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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 (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 House Bill 533 allows a person proceeding through the administrative adjudication process under AS 44.62.330 - 44.62.630 to move his or her case to the superior court if the person alleges that the agency has unreasonably delayed the process and further delay will cause the person significant and irreparable damage. Once a case is before the court it may either determine the case on its merits, order that the dispute be handled by another form of dispute resolution or establish a deadline for the agency to issue a final administrative decision.
 This bill changes existing law by allowing a person to bring an administrative adjudication to the superior court prior to the issuance of a final agency decision. The court will be impacted by the number of cases that come before it under this provision. However, estimating the number of such cases is too speculative to support a fiscal note. Should the number of cases prove to be significant then the court may return to the legislature for additional funding.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 3/18/04 7:59 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 3/18/2004
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB533
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title "An act relating to judicial relief before final administrative decisions of state agencies." RDU Comm. Fish Entry Commission
 Component Commercial Fisheries Entry Commission
 Sponsor House State Affairs Committee
 Requester House Judiciary Committee Component No. 471

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The commission has averaged more than 70 final decisions on applications for limited entry permits each year since 1990 (more than 1,000 total). Seven appeals from these decisions are currently pending in court, representing about 10% of our average yearly final decisions on applications (the commission does additional kinds of cases including transfer cases).

 HB 533 will almost certainly increase the number of CFEC court cases the state must defend, though the exact number (and thus, the exact fiscal impact to CFEC) cannot be known at this time. Any increase in the number of cases filed will require additional staff and commissioner time. If 10% of the 321 applicants currently on appeal before our hearing officers or commissioners were to file a case

Prepared by: Shirley Penrose, Administrative Officer Phone 907-790-6960
 Division: Commercial Fisheries Entry Commission Date/Time 3/23/04 10:13 AM
 Approved by: Bruce Twomley, Chairman Date 3/23/2003
 Agency: Commercial Fisheries Entry Commission

FISCAL NOTE

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. HB533

ANALYSIS CONTINUATION

under HB 533 without having first exhausted the administrative appeal process available to them, 32 additional lawsuits would be generated. Because gathering and preparing records and assisting the Department of Law with court appeals of CFEC cases is enormously labor intensive and time consuming, if HB 533 results in 10% of the appeals pending before the commission being filed with the courts, the commission will need to add one paralegal position to assist with the additional workload.

The following personal services costs are calculated for a range 15 with salary, benefits and employer costs, including yearly merit increases (based on the current employer costs and XE salary schedule):

FY05: \$54.4
FY06: \$55.8
FY07: \$57.5
FY08: \$59.3
FY09: \$61.0
FY10: \$63.0

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB533-DHSS-DHCS2-03-23-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Health & Social Services

Title JUDICIAL OVERSIGHT OF ADMINISTRATIVE PROCEDURES

RDU Health Care Services

Component Hearings and Appeals

Sponsor HOUSE (STA)

Requester HOUSE (JUD)

Component No. 1434

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match	*	*	*	*	*	*
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would allow parties involved in the administrative hearing and appeals process judicial relief if a party to the proceeding has satisfied all procedural requirements up to the time relief is sought, a state agency unreasonably delays the administrative process, and that delay causes significant and irreparable damage.

HB 533 would circumvent the federal requirements set forth for the Medicaid Program, Temporary Assistance Program, and Food Stamps Program. 7 CFR 273.15 (Food Stamps), 42 CFR 431.200-250 (Medicaid Program), 45 CFR 205.10(Temporary Assistance) requires this

Prepared by: Dwayne Peoples, Director
 Division: Health Care Services
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-3355
 Date/Time 03/13/2004
 Date 03/23/2004

FISCAL NOTE

FN #

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB533-DHSS-DHCS2-03-23-04

ANALYSIS CONTINUATION

state to provide a fair hearing through the administrative process. These federal regulations require the fair hearing process to be complete within 90 days from the date a person requests a hearing, and in some cases regarding food stamps, within 60 days.

Because federal law provides required completion dates, this bill has no fiscal impact on Health Care Services Hearings and Appeals.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 26, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1833\D, HB 533, incorporating the attached amendment. The bill was passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

#1
New Amendment to CSHB 533 () "D" version
by Gruenberg - PASSED

page 2 line 14 delete "15" insert "30"

page 2 line 15 delete "provide" and insert "filed in"

page 2 line 15 delete "with" and insert "a"

23-LS1833\D
Bannister
3/24/04

CS FOR HOUSE BILL NO. 533()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the state's administrative procedures and to judicial oversight of**
2 **administrative matters."**

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

4 *** Section 1. AS 22.10.020(d) is amended to read:**

5 (d) The superior court has jurisdiction in all matters appealed to it from a
6 subordinate court, or administrative agency when appeal is provided by law, and has
7 jurisdiction over petitions for relief in administrative matters under
8 AS 44.62.305. The hearings on appeal from a final order or judgment of a subordinate
9 court or administrative agency, except an appeal under AS 43.05.242, shall be on the
10 record unless the superior court, in its discretion, grants a trial de novo, in whole or in
11 part. The hearings on appeal from a final order or judgment under AS 43.05.242 shall
12 be on the record.

13 *** Sec. 2. AS 44.62 is amended by adding a new section to read:**

14 **Sec. 44.62.305. Judicial relief in administrative matters. (a)**

1 Notwithstanding any other provision of law to the contrary and except as provided in
 2 (f) of this section, a person may obtain judicial relief in an administrative matter by the
 3 superior court before the state agency handling the administrative proceeding on the
 4 matter issues a final administrative decision if

- 5 (1) the person is a party to the administrative proceeding;
- 6 (2) the person has satisfied the procedural requirements of the
 7 administrative proceeding up to the time that the person petitions for judicial relief
 8 under (b) of this section;
- 9 (3) the state agency has unreasonably delayed the progress of the
 10 administrative proceeding; and
- 11 (4) further delay in reaching a final administrative decision will cause
 12 the person immediate and irreparable damage.

13 (b) A person may seek judicial relief under (a) of this section by filing a
 14 petition in the superior court. A person may not file the petition until 15 days after the
 15 person has provided the state agency handling the administrative proceeding with
 16 written notice that the person intends to file the petition.

17 (c) In a proceeding begun under (b) of this section, if the superior court
 18 determines that the person is eligible for judicial relief under (a) of this section, the
 19 superior court may

- 20 (1) enjoin the administrative proceeding and determine the
 21 administrative matter in the superior court;
- 22 (2) order that the administrative matter be handled by another form of
 23 dispute resolution; or
- 24 (3) establish a deadline for the state agency to issue a final
 25 administrative decision.

26 (d) After a person files a petition under (b) of this section, the state agency
 27 shall continue with the administrative proceeding unless the superior court

- 28 (1) enjoins the administrative proceeding under (c)(1) of this section;
- 29 or
- 30 (2) issues an order under (c)(2) of this section.

31 (e) If the superior court decides that a person is not eligible for judicial relief

1 under (a) of this section, a party to the administrative proceeding may exercise any
2 right of appeal allowed under law for the final administrative decision as if the person
3 had not filed a petition under (b) of this section.

4 (f) A person may not obtain judicial relief under this section in a personnel
5 proceeding by a state agency. In this subsection, "personnel proceeding" includes a
6 proceeding under AS 39.25 (State Personnel Act) and a proceeding in a grievance
7 arbitration procedure under a collective bargaining agreement.

8 (g) In this section,

9 (1) "administrative matter" means the subject matter of an
10 administrative proceeding;

11 (2) "administrative proceeding" means

12 (A) a proceeding subject to AS 44.62.330 - 44.62.630; and

13 (B) a proceeding that is not subject to AS 44.62.330 -
14 44.62.630, that is authorized by statute for the adjudication of a state agency
15 matter by the state agency handling the matter or by a person appointed by the
16 state agency, and that involves a matter that directly affects the personal,
17 professional, or business interests of a specific person who is named in the
18 adjudication;

19 (3) "damage" means damage to the personal, professional, or business
20 interests of a person;

21 (4) "party" means a specific person whose personal, professional, or
22 business interests are the subject of an administrative proceeding and who is named in
23 the administrative proceeding;

24 (5) "person" does not include a state agency or other governmental
25 agency;

26 (6) "state agency" means a department, an institution, a board, a
27 commission, a division, an authority, and any other administrative unit of the
28 executive branch of state government, except a public corporation; the term includes
29 the University of Alaska.

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

STATE AFFAIRS COMMITTEE

MEMORANDUM

DATE: March 15, 2004
TO: Rep. Lesil McGuire
FROM: Rep. Bruce Weyhrauch
SUBJECT: HB 533 – Judicial Extraction from Administrative Review

At this time I respectfully request a hearing before your committee on this very important piece of legislation. The Judiciary Committee is this bill's first committee of referral.

If you have any questions or need further information, I invite you to contact Dave Stancliff from Senator Therriault's office.

Thank you for your kind attention to this matter.

ALASKA STATE LEGISLATURE

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ALASKA
STATE CAPITOL
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STATE AFFAIRS COMMITTEE

HB 533

Judicial Extraction from Administrative Review

HB 533 allows a person (petitioner) who is unable to obtain a final administrative decision from a government agency to ask the Superior Court for assistance.

Under the present system, the agency regulators have the power to keep a petitioner tied up in its process for extended periods of time. Long delays can mean high costs to the state, the petitioner and damage to the integrity of the administrative process itself. High costs are especially onerous to smaller businesses or individuals.

The legislature does not intend that agencies be able to tie up petitioners for unreasonable lengths of time. Since the judiciary requires administrative remedies to be exhausted before taking the matter up in court, abuse of agency authority can actually block or unduly delay due process.

For instance, if a state agency fears losing a contested rule in court, it has the ability to effectively delay judicial review by refusing to issue a final administrative decision.

House Bill 533 is an integral part of three-phase regulation reform package.

- Senate Bill 203 reforms the internal administrative hearing process.
- Senate Bill 287 / House Bill 424 reforms the initial phases of the regulatory process.
- Senate Bill 333 / House Bill 533 reforms the final phases of the administrative process.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: H.B. 533
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title If Unreasonable Agency Delay, RDU _____
Court Decides Component _____
Sponsor Representative Weyrauch
Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson, Legislative Liaison Phone 465-6137
Division: Alaska Department of Fish & Game Date/Time 3/19/04 5:33 PM
Approved by: Commissioner Kevin Duffy Date 3/19/2004
Agency: Alaska Department of Fish & Game

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB533-DHSS-DPA-03-23-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Health & Social Services

Title JUDICIAL OVERSIGHT OF ADMINISTRATIVE PROCEDURES

RDU Public Assistance

Component Public Assistance Field Svcs

Sponsor HOUSE (STA)

Requester HOUSE (JUD)

Component No. 236

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	59.4	59.4	59.4	59.4	59.4	59.4
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	59.4	59.4	59.4	59.4	59.4	59.4

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

CHANGE IN REVENUES (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	59.4	59.4	59.4	59.4	59.4	59.4
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	59.4	59.4	59.4	59.4	59.4	59.4

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill allows individuals involved in administrative hearing procedures to seek and receive judicial relief before completing all available administrative proceedings. Public Assistance receives approximately 550 requests for administrative fair hearings per year. While the number of hearings that may proceed to court could range from zero to 550, we will assume approximately 10% or 55 will go to court, and each will require 10 hours of work by an AAG. Our cost estimates are based on the FY 05 Dept. of Law attorney's fees of \$108 per hour.

55 cases/yr. x 10hrs./case x \$108/hr = \$59,400

Prepared by: Angela Salerno
Division Public Assistance
Approved by: Joel S. Gilbertson, Commissioner
Agency Department of Health and Social Services

Phone 465-3200
Date/Time 03/10/2004
Date 03/23/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB533-DHSS-DHCS1-03-23-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Health & Social Services

Title JUDICIAL OVERSIGHT OF ADMINISTRATIVE PROCEDURES

RDU Health Care Services

Component Health Purchasing Group

Sponsor HOUSE (STA)

Requester HOUSE (JUD)

Component No. 243

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	40.0	40.0	40.0	40.0	40.0	40.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	40.0	40.0	40.0	40.0	40.0	40.0

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

CHANGE IN REVENUES (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts	20.0	20.0	20.0	20.0	20.0	20.0
1003 GF Match	20.0	20.0	20.0	20.0	20.0	20.0
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	40.0	40.0	40.0	40.0	40.0	40.0

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would allow parties involved in the administrative hearing and appeals process judicial relief if a party to the proceeding has satisfied all procedural requirements up to the time relief is sought, a state agency unreasonably delays the administrative process, and that delay causes significant and irreparable damage.

The Division of Health Care Services, Health Purchasing Group handles approximately 150 Medicaid and CAMA provider appeals and 185 Medicaid and CAMA recipient fair hearings annually. Assuming 10% of these proceedings bypass administrative remedy, it is estimated the division will need to purchase the part-time services of an additional attorney from the Department of Law.

Prepared by: Dwayne Peoples, Director
Division: Health Care Services
Approved by: Joel S. Gilbertson, Commissioner
Agency: Department of Health and Social Services

Phone 465-3355
Date/Time 03/13/2004
Date 03/23/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB533
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title "An act relating to judicial relief before final RDU Comm. Fish Entry Commission
administrative decisions of state agencies." Component Commercial Fisheries Entry
 Sponsor House State Affairs Committee Commission
 Requester House Judiciary Committee Component No. 471

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
1156 Receipt Supported Services						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The commission has averaged more than 70 final decisions on applications for limited entry permits each year since 1990 (more than 1,000 total). Seven appeals from these decisions are currently pending in court, representing about 10% of our average yearly final decisions on applications (the commission does additional kinds of cases including transfer cases).

 HB 533 will almost certainly increase the number of CFEC court cases the state must defend, though the exact number (and thus, the exact fiscal impact to CFEC) cannot be known at this time. Any increase in the number of cases filed will require additional staff and commissioner time. If 10% of the 321 applicants currently on appeal before our hearing officers or commissioners were to file a case

Prepared by: Shirley Penrose, Administrative Officer Phone 907-790-6960
 Division: Commercial Fisheries Entry Commission Date/Time 3/23/04 10:13 AM
 Approved by: Bruce Twomley, Chairman Date 3/23/2003
 Agency: Commercial Fisheries Entry Commission

FISCAL NOTE

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. HB533

ANALYSIS CONTINUATION

under HB 533 without having first exhausted the administrative appeal process available to them, 32 additional lawsuits would be generated. Because gathering and preparing records and assisting the Department of Law with court appeals of CFEC cases is enormously labor intensive and time consuming, if HB 533 results in 10% of the appeals pending before the commission being filed with the courts, the commission will need to add one paralegal position to assist with the additional workload.

The following personal services costs are calculated for a range 15 with salary, benefits and employer costs, including yearly merit increases (based on the current employer costs and XE salary schedule):

FY05: \$54.4
FY06: \$55.8
FY07: \$57.5
FY08: \$59.3
FY09: \$61.0
FY10: \$63.0

HB

534




LEGISLATIVE BUDGET & AUDIT COMMITTEE
REPRESENTATIVE RALPH SAMUELS, CHAIR

Memorandum

Date: March 15, 2004

To: Representative Lesil McGuire
Chair, House Judiciary Committee

From: Representative Ralph Samuels 

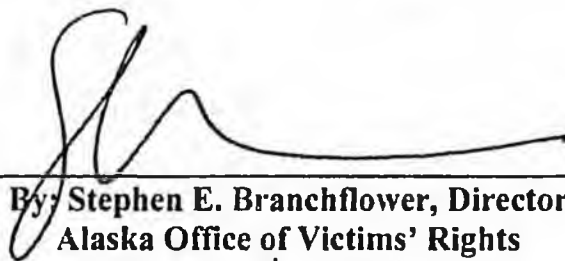
RE: Hearing for House Bill 534

Please schedule a hearing for HB 534 at your earliest convenience. This legislation simply extends the sunset date of the Office of Victims' Rights to 2010.



**FIRST ANNUAL REPORT
OF THE ALASKA OFFICE OF VICTIMS' RIGHTS**

JULY 1, 2003



**By: Stephen E. Branchflower, Director
Alaska Office of Victims' Rights
1007 West 3rd Ave. Suite 205
Anchorage, Alaska 99501-1936**

**1-907-272-2620
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Welcome To The 2003 Annual Report Of The Alaska Office Of Victims' Rights- The Agency's First

As a result of the victims' rights movement seen in American jurisprudence over the last two decades, almost every American jurisdiction now has a body of laws that are intended to provide a means for crime victims to effectively participate in the criminal process, and to require that their concerns are addressed by police, prosecutors, defense counsel, and judges. The principal objectives of such laws have been twofold. First, to promote respect for and to protect victims' privacy and safety. Second, to foster administrative and judicial sensitivity to the difficulty experienced when victims are unexpectedly drawn into an often indifferent but always confusing criminal justice system often at the very time they are trying to cope with injury and personal loss.¹

In Alaska, those purposes were served in 1984 by passage of AS 12.61.010-.900 captioned "Rights of Victims, Protection of Victims and Witnesses." Ten years later in 1994, Alaska joined a majority of states when voters overwhelmingly approved passage of a Victims' Rights Amendment to our Constitution. The rights guaranteed in Article I Section 24 are similar to those of thirty other states that have enshrined victims' rights in their Constitutions.²

More recently, in 2001 the Alaska Legislature promulgated an Act that created a new agency called the Alaska Office of Victims' Rights (OVR). OVR's purpose is to help victims of crime obtain the rights they are guaranteed under the Alaska constitution and statutes with regard to their contacts with criminal justice agencies in this state as well as to advance and protect these statutory and constitutional victim rights.

In a press release on February 20, 2001, announcing the OVR legislation Senate President Rick Halford, the chief architect of the OVR law said, "In 1994 voters approved an amendment to Alaska's Constitution that guarantees victims' rights, but simply passing an amendment is not enough." He then added "It is difficult for the victim of a violent crime to wade through our judicial system, which is full of technicalities and legal jargon. Many feel victimized twice - first by the criminal, then by the system. This office would ensure that victims' rights are protected."

The OVR was created in the nature of an Inspector General's office within the legislative, rather than the executive branch, as a way of avoiding conflicts within state government. It was also to ensure that the Director and his staff

¹ The Alaska Legislature has enacted 42 distinct rights to protect crime victims. Alaska's Constitution contains 7 specific crime victim guarantees.

² An amendment to the United States Constitution providing for victims' rights has also been proposed. See S.J. Res. 3 106th Cong. (1999).

would have the necessary independence to investigate criminal justice agencies and make appropriate recommendations. The law, which may be found in Alaska statute (AS) 24.65.010-.250, went into effect on July 1, 2002.

The public has responded enthusiastically to this innovation. Over the last 12 months, OVR's clients have sought a variety of services including information, education, investigation, in-court advocacy and support. In providing these needed services we have focused on facilitating a cooperative relationship between criminal justice agencies, the courts and the victims of crime who are our clients.

Alaska statute 24.65.170 requires the Director to publish an annual report regarding the OVR's activities and to notify the Legislature that the report is available. This is the OVR's first annual report.

I. Overview of the Alaska Office of Victims' Rights

1. Advocacy On Behalf Of Crime Victims-Jurisdiction

To accomplish the goal of assisting crime victims and of giving force to their Constitutional and statutory rights in Alaska, the OVR was empowered by the Alaska Legislature to advocate in state court in all felony offenses, all class A misdemeanors involving domestic violence and all misdemeanors involving crimes against the person. A felony offense is a crime where the possible sentence upon conviction is one or more years in jail and a substantial fine depending on the class of felony. Class A misdemeanors are those crimes punishable by up to one year in jail and up to a \$5,000 fine.

Additionally, OVR lawyers are permitted to address the sentencing judge on the victims' behalf when requested to do so by the victim and when the victim chooses not to personally make their victim impact statement to the judge.

2. Investigation Of Complaints By Victims

Crime victims may file a written complaint with the OVR that they have been denied any of the rights established by Article 1 Section 24 of Alaska's Constitution or the laws of this state. The OVR is empowered to investigate such complaints and take appropriate action on their behalf regarding their contacts with criminal justice agencies. In conducting an investigation the OVR may:

- (1) Make inquiries and obtain information considered necessary from justice agencies;
- (2) Hold private hearings; and

- (3) Notwithstanding other provisions of law, have access at all times to records of justice agencies, including court records of criminal prosecutions and juvenile adjudications, necessary to ensure that the rights of crime victims are not being denied; with regard to court and prosecution records, the Victims' Advocate is entitled to obtain access to every record that any criminal defendant is entitled to access or receive. (AS 24.65.120).

Some examples of information and records available to the OVR are police reports, witness statements, lab reports, photos, taped statements, grand jury proceedings and exhibits, officers notes, scene diagrams, dispatch records, autopsy reports, pre-sentence reports, access to all physical evidence, and more. All information and/or records obtained during any investigation, including information and records subpoenaed by the OVR, are deemed confidential.

3. Obtaining Information From Criminal Justice Agencies

A subpoena is a legal order requiring a person to appear at a specified time and place in order to provide documents, an object, or to answer questions under oath. It is a serious crime for a person to knowingly tell a lie when testifying. The Director of the OVR is authorized by law to issue subpoenas to any person for any records or any object if he reasonably believes such items may provide information relating to a matter under investigation. He may also require the appearance of any person to give sworn testimony if he reasonably believes that person may have such information.

If a person refuses to comply with a subpoena issued by the Director, he may file a motion with the superior court requesting a judge to issue a court order directing obedience to the subpoena. If the person persists in not complying, the person may be held in contempt of court by the judge and could be fined or jailed until the subpoena is complied with.

The law identifies certain persons who may not be subpoenaed by the Director and they are:

1. A justice, judge, magistrate or law clerk or a person acting under their direction;
2. A member of a grand or trial jury;
3. The person accused or convicted of the crime that is the basis for the investigation;
4. A victim counselor concerning a matter made confidential by statute;

5. A criminal justice agency concerning records that lead to the disclosure of a confidential police informant.

4. Information And Records Obtained By The OVR Is Confidential

The OVR is required by law to keep secret all matters and information, as well as the identities of all complainants or witnesses coming before the OVR, except insofar as disclosures of such information may be necessary to enable the OVR to carry out its duties and to support its recommendations. However, the OVR may not disclose a confidential record obtained from a court of justice agency.

5. Publication Of OVR Findings Following An Investigation

Within a reasonable time after an investigation is completed, and after the OVR reports their opinion and recommendations to a justice agency, the Director of the OVR may present the opinion and recommendations to the Governor, the Legislature, a Grand Jury, the public, or any of these. The C /R must include with the opinion any reply made by the justice agency. Written consent from the complainant to release the OVR's report must be obtained prior to release of the report.

6. OVR May Not Interfere With The Criminal Justice System

The OVR is required by law to ensure that their exercise of discretion does not interfere with any ongoing criminal investigation by a police agency or any criminal proceeding by the prosecutor's office. Additionally, the Director must make sure OVR employees do not make public statements that lawyers are prohibited from making by the Alaska Rules of Professional Conduct. Finally, the OVR may not prevent or discourage a victim from providing evidence, testifying or cooperating in a criminal investigation or criminal proceeding.

7. The OVR Has Very Broad Civil Immunity And Protection

The OVR Act provides that a proceeding or decision made by the Director of the OVR or his staff may be reviewed in superior court *only* to determine if it is contrary to the provisions of the statutes that created the OVR. It also provides that the conclusions, thought processes, discussions, records, reports and recommendations of or information collected by the Director or his staff is not admissible in a civil or criminal proceeding, and is not subject to questioning or disclosure by subpoena or discovery. Additionally, a civil lawsuit may not be brought against the Director of the OVR, nor a member of his staff, for anything

they do or say, or that they fail to do or say, in the performance of OVR's duties or responsibilities.

8. It's A Crime To Hinder Or Fail To Comply With OVR's Requests

Alaska law provides "A person who knowingly hinders the lawful actions of the Victims' Advocate or the staff of the Victims' Advocate, or who knowingly refuses to comply with their lawful demands, is guilty of a misdemeanor and upon conviction may be punished by a fine of not more than \$1000." A misdemeanor is a crime.

9. Funding Of The OVR

Many Alaskans mistakenly believe the OVR is funded from the State treasury but this is not so. The OVR is actually funded by money from convicts' forfeited permanent fund dividend checks. Alaska statute 43.23.005 is the law that determines a person's eligibility to receive a permanent fund dividend. A person is disqualified from receiving a PFD if during the dividend year they have either (1) been convicted of a felony, (2) spent time in jail for a felony conviction, or (3) jailed for their third misdemeanor conviction during the dividend year if they have ever been convicted of a felony at any time.

In dividend year 2002, 5276 persons lost their PFD checks by operation of this law, which is an amount that totaled slightly more than \$8 Million dollars. Those funds are placed into an account that (either in whole or in part) funds the OVR, the Violent Crimes Compensation Fund, the Department of Corrections, and the Council on Domestic Violence and Sexual Assault. It also funds grants to various non-profit victims' rights organizations for services to Alaskan victims of crime. The 23rd Legislature fully funded the OVR's FY 2004 budget request of \$512,300.

II. OVR Professional Staff

The Victims' Advocate

In a joint meeting of the Alaska House and Senate on May 13, 2002, the Alaska Legislature unanimously confirmed the appointment of longtime Anchorage prosecutor Stephen Branchflower to become Alaska's first Victims' Advocate and Director of the Office of Victims' Rights. Mr. Branchflower had served as a state prosecutor in Anchorage for 28 years prior to this appointment. He was nominated by a bipartisan legislative Victims' Advocate selection committee. His term of office is five years and he may be reappointed but may not serve for more than three terms. The Legislature, by a concurrent resolution adopted by a roll call vote of two-thirds of the members of each house entered in the journal, may remove or suspend him from office, but only for neglect of duty, misconduct, or disability.

The Associate Victims' Advocate

The OVR staff is small but very experienced, professional, and capable. The OVR's Associate Victims' Rights Advocate is Tamara E. de Lucia who obtained her BA in political science and philosophy from Binghamton University in New York in 1995. She earned a Juris Doctor degree and a Certificate in Environmental and Natural Resources law from Northwestern School of Law at Lewis and Clark College in Portland in 1998. Throughout her law school career she was employed with the Oregon state department of justice as an intern. She served as a law clerk to the Anchorage District Court for a year in 1998 and then as a law clerk to Judge David Mannheim of the Alaska Court of Appeals in 1999. In 2000 she was selected to be an assistant municipal prosecutor with the Municipality of Anchorage Prosecutors Office where she served for two years before joining the OVR in August 2002. As a prosecutor she was responsible for a heavy caseload consisting exclusively of domestic violence cases, which she screened and tried before juries. She also provided extensive training to police and other prosecutors regarding DV issues and DUI detection and prosecution.

Ms. de Lucia was recently elected to serve as the chairperson of the Anchorage Domestic Violence Caucus. The DV Caucus is an organization comprised of law enforcement officers, prosecutors, magistrates, shelter coordinators, non-profit program managers, state and municipal representatives, tribal members and private citizens who gather together to advance the end of domestic violence, sexual assault and child abuse. The Caucus acts as a coordinating body to ensure that community efforts are properly directed and not duplicated; as well as a venue for information dissemination and program introduction. The Caucus meets monthly to discuss matters of import to the domestic violence prevention community.

The OVR Investigator

William Gaither, a highly decorated retired police officer, is the OVR's Investigator. He started his police career with the Anchorage Police Department in March 1974 as a rookie street officer and retired as a lieutenant in June 1996. During his 22-year career he served as field training officer, sergeant in the burglary, theft, drug and homicide units. He also commanded a K-9 unit, the APD Explorer Unit, the APD Reserve Police Officer Unit and was a senior officer on the Crisis Intervention and Response Team before retiring as a Shift Commander. He then accepted a position as a campus police officer at the University of Alaska Anchorage where he served for 5 years. He was selected to become the OVR's Investigator in August 2002 from a field of more than 50 applicants.

III. Highlights Of The OVR's First Year Of Operation

On July 1, 2002, the effective date of the Act creating the OVR, the agency did not exist. There were no offices, computers, office equipment, supplies or employees to staff the newly created organization. The OVR existed only on paper as a legal entity. However, much has been accomplished over the last 12 months to implement the Legislative intent embodied in the OVR enabling statutes.

1. Creation Of The OVR Central Office

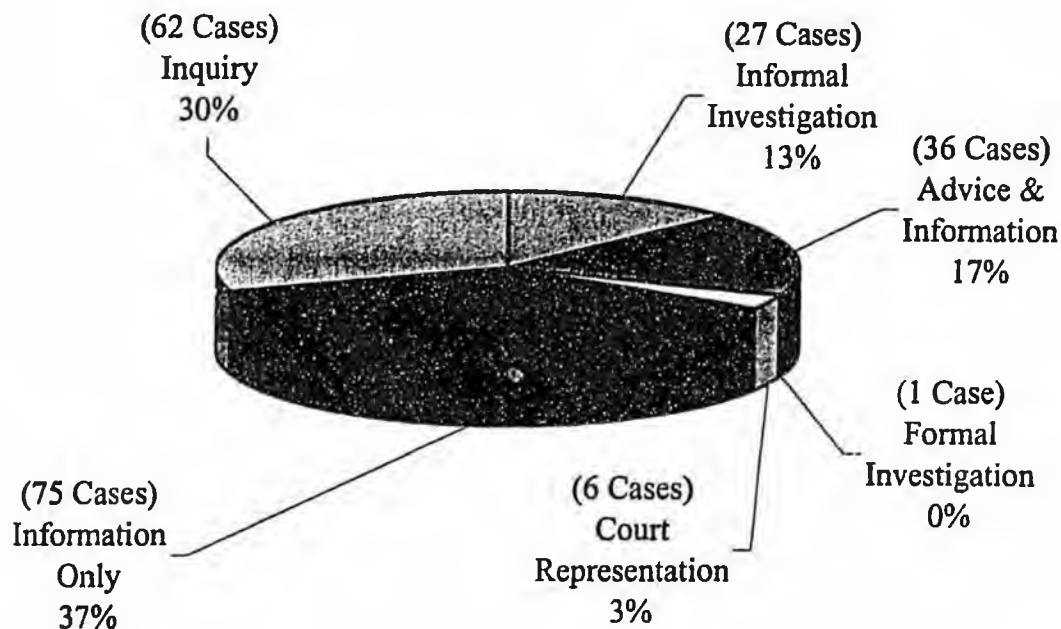
Thanks to the able assistance of the Executive Director of the Legislative Affairs Agency Pamela Varni, and her capable staff and employees, computer, data processing, and teleconference facilities have been made available in order to manage the OVR and to carry out the purposes of AS 24.65.

The OVR has been staffed with experienced and committed professional and support employees who are in the exempt service under AS 39.25.110. A long-term lease has been entered for a suite of professional offices located at 1007 West 3rd Avenue in downtown Anchorage. The office is located near key law enforcement agencies such as the Anchorage District Attorney's office, the Office of Special Prosecutions and Appeals, the Alaska Law Library, the Alaska Supreme Court and Court of Appeals, and the Nesbett Courthouse all of which are within easy walking distance for victims and law enforcement personnel alike. All the necessary office furniture, office equipment and machines have been acquired and are in place.

2. Summary Of OVR Case Statistics For 2002- 2003

Complete office systems and case processing forms have been created where none existed before in order to manage the flow of information and paperwork generated by the large number of complaints from victims. The following is a summary of the kinds of cases processed by the OVR during the 12-month period between July 1, 2002 and July 1, 2003:

OVR Opened 207 Cases Between July 1, 2002 And July 1, 2003 As Follows:



Case Classifications:

- **Information Only:**

Finally, during the current reporting period, 75 clients contacted the OVR for information or advice. After obtaining the information or advice, the clients decided not to file a complaint with the Office of Victims' Rights regarding their case.

- **Advice and Information:**

36 crime victims sought information or advice and after speaking with OVR staff, filed formal written documents with the office. These cases were easily resolved and involved minimal document collection and preparation. These cases primarily involved individuals who needed information as to how the judicial system operates and wished to have a third party look over their case to determine whether the case proceeded as other cases in similar situations.

- **Inquiry:**

During the current reporting period 62 crime victims came to OVR with particular problems or concerns regarding active criminal cases. These clients filed formal written requests with OVR and their cases required OVR to seek documentary evidence from the justice agency involved. In addition, these cases required more time from OVR staff and created a longer-term cooperative relationship between OVR, the client and the justice agency.

- **Informal Investigation:**

27 crime victims came to OVR with significant problems or concerns regarding active criminal cases during the current reporting period. These clients filed formal written requests with OVR and their cases required OVR to seek documentary evidence from justice agencies. These cases were significant in terms of the documents collected and reviewed, the time commitment required from OVR staff and the level of inquiry into justice agency affairs. These cases did not result in the publication of a formal report pursuant to AS 24.65.160.

- **Formal Investigation:**

During the first 12 months of operation the OVR opened one formal investigation, which involved significant problems regarding an active criminal investigation. Patti Godfrey filed a formal written request with the OVR and the case required OVR to seek documentary evidence from the police agency in question. This case was significant in terms of the documents collected and reviewed, the time commitment required from OVR staff and the level of inquiry into the operation of the justice agency's affairs. The case did result in the publication of a formal report pursuant to AS 24.65.160 that is available at the OVR website: <http://www.officeofvictimsrights.legis.state.ak.us>. The Godfrey case is discussed in greater detail in part IV of this report.

- **Court Representation:**

Six clients came to OVR with significant problems or concerns regarding active in-court criminal cases. In addition to requesting documentary evidence from judicial agencies, these cases gave rise to OVR presence in the courtroom and argument before the court on behalf of the victim and their interests.

3. OVR Community Training And Outreach

Perhaps the greatest challenge facing the newly formed OVR during the first 12 months of its existence has been to educate criminal justice agencies, the courts, victims' support organizations and the public that our agency is available as a resource to them. To meet this challenge, the OVR director and staff have undertaken an aggressive educational campaign to explain their functioning and inform prospective clients how to obtain the assistance they are entitled to under the OVR Act. The following is a summary of that community training:

1. July 30, 2002- Anchorage Area Wide Victim's Support Organization Meeting With Approximately 40 Representative From Various Victim's Support Organizations;
2. August 7, 2002- Training At The Anchorage Police Department For Command Officers;
3. August 22, 2002- Guest Appearance On The Herb Shandlin Radio Talk Show, 750 KFQD;
4. August 27, 2002- Bar-Bench Presentation To Judges, Defense Attorneys, And Probation Officers;
5. September 23, 2002- Anchorage Daily News Editorial Board Presentation For Editors And Reporters And The ADN Publisher;
6. September 27, 2002, - Statewide Probation-Parole Officers Training;
7. September 30, 2002, - Alaska State Trooper B Detachment In Palmer/Wasilla Police Dept./Assistant District Attorney Training;
8. October 1, 2002, - One Hour Guest Appearance On Live International Internet Radio Talk Show Hosted By The Voice Of America At [Http://Voiceamerica.Com/](http://Voiceamerica.Com/);
9. October 11, 2002, - Presentation About The OVR At The Eagle River Star Newspaper;
10. October 15, 2002, - Lecture To Approximately 150 State Prosecutors And Lawyers From The Attorney General's Office At The Annual DA's Conference In Girdwood, AK.
11. October 21, 2002, - Presentation To Approximately 30 Tribal Representatives From Bush Alaska At The Forum On Domestic Violence Sponsored By The Office Of The Governor, Alaska State Troopers, And

Alaska Native Women's Coalition On Domestic Violence And Sexual Assault At The Captain Cook Hotel In Anchorage;

12. October 22, 2002, - Presentation To AST Colonel Randy Crawford And Approximately 20 AST Senior Commanders From Throughout Alaska At The Hotel Captain Cook In Anchorage;
13. November 13, 2002, - Presentation To DHHS Division Of Juvenile Justice, Approximately 30 Intake And Juvenile Probation Officers, At The Frontier Building In Anchorage;
14. November 14, 2002, - Alaska Native Women's Sexual Assault Committee, Approximately 10 Representatives From Eight Victim Support Organizations;
15. December 1, 2002, - Guest Appearance On KSKA FM Radio Talk Show;
16. December 2, 2002, - TV Appearance On The Norma Goodman Show;
17. December 5, 2002, - Continuing Legal Education To Approximately 15 Assistant United States Attorneys At The US Attorney's Office In Anchorage;
18. February 5, 2003, - Continuing Legal Education To Approximately 15 Senior Alaska. Fish And Wildlife Officers From Various Locations Around Alaska;
19. February 19, 2003, - Presentation To The Anchorage Women's Aid In Crisis (AWAIC) Organization;
20. February 26, 2003, - Presentation To The Board Of Directors Of Standing Together Against Rape (S.T.A.R.);
21. March 27, 2003, - Presentation To The Staff Of The Medical Examiner's Office;
22. April 2, 2003, Presentation To The Board Members And Staff Of The Alaska Violent Crimes Compensation Board:
23. Featured Guest Speaker On "Consider This" Television Show On KAKM, Channel 7, Discussing The OVR. The Show Was Taped On April 7, 2003 To Be Broadcast In Anchorage On April 23 And Statewide On April 25, 2003;

24. April 15, 2003, - Continuing Legal Education At The Fifth Annual Network On Domestic Violence And Sexual Assault (ANDVSA) Conference;
25. May 13, 2003, - Advocate Training For Alaska Women's Resource Center (AWRC);
26. May 13 And 15, 2003, - Presentation About The OVR To Attendees At The 2003 Alaska Peace Officer Association Annual Crime Conference;
27. May 23, 2003, - Presentation To Visiting Russian Dignitaries From Khabarovsk, Russia Through The University Of Alaska Anchorage American Russian Center- Community Connections Program (Sponsored By The U.S. Department Of State's Bureau Of Educational And Cultural Affairs);
28. June 20-21, 2003, - Presentation At The Second Annual Crime Victim Law And Litigation Conference At The National Crime Victim Law Institute At Lewis And Clark Law School, Portland, Oregon.
29. The OVR Director also addressed members of the Twenty-Third Alaska Legislature and their staff during their staff orientation January 18, 2003.

4. Creation Of OVR Informational Brochure

During its first year of operation the OVR has also designed and printed 5000 copies of a two-fold, color brochure called "Spotlight On Crime Victims." The brochure highlights and explains such topics as "What are my rights?" "Who does the OVR help?" "What can I expect?" as well as other matters including confidentiality issues. In January 2003, several thousand copies of the brochure were distributed statewide to dozens of law enforcement agencies along with a cover letter explaining the purpose of the OVR and providing contact information to rural police agencies.

5. Office Of Victims' Rights Web Site

The OVR has statewide jurisdiction and oversight over criminal justice agencies. In an effort to serve crime victims throughout the state, the OVR worked cooperatively with the Alaska Legislative Information Office during FY 2003 towards the joint development of an OVR website. The website was developed by Lori Yorba, and may be accessed at <http://www.officeofvictimsrights.legis.state.ak.us/> It was designed to provide the user with easy access to information about the Alaska OVR, the various statutory and constitutional rights of crime victims, information on current investigations, information regarding other helpful links and how to file a complaint with the OVR. The OVR website complaint form is currently being programmed to allow

for online submission. The OVR also has a dedicated e-mail address, which can be accessed directly from the web page, as well as information about how to contact the OVR including its toll free 800-telephone number. A copy of this annual report will be posted on the OVR website for viewing by the public.

6. OVR Chart Of Statutory And Constitutional Victim Rights

Crime victims in this state are entitled to approximately 50 separate constitutional and statutory rights. However, prior to the creation of the OVR, these rights were difficult for victims to learn about or find because they were scattered throughout the statutes. One of the first priorities of the OVR was to construct a chart that gathered all crime victims' rights in this state into one document in order to provide victims, law enforcement agencies and the public with a central repository of this key information. That chart may now be found on the OVR web page at the following URL address <http://www.officeofvictimsrights.legis.state.ak.us/ovrlisting.htm>

IV. Significant Cases Handled By The OVR During Its First Year Of Operation

A. John M. Murtagh, et al v. State of Alaska, and the Office of Victims' Rights, 3AN-97-649 Civil

Some five and a half years before the OVR was created, four Anchorage criminal defense attorneys, John M. Murtagh, James H. McComas, Cynthia L. Strout, and Sidney K. Billingslea and private investigator Harry D. Taylor, filed suit in Anchorage Superior Court challenging four subsections of Alaska's Victims Right Act: AS 12.61.120(c)(2), (c)(3); AS 12.61.120(d) and AS 12.61.125. In their January 23, 1997, complaint, the plaintiffs moved for a declaratory judgment seeking a ruling that these statutes were unconstitutional because, they claimed, these laws interfered with a criminal defendant's right to investigate the charges against them and to prepare a defense. The Superior Court entered a partial judgment on the plaintiff's claims and the case was appealed to the Alaska Supreme Court. The matter was remanded to the Superior Court on November 4, 2002 for further determination. The OVR filed a motion with the Superior Court to intervene as a matter of right in March 2003, which was granted, and the OVR is now a named defendant in the suit.

- *Why This Lawsuit Threatens Victims' Rights*

The challenged provisions of AS 12.61.125 greatly limit criminal defense contacts with crime victims in order to safeguard their constitutionally protected privacy rights under Article I Section 22 as well as their right to be treated with dignity, respect and fairness as required by Article I Section 24 of Alaska's Constitution. Neither a defendant accused of a sexual offense, the defendant's counsel, an investigator, or other person acting on behalf of the defendant, may contact the victim of the offense or a witness to the offense if the victim or witness has informed the defendant or the defendant's counsel in writing or in person that the victim or witness does not wish to be contacted by the defense. Also, the defense may not obtain a statement from the victim of the offense or a witness to the offense, unless, (if the statement is taken as a recording), the recording is taken in compliance with AS 12.61.120. If the statement is not taken as a recording, written authorization must first be obtained from the victim or witness and it must state that the victim or witness is aware that there is no legal requirement that the victim or witness speak to the defense. Statements obtained from a victim or witness in violation of AS 12.61.120 or 12.61.125 are presumed inadmissible.

To overcome the presumption of inadmissibility, the defendant is required to prove by clear and convincing evidence that (1) the statement is reliable; (2) similar evidence is unavailable from any other source; and (3) failure to introduce the statement would substantially undermine the reliability of the fact-finding process and result in manifest injustice. AS 12.61.127. Violation of these restrictions by an attorney or an agent of the attorney is considered so serious that "...the court shall refer the violation to the Disciplinary Board of the Alaska Bar Association as a grievance." AS 12.61.125(c).

- *Why The Office of Victims' Rights Sought To Become A Party*

The Attorney General is responsible for representing the state in all civil actions in which the state is a party as in this case. The Office of the Attorney General then, has the mandate to advocate on behalf of the state's interests and to defend state law from challenge. Here however, the constitutional and statutory rights of a particularly vulnerable class of citizens, crime victims, could be gravely impacted by this action if the plaintiffs prevail. When this suit was filed in 1997, the OVR was not yet in existence. With the case now on remand from the Supreme Court, the opportunity was presented for this office to intervene and the opportunity has been seized. This is proper because the OVR has the specific legislative mandate to advocate on behalf of the very citizens whose rights could be directly impacted as a result of this action. OVR is the voice for that class of citizens and advocates solely on behalf of crime victims' statutory and constitutional victims' rights. Further, OVR represents the legislative branch of government – the same body that enacted and passed the contested laws. It is anticipated that a final opinion by the Alaska Supreme Court will not be rendered for at least 24 months.

B. State of Alaska v. Joshua Wade, 3AN-S00-8436 CR

In October 2000 Joshua Wade was indicted by an Anchorage grand jury for the murder, robbery, and sexual assault of D.B. His case went to trial in the spring of 2003 in Anchorage before the Honorable Michael L. Wolverton, judge of the Superior Court. Prior to the commencement of his trial, Wade's defense lawyers were successful in persuading Judge Wolverton to admit evidence before Wade's jury that another suspect, Gregory Poindexter, may have committed the crimes against D.B. rather than Wade. At the time of Wade's trial, Poindexter was in prison having been convicted earlier of a number of sexual assaults of other women, including M.F. and E.K. In part, the court granted the request because of the similarities in the manner of the commission of the crimes against M.F. and E.K. and D.B. In an attempt to raise doubt about Wade's complicity, his lawyers subpoenaed M.F. and E.K., two of Poindexter's sexual assault victims. Both victims then sought assistance from the OVR.

The OVR filed a motion to quash their subpoenas advancing a number of different legal arguments in support of the motion. Chief amongst them was that, since M.F. and E.K. had no involvement with Wade, to require them to become re-victimized by reliving Gregory Poindexter's crimes through their compelled testimony in open court for the purpose of attempting to raise doubt about Wade's guilt, violated their constitutional right to be treated with dignity, respect, and fairness as guaranteed by Article I, section 24 of the state's constitution, as well as their right to privacy under Article I Section 22 of that document. Following argument, Judge Wolverton granted OVR's motion and quashed M.F. and E.K.'s subpoenas.

C. The Patti Godfrey Case- OVR's First Formal Investigation

The OVR has the statutory authority to conduct investigations of complaints from crime victims that they have been denied the rights they are guaranteed under Alaska's constitution and laws of this state. Within a reasonable time after an investigation is completed, and after the OVR reports their opinion and recommendations to a criminal justice agency, Alaska statute 24.65.160 authorizes the OVR to present their investigative findings, opinions and recommendations to the governor, the legislature, a grand jury, the public, or any of these.

- *Investigation Of The Anchorage Police Department*

Patti Godfrey filed a written complaint with the OVR regarding the response by the Anchorage Police Department (APD) to her home on August 3, 2002 after her husband Glen Godfrey was murdered, and she was shot several times and seriously wounded by Karen Brand who then committed suicide. At

issue was the delay in providing immediate medical assistance to Ms. Godfrey as required by law. The dispatch log showed arriving officers made contact with her at 1:18 am after she called 911 at 12:29 am, some 49 minutes earlier. Crime victims have a right to immediate medical assistance as provided in Alaska statute (AS) 12.61.010(a)(7).

The second basis for her complaint related to the unauthorized release of confidential information about her home address and telephone number, as well as her daughter's home telephone number, in the 911 tape and transcript released by APD to the media at an APD press conference on August 22, 2002. Both Patti Godfrey and her daughter are considered "victims" as that term is defined in AS 12.55.185(16). AS 12.61.110 provides for confidentiality regarding the location of a crime victim's residence address and telephone numbers. Whenever a report, paper, picture, photograph, court file, or other document that is in the custody or possession of a public officer or employee relates to a crime and contains the residence or business address or telephone number of a victim or witness, that public officer or employee may not make it available for public inspection unless the residence and business addresses and telephone numbers of all victims and witnesses have been deleted. Here, neither the written transcript of the 911-dispatch tape nor the audiotapes were edited to remove this confidential information prior to release to the public as required by law.

- *Information Reviewed By The OVR*

AS 24.65.120 provides that during an investigation, the OVR is authorized to "make inquiries and obtain information considered necessary; hold private hearings; and notwithstanding other provisions of law, have access at all times to records of justice agencies..." necessary to protect victims' rights. AS 24.65.130 authorizes the OVR to subpoena documents and objects, and to command the appearance of persons who may have relevant information about a matter under investigation to give sworn testimony.

In accordance with these laws the OVR subpoenaed records from the APD as well as the Municipal Office of Management and Budget. Additionally, records, data, and information were subpoenaed from Resource Data Inc. (RDI), an Anchorage computer software applications developer that had contracted with the APD to improve the accuracy of the E-911 database. Altogether, approximately 4,105 documents were subpoenaed and reviewed during this investigation. The OVR also heard sworn testimony from APD Chief of Police Walt Monegan and Deputy Chief Mark Mew. The Municipal legal department cooperated with OVR subpoenas and requests for information.

The OVR interviewed numerous private individuals who have relevant information about the facts of the Godfrey incident, as well as the inner workings of the APD dispatch unit. Individuals interviewed included the Godfrey's neighbors, members of the public and other witnesses as well as representatives

from Alaska Communications Systems (ACS) and the Matanuska Telephone Association (MTA). Finally, the OVR considered information within the public domain.

- *OVR Findings*

The OVR published its 36-page report on November 26, 2002. The OVR found that the release of confidential information by the APD violated the Godfrey family's right of confidentiality and that the delayed response to her home violated Patti Godfrey's right to immediate medical assistance as required by AS 12.61.010(2)(7). The investigation also disclosed that the delayed emergency response was not an isolated event and in the weeks following the Godfrey case, several cases came to light that involved similar errors. The delayed response was determined by the OVR to be attributable to an error in APD's database that prevented the system from verifying the Godfrey address as a valid address. Instead the computer database suggested an address that did not exist. The OVR report concluded by making numerous recommendations to improve the efficiency of Anchorage's E-911 system.

Prior to the tragic events of August 3, 2003, and the delay in locating the Godfrey residence, the Municipality of Anchorage was aware of problems cited in the OVR's report and engaged in making a number of improvements to the city's emergency response system. However, it appears the unusual facts of the Godfrey incident brought the E-911's shortcomings into immediate community focus and underscored the need for immediate action.

On December 6, 2002, Mayor George Wuerch announced the creation of an E-911 oversight task force to study the city's existing E-911 shortcomings and to make recommendations for improving the system and related personnel issues discussed in the OVR's final written report. The complete text of that report is available on line at http://www.officeofvictimsrights.legis.state.ak.us/investigations/OVR_Final_Godfrey_Report.pdf

V. 2003 CRIME VICTIM LEGISLATION SUPPORTED BY OVR

Three important pieces of legislation were actively supported by the OVR during the recently concluded twenty-third session of the Alaska Legislature. The enactment of all three Bills into law has significantly advanced the interests and well being of crime victims throughout Alaska.

House Bill 68

In its written response to the OVR's report in the Patti Godfrey case mentioned above, the Municipality of Anchorage stated in part:

"It is doubtful the OVR has the jurisdiction to investigate or make findings regarding the Anchorage Metropolitan Police Department ("APD"). OVR's authorizing statute specifically defines "justice agencies" as belonging to the "executive or judicial branches of state government". The Municipality of Anchorage and its departments are not part of the executive or judicial branches of state government and so are outside the OVR's jurisdiction." (At page 2).

Overlooked by the Municipality in asserting this claim was AS 24.65.120, which states "The Victims' Advocate may investigate complaints from crime victims that they have been denied the rights they are guaranteed under the constitution and laws of this state." In any event, the matter has now been rendered moot by passage of HB 68 on February 12, 2003. HB 68 amended the definition of "justice agencies" in AS 24.65.250 to now include all municipalities within the state. This legislation was sought, and supported by the OVR in response to the Municipality's assertion that it lacked statutory authority to investigate the Anchorage Police Department. HB was introduced by House Representative Ralph Samuels (R) Anchorage and passed both houses of the 23rd Alaska Legislature unanimously. The bill was signed by Governor Frank Murkowski on April 11, 2003, and becomes effective on July 10, 2003.

Senate Bill 41

Medicaid is a federal-state financed health care program for indigent patients. Medicaid costs in Alaska have escalated an average of 15% a year over the last 5 years with the FY 2004 budget approaching \$1 Billion. One reason for the rapid escalation of such health care costs is due to theft by unscrupulous Medicaid providers who can cheat Alaska's Medicaid program through fraudulent or inflated billings. When limited money earmarked for sick and needy patients is diverted from the Medicaid program due to theft, the public is victimized because the suffering of those patients is unnecessarily prolonged and critical medical services are curtailed due to lack of funds.

Unfortunately, investigating and prosecuting such thefts can be very difficult. Unlike most "regular" crimes, there is no "crime scene" in a health care case nor is there any physical evidence to send to a crime lab for analysis. There are seldom any witnesses to crimes of dishonesty generally, and health care crimes are in a league of their own in terms of specialization. Those who commit such crimes are intelligent, well educated and able to afford the best criminal defense. Health care practitioners work in specialized areas of medicine and are usually no match for most police officers or prosecutors. Often, such crimes depend on a

showing by prosecutors through expert testimony that medical services were not provided in accordance with complex Medicaid rules and Regulations. This requirement raises thorny issues regarding medical necessity and the quality of care provided by a practitioner to their patients, something juries find difficult to understand in the absence of clear, specialized criminal laws. That is why in Alaska there exists a specially trained prosecution office known as the Medicaid Fraud Control Unit.

However, until recently, it was difficult even for such specialists to investigate and prosecute health care crimes because Alaska was the only state that had no specific health care criminal theft laws in its criminal code. As a result, prosecutors had no choice but to use non-specific, generic criminal statutes to prosecute health care professionals who operate in a highly technical field and are able to mount expensive and well-financed (and often successful) defenses. SB 41 has changed all that. For the first time in this state, prosecutors and Medicaid Investigators now have statutes that are specific to health care crimes.

SB 41 also now requires the Commissioner of Health and Social Services to undertake annual statewide audits of Medicaid providers and to commence administrative procedures to recoup overpayments identified in the audits. SB 41 was passed by the legislature on May 21, 2003 and was signed into law by Governor Murkowski on June 11, 2003. SB 41 was introduced by Senator Lyda Green (R) of Wasilla.

Senate Bill 45

Another Bill sponsored By Senator Green was SB 45, which concerns the work of the Legislative Budget and Audit Committee of the Alaska legislature.

AS 24.20.201(a)(3) states that the Legislative Budget and Audit Committee has the power to "require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information." Unfortunately, this well-intentioned statute has been unenforceable because there are no penalties to be had against anyone who hinders or undermines the work of the Committee.

SB 45 will fix this by amending the criminal code to establish AS 11.56.870, a new statute captioned "Hindering the Legislative and Audit Committee." AS 11.56.870 will now make it a violation punishable with a fine up to \$5000 for any person who obstructs the work of that committee. SB 45 also amends Alaska's Whistleblower Act found in AS 39.90 to protect any state employee who reports interference or any failure to cooperate with an audit or other matter within the authority of the Legislative Budget and Audit Committee. As state revenue continues to decrease, the Legislative Budget and Audit Committee's work will likely increase and become more important. This statute

will advance their important work. SB 41 was passed by the legislature on May 21, 2003 and was signed into law by Governor Murkowski on June 11, 2003.

VI. OVR PLANS FOR FY 2004

A. OVR Regulations To Be Implemented During FY 2004

Alaska statute 24.65.090 requires the OVR to promulgate regulations adopted under AS 44.62 of the Administrative Procedure Act. Over the last several weeks, the director and his staff have been in the process of drafting regulations as authorized by this statute. The regulations will establish procedures for advocacy on behalf of crime victims, receiving and processing complaints from crime victims, conducting investigations of justice agencies, reporting findings and ensuring that confidential information obtained by the OVR in the course of advocacy on behalf of a crime victim, or in the course of an investigation, will not be improperly disclosed. The regulations will also establish procedures so that advocacy and investigations on behalf of crime victims in felony cases take priority over advocacy and investigations on behalf of crime victims in misdemeanor cases. It is anticipated that the regulations will become effective prior to September 1.

B. Development Of An OVR Case Management System

The Office of Victims' Rights Case Management System, called OVRcms, is a unique application that has been custom designed specifically for the work of the OVR. The program's ability to streamline data entry for new contacts and cases, as well as to produce ad hoc reports on command, make it a very useful tool for OVR caseworkers. Another unique feature is the program's ability to track relationships amongst contacts and cases which can produce patterns otherwise unforeseen e.g. whether a contact in the system is a victim in more than one open case or whether the facts of one case are related to another. The case management system will further benefit the Office of Victims' Rights by continually monitoring case status, deadlines, and any other important flags it is tasked with while retaining the ability to notify the correct caseworker through reminder e-mails and pop-ups. The application is also able to send an OVR client a group of forms or information sheets from the document database on the fly with little effort. The principal benefit to the OVR from this application is its ability to have data at the touch of a button and to be able to share it amongst other office staff instantly. OVRcms is currently in it's final programming stages and version 1 should be available within a few weeks. Changes and improvements will be added to the application as needed.

C. Statewide Survey Of Criminal Justice Agencies

The OVR is charged with the legal duty to ensure that crime victims are granted the rights guaranteed them under the constitution and laws of the state with regard to their contacts with justice agencies throughout Alaska. In furtherance of that responsibility the Victims' Advocate plans to contact all law enforcement agencies throughout the state during FY 2004 to inquire about, and request copies of, their policies and directives related to providing services to crime victims. The materials will be evaluated with the goal of drafting suggested model policies for law enforcement agencies.

D. OVR Plans To Recruit Another Attorney During FY 2004

As the public continues to learn about the services available to crime victims, and as the OVR's caseload continues to expand, it is presently envisioned that there will arise a need for an additional attorney position within the agency during FY 2004, bringing the total legal staff to three lawyers. It is anticipated that one primary responsibility of the attorney will be to focus efforts on education of victims and justice agencies in major cities and communities throughout Alaska.

E. Drafting Of An OVR Policies and Procedures Manual

It is the intent of the Victims' Advocate to commence preparation of an OVR Internal Policies and Procedures Manual for the Office of Victims' Rights during FY 2004. In accordance with AS 24.65.200, the manual will be confidential and for internal use by OVR staff.

VII. CONCLUSION

The Alaska Legislature created the Alaska Office of Victims' Rights in 2002 to help victims of crime obtain the rights that they are guaranteed under Article I Section 24 of the Alaska Constitution and numerous state statutes with regard to their contacts with criminal justice agencies in this state. The Office of Victims' Rights is also charged with the advancement and protection of those statutory and constitutional victim rights and is the only such agency of its kind. OVR's director and staff have undertaken outreach and education efforts statewide to make the public aware of the new and innovative office. The public has responded enthusiastically to this much-needed legislation and support for the agency throughout the community has been tremendous.

Since the establishment of the office on July 1, 2002, more than 200 crime victims have sought a variety of services including information, education, investigation, in-court advocacy and support. In providing these needed services the OVR staff has focused on facilitating a cooperative relationship between criminal justice agencies, the courts and the victims of crime who are our clients. OVR has established a user-friendly, educational web site that includes a complete listing of all the rights guaranteed to crime victims in the state. In addition, OVR has undertaken representation of victims both in- court and behind the scenes; for many victims the advocacy, support and advice they received from OVR attorneys has proven invaluable to resolving their cases in a way that preserves their dignity, respect and legal rights.

The OVR has plans to further its efforts on behalf of crime victims during the next twelve months. OVR will continue to discharge its statutory duty to assist crime victims and also plans to promulgate regulations; implement a case management system; survey criminal justice agencies throughout the state and assess their policies and directives related to crime victim rights; and hire another OVR staff attorney. OVR will continue its education and outreach program and will further develop the agency's ability to investigate complaints from crime victims and effectively advocate on their behalf in ongoing criminal cases and juvenile adjudications.

The dedication and commitment of the OVR staff has made the past year a fruitful one for crime victims. The future is bright and FY 2004 promises to be another successful year for the Office of Victims' Rights and the clients it serves.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 534
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
 Title "An Act extending the termination date of BRU Legislative Council
the office of victims' rights." Component: Council and Subcommittees
 Sponsor House Rules by Request-Legis Budg & Audit
 Requestor House Judiciary Committee Component No. 783

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Legislature's budget currently includes funding for the Office of Victims' Rights. If this legislation passes, the funding for the Office of Victims' Rights will continue to be included in the Legislature's budget. There is zero additional fiscal impact to the Legislature.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
 Division Administrative Services Date/Time 3/19/04 3:57 PM
 Approved by: Pamela Varni, Executive Director Date 3/19/2004
 Agency Legislative Affairs Agency

HB

535

Alaska State Hospital & Nursing Home Association

We're helping people care for people!

May 3, 2004

Representative Lesle McGuire
Chairman, House Judiciary Committee
State Capitol
Juneau, AK 99801

Dear Representative McGuire:

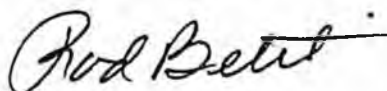
The Alaska State Hospital and Nursing Home Association (ASHNHA) strongly supports CSHB 535 as it is currently written. We support the Department's need to improve case management of the Designated Evaluation and Treatment program, and have worked with the Department to address our concerns should the Department run out of funding.

ASHNHA initially was concerned that if the Department ran out of funds for this program, already strapped community hospitals would be left with an unfunded mandate to continue treating these patients.

The Department has worked with ASHNHA to craft the new language added in Section 2, lines 28 through 30, clarifying that the Department will work with our hospitals to transfer DET patients as soon as medically possible to API or to a community treatment program in the event of a funding shortfall. We believe this is a fair solution to our concerns.

ASHNHA supports CSHB 535 (HES) and recommends its passage from your committee.

Sincerely,



Rod L. Betit
President/CEO

cc: House Judiciary Committee members

426 Main Street, Juneau, Alaska 99801

Phone: 907-586-1790 • Fax: 907-463-3573 • Web: ashnha.com



FAIRBANKS LEGISLATIVE INFORMATION OFFICE
119 N. CUSHMAN ST. SUITE 101
FAIRBANKS, AK 99701

WRITTEN TESTIMONY TRANSMITTAL SHEET

TO:	Rep. Lesil McGuire, Chair	FROM:	Fran/Fbx LIO
COMMITTEE:	House Judiciary Committee	DATE:	5/5/2004
FAX NUMBER:	465-6592	PAGES:	2
PHONE NUMBER:	465-4990	FAXED ON:	5/5/2004
RE:	Written Testimony: HB 535	TELECONFERENCED ON:	5/5/2004

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Written testimony for HB 535 before the HJUD committee, teleconferenced on 05/05/04. The originals will be pouched to the committee chair.

Fran/Fbx LIO

PHONE: 452-4448

FAX: 456-3346

Senate Bill 364/HB 535
May 5, 2004

My name is Jeanette Grasto. I am a member of the Alaska Mental Health Board, NAMI Fairbanks, NAMI Alaska and a long time advocate for people with mental illness and their families. Thank you for the opportunity to testify on HB 535 today.

SB 364/HB 535 represents a major philosophical change without any discussion. It conflicts with principles articulated in Alaska Statute 47.30.655 and a Shared Vision II, our current plan for mental health services. It violates the principle that services will be provided in the least restrictive setting and as close to the client's home as possible. If changes in policy are going to be made, it should be with discussion and input from mental health consumers, the AMHB, hospitals, the Division of Behavioral Health and other stakeholders.

The utilization review section of this bill that would allow more efficient use of resources appears to be a positive step on behalf of the administration. Savings from improved management should be used for added service capacity.

The rest of the bill represents a giant step backwards. In Fairbanks, we are so grateful to have the capacity and quality of program that we currently have at Fairbanks Memorial Hospital for Designated Evaluation and Treatment Beds in our mental health unit. These beds are a critical part of the community-based services that we rely on. Before this unit was expanded to 20 beds, many Fairbanksans in acute need spent up to 3 days in jail and then were transported to API in Anchorage, 300 miles away from their families and natural support system. This was a terrible situation for both the consumers and their families and often exacerbated their illness and symptoms. It seems like the dark ages now looking back at it. We have come so far.

Our state is currently expanding DET beds so that people can access services in their community. Providing DET beds was a consensus decision by the mental health community and seen as an appropriate alternative to sending people to API. API is downsizing and is to be reserved for the most complex patients who needs cannot be met locally. It will no longer be a dumping ground for people no one else wants. Communities are expected to take care of their own whenever possible.

The people we are talking about in this bill are among the most vulnerable Alaskans. They are either a danger to themselves or others or gravely disabled and unable to take care of themselves. They are the poorest of the poor, without even a disability income or Medicaid. Alaska clearly has a responsibility to take care of these vulnerable people.

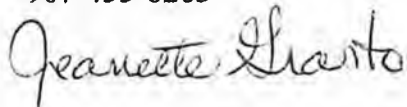
The bill also is discriminatory. We are denying them access to the community system of care that everyone else uses to be sent off to a state institution. They become second-class citizens even among an already marginalized group. Would we even consider a similar bill for someone suffering from heart disease or cancer?

Maybe you think it doesn't matter because it doesn't affect anyone you know or care about, just strangers who live under the bridge. Mental illness affects 1 in 5 Alaskan families. It is not a rare condition and treatment for mental illness is more effective than for heart disease or cancer. I am amazed how many of my friends are struggling with mental illness either themselves or in a family member. It truly is a crisis when it affects you or someone you love. It isn't uncommon when mental illness first strikes, the person is unable to work and has no other income and is indigent until they can either return to work or qualify for disability income.

Finally, many DET patients are involuntarily committed. It is appropriate to take away the civil rights of an indigent individual and then not cover their treatment?

What kind of state are we becoming as we pretend to be broke? If Alaska is so broke that we cannot take care of these most vulnerable Alaskans, then it is imperative that we have a sound fiscal plan that guarantees that we can serve their needs. Cuts to our state budget need be made from excess not from need.

Thank you,
Jeanette Grasto
907-455-6263

A handwritten signature in cursive script that reads "Jeanette Grasto".

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: May 6, 2004
Re: CS Request

Please create a new final draft House Judiciary Committee Substitute for work order # 23-GH2080H, HB 535, incorporating the attached two amendments (Amendment #1 as amended and Amendment #2). The bill was passed out of committee again today (original motion to move the bill was rescinded and another amendment was adopted).

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

#1
Amendment to CS HB 535 (HES) - PASSED
by Gruenberg - FAILED
Rescind

* 1) Strike page 2 lines 15 (after "notification.") through
line 20

2) strike page 2 lines ~~22~~²⁸ (after "stop") through line
30

3) page 4, Line 27 -
strike page 5 lines *6. (Strike Sections 7 & 8.)

~~in page 2 line 28 insert~~

~~"(2) ~~the~~ ~~state~~ ~~shall~~ ~~make~~ ~~every~~ ~~effort~~ ~~to~~ ~~secure~~~~

~~additional funding resources and allocate available~~

~~appropriations to fund financial assistance under~~

~~the chapter."~~

CS/HB 535 (HES)

Amendment #2 - PASSED
by Rep. McGuire

Page 4, Line 2

After "within"

Delete "24"

Insert "72"

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: May 6, 2004
Re: CS Request

FINAL
Please create a work draft House Judiciary Committee Substitute for work order # 23-GH2080XH, HB 535, incorporating the attached amendment. The bill was passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** and/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

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**SENATE HEALTH, EDUCATION AND SOCIAL
SERVICES COMMITTEE (HES)**

**LETTER OF INTENT
TO SB 364**

It is the intent of the legislature that the Department of Health and Social Services continue to develop and support a continuum of mental health care that includes community-based outpatient and supportive services, community hospital-based inpatient evaluation and treatment services, and tertiary mental health care through the Alaska Psychiatric Institute. In developing this system the Department of Health and Social Services shall be guided by the principles that mental health services should be clinically appropriate, cost effective, offered in the least restrictive setting available, and provided as close to the client's home as possible.

It is further the intent of the legislature that in the event of a shortfall in appropriations for mental health evaluation and treatment at community hospitals to stabilize persons experiencing a psychiatric emergency or crisis, and who meet the criteria for involuntary commitment under AS 47.30.700 - 47.30.915, the Department of Health and Social Services shall make every effort to identify additional financing sources or reallocate appropriations available for the purpose from lesser priorities to continue these important services for the remainder of the fiscal year.

Part of language in operating budget

Legislative Questions HB 535 / SB 364

Draft 5/3/04

- 1) If a person has been sent to a DET facility on a court order, would the DBH have any authority to question or overthrow the court order.

Attn Gen – the DBH would be obligated to follow that order

However, the treating physician can discharge a person who does not meet admission criteria.

- 2) How many youth are treated in DET facilities?

Seven (under 3%) admissions occurred in FY 03 out of a total 244 admissions; one youth entered the hospital twice. None exceeded the evaluation phase of up to 7 days.

- 3) What is the explanation for the increased length of stay at Bartlett?

See attached list of reasons for extended stays as explained by Bartlett justified by clinical reasons in the best interests of the patient

- 4) Why is cost of care at Mt. Edgecumbe so high compared to Bethel for example?

All IHS hospitals have a nationally determined rate that is the same for all hospitals

General answer is full cost studies are conducted every four years which include facility depreciation and are used to collect Medicaid funds.

- 5) What would happen if API were full?

- See # 3 – We can ask a DET facility to keep someone longer
- API is being more assertively managed to avoid being full – Current CEO has not turned anyone away

- 6) Could we send anyone to a correctional facility if API is full?

Attn Gen. -- DHSS will pay for another placement – we will not send to correctional facility (notwithstanding hold in jail while transportation being arranged for combative patients – leads to discussions about developing more assertive local DET and other medication options including Dr. to Dr. discussions with local physicians and API physicians.

- 7) Why are there different poverty levels eligibility definitions -- example between DET and Denali Kid Care.

There are at least 9 categorical programs using poverty definitions ranging from 100 – 250% of federal poverty guidelines. Each was developed at different times, under different climates and different administrations.

See attached data summary sheet.

- 8) What is the comparable API Daily Medicaid Rate?

I was in error reporting the daily cost at API as \$669. That rate did not include depreciated facility costs. The Medicaid Rate was calculated at \$757.46/day calculated with the same standardized procedure used to calculate the other Medicaid rates used for other hospitals.

A rate for the new facility has not been calculated.

- 9) Are the Medicaid Rates cost shifting from higher Medical Costs such as surgery?

(Note: DHSS efforts to restructure psychiatric hospital rate.)

- 10) How will be using First Health and MD to monitor program?

See Summary of Proposed DET Monitoring Process

- 11) How have other states managed DET like programs in terms of an entitlement vs. limitations of budget.

Dan Branch, Att. Gen. Office has been asked to attend on 4/2/04

Length of Stay Extensions at Bartlett FY 03

- Difficulty in stabilizing on medications; developed many side effects to medications
- Placement, working w/ courts to get guardianship
- Difficulty in stabilizing medications, many reactions
- Placement, unable to release safely by self, not appropriate for API
- MD felt API placement inappropriate, better to stay within the southeast community
- Stabilizing on medications
- Difficulty in stabilizing on medications related to reactions/EPS
- Was off medication completely, restarted and stabilized
- Stabilizing on medications
- Co-occurring ETOH abuse, needing extra time
- Newly diagnosed, stabilizing on medication

Hospital CEO notes that most delays occurred with patients sent from across the region where resources tend to be less than in Juneau. Sixty-four percent of the delays were related to medication issues. More assertive discharge planning may be able to facilitate earlier discharges. Discharge planning should begin on Day of Admission by hospital staff and local programs. More active management by DBH/API/First Health may facilitate more timely discharges.

2003 Monthly Federal Poverty Guidelines for Alaska

Effective 9/1/2002

Household Size	QMB	SLMB	SLMB	Denali KidCare	Denali KidCare	Transitional Medicaid	QDWI	Working Disabled
	Working Disabled (Premium Level)	Base	Plus	(limit for insured children)	(limit for uninsured children) Pregnant Women	DET		(eligibility)
	100%	120%	135%	150%	175%	185%	200%	250%
1	\$935	\$1,121	\$1,262	\$1,402	\$1,635	\$1,729	\$1,869	\$2,336
2	\$1,262	\$1,514	\$1,704	\$1,893	\$2,208	\$2,335	\$2,524	\$3,155
3	\$1,590			\$2,384	\$2,782	\$2,940	\$3,179	\$3,973
4	\$1,917			\$2,875	\$3,355	\$3,546	\$3,834	\$4,792
5	\$2,245			\$3,367	\$3,928	\$4,152	\$4,489	\$5,611
6	\$2,572			\$3,858	\$4,501	\$4,758	\$5,144	\$6,430
7	\$2,900			\$4,349	\$5,074	\$5,364	\$5,799	\$7,248
8	\$3,227			\$4,840	\$5,647	\$5,970	\$6,454	\$8,086
Ea Addl	\$328			\$492	\$574	\$606	\$655	\$819

Proposed DET Monitoring Process

DBT Admission & Review Process	Existing Practice	Administered by DBH/API/1 st Health
<p>I. <u>Registration:</u> Provides ability to identify level of utilization for program management. Type of Information obtained:</p> <ul style="list-style-type: none"> • Basic demographics • Program Criteria: <ul style="list-style-type: none"> • Mental status • Level of acuity (dangerousness) <p>(Note: Discharge Planning is to begin at Day 1)</p>	<p>I. <u>Registration:</u> 1. The treating physician certifies on admission that the patient meets involuntary commitment criteria. Reference AS 47.30.700-47.30.915</p> <p>Note: registration does not involve authorizing admission.</p>	<p>I. <u>Registration:</u> All registration would be sent to DBH/API</p> <p>(Note: it is possible to have online data entry into AKAIMS from the provider or API)</p>
<p>II. <u>Eight Day Review:</u></p> <p>It is assumed that the "evaluation" period is up to three days, and can be extended to 7 days. The "treatment" period is implemented from this point forward.</p> <p>Note: Updating the means for documentation to more clearly articulate that criteria for continued stay is evident.</p> <p>(NOTE: Discharge planning should be updated)</p>	<p>II. <u>Eight Day Review:</u> 1. The treating physician makes a daily notation n each patient's care chart regarding whether the patient continues to meet the involuntary commitment criteria, and recertifies every 7 days, whether the patient continues to meet criteria.* (Reference the <u>Mental Health Treatment Assistance Eligibility Manual</u>, p.3)</p> <p>2. "The division will reimburse a designated evaluation facility for no more than 7 days for evaluation and crisis stabilization or for transition to community-based services if the division determines the amount of time is clinically appropriate" (Reference the <u>Mental Health Treatment Assistance Eligibility Manual</u>, p.6) Reference 7 AAC 75.520(b) and (c).</p>	<p>II. <u>Eight Day Review: (est. # 60-70)</u> DBH/API staff would conduct the 8 day review.</p> <p>1. Does the evaluation period exceed 7 days?</p> <ul style="list-style-type: none"> • No.....No review is conducted • Yes... Medical necessity of extension is reviewed: Criteria met? <ul style="list-style-type: none"> • Yes...extension is approved. • No....provider contacted for more information. Criteria met? <ul style="list-style-type: none"> • Yes...extension is approved. • No...DBH medical director consults with provider. Criteria met? <ul style="list-style-type: none"> • Yes...extension approved • No... payment denied
<p>III. <u>Retrospective Review</u></p> <p>This review would occur within 90 days of admission, after discharge.</p> <ul style="list-style-type: none"> • Same as time limit for bill submission • Note: this would involve, on average, 275 clients annually. 	<p>III. <u>Retrospective Review</u> 1. The division will reimburse a designated treatment facility for no more than 40 days for evaluation, treatment, and crisis stabilization or for transition to community-based services if the division determines the amount of time is clinically appropriate</p> <p>(Reference the <u>Mental Health Treatment Assistance Eligibility Manual</u>, p.7) Reference 7 AAC 75.520(b) and (c).</p>	<p>III. <u>Retrospective Review</u> API staff would conduct review. Sources used: the client file Process:</p> <ol style="list-style-type: none"> 1. Paperwork is filed in a timely manner 2. Admission criteria is met? 3. File contains medical necessity that matches length of stay with client need? 4. File contains discharge planning that includes referral linkage to community based programs?

Summary of DES/T for FY00 to FY03 Hospitals Only

		Clients Served in Fiscal Year				
Region	Facility	FY00	FY01	FY02	FY03	
ARO	Providence Hospital	2	0	0	0	
ARO	North Star Hospital	0	0	2	0	
NRO	Fairbanks Memorial Hospital	127	185	207	178	
NRO	YKHC	6	6	2	0	
SCRO	Providence Kodiak Island Medical	12	9	0	1	
SCRO	Valdez Community Hospital	0	0	2	0	
SERO	Bartlett Memorial Hospital	44	68	65	57	
SERO	Ketchikan General Hospital	33	21	0	0	
SERO	Mt Edgecombe Hospital	2	1	3	3	
SERO	Petersburg General	0	1	0	0	
	Statewide	226	291	286	244	
Days of Evaluation and Treatment Services in Fiscal Year						
Region	Facility	FY00	FY01	FY02	FY03	
ARO	Providence Hospital	6	0	0	0	
ARO	North Star Hospital	0	0	6	0	
NRO	Fairbanks Memorial Hospital	874	791	892	991	
NRO	YKHC	8	12	2	0	
SCRO	Providence Kodiak Island Medical	22	24	0	4	
SCRO	Valdez Community Hospital	0	0	6	0	
SERO	Bartlett Memorial Hospital	235	460	430	670	
SERO	Ketchikan General Hospital	59	33	0	0	
SERO	Mt Edgecombe Hospital	2	2	28	21	
SERO	Petersburg General	0	1	0	0	
	Statewide	1206	1323	1364	1686	
Average Length of Stay in Fiscal Year						
Region	Facility	FY00	FY01	FY02	FY03	
ARO	Providence Hospital	3	0	0	0	
ARO	North Star Hospital	0	0	3	0	
NRO	Fairbanks Memorial Hospital	6.9	4.3	4.33	5.6	
NRO	YKHC	1.3	2	1	0	
SCRO	Providence Kodiak Island Medical	1.8	2.7	0	4	
SCRO	Valdez Community Hospital	0	0	3	0	
SERO	Bartlett Memorial Hospital	5.3	6.8	6.6	11.8	
SERO	Ketchikan General Hospital	1.8	1.6	0	0	
SERO	Mt Edgecombe Hospital	1	2	3.5	2.6	
SERO	Petersburg General	0	1	0	0	
	Statewide	3	2.9	3.6	6	
Cost of Increase 01 to 03						Estimated
	Statewide		FY01	FY02	FY03	Cost Increases
	Average Daily Medicaid Rate		1178	1449	1493	
	Percentage of Increase in Rate					27% \$534,090
	Total Bed Days		1323	1364	1686	
	Percentage of Increase in Days					27% \$612,018
	Total DES/T		\$1,410,745	\$2,470,511	\$2,831,728	
	Percentage of Increase in Cost					100% \$1,420,938