

ALASKA LEGISLATURE COMMITTEE FILES

2007-2008

SJUD

1252

Mr. Chair, Committee members,

My name is Faith Myers. I support the passing of Senate Bill 8 as written.

I have an avocation in Mental Health Advocacy. In the past I have been in acute care psychiatric facilities in Alaska, Washington and Nevada. Also, as an advocate, I have contacted psychiatric hospital administrators in Maine, Maryland, Nevada, Alaska and Washington looking for best practices.

There is such a thing as unnecessary traumatization of psychiatric patients in a psychiatric facility, especially in facilities in states that look for shortcuts. It is the rules and statutes of the state that reduce the amount of trauma and recidivism.

We fully understand the idea of a psychiatric emergency when gender choice may not be able to be provided—What we want to reduce is the unnecessary traumatization of a psychiatric patient who is reasonably cooperative.

The percentage of women in acute care psychiatric facilities who have a history of sexual abuse and/or physical abuse in their past is somewhere between 51% and 98% respectively. The figure for men is a little bit less. To a person with mental illness, it is certain he/she feels re-victimized when he / she is given intimate care against their will by the gender of the person who sexually abused him or her in the past.

There are 3 or 4 hospitals that do civil commitments, and there are numerous other ones that do 3 day evaluations that stretch out into 7 days. This issue cannot be dealt with by working to change each hospital's policy. Change needs to be done by state statute.

I would like to briefly explain the support letters in favor of a bill for gender choice of staff for intimate care. The following letters of support should have been provided to you.

1. Ann F. Jennings, PhD., Trauma-Informed Systems Consultant has background knowledge of trauma in acute-care psychiatric institutions. She also has a personal connection. Her daughter was in and out of psychiatric institutions from the age of 13 to 32 when her daughter committed suicide in a psychiatric institution.
2. Aron S. Wolf, MD, MMD. Dr. Wolf has over 30 years of experience in treating psychiatric patients from children to adults.
3. NAMI, Anchorage —Their Board members have personally been in psychiatric institutions and had family members in psychiatric institutions.

4. Alaska Mental Health Consumer Web—Their Board members also have a wide range of experience with psychiatric facilities.
5. The Alaska Mental Health Board, whose Board members are appointed by the Governor—again, their Board members have a wide range of experience in advocating for better treatment in psychiatric facilities.
6. Disability Law Center submitted a 4 page legal opinion, stating that gender choice of staff is a right that should be given to a civilly committed psychiatric patient.
7. Psychiatric Rights—an organization dedicated to furthering the rights of psychiatric patients—Psychiatric Rights also concurs with Disability Law's legal opinion that gender choice is a right of civilly committed psychiatric patients.

All told there are probably 50 or more Board members that voted that a gender choice of staff for intimate care bill should be passed, many of them experts in the field.

Senate Bill 8 only requires psychiatric institutions to make a good faith effort at giving gender choice of staff.

In closing, I am asking you to pass Senate Bill 8.

Thank you,

Faith Myers  
(907) 929-0532

*Faith Myers*

# Alaska State Legislature

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[Senator Bettye Davis@legis.state.ak.us](mailto:Senator_Bettye_Davis@legis.state.ak.us)  
<http://www.akder.org>

## Senator Bettye Davis

April 23, 2007

Senator Hollis French, Chairman  
Senate Judiciary Committee  
State Capitol Building, Rm 417  
Juneau, Alaska 99801

### **RE: Request for Hearing – SB 8**

"An Act relating to a mental health patient's right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment."

Dear Senator French,

As sponsor of SB 8 I respectfully request a hearing before Senate Judiciary Committee as the next stop on this bill which was passed out of the HESS Committee on April 23, 2007.

Attached in order are the following:

1. Sponsor Statement
2. The unchanged original SB 8, 25-LS0101\A
3. Sectional analysis
4. Additional Documentation
5. People anticipated to testify include Dorrance Collins, Faith Meyers, citizen mental health advocates, Andrea Schmook, Chair, Alaska Mental Health Board, *et al.*

Sincerely,

A handwritten signature in cursive script that reads "Bettye Davis".  
Senator Bettye Davis

# Alaska State Legislature

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716 W. 4<sup>th</sup> Ave  
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[Senator Bettye Davis@legis.state.ak.us](mailto:Senator.Bettye.Davis@legis.state.ak.us)  
<http://www.akdemocrats.org>

## Senator Bettye Davis

### Senate Bill 8

**"An Act relating to a mental health patient's right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment."**

### Sponsor Statement

SB 8 provides that a mental health patient 18 years of age or older who is receiving mental health treatment and being provided intimate care at a hospital shall have the right to have care provided by a staff member who is the gender that the patient requests. Many of these patients have been traumatized by sexual and/or physical abuse in the past and they are very sensitive to being touched or assisted by hospital staff who provide intimate care, because the experience may trigger from original abuse feelings of fear, helplessness, distress, humiliation, and loss of trust in staff. The supervisor or manager employed by a hospital shall post notice of this right in a conspicuous place, so patients know they may exercise this right when they are concerned about the gender of staff responsible for their personal intimate care.

While it is understandable that a hospital may not always be able to comply with the requirement of choice of gender in all situations and requests due to staffing schedules and shortages on particular shifts or duty units, the bill requires that the facility document the non-compliance in the patient record that the intimate care was provided by a licensed or unlicensed staff member of a gender opposite that requested by the patient. This information might otherwise be ignored or lost. The information is also useful not only for confirming the good faith effort on the part of the institution to comply with the wishes of the patient, but for medical purposes as well in evaluating the effect on patient outcome, because individuals re-traumatized in this way are subject to chronic stress which can worsen serious mental illness and result in symptomatic relapses and repeated re-hospitalizations. Lastly, this bill will preserve information for inquiry into grievance procedures at mental health facilities under Title 47, which have been described as unduly burdensome by some patients, and easily circumvented or limited because the language is too broad.

# LEGAL SERVICES

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

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Mail Stop 3101

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

## MEMORANDUM

February 6, 2007

**SUBJECT:** Sectional Summary (SB 8)

**TO:** Senator Bettye Davis  
Attn: Tom Obermeyer

**FROM:** Jean M. Mischel  
Legislative Counsel 

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Establishes a right to staff choice for the provision of intimate care for patients 18 years of age or older who are receiving mental health treatment and intimate care at a hospital. Also requires certain actions of hospital staff to provide privacy and to accommodate staff choice except as otherwise described.

JMM:med  
07-078.med

# STATE OF ALASKA

*Sarah Palin, GVERNOR*

**DEPT. OF HEALTH AND SOCIAL SERVICES**

*Advisory Board on Alcoholism and Drug Abuse  
Alaska Mental Health Board*

*P.O. BOX 110608*

*JUNEAU, AK 99811-0608*

*PHONE: (907) 465-8920*

*FAX: 465-4410*

April 16, 2007

Senator Bettye Davis, Chair  
Health, Education and Social Services Committee  
Alaska State Legislature

Dear Representative Davis:

Thank you for introducing SB 8, Mental Health Patient Rights: Staff Gender.

The Alaska Mental Health Board (AMHB) strongly supports the notion that patients in psychiatric hospitals should have the right to choose the gender of the person providing them intimate care. This type of choice will allow the individual to retain their dignity during a time of extreme distress and vulnerability, and will afford a modicum of choice and control in a fundamentally uncontrollable situation.

This bill has been criticized as "unnecessary" because hospitals should be allowed to handle this issue administratively through internal policies and procedures. The AMHB was instrumental in convincing API to promulgate such a policy, and applauds their efforts. But the Board believes a single, isolated policy is not sufficient to safeguard the rights of all individuals who find themselves in an acute psychiatric facility. Placing this provision into statute will ensure that patients in API and the State of Alaska's Designated Evaluation and Treatment beds, as well as those in private psychiatric facilities, will be afforded this basic right.

The AMHB is also sensitive to the argument that the bill's provisions will create a financial burden on psychiatric hospitals by forcing them to staff so as to have both genders available for patient care at all times. But the language found in the CS clearly provides a method for dealing with this issue – if the patient cannot be served by someone of the gender they choose, the hospital must simply document that a request was made and that it was not able to be honored. As such, this bill will not impact the "bottom line" for hospitals.

Finally, the bill offers a balance between the rights of the patient for privacy and choice and the physician's duty to provide sound and responsible care. If the treating psychiatrist determines that the choice made by the patient is not in the best interest of the patient's treatment, he or she may override a patient's choice.

The AMHB believes that putting gender choice into statute is the correct and responsible way to ensure that all psychiatric patients retain their basic dignity while being treated for acute or ongoing psychiatric disabilities. The Board urges all members of the Senate Health and Social Services Committee to support the bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrea Schmook".

Andrea Schmook, Chair,  
Alaska Mental Health Board

# **ALASKA COUNSELING INC.**

March 1, 2005

Faith Myers,  
Dorrance Collins  
330 E. 14<sup>th</sup> Ave., Apt E  
Anchorage, Alaska 99501

**Re: Psychiatric Staff Gender Rights**

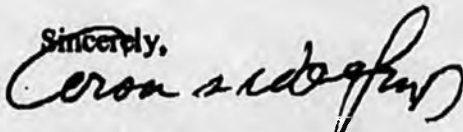
**Dear Ms Myers and Mr. Collins,**

I would very much support your efforts to amend AS47.30.840 to include a section acknowledging the right of Psychiatric patients to choose the gender of staff providing intimate care.

This is a very important issue as my Psychiatric inpatients already have significant issues with both sexuality and trust.

I believe that as a Physician this would be a significant step forward in providing the best and most therapeutic care for psychiatric patients throughout the State of Alaska. Please contact me if I can be of further assistance.

Sincerely,



Aron S. Wolf MD, MMD  
Distinguished Life Fellow American Psychiatry Association

Alaska Counseling, Inc.  
Parkway Professional Building II  
4120 Laurel St., Suite 102, Anchorage, Alaska 99508  
907.569.8600

Focused on Alaska kids and families • Treating behavioral & psychological problems • Continuing care after residential treatment  
*When you don't know where to turn . . .*

August 12, 2005

Faith Myers  
Dorrance Collins  
801 Airport Hts. #35  
Anchorage, AK 99508

Dear Ms. Myers and Mr. Collins,

I wholeheartedly support your efforts to amend AS47.30.840 to include a section acknowledging the right of psychiatric patients to choose the gender of staff providing intimate care. How sad that you and others have to fight for something that simple human respect and common sense would dictate should be done.

Recent empirical studies provide evidence that many common practices in psychiatric settings - such as those at issue here, cause patients chronic stress and put them at risk for iatrogenic psychiatric morbidity such as PTSD and Depression. They also very likely increase avoidance of helpful treatments.<sup>1</sup> Yet, it is often difficult to influence change in professional practice, or in established procedures. The medical dictum to "do no harm" frequently does not guide decision making.

Legislators often have good common sense. It should be clear to them for example that no one in their circle of family or friends would accept routinely being bathed, touched intimately, toileted etc. by someone of the opposite sex that they did not know.

But with patients in a psychiatric setting, the issue is much more serious. First, many psychiatric patients (51% - 98%) have histories of sexual and/or physical abuse.<sup>2,3,4</sup> This makes them especially vulnerable to "re-traumatization" by procedures such as being stripped, bathed, touched, and toileted by a staff of the same gender as their childhood perpetrator. Such a practice replicates and "triggers" feelings from the original abuse experiences and engenders feelings of fear, helplessness, distress, humiliation and loss of trust in staff.<sup>2</sup> When individuals are continually re-traumatized in this way, they are subject to chronic stress<sup>5</sup> which in turn worsens serious mental illness and results in symptom relapses and repeated re-hospitalization<sup>6,7,8,9</sup>.

Thank you for your efforts on behalf of persons with mental health issues. In this instance of unconscionable resistance to changing practices experienced as harmful by patients, the right to choose a preferred or same-sex provider must be legislatively mandated, and enforced.

Sincerely,



Ann F. Jennings, Ph.D.  
Trauma-Informed Systems Consultant  
The Anna Foundation  
21 Ocean Street  
Rockland, ME 04841

## References:

1. Mueser, K.T., Rosenberg, S.D. (2003) Treating the trauma of first episode psychosis: A PTSD perspective. *Journal of Mental Health*. 12, 2, 103-108
2. Cusack, K.J., Frueh, B.C., Hiers, T., Suffoletta-Maierle, S., and Bennett, S. (2003). Trauma within the psychiatric setting: A preliminary empirical report. *Administration and Policy in Mental Health*, 30, 453-460.
3. Mueser, K., Goodman, L.A., Trumbetta, S.L., Rosenberg, S.D., Osher, F.C., Vidaver, R., Auciello, P., & Foy, E.W. (1998). Trauma and posttraumatic stress disorder in severe mental illness. *Journal of Consulting and Clinical Psychology*, 66, 493-499.
4. Switzer, G.E., Dew, M.A., Thompson, K., Goycoolea, J.M., Derricott, T., & Mullins, S.D. (1999). Posttraumatic stress disorder and service utilization among urban mental health center clients. *Journal of Traumatic Stress*, 12, 25-39.
5. Mueser, K.T., Rosenberg, S.D., Goodman, L.A., Trumbetta, S.L. (2002). Trauma, PTSD, and the course of severe mental illness: an interactive model. *Schizophrenia Research* 53, 123-143
6. Bebbington, P., Knipers, L. (1992) .Life events and social factors. In: Kavanagh, D.J. (Ed). *Schizophrenia: An Overview and Practical Handbook*. Chapman and Hall, London. 126-144
7. Butzlaff, R.L., Hooley, J.M. (1998). Expressed emotion and psychiatric relapse. *Archives of General Psychiatry* 55, 547-552
8. Goodwin, F.K., Jamison, K.R. (1990) Manic-depressive Illness. Oxford University Press, New York.



December 22, 2004

Faith Myers  
Dorrance Collins  
330 E. 14<sup>th</sup> Ave., Apt. E  
Anchorage, Alaska 99501

Dear Faith and Dorrance:

I am in receipt of your letter wherein you request support from the Disability Law Center, Alaska's Protection and Advocacy agency for individuals with disabilities, in your efforts to secure "more rights" for patients at the Alaska Psychiatric Institute ["API"]. Specifically, you are advocating for a change in AS 47.30.840 that would, in effect, provide Alaskans undergoing mental health evaluation or treatment the right to choose the gender of the person providing them hands-on intimate care, such as toileting, bathing, diapering and dressing. You have asked the Disability Law Center to both confirm the legality of the requested statutory change and to voice support for your effort.

A review of statutory and judicial authority reveals a strong foundation of support for your legislative goal. In fact, securing the change in statute would not be bestowing 'more rights' onto patients, but would be a codification of an existing constitutional right that is not being acknowledged and protected. Based on this research, as well as common sense and decency, the Disability Law Center fully supports your effort.

It is clear that the State anticipates that some individuals admitted to API will require assistance with intimate care activities. The brief job description for a psychiatric nursing assistant that appears on the State's website describes the duties as follows:

*Assist patients in occupational, recreational, and industrial therapy and school programs. Assist patients with daily routine activities such as oral hygiene, preparing for meals, toileting, or preparing for bed. Help with feeding of patients unable to feed themselves.*

(Emphasis supplied). Acknowledging the need by some patients for this intimate assistance during a hospitalization, must these individuals submit themselves to care by a staff member of API's choosing, or do they have the right to choose the gender of the person viewing and touching their bodies? Do patients at API have a right to privacy?

Article I, Section 22 of the Constitution of Alaska provides that: "The right of the people to privacy is recognized and shall not be infringed." The specific enumeration of this right in Alaska's Constitution has been interpreted to

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ADVOCACY  
SYSTEMS

mean that Alaska's right to privacy is broader than that afforded by the United States Constitution. *Masserli v. State*, 626 P.2d 81 (Alaska 1980).

Federal courts have clearly enunciated that encompassed within the right to privacy is the right to shield one's unclothed body from view. As the Ninth Circuit Court of Appeals held over forty years ago, "We cannot conceive of a more basic subject of privacy than the naked body. The desire to shield one's unclothed figure from view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity. *Story v. York*, 324 F.2d 450, 455 (9<sup>th</sup> Cir. 1963).

Many of the cases discussing this aspect of the right to privacy arose in the context of employment discrimination complaints against correctional facilities. These facilities were sued for restricting the gender of certain guard positions, in part, to protect the privacy rights of prisoners. The courts have held that this right is not destroyed simply because one is institutionalized. *Turner v. Safley*, 482 U.S. 78, 84. (1987) ("Prison walls do not form a barrier separating prison inmates from the protections of the Constitution."); *Robino v. Iranon*, 145 F.3d 1109, 1111 (9<sup>th</sup> Cir. 1998) ("[A] person's interest in not being viewed unclothed by members of the opposite sex survives incarceration.")

Most people, however, have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating. When not reasonably necessary, that sort of degradation is not to be visited upon those confined in our prisons.

*Lee v. Downs*, 641 F.2d 1117, 1119 (4<sup>th</sup> Cir. 1981).

There are a few cases that address the employment of gender specific individuals in psychiatric hospitals. Courts have recognized that, unlike prison guards, hospital staff can infringe significantly on a patient's privacy rights. "Treatment assistants at a state psychiatric hospital intrude on patients' privacy by performing duties involving intimate personal care such as 'assisting patients with toileting, disrobing, showering and cleaning their genitals,' as well as stripping patients before placing them into restraints and conducting bed checks of patients who sleep naked or whose nightwear comes off during sleep. *Olsen v. Marriott International, Inc.*, 75 F. Supp.2d 1052, 1062 (Ariz. 1999) quoting *Jennings v. New York State Office of Mental Health*, 786 F. Supp. 376, 382 (S.D.N.Y. 1992).

Obviously most people would find it a greater intrusion of their dignity and privacy to have their naked bodies viewed (or any number of personal services performed) by a member of the opposite sex. Although there will be a certain relinquishment of privacy by necessity when anyone is admitted to a hospital or mental health facility, this is not to say that a patient has forfeited all rights to privacy.

*Local 567 American Federation of State, County & Municipal Employees v. Michigan Council 25, American Federation of State, County & Municipal Employees*, 635 F.Supp. 1010, 1013-14 (E.D. Mich. 1986) (footnote omitted).

The court in *Jennings* distinguished the privacy rights of patients from that of prisoners.

The patients at OMH are not convicted criminals but instead are there as a result of civil commitments. Thus, their right to privacy may not be abrogated by virtue of their confinement in a state-run facility unlike a prison inmate who has forfeited some rights in repayment to society. The patients at OMH are just that, patients. They are vulnerable and mentally ill. Basic decency demands that their privacy be respected to whatever degree feasible.

*Jennings v. New York State Office of Mental Health*, 786 F. Supp. At 384. The federal district court in Michigan held that not only should the psychiatric hospital respect the privacy rights of their patients, but should assist in protecting those rights.

It is obvious that the law recognizes the privacy rights of these patients or residents and that the defendants had the right to protect these rights, possibly even more so in the case of mental health patients who are far more reliant on the protection of the defendants than patients in hospitals. Moreover the failure to recognize their privacy rights is contrary to the concept of normalization which recognizes that mentally handicapped persons have a right to lives as close as possible to that which is typical for the general population.

*Local 567 American Federation of State, County & Municipal Employees v. Michigan Council 25, American Federation of State, County & Municipal Employees*, 635 F.Supp. at 1013. See also *Jennings v. New York State Office of Mental Health*, 786 F. Supp. at 383 ("[T]he fact that a person does not assert his or her constitutional right does not mean that state run facilities are still not obligated to respect these same rights.") "It would be a strange doctrine . . . that would decree that the sanctity of the right of privacy in the performance of the excretory functions, fully respected in a public restroom, is forfeited by the fact of falling ill and becoming hospitalized." *Local 567*, 635 F.Supp. at 1014.

Sensitivity towards the privacy rights of patients would also seem to further the treatment goals for many individuals. A large number of women and men have been sexually abused and live with the devastating aftermath of such experiences. Many with histories of maltreatment are extremely sensitive to issues of privacy and violation of their privacy. Early on in their lives their sense of body integrity was invaded by the behaviors of their perpetrators. Being exposed to the invasion of privacy while dressing, showering, or using the toilet can cause flashbacks in some individuals of prior abuse experiences. In others it can cause embarrassment and a sense of shame, even if they have no history of prior maltreatment. The need for a safe place where one is not exposed to the dominate

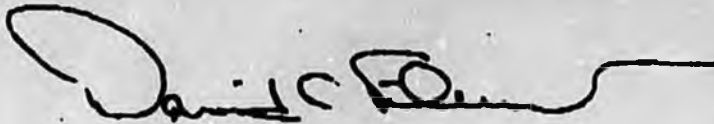
and submission process is imperative. The only way to make that possible is for people to have choices. Without choice there is a potential for the reenactment of trauma,

It is therefore possible that being viewed naked by staff of the opposite gender can cause significant harm to patients. A serious risk of harm violates the Eighth Amendment of the U.S. Constitution, even if no harm has yet occurred. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Helling v. McKinney*, 509 U.S. 25 (1993).

For the reasons set forth above, the Disability Law Center of Alaska enthusiastically supports your efforts to protect the privacy rights of patients at API through the legislative process. Please do not hesitate to contact me if there is anything this agency can do to assist you with your advocacy.

Sincerely,

**DISABILITY LAW CENTER OF ALASKA**

A handwritten signature in black ink, appearing to read "David C. Fleurant", with a long horizontal flourish extending to the right.

**David C. Fleurant  
Executive Director**

cc Ron Adler



**NAMI Anchorage**

*Anchorage's Voice on  
Mental Issues*

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Executive Director

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yvon@gci.net

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Alaska since 1984

Faith Myers  
Dorrance Collins  
330 E. 14<sup>th</sup> Ave., Apt. E  
Anchorage, Alaska 99501

27 February 2005

Dear Faith and Dorrance:

We here at the National Alliance for the Mentally Ill, Anchorage Affiliate (NAMI-Anch) have received and support your request for psychiatric patients to have the ability, through existing law and the most basic of privacy rights, to request gender specific intimate care. We further feel that these rights need to be clearly enunciated and that an addition to AS 47.30.940 reflecting such is in order.

We concur with and support the position Disability Law Center has taken in their letter to you dated December 22, 2004 and support their further involvement in resolving this matter of extreme importance.

It is telling to us that we rarely hear of this issue in private facilities where patients and their families have the freedom and ability to select other service providers. We understand that public institutions operate on limited resources, however this most basic of human rights, the right to personal dignity, is one that cannot carry a price tag but must be provided for in public as well as private facilities.


It is further troubling for us to realize that the staff making the majority of these decisions involving this most intimate of care are those who are the least trained. These staff members may well view their employment in the psychiatric care field as being transitory in nature and feel they have nothing or little to lose should a complaint regarding them be found to have merit. Our highest concern is that these individuals wield excessive physical and emotional power over these vulnerable persons and can too easily abuse the discretion given them to include suppressing complaints against them.

It is important to note that as State laws are currently being interpreted these basic rights to control who views and perhaps even touches our naked bodies may well be, and likely are being, violated without rising to the level of being a sexual assault or breaking any other laws. However, in this context, sexual assaults may well be, and quite possibly are being, committed with the vulnerable victim having little to no recourse, hope or even prayer of justice.

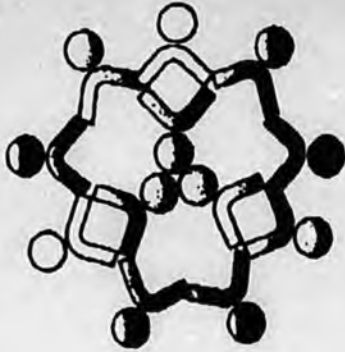
We urge our lawmakers to pass legislation which will protect individuals receiving this care.

Sincerely,

  
Yvonne Evans, President

  
Trish McDonald, Executive Director

Co Ron Adler  
David Fleurant



## **Alaska Mental Health Consumer Web**

**1248 Gambell St.  
Anchorage, ALASKA 99501**

**Phone: 907.222.2980  
Fax: 907.222.2981**

**March 2, 2005**

**Faith Myers  
Dorrance Collins  
330 E. 14<sup>th</sup> Ave., Apt. E  
Anchorage, Alaska 99501**

**Dear Faith and Dorrance:**

**We at Alaska Mental Health Consumer Web would like to express our full support for your efforts to ensure the right of Alaskans undergoing mental health evaluation and treatment to choose the gender of their caregivers. Specifically, we wholeheartedly endorse the amendment of AS47.30.340 to include the right of Psychiatric patients to choose the gender of those that provide their care. It is our collective belief that this is not only a core human right, but also a matter of basic human dignity. For many years Alaskans have received care without regard to the gender of the provider. This practice has potentially violated the rights of thousands of Alaskan citizens and may have broached the boundaries of people who may have issues of sexuality and trust.**

**We again applaud your efforts and if I can be of further assistance please do not hesitate to contact me.**

**Sincerely,**

**Carl Ipock**

**Executive Director**

**Alaska Mental Health Consumer Web**

# PsychRights

LAW PROJECT FOR

PSYCHIATRIC RIGHTS, INC.

408 G Street, Suite 208, Anchorage, Alaska 99501

(907) 274-7688 Phone - (907) 274-8493 Fax

<http://psychrights.org>

January 3, 2005

Faith Myers  
Dorrance Collins  
330 E. 14th Ave., Apt. B  
Anchorage, Alaska 99501

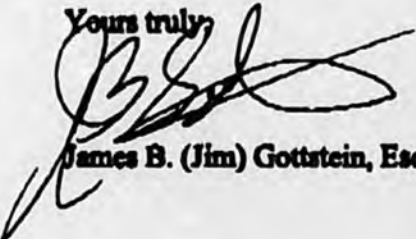
Re: Psychiatric Staff Gender Rights

Dear Ms. Myers and Mr. Collins:

The Law Project for Psychiatric Rights (PsychRights) unreservedly supports your efforts for legislative acknowledgment of the right for psychiatric patients to choose the gender of staff providing intimate care. We are outraged such a choice is not provided now. It is well known that many psychiatric patients (male as well as female) have been sexually assaulted or otherwise physically abused and that the failure to be sensitive to this issue is re-traumatizing and counter-therapeutic. Since the Alaska Psychiatric Institute is unwilling to recognize this and change its policy, a legislative directive is certainly in order.

PsychRights also concurs in the Disability Law Center's conclusion that Alaska patients already have such rights under the Alaska Constitution at least. If the 2005 Alaska Legislature fails to correct this outrage, I would encourage the Disability Law Center to pursue this through the courts.

Yours truly,



James B. (Jim) Gottstein, Esq.

cc: Ron Adler  
David Fleurant

**Testimony supporting Senate Bill 8 by Dorrance Collins—February 11, 2007**

Madam Chair, Committee members,

My name is Dorrance Collins. I support the passing of Senate Bill 8 as written.

Post traumatic stress disorder is one of the most prevalent and costly mental illnesses in America. Not giving gender choice of staff for intimate care in inpatient settings is traumatic to many psychiatric patients and can add to the illness.

In other states some psychiatric facilities take providing gender choice of staff for intimate care seriously. These facilities have policies that require the facility to schedule a portion of their work force by gender. As an example, if there are 5 male staff on one unit and 5 female staff on another unit, policy would require the head nurse, when scheduling, to see to it that there are sufficient men and women staff on each shift to provide gender choice.

Also, in the larger hospitals with multiple units—if the required gender is not available for intimate care, facility policy would require staff to go to the next unit to try and find the requested gender. Units are often just separated by a door.

These are all policies that we have been informed that the Alaska psychiatric hospitals and facilities will not adopt, even when it is pointed out that adopting such policies does not cost money and it reduces trauma.

In a recent Alaska Supreme Court decision, the justices stated there is a clear, unavoidable tension between hospitals seeking convenience/ economics and patient rights, which can manifest itself in patient abuse.

The justices saw it as a given that psychiatric hospitals and units were going to take shortcuts and would without regulation deny psychiatric patients their rights. It is laws passed by the legislature and action taken by the courts that will force psychiatric hospitals to do the right thing.

Almost without exception those patients entering an acute care psychiatric facility have dementia and trauma in their background. And to a lesser extent those patients entering evaluation facilities. Many have been victimized, some from childhood through adulthood. The percentage that has been sexually abused and physically abused is much higher than the rate in general society. When psychiatric patients are not given gender choice, they feel they are being re-victimized all over again.

As a civilized society, we can't leave psychiatric patient's protection up to guesswork. We need to pass statutes.

Passing Senate Bill 8 will give back to psychiatric patients' a small amount of dignity and control they lost when entering a psychiatric facility.

Senate Bill 8 only asks that psychiatric institutions make a good faith effort at providing gender choice of staff for intimate care. Adding more loopholes for psychiatric facilities to utilize will make the Bill useless.

In closing, I am asking you to pass Senate Bill 8 as written.

Thank you,

Dorrance Collins  
(907) 929-0532

*Dorrance Collins*

Sen. Bettye Davis  
Chair — HESS Committee

**Testimony supporting Senate Bill 8 by Dorrance Collins—February 11, 2007**

Madam Chair, Committee members,

My name is Dorrance Collins. I support the passing of Senate Bill 8 as written.

In a recent Alaska Supreme Court decision, the justices stated there is a clear, unavoidable tension between hospitals seeking convenience/ economics and patient rights, which can manifest itself in patient abuse.

The justices saw it as a given that psychiatric hospitals and units were going to take shortcuts and would without regulation deny psychiatric patients their rights. It is laws passed by the legislature and action taken by the courts that will force psychiatric hospitals to do the right thing.

Almost without exception those patients entering an acute care psychiatric facility have dementia. And to a lesser extent those patients entering evaluation facilities. Many have been victimized, some from childhood through adulthood. The percentage that has been sexually abused and physically abused is much higher than the rate in general society. When psychiatric patients are not given gender choice, they feel they are being re-victimized all over again.

As a civilized society, we can't leave psychiatric patient's protection up to guesswork. We need to pass statutes.

Passing Senate Bill 8 will give back to psychiatric patients' a small amount of dignity and control they lost when entering a psychiatric facility.

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In closing, I am asking you to pass Senate Bill 8 as written.

Thank you,

Dorrance Collins  
(907) 929-0532

*Dorrance Collins*

**Mr. Chair, Committee members,**

**My name is Faith Myers. I support the passing of Senate Bill 8 as written.**

**I have an avocation in Mental Health Advocacy. In the past I have been in acute care psychiatric facilities in Alaska, Washington and Nevada. Also, as an advocate, I have contacted psychiatric hospital administrators in Maine, Maryland, Nevada, Alaska and Washington looking for best practices.**

**There is such a thing as unnecessary traumatization of psychiatric patients in a psychiatric facility, especially in facilities in states that look for shortcuts. It is the rules and statutes of the state that reduce the amount of trauma and recidivism.**

**We fully understand the idea of a psychiatric emergency when gender choice may not be able to be provided—What we want to reduce is the unnecessary traumatization of a psychiatric patient who is reasonably cooperative.**

**The percentage of women in acute care psychiatric facilities who have a history of sexual abuse and/or physical abuse in their past is somewhere between 51% and 98% respectively. The figure for men is a little bit less. To a person with mental illness, it is certain he/she feels re-victimized when he / she is given intimate care against their will by the gender of the person who sexually abused him or her in the past.**

**There are 3 or 4 hospitals that do civil commitments, and there are numerous other ones that do 3 day evaluations that stretch out into 7 days. This issue cannot be dealt with by working to change each hospital's policy. Change needs to be done by state statute.**

**I would like to briefly explain the support letters in favor of a bill for gender choice of staff for intimate care. The following letters of support should have been provided to you.**

- 1. Ann F. Jennings, PhD., Trauma-Informed Systems Consultant has background knowledge of trauma in acute-care psychiatric institutions. She also has a personal connection. Her daughter was in and out of psychiatric institutions from the age of 13 to 32 when her daughter committed suicide in a psychiatric institution.**
- 2. Aron S. Wolf, MD, MMD. Dr. Wolf has over 30 years of experience in treating psychiatric patients from children to adults.**
- 3. NAMI, Anchorage —Their Board members have personally been in psychiatric institutions and had family members in psychiatric institutions.**

4. **Alaska Mental Health Consumer Web**— Their Board members also have a wide range of experience with psychiatric facilities.
5. **The Alaska Mental Health Board**, whose Board members are appointed by the Governor—again, their Board members have a wide range of experience in advocating for better treatment in psychiatric facilities.
6. **Disability Law Center** submitted a 4 page legal opinion, stating that gender choice of staff is a right that should be given to a civilly committed psychiatric patient.
7. **Psychiatric Rights**—an organization dedicated to furthering the rights of psychiatric patients—Psychiatric Rights also concurs with Disability Law's legal opinion that gender choice is a right of civilly committed psychiatric patients.

All told there are probably 50 or more Board members that voted that a gender choice of staff for intimate care bill should be passed, many of them experts in the field.

Senate Bill 8 only requires psychiatric institutions to make a good faith effort at giving gender choice of staff.

In closing, I am asking you to pass Senate Bill 8.

Thank you,

Faith Myers  
(907) 929-0532

*Faith Myers*

# Letters

require inpatient psychiatric facilities to make a good faith effort at providing patients receiving intimate care their choice of gender of staff performing that care. We believe if the bill does pass it would eventually carry over into senior care facilities.

The Alaska facilities we have surveyed do not schedule for gender. For example, if there are five men working on one shift at a facility and five women working on the other shift, all of the facilities we have surveyed do not have policies that require the nurse making up the work schedule to make an attempt to see to it there is proper gender on each shift to provide gender choice of staff for intimate care.

We fully understand not hiring for gender, but in Alaska they refuse to schedule the work force for gender.

Also, in larger facilities where there is more than one unit, there is no policy that requires staff to go to the next unit to get the requested gender to give someone a bath.

These are things that they do in other states and it doesn't cost money, but Alaska facilities we surveyed refused to do it.

Providing gender choice of staff for intimate

care reduces traumatization and passing Senate Bill 8 will force psychiatric institutions to write good gender choice policies.

**Faith Myers and Dorrance Collins**  
Anchorage

## We would like to hear from you

Send letters to the editor to Senior Voice, 325 E. Third Ave., Suite 300, Anchorage AK 99501. Maximum length is 250 words. Senior Voice reserves the right to edit for content and length.

Space may be made available for longer opinion piece essays up to 500 words. Please contact the managing editor at [seniorvoice@gci.net](mailto:seniorvoice@gci.net) to discuss this.

Copy deadline is the 15th of the month prior to publication.

Dear Editor,

We would like to make readers aware of Senate Bill 8, which when passed would

# PsychRights<sup>®</sup>

Law Project for  
Psychiatric Rights, Inc.

Alaska Legislature  
Alaska State Capitol  
Juneau, Alaska 99801

January 30, 2006

Re: Psychiatric Rights Legislation

This is to support the proposals by Faith Myers and Dorrance Collins to amend Alaska law to enhance certain rights given to people diagnosed with serious mental illness and held at inpatient facilities.

For example, the wording "patients must be given reasonable opportunity" gives some facilities license to deny patients the rights the statute is intended to ensure. Some facilities turn these rights on their head and make them "privileges." To address this, it is recommended that something like the following be added to AS 47.30.840:

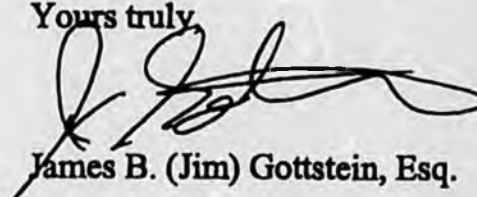
At no time shall the rights set forth in this chapter be treated as privileges that the recipient must earn by meeting certain standards of behavior.

Of course these rights are meaningless if there is no effective enforcement process. It is therefore suggested that AS 47.30.847 be amended to specify a time limit in which grievances/complaints must be answered and that patients 18 and older have a right to appoint a representative of their choice to help them file and pursue grievances/complaints.<sup>1</sup> Such representatives should have the right to "reasonable access to all living and program areas and to staff involved in the treatment of the patient in order to assist the patient in the protection of his or her rights."

In addition the state Ombudsman or some other state oversight authority should have the right to go into any facility holding people because being diagnosed with mental illness. The Ombudsman's Office is presently excluded from all but state hospitals and would have to be granted a different authority to enter other facilities.

I have known Faith Myers and Dorrance Collins for a number of years and they are absolutely spot on with their suggestions. Alaska citizens deserve the type of consideration Faith and Dorrance are asking for and I urge you to act favorably upon their suggestions.

Yours truly,



James B. (Jim) Gottstein, Esq.

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<sup>1</sup> For patients under 18, their guardian would retain that right.



January 30, 2006

Faith Myers  
Dorrance Collins  
330 E. 14<sup>th</sup> Ave., Apt. E  
Anchorage, Alaska 99501

Dear Faith and Dorrance:

You have requested a letter of support from the Disability Law Center of Alaska for your effort to revise the grievance rights of psychiatric patients in Alaska. In essence, your proposed revisions seek to ensure that psychiatric patients are afforded basic due process rights when filing a grievance.

The Disability Law Center of Alaska supports your efforts to ensure that psychiatric patients in Alaska are afforded basic due process rights. Your recommendations, including permitting psychiatric patients the right to obtain the assistance of a self-designated representative and establishing specific time frames for certain actions, are very appropriate means of assuring that rights can both be exercised and are protected.

Please let me know if there is anything we can do to assist you in this effort.

Sincerely,

DISABILITY LAW CENTER OF ALASKA

David C. Fleurant  
Executive Director

MEMBER OF THE  
NATIONAL  
ASSOCIATION OF  
PROTECTION &  
ADVOCACY  
SYSTEMS

**NAMI Anchorage**  
144 W. 5th Avenue  
Anchorage, AK 99501

Support For New Grievance  
Procedures

(907) 272-0227  
(phone and fax)

Tom

February 17, 2007

Alaska State Legislature  
Juneau, Alaska

RECEIVED  
FEB 20 2007

Re: Request for Amendment to AS 47.30.847  
Psychiatric Grievance Procedures

Honorable Senators and Representatives:

NAMI Anchorage provides support, education and advocacy to persons experiencing a mental illness and their families. This letter is about the grievance rights of patients in mental health facilities. Those rights are set out in broad terms in AS 4.30.847. See copy attached.

We have received reports that patients have been unduly burdened by hospital procedures in their efforts to bring grievances. For example, the facility may repeatedly require the patient to confer with members of the very same treatment team that have aggrieved the patient as a pre-condition to filing a formal grievance. It can be traumatizing to a patient to be required to seek redress from the same caregivers with whom the patient has a dispute.

It has also been reported to NAMI that patients are not always being provided a written statement of the grievance procedure upon admission to the facility. The ability of the patient or patient's representative to advocate for themselves requires knowledge of the "what" and "how" of the grievance procedure *prior* to treatment. NAMI believes that self-advocacy is one of the building blocks for real and lasting recovery.

These examples demonstrate that the due process rights of patients can be easily limited or circumvented because the language of AS 47.30.847 is too broad. The statute does not say precisely what the mental health facilities must do, giving them considerable latitude in interpreting the law and developing the grievance procedures as they wish. The statute needs to be amended to state the following specific requirements:

- the written grievance procedure will be provided to the patient at the time of admission.
- the patient's written complaint will be accepted and delivered to the "impartial body" required in subsection (a) without requirement of further consultation with or approval by the treatment team or other precondition.
- the patient will be allowed the assistance of a self-designated representative and will not be limited to a representative as defined by the facility.
- the complaint will be addressed and resolved within specific time frames to be set out in the amended statute.

*Anchorage's Voice on Mental Illness*

NAMI Anchorage is the Local Affiliate of the National Alliance on Mental Illness

Additional specific provisions may be required as investigation continues. NAMI Anchorage is prepared to assist in this important revision process as requested. In the meantime, we ask the legislators and the administrators of mental health facilities to bear in mind the trauma that hospitalization by itself causes a patient, on top of the underlying problem resulting in the hospitalization. In such a situation, the balancing of administrative inconvenience with the health and welfare of the patient should weigh in favor of the patient.

Thank you for this opportunity to comment.

NAMI Anchorage

*Pat Kouris / by Harbour*

Pat Kouris

President, NAMI Anchorage Board of Directors

attachment: AS 47.30.847

cc: Representative Sharon Cissna  
James B. Gottstein, Esq.  
Faith Myers and Dorrance Collins  
David Fleurant, Disability Law Center

*Anchorage's Voice on Mental Illness*

NAMI Anchorage is the Local Affiliate of the National Alliance on Mental Illness

**SB**

**13**

# 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

February 28, 2007

**SUBJECT:** Draft CSSB 13(JUD): Does the amendment to section 1 prohibit privately-funded communication?  
(Work Order No. 25-LS0106WM)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee  
Attn: Cindy Smith

**FROM:** Dan Wayne   
Legislative Counsel

The committee has asked: does the language of section 1 prohibits a legislator from communicating with constituents, by a newsletter or other means, if the communication is paid for by private funds or from a POET account? The answer is no. AS 24.60.030(a)(2), as set forth in the bill beginning on page 1, prohibits use only of *public* funds, facilities equipment, or services or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person. Therefore, communications, including newsletters, are not prohibited by this section if they are paid for with non-public funds, such as a private donation or money from a POET account.<sup>1</sup>

If I may be of further assistance, please advise.

DCW:med  
06-133.med

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<sup>1</sup> There are separate legal restrictions on the management and use of POET funds that may affect the publication of newsletters, but not under section 1 of this bill.

**Sen. Hollis French**

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**From:** Drue\_Pearce@ios.doi.gov  
**Sent:** Wednesday, February 21, 2007 10:52 AM  
**To:** Sen. Lesil McGuire; Sen. Hollis French  
**Cc:** Sharon Szymanski  
**Subject:** SB19

I read the Alaska Budget Report section on the bill and I'm wondering how legislators are treated when they leave public service to take a federal position, either appointed like my old DOI position, confirmed like my new one, or a career position? I certainly have advised, for compensation, the federal government vis-a-vis Alaska issues, including many in which I participated as a State Senator.

I would think you would want the door open for others to follow in my footsteps in the future; I maintain it's been good for Alaska to have me here.

How would I have been treated if your new law had been in effect?

Drue Pearce  
Federal Coordinator  
Office of the Federal Coordinator  
Alaska Natural Gas Transportation Projects  
1849 C Street, NW  
MS-6020  
Washington, DC 20240

(202) 208-4177  
(202) 219-0229 (fax)  
Cell (907) 230-8558

**Senator Hollis French**

Capitol Room 504  
465-3892  
465-6595 fax



**MEMORANDUM**

Date: March 12, 2007

To: Leg Legal

From: Cindy Smith

**RE: CSSB13: as-passed version**

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Please make the following change to CSSB13 \K version:

On page 6, line 13, delete the words "and for one year thereafter"

25-LS0106K  
Wayne  
2/28/07

**CS FOR SENATE BILL NO. 13(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATOR STEVENS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to ethics in state government and to activities of former legislators; and**  
2 **providing for an effective date."**

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

4 **\* Section 1. AS 24.60.030(a) is amended to read:**

5 (a) A legislator or legislative employee may not

6 (1) solicit, agree to accept, or accept a benefit other than official  
7 compensation for the performance of public duties; this paragraph may not be  
8 construed to prohibit lawful solicitation for and acceptance of campaign contributions,  
9 solicitation or acceptance of contributions for a charity event, as defined in  
10 AS 24.60.080(c)(10), or the acceptance of a lawful gratuity under AS 24.60.080;

11 (2) use public funds, facilities, equipment, services, or another  
12 government asset or resource for a nonlegislative purpose, for involvement in or  
13 support of or opposition to partisan political activity, or for the private benefit of either  
14 the legislator, legislative employee, or another person; this paragraph does not prohibit

1 (A) limited use of state property and resources for personal  
2 purposes if the use does not interfere with the performance of public duties and  
3 either the cost or value related to the use is nominal or the legislator or  
4 legislative employee reimburses the state for the cost of the use;

5 (B) the use of mailing lists, computer data, or other information  
6 lawfully obtained from a government agency and available to the general  
7 public for nonlegislative purposes;

8 (C) telephone or facsimile use that does not carry a special  
9 charge;

10 (D) the legislative council, notwithstanding AS 24.05.190,  
11 from designating a public facility for use by legislators and legislative  
12 employees for health or fitness purposes; when the council designates a facility  
13 to be used by legislators and legislative employees for health or fitness  
14 purposes, it shall adopt guidelines governing access to and use of the facility;  
15 the guidelines may establish times in which use of the facility is limited to  
16 specific groups;

17 (E) a legislator from using the legislator's private office in the  
18 capital city during a legislative session, and for the 10 days immediately before  
19 and the 10 days immediately after a legislative session, for nonlegislative  
20 purposes if the use does not interfere with the performance of public duties and  
21 if there is no cost to the state for the use of the space and equipment, other than  
22 utility costs and minimal wear and tear, or the legislator promptly reimburses  
23 the state for the cost; an office is considered a legislator's private office under  
24 this subparagraph if it is the primary space in the capital city reserved for use  
25 by the legislator, whether or not it is shared with others;

26 (F) a legislator from use of legislative employees to prepare  
27 and send out seasonal greeting cards;

28 (G) a legislator from using state resources to transport  
29 computers or other office equipment owned by the legislator but primarily used  
30 for a state function;

31 (H) use by a legislator of photographs of that legislator;

1 (I) reasonable use of the Internet by a legislator or a legislative  
2 employee except if the use is for election campaign purposes;

3 (J) a legislator or legislative employee from soliciting,  
4 accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable  
5 organization in a state facility;

6 (K) a legislator from sending any communication in the form of  
7 a newsletter to the legislator's constituents, unless

8 (i) the communication is sent during the 30-day  
9 period immediately preceding a state election: or

10 (ii) it is [EXCEPT] a communication expressly  
11 advocating the election or defeat of a candidate or a newsletter or  
12 material in a newsletter that is clearly only for the private benefit of a  
13 legislator or a legislative employee; or

14 (L) full participation in a charity event approved in advance by  
15 the Alaska Legislative Council;

16 (3) knowingly seek, accept, use, allocate, grant, or award public funds  
17 for a purpose other than that approved by law, or make a false statement in connection  
18 with a claim, request, or application for compensation, reimbursement, or travel  
19 allowances from public funds;

20 (4) require a legislative employee to perform services for the private  
21 benefit of the legislator or employee at any time, or allow a legislative employee to  
22 perform services for the private benefit of a legislator or employee on government  
23 time; it is not a violation of this paragraph if the services were performed in an  
24 unusual or infrequent situation and the person's services were reasonably necessary to  
25 permit the legislator or legislative employee to perform official duties;

26 (5) use or authorize the use of state funds, facilities, equipment,  
27 services, or another government asset or resource for the purpose of political fund  
28 raising or campaigning; this paragraph does not prohibit

29 (A) limited use of state property and resources for personal  
30 purposes if the use does not interfere with the performance of public duties and  
31 either the cost or value related to the use is nominal or the legislator or

1 legislative employee reimburses the state for the cost of the use;

2 (B) the use of mailing lists, computer data, or other information  
3 lawfully obtained from a government agency and available to the general  
4 public for nonlegislative purposes;

5 (C) telephone or facsimile use that does not carry a special  
6 charge;

7 (D) storing or maintaining, consistent with (b) of this section,  
8 election campaign records in a legislator's office;

9 (E) a legislator from using the legislator's private office in the  
10 capital city during a legislative session, and for the 10 days immediately before  
11 and the 10 days immediately after a legislative session, for nonlegislative  
12 purposes if the use does not interfere with the performance of public duties and  
13 if there is no cost to the state for the use of the space and equipment, other than  
14 utility costs and minimal wear and tear, or the legislator promptly reimburses  
15 the state for the cost; an office is considered a legislator's private office under  
16 this subparagraph if it is the primary space in the capital city reserved for use  
17 by the legislator, whether or not it is shared with others; or

18 (F) use by a legislator of photographs of that legislator.

19 \* **Sec. 2.** AS 24.60.040 is amended by adding a new subsection to read:

20 (d) Disclosure by a legislator or legislative employee under this section shall  
21 be made in writing to the committee, which shall maintain a public record of the  
22 disclosure and forward the disclosure to the respective house for inclusion in the  
23 journal.

24 \* **Sec. 3.** AS 24.60.050(c) is amended to read:

25 (c) A legislator or legislative employee who participates in a program or  
26 receives a loan that is not exempt from disclosure under (a) of this section shall make  
27 written disclosure to [FILE A WRITTEN REPORT WITH] the committee by the  
28 date required under AS 24.60.105 stating the amounts of the loans outstanding or  
29 benefits received during the preceding calendar year from nonqualifying programs. If  
30 the committee requests additional information necessary to determine the propriety of  
31 participating in the program or receiving the loan, it shall be promptly provided. The

1 committee shall promptly compile a list of the statements indicating the loans and  
2 programs and amounts and send it to the presiding officer of each house who shall  
3 have it published in the supplemental journals with the next regular publication, by  
4 the senate secretary and the house chief clerk, of disclosures under this chapter  
5 [WITHIN THREE WEEKS AFTER THE FILING DATE]. A legislator or legislative  
6 employee who believes that disclosure of participation in a program would be an  
7 invasion of the participant's right to privacy under the state constitution may request  
8 the committee to keep the disclosure confidential. If the committee finds that  
9 publication would constitute an invasion of privacy, the committee shall publish only  
10 the fact that a person has participated in the program and the amount of benefit that the  
11 unnamed person received. The committee shall maintain the disclosure of the name of  
12 the person as confidential and may only use the disclosure in a proceeding under  
13 AS 24.60.170. If the disclosure becomes part of the record of a proceeding under  
14 AS 24.60.170, the disclosure may be made public as provided in that section.

15 \* Sec. 4. AS 24.60.080(c) is amended to read:

16 (c) Notwithstanding (a) of this section, it is not a violation of this section for a  
17 legislator or legislative employee to accept

18 (1) hospitality, other than hospitality described in (4) of this  
19 subsection,

20 (A) with incidental transportation at the residence of a person;  
21 however, a vacation home located outside the state is not considered a  
22 residence for the purposes of this subparagraph; or

23 (B) at a social event or meal;

24 (2) discounts that are available

25 (A) generally to the public or to a large class of persons to  
26 which the person belongs; or

27 (B) when on official state business, but only if receipt of the  
28 discount benefits the state;

29 (3) food or foodstuffs indigenous to the state that are shared generally  
30 as a cultural or social norm;

31 (4) travel and hospitality primarily for the purpose of obtaining

1 information on matters of legislative concern;

2 (5) gifts from the immediate family of the person;

3 (6) gifts that are not connected with the recipient's legislative status;

4 (7) a discount for all or part of a legislative session, including time  
5 immediately preceding or following the session, or other gift to welcome a legislator  
6 or legislative employee who is employed on the personal staff of a legislator or by a  
7 standing or special committee to the capital city or in recognition of the beginning of a  
8 legislative session if the gift or discount is available generally to all legislators and the  
9 personal staff of legislators and staff of standing and special committees; this  
10 paragraph does not apply to legislative employees who are employed by the  
11 Legislative Affairs Agency, the office of the chief clerk, the office of the senate  
12 secretary, the legislative budget and audit committee, the office of victims' rights, or  
13 the office of the ombudsman;

14 (8) a gift of legal services in a matter of legislative concern and a gift  
15 of other services related to the provision of legal services in a matter of legislative  
16 concern;

17 (9) a gift of transportation from a legislator to a legislator if the  
18 transportation takes place in the state on or in an aircraft, boat, motor vehicle, or other  
19 means of transport owned or under the control of the donor; this paragraph does not  
20 apply to travel described in (4) of this subsection or travel for political campaign  
21 purposes;

22 (10) tickets from a lobbyist for a charity event at any time, including  
23 during a legislative session, except that tickets to or gifts received at a charity event  
24 under this paragraph are subject to the calendar year limit on the value of gifts  
25 received by a legislator or legislative employee in (a) of this section; in this paragraph,  
26 "charity event" means an event the proceeds of which go to a charitable organization  
27 with tax-free status under 26 U.S.C. 501(c)(3) and that the Alaska Legislative Council  
28 has approved in advance; the tickets may entitle the bearer to admission to the event,  
29 to entertainment, to food or beverages, or to other gifts or services involved in the  
30 charity event; or

31 (11) a contribution to a charity event from any person at any time; in

1 this paragraph, "charity event" has the meaning given in (10) of this subsection.

2 \* Sec. 5. AS 24.60.080(i) is amended to read:

3 (i) A legislator or legislative employee who knows or reasonably should know  
4 that a family member has received a gift because of the family member's connection  
5 with the legislator or legislative employee shall make written disclosure to the  
6 committee regarding the gift [REPORT THE RECEIPT OF THE GIFT BY THE  
7 FAMILY MEMBER TO THE COMMITTEE] if the gift would have to be reported  
8 under this section if it had been received by the legislator or legislative employee or if  
9 receipt of the gift by a legislator or legislative employee would be prohibited under  
10 this section. The committee shall maintain a public record of the disclosure and  
11 forward the disclosure to the respective house for inclusion in the journal.

12 \* Sec. 6. AS 24.60.085 is amended by adding a new subsection to read:

13 (c) During the term for which elected or appointed [and for one year thereafter,  
14 a legislator may not, directly or by authorizing another to act on the legislator's behalf,  
15 accept or agree to accept compensation, except from the State of Alaska, for work  
16 associated with legislative action, administrative action, or political action.  
17 Notwithstanding AS 24.60.990, in this subsection "administrative action" and  
18 "legislative action" have the meanings given in AS 24.45.171.

19 \* Sec. 7. AS 24.60.105(a) is amended to read:

20 (a) When a legislator or legislative employee is required to file a disclosure  
21 under this chapter and a date by which the disclosure must be filed is not otherwise set  
22 by statute, the deadline for filing disclosure shall be 30 days [DEADLINES SET  
23 OUT IN THIS SECTION SHALL APPLY. FOR DISCLOSURE OF A MATTER OR  
24 AN INTEREST THAT BEGAN OR WAS ACQUIRED DURING THE INTERIM  
25 BETWEEN REGULAR LEGISLATIVE SESSIONS, WHETHER OR NOT THE  
26 REGULAR SESSION IS EXTENDED OR THERE IS A SPECIAL SESSION, OR  
27 DURING THE LAST 30 DAYS OF A REGULAR SESSION, THE LEGISLATOR  
28 OR LEGISLATIVE EMPLOYEE SHALL DISCLOSE THE MATTER BY MARCH  
29 15. FOR DISCLOSURE OF A MATTER OR AN INTEREST THAT BEGAN OR  
30 WAS ACQUIRED DURING A REGULAR LEGISLATIVE SESSION, BUT NOT  
31 DURING THE LAST 30 DAYS OF THE REGULAR SESSION, THE

1 DISCLOSURE MUST BE MADE WITHIN 30 DAYS] after the commencement of  
2 the interest or representation.

3 \* Sec. 8. AS 24.60.130(n) is amended to read:

4 (n) When appointing members of the legislature to serve on the committee, the  
5 speaker of the house or the president of the senate, as appropriate, shall appoint an  
6 alternate member for each regular member. An alternate must have the same  
7 qualifications as the regular member for whom the alternate stands as alternate and is  
8 subject to confirmation as required for the regular member. If a regular legislative  
9 member of the committee or a subcommittee is unable to attend a meeting, the  
10 chair of the committee or a subcommittee shall designate the regular member's  
11 alternate to serve in place of the regular member at the meeting and the  
12 designated alternate shall serve unless unable to serve for any reason. If a regular  
13 legislative member of the committee or a subcommittee is disqualified under (h) of  
14 this section from serving on the committee or the subcommittee concerning a  
15 proceeding under AS 24.60.170 or if the regular member is unable to attend, the  
16 chair of the committee or a subcommittee shall designate the regular member's  
17 alternate to serve in place of the regular member in the proceeding unless the alternate  
18 is also disqualified from serving. The designation shall be treated as confidential to the  
19 same extent that the identity of the subject of a complaint is required to be kept  
20 confidential.

21 \* Sec. 9. AS 24.60.150(a) is amended to read:

22 (a) The committee shall

23 (1) adopt procedures to facilitate the receipt of inquiries and prompt  
24 rendition of its opinions;

25 (2) publish advisory opinions annually;

26 (3) publish annual [SEMI-ANNUAL] summaries of decisions [AND  
27 ADVISORY OPINIONS] with sufficient deletions in the summaries to prevent  
28 disclosing the identity of the persons involved in the decisions [OR OPINIONS] that  
29 have remained confidential.

30 \* Sec. 10. AS 24.60.160(b) is amended to read:

31 (b) An opinion issued under this section is binding on the committee in any

1 subsequent proceedings concerning the facts and circumstances of the particular case  
2 unless material facts were omitted or misstated in the request for the advisory opinion.  
3 All advisory opinions shall be issued with sufficient deletions to prevent  
4 disclosing the identity of the persons involved. Advisory opinion discussions and  
5 deliberations are confidential, unless the requester and anyone else named in the  
6 request who is covered by the ethics code waives confidentiality. The committee  
7 vote shall be a public record [EXCEPT AS PROVIDED IN THIS CHAPTER, AN  
8 ADVISORY OPINION IS CONFIDENTIAL BUT SHALL BE MADE PUBLIC IF A  
9 WRITTEN REQUEST BY THE PERSON WHO REQUESTED THE OPINION IS  
10 FILED WITH THE COMMITTEE].

11 \* Sec. 11. AS 24.60.176(b) is amended to read:

12 (b) In this section, "appointing authority" means

13 (1) the legislative council for employees of the Legislative Affairs  
14 Agency and of the legislative council and for legislative employees not otherwise  
15 covered under this subsection;

16 (2) the Legislative Budget and Audit Committee for the legislative  
17 fiscal analyst and employees of the division of legislative finance, the legislative  
18 auditor and employees of the division of legislative audit, and employees of the  
19 Legislative Budget and Audit Committee;

20 (3) the appropriate finance committee for employees of the senate or  
21 house finance committees;

22 (4) the appropriate rules committee for employees of

23 (A) standing committees of the legislature, other than the  
24 finance committees;

25 (B) the senate secretary's office and the office of the chief clerk  
26 of the house of representatives; and

27 (C) house records and senate records;

28 (5) the legislator who made the hiring decision for employees of  
29 individual legislators; however, the legislator may request the appropriate rules  
30 committee to act in the legislator's stead;

31 (6) the ombudsman for employees of the office of the ombudsman,

1 other than the ombudsman;

2 (7) the legislature for the ombudsman;

3 (8) the victims' advocate for the employees, other than the victims'  
4 advocate, of the office of victims' rights;

5 (9) the legislative council for the victims' advocate.

6 \* Sec. 12. AS 24.60.210(a) is amended to read:

7 (a) A person required to file a disclosure statement under AS 24.60.200 shall  
8 file an annual report with the Alaska Public Offices Commission, covering the  
9 previous calendar year, containing the disclosures required by AS 24.60.200, on or  
10 before March 15 of each year, except that a legislator appointed under  
11 AS 15.40.320 - 15.40.350, a public member of the committee, and a legislative  
12 director must file within 30 days after the person's initial appointment.

13 \* Sec. 13. AS 24.60.250(c) is amended to read:

14 (c) In addition to the sanctions described in AS 24.60.260, if the Alaska Public  
15 Offices Commission finds that a legislative director has failed or refused to file a  
16 report under AS 24.60.200 by a deadline established in AS 24.60.210, it shall notify  
17 the Alaska Legislative Council or the Legislative Budget and Audit Committee, as  
18 appropriate. For the ombudsman and for the victims' advocate, the Alaska  
19 Legislative Council shall be notified.

20 \* Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

# 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

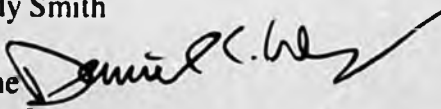
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 28, 2007

**SUBJECT:** Definition of "legislative action" (CSSB 13(JUD),  
Work Order No. 25-LS0106K)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee  
Attn: Cindy Smith

**FROM:** Dan Wayne   
Legislative Counsel

You have asked, as to the phrase "work associated with legislative action," used in sec. 6 of CSSB 13(JUD), version "K," whether "legislative action," as defined in AS 24.45.171(9), would prohibit a legislator paid by a private client from researching bill history and other legislative information for use in the legislator's work outside of the legislature. The short answer is no, although adding "contemporaneous or future" after "associated with" might make it clearer.<sup>1</sup>

According to AS 24.45.171(9):

(9) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat, or rejection of any bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity;

it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding, or sustaining that veto and the action of the legislature in considering, confirming, or rejecting an executive appointment of the governor;

I have divided the cited language in half, because for the purpose of this discussion it is helpful to read the first half separately from the rest of the section. The first half says

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<sup>1</sup> This opinion is not necessarily the opinion of the Select Committee on Legislative Ethics, which may disagree.

Senator Hollis French  
February 28, 2007  
Page 2

legislative action is, essentially, *legislating* -- by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature.<sup>2</sup>

CSSB 13(JUD), version "K", sec. 6, says:

(c) During the term for which elected or appointed and for one year thereafter a legislator may not, directly or by authorizing another to act on the legislator's behalf, accept or agree to accept compensation, except from the State of Alaska, for work *associated with* legislative action, administrative action, or political action. Notwithstanding AS 24.60.990, in this subsection "administrative action" and "legislative action" have the meanings given in AS 24.45.171. (Emphasis added).

I have emphasized "associated with" for the purpose of this discussion because the phrase could be interpreted to make prohibitions in sec. 6 seem applicable to anything connected with legislative action, no matter how far removed the connection. I think that would be a misinterpretation.

If "legislative action" is, as I have suggested, an act of *legislating* or law-making, then sec. 6 only prohibits outside work associated with "legislating" and not work associated with an end product of legislating like reviewing legislative records or the history of enacted statutes. Under this interpretation of sec. 6, a legislator or former legislator who is a lawyer in the paid employment of a client other than the state would not be prevented from performing any of the actions (research, prepare memos for court, etc.) listed in the definition of "legislative action," as long as the person is otherwise in compliance with the law, is not acting in the person's official capacity as a member or employee of the legislature, and is not doing work that is associated with legislating (i.e. lobbying the legislature, giving paid advice about how to pass or repeal a state statute, drafting proposed legislation, etc.).

If I may be of further assistance, please advise.

DCW:ljw  
07-106.ljw

Enclosure

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<sup>2</sup> I read the phrase "in an official capacity" as relating only to employees of the legislature.

**Senator Hollis French**

Capitol Room 504  
465-3892  
465-6595 fax



**MEMORANDUM**

Date: February 26, 2007

To: Leg. Legal/Dan Wayne

From: Cindy Smith *- attached*

**RE: CSSB13**

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Please incorporate the definitions, attached, for the terms "administrative action", "legislative action", "political action" used in Section 6. Note that the definitions for administrative and legislative action are from AS 24.45.171 and the definition for political action is from AS 24.60.990.

Please provide an opinion as to whether "legislative action", as defined in 25.45.171(9), would prohibit a legislator paid by a private client from researching bill history and other legislative information for use in his or her profession (e.g., could an attorney, under this definition, do research on the legislative history of a particular bill or legislative item?)

The committee has also asked for an opinion regarding section 1. Does the language prohibit the issuance of a newsletter within 30 days regardless of fund source? If so, is it constitutionally possible to restrict what a legislator uses his/her private funds for? Is there a distinction between using public funds and POET account funds? And finally, is there a distinction between newsletters and other communications? Would a legislator be permitted under this language to mail a letter on a single, time-sensitive matter within 30 days prior to an election?

*Dan - please call me about this*

*Cindy*

**Sec. 24.45.171. Definitions.**

In this chapter

(1) **"administrative action"** means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by any state agency of any rule or regulation, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by AS 44.62 (Administrative Procedure Act); "administrative action" does not include



(A) a proceeding or an action to determine the rights or duties of a person under existing statutes, regulations, or policies;

(B) the issuance, amendment, or revocation of a permit, license, or entitlement for use under existing statutes, regulations, or policies by the agency authorized to issue, amend, or revoke the permit, license, or entitlement for use;

(C) the enforcement of compliance with existing law or the imposition of sanctions for a violation of existing law;

(D) procurement activity, including the purchase or sale of property, goods, or services by the agency or the award of a grant contract;

(E) the issuance of, or ensuring compliance with, an opinion or activity related to a collective bargaining agreement including negotiating or enforcing the agreement;

(2) **"agency"** means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization, committee, council or board in the executive branch, or independent of the executive branch, of state government;

(3) **"commission"** means the Alaska Public Offices Commission;

(4) **"communicate directly"** means to speak with a legislator, legislative employee, or public official;

(A) by telephone;

(B) by two-way electronic communication; or

(C) in person;

(5) **"gift"**

(A) means any payment to the extent that consideration of equal or greater value is not received;

(B) includes but is not limited to

(i) a loan, loan guarantee, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except when full and adequate consideration is received;

(ii) the purchase of tickets for travel or for entertainment events; and

(iii) the granting of discounts or rebates for goods or services not extended to the public generally;

(C) does not include

(i) informational or promotional materials, including but not limited to books, reports, pamphlets, calendars, or periodicals; however, payments for travel or reimbursement for expenses may not be considered "informational material";

(ii) food and beverages consumed in places of public accommodation;

(6) "immediate family" means the spouse and dependent children of an individual;

(7) "individual" means a natural person;

(8) "influencing legislative or administrative action" means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action;

(9) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat, or rejection of any bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature, or by a standing, interim, or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding, or sustaining that veto and the action of the legislature in considering, confirming, or rejecting an executive appointment of the governor;

(10) "lobbyist" means a person who

(A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action for more than 10 hours in any 30-day period in one calendar year; or

(B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession;

(11) "payment" means the disbursement, distribution, transfer, loan, advance, deposit, gift, or other rendering or tendering of money, property, goods, or services or anything else of value;

(12) "payment to influence legislative or administrative action" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or the lobbyist's activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

2100-770 2012

(10) "legislative director" means the director of the legislative finance division, the legislative auditor, the director of the legislative research agency, the ombudsman, the victims' advocate, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;

(11) "legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes public members and staff of the committee; it does not include individuals who perform functions that are incidental to legislative functions, including security, messenger, maintenance, and print shop employees, and other employees designated by the committee;

(12) "lobbyist" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171, but does not include a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission;

(13) "political action" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office; ✓

(14) "registered lobbyist" means a person who is required to register under AS 24.45.041;

(15) "representation" means action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings;

(16) "state office" includes the office of governor, lieutenant governor, member of the legislature, or similar state office.

(b) A person has a substantial interest in legislative, administrative, or political action if the person (1) is not a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action; (2) is a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action in a way that is greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region; (3) has or seeks contracts in excess of \$10,000 annually for goods or services with the legislature or with an agency of the state; or (4) is a lobbyist. For the purpose of this subsection, the state, the federal government, and an agency, corporation, or other entity of or owned by the state or federal government do not have a substantial interest in legislative, administrative, or political action.

# Alaska State Legislature

**Senator Hollis French, Chair**  
State Capitol, Room 417  
Juneau, Alaska 99801  
Phone: (907) 465-3892  
Fax: (907) 465-6595



**Committee Members:**  
Senator Charlie Huggins  
Senator Bill Wielechowski  
Senator Lesil McGuire  
Senator Gene Therriault

## Senate Judiciary Committee

Date: February 16, 2001

TO: Legislative Legal

FROM: Senator Hollis French

RE: Senate Bill 13

---

Please prepare a Judiciary Committee CS to Senate Bill 13 as follows:

1. Delete provisions of the bill as written.
2. Add the following provisions:
  - The language in Section 2 of House Bill 10 (attached).
  - The provisions provided in work draft 1268\G (attached).
  - The provisions which are circled in the list provided by Joyce Anderson dated 1/26/07 (attached).
  - Title amendment as necessary, and an immediate effective date.

**January 25, 2007 -- Suggested substantive changes to AS 24.60 Ethics Code**

(These suggestions do not include changes already proposed in 2007 ethics bills.)

These suggestions are the result of either an advisory opinion issued by the committee, committee discussion or observations by ethics staff or individual committee members.

1. **AS 24.60.160 Advisory Opinions** - Add language allowing the Ethics Committee and/or staff to request an advisory opinion. Currently, the request must relate to a set of circumstances of a particular situation that effect the person requesting the opinion. Many times the person does not want to request an opinion. Advisory opinions are referenced when a similar request is received.
2. **AS 24.60.160 Advisory Opinions** – Add language allowing the Ethics Committee to request an advisory opinion from APOC and for APOC to request one from the Ethics Committee. APOC statutes and ethics statutes are much intertwined and many times clarification is needed from one oversight agency for the other agency to issue an advisory opinion.
3. **AS 24.60.160(b) Advisory Opinions** – Clarify the language in this section. Make it clear advisory opinions will be issued with sufficient deletions to prevent disclosure of the identity of the person requesting the opinion and any other persons named in the request. (suggested language approved by the ethics committee will be transmitted in a separate document)
4. **AS 24.60.150(a) Duties of the committee** – Delete in (a)(2) the requirement that summaries of public decisions and advisory opinions be published on a semi-annual basis. Public decisions have been published annually since 1999 and advisory opinions since 1995. (suggested language approved by the ethics committee will be transmitted in separate document)
5. **AS 24.60.130(n) Select committee on legislative ethics** – Add language to allow the chair of the committee or subcommittee to designate the alternate legislative member to attend a meeting if the regular member is unable to attend. Currently the alternate member may only serve if the regular member has a conflict. This change would allow the committee to meet in a more timely fashion. (suggested language approved by the ethics committee will be transmitted in a separate document)
6. **AS 24.60.030(f) Boards and Commissions** - Legislators currently have double disclosure requirements for membership on boards and commissions. Reporting is inclusive for APOC and subjective for Ethics. Membership on boards and commissions is only required if the board and commission will have an interest in legislation. This is very confusing and often times not reported properly. Should be inclusive for both oversight agencies. Reporting of membership on boards and

X sec 11

X sec 10

X sec 9

commissions is on the ethics web site for the public to view. APOC need this information to administer the financial disclosure reporting requirement.

7. **AS 24.60.050 State programs and loans** - Add a section that allows the committee to refrain from publishing disclosures that would be considered an invasion of the discloser's privacy. Currently a person who is a participant of the Violent Crimes Compensation program would have to disclose. The committee has determined they do not have the authority to withhold publication. They have, however, determined the dollar amount need not be disclosed.

- X *Good*  
8. **AS 24.60.105 Deadlines for filing disclosures** - Filing dates for ethics disclosures are very confusing. Some disclosures are required within 30 days of association at certain times of the year, some annually, and no disclosures are required during the timeframe of 30 days prior to the end of session. Suggest all disclosures be filed within 30 days of the association or interest.

- X *Section 1*  
9. **AS 24.60.031(1) Restrictions on fund raising** - The ethics committee defined 'acceptance' of a campaign contribution in Advisory Opinion 94-05. APOC differentiates between 'receiving' and 'accepting' a contribution. See 2 AAC 50.333. Clarification of these terms is needed so both ethics and APOC are disseminating the same information to candidates who are also sitting legislators. *made in 15/13.040 (Campaign statutes)*

10. Include in the ethics code an education program and/or training class.

- X *(a)(b)(c) Section 2*  
11. **AS 24.60.030(c) Prohibitions related to conflicts of interest and unethical conduct** - Prohibit the distribution of legislative newsletters within the 30 days preceding an election. Many calls are received from the public asking why a legislator is allowed to send a legislative newsletter so close to an election. The newsletter is perceived as a campaign piece.

12. **Article 4 of AS 24.60** - Change the title from "Required Annual Financial Disclosure" to "Disclosure Statements" since the section covers both financial disclosure requirements and some ethics disclosures.
13. **AS 24.60.080(c)(10) Gifts** - Legislative Council presently approves 501(c)(3) charity events during session. Lobbyists are then allowed to give free tickets to attend the event. Change the approving authority from Legislative Council to the Ethics Committee. This will allow oversight from one area and provide consistency of information provided by Ethics and APOC.
14. **AS 24.60.170 Proceedings before the committee** - The complaint section of the code does not provide for an alternate legislative member to be appointed if both the legislative member and designated alternate have a conflict and cannot serve on the ethics subcommittee hearing a complaint. The Open Meetings section, AS 24.60.037, has a provision for this type of occurrence. Add similar language to

the complaint section.

15. **AS 24.60.170(i) Proceedings before the committee** – This section states a person providing legal advice to the committee is prohibited from ever being involved in a complaint proceeding. The ethics committee discussed clarifying the language to stipulate 'currently providing legal advice to the committee'.
  
16. **AS 24.60.170(j) Proceedings before the committee** – This section grants authority to the subject of the complaint to change the date of the public hearing to a time outside of the 90 day requirement. However, the committee does not appear to have the authority to approve the change of the date of the hearing. An example given by the committee is what if the subject of the complaint wants to change the hearing to a date 6 months in the future. The statute needs to include a provision for approval by the committee of the change in date and also allow the committee to change the date of the hearing due to, for example, a lack of a quorum.

**Suggested Language (prepared in 2005)**

**AS 24.60.150**

(a) The committee shall

(1) adopt procedures to facilitate the receipt of inquiries and prompt rendition of its opinions;

✓ (2) **publish advisory opinions annually; and**

(3) publish [SEMI-]annual summaries of decisions [AND ADVISORY OPINIONS] with sufficient deletions in the summaries to prevent disclosing the identity of the person involved in the decisions [OR OPINIONS] that have remained confidential.

**AS 24.60.160**

(b) An opinion issued under this section is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. [EXCEPT AS PROVIDED IN THIS CHAPTER, AN ADVISORY OPINION IS CONFIDENTIAL BUT SHALL BE MADE PUBLIC IF A WRITTEN REQUEST BY THE PERSON WHO REQUESTED THE OPINION IS FILED WITH THE COMMITTEE.] **All advisory opinions shall be issued with sufficient deletions to prevent disclosing the identity of the persons involved. Unless the requester and anyone else named in the request who is covered by the ethics code waives confidentiality, advisory opinion discussions and deliberations are confidential. The committee vote will be a public record.**

**Suggested Language (Prepared in 2005)**

**AS 24.60.130(n)**

When appointing members of the legislature to serve on the committee, the speaker of the house or the president of the senate, as appropriate, shall appoint an alternate member for each regular member. An alternate must have the same qualifications as the regular member for whom the alternate stands as alternate and is subject to confirmation as required for the regular member. **If a regular legislative member of the committee or a subcommittee is unable to attend a meeting, the chair of the committee or a subcommittee shall designate the regular member's alternate to serve in place of the regular member at the meeting and the designated alternate shall serve unless unable to serve for any reason.** If a regular legislative member of the committee or a subcommittee is disqualified under (h) of this section from serving on the committee or the subcommittee concerning a proceeding under AS 24.60.170 **or if the regular member is unable to attend**, the chair of the committee or a subcommittee shall designate the regular member's alternate to serve in place of the regular member in the proceeding unless the alternate is also disqualified from serving. The designation shall be treated as confidential to the same extent that the identity of the subject of a complaint is required to be kept confidential.

