

**HOUSE
COMMITTEE REPORT**

(11)

Date referred: 3/7/86

FURTHER REFERRALS:

DATE: 3/24/86

The FINANCE

Committee has considered HB 194

"An Act relating to sentencing for certain offenses involving discriminatory harassment."

and recommends:

- ☐ do pass
☐ do not pass
☐ do pass with attached amendment(s)
☐ no recommendation
☒ replace with CS HB 194 (Fin) ☐ same title
☒ new title

and recommends No Recommendation

☐ further referral to the _____ Committee

and attaches: ☐ letter of intent
☐ first fiscal note
☐ new fiscal note
☒ zero fiscal note - new & F.N. (Fin) 3/21/86

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] - No Rec
[Signature] No Rec
[Signature] No Rec
[Signature] No Rec
[Signature] No Rec
[Signature] No Recommendation
[Signature] - No Rec

[Signature]
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : 3/21/86

REQUEST

Bill/Resolution No. : CSHB 194 (Fin)
 Title : Discriminatory Harassment

Sponsor : Governor
 Requestor : House Finance Committee
 Date of Request : 3/21/86

FISCAL DETAIL

Agency Affected : Governor's Office,
 BRU : Public Safety, Courts

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
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REVENUE		0	0	0	0	0
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FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS		0	0	0	0	0
OTHER		0	0	0	0	0
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME		0	0	0	0	0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

APA

Prepared by : Al Adams, Chair
 Division : House Finance Committee

Phone : 465-3706
 Date : 3/21/86

Approved by Commissioner : _____
 Agency : _____

Date : _____

Distribution (by Agency preparing fiscal note) :

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 194 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a cause of action and sentencing
7 for certain offenses involving discriminatory harass-
8 ment."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 09.55 is amended by adding a new section to read:

11 ARTICLE 8. DISCRIMINATORY HARASSMENT.

12 Sec. 09.55.650. DISCRIMINATORY HARASSMENT ACTION. (a) A person
13 may maintain an action for discriminatory harassment against another
14 person, or against the parent or legal guardian of a minor, who has
15 caused physical injury to the person or damage to the property of the
16 person, with the intent to intimidate or harass the person because of
17 the person's sex, sexual orientation, race, color, religion, national
18 origin, or physical or mental disability.

19 (b) Actual and punitive damages may be awarded to a prevailing
20 plaintiff in an action brought under this section. An award of dam-
21 ages against the parent or legal guardian of a minor under this sec-
22 tion must be predicated upon conduct of the parent or legal guardian
23 that is at least negligent. An award of damages under this section
24 does not preclude a person from seeking other remedies available under
25 law.

26 (c) A party filing a complaint or an answer under this section,
27 shall serve an informational copy on the executive director of the
28 Alaska State Commission for Human Rights.

29 * Sec. 2. AS 12.55.155(c)(22) is amended to read:

1 (22) the defendant knowingly directed the conduct consti-
2 tuting the offense at a victim because of that person's race, sex,
3 sexual orientation, color, creed, ancestry, religion, or national
4 origin;
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STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

R.O. 3/24/86

Rec'd 4/7/86

Revision Date : _____

REQUEST

Bill/Resolution No.: CSHB 194(FIN)
 Title: "An Act relating to a cause of action and certain offenses involving discriminatory harassment."
 Sponsor: Judiciary
 Requestor: House Judiciary
 Date of Request: 4/2/86

FISCAL DETAIL

Agency Affected: Public Safety
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Francis C. Allan *F.C.A.*
 Division: Alaska State Troopers

Phone: 269-5691
 Date: 4/2/86

Approved by Commissioner: [Signature]
 Agency: Public Safety

Date: 4/3/86

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Alaska State Legislature

Louis



House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

MEMORANDUM

To: Rep. Al Adams, Chairman
House Finance Committee

From: Rep. M.M. Miller, Chairman *in a bill*
House Judiciary Committee

Re: CSHB 194, "An Act relating to a cause of action
and sentencing for certain offenses involving
discriminatory harassment.

Date: March 10, 1986

The House Judiciary Committee recently heard and passed out CSHB 194 (Jud). The bill as originally presented to the committee by the Rules Committee by request of the Governor was a lengthy bill with which the committee had a number of problems. The scope of the bill was narrowed considerably by the committee to its present form. The committee substitute bill also reduced the fiscal impact of the legislation to zero.

The original bill included a provision requiring the court system to submit a lengthy and involved annual report to the Human Rights Commission. This created a substantial fiscal impact on the court system. That section was removed from the committee substitute. Another section of the original bill, which was also deleted in the substitute, was one requiring an informational copy of any civil action filed for discriminatory harassment to be served on the director of the Human Rights Commission.

The Human Rights Commission had requested that this latter section be added back to the committee substitute. During committee debate on the substance of the substitute, this request was not discussed and therefore was not added back into the committee substitute. The executive director of the commission has stated that this provision has no fiscal impact but is necessary in order to fulfill

Chairman Al Adams
page 2
March 10, 1986
re: CSHB 277(Jud)

the commission's statutory monitoring functions of human rights violations in the state.

When your committee hears this bill, you might want to consider reinstating the provision requiring the service on the commission of an informational copy of a civil action filed under the act. Attached is a copy of the letter from the director of the Human Rights Commission on the bill.

STATE OF ALASKA

HUMAN RIGHTS COMMISSION

BILL SHEFFIELD, GOVERNOR

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(907) 465-3560

March 6, 1986

The Honorable M. Mike Miller
Chairman,
House Judiciary Committee
P.O. Box V
Juneau, AK 99811

Re: CS for House Bill 194 (Judiciary)

Dear Representative Miller:

I have received and reviewed the proposed committee substitute for the original bill introduced at the request of the Commission by Governor Sheffield prohibiting certain offenses involving discriminatory harassment, HB 194.

This bill is the result of substantial effort on the part of the Human Rights Commission, the Anchorage Equal Rights Commission and members of a Task Force assembled by state and local commissions over the past two and one half years. This Task Force collected and studied incidents of discriminatory harassment in the state and determined that there was a need for legislation to deal with this problem.

The Alaska Human Rights Commission has advocated for legislation prohibiting acts of discriminatory harassment since 1981. HB 194 represents our third attempt at passage of such legislation. It appears that while all have agreed that this legislation is desirable, considerable debate has taken place about the technical approaches to incorporating the provisions of the criminal section of the bill into the existing criminal code. Most recently, members of your committee have raised concerns about the section of HB 194 which provided for escalation of sentences for criminal acts already punishable by presumptive sentencing. Within the Native community, we have heard serious objections voiced about the impact of presumptive sentencing on Alaska Natives. We are also sensitive to the problem of the increasing numbers of inmates in the correctional institutions and the enormous burden this places on the state. For these reasons we have been amenable to amending HB 194.

Quite simply, there is considerable frustration at this point in moving forward toward our goal of protecting Alaskans from acts of discriminatory harassment by passage of legislation which recognizes the special character of acts motivated by bigotry and prejudice.

Nonetheless, the Commission supports the proposed judiciary committee substitute with the following comments:

First, we note that the protections in the committee substitute have been expanded to include sexual orientation. Since this protection was not included in HB 194 as originally proposed, the Commission has not considered this question. Eight years ago, the Alaska Human Rights Commission passed a motion endorsing the addition of "sexual preference" as a protected class to the agency's enabling legislation.

Second, we note that the requirement for the informational copy to the Commission of complaints filed under the remaining civil section has been deleted. The Commission feels strongly about this reporting requirement and urges its inclusion in the substitute bill.

Nationally, reporting provisions for this type of activity are deemed a critical factor in opposing the spread of racial and religious violence. The Alaska Commission and the Discriminatory Harassment Task Force have pledged to monitor incidents of discriminatory harassment in Alaska. The Commission's receipt of informational copies of court actions filed under the proposed committee substitute are essential to our objective. AS 18.80.060(5) gives the Commission the duty "to foster through community effort or goodwill, cooperation and conciliation among the groups and elements of the population of the state". The Commission and the Task Force will work together to develop educational programs based on the information collected as a result of this legislation.

Finally, the Commission hopes that passage of CS HB 194 (Judiciary) will create an awareness in the Legislature and throughout Alaska of a continuing need for even more comprehensive legislation on this subject. The Human Rights Commission, sadly enough, believes that we must increase our vigilance and redouble our efforts to combat the spread of bigotry and racism in Alaska.

Sincerely,

Janet L. Bradley

Janet L. Bradley
Executive Director

JLB/b

BILL SHEFFIELD, GOVERNOR

HUMAN RIGHTS COMMISSION

March 17, 1986

The Honorable Al Adams
Chairman
House Finance Committee
P.O. Box V
Juneau, AK 99811

Re: CS for HB 194 (Judiciary)

Dear Representative Adams:

The Commission requests your committee to amend CS HB 194 (Judiciary) by reinserting Section 09.55.650(c) of the original HB 194.

This subsection provides for an informational copy of complaints filed under the Discriminatory Harassment Action section of the bill to be sent to the Commission. HB 194 is supported by a Discriminatory Harassment Task Force comprised of constituent groups which have joined the Alaska Human Rights Commission and the Anchorage Equal Rights Commission for the past two years in efforts to deal with incidents of racism and bigotry in Alaska. The Task Force is pledged to monitor this growing concern and believes that informational copies of actions filed in court as provided by HB 194 is essential to their objective.

AS 18.80.060 (5) gives the Commission the duty "to foster through community effort or goodwill, cooperation and conciliation among the groups and elements of the population of the state". The Commission and the Task Force will develop educational programs in response to court actions and incidents of discriminatory harassment.

The Commission's request for re-insertion of the informational copy as provided by Section 09.55.650(c) will not require a fiscal note.

The Commission urges passage of HB 194 to combat the spread of bigotry and racism in Alaska.

Sincerely,

Janet L Bradley by Fletcher

Janet L. Bradley
Executive Director

JLB/b

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DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

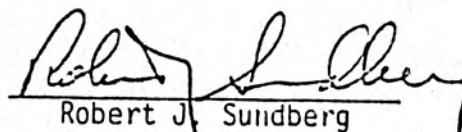
Support

March 5, 1986

HB194 - "An Act relating to sentencing for certain offenses involving discriminatory harassment."

Our interpretation of the intent of this legislation is that it is an attempt to curb discriminatory harassment by making it a felony crime.

No additional enforcement activity is anticipated, but the Division supports the legislation as an effective tool in fighting these types of crimes.


Robert J. Sundberg
Commissioner

Suspect

Continued from Page C-1

pened that night diverge.

Fraties told jurors Decker left the table at a pre-arranged signal, got a weapon from another part of the home, came up behind Barker and brought the club down on his head five times, crushing his skull and killing him.

The murder weapon was a willow branch, about 18 inches long, with a large knot at one end.

But the defense argued Cole was just an observer and left the room while Barker was still alive, after two blows had been struck. When he came back, having cut the telephone cord, the victim was lying in a pool of blood with a rug over his head, Ashburn said.

Color slides taken at the death scene show Barker sprawled on his back, his overturned chair nearby and his dinner napkin still clutched in his hand.

In Ashburn's version, Decker robbed the house and the two drove off in Barker's blue, three-quarter ton pickup, later recovered by police in Bootlegger's Cove.

The day after the murder, someone telephoned Crimetoppers and reported two people he knew were boasting about having robbed and beaten a man. Police put a hidden transmitter on the informant and recorded a conversation between him and the two defendants, which led to their arrest.

Ashburn said the recording will show that the two men did not intend to kill Barker, that they thought they left him alive.

Fraties told jurors the five blows to the victim's head is proof they intended to kill.

Intentional murder — first-degree murder — carries a prison term of from 20 to 99 years. Unintentional killing during the commission of a felony is second-degree murder and carries a prison term of from 5 to 99 years.

The trial continues today before Judge Mark Rowland.

Suspect on trial in clubbing death

By SHEILA TOOMEY
Daily News reporter

One of two men accused of letting a 55-year-old carpenter pick them up in a bar so they could rob him went on trial for murder Tuesday in Anchorage Superior Court.

Charles Cole, 21 and Matthew Decker, 19, are charged with first-degree murder in the April 3 death of Ray Barker, found clubbed to death in his trailer home at 3440 E. 64 Ave. Cole and Decker were arrested the next day.

In his opening statement against Cole on Tuesday, Assistant District Attorney Gail Fraties said the two defendants were broke and went looking for a victim among homosexual men who frequent several downtown bars.

"They decided to troll a gay bar and pick up somebody and rob them," he said.

They killed Barker deliberately, he said, and then complained because they got only \$70, a television and Barker's truck.

But defense attorney Mark

Ashburn said the two men played different roles in the crime. Decker, not Cole, set the plan in motion, he said. Decker, not Cole, had a history of going home with gay men and robbing their homes in the middle of the night.

Cole was out of the room when the killing blows were struck, Ashburn said.

The two men found Barker earlier that evening at The Raven, a bar on Gambell Street, and arranged to meet him at another bar, The Jade Room, Fraties said. Barker was "a great big bear of a man ... a rather gentle, friendly person" who befriended street people "and not necessarily for sexual purposes."

He took the men home and cooked them a fried chicken and green bean dinner. During the dinner, said Ashburn, Barker asked his guests if they "were into sexual activities."

Here the prosecution and defense versions of what hap-

See Page C-3, SUSPECT

Anch. Daily News Sept. 11, 1985

ROSE RESTAURANT AND A BAR-RESTAURANT-MOTEL IN KENAI CALLED THE KATHMAI PINES. (10)

PRESIDENT FREDERICK MCCORRISTON DECLINED COMMENT ON THE FILING; OTHER THAN TO SAY ALL THREE ESTABLISHMENTS WILL REMAIN OPEN WHILE REORGANIZATION TAKES PLACE.

MCCORRISTON AND WAYNE ROSS BOUGHT THE PINES IN 1984; REPORTEDLY PAYING MORE THAN \$2 MILLION FOR THE 20,000-SQUARE-FOOT ESTABLISHMENT.

IT WAS OWNED PREVIOUSLY BY RUSSELL AND JERI PACE; WHO BOUGHT IN 1965 AND EXPANDED IT FROM A 40-SEAT BAR INTO A 600-SEAT RESTAURANT AND DANCE HALL.

THE CLUB FEATURES LIVE MUSIC NIGHTLY; ALONG WITH OCCASIONAL CONCERTS; BOXING MATCHES; POLKA FESTS AND COMEDY ROUTINES.

Y

ALASKA TIGHTENS BELT AS OIL REVENUES SAG

BY PAUL JENKINS

ASSOCIATED PRESS WRITER

ANCHORAGE, ALASKA (AP) - ALASKANS RIDING OUT THE PLUNGE IN OIL PRICES MAY HAVE TO TRIM SOME OF THE PORK OUT OF STATE GOVERNMENT; BUT THEY STILL WILL BE LIVING FAIRLY HIGH ON THE HOG.

"WE WERE ONCE FILTHY RICH," SAID STATE HOUSE SPEAKER BEN GRUSSENDORF OF SITKA. "AND NOW WE'RE JUST WEALTHY."

WHILE LEGISLATORS TRY TO MAKE SOME SENSE OF THE EVER-CHANGING OIL PRICE AND STATE INCOME NUMBERS; A HAIR-PULLING; EAR-BITING ELECTION-YEAR DONNYBROOK MAY BE SHAPING UP OVER THE SHRINKING; YET STILL SUBSTANTIAL; REVENUES. THE BATTLE IS OVER SPENDING AND SAVING; ACTING NOW OR ACTING LATER.

"THE BIG FIGHT HAS ALREADY STARTED," SAYS SENATE PRESIDENT DON BENNETT OF FAIRBANKS. "THE ONLY THING IS THAT EVERYBODY IS NOT SURE OF THEIR ARMAMENT OR AMMUNITION."

IN ALASKA; OIL IS KING. IT GENERATES 85 CENTS OF EVERY DOLLAR THE STATE TAKES IN. FISHING; TIMBER AND TOURISM PALE BY COMPARISON. THERE IS LITTLE OTHER INDUSTRY.

EVERY TIME MIDDLE EAST DEVELOPMENTS JOLT PRICES BY A DOLLAR; THERE

THE STATE TREASURY THERE ARE NO STATE

KILLER GETS 85 YEARS

PALMER (AP) - SAYING "NO ONE SHOULD HAVE TO DIE FOR BEING THE WRONG COLOR," A PALMER JUDGE THURSDAY SENTENCED 23-YEAR-OLD JOHN DUNKIN TO 85 YEARS IN PRISON FOR THE SHOOTING DEATH OF A BLACK MAN LAST SPRING. THE SENTENCE MEANS DUNKIN, WHO IS WHITE, WON'T BE ELIGIBLE FOR PAROLE FOR 50 YEARS. DUNKIN WAS CONVICTED IN OCTOBER OF FIRST-DEGREE MURDER FOR KILLING 43-YEAR-OLD JULIUS MARSHALL.

SUPERIOR COURT JUDGE BEVERLY CUTLER CITED NUMEROUS EXAMPLES OF WHAT SHE CALLED THE RACIAL MOTIVATION FOR THE MURDER.

"THESE ARE NOT MERE ALLEGATIONS OF RACISM," SHE SAID. "IT'S OVERWHELMING PROOF."

AT DUNKIN'S TRIAL, WITNESSES SAID DUNKIN REFERRED TO MARSHALL AS A "NIGGER" OR "BOOFER" AND AT ONE POINT TOLD A COMPANION HE WAS GOING TO "WASTE THE SPOOK."

DUNKIN DENIED THAT RACE HAD ANYTHING TO DO WITH THE CRIME, WHICH HE DID NOT DENY COMMITTING. HE DENIED BEING A RACIST, AND SAID HE WAS DRUNK AT THE TIME.

CUTLER SAID THE CRIME WAS EVEN LESS EXCUSABLE BECAUSE MARSHALL HAD SPENT A GOOD PART OF MAY 26 GETTING DUNKIN'S FOUR-WHEEL-DRIVE VEHICLE UNSTUCK FROM THE KNIK RIVER FLATS AND GETTING THE VEHICLE RUNNING AGAIN.

DEFENSE ATTORNEY FRED DEWEY'S ARGUMENTS THAT DUNKIN HAD A SUCCESSFUL STINT IN THE MILITARY, WORKING ALONGSIDE PEOPLE OF ALL COLORS, DREW LITTLE SYMPATHY FROM CUTLER. A VERY HIGH PROPORTION OF MURDER CONVICTIONS INVOLVE MILITARY PERSONNEL OR VETERANS, SHE SAID.

"MILITARY PEOPLE GET SOME PRETTY GRANDIOSE NOTIONS OF WHAT THEY CAN DO WITH GUNS...AND WHAT THEIR POWER IS," CUTLER SAID.

CUTLER ORDERED THAT DUNKIN'S FUTURE PERMANENT FUND DIVIDEND CHECKS BE DEPOSITED IN A TRUST FUND FOR MARSHALL'S TWO YOUNG CHILDREN. THE MONEY WON'T REPLACE THEIR FATHER, CUTLER SAID, BUT IT WILL HELP A LITTLE.

"I HOPE NONE OF YOU ARE EVER GOING TO LIVE IN FEAR IN THE STATE OF ALASKA," CUTLER TOLD MARSHALL'S FAMILY AND OTHER BLACKS IN THE

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that addresses the problem of discriminatory harassment -- that is, wrongful acts committed with the intent to intimidate or harass another because of the race, color, religion, national origin, or physical handicap of that person.

The bill does two things: (1) it establishes a private right of action called "discriminatory harassment" under which a person can bring a civil lawsuit for the damages caused by discriminatory acts, such as the painting of a swastika on a synagogue or on a person's home; and (2) it creates new presumptive and mandatory minimum criminal sentencing provisions to be used when crimes committed are motivated by this sort of discrimination. The thrust behind this bill is to properly identify the character of harassment and violence motivated by racial bias and religious bigotry and to increase the penalties for such acts because of that motivation.

More specifically, the first section of the bill creates a statutory private right of action under which a person can sue another for physical harm or property damage caused with the intent to intimidate or harass another person because of the sex, race, color, religion, national origin, or physical handicap of that person. The court may award actual and punitive damages to a prevailing plaintiff. Creating a special civil action such as this gives specific statutory authority for such an action, rather than the broad authority of common law. It also allows for easier tracking of lawsuits involving discriminatory harassment, because an informational copy of a complaint filed under this statute, along with the answer to it, is to be served on the executive director of the Alaska State Commission for Human Rights.

In the criminal law sections (secs. 2 -- 13 of the bill), the bill creates new presumptive and mandatory minimum sentencing provisions to address sentencing of these types of crimes with dependable consistency.

Under the state criminal code (AS 11 and AS 12), criminal conduct is classified according to its seriousness, and an appropriate penalty level is attached. This bill leaves this statutory scheme intact, but establishes mandatory minimum and presumptive terms that must be imposed if the defendant committed the offense with the intent to intimidate or harass another person because of the person's race, color, religion, national origin or physical handicap. The structure and theory behind this bill is similar to legislation passed in 1983 which established comparable sentences for assaults on a peace officer. (See AS 12.55.125(c)(2), (d) and (e); AS 12.55.135(d) and (e); AS 12.55.155(c)(13) and (e)).

Under current law, a person convicted of a first offense class A felony would ordinarily face a presumptive term of five years imprisonment. If the defendant's criminal act was motivated by discriminatory intent, this bill would require the imposition of a seven-year presumptive sentence. During a presumptive term, the offender is not eligible for probation or parole.

Under current law, presumptive terms are not imposed upon a first conviction for either a class B or class C felony. This bill imposes presumptive sentences upon first offenders convicted of class B or C felonies if the act was committed with discriminatory intent. The class B felony presumptive term is two years, and the class C felony presumptive term is one year.

If a person commits a class A misdemeanor with discriminatory intent, such as assault in the fourth degree, the defendant must be sentenced to serve at least 30 days in jail. Depending upon the defendant's prior criminal record and the facts of the offense, a court may impose up to the maximum of one year in jail.

If a defendant is convicted of a class B misdemeanor that was committed with discriminatory intent, the defendant must be sentenced to serve at least 10 days in jail. Again, depending upon the defendant's prior criminal record and the facts of the offense, a court may impose up to the maximum of 90 days in jail -- except in cases where a lesser maximum sentence is established by law, such as the 10-day maximum

that can be imposed for convictions of disorderly conduct under AS 11.61.110.

Under current law it is an "aggravating factor" in sentencing if the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, ancestry, or national origin. This bill, in sec. 7, adds religion and physical handicap to that list. A presumptive term may be increased if the court finds the existence of an aggravating factor.

In practice, this aggravating factor may only be used to increase the sentence of a repeat offender, as an aggravating factor may not be considered if it is the same reason that a presumptive sentence must be imposed to begin with. Thus, a person being sentenced for a first felony offense who is facing a certain presumptive term because he committed a crime with discriminatory intent, could not also be subject to aggravation of his sentence for the same reason.

The amendments contained in sec. 5, 8, 9, and 13 are made to ensure that all provisions that deal with some aspect of presumptive sentencing refer to all of the presumptive terms found under AS 12.55.125. As the criminal code has been amended, and presumptive penalties have been added or changed, necessary conforming amendments were not always made or were not made completely. This bill cures past discrepancies, and eliminates the problem for the future, by simply substituting a general reference to "presumptive terms" in several statutes that now contain a list of specific subsections.

Finally the bill provides that the Alaska Court System keep a record of all civil actions and criminal sentencings involving discriminatory intent. In this way, the Human Rights Commission can keep track of the type and number of such incidents occurring in Alaska.

To discourage discriminatory conduct in Alaska and to treat this conduct with the severity and seriousness it deserves, I urge your prompt and favorable action on this bill.

Sincerely,



Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 194

Title: Discriminatory Harassment

Sponsor: Rules/Governor

Requestor: Governor

Date of Request: Feb. 5, 1985

FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: _____

Due Process _____

BRU, Program or Subprogram(s) Affected: _____

Human Rights Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING		-0-				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Michael A. Nizich, Director Phone: 465-3544
 Division: Administrative Services Date: 2/5/85
 Approved by Commissioner: Laura J. Wilmar Date: 2/5/85
 Agency: Office of the Governor

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No.: HB 194
 Title: "An Act relating to sentencing for certain offenses involving discriminatory harassment."
 Sponsor: Rules/Governor
 Requestor: House Judiciary
 Date of Request: 3/6/86

FISCAL DETAIL

Agency Affected: Public Safety
 BRU: Alaska State Troopers
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Kathy Niles, Admin. Assistant Phone: 465-4336
 Division: Commissioner's Office Date: 3/5/86
 Approved by Commissioner: [Signature] Date: 3/5/86
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Offered: 3/7/86
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 194 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to a cause of action and sentencing
7 for certain offenses involving discriminatory harass-
8 ment."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 09.55 is amended by adding a new section to read:
11 ARTICLE 8. DISCRIMINATORY HARASSMENT.
12 Sec. 09.55.650. DISCRIMINATORY HARASSMENT ACTION. (a) A person
13 may maintain an action for discriminatory harassment against another
14 person, or against the parent or legal guardian of a minor, who has
15 caused physical injury to the person or damage to the property of the
16 person, with the intent to intimidate or harass the person because of
17 the person's sex, sexual orientation, race, color, religion, national
18 origin, or physical or mental disability.
19 (b) Actual and punitive damages may be awarded to a prevailing
20 plaintiff in an action brought under this section. An award of dam-
21 ages against the parent or legal guardian of a minor under this sec-
22 tion must be predicated upon conduct of the parent or legal guardian
23 that is at least negligent. An award of damages under this section
24 does not preclude a person from seeking other remedies available under
25 law.
26 * Sec. 2. AS 12.55.155(c)(22) is amended to read:
27 (22) the defendant knowingly directed the conduct consti-
28 tuting the offense at a victim because of that person's race, sex,
29 sexual orientation, color, creed, ancestry, religion, or national

1 origin;

Introduced: 2/13/85
Referred: Judiciary and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 194

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to sentencing for certain offenses
7 involving discriminatory harassment."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 09.55 is amended by adding a new section to read:

10 ARTICLE 8. DISCRIMINATORY HARASSMENT.

11 Sec. 09.55.650. DISCRIMINATORY HARASSMENT ACTION. (a) A person
12 may maintain an action for discriminatory harassment against another
13 person, or against the parent or legal guardian of a minor, who has
14 caused physical injury to the person or damage to the property of the
15 person, with the intent to intimidate or harass the person because of
16 the person's sex, race, color, religion, national origin, or physical
17 handicap.

18 (b) Actual and punitive damages may be awarded to a prevailing
19 plaintiff in an action brought under this section. An award of dam-
20 ages against the parent or legal guardian of a minor under this sec-
21 tion must be predicated upon conduct of the parent or legal guardian
22 that is at least negligent. An award of damages under this section
23 does not preclude a person from seeking other remedies available under
24 law.

25 (c) An informational copy of a complaint filed under this sec-
26 tion, and of the answer to it, must be served on the executive direc-
27 tor of the Alaska State Commission for Human Rights.

28 * Sec. 2. AS 12.55.125(c) is amended to read:

29 (c) A defendant convicted of a class A felony may be sentenced

1 to a definite term of imprisonment of not more than 20 years, and must
2 [SHALL] be sentenced to the following presumptive terms, subject to
3 adjustment as provided in AS 12.55.155 -- 12.55.175:

4 (1) if the offense is a first felony conviction and does
5 not involve circumstances described in (2) of this subsection, five
6 years;

7 (2) if the offense is a first felony conviction, other than
8 for manslaughter, and

9 (A) the defendant possessed a firearm, used a danger-
10 ous instrument, or caused serious physical injury during the
11 commission of the offense, seven years; [OR]

12 (B) the defendant knowingly directed the conduct
13 constituting the offense at a uniformed or otherwise clearly
14 identified peace officer, fire fighter, correctional officer,
15 emergency medical technician, paramedic, ambulance attendant, or
16 other emergency responder who was engaged in the performance of
17 official duties at the time of the offense, seven years; or

18 (C) the defendant committed the offense with the
19 intent to intimidate or harass another person because of the
20 person's race, color, religion, national origin, or physical
21 handicap, seven years;

22 (3) if the offense is a second felony conviction, 10 years;

23 (4) if the offense is a third felony conviction, 15 years.

24 * Sec. 3. AS 12.55.125(d) is amended to read:

25 (d) A defendant convicted of a class B felony may be sentenced
26 to a definite term of imprisonment of not more than 10 years, and must
27 [SHALL] be sentenced to the following presumptive terms, subject to
28 adjustment as provided in AS 12.55.155 -- 12.55.175:

29 (1) if the offense is a second felony conviction, four

1 years;
2 (2) if the offense is a third felony conviction, six years;
3 (3) if the offense is a first felony conviction, and the
4 defendant knowingly directed the conduct constituting the offense at a
5 uniformed or otherwise clearly identified peace officer, fire fighter,
6 correctional officer, emergency medical technician, paramedic, ambu-
7 lance attendant, or other emergency responder who was engaged in the
8 performance of official duties at the time of the offense, two years;
9 (4) if the offense is a first felony conviction, and the
10 defendant committed the offense with the intent to intimidate or
11 harass another person because of the person's race, color, religion,
12 national origin, or physical handicap, two years.

13 * Sec. 4. AS 12.55.125(e) is amended to read:

14 (e) A defendant convicted of a class C felony may be sentenced
15 to a definite term of imprisonment of not more than five years, and
16 must [SHALL] be sentenced to the following presumptive terms, subject
17 to adjustment as provided in AS 12.55.155 -- 12.55.175:

18 (1) if the offense is a second felony conviction, two
19 years;

20 (2) if the offense is a third felony conviction, three
21 years;

22 (3) if the offense is a first felony conviction, and the
23 defendant knowingly directed the conduct constituting the offense at a
24 uniformed or otherwise clearly identified peace officer, fire fighter,
25 correctional officer, emergency medical technician, paramedic, ambu-
26 lance attendant, or other emergency responder who was engaged in the
27 performance of official duties at the time of the offense, one year;

28 (4) if the offense is a first felony conviction, and the
29 defendant committed the offense with the intent to intimidate or

1 harass another person because of the person's race, color, religion,
2 national origin, or physical handicap, one year.

3 * Sec. 5. AS 12.55.125(g) is amended to read:

4 (g) If a defendant is sentenced to a presumptive term under
5 [(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i) OF] this section, except
6 to the extent permitted under AS 12.55.155 -- 12.55.175,

7 (1) imprisonment may not be suspended under AS 12.55.080;

8 (2) imposition of sentence may not be suspended under
9 AS 12.55.085;

10 (3) terms of imprisonment may not be otherwise reduced.

11 * Sec. 6. AS 12.55.135(e) is amended to read:

12 (e) A defendant convicted of a class A misdemeanor who committed
13 the offense with the intent to intimidate or harass another person
14 because of the person's race, color, religion, national origin, or
15 physical handicap must be sentenced to a minimum term of imprisonment
16 of 30 days [THE EXECUTION OF A SENTENCE UNDER (c) OR (d) OF THIS
17 SECTION MAY NOT BE SUSPENDED AND PROBATION OR PAROLE MAY NOT BE GRAN-
18 TED UNTIL THE MINIMUM TERM OF IMPRISONMENT HAS BEEN SERVED. IMPOSI-
19 TION OF A SENTENCE UNDER (c) OR (d) OF THIS SECTION MAY NOT BE SUS-
20 PENDED, EXCEPT UPON CONDITION THAT THE DEFENDANT BE IMPRISONED FOR NO
21 LESS THAN THE MINIMUM TERM OF IMPRISONMENT PROVIDED IN (c) OR (d) OF
22 THIS SECTION AND THE MINIMUM SENTENCE PROVIDED FOR IN (c) OR (d) OF
23 THIS SECTION MAY NOT BE OTHERWISE REDUCED].

24 * Sec. 7. AS 12.55.135 is amended by adding new subsections to read:

25 (f) A defendant convicted of a class B misdemeanor who committed
26 the offense with the intent to intimidate or harass another person
27 because of the person's race, color, religion, national origin, or
28 physical handicap must be sentenced to a minimum term of imprisonment
29 of 10 days.

1 (g) If a defendant is sentenced to a minimum term under this
2 section,

3 (1) imprisonment may not be suspended and probation or
4 parole may not be granted until the minimum term of imprisonment has
5 been served;

6 (2) imposition of sentence may not be suspended under
7 AS 12.55.085, except on condition that the defendant be imprisoned for
8 no less than the minimum term of imprisonment provided under this
9 section;

10 (3) terms of imprisonment may not be otherwise reduced
11 until the minimum term of imprisonment has been served.

12 * Sec. 8. Sec. 12.55.145(a) is amended to read:

13 (a) For purposes of considering prior convictions in imposing
14 sentence under AS 12.55.125[(c), (d)(1), (d)(2), (e)(1), (e)(2), OR
15 (i)]

16 (1) a prior conviction may not be considered if a period of
17 10 or more years has elapsed between the date of the defendant's
18 unconditional discharge on the immediately preceding offense and
19 commission of the present offense unless the prior conviction was for
20 an unclassified or class A felony;

21 (2) a conviction in this or another jurisdiction of an
22 offense having elements similar to those of a felony defined as such
23 under Alaska law at the time the offense was committed is considered a
24 prior felony conviction;

25 (3) two or more convictions arising out of a single, con-
26 tinuous criminal episode during which there was no substantial change
27 in the nature of the criminal objective are considered a single con-
28 viction unless the defendant was sentenced to consecutive sentences
29 for the crimes; offenses committed while attempting to escape or avoid

1 detection or apprehension after the commission of another offense are
2 not part of the same criminal episode or objective.

3 * Sec. 9. AS 12.55.155(a) is amended to read:

4 (a) If a defendant is convicted of an offense and is subject to
5 a presumptive term [SENTENCING] under AS 12.55.125[(c), (d)(1),
6 (d)(2), (e)(1), (e)(2), OR (i)] and

7 (1) the presumptive term is four years or less, the court
8 may decrease the presumptive term by an amount as great as the pre-
9 sumptive term for factors in mitigation or may increase the presump-
10 tive term up to the maximum term of imprisonment for factors in aggra-
11 vation;

12 (2) the presumptive term of imprisonment is more than four
13 years, the court may decrease the presumptive term by an amount as
14 great as 50 percent of the presumptive term for factors in mitigation
15 or may increase the presumptive term up to the maximum term of impris-
16 onment for factors in aggravation.

17 * Sec. 10. AS 12.55.155(c) is amended to read:

18 (c) The following factors must [SHALL] be considered by the
19 sentencing court and may aggravate the presumptive terms set out in
20 AS 12.55.125:

21 (1) a person, other than an accomplice, sustained physical
22 injury as a direct result of the defendant's conduct;

23 (2) the defendant's conduct during the commission of the
24 offense manifested deliberate cruelty to another person;

25 (3) the defendant was the leader of a group of three or
26 more persons who participated in the offense;

27 (4) the defendant employed a dangerous instrument in fur-
28 therance of the offense;

29 (5) the defendant knew or reasonably should have known that

1 the victim of the offense was particularly vulnerable or incapable of
2 resistance due to advanced age, disability, ill health, or extreme
3 youth or was for any other reason substantially incapable of exercis-
4 ing normal physical or mental powers of resistance;

5 (6) the defendant's conduct created a risk of imminent
6 physical injury to three or more persons, other than accomplices;

7 (7) a prior felony conviction considered for the purpose of
8 invoking the presumptive terms of this chapter was of a more serious
9 class of offense than the present offense;

10 (8) the defendant's prior criminal history includes conduct
11 involving aggravated or repeated instances of assaultive behavior;

12 (9) the defendant knew that the offense involved more than
13 one victim;

14 (10) the conduct constituting the offense was among the most
15 serious conduct included in the definition of the offense;

16 (11) the defendant committed the offense under [PURSUANT TO]
17 an agreement that the defendant either pay or be paid for the commis-
18 sion of the offense, and the pecuniary incentive was beyond that
19 inherent in the offense itself;

20 (12) the defendant was on release under AS 12.30.020 or
21 12.30.040 for another felony charge or conviction or for a misdemeanor
22 charge or conviction having assault as a necessary element;

23 (13) the defendant knowingly directed the conduct constitut-
24 ing the offense at an active officer of the court or at an active or
25 former judicial officer, prosecuting attorney, law enforcement offi-
26 cer, correctional employee, fire fighter, emergency medical techni-
27 cian, paramedic, ambulance attendant, or other emergency responder
28 during or because of the exercise of official duties;

29 (14) the defendant was a member of an organized group of

1 five or more persons, and the offense was committed to further the
2 criminal objectives of the group;

3 (15) the defendant has three or more prior felony convictions;
4

5 (16) the defendant's criminal conduct was designed to obtain
6 substantial pecuniary gain and the risk of prosecution and punishment
7 for the conduct is slight;

8 (17) the offense was one of a continuing series of criminal
9 offenses committed in furtherance of illegal business activities from
10 which the defendant derives a major portion of the defendant's income;

11 (18) the offense was a crime specified in AS 11.41 and was
12 committed against a spouse, a former spouse, or a member of the social
13 unit comprised of those living together in the same dwelling as the
14 defendant;

15 (19) the defendant's prior criminal history includes an
16 adjudication as a delinquent for conduct that would have been a felony
17 if committed by an adult;

18 (20) the defendant was on furlough under AS 33.30 or on
19 parole or probation for another felony charge or conviction;

20 (21) the defendant has a criminal history of repeated instances of
21 conduct violative of criminal laws, whether punishable as
22 felonies or misdemeanors, similar in nature to the offense for which
23 the defendant is being sentenced under this section;

24 (22) the defendant knowingly directed the conduct constituting
25 the offense at a victim because of that person's race, sex, color,
26 creed, ancestry, religion, or national origin;

27 (23) the defendant is convicted of an offense specified in
28 AS 11.71 and the offense involved the delivery of a controlled substance
29 under circumstances manifesting an intent to distribute the

1 substance as part of a commercial enterprise;

2 (24) the defendant is convicted of an offense specified in
3 AS 11.71 and the offense involved the transportation of controlled
4 substances into the state;

5 (25) the defendant is convicted of an offense specified in
6 AS 11.71 and the offense involved large quantities of a controlled
7 substance;

8 (26) the defendant is convicted of an offense specified in
9 AS 11.71 and the offense involved the distribution of a controlled
10 substance that had been adulterated with a toxic substance.

11 * Sec. 11. AS 12.55.155(e) is amended to read:

12 (e) If a factor in aggravation is a necessary element of the
13 present offense, or requires the imposition of a presumptive term
14 under AS 12.55.125(c)(2), (d)(3) or (4), or (e)(3) or (4), that factor
15 may not be used to aggravate the presumptive term. If a factor in
16 mitigation is raised at trial as a defense reducing the offense
17 charged to a lesser included offense, that factor may not be used to
18 mitigate the presumptive term.

19 * Sec. 12. AS 12.55 is amended by adding a new section to read:

20 Sec. 12.55.160. RECORDS OF DISCRIMINATORY CONDUCT. The adminis-
21 trative director of the Alaska Court System shall prepare an annual
22 report to the Alaska Human Rights Commission concerning cases involv-
23 ing civil suits brought under AS 09.55.650, cases involving sentences
24 imposed under AS 12.55.125(c)(2)(C), (d)(4), (e)(4), and AS 12.55.-
25 145(f) and (g) and cases in which a court has found the existence of
26 the aggravating factor in AS 12.55.155(c)(22). The report shall
27 include the number of cases, the types of civil action brought and
28 amount of damages awarded, the types of crimes involved and sentences
29 imposed, and the geographical distribution of the cases.

1 * Sec. 13. AS 12.55.165 is amended to read:
2 Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant
3 is subject to a presumptive term [SENTENCING] under AS 12.55.125[(c),
4 (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and the court finds by clear
5 and convincing evidence that manifest injustice would result from
6 failure to consider relevant aggravating or mitigating factors not
7 specifically included in AS 12.55.155 or from imposition of the pre-
8 sumptive term, whether or not adjusted for aggravating or mitigating
9 factors, the court shall enter findings and conclusions and cause a
10 record of the proceedings to be transmitted to a three-judge panel for
11 sentencing under AS 12.55.175.