

12202 HOUSE JUDICIARY

Data Use

- o Data is confidential and not subject to public disclosure
 - HIPAA exceptions are allowed for state PDMPs.
 - Patient privacy is secured by the details of the contract for the vendor who will capture the data.
 - Privacy is insured by the Class A misdemeanor and Class C felony charges that would accompany inappropriate use of the data.

17

Fiscal Notes

- o DCCED Occupational and Professional Licensing
 - Start up costs of \$400,000 federal funds
 - Ongoing costs will decrease significantly (Wyoming annual costs are \$90,000 per year)
- o DHSS Medicaid
 - Initial savings of \$86,000 total funds
 - May actually be 2 or 3 times that amount of savings

18

Changes to SB 196

- o Senate Labor and Commerce adopted a CS that addressed almost all concerns voiced by the medical community and government agencies.
 - Summarized side-by-side document in bill packet
- o Senate Labor and Commerce adopted intent language regarding the impact of future funding.
 - Intent memo in bill packet

19

Changes to SB 196

- o Concern regarding data security:
 - An amendment that better clarifies the Class A misdemeanor and Class C felony was adopted in Senate Finance.
- o Senate Floor Amendments
 - Summary of amendments included in bill packet.

20

Summary of Side-by-Side Bill Comparison in Senate Labor and Commerce

The data collection section on Page 3 was rewritten to remove the requirement to collect and report data on the person picking up the prescription. The Alaska Pharmacists Association wrote a letter asking the legislature to remove the requirement because it would dramatically increase the work load on pharmacists. Others were concerned that they may be targeted because as part of their job, they do pick up prescriptions for home-bound individuals. Many pharmacists will continue to collect ID on the individual picking up the prescription as they feel this is critical to identifying drug seekers.

The Senate Labor and Commerce Committee added the following language to address data security. "The board shall undertake to ensure the security and confidentiality of the database and the information contained within the database." Specific data security requirements will be at the discretion of the Board of Pharmacy. It is generally recommended that the data follow NASPER standards for interoperability. The vendor contract for data collection should include approved standards, encryption, and internet security provisions as well as accountability and liability for data security.

NASPER: National All Schedules Prescription Electronic Reporting Act of 2005

The Senate Labor and Commerce Committee added the following language to encourage the Board of Pharmacy to include memorandums of agreement with health care entities who may not fall under the act. "The board may enter into agreements with tribal and military dispensers and practitioners in this state to submit information to and access information in the database subject to this section and the regulations of the board." Currently, tribal and military providers are not required to follow the state's program because they follow federal mandate which supersedes state law. The states of Maine, Oklahoma, Michigan, Oregon, and others have been approached by tribal or military health providers to request to be included in the PDMP.

The Senate Labor and Commerce Committee added the following language to address future funding concerns voiced by pharmacists. "The board shall notify the president of the senate and the speaker of the house of representatives if, at any time after the effective date of this Act, the federal government fails to pay the costs of the controlled substance prescription database." This allows the legislature to plan for other means for funding without assuming the board would automatically increase license fees to database users. It is the intent of the legislature that this database be implemented as a tool for improving public service and that cost should not be assessed to prescribers and dispensers. The intent of this section is backed with the **Letter of Intent** included in this bill packet.

The Senate Labor and Commerce Committee added the following language to address liability for use or non-use of the database by health care professionals. "An individual who has submitted information to the database in accordance with this section may not be held civilly liable for having submitted the information. Nothing in this section requires or obligates a dispenser or practitioner to access or check the database before dispensing, prescribing, or administering a medication, or providing medical care to a person. Dispensers or practitioners may not be held civilly liable for damages for accessing or failing to access the information in the database." Although querying the database is not mandated, it is anticipated that most prescribers and dispensers will find the information invaluable in evaluating the health care for their client. There may be instances in Alaska where a medical provider may not have access to the database to query information prior to treating an individual. E.g., Iditarod emergency.

ALASKA STATE LEGISLATURE



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Session:

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SENATOR LYDA GREEN
PRESIDENT OF THE SENATE

February 5, 2008

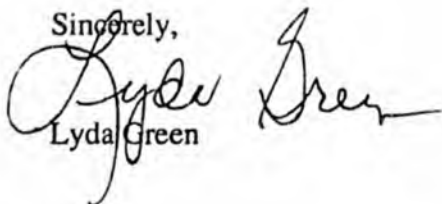
Senator Ellis, Chair
Senate Labor and Commerce Committee

As requested by the Senate Labor and Commerce Committee I am happy to provide the following intent statement to be included with Senate Bill 196 as it continues to the next committee.

I would offer:

"It is the intent of the Legislature that the Alaska Prescription Drug Monitoring Program be funded with federal grants and state appropriations. It is not the intent of the Legislature that the professional users of the database absorb the costs of managing this public program through their license fees or other fee structure."

Sincerely,


Lyda Green

Amendment history from the Senate Floor 19 Feb 08

1. **Passed:** Page 3, line 4 remove "dispensed for an inpatient" replace with "administered to a patient" We had discussed the definition of inpatient and came up with many scenarios where that term may not have been the most definitive. Administered clears up the question of a patient's status and clearly identifies that the prescription is not provided out of managed care.
2. **Passed:** Page 3, line 11 clarification of "method of payment" Senator Therriault included additional information to clarify that specific account numbers would not be collected and stored in the database.
3. **Passed:** Page 3, line 12 following "name" insert ", date of birth" Included the patient's data of birth as requested by many health care professionals and legal professionals around the state.
4. **Passed:** Page 3, line 15 remove "prescribed or" The reference to prescriptions was removed because we are only tracking drugs that are dispensed, not as they are written by the prescriber. In the event drug diversion is suspected, the dispensing history can be compared to the prescribers' records. Secondly, many times one prescription may be forwarded from one pharmacy to another, with only one Rx being dispensed. We did not want to create a false impression of over-prescribing.
5. **Passed:** Page 3, line 20 remove subsection (9) Removing the provision for the Board of Pharmacy to collect other information as necessary eliminated some fear of "Board gone wild" in collecting unnecessary data. For reasons of personal privacy, this section was removed.
6. **Passed:** Add language that instructs the Board of Pharmacy to destroy the data after it is more than two years old. Again, this section was added with the concern for personal privacy and that the data is typically not relevant beyond two years.
7. **Failed:** Page 4, line 30 remove "\$10" and insert "\$5" The language was a nominal fee to begin with and was most in line with other similar program fee charges. Most individuals who want to know about their drug history will meet with their provider, who will run the report, and will be able to better analyze the data shown.
8. **Passed:** Page 5, line 5 remove "tribal and military" and replace with language similar to "non-state regulated health care" This language change just allows for any other health care entity that may not fall under "tribal or military" to participate. It still includes tribal and military health care entities.
9. **Failed:** Page 5, lines 13-15 remove "Nothing in this section requires or obligates a dispenser or practitioner to access or check the database before dispensing, prescribing, or administering a medication, or providing medical care to a person." Senator Therriault felt that this may have been redundant information within the paragraph and may have not been necessary.



OHIO Automated Rx Reporting System

77 South High Street, Room 1702; Columbus, OH 43215-6126

-Equal Opportunity Employer and Service Provider-

TEL: 614/466-4143

E-MAIL: info@chiopmp.gov

FAX: 614/644-8556

TTY/TDD: Use the Ohio Relay Service: 1-800/750-0750

URL: http://www.ohiopmp.gov

Patient Rx History Report

JOSEPH LLEWELLYN (This is a fictitious patient name)

DATE : 11/15/06

Page 1 of 2

Search Criteria: (Last Name = 'Llewellyn' and First Name = 'Joseph') and D.O.B. = '05/08/1972' And Address = '2110 Quail St' And Zip = '45240' and Request Period = '8/1/2006 to 11/15/2006'

Fill Date	Product, Str/Form	Qty	Days	Pl ID	Prescriber	Written	RX#	N/R	Pharm	Pay
10/12/2006	PERCOCET 325 MG-5 MG TAB	286	35	4055	MAR JO	10/10/2006	2204075	N	K-M7753	C
10/06/2006	APAP/HYDROCODONE 500MG-10MG TAB	120	30	1170	AP1234563	10/06/2006	4432314	N	MEIJ159	C
09/28/2006	APAP/HYDROCODONE 500MG-10MG TAB	180	30	7137	AM1111119	09/28/2006	6010985	N	JJIMSPH	C
09/25/2006	NDC# 32144568710	120	30	3323	DEL AM	09/25/2006	00254513	N	CVS7699	C
09/23/2006	APAP/HYDROCODONE 500MG-10MG TAB	20	5	3323	CGR	09/23/2006	00254464	N	CVS7699	C
09/20/2006	APAP/OXYCODONE 325MG-7.5MG TAB	112	19	0938	KHA RA	09/20/2006	0166311	N	COST379	C
09/19/2006	APAP/OXYCODONE 325MG-5MG TAB	183	30	0489	KHA RA	09/19/2006	2226135	N	KRO943	C
09/13/2006	APAP/HYDROCODONE 500MG-10MG TAB	90	30	9241	DEL AM	09/12/2006	4013392	N	BIGGS719	CI
09/08/2006	APAP/HYDROCODONE 500MG-10MG TAB	120	30	7817	AP1234563	09/08/2006	4432061	N	MEIJ159	C
08/28/2006	APAP/HYDROCODONE 500MG-10MG TAB	120	20	3323	DEL AM	08/28/2006	00252704	N	CVS7699	C
08/23/2006	APAP/OXYCODONE 325MG-7.5MG TAB	120	20	0938	MIN RA	08/23/2006	0164710	N	COST379	C
08/22/2006	APAP/OXYCODONE 325MG-5MG TAB	180	30	0489	KHA RA	08/22/2006	2225879	N	KRO943	C
08/15/2006	APAP/HYDROCODONE 500MG-10MG TAB	180	30	9241	AM1111119	08/15/2006	4013193	N	BIGGS719	CI
08/07/2006	APAP/HYDROCODONE 500MG-10MG TAB	120	30	1747	RCE	08/07/2006	4006605	N	MEIJ223	C

N/R N=New R=Refill

Pay I=Insurance C=Cash/Private Pay M1=Medicare M2=Medicaid WC=Workers Comp U=Unknown

Prescribers for prescriptions listed (These are fictitious practitioners)

AM1111119

AP1234563

BAR DA

DAVID BARBER, MD; 672 MAIN ST., CINCINNATI OH 45233

CGR

CHRIST HOSP; PHARMACY DEPT, 2139 AUBURN AVE., CINCINNATI OH 45219

DEL AM

AMOS DELANEY, MD; FAMILY MEDICINE GROUP, 5757 MEDICINE AVENUE, CINCINNATI OH 45238

HEU SO

SONNY HEUSON A, MD; 6331 MEDICINE AVENUE, CINCINNATI OH 45211

KHA RA

RANDALL KHAN, MD; NORTHEAST MEDICAL GROUP, 1380 COLLY ROAD., CINCINNATI OH 45231

MAR JO

JOSEPH MARTIN, MD; PRIMARY HEALTH SOURCE, INC, 3328 WESTERN DRIVE., CINCINNATI, OH 45248

MIN RA

RACHEL MINTON, MD; 8250 ASHWOOD CROSSING WAY, SUITE 100., CINCINNATI OH 45236

Disclaimer: The State of Ohio does not warrant the above information to be accurate or complete. The Report is based on the search criteria entered and the data entered by the dispensing pharmacy. For more information about any prescription, please contact the dispensing pharmacy or the prescriber.

PATIENT Rx HISTORY REPORT

Pharmacies that dispensed prescriptions listed

BIGGS719 BIGGS PHARMACY, 719, 8430 COLERAIN AVENUE., CINCINNATI OH 45239, Pharmacy phone number
COST 379 COSTCO PHARMACY #379, 1100 EAST KEMPER ROAD, SPRINGDALE OH 45246, Pharmacy phone number
CVS7699 CVS/PHARMACY #7699, 11611 HAMILTON AVENUE., CINCINNATI OH 45231, Pharmacy phone number
JJIMSPH JUNGLE JIM'S PHARMACY; 5440 DIXIE HWY., FAIRFIELD OH 45014, Pharmacy phone number
K-M7753 K MART PHARMACY #7753; 12171 PARKFIELD DRIVE., FOREST PARK OH 45240, Pharmacy phone number
KRO943 THE KROGER STORE, #943; 1212 WEST KEMPER RD., CINCINNATI OH 45240, Pharmacy phone number
MEIJ159 MEIJER PHARMACY, #159; 6325 S. GILMORE ROAD., FAIRFIELD OH 45014, Pharmacy phone number
MEIJ223 MEIJER PHARMACY #223; 6550 HARRISON ROAD., CINCINNATI OH 45247, Pharmacy phone number
TARG1092 TARGET STORE T-1092, ATTN: PHARMACY, 8680 BEECHMONT AVE., ANDERSON OH 45255, Pharmacy phone number
TARG1545 TARGET STORES, T-1545, ATTN: PHARMACY, 9040 COLERAIN AVE, CINCINNATI OH 45251, Pharmacy phone number
W-G4522 WALGREEN CO #04522; 9775 COLERAIN AVENUE., CINCINNATI OH 45251, Pharmacy phone number

Patients that match search criteria (All information is fictitious.)

0489 Joseph Llewellyn, DOB 5/8/1972; 5545 BROADWAY, FAIRBORN OH 45240
0938 Joe Llewellyn, DOB 5/8/1972; 100 MAIN AVE, BEAVER CREEK OH 45002
1170 Joseph Llewellyn, DOB 5/8/1972; 2110 QUAIL CT., CINCINNATI OH 45240
1747 Jo Llewellyn, DOB 5/18/1972; 109 N. MAIM, BEAVER CREEK OH 45002
3323 Joseph Llewellyn, DOB 1/1/2004; 2010 QUILL CT, CINCINNATI OH 45240
4055 Joseph Lewellen, DOB 5/8/1972; 2101 LINPAR APT. 4, FAIRBORN OH 45240
7817 Joey Llewellyn, DOB 5/18/1972; 2108 QUAILLT, FAIRBORN OH 45240
9241 Joseph Loewellyn, DOB 5/18/1972; 354 BROADWAY, CINCINNATI OH 45240
7137 Joseph Hinton-Llewellyn, DOB 5/18/1972; 2008 QUAIL CT, CINCINNATI OH 45240

Sec. 08.80.480. Definitions.

(28) "practitioner" means an individual currently licensed, registered, or otherwise authorized by the jurisdiction in which the individual practices to prescribe and administer drugs in the course of professional practice;

Sec. 11.71.900. Definitions.

In this chapter, unless the context clearly requires otherwise,

(19) "practitioner" means

(A) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in the state;

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in the state;



John Elias Baidacci
Governor

Maine Department of Health and Human Services

Office of Substance Abuse
Marquardt Building, 3rd Floor
11 State House Station
Augusta, ME 04333-0011

John R. Nicholas
Commissioner

Kimberly Johnson
Director

DATE: January 18, 2006

TO: The Director of the Togus VA Pharmacy in Augusta, Maine

FROM: Kimberly Johnson, Director of the Maine Office of Substance Abuse

SUBJECT: Request to have Togus VA release health information to the Maine Office of Substance Abuse's Prescription Monitoring Program.

Under Title 22, Chapter 1603 of the Maine Revised Statutes Annotated the Office of Substance Abuse (OSA) was charged with implementing and operating the Prescription Monitoring Program. The legislative purpose of this program is too: "promote the public health and welfare and to detect and prevent substance abuse". To that end the Office implemented the program in July of 2004 and currently collects data from over 300 pharmacies licensed to dispense in the State of Maine as authorized by Title 22, Chapter 1603.

For some time now OSA has been interested in finding other dispensing sources that could make the data base more complete and therefore more effective in detecting & preventing substance abuse. The Togus VA Pharmacy System is a place that serves several state citizens but was not required to report to OSA because Togus is a Federal Agency. Several Togus dispensers prescribers currently are registered for and use OSA's PMP data to help prevent and detect substance abuse among the veterans they serve.

OSA would like to give this same advantage to all prescribers & dispensers in our state by formally asking Togus to volunteer their data to our system. Under 38 USC 5701 the Secretary can release information: "to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such name or address be provided for a purpose authorized by law".

All data that Togus submits would be used for the same purposes outlined in Title 22, Chapter 1603 & spelled out in our regulations (Chapter 11 under the Maine Department of Health & Human Services).

It is OSA's hope that by collaborating with Togus VA that we can positively influence the prescription drug abuse problem that has become prevalent in our state.

Sincerely,

Kimberly A. Johnson, Director

Our vision is Maine people enjoying safe, healthy and productive lives.

Phone: 207-287-2595

Fax: 207-287-4334

TTY: 207-287-4475
1-800-215-7604

the same established
and route of adminis-
trative ingredients in the
applicable standards for
characteristics such as
colors, flavors, preserva-

pharmacy while under
supervision toward meeting

approved by the board for
licensure as a

related to a drug container,
supplier, or distributor of a
device;

manufacture, conversion, or
distillation from a substance
chemical synthesis, and
repackaging or relabeling of its
contents; "manufacturing" also
includes products from bulk
supplies;

drug that may be sold
to the consumer and labeled in
accordance with the
regulations of the state and the

administration outside of the
state; wholesaling, retailing,

provision of information.
The pharmacist's duty is to improve

includes a governmental

other pharmaceutical
regulation or prevention of a
harmful effect or slowing of a

the state to engage in the

responsibility for oper-
ating regulations applicable to
personally in charge of

dispensed and pharma-
ceutical subject to licensure or

that prepares or mixes
drugs at which those drugs

(26) "pharmacy technician" means a supportive staff member who works under the immediate supervision of a pharmacist;

(27) "practice of pharmacy" means the interpretation, evaluation, and dispensing of prescription drug orders in the patient's best interest; participation in drug and device selection, drug administration, drug regimen reviews, and drug or drug-related research; provision of patient counseling and the provision of those acts or services necessary to provide pharmaceutical care; and the responsibility for: compounding and labeling of drugs and devices except labeling by a manufacturer, repackager, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; proper and safe storage of drugs and devices; and maintenance of proper records for them;

(28) "practitioner" means an individual currently licensed, registered, or otherwise authorized by the jurisdiction in which the individual practices to prescribe and administer drugs in the course of professional practice;

(29) "preceptor" means an individual who is currently licensed by the board, meets the qualifications as a preceptor under the regulations of the board, and participates in the instructional training of pharmacy interns;

(30) "prescription drug" means a drug that, under federal law, before being dispensed or delivered, is required to be labeled with either of the following statements: (A) "Caution: Federal law prohibits dispensing without prescription"; (B) "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or a drug that is required by an applicable federal or state law or regulation to be dispensed only under a prescription drug order or is restricted to use by practitioners only;

(31) "prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient;

(32) "prospective drug use review" means a review of the patient's drug therapy and prescription drug order, as defined in the regulations of the board, before dispensing the drug as part of a drug regimen review;

(33) "significant adverse drug reaction" means a drug-related incident that may result in serious harm, injury, or death to the patient;

(34) "substitution" means to dispense without the prescriber's expressed authorization, an equivalent drug product in place of the prescribed drug;

(35) "wholesale" means sale by a manufacturer, wholesale dealer, distributor, or jobber to a person who sells, or intends to sell, directly to the user;

(36) "wholesale drug distributor" means anyone engaged in wholesale distribution of drugs, including but not limited to manufacturers; repackagers; own-label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses; chain drug warehouses; wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions. (§ 2 ch 194 SLA 1955; am §§ 27 — 29 ch 206 SLA 1972; am § 11 ch 53 SLA 1973; am §§ 20, 21 ch 166 SLA 1980; am § 9 ch 45 SLA 1982; am §§ 6, 7, 22 ch 146 SLA 1986; am § 6 ch 50 SLA 1989; am § 3 ch 56 SLA 1992; am § 4 ch 70 SLA 1992; am §§ 24 — 28 ch 45 SLA 1996)

Revisor's notes. — Reorganized in 1992. Reorganized again in 1996 to alphabetize new terms originally enacted as paragraphs (21)-(46) and to reflect the repeal of former paragraphs.

Effect of amendments. — The 1996 amendment, effective August 22, 1996, deleted former paragraphs (8), (6)-(7), (13), (16)-(18), and (20); in paragraph (8),

substituted "as a drug in an official compendium, or supplement to an official compendium" for "in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary"; added paragraphs (1), (3), (5)-(8), (10)-(15), (19)-(23), (26)-(29), (31)-(34), (36); and rewrote paragraphs (24) and (30).

Sec. 08.80.490. Short title. This chapter may be known as the Pharmacy Act. (§ 1 ch 194 SLA 1955)

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

February 22, 2008

Honorable Jay Ramras
House of Representatives, Judicial Committee
State Capitol, Room 118
Juneau, AK 99801-1182

Transmitted by email:
Rep_Jay_Ramras@legis.state.ak.us

RE: CS SB196/HB316 - Prescription Database

Dear Representative Ramras:

The Alaska State Medical Association (ASMA) represents physicians statewide and is primarily concerned with the health of all Alaskans.

ASMA supports the concept of the development of a controlled substances prescription database. It believes that such a tool can help with the problem of the misuse, abuse, and diversion for sale of controlled substances. Additionally, it can also provide an important tool for physicians caring for patients with multiple chronic conditions, seeing a number of other physicians, and who are taking a variety of drugs. Patients taking a multitude of drugs often forget what all they are taking and it's important for the physician to be aware of them all to help prevent untoward events that can result from drug interactions.

However, access to such a database must be provided for in a manner that provides for appropriate privacy protection for both patients and prescribers. Additionally, the appropriate due process protections must also be part of this process.

ASMA does not believe that SB196 provides the appropriate due process protections for prescribers who are possibly the subject of unfettered access to this database by licensing boards and other agencies. (Sec. 17.30.200 (d) (1) provides for such access without defining what "license inquiries" entail. Arguably, this can only mean investigations that could result in action against a prescriber or dispenser's license).

It appears this is not a problem with inquiries for law enforcement authorities (Sec. 17.030.200 (d) (5)) as access requires a search warrant, subpoena, or order issued by a court. The court provides the protection by an unbiased review and thus helps to eliminate simple "fishing expeditions".

ASMA has been concerned for a long time regarding due process protection for physicians involved in administrative or licensure actions which have included State Medical Board Disciplinary actions as well as Medicaid audits. ASMA has frequently testified before the Legislature and Executive Branch agencies involving such issues. Without exception, ASMA has been supportive of the intent of various measures that primarily help assure that the best medicine is practiced and that physicians are treated equitably.

Over many years, ASMA's legal counsel has done extensive analysis of the due process issues involving physicians and their practice of medicine. Under Alaska law (see Court of Appeals of Alaska, State of Alaska v. Candice Auliye; No A-8084, Oct. 25, 2002), ASMA believes that it can be successfully argued that any disciplinary actions taken by the State Medical Board must be adjudicated in a manner that provides all the same due process protection as a criminal investigation and prosecution. The argument follows that a license to practice medicine in Alaska is a very valuable property right. The taking of such a valuable property right is the same as assessing a fine that is high enough to constitute a criminal fine. As such, any proceedings must provide the same due process protection as in any criminal proceeding. (The Auliye case found a minor's drivers license to be valuable enough to meet the standard requiring all criminal due process protections including counsel at public expense if the defendant was indigent. Surely a professional licensure of a physician, pharmacist, dentist, advance nurse practitioner is much more valuable).

ASMA suggests that at a minimum that a board or other administrative agency, before gaining access to the database, secure a subpoena, search warrant, or order issued by an administrative hearing officer from the body that provides hearings under the Administrative Procedures Act. ASMA feels this will help provide sufficient due process protection. Otherwise, at a minimum, the information obtained from access to the database may be eliminated from use in any licensure actions, and, at worse, Sec. 17.30.200 could be found unconstitutional and thereby not be functional.

ASMA feels that such a database is important to have and that appropriate access to it is essential. Additionally, the change suggested will not change the intent or functionality of the database. It may, however, slow the access by boards and other administrative agencies. Furthermore, ASMA would support the access to this database by other agencies that have a legitimate need for accessing this information. For example, the Medicaid program may have legitimate reasons. However, this support is predicated on that the other agencies would be required to provide the same privacy safeguards and appropriate due process procedures.

Nothing in the current version of SB196 would prevent a board or administrative agency from accessing the entire database annually. Such freewheeling access could have a chilling effect on appropriate medical treatment with some physicians who occasionally prescribe a controlled substance to stop such prescribing entirely to avoid being on the annual "fishing expedition" list.

To reiterate ASMA strongly supports the concept of a controlled substance database. However, access to the database must be in a manner that provides the appropriate constitutional protections for the patients, prescribers, and dispensers.

Sincerely,

By: J. Ross Tanner, DO, President
For: Alaska State Medical Association

cc: Sen. Lyda Green



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on HB 316 & SB 196, dated 2-22-08
bill # / subject public hearing date

Please consider, with these drug bills that the first information we need is how many adult and juvenile Alaskans are taking conscious altering prescription drugs with a warning label. Without this specific information on the quantity of drugs, and disregarding the personal information aspect of the bills currently presented, please note how many adult Alaskans and juveniles are on prescription drugs. We need cross-drug testing for people using drugs other than those prescribed to them, including alcohol and marijuana. Without this type of deterrent the information we gather will just be another bureaucratic boondoggle.

We also need constraints that are consistent with the warning labels on these drugs. If it says "do not operate machinery", the driver's license of that person should be suspended until the prescription is terminated. If it says it "will alter the conscious and mood", adult workers and juvenile children in school should be responsible for alerting the authorities at their work place and school concerning the fact that they are under the influence of a drug and appropriate steps should be taken to see to it that they are not operating machinery or interacting with others in these places in a way that would be dangerous or affect the positive working environment of co-workers and students. We must have a specific idea of how many adults and children are taking these drugs. The figures that I have acquired in an informal manner show a shocking percentage of adults and children on these drugs regularly. One last thought, should there be a disaster that causes an interruption in the flow of these drugs for an extended period, what do you consider will be the consequences of over 100,000 adult & children Alaskan prescription drug users who will be withdrawing from these medications? We must be aware. Please tell us how many of these people there are, not who they are. Please do not get lost in the details of a bill specifically intended for control of these drugs by being swayed by informational impairments.

Signed: Thomas Corbitt
Testifier

self
Representing (optional)

PO Box 132 Clam Gulch, AK 99568
Address

262-5678
Phone number

OHIO Automated Rx Reporting System

77 South High Street, Room 1702; Columbus, OH 43215-6126

-Equal Opportunity Employer and Service Provider-

TEL: 614/466-4143

E-MAIL: Info@ohiopmp.gov

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Patient Rx History Report

BETTY TESTPATIENT

DATE: 1/29/08

Page 1 of 1

Search Criteria: (Last Name = 'TestPatient' And First Name = 'Betty') And D.O.B. = '1/1/1970' And Zip = '43215' And State = 'OH' and Request Period = '1/1/2007 12:00:00AM' to '1/29/2008 12:00:00AM'

Prescriptions

9/5/2007	ALPRAZOLAM 1 MG TAB	120	30	1287	BAR	9/5/2007	04077535	N	RALEY	C
9/4/2007	ALPRAZOLAM 0.5 MG TAB	60	30	1289	ANT DE	9/4/2007	664233	N	W-G2694	CI
7/12/2007	ALPRAZOLAM 1 MG TAB	120	30	1287	BAR	7/12/2007	04076995	N	RALEY	C
4/19/2007	ALPRAZOLAM 1 MG TAB	120	30	1289	BAR	4/19/2007	0676157	N	HUGHES	C

N/R: N=New R=Refill

Pay: I=Insurance C=Cash M1=Medicare M2=Medicaid WC=Workers Comp CI=Commercial PBM Insurance U=Unknown

Total Prescriptions:

4

Prescribers for prescriptions listed

ANT DE DENNIS ANTHONY M. MD, . 5971 GOLF CLUB LANE., HAMILTON OH 45011

BAR BARBERTON HEALTH SYSTEM, LLC, DBA BARBERTON CITIZENS HOSP. DEPT OF PHARMACY, 155 FIFTH STREET, NE, BARBERTON OH 44203

Pharmacies that dispensed prescriptions listed

HUGHES HUGHES PHARMACY, . 302 MAIN ST., HAMILTON OH 45013, PHONE (513) 868-1199

RALEY RALEY DRUG STORE, INC, . 1760 GOODYEAR BLVD., AKRON OH 44305. PHONE (330) 784-3527

W-G2694 WALGREEN CO., DBA: WALGREENS # 02694. 385 NORTHLAND BLVD., SPRINGDALE OH 45246, PHONE (513) 825-6446

Patients that match search criteria

1287 BETTY TESTPATIENT, DOB 1/1/1977; 123 BROADWAY, COLUMBUS OH 43215

1289 BETTY TESTPATIENT, DOB 1/1/1970; 234 WEST ST, WESTERVILLE OH 43081

Disclaimer: The State of Ohio does not warrant the above information to be accurate or complete. The Report is based on the search criteria entered and the data entered by the dispensing pharmacy. For more information about any prescription, please contact the dispensing pharmacy or the prescriber.

SB

211

Representative Jay Ramras
Chair, House Judiciary
House Labor & Commerce
House Oil & Gas
House Military & Veteran
Affairs

1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
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Alaska State Legislature



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House District 10

House of Representatives

Memo

To: Representative John Coghill
Chair House Rules Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Date: April 4, 2008

Re: Referral File SB211

Please accept this memo as the referral file for SB211. Attached are the following documents:

- Sponsor Statement
- HCSSB211(JUD) 25-LS1245\E
- HCR re: HCSSB211 Title Change
- Legal Memo re: Title Change
- Fiscal Notes
 - ADM - 0
 - ADM - 0
 - COR - 0
- Back-up
- Bill History
- HJUD Report

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[Senator Betty Davis@legis.state.ak.us](mailto:Senator_Betty_Davis@legis.state.ak.us)
<http://www.akdemocrats.org>

Senator Betty Davis

SB 211 "An Act relating to an aggravating factor at sentencing for crimes directed at a victim because of the victim's homelessness."

Sponsor Statement

SB 211 allows the court to increase the active term of imprisonment for felonies up to the maximum term of imprisonment, even for a first offense, for factors in aggravation. Current sentencing provisions allow imposition of a sentence above the presumptive range set out in AS 12.55.125 based race, sex, color, creed, physical or mental disability, ancestry, or national origin as set out in AS 12.55.155(c)(22). SB 211 adds "homelessness" as an aggravating factor to this section.

The purpose of this statute is to deter and punish defendants motivated to harm homeless people who are particularly vulnerable and increasingly targets of crime. Violent crimes against the homeless increased 65% from 2005-2006, according to a 2006 report by the National Coalition for the Homeless. The 2006 numbers reflect a 170 percent increase since the organization's first study in 1999. This national trend is reflected in the more than 14,000 individuals who experience homelessness in Alaska each year, according to the 2005 Alaska Interagency Council on Homelessness report, "Keeping Alaskans Out of the Cold." This violence against the homeless has a direct impact on the victim, the victim's family, the community, and Alaska as a whole.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SB 211
 (S) Publish Date: 2/19/08

Identifier (file name): SB211-DOA-PDA-1-28-08 Dept. Affected: Administration
 Title: "An Act relating to an aggravating factor at sentencing..." RDU: Legal and Advocacy Services
 Component: Public Defender Agency
 Sponsor: Senator Davis
 Requester: _____ Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	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	0.0	0.0
Contractual	0.0	0.0	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	0.0	0.0
Equipment	0.0	0.0	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	0.0	0.0
Grants & Claims	0.0	0.0	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	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts	0.0	0.0	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	0.0	0.0
1004 GF	0.0	0.0	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	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	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	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill adds as an aggravating factor for felony sentencing that the defendant knowingly directed their conduct at a victim because of that person's homelessness. This bill is not expected to have a fiscal impact on the Agency.

Prepared by: Quinlan Steiner, Director
 Division: Public Defender Agency
 Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-334-4414
 Date/Time 1/28/08 10:30 AM
 Date 1/28/2008

LEGAL SERVICES

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

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

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

MEMORANDUM

April 2, 2008

SUBJECT: Draft HCS SB 211(JUD) (Work Order No. 25-LS1245\E)

TO: Representative Jay Ramras

FROM: Gerald P. Luckhaupt *Jerry*
Legislative Counsel

Enclosed is the draft HCS(JUD) you requested. The change to the aggravating factor that is being amended necessitates a change to the title of the bill. The title, as the bill passed the Senate, reflected the change the bill was making to AS 12.55.155(c)(22). That change related to an aggravating factor at sentencing for crimes directed at a victim **because** of the victim's homelessness. The change you have requested adds "homelessness" to AS 12.55.155(c)(5), which means the bill relates to an aggravating factor at sentencing where the defendant knew or should have known that the victim was particularly vulnerable or incapable of resistance due to homelessness. The Senate title no longer accurately reflects what the HCS(JUD) is actually doing because AS 12.55.155(c)(5) does not relate to directing conduct at a victim **because** of something but relates to the defendant's knowledge of a particular vulnerability of the victim.

GPLljw
08-195.ljw

Enclosure

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 211
 (S) Publish Date: 2/19/08

Identifier (file name): SB211-DOA-OPA-1-28-08 Dept. Affected: Administration
 Title: "An Act relating to an aggravating factor at sentencing for crimes directed at a victim because . . ." RDU: Legal and Advocacy Services
 Component: Office of Public Advocacy
 Sponsor: Senator Davis
 Requester: _____ Component Number: 43

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	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	0.0	0.0
Contractual	0.0	0.0	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	0.0	0.0
Equipment	0.0	0.0	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	0.0	0.0
Grants & Claims	0.0	0.0	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	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts	0.0	0.0	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	0.0	0.0
1004 GF	0.0	0.0	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	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	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	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill will allow the court to increase a defendant's sentence if the state proves that the defendant directed his criminal conduct at the victim due to the victim's homelessness. This bill is not expected to have a fiscal impact on OPA.

Prepared by: Rachel Leviitt, Deputy Director
 Division: Office of Public Advocacy
 Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-269-3504
 Date/Time 1/28/08, 11:00 a.m.
 Date 1/28/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 211
 (S) Publish Date: 2/19/08

Identifier (file name): SB211-DOC-OC-01-30-08 Dept. Affected: Corrections
 Title: "Act relating to an aggravating factor at sentencing for crimes
directed at a victim because of the victim's homelessness." RDU: Administration and Operations
 Sponsor: Senator Davis Component: Office of the Commissioner
 Requester: Senate Judiciary Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	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	0.0	0.0
Contractual	0.0	0.0	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	0.0	0.0
Equipment	0.0	0.0	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	0.0	0.0
Grants & Claims	0.0	0.0	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	0.0	0.0
TOTAL OPERATING	0.0	0.0	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	0.0	0.0	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	0.0	0.0
1004 GF	0.0	0.0	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	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	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	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0	0	0
Part-time	0	0	0	0	0	0	0	0
Temporary	0	0	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation should have no fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Director Phone: (907) 465-3339
 Division: Administrative Services Date/Time: 1/25/08 12:50 PM
 Approved by: Dwayne Peeples, Deputy Commissioner Date: 1/25/2008
Department of Corrections

State of Alaska > Governor > News > News Details

The Office of the Governor
SARAH PALIN



The Day of the Homeless Youth

WHEREAS, more than five percent of youths in America - over 1 million - will experience homelessness this year. It is hard enough to experience family homelessness but unaccompanied young people, ages 15 to 21 years old, are especially vulnerable to the danger of living on the streets and in the severity of our arctic climate.

WHEREAS, in Alaska, every hour a report of abuse or neglect is filed; every eight hours a baby is born to a teenage mother; every day five kids in Anchorage are reported as runaway.

WHEREAS, since opening in 1988, Covenant House Alaska has provided food, shelter, clothing, crisis counseling, and outreach to more than 17,000 of Alaska's homeless, runaway, and at-risk youth. Last year, more than 2,600 youths sought refuge at Covenant House Alaska.

WHEREAS, the 2007 Covenant House International Candlelight Vigil for Homeless Youth will take place on Thursday, November 15 in 18 cities throughout North and Central America. The Covenant House Candlelight Vigil for Homeless Youth, now in its 17th year, coincides with National Hunger and Homelessness Awareness Week (November 11-17).

WHEREAS, the event will bring together thousands of supporters who want to create greater awareness for the plight of homeless young people. Covenant House, which sponsors the annual event, is the largest privately funded agency in the Americas providing crucial services such as shelter, counseling, transitional living, health services, and educational/vocational training to homeless and runaway youths under 21 years of age.

WHEREAS, all donations, funding, or volunteer support generated by this Call to Action during the day of November 15, will benefit the estimated 5,000 homeless kids in Anchorage.

NOW, THEREFORE, I, Sarah Palin, Governor of the State of Alaska, do hereby proclaim November 15, 2007, as:

The Day of the Homeless Youth

in Alaska, and encourage the citizens and businesses of Alaska to join in supporting Covenant House Alaska's Candlelight Vigil from 6 p.m. to 7 p.m. in Anchorage's Town Square.

Dated: October 22, 2007

Printed on 3/17/08 at 10:49:50 AM by 146.63.202.66

Alaska's Homeless—Victims of Violence

ANCHORAGE, Monday, May 22, 2000, Nearly one-fourth of Alaska's homeless reported being a victim of violence, according to the Winter 2000 Homeless Service Providers' Survey. While this figure is lower than the national rate of violence among the homeless (29%), it is much higher than the reported incidence of violent crime in Alaska (<1%).

"Our survey suggests that homeless in Alaska are twenty-five times more likely to be victims of a violent crime than a non-homeless person," according to James Wiedle, Research Analyst for the Alaska Housing Finance Corporation (AHFC). Both men and women reported victimization--33% of the victims were males.

The semi-annual survey, conducted by AHFC on January 26, 2000, also showed the percentage of homeless with disabilities or substance abuse problems reach its highest level since the survey began in 1993. Nearly 40 percent of the homeless disclosed having a disability, while 45 percent noted a substance-abuse problem.

"Homeless agencies link these increases to a healthy Alaska economy," states Wiedle. "Increases in employment and wage earnings have helped those families who in the past might have become homeless because of temporary financial hardships. However, a strong economy has less of an impact on those homeless with complex, multiple problems unlikely to be solved through employment and/or rental assistance alone. Consequently, these hard-to-serve clients are beginning to represent a larger-portion of most homeless agencies' caseloads," states Wiedle.

AHFC had a 79% response rate to the January 2000 survey, with the total reported cases increasing by 9% over the Winter 1999 survey to 1,375 cases, excluding duplicates. Of those, 907 were located in Anchorage. This compares to 1260 cases for Alaska and 810 for Anchorage in the Winter 1999 survey.

According to AHFC, the survey is not intended to represent a definitive count of the homeless population. Homeless cases reported can fluctuate based on a variety of factors. These factors include, but are not limited to, response rates of participating agencies, changes in the number of homeless seeking services, and changes in the capacity of agencies to provide the homeless with services.

AHFC is a self-supporting public corporation, which provides financing for multi-family complexes, congregate facilities, and single-family homes, with special loan programs for low- and moderate-income borrowers, veterans, and those living in rural areas of the state. It also provides energy and weatherization programs; low-income rental housing; and special programs for the homeless and those seeking to become self-sufficient. AHFC contributes more than \$100 million annually to Alaska's state revenues through cash transfers, capital projects and debt-service payments.



Veterans fight vice, homelessness

by Sean Doogan

KTUU-TV

updated 11:11 a.m. HT, Wed., Jan. 30, 2008

Anchorage, Alaska - Military veterans make up almost one quarter of the United States' homeless population, according to statistics from the U.S. Census Bureau and the U.S. Department of Veterans Affairs. That equals almost 200,000 former soldiers, Marines, airmen and seamen on the streets this Veteran's Day.

Some of them live right here in Alaska.

The stress of combat and grueling training, coupled with the military lifestyle, contribute to the high numbers, according to Veterans Administration officials.

Oliver Warren wanted to be a Marine.

"I finished high school and joined the Marine Corps and left town," Resident Manager of the Salvation Army Oliver Warren said.

But after serving at Cuba's Guantanamo Bay, chronic back pain changed his future forever. He was discharged from the military.

"I didn't talk to my family much. There were issues in the military that I didn't share so that just pushed me farther away," Warren said.

Warren says his marriage fell apart and he drifted into a cycle of homelessness and alcoholism.

"After years of being in pain, you just kind of break," he said.

Although veterans constitute only 11 percent of the entire U.S. population, they account for 25 percent of the nation's homeless.

They live on streets, in shelters, and in make-shift camps - even in Alaska - and even in winter.

A Downtown area that was once a fitness trail that many residents drive past daily is now a homeless encampment. It's also a place many of Alaska's veterans now call home.

"I woke up and there were a couple bottles of alcohol half-full and some other drug paraphernalia lying around," said Jamey Bachmann, a homeless veteran. "When I saw that I knew it was time to make a big change because I knew where I was headed."

Homeless vets say transitioning from military to civilian life is difficult. Family problems often arise during that transition, they say, and are compounded by unaddressed psychological issues that come from deployments and service.

These issues drive the escalating number of veterans on the streets.

Some Alaska vets admit, though, that military service itself can cause big problems later in life.

"When you are standing on the fence line in Cuba and you know that there's a guy that's across the fence line, and he's got a weapon and you've got a weapon and he could shoot you at any moment, there's mental things that you have to change in yourself in order to get through that year," Warren said.

Both Warren, and Bachmann are recovering. Warren now lives and works at the Salvation Army.

Bachmann has help at a local Veterans Administration facility.

Both men agree that the time to help veterans is while they are still protecting the home front and before they become homeless.

Approximately 192,000 U.S. troops are currently fighting in Iraq and Afghanistan, according to U.S. Command Iraq.

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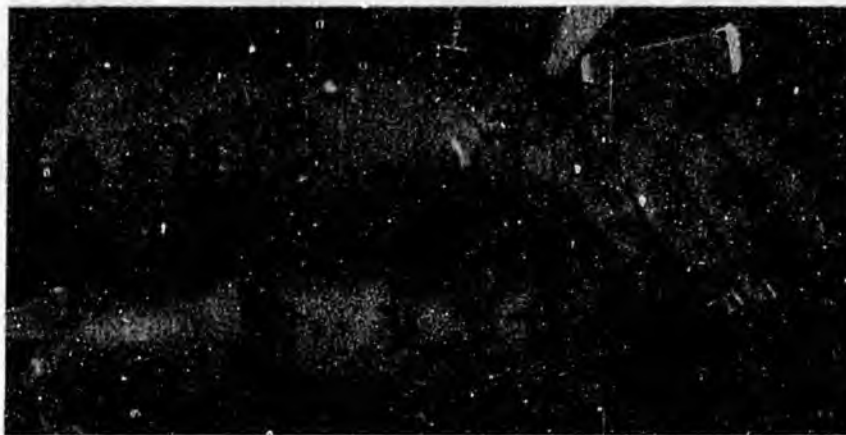
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Attacks on the Homeless Rise, With Youths Mostly to Blame

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Phil Sears for The New York Times

Warren Messner, 18, has an armful of tattoos early in his 22-year prison term for the beating death of a homeless man.

By AMY GREEN

Published February 15, 2008

CROSS CITY, Fla. — Warren Messner was 15 when he and some friends attacked a homeless man and left him for dead. Mr. Messner jumped on a log laid across the man's ribs. He does not know why. He was high, does not remember much and wants to forget the rest.

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Phil Sears for The New York Times

"It was just a senseless crime," Mr. Messner said of the fatal beating of Michael Roberts. Advocates for the homeless have taken note of a rise in such attacks, particularly in Florida.

Today Mr. Messner is a baby-faced 18-year-old serving 22 years for second-degree murder. He used to like skipping school and listening to rap music with friends. He imagined he eventually would help his father install flooring. Now he talks to his parents nearly every night from the maximum-security Cross City Correctional Institution.

"It was just a senseless crime," he said, his eyes down, his shoulders slumped. "I wish it would have never happened.

It made no sense. It was stupidity."

Mr. Messner's story is not unusual. Nationwide, violence against the homeless is soaring, and overwhelmingly the attackers are teenagers and young adults. In Florida the problem is so severe that the National Coalition for the Homeless is setting up speakers bureaus to address a culture that sees attacking the homeless as a sport. It is the first time the organization has singled out a particular state.

Of more than 142 unprovoked attacks on homeless people in 2007, the most — at least 32 — were in Florida, according to a preliminary count by the coalition and the National Law Center on Homelessness and Poverty. Nationwide, such attacks rose about 65 percent

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Michael Roberts

from 2005.

In Fort Lauderdale a group of teenagers captured national attention in 2006 when a surveillance camera caught one laughing as he beat a homeless man with a baseball bat. The teenagers attacked three homeless men that night and face a murder trial in one man's death. A year later in Daytona Beach, a 17-year-old and two 10-year-olds attacked a homeless Army veteran. One 10-year-old dropped a cement block on the man's face, the police said.

"What could possibly be in the mind of a 10- or 12-year-old that would possess them to pick up a rock and pick up a brick and beat another human being in the head?" said Ron Book, chairman of the Miami-Dade County Homeless

Trust. "It defies any rational thought process, but it's also why we felt so strongly we had to do something."

The trust has teamed with the local schools to develop a curriculum for elementary, middle and high schools teaching respect for the homeless.

Advocates for the homeless blame a society that they say shuns the homeless through laws that criminalize sleeping in parks, camping and begging.

"I think it reflects a lack of respect for the homeless that has reached such extreme proportions that homeless people aren't viewed as people," said Maria Foscarinis, executive director of the National Law Center on Homelessness and Poverty.

Troubled by news photos showing those two 10-year-olds in Daytona Beach in prison suits and handcuffs, the National Coalition for the Homeless joined with AmeriCorps Vista to open speakers bureaus last fall in Key West, Jacksonville and Tallahassee. Nine more are planned in Florida. The idea is to educate students using speakers who are homeless or once lived on the streets, and the organization wants to open more bureaus nationwide, said Michael Stoops, executive director of the coalition.

The speakers are like George Siletti, who grew up in foster care and lived as a homeless drifter on and off for 25 years, starting at the age of 16. Now 51, Mr. Siletti said he took medication for schizophrenia and depression and lived in subsidized housing in Washington, addressing schools, churches and organizations about homelessness.

"I've had bottles thrown at me. I've had people spit on me, cursed me out for no reason," said Mr. Siletti, who was attacked by teenagers in Fort Lauderdale as he and others slept under a bridge in the 1980s. "People seem to pick on the most vulnerable because they really think that they won't do nothing."

In Miami, students are learning from a weeklong curriculum and a DVD teaching that families are the fastest-growing segment of the homeless population. The curriculum requires younger students to make posters and older students to write essays about what they learned.

Legislation adding the homeless to hate-crime laws has been introduced in Alaska, California, Florida, Maryland, Massachusetts, Nevada, Ohio and Texas. Bills are also pending in Congress.

Mr. Messner, who is an imposing six feet, 240 pounds in his blue prison suit, talks about his crime with quiet resignation.

He and his friends were looking for a place to smoke marijuana near his home in the

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Daytona Beach area when they stumbled on Michael Roberts. Mr. Messner joined the attack and remembers hearing Mr. Roberts groan when he jumped on the log, but then Mr. Messner tried to pull his friends away, he said.

"He was making noises," Mr. Messner said. "He asked one time why we was doing it to him. Why we was messing with him."

A few days later, Mr. Roberts's body was found. Mr. Messner agreed to a plea bargain and drew the lightest sentence of the four convicted in the attack.

He does not like prison much. He keeps busy doing yard work, exercising and reading. He likes James Patterson novels and murder mysteries. He has dropped at least 40 pounds and developed a penchant for prison tattoos. One arm reads "thug" while the other reads "life." His mother's name, Lori, is on one hand. On one arm is the same cross he wears around his neck, surrounded by the words "hope," "faith" and "love."

"I'm not a killer. I know that," Mr. Messner said. "A lot of people, they see this story and call us killers. I'm not a killer. I regret what I did. I wish I could take it back."

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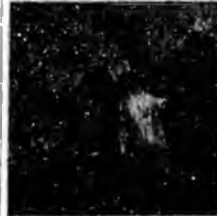
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Street Spirit September 2005

Alarming Rise in Hate Crimes Against Homeless People in United States

by Michael Stoops, National Coalition for the Homeless

Over the past six years, advocates and homeless shelter workers from around the country have seen an alarming increase in reports of homeless men, women and even children being killed, beaten and harassed. The violent attacks and murders are often directed against people precisely because they are homeless, and thus constitute hate crimes.

On May 28, 2005, Michael Roberts, age 53, was beaten to death with sticks and logs by a group of teenagers who admitted to beating the homeless man just for fun. The autopsy report indicates that Roberts died of blunt-force trauma to the head and body, and suffered a fractured skull, broken ribs, badly injured legs and defensive wounds on his hands. The teens returned several times to make sure the job was done.

In September of 2004, three Milwaukee teens murdered a homeless man at his forest campsite. The teens hit 49-year-old Rex Baum with rocks, a flashlight, a bat and a pipe, then smeared feces on his face. They continued beating Baum until they thought he was dead. One of the boys "hit the victim one last time to see if he would make a sound like In Grand Theft Auto," then cut him twice with a knife to make sure he was dead. They covered his body with plastic and rocks, hoping animals would eat him before the body was discovered.

In August 2004, Curtis Gordon Adams, 33, beat and stabbed a disabled homeless man to death, and then licked the blood from his fingers on a Denver sidewalk.

In June 2004, two New York City teens kicked, punched, and finally bludgeoned 51-year-old William Pearson to death in a churchyard. Pearson crawled to the church steps before finally dying of a fractured skull. "His head was a bloody mess," one police officer noted.



Sadly, these gruesome accounts are only a few of many recent assaults and murders which demonstrate the hatred, prejudice and senseless violence faced by many of our country's homeless citizens.

Over the six-year period from 1999-2004, the National Coalition for the Homeless documented 156 murders and 386 violent acts against homeless individuals. The violent attacks occurred in 140 cities in 39 states in the United States. The homeless victims ranged in age from a four-month-old infant to a 74-year-old man.

This year's annual report on hate crimes by the National Coalition for the Homeless (NCH) is published in full in this issue of *Street Spirit*. [See "Hate, Violence and Death on Main Street USA."] The NCH report carefully documents 105 hate crimes and violent acts that occurred in 2004, collected from newspapers and reports across the country. This report shows the geographical extent and the sheer savagery of this wave of hate crimes against the homeless.

Yet many of these violent acts go unpublicized or unreported, making it difficult to assess the true magnitude of the problem. Often, homeless people do not report crimes committed against them because of mental health issues, substance abuse, fear of retaliation, or frustration with the police. Some cases were also omitted because the victims were found beaten to death, but no suspects could be identified. In addition, this report does not take into account the large number of sexual assaults, especially against homeless women.

Link between hate crimes and laws that criminalize homelessness

There is a documented relationship between increased police actions that criminalize homelessness and the rising number of hate crimes and violent acts against homeless people.

It appears that violent citizens become emboldened to attack homeless people because their city has responded negatively to the homeless population. These violent attacks occur especially where the city has portrayed homeless people as the cause of unemployment, decreasing property values, vacant storefronts or other problems.

Advocates from around the country have cited the relationship between municipal laws to banish or restrict visibility of homeless people and hate crimes and violence. This overly broad enforcement of the laws passed by city governments specifically targeting homeless people are documented in NCH's *Illegal to Be Homeless: The Criminalization of Homelessness in the U.S.*

This survey of cities and states that violate the civil rights of homeless people concluded that California is the "meanest" state in the nation for poor and homeless people, followed by Florida, Hawaii and Texas. The NCH study also ranked four California cities as among the top 20 "meanest cities" in the nation for violating the human rights of homeless people: Berkeley, San Francisco, Fresno and Los Angeles. [See "California Named as Meanest State in the Nation," *Street Spirit*, December 2004.]

What is a hate crime?

The term "hate crime" generally conjures up images of cross burnings and lynchings, swastikas on Jewish synagogues, and horrific murders of gays and lesbians. Hate crimes are commonly called bias-motivated crimes, referring to the prejudice of the perpetrator against the victim's real or perceived grouping or circumstance. Most hate crimes are committed not by organized hate groups, but by individual citizens who harbor a strong resentment against a certain group of people.

In 1968, the U.S. Congress defined a hate crime, under federal law, as a crime in which the defendant intentionally selects a victim because of their race, color or national origin.

In recent years, federal bias crime laws have been enacted to provide expanded coverage. The Hate Crimes Statistics Act of 1990 mandates the Justice Department to collect data from law enforcement agencies about "crimes that manifest evidence of prejudice based upon race, religion, sexual orientation, or ethnicity."

The Hate Crimes Sentencing Enhancement Act, enacted in 1994, defines a hate crime as a crime in which the victim is intentionally chosen "because of the actual or perceived race, color, national origin, ethnicity, gender, disability, or sexual orientation of any person." This measure only applies to, among other things, attacks and vandalism that occur in national parks and on federal property.

The most recent legislation, Local Law Enforcement Hate Crimes Prevention Act of 2005, was introduced in the U.S. House (H.R. 2662) and U.S. Senate (S. 1145) in the 109th Congress. This legislation "authorizes the Attorney General to provide technical, forensic, prosecutorial, or other assistance in the criminal investigation or prosecution of any crime that: (1) constitutes a crime of violence under Federal law or a felony under State or Indian tribal law; and (2) is motivated by prejudice based on the race, color, religion, national origin, gender, sexual orientation, or disability of the victim or is a violation of the hate crimes laws of the State or tribe."

Hate Crime laws do not protect homeless people

There is currently no federal criminal prohibition against violent crimes directed at individuals because of their housing status, poverty or homelessness. The NCH aims to include housing status in the Local Law Enforcement Hate Crimes Prevention Act of 2005 (H.R. 2662 and S. 1445) and in future pieces of legislation.

H.R. 2662 and S. 1445 have broad bipartisan support, but through the inclusion of housing status, hate crimes and violent acts toward people experiencing homelessness will be more appropriately handled and prosecuted. Also, if victims know that a system is in place to prosecute such crimes, they are more likely to come forward to report these crimes.

People who are forced to live and sleep on the streets for lack of an appropriate alternative are in an extremely vulnerable situation, and it is unacceptable that hate crime prevention laws do not protect them.

Recommendations for Action on Hate Crimes

The National Coalition for the Homeless recommends that the following actions be taken to address the rising number of hate crimes committed against homeless people.

1. A public statement by the U.S. Justice Department acknowledging that hate crimes and violence against people experiencing homelessness is a serious national trend.
2. The Justice Department would issue guidelines for local police on how to investigate and work with people experiencing homelessness based on recommendations from the National Coalition for the Homeless. The Justice Department would recommend improvements to state law on how to better protect against violence directed against people experiencing homelessness, including tougher penalties.
3. A database to be maintained by the U.S. Department of Justice, in cooperation with the National Coalition for the Homeless, to track hate crimes and/or violence against people experiencing homelessness.
4. Inclusion of housing status in the pending state and federal hate crimes legislation. The pending federal bill is the Local Law Enforcement Hate Crimes Prevention Act of 2005 (H.R. 2662 in the House; S. 1145 in the U.S. Senate -- 109th Congress).
5. Sensitivity/Awareness training at police academies and departments nationwide for trainees and police officers on how to deal effectively and humanely with people experiencing homelessness in their communities.
6. A U.S. Government Accountability Office (GAO) study into the nature and scope of hate crimes and/or violent acts and crimes that occur against people experiencing homelessness. This proposed study will address the following:
 - a. Causes of hate crimes/violence.
 - b. Circumstances that contribute to or were responsible for the perpetrators' behavior.
 - c. Beliefs held by the perpetrators of these crimes and how their beliefs have changed since conviction.
 - d. Thoughts and advice from the perpetrators to others who are considering hate crimes/violence against the homeless population.
 - e. Community education, prevention and law enforcement strategies.

For more information about hate crimes against homeless people, contact:

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National Coalition for the Homeless
2201 P St. NW
Washington, DC 20037-1r 33

Phone: (202) 462-482; ext. 19
Email: mstoops@nationalhomeless.org
Web: www.nationalhomeless.org/hatecrimes/signon.html

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AHFC/HUD homelessness definition:

For the purposes of this section, the definition of "homeless" includes:

- Any individual who lacks a fixed, regular, and adequate nighttime residence or has a primary nighttime residence in any facility not designed for permanent living;
- Families, individuals, and youth residing in emergency shelter or transitional housing;
- Persons in drug and alcohol treatment who were homeless before they entered treatment or will be homeless after they leave treatment;
- Family members wait-listed for public housing that are currently residing in substandard or overcrowded housing;
- An individual in any of the above places but is spending a short time (up to 30 consecutive days) in a hospital or other institution; and/or

An individual who is being discharged within a week from an institution, such as a mental health or substance abuse treatment facility or jail/prison, in which the person has been a resident for more than 30 consecutive days and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing.

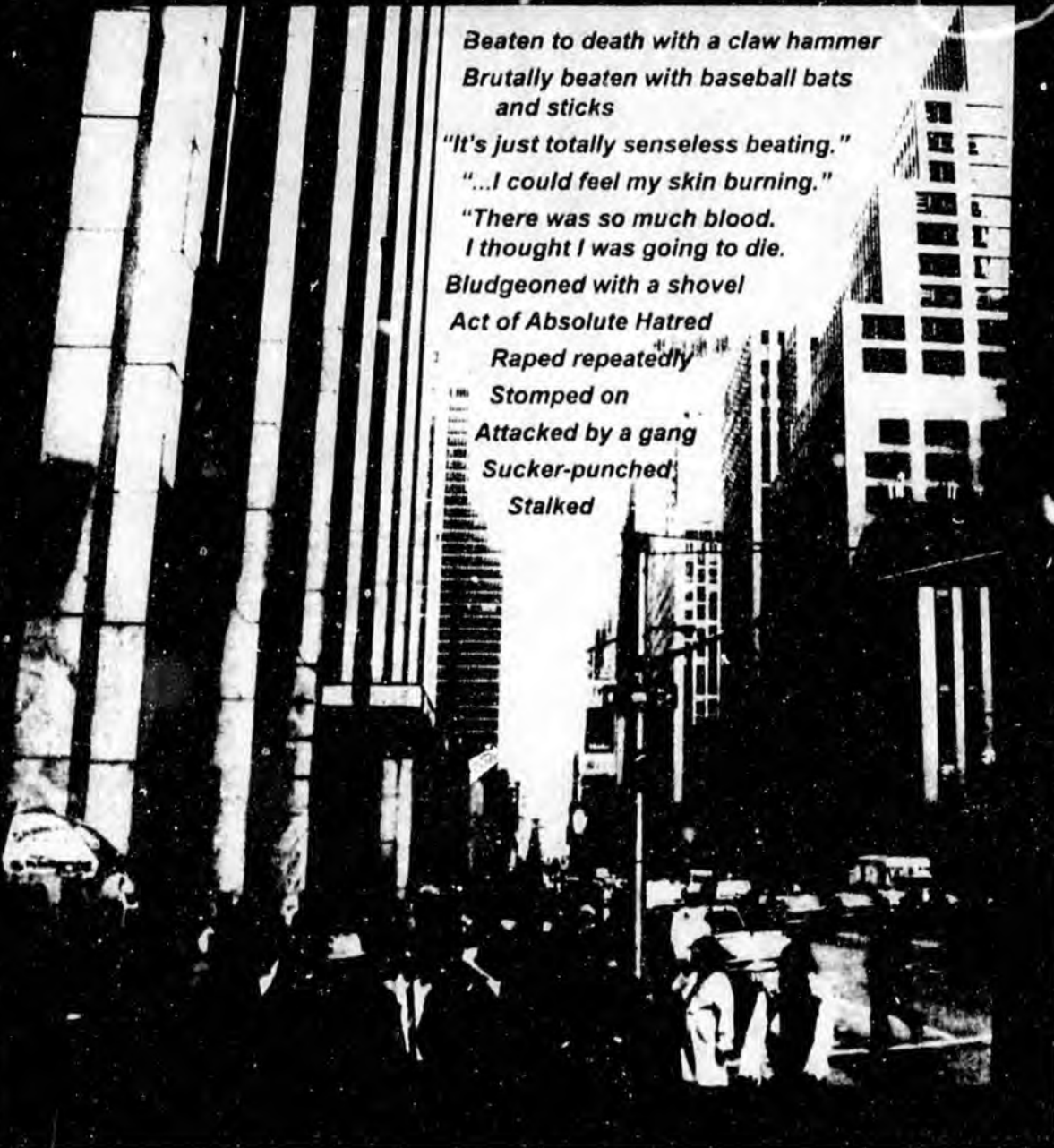
National Council on Homeless Model Legislation definition:

For the purposes of this section, the definition of "homeless person" refers to an individual who lacks a fixed, regular, and adequate nighttime residence or has a primary nighttime residence that is:

- A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, including cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;
- A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including motels, hotels, congregate shelters, and transitional housing; or
- Housing of other persons in which the individual is temporarily staying due to loss of housing, economic hardship, or a similar reason.

Hate, Violence, and Death on Main Street USA:

A Report on Hate Crimes And Violence Against
People Experiencing Homelessness, 2006



*Beaten to death with a claw hammer
Brutally beaten with baseball bats
and sticks*

"It's just totally senseless beating."

"...I could feel my skin burning."

*"There was so much blood.
I thought I was going to die."*

Bludgeoned with a shovel

Act of Absolute Hatred

Raped repeatedly

Stomped on

Attacked by a gang

Sucker-punched

Stalked

TABLE OF CONTENTS

Acknowledgements:	3
Introduction:	5
2006 ANNUAL REPORT	
Title Page:	10
Dedication:	11
Executive Summary:	12
Summary of Hate Crimes/Violence Data in 2006:	15
Summary of Teen Involvement in Hate Crimes/ Violent Acts:	17
Summary of Victims Who Were Middle-Aged:	18
Cities/Counties where Hate Crimes/Violence Occurred in 2006:	19
Map of Cities/Counties where Hate Crimes/Violence Occurred in 2006:	21
States where Hate Crimes/Violence Occurred in 2006:	22
Map of States where Hate Crimes/Violence Occurred in 2006:	24
Historical Summary of Hate Crimes/Violence Data for 1999-2006:	25
Comparison of Hate Crime Homicides vs. Lethal Attacks on Homeless Individuals:	26
Hate Crimes Survey Summary and Results:	27
Recommendations for Action:	35
Model State Legislation:	37
Model Legislative/Organizing/Public Education Efforts in California and Maine:	42
Listing of Incidents by City	46
Case Descriptions Involving Death:	47
Case Descriptions Involving Rape:	54
Case Descriptions Involving Violent Acts Setting on Fire:	56
Case Descriptions Involving Violent Acts Beatings:	58

HATE, VIOLENCE, AND DEATH ON MAIN STREET USA

February 2007

Case Descriptions Involving Police Brutality:	75
Case Descriptions Involving Threats/Intimidations:	76
The Link between Violence against Homeless People and the Criminalization of Homelessness:	77
Video Exploitation of Homeless People:	78
National Media Coverage:	83
Appendix A: Sources:	90
Appendix B: Mr. Gast Lives Everywhere: A Homeless Folk Tale:	101
Appendix C: NCH Hate Crimes Public Service Ad:	104

EXECUTIVE SUMMARY

In 1982, the National Coalition for the Homeless (NCH) was founded with one mission in mind: to end homelessness. NCH consists of a national network of currently and formerly homeless people, advocates, activists, and service providers who have worked tirelessly to fulfill this mission. Our vision of a society without homelessness has been the ultimate goal of attempts to pass comprehensive legislation, to satisfy the immediate needs of the homeless population and to raise awareness through public education.

Through the *Hate, Violence and Death on Main Street USA* report, the National Coalition for the Homeless brings attention to an issue that has been ignored in both government policy and the opinions and thoughts of the everyday American. We hope this report will educate the public to the inhumanities facing America's homeless population and ultimately end violence against people experiencing homelessness. In fact, our report has played a role in getting laws passed in Maine and California as well as influencing pending legislation in California, Florida, Maryland, Massachusetts, Nevada and Texas.

The Maine law gave judges the discretion of adding a few more years onto a person's sentence, and the California law mandated police officers to be trained about hate crimes against homeless people. If passed, the pending legislation will add homelessness as a protected class to their respective states' hate crimes laws.

Throughout our country's history, people of varying race, ethnicity, disability and sexual orientation have been the victim of hate crimes. The justice system has worked to reduce these crimes through efforts to provide greater retribution to victims of hate crimes by further penalizing perpetrators and by discouraging potential attackers by imposing stricter punishment. Yet homeless victims have been denied this equal opportunity alongside other minority groups. Between 1999 and 2005 there have been 82 homicides classified as the result of hate crimes according to the Center for the Study of Hate and Extremism at California State University San Bernardino. Over that same period there have been 169 deaths as a result of violent acts directed at homeless people. This is more than twice the amount of deaths than those resulted from categorized hate crimes.

The past eight years have witnessed 614 violent acts against homeless individuals. These attacks occurred in 200 cities throughout our country in 44 states and Puerto Rico. They know no boundary and are not limited to coast, region or state. These attacks have permeated every corner of our society, resulting in 189 deaths and 425 non-lethal attacks, ranging from beatings with golf clubs to setting a man on fire while sleeping. The victims have endured humiliations both great and small and the injuries they sustained created not only physical pain and scars, but the crippling effects of wounded self-esteem and dignity of the human spirit.

In 2006, headline after headline carried the same message, "Group of teens savagely beat homeless men." The data shows that the majority of crimes were committed by teens and youths as young as thirteen-years-old. Of the known attackers, 62% were youths between age thirteen and nineteen. An overwhelming 84% of the accused and convicted were 25 and under. The attackers repeatedly cited

HATE, VIOLENCE, AND DEATH ON MAIN STREET USA

February 2007

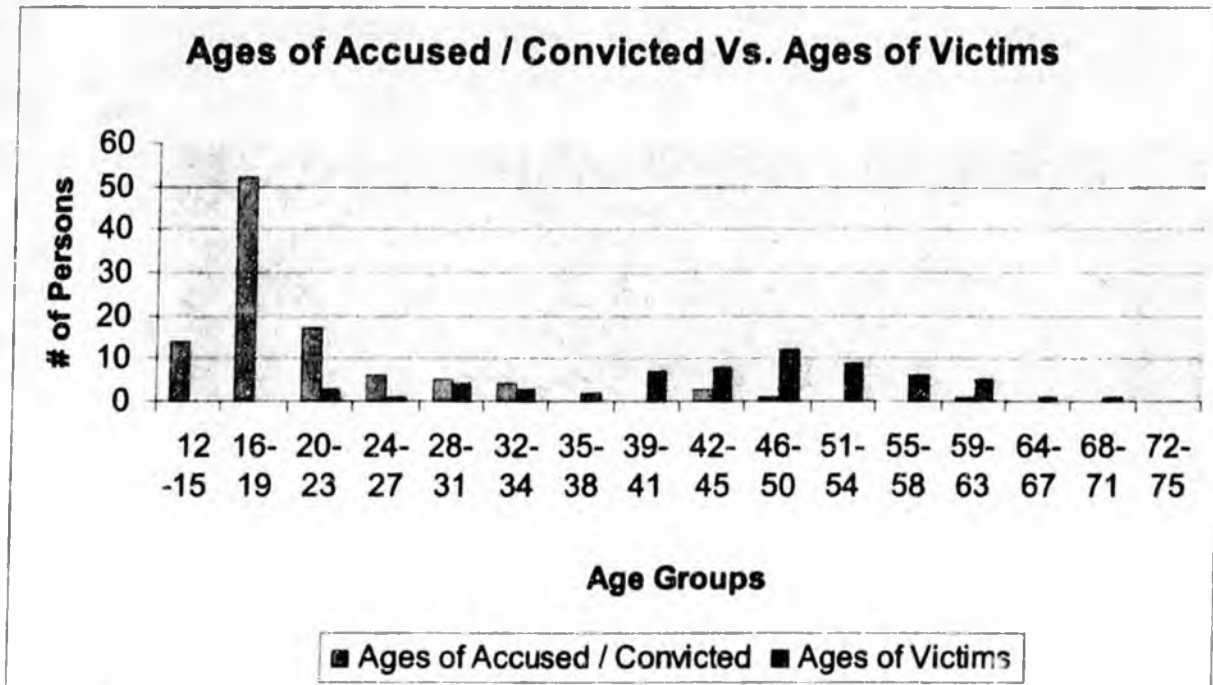
their motive of attack as boredom, committing the crimes for the "thrill" or "fun," because the victim is homeless, or perhaps even more harrowing, because they simply "can." The victims of these violent crimes were for the most part innocent pawns in a game of fun for their attackers.

The *Hate, Violence and Death on Main Street USA* report seeks to ultimately create awareness. Too many homeless individuals have been made into victims of brutal and often deadly attacks, attacks motivated by one's housing status and the simple thrill of harming someone. According to a 2006 study done by the Association of Gospel Rescue Missions, 18 percent of homeless people have experienced violence on the street. These atrocities are acts of hatred and should be classified as hate crimes. It is time that the victims of these violent acts are given due respect. The Local Law Enforcement Hate Crimes Prevention Act of 2005 does not address housing status, nor does the Hate Crime Prevention Act of 2005. The facts show that homeless people are a vulnerable population; as such they should be included in legislation protecting the most vulnerable classes of society. Moreover, since the homeless often reside in federally subsidized shelters, streets, and parks, the federal government has both unique authority and a jurisdictional justification to assure their protection when local authorities cannot. Additionally, housing-related issues have been an area of active federal enforcement for decades. Proactive measures must be taken to address violence against homeless people. We can no longer watch idly as the civil rights of homeless people are continually thrown aside.

Research and experience have shown the correlation between homeless-directed violence and city efforts to criminalize homelessness. Laws that violate the basic civil rights of homeless people justify violence toward them. Through the creation of societies where homeless individuals are seen as second-class citizens, we are fueling the dehumanization of homeless people. It is the responsibility of cities and of all governing bodies to ensure that the criminalization of the homeless is neither fostered nor encouraged in America's cities.

The *Hate, Violence and Death on Main Street USA* report is the voice for the 189 men and women who lost their lives, for the 425 who managed to survive and for the countless number of victims and casualties that go unreported every year. Justice for homeless people should be granted to them; protection of their civil rights should be ensured; they should be protected by legislation that acknowledges the injustice of violence against them. By acknowledging this sickening trend, we can discourage America from continuing to ostracize our homeless citizens. We can work to return their sense of self worth and purpose. We can show they are not forgotten.

SUMMARY OF HATE CRIMES AND VIOLENCE DATA IN 2006:



Age Ranges of the accused/ convicted: 13, 14 (five), 15 (eight), 16 (fifteen), 17 (fourteen), 18 (fourteen), 19 (nine), 20 (four), 21 (six), 22 (four), 23 (three), 24, 25 (five), 27 (two), 28 (three), 29, 30, 32, 33 (three), 34, 43, 44 (two), 50 and 59.

Age ranges of the victims in 2006: 21 (two), 22, 25, 28, 30 (two), 31, 32, 33, 34, 35, 36, 39 (two), 41 (five), 42, 43 (two), 44, 45 (four), 46 (two), 47 (three), 48 (three), 49 (two), 50 (two), 51 (five), 52, 54 (three), 55, 56, 57, 58 (three), 60 (two), 62 (two), 63, 67 and 68

Gender of Victims: male: 98 female: 16

LEGISLATIVE RESEARCH REPORT

APRIL 2, 2008



REPORT NUMBER 08.231

VIOLENT CRIMES AGAINST ALASKANS EXPERIENCING HOMELESSNESS

PREPARED FOR REPRESENTATIVE MAX GRUENBERG

BY DANIEL LESH, LEGISLATIVE ANALYST

You asked about violent crimes committed against homeless people in Alaska in recent years. Specifically, you asked for data on the total convictions, by region, made for homicides, assaults, sexual assaults, and robberies where the victim was a homeless person.

We were unable to locate the data you requested for any part of the state, because no Alaska law enforcement, or other, entities collect information regarding whether a victim was experiencing homelessness at the time a crime was committed.¹ However, we present the available data on the subject in Table 1 and Table 2 below.

The National Coalition for the Homeless (NCH), a leading national organization addressing the subject of your request, produces an annual report on violence against the homeless across the nation. The NCH describes the methods used in their annual report, and discusses the challenge of conducting this type of research, as follows:

For documenting hate crimes and violence NCH relies on news reports and information relayed to us by homeless shelters around the country for the data and documentation that it includes in its reports. Although NCH acts as the nationwide repository of hate crimes/violence against homeless people, there is no systematic method of collecting and documenting such reports. Many of these violent acts go unpublicized and/or unreported, thereby making it difficult to assess the true situation. Often, homeless people do not report crimes committed against them because of mental health issues, substance abuse, fear of retaliation, past incidents, or frustration with police. Some cases this year were also omitted because the victims were found beaten to death, but no suspects

¹ In response to your inquiry, we contacted the following officials: Chris Christensen, Deputy Administrative Director, Alaska Court System, (907) 269-5413; Megan Peters, Public Information Officer, Alaska State Troopers, (907) 269-5413; Lieutenant Paul Honeman, Anchorage Police Department, (907) 786-2403; Deputy Chief Brad Johnson, Fairbanks Police Department; Sergeant David Campbell, Juneau Police Department, (907) 586-0639; Teri Carnes, Alaska Judicial Council, (907) 279-2526; and Kathryn Monfreda, Criminal Records and Identification Bureau Chief, Department of Public Safety, (907) 269-5906.

could be identified. In addition, the report does not take into account the large number of sexual assaults, especially on homeless women.²

In Table 1, we present references to incidents in Alaska described in the NCH's annual violence reports. We also include the results of our own news search for violent crimes committed against homeless people in Alaska. As noted by the NCH, it is likely that these data significantly understate the prevalence of crimes committed against the homeless in Alaska.

Table 1: Violent Crimes Committed Against the Homeless in Alaska, As Reported by the National Coalition for the Homeless (NCH) or Encountered During a News Search

Year	Incidents Reported in NCH Annual Reports	Incidents Encountered in a Legislative Research News Search
2007	Report Not Available	1 assault (a homeless man was set on fire) reported in Anchorage (Attachment A)
2006	none reported	
2005	3 separate incidents of assault in Fairbanks	"some" assaults reported in Fairbanks (Attachments B and C)
2004	5 separate incidents of assault in Anchorage	
2003	none reported	"regular attacks" reported in Anchorage (Attachment D)
1999 - 2002	3 separate incidents of assault and 1 homicide in Anchorage	1 homicide in 2002 and 1 homicide in 2002 (Attachments E and F)

SOURCES: NCH "Hate, Violence, and Death on Main Street USA: A Report on Hate Crimes and Violence Against People Experiencing Homelessness, 1999-2006." Please see attached news articles for more information on these sources.

Since 1993, the Alaska Housing Finance Corporation (AHFC) has conducted surveys of homeless people in Alaska.³ These surveys provide a one-day snapshot of people experiencing homelessness in Alaska and include a question asking whether or not the respondent has ever been the victim of domestic violence. These data are subject to a number of caveats, including that they do not necessarily reflect the entire population of homeless people in Alaska and that

² Please see <http://www.nationalhomeless.org/publications/reports.html> for links to the NCH's annual reports on violence against the homeless. The quoted text comes from page 4 of the NCH report that covers the period 1999-2002.

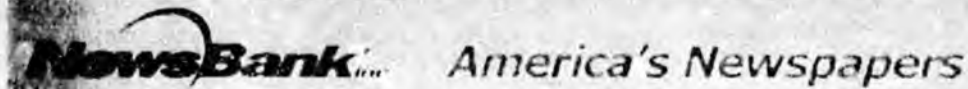
³ These surveys are mailed once per winter and once per summer to homeless shelters and other agencies that provide services to people experiencing homelessness. Participation by the agencies is greatest in Anchorage. For more information, visit http://www.ahfc.state.ak.us/grants/homeless_survey_reports.cfm or call James Wiedle, planner, Alaska Housing Finance Corporation, (907) 330-8235.

changes over time may reflect changes in survey participation rather than increases or decreases in violence. We present the AHFC's survey data in Table 2.

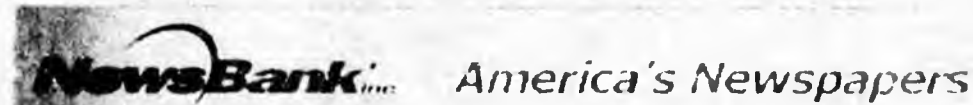
Table 2: Domestic Violence Against Homeless Individuals, as Self-Reported on Alaska Housing Finance Corporation Surveys					
Location	2003	2004	2005	2006	2007
Anchorage	272	250	240	177	137
Other Parts of State	129	140	122	187	74
Totals	401	390	362	364	211

NOTES: The following caveats apply to these data: the survey does not reach all homeless people in Alaska; the survey method is subject to errors associated with self-reporting; changes over time may reflect changes in participation and do not necessarily reflect increases or decreases in violence; the survey does not ask about when domestic violence occurred, only whether or not the person experiencing homelessness has ever been the target of domestic violence. **SOURCE:** Alaska Housing Finance Corporation "Statewide Homeless Survey" Winters 2003, 2004, 2005, 2006, and 2007, available online at http://www.ahfc.state.ak.us/grants/homeless_survey_reports.cfm, and James Wiedle, Planner, Alaska Housing Finance Corporation, (907) 330-8235.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.



NewsBank Article Listing



Charges leveled for lighting face on fire - BURNED: After tussle, suspect put cardboard around man's head and ignited it, police say.

Anchorage Daily News (AK) - September 19, 2007

Author: JAMES HALPIN jhalpin@adn.com ; Staff

A man who told police he laughed as he set an unconscious homeless man on fire has been charged with attempted first-degree murder, Anchorage police said Tuesday.

Information about the July attack surfaced earlier this month when Wayne Barras, 19, told officials at the Alaska Psychiatric Institute he had set a man on fire.

"It's bizarre, there's no doubt about it," said police Lt. Paul Honeman. "Very, very rarely do we have a case like this."

Barras was arraigned last week on charges of first-degree attempted murder and first-degree assault, according to court documents, and he had a pre-indictment hearing Tuesday.

Police learned of the attack after Hjalmar Christensen, 50, showed up to the Brother Francis Shelter on July 6 severely burned and beaten.

According to a statement filed by police Detective Kristie Ratcliff, Christensen was hanging out earlier in the day drinking with friend Lorena Ellsworth in a field across from the shelter. He had just walked up to a liquor store and bought a bottle of vodka, and the two were working to finish it.

Christensen took his turtleneck off before falling asleep against a fence, and Ellsworth laid her purple jacket on him before she left, she told Ratcliff.

At some point after that, Barras, who had also been drinking, happened upon Christensen as he was getting up.

Barras asked him for a cigarette, but "he was not polite in his request," according to what he told Ratcliff.

Christensen then apparently lunged toward Barras and tried to grab him. He missed, and Barras grabbed a rock and began smashing it into Christensen's head. He told Ratcliff he doesn't know how many times.

After the attack, Christensen "went to sleep," according to what Barras told police.

Barras set a piece of a Natural Ice beer box on fire with a lighter and put it on Christensen's face, he told Ratcliff. He then put it out, grabbed Christensen's backpack, and left the immediate area, but stuck around as an ambulance arrived, he told police. He could not say where he was, though.

On his way back to the Covenant House, where he stayed, he threw the backpack into a Dumpster without looking in it, he said.

"It certainly seems to be a crime of opportunity," Honeman said. "His acts were reckless endangerment that it rose to the level it did."

According to Ratcliff's statement, Barras told his cousin Romeo Iyapana what he did. When contacted by Ratcliff,

Iyapana said his cousin told him he acted in self-defense. Christensen had thrown a rock at Barras, he said, and Barras beat him up in response.

But then Iyapana told Ratcliff that he didn't want to discuss what happened until he knew what Barras had said.

Barras planned to turn himself in because he felt bad about the incident, Iyapana said, but he urged him not to do so because he wanted to hang out with him before he "went away."

After Christensen showed up at the Brother Francis Shelter, badly burned on his face and hands, he was transported to Harborview Medical Center in Seattle.

"It was hugely severe," Honeman said. "They didn't think he was going to make it."

Christensen is still recovering after undergoing several surgeries, including having skin from his leg grafted to his face. Doctors also operated on his hand and inserted pins in it, and those remain.

He was released from the hospital Sept. 7, but has since told police he doesn't remember the assault or anything else from that day.

Barras told police he didn't know why he did what he did. He thought he had killed Christensen and was laughing as he did so, but he didn't know why, he told Ratcliff.

According to court records, Barras has no criminal history.

Barras was arraigned last Thursday and was being held with bail set at \$200,000 with a third-party custodian required.

Find James Halpin online at adn.com/contact/jhalpin or call him at 257-4589.

Caption: Graphic 1: Christensen[1]_091907.pdf
Christensen


Edition: Final

Section: Alaska

Page: B1

Record Number: 1489698509/19/07

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[Back to Document](#) **NewsBank** America's Newspapers

NewsBank Article Listing

 **NewsBank** America's Newspapers

Fairbanks leaders seek a single voice - COMPASS: Points of view from the community

Anchorage Daily News (AK) - October 5, 2005

Author: SHIRLEY L. LEE, MAYOR STEVE THOMPSON, and ORIE WILLIAMS ; Commentary

The Fairbanks community was recently outraged when some of our homeless citizens were viciously beaten. Alarmed about this unacceptable behavior, the Native and non-Native community came together to raise a reward, share information and work toward stopping these intolerable crimes. Within the week, the Fairbanks Police Department arrested three people, who have since confessed to these crimes. Fairbanks Police Chief Dan Hoffman stated, "We were extremely concerned about victimization of vulnerable members of our population and extremely pleased with the proactive response of the entire community in working with us to put out the message that this would not be tolerated."

Some have attempted to cast these as racially motivated hate crimes. It appears this is not the case, as the victims were both Native and non-Native, and those who committed the crimes were also Native and non-Native. "Fairbanks Native Association witnessed clients, both Native and non-Native, coming into our programs who had been beaten. It appeared they were victims of opportunity -- assaulted while they were alone. Chief Hoffman and his officers have been very responsive to reports and are working with FNA to improve the safety and welfare of the community" said Shirley L. Lee, FNA's executive director.

Over time, the Fairbanks community has worked hard to strengthen the ties between community members, finding ways to work together on community issues, problems and opportunities. One example of this is coming together to host the Alaska Federation of Natives Convention in 2005. As part of this joint effort, 15 community committees were created to ensure that the AFN convention is a success. One committee created an AFN hot line -- 1-907-450-6546 -- for people needing information or assistance but not requiring a direct police response. This and other programs will help continue to make the Fairbanks community more welcoming to all visitors.

The executive directors of Fairbanks Native Association, Doyon Foundation, and Denakkanaaga; the mayors of the City of Fairbanks, Fairbanks North Star Borough, and North Pole; and the presidents of Doyon Limited and Tanana Chiefs Conference speak with one voice when we say, "All people in Alaska must work together. We need to get along. This community is going to continue to do even more to develop strong relationships with all our neighbors. The AFN convention is a place where an example can be set. Our community takes victimization and discrimination of any person seriously. We are a community known for our warm hospitality and we are committed to strengthening this reality. It is with that in mind that Mayor Steve Thompson, Mayor Jeff Jacobson and Mayor Jim Whitaker ask that anyone who experiences discrimination at any time or is not served well during the convention call them at 1-907-459-6793, 1-907-488-2281, or 1-907-459-1300."

Shirley L. Lee is executive director of the Fairbanks Native Association. Steve Thompson is mayor of the City of Fairbanks. Orie Williams is president and CEO of Doyon Limited.

Edition: Final

Section: Alaska

Page: B6

Record Number: 902865610/05/05

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[Back to Document](#)

NewsBank... America's Newspapers

NewsBank Article Listing

NewsBank... America's Newspapers

Fairbanks welcomes Alaska Federation of Natives convention

Fairbanks Daily News-Miner (AK) - October 8, 2005

CHEAP SHOT: The Anchorage Daily News reprinted an opinion column this week by a Bethel resident who asked, "Is it going to be safe for Alaska Natives to travel to Fairbanks?"

The short answer for those planning to attend the Alaska Federation of Natives convention this month is "Yes."

The column by John Active, a writer for the Tundra Drums, was reprinted Monday by the Anchorage Daily News under the headline "Discrimination hasn't left Fairbanks."

The same headline could be written on any day about any community in the world and be entirely accurate, so I'm not about to argue that discrimination has ended here.

Instead, I'd like to point out that the recent assault reports Active cites as evidence are the wrong ones upon which to build a discrimination claim.

Active began his column by telling a story about when he attended the University of Alaska Fairbanks 36 years ago as a freshman and went one night with a group to a downtown restaurant for dinner.

He said a waitress did not wait on them for a half-hour, even though the only other people in the place were several individuals seated at the bar. Active said his group eventually left the restaurant and went to another business where they were waited on promptly.

Active said he didn't stay long in Fairbanks after that because "I did not want to live in a place where people looked down on you."

"I thought Fairbanks had changed" since then, Active said, but he used the column to suggest that it hasn't.

He said that the recent assaults on homeless and transient people by kids on bicycles in Fairbanks are hate crimes directed at Alaska Natives.

"Today there are worse things happening to Alaska Natives than not being served in a restaurant," he said.

"These are serious crimes that can reveal a lot about Fairbanks, though I do want to believe the city has changed," Active said.

"A community can be measured by how its population and institutions treat its most vulnerable members. A community that doesn't take seriously such attacks can quickly find itself with a reputation that may take years to shed."

In his comments, Active failed to mention that the attacks were directed against Natives and non-Natives. He did mention that three people were arrested--ages 13, 14 and 19--but he did not mention that the oldest of the three is an Alaska Native.

He also failed to mention that the Fairbanks police chief and local Native leaders agree that the people injured in these crimes were "victims of opportunity" and were not singled out because of their race.

He also failed to mention that the paragraph beginning with the words "A community can be measured ..." was copied

almost word for word from a Daily News-Miner editorial that appeared Sept. 19. A couple of other passages were copied as well.

The editorial was written in the context of a community condemnation of the attacks. Viewed in that light, the words have a different meaning than in Active's column.

The Fairbanks City Police worked closely with leading Native organizations on this case and the community took the attacks seriously and reacted swiftly. Everyone I know was outraged at these attacks.

To suggest that the people who did this represent what's acceptable in Fairbanks or that this is how visitors to our town are likely to be treated is way off the mark.

In a letter responding to Active's column, six Native leaders and the three local mayors said that Fairbanks is working hard to build ties among community members.

"Our community takes victimization and discrimination of any person seriously," they said. "We are a community known for our warm hospitality and we are committed to strengthening this reality."

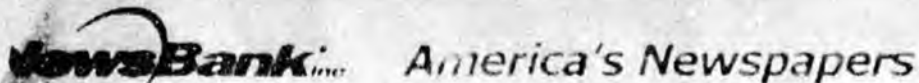
Many months of work by people from throughout the community have gone into the planning for the AFN convention. That cooperation is a more accurate reflection of community standards than the actions of a few individuals who belong behind bars.

Dermot Cole can be reached at cole@newsminer.com or 459-7530.

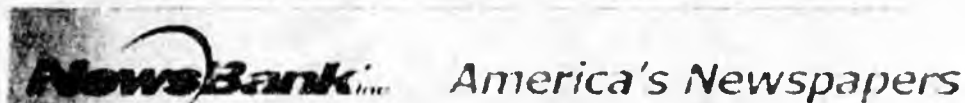
Section: Today's Cole Column

Record Number: 3085843

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NewsBank Article Listing



Picture of trail safety murky - DATA: Police have no hard numbers, but "we think the trails are generally safe."

Anchorage Daily News (AK) - August 17, 2003

Author: TATABOLINE BRANT Anchorage Daily News ; Staff

A string of sex assaults and a body found under a bridge have heightened safety worries this summer about Anchorage's bike trails. The concerns have stirred plans for renewed trail patrols and inspired users, particularly women, to take steps -- traveling in pairs, avoiding some sections -- to increase their security.

Using their current system of keeping data, Anchorage police cannot determine whether crime statistics for one of the city's most popular outdoor attractions are up or down. But despite clusters of crime and some high-publicity incidents, "we think the trails are generally safe," Deputy Police Chief Audie Holloway said. They're not as pleasant as they could be, he said. Some people are afraid, and there are problems with public alcoholics and homeless camps along the trails.

"We'd like for them to be 100 percent safe," Holloway said.

The problem with getting hard numbers, police say, is that when a crime occurs on a trail, it's usually the nearest street address that's listed as the location. To find out whether a particular crime occurred on a trail, someone has to physically pull the police report from the records room at APD headquarters and read through it.

For example, if police wanted to know how many assaults occurred on trails around town in 2001, they would have to pull the approximately 3,750 assault reports that came in that year and read each one, trying to find reference to a trail.

To get a clear picture of how safe the city's trails were that year, they'd also have to at least read the homicide (12), sexual assault (286) and robbery (390) reports.

Add in the drug, prostitution and theft reports for 2001 and you're talking about reading through more than 14,000 reports.

Then there would be the question of what a trail is. Of course the definition would include the 127 miles of paved trails in the municipality, but what about the 15,000 acres of city parks? Or the footpaths that wind through the woods at Valley of the Moon Park and other areas?

It would take several months and some serious manpower to get a year's worth of accurate stats compiled, Holloway said.

Most of the crimes the Police Department responds to occur in the city's residential, industrial and business districts, Holloway said - not on the trails - so it doesn't make sense to devote an already understaffed force to investigating trail crime trends, he said.

"We'd rather put people on the problem rather than try to describe the problem," he said.

Mayor Mark Begich's office is launching a Trail Watch program, which will put volunteers on the city's trails to help be the eyes and ears of the police. Details on the program are still being ironed out. City officials say they'll be released in the next few weeks.

Volunteer trail patrols have succeeded in places Outside. At least one patrol has been tried in Anchorage before, in 1994 shortly after Bonnie Craig was murdered, according to Robert Arnold, who was involved in the effort. The

patrol disappeared because it was "not able to mount sufficient time and effort to sustain the plan," Arnold explained via e-mail recently.

Begich has made safety on the city's trails a priority, which might prove to make all the difference this time around. His first meeting on the Trail Watch program drew more than 70 people from all aspects of the community. At least one business has donated \$1,000 to help pay for gear, and a nationally recognized local search team has offered to help train Trail Watch volunteers.

The program got a warm response among trail users who were out at Westchester Lagoon and Valley of the Moon Park one recent afternoon, though almost all contacted said they'd still like to see police on the trails.

Holloway said APD would like to put police on the trails but doesn't have the resources right now.

"We have to assign people to areas where they're going to be serving the public the most," and those are the areas where population is most dense, he said.

Betty Vogt, who has lived in Alaska for about five decades, said she used to walk on the Chester Creek trail all the time but not anymore. She said a few years ago, a young man passed her on the trail and yelled "Boo!" at her.

"Just scared me half to death," Vogt said. The man laughed and walked away, she said.

Vogt said she realized that if the man had intended to do her harm, there would have been no one around to help. Since then, she has taken to walking back and forth in front of Valley of the Moon Park, near her house, where there are usually a lot of people. Putting volunteers on the trails would be great, Vogt said. But, she added, she still wouldn't feel comfortable walking alone.

At Westchester Lagoon, Meagan Hughes, 25, and her friend Heidi, 26, sat on a bench after rollerblading. The pair said they use the trails about twice a week.

"I would not go alone," said Heidi, who did not want her last name used. "If somebody doesn't come with me, I won't go."

Hughes said she doesn't like to go where there are woods on both sides of the trail because she doesn't feel safe. "It's gorgeous," Hughes said, "but I'm not going to do it alone. One of the drawbacks of being a woman, I guess."

"One thing I've never seen down here that I'd really like to see (are) bicycle cops in full uniform," Heidi said.

Both women said they would love to see Trail Watch get off the ground. "Especially if they were clearly marked," Heidi said. "Then you would at least know somebody's down here."

At 6 foot, 3 inches and 220 pounds, Ross Nixon said he's never had a problem on the trails. Sitting in the grass with a friend at Westchester after a long run toward Kincaid Park, he said Trail Watch is a good idea. "I would be interested in volunteering," he said.

"This trail here is such a jewel for Anchorage," Nixon said. "It really is worth working on the problem to make sure people keep using it and aren't afraid of using it. ... If everyone who uses the trails agrees to help each other, we've really got something."

Heather Walsh, 21, who was just about to start a run at Westchester, said she runs on the trails only between about 3 and 8 p.m. "If it's earlier or later than that, I won't run," she said. "I'm too scared. And I won't run that way," she said, pointing toward the Chester Creek trail, where some of the recent sex assaults occurred. "I always see really weird people coming out of the woods."

Chester Creek Greenbelt is peppered with homeless camps. The woods along the trails are dense and close to downtown, where most of the services for homeless people are clustered, which makes them a popular spot for camping.

On Monday, a little girl walking on the Chester Creek trail found a man believed to be homeless floating in the creek under a foot bridge. Police have ruled his death accidental.

In June, more than two dozen police officers swept through the greenbelt, rousting people from homeless camps and looking for a suspect in three of the four attempted sexual assaults that occurred on the trails this summer. A few days later, police arrested a 33-year-old man and charged him in one of the attacks.

Women have said this summer that they feel intimidated when they approach drunken men on the trail, especially if they number two or more.

Thom Blackbird, an outreach coordinator for Homeward Bound, doesn't doubt that homeless alcoholics can be scary sometimes, especially if they have mental health issues, but by and large they leave trail users alone when addressed in a forthright manner, he said.

Blackbird said homeless people are regularly attacked along the Chester Creek greenbelt. He did not have hard numbers, just his experience talking to people on the street.

"I probably see a person every couple of weeks that are jumped or beaten up there," Blackbird said. "The majority of it is by young people. I'd say 90 to 95 percent of the time they jump them and take their cigarettes and any money that they have."

Often the assaults are not reported to police, Blackbird said. He suspects assaults have increased over the years. "It used to be the summer months with the kids. Now it's year-round."

Deputy Chief Holloway said APD is looking into the possibility of tweaking the way it enters data so it will be able to track trail crime trends in the future.

What it would take, Holloway said, is adding a box to police report forms that asks whether the crime occurred on a trail. The department's reporting forms haven't been overhauled in about 10 years, he said, but negotiations for a new computerized reporting system are under way. Adding a field that would allow for tracking crime on the trails should be fairly easy, he said.

"We have been Band-Aiding things around here for so long," Holloway said. "We have a lot of updating to do."

Daily News reporter Tataboline Brant can be reached at tbrant@adn.com or 257-4321.

VOLUNTEER OPPORTUNITIES for Trail Watch will be announced around Sept. 1, the city said. For more information on the program or to submit comments, visit:

www.muni.org/mayor/trailwatch.cfm

MAP OF ANCHORAGE TRAILS

www.muni.org/iceimages/parks/trailsmap.jpg

Caption: Photo 1: Weblink CMYK_081703.jpg


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Section: Alaska

Page: B1

Record Number: 281871

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[Back to Document](#) **NewsBank** America's Newspapers

NewsBank Article Listing

 **NewsBank** America's Newspapers

Cold case is solvable, detective says - MURDER: Investigator works to find justice for woman killed two years ago.

Anchorage Daily News (AK) - September 25, 2004

Author: TATABOLINE BRANT Anchorage Daily News ; Staff

Two years after a 36-year-old woman was found slain under the A Street bridge downtown where she had been sleeping, police say they have the evidence to make a case but have not yet matched the evidence with a person.

"This case is definitely solvable," detective Glen Klinkhart said Friday, asking anyone with information to come forward. "The only thing I need is the guy's name."

It was two years ago Friday that a downtown security worker on a routine bike patrol found Cynthia "Cindy" Henry's body around 7:30 a.m. The man had gone to look under the A Street bridge, near Third Avenue, because he knew it to be a place frequented by transients, Klinkhart said.

Under the bridge, the man noticed a pallet leaning up against a roughly 7-foot-tall cement wall. At the top of the wall, on a wide ledge, was a person. The man climbed up the makeshift ladder to check on the individual and realized she was dead. He called police.

"It was immediately apparent it was a homicide," Klinkhart said.

Klinkhart said he still remembers getting pulled out of a meeting to investigate the slaying. It was his first homicide, and remains the only murder case he's been in charge of to date that he has not cracked.

"I want to find some justice for her," Klinkhart said Friday afternoon, standing under the A Street bridge where he had met with reporters to explain what he could about the case.

Klinkhart said Henry was part of a subculture of homeless and semi-homeless people who live downtown. She had been in and out of shelters over the years and had apparently tried to get off the streets, but never made it that far, he said. She wasn't close to her family, who live in the Glennallen area, he said.

Within this subculture, Henry was known to share what little she had -- extra food, money or alcohol that she'd come into from time to time -- with others, Klinkhart said. That was no small thing among people fighting daily for survival and who often live in fear of being beaten, robbed or otherwise taken advantage of, Klinkhart said.

"They live very, very hard lives," he said, noting that Henry was sleeping outside on a cold, rainy night "underneath a bridge that shook every time a car came over it" when she was killed.

Many people knew Henry, Klinkhart said. "She was well-liked."

Klinkhart refused to reveal how she died, saying that only police and the killer knew that and he wanted to keep it that way to help verify stories later. He said he thought she arrived at the bridge around 1 a.m. to sleep the night she died.

Members of the Alaska Native Justice Center showed up at the A Street bridge Friday to learn more about the investigation. Asked by a member if Henry had been raped, Klinkhart answered that when he catches Henry's killer, "I will be arresting him for sexual assault."

Klinkhart credited the security ambassador and crime scene investigators with helping to preserve "a lot of good physical evidence," but refused to say whether that included DNA or fingerprints. The evidence did help eliminate suspects, he said.

"The man who murdered Cynthia Henry was sloppy," he said.

Karen Lee, director of planning and development at the Alaska Native Justice Center, which assists police when possible by putting up rewards or helping officers find victim's friends and families, said she was glad to see the police department keeping Henry's case in the public eye.

"It sounds like they've done a lot of work," she said. "I'm hopeful that someone will come forward."

Anyone with information about the slaying is asked to call Crime Stoppers at 561-STOP. Callers can remain anonymous and be eligible for a cash reward.

Daily News reporter Tataboline Brant can be reached at tbrant@adn.com or 257-4321.

Caption: Photo 1: 25 B1 AK teaser Ralston_092504.tif Photo 2: cynthia_henry_092504.tif
Henry

Edition: Final

Section: Alaska

Page: B1

Record Number: 609590409/25/04

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Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: 2029

Number of pages including cover: 1

From: Jane Pierson

Date: April 4, 2008

Re: Please go final on HCSHB211(JUD) 25-LS1245E

We also adopted the Title Change Resolution 25-LS1626A

Thank you

HP Officejet 7310xd
Personal Printer/Fax/Copier/Scanner

Log for
Representative Jay Ramras
(907) 465-2070
Apr 04 2008 2:48PM

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SB

226

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MEMORANDUM

April 11, 2008

SUBJECT: Requiring leave of the court to file complaint for vexatious defendant (SB 226, Work Order 25-LS0825\C)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Dennis C. Bailey *DCB*
Legislative Counsel

You have asked whether the issues I identified in my earlier (April 11, 2008) memorandum relating to your amendment also apply to the underlying bill, SB 226. The amendment requires a plaintiff to obtain leave of the court before a public interest litigant may file a complaint. The underlying bill requires a vexatious litigant to obtain prefiling order before the vexatious litigant may commence an action. The short answer is yes, the concerns in my memo apply to both.

Both the amendment and the bill require the court to make a preliminary determination that the claims of the public interest litigant have merit and are not filed solely for the purpose of harassment or delay. A determination of success on the merits by the court before litigation has begun could be challenged as a constitutional due process infringement.

Both the bill and the amendment require a prefiling order. This requirement potentially creates a jurisdiction problem. Normally a civil action is commenced by the filing of a complaint under Civil Rule 3 and jurisdiction over the parties is obtained by service of the complaint and summons on the defendant. (AS 09.05.010) The prefiling order might be considered an order without jurisdiction.

Focusing on the larger perspective, in my judgment, both the bill and the amendment may be subject to a constitutional challenge based on an argument that it interferes with the right of access to the courts. The Alaska Supreme Court has outlined the right of access to the courts as follows:

The right of access to the courts is an important interest requiring enhanced scrutiny; however, that right is impaired only by state action that actually limits or blocks access to the courts. n.33 The damages caps at issue here do not actually limit access to the courts; rather, they simply

Representative Jay Ramras
April 11, 2008
Page 2

limit a plaintiff's recovery in civil court.

Footnotes

n. 33 See *Patrick v. Lynden Transport, Inc.*, 765 P.2d 1375, 1379 (Alaska 1988) (holding that statute requiring security bond for nonresident plaintiffs in civil court "restricts access to Alaska courts" and violates equal protection); *Wilson v. Municipality of Anchorage*, 669 P.2d 569, 572 (Alaska 1983) (holding that statute blocking recovery against government tortfeasors did not infringe right of access to courts because plaintiffs could still recover against private tortfeasors); *Bush v. Reid*, 516 P.2d 1215, 1220-21 (Alaska 1973) (holding that statute directly barring parolees' access to civil courts infringed right of access to courts).

Evans v. State, 56 P.3d 1046, 1052 (Alaska 2002).

Further, the Alaska Supreme Court, in *Patrick v. Lynden Transp.*, 765 P.2d 1375, 1379 (Alaska 1988), held that AS 09.60.060, which requires that nonresident or foreign plaintiffs must post security for costs and attorneys fees, unconstitutionally denies access to the courts. The court concluded that "statutory infringement upon that right is deserving of close scrutiny. The purposes served by the statute and the legislature's chosen means for effectuating those purposes must be examined."

Commenting on the *Patrick v. Lynden Transp.* case, the Alaska Supreme Court emphasized that "the 'effect of the statute [was] to discriminate between those nonresidents who can afford to post a bond for costs and attorney fees and those nonresidents who cannot, as well as to discriminate between nonresidents and residents generally.' We concluded that the statute violated equal protection because it unreasonably restricted access to the courts." *In re K.A.H.*, 967 P.2d 91, 94 (Alaska 1998).

The posting of cost bond required by both the draft bill and the amendment have many parallels with the cost bond statute rejected by the *Patrick v. Lynden Transp.* case and may be challenged on similar grounds.

It is, of course, impossible to predict the actual outcome of a litigation challenging the prefiling requirements proposed in the bill.

If I may be of further assistance, please advise.

DCB:med
08-273.med



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MEMORANDUM

Date: April 10, 2008

To: Representative John Coghill
Chair House Rules Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for SB266 – Vexatious Litigants

Attached please find the following documents:

- Sponsor Statement
- SB266 (25-LS0825\C)
- LAW 0 Fiscal Note
- Back up
- HJUD Committee Report

Alaska State Legislature



Senator Hollis French

Sponsor Statement

Senate Bill 226 - Vexatious Litigants

SB 226 creates a process in statute for courts to manage the problem of lawsuits brought by individuals who are "vexatious litigants."

A vexatious litigant is defined as a person who, among other things, repeatedly litigates the same claims or previous adverse decisions against the same parties, files multiple frivolous lawsuits, repeatedly files pleadings or motions that are frivolous or in bad faith, or repeatedly engages in tactics that are without merit or intended to cause unnecessary delay.

This bill allows the court to impose reasonable restrictions on vexatious litigants' access to the court. Under SB 226 a court can require conditions, such as the posting of security or prefiling review of a complaint by a presiding judge, before an action filed by a vexatious litigant can proceed. Several states have passed similar legislation to control the problem of vexatious litigation. The provisions in this bill are based on California's Code of Civil Procedure.

Vexatious litigation needlessly burdens the resources of the court system, and creates unnecessary expense for individuals who are the target of this litigation in the public and private sectors. It is certainly important to recognize and protect the individual's right to litigate claims in our court system. SB 226 will only affect those few cases that are clearly without merit. This bill will provide means for screening out extreme examples of meritless cases before they are filed. Please join me in supporting SB 226.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: **SB226-LAW-CIV-01-17-08**
 Bill Version: **SB226**
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: **LAW**
 Title: **An Act relating to vexatious litigants** RDU: **CIVIL**
 Component: **Torts & Workers Compensation**
 Sponsor: **Judiciary** Component Number: _____
 Requester: **Senate Judiciary**

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts								
1003 GF Match								
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

The bill would amend current statute, the Alaska Rules of Civil Procedure and the Constitution of the State of Alaska in order to allow the Alaska Court System to more appropriately manage the problem of vexatious litigation. The bill would enable the court system to prohibit, under certain circumstances, the commencement of an action by a vexatious litigant who is subject to a prefiling order or who fails to provide court ordered security, prohibit the issuance of a summons upon the filing of a complaint if the complaint is filed by a vexatious litigant or if a complaint has been mistakenly filed and is considered invalid; establish that a party to an action mistakenly accepted for filing by the clerk of court need not file an answer or other responsive pleading under certain circumstances; and permit the clerk of court to dismiss a mistakenly filed case. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Robert Meiners, Administrative Services Manager
 Division: Administrative Services Division
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Department of Law

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 Date/Time 1/18/08 4 23 AM
 Date 1/18/2008

American Law Reports ALR6th
The ALR databases are made current by the weekly addition of relevant new cases.

(This annotation has not been released for publication in ALR and is subject to revision or withdrawal).

Validity, Construction, and Application of State Vexatious Litigant Statutes

Robin Miller, J.D.

A state vexatious litigant statute permits restrictions on access to the courts by a litigant judicially determined to be vexatious, at least when the litigant is proceeding pro se. The purpose of such a statute is to prevent abuse of the judicial system by those persons who persistently and habitually file lawsuits without reasonable grounds, or who otherwise engage in frivolous conduct in the courts. These statutes have been consistently upheld by the courts. For example, in Wolfe v. George, 385 F. Supp. 2d 1004 (N.D. Cal. 2005), the court held that: (1) the California vexatious litigant statute does not violate litigants' rights to petition for redress of grievances, procedural due process, equal protection, or protection from double jeopardy; (2) the statute is not unconstitutionally vague or overbroad; (3) the statute does not impose an excessive fine or constitute an ex post facto law or a bill of attainder; and (4) the statute does not violate the Supremacy Clause of the U.S. Constitution. This annotation collects and analyzes the federal and state cases discussing the validity, construction, and application of state vexatious litigant statutes.

TABLE OF CONTENTS

Article Outline
Index
Table of Cases, Laws, and Rules
Research References

ARTICLE OUTLINE

I. PRELIMINARY MATTERS

- § 1. Scope
- § 2. Summary and comment
- § 3. Practice pointers

II. GENERAL PRINCIPLES

- § 4. View that statute is constitutional
- § 5. View that statute does not apply to criminal proceeding

III. PROPRIETY, UNDER CIRCUMSTANCES, OF VEXATIOUS LITIGANT ORDER

A. Order Finding Party Vexatious Litigant

1. Procedural Issues

- § 6. Manner of raising issue--Issue properly raised
- § 7. Manner of raising issue--Issue not properly raised
- § 8. Motion by proper party--Party proper
- § 9. Motion by proper party--Party not proper
- § 10. Necessity of notice and hearing
- § 11. Necessity of formal findings by court
- § 12. Timeliness of motion or action--Held timely

This annotation collects and analyzes the federal and state cases discussing the validity, construction, and application of a state vexatious litigant statute. Such a statute permits restrictions on access to the courts by a litigant judicially determined to be vexatious, at least when the litigant is proceeding pro se.

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein.

§ 2. Summary and comment

The purpose of a vexatious litigant statute is to prevent abuse of the judicial system by those persons who persistently and habitually file lawsuits without reasonable grounds, or who otherwise engage in frivolous conduct in the courts. Such conduct clogs the court dockets, results in increased costs, and is a waste of judicial resources that are supported by the taxpayers.^[FN1]

California enacted the nation's first vexatious litigant statute^[FN2] in 1963 after suggestions by both the state bar and the state judiciary.^[FN3] This statute was significantly broadened in 1990.^[FN4]

The next state to act, Hawaii, did not do so until 1993,^[FN5] enacting a statute modeled on California's.^[FN6] Other states followed: Ohio in 1996,^[FN7] Texas in 1997,^[FN8] and Florida in 2000.^[FN9] The latter two are also based on (but are not identical to) California's statute, while Ohio's is dissimilar.

The California statute establishes four tests for vexatiousness; a litigant's satisfying any one is a sufficient basis for a determination that the litigant is vexatious:

- In the immediately preceding seven-year period, the person has commenced, prosecuted, or maintained in propria persona at least five litigations, other than in a small claims court, that have been (1) finally determined adversely to the person or (2) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

- After a litigation has been finally determined against the person, he or she repeatedly relitigates or attempts to relitigate, in propria persona, either (1) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (2) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

- In any litigation while acting in propria persona, the person repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

- The person has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

Statutes enacted in Florida, Hawaii, and Texas embrace some or all of the California statute's criteria for a vexatious litigant, occasionally with modifications. The Ohio statute, taking a different approach, applies to a litigant who has habitually, persistently, and without reasonable grounds engaged in "vexatious conduct," which the statute defines as conduct that either: (1) obviously serves merely to harass or maliciously injure another party to the civil action; (2) is imposed solely for delay; or (3) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

After a litigant has been determined by the court to be vexatious, all the statutes permit two separate remedies: a requirement that the litigant post security for the opposing party's costs in order to continue the litigation, and a prefiling order requiring the litigant to receive advance judicial permission before commencing new pro se litigation.^[FN10]

Courts asked to consider the constitutionality of a state vexatious litigant statute have consistently upheld the statute (§ 4). Some courts have ruled that such a statute does not apply to criminal or habeas corpus proceedings (§ 5).

Courts have been asked to address various procedural issues in connection with a motion to have a person declared a vexatious litigant under the state vexatious litigant statute. Thus, courts have held, under the circumstances, that such a motion was (§ 6), or was not (§ 7), made in a manner permitted under the statute; that the motion was (§ 8), or was not (§ 9), made by a party permitted under the statute to assert such a motion; that the statute required prior notice and a hearing (§ 10), but did not require the court to issue formal findings (§ 11), before a party could be declared a vexatious litigant; and that the motion was (§ 12), or was not (§ 13), timely under the statute.

In cases resolving substantive issues concerning the propriety of an order declaring a party to be a vexatious litigant, courts have had to address certain threshold issues. Thus, courts have held, at least under the circumstances, that a vexatious litigant was (§ 14), or was not (§ 15), required to be a natural person; that a vexatious litigant was (§ 18), or was not (§ 19), required to be proceeding pro se; and that, where a vexatious litigant was required to be a "plaintiff," a party's status as a plaintiff was (§ 16), or was not (§ 17), supportable.

In cases applying the various definitions of vexatious litigant found in state vexatious litigant statutes, courts have held, under the circumstances, that a showing that there was no reasonable probability that a litigant would prevail in the litigation was (§ 20), or was not (§ 21), a prerequisite for a determination that the litigant was vexatious; that a determination that a party was a vexatious litigant was (§ 22), or was not (§ 23), supportable under a provision in a state vexatious litigant statute defining a vexatious litigant as one who had engaged in persistent vexatious conduct; that a determination that a party was a vexatious litigant was (§ 24), or was not (§ 25), supportable under a provision in a state vexatious litigant statute defining a vexatious litigant as one who had been designated as a vexatious litigant in prior litigation; that a determination that a party was a vexatious litigant was (§ 26), or was not (§ 27), supportable under a provision in a state vexatious litigant statute defining a vexatious litigant as one who had engaged in repeated dilatory or frivolous conduct; that a determination that a party was a vexatious litigant was (§ 28), or was not (§ 29), supportable under a provision in a state vexatious litigant statute defining a vexatious litigant as one who had repeatedly litigated, or attempted to litigate, the same issues; that a determination that a party was a vexatious litigant was (§ 30), or was not (§ 31), supportable under a provision in a state vexatious litigant statute defining a vexatious litigant as one who had commenced a specified number of prior unsuccessful litigations; and that a determination that a party was a vexatious litigant was supportable under an unspecified provision in a state vexatious litigant statute (§ 32).

In other cases involving substantive issues in connection with a motion to have a person declared a vexatious litigant under the state vexatious litigant statute, courts have ruled, at least under the circumstances, that neither the fact that a prior court declined to declare the person to be a vexatious litigant under the statute (§ 33), nor the fact that a prior court had sanctioned the person for the allegedly objectionable conduct (§ 34), precluded the court from granting the motion.

In cases addressing the propriety of the issuance, under the state vexatious litigant statute, of a prefiling order requiring a vexatious litigant to obtain advance judicial permission to commence specified litigation, courts have held, under the circumstances, that the proper party made the motion seeking the issuance of the prefiling order (§ 35); that the motion seeking the issuance of the prefiling order, or the court's order granting the motion, was timely filed (§ 36); that it was (§ 37), or was not (§ 38), permissible for the order to extend to litigation in which the vexatious litigant was represented by counsel rather than proceeding pro se; and that it was impermissible for the order to extend to litigation commenced in certain courts (§ 39).

In cases addressing the propriety of the issuance, under the state vexatious litigant statute, of a court order

requiring a vexatious litigant to post security in order to proceed with specified litigation, courts have held, under the circumstances, that a court was not required to hold a hearing (§ 41), or to make formal findings (§ 40), prior to issuing such an order; that a motion seeking such an order was untimely (§ 42); that the amount of security required was (§ 43), or was not (§ 44), supportable; that the court had (§ 45), or did not have (§ 46), discretion in issuing such an order; that the court properly disposed of unused security (§ 47); that the court improperly specified the form of the security (§ 48); that a finding that a vexatious litigant lacked a reasonable probability of success with respect to certain litigation, so as to support an order for security, was (§ 49), or was not (§ 50), supportable; that it was proper for the order to protect a specified party (§ 51); and that a litigant's receiving judicial permission to proceed with certain litigation did not preclude a court from ordering the litigant to provide security in order to proceed with the litigation (§ 52).

In cases involving the application, rather than the propriety, under the circumstances, of a prefiling order issued against a vexatious litigant under the state vexatious litigant statute, courts have held, under the circumstances, that the litigant sought leave to proceed from the wrong court (§ 53); that the order applied to specific litigation (§ 54); and that the litigant did not submit a sufficient application for leave to proceed (§ 55).

In cases involving the application of an order, under the state vexatious litigant statute, requiring a vexatious litigant to post security in order to proceed with certain litigation, courts have held, under the circumstances, that the order did (§ 56), or did not (§ 57), apply to the litigant's current litigation.

Finally, in several miscellaneous cases arising under state vexatious litigant statutes, courts have held, under the circumstances, that dismissal of the action was an appropriate sanction for a vexatious litigant's failure to comply with the statute or an order issued under the statute (§ 58); that a stay imposed upon the filing of a vexatious litigant motion was (§ 59), or was not (§ 60), preclusive of certain action by the court; that a vexatious litigant's appeal was untimely even taking into account the time expended in complying with a prefiling order (§ 61); and that a pleading filed following a court's denial of a vexatious litigant motion was (§ 62), or was not (§ 63), timely.

§ 3. Practice pointers

A proceeding under a state vexatious litigant statute is just one tool available to rein in litigants who abuse the judicial system. A court may have inherent power to restrict a vexatious litigant's access to the courts, [FN11] or the party harassed by the litigant may be able to secure an anti-suit injunction.[FN12] Furthermore, a court may have either inherent [FN13] or express statutory[FN14] authority to require a party who pursues vexatious litigation, or the party's attorney, to pay the opposing party's attorney's fees.

A court order declaring a party to be a vexatious litigant is usually considered an interlocutory order that cannot be appealed until final judgment is rendered in the action.[FN15]

The state vexatious litigant statutes enacted to date do not provide a mechanism for that designation, once bestowed, to be removed, and only one court appears to have considered the question of whether a mechanism should be provided.[FN16] According to the California state vexatious litigants web site, a person's name can be removed from the state list of vexatious litigants only if the court that issued the original vexatious litigant order vacates that order.[FN17]

Where a state-law claim is asserted in a federal court sitting in a state that has enacted a vexatious litigant statute, it appears that a party's status as a vexatious litigant will be determined under federal law, rather than under the state statute.[FN18] unless the federal court has adopted a local rule embracing the standards articulated in the state statute [FN19]

II. GENERAL PRINCIPLES

§ 4. View that statute is constitutional

Rejecting the indicated federal or state constitutional challenges, the courts in the following cases held that the state's vexatious litigant statute is constitutional.

Legal Encyclopedias

Am. Jur. 2d, Constitutional Law § 620

Am. Jur. 2d, Costs § 81

Am. Jur. 2d, Equity § 27

Am. Jur. 2d, Injunctions § § 39, 78, 191, 204

C.J.S., Actions § 73

C.J.S., Costs § 63

C.J.S., Equity § 38

C.J.S., Injunctions § 99

Trial Strategy

Cause of Action Under 28 USC 1927 to Recover Excess Costs, Expenses, and Attorneys' Fees for Unreasonable and Vexatious Multiplication of Proceedings, 19 Causes of Action 447

Additional References

Appellees' Brief [Leonard v. Abbott], 2004 WL 1873171

Appellant's Reply Brief [Leonard v. Abbott], 2004 WL 1292173

Appellant's First Amended Brief [Leonard v. Abbott], 2004 WL 828168

California state vexatious litigants website, [http:// www.courtinfo.ca.gov/courtadmin/aoc/vexatious.htm](http://www.courtinfo.ca.gov/courtadmin/aoc/vexatious.htm)

Ohio state vexatious litigants website, http://www.sconet.state.oh.us/Clerk_of_Court/vexatious/

Section 2. Footnotes:

[FN1] See Mayer v. Bristow, 91 Ohio St. 3d 3, 2000-Ohio-109, 740 N.E.2d 656 (2000).

[FN2] See Cal. Civ. Proc. Code § § 391 et seq. (effective Sept. 20, 1963).

[FN3] See Taliaferro v. Hoogs, 236 Cal. App. 2d 521, 46 Cal. Rptr. 147 (1st Dist. 1965); McColm v. Westwood Park Ass'n, 62 Cal. App. 4th 1211, 73 Cal. Rptr. 2d 288 (1st Dist. 1998).

[FN4] See Camerado Ins. Agency, Inc. v. Superior Court, 12 Cal. App. 4th 838, 16 Cal. Rptr. 2d 42 (3d Dist. 1993).

[FN5] See Haw. Rev. Stat. § § 634J-1 et seq.

[FN6] See Standard Management, Inc. v. Kekona, 98 Haw. 95, 43 P.3d 232 (Ct. App. 2001).

[FN7] See Ohio Rev. Code Ann. § 2323.52 (effective March 18, 1997).

[FN8] See Tex. Civ. Prac. & Rem. Code Ann. § § 11.001 et seq. (effective Sept. 1, 1997).

[FN9] See Fla. Stat. Ann. § 68.093 (effective Oct. 1, 2000).

[FN10] See, e.g., Holcomb v. U.S. Bank Nat. Ass'n, 129 Cal. App. 4th 1494, 29 Cal. Rptr. 3d 578 (4th Dist. 2005) (§ 54); Bravo v. Ismaj, 99 Cal. App. 4th 211, 120 Cal. Rptr. 2d 879 (4th Dist. 2002) (§ 10).

Section 3. Footnotes:

[FN11] See, e.g., Melnitzky v. Apple Bank for Savings, 19 A.D.3d 252, 797 N.Y.S.2d 470 (1st Dep't 2005); Jordan v. State ex rel. Dept. of Motor Vehicles and Public Safety, 110 P.3d 30 (Nev. 2005); May v. Barthelet, 886 So. 2d 324 (Fla. Dist. Ct. App. 4th Dist. 2004).

[FN12] See, e.g., Weaver v. School Bd. Of Leon County, 896 So. 2d 929, 197 Ed. Law Rep. 457 (Fla. Dist. Ct. App. 1st Dist. 2005); Howell v. Texas Workers' Compensation Com'n, 143 S.W.3d 416 (Tex. App. Austin 2004), review denied, (2 pets.) (Apr. 1, 2005).

[FN13] See, e.g., LaMontagne Builders, Inc. v. Bowman Brook Purchase Group, 150 N.H. 270, 837 A.2d 301 (2003); Barnes v. Oklahoma Farm Bureau Mut. Ins. Co., 2000 OK 55, 11 P.3d 162 (Okla. 2000), as corrected, (July 25, 2000) and as corrected, (Aug. 9, 2000) and as corrected, (Jan. 16, 2001).

[FN14] See, e.g., Gibson v. Decatur Federal Sav. & Loan Ass'n, 235 Ga. App. 160, 508 S.E.2d 788 (1998); Lewis v. Powers, 1997 WL 335563 (Ohio Ct. App. 2d Dist. Montgomery County 1997); Township of Lower Merion v. QED, Inc., 762 A.2d 779 (Pa. Commw. Ct. 2000).

[FN15] See, e.g., Stern v. American States Ins. Co., 2003 WL 1611291 (Cal. App. 2d Dist. 2003), unpublished/noncitable, (Mar. 28, 2003); Phillips v. Phillips, 2004 WL 2903519 (Tex. App. Houston 1st Dist. 2004).

[FN16] See PBA, LLC v. KPOD, Ltd., 112 Cal. App. 4th 965, 5 Cal. Rptr. 3d 532 (2d Dist. 2003), review denied, (Jan. 22, 2004) (§ 26), in which the court stated that "[d]espite the apparent unfairness of permanently branding a person as a vexatious litigant, it is unclear how the vexatious litigant determination can be erased in appropriate cases. The statutory scheme ... does not itself provide a procedural mechanism for dissolving an order declaring a person a vexatious litigant."

[FN17] See <http://www.courtinfo.ca.gov/courtadmin/aoc/vexfaq.htm>.

[FN18] See Fox v. Pope, R.I.C.O. Bus. Disp. Guide (CC11) ¶ 16010, 2001 WL 167913 (N.D. Tex. 2001) (unreported opinion); Benoza v. Target Personnel Services, 1997 WL 446232 (N.D. Cal. 1997) (unreported opinion). See also Carlock v. RMP Financial, 2003 WL 24207625 (S.D. Cal. 2003) (unreported opinion; without deciding the "Erie question" of whether federal or state law controlled, the court found that the party was not a vexatious litigant under either standard).

[FN19] See Sanders v. CleanNet of Southern California, Inc., 135 Fed. Appx. 936 (9th Cir. 2005) (this case may be of limited or no precedential value due to court rule); Weissman v. Quail Lodge, Inc., 179 F.3d 1194 (9th Cir. 1999).

Section 4. Footnotes:

[FN20] In Cent. Ohio Transit Auth. v. Timson, 132 Ohio App. 3d 41, 724 N.E.2d 458 (10th Dist. Franklin County 1998) (abrogated by, Mayer v. Bristow, 91 Ohio St. 3d 3, 2000-Ohio-109, 740 N.E.2d 656 (2000)), the court held that, while most of the state vexatious litigator statute was constitutional, Ohio Rev. Code Ann. § 2323.52(G), precluding any appeal from a court's denial of a vexatious litigator's application for leave to proceed with a case, violated Ohio Const. art. I, § 16, providing that all courts shall be open, and every person, for an injury to his or her land, goods, person, or reputation, shall have remedy by due course of law.

Briefs and Other Related Documents

Wolfe v. George N.D. Cal., 2005.

United States District Court, N.D. California,
Burton H. WOLFE, Plaintiff,

v.

Ronald M. GEORGE, et al., Defendants.

No. C 00-1047 SBA.

Nos. 264, 276, 285.

Aug. 22, 2005.

Background: Civil rights action was brought against state of California, California's Judicial Council, various California trial and appellate judges, and court services analyst employed by the California Judicial Council, seeking declaration that California's Vexatious Litigant Statute was unconstitutional. The District Court dismissed action for lack of subject matter jurisdiction, and plaintiff appealed. The Court of Appeals, 392 F.3d 358, affirmed in part, reversed in part, and remanded. On remand, parties moved and cross moved for judgment on the pleadings.

Holdings: The District Court, Armstrong, J., held that:

- (1) statute did not violate First Amendment right to petition for redress of grievances;
- (2) statute was not unconstitutionally vague or overbroad;
- (3) statute did not violate procedural due process rights of frequent litigants;
- (4) equal protection rights were not violated;
- (5) double jeopardy rights were not violated;
- (6) security requirement was not impermissible excessive fine;
- (7) no ex post facto law or bill of attainder was involved;
- (8) no Supremacy Clause violation was involved; and
- (9) litigant lacked standing to raise third party claims.

Judgment for state.

West Headnotes

11 Action 13 13 Action131 Grounds and Conditions Precedent13k9 k. Unnecessary or Vexatious Actions.Most Cited CasesConstitutional Law 92 9192 Constitutional Law92V Personal, Civil and Political Rights92k91 k. Right of Assembly and Petition. MostCited Cases

California Vexatious Litigant Statute, barring frivolous lawsuits, did not violate First Amendment right to petition for redress of grievances; suits based on intentional falsehoods, or knowingly frivolous claims, were not protected by First Amendment. U.S.C.A. Const. Amend. 1; West's Ann. Cal. C.C.P. § 391 et seq.

12 Action 13 13 Action131 Grounds and Conditions Precedent13k9 k. Unnecessary or Vexatious Actions.Most Cited CasesConstitutional Law 92 82(6.1)92 Constitutional Law92V Personal, Civil and Political Rights92k82 Constitutional Guaranties in General92k82(6) Particular Rights, Limitations, and

Applications

92k82(6.1) k. In General. Most CitedCases

California Vexatious Litigant Statute was not unconstitutionally vague, despite claims that pro se litigants would not understand technical legal terms, and that judges were given excessive discretion to determine that litigation was vexatious or lacked merit. U.S.C.A. Const. Amend. 1; West's Ann. Cal. C.C.P. § 391 et seq.

13 Action 13

13 Action

13I Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

Constitutional Law 92 ↪ 82(6.1)

92 Constitutional Law

92V Personal, Civil and Political Rights

92k82 Constitutional Guaranties in General

92k82(6) Particular Rights, Limitations, and Applications

92k82(6.1) k. In General. Most Cited

Cases

California Vexatious Litigant statute was not unconstitutionally overbroad; there was compelling government interest in supporting uncluttered operation of court, and there were safeguards against suppression of justifiable litigation. U.S.C.A. Const.Amend 1; West's Ann.Cal.C.C.P. § 391 et seq.

[4] Action 13 ↪ 9

13 Action

13I Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

Constitutional Law 92 ↪ 305(2)

92 Constitutional Law

92XII Due Process of Law

92k304 Civil Remedies and Proceedings

92k305 Actions

92k305(2) k. Access to Courts; Rights to Hearing and Determination. Most Cited Cases

California Vexatious Litigant Statute did not violate procedural due process rights of frequent litigants; there were no restrictions placed on right to sue until after notice and hearing, and claims that suits filed after entry of order limiting suit were frivolous would be resolved on case by case basis. U.S.C.A. Const.Amend 14; West's Ann.Cal.C.C.P. § 391 et seq.

[5] Action 13 ↪ 9

13 Action

13I Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

Constitutional Law 92 ↪ 248(1)

92 Constitutional Law

92XI Equal Protection of Laws

92k243 Creation or Discharge of Liability

92k248 Costs or Fees

92k248(1) k. In General. Most Cited

Cases

Constitutional Law 92 ↪ 249(1)

92 Constitutional Law

92XI Equal Protection of Laws

92k249 Civil Remedies and Proceedings

92k249(1) k. In General. Most Cited Cases

Costs 102 ↪ 106

102 Costs

102VI Security for Costs; Proceedings in Forma Pauperis

102k106 k. Statutory Provisions. Most Cited

Cases

Equal protection rights of frequent litigants were not violated by California Vexatious Litigant Statute, requiring them to have complaints screened by court before filing and to post security; financial barrier applied only to activities not protected by constitution. U.S.C.A. Const.Amend 14; West's Ann.Cal.C.C.P. § 391 et seq.

[6] Double Jeopardy 135H ↪ 22

135H Double Jeopardy

135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected

135Hk22 k. Particular Proceedings. Most Cited

Cases

California Vexatious Litigant Statute, imposing restrictions on persons engaged in frivolous litigation, did not violate double jeopardy clause; no criminal sanctions were involved. U.S.C.A. Const.Amend 5; West's Ann.Cal.C.C.P. § 391 et seq.

[7] Fines 174 ↪ 1.3

174 Fines

174k1.3 k. Excessive Fines. Most Cited Cases

California Vexatious Litigant Statute, imposing security requirement on litigant found to have engaged in vexatious litigation, did not violate Eighth Amendment prohibition on excessive fines; Eighth Amendment was implicated in criminal and civil forfeiture proceedings, not involved in present case. U.S.C.A. Const.Amend 8; West's Ann.Cal.C.C.P. §

391 et seq.

[8] Action 13 ↪ 9

13 Action

131 Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

Constitutional Law 92 ↪ 199

92 Constitutional Law

92VII Retrospective and Ex Post Facto Laws

92k198 Retroactive Operation of Ex Post Facto Laws

92k199 k. In General. Most Cited Cases

California Vexatious Litigant Statute, imposing security requirements when persons with history of vexatious litigation bring suit, was not ex post facto law violating Constitution; ex post facto clause applied only to criminal cases. U.S.C.A. Const. Art. 1, § 9, cl. 3, 10, cl. 1; West's Ann. Cal. C.C.P. § 391 et seq.

[9] Action 13 ↪ 9

13 Action

131 Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

Constitutional Law 92 ↪ 82.5

92 Constitutional Law

92V Personal, Civil and Political Rights

92k82.5 k. Bills of Attainder, Prohibition Against. Most Cited Cases

California Vexatious Litigant Statute, imposing restrictions on litigants with history of vexatious filings, was not unconstitutional bill of attainder; statute had valid and non punitive purpose of protecting courts and other litigants against abuses of judicial process, rather than purpose of inflicting legislative punishment on frequent litigators. U.S.C.A. Const. Art. 1, § 9, cl. 3, 10, cl. 1.

[10] Action 13 ↪ 9

13 Action

131 Grounds and Conditions Precedent

13k9 k. Unnecessary or Vexatious Actions.

Most Cited Cases

States 360 ↪ 18.15

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.15 k. Particular Cases, Preemption or Supersession. Most Cited Cases

Absence of any conflicting federal statute precluded claim that California Vexatious Litigant Statute, imposing restrictions on persons engaging in frivolous litigation, violated Supremacy Clause. U.S.C.A. Const. Art. 6, cl. 2; West's Ann. Cal. C.C.P. § 391 et seq.

[11] Constitutional Law 92 ↪ 42.1(1)

92 Constitutional Law

92II Construction, Operation, and Enforcement of Constitutional Provisions

92k41 Persons Entitled to Raise Constitutional Questions

92k42.1 Particular Statutes or Actions Attacked

92k42.1(1) k. In General. Most Cited Cases

Litigant lacked standing to raise claims, on behalf of all persons pursuing pro se claims, that California Vexatious Litigant Statute was unconstitutional; litigant was seeking to represent too broad a class, as statute applied only to those with record of frivolous litigation. U.S.C.A. Const. Art. 3, § 2, cl. 1; West's Ann. Cal. C.C.P. § 391 et seq.

Burton H. Wolfe, San Francisco, CA, pro se.

David M. Verhey, Sacramento, CA, Tom Blake, CA State Attorney General's Office, Thomas A. Blake, Jonathan U. Lee, City Attorney's Office, San Francisco, CA, for Defendants.

ORDER

ARMSTRONG, District Judge.

This matter comes before the Court on Plaintiff's Motion for Judgment on the Pleadings [Docket No. 264] and Defendants' Cross-Motion for Judgment on the Pleadings [Docket No. 276]. Having read and considered the arguments presented by the parties in the papers submitted to the Court, and having heard the argument of Plaintiff and Defendants' counsel at the June 28, 2005 hearing, the Court hereby DENIES Plaintiff's Motion for Judgment on the Pleadings and GRANTS Defendants' Cross-Motion for Judgment on the Pleadings.

BACKGROUND

A. Procedural Background.

On March 27, 2000, Plaintiff Burton Wolfe ("Plaintiff"), filed a Complaint, in propria persona, under 42 U.S.C. § 1983, challenging the constitutionality of California's*1007 Vexatious Litigant Statute. He named as defendants: (1) Justice Gary Strankman, Chief Justice Ronald George, Deborah Silva, the Judicial Council of California, and State of California (collectively known as the "State Defendants"); and (2) Judge Alfred Chiantelli, Judge David Garcia, and Judge Ronald Quidachay (collectively known as the "Judge Defendants").

On March 29, 2002, this Court dismissed Plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine after finding that Plaintiff's action appeared to be a de facto appeal of prior state court decisions. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). The Court also dismissed the State Defendants and the Judge Defendants from the lawsuit. Plaintiff subsequently appealed.

On December 14, 2004, the Ninth Circuit held that this Court erred by dismissing the suit under *Rooker-Feldman*. See *Wolfe v. Strankman*, 392 F.3d 358, 364 (9th Cir. 2004). Specifically, the Ninth Circuit found that Plaintiff's references to his involvement in prior state court actions went to show that Plaintiff had standing, and were not de facto appeals from the decisions in those prior actions. *Id.* However, the Ninth Circuit affirmed the dismissal of the State of California and the Judicial Council of California on the grounds that they are not "persons" subject to suit under § 1983. *Id.* at 361. The court further affirmed the dismissal of the Judge Defendants, Justice Strankman, and Chief Justice George in his judicial capacity. *Id.* Finally, the court reversed the dismissal of Chief Justice George, in his administrative capacity, and Ms. Silva, and remanded to this Court for further proceedings. *Id.*

On February 8, 2005, Plaintiff filed a First Amended Complaint, in propria persona, on behalf of himself and on behalf of all persons appearing in the courts of California without representation, for Declaratory and Prospective Injunctive Relief. In the First

Amended Complaint, Plaintiff alleges that California's Vexatious Litigant Statute, California Code of Civil Procedure § § 391 et seq., is unconstitutional. On February 23, 2005, Plaintiff filed a Motion for Judgment on the Pleadings or, in the alternative, for Declaratory Judgment. On May 6, 2005, Defendants filed a Cross-Motion for Judgment on the Pleadings.

B. Statutory Background.

California's Vexatious Litigant Statute (the "statute") is codified at California Code of Civil Procedure § § 391 et seq. The statute defines a vexatious litigant as a person who:

- (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.
- (2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.
- (3) In any litigation while acting in propria persona, repeatedly files unmeritorious*1008 motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.
- (4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

Cal. Code of Civ. Proc. § 391(b)(1)-(4) Pursuant to the statute, a defendant may move the court to require the pro se plaintiff to provide security if the defendant can make a showing that the plaintiff is a vexatious litigant and that there is not a reasonable probability that the plaintiff will prevail in the litigation against the moving party. See Cal. Code of Civ. Proc. § 391.1. Upon making the requisite findings, the court may then order the plaintiff to provide a security ^{fund} that compensates for the reasonable costs and attorney fees of defending the

suit. Cal.Code Civ. Proc. § § 391.1, 391.3. If the plaintiff fails to post the security, the action may be dismissed. Cal.Code Civ. Proc. § 391.4.

FN1 A "security" is defined in the statute as an "undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant." Cal.Code Civ. Proc. § 391(c).

Once a plaintiff has been declared a "vexatious litigant" within the meaning of the statute, the court may also enter an order prohibiting that plaintiff from filing new state court litigation absent leave of the presiding judge where the litigation is proposed to be filed. Cal.Code Civ. Proc. § 391.7. This order is referred to as a "prefiling" order. Cal.Code Civ. Proc. § 391.7. After the prefiling order is issued, the presiding judge shall permit the filing of further litigation if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. Cal.Code of Civ. Proc. § 391.7(b).

LEGAL STANDARD

A. Motion for Judgment on the Pleadings.

Under Federal Rule of Civil Procedure 12(c), any party may move for judgment on the pleadings at any time after the pleadings are closed but within such time as not to delay the trial. Fed.R.Civ.P. 12(c). "For the purposes of the motion, the allegations of the non-moving party must be accepted as true, while the allegations of the moving party which have been denied are assumed to be false." Hal Roach Studios, Inc. v. Richard Femen and Co., Inc., 896 F.2d 1542, 1550 (9th Cir.1990). Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. *Id.* When brought by the defendant, a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is a "means to challenge the sufficiency of the complaint after an answer has been filed." New Nor, Inc. v. Lavasoft, 356 F.Supp.2d 1090, 1115

(C.D.Cal.2004). A motion for judgment on the pleadings is therefore similar to a motion to dismiss. *Id.* When the district court must go beyond the pleadings to resolve an issue on a motion for judgment on the pleadings, the proceeding is properly treated as a motion for summary judgment. Fed.R.Civ.P. 12(c); Bonilla v. Oakland Scavenger Co., 697 F.2d 1297, 1301 (9th Cir.1982).

*1009 B. Declaratory Judgment.

28 U.S.C. § 2201 provides that "[i]n a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." 28 U.S.C. § 2201.

Declaratory judgment is appropriate where, as here, an injunction is not available because there are no pending state court proceedings. Steffel v. Thompson, 415 U.S. 452, 463, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974) ("When no state prosecution is pending and the only question is whether declaratory relief is appropriate, the congressional scheme that makes the federal courts the primary guardians of constitutional rights, and the express congressional authorization of declaratory relief, afforded because it is a less harsh and abrasive remedy than the injunction, become the factors of primary significance.")

ANALYSIS

A. Plaintiff's and Defendants' Cross-Motions for Judgment on the Pleadings.

In his Motion for Judgment on the Pleadings, Plaintiff seeks a declaratory judgment from this Court that California's Vexatious Litigant Statute, California Code Civil Procedure § § 391 et seq., is unconstitutional. ^{FN2} Plaintiff asserts the following bases for a finding that the Vexatious Litigant Statute is unconstitutional: (1) it violates the First Amendment; (2) it is overbroad; (3) it is vague; (4) it violates the due process clause of the Fifth and Fourteenth Amendments ^{FN3}; (5) it violates the equal protection clause of the Fourteenth Amendment; (6) it violates the double jeopardy clause of the Fifth Amendment; (7) it violates the excessive fines clause

of the Eighth Amendment; (8) it is an impermissible ex post facto law or bill of attainder; and (9) it generally conflicts with federal law and violates 42 U.S.C. § 1983. Defendants, on the other hand, move for judgment on the pleadings on the basis that the Vexatious Litigant Statute is not unconstitutional on any of the aforementioned grounds. Additionally, Defendants assert that Plaintiff lacks standing to assert third-party rights.^{FN3}

^{FN2} Plaintiff actually contends that the statute is unconstitutional "on its face" and "as applied." However, Plaintiff has not produced any admissible evidence demonstrating that the statute is unconstitutional as "applied" to himself or others. Instead, he relies on vague references to certain "facts" that are clearly outside of his own personal knowledge and "documents" that have not been produced to the Court. See, e.g., Pl's Mot. at 19. Plaintiff has therefore failed on his burden of proof with respect to his "as applied" constitutional challenge and, accordingly, only his facial challenge is discussed below.

^{FN3} Since Plaintiff is challenging a state statute, his due process cause of action is most appropriately characterized as claim brought under the Fourteenth Amendment, not the Fifth Amendment. Thus, hereafter, discussion of Plaintiff's due process claim will refer exclusively to the Fourteenth Amendment. It should be noted, however, that the due process analysis is the same under both the Fourteenth and Fifth Amendment. See Rodriguez v. Cook, 10th F.3d 1176, 1179 n. 4 (9th Cir. 1990).

^{FN4} Although it is not clear from the parties' briefing, both parties conceded at the June 28, 2005 hearing that, pursuant to the Ninth Circuit's ruling in Wolfe, Plaintiff's personal standing has been established and is no longer challenged by Defendants. See Wolfe, 392 F.3d at 364 ("We construe Wolfe's references to the prior judicial actions ... as ... part of his demonstration that he is sufficiently threatened with actual harm from the future operation of the Vexatious Litigant Statute that he has standing to bring the present suit.").

*1010 1. Constitutionality under the First

Amendment.

a. First Amendment Right to Petition for Grievances.

[1] With respect to Plaintiff's First Amendment claim, the Court must first determine whether the Vexatious Litigant Statute actually encroaches upon a right guaranteed by the First Amendment.

The United States Supreme Court has long recognized that the right to petition for a redress or grievance is a liberty safeguarded by the Bill of Rights and is intimately connected both in origin and in purpose with the other First Amendment rights of free speech and free press. United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n, 389 U.S. 217, 222, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967).^{FN5} However, the Supreme Court has also consistently held that "baseless litigation is *not* immunized by the First Amendment right to petition." Bill Johnson's Restaurants, Inc v. NLRB, 461 U.S. 731, 743, 103 S.Ct. 2161, 76 L.Ed.2d 277 (1983) ("[S]ince sham litigation by definition does not involve a bona fide grievance, it does not come within the first amendment right to petition."). In fact, as the Supreme Court stated in Bill Johnson's Restaurants, "The first amendment interests involved in private litigation-compensation for violated rights and interest, the psychological benefits of vindication, public airing of disputed facts-are not advanced when the litigation is based on intentional falsehoods or on knowingly frivolous claims." *Id*

^{FN5} The First Amendment is "incorporated" against the states by virtue of the Fourteenth Amendment. Hague v. CIO, 307 U.S. 496, 512-13, 59 S.Ct. 954, 83 L.Ed. 1423 (1939).

Applying the Bill Johnson's Restaurants holding to the Vexatious Litigant Statute, the Court finds that the Vexatious Litigant Statute does not violate the First Amendment. By its very terms, the statute is only implicated once the state court has concluded that there is "no reasonable probability that [the plaintiff] will prevail in the litigation against the moving defendant." Cal Code Civ Proc. § 391.3. Further, even when a plaintiff has been declared a vexatious litigant, the statute does not preclude a plaintiff from filing subsequent lawsuits, so long as those lawsuits have merit. See Cal Code Civ Proc. § 391.7; see Wolfgram v. Wells Fargo Bank, 53

Cal App 4th 43, 60, 61, Cal Rptr 2d 694 (1987) ("When a vexatious litigant knocks on the courthouse door with a colorable claim, he may enter.") Thus, to the extent that Plaintiff's argument is premised on his belief that the Vexatious Litigant Statute encroaches upon a First Amendment right because it is a prohibitive ban on meritorious litigation, his argument is fatally flawed. The Vexatious Litigant Statute is not, as Plaintiff contends, an absolute ban on the right to petition for grievances.

2. Vagueness.

[2] Plaintiff has also not proven that the Statute is unconstitutionally vague. "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). To survive a vagueness challenge, the statute must give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. *Id.* This is particularly important when sensitive areas of First Amendment freedoms are involved; in such cases, the statute must have sufficiently clear terms such that citizens are not led to "steer far wider of the unlawful zone ... than if the boundaries of the forbidden areas were clearly marked." *Id.* *1011 The statute must also provide explicit standards for those who apply it so that arbitrary and discriminatory enforcement is prevented. *Id.*

In support of his vagueness challenge, Plaintiff contends that the statute fails to provide warning of what conduct is proscribed because it does not define the terms "finally determined adversely," "unmeritorious pleadings," "unnecessary discovery," or "other tactics that are frivolous." Having considered Plaintiff's arguments, the Court finds that there is absolutely no merit to the contention that words such as "final," "adverse," "unmeritorious," "unnecessary," "tactics," or "frivolous" are incomprehensible to a person of ordinary intelligence. Second, while it may be true that a complete stranger to litigation may not readily understand the correct meaning of the terms "discovery" and "pleadings," Plaintiff's contention that an "ordinary person" would not understand these terms is completely undermined by the fact that the "ordinary person" in this context is a person who either: (1) has engaged in litigation on at least five prior occasions within seven years; (2) is actively involved in current litigation; or (3) has recently

been involved in litigation and is reinitiating that litigation. See Cal Code Civ. Proc. § 391(b). Thus, the argument that such a person is not able to comprehend fairly basic concepts of litigation is tenuous, at best, and defies credibility. The Vexatious Litigant Statute simply has no applicability to a person who is a complete stranger to litigation.

Moreover, even assuming, *arguendo*, that "sensitive areas of First Amendment freedoms" are involved, the Court does not find that there is any lack of clarity in the statute that would lead citizens to "steer far wider of the unlawful zone" than necessary. The activity "prohibited" by the statute is unmistakably clear: it is the pursuit of litigation that lacks merit and is instituted solely for the sake of harassment and delay. Indeed, the definition of the term "vexatious litigant" alone contains a considerable amount of detail. See Cal Code Civ. Proc. § 391. Since this is not "a vague, general ... ordinance, but a statute written specifically for the [court] context, where the prohibited disturbances are easily measured by their impact" the Court finds that the statute gives "fair notice to those to whom it is directed." See Grayned, 408 U.S. at 112, 92 S.Ct. 2294.

Additionally, since the statute provides for actual notice and a hearing before it is even triggered, there is arguably nothing to "steer clear of" at all, as even a person who unjustifiably pursues frivolous litigation is free to continue his activities until his opponent asks the court to intervene. Cal Code Civ. Proc. § 391.1. Significantly, even then, the person cannot be declared a "vexatious litigant" until after the court has conducted a hearing and given the plaintiff the opportunity to be heard. *Id.*

Plaintiff's alternative argument, that the alleged "vagueness" of the statute enables judges to interpret the statute in an arbitrary and discriminatory manner, is also unpersuasive. Undisputedly, even outside of the Vexatious Litigant context, judges are regularly called upon to determine what constitutes a "final adverse determination," an "unmeritorious pleading," "frivolous tactics," or "unnecessary discovery." See, e.g., Cal Code Civ. Proc. 128.5 ("Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay."); see also Cal. Rule of Court 27(e) (permitting Court of Appeal to "impose sanctions, including the award or denial of costs, on a party or an attorney for (a) *1012 taking a frivolous

appeal or appealing solely to cause delay; (b) including in the record any matter not reasonably material to the appeal's determination; or (c) committing any other unreasonable violation of these rules." The fact that a judge performs this function is one of the most fundamental underpinnings of the judicial system. See, e.g., Ellis v. Rosket Corp., 143 Cal.App.3d 642, 648, 192 Cal.Rptr. 57 (1983) ("A trial court is empowered to exercise its supervisory power in such a manner as to provide for the orderly conduct of the court's business and to 'guard against inept procedures and unnecessary indulgences which would tend to hinder, hamper or delay the conduct and dispatch of its proceedings.'"). Thus, Plaintiff's argument that "a judge can [not] come up with applicable definitions for such terms" is wholly without merit. The case law makes clear that California state court judges are, in fact, consistently and fairly construing the statute. See, e.g., Childs v. PaineWebber Inc., 29 Cal.App.4th 982, 992, 35 Cal.Rptr.2d 93 (1994).

Plaintiff's position is also based entirely on the faulty premise that "in a CCP 391 proceeding a First Amendment right is at stake." Again, by definition, a "CCP 391 proceeding" involves only litigation where the plaintiff cannot demonstrate that he has any reasonable likelihood of prevailing. Such frivolous litigation is not protected by the First Amendment.

Finally, Plaintiff's concern that litigants are often required to post securities of varying amounts, or subjected to pre-filing orders with varying standards, does not compel the conclusion that judges are enforcing the statute in an arbitrary or discriminatory manner. If anything, it suggests that state court judges are appropriately deciding each matter on a case-by-case basis, after giving careful consideration to the particular facts of the situation. This supports a finding of constitutionality. Grayned, 408 U.S. at 119, 92 S.Ct. 2294 ("[the] decision is made, as it should be, on an individualized basis, given the particular fact situation."). Accordingly, the Court finds that the Vexatious Litigant Statute is not unconstitutionally vague.

3. Overbreadth.

[3] Plaintiff's argument that the Vexatious Litigant Statute is unconstitutionally overbroad is also flawed. Although "[a] clear and precise enactment may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct," there is simply

no basis to conclude that the Vexatious Litigant Statute "sweeps within its prohibitions" constitutionally protected activities. Grayned, 408 U.S. at 115, 92 S.Ct. 2294.

First, as set forth above, the Vexatious Litigant Statute is not a prohibitive ban on the general right to petition for *bona fide* grievances. In fact, the Vexatious Litigant Statute does not prohibit the filing of meritorious litigation or special proceedings, such as the filing of a habeas corpus petition. See, e.g., In re Bitaker, 55 Cal.App.4th 1004, 1011-12, 64 Cal.Rptr.2d 679 (1997) (holding that a petition for writ of habeas corpus is not a civil action or proceedings within the meaning of the Vexatious Litigant Statute). Second, the purpose of the Vexatious Litigant Statute is undeniably significant and legitimate. Specifically, the purpose of the statute is to protect courts from "the unreasonable burden placed upon [them] by groundless litigation [which] prevents the speedy consideration of proper litigation and [consumes] tremendous time and effort." First Western Dev. Corp. v. Superior Court, 212 Cal.App.3d 860, 870, 261 Cal.Rptr. 116 (1989). The Vexatious Litigant also protects the general public, as well, because "[t]he constant suer ... becomes *1013 a serious problem to others than the defendant he dogs ... [b]y clogging court calendars, he causes real detriment to those who have legitimate controversies to be determined and to the taxpayers who must provide the courts." Tahaferro v. Hoogs, 237 Cal.App.2d 73, 74, 46 Cal.Rptr. 643 (1965).

Although Plaintiff does not dispute that the inherent purpose of the Vexatious Litigant Statute is important and legitimate, he argues that the statute must be overturned because there are "many [other] ways of dealing with nuisance litigants that are less drastic than imposing affordable monetary barriers or blacklisting them." However, this argument is entirely insufficient to support an overbreadth challenge to the constitutionality of a statute that (1) serves a substantial and legitimate purpose, and (2) is not aimed at, and does not encompass, constitutionally protected speech or activities. See Virginia v. Hicks, 539 U.S. 113, 118, 123 S.Ct. 2191, 156 L.Ed.2d 148 (2003) ("[T]here comes a point at which ... [one] cannot justify prohibiting ... enforcement of ... a law that reflects 'legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.'"). Since the Vexatious Litigant Statute is specifically aimed at controlling constitutionally unprotected conduct, the "legitimate state interest" standard mandates that the Court uphold its validity.

Even assuming that the statute *does* affect constitutionally protected speech, however, Plaintiff has not shown that the statute is unconstitutionally "overbroad." A statute affecting constitutionally protected speech is not overbroad if it is narrowly tailored and does not prohibit substantially more protected speech or conduct than necessary. Ironically, here, the very purpose of the notice and hearing requirement of the statute, as well as the "prefiling order" process set forth in the statute, is to *ensure* that constitutionally protected activities (*i.e.* the filing of meritorious claims) are *not* prohibited in any way. Thus, like the ordinance scrutinized and ultimately upheld by the Supreme Court in *Grayned*, the Vexatious Litigant Statute is constitutional because it is narrowly tailored to further the compelling interest in having a legal system that is not needlessly disrupted by baseless and frivolous litigation. *Grayned*, 408 U.S. at 121, 92 S.Ct. 2294 ("Far from having an impermissibly broad prophylactic ordinance, ... [the statute] punishes only conduct which disrupts or is about to disrupt normal ... activities."); *see also Cox v. State of Louisiana*, 379 U.S. 559, 562, 85 S.Ct. 476, 13 L.Ed.2d 487 (1965) ("Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. This Court has recognized that the unhindered and untrammelled functioning of our courts is part of the very foundation of our constitutional democracy."). As such, Plaintiff's overbreadth challenge fails.

4. Constitutionality under the Fourteenth Amendment.

a. Procedural Due Process.

[4] Next, Plaintiff argues that the Vexatious Litigant Statute violates the fundamental precepts of due process of fair treatment, fair play, decency, and justice guaranteed by the Fourteenth Amendment. It should be noted that this same argument was previously considered by the California Court of Appeals in *Wolffgram* and ultimately rejected. *See Wolffgram*, 53 Cal. App. 4th at 60, 61 Cal Rptr. 2d 694.

The Supreme Court has established that due process "requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to *1014 settle their claims of right and duty through the judicial process must be given a

meaningful opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 377, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). Here, the Vexatious Litigant Statute fulfills the requirements set forth in *Boddie* because (1) the state's interest in controlling the unfettered abuse of the legal system overrides a litigant's personal interest in filing frivolous pleadings, and (2) the statute provides a litigant with an ample and meaningful opportunity to be heard. In fact, it is beyond dispute that the Vexatious Litigant Statute explicitly provides for notice and opportunity to be heard before the plaintiff is subjected to any adverse effects of the statute. Moreover, even when a prefiling order has been entered, there is never a "blanket" prohibition on further filings; a plaintiff deemed to be a vexatious litigant may always file a new action so long as the presiding judge determines that the litigation has merit and has not been filed for the purpose of harassment or delay. *Cal.Code Civ. Proc. § 391.7(b)*. Such determinations are appropriately made on a case-by-case basis. *Id.* If the plaintiff believes that he has been wrongly denied of the opportunity to pursue meritorious litigation, relief by way of mandamus is immediately available to challenge the presiding judge's abuse of discretion. *Cal.Code Civ. Proc. § 1085*.

b. Substantive Due Process and the Equal Protection Clause of the Fourteenth Amendment.

[5] Plaintiff also argues that the Vexatious Litigant Statute violates the due process and equal protection clauses of the Fourteenth Amendment because it unfairly discriminates against pro se litigants in that it (1) imposes a financial barrier to the pro se litigant's "right to sue," and (2) creates a disparity between how pro se litigants and represented parties are treated by the courts. These arguments, however, are insufficient to invalidate the statute under the Fourteenth Amendment.

First, the fact that the vexatious litigant *may* be required to pay a "security" does not violate the Fourteenth Amendment since this so-called "financial barrier" only serves to bar frivolous litigation, which is not protected by the Constitution. *See California Code of Civil Procedure § 391.3* (stating that the Court may only order the payment of a security once the court has determined, "after hearing the evidence upon the motion, ... that the plaintiff is a vexatious litigant and that *there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant*") (emphasis added); *see also Cal.Code Civ. Proc. § 391(c)* (the amount of the

security is limited to the opposing party's "reasonable expenses ... incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.") (emphasis added).

Relying primarily on the Supreme Court's holding in *Boddie*, and the District of Columbia Court of Appeals's holding in *In re Green*, 669 F.2d 779, 785 (D.C.Cir.1981), Plaintiff essentially seeks to have this Court hold that the imposition of any cost associated with civil litigation is unconstitutional.^{FN6} This is not, however, what the Fourteenth Amendment requires, and Plaintiff's reliance on *Boddie* and *Green* is utterly misplaced. In fact, in *Green*, the *1015 District of Columbia Court of Appeals expressly acknowledged that the "right of access to the courts ... is neither absolute or unconditional." *In re Green*, 669 F.2d at 785. Further, in *United States v. Kras*, 409 U.S. 434, 446, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973), the Supreme Court declined to follow this particular holding in *Boddie* after noting that *Boddie's* holding was limited to cases involving a state's regulation of a fundamental right, such as marriage. *Id.* at 446, 93 S.Ct. 631 ("We are ... of the opinion that the [bankruptcy] filing fee requirement does not deny [the litigant of] the equal protection of the laws."). Thus, under *Kras*, in cases where a fundamental right is not implicated, a statute will be upheld if there is a rational justification for it. *Id.*; see also *Ortvein v. Schwab*, 410 U.S. 656, 656, 93 S.Ct. 1172, 35 L.Ed.2d 572 (1973) (upholding validity of appellate filing fee applied to indigents seeking to appeal an adverse welfare decision).

^{FN6} Plaintiff also relies on *Roberts v. LaPaille*, 389 U.S. 40, 42, 88 S.Ct. 194, 19 L.Ed.2d 41 (1967) and *Bounds v. Smith*, 430 U.S. 817, 825, 97 S.Ct. 1491, 52 L.Ed.2d 72. However, these cases involve a prisoner's right of access to the courts, which is not applicable in this context. The Vexatious Litigant Statute does not apply to criminal proceedings, see *Cal.Code of Civ. Proc.* 391(a), or to petitions for writ of habeas corpus, see *In re Bittaker*, 55 Cal.App.4th at 1011-12, 64 Cal.Rptr.2d 679.

Plaintiff's alternative argument that the Vexatious Litigant Statute unfairly disadvantages pro se litigants is also fundamentally flawed. While Plaintiff may subjectively believe that the statute is a "weapon" hurled against unsuspecting persons who

are "unskilled at law," it has long been recognized that the Vexatious Litigant Statute was enacted for the purpose of protecting defendants from overly litigious, vexing, and harassing plaintiffs and protecting the courts from having to expend countless hours dealing with meritless litigation. This is clear not only from the history of the statute but also from the very terms of the statute itself. See, e.g., *First Western Dev. Corp. v. Superior Court*, 212 Cal.App.3d 860, 870, 261 Cal.Rptr. 116 (1989) ("The vexatious litigant statutes were enacted to require a person found a vexatious litigant to put up security for the reasonable expenses of a defendant who becomes the target of one of these obsessive and persistent litigants whose conduct can cause serious financial results to the unfortunate object of his attack.")

Additionally, the Vexatious Litigant Statute does not, as Plaintiff contends, subject pro se litigants to undue burdens that are not equally borne by attorneys and represented parties. Indeed, the Vexatious Litigant Statute is not unique; the California Code of Civil Procedure contains other similar measures intended to control the filing of frivolous litigation. See, e.g., *Cal.Code Civ. Proc.* § 128.5 (providing for the imposition of sanctions against an attorney or party who litigates in bad faith); *Cal.Code of Civ. Proc.* § 907 (allowing a Court of Appeals to impose costs on an attorney or party who pursues a frivolous appeal); *Cal.Code Civ. Proc.* § 128.7 (providing for the imposition of sanctions against an attorney who submits papers to the court for the sole purpose of harassing the opposing party or causing delay).

Attorneys are also subject to *California Business and Professions Code* § 6068, which provides, *inter alia*, that an attorney must: (1) support the Constitution and laws of the United States and California, (2) maintain the respect due to the courts of justice and judicial officers, (3) counsel or maintain only actions, proceedings, or defenses that appear to him or her legal or just; (4) employ means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law; and (5) not encourage either the commencement or the continuance of an action or proceeding for a corrupt motive of passion or interest. *Cal.B & P Code* § 6068. Additionally, an attorney's conduct is regulated by the State Bar of California and California's Rules of Professional Responsibility. See *Cal. B & P Code* § 6068.7 (providing that a court must notify the *1016 State Bar when sanctions in excess of \$1,000 are imposed)

Although Plaintiff attempts to distinguish the Vexatious Litigant Statute by noting that lawyers are not subject to a rule that "disciplines" them for "losing five lawsuits in seven years," Plaintiff conveniently overlooks the fact that a pro se litigant's prior litigation record *only* becomes relevant when that litigant attempts to pursue a *sixth* litigation that has no reasonable probability of success. This distinction is significant and Plaintiff's failure to even acknowledge it makes his argument unpersuasive.

Further, in evaluating Plaintiff's argument, the Ninth Circuit's analysis in *Rodriguez* is instructive. In *Rodriguez*, the Ninth Circuit considered a Fifth Amendment challenge to 28 U.S.C. § 1915(g) (commonly referred to as the "three-strike rule").^{FN7} *Rodriguez*, 169 F.3d at 1179. In upholding the three-strike rule, the Ninth Circuit noted that "requiring prisoners to make the same financial decisions as non-prisoners before filing a cause of action does not violate equal protection." *Id.* The court also stated that "[a]lthough prisoners are entitled to meaningful access to the courts, courts are not obliged to be a playground where prisoners with nothing better to do continuously file frivolous claims. Only after demonstrating an inability to function within the judicial system is an indigent inmate asked to pay for access to the courts." *Id.* at 1180. Accordingly, the Ninth Circuit concluded that § 1915(g) permissibly "precludes prisoners with a history of abusing the legal system from continuing to abuse it while enjoying IFP status." *Id.* Thus, under the holding of *Rodriguez*, neither the security provision of the Vexatious Litigant Statute nor its analogous "six-strike rule" can be considered unconstitutional.

^{FN7} The three-strike rule provides that "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding ... [in forma pauperis] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Accordingly, the Court hereby finds that the Vexatious Litigant Statute does not violate the due process or equal protection clause of the Fourteenth Amendment.

5. Double Jeopardy Clause of the Fifth Amendment.

[6] Plaintiff also argues that the Vexatious Litigant Statute violates the double jeopardy clause of the Fifth Amendment. While the double jeopardy clause may be enforced against the states due to its incorporation into the due process clause of the Fourteenth Amendment, *see Benton v. Maryland*, 395 U.S. 784, 794, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969), the double jeopardy clause simply does not apply to the Vexatious Litigant Statute.

Specifically, the double jeopardy clause serves to prohibit multiple punishments for *criminal* conduct. *See Abbate v. United States*, 359 U.S. 187, 198-99, 79 S.Ct. 666, 3 L.Ed.2d 729 (1959) ("The basis of the Fifth Amendment protection against double jeopardy is that a person shall not be harassed by successive trials; that an accused shall not have to marshal the resources and energies necessary for his defense more than once for the same alleged *criminal acts*.") (emphasis added). Although the cases upon which Plaintiff relies—namely *United States v. Halper*, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989) and *1017 *United States v. \$405,089.23 U.S. Currency*, 33 F.3d 1210 (9th Cir. 1994)—discuss the fact that a civil fine may be considered "punitive," significantly, both cases involved a predicate *criminal* offense. *See Halper*, 490 U.S. at 437, 109 S.Ct. 1892 (defendant initially charged under criminal false claims act statute); *see also \$405,089.23 U.S. Currency*, 33 F.3d at 1213 (defendants initially charged with conspiracy and money laundering arising out of large-scale methamphetamine manufacturing operation). Further, the holding in *Halper* was later abrogated by the Supreme Court in *Hudson v. United States*, 522 U.S. 93, 98-09, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997) (holding that the double jeopardy clause "protects only against the imposition of multiple criminal punishments for the same offense"). Thus, the fact that Plaintiff subjectively feels that the Vexatious Litigant Statute operates as a "punishment" is irrelevant. The relevant inquiry under the Fifth Amendment is whether the statute serves as a second punishment for a *criminal* offense, which it clearly does not. Indeed, in order to reach this conclusion, the Court would have to first accept the utterly preposterous premise that the pursuit of frivolous litigation is criminal conduct. Accordingly, the Court finds that Plaintiff has failed to state a claim under the double jeopardy clause of

the Fifth Amendment.

6. Excessive Fines Clause of the Eighth Amendment.

[2] Plaintiff's argument that the Vexatious Litigant Statute violates the excessive fines clause of the Eighth Amendment is equally without merit. Plaintiff's specific contention is that the Vexatious Litigant Statute violates the excessive fines clause of the Eighth Amendment because it punishes, as well as deters, use of the courts. However, like Plaintiff's double jeopardy clause allegation, Plaintiff's excessive fines clause claim relies entirely upon the assumption that the Vexatious Litigant Statute is somehow related to criminal conduct. This assumption is unjustified under the applicable case law.

The Eighth Amendment reads in its entirety: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Const. Amend. VIII. The Supreme Court has long understood the Eighth Amendment to apply primarily, and perhaps exclusively, to criminal prosecutions and punishments. Browning-Ferris Indus. of Vermont, Inc v Kelco Disposal, Inc, 492 U.S. 257, 262, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989); see, e.g., Fong Yue Ting v United States, 149 U.S. 698, 730, 13 S.Ct. 1016, 37 L.Ed. 905 (1893) (stating that Eighth Amendment is inapplicable to deportation because deportation is not punishment for a crime). "Bail, fines, and punishment traditionally have been associated with the criminal process, and by subjecting the three to parallel limitations the text of the Amendment suggests an intention to limit the power of those entrusted with the criminal-law function of government." Browning-Ferris, 492 U.S. at 263, 109 S.Ct. 2909 (quoting Ingraham v Wright, 430 U.S. 551, 664-668, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977)).

Although the Supreme Court has held that the Eighth Amendment excessive fines clause extends to civil forfeiture proceedings, see Alexander v United States, 509 U.S. 544, 559-59, 113 S.Ct. 2765, 125 L.Ed.2d 441 (1993), Plaintiff's attempt to equate the "security" provision of the Vexatious Litigant Statute with a "civil forfeiture" is wholly without merit. Notably, there are significant differences between a "civil forfeiture" and a "security" which Plaintiff overlooks. First, a civil forfeiture proceeding necessarily relates to prior criminal conduct. See, e.g., United States v Premises Known as RR# J, 14

F.3d 864, 869 (3d Cir.1994) ("The Government bears the initial burden of proof in attaching property for trial in civil forfeiture *1018 cases and to do so it must establish some connection between the alleged criminal activity and the ... property the Government seeks to forfeit."); see also United States v Certain Real Property and Premises, 954 F.2d 29, 33 (2nd Cir.1992) (stating that 21 U.S.C. § 881(a)(7) provides for the forfeiture of real property which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of a violation of the narcotics laws) Second, in a civil forfeiture proceeding, the Government is the entity who retains the money or property. In contrast, under the Vexatious Litigant Statute, the "security" is provided for the exclusive benefit of the opposing party. See Cal.Code Civ. Proc. § 391(c) (defining a security as "an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses.") (emphasis added). These distinctions are important, as they are critical features that bring a civil forfeiture within the ambit of the Eighth Amendment. See Browning-Ferris, 492 U.S. at 265, 109 S.Ct. 2909 ("[W]e think it significant that at the time of the drafting and ratification of the Amendment, the word "fine" was understood to mean a payment to a sovereign as punishment for some offense.").

Accordingly, there is no basis upon which this Court can conclude that the Vexatious Litigant Statute violates the excessive fines clause of the Eighth Amendment.

7. The Ex Post Facto Clause and the Bill of Attainder Clause.

[8][9] Plaintiff's argument that the Vexatious Litigant Statute is an ex post facto law prohibited by the Article 1, Section 10 of the United States Constitution is also baseless. The Supreme Court has expressly held that the ex post facto clause is aimed at laws that "retroactively alter the definition of crimes or increase the punishment for criminal acts." California Dept of Corrections v Morales, 514 U.S. 499, 504, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995) (emphasis added). For example, the ex post facto clause "is violated if a change in the law creates 'a sufficient risk of increasing the measure of punishment attached to the covered crime.'" Humes v Thompson, 336 F.3d 848, 855 (9th Cir.2003) (quoting California Dept of Corr v Morales, 514 U.S. 499, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995)). Since the Vexatious Litigant Statute does not involve

penal legislation, the ex post facto clause is simply inapplicable to this case.^{FN8}

^{FN8} Further, as Defendants correctly note, Plaintiff's reliance on Landgraf v. USI Film Products, 511 U.S. 244, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994), and Ralis v. RFE/RL, inc. 770 F.2d 1121 (D.C.Cir.1985), is misplaced. Both Landgraf and Ralis concern "retroactive" statutory enactments. Landgraf, 511 U.S. at 266-67, 114 S.Ct. 1483. Ralis, 770 F.2d at 1123-24. That is not an issue here.

Plaintiff has also not demonstrated that the Vexatious Litigant Statute is an unconstitutional "bill of attainder." A bill of attainder is "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." Nixon v. Adm'r of Gen. Servs. 433 U.S. 425, 468, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977). As stated by the Supreme Court in Nixon, "Just as Article III confines the Judiciary to the task of adjudicating concrete 'cases or controversies,' so too the Bill of Attainder Clause was found to 'reflect ... the Framers' belief that the Legislative Branch is not so well suited as politically independent judges and juries to the task of ruling upon the blameworthiness of, and levying appropriate punishment upon, specific persons.'" Id. (quoting *1019 United States v. Brown, 381 U.S. 437, 445, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965)). Given that the inherent concern of the bill of attainder clause is the separation of powers doctrine, Plaintiff's attempt to define the Vexatious Litigant Statute as a "bill of attainder" is decidedly strained. However, even assuming, *arguendo*, that the Vexatious Litigant Statute falls within the ambit of the bill of attainder clause, Plaintiff still fails to demonstrate that it meets the criteria set forth by the Supreme Court in Selective Service System v. Minnesota Pub. Inter-Research Group, 468 U.S. 841, 847, 104 S.Ct. 3348, 82 L.Ed.2d 632 (1984).

In Selective Service System, the Supreme Court noted that, to constitute a bill of attainder, the statute must (1) specify the affected persons, and (2) inflict punishment (3) without a judicial trial. Id. Three inquiries determine whether a statute inflicts punishment on the specified individual or group (1) whether the challenged statute falls within the historical meaning of legislative punishment; (2) whether the statute, viewed in terms of the type and severity of burdens imposed, reasonably can be said

to further nonpunitive legislative purposes; and (3) whether the legislative record evinces a congressional intent to punish. Id. at 852, 104 S.Ct. 3348. Although Plaintiff vigorously argues that the Vexatious Litigant Statute is a "sadistic" statute that was enacted for the sole purpose of punishing pro se litigants, there is simply no credible support for this conclusion outside of Plaintiff's own speculative theories. As noted previously, it has been consistently recognized that the purpose of the statute was to protect courts and defendants from "the unreasonable burden placed upon [them] by groundless litigation." First Western Dev. Corp. v. Superior Court, 212 Cal.App.3d 860, 870, 261 Cal.Rptr. 116 (1989). Since this purpose is decidedly legitimate and non-punitive, Plaintiff has not demonstrated that the Vexatious Litigant Statute is a "bill of attainder."

8. Supremacy Clause.

Last, Plaintiff argues that the Vexatious Litigant Statute conflicts with numerous federal laws thereby violating the Supremacy Clause of the United States Constitution. Specifically, he contends that the Vexatious Litigant Statute "conflicts with the right under Title 28 U.S.C. § 1654 to litigate in pro per and the right provided under Title 28 U.S.C. § 1915 ... to conduct a case without prepayment of fees or imposition of 'security.'" Additionally, Plaintiff argues that the statute violates 42 U.S.C. § 1983.^{FN9} All of these arguments lack merit.

^{FN9} Plaintiff also argues that the Vexatious Litigant Statute improperly "enables a state court to prohibit and punish a pro se litigant for failing to prevail in five litigations in a federal court under federal standards." However, he fails to articulate how this violates the Supremacy Clause.

[10] First, there is no inherent conflict with 28 U.S.C. § 1654, which provides that "parties may plead and conduct their own cases personally" according to the rules of such courts. Id. Nor is there a conflict with 28 U.S.C. § 1915, which explicitly provides that a federal court may dismiss a case filed *in forma pauperis* if the court determines that the action or appeal is frivolous, malicious, or fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e). As to Plaintiff's § 1983 claim, as previously explained, *supra*, this is premised on his flawed assumption that a person has an absolute right

to file litigation, regardless of its merits. There is no such right under the Constitution. See *Bill Johnson's Restaurants, Inc.*, 461 U.S. at 743, 103 S.Ct. 2161 ("[B]aseless litigation is not immunized by the First Amendment right to petition."). Accordingly, *1020 Plaintiff has failed to state a claim under the Supremacy Clause.

9. Third Party Standing.

[11] Although the Court has concluded that the Vexatious Litigant Statute is constitutional and that Defendants are entitled to judgment as a matter of law on the merits of Plaintiff's Complaint, the Court will briefly address Defendant's objection to Plaintiff's purported third-party standing.

As previously noted, *supra*, Plaintiff seeks declaratory judgment in this action on behalf of himself and on behalf of "all persons appearing or trying to appear in the Courts of California without benefit of representation by counsel." First Amended Complaint ("FAC") at 123-25. Defendants have conceded that Plaintiff has standing to pursue this action on behalf of himself. See *Wolfe*, 392 F.3d at 364 (finding that Plaintiff's prior state court actions are sufficient to establish that Plaintiff is threatened with actual harm from the future operation of the Vexatious Litigant Statute and therefore sufficient to establish standing). However, Defendants argue that Plaintiff does not have standing to assert constitutional rights on behalf of other persons.

"Article III of the Constitution limits the 'judicial power' of the United States to the resolution of 'cases' and 'controversies.'" *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 471, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982) (citations omitted). Generally, there are three requirements for Article III standing: (1) injury in fact, which means an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) a causal relationship between the injury and the challenged conduct, which means that the injury fairly can be traced to the challenged action of the defendants, and has not resulted from the independent action of some third party not before the court; and (3) a likelihood that the injury will be redressed by a favorable decision, which means that the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative. *Lujan v. Defenders of Wildlife*, 504

U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). The party invoking federal jurisdiction bears the burden of establishing each of these elements. *Id.*

Courts typically employ a presumption against third-party standing. *Singleton v. Wulff*, 428 U.S. 106, 113-14, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976). However, the presumption may be rebutted in circumstances where: (1) the litigant has suffered an injury in fact and has a close relation to the third party; and (2) where there is some hindrance to the third-party's ability to protect his or her own interests. See *Powers v. Ohio*, 499 U.S. 400, 411, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991). Plaintiff argues that he meets both of these exceptions due to the unique nature and circumstances of this case.^{EN10} The Court *1021 does not find Plaintiff's argument persuasive. First, Plaintiff's contention that "all persons appearing or trying to appear in the Courts of California without benefit of representation by counsel" are subjected to the Vexatious Litigant Statute results from a gross misreading of the Statute. As this Court has observed, *supra*, the terms of the Statute make it clear that it applies to only a limited class of persons; specifically, it applies only to those persons who have demonstrated a clear inability to pursue meritorious litigation or who have utterly failed to adroitly navigate the California court system. Accordingly, the class of persons that Plaintiff seeks to represent is unnecessarily overbroad and, therefore, Plaintiff has not demonstrated that he has a close relationship with such parties. Second, Plaintiff has not effectively demonstrated that there is any hindrance to the third parties' abilities to protect their own interests. To the contrary, as Defendants correctly note, a person determined to be a "vexatious litigant" can always challenge such determination through the appropriate appellate process. In fact, it appears that Plaintiff's belief that third parties are hindered in pursuing such litigation is premised solely on Plaintiff's subjective belief that other persons are not capable of "proceeding with the level of ability and competence that they now have with Wolfe effectively representing them." Pl's Supp Reply to Def's Mot. at 12-8-10. This argument has no basis in law or fact. Further, because the Court has concluded that Plaintiff has not raised a cognizable claim under the First Amendment, the Supreme Court's holding in *Broadrick v. Oklahoma*, 413 U.S. 601, 612, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973) does not support Plaintiff's position. See *id.* (finding that the restriction on third-party standing is relaxed when the plaintiff is asserting a First Amendment claim). Accordingly, the Court sustains Defendants' objection to Plaintiff's assertion of standing on behalf