

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11192 SENATE JUDICIARY

2,500 different state law rules requiring that cancelled checks be stored by drawers. These statutes appear to be designed to assure that records of financial transactions will be available upon subsequent audit. Such records can be made available electronically, but not if the statute says only the paper cancelled check will suffice. And this does not only impose a burden on those who draw and are required to store the cancelled checks. It also means that the check collection system cannot short-circuit the physical travels of the check. If a bank's customers are required by law to store the physical, cancelled checks, the bank cannot store them or authorize anyone earlier in the collection chain to do so.

Unfortunately, it is not possible to simply wave a wand and redefine writings and signatures to include their electronic counterparts. In most instances such a redefinition would serve admirably. It certainly would suffice in all cases in which the purpose of the writing or signing requirement is to insure that there is a record of a transaction which preserves its terms or a record preserving evidence of the parties' assent to the transaction. Electronic records can serve those functions quite well. There is another body of law, however, that governing negotiable instruments, which would be badly disrupted by such a change. This body of law is one where the rights and liabilities of parties depend upon the physical delivery of a token of rights. The technologists tell us that they have not yet invented a technological scheme which would enable us to identify the single, unique and original electronic token. The rights and liabilities that now depend on or arise from negotiable instruments law can be managed in a

legal scheme, but not in one dependent upon the transfer of a single, unique token. Until that sort of technology is in place, however, a provision which merely changes the definition of writing and signature would disrupt the check collection system, the investment markets, commodity and other markets. In the meantime, electronic analogues to the existing paper worlds require a full and complete rethinking of the rights and obligations of parties in those markets, such as was done in the revision of Uniform Commercial Code Article 8. And the Article 8 experience has taught some valuable lessons to the law revisers about the wisdom of technology specific or business model specific statutes or of attempting to draft statutes to govern systems which we believe will come into being, rather than those which already exist.

2. Introduction to the Uniform Electronic Transactions Act. The Uniform Electronic Transactions Act is designed to set a solid legal foundation for the use of electronic communications in transactions. The goal of the draft is to facilitate and support the development of the information economy, and in particular its place in commercial transactions, throughout the States. If the States act in a uniform and constructive manner, the traditional role of the States in the law of commerce may be maintained. If they fail to do so, I believe the imperative need for commercial certainty may lead to a shift of a significant part of the authority of the States to the national government.

The UETA is designed to apply to any transaction where the parties have agreed to deal electronically, validating and supporting the use of electronic communications and records. It provides that parties may choose whether or not to use electronic communications in their transactions. It will put electronic commerce and paper-based commerce on the same legal footing and not discriminate between different forms of technology.

5. The Scope and Provisions of the UETA. The governing principles which have controlled the drafting are fairly simple to state, although not so simple to implement.

1. First, legal barriers to electronic commerce are to be eliminated.
2. Secondly, the barriers should be removed in a manner which assures that the parties' selection or choice of medium does not alter the outcome of disputes between the parties, i.e. whether the parties deal in the paper world or the electronic world, their relationship should be subject to the same legal principles.
3. The draft should maintain medium neutrality and technology neutrality. It should neither assume nor require any particular business model for transactions. The focus should be on the purpose of the legal requirement, rather than the form by which it is satisfied. This also should assure that the draft does not itself become a barrier to electronic commerce as technology and

business practices continue to shift and evolve. Markets and business people should be free to select technologies and business methods according to their needs.

Turning to the UETA, it provides that an electronic record, electronic signature and electronic contract shall not be denied validity on the sole ground that they are electronic. §106. It provides that electronic records shall not be denied admissibility into evidence on the sole ground that they are electronic or that it is not in its original form or is not an original. § 112. It provides that if an offer evokes an electronic response, a contract may be formed with the same effect as if the record was not electronic. §113. These are, I believe, the pivotal provisions of the draft.

A. Scope. One of the most difficult problems to resolve has been the question of the appropriate scope of the statute. Literally thousands, perhaps tens of thousands, of paper and signing requirements are buried in state law. These can range from the steps a legislature must follow to demand a special session, to how to execute a will, to rules for filing financing statements with the state, to rules for giving consumer notices, to contract formation rules. And some of the rules are tied to property and legal rights and obligations that cannot readily be translated into the electronic world, i.e. checks and other negotiable instruments.

Although there was some early sentiment favoring a statute which explicitly listed the provisions of state law which would be amended, pragmatists prevailed. They argued, with some merit, that the resources of the Drafting Committee would not permit such specific itemization and evaluation of writing and signing requirements, and that a demand that State legislatures do so prior to enactment would unduly delay enactment. Consensus emerged that the best approach is to provide that the UETA applies to electronic records and electronic signatures that "relate to any transaction." § 103. And then proceed to create appropriate exclusions. Section 103 excludes rules of law relating to the creation and execution of wills and codicils, and testamentary trusts. It excludes existing Article 1 of the Uniform Commercial Code, except §§ 1-107 and 1-206, Articles 3 through 9 of the Code as currently approved, and revised Articles 2 and 2A and UCITA, except as those statutes may provide. It recognizes that some States may choose to specifically exclude particular statutes, although the comments will urge caution in selecting additional exclusions.

In addition, §103 explicitly states that the Act will apply to electronic records or signatures otherwise excluded when used for transactions subject to a law other than the ones specified as excluded. Thus, for example, while UCC Article 9 applies generally to a transaction creating a security interest in personal property, it excludes landlord's liens. Thus this Act would apply to the creation of a landlord's lien if the law otherwise applicable to such liens did not provide otherwise.

To sum up the discussions on the scope of the UETA, and the conclusions which have been reached, the UETA will apply to "any transaction" unless the law governing it is specifically excluded. Exclusions will include testamentary documents, generally the revised UCC, and any other statutes specifically excluded. All other transactions in which the parties have agreed to deal electronically will be included..

However, the UETA only applies to the procedural aspects of the transaction, i.e. the use of electronic communications and records. A transaction subject to the Act also will be subject to applicable substantive rules of law. The UETA is designed to interact with, not supplant, the bodies of law which otherwise govern contract formation, record-retention, the performance of obligations and rights and liabilities of the parties. The UETA will not, except as is specifically stated, affect requirements relating to a specific mode of delivery or display of information. If a rule of law requires that information be provided in writing, § 107 requires that the information may be furnished in a record that is under the control of the person to which it is provided and capable of retention. This is in accord with the Federal Reserve Board's interim rule for electronic funds transfers. As to notarization, §110 provides that that if the law requires a notarization it is satisfied if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included by other applicable

law. Whether an electronic record or electronic signature will have legal consequences is determined by a combination of UETA and other applicable law

B. Security Procedures. Turning to security procedures, the UETA defines a security procedure as:

a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

The UETA does not provide that a security procedure has any particular legal effect. Rather it provides, in § 108, that an electronic record or electronic signature is attributable to a person if it was the act of the person. This may be proven in any manner, including a showing of the efficacy of a security procedure which has been applied. The effect of an electronic record or signature on the responsibility of a person is then determined from the context and surrounding circumstances, including any agreement of the parties. In other words, the effect of the use of the technology is left to the ordinary, garden variety rules of evidence, contracts, etc.

C. Electronic Agents. Although the use of automated programs for the conduct of transactions has been possible for a couple of decades, with the emergence of the Internet automation of transactions has become common. Yet most of the law of principal and agent assumes the existence of human actors. From one perspective, electronic agents or 'bots and automated transactions are

merely tools used by individuals or other actors. From another, there is concern that pre-programmed operations of computers or other devices will not be regarded as sufficient "manifestations of assent" in the eyes of some courts. To allay such concerns, the UETA explicitly provides that a contract may be formed by the interaction of electronic agents, whether with other electronic agents or with individuals. § 113.

D. Automated Transactions. In addition, concerns have been expressed that in automated transactions an inadvertent pressing of a computer button may result in a party being bound without intending to contract. This might be called the "finger twitching" issue. These concerns have been so pervasive that a special right to avoid a transaction is provided for inadvertent error in automated transactions in cases where the electronic agent did not allow for the prevention or correction of the error. In such a case, a party may avoid a transaction caused by an inadvertent error provided that, on learning that the other party believed a transaction had occurred, the individual gives prompt notice of the error, has not used or received the benefit of the transaction, and complies with any instructions for return or destruction of the consideration received. § 109.

E. Time and Place of Sending and Receipt. One of the most difficult issues for any drafters attempting to deal with electronic commerce, and one on which there does not seem to be any developing consensus, relates to issues arising from the irrelevance of geography in electronic commerce. There is a cluster of

issues which are being debated on local, national and international venues.

There is plenty of noise, but precious little consensus..

The UETA has taken the position that it should lay foundations.

Whatever rules may evolve in the future, they may be applied against Section 114 of the UETA, which specifies both the time and place of sending and receipt of communications. The focus in terms of geography is on the location of the respective parties, i.e. their places of business or residences. The focus in temporal terms is on when messages leave the sender's information system or enter the recipient's system, or one accessible by the recipient.

F. Transferable Records. Section 115 explicitly provides that parties may obtain the benefits of negotiability in an electronic environment. It provides that, if the issuer of a record explicitly agrees it is subject to this Act, a person in control of the record may have the rights, and an obligor may have the liabilities, which would exist for an equivalent paper note or document of title under the Uniform Commercial Code. These provisions are designed to permit commercial interests to proceed with the development of appropriate systems for establishing control of such transferable records without hampering expedited review of negotiability in an electronic environment.

G. Government Records. Part 2 of the UETA authorizes governmental entities, at all levels of the State, to create and retain electronic records and to convert written records into electronic databases. We have been urged by many to include such provisions, and of course any governmental rules concerning

commercial interactions with governmental agencies will have a major impact on the adoption of technologies, methods of record-keeping, and business models selected by commerce. The Drafting Committee has not felt at liberty to do more than authorize government agencies. We are convinced that a mandate would harm enactment, due to the price tag which could accompany such a bill in many states. Instead, Part 2 authorizes agencies to create and retain records, to accept and distribute electronic records, and to write the regulations which necessarily must govern their use of electronic technologies. Finally, it encourages and urges all such regulations to encourage and promote interoperability of their systems.

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FEDERAL PREEMPTION AND ELECTRONIC COMMERCE

by Patricia Brumfield Fry¹

President Clinton signed the Electronic Signatures in Global and National Commerce Act (E-Sign) on June 30, 2000. Nineteen States have enacted the Uniform Electronic Transactions Act (UETA); it is pending in several others. Both acts validate the use of electronic records and signatures; they overlap significantly. Each statute provides that electronic contracts and signatures shall not be denied legal effect or enforceability because they are electronic. Nevertheless, the two acts are not identical, either in scope or substance. This memorandum considers the extent to which E-Sign preempts UETA.

E-Sign §102 Preemption: E-Sign § 102(a) states that States may modify, limit or supersede the electronic contracting provisions of E-Sign under limited conditions. If the State has enacted UETA as *approved and recommended by NCCUSL in 1999*, the State law will govern. This provision is subject to two important caveats. First, if a State has accepted the invitation in UETA §3(b)(4) to exclude State laws not listed by the drafters, the added exclusions are preempted to the extent inconsistent with E-Sign.

E-Sign permits States to enact the uniform version of UETA without fear of preemption. The second caveat relates to the effect of non-uniform enactment. The best interpretation, consistent with general preemption principles, is that any non-uniform provisions of such an enactment are to be evaluated under §102(a)(2), which states that State law may modify, limit or supersede the federal legislation only if it "specifies the alternative procedures or requirements for the use or acceptance of electronic records or electronic signatures, provided:

(a) any alternative procedures or requirements are consistent with Titles I and II and

(b) the alternative procedures do not require, or give greater legal status or effect to use or application of a specific technology or technological specification." [Note, however, that there is an exclusion from this provision for the procurement regulations or laws of the States.]

In addition, any State law, if enacted after E-Sign, must refer specifically to the federal legislation.

Under the preferred interpretation, inconsistent non-uniform provisions are ineffective but the balance would survive. There are other possible readings of the preemption language. Under one, if a State includes any non-uniform provision, the entire enactment is ineffective and federal law governs. This reading is consistent with the literal language of subsection (a)(1) and would force every provision to be evaluated under subsection (a)(2). Under the second alternative reading, non-uniform provisions do not survive, whether or not acceptable under subsection (a)(2).

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The preemption provision of E-Sign §102 may be unique in its drafting style. It does not follow the models found in other legislation, such as the Consumer Credit Protection Act, or in federal regulations, such as the Federal Reserve Board's Regulation CC. To the extent that State law is not an enactment of the uniform language of UETA, it may not be possible to determine whether the effect of E-Sign has been avoided until there has been judicial review.

Additional Preemption Issues in E-Sign:

- UETA §8(b) provides that if a State law requires records to be posted or displayed, sent or communicated, or provides for specific formatting for stated information, the method provided in that State law must be followed. E-Sign §102(c) states explicitly that this provision may not be used by any State to "circumvent" the federal law by imposing "nonelectronic delivery methods" which would be enforced under UETA §8(b).
- UETA §§12(f) and (g) permit States to impose requirements, in addition to the use of electronic media, for records retained for evidentiary, audit or like purposes or for records within the jurisdiction of a state agency. The provisions of E-Sign §104 limit that power by stating it may not be exercised in a manner inconsistent with the federal Act.
- E-Sign §104 specifies that State regulations or orders may not impose requirements in addition to those found in E-Sign §101 and may not require, or accord greater legal status to implementation of specific technologies. As a condition to any such regulation or order, the State agency must find that the regulations or orders are substantially justified, are substantially equivalent to requirements imposed on paper records, and will not impose unreasonable costs on the acceptance use of electronic records.

Limits on State Power to Supersede. The savings provisions of E-Sign §102 apply only to the electronic contracting provisions of the statute. They do not apply to the other titles of E-Sign, i.e. the exclusions found in §103, the provisions governing the powers of State and Federal agencies in §104, the studies required by §105, the provisions on transferable records in Title II or the provisions on promotion of international electronic commerce in Title III. This fact does not automatically render other State law ineffective, but it does mean that to the extent the federal legislation overlaps such laws, the federal legislation will prevail.

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WHY ENACT UETA?
THE ROLE OF UETA AFTER E-SIGN
by Patricia Brumfield Fry¹

President Clinton signed the Electronic Signatures in Global and National Commerce Act (E-Sign) on June 30, 2000. Nineteen States have enacted the Uniform Electronic Transactions Act (UETA); it is pending in several others. Both acts validate the use of electronic records and signatures; they overlap significantly. Each statute provides that electronic contracts and signatures shall not be denied legal effect or enforceability because they are electronic. In some cases the federal legislation uses the language of UETA without change. Nevertheless, the two are not identical, either in scope or substance. UETA is more comprehensive than the federal legislation, including subjects not addressed by E-Sign. Other issues are addressed differently. This memorandum discusses the role of UETA after E-Sign.

How is UETA more comprehensive than E-Sign?

A. Attribution. Often the issue is not whether a record has been signed, but rather whose signature appears. Even if Patricia B. Fry appears on a record, I cannot be bound if the name was not placed by me, ratified by me, or inserted by someone acting on my authority. UETA §9 states that an electronic record or signature is attributed to a person if it was the act of the person. This can be proved by any relevant evidence, including the fact some technology or password was used to establish who attached the signature. Section 9 clarifies that the effect of a record or signature on the person to whom it is attributed is determined from the context and surrounding circumstances at the time of the creation, execution or adoption of the record. E-Sign does not address attribution.

B. Effect of Party Agreement. UETA provides that parties may enter into agreements concerning their use of electronic media. For example, UETA §9 refers to the parties' agreement as a factor in determining the effect of an electronic record and §10 refers to the parties' agreement to use security procedures. E-Sign contains no provisions on variation by agreement.

C. Send and receive. UETA §15 ties the determination of whether something has been sent or received to the communication systems used by the parties and specifies that, unless otherwise agreed, they are sent or received from the parties' principal place of business or residence. E-Sign does not deal with the question of when an electronic record is sent or received.

D. Effect of Change or Error. UETA §10 contains provisions governing the effect of failure to use an agreed security procedure and the impact of mistakes made by an individual while dealing with an electronic agent. It specifies that the rules of mistake otherwise apply. E-Sign has no provisions dealing with mistakes or errors in electronic communications.

F. Admissibility. UETA §13 specifies that electronic records are not to be denied admissibility into

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evidence solely because the records are in electronic format. There is no parallel provision in E-Sign.

G. Transferable Records. E-Sign Title II provides for electronic analogs to paper negotiable notes in transactions secured by real property, and does so in language which is in material part directly imported from UETA §16. The provisions of the UETA are broader in scope, applying to all documents which would, if on paper, be either a promissory note under UCC Article 3 or a document of title under UCC Article 7.

What does UETA do differently from E-Sign? To the extent a State has enacted the uniform version of UETA, the UETA treatment of these matters should prevail.

A. Consumer Protection. The federal legislation focuses on regulating the manner of consumer assent to deal electronically, while UETA emphasizes how parties are to comply with State consumer protection rules. The federal provisions call for a study of the extent to which the regulation benefits or burdens electronic commerce and recommendations from the Department of Commerce and Federal Trade Commission on whether they should be modified.

B. Record-keeping. E-Sign §101(d) follows, in material part, UETA §12(a), (b), (d) and (e). The federal legislation requires that the record remain accessible "to all persons who are entitled to access by statute, regulation, or rule of law" for the time specified, as a condition to enforceability. Query whether it is sufficient that the record is subject to discovery. UETA requires accessibility for later reference.

UETA §12(c) specifies that persons may satisfy their record-keeping obligations through the use of third parties. E-Sign is silent. UETA states that retained electronic records satisfy evidentiary, audit and similar requirements. There is no specific parallel in the federal legislation. UETA permits the States to impose restrictions on the use of electronic records for audit or like purposes. E-Sign, in provisions which are not displaced in a State which enacted UETA [See §104], provides that states may not impose paper requirements through their rule-making power.

C. Automated transactions. E-Sign §101(h) states that the fact an electronic agent was involved in contract formation does not affect enforceability, provided that the agent's activity is attributable "to the person to be bound." UETA §14 states that the use of electronic agents will not defeat contract formation. UETA also has provisions governing changes or errors during the transmission of electronic records. UETA §10 provides rules on the effect of records when a party fails to use an available security procedure to detect the change or error and a provision for unwinding mistakes made by individuals dealing with electronic agents. It specifies that in all other cases, other State law governing mistake is applicable. There are no parallel provisions in E-Sign.

D. Effect of Other State Law. UETA defers explicitly to the provisions of other State law for most substantive determinations. Questions of authority, agency, forgery, contract formation, etc., are determined by other State law. E-Sign states in §101(b) that it does not affect any legal requirement beyond requirements for writings, signatures, and the like.

E. Powers of State governments. UETA bracketed §§17-19 authorize State governments to migrate, in an orderly fashion, to electronic technologies. Some States are far along in the process of migration, others have much work to do. The provisions of UETA are permissive and authorizing; they contain no mandatory provisions. E-Sign restrains the States by limiting their powers.

HB

334

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: April 28, 2004

TO: Senator Ralph Seekins
Chairman, Senate Judiciary Committee

FROM: Representative Kevin Meyer *K*

RE: CS HB 334 (RLS) Unlawful *K* oitation of a Minor/Child Porn

At your earliest convenience, please schedule CS HB 334 (RLS) Unlawful Exploitation of a Minor/Child Porn for a hearing in the Senate Judiciary Committee.

CS HB 334 (RLS) will increase the criminal penalty for AS 11.41.455 Unlawful Exploitation of a Minor to a class A felony for a person who has been previously convicted of this crime. Also, the criminal penalty for AS 11.61.125 Distribution of Child Pornography is raised to a class A felony for a person who has been previously convicted of this crime.

Thank you for your time and consideration of this request.

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

CS HB 334 (RLS)

“An Act relating to unlawful exploitation of a minor and to distribution of child pornography.”

A major area of child victimization is the sexual exploitation of children, which includes child pornography. CS HB 334 (RLS) Unlawful Exploitation of a Minor will increase the criminal penalty for AS 11.41.455 Unlawful Exploitation of a Minor to a class A felony for a person who has previously been convicted of this crime. Also, the criminal penalty for AS 11.61.125 Distribution of Child Pornography is raised to a class A felony for a person who has previously been convicted of this crime.

Photographs, videotapes, films, and magazines of children in sexual poses and sexual acts make up a multimillion-dollar world of child pornography. Child pornographers and pedophiles come from all walks of life. Pedophiles will use the child pornography they have collected to seduce other children into participating in sexual activities with them; proliferating sexually abusive behaviors and attitudes.

The sexual exploitation of a child has multiple victims and the effects can extend through a child's or adolescent's psychological, sociological, and behavioral development into adulthood. Child pornography places the children depicted in harmful situations including the contraction of sexually transmitted diseases, rape, assault, and torture. The production and distribution of explicit sexual material depicting children and adolescents warrants a severe criminal penalty.

Child pornography has devastating effects on children, both on those who are exploited in the actual pictures and those who view it. The production of explicit sexual material involving children is sexual abuse. It becomes the permanent record of sexual abuse. The criminal penalty for the Unlawful Exploitation of a Minor and Distribution of Child Pornography should be the utmost stringent and severe for repeat offenders.

Last Updated: April 13, 2004

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SECTIONAL ANALYSIS

CS HB 334 (RLS)

“An Act relating to unlawful exploitation of a minor and to distribution of child pornography.”

Section 1: Increases the criminal penalty for AS 11.41.455 Unlawful Exploitation of a Minor to a class A felony for a person who has previously been convicted of this crime.

Section 2: Increases the criminal penalty for AS 11.61.125 Distribution of Child Pornography to a class A felony for a person who has previously been convicted of this crime.

Last Updated: April 16, 2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 334(JUD)
 (H) Publish Date: 3/18/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to unlawful exploitation BRU Legal and Advocacy Services
of a minor Component Public Defender Agency
 Sponsor Representative Meyer
 Requester (H) Judiciary Component No. 1631

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 | | | | | | |
| 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)

This bill should have minimal fiscal impact on the operations of the Public Defender Agency. The Agency does not handle a significant number of these offenses.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time _____
 Approved by: Mike Miller, Commissioner Date _____
 Agency Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 334(JUD)
 (H) Publish Date: 3/18/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title Unlawful Exploitation of a Minor RDU Administration & Operations
 Component Institution Director's Office
 Sponsor Representative Meyer
 Requester _____ Component No. 1381

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 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1003 GF Match | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1037 GF/Mental Health | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other (Specify Type--Do not abbreviate) | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 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 | 0 | 0 | 0 | 0 | 0 | 0 |
| Part-time | 0 | 0 | 0 | 0 | 0 | 0 |
| Temporary | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: *(Attach a separate page if necessary)*
 This bill may have an impact on the inmate population at some time in the future but will not impact the number of incarcerated felons within the next five years.

Prepared by: Jerry D. Burnett, Director Phone (907) 465-3339
 Division Administrative Services Date/Time 1/27/04 2:20 PM
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 1/27/2004
 Agency Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 334(JUD)
 (H) Publish Date: 3/18/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to unlawful exploitation of RDU Criminal
a minor." Component CDCO
 Sponsor Representative Meyer
 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)

This bill would make unlawful exploitation of a minor a Class A felony, rather than a Class B felony.

These cases, involving making child pornography are rare and usually plead out. Consequently, passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director
 Division Administrative Services
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General
 Agency Department of Law

Phone 465-3673
 Date/Time 2/13/04 12:25 PM
 Date 2/13/2004

AS 11.41.455 Unlawful exploitation of a minor

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child's genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony.

(d) In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.

AS 11.61.125 Distribution of child pornography

(a) A person commits the crime of distribution of child pornography if the person brings or causes to be brought into the state for distribution, or in the state distributes, or in the state possesses, prepares, publishes, or prints with intent to distribute, any material that visually or aurally depicts conduct described in AS 11.41.455 (a), knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

(b) This section does not apply to acts that are an integral part of the exhibition or performance of a motion picture if the acts are performed within the scope of employment by a motion picture operator or projectionist employed by the owner or manager of a theater

CS HB 334 (RLS) Unlawful Exploitation of a Minor
Statutes pertaining to CS HB 334 (RLS)
Senate Judiciary Committee Hearing

or other place for the showing of motion pictures, unless the motion picture operator or projectionist

(1) has a financial interest in the theater or place in which employed; or

(2) causes the performance or motion picture to be performed or exhibited without the consent of the manager or owner of the theater or other place of showing.

(c) The possession of 100 or more films, audio, video, electronic, or electromagnetic recordings, photographs, negatives, slides, books, newspapers, magazines, or other materials, including a combination of these items totaling 100 or more, is prima facie evidence of distribution and intent to distribute under (a) of this section.

(d) In this section, "distribution" includes the following, whether or not for monetary or other consideration: delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, exchanging, placing on a computer network or computer system, and providing billing collection, or other ancillary services for or otherwise supporting these activities.

(e) Distribution of child pornography is a class B felony.

HB 334 Unlawful Exploitation of a Minor
Comparison of Sentences of Imprisonment

Class A Felonies: Sentences of Imprisonment (AS 12.55.125)

Definite Term: Not more than 20 years

Presumptive Term: **First Felony Conviction**
5 Years, other than for manslaughter
Second Felony Conviction
10 Years
Third Felony Conviction
15 Years

Class B Felonies: Sentences of Imprisonment (AS 12.55.125)

Definite Term: Not more than 10 years

Presumptive Term: **First Felony Conviction**
1-4 years
Second Felony Conviction
4 Years
Third Felony Conviction
6 Years

Class C Felonies: Sentences of Imprisonment (AS 12.55.125)

Definite Term: Not more than 5 years

Presumptive Term: **First Felony Conviction**
1-2 Years
Second Felony Conviction
2 Years
Third Felony Conviction
3 Years

Alaska Statutes-Title 11
Class A Felonies

| Offense Citation | Offense Description | Criminal Classification | Criminal Penalty |
|--------------------|--|-------------------------|------------------|
| AS 11.41.120 | Manslaughter | Felony | Class A |
| AS 11.41.120(a)(1) | Manslaughter-Death that is not Murder in the First Degree or Second Degree | Felony | Class A |
| AS 11.41.120(a)(2) | Manslaughter-Aid in Suicide | Felony | Class A |
| AS 11.41.200 | Assault in the First Degree | Felony | Class A |
| AS 11.41.200(a)(1) | Assault in the First Degree-Serious Injury Involving a Weapon | Felony | Class A |
| AS 11.41.200(a)(2) | Assault in the First Degree-Serious Injury Involving a Weapon-With the Intent to Cause Physical Injury | Felony | Class A |
| AS 11.41.200(a)(3) | Assault in the First Degree-Serious Injury with Extreme Indifference | Felony | Class A |
| AS 11.41.200(a)(4) | Assault in the First Degree-Serious Injury by Repeated Assaults Using a Weapon | Felony | Class A |
| AS 11.41.300(d) | Kidnapping-Releasing a Victim Unharmed | Felony | Class A |
| AS 11.41.500 | Robbery in the First Degree | Felony | Class A |
| AS 11.41.500(a)(1) | Robbery in the First Degree-Armed with a Deadly Weapon | Felony | Class A |
| AS 11.41.500(a)(2) | Robbery in the First Degree-Using a Weapon | Felony | Class A |
| AS 11.41.500(a)(3) | Robbery in the First Degree-Causes or Attempts to Cause Physical Injury | Felony | Class A |
| AS 11.46.400 | Arson in the First Degree-Danger of Serious Injury | Felony | Class A |
| AS 11.46.475 | Criminal Mischief in the First Degree | Felony | Class A |
| AS 11.46.475(a)(1) | Criminal Mischief in the First Degree-Damage to the Pipeline | Felony | Class A |
| AS 11.46.475(a)(2) | Criminal Mischief in the First Degree-Damage to a Public Service Utility | Felony | Class A |
| AS 11.46.475(a)(3) | Criminal Mischief in the First Degree-Damage to Property by Dangerous Means that Exceeds \$100,000 | Felony | Class A |
| AS 11.56.300 | Escape in the First Degree | Felony | Class A |
| AS 11.61.190 | Misconduct Involving a Weapon in the First Degree | Felony | Class A |
| AS 11.61.190(a)(1) | Misconduct Involving a Weapon in the First Degree-Involved in a Drug Crime | Felony | Class A |
| AS 11.61.190(a)(2) | Misconduct Involving a Weapon in the First Degree-From a Vehicle | Felony | Class A |

Alaska Statutes-Title 11
Class A Felonies

| | | | |
|-----------------------|---|--------|---------|
| AS 11.61.240(b)(1) | Possession of Explosives-With the Intent to Murder or Kidnap | Felony | Class A |
| AS 11.66.110(a)(2) | Promotion of Prostitution in the First Degree-Inducing a Person Under 16 Years of Age | Felony | Class A |
| AS 11.71.020 | Misconduct Involving a Controlled Substance in the Second Degree | Felony | Class A |
| AS 11.71.020(a)(1) | Misconduct Involving a Controlled Substance in the Second Degree-Manufacture and Delivery of Class IA Drugs | Felony | Class A |
| AS 11.71.020(a)(2) | Misconduct Involving a Controlled Substance in the Second Degree-Manufacturing Methamphetamines | Felony | Class A |
| AS 11.71.020(a)(2)(A) | Misconduct Involving a Controlled Substance in the Second Degree-Manufacturing Methamphetamines | Felony | Class A |
| AS 11.71.020(a)(2)(B) | Misconduct Involving a Controlled Substance in the Second Degree-Manufacturing Methamphetamine Precursors | Felony | Class A |
| AS 11.71.020(a)(3) | Misconduct Involving a Controlled Substance in the Second Degree-Possessing Methamphetamine Precursors | Felony | Class A |
| AS 11.71.020(a)(4) | Misconduct Involving a Controlled Substance in the Second Degree-Possessing Methamphetamine Chemicals | Felony | Class A |
| AS 11.71.020(a)(4)(A) | Misconduct Involving a Controlled Substance in the Second Degree-Possessing Methamphetamine Chemicals | Felony | Class A |
| AS 11.71.020(a)(4)(B) | Misconduct Involving a Controlled Substance in the Second Degree-Possessing Methamphetamine Chemicals | Felony | Class A |

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Alaska Statutes-Title 11
Class B Felonies

| Offense Citation | Offense Description | Criminal Classification | Criminal Penalty |
|--------------------|---|-------------------------|------------------|
| AS 11.41.130 | Criminally Negligent Homicide | Felony | Class B |
| AS 11.41.210 | Assault in the Second Degree | Felony | Class B |
| AS 11.41.420 | Sexual Assault in the Second Degree | Felony | Class B |
| AS 11.41.436 | Sexual Abuse of a Minor in the Second Degree | Felony | Class B |
| AS 11.41.455 | Unlawful Exploitation of a Minor | Felony | Class B |
| AS 11.41.510 | Robbery in the Second Degree | Felony | Class B |
| AS 11.41.520 | Extortion | Felony | Class B |
| AS 11.41.530 | Coercion | Felony | Class B |
| AS 11.46.120 | Theft in the First Degree | Felony | Class B |
| AS 11.46.280(d)(1) | Issuing a Bad Check-value of \$25,000 | Felony | Class B |
| AS 11.46.285(b)(1) | Fraud: Use of an Access Device-value of \$25,000 | Felony | Class B |
| AS 11.46.300 | Burglary in the First Degree | Felony | Class B |
| AS 11.46.410 | Arson in the Second Degree | Felony | Class B |
| AS 11.46.480 | Criminal Mischief in the Second Degree | Felony | Class B |
| AS 11.46.500 | Forgery in the First Degree | Felony | Class B |
| AS 11.46.565 | Criminal Impersonation in the First Degree | Felony | Class B |
| AS 11.46.600 | Scheme to Defraud | Felony | Class B |
| AS 11.46.730 c(1) | Defraud Creditors-value of \$25,000 | Felony | Class B |
| AS 11.56.100 | Bribery-A Public Servant | Felony | Class B |
| AS 11.56.110 | Receiving a Bribery As a Public Servant | Felony | Class B |
| AS 11.56.200 | Perjury | Felony | Class B |
| AS 11.56.310 | Escape in the Second Degree | Felony | Class B |
| AS 11.56.510 | Interference with Official Proceedings | Felony | Class B |
| AS 11.56.520 | Receiving a Bribe: Witness or Jury | Felony | Class B |
| AS 11.56.807 | Terroristic Threatening in the First Degree | Felony | Class B |
| AS 11.61.125 | Distribution of Child Pornography | Felony | Class B |
| AS 11.61.195 | Misconduct Involving Weapons in the Second Degree | Felony | Class B |
| AS 11.61.240(b)(2) | Possession of Explosives with the Intent to commit a Class A felony | Felony | Class B |
| AS 11.66.110(a)(1) | Promotion of Prostitution in the First Degree-Using Force | Felony | Class B |
| AS 11.71.030 | Misconduct Involving a Controlled Substance in the Third Degree | Felony | Class B |
| AS 11.73.030 | Delivering Imitation Controlled Substances to a Minor | Felony | Class B |

FEDERAL LEGISLATION

1977 Sexual Exploitation of Children Act: 18 U.S.C. 2251-2253

The law prohibits the use of a minor in the making of pornography, the transport of a child across state lines, the taking of a pornographic picture of a minor, and the production and circulation of materials advertising child pornography.

1984 Child Protection Act: 18 U.S.C. 2251-2255

Defines anyone younger than the age of 18 as a child. Therefore, a sexually explicit photograph of anyone 17 years of age or younger is child pornography.

1986 Child Sexual Abuse and Pornography Act: 18 U.S.C. 2251-2256

Banned the production and use of advertisements for child pornography and included a provision for civil remedies of personal injuries suffered by a minor who is a victim. It also raised the minimum sentences for repeat offenders from imprisonment of not less than two years to imprisonment of not less than five years.

1988 Child Protection and Obscenity Enforcement Act: 18 U.S.C. 2251-2256

Unlawful to use a computer to transmit advertisements for or visual depictions of child pornography and it prohibited the buying, selling, or otherwise obtaining temporary custody or control of children for the purpose of producing child pornography.

1990: 18 U.S.C. 2252

Created a federal crime to possess three or more depictions of child pornography that were mailed or shipped in interstate or foreign commerce or that was produced using materials that were mailed or shipped by any means, including by computer.

1996 Telecommunications Act: 18 U.S.C. 2422

A federal crime for anyone using the mail, interstate or foreign commerce, to persuade, induce, or entice any individual younger than the age of 18 to engage in any sexual act for which the person may be criminally prosecuted.

1996 Child Pornography Prevention Act: 18 U.S.C.

Amended the definition of child pornography to include that which actually depicts the sexual conduct of minor children and that which appears to be a depiction of a minor engaging in sexual conduct. People who alter pornographic images to look like children can now be prosecuted under the law.

STATE LEGISLATION

1978 House Bill 661

Created the crime of Unlawful Exploitation of a Minor (AS 11.41.455).

Provided that a person commits the crime if, with the intent of producing for any commercial purpose a live performance, film, photograph, negative, slide, book, newspaper, or magazine, that depicts such conduct, a person knowingly induces or employs a child under the age of 16 to engage in, or photographs, films or televises a child under 16 years of age engaged in:

1. Sexual penetration;
2. The obscene touching of another person's genitals, anus, or female breast;
3. The obscene touching by another person of a child's genitals, anus, or female breast;
4. Masturbation;
5. Bestiality; or
6. The obscene exhibition of the child's genitals.

HB 661 created the criminal penalty for Unlawful Exploitation of a Minor as a class B felony.

1983 House Bill 270

This legislation repealed and reenacted AS 11.41.455.

Provided that a person commits the crime if in the state and with the intent of producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed in (1)-(6) of this subsection, the person knowingly induces or employs a child under 18 years of age in, or photographs, films, or televises a child under the age of 18 engaged in the following actual or simulated conduct:

1. Sexual penetration;
2. The lewd touching of another person's genitals, anus, or female breast;
3. The lewd touching by another person of a child's genitals, anus, or female breast;
4. Masturbation
5. Bestiality
6. The lewd exhibition of the child's genitals

Created a new subsection that prohibits a parent, legal guardian, or person having custody or control of a child under 18 years of age from permitting the child to engage in conduct described in the previous subsection, knowing that the conduct is intended to be used in producing a live performance, film, photograph, negative, slide, book, newspaper, magazine or other printed material that depicts the actual or simulated conduct.

The criminal penalty for AS 11.41.455 remained a class B felony.

Historical Perspective: Laws and Legislation
Exploitation of Minors

1990 Senate Bill 513

This legislation amended AS 11.41.455

Provided that a person commits the crime of unlawful exploitation of a minor by producing an audio recording of a minor participating, or simulated participation in certain acts. Also, a new subsection was added to AS 11.41.455 that defined "audio recording".

The criminal penalty for AS 11.41.455 remained a class B felony.

1992 House Bill 396

This legislation amended AS 11.41.455

Added "sexual masochism or sadism" to the list of behaviors prohibited.

The criminal penalty for AS 11.41.455 remained a class B felony.

2000 Senate Bill 259

Provided that a person commits the crime of unlawful exploitation of a minor by producing video, electronic, or electromagnetic recordings of a minor participating, or simulated participation in certain acts.

The criminal penalty for AS 11.41.455 remained a class B felony.

Sexual Exploitation of Children

Title 18 U.S.C. 2251 sets forth three offenses. Section (a) proscribes the employment or enticement of a minor to engage in sexually explicit activity for the purpose of producing any visual depiction of such conduct. Either the visual depiction must be actually transported in interstate or foreign commerce, or mailed, or the person must know or have reason to know that it will be so transported, or the visual depiction must be produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer.

Subsection (b) prohibits any parent, legal guardian, or person having custody or control over a minor to permit such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

Subsection (c) penalizes anyone who makes, prints, or publishes any notice or advertisement seeking or offering: (1) to receive, exchange, buy, produce, display, distribute or reproduce a visual depiction of a minor engaging in sexually explicit conduct; or (2) to participate in any act of sexually explicit conduct by or with a minor. Such person should know or have reason to know that such notice or advertisement will be transported in interstate or foreign commerce by any means, including by computer or mail.

Section 2251 imposes a mandatory minimum of 10 years' imprisonment and/or a fine to a twenty year maximum for the first offense and a minimum of 15 years' to a maximum thirty years' imprisonment together with a fine for the second offense if the offender has one prior conviction under Chapter 10, Chapter 109A, or Chapter 117, or under the laws of any state relating to the sexual exploitation of children. An offender with two or more such prior convictions faces a mandatory minimum of thirty years with a maximum sentence of life in prison.

Selling or Buying of Children (Section 2251 A)

Title 18 U.S.C. section 2251 A (a) punishes any parent, legal guardian, or other person with rights of custody or control over a minor who sells or otherwise transfers control of such minor with knowledge that the minor will be used to depict sexually explicit conduct or with the intent of promoting the minor in sexually explicit conduct.

The penalties for subsections (a) and (b) are imprisonment for 20 years to life and a fine if during the course of conduct the minor traveled in or was transported in interstate or foreign commerce; or offers to transport were made in interstate or foreign commerce, including by computer, or the conduct occurred in any territory or possessions of the United States.

**Certain Activities Relating to Material Involving the Sexual Exploitation of Minors
(Section 2252 and 2252 A)**

Title 18 U.S.C. section 2252 sets forth four offenses. Subsection (a)(1) prohibits anyone from knowingly transporting in interstate or foreign commerce or mailing any visual depiction involving the use of a minor engaging in sexually explicit conduct.

Subsection (a)(2) prohibits anyone from knowingly receiving or distributing any visual depiction of a minor engaging in sexually explicit conduct that has been mailed or transported in interstate or foreign commerce or from knowingly reproducing any such visual depiction for distribution in interstate or foreign commerce or through the mail.

Subsection (a)(3)(A) prohibits anyone in the special maritime and territorial jurisdiction of the United States, or on any government land, or in any government facility, from selling or possessing with the intent to sell any visual depiction of a minor engaged in sexually explicit conduct that has been shipped in interstate or foreign commerce or was made with materials sent in interstate or foreign commerce. Subsection (a)(3)(B) penalizes the knowing sale or possession with the intent to sell of any visual depiction of a minor engaged in sexually explicit conduct shipped in interstate or foreign commerce, or produced using materials mailed or shipped by any means, including by computer where the production involved the use of a minor engaged in sexually explicit conduct and the visual depiction of such conduct.

Subsection (a)(4) prohibits the possession of one or more books, magazines, periodicals, films, video tapes, or other matter containing any visual depiction of a minor engaging in sexually explicit conduct, which was shipped or transported or made with materials shipped or transported in interstate or foreign commerce, including by computer.

Section 2252 imposes, for the first three offenses, a maximum 15 years' imprisonment and/or a fine for the first offense and a minimum five years' imprisonment to a maximum 30 years' imprisonment and/or a fine for a subsequent conviction under this Section, under Chapter 109 A, under Chapter 117, or under the laws of any state relating to aggravated sexual abuse, or abusive sexual conduct involving a minor or ward, or the trafficking in child pornography. The penalty for violation of Subsection (a)(4) is a maximum sentence of five years and/or a fine for the first offense, and a two year mandatory minimum with a ten year statutory maximum if the offender has a prior conviction as set forth above.

**Certain Activities Relating to Material Involving the Sexual Exploitation of Minors
(2252 A)**

Title 18 U.S.C. Section 2252 A is identical to 18 U.S.C. Section 2252, with two exceptions. First, section 2252 A expands the definition of the prohibited material by using the more inclusive term "child pornography" instead of the words "visual depiction of a minor engaging in sexually explicit conduct" that is utilized in Section 2252. A second difference is

found in the possessory offense set forth in Section 2252 A (a)(5)(B), which makes it illegal to possess an image of child pornography.

Section 2252 A imposes, for the first four offenses, a maximum 15 years' imprisonment and/or a fine for the first offense and a minimum five years' imprisonment to a maximum 30 years' imprisonment and/or a fine for a subsequent conviction under this Section, under Chapter 109 A, or under the laws of any state relating to aggravated sexual abuse, or abusive sexual conduct involving a minor or ward, or the trafficking in child pornography. The penalty for violation of Subsection (a)(5) is a maximum sentence of five years and/or a fine for the first offense, and a two year mandatory minimum with a ten year statutory maximum if the offender has a prior conviction as set forth above.

Definitions for 18 U.S.C. Sections 2251, 2251 A, 2252, and 2252 A

"Minor" refers to any person under the age of eighteen years.

"Sexually explicit conduct" means actual or simulated: sexual intercourse, bestiality, masturbation, sadistic or masochistic abuse, or lascivious exhibition of the genitals or pubic area.

"Child pornography" is defined to include the following:

- (1) Visual depictions where minors are depicted engaging in sexually explicit conduct;
- (2) Visual depictions which are, or appear to be, or a minor engaging in sexually explicit conduct;
- (3) Visual depictions which have been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or
- (4) Visual depictions which are advertised, promoted, presented, described or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.

"Identifiable minor" is defined as a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.

HB 334 Unlawful Exploitation of a Minor
Comparison of Sentences of Imprisonment

Sexual Exploitation of Children (Title 18 U.S.C. 2251)

Description of Offense:

Proscribes the employment or enticement of a minor to engage in sexually explicit activity for the purpose of producing any visual depiction of such conduct. Prohibits any parent, legal guardian, or person having custody or control over a minor to permit the minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. Penalizes anyone who makes, prints, or publishes any notice or advertisement seeking or offering to (1) to receive, exchange, buy, produce, display, distribute or reproduce a visual depiction of a minor engaging in sexually explicit conduct; or (2) to participate in any act of sexually explicit conduct by or with a minor.

Sentences:

- First Offense:** Mandatory minimum of 10 years imprisonment and/or a fine.
Maximum 20 years imprisonment and/or a fine.
- Second Offense:** Minimum of 15 years imprisonment with a fine
Maximum 30 years imprisonment with a fine
- Subsequent Convictions:** An offender with 2 or more such prior convictions faces a mandatory minimum of 30 years with a maximum sentence of life in prison.

Activities Relating to Material Involving the Sexual Exploitation of a Minor (Title 18 U.S.C. 2252)

Description of Offense:

Prohibits anyone from knowingly transporting in interstate or foreign commerce or mailing any visual depiction involving the use of a minor engaging in sexually explicit conduct. Prohibits anyone from knowingly receiving or distributing any visual depiction of a minor engaging in sexually explicit conduct that has been mailed or transported in interstate or foreign commerce or from knowingly reproducing such material for distribution. Prohibits anyone selling or possessing with the intent to sell any visual depiction of a minor engaged in sexually explicit conduct. Prohibits the possession of one or more books, magazines, periodicals, films, video tapes, or other matter containing any visual depiction of a minor engaging in sexually explicit conduct.

Sentences:

- First Offense:** Maximum 15 years imprisonment and/or a fine
- Subsequent Convictions:** Minimum 5 years imprisonment
Maximum 30 years imprisonment

Sentences for Possession of Material:

- First Offense:** Maximum 5 years imprisonment and/or a fine
- Subsequent Convictions:** Minimum of 2 years imprisonment
Maximum 10 years imprisonment

**Crime Classifications of Offenders in Institutions
December 31, 2002**

| Alcohol | Female | Male | Total |
|--|---------------|-------------|--------------|
| Driving While Intoxicated | 10 | 70 | 80 |
| Drunk Person on Lic Premises | 0 | 9 | 9 |
| Felony DWI - 2+ Priors w/in 5 Yrs | 18 | 126 | 144 |
| Felony Refusal of Chem Test- 2+ Priors | 0 | 5 | 5 |
| Furnish Alcohol to Minor - Felony | 0 | 2 | 2 |
| Furnish Alcohol to a Minor | 2 | 4 | 6 |
| License or Permit Required | 0 | 5 | 5 |
| Manuf/Sell Alcohol w/o lic - in Dry Area | 1 | 8 | 9 |
| Minor Consuming/Possessing Alcohol | 0 | 2 | 2 |
| Refuse to Submit to Chem Test | 1 | 2 | 3 |
| Trans Alcohol by Carrier to Dry Area | 1 | 5 | 6 |
| Total | 33 | 238 | 271 |
| Drugs | | | |
| Attempted Drugs 2 | 0 | 2 | 2 |
| Attempted Drugs 3 | 0 | 3 | 3 |
| Attempted Drugs 4 | 0 | 1 | 1 |
| Dangerous Drugs - Other | 0 | 1 | 1 |
| Misconduct - Controlled Substance 1 | 0 | 5 | 5 |
| Misconduct -Controlled Substance 2 | 8 | 25 | 33 |
| Misconduct - Controlled Substance 3 | 9 | 58 | 67 |
| Misconduct - Controlled Substance 4 | 19 | 88 | 107 |
| Misconduct - Controlled Substance 5 | 0 | 1 | 1 |
| Misconduct - Controlled Substance 6 | 1 | 0 | 1 |
| Total | 37 | 179 | 216 |
| Person | | | |
| Assault 1 | 4 | 78 | 82 |
| Assault 2 | 1 | 78 | 79 |
| Assault 3 | 19 | 239 | 258 |
| Assault 4 | 16 | 125 | 141 |
| Attempted Assault 1 | 0 | 1 | 1 |
| Attempted Assault 2 | 0 | 1 | 1 |
| Attempted Kidnapping | 0 | 2 | 2 |
| Attempted Murder 1 | 5 | 28 | 33 |
| Attempted Robbery 2 | 0 | 1 | 1 |
| Child Abuse | 0 | 2 | 2 |
| Custodial Interference 1 | 1 | 1 | 2 |
| Coercion | 0 | 8 | 8 |
| Conspiracy Murder 1 | 0 | 1 | 1 |
| Criminally Negligent Homicide | 0 | 11 | 11 |
| DV Assault | 1 | 11 | 12 |
| Endanger Vulnerable Adult 1 | 0 | 1 | 1 |
| Endanger Welfare Minor 1 | 0 | 1 | 1 |
| Kidnapping | 1 | 55 | 56 |
| Manslaughter | 4 | 42 | 46 |
| Murder 1 | 13 | 208 | 221 |
| Murder 2 | 7 | 157 | 164 |
| Reckless Endangerment | 0 | 3 | 3 |
| Robbery 1 | 7 | 137 | 144 |
| Robbery 2 | 3 | 61 | 64 |

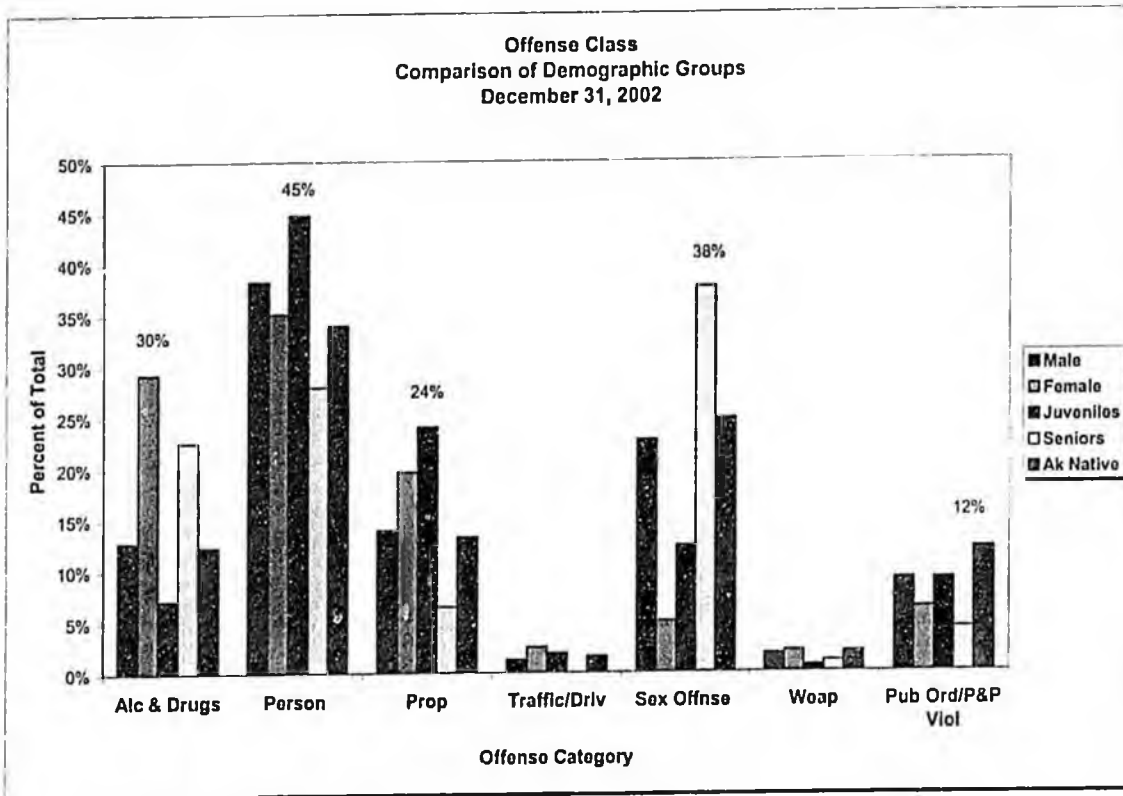
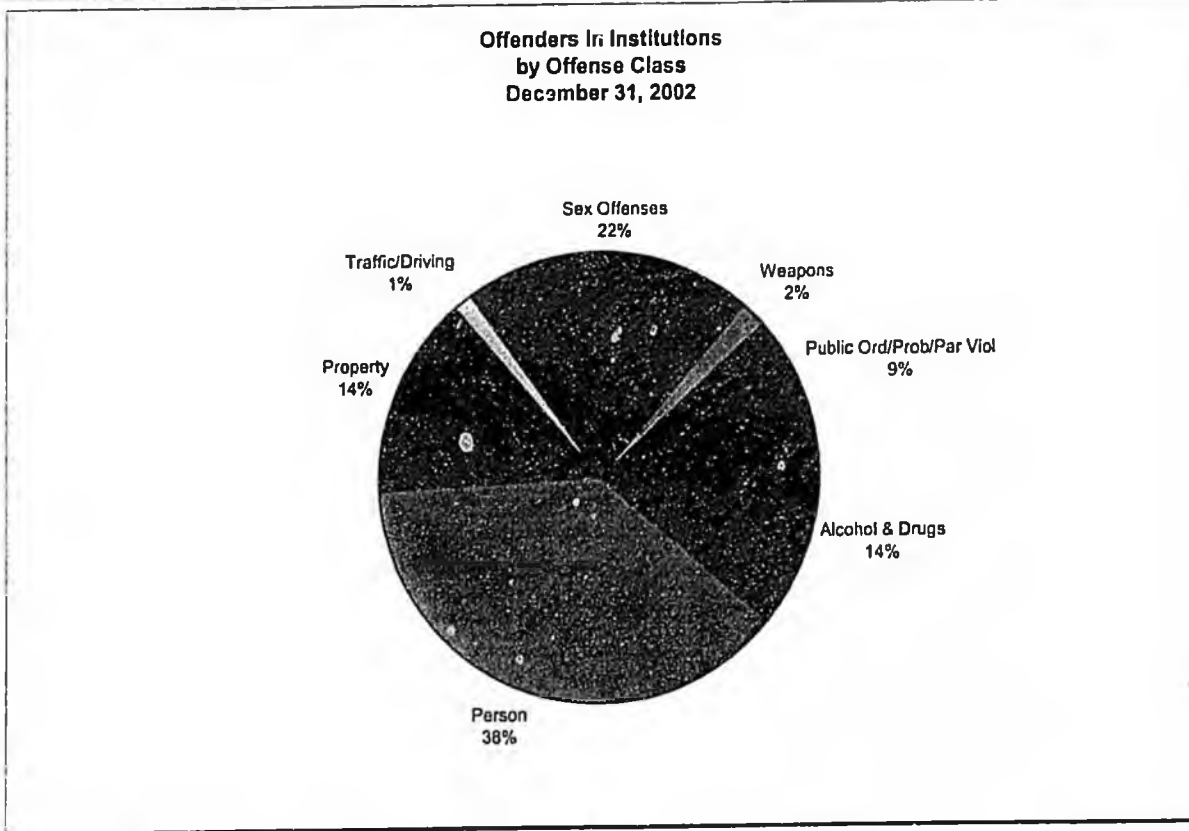
| Person (cont'd) | Female | Male | Total |
|------------------------|-----------|--------------|--------------|
| Solicitation Assault 4 | 0 | 1 | 1 |
| Solicitation Murder 1 | 0 | 1 | 1 |
| Solicitation Robbery 1 | 0 | 1 | 1 |
| Stalking 1 | 0 | 9 | 9 |
| Total | 84 | 1,262 | 1,346 |

| Property | Female | Male | Total |
|--|-----------|------------|------------|
| Arson 1 | 0 | 6 | 6 |
| Arson 2 | 1 | 8 | 9 |
| Attempted Burglary 1 | 0 | 2 | 2 |
| Attempted Scheme to Defraud | 0 | 1 | 1 |
| Attempted Theft 1 | 0 | 1 | 1 |
| Attempted Theft 2 | 0 | 1 | 1 |
| Burglary 1 | 4 | 38 | 42 |
| Burglary 2 | 0 | 58 | 58 |
| Conceal Merch - Value \$500+ | 0 | 1 | 1 |
| Conceal Merch - Value < \$500 | 1 | 15 | 16 |
| Criminal Mischief 2 | 2 | 21 | 23 |
| Criminal Mischief 3 | 1 | 1 | 2 |
| Criminal Trespass 1 | 0 | 5 | 5 |
| Criminal Trespass 2 | 3 | 9 | 12 |
| Criminally Negligent Burning | 0 | 1 | 1 |
| Forgery 1 | 0 | 1 | 1 |
| Forgery 2 | 8 | 16 | 24 |
| Fraud Use Credit Card - Value \$500+ | 0 | 1 | 1 |
| Issuing Bad Check - Value \$500-\$24,999 | 0 | 2 | 2 |
| Issuing Bad Check - Value <\$50 | 0 | 1 | 1 |
| Theft 1 | 0 | 2 | 2 |
| Theft 2 | 18 | 167 | 185 |
| Theft 3 | 1 | 11 | 12 |
| Theft 4- Value <\$50 | 0 | 1 | 1 |
| Theft by Deception | 0 | 1 | 1 |
| Theft by Receiving | 0 | 3 | 3 |
| Theft of Services | 0 | 1 | 1 |
| Unauthorized Entry | 0 | 2 | 2 |
| Vehicle Tampering | 0 | 1 | 1 |
| Vehicle Theft 1 | 4 | 86 | 90 |
| Total | 47 | 460 | 507 |

Public Order/Administration

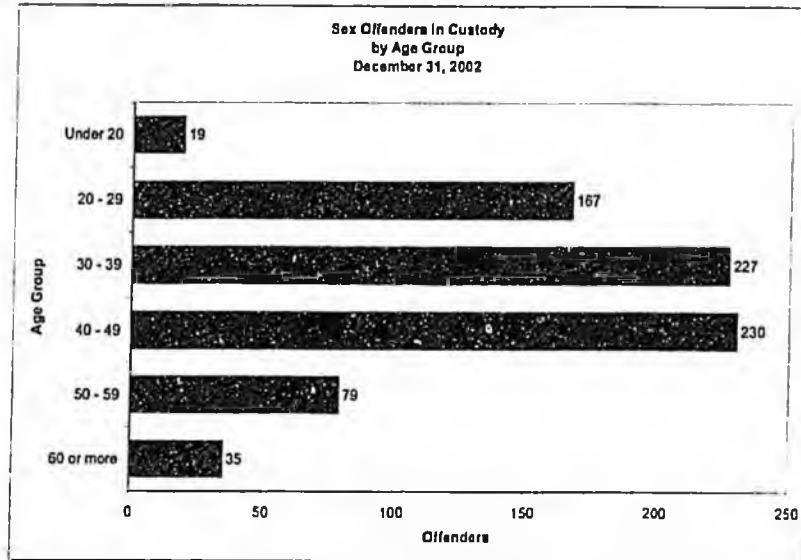
| | | | |
|--------------------------------------|---|---|----|
| Contempt of Court | 1 | 7 | 8 |
| Escape 2 | 0 | 5 | 5 |
| Failure to Appear | 1 | 8 | 9 |
| Failure to Comply | 1 | 3 | 4 |
| Failure to Reg as Sex Offender 1 | 0 | 4 | 4 |
| False Information | 2 | 5 | 7 |
| Fugitive from Justice | 3 | 7 | 10 |
| Interfere w/ Report of DV Crime | 0 | 1 | 1 |
| Interference w/ Official Proceedings | 1 | 3 | 4 |
| Leaving Scene of Accident | 1 | 4 | 5 |
| Perjury | 0 | 2 | 2 |
| Promote Contraband 1 | 0 | 3 | 3 |
| Resist/Interfere Arrest | 0 | 4 | 4 |
| 14 Tamper Phys Evid | 1 | 8 | 9 |

| | Female | Male | Total |
|--|-----------|------------|------------|
| Public Order/Administration | | | |
| Tamper Witness 1 | 0 | 3 | 3 |
| Terroristic Threat | 0 | 1 | 1 |
| Unlawful Evasion | 0 | 1 | 1 |
| Violate Conditions of Release | 0 | 10 | 10 |
| Violate DV Restraining Order | 1 | 8 | 9 |
| Total | 12 | 87 | 99 |
| Parole/Probation Violations | | | |
| Parole Violation | 0 | 77 | 77 |
| Probation Violation | 3 | 136 | 139 |
| Total | 3 | 213 | 216 |
| Non-Registerable Sex Offenses | | | |
| Family Violence | 1 | 6 | 7 |
| Indecent Exposure 2-Victim 16+ | 0 | 2 | 2 |
| Indecent Exposure 2-Victim <16 | 0 | 1 | 1 |
| Practicing Prostitution | 1 | 0 | 1 |
| Promoting Prostitution | 0 | 1 | 1 |
| Sex Abuse Minor 4-Vic 13, Ofndr <16 | 0 | 2 | 2 |
| Total | 3 | 11 | 14 |
| Registerable Sex Offenses | | | |
| Attempted Sex Abuse Minor 1 | 0 | 22 | 22 |
| Attempted Sex Abuse Minor 2 | 0 | 14 | 14 |
| Attempted Sex Abuse Minor 3 | 0 | 3 | 3 |
| Attempted Sex Assault 1 | 0 | 16 | 16 |
| Attempted Sex Assault 2 | 0 | 12 | 12 |
| Attempted Sex Assault 3 | 0 | 2 | 2 |
| Conspiracy Sex Abuse 1 | 1 | 0 | 1 |
| Incest | 0 | 3 | 3 |
| Indecent Exposure 1 | 0 | 2 | 2 |
| Indecent View/Photo w/o Consent of Minor | 0 | 1 | 1 |
| Possess Child Pornography | 0 | 1 | 1 |
| Sex Abuse Minor 1 | 1 | 150 | 151 |
| Sex Abuse Minor 2 | 1 | 171 | 172 |
| Sex Abuse Minor 3 | 1 | 28 | 29 |
| Sex Assault 1 | 1 | 168 | 169 |
| Sex Assault 2 | 3 | 104 | 107 |
| Sex Assault 3 | 1 | 39 | 40 |
| Solicitation Sex Abuse 1 | 2 | 2 | 4 |
| Total | 9 | 716 | 725 |
| Traffic/Driving | | | |
| Driving w/ Lic Rev/Sus | 5 | 21 | 26 |
| Eluding | 0 | 1 | 1 |
| Fail to Stop at Direction of Officer 1 | 1 | 20 | 21 |
| Reckless Driving | 0 | 1 | 1 |
| Total | 6 | 43 | 49 |



**Distribution of Sex Offenders
December 31, 2002**

| In-State Institutions | Count | Percent |
|-------------------------------------|--------------|----------------|
| Anchorage Jail | 43 | 5.7% |
| Anvil Mt Correctional Center | 15 | 2.0% |
| Cook Inlet Pretrial Facility | 63 | 8.3% |
| Fairbanks Correctional Center | 16 | 2.1% |
| Hiland Mt. Correctional Center | 76 | 10.0% |
| Ketchikan Correctional Center | 6 | 0.8% |
| Lemon Creek Correctional Center | 46 | 6.1% |
| Mat-Su Pretrial Facility | 7 | 0.9% |
| Palmer Minimum Correctional Center | 59 | 7.8% |
| Palmer Medium Correctional Center | 35 | 4.6% |
| Spring Creek Correctional Center | 99 | 13.1% |
| Wildwood Correctional Center | 57 | 7.5% |
| Wildwood Pretrial Facility | 6 | 0.8% |
| Yukon-Kuskokwim Correctional Center | 22 | 2.9% |
| <i>Total</i> | <i>550</i> | <i>72.7%</i> |
| Out-of-State Institutions | | |
| Central Arizona Detention Center | 196 | 25.9% |
| <i>Total</i> | <i>196</i> | <i>25.9%</i> |
| CRC's | | |
| Cordova Center | 7 | 0.9% |
| Glacier Manor | 1 | 0.1% |
| Glennwood Center | 2 | 0.3% |
| North Star Center | 1 | 0.1% |
| <i>Total</i> | <i>11</i> | <i>1.5%</i> |
| Special Offsite Programs | | |
| <i>Total</i> | <i>0</i> | <i>0.0%</i> |
| Grand Total | 757 | 100.0% |



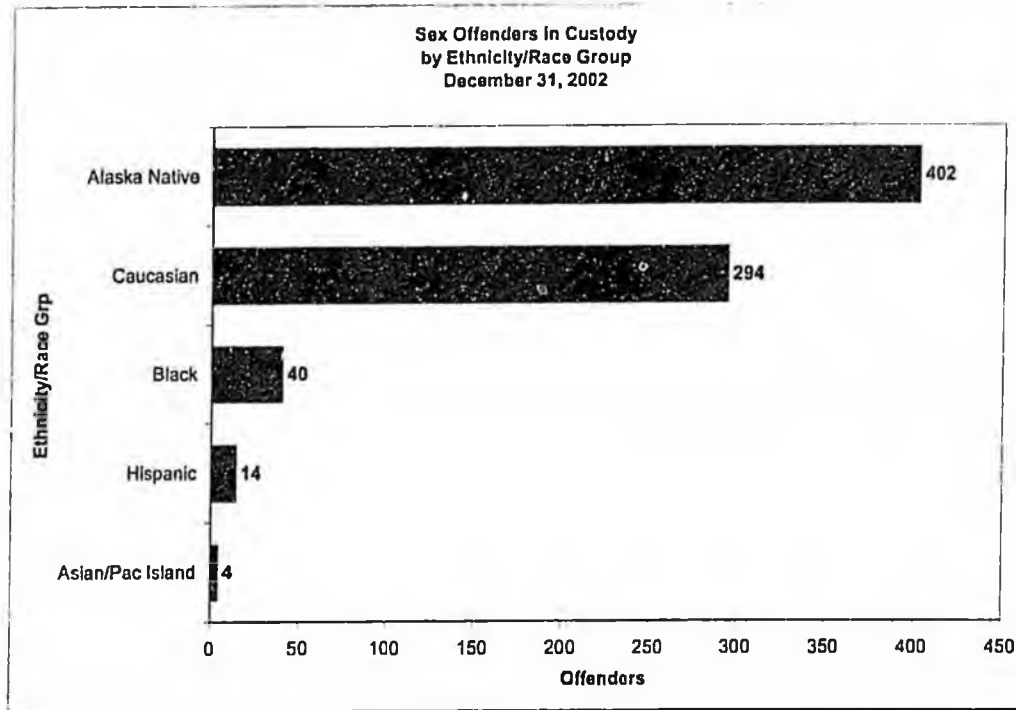
**Demographic Information for Sex Offenders
December 31, 2002**

| Sex | Count | Percent |
|--------------|------------|---------------|
| Females | 9 | 1.2% |
| Males | 748 | 98.8% |
| Total | 757 | 100.0% |

| Ethnicity | Count | Percent |
|----------------------|------------|---------------|
| Asian/Pacific Island | 4 | 0.5% |
| Black | 40 | 5.3% |
| Caucasian | 294 | 38.8% |
| Hispanic | 14 | 1.8% |
| Alaska Native | 402 | 53.1% |
| Unknown | 3 | 0.4% |
| Total | 757 | 100.0% |

| Age Group (Years) | Count | Percent |
|-------------------|------------|---------------|
| 19 and Under | 19 | 2.5% |
| 20 - 24 | 89 | 11.8% |
| 25 - 29 | 78 | 10.3% |
| 30 - 34 | 100 | 13.2% |
| 35 - 39 | 127 | 16.8% |
| 40 - 44 | 130 | 17.2% |
| 45 - 49 | 100 | 13.2% |
| 50 - 54 | 48 | 6.3% |
| 55 - 59 | 31 | 4.1% |
| 60 - 64 | 17 | 2.2% |
| 65 and over | 18 | 2.4% |
| Total | 757 | 100.0% |

| | |
|-------------------|--------------|
| <i>Mean Age</i> | 38.79 |
| <i>Median Age</i> | 38.76 |



**Offense Classifications of Sex Offenders
December 31, 2002**

| | | |
|----------------------|------------|---------------|
| Offense Level | | |
| Felony | 752 | 99.3% |
| Misdemeanor | 5 | 0.7% |
| Total | 757 | 100.0% |

| | | |
|----------------------------------|------------|---------------|
| Registerable Sex Offenses | | |
| Attempted Sex Abuse Minor 1 | 22 | 2.9% |
| Attempted Sex Abuse Minor 2 | 14 | 1.8% |
| Attempted Sex Abuse Minor 3 | 3 | 0.4% |
| Attempted Sex Assault 1 | 16 | 2.1% |
| Attempted Sex Assault 2 | 12 | 1.6% |
| Attempted Sex Assault 3 | 2 | 0.3% |
| Conspiracy Sex Abuse 1 | 1 | 0.1% |
| Incest | 3 | 0.4% |
| Indecent Exposure 1 | 2 | 0.3% |
| Possess Child Pornography | 1 | 0.1% |
| Sex Abuse Minor 1 | 158 | 20.9% |
| Sex Abuse Minor 2 | 175 | 23.1% |
| Sex Abuse Minor 3 | 29 | 3.8% |
| Sex Assault 1 | 169 | 22.3% |
| Sex Assault 2 | 108 | 14.3% |
| Sex Assault 3 | 40 | 5.3% |
| Solicitation Sex Abuse 1 | 2 | 0.3% |
| Total | 757 | 100.0% |

Division of Juvenile Justice/ DHSS
Information RE: HB 334- February 20, 2004

| Fiscal Year | Total # Youth Charged | Age | Race | Other Charges Present ? | Case Outcome |
|-------------|-----------------------|-----|-----------|-------------------------|------------------------------------|
| FY '94 | 1 | 12 | Multirace | No | Dismissed |
| FY '95 | 0 | | | | |
| FY '96 | 1 | 12 | Caucasian | No | Dismissed |
| FY '97 | 0 | | | | |
| FY '98 | 0 | | | | |
| FY '99 | 4 | 16 | Caucasian | No | Dismissed |
| | | 16 | Caucasian | No | Dismissed |
| | | 16 | Unknown | No | Dismissed |
| | | 15 | Unknown | No | Dismissed |
| FY '00 | 0 | | | | |
| FY '01 | 2 | 14 | Caucasian | Yes | Adjudicated |
| | | 16 | Caucasian | Yes | Adjudicated |
| FY '02 | 5 | 13 | Unknown | Yes | Adjudicated |
| | | 15 | Caucasian | No | Dismissed |
| | | 16 | Caucasian | Yes | Adjudicated |
| | | 16 | Caucasian | No | Dismissed |
| | | 16 | Caucasian | Yes | Adjudicated |
| FY '03 | 1 | 13 | AK Native | Yes | Adjudicated/Sex Offender Treatment |
| FY '04 | 1 | 18* | Caucasian | Yes | Waived to Adult Court |

* Although the youth was 18 at the time the charges surfaced, the offenses had occurred a few years prior to the juvenile turning 18.

Summary Points:

- ❖ Fifteen (15) juveniles were charged with Unlawful Exploitation of a Minor in 10 years.
- ❖ Several of these incidents involved youths committing the behavior as a group, or stated differently, the 15 youths were involved in 8 separate incidents.
- ❖ Those cases referred with other charges (40% of the total referrals listed above) ultimately resulted in adjudication 100 % of the time. In some of these instances, the adjudication was at a later time for a subsequently referred charge.
- ❖ Seven (7) juveniles out of the total fifteen referred to the Division on this charge (47% of the total referrals for this offense in the past ten years) would have been waived to adult court under this proposed bill based on having been at least 16 at the time of the offense.



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99503-7488

Channel 2 News - Oct. 23, 2003

Chase gets 5-year sentence for child pornography



Anchorage, Alaska, Oct. 23, 2003 - Randy Chase has a long infatuation with children, according to police, Thursday, he faced a judge to find out how much time he'll spend in prison on charges of possessing child pornography.

Chase, 38, was arrested in January at Stevens Anchorage International Airport as he returned from a trip, after his teenage foster son reported finding a videotape in their home of Chase having sex with a young boy.

After his arrest, police found 91 computer discs in Chase's home with more than 15,000 pictures of young boys dating back to March 2000.

Chase pleaded "no contest" to two counts of possessing child pornography.

The courtroom was full Thursday as a standing-room-only crowd gathered to hear Superior Court Judge Larry Carr deliver the sentence.

"Based on my findings and based on the criteria as I've ordered them, I'm going to impose five years on Count 1," he said. Another five years on Count 2 were suspended.

"This is a 38-year-old pedophile, and he's a sadistic pedophile," Assistant District Attorney Taylor Winston told the court. "And the state can say that, your honor, because (of) the pictures."

Chase also faces an indictment for the actual rape of the 8-year-old boy from the videotape, which was taken in Arizona. If convicted on that charge, Chase will face life in prison.

by Warren Williamson

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17-year-old seeks abuse charges against ex

48-year-old man also faces child-porn charges after relationship sours

Tuesday, June 10, 2003

**By MELANIE PLEND
JUNEAU EMPIRE © 2003**

A middle-aged Juneau man is facing 17 felony charges alleging he carried out a clandestine and illegal sexual relationship with a girl who was 14 when the affair started.

The girl, now 17, told the Empire on Monday that she pursued charges against the man earlier this month because he ended their three-year relationship.

Frederick L. Wigg, 48, a motor route carrier for the Juneau Empire, was arraigned Monday in Juneau Superior Court on three counts of second-degree sexual abuse of a minor, seven counts of unlawful exploitation of a minor and seven counts of possession of child pornography, all felonies.

According to court records, the charges stem from incidents between January 2000 and June 2003. He is accused of having sex with the girl, whose name wasn't released, from age 14 until she was 17, the record said. He also is accused of photographing her while she performed sexual acts with him and keeping the photos.

Wigg is not represented by an attorney yet, and was unavailable for comment following his Monday arraignment. Superior Court Judge Patricia Collins entered an innocent plea on his behalf at his arraignment.

"He was my first love and all that, and he was actually there for me through some stuff I've been through," the girl told the Empire Monday. "It started with e-mails when I was 14, and he said some stuff that made me uncomfortable at the time. I was going to tell someone, but I didn't. I didn't really know what to do. Then I fell in love with him.

"I think what he did was wrong, because I was pretty young and didn't really know what I was doing. I decided to press charges because we broke up and he started dating someone else."

According to court records, the couple's sexual relationship began while the girl was baby-sitting at the Wigg home. Over the next two and a half years, Wigg would pick the girl up from school and the two would have sex in his truck or in the woods while on camping trips, court records said.

The girl said few people knew about her relationship with Wigg. In October 2002, he suggested they end the relationship until she turned 18, because keeping their relationship a secret was too stressful, the girl said. The girl agreed and they ended the affair. She said she later found out Wigg had been seeing another woman for months before he ended the relationship.

Wigg's trial is set for Aug. 25. If convicted, he faces up to 10 years in prison for the abuse and exploitation charges and up to five years in prison for the pornography charges.

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Anchorage man sentenced for raping, abusing 10-year-old girl

Gene Andersen, 42, was convicted on 16 counts of sexual abuse of a minor, which began in 2002. (Photo by Barry Johnson/KTUU)

By Warren Williamson
 KTUU-TV
 Updated: 3:07 a.m. ET Feb. 11, 2004

Feb. 10 - A judge sent a powerful message Tuesday, sentencing an Anchorage man to 25 years in prison for raping and abusing a 10-year-old girl hundreds of times over a 30-month period.

Gene Andersen, 42, was convicted on 16 counts of sexual abuse of a minor, which began in 2002.

According to police, Andersen forced the young girl to have sex with him -- sometimes on a daily basis over a two-and-a-half-year period.

Court documents say Andersen used the young girl as his personal sex slave and posed her in Playboy-like photographs and also videotaped some of their sexual encounters.

Andersen will be eligible for parole in about 10 years.

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Child porn charges disclosed**ANDREW THOMAS WEED: Indictment adds new details about Web site manager.**By NICOLE TSONG
Anchorage Daily News*(Published: January 27, 2004)*

A new federal indictment against child pornography suspect Andrew Thomas Weed has revealed more details about the government's charges against him.

As manager of three pornographic Web sites, Weed required new users to post child pornography and banned those who didn't, according to the indictment. He also posted pictures of children ages 1 to 5 in February and March 2003, prosecutors said.

Weed, who once served as a soccer coach for the Boys and Girls Club of Southcentral Alaska for 8- and 9-year-old girls, was initially charged in November with one charge each of transportation and possession of child pornography. The indictment returned last week adds multiple counts of transporting the images through a computer, possessing images and two counts of advertising child pornography on the Internet.

The investigation began when Microsoft Corp. notified the National Center for Missing and Exploited Children that the corporation had shut down Internet groups that had child pornography, prosecutors said. The FBI traced four of the groups to Weed.

According to the indictment, Weed, 35, managed three Internet groups using the nicknames "slapdash," "sara" and "jack."

Managers of child pornography Web sites regularly require members to post pictures within a time frame, often 24 hours, to prove the member has access to such pornography, and to try to keep out law enforcement officers, the indictment says.

On Feb. 13, 2003, for example, Weed posted the message "some of you that joined on the 9th and still have not posted are now banned. same deal tommarow [sic] for the ones who joined on the 10th and have not posted," the indictment says.

During the same period, he uploaded pornographic pictures to the groups he managed and to a fourth Web site he belonged to, according to the indictment.

His attorney, Mary Geddes, said she had not seen the new indictment and had no comment.

Weed, who has been in custody since his arrest in November, faces a mandatory minimum penalty of 10 years in prison and a maximum of 20 years if convicted on the advertising charges, a maximum of 15 years for the transportation counts and a maximum of five years for the possession charges, prosecutors said. All the charges carry a maximum fine of \$250,000.

Reporter Nicole Tsong can be reached at ntsong@adn.com or 257-4450.

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February 9, 2004

Representative Kevin Meyer
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Meyer,

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 334, an act relating to unlawful exploitation of a minor.

This proposed legislation will raise the classification of the offense from a class B to a class A felony. This legislation should be of great benefit to the citizens and law enforcement in Alaska. We thank you for addressing this issue.

Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Leo J. Brandlen
State President

FEB 16 2004

Subject: Support for HB334

Date: Tue, 16 Mar 2004 00:08:41 -0800

From: Lauree Hugonin <lauree@ptialaska.net>

Organization: ANDVSA

To: Representative_Kevin_Meyer@legis.state.ak.us

CC: Anna Fairclough <STAR@ak.net>

Dear Rep. Meyer:

Please accept this email as one of support for HB334 from the Alaska Network on Domestic Violence and Sexual Assault. The Network supports increasing the penalty for unlawful exploitation of a minor from a class B to a class A felony.

People who choose to induce/entice children to participate in the sexual behavior listed in AS 11.41.455 should face more jail time. Increasing the penalty may also cause some people to choose not to commit the crime, but whether or not there is a deterrent effect, the penalty should be increased.

Thank you for your continuing efforts to protect children from sexual abuse/exploitation.

Sincerely,
Lauree Hugonin
Executive Director

HB

336

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: May 1, 2004

TO: Senator Ralph Seekins
Chairman, Senate Judiciary Committee

FROM: Representative Kevin Meyer *KM*

RE: CS HB 336 (JUD)am Motor Vehicle Insurance/Uninsured Drivers *KM*

At your earliest convenience, please schedule CS HB 336 (JUD)am Motor Vehicle Insurance/Uninsured Drivers for a hearing in the Senate Judiciary Committee.

CS HB 336 (JUD)am provides that a person who knowingly does not comply with existing motor vehicle liability laws may not recover damages for non-economic loss suffered while operating a car. CS HB 336 (JUD)am also provides that punitive damages are not required to be part of the mandated offers of uninsured/underinsured motorist coverage that insurance providers are required to make. CS HB 336 (JUD)am clarifies that insurance companies are not required to offer uninsured/underinsured motorist coverage on excess or umbrella policies.

Thank you for your time and consideration of this request.

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

CS HB 336 (JUD)am

“An Act relating to motor vehicle insurance; limiting recovery of civil damages by an uninsured driver; and providing for an effective date.”

CS HB 336 (JUD)am changes existing law to provide that a person who knowingly does not comply with existing motor vehicle liability laws may not recover damages for non-economic loss suffered by that person while operating a motor vehicle; provides that punitive damages are not required to be part of the mandated offers of uninsured/underinsured motorist coverage that insurance providers are required to make; and clarifies that an insurance company is not required by law to offer uninsured/underinsured motorist coverage on excess or umbrella policies.

The first provision in CS HB 336 (JUD)am is commonly referred to as “No Pay, No Play.” Currently, 12% of drivers on Alaskan roads do not provide the minimum amount of liability protection that is required by state law. It is a matter of fairness, for those drivers who are unwilling to provide at least the minimum protection for other drivers to be prohibited from receiving such protection themselves. Uninsured motorists will still be able to seek recovery of any economic damages and punitive damages.

CS HB 336 (JUD)am clarifies that punitive damages do not need to be part of the mandated offers of uninsured/underinsured motorist coverage. It makes little sense for an insured to pay for the ability to recover punitive damages against a uninsured/underinsured motorist. Punitive damages are intended to punish and deter; not to compensate. It is hard to see how an uninsured motorist is punished when it is the insured that is funding the right to recovery.

The third provision under CS HB 336 (JUD)am clarifies that an insurance company is not required by law to offer uninsured/underinsured motorist coverage on excess or umbrella policies. This change would avoid repetitive offers of uninsured/underinsured motorist coverage which are now required in some cases under existing law.

The cost of uninsured motorists is a burden on the State of Alaska and its citizens. Uninsured motorists, those who consciously break the law, are able to sue for noneconomic damages that result in a no-fault accident. Those who follow the mandated insurance laws are then subjected to attorney fees, court fees, and time spent in court. CS HB 336 (JUD)am corrects the injustice of the uninsured benefiting from the insured motorists, while at the same time, reducing excessive litigation that backs up our court system.

Last Updated: May 1, 2004

Email: Representative_Kevin_Meyer@legis.state.ak.us • Toll Free: (866) 465-4945
Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4945 Fax: (907) 465-3476
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0199 Fax: (907) 269-0197

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SECTIONAL ANALYSIS

CS HB 336 (JUD)am

“An Act relating to motor vehicle insurance; limiting recovery of civil damages by an uninsured driver; and providing for an effective date.”

Section 1: New Section to AS 09.45

This section would change existing law to provide that a person who knowingly does not comply with existing motor vehicle liability insurance laws may not recover damages for non-economic loss suffered by that person while operating a motor vehicle.

Section 2: AS 21.89.020(c) Required Motor Vehicle Coverage: Amended

This section amends the current law to clarify that punitive damages does not need to be a part of the mandated offers of uninsured/underinsured motorist coverage.

Section 3: AS 21.89.020 Required Motor Vehicle Coverage: Amended by adding new section

This section provides that the definition of automobile liability insurance does not include coverage that is provided only on an excess or umbrella basis.

Section 4: AS 28.20.445(e) Uninsured and Underinsured: Amended

Provides that an uninsured and underinsured motorist policy does not need to provide coverage for punitive damages that might otherwise be recoverable from an uninsured or underinsured person.

Section 5: AS 28.22.101(e) General Coverage Requirements; Policy Limits: Amended

Provides that subsection (e) does not require a motor vehicle liability policy to provide coverage for punitive damages that might otherwise be recoverable from an uninsured or underinsured person.

Section 6: Applicability

Section 7: Effective Date

Last Updated: May 1, 2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 336(JUD)
 (H) Publish Date: 4/15/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Civil Damages for Uninsured Drivers BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Meyers
 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 | 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)

The court system does not anticipate any fiscal impact from the passage of HB 336.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 3/29/04 1:17 PM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 3/29/2004
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 336(JUD)
 (H) Publish Date: 4/15/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act limiting recovery of civil damages by an uninsured driver; and providing for an effective date." RDU CIVIL
 Component _____
 Sponsor Representative Meyer
 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)

This bill adds a new section to AS 09.65 prohibiting recovery of noneconomic losses if injury or death occurred while the operator of the vehicle was not insured in accordance with AS 28.22.011.

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

Prepared by: Kathryn A. Daughetee, Director
 Division: Administrative Services
 Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General
 Agency: Department of Law

Phone 465-3673
 Date/Time 3/30/04 1:04 PM
 Date 3/30/2004

States That Bar Recovery of Noneconomic Damages

California: Proposition 213

Precludes an uninsured motorist from recovering in a civil action certain "noneconomic losses" to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages in an action arising out of the operation or use of a motor vehicle.

The provision bars recovery, even if the uninsured motorist is without fault.

Proposition 213 was challenged as violative of the due process and equal protection provisions of the United States and California constitutions. The Court of Appeals decided that it did not violate a person's right to due process because either a driver has auto insurance, or they don't. If they do not have auto insurance and they choose to drive, the court could think of no justifiable defense that would require a hearing to determine if damages could be collected.

Addressing the issue of equal protection, the court noted that Proposition 213's legitimate purposes of restoring balance to the justice system and reducing costs of mandatory auto insurance. The court concluded that eliminating noneconomic damages for uninsured motorists was rationally related to both interests because it would lead to reduced costs of insurance and to fewer lawsuits.

Michigan:

Similar to California, in that it precludes an uninsured motorist from recovering noneconomic damages in a lawsuit arising out of an automobile accident.

The Michigan Court of Appeals found that the purpose of this law was to correct the injustice of allowing drivers who do not contribute to the no-fault system to recover damages from persons that do contribute to the system, and to provide an incentive for uninsured motorists to comply with the requirement that they maintain no-fault automobile insurance. They found that it does not violate the due process clause of the Michigan Constitution.

Limitation of Amount Recoverable

Louisiana:

States that if a motorist fails to maintain liability coverage to protect others, he or she does not have the ability to recover or collect the first \$10,000 of damages for bodily injuries and the first \$10,000 of property damages resulting from an automobile accident.

The limitation of recovery does not apply, however, if the driver of the other vehicle (1) is cited for a violation of the state's operating a motor vehicle while intoxicated as a result of the accident and is convicted of the offense, (2) intentionally causes the accident, (3) flees

from the scene of the accident, (4) at the time of the accident, is in furtherance of an offense that is a felony.

The Louisiana law was broadly challenged on many grounds. However, the court rejected all contentions presented. The court found that the partial bar to recovery was not a punishment in violation of a state constitutional provision that prevents any person from being subjected to cruel, excessive, or unusual punishment, concluding that the provision was one with other conditions imposed on the privilege to drive.

On the question of impairment of equal protection, the court noted, the statute's classification on the basis of a person's voluntary decision to remain uninsured, or likewise to forgo purchasing insurance, does not infringe on a fundamental right or discriminate on the basis of a suspect classification such as race, alienage, or national origin.

In the legislation that was enacted, the Legislature stated that the legislation was enacted because of a concern for: (1) the lack of compliance with the Motor Vehicle Safety Responsibility Law; (2) the high incidence of motor vehicle accident claims in the state's courts; (3) reduction of the high cost of motor vehicle insurance through reformation of the civil justice system; (4) an evident imbalance in the state's motor vehicle insurance system which had engendered abuse; (5) the need for insurance cost savings to the citizens of the state through a reduction of premium rates for automobile insurance..

In summary, the court was satisfied that uninsured motorists did not comprise a suspect class, did not have a fundamental right to exercise that privilege to drive without insurance, and did not have a fundamental right to tort recovery so that equal protection considerations might apply.

Preclusion of All Recovery

New Jersey:

In 1997, New Jersey's statutes were amended to preclude any suit by the uninsured driver against a person for any element of damage (economic and noneconomic).

The trial court concluded that the amended statute, because of its total preclusion of a cause of action against a person, violated the Fourteenth Amendment of the U.S. Constitution. An intermediate appellate court agreed with the trial court judge, finding both equal protection and due process violations and providing this analysis:

...The uninsured injured driver is left entirely without any opportunity at all to obtain compensation for any of his losses from the person who negligently or intentionally inflicted them irrespective of the severity of the injuries, irrespective of the freedom from fault for the occurrence of the accident, irrespective of whether the tortfeasor himself was uninsured, and irrespective of whether the tortfeasor was driving while intoxicated or under some other disability.

MONTHLY DRIVER LICENSE STATISTICS-2002

| Suspensions | January | February | March | April | May | June | July | August | September | October | November | December | Yr. End Total |
|---|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------|---------------|
| Financial Responsibility | 0 | 30 | 0 | 36 | 0 | 59 | 0 | 0 | 76 | 0 | 49 | 121 | 371 |
| Mandatory Insurance | 151 | 409 | 396 | 307 | 293 | 249 | 286 | 198 | 234 | 285 | 422 | 860 | 4090 |
| Financial Responsibility and Mandatory Insurance Suspension | 147 | 145 | 174 | 154 | 120 | 135 | 297 | 96 | 159 | 179 | 352 | 688 | 2646 |
| Unsatisfied Judgements | 0 | 29 | 0 | 0 | 119 | 0 | 0 | 102 | 0 | 174 | 0 | 0 | 424 |
| Defaults | 0 | 0 | 43 | 0 | 0 | 31 | 0 | 0 | 28 | 0 | 17 | 0 | 119 |
| Late Incoming Crash Reports | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 84 | 139 | 0 | 223 |
| Totals: | 198 | 613 | 613 | 497 | 532 | 474 | 583 | 396 | 497 | 722 | 979 | 1669 | 7873 |

Information Provided by the Division of Motor Vehicles HB 336 Civil Damages for Uninsured Drivers

Statistics From California After the Passage of Proposition 213

In the Fall of 1996, Proposition 213 passed in California. Proposition 213 is commonly known as "No Pay, No Play". With the passage of Proposition 213, drivers were required to show positive proof of insurance upon registering a vehicle. These statistics show the percentage of uninsured motorists prior to the passage of Proposition 213, and the effect of Proposition 213 on the percentage of uninsured motorists.

| | | | | | |
|------|--------|------|--------|------|--------|
| 1994 | 31.30% | 1997 | 20.12% | 2000 | 14.21% |
| 1995 | 29.34% | 1998 | 16.34% | | |
| 1996 | 28.06% | 1999 | 14.78% | | |



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Mandatory Insurance Suspension

Alaska has both Mandatory Insurance and Financial Responsibility laws. The purpose of these laws is to ensure that drivers and owners of vehicles using the streets and highways are financially responsible for any damage or injury caused by motor vehicle collisions and to remove financially irresponsible drivers from the highways.

The mandatory insurance law requires the operator or owner of a motor vehicle subject to registration to have motor vehicle liability insurance **in effect** when the vehicle is driven on a highway, vehicular way or area, or other public property in the state. The owner's or driver's motor vehicle liability insurance policy must meet the minimum coverage amounts required by law. The minimum coverage amounts are \$50,000.00 for injuries or death to any one person, \$100,000.00 for total injuries or death per collision, and \$25,000.00 for property damages.

A driver who has been involved in a collision, regardless of fault, is required to show proof of motor vehicle liability insurance if the collision resulted in personal injury or death, or damage to property exceeding \$500.00. A driver may show proof by completing the Certificate of Insurance form provided by the investigating police office at the collision scene. The form is also available from any Division of Motor Vehicles Office.

The Division of Motor Vehicles must suspend the driver's license, privilege to drive or privilege to obtain a license of drivers who fail to provide proof of liability insurance. The suspension period can be 90 days to 1 year depending on prior license actions. The license suspension will occur even if the driver is not at fault in the collision.

A person may apply for a limited work purpose license during the suspension period. The application for mandatory insurance limited license may be obtained at any Division of Motor Vehicle Office. There is not a fee for this specific type of limited license due.

Drivers must reinstate their privilege to drive at the end of their suspension period.

A person's license may also be suspended for non-compliance with the Financial Responsibility law.

If you have additional questions you can call, write, e-mail or visit a DMV office.

STE B, Juneau AK 99801
Driver License - Reinstatement - DMV HOME PAGE - Dept. of Administration - State

**MOTOR VEHICLES**

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Financial Responsibility Suspension

Alaska has both Financial Responsibility and Mandatory Insurance laws. The purpose of these laws is to ensure that drivers and owners of vehicles using the streets and highways are financially responsible for any damage or injury caused by motor vehicle collisions and to remove financially irresponsible drivers from the highways.

The Division of Motor Vehicles must suspend the driver's license, privilege to drive or obtain a driver's license of drivers who fail to comply with the Financial Responsibility law. The suspension will occur when there is a reasonable possibility that the driver involved in a collision will be held liable and did not have insurance or had insufficient insurance to cover damages. The driver can satisfy the requirements for Financial Responsibility by providing proof that the requirements have been met in one of the following ways:

- Submit evidence to the department that an automobile liability insurance policy was in effect at the time of the collision (If you submit proof of insurance prior to the suspension date, no further action is required.) Certificate of Insurance
- Submit releases of liability (known as a general release) with notarized signatures of all persons who received personal injury or property damages in the collision
- Submit settlement agreements (known as a promissory note) with all persons seeking damages as a result of the collision
- Deposit security in an amount specified by the department
- Submit evidence that you were not liable for the damages through determination of a civil court
- Prove that you were not liable in the collision in the Administrative Hearing process

Drivers must reinstate their privilege to drive at the end of their suspension period.

A person's license may also be suspended under the Mandatory Insurance law.

If you have additional questions you can call, write, e-mail or visit a DMV office.

STE B, Juneau AK 99801

Driver License - Reinstatement - DMV HOME PAGE - Dept. of Administration - State

IP-174

Issue Paper

RAND

Institute for Civil Justice

The Effects of a No-Pay/No-Play Plan on the Costs of Auto Insurance in Texas

Stephen J. Carroll and Allan F. Abrahamse

What Is No-Pay/No-Play?

The cost of automobile insurance has been a major public policy issue for more than a decade. A variety of public and private organizations and individuals have proposed alternative, purportedly less expensive, automobile insurance plans. But to obtain those savings, states would have to limit the rights and compensation traditionally provided to people injured in auto accidents. Recently, a new concept has emerged called "no-pay/ no-play," which limits the compensation rights of people who were breaking the law when they were injured.

The Texas Senate Interim Committee on Civil Justice is studying Texas's current liability system. Senator Teel Bivins, a member of the committee, asked the Institute for Civil Justice to analyze the effects of a no-pay/no-play automobile insurance plan similar to Proposition 213 adopted in California in November 1996. We used the models we had developed to analyze Proposition 213 [1] to estimate the likely effects of a similar plan on the costs of automobile insurance in Texas. This issue paper presents our results.

The plan we examine here bars drunk drivers and uninsured motorists from compensation for any non-economic losses resulting from auto accident injuries.[2] We estimate the likely effects of this plan on the costs of private passenger auto insurance. Because of data limitations, we did not consider the effects of the plan on the costs of commercial auto insurance or on felons.

Key Findings

Our analyses suggest that the no-pay/no-play insurance plan could reduce the costs of auto insurance. If current claiming, negotiating, and insurance purchasing patterns persist, the plan would reduce auto insurers' compensation costs for personal injuries by about 6 percent from the costs under Texas's current auto insurance rules. Given the past relationship between compensation costs and auto insurance premiums in Texas, this difference would translate into a reduction of about 3 percent in the average Texas driver's auto insurance premiums. To put this estimate in perspective, if the plan had been in force in 1996, the most recent year for which we have data on total auto insurance premiums,[3] Texas drivers' auto insurance premiums would have been about \$182 million lower, a reduction of roughly \$23 in the average Texas driver's auto insurance costs.

Our results address relative costs; they show the difference between what will happen if the current

system is retained and what would occur if the proposal were adopted. We do not suggest that auto insurance costs will necessarily fall if Texas adopts such a plan. For example, the plan may not reverse the long-term trend toward higher auto insurance costs. Rather, it is possible that no-pay/no-play provisions will slow the rate of growth in premiums so, over time, premiums would be roughly 3 percent less, on average, than they would be if the current system is not modified.

It should also be noted that our results address the effects of the plan on the average Texas driver. Both the expected costs of insuring a driver under the current auto insurance system and the likely effects of the plan vary from one driver to another, depending on a driver's risk factors and the coverages and policy limits purchased. For example, the savings that would result from limiting compensation to uninsured drivers injured in auto accidents would be greater in those communities in which the uninsured motorist rate is higher. Similarly, because the plan does not affect the costs of collision and comprehensive coverages, the relative savings would be greater for drivers who purchase only the personal injury and property damage liability coverages.

Because adoption of no-pay/no-play could engender changes in behavior, we recalculated our estimates under different sets of assumptions incorporating such changes. We also explored the sensitivity of these results to sampling error. Although the precise estimates vary from one set of behavioral assumptions to another, the results generally suggest that the plan would cut the costs of compensating auto accident victims by 3 to 10 percent. Thus, our basic conclusion--that the plan would result in savings of about 3 percent on the average driver's auto insurance premiums--holds for all the alternatives we considered.

Probable Effects of No-Pay/No-Play in Texas

The traditional rules of the tort system govern recovery for auto accident injuries in Texas. An accident victim may seek compensation for all economic and noneconomic losses from the driver who caused the accident.[4] However, the victim is entitled to compensation only to the degree that the other driver is responsible for the accident.

The plan examined here would eliminate compensation for noneconomic losses to uninsured motorists and drunk drivers injured in auto accidents. This plan would not affect uninsured or drunk drivers' rights to compensation for economic losses. Nor would it affect the compensation rights of any other person injured in an auto accident--insured persons, sober drivers, passengers, pedestrians, bicyclists, etc.--including passengers injured while riding in cars operated by uninsured or drunk drivers.

In sum, the only accident victims who would be affected by the plan are uninsured or drunk drivers injured by an insured driver, and drunk drivers covered by uninsured motorist insurance injured by a negligent, uninsured motorist. The savings achieved by the plan would be the amount of compensation for noneconomic loss that would be paid to affected victims under the current law, plus the transactions costs--claims handling and defense costs--that insurers would have incurred in providing that compensation.

To estimate the effects of the plan, we used data derived from a representative sample of Texas auto accident injury claims closed with payment during 1992.[5] For purposes of the analysis, we assume that the distributions of accidents, losses, and claimants reported in those data are representative of the corresponding future distributions. As a result of conversations with several major insurers, we assume that the uninsured motorist rate is 20 percent, that 90 percent of insured drivers will purchase uninsured motorist coverage, that 10 percent of insured drivers purchase medical payments coverage, and that 80 percent of insured drivers purchase personal injury protection coverage.

Given these assumptions, about 7 percent of future Texas auto accident victims will be uninsured drivers injured by an insured driver. Another 2 percent of future victims will be insured drunk drivers who are either injured by another insured driver or are injured by an uninsured motorist and have uninsured motorist coverage. In all, the plan would bar about 9 percent of auto accident victims from compensation for noneconomic loss. If the costs of compensating uninsured or drunk drivers hurt in auto accidents are reduced by the average compensation for noneconomic loss paid Texas drivers hurt in auto accidents, plus the associated transactions costs, the total costs of compensating auto accident victims would fall about 6 percent.

Personal injury coverages account for about half of auto insurance premiums; property damage coverages account for the other half. Thus, a 6 percent reduction in the costs of compensating auto accident victims for personal injuries translates into a 3 percent reduction in total auto insurance premiums. In 1996, total auto insurance premiums in Texas added up to about \$5.8 billion. If the plan had been in force then, the costs of auto insurance in 1996 would have been about \$182 million lower:

- Drivers denied compensation for noneconomic losses because they were drunk or uninsured when they were injured would have lost about \$124 million. (Because the attorneys who represent auto accident victims are typically paid on a contingency fee basis, a reduction of \$124 million in accident victims' gross compensation would have been divided between the victims--in the form of lower net compensation--and their attorneys--in the form of lower fees.)
- Because insurance companies would have faced smaller claims from drunk, insured drivers injured in accidents, they would have had to pay about \$21 million less in claims handling and defense costs.
- Finally, if insurance companies' other costs (general expenses, selling expenses, taxes and license fees, and dividends to policyholders) vary in proportion to compensation costs, insurance companies would have been able to cut premiums another \$37 million and still earn the same rate of profit.

Possible Behavioral Responses to No-Pay/No-Play Auto Insurance

In the estimates described above, we assume that past behaviors persist. But it is possible that people will change their behavior if the plan is adopted. We identified what some of these possible behavioral changes might be, modified our model to reflect alternative behavioral assumptions, and reestimated the effects of the plan. We emphasize that we have no evidence that any of these behavioral changes will occur if the plan is approved. Our purpose is to identify the extent to which our estimates are sensitive to the behavioral assumptions that underlie the calculations.

It is possible that the *claiming behavior* of uninsured or drunk drivers might change if they could no longer obtain compensation for noneconomic loss. We have found evidence of excess claiming for medical costs in auto personal injury cases across the United States.[6] Texas's current system encourages excess claiming as a way to leverage greater compensation for noneconomic loss; by eliminating that incentive, the plan would discourage fraudulent or excessive claims. At the same time, many accident victims rely on compensation for noneconomic loss for the funds needed to pay their attorneys; eliminating this source of funds may reduce victims' ability to obtain an attorney and, consequently, discourage legitimate claims.

The civil justice policy implications of reducing the frequency of excessive claims are very different from the policy implications of reducing the frequency of legitimate claims. But from a cost perspective,

the two look the same: Fewer claims imply lower costs.

To estimate how reducing the frequency of claims--excessive claims, legitimate claims, or some combination--would affect costs, we assumed that adoption of no-pay/no-play would result in either a 25 percent or a 50 percent reduction in the frequency of claims, and we estimated the savings in both cases.

The *negotiating behavior* of accident victims, of their attorneys, or of claims adjusters might change if the plan is adopted. In principle, those involved in resolving a liability claim determine the victim's economic and noneconomic loss as well as the insured's negligence. In practice, the parties often focus on the total amount of compensation that will be paid the victim, without regard for the specifics of just how much compensation is being paid for what. It is possible that those involved in resolving a claim by an uninsured or drunk driver will agree on a compensation figure that is less than what would have been paid under the current system, but not by the full amount that our data suggest is being paid for noneconomic loss.

To estimate how a partial, rather than full, elimination of compensation for noneconomic loss to uninsured or drunk drivers would affect our estimates, we assumed that despite the formal provisions of the plan, uninsured or drunk drivers injured in auto accidents would be compensated for either 25 percent or 50 percent of their noneconomic loss, and we estimated the savings in both cases.

Adoption of the plan could also change some drivers' *insurance purchasing behavior*. The potential costs of going uninsured would be increased--uninsured drivers would not only be in violation of the law, they would not have access to compensation for noneconomic loss in the event that they were injured in an auto accident. At the same time, the plan would reduce the costs of purchasing auto insurance, relative to the current system. It is possible that some drivers who would go uninsured under the current system will choose to purchase insurance under the plan.

To estimate how an increase in the fraction of drivers who purchase insurance would affect our estimates, we assumed that either 25 percent or 50 percent of the uninsured motorist population chooses to purchase insurance, and we estimated the savings in both cases.

Our estimates are based on data obtained in a sample of claims; they are subject to *sampling error*. Some of these claims were high-dollar claims, and it is possible that these high-dollar claims had an undue influence on our results. However, high-dollar claims are a fact of life, and although they are relatively rare, they might indeed have a real influence on savings under the plan.

To examine the possible effect of sampling error on our results, we estimated the effects of the plan under three very different assumptions regarding the sample: First, we used all the cases in our sample to make nominal cost estimates. We then dropped the 10 percent of all cases with the greatest economic loss to obtain a second set of cost estimates. Finally, we doubled the economic loss of those in the top 10 percent of all cases to obtain a third set of cost estimates. It is unlikely that the effect of sampling error would be as great as the effect of discarding or doubling the top 10 percent of the sample.

In sum, we considered the sensitivity of our results to three alternative assumptions regarding the values of each of four factors: claim frequency, the fraction of noneconomic loss compensated, the percentage of uninsured drivers induced to purchase insurance, and the frequency of very large claims. We calculated relative savings under the plan under all 81 combinations of the four factors over the three levels discussed above. The table shows the results of these calculations.

Relative Savings in a Compensation Costs Provided by a No-Pay/No-Play Plan Under Alternative

Assumptions, in Texas, by Percent

| Claiming Rate | Percentage of Noeconomic Loss Compensated | Percentage of Uninsured Drivers Purchasing Insurance | Compensation Cost Savings Estimates | | |
|---------------|---|--|-------------------------------------|----------------------|----------------------|
| | | | Nominal | When Top 10% Dropped | When Top 10% Doubled |
| No reduction | None | 0 | 5.7 | 6.3 | 5.5 |
| | | 25 | 7.8 | 7.8 | 7.8 |
| | | 50 | 9.9 | 9.4 | 10.2 |
| | 25 | 0 | 4.3 | 4.8 | 4.2 |
| | | 25 | 6.7 | 6.7 | 6.8 |
| | | 50 | 9.1 | 8.5 | 9.4 |
| | 50 | 0 | 3.0 | 3.3 | 2.9 |
| | | 25 | 5.6 | 5.5 | 5.8 |
| | | 50 | 8.3 | 7.6 | 8.7 |
| 25% | None | 0 | 7.0 | 7.3 | 6.9 |
| | | 25 | 8.8 | 8.7 | 9.0 |
| | | 50 | 10.7 | 10.0 | 11.1 |
| | 25 | 0 | 6.0 | 6.2 | 5.9 |
| | | 25 | 8.0 | 7.8 | 8.2 |
| | | 50 | 10.1 | 9.3 | 10.5 |
| | 50 | 0 | 5.0 | 5.1 | 4.9 |
| | | 25 | 7.2 | 6.9 | 7.4 |
| | | 50 | 9.5 | 8.7 | 9.9 |
| 50% | None | 0 | 8.3 | 8.4 | 8.3 |
| | | 25 | 9.9 | 9.5 | 10.1 |
| | | 50 | 11.5 | 10.6 | 11.9 |
| | 25 | 0 | 7.6 | 7.6 | 7.6 |
| | | 25 | 9.3 | 8.9 | 9.6 |

| | | | | |
|----|----|------|------|------|
| | 50 | 11.1 | 10.2 | 11.5 |
| 50 | 0 | 6.9 | 6.9 | 7.0 |
| | 25 | 8.8 | 8.3 | 9.0 |
| | 50 | 10.7 | 9.7 | 11.1 |

Calculations are based on a representative sample of Texas auto accident injury claims closed with payment during 1992.

The first point to be seen from the table is that *relative savings in compensation costs always exceed about 3 percent*, regardless of how we combine the various factors. It seems quite likely that no-pay/no-play will reduce compensation costs in Texas.

The second point is that *relative savings in compensation costs generally exceed 6 percent*. Savings drop below 6 percent in relatively few cases, mostly those cases where drivers negotiate high compensation for noneconomic losses. Assuming that the terms of the plan are really put into practice, it seems unlikely that such negotiations will occur frequently. Thus, it seems quite likely that no-pay/no-play will modestly reduce compensation costs.

Finally, relative savings rarely exceed 10 percent. Savings approach and exceed this level when many currently uninsured drivers decide to purchase insurance after the plan goes into effect, or if we assume that our data file underrepresents high-dollar claims.

In light of the above, we believe that relative savings in compensation costs under the plan will fall somewhere between 6 and 10 percent.

Data and Methods

We obtained detailed information on a random sample of about 4,800 Texas auto accident injury claims closed with payment during 1992 under the principal auto injury coverages.[7] The data describe each victim's accident, resulting injuries and losses, and the compensation obtained from auto insurance. We combined data from several sources to estimate insurers' transaction costs,[8] including both allocated loss-adjustment expenses (costs, primarily including legal fees and related expenses, incurred on behalf of and directly attributed to a specific claim) and unallocated, or general claim-processing costs, for each line of private-passenger auto insurance.[9]

We estimated the effects of the plan on insurance costs by comparing the costs of compensating the accident victims in the sample under the current insurance system to the costs of compensating the same victims for the same injuries and losses under a no-pay/no-play provision. We included all accident victims--insured and uninsured drivers, passengers, pedestrians, bicyclists, people injured in single-car accidents, etc.--in these calculations.

We assumed the proportions of drivers who will purchase each available type of auto insurance personal injury coverage and, by implication, the proportion of drivers who will go uninsured under Texas's current system. Given these assumptions, we computed the probability that an accident victim will have access to compensation under each coverage, multiplied by the average compensation paid to Texas accident victims under that coverage, and summed over all coverages to estimate insurers' expected compensation costs under the current system. We then estimated a break-even premium for the current

system--the amount insurers would have to charge the average insured driver to recover just what they paid out in compensating victims and the transaction costs they incurred in providing that compensation.

We assumed that drivers would make the same insurance purchasing decisions under the plan and, by implication, that the same proportion of drivers would go uninsured. We computed insurers' expected compensation costs, given those assumptions, and estimated the break-even premium under the plan--the amounts insurers would have to charge insured drivers to recover compensation costs.

Finally, we calculated relative savings under the plan as the percentage difference between the break-even premium under the current system and the one under the plan.

We focused on the effects of the proposed plan on auto insurers' compensation costs, including both the amounts they pay out in compensation and the transaction costs they incur in providing that compensation. We neglected the many other factors (e.g., insurers' overhead and profit margins and investment income) that also affect insurance premiums.

We focused on the relative costs of the two insurance systems. Because any factors that proportionately affect costs under both the current system and the proposed plan cancel out in the comparison, the results are insensitive to changes in such factors over time.

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[1] Carroll and Abrahamse (1996) provide a description of the data and methods we used to analyze the effects of Proposition 213 in California. We drew upon the results presented there for this discussion.

[2] Proposition 213 also bars compensation for any loss incurred in auto accidents by persons committing or fleeing from their crimes. However, because of data limitations, we do not consider the effects of that provision in this analysis.

[3] National Association of Insurance Commissioners (1998).

[4] Economic losses include an accident victim's medical costs, lost wages, burial expenses, replacement service losses, and other pecuniary expenditures. Noneconomic losses include physical and emotional pain, physical impairment, mental anguish, disfigurement, loss of enjoyment, and other nonpecuniary losses.

[5] The data were collected by the Insurance Research Council (1994) from 61 insurance companies that together accounted for about 81 percent of Texas's private-passenger automobile insurance (by premium volume) in 1992.

[6] See Carroll, Abrahamse, and Vaiana (1995).

[7] Insurance Research Council (1994) provides a detailed description of the database used for this work.

[8] Carroll et al. (1991), Appendix D, describe the data and methods used to estimate insurers' transaction costs.

[9] We do not include claimants' legal costs, the value of claimants' time, or the costs the courts incur in handling litigated claims. Those costs do not affect insurers' costs and hence do not affect auto insurance premiums.

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HOT TOPICS & INSURANCE ISSUES

Compulsory Auto Insurance

THE TOPIC

FEBRUARY 2004

Most states require drivers to have auto liability insurance before they can legally drive a car. (Liability insurance pays the other driver's medical, car repair and other costs when the policyholder is at fault in an auto accident.) All states have laws that set the minimum amounts of insurance or other financial security drivers must have to pay for the harm caused by their negligence behind the wheel if an accident occurs. The public generally supports compulsory auto insurance and wants these laws enforced.

Laws in most states have proven ineffective in reducing the number of drivers who are uninsured. There are many reasons for this. Some drivers can't afford insurance and some drivers with surcharges for accidents or serious traffic violations don't want to pay the high premiums that result from a poor driving record. With the percentage of uninsured motorists as high as 30 percent in some states, it is costly to track down violators of compulsory insurance laws. And unless the odds of getting caught are high and the penalties severe, drivers will continue to flout the law.

KEY FACTS

- Liability insurance is compulsory in 47 states and the District of Columbia. Only New Hampshire, Tennessee and Wisconsin do not have compulsory auto insurance liability laws.
- About 14 percent of drivers in the United States are uninsured, despite laws that prohibit it.
- More than 20 states have considered "no pay, no play" legislation, a concept which sets limits on the amount of compensation uninsured motorists can receive in an accident.

CURRENT DEVELOPMENTS

Ineffectiveness of Compulsory Auto Insurance Laws: Over the long term, compulsory auto insurance laws have not reduced the uninsured driver population in the United States. Although the number of uninsured drivers in a state declines when a compulsory law first goes into effect, some drivers allow the coverage to expire and gradually the uninsured driver levels increase, according to the National Association of Independent Insurers, an organization representing property/casualty insurance companies now known as the Property Casualty Insurers Association of America (PCI) (see Background).

"No Pay, No Play": To encourage more drivers to purchase insurance and to respond to public concern that people who obey compulsory auto insurance laws are subsidizing those who do not, lawmakers in some states have considered the "no pay, no play" concept, which prohibits uninsured drivers from bringing lawsuits for noneconomic damages, such as pain and suffering. According to an Insurance Research Council (IRC) 1997 public opinion survey, 77 percent of respondents thought it was a good idea to limit uninsured drivers' rights to collect damages from insured drivers, more than the 70 percent who said it was a good idea in 1996. Although more than 20 states since the mid-1990s have considered "no pay, no play" legislation, only four states have enacted such laws — Michigan, California, Louisiana and New Jersey. The laws in California and New Jersey also prohibit drunk drivers from filing lawsuits (see Background).

New Jersey's "no pay, no play" statute was challenged by plaintiffs who disputed a trial court's decision to deny recovery for personal injuries on the grounds that the plaintiffs had no auto insurance. The case was brought to the State Supreme Court in December 2003. In Louisiana, a state court upheld a similar statute.

Low-Cost Auto Policies: In an effort to help low-income drivers in urban centers in California and New Jersey where auto insurance premiums are high, low-cost policy programs have been established. California's pilot program in the California Assigned Risk Program, which began in July 2000, was not effective at first because the

policies were still too expensive for low-income consumers, provided little value as these consumers have few assets to protect and did not provide medical care coverage. Legislation enacted in 2003 lowered eligibility requirements, cut premiums and increased coverage (see Background). By the end of 2003, there were about 5,600 low-cost policies in force, as reported by the top nine companies in California that are underwriting the policies. These nine companies make up 95 percent of the total volume of low-cost policies.

In mid-2003, New Jersey began offering "dollar a day" auto insurance. The \$365 annual premium pays for the same coverage as the state's Basic Policy, but is limited to the poorest people in the state, those eligible for Medicaid. The Basic Policy offers \$15,000 in personal injury protection, up to \$250,000 in medical benefits for catastrophic injuries and a \$10,000 death benefit. Qualified applicants are exempt from the liability coverage that is mandatory in New Jersey.

Enforcement of Compulsory Laws: Liability insurance is compulsory in 47 states and the District of Columbia (see chart). Penalties for noncompliance include fines, jail time, license or registration revocation, confiscation of license plates and, in some Florida counties, Louisiana, Connecticut and New Jersey, vehicle impounding. In April 2002, at a meeting before the Louisiana House Insurance Committee, a member of the state Towing and Recovery Association said that 60 percent of impounded vehicles, mostly in poor condition, are never reclaimed since owners can get a similar car for the price of getting the first one out of the pound. In general, although enforcement laws should be strict enough to foster awareness among motorists that there are penalties for driving without insurance, if the penalties are too punitive courts and law enforcement agencies may not be disposed to enforce them.

At least seven states confiscate license plates when vehicle owners do not purchase the minimum insurance. Twenty-two states revoke or suspend drivers licenses, and 20 revoke or suspend vehicle registration. Most states combine penalties, i.e., first offenses are punishable with fines and registration revocations, while subsequent offenses entail jail time and license plate confiscation. At least four states — Louisiana, Florida, Georgia and South Carolina — have used checkpoints to identify uninsured drivers, primarily as a tool to raise public awareness of the uninsured motorist problem and the possibility of getting caught.

Percentage of Uninsured Motorists: The IRC's 2001 Public Attitude Monitor (PAM) found that 12 percent of respondents admitted having at least one uninsured car, the same percentage as in 2000. However, the PAM report's methodology differs from the claims study mentioned above because the PAM is based on self-reporting. The IRC contends that self-reporting is not as accurate as studying insurance claims. The percentage of households reporting uninsured vehicles to the IRC fluctuated between 6 and 17 percent in the 1990s. The 2000 PAM survey reiterated what observers have long known: income influences the likelihood of buying insurance. It found that the number of uninsured vehicles decreased from the lowest to highest income groups, with fluctuations in the middle-income groups. Statistically, respondents with an annual income of less than \$20,000 per year averaged 1.40 vehicles and 0.30 uninsured vehicles. In contrast, households with annual incomes of \$75,000 and over averaged 2.88 cars but only 0.18 uninsured vehicles per household.

To pressure drivers to purchase insurance, about a dozen states have set up complex databases that match vehicle registrations with insurance company auto insurance records. Mismatch problems — where insurer and Department of Motor Vehicle (DMV) records mistakenly flag policyholders as flouting the law — have occurred in several states including Colorado, Florida and Nevada. Nevada's DMV then switched from using names and policies to using vehicle identification numbers. In three Florida counties that allow license plate confiscation for lack of insurance, mismatches can have serious implications for insured motorists cited in error. In New York, insurers began issuing bar-coded insurance cards in late 2000, the first state to use them.

Georgia's database began operating in January 2004. A sample of the database of over 6.7 million vehicles in November 2003 found that about 7 percent had no insurance. In Alabama, the Revenue Department has resumed checking motorists for insurance after a two-year lapse. In fiscal 2001, 8,000 registrations were suspended for lack of insurance before budget problems closed the program down. Missouri's random sampling program resulted in the suspension of about 10,000 drivers licenses since January 2002. South Carolina's database is expected to begin operating in March 2004, along with Minnesota's random sampling program.

Uninsured Motorist Coverage: In Ohio, the State Supreme Court reversed the Scott-Pontzer decision, ruling that an employer's commercial auto insurance covers only employees who are injured in the course of their employment. The November 2003 decision overrules the court's earlier decision, which extended the coverage to family members of employees and to cases where employees were not working and possibly driving a personal vehicle outside of work hours. The reversal is expected to affect uninsured and underinsured claims that date back as far as 15 years.

BACKGROUND

In 1927, Massachusetts became the first state to require the purchase of auto liability insurance. Since then, 47 states and the District of Columbia have followed suit. Such laws usually have the support of the general public despite the fact that compliance with such laws is generally poor and enforcement activities are costly. Compulsory auto insurance laws do nothing to protect drivers involved in accidents with drivers of stolen vehicles or drivers from one of the three states where insurance is not compulsory, drivers of unregistered vehicles, the insurance dodger who cancels a policy immediately after receiving a proof-of-insurance certificate and the hit-and-run driver.

Uninsured Motorists: It is hard to assess the extent of the uninsured motorist problem and devise an effective way to deal with it. The National Association of Insurance Commissioners (NAIC) has suggested that strict enforcement of compulsory auto insurance laws, with mandatory and "significant" fines for first time offenders, may be the key to lowering the uninsured motorist population. In 1989 it identified North Carolina as having one of the highest rates of compliance at the time (96.6 percent) and one of the strictest and swiftest enforcement programs. The NAIC said the program's effectiveness relies largely upon the cooperation of the state's insurance and motor vehicle departments, insurers and state and local law enforcement agencies — following up on reports of insurance policy cancellations, for example, to make sure that new policies have been purchased or that the license plates have been turned in. Such cooperation may not be possible in states with larger metropolitan areas, where other law enforcement priorities may limit the resources devoted to enforcing compulsory auto liability insurance laws.

A study released in mid-2002 written by professors at Florida State University's College of Business also noted the positive effect of compulsory laws combined with high noncompliance fines. It noted that states that had this combination from 1995 to 1997 were able to decrease their uninsured motorist rates. While high fines were found to be an effective deterrent, jail time for noncompliance was not, probably, as the authors said, because motorists don't believe that the penalty will be enforced.

Compulsory auto liability insurance is not necessarily the most effective solution. A 1994 study by the National Association of Independent Insurers (now known as PCI) found that New Hampshire, a state that does not have compulsory insurance laws, had a smaller percentage of uninsured drivers than the nearby states of Rhode Island, Vermont and Connecticut. Only 10 other states had fewer uninsured drivers. The state had the lowest percentage of uninsured drivers — 9.5 percent — of all the states without compulsory laws.

Affordability influences decisions about whether to purchase auto insurance. Risk Information, Inc. found that the 1995 Insurance Research Council (IRC) uninsured motorist rates by state, when compared with average personal auto insurance expenditures from the NAIC, points to cost, along with enforcement and culture, as factors in decisions not to buy compulsory coverage. For instance some states such as New Jersey, New York and Louisiana have high insurance costs, especially when measured against median family income. Yet their uninsured motorist rates were 12 percent or less, compared with Alabama, which has an uninsured rate of 28 percent even though the coverage costs much less there.

Computer Databases: Insurer verification laws that mandate that all insurance companies in a state submit the entire list of their insureds to an outside vendor which matches the insureds to motor vehicle records of motor vehicle registrations was also expected to help solve the uninsured motorist problem. Such a system was thought to be a promising advance that would promote compliance with the law since it would increase the odds of being caught driving uninsured. However, a number of states have reported having problems administering this system, which in some states has had a high error rate.

Other Solutions to the Uninsured Motorist Problem: Over the years various proposals for dealing with the uninsured motorist problem have been put forward. Unsatisfied judgment funds were set up in a few states to provide a source of funds for accident victims when the at-fault party has no means of paying a judgment, but their effectiveness proved to be limited. A more effective remedy is uninsured (and underinsured) motorist coverage that provides compensation to policyholders when an at-fault motorist has no liability insurance (or insufficient amounts) or when the at-fault motorist is a hit-and-run driver. Like unsatisfied judgment funds, this program does nothing to reduce the number of uninsured motorists but it does provide a way for individual drivers to deal with the financial consequences of accidents with hit-and-run or uninsured drivers. In about 20 jurisdictions, uninsured motorist coverage is mandatory. In other states, insurers are required to offer the coverage but a driver does not have to purchase it. Only a handful of states require drivers to purchase underinsured motorist coverage.

The price of uninsured motorist coverage varies considerably from state to state, depending in part on the percentage of drivers that are uninsured. The price is also influenced by whether the amount available to pay claims can be increased by "stacking," a practice that works to the benefit of people who own more than one

insured vehicle. In states where stacking is not specifically prohibited, liability limits under the uninsured motorist coverage may be multiplied by the number of cars insured under a single policy, or may be added together where multiple vehicles are insured under different policies. Thus, in a three-car family, where uninsured motorist liability limits are \$20,000, in a state that does not prohibit stacking, the amount available to pay a claim in an accident with an uninsured driver would be \$60,000. Because stacking drives up the cost of auto insurance, most states now prohibit stacking. However, in challenges to laws prohibiting the practice, legislators in Missouri and the Supreme Court of Arizona have upheld stacking provisions.

No-fault insurance laws also provide some relief from the problem of uninsured motorists. Under no-fault auto insurance plans, accident victims can collect benefits from their own insurance companies, regardless of whether the other party has insurance coverage (see paper on no-fault auto insurance for more information).

Stiffer penalties for driving without insurance have been considered in many states, along with more effective ways of identifying uninsured drivers. In some states, however, judges are reluctant to impose harsher penalties on people who cannot afford insurance. A survey by the Independent Insurance Agents of Texas suggests that many people are uninsured not out of a desire to defy the law but because they lack the financial assets to comply. The study shows that uninsured drivers in Texas are likely to be young (and therefore in the highest premium bracket) and to drive cars more than 10 years old (the least expensive cars to purchase).

"No Pay, No Play": In response to public concerns that those who obey compulsory laws subsidize scofflaws, legislators in more than 20 states have proposed "no pay, no play" laws that ban uninsured drivers from suing for non economic damages such as pain and suffering. Four states — Michigan, California, Louisiana and New Jersey — have enacted such laws. In Michigan uninsured drivers who are 50 percent or more at fault cannot collect noneconomic damages in the event of an auto accident. California's plan (Proposition 213) goes further by curtailing lawsuits for drunk drivers as well as for those who are uninsured. Louisiana's law compels uninsured motorists to pay for the first \$10,000 in out-of-pocket medical expenses and the first \$10,000 in property damage before they can sue the other party. New Jersey's law, similar to California's Proposition 213, specifies that uninsured and drunk drivers, as well as motorists who intentionally commit other crimes may not file lawsuits for economic or noneconomic damages. A related issue was addressed in Iowa where the governor signed a bill prohibiting motorists from collecting noneconomic damages for injuries resulting from an accident if the motorist was using the vehicle while committing a felony.

Low-Cost Policies: Low-cost auto policies are designed for drivers who cannot afford regularly priced auto policies or who have little or no assets to protect. New Jersey's Basic Policy offers \$15,000 in personal injury protection, up to \$250,000 in medical benefits for catastrophic injuries and \$5,000 property damage liability. Policyholders have the option to buy \$10,000 bodily injury liability coverage but they cannot buy uninsured, under-insured or collision and comprehensive coverage.

California's plan, designed to provide low-cost liability coverage to good drivers who demonstrate financial need, mandates that every auto insurer admitted in the state take their "fair share" of applicants. Applicants must purchase bodily injury liability coverage up to \$10,000 for one person involved in an accident, up to \$20,000 for more than one person, and \$3,000 for property damage liability. There is no collision or comprehensive coverage available. The pilot program for drivers in the California Assigned Risk Plan in Los Angeles and San Francisco will expire on January 1, 2007. Only drivers over age 19 with good driving records and low incomes (up to 250 percent of the poverty level) are eligible. Applicants must have motor vehicles valued at \$12,000 or less. The rate for the mandatory coverage in Los Angeles is \$347 with a 25 percent surcharge for single males 19 to 24 years old. In San Francisco, the policy costs \$314 with the same surcharge. The policy also includes payment options, allowing a 15 percent deposit and six monthly installments, optional \$10,000/\$20,000 uninsured motorist bodily injury coverage and \$1,000 medical payments coverage. Colorado has a low-cost plan for families with incomes of up to \$31,000 per year that provided a maximum benefit of \$25,000 for medical expenses or personal injury protection, but as of January 2004, insurers are no longer required by law to offer these policies.

Enforcement of Compulsory Auto Liability Insurance Laws: The attached chart provides a state-by-state overview of minimum auto liability limits and the measures used to enforce compulsory liability laws. For each state the insurance required by state law is listed. Coverages that may be rejected by the policyholder, either in writing or verbally (i.e., are not mandatory) have been excluded.

Increasingly, laws are being passed that expand the role of the insurer in verifying compliance with compulsory liability laws and aiding in their enforcement. Insurance companies often work in conjunction with state motor vehicle departments to verify insurance coverage. Many states now have laws that specify that insurers must notify the motor vehicle department when a policy is cancelled or not renewed. In some states, insurers are asked to verify the existence of insurance at the time that a specific accident occurred. In other states, insurers are given

lists of randomly selected auto registrations, or in some states, lists of motorists who were involved in accidents, which they are asked to match up with insurance policies that the motorists claim were in effect. Newer laws, known as computer data laws, require an insurer to submit its entire list of automobile liability policies, updated at specified intervals, to a state agency such as the motor vehicle department. The state agency can use the lists to verify registration applicants' declarations that insurance is in effect.

Penalties for driving without compulsory insurance are imposed on first offenders in only about 15 states. In other states with compulsory laws, penalties are provided for in the law but are not required to be imposed for a first offense. Penalties range from fines, which can be as high as \$5,000 for a subsequent offense, to license or registration suspension or revocation. Some states can impose jail time, confiscate license plates and impound vehicles.

ENFORCEMENT OF COMPULSORY AUTO LIABILITY INSURANCE LAWS

(As of February 2004)

| State | Insurance Required (a) | Minimum Liability Limit | Proof of Insurance Required (c) | | | | Penalties for Non-compliance (Offense) |
|-------|------------------------|-------------------------|---------------------------------|---------------------|-------------------------|----------------------------|---|
| | | | At Time of Registration | At Time of Accident | At All Times In Vehicle | Insurance Verification (d) | |
| AL | BI & PD Liab | 20/40/10 | Yes | Yes | Yes | None | license suspension |
| AK | BI & PD Liab | 50/100/25 | No | No (e) | Yes | 2 | Registration suspension/revocation (f) |
| AZ | BI & PD Liab | 15/30/10 | No (g) | Yes | Yes | 1,2,4 | \$250 fine |
| AR | BI & PD Liab | 25/50/25 | Yes | No | No | None | \$250 fine; registration suspension, confiscation of plates (f) |
| CA | BI & PD Liab | 15/30/5 (h) | Yes | Yes | Yes | 2 | \$100 fine; registration suspension |
| CO | BI & PD Liab | 25/50/15 | Yes | Yes | Yes | 1,4 | License suspension, \$500 fine |
| CT | BI & PD Liab, UM, UIM | 20/40/10 | Yes | Yes | Yes | 1,4 | Registration/license suspension/revocation, confiscation of plates, vehicle impoundment, \$110-\$250 fine |
| DE | BI & PD Liab, PIP | 15/30/10 | No | Yes | Yes | 1,3 | \$150 fine; registration suspension, confiscation of plates (f) |
| DC | BI & PD Liab, UM | 25/50/10 | Yes | No | No | 1,3 | \$100 fine or maximum 30 days jail |
| FL | PD Liab, PIP | 10/20/10 (i) | Yes | Yes | Yes | 1,4 | 60-day license revocation, vehicle impoundment for subsequent offense and confiscation of plates in Dade, Broward and Hillsborough counties (f) |
| GA | BI & PD Liab | 25/50/25 | Yes | Yes | Yes | 1 | 60-day license suspension, registration suspension |
| HI | BI & PD Liab, PIP | 20/40/10 | No | Yes | Yes | None | \$1,000 fine |
| ID | BI & PD Liab | 25/50/15 | No | Yes | Yes | 1,3 | \$75 fine (f) |
| | BI & PD | | | | | | 60-day registration |

| IL | Liab, UM | 20/40/15 | No | Yes | Yes | 1,3 | suspension (f) |
|----|----------------------------|---------------|-----|--------|-----|------|---|
| IN | BI & PD Liab | 25/50/10 | Yes | Yes | No | 1,2 | 90 day license suspension, \$150 reinstatement fee |
| IA | BI & PD Liab | 20/40/15 | No | Yes | Yes | 1 | \$100 fine |
| KS | BI & PD Liab, PIP, UM | 25/50/10 | Yes | No | No | 2 | \$100 fine (f) |
| KY | BI & PD Liab, PIP | 25/50/10 | Yes | Yes | Yes | 1 | Registration revocation, \$50 fine, up to 90 days in jail (f) |
| LA | BI & PD Liab | 10/20/10 | Yes | No (e) | Yes | 1,4 | \$25 fine, up to \$500 fine, confiscation of plates (f), vehicle impoundment |
| ME | BI & PD Liab, UM, UIM | 50/100/25 (j) | No | Yes | Yes | 1 | \$100-\$500 fine, 30-day license and registration suspension |
| MD | BI & PD Liab, PIP (k), UM | 20/40/15 | Yes | No | No | 1,3 | \$150 fine (f) |
| MA | BI & PD Liab, PIP, UM | 20/40/5 | Yes | No | No | 1 | \$500 fine (f) |
| MI | BI & PD Liab, PIP | 20/40/10 | Yes | No | No | 1 | \$200 fine (f) |
| MN | BI & PD Liab, PIP, UM, UIM | 30/60/10 | No | Yes | Yes | 3 | License and/or registration revocation for 6 months (f) |
| MS | BI & PD Liab | 10/20/5 | No | Yes | Yes | 1 | \$1,000 fine, license suspension |
| MO | BI & PD Liab, UM | 25/50/10 | Yes | Yes | Yes | 1,3 | License and registration revocation (f) |
| MT | BI & PD Liab | 25/50/10 | No | Yes | Yes | 1 | \$250 fine or not more than 10 days in jail (f) |
| NE | BI & PD Liab | 25/50/25 | Yes | Yes | Yes | 1,4* | \$500 fine (f), license and registration suspension |
| NV | BI & PD Liab | 15/30/10 | No | Yes | Yes | 1,4 | \$100 fine (f) |
| NH | FR only, UM | 25/50/25 | No | No (e) | No | None | None |
| NJ | BI & PD Liab, PIP, UM | 15/30/5 (1) | No | Yes | Yes | 4 | \$300 fine, community service, 1-year license suspension, vehicle impoundment |
| NM | BI & PD Liab | 25/50/10 | Yes | No | No | 1,3 | \$100 fine (f) |
| NY | BI & PD Liab, PIP, UM | 25/50/10 (m) | Yes | Yes | Yes | 1,4 | 1-year license revocation |
| NC | BI & PD Liab | 30/60/25 | No | No | No | 1,4 | 60-day registration suspension (f) |
| ND | BI & PD Liab, PIP, UM | 25/50/25 | No | No (e) | No | 1 | \$150 fine, registration revocation, license suspension (f) |
| OH | BI & PD Liab | 12.5/25/7.5 | No | Yes | Yes | 1 | 90-day license suspension, \$75 reinstatement fee |
| | | | | | | | Less than \$500 fine. |

| | | | | | | | |
|----|-----------------------|--------------|-----|-----|---------|-------|---|
| OK | BI & PD Liab | 10/20/10 | Yes | Yes | Yes | 1 | less than 6 months jail (f) |
| OR | BI & PD Liab, PIP, UM | 25/50/10 | No | Yes | Yes | 1,3 | License suspension and/or revocation (f) |
| PA | BI & PD Liab, Med | 15/30/5 | No | Yes | Yes | 1 | License and registration suspension, confiscation of plates (f) |
| RI | BI & PD Liab, UM | 25/50/25 (n) | No | No | No | 1,3 | \$500 fine, confiscation of plates |
| SC | BI & PD Liab, UM | 15/30/10 | Yes | Yes | Yes | 1,4 | Less than 30 days jail, registration suspension (f) |
| SD | BI & PD Liab, UM | 25/50/25 | No | Yes | Yes | 1 | 1-year license suspension (f) |
| TN | FR only | 25/50/10 (o) | No | No | Yes (p) | 1 | \$100 fine |
| TX | BI & PD Liab | 20/40/15 | Yes | Yes | No | 1 | \$75 fine; license and registration suspension (f) |
| UT | BI & PD Liab, PIP | 25/50/15 (q) | No | Yes | Yes | 1 | \$400 fine; up to \$1,000, license and/or registration loss (f) |
| VT | BI & PD Liab, UM, UIM | 25/50/10 | No | Yes | Yes | 1 | Less than \$100 fine (f) |
| VA | BI & PD Liab, UM | 25/50/20 | No | No | No | 1,2,3 | None |
| WA | BI & PD Liab | 25/50/10 | No | No | No | 1 | \$480 fine |
| WV | BI & PD Liab, UM | 20/40/10 | Yes | Yes | Yes | 1 | 90-day license suspension, registration revocation (f) |
| WI | FR only, UM | 25/50/10 | No | No | No | 1 | License and or registration revocation (f) |
| WY | BI & PD Liab | 25/50/20 | Yes | Yes | Yes | 1 | Up to \$750 fine; up to six months in jail |

(a) FR--Financial responsibility only. Insurance not compulsory.

Compulsory Coverages:

BI Liab--Bodily injury liability

PD Liab--Property damage liability

UM--Uninsured motorist

PD--Physical Damage

Med--First party (policyholder) medical expenses

UIM--Underinsured motorist

PIP (Personal Injury Protection)--Mandatory in No-Fault states. Includes medical, rehabilitation, loss of earnings and funeral expenses. In some states PIP includes essential services (such as child care.)

(b) The first two numbers refer to bodily injury liability limits and the third number to property liability. For example, 20/40/10 means coverage up to \$40,000 for all persons injured in an accident, subject to a limit of \$20,000 for one individual, and \$10,000 coverage for property damage.

(c) Proof of valid insurance. The form of evidence varies by state and may take the form of an insurance policy, binder, certificate of self-insurance, surety bonds, or certificate of deposit. Many states require insurance identification cards issued by the insurer. Self-certification, where the driver is required to identify

the insurer and policy number in writing rather than in person, is not included.

- (d) 1. Insurer must notify Department of Motor Vehicles or other state agency of cancellation or nonrenewal.
 - 2. Insurer must verify financial responsibility or insurance after an accident or arrest.
 - 3. Insurer must verify randomly selected insurance policies upon request.
 - 4. Insurers must submit entire list of insurance in effect, which may be compared with registrations at a state agency. Also known as a computer data law.
- (e) Insured must provide evidence of insurance at some point after the accident to the Department of Insurance, other state agency, or law enforcement officer. Deadlines vary among the states.
- (f) Penalties are provided for in the law but may not be mandatory for first offenses.
- (g) Proof of insurance must be presented within 30 days of registration.
- (h) Low-cost policy limits for Los Angeles and San Francisco low-income drivers in the California Automobile Assigned Risk Plan are 10/20/3; pilot program effective January 1, 2000 until January 1, 2007.
- (i) Instead of policy limits, policyholders can satisfy the requirement with \$30,000 combined property damage liability and bodily injury liability.
- (j) In addition, policyholders must also carry at least \$1,000 for medical payments.
- (k) May be waived for the policyholder but is compulsory for passengers.
- (l) Basic policy (optional) limits are 10/10/5. Uninsured and underinsured motorist coverage not available.
- (m) In addition, policyholders must have 50/100 for wrongful death coverage.
- (n) Instead of policy limits, policyholders can satisfy the requirement with a \$75,000 combined single limit policy.
- (o) Instead of policy limits, policyholders can satisfy the requirement with a \$60,000 single limit policy.
- (p) Although legally defined as financial responsibility, Tennessee's law is similar to a compulsory law because drivers can be fined if stopped by police or after crashes if they cannot show proof of financial responsibility.
- (q) Instead of policy limits, policyholders can satisfy the requirement with a \$65,000 combined single limit policy.

*Effective July 1, 2004.

Sources: Property Casualty Insurers Association of America, state departments of insurance and motor vehicles.

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RAND INSTITUTE FOR CIVIL JUSTICE

RESEARCH | BRIEF

Choosing an Alternative to Tort

Escalating auto insurance premiums have been a major public policy issue at the state level for the last three decades. *No-fault* auto insurance, spawned in the 1970s, was one response, offering cost savings to motorists and speedier compensation to auto accident victims. But because it required claimants to give up rights to seek compensation through the courts unless their losses exceeded a specified threshold, many states found it an unappealing alternative.

Choice auto insurance was proposed to address this concern. Under a choice auto insurance system, drivers may choose either a traditional auto insurance plan (tort) or a no-fault plan. Those who choose tort retain traditional tort rights and liabilities. Those who choose no-fault neither recover, nor are liable to others for, noneconomic losses (typically, pain and suffering) for less-serious injuries incurred in auto accidents.

Giving motorists a choice of coverage has strong appeal. But how does the choice alternative affect the premiums motorists pay? In a series of analyses, Stephen Carroll and Allan Abrahamse estimated how a choice auto insurance plan would affect insurance premiums in each state. Their basic finding: Overall, choice auto insurance could reduce the price tag for auto insurance by about 30 percent.

Approach

To understand the cost effects of choice auto insurance, the researchers estimated how a plan that offers a choice between tort and no-fault would affect the costs of auto insurance in each state that now relies on the traditional tort system. The plan they analyzed is *absolute no-fault*, the most extreme version of choice: Motorists may never sue, or be sued, for noneconomic loss. Thus, these estimates suggest the upper bound on the savings that can be accomplished in each tort state via the choice approach.

The researchers also estimated the cost effects of a choice plan in each state that already has some form of no-fault auto insurance. These estimates suggest the upper bound on the savings that can be accomplished in current no-fault states by extending the no-fault concept to its limit.

Results for Each State

In the tort states, the costs of compensating accident victims on behalf of drivers who elect no-fault would be at least 60 percent less than they would have been if those drivers had been insured under the traditional tort system. These savings include both the compensation paid to accident victims and the transactions costs incurred in providing that compensation.

If these savings are passed on to consumers, drivers in tort states who select choice could buy personal injury coverages for about 60 percent less than they pay for those coverages under the tort system. Because coverages for personal injury and property damage each account for roughly half of total auto

insurance compensation costs, this 60 percent reduction translates roughly into a 30 percent reduction in a driver's total auto insurance premium. Premiums are unchanged for motorists who choose to remain in the traditional tort system.

In most no-fault states, a choice plan would have a similar effect on the costs of compensating accident victims and, again assuming that insurer savings are passed on to consumers, would result in similarly lower insurance premiums. And in most no-fault states, drivers who preferred to retain their current no-fault plan would pay no more for personal injury coverage than under the current system.

The savings an individual driver will realize from a choice system do not depend on the proportion of uninsured drivers in a state's current system, the proportion of previously insured who switch to absolute no-fault, or the proportion of the previously uninsured who switch to absolute no-fault. The effects of the plan on the total costs of auto insurance do depend on how many drivers choose to switch to the absolute no-fault option.

Nationwide, the reductions in personal injury premiums resulting from choice could be enormous. For example, if every currently insured driver in the country were to choose absolute no-fault, total auto insurance premiums in 1993--the last year for which data are available--would have been \$26 billion lower. The table shows the relative savings for motorists in each state.

In addition to the savings in premiums, choice has another important cost effect. Because the no-fault premium is much lower than the premium for mandatory coverage under a tort system, some motorists who chose to drive without insurance under tort will choose no-fault. These uninsured drivers who switch to no-fault could contribute \$1 billion to \$4 billion to the compensation system nationwide.

Automobile Insurance Savings in Each State Under Choice¹

| State | % Premium Savings for All Motorists (assumes 50% of insured motorists choose absolute no-fault) | % Premium Savings for Low-Income Motorists (assumes 50% of insured motorists choose absolute no-fault) | Total savings, \$ millions (assumes all insured motorists choose absolute no-fault) |
|----------------|---|--|---|
| Alabama | 19 | 38 | 176 |
| Alaska | 17 | 28 | 24 |
| Arizona | 37 | 53 | 533 |
| Arkansas | 28 | 47 | 195 |
| California | 35 | 53 | 3622 |
| Colorado | 31 | 47 | 462 |
| Connecticut* | 41 | 57 | 678 |
| Delaware | 34 | 47 | 93 |
| Florida | 32 | 44 | 1395 |
| Georgia* | 24 | 42 | 484 |
| Hawaii | 43 | 55 | 229 |
| Idaho | 28 | 46 | 75 |
| Illinois | 25 | 45 | 772 |
| Indiana | 27 | 44 | 450 |
| Iowa | 27 | 48 | 187 |
| Kansas | 12 | 23 | 53 |
| Kentucky | 14 | 21 | 40 |
| Louisiana | 45 | 64 | 592 |
| Maine | 31 | 51 | 114 |
| Maryland | 38 | 56 | 661 |
| Massachusetts* | 41 | 57 | 1154 |
| Michigan | 15 | 28 | 647 |
| Minnesota | 32 | 49 | 483 |
| Mississippi | 25 | 44 | 137 |
| Missouri | 26 | 44 | 405 |
| Montana | 33 | 57 | 79 |
| Nebraska | 25 | 45 | 113 |
| Nevada | 37 | 55 | 196 |
| New Hampshire | 26 | 42 | 92 |
| New Jersey* | 36 | 53 | 1496 |
| New Mexico | 33 | 52 | 173 |
| New York | 35 | 53 | 2334 |
| North Carolina | 32 | 47 | 658 |
| North Dakota | 2 | 3 | -8 |
| Ohio | 29 | 47 | 840 |
| ... | .. | .. | ... |

| | | | |
|----------------|----|----|-------|
| Oklahoma | 29 | 49 | 278 |
| Oregon | 29 | 43 | 272 |
| Pennsylvania* | 32 | 47 | 1300 |
| Rhode Island | 28 | 41 | 103 |
| South Carolina | 36 | 53 | 398 |
| South Dakota | 34 | 59 | 61 |
| Tennessee | 22 | 39 | 261 |
| Texas | 36 | 54 | 1688 |
| Utah | 29 | 46 | 145 |
| Vermont | 21 | 38 | 31 |
| Virginia | 34 | 50 | 612 |
| Washington | 37 | 53 | 621 |
| West Virginia | 37 | 58 | 222 |
| Wisconsin | 31 | 53 | 443 |
| Wyoming | 24 | 46 | 31 |
| All states | 31 | 49 | 26100 |

¹The choice plan examined here is described in J. O'Connell, S. J. Carroll, M. Horowitz, and A. Abrahamse, "Consumer Choice in the Auto Insurance Market," *Maryland Law Review*, Vol. 52, 1993. Reprinted as RAND RP-254, 1994.

*Insurance system changed since January 1, 1988.

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RB-9024 (1995)

RAND research briefs summarize research that has been more fully documented elsewhere. This research brief describes work done in the Institute for Civil Justice and published as follows: S. J. Carroll, J. S. Kakalik, N. M. Pace, and J. L. Adams, *No-Fault Approaches to Compensating People Injured in Automobile Accidents*, R-4019-ICJ; S. J. Carroll and J. S. Kakalik, "No-Fault Approaches to Compensating Auto Accident Victims," *The Journal of Risk and Insurance*, Vol. 60, No. 2, 1993, reprinted as RP-229; J. O'Connell, S. J. Carroll, M. Horowitz, and A. Abrahamse, "Consumer Choice in the Auto Insurance Market," *Maryland Law Review*, vol. 52, 1993, reprinted as RP-254; A. Abrahamse and S. J. Carroll, *The Effects of a Choice Auto Insurance Plan on Insurance Costs*, MR-540-ICJ; J. O'Connell, S. J. Carroll, M. Horowitz, A. Abrahamse, and D. Kaiser, "The Costs of Consumer Choice for Auto Insurance in States Without No-Fault Insurance," *Maryland Law Review*, Vol. 54, No. 2, 1995; J. O'Connell, S. Carroll, M. Horowitz, A. Abrahamse, and P. Jamieson, "The Comparative Costs of Consumer Choice for Auto Insurance in All Fifty States," *Maryland Law Review*, forthcoming.

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