

LEGISLATIVE COURTS FILES, 2005-2006 86/2

11473 HOUSE JUDICIARY

adopted by the Convention? All those in favor of adopting the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Mr. Hinckel.

HINCKEL: May I ask another question?

PRESIDENT EGAN: You may ask your question if there is no objection, Mr. Hinckel.

HINCKEL: Did I overlook a discussion on how this legislature was going to regulate this executive branch board or has that been answered?

PRESIDENT EGAN: Could the Committee answer that question?

HINCKEL: I thought there were two separate branches.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: The way it reads the legislature would establish it; it would be contained within the executive; and the legislature would regulate it; but the intent was, and I speak for the whole board, the intent was that the legislature would establish such a board or commission by law and it would function and lie within the executive department to more or less direct and regulate its activities. That was the intent. I can see here, as I saw it before you mentioned it, the dual possible interpretation, and I hope that this will be noted for the benefit of Style and Drafting Committee.

PRESIDENT EGAN: Are there other amendments to Section 12.

HURLEY: I have one.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment by Mr. Hurley.

CHIEF CLERK: "Section 12, line 25, page 4, strike the words 'at the end of' and line 1, page 5, strike 'the session unless disapproved,' and insert therefor the words 'when approved'."

HURLEY: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Hurley moves the adoption of the proposed amendment. Is there a second to the motion?

RILEY: I second the motion.

PRESIDENT EGAN: Mr. Riley seconds the motion. Is there discussion of the proposed amendment? Mr. Hurley.

HURLEY: Mr. President, I detect a sleepy feeling on some of the parts of the delegates on this matter, but I think this is a crucial one and one of which I recognize there are good arguments on both sides, but I feel that I should bring the amendment before the group to determine what the feeling of the group is. There is a very distinct difference between the wording as it was before and the wording as it is now. At least, I intend that there be a distinct difference. The wording as it was before was a self-executing proposition where the board made a recommendation and if the legislature didn't by resolution accept it, it became law. Now, I am reactionary enough, I guess, to think that is kind of a bad thing. I can

NATIONAL MUNICIPAL LEAGUE

State Constitutional Convention Studies

Number Nine

**ALASKA'S CONSTITUTIONAL
CONVENTION**

VICTOR FISCHER

Institute of Social, Economic and Government Research
University of Alaska

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that laid the basis for a strong and independent judiciary.⁸⁵ While they concurred with the basic objectives, the consultants stated that:

These sections in particular, however, go a long way toward withdrawing the judicial branch from the control of the people of this state and placing it under that of the organized bar. No state constitution has ever gone this far in placing one of the three coordinate branches of the government beyond the reach of democratic controls. We feel that in its desire to preserve the integrity of the courts, the convention has gone farther than is necessary or safe in putting them in the hands of a private professional group, however, public-spirited its members may be.

The consultants then suggested a number of revisions that would, in their view, democratize the proposed system by providing for legislative confirmation of attorney members of the judicial council, adding a superior court judge and another lay member to the membership of the council, and other changes. However, the suggestions were not accepted by the meeting of committee chairmen and never reached the convention floor.

Local Government⁸⁶

In providing for the legislative, executive, and judicial branches of government, delegates dealt with subject matter with which they were familiar and on which they had definite opinions. On the other hand, local government was a subject for which there was little Alaska experience to provide a useful point of departure and which provided few useful models. The local government committee, therefore, determined early that innovation was the key to structuring a local government system for Alaska.

Under territorial status, local institutions had undergone only limited development; there was little self-determination at the territorial and even less at the local level. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government and restricting the powers that could be exercised by cities. For example, counties could not be established, bonding criteria were strictly delimited, and home rule could not be extended to cities.

A New Local Government System

Study of the PAS staff paper⁸⁷ and a review of local govern-

⁸⁵See Chapter 3, pg. 42.

⁸⁶For more information on this topic, see the author's chapter "The Constitution Framework" in Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, pp. 33-65.

⁸⁷Public Administration Service, *Constitutional Studies*, Chapter VIII.

ment experiences throughout the United States, Canada, Scandinavia, Latin America, and other parts of the world convinced committee members that they could look outside Alaska primarily for the purpose of evaluating basic principles and determining what *not* to do. They quickly saw that modern times and Alaska's unique geographic characteristics demanded a totally new and different system from any existing elsewhere. Delegates did not want to saddle Alaska with the conventional jumble of local government jurisdictions, particularly the proliferating special districts and archaic counties. Only an infinitesimal part of Alaska's 586,400 square miles was organized (about thirty cities and fifteen special districts); the bulk of the territory had no local government whatsoever. Thus, delegates faced a situation which invited, almost demanded, innovation. Accordingly, the convention's local government committee, aided by several consultants, proceeded to design a local government system adapted to Alaska and the times.⁸⁸

Since there were no direct precedents, the committee decided that the local government article should consist of general statements and policy, rather than detailed prescriptions and criteria. The first draft article presented to the convention stated the general purpose was to provide a maximum of self-government to people in all parts of Alaska. To meet this goal, two basic local government units were established—boroughs and cities. This framework was designed to accommodate today's needs and tomorrow's growth and development.⁸⁹ The committee then set forth the principles underlying the proposed local government system:

1. Self-Government. The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the capital of the territory or even Washington, D.C. The proposed article allows some degree of self-determination in local affairs whether in urban or sparsely populated areas. The highest form of self-government is exercised under home rule charters which cities and first class boroughs could secure.

⁸⁸Principal consultants were Weldon Cooper and John Bebout. Primary references included the PAS staff study and George W. Rogers' *A Handbook on Alaska Regionalism*, Office of the Governor, Juneau, Alaska, November 21, 1955 (mimeo). The seven members brought to the committee a variety of backgrounds and experiences: large-city and small-town mayors, city councilmen, municipal utility board membership, secretary of League of Alaska Cities; they included businessmen, a civil engineer, a professional city planner, a commercial fisherman, a bush pilot, and a minister. Significantly, there were no attorneys and no member represented the special interests of education.

⁸⁹*Proceedings*, Appendix V, p. 47.

2. One basic local government system. The proposed article vests all local government authority in boroughs and cities. It prevents creation of numerous types of local units which can become not only complicated but unworkable.
3. Prevention of overlapping taxing authorities. The proposed article grants local taxing power exclusively to boroughs and cities. This will allow consideration of all local needs in the levying of taxes and the allocation of funds. It will lead to balanced taxation. Single interest agencies with taxing authority often do not realize needs other than their own.
4. Flexibility. The proposed article provides a local government framework adaptable to different areas of the state as well as changes that occur with the passage of time. It allows classification of units on the basis of ability to provide and finance local services. It allows optional administrative forms, adoption of home rule charters, boundary changes, etc.
5. State interest. The proposed article recognizes that the state has a very definite interest in and concern with local affairs. For example, the credit of the state is indirectly involved in local financial matters, and local units are the agencies through which many state functions are performed. The proposal therefore gives the state power to establish and classify boroughs, to alter boundaries of local units, to prescribe powers of noncharter governments, to withhold authority from home rule boroughs and cities, and to exercise advisory and review functions.⁹⁰

The Borough Concept

As the committee was evolving these principles, its members agreed that some type of unit larger than the city and smaller than the state was required to provide both for a measure of local self-government and for performance of state functions on a regionalized basis. They also agreed "that any form of local government for Alaska that would be similar to counties would need a broader scope, should have authority to perform all services and should provide a maximum amount of local self-government."⁹¹ The result was the borough concept—an areawide unit that while different from the traditional form of the county, was in effect a modernized county

⁹⁰*Ibid.*, pp. 47-48.

⁹¹*Ibid.*

adapted to Alaska's needs.⁹² As seen by delegates, the inadequacies of conventional counties were limited functional jurisdiction, frozen boundaries, an overabundance of constitutionally established elective offices, inadequacy of fiscal powers, and lack of specifically local (as against state) governmental authority. They noted also that numerous special districts were being created to fill service gaps left by counties and municipalities, resulting in a multiplicity of overlapping tax jurisdictions.

To overcome such deficiencies, the initial principles set forth by the committee for consideration in the formation of the new areawide government units included these guidelines:

- Provision should be made for subdividing all Alaska into local units (boroughs) based on economic, geographic, social, and political factors; initially, not all need be organized.
- Units should be large enough to prevent too many subdivisions in Alaska; they should be so designed as to allow the provision of all local services within the boundaries of a single unit, thus avoiding multiplicity of taxing jurisdiction and overlapping, independent districts.
- The state should have power to create, consolidate, subdivide, abolish, and otherwise change local units.
- Creation of units should be compulsory, with provision for local initiative.
- Boundaries should be established at the state level to reflect statewide considerations as well as regional criteria and local interests, and must remain flexible in order to permit future adjustment to growth and changing requirements for the performance of regional functions.
- Units should cover large geographic areas with common economic, social, and political interests.

⁹²Almost unending controversy surrounded the selection of the name "borough." While there were strong proponents for the word "county" (as well as canton, division, province, and others), the majority believed that the term had such a definite and negative connotation that its use had to be avoided to preclude rigid thinking and restrictive legal interpretation. It was believed that a different name would be more readily interpreted in the context of the Alaska Constitution. Black's Law Dictionary defines "borough" as "a place organized for local government purposes." See *Minutes*, 18th, 29th Meetings; Report of Local Government Committee, January 18, 1956 "Commentary on Local Government Article," *Proceedings*, Appendix V, pp. 58-59; *Proceedings*, pp. 2618-19, 2777-87, 3599-3608, 3621-25, 3627.

- Local units should have the maximum amount of self-government and have authority to draft and adopt charters; organized units should have the authority to perform any function, to adopt any administrative organization, and to generally undertake any action that is not specifically denied by the legislature.⁹³

When the local government article came before the convention, the delegates did not question the need for an areawide unit. Similarly, they accepted without argument most of the basic concepts evolved by the committee, even though many ideas were quite tentative and subject to further evolution upon statehood.

Most of the floor discussion on local government involved questions and explanations; there were few proposals for substantive amendments. Thus, the convention gave consideration to whether boroughs should be established on a voluntary or compulsory basis. The committee had previously decided that, although voluntary incorporation was preferable, organized boroughs should be created without approval in the area if considered necessary by the state, because the borough would, as appropriate, carry out state functions. Also, the state may want to mandate incorporation if an area is deemed to have reached a position where "it should take on the burden of its own government."⁹⁴ Committee members anticipated, however, that the legislature might choose to provide the local people with the opportunity to vote upon the issue—a referendum,⁹⁵ and that the state would offer adequate inducement to local people to accept organized borough status and to initiate incorporation.⁹⁶

Unlike the organized borough, legally a municipal corporation, unorganized boroughs were to be instrumentalities of the state. The legislature was to have the same authority within these boroughs as the governing bodies (assemblies) of organized boroughs. By permitting the legislature to act as the borough assembly, the general prohibition against local legislation was overcome, and laws could be enacted for differential performance of functions in accordance with the needs of different regions.

Service areas were authorized to be established by organized boroughs (and by the legislature in unorganized boroughs) as another

⁹³All Minutes, Proceedings, Appendix V, pp. 48-50.

⁹⁴Proceedings, pp. 2673-74.

⁹⁵*Ibid.*, pp. 2674-76.

⁹⁶*Ibid.*, pp. 2650-51.

method of meeting requirements for different services. Initially, service areas were conceived as a means of providing services within a limited part of the borough in which taxes, assessments, and charges could be levied to cover the cost of such services. The approach was subsequently expanded to include areawide services that might be administered by special instrumentalities such as health or school districts. In all cases, however, service areas were to be creatures of boroughs and function under borough fiscal control.

In evolving the borough concept, delegates were quite aware that they were only delineating the general structure of local government. While they reviewed various ways in which their ideas might be applied, they realized it was not possible, nor was it desirable, to delineate a detailed system. Instead, they attempted to anticipate future needs and provide the broad principles and processes for dealing with them. In particular, the convention was concerned with borough-city interaction, with organization for schools, and with the exercise of continuing state responsibility. The latter was deemed particularly important to assure the appropriate growth of local government from the base provided in the constitution.

Borough-City Relations

The relationship between boroughs and cities, whether existing or in the future, was of special concern to the convention. Initially, the Local Government Committee, in an attempt to avoid any overlapping or duplicative structures of government, had considered doing away with cities altogether. But in exploring this and other similar options, the delegates realized that the city was the only existing unit of general local government in Alaska and that its outright abolition could create administrative and political problems. They therefore abandoned any ideas of major restructuring and decided instead that the status of cities should continue to exist and not be changed directly by the constitution.

The delegates stipulated, however, that the city should be an integral part of the borough in which it was located, and other provisions were made with the intent of encouraging cooperation between cities and boroughs. These included joint service of city councilmen on the legislative bodies of both the city and the borough, joint performance of functions, and voluntary transfer of functions from city to borough. The objective throughout was to assure that wherever functions overlap they should be integrated. It was the committee's belief that maximum cooperation would result from coordination between the city council and the borough assembly.

Although joint council-assembly service was seen by the committee as a means of fostering understanding and cooperation, some delegates repeatedly expressed concern about the extent to which cities might dominate the borough through direct representation on the assembly. Some also believed that this approach, instead of minimizing conflict, would lead directly to it. However, delegates generally accepted the basic objectives of borough-city coordination and nonduplication of functions, and lacking more acceptable alternatives, the convention supported the committee's approach.

Borough-School Relations

Education and local government relationships were also given extensive discussion. As at the state level, the Local Government Committee saw education as a function of general government and made no special provision for school districts in the local organizational structure. In the major urban areas, education was the responsibility of independent school districts. These districts were subject to budgetary control by cities within their boundaries, and the Local Government Committee proposal was predicated on passing future fiscal control to the areawide borough. As in the case of the executive article, however, an intense effort was made before the committee and on the floor to endow education with administrative and fiscal autonomy.

An amendment was proposed by Maurice Johnson of Fairbanks to grant school districts, and not just cities and boroughs, independent authority to exercise the powers of local government and of taxation. The arguments for the proposed change were, essentially, (1) that educational needs and the taxes necessary to meet these needs can be determined best by those responsible for education, and that (2) education was so much more important than other local functions that fiscal allocations for this purpose should not be subject to borough approval. The amendment was rejected by a forty-three to nine vote. The majority feared independent access by school boards to the local tax base; they believed that separate status for education would, in delegate George Sundborg's words, tend to make:

... the school districts within our cities and boroughs ... independent of the people of Alaska as they consider the other responsibilities and functions of government.⁹⁷

While the convention did not approve fiscal independence for

⁹⁷*Ibid.*, pp. 2696-2708.

schools, it did recognize that there could be separate administration of the education function through service areas coterminous with or located within organized or unorganized boroughs. Moreover, school boards and district organizations could exist within the overall borough structure. Convention discussion made it clear, however, that no matter how the school functions were organized, only the borough assembly could authorize the levying of local taxes for education purposes.⁹⁸

The convention similarly went along with the Local Government Committee in denying school boards representation on the borough governing body. The rationale was again—no special treatment for the school function:

... If a specific service like education is to be represented, then health should be represented, if we have a health service area; if we have a fire protection district, they should be represented, and what we [the committee] wanted to avoid in this was the specific seating of people with just one interest on the borough assembly.⁹⁹

While convention deliberations show that the delegates generally viewed education as a borough function, they also considered it a concurrent state responsibility as set out in Article VII, of the constitution which stipulates that the state must provide for a system of public education throughout the state.

State-Local Relations

In general, the constitutional convention saw the role of the state as critical in making the local governmental system work. Several factors strongly argued for a continuing state responsibility for local affairs, such as:

- The lack of any general government beyond the city.
- A tradition of territorial government responsibility for services beyond incorporated communities.
- The varying levels of local government capability and of the requirements for local services throughout Alaska.
- The realization that further detailed study and planning was necessary to establish a new governmental system.

Therefore, in addition to dealing with local government organi-

⁹⁸*Ibid.*, pp. 2620, 2630, 2633, and 2707.

⁹⁹*Ibid.*, p. 2623.

zation, Article X includes the following provisions for state authority and responsibility:

- Responsibility is vested in the legislature for establishing procedures and standards under which boroughs will be created and classified.
- The legislature is established as the governing body for unorganized boroughs and has responsibility for provision of services in such boroughs.
- A state-level local boundary commission is given responsibility for changes in local government boundaries subject to disapproval by the legislature.
- An executive agency is established in state government to deal with local affairs.
- Authorization is granted for joint exercise of powers by local governments and the state.

While there was general convention agreement about the importance of the state role in local affairs, there was considerable floor debate about the proposal to create a "local government agency"—the only administrative body specifically provided for in the executive branch. Delegates questioned this not because it was considered undesirable, but because they had generally subscribed to the principle that, unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution. As Delegate John Hellenthal stated:

Unless there is some very, very compelling reason given for including such an agency as proposed in Section 14 in the constitution (the local government agency), I think we're violating the principles and policies we've already adopted here.¹⁰⁰

However, in view of the general belief that success of the local government plan depended upon existence of an effective agency at the state level, the delegates provided for a mandatory agency in the constitution.

Home Rule

Convention delegates did not believe a strong state role to be inconsistent with a commitment to maximum local self-government. They envisioned a self-government concept which would apply not

¹⁰⁰*Ibid.*, p. 2670.

only to home-rule cities and boroughs with their own charters, but would also extend to local units operating under the general local government laws of the state. The concept was also applied to unorganized boroughs, where it could take the form of local participation in state policy making and in providing state services. Thus, home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local government adaptation in a state with great variations in geographic, economic, social, and political conditions.

Believing that local governments should have freedom to perform what functions they desired and to design their own administrative organization, the committee rejected the home rule approaches of other states that enumerated specific powers or which made a vague grant of local government powers. It, therefore, also rejected suggestions of the National Municipal League's Model State Constitution, which included a general grant of home rule authority, a list of major powers, and a statement to the effect that the enumeration of powers should not be deemed to restrict the general grant.¹⁰¹ Instead, it chose to devise its own home rule clause: "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter."¹⁰² The intent of this provision was expressed by the Local Government Committee:

The grant of powers is to be based upon "legislative powers" rather than a specific enumeration. Enumerations have frequently been restrictively interpreted by the courts. Nor was it felt desirable that the grant be on the basis of powers covering "local affairs" or "local government." Such terms have also given rise to continuous judicial interpretation, causing great uncertainty in what the actual powers of local government are. The grant of "legislative" power would be subject to restrictions contained in the constitution, to powers specifically withheld by the legislature, and to powers withheld by the people in the adoption of their local charters.¹⁰³

"Legislative powers," as used here, meant that a home rule government might exercise the same powers available to the state

¹⁰¹National Municipal League, *Model State Constitution*, 1955, Section 804.

¹⁰²Constitution, Article X Section 11. This approach is similar to the type of home rule that evolved in Texas after many years of judicial interpretation and abandonment of the doctrine that the Texas home rule amendment granted only "local government powers." See John P. Keith, *City and County Home Rule in Texas*, Institute of Public Affairs, University of Texas, 1951. Keith's study was used by the committee in developing the Alaska approach. For a recent review of home rule in Alaska, including its constitutional background and intent, see Gerald R. Sharp, "Home Rule in Alaska: A Clash Between the Constitution and the Court," *UCLA-Alaska Law Review*, Vol. 3, No. 1, Fall 1973.

¹⁰³*Minutes*, 24th Meeting

legislature.¹⁰⁴ However, the committee recognized that home rule could not be absolute. Delegates believed that the legislature should have the authority to deny local exercise of specific powers when necessary in behalf of an overriding state interest or to resolve conflicts of authority between home rule cities and home rule boroughs.

Convention action was directed in large part toward further liberalization of home rule coverage; no delegate objected to the proposed home rule approach. By floor action, delegates permitted the legislature to extend home rule powers to other than first class cities and boroughs.¹⁰⁵ The only restrictive amendment would have eliminated the self-executing charter drafting provision and would instead have made home rule implementation subject to future legislative action. This, however, was turned down by the delegates.¹⁰⁶

To assure that home rule and other innovative approaches would not be undermined, the Local Government Committee made a special point of specifying in a preamble to the proposed article that "A liberal construction shall be given to the powers of local government units."¹⁰⁷ Fearing that traditional legislative and judicial doctrines might be applied to Alaska's new local system, the committee considered the preamble necessary to give both the legislature and the courts some policy guidance in implementing the article. The committee hoped that the liberal construction clause would help assure that the new system did not become encumbered by restrictive judicial interpretation; it was seen as a step toward achieving the general purposes and intent of the article.¹⁰⁸

When the local government article came before the convention, an amendment was introduced to strike the liberal construction clause.¹⁰⁹ A number of delegates who were also lawyers supported elimination of the provision with the argument that:

1. The article itself was plain and concise and would not present difficult interpretation, either by the legislature or by the courts.
2. Under *McCulloch vs. Maryland*, the U.S. Supreme Court had said that an delegation of power must be construed in the manner most beneficial to the people, and that this construction would be

¹⁰⁴Thus, the Local Government Committee deemed it possible that resources development could be a function of Alaska local governments, even though such a power could not come under the traditional concept of what is "local" or be included in the usual enumeration of local powers.

¹⁰⁵*Proceedings*, pp. 2736-2744

¹⁰⁶*Ibid.*, pp. 2733-36.

¹⁰⁷*Constitution*, Article X, Section 1.

¹⁰⁸*Minutes*, 23rd and 26th Meetings.

¹⁰⁹*Proceedings*, pp. 2690-96.

obligatory upon the court in interpreting the article.

3. In any case, articles of the constitution should be construed strictly in accordance with the constitution rather than given liberal interpretation.

The committee's reasons for including the liberal construction clause were:

1. Under the so-called "Dillon' Rule," powers of local government were to be strictly interpreted, and explicit provision was required to ensure sufficient scope and flexibility under the article and to provide the legislature and local governments with sufficient powers to carry out the intent of the article.
2. Even though home rule boroughs and cities might be generally secure in the exercise of their powers under the constitution, nonhome rule units would require the protection of this clause.
3. The vagueness of the local government article on how the new system was to be implemented made it essential that the legislature and the courts construe the article liberally in order to obtain strong home rule government.

In the end, convention delegates were almost evenly split on this issue, with the liberal construction provision being retained by only one vote, twenty-six to twenty-five. The basic principle of maximum local self-government was not challenged at any time.

HB

136

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Nancy Dahlstrom
Rep. Ralph S. nuels
Rep. Les Gara
Rep. Max Gruenberg



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

House Judiciary Committee Letter of Intent HB 136

It is the intent of the Legislature that the Court System and Department of Law continue their practice with regard to the collection of unpaid fines for driving under the influence of alcohol. That practice is to pursue the payment of unpaid fines through a civil action by the Department of Law and not through revoking probation. It is also the intent of the Legislature to encourage the use of fines, wellness courts and interlock devices, when appropriate, as tools for addressing these crimes and those who commit them.

A handwritten signature in cursive script, appearing to read "Lesil McGuire".

Representative Lesil McGuire
Chair

It is the intention of the Legislature that the Court System and Department of Law continue their practice as regards collection ~~of~~ of unpaid ~~fines~~ ~~fines~~ [&] fines for driving while ~~intoxicated~~ impaired ^{Upon the influence of} Alcohol. That practice is to

- pursue the payment of unpaid fines through a civil action by the Department of Law, and not through revoking probation.

It is also the intent of the Legislature to encourage the ~~appropriate~~ use of fines, wellness courts, and interlocking devices, ^{when appropriate} as tools for addressing these crimes, and ~~to~~ ^{to} ~~not~~ ^{not} ~~commit~~ ^{commit} them.

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.akRepublicans.org/rokeberg/index.php>



INTERIM:
716 WEST 4TH AVENUE, SUITE 600
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

MEMORANDUM

To: Rep. Lesil McGuire, Chairwoman
House Judiciary Committee

From: Rep. Norman Rokeberg *hnr by hmn*

Date: March 15, 2005

Re: HB 136

I respectfully request that HB 136, Drunk Driving Treatment Program, be scheduled for a hearing. I have attached the following for your information:

1. HB 136
2. Sponsor Statement
3. Sectional Analysis
4. May 1, 2003 Letter from MADD
5. Letter from AG's Office
6. *Curtis vs. State*
7. DUI Fines and Sentences Chart
8. Juneau and Nome DUI Sentences
9. Letters of Support

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

RULES COMMITTEE, CHAIRMAN
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SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.akRepublicans.org/rokeberg/index.php>



INTERIM
716 WEST 4TH AVENUE, SUITE 600
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4368
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SPONSOR STATEMENT FOR HB 136

By: Representative Norman Rokeberg

Title: An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program.

The Legislature believes in the effectiveness of therapeutic courts. Anchorage and Bethel have active therapeutic courts, and various other Alaska communities - Ketchikan, Juneau and Fairbanks - are currently working to establish these courts at the misdemeanor level. I introduced HB 136 in order to provide additional statutory assistance to the operations of therapeutic courts around the state.

Specifically, HB 136 expands the court-ordered treatment programs, i.e. "Wellness Courts," to felony DUI defendants. The statutory authority for these courts can be found under AS 28.35.030 and AS 28.35.032. There are several reasons for doing this:

1. Opening therapeutic courts to felons would increase public protection from DUI crimes. The success of the 18-month "court-ordered treatment" system created by the Legislature is demonstrated by data that shows that over a three-year period, only 25% of graduates have had any repeat offenses. This is in stark contrast to the 75% of DUI offenders who repeat after serving their time in jail.
2. It creates economies of scale if the newly established DUI Wellness Courts are open to both felony and misdemeanor DUI cases.
3. This is an opportune time to extend the DUI/Wellness Court model. The National Highway Traffic Safety Administration (NHTSA) has made funding of this type of court a priority.

In addition to expanding the therapeutic court provisions to felony DUI offenders, HB 136 gives a judge the ability to reward a graduating DUI offender by suspending 75% of the mandatory fine. This amount is increased from the present 50%. Currently, Wellness Court participants pay for most of their own treatment. This is a very costly requirement over the course of the required 18-month program. Allowing the judge to reduce mandatory fines will increase the incentive for defendants to enter a Wellness Court.

Lastly, HB 136 requires that misdemeanor and felony DUI offenders, who are not participants in a court-ordered treatment program, must pay the minimum fines provided in statute. It has been brought to my attention that judges, under the authority of a 1992 Alaska Court of Appeals decision (*Curtis v. State*), are often suspending the fines that the Legislature has specifically set out in statute. HB 136 overrides this decision and makes it absolutely clear to the courts that these defendants must pay the minimum fines.

I urge your support of this legislation.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
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website: <http://www.akrepublicans.org/rokeberg/index.php>



INTERIM
718 WEST 4TH AVENUE, SUITE 600
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SECTIONAL ANALYSIS FOR HB 136

By: Representative Norman Rokeberg

Title: An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program.

- Section 1:** Requires the courts to impose the minimum fines for a misdemeanor DUI offense.
- Section 2:** Requires the courts to impose the minimum fines for a felony DUI offense.
- Section 3:** Expands the provisions for "court-ordered treatment programs" to felony DUI offenses. Allows the court to suspend 75% (up from 50%) of the minimum fines for successful participants.
- Section 4:** Requires the courts to impose the minimum fines for a misdemeanor offense of refusal to submit to a chemical test.
- Section 5:** Requires the courts to impose the minimum fines for a felony offense of refusal to submit to a chemical test.
- Section 6:** Mirrors the provisions of Section 3 in the refusal to submit to a chemical test statutes.



MADD
Activism | Victim Services | Education™

Mothers Against Drunk Driving
JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

May 1, 2003

Representative Norman Rokeberg
State Capitol
Juneau, Alaska 99801

RE: Dismissal of DUI fines

Dear Representative Rokeberg:

I am providing the enclosed information for your interest. As you well know, your House Bill 4 raised the minimum and maximum level of fines for offenders sentenced with driving while under the influence (DUI).

Historically judges have not dismissed DUI fines because of the theory that this served as an encouragement for compliance of the law. The fine also provided sufficient reason to seek a job for those DUI offenders arrested while unemployed. This theory has proven effective for many DUI offenders and most Alaska judges continue to hand down sentences which include fines.

In the case of Jack Curtis v. State of Alaska, the Court of Appeals have ruled that "while courts do not have the inherent power to suspend execution of a sentence, the Alaska legislature has given the power to the trial courts." This is possible when the minimum prison sentence has been served.

They point out in Dunham v. Juneau that while the law states no portion of the mandated minimum fine can be suspended; the Appellate court is "convinced that this conclusion was hasty. The parties in Dunham did not distinguish between the mandated imprisonment and the mandated fine..." Therefore a fine may be dismissed regardless of prison time.

Defending attorneys have become aggressive in searching for judges and magistrates who consider this option in DUI cases. Defending attorneys are pushing for a dismissal of fines by pointing out the DUI offender does not have job and therefore cannot afford to pay the fine. Unfortunately some judges and magistrates are beginning to listen to this appeal.

One such example is across the street from your Juneau office. On occasion, Magistrate Sivertsen will consider such an option, and in doing so creates a dangerous precedent for prosecuting attorneys.



MADD

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JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

One **public** defender is taking all his DUI cases assigned to Judge Froehlich and having them **bumped** to Magistrate Sivertsen or to Ketchikan Judge Miller.

This action has several negative effects:

- **Creates** a negative public impression the Legislature is allowing DUI offenders to **not** pay for their actions.
- **Public** Defending Agency costs the state and therefore the taxpayers of Alaska **additional** and unnecessary costs as DUI cases move from one town to another.
- **Allows** DUI offenders to walk away without paying a penny for the crime **committed** based on the fact they did not, while arrested for DUI, have a job.
- **Has** a negative impact on Judge Froehlich's grade as district court judge.

As **the** enclosed documents show, MADD encouraged the Public Defending Agency to **reconsider** this decision but was unsuccessful.

Please **let** me know if you have any questions on this matter. MADD hopes this situation may **be** worked out so all DUI offenders are obligated to fines for the dangerous crimes they **choose** to commit.

Sincerely,

Cindy Cashen
Executive Director

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 16300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3800
FAX: (907)465-2075

December 9, 2003

The Honorable Norman Rokeberg
Alaska State Legislature
716 W 4th Suite 300
Anchorage, AK 99501-2133

Dear Rep. Rokeberg:

This is in response to your letter of August 20, in which you expressed your concern that the statutory minimum fines in drunk driving cases are sometimes being suspended, despite your intent in introducing and supporting House Bill 4 in the 2001 and 2002 sessions. Based on case law from the court of appeals, and given the language of the statute, we believe that additional legislation will be needed if such fines are to be fully imposed.

As you know, your bill greatly increased the financial costs of being convicted of drunk driving. Minimum fines for first and second offenders increased six-fold, from \$250 to \$1500 and from \$500 to \$3000, respectively. Fines for subsequent misdemeanor convictions increased by \$3000. Fines for felony drunk driving doubled to \$10,000. In addition, HB 4 increased the maximum amount that offenders must pay to the state as reimbursement for the costs of incarceration from \$1000 to \$2000. Your bill also doubled the fees that convicted repeat offenders would have to pay to reinstate their driver licenses. Finally, your bill required vehicle forfeiture for offenders convicted of felony drunk driving.

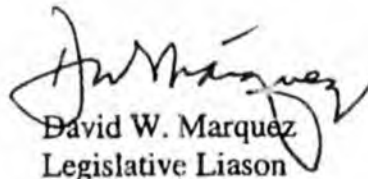
The opinion of the Alaska Court of Appeals in *Curtis v. State*, 831 P.2d 359 (Alaska App. 1992) was, up until recently, an obscure two-page decision more than a decade old. With fines for first and second offenders set at \$250 and \$500, judges rarely, if ever, invoked the *Curtis* decision to suspend a portion of the fines. In any event, with the large increase in fines enacted in HB 4, the *Curtis* opinion has, in essence, been rediscovered by lawyers and judges. In fact, it came as a surprise to state prosecutors, who had long forgotten about it. Ultimately, *Curtis* leaves the decision to impose or suspend a fine in a drunk driving case to the discretion of the sentencing judge. The

minimum period of incarceration, however, cannot be suspended, unless the person completes a "therapeutic court" program.

It certainly can be argued, as mentioned in your letter, that the legislature's intent was that the only way fines could be reduced is by completing a "therapeutic court" program described in AS 28.35.030(q) or in the special legislation setting up the Anchorage and Bethel therapeutic courts. However, the therapeutic court program allows both fines and imprisonment to be suspended. The decision in *Curtis*, which is based on the specific statutory language in AS 28.35.030(b)(2)(A), only applies to suspending fines. Because the language of the statute in issue in *Curtis* remains unchanged, in our opinion that holding is still valid and would not be successfully challenged on appeal. The relationship between *Curtis* and HB 4 was raised by state prosecutors during the Murkowski administration transition process as an item for possible legislative action. If the legislature's desire is to reverse the *Curtis* opinion, that would require a relatively simple amendment to AS 28.35.030(b)(2)(A) and the similar provisions governing felony driving under the influence and refusal to take a breath test.

If you have further questions, please contact me.

Sincerely,



David W. Marquez
Legislative Liason

LEXSEE 831 P2D 359

JACK CURTIS, Appellant, v. STATE OF ALASKA, Appellee.

No. 1222, Court of Appeals No. A-4035

COURT OF APPEALS OF ALASKA

831 P.2d 359; 1992 Alas. App. LEXIS 33

May 15, 1992, Decided

PRIOR HISTORY: [1]**

Appeal from the District Court, Third Judicial District, Anchorage, Martha Beckwith, Judge. Trial Court No. 3AN-90-3132 Cr

DISPOSITION:

REMANDED

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant sought review of an order of the District Court, Third Judicial District, Anchorage (Alaska), which modified a sentence imposed on him for driving while intoxicated (DWI). The trial court originally believed he was a first offender and his sentence included a \$ 250 fine. Upon the State's motion after it was discovered defendant had a prior offense, the court modified the fine to \$ 500, in accordance with *Alaska Stat. § 28.35.030(c)*.

OVERVIEW: Defendant contended that the trial court was authorized to modify his sentence only to the extent necessary to correct its illegality, and that although the minimum fine was \$ 500 for a second offense, the trial court was able to suspend all or part of this minimum fine, and was required to suspend it to the amount of the original fine. On appeal, the court held that (1) under *Alaska Stat. § 28.35.030(c)*, the only limitation on the trial court's authority to suspend a DWI offender's sentence was the condition that he serve the mandated 20 days' imprisonment; (2) although a prior case held that no portion of the mandated minimum fine was subject to suspension, the conclusion made in that case was hasty and the parties therein did not distinguish between the

mandated imprisonment and the mandated fine; (3) although courts did not have an inherent power to suspend execution of a sentence, § 28.35.030(c) limited a sentencing court's authority to suspend a term of imprisonment but did not limit the sentencing court's authority to suspend a fine, and (4) because defendant's original sentence included a \$ 250 fine, the trial court was required to suspend one-half of the \$ 500 fine.

OUTCOME: The court remanded the case to the trial court with directions to amend the judgement.

LexisNexis(R) Headnotes

Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Driving Under the Influence
Criminal Law & Procedure > Sentencing > Sentencing Ranges

Criminal Law & Procedure > Sentencing > Fines
[HN1] *Alaska Stat. § 28.35.030(c)* provides that, when a person is convicted of a second driving while intoxicated offense within 10 years, a sentencing court is required to impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$ 500. The statute also provides that execution of sentence can not be suspended nor probation be granted except on condition that the minimum imprisonment provided in this section is served.

Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Driving Under the Influence
Criminal Law & Procedure > Sentencing > Suspension of Sentence

Criminal Law & Procedure > Sentencing > Fines
[HN2] Under *Alaska Stat. § 28.35.030(c)*, the only limitation on a district court's authority to suspend a

driving while intoxicated offender's sentence is the condition that the offender serve the mandated 20 days' imprisonment. The statute imposes no condition on the court's authority to suspend the mandated \$ 500 fine.

*Governments > Legislation > Interpretation
Criminal Law & Procedure > Sentencing > Suspension
of Sentence*

[HN3] While courts do not have the inherent power to suspend execution of a sentence, the Alaska legislature has given this power to trial courts. *Alaska Stat. § 12.55.080*; *Alaska Stat. § 12.55.015(a)(7)*. When a statute of general application grants sentencing courts the power to suspend all or part of a sentence, that statute will govern unless the legislature specifically provides otherwise.

COUNSEL:

Appearances: David R. Weber, Assistant Public Defender, and John B. Salemi, Public Defender, Anchorage, for Appellant.

Susan Wibker, Assistant District Attorney, Edward E. McNally, District Attorney, Anchorage, and Charles E. Cole, Attorney General, Juneau, for Appellee.

JUDGES: Before: Bryner, Chief Judge, and Coats and Mannheimer, Judges.

OPINIONBY: MANNHEIMER

OPINION:

[*360] OPINION

MANNHEIMER, Judge.

On August 9, 1990, Jack Curtis was sentenced for driving while intoxicated (DWI), *AS 28.35.030(a)*. Believing that Curtis was a first DWI offender, the district court sentenced him to 60 days' imprisonment with 57 days suspended, plus a \$ 250 fine. The 3 days to serve and the \$ 250 fine were the specified minimum penalties for a first offender. *AS 28.35.030(c)*.

Two months later, the State moved to modify Curtis's sentence after discovering that Curtis had a prior DWI conviction from 1987. The district court granted the motion and modified Curtis's sentence to 60 days' imprisonment with 40 days suspended, plus a \$ 500 fine.

Curtis does not challenge the district court's authority to [**2] modify his sentence after learning that it was less than the statutory minimum. Curtis points out, however, that under *Love v. State*, 799 P.2d 1343, 1346 (*Alaska App.* 1990), and *Dunham v. Juneau*, 790 P.2d 239, 241 (*Alaska App.* 1990), the district court was

authorized to modify the sentence only to the extent necessary to correct the illegality. Curtis contends that, although the minimum fine is \$ 500 for a second offense, the district court is empowered to suspend all or part of this minimum fine. Therefore, Curtis argues, to correct the portion of the original judgement that sentenced him to pay a fine of \$ 250, the district court should have sentenced Curtis to a \$ 500 fine with \$ 250 suspended. We agree.

The 1990 version of *AS 28.35.030(c)* (the version that governs the sentencing in Curtis's case) [HN1] provided that, when a person was convicted of a second DWI offense within 10 years, the sentencing court was required to "impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$ 500". The statute also provided that "execution of sentence [could] not be suspended nor . . . probation be granted except [**3] on condition that the minimum imprisonment provided in this section [was] served." (emphasis added)

Curtis points out that, [HN2] under *AS 28.35.030(c)*, the only limitation on the district court's authority to suspend a DWI offender's sentence was the condition that the offender serve the mandated 20 days' imprisonment. The statute imposed no condition on the court's authority to suspend the mandated \$ 500 fine. Thus, Curtis argues, the district court retained the authority to suspend all or part of the minimum fine, and therefore the least amount of judicial intervention necessary to correct the illegality of his original fine - \$ 250 to pay - was to change it to a fine of \$ 500 with \$ 250 suspended.

The State counters that this Court has already held, in *Dunham v. Juneau*, that no portion of the mandated minimum fine can be suspended. 790 P.2d at 240-41. The *Dunham* decision does in fact say this, but we are convinced that this conclusion was hasty. The parties in *Dunham* did not [*361] distinguish between the mandated imprisonment and the mandated fine; the defendant simply argued that his sentence could not be altered.

[HN3] While courts do not have the inherent power [**4] to suspend execution of a sentence, *Pete v. State*, 379 P.2d 625, 626 (*Alaska* 1963), the Alaska legislature has given this power to the trial courts. *AS 12.55.080*, *AS 12.55.015(a) (7)*. When a statute of general application grants sentencing courts the power to suspend all or part of a sentence, that statute will govern unless the legislature specifically provides otherwise. *Speas v. State*, 511 P.2d 130 (*Alaska* 1973). Curtis is correct that *AS 28.35.030(c)* limits a sentencing court's authority to suspend the term of imprisonment but does not limit the court's authority to suspend the fine. Thus,

because AS 28.35.030(c) does not restrict a sentencing court from suspending all or part of the mandatory minimum fine, the court retains this power.

The district court originally ordered Curtis to pay a \$ 250 fine. The mandatory minimum fine for a second DWI offender was \$ 500. To correct the illegality, the

district court needed to increase Curtis's fine to \$ 500 with \$ 250 suspended.

This case is therefore REMANDED to the district court with [**5] directions to amend the judgement in this manner.

Misdemeanor and Felony DUI Sentences and Fines

| Misdemeanor DUI | Prison | Fine | License Revocation | Look Back |
|----------------------------|---------------|-------------|---------------------------|--|
| class A misdemeanor | | | | |
| 1 st offense | 72 hours | \$1500 | 90 day suspension | |
| 2 nd offense | 20 days | \$3000 | 1 year suspension | within 15 years |
| 3 rd offense | 60 days | \$4000 | 3 year suspension | within 15 years |
| 4 th offense | 120 days | \$5000 | 5 year suspension | within 15 years |
| 5 th offense | 240 days | \$6000 | 5 year suspension | within 15 years |
| 6 th offense | 360 days | \$7000 | 5 year suspension | within 15 years |
| | | | | |
| | | | | |
| Felony DUI | | | | |
| class C felony | | | | |
| 3 rd offense | 120 days | \$10,000 | 3 year suspension | 2+ times since 1996 and within 10 years |
| 4 th offense | 240 days | \$10,000 | 5 year suspension | |
| 5 th offense | 360 days | \$10,000 | 5 year suspension | |
| | | | | |

By: Representative Norman Rokeberg

DRIVING WHILE INTOXICATED SENTENCES - JUNEAU

| DATE FYI Juneau Empire | NAME | CHARGE | JUDGE | JAIL | SUSPENDED | FINE | SUSPENDED | LICENSE | PROBATION |
|---------------------------|-----------|--|-----------|-----------------|---------------------------------|----------|-----------|-----------------------|-----------|
| 1/2/04 | Whiting | Felony (third, seventh drunk driving) | Weeks | 5 years | 2 years suspended | | \$10,000 | Permanently Revoked | |
| 10/08/04 | Patterson | .134 | Froehlich | 75 days | 35 days suspended | \$1,500 | | 90 days | 2 years |
| 10/15/04 | Schmidt | Misdemeanor | Froehlich | 63 days | 30 suspended | \$1,500 | | 90 days revocation | 2 years |
| 10/22/04 | Bugbee | | Sivertsen | 63 days | 30 suspended | \$3,000 | \$1,500 | 90 days | 18 months |
| 10/29/04 | Johnson | 2 nd degree assault & misdemeanor DWI | Weeks | 6 months on DWI | All but 3 days suspended on DWI | \$1,500 | \$1,500 | 90 days | 10 years |
| 10/29/04 | Thomas | | Weeks | 32 months | 14 months suspended | \$10,000 | \$10,000 | Permanently suspended | 3 years |
| 10/29/04 | Smith | | Weeks | 84 months | 28 months | \$10,000 | \$5,000 | Permanently Revoked | 3 years |
| 11/12/04 | Andrews | | Froehlich | 63 days | 30 suspended | \$1,500 | | 90 days | 2 years |
| 11/19/04 | Morris | .210 | Froehlich | 45 days | 40 days suspended | \$1,500 | \$1,500 | 90 days | 2 years |

| DATE FYI Juneau Empire | NAME | CHARGE | JUDGE | JAIL | SUSPENDED | FINE | SUSPENDED | LICENSE | PROBATION |
|---------------------------|---------------|-------------|-----------|-----------|---------------------------|----------|-----------|------------------------|-----------|
| 11/26/04 | Roche-Carlton | Felony | Weeks | 18 months | 14 suspended | \$10,000 | \$7,500 | Permanently Revoked | 2 years |
| 12/03/04 | Quick | .147 | Sivertsen | 90 days | 65 days suspended | \$3,000 | \$2,500 | 1 year | 2 years |
| 12/17/04 | Willis | Felony | Weeks | 3 years | 1 year 225 days suspended | \$10,000 | \$10,000 | Permanently Revoked | 3 years |
| | | | | | | | | | |
| 1/7/05 | Claffin | Felony | Collins | 240 days | 120 suspended | \$10,000 | \$7,500 | | 5 years |
| 1/7/05 | Moy | Misdemeanor | Sivertsen | 240 days | 80 suspended | \$4,000 | \$3,250 | Three years revocation | 4 years |
| 1/7/05 | Wiseman | Misdemeanor | Sivertsen | 70 days | 45 suspended | \$3,000 | \$2,500 | One year revocation | 2 years |
| 1/7/05 | Crowley | Misdemeanor | Sivertsen | 34 days | 30 suspended | \$1,500 | \$750 | 90 days revocation | 18 months |
| 1/14/05 | Rose | Felony | Weeks | 18 months | 14 suspended | \$10,000 | \$10,000 | Lifetime revocation | 2 years |
| 1/14/05 | Williams, Jr. | Felony | Collins | 16 months | 12 suspended | \$10,000 | \$9,000 | Permanently revoked | 2 years |
| 1/14/05 | Lott | Felony | Collins | 20 months | 16 months | \$10,000 | \$9,000 | Permanently revoked | 4 years |
| 1/28/05 | Lofaso | .191 | Sivertsen | 40 days | 34 suspended | \$3,000 | \$1,500 | 90 days revocation | 2 years |

| DATE FYI Juneau Empire | NAME | CHARGE | JUDGE | JAIL | SUSPENDED | FINE | SUSPENDED | LICENSE | PROBATION |
|---------------------------|------------------|--------|-----------|-------------|------------------|---------|----------------------|------------------------|---|
| 1/28/05 | Lemke | .181 | Sivertsen | 46 days | 40 suspended | \$3,000 | \$1,500 | 90 days revocation | 18 months |
| 1/28/05 | Knott | .205 | Sivertsen | 60 days | 54 suspended | \$1,500 | | 90 days revocation | 2 years |
| 1/28/05 | Helart | .185 | Sivertsen | 150 days | 130 suspended | \$3,000 | | One year revocation | 3 years |
| 1/28/05 | Gomez- Olvera | .192 | Sivertsen | 90 days | 70 suspended | \$3,000 | \$3,000 | One year revocation | 3 years |
| 1/28/05 | Hope | .218 | Sivertsen | 46 days | 40 suspended | \$3,000 | \$1,500 suspended | 90 days revocation | 2 years plus guilty of probation violation, 30 days with 3 suspended and additional 2 years probation |
| 1/28/05 | Robinson | | Sivertsen | 90 days | 70 suspended | \$3,000 | | One year revocation | 2 years |
| 1/28/05 | Dusenberry | | Miller | 90 days | 84 suspended | \$1,500 | | 90 days revocation | 3 years |
| 1/28/05 | Ortiz | | Miller | 70 days | 50 suspended | \$3,000 | | One year revocation | 5 years |

| DATE FYI Juneau Empire | NAME | CHARGE | JUDGE | JAIL | SUSPENDED | FINE | SUSPENDED | LICENSE | PROBATION |
|---------------------------|-------------------|-------------|-----------|--------------|------------------|---------|-----------|------------------------|---|
| 1/28/05 | Haltiner | | Miller | 40 days | 30 suspended | \$1,500 | | 90 days | 2 years |
| 2/04/05 | Milton | | Sivertsen | 240 days | 200 days | | \$3,000 | One year revocation | 3 years probation + for probation violations |
| 2/4/05 | Wendling | Misdemeanor | Collins | 12 months | 10 months | \$4,000 | \$4,000 | 4 years | 30 months probation |
| 2/4/05 | Cooper | | Sivertsen | 46 days | 40 suspended | \$1,500 | \$750 | 90 days | 2 years |
| 2/4/05 | Benson of Maui | | Sivertsen | 35 days | 30 suspended | \$3,000 | \$1,500 | 90 days | 1 year probation |
| 2/4/05 | Casey | | Sivertsen | 180 days | 120 suspended | \$4,000 | | 3 years | 3 years |
| 2/4/05 | Manager | | Sivertsen | 33 days | 30 suspended | \$3,000 | \$1,500 | 90 days | 18 months |
| 2/4/05 | Lane | .186 | Sivertsen | 36 days | 30 suspended | \$3,000 | \$1,500 | 90 days | 1 year |

DRIVING WHILE INTOXICATED SENTENCES - PER NOME NUGGET

| DATE Nome Nugget | NAME | CHARGE | JUDGE | JAIL | SUSPENDED | FINE | SUSPENDED | LICENSE | PROBATION |
|------------------------|--------------------|--------|-------|-------------|------------------|----------|-----------|------------------------|----------------|
| 10/7/04 | Aketachunak | | | 90 days | 80 days | \$1500 | \$1,200 | 90 days revocation | Until 9/1/2006 |
| 10/14/04 | Cantrell | | | 60days | 40 days | \$3,000 | \$1,000 | 1 year | Until 10/24/06 |
| 10/21/04 | Tocktoo | | | 30 days | 27 days | \$1,500 | \$1,200 | 90 days revocation | Until 10/12/05 |
| 10/21/04 | Pete | | | 140 days | 120 days | \$,1500 | \$1,200 | 90 days revocation | Until 10/08/05 |
| 11/04/2004 | Nashoanak, Sr. | | | 30 days | 27 days | \$1,500 | \$1,200 | 90 days revocation | Until 10/22/05 |
| 11/11/04 | Otten, Jr. | | | 30 days | 27 days | \$1,500 | \$1,300 | 90 days revocation | Until 10/26/05 |
| 11/11/04 | Smith | | | 60 days | 40 days | \$3,000 | \$2,000 | 1 year revocation | Until 10/28/05 |
| 11/25/04 | Fagerstrom | | | 1 year | 120 days | \$10,000 | \$5,000 | Lifetime revocation | 2 years |
| 11/25/04 | Angi | | | 1 years | 120 suspended | \$10,000 | \$7,000 | Lifetime revocation | 2 years |
| 11/25/04 | Kavairlook, Sr. | | | 30 days | 27 days | \$1,500 | 0 | 90 days revocation | Until 11/8/05 |
| 11/25/04 | Jackson | | | 120 days | 90 days | \$3,000 | \$1,000 | 1 year | Until 11/9/08 |

From: Rep. Norman Rokeberg

| DATE Nome Nugget | NAME | CHARGE | JUDGE | JAIL | SUSPENDED | FINE | SUSPENDED | LICENSE | PROBATION |
|------------------------|--------------------|--------|-------|-------------|-----------|---------|-----------|---------|----------------|
| 12/2/04 | McGuffey | | | 30 days | 27 days | \$1,500 | \$1,200 | 90 days | Until 11/15/05 |
| 12/9/04 | Malewotkuk, Jr. | | | 150 days | 0 | \$1,500 | \$1,200 | 90 days | Until 11/22/05 |
| 12/9/04 | Iyakitan | | | 30 days | 27 days | \$1,500 | \$1,300 | 90 days | Until 11/30/05 |
| 12/9/04 | Wilson | | | 60 days | 40 days | \$3,000 | \$2,000 | 1 year | Until 11/30/05 |
| 12/9/04 | Hoogendorn | | | 35 days | 32 days | \$1,500 | \$1,200 | 90 days | Until 12/1/05 |
| 12/9/04 | Hamilton | | | 30 days | 27 days | \$1,500 | \$1,200 | 90 days | Until 11/29/05 |
| 12/16/04 | Kasper | | | 40 days | 20 days | \$3,000 | \$2,000 | 1 year | Until 12/6/04 |
| 12/16/04 | Hunt, Jr. | | | 40 days | 20 days | \$3,000 | \$2,000 | 1 year | Until 12/2/05 |
| | | | | | | | | | |
| 1/6/05 | Olanna | | | 180 days | 120 days | \$3,000 | \$2,000 | 1 year | Until 12/21/07 |
| 1/27/05 | Wheeler | | | 30 days | 27 days | \$1,500 | \$1,200 | 90 days | Until 1/20/06 |
| 2/3/05 | Tocktoo | | | 120 days | 90 days | \$1,500 | \$1,200 | 90 days | Until 1/24/06 |



National Council on Alcoholism and Drug Dependence
Juneau Affiliate
211 4th Street, Suite #102
Juneau, AK 99801

Phone: (907) 463-3755
Fax: (907) 463-2539
<http://www.ncadd-j.org>
National Intervention Network (800) 654-HOPE

March 3, 2005

Representative Norman Rokeberg
Chairman House Rules Committee
Alaska State Legislature
Juneau, Alaska

Dear Representative Rokeberg:

The National Council on Alcoholism and Drug Dependence (NCADD)- Juneau Affiliate, strongly supports the passage of **HB 136**.

This bill enhances the current structure of therapeutic courts in Alaska by extending the same rights of a successful misdemeanor court graduate to a felony refusal or felony DUI court graduate. This would increase the amount of people able to benefit from therapeutic courts by increasing the pool of applicants and providing larger incentives to participate in these effective and cost efficient courts. It would also decrease the number of drunk drivers returning to Alaska's highways after release from a correctional institution.

Decreasing drunk driving and other alcohol related crimes is a priority for NCADD, especially in a state where the rate at which alcohol kills Alaskans is twice the U.S. average. Drug courts, DUI courts, family care courts, and mental health courts are just a few of the 1600 therapeutic courts currently operating in the U.S. These alternative "problem-solving" courts have proven themselves effective in reducing recidivism for the chronic alcohol or drug dependent offender. They have been so successful that John Walters, the drug czar for the Bush administration, recently came out in favor of them as the most effective way of dealing with this population of offender thus reducing drug crimes. The Bush administration's proposed budget for 2006 includes 70 million for drug/DUI courts, double the current budget. This financial commitment supports the value of these courts to our nation. **House Bill 136** fits very well with the federal commitment.

Thank you for your past efforts and continued support this year.

Sincerely,

Matt Felix, Executive Director



The Alaska Center for Therapeutic Courts

406 G Street, Suite 302
Anchorage, Alaska 99501
Fax: 907-272-1194
wellnessjudge@yahoo.com

A Division of Partners for Progress, Inc.

James N. Wanamaker
Director

Phone: 907-272-1193
Mobile: 907-227-4084

March 2, 2005

Representative Norman Rokeberg
Chairman House Rules Committee
Alaska Legislature
Juneau, Alaska

Fax 1-907-465-2040

Re: House Bill No. 136

Dear Representative Rokeberg:

The Alaska Center for Therapeutic Courts strongly supports the passage of HB 136.

Sections 3 and 6 of the bill will extend the methodology of the Anchorage Wellness Court to include felony DUI and felony refusal cases. The Anchorage Wellness Court has certainly proved itself as a system that should be made available in other parts of the state. Any defendant who completes the 18 months of monitored sobriety and all the strict requirements of the Wellness Court can gain a suspension of 75% of minimum jail sentence and, with this bill, 75% of the minimum fine.

The Alaska public is protected by this system because that defendant who completes Wellness Court has embarked on a life of sobriety and has a wealth of tools to maintain sobriety. This is in stark contrast to the usual DUI defendant who gets drunk and rearrested for DUI within days of release from jail.

Currently, misdemeanor DUI courts are being developed in Ketchikan, Juneau, and Fairbanks. Extending the Wellness Court method to felony DUI and refusal cases will help to increase the volume of defendants who choose to enter these Wellness Court programs, and make more efficient use of public resources.

March 2, 2005

Page 2

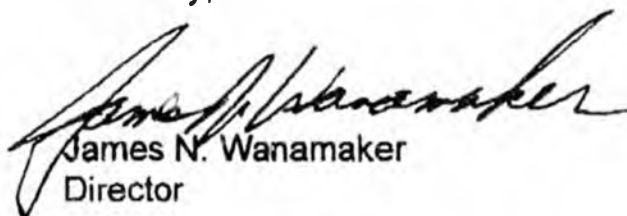
This is an extremely opportune time to expand the DUI Wellness Courts since federal funding is available through National Highway Traffic Safety Administration (NHTSA).

Of a housekeeping nature, are Sections 1, 2, 4, and 5 of the bill which make it clear that the DUI defendant must actually pay the minimum fines set by the Legislature. This would end the minority practice of suspending all or a portion of the minimum fine or offsetting the cost of treatment as a credit against the fine.

The practice of reducing the minimum fine will then be limited to persons who graduate from Wellness Court. The bill increases the permitted offset (for Wellness Court graduates only) to 75%. This is a much smaller number than the whole DUI offender population and will not adversely affect state finances.

Thank you for your constant and effective support of the therapeutic court program. I return from Hawaii to Anchorage on March 9. In the meantime, I am available on my mobile phone (907) 227-4084 (yes, it will ring right through to Hawaii and I would be pleased to receive your call if there are any questions.)

Sincerely,



James N. Wanamaker
Director



MADD

Activism | Victim Services | Education

Mothers Against Drunk Driving
JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

February 25, 2005

Representative Norman Rokeberg
State Capitol, room 214
Juneau, AK 99801-1182

RE: House Bill 136 -An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test;

Dear Representative Rokeberg:

The MADD Alaska Chapters are grateful for your sponsorship of HB 136. MADD is a strong proponent of restorative justice. The Justice System, the offender and the victim/community all play a necessary role in community safety, competency development and accountability.

There is a reason a DUI offender is held responsible for his/her actions. Society demands this of the offender. Accountability is connected to community safety and competency development; without one, the other two are most likely to be ineffective.

There is sensible reason behind the need for comprehensive sentencing. One DUI offender may find the fines deter any future drunk driving while another might discover treatment is the answer. Some discover losing their license an effective consequence and others discover jail is something they never want to go through again. It's important that each part of a DUI sentence be passed down to all offenders because there is no way of knowing which part of the sentence will be the effective tool in preventing future drunk driving.

Unfortunately Alaska has Judges who dismiss all or more than the mandatory minimum fines for many DUI offenders. Financial disclosures do not seem to play a part in the dismissals as MADD volunteers have witnessed dismissals with repeat offenders who own property and have lucrative jobs.

MADD is grateful Rep. Rokeberg is willing to take a stand for restorative justice.

Sincerely,

Cindy Cashen
Executive Director



Sentence Structure

DRIVEN magazine, Spring 2002



The case has gone to trial. The evidence has been presented. Both the prosecution and the defense have rested their cases. The jury has reached a verdict: guilty. Now the critical phase of punishing the defendant begins – the sentencing.

In cases where there's a guilty verdict, the judge is usually responsible for sentencing the offender. While some jurisdictions have mandatory minimum sentences for certain offenses that judges must adhere to or enhance, the judge has considerable discretion over sanctions including confinement, fines, probation, treatment and creative sentencing options.

Judges consider the defendant's background, past offenses, the seriousness of the crime, post-arrest behavior, circumstances of the offense, remorsefulness of the defendant and any victim impact statements. Ultimately, the fundamental question facing a judge is what sanction or combination of sanctions will most effectively reduce or eliminate future criminal activity by the offender.

In the case of driving under the influence (DUI) offenses, rendering punishment that reduces recidivism of drunk drivers is paramount. Currently, almost one-third of all offenders arrested for DUI are repeat offenders, indicating that traditional sentences such as jail time, fines and community service simply are not working. In fact, through its research-based Higher Risk Driver program, MADD advocates sanctions that encompass driving restrictions, community restitution and offender recovery.

One of the most difficult challenges now before the courts is to find the perfect combination of sanctions to reduce the alarming recidivism rate in this country. Fortunately, judges nationwide are rising to the challenge by establishing innovative sanctions and programs designed to reduce the crime of drunk driving. Here are just three examples of the hundreds of passionate judges across the country who are taking the first step.

Each Sentence Is a Work of Art

"DUI cases are the most important cases that judges handle," says Judge William Todd of Rockdale, Georgia. "And those sentences cannot be mechanical; they must be individualized to the offender."

During his 10 years as chief assistant district attorney, Todd saw his share of drunk driving cases. When he took the bench in 1993, he quickly developed a database for himself designed to track his cases and offender data such as the number of DUIs in the defendant's lifetime, number of DUIs in the past five years, crashes, sentence (s) received, location where the defendant was drinking, marital status, type of car the defendant was driving and demographic information. Using this database, Todd looks at trends, tracks progress and identifies problematic patterns. Most importantly, though, the database allows Todd to review the profile of the defendant before him, which helps him create an individualized sentence using a combination of sanctions designed to reduce the recidivism rate for that specific offender.

Todd uses a vast combination of sanctions. Traditional measures such as jail, electronic monitoring, Alcoholics Anonymous meetings, random drug and breath tests, fines, DUI school, treatment, victim impact panels, ignition interlock devices and other vehicle sanctions are used in conjunction with non-traditional sanctions. People who have sold cigarettes to minors have found that they and their families were required to pick up cigarette butts at a park. Those who littered have spent time on the side of the road picking up trash.

However, Todd believes sanctions alone are not the answer. "Both treatment and rehabilitation as well as prompt sanctions are the key," Todd says. "Follow-up is also important. You must enforce the sanctions and hold the offender accountable."

Todd has offenders check in with his court and keeps "steady pressure" on them by having defendants write

essays about their experience and charging offenders for all costs associated with their sanctions. He also works to establish a trust relationship with the offender. "I will try everything I can to turn people around," Todd explains. "This often means changing terms of probation, revoking terms where appropriate, or modifying sentences based on a change in behavior or a change in circumstances."

The numbers show that his program is working. Recidivism rates in Judge Todd's court dropped to half, and last year his court saw a considerable decline in the number of DUIs compared to years past. And since 1997, there have been only two DUI-related deaths in Rockdale County, even with increases in population and in the number of bars in the county. A 1998 study of the Todd program by the National Highway Traffic Safety Administration (NHTSA) found that it was more effective, by a wide margin, than a sentencing program that imposed the minimum sanctions.

Todd encourages other judges to try innovative sanctions and find the right combination for each individual offender. "Each sentence is a work of art," he says. "First you paint the picture, and then oftentimes it needs to be touched up."

Creativity and Consequences

Sentencing takes on new meaning in the courtroom of Judge Ted Poe of the Criminal District Court in Harris County, Texas, in Houston, as one woman convicted of a DUI found out. Poe sentenced her to carrying a placard reading, "I am a drunk driver" outside the Neiman Marcus store where she regularly shopped.

"It was far worse for her to have to carry that sign and face her friends than pay the \$5,000 fine," Poe says. "That woman will never be back in the system because it was far too embarrassing for her."



A judge for nearly 20 years, Poe uses what he calls "hybrid sentencing" — a combination of jail and creative sanctions. "I keep all the options open, from prison to community service," Poe explains. "My philosophy is that the offenders need to do something for the victim, do something for the community and do something for themselves."

Poe is known for his creative sentences. Whether it is sanctioning the offender to make restitution, personalizing the crime or inflicting public punishment, Poe does whatever is necessary to serve justice. "Restitution to the victim can include money for damages or funeral expenses," Poe says. "Offenders can be required to sell their cars, take out loans or get a job to pay the restitution owed." In one case, the offender had destroyed the victim's car in a drunk driving crash, leaving her with no vehicle. Poe required the defendant to turn over his vehicle to the victim in a courtroom ceremony for use until the victim's car was repaired. Poe maintains, "This type of punishment causes shock, thus changes the defendant's behavior."

Another victim-based sanction Poe uses is ordering defendants to erect and maintain markers at the crash site to honor victims. Poe says, "This personalizes the crime for the offender."

Along the same line, Poe requires that a picture of the victim be prominently displayed in the offender's prison cell — a standard part of Poe's sentences in all homicide cases, including those caused by drunk drivers. "This is also designed to change the offender's attitude," Poe explains. "I know it works because defendants are always trying to have [the pictures] removed."

The only time Poe doesn't use this sanction is when he believes the defendant will use the picture as a "badge to brag" — this is especially true with younger defendants.

Poe has found that younger offenders can be harder to reach. But that doesn't stop him from trying and succeeding. Poe recalls one case where a popular 17-year-old high-school senior drove drunk, and crashed into a van, killing two people and injuring another. Poe sentenced the minor to jail and ordered the victims' photos posted in his cell.

Poe also ordered him to attend a work camp for those younger than 27; to erect and maintain a marker at the crash site; to visit and maintain the victims' grave sites, including bringing flowers; to send a check to the victims'

high school as well as his own; to view an autopsy; and to carry a placard at the crash site and at the convenience store where he purchased the beer. The placard read, "I killed two people while driving drunk." Also, as part of the defendant's 10 years of probation, he was ordered to do 20 hours of public speaking a year at area schools about the dangers of underage drinking and drunk driving. Poe mandated that he start at his former high school, where he was once so popular.

That was five years ago. Today, the defendant not only does his annual 20 hours of speaking, he voluntarily dedicates nine months out of the year to speak at schools. In addition, on his own accord, he carries around his placard, which he now views as a public warning rather than a punishment.

Poe doesn't issue his creative sanctions to be cruel. On the contrary, he says, "People must learn that drunk driving is a crime of violence, much like shooting a gun into a crowd of people. Sometimes you hit and kill someone, and sometimes you are lucky. Drunk driving is not socially acceptable and people must learn that."

Poe is a tough judge, and his approach seems to be working. His court has a 20 percent recidivism rate, while the national average for offenders failing to maintain the terms of their probation is about 50 percent. Poe says, "The system must offer consequences. Where judges often fail is in giving lofty probation terms, and when the defendant fails to complete them, nothing happens. The system loses credibility and the probation office is unsuccessful in working with [offenders] because they have lost respect for the system."

Poe believes that through tough and appropriate sanctions, defendants can turn around and become productive citizens.

Empowering Offenders to Change

Similar to Poe's philosophy, Judge Dorothy Baker of the 4th Judicial District in Oregon also focuses on serving justice while enabling offenders to change their behavior. "In order to increase community safety, we as a society need to increase the quality of life for those who threaten our safety, because if you increase quality of life, it is less likely the person will re-offend," Baker says.

MADD Fact:

In 2000, it's estimated that more than 1 million people were arrested in the United States for driving under the influence.

On the bench for more than 20 years, Baker has chosen to work only with drunk driving offenders. And, like Todd, she feels that dealing with offenders needs to be individualized. "Each offender must be individually assessed and monitored closely while they work on their recovery," Baker explains. "By paying attention to each detail in an offender's life and investing time and energy to empower that offender, most can change their quality of life, become vested in themselves and make our communities a better place."

Baker's DUI Intensive Supervision Program (DISP) is one of a kind. The first phase of the program consists of obtaining and maintaining sobriety. The second phase concentrates on quality of life. "My program includes complete behavior modification and is designed to impact all areas of a defendant's life," Baker says.

Defendants voluntarily enter into Baker's three-year program through a plea agreement. Once in her courtroom, defendants discuss their plea, the legal consequences of their actions, their past crimes and the threat they pose to society. Baker then interviews them on a personal level, asking them questions such as: what they think about before they drink; if drinking makes them feel better; if they think drinking alcohol is working for their life; if alcohol is solving problems; and if they feel that there is an underlying problem and what that problem may be. Baker says her philosophy is clear: "Lead the defendant down the path to discover the destructive behavior and then attack the problem causing the drinking."

The conditions of Baker's program are standard. Participants must work a minimum of 35 hours per week, lead an organized, structured life, and have some type of social activity that does not involve alcohol.

Additionally, offenders are required to take polygraph tests, report to their probation officer and have a follow-up meeting with Baker 45 to 90 days after sentencing.

Offenders and their family members also must sign a document stating that there will be only one vehicle per licensed driver in the household, that the keys will be kept from the offender, and that there will be no alcohol or drugs brought into the house.

However, Baker says that absolute honesty is the most important point in the program because it helps offenders regain accountability for their actions. "If an offender violates their probation, they must tell on themselves," Baker explains. "Based on the violation, I modify the terms of the program."

In one case, an offender called Baker to confess he was drinking and that he should be put in jail. The next day in court when he was sober, he protested when Baker modified his probation to include jail. Baker matter-of-factly states, "I was doing what he had asked and sent him to jail."

The numbers testify to Baker's success. In more than three years, slightly more than 1 percent of the participants have re-offended. But it is the gratitude from those who have gone through the program and their families that speaks volumes. Wives call crying to thank her. Parents beg her to take their other children into the program even though no crime has been committed. And, she receives an abundance of appreciation from those who have turned their lives around and graduated from the program.

When asked about the success of DISP, Baker says, "Be dedicated to consistency and work based on that. Any community can create a program like this. All it takes is communication and dedication among the criminal justice community."

Where the justice system has failed to make an impact on drunk driving by rendering standard sentencing, judges nationwide are successfully using personalized programs and creative sanctions. This individualized approach aims to not only punish offenders for their crimes, but to rehabilitate them as well, thus helping to reduce drunk driving recidivism and make the streets safer for everyone. Through the efforts of Judges Todd, Poe, Baker and thousands like them, the criminal justice system is helping to solve the nation's drunk driving problem one case at a time.

This information is brought to you courtesy of Mothers Against Drunk Driving – find us online at <http://www.madd.org/>.

The mission of MADD is to stop drunk driving, support the victims of this violent crime, and prevent underage drinking.



Higher Risk Driver Fact Sheet

Higher-Risk Drivers: The Problem & Proven Solutions

Higher-Risk Driver: MADD defines the "higher-risk driver" as 1) Repeat offenders convicted (conviction is defined as receiving a court-imposed sanction) of a second driving-under-the-influence offense within a 5-year period; 2) High BAC offenders convicted of a driving-under-the-influence offense with a BAC of .15% or higher; and/or 3) Driving-while-suspended (DWS) where the suspension was the result of a conviction for driving under the influence.

THE PROBLEM

Repeat Offenders:

- About one-third of all drivers arrested or convicted of driving under the influence are repeat offenders. These drivers are 40% more likely to be involved in a fatal crash than those without prior DUIs.¹

High-BAC Offenders:

- 58% of alcohol-related traffic fatalities in 2001 involved drivers with a BAC of .15% and above.² These drivers are at least 382 times more likely to be involved in a fatal crash than a non-drinking driver.¹⁷
- During a typical weekend night, 1% of drivers will have a blood alcohol concentration (BAC) of .15 or higher.¹³

Offenders Who Drive on a Suspending License:

- 50-75% of drunk drivers whose licenses are suspended continue to drive.¹⁴
- 32% of suspended second-time offenders and 61% of suspended third-time offenders received violations or were involved in crashes during their suspensions.³
- Generally, unlicensed drivers are 4.9 times more likely to be involved in a fatal crash than properly licensed drivers.¹⁶

Drivers Who Refuse a BAC Test:

- Depending on the state, 3% to 59% of those under suspicion for DUI/DWI refused to take a BAC test.¹⁵
- Not surprisingly, those states that did not sanction those who refuse the test more than those who take the test had higher refusal rates. Also, offenders who refuse the test tend to have higher recidivism rates and more previous offenses.

MADD SOLUTIONS: THE THREE R'S

Restrictions on Driving:

- Restrict vehicle operation by suspending licenses, impounding or immobilizing vehicles, and requiring alcohol ignition interlock devices on offenders' vehicles.
 - Studies show that license revocation laws can decrease fatal late-night crashes by 9%.⁶
 - Interlock systems have reduced repeat DWI offenses among convicted drinking drivers in Maryland⁷, California⁸ and other states^{9,10} by 65% to 90%.

- o License suspension was effective in reducing DWI offenses among convicted drinking drivers in Ohio⁴. After two years, there were lower rates of moving violations and crashes compared with DUI offenders convicted before the law went into effect and this reduction significantly reduced alcohol-related fatalities.
- o Vehicle impoundment has reduced DWI offenses among convicted drinking drivers. First-time offenders who had their vehicles impounded had 25% fewer crashes and repeat offenders had 38% fewer crashes than similar offenders who had access to their vehicles in California.⁵

Restitution Sanctions:

- Require compensation to the community through fines, mandatory incarceration and financial restitution to crash victims.
 - o Community service has little or no impact on reducing recidivism. However, some judges use creative sentencing and restitution sanctions to create more meaning from sanctions.
 - o Fines and court fees can be used to offset the costs of law enforcement efforts to crack down on drunk drivers and to pay the cost of treatment programs. They can also fund special minimum-security facilities for DUI offenders.

Recovery Provisions:

- Promote recovery programs through mandatory alcohol assessment and treatment, intensive probation and attendance at victim impact panels.
 - o Over 70% of DUI offenders have alcohol abuse problems and between 10% and 50% were alcohol dependent.¹¹ Repeat offenders are the most likely to be alcohol dependent.
 - o A 1995 study found that DUI offenders who participated in treatment programs had a 7-9% reduction in recidivism over those who had no treatment.¹²

Citations:

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15. MADD Rating the States 2002 data.
16. Scopatz, R.A., Hatch, C.E., Delucia, B.H., and K.A. Tays. *Unlicensed to Kill: The Sequel*. AAA Foundation for Traffic Safety. January 2003.
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This information is brought to you courtesy of Mothers Against Drunk Driving -- find us online at <http://www.madd.org/>.

The mission of MADD is to stop drunk driving, support the victims of this violent crime, and prevent underage drinking.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 136
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Drunk Driving Treatment Program BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Rokeberg
 Requester _____ Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 |

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

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 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 136.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 3/17/05 2:52 PM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 3/17/2005
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB136-DPS-ASTD-3-18-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title "An Act restricting the authority of a court to suspend RDU Alaska State Troopers
execution of a sentence or grant probation in..." Component AST Detachments
 Sponsor Representative Fokeberg
 Requester House Judiciary Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 |

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FUND SOURCE (Thousands of Dollars)

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| 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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

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|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill will have no fiscal impact on the Alaska State Troopers.

The bill does amends sections of Title 28 and suspends up to 75 percent of the minimum fines for driving while under the influence and refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program.

Prepared by: Lieutenant Todd Sharp Phone 907-269-4532
 Division Alaska State Troopers Date/Time 3/18/05 3:39 PM
 Approved by: Commissioner William Tandeske Date 3/18/2005
 Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 136
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act restricting authority of court RDU Legal and Advocacy Services
to suspend execution of sentence... Component Public Defender Agency
 Sponsor Rep Rokeburg
 Requester House Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | * | * | * | * | * | * |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | * | * | * | * | * | * |

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

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill restricts the court's ability to suspend a minimum fine imposed for DUI or Refusal convictions. It also opens therapeutic courts to felony DUI offenders. Opening therapeutic courts to felony DUI will increase the workload of the Agency. Currently the Agency closes a case after sentencing. The therapeutic court model and "court-ordered treatment" requires a lengthy time in treatment, intensive supervision and monitoring, and frequent court review hearings, often once a week, which significantly extends the life of a case. Requiring attorneys to attend additional hearings in cases, that currently would be closed, will increase the workload of the Agency. It is unknown how many felony DUI offenders would participate in court-ordered treatment programs like "Wellness Court" in Anchorage, if offered, or whether the special court would be a newly established one in superior court, the jurisdiction for felony cases. This bill, if enacted, will have a fiscal impact on the operations of the Agency, but it is not possible to predict with any certainty what that impact would be. Therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division Public Defender Agency Date/Time 3/21/05 8:44 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 3/21/2005
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 136
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An act restricting the authority of a court to RDU Institutional Facilities
suspend execution of a sentence or grant probat ..driving under Component Institution Director's Office
 Sponsor Representative Rokeberg
 Requester Judiciary, Finance Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Travel | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Contractual | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Supplies | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Equipment | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Land & Structures | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Grants & Claims | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Miscellaneous | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-----------------------------|------------|------------|------------|------------|------------|------------|

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

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—Dc 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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 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)

The Department of Corrections does not anticipate a significant fiscal impact with the passage of this legislation.

Prepared by: Sharleen Griffin, Acting Director
 Division: Administrative Services
 Approved by: Portia C.K. Parker, Deputy Commissioner
 Agency: Department of Corrections

Phone 465-4641
 Date/Time 3/21/05 7:01 AM
 Date 3/21/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB136-LAW-CDCO-3-18
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act restricting the authority of a court to
suspend execution of a sentence or grant probation..." RDU CRIMINAL
Component Criminal Justice Litigation
Sponsor Representative Rokeberg
Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | ***** | ***** | ***** | ***** | ***** | ***** |
| Travel | ***** | ***** | ***** | ***** | ***** | ***** |
| Contractual | ***** | ***** | ***** | ***** | ***** | ***** |
| Supplies | ***** | ***** | ***** | ***** | ***** | ***** |
| Equipment | ***** | ***** | ***** | ***** | ***** | ***** |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | ***** | ***** | ***** | ***** | ***** | ***** |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 28.35.030 (Driving under the influence) and 28.35.032 (Refusal to take a breath test) by making it a requirement that a convicted person pay the minimum fine required as a condition of a suspended sentence or probation. The bill also allows the court to forgive 75% of the minimum fine in cases of felony DUI or Refusal if the person has successfully completed an 18-month court-ordered treatment program. The Department of Law believed the provision requiring mandatory fines that could not be suspended was part of HB4 passed three years ago, but an overlooked court of appeals opinion made it possible to suspend the fines. A fiscal note to HB4 provided by this agency was reduced to half of the requested amount, thus we are underfunded for work arising from changes the legislature has made in passing stricter DUI laws in HB4. The change created by this bill will have a fiscal impact on the Department of Law because more trials will likely be required for those who can't afford the

Prepared by: Kathryn Daughhete, Director Phone 465-3673
Division Administrative Services Division Date/Time 3/20/05 12:21 PM
Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/20/2005
Agency Department of Law

FISCAL NOTE

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. _____

ANALYSIS CONTINUATION

minimum fines, or more probation revocations or collection efforts will be required for those who do not pay the fines. However, the exact fiscal impact is difficult to determine.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB136-LAW-C&S-3-18-0
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act restricting the authority of a court to RDU CIVIL
suspend execution of a sentence or grant probation..." Component Collections and Support
 Sponsor Representative Rokeberg
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 28.35.030 (Driving under the influence) and 28.35.032 (Refusal to take a breath test) by making it a requirement that a convicted person pay the minimum fine required as a condition of a suspended sentence or probation. The bill also allows the court to forgive 75% of the minimum fine in cases of felony DUI or Refusal if the person has successfully completed an 18-month court-ordered treatment program. The Department of Law believed the provision requiring mandatory fines that could not be suspended was part of HB4 passed three years ago, but an overlooked court of appeals opinion made it possible to suspend the fines. Passage of this legislation could result in additional revenues collected by the Collections Unit, but the amount is difficult to determine.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 3/20/05 12:19 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/20/2005
 Agency: Department of Law

HB

148

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Nancy Dahlstrom
Rep. Pete Kott
Rep. Les Gara
Rep. Max Gruenberg



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

House Judiciary Committee

Memorandum

To: Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: April 1, 2005

Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 24-LS0449\G, HB 148, incorporating the attached amendment (new CS). The attached language should completely replace the original version of the bill. The bill was passed out of committee today.

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

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

Adopted as JUD CS

DRAFT HB 148

(conceptual)

"An Act relating to human trafficking; and providing for an effective date."

* Section 1. AS 11.41 is amended by adding new sections to read:

Sec. 11.41.310. Human trafficking in the first degree. (a) A person commits the crime of human trafficking in the first degree if the person compels or induces another person to come to this state to engage in sexual conduct, adult entertainment, or labor in the state by force or threat of force against any person, or by deception.

(b) In this section,

- (1) "adult entertainment" means the conduct described in AS 23.10.350(f)(1) - (3);
- (2) "deception" has the meaning given in AS 11.46.180;
- (3) "sexual conduct" has the meaning given in AS 11.66.150.

(c) Human trafficking in the first degree is a class A felony.

Sec. 11.41.315. Human trafficking in the second degree. (a) A person commits the crime of human trafficking in the second degree if the person obtains a benefit from the commission of human trafficking under AS 11.41.310, with reckless disregard that the benefit is a result of the trafficking.

(b) Human trafficking in the second degree is a class B felony.

* Sec. 2. This Act takes effect July 1, 2005.



State of Alaska
Department of
Public Safety

Frank H. Murkowski, Governor
William Tandeske, Commissioner

March 21, 2005

The Honorable Beth Kerttula
State Capitol, Room 430
Juneau, Alaska 99801

Dear Representative Kerttula:

This letter is written in support of House Bill 148 that you have sponsored to criminalize the trafficking of persons by making it an unclassified felony. This will allow for the prosecution of those traffickers in the State of Alaska, complementing existing federal regulations.

I believe this legislation is a step in the right direction to fighting this scourge on society and protecting victims who fall prey to these immoral human beings. I find it appalling that men, women and children are enslaved so others can profit from their misery.

The fourth annual "Trafficking in Persons Report" as published by the U.S. Department of State, reflects the growing concern of the president, members of congress, and the public over the serious human rights, health, and security implications of human trafficking around the world. I think former Secretary of State Colin Powell said it very well when he remarked about this modern-day slavery by asserting, "Together we can bring an end to the shadow (human trafficking) it has cast on too many lives."

Human trafficking cases are among the most labor and time intensive matters brought before the courts. Typically they involve multiple investigating agencies, as well as requiring the expertise of various professionals to deal with the trauma that so many of them have endured.

Hopefully the legislation you've introduced will act as a deterrent to someone or some organization and halt their illicit activities regarding the horrors of human trafficking.

Thank you for your initiative to criminalize this activity.

Sincerely,

A handwritten signature in black ink, appearing to read "William Tandeske".

William Tandeske
Commissioner

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Main Office

130 Seward Street, Suite 209

Juneau, Alaska 99801

Phone: (907) 586-3650

Fax: (907) 463-4493

www.andvsa.org

Sitka Office

P.O. Box 6631

Sitka, Alaska 99835

Phone: (907) 747-7545

Fax: (907) 747-7547

Organizational Members:

Anchorage

AWAIC

AWRC

STAR

Barrow

AWIC

Bethel

TWC

Cordova

CFRC

Dillingham

SAFE

Fairbanks

IAC

Homer

SPWS

Juneau

AWARE

Kenai/Soldotna

Lee Shore Center

Ketchikan

WISH

Kodiak

KWRCC

Kotzebue

MFCC

Nome

BSWG

Palmer

AFS

Seward

SCS

Sitka

SAFV

Unalaska

USAFV

Valdez

AVV

March 15, 2005

The Honorable Representative Kerttula
State House
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Kerttula:

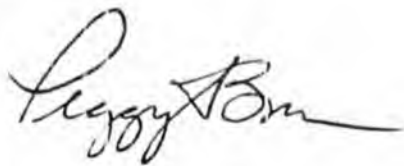
The Alaska Network on Domestic Violence & Sexual Assault (ANDVSA) supports House Bill 148 – An act relating to trafficking of persons. The majority of trafficked persons are women and girls, in particular from developing countries and countries with economies in transition. In Alaska there is an increasing occurrence of trafficking for all forms of exploitation, especially for commercial sexual exploitation, which overwhelmingly affects women and girls.

Many of the women and children that the ANDVSA serves face multiple forms of discrimination, violence and conditions of disadvantage which contribute to their vulnerability to trafficking and violence.

All states have an obligation to exercise due diligence to prevent, investigate and punish perpetrators of trafficking in persons and to provide protection to the victims. Trafficking of persons violates and nullifies the enjoyment of human rights and fundamental freedoms.

Alaska has no particular state law to address trafficking of persons. Alaska must prosecute under federal provisions. This bill provides better protection for the rights of women and girls and effective punishment for perpetrators, through both criminal and civil measures.

Sincerely,



Peggy Brown, Executive Director
ANDVSA

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available for one week.

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HOUSE. We also make individual audio files of each story, labeled the same as the slug for the TV report. These files are available indefinitely.

** If you need an audio file after noontime, look in TV / AUDIO FOR HOUSE **

- For additional information or help please get in touch with:

George Krawciw / 203-4405

Bob Morris / 203-4412

LOAD-DATE: March 11, 2005

131 of 417 DOCUMENTS

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CNN International

SHOW: INSIGHT 11:00 PM EST

March 9, 2005 Wednesday

TRANSCRIPT: 030901cb.k01

SECTION: NEWS, INTERNATIONAL

LENGTH: 3378 words

HEADLINE: Slavery and Trafficking in the United States

BYLINE: Jonathan Mann, Thelma Gutierrez

HIGHLIGHT:

A look at human trafficking and the illegal slave trade in the United States of America.

BODY:

JONATHAN MANN, CNN HOST: The USA's secret slaves. Smuggled into the country and then sold over and over again for sex. An outrage-turned- industry in the land of the free.

Hello and welcome.

There are places infamous around the world for the sex trade and the trade in human beings that are fed into it. U.S. President Bush may have had South Asia or Eastern Europe in mind when he called sex trafficking a special evil, an underground of brutality and lonely fear.

But no one in the United States has to look that far. His country has generated its own terrible underground industry of people held against their will and forced into prostitution. Estimates of the numbers vary widely from a few thousand to tens of thousands.

But the U.S. government has been slow to find them, in part because until recently it wasn't really looking. It's looking now.

On our program today, Thelma Gutierrez follows the journey of tears.

(BEGIN VIDEOTAPE)

THELMA GUTIERREZ, CNN CORRESPONDENT (voice-over): It is a hidden crime.

UNIDENTIFIED FEMALE (through translator): Yes, I believe we were slaves.

GUTIERREZ: From secret residential brothels in the city.

UNIDENTIFIED FEMALE (through translator): RR they wouldn't let us leave or go anywhere.

GUTIERREZ: To brothels in the agricultural fields, women are being bought and sold.

UNIDENTIFIED FEMALE: It is a very lucrative crime and that's why people are willing to exploit other human beings.

GUTIERREZ: It's called human trafficking and only drugs and guns generate more money for organized crime.

Meet Alex.

UNIDENTIFIED FEMALE (through translator): The woman who brought me here told me I would work in a restaurant and I would pay her off with my labor.

GUTIERREZ: Instead, Alex was forced to pay off her debts with her body. We can't show you her face because she is a federal witness in the case against her captors.

UNIDENTIFIED FEMALE (through translator): We were thinking, my God, we're all going to die here.

GUTIERREZ: Alex was smuggled from Mexico through the desert to a house here in Los Angeles, where her dreams were shattered.

UNIDENTIFIED FEMALE (through translator): They didn't tell me what was going to happen. They just told you are going to go with this man.

GUTIERREZ: It was a frightening realization. The restaurant job was a farce. Alex and a dozen others, including two 14-year-old girls, were forced to work as prostitutes.

UNIDENTIFIED FEMALE (through translator): We were working 24 hours. It didn't matter if we were sleeping. They would get us up. If we were hungry, there was nothing to eat. All that mattered was their money.

GUTIERREZ: Sheriff's Deputy Rick Castro (ph) leads a small strike force against human traffickers.

We followed the team as they conduct ongoing surveillance of an agricultural field in the suburbs of San Diego.

Deputy Castro (ph) and Sergeant Marcos Ramirez (ph) told me it is common for traffickers to set up brothels for migrant workers. Here we watch from atop a mountain range.

On this night, our camera captures several people running into the field. Deputy Castro (ph) is an expert on trafficking. He says in the past three years he has noticed a marked increase in traffic victims and they're not easy to identify.

RICK CASTRO (ph), DEPUTY: Unfortunately, when I first started interviewing some of these victims, I didn't know what human trafficking was. And I let a lot of victims -- when I think back, I let a lot of victims go.

GUTIERREZ: It is a transient operation where women are brought to the field. They disappear into a grove of trees. This is where business is conducted, through the bush and on the ground.

UNIDENTIFIED MALE: They're out here in this bush doing it because they have to.

GUTIERREZ (on camera): And if they don't want to or if they try to run away?

UNIDENTIFIED MALE: They'll be dealt with severely by the persons who are basically the ones that we're after.

GUTIERREZ (voice-over): Castro says punishment for running away is brutal.

CASTRO (ph): These girls will get raped violently. They'll get sodomized. Beaten very badly. And in one case specifically I remember that the family was beaten with a clothes hanger for about two hours and just by witnessing this torture for two hours, those girls will have that lasting impression for the rest of their life and they will never, ever go against that trafficker.

HEIDI RUMMEL (ph), ASST. U.S. ATTNY.: The youngest girl at this house was 14 years old.

GUTIERREZ: Heidi Rummel (ph) is an assistant U.S. attorney in Los Angeles.

RUMMEL (ph): October, she had 80 clients. In November, 91. December, 97.

GUTIERREZ: She shows us the journal of a young victim who was forced to prostitute herself here in a house without windows.

(on camera): Why do you think it was important to keep these journals?

RUMMEL (ph): Because the defendant had promised them that when they left he would pay them for the clients they had serviced. They didn't receive money for it time that they were working here.

GUTIERREZ (voice-over): Over four months, the girl was forced to have sex with 274 clients. Her trafficker, Sammy Chung (ph), is now serving 12- 1/2 years in federal prison.

From Texas to New Jersey to California, international trafficking rings have been busted across the country. As of February of this year, the Justice Department has 203 open trafficking investigations.

UNIDENTIFIED FEMALE (through translator): I would get sad at times because I would imagine my dreams escaping like water through my hands.

GUTIERREZ: Alex is convinced that many of the clients knew that she and the others were being forced to sell themselves, but didn't care.

UNIDENTIFIED FEMALE (through translator): To the men, I have so little to say. I hope they will take a step back and think, especially if they have children or daughters. I don't think they would like to see their daughters in those places.

GUTIERREZ: For her traffickers, Alex was a reusable commodity who could be used over and over again, just like the women we see here running across a field on a degrading journey that may have no end.

(END VIDEOTAPE)

MANN: We take a break now. When we return.

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: How horrible. How unjust. And what it does to their lives.

MANN (voice-over): We pick up the trail in the Mexican border city of Tijuana.

Stay with us.

(END VIDEO CLIP)

MANN: The Mexican border town of Tijuana has a reputation in the United States as a city of easy morals and illicit entertainment. Prostitution is legal there, as it is in much of the country, and Americans only have to take a short drive to find the things they're denied back home.

Welcome back.

The Tijuana border crossing is one of the busiest in the world. The vast majority of the people and the business moving north and south are law abiding, but Tijuana is also a transit point for some of the victims of sexual slavery in the United States.

Once again, here's Thelma Gutierrez.

(BEGIN VIDEOTAPE)

GUTIERREZ (voice-over): His voice echoes through this neighborhood in Tijuana, Mexico. It is a song without words. Only melancholy, haunting song from a child who was once bought and sold.

Tijuana sits on the United States-Mexican border. On the weekends, Americans flock here to party. Just five blocks away is a dark side few outsiders have seen. This is what police call the tolerant zone. It is a maze of dark alleys lined with small bars and young prostitutes.

In this zone, prostitution is legal, but sex workers must be at least 18. Many don't look a day over 15, and some maybe even younger than that.

UNIDENTIFIED FEMALE (through translator): I don't like it, but what can I do. I started this a year ago, when I was 17.

GUTIERREZ: It's hard to know just how old this teenage prostitute really is because they all say they're at least 18.

We can't show you her face because she'd be in danger from the men who control this zone and who enforce strict discipline on the young prostitutes who work for them.

The teenager says she was lured to the border from another state in Mexico and that she's doing this to earn money to send to her family. Trafficking experts say young women like her would be over more profitable commodities in the United States.

UNIDENTIFIED FEMALE (through translator): I've had guys ask me to go with them. I would like to leave here if I could. Some people have even tried to take me to the United States.

GUTIERREZ: This is how international traffickers lure young women into the underground world of sex slavery, where they might disappear forever.

CHARLES SONG, COALITION TO ABOLISH SLAVERY: People will be promised different jobs or different opportunities to come here to the United States or they will actually be literally kidnapped and forced to come over here.

GUTIERREZ: Federal authorities say Mexico is predominantly a source country,

where human beings are found, bought and sold by traffickers. According to CIA estimates, nearly 18,000 people are trafficked into the United States each year. One-third are from Latin America and no one knows how many are minors.

'UNIDENTIFIED FEMALE: They range from ages 14 to 18 and maybe younger. They've got a lot of makeup on (UNINTELLIGIBLE).

GUTIERREZ: Marissa Barber (ph) is a human rights activist who works with other groups to protect the most vulnerable, treat children who work in the sex trade.

MARISSA BARBER (ph), HUMAN RIGHTS ACTIVIST: They have no place to go, so they roam the streets. They do survival sex. They do other things that you don't want to mention. They don't do them because they're bad, but because it is a need.

GUTIERREZ: The main thing children need is a place where they can feel safe.

JORGE BADOYA (ph), SHELTER DIRECTOR: This is the sleeping area. We have three sleeping areas.

GUTIERREZ: We were granted rare access to this government-run shelter in Tijuana, where sexually exploited boys are counseled, educated and given a second chance at childhood. Jorge Badoya (ph) is the director.

BADOYA (ph): We are most of the time full because we have the problem with street children.

GUTIERREZ: It was here at this shelter where I first met the boy with the voice who sings songs that only have meaning to him. We'll call him Tomas.

TOMAS, VICTIMIZED CHILD (through translator): When I sing, I forget everything, all the hurt, the rejection and the abuse. I express my feelings by singing.

GUTIERREZ: Tomas also expresses his feelings by writing. He showed me his journal. Inside, the tragic story of a mother who did not want him and a life of abuse that led him to the streets when he was only 11.

TOMAS (through translator): My mother and stepfather threw me out of the house. I was crying on the street, and a man came and took me home.

GUTIERREZ: Tomas ran away from a series of child molesters until one day he says he met a woman with whom he thought he'd be safe.

TOMAS (through translator): The woman took me home with her and fed me. Within a week, I learned it was a brothel. I had nowhere to go, so I stayed there. The woman gave me things. In exchange, I had to prostitute myself.

GUTIERREZ: Tomas says he was forced to wear makeup and dress as a girl for clients, some of whom were American men.

He says he lived this twisted existence for four years as a child prostitute, until he learned he was about to be trafficked.

TOMAS (through translator): I found out they wanted to sell me to a person. He offered to buy me, but I said no.

GUTIERREZ: This time, when he ran away he managed to find his way to Jorge's shelter.

Sister Dora (ph) says there is no shortage of exploited children in her shelter either. She bought it and runs it with money she made in California real estate.

This was a socialite who once owned beachfront property in San Diego and 120 pairs of designer shoes, a far cry from how she lives now.

She has space for six kids, but 16 live here.

SISTER DORA (ph), SHELTER DIRECTOR: We actually are hoping and started praying for a center that would house as many as 80 to 100 children.

GUTIERREZ: Sister Dora (ph) says it was a calling from above that compelled her to dedicate her life to the children and her own money to pay tuition so that each one can go to school. For many here, it is the first time in a classroom.

She says every boy and girl here has a story of heartache and stolen innocence, stories she's heard for 10 years.

SISTER DORA (ph): And I cannot fathom or even understand how anyone man, whether it is your child or your present wife or what, that you would violate them. I cannot understand that, and it just breaks me up terribly. How horrible. How unjust. And what it does to their lives. They're just absolutely in shambles, and this is why we have so many that do attend, go into prostitution for that reason. They say, well, I'm not worth anything.

GUTIERREZ: In the tolerant zone, child prostitutes learn the tragic lesson: that the value of their lives is ultimately measured in the desires and wallets of strangers.

(END VIDEOTAPE)

MANN: We take another break, and then.

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: It's a hugely profitable industry, the selling and buying of human beings.

MANN (voice-over): A glimpse elsewhere inside America's forced labor trade.

Stay with us.

(END VIDEO CLIP)

MANN: Most Americans never expect to meet a slave. They probably don't know where to look. The U.S. government says that it's a relatively rare phenomenon, but in some of the country's largest cities, on its farms, in all kinds of businesses and in private homes, there are people who are forced to work against their will.

Welcome back.

The immediate threat of punishment isn't the only thing that keeps slavery secret. Sometimes victims don't turn to U.S. authorities for help because they're afraid of being deported, and maybe even punished when they get back home.

The United States now has a special visa that gives trafficked people the same rights as refugees, temporary legal residence, and then a chance to stay for good. Even so, it is a problem across the country.

One last time, here's Thelma Gutierrez.

(BEGIN VIDEOTAPE)

GUTIERREZ (voice-over): From New York to Los Angeles and most every major city in between, a secret labor force is hard at work.

In the fields, garment shops, restaurants and even in some homes. We're not just talking about undocumented workers.

DAN STORMER, CIVIL RIGHTS ATTNY.: Slavery is alive and well. Trafficking in slaves is alive and well.

GUTIERREZ: We're talking about modern-day slaves, living and working in this country without pay and against their will.

UNIDENTIFIED FEMALE (through translator): For example, my experience was really hell.

GUTIERREZ: 47-year-old Tan Lyn Campi on (ph) is a mother of two from Thailand.

UNIDENTIFIED FEMALE: I was a slave to my traffickers.

GUTIERREZ: Nanette Louise (ph) is a mother of three from a small village in the Philippines. Both struggled to eke out a living in their own countries, but like so many others who live in poverty, Nanette (ph) and Tan Lyn (ph) were easy targets for traffickers looking for slave labor, and this is their story.

UNIDENTIFIED FEMALE: Because my family is poor, right, they wanted to make money and then they wanted to take care of my son and my children and make them happy.

GUTIERREZ: Tan Lyn (ph) dreamed of giving her kids the education she never had and believes the only way was to leave Thailand and everything she loved behind.

UNIDENTIFIED FEMALE: When I want a job and want to make money.

GUTIERREZ: So when this woman, Silvawan Verapol (ph), a Thai socialite living in the United States, offered Tan Lyn (ph) a job in a restaurant in California, she thought her prayer were answered.

UNIDENTIFIED FEMALE: Tell me, if you want to come back to Thailand, you work for me like four years.

GUTIERREZ: Tan Lyn (ph) didn't understand what she was in for until she landed in Los Angeles with no money and no friends. Silvawan (ph) even took her passport away.

Tan Lyn (ph) says she was forced to work around the clock seven days a week.

UNIDENTIFIED FEMALE: I worked like an 18 hour or 19 hour day.

GUTIERREZ: When her day ended at the Thai restaurant, her second job would begin at Silvawan's (ph) home, where Tan Lyn (ph) and seven other Thai women worked as house servants.

She says she will never get over the humiliation she felt when Silvawan (ph) forced her to serve meals and perform other chores on her hands and knees as a sign of submission. And then there was the broken dreams.

UNIDENTIFIED FEMALE: I come here, everything I pay.

GUTIERREZ: Tan Lyn (ph) hoped to send money home to her children, but her salary was only \$240 a month. From that, all of her living expenses were deducted, leaving her with nothing. When she complained or talked about leaving, she says she was threatened.

UNIDENTIFIED FEMALE (through translator): If I run away and tell the police, my family will suffer.

GUTIERREZ: And so she kept silent for nine long years without seeing her children. Until one day she and another woman escaped. That's when the FBI and immigration authorities got involved.

Nanette Louise (ph) was a teacher in a rural village in the Philippines. She thought she was coming to the United States to work as a travel companion to an elderly woman. Instead, she says, she ended up in Los Angeles, working here, in

the home c. then Sony executive Judd Jackson and his wife, Beth, whom she was to refer to as Sir Judd and Ma'am Beth.

UNIDENTIFIED FEMALE: I started to work at 5:30 to 8 or 10 at night.

GUTIERREZ: Nanette (ph) says the Jacksons had strict daily, weekly and biweekly schedules for her to follow, which included meticulous care of the couple's two dogs, Andrew and Stella.

UNIDENTIFIED FEMALE: I had to brush the dogs teeth, clean their ears and even give them vitamins every day, but I was forced to sleep on a dog bed.

GUTIERREZ: Nannette (ph) says she slept on the floor of this dining room and because her passport was taken she couldn't escape. She said she was charged room and board, and by the time her living expenses were deducted, she had nothing. And she claims on several occasions she was hit.

UNIDENTIFIED FEMALE: Follow my instructions. I follow the instructions, but she just hit across face and across my mouth.

GUTIERREZ: A neighbor finally called the police. No criminal charges were filed against the Jacksons, but civil rights attorney Dan Stormer filed a civil law suit against them.

STORMER: The Jacksons have stature within the community. I mean, this is a man who is vice president of corporate legal affairs for Sony. The jury found under the laws of this country that she had been held, falsely imprisoned, held as a slave, and her rights violated.

GUTIERREZ: After the verdict, Judd Jackson was let go from his job at Sony. Neither of the Jacksons agreed to be interviewed for this story, but their attorney, Jack Daniels (ph), says his clients never physically abused Nanette (ph).

JACK DANIELS (ph) ATTNY.: She certainly wasn't an indentured servant. She had free access to leave anytime she wanted to. All she had to do was walk out the front gate and turn a knob.

GUTIERREZ: In the 12 months and 3 weeks she worked for the Jacksons, Nanette (ph) says she was paid \$300. At trial, the jury awarded her \$825,000 in damages.

As for Tan Lyn (ph), her trafficker, Silvawan Verapol (ph), is serving an 8-year sentence in federal prison for harboring illegal aliens and violating involuntary servitude laws.

Tan Lyn (ph) now has a real restaurant job and she's able to send money home to her family.

UNIDENTIFIED FEMALE: I wanted everything like American people.

GUTIERREZ: As for the dream that she could one day educate her children.

UNIDENTIFIED FEMALE: I love America.

GUTIERREZ: She did it. By scraping together meager funds, she managed to send her daughter, Pin (ph), to a university in Thailand and now the little girl Tan Lyn (ph) left behind years ago is the first in her family to become a university graduate, a very American dream come true.

(END VIDEOTAPE)

MANN: And that's INSIGHT for today. I'm Jonathan Mann. Before we go, a reminder that we like to hear from you. We'd like to hear your thoughts on the program you've seen or the topics we've covered. Send them to INSIGHT@CNN.COM, once again INSIGHT@CNN.COM.

For now, the news continues, here on CNN.

Excerpt of a draft of a book Professor Sutapa Basu is currently writing. It was given to the Committee by permission of the author. Please do not copy.

Sutapa Basu, PhD

Director, University of Washington Women's Center

Adjunct Professor, Women's Studies, University of Washington

Introduction

This chapter will begin with an introduction and background of the human trafficking of women and the matchmaking industry, specifically in the United States. Current U.S. trafficking policy and its implementation will also be discussed. Additionally, information on how best to assist women survivors of trafficking via policy expansion and coordination of service organizations, authorities, and government will be included.

An Overview of Trafficking

The Trafficking Network

Simply put, human trafficking, or modern slavery is the international and domestic transport of human beings solely for the purpose of their exploitation. Though trafficking affects both men and women, the vast majority of trafficking victims are women and children, under the age of twenty-five.¹ Most often, the countries of origin of trafficking victims, commonly known as sending countries, are economically troubled areas including Asia, Africa, Eastern Europe, the former Soviet Union, and Latin America. Traffickers of these women and girls exploit them physically for domestic labor or sexual services, while taking advantage of lax laws and corrupt officials surrounding the

¹ Miko; Gender Matters Quarterly

business of human trafficking. A number of human rights organizations work to raise awareness about the issue of human trafficking. Governments are also beginning to acknowledge that trafficking is a human rights violation and are beginning to create laws to protect survivors and raise awareness among potential victims.

As borders become increasingly permeable, and cyberspace continually facilitates human availability, the scale of the international trade in people has skyrocketed. Trafficking in women and girls is now the third largest grossing sector of international organized crime, surpassed only by drugs and arms.² According to United Nations' calculations, the profits of the trafficking industry may have even surpassed the trade in illegal weapons, generating profits of over nine billion dollars annually.³ Worldwide, at least four million people are victims of human trafficking each year, or one person every thirty seconds.⁴ It is estimated that "every ten minutes another human being is trafficked to the United States for slavery—a total of 45-50,000 women and children each year," *not including men.*⁵

A common scenario starts with a naïve and desperate young woman attempting to escape bleak employment prospects at home. She receives offers for good wages, and "legitimate" work abroad as a waitress, dancer, or secretary from traffickers posing as "employment brokers." Instead, she is unknowingly selling herself into virtual slavery. She will end up working as a domestic servant, or in a sweatshop, or in the sex industry.

² UN Congressional Research Service

³ ~~Kanics, Foreign Policy in Focus~~ (seven). Freedom network conference literature

⁴ UN; USCRS (one) *ibid*

She will be forced to pay off exorbitant travel debts to her traffickers for smuggling her into the country. As most other trafficked women she might find herself confined to her place of employment, forced to work almost continually, and denied wages. For example, for years a complex trafficking ring "lured young women from Asia with the promise of a better life in the United States, only to make them virtual sex slaves in brothels in Seattle and Portland."⁶ "Brokers" would sell temporary or student visas to young women seeking better economic opportunities. Upon arrival in the U.S., the women were forced into prostitution in order to repay their "debt."⁷ In September 2002, after a 2-year investigation, the Federal Bureau of Investigation broke up the ring.

Though many women enter the trade voluntarily, too often they are unaware of the nature of the work they will be performing. In a recent study of child prostitutes in Thailand, "several girls who said they knew they would be working as 'prostitutes' thought that the term meant wearing Western clothes and working in a restaurant."⁸ Another scenario is women's participation in the flourishing matchmaking industry. This common and socially accepted form of trade in women is not considered by many governments to be trafficking, despite the fact that women are regarded as commodities and that the system is widely abused.

One of the main causes of the current upsurge in trafficked women is global economic liberalization. It has exacerbated the economic and social stability of women worldwide,

⁵ freedom network conference literature

⁶ http://seattlepi.nwsourc.com/prnter2/index.asp?plc=b&refer=http://seattlepi.nwsourc.com/local/87681_fb19.shtml

⁷ ibid

especially in developing countries. The United Nations Development Fund For Women lists the following information as how women are impacted by globalization.

By definition, trade liberalization seeks to create a level playing field on which economies at different levels of development can compete by reducing tariff and non-tariff barriers. However, longstanding power imbalances between nations and among men and women have translated into uneven patterns of growth and heightened inequality. Women - especially poor women - have unequal access to resources such as land, credit and education. This in turn makes them the least able to benefit from trade liberalization and the most likely to suffer from the adjustment costs of trade reform and economic restructuring.⁹

The inability of women in their home, or sending countries to find economic advancement opportunities with which to support their families is another cause to their complicity in the trafficking industry. The native countries of most of these women are usually those in economic and social transition, suffering from high levels of poverty and unemployment. *Many times this has little to do with educational level as the 36.8 percent of Philippine women who are involved in reproductive labor or in the "tourist industry" have obtained college degrees.* For example, studies show that between 70 and 80 percent of the unemployed workers in the Russian Federation, a major source of trafficking victims, are women.¹⁰ Elene Penttinen, highlighted in her paper "Globalization, Bio-power and Trafficking in Women" that women who can no longer support themselves or their family join the global sex trade "tak[ing] on the opportunity of international prostitution and thus using their bodies as means for exchange, rather than remain in a place where there are few prospects of making a living."¹¹ Penttinen contends that "this can be seen as a form of structural violence taking place, that in a

⁸ Unifem Bangkok, as quoted in Basu, 2001.

⁹ http://www.unifem.org/economic_security/gender_trade.html

Chang, Kimberly and Ling, L.H.M. "Globalization and its Intimate Other."

Gender and Global Restructuring. Marchand, Marianne and Anne Sisson Runyan Eds. Routledge, London and New York: 2000

¹⁰ <http://usinfo.state.gov/topical/global/traffic/report/chapt13.htm>

situation of impoverishment and unemployment women are 'forced to choose' their own sexual exploitation (Doezema 1998)."

The ways in which women and girls fall victim to trafficking vary in relation to many factors, including nationality, educational background, and employment circumstances in their country of origin. While many women are enticed by misleading or blatantly false advertisements, others are "bonded" or sold into indentured servitude by family members for financial gain. Some families are unaware of the nature of the service, clinging to the potential for riches gained through legitimate employment.

Although it is a commonly held belief that all trafficked women are forced into the sex trade, this is not wholly true: in actuality, domestic servitude is an equally as common type of slavery for these women. "Indentured servitude is in part spawned by the high cost of gaining entry into the United States, with trafficked persons from sending countries often paying up to \$50,000 to smugglers. Since few workers from developing nations can afford such fees, immigrants will often agree to work off their smuggling debts over a period of years."¹² In a case that exemplifies this trend, Saieo a 59 year old cook from Thailand, was brought into the US and enslaved for five years by Supawan Veerapol, a wealthy Thai restaurant owner in Los Angeles. She was forced to work from 12 to 20 hours a day, seven days a week, made to sleep on the floor of a closet-size utility

¹¹ http://www.csun.edu/~jggd00/IPSA_Quebec_papers/IPSAPenttinen.doc

¹² Slave trade still alive in U.S. - Exploited women, children trafficked from poorest nations by Erin McCormick And Jim Herron Zamora, San Francisco Examiner, February 14, 2000

room where Veerapol kept her washer and dryer, and denied any medical care. It was not until her employer was tried and convicted on charges of indentured servitude in 1998 that she was finally freed.

Despite increasing global attempts to monitor and curb the trafficking trade, authorities have been largely ineffective in dealing with the problem. According to Human Rights Watch, "although trafficking in women and girls has become a lucrative and expanding cross-border trade, it routinely escapes effective national and international sanctions."¹³ Also, current laws regard trafficking largely as a migration issue and do nothing to help trafficking victims. The legal context of migration cannot give full justice to the nebulous crime of trafficking. Traffickers are not given proper punishment for their crime.

An alarming example is the case of Lakireddy Bali Reddy from Berkeley, California. One of the Bay Area's wealthiest landlords with a fortune estimated at \$70 million, he was able to abuse the law and helpless immigrants.¹⁴ Between 1986 and 2000 Reddy and his family members smuggled poverty stricken girls, men, and women from their hometown of Velavadam, Andhra Pradesh, India.¹⁵ Upon arrival the victims worked virtually as slaves or indentured servants in Reddy's buildings and restaurants. In addition to their domestic work, the teenage girls, as young as thirteen years old, were forced to sexually service Reddy. Reddy was caught in 1999 when authorities discovered

¹³ HRW, Global report on Women's Human Rights, 198.

¹⁴ State dept, 70million-rediff

¹⁵ <http://www.asata.org/about/reddy.htm>

2 unconscious Indian girls, brought to the U.S. for labor and sex, in his apartment building suffering from carbon monoxide poisoning.¹⁶ Tragically, 17 year old Chanti Prattipati, one of the 2 girls, died. It was later discovered that she was in the early stages of pregnancy with Reddy's child. In 2001 Lakireddy Bali Reddy was sentenced to 8 years in federal prison, forced to pay \$2million in restitution to the victims, and register in California as a sex offender.¹⁷

Reddy was able to exploit, degrade, and victimize these girls, women, and men through abuse of laws, social and cultural norms, and power structures. He is a member of India's most powerful castes and "virtually owns" his hometown where he has built schools and invested millions of dollars.¹⁸ Reddy's clout in Velavadam enabled him to easily take advantage of the local people who were desperate to escape the poverty and lack of opportunity in their village.¹⁹ He was able to traffick people using his resources and contacts to produce fraudulent visas.²⁰ The people that he trafficked were helpless to do anything about their situation once in the U.S. Most of them did not speak English, and were reluctant to report Reddy because they did not want to reveal their falsified immigration documents.²¹ It is also important to note that when Reddy was prosecuted

¹⁶ Rediff

¹⁷ <http://www.oig.dol.gov/public/media/oi/lbreddy.html>

¹⁸ <http://www.prostitutionresearch.com/mills-trafficking.html>

¹⁹ <http://www.prostitutionresearch.com/mills-trafficking.html>

²⁰ <http://www.oig.dol.gov/public/media/oi/lbreddy.html>

²¹ <http://www.prostitutionresearch.com/mills-trafficking.html>

by the government, his charges consisted of mostly illegal immigration and fraud as opposed to exploitation.²²

Another example is the experience of Helen Clemente, demonstrating how legally framing trafficking as solely a migration issue re-victimizes the victim. Clemente was brought illegally to Washington State in 1990 from the Philippines by a retired police officer Eldon Doty and his wife Sally to work as their servant. The Doty's were able to bring Helen Clemente to the U.S. by manipulating laws: they arranged a sham marriage between Clemente and Eldon Doty that enabled her to immigrate here. The Dotys had divorced to allow Eldon to marry Clemente, but Eldon and Sally continued to live as man and wife. When Clemente ran away after nearly three years of servitude, the Dotys worked with the INS to deport her in exchange for de facto immunity. Clemente, who was granted permission to remain in the U.S. while her case is pending, has been fighting a difficult, precarious legal battle. She has courageously rebuilt her life, re-marrying, and is raising two daughters. However, she still faces the possibility of deportation. The Doty's have never been prosecuted for their abuse of the law and exploitation of Helen Clemente.

Additionally, there are many instances outside of the U.S. that reveal the negative consequences of framing trafficking as a migration issue. A recent study of Eastern European women working within Israeli prostitution rings demonstrated this trend: the victims were freed from bondage only when their place of business was raided by local

²² <http://www.asata.org/about/reddy.htm>

authorities. The trafficked women were then imprisoned as illegal immigrants and charged with prostitution; bail was then set and paid by their employer, relinquishing them back into the hands of their perpetrators.²³ In too many similar scenarios, the women involved are treated as criminals rather than as victims. Similarly, until the late 1990s, Vietnam did not recognize trafficking as a legislative issue, and a harsh crackdown on prostitution meant that women trafficked into Vietnam's sex trade were considered guilty.²⁴ In such situations trafficked women are often reluctant to seek help or approach the authorities.²⁵

Despite the fact that trafficking in women is a worldwide epidemic, legislation to punish traffickers or to protect victims is rare. This is due, in part, to the fact that government officials and law enforcement officers often facilitate the trafficking process, as the recipients of bribes to ignore the crime or to help falsify documents. Human Rights Watch goes so far as to say that, "without such corruption and complicity on the part of state officials, trafficking could not thrive."²⁶

The Matchmaking Industry

There is another kind of trade in women that is not always recognized as trafficking: the matchmaking industry.²⁷ Catalogues and internet sites list women and girls advertising

²³ *ibid.*, NYT

²⁴ Mekong Sub-Region Needs Assessment (23)

²⁵ Kanics.

²⁶ Human Rights Watch, <http://www.hrw.org/women/trafficking.html>

²⁷ The Match Making Industry is also known as the Mail Order Bride Industry

for foreign husbands. Women are sorted by national origin, and listed with names, photos, and measurements—so men can pick them out by the color and size they desire, as if they were choosing a shirt to buy. For a fee, men can obtain addresses and begin correspondence with the potential brides. Some girls as young as 13 years old have been advertised in such catalogues, and a considerable proportion of them are aged 15 to 18.²⁸ The majority of these women are from Southeast Asia, although an increasing number come from Eastern Europe and the former Soviet Union. Like other trafficked women and girls, they are motivated by the desire to escape bleak economic conditions, and they view marriage to a Western man as a ticket out of their desperate situation at home.

Women participating in the matchmaking industry are advertised as being more traditional, feminine, and submissive than the majority of Western women. In addition, “the multi-million dollar mail-order bride business ... frequently uses marketing techniques that reinforce racial stereotypes.” (Vergara, 1551, *Northwestern University Law Review*; 2000) They are also promoted as being willing to marry men much older than they are—the typical woman from the matchmaking industry is 10-20 years younger than her Western husband.²⁹ The men who make use of matchmaking services are white, financially successful, and politically and ideologically conservative.³⁰ Gary Clark, the author of “Your Bride is In the Mail,” showcases the motivations of these men when he writes, “what [we] want is a woman who will be a more traditional kind of wife...because of the confrontational chip-on-the-shoulder attitudes held by so many of

²⁸ Hughes, *Sisters and Daughters Betrayed*

²⁹ Hughes, *Scholes*

³⁰ *Scholes*.

today's feminism-influenced American...women." The desire for a submissive, dependent wife is what prompts these marriages.

Why are women from the matchmaking industry at risk? Since many of them do not speak English well, and do not have a support system in their new country, they find themselves in a vulnerable position where the husband can freely abuse his position of power and dominance. *The women are dependent on their husbands in regard to their immigration status, due to the conditional basis of their resident status and the fact that they must jointly file for the removal of the conditional status.* (Vegara, 1552)

Academics studying the matchmaking industry conclude that there is a disturbing potential for domestic abuse, including rape and battering. The potential for abuse is stronger if the bride does not live up to her husband's expectations, if she refuses to perform sexual services he demands, or if she becomes more independent as she accustoms herself to her new country, no longer conforming to the expected role of docile and submissive wife. *This is compounded by the fact that since the husband has purchased his wife, there is the belief that he owns her.* (Vegara, 1558) Women from the matchmaking industry also have limited access to health services due to language and cultural barriers.

The Philippines is a major source of women participants in the matchmaking industry. One reason is that structural adjustment programs have resulted in a much lower demand of migrant Filipino men's labor. Therefore, in order to maintain the survival of their family, Filipino women are filling the gap, and one route is through joining the

matchmaking industry.³¹ According to Aida Santos chapter "The Philippines: Migration and Trafficking in Women," "many Filipino brides have admitted that marrying foreign spouses assures them of a more materially comfortable life overseas, not just for themselves but also for their families of origin. They expect that their husbands would understand the Filipino culture of married children helping out their elderly parents and siblings who are in less fortunate circumstances."

However, media representation of the industry and the women involved often obscures the complexity of the issue. The topic of the mail order bride industry gained attention in the Canadian press due to a court case involving a 68 year old man and his 23 year old wife. His attempt to obtain a "virgin homemaker," failed to provide him with the compliant wife that he desired. After showing no interest in sex, his wife left him six months later and sued for support and won 10% of the family assets valued at \$186,000. ("Mail-order love backfires: 68 year old man ordered to pay support." The Edmonton Sun: July 11, 1999.) The article portrayed the man as misguided and the woman as subtly manipulative and dishonest. Recently Hollywood entered the discourse with the production of "Birthday Girl," a film about a lonely, English banker who orders a bride from Russia. The woman is a con artist who works in conjunction with her boyfriend and brother to rob unsuspecting men out of their fortunes. With these images being promoted, the real crimes of abuse, imprisonment, and indentured servitude become lost.

In the U.S., there have been several high-publicity cases of domestic violence and even murder in such marriages. Such a case recently came to light in Seattle. Anastasia King, a young bride through the match making industry from Kyrgyzstan, was a student at the University of Washington. A vibrant twenty-year old who dreamed of earning a degree

³¹ 11, raymond

in business, Anastasia came to the United States by becoming the wife of a man nearly twice her age, who had already divorced a previous mail-order bride. In autumn 2000 she was murdered. Her body was wrapped in a dog blanket and buried in a shallow grave near the Tulalip Indian Reservation. According to court documents, Anastasia was taking steps to obtain a divorce because of domestic violence. Her husband Indle King, who has since been charged with her murder, apparently started looking for a third wife through the matchmaking industry as early as summer 2000.

After the death of Anastasia King, several women married through the matchmaking industry have come forward to me in my capacity as Director of the University of Washington Women's Center. Although all of them relayed the same story of a life filled with abuse and fear, they were reluctant to seek out help. This was in large part due to the Russian Mafia's involvement in trafficking. If any of them were to leave their husbands the mafia would threaten their family. These women felt trapped and hopeless. Stories like Anastasia's and of these other women remind us of the potential cost of this trade in women, whether it takes the form of illegal debt-bondage trafficking or through the legal matchmaking industry.

Dangers of Trafficking Industry: Risks and Health Consequences

Trafficking and Gender-Based Violence as Public Health Issues

Governments and international organizations have begun to acknowledge the human rights abuses caused by trafficking. However, the health consequences of the problem

not fully recognized. It is necessary to place more of an emphasis on the public health dimension of the trafficking for the following reasons. First, a public health focus helps make the costs of this illegal but profitable trade more visible. Also, there is a pressing need for more intervention and services to deal with the health problems of trafficked women and children. Finally, by reconceptualizing trafficking as a public health issue as well as a human rights violation, another platform for action against the trafficking trade is created.

In the campaign against violence against women worldwide, scholars and activists have increasingly pointed out the health consequences. According to a World Bank Report, "gender-based violence...is a profound health problem across the globe...although gender violence is a significant cause of female morbidity and mortality; it is almost never seen as a public health issue."³² The World Health Organization (WHO) calls violence against women "a priority health issue" and points out that on a worldwide basis, violence against women "is as serious a cause of death and incapacity among women of reproductive age as cancer, and a greater cause of ill-health than traffic accidents and malaria combined."³³ Yet relatively little attention has been paid to trafficking in this context. Although WHO includes "trafficking in women [and] forced prostitution" among the forms of gender-based violence, the focus of most of the work on this issue appears to deal with domestic violence, female genital mutilation, and rape. This approach to gender-based violence must also be applied to the specific health

³² Violence Against Women: The Hidden Health Burden (ix)

³³ WHO Violence Against Women report.

consequences that result from the abuse of women in trafficking, especially in the sex trade

Health Risks of Trafficked Women

Trafficked women and girls, particularly those who work in the sex trade, face damage to their physical and mental health. In addition, the sex trade is a growing sector for the transmission of HIV/AIDS. Trafficked women and girls are probably more at risk for contracting the virus, as well as other sexually transmitted diseases, than other sex workers. Trafficked Nepali women make up about half of the 100,000 brothel workers in Bombay, India. Twenty percent of the brothel population are under 18, and as many as half were estimated to be HIV positive in the mid-1990s. Even when women are aware of how to protect themselves from disease, they have little autonomy over their bodies or work conditions. Beatings, rape, and other forms of physical abuse are endemic in the trafficking trade. According to Human Rights Watch, the physical abuses to which some trafficked women are subjected constitute "torture."³⁴

Trafficked women working as domestic laborers are also often subjected to physical abuse, according to a study of Filipino women who worked in a variety of Middle Eastern, European, and African countries as maids.³⁵ Working conditions for trafficked women are frequently abysmal. In both domestic labor and sex work, excessive hours are

³⁴ HRW Global Report 202.

³⁵ Phillipines-Belguim Project.