

H B

287

COMMITTEE REPORT

HOUSE

3/9/81

FURTHER: JUDICIARY

(5)

Date: April 7, 1981

Mr. Speaker:

The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had HB 287

"An Act relating to domestic violence."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 287 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
 CHAIRMAN

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

JAY S. HAMMOND, GOVERNOR

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 26, 1981

The Honorable Donald E. Clocksin
Chairman, Health, Education and
Social Services Committee
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99811

Re: House Bill 287

Dear Representative Clocksin:

We are writing in response to a recent request from your staff for a position paper concerning House Bill 287, An Act Relating to Domestic Violence. Having worked closely with you last session in insuring passage of strong domestic violence legislation, we support HB 287 as it clarifies several ambiguities in the law that was enacted last year. We do, however, offer the following comments for your committee's consideration.

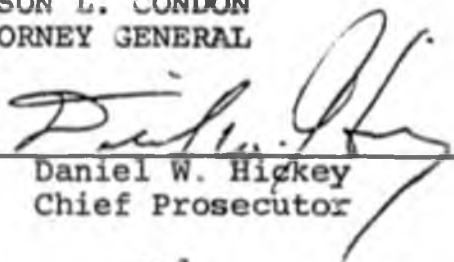
1. We question why the definition of "domestic violence" has been restricted in new paragraphs (A) - (F) of secs. 09.55.640, 12.30.025(b) and 18.65.520(c). Rather than expand the protection provided by the law to members of the same household as the assailant, the categories of persons set forth in paragraphs (A) - (F) limit the application of the domestic violence statutes. For example, under HB 287 a mother-in-law under 65 or a cousin who is living with the assailant would not be protected under the special provisions of the domestic violence laws. Additionally, a person who is assaulted by a person he or she is living with would not be protected unless it can be shown that the two engaged in sexual relations.
2. We strongly support sections 6 and 7 of the bill which makes it clear that a violation of an order under AS 09.55.600(b) directing a respondent to vacate the home of the petitioner falls within the purview of the criminal trespass statutes and that a violation of an order prohibiting communications may constitute the crime of harassment. These amendments will also serve to resolve questions concerning the arrest authority of law enforcement officers.

3. On a relatively minor point, we wonder: why the term "peace officer" has been substituted for the term "police officer" in AS 18.65.520. If the intent of this amendment is to change existing law, the committee report accompanying this legislation should so state.

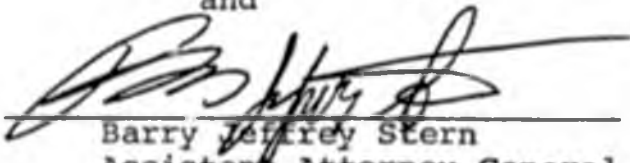
If you have any questions or if we can be of further assistance to your committee in this subject, please let us know.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Daniel W. Hickey
Chief Prosecutor

and


Barry Jeffrey Stern
Assistant Attorney General

BJS:dm

cc: Art Peterson
Assistant Attorney General

Larry R. Weeks
District Attorney
Anchorage



Alaska Network on Domestic Violence and Sexual Assault

February 1981 in Anchorage

28 petitions were filed. We have information on 24 of them:

AWAIC, Inc.
Anchorage
Shelter
274-4561
Community Office
279-9581
Male Awareness Project
279-9581

AWARE, Inc.
Juneau
586-6623

Arctic Women's Group
Barrow

Bering Sea Women's Group
Nome
443-5444

Family Violence Counselor.
Police Dept.
Kodiak
486-3221

Kenai-Soldotna
Women's Resource Center
Soldotna
262-9378

Kodiak Women's Resource Center
Kodiak
486-5038

WKCA, Inc.
Fairbanks
452-2293

Women in Safe Homes
Ketchikan, Alaska
225-2730

Tundra Women's Coalition
Bethel
543-3455

13 married

4 separated

3 divorced

2 living together

2 ex-boyfriends

1 family widow being assaulted by her teen-age son

5 incidents involved weapons

15 incidents resulted in injuries

21 incidents included threats by the respondent

Of the 24 petitions that we have information on:

5 were denied emergency treatment and no further date was set

2 proceeded on to divorce and were either withdrawn or consolidated

1 withdrawn because the petitioner also pursued criminal charges and the respondent had a bail condition ordering no contact

1 respondent was not served

1 petitioner requested withdrawal because the respondent entered both alcoholic and psychiatric counseling

4 petitioner withdrew without explanation

10 went to a full hearing:

4 married

2 divorced

2 separated

1 living together

1 family



Alaska Network on Domestic Violence and Sexual Assault

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Soldotna
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Kodiak Women's Resource Center
Kodiak
486-5038

WICCA, Inc.
Fairbanks
452-2293

Women in Safe Homes
Ketchikan, Alaska
225-2730

Tundra Women's Coalition
Bethel
543-3455

March 1st through March 24, 1981 in Anchorage

15 petitions were filed. We have information on 11:

4 married

4 separated

3 living together

8 incidents resulted in injuries

11 incidents involved threats by the respondent

Of the 11 that we have information on:

6 are scheduled for hearings

2 emergency requests were denied and no date was set

1 the petitioner was allowed to dismiss because she moved out and did not expect to have further contact with him

1 the petitioner filed petition but did not walk it through, no date was set

1 married went to a full hearing



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Public Safety	Sponsor (Principal)	Bill Number HB287
Department Position		
Division Director T.R. Anderson	Date 3/19/81	Commissioner William R. Nix

GOVERNOR'S OFFICE USE

Comments:

Position Noted

By _____ Date _____

SUMMARY

1. a) Related Bills (Similar or Conflicting)	1. b) Other Agencies Affected by Bill
2. a) Organizational Support for Bill	2. b) Organizational Opposition to Bill
3. Program Effects of Bill	

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:

6. Comments:

HB 287 (domestic violence) extends the effective date for orders issued in domestic violence cases from 45 to 90 days in non-emergency cases and from 10-20 days for emergency orders. I can't think of any advantage to the police and it just seems to extend their responsibility for a longer period. There has always been a constitutional question concerning these ex parte emergency orders, where the respondent is deprived of due process without a hearing for even 10 days, and this new provision just aggravates this problem area.

(continued on page 2)

Another section does clarify who is protected is a "household member" in that he or she must be a spouse or former spouse, or related to the person committing the domestic violence, unless he is a child under 18 year or a person 65 years or older. In other words two guys living together would not be considered as members of the same household unless they had sexual relations with each other! In that case one could file against the other.

This bill also amends the criminal code so that it is trespass if you enter or remain on the premises in violation of an order, and harassment if you communicate directly or indirectly with the petitioner in violation of the order. The trespass provision will allow arrests at the scene and clarifies this problem area.

A new section changes police officer to peace officer and defines him as a "public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders." AS22.20.130 was also amended to allow the Commissioner to designate a "peace officer" not just State Troopers, to serve and execute process. If these two changes were put in there in an attempt to force APD to serve domestic violence orders, it was poorly done.

Finally, for some reason the author repealed the section which provides for a criminal charge of false swearing if someone files a petition against someone which is untrue.



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COMMENTS ON HOUSE BILL 287

Section 1. We support this amendment.

Section 2. This amendment would extend the initial duration of the restraining order to 90 days and provides that an extension could be obtained of those provisions which govern the degree of contact between the parties. The issues of child custody and visitation cannot be extended. We agree that the initial order should last more than 45 days. We also feel that all the orders should be co-extensive. Therefore we recommend that the statute allow for an initial order of 120 days and that there be no provision for an extension of any of the provisions. This would allow sufficient time for the parties to stabilize and make decisions and would not give rise to the confusion of having an order that once covered the whole family but has been extended to only cover half.

Section 3. We support this amendment. We believe that 20 days will provide time for the respondent to be served and for a hearing to be set. We do not believe that there are any due process problems as the respondent can call a hearing to modify or dissolve the emergency order.

Section 4. We support this section.

Section 5. This section defines the relationships which must exist for a person to apply for injunctive relief. We think that the proposed definition is more limiting than the present definition and we believe that persons seeking to use the process will find it confusing. We need a definition that will provide access to the civil injunctive process to all persons who are not safe due to abuse by family members. We are becoming increasingly aware of the magnitude of elderly abuse in this state. We suggest a definition which would include persons who are related by either blood or marriage, and ex-spouses, and household members. If it is felt that the scope of 'related by blood or marriage' is too broad, it could be limited to persons within the third degree of consanguinity (this would include aunts, uncles, nieces and nephews)

Section 6 and Section 7 of the bill suggest two ways in which some 'teeth' can be put into the enforcement of the restraining orders.

Section 6. This section proposes an amendment of AS 11.46 to specify that the word 'unlawfully' in the term of art 'enters or remains unlawfully' encompasses entering or remaining in violation of an order

issued under the Domestic Violence Act. Our problem with this section is that it specifically limits the enforcement to a situation where the respondent has been ordered to vacate the home of the petitioner. A good proportion of the persons involved are already living apart and the courts order of "no contact" implicitly means that the respondent is not to enter or remain at the premises of the petitioner. Therefore we believe that this section should be expanded to cover a person who 'enters or remains' in violation of any provision of the restraining order. We also suggest that the section be expanded past 'premises' and also include 'propelled vehicle' so that a person lurking in the womans car in violation of an order not to contact her would also be culpable.

Section 7. This section proposes addressing the issue of the 'no contact' provision by including it as a possible element of Harrassment. The problem of using this section is that the preliminary language of the statue establishes 'intent to harrass or annoy' as a threshold element. When the respondent is ordered by the Superior Court not to contact the petitioner in any manner, that order extends to all forms of contact regardless of intent. This amendment would not cover the respondent who contacts the petitioner with the intent to reconcile or to send flowers, and yet this action is not only a violation of the order, and an indication that the respondent is not willing/able to exercise self-control, but it also subjects the petitioner to danger since the respondent may become violent when offers of reconciliation are rebuffed.

Another problem with the lead in language is that by establishing Intent as the culpable mental state and this is the one culpable mental state that can be avoided due to intoxication.

Section 8. See comments to section 5.

Section 9. We support this provision

The following are suggested alternative amendments; if adopted they would replace the need for sections 6 and 7 (discussed on page 2) and they would clarify the arrest powers of peace officers when they are responding to an apparent violation of an order.

First we suggest that we create a law which simply makes it a misdemeanor to violate any provision of an order issued pursuant to this act (other than the support provisions). We feel that an appropriate place for the section would be in AS 11.51 which delineates Crimes against the family.

The suggested cite and language is as follows:

AS 11.51.150 Criminal Contempt.

A person commits the crime of criminal contempt when they knowingly violate any provision of an order issued pursuant to AS 09.55.600 or AS 09.55.610.

Second we suggest that this above crime be cross referenced to the 'misdemeanor' arrest provisions of AS 12.25.030. so that peace officers have clear power to arrest the respondent.

Additional suggestions: We feel that AS 12.55.135 be amended to reflect the recent changes in the criminal assault laws which provide for 4 degrees of assault; the present provision sets a minimum of 10 days incarceration if a person is convicted of a felony assault. This needs to be changed so that the minimum attaches to a conviction for a misdemeanor assault.



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Kodiak
486-3038

WCCA, Inc.
Fairbanks
452-2293

Women in Safe Homes
Ketchikan, Alaska
225-2730

Tundra Women's Coalition
Bethel
343-3455

January 1981 in Anchorage

15 petitions were filed:

9 married

1 separated

2 divorced

2 household

1 family (daughter was petitioner against father)

2 incidents involved weapons

11 incidents resulted in injuries

15 incidents included threats by the respondent

of the 15 petitions filed;

3 were denied emergency treatment and no further date was set

2 both parties absent at hearing

2 were withdrawn because of reconciliation

3 the petitioner was present but there had been no return of service on respondent.

5 went to full hearing

1 was the daughter/father both represented themselves

2 were divorced from each other

2 were married to each other

One of these was dismissed because the woman's attorney informed the court that the USAF has flown her home.

POSITION PAPER
ON
HOUSE BILL NO. 287

"An Act relating to domestic violence."

The Department of Health and Social Services supports the amendments to House Bill No. 287. During the 1980 legislative session, the Department supported House Bill No. 392 which eventually became the present statute. Since that time, the local programs of Domestic Violence and Sexual Assault have coordinated closely with the public safety and police officers of each major community. The Alaska Network on Domestic Violence and Sexual Assault has assisted in preparing training for police officers at the Academy; and victims of domestic violence are beginning to use the right for restraining orders. Each of the domestic violence programs has had an increase in number of clients during the year; perhaps some of this has been due to the obligation now placed on a police/public safety officer to inform a victim of the availability of a protected environment.

It has become evident with the use of the current statute that complex living situations do exist in Alaska and that violence frequently occurs within those interrelated "families" - no matter what the definition of family. According to the publication "Crime in Alaska," published by CJPA, in 1980, of 39 murders in the state, 12 victim/offenders were family members.

The Department is also aware that for many women a period of 45 days to "solve her problems" and make decisions about life decisions is frequently too short a time; if the perpetrator chooses to seek help, in order to help solve the relationship problem, a period of 45 days is by no means long enough to help him learn new methods and techniques of handling stress. Therefore, the Department supports the extension of the restraining order.

Recommended by: Elizabeth Muktarian
Elizabeth Muktarian
Director
Div. of Adult and
Aging Services

Date: 3/24/81

Approved by: Helen D. Beirne
Helen D. Beirne
Commissioner
Dept. of Health and
Social Services

Date: 3/24/81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 287

Title "An Act Relating to domestic violence."

Requested by _____

Date March 17, 1981

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Social & Economic Assistance for the General Population

BRU, Program, or Subprogram(s) Affected Division of Adult & Aging Services - Adult Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Zero Impact

IV. DATE 3-17-81

PREPARED BY Dorothy Walt

AGENCY Division of Adult and Aging Services

PHONE 465-3250

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named) M&B Approval [Signature]

Date 3/17/81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 287
 Title "An Act relating to domestic violence."
 Requested by Representative Clocksin Date March 17 1981

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected Administration of Justice/General Government
 BRU, Program, or Subprogram(s) Affected Prosecution/Legal Services
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section "I")

The proposed bill, in Sec. 9, speaks to services already provided by the Department's Criminal Division. Likewise, the Department's Civil Division is already providing legal services for the Division of Social Services to such extent as that division may be involved in protecting minor children as provided by Sec. 2 of the proposed Act. Therefore, no additional fiscal impact will be felt by the department by the enactment of this legislation.

IV. DATE March 18, 1981 PREPARED BY Richard I. Pegues, Admin. Officer
 AGENCY Department of Law

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

MEMORANDUM

March 27, 1981

TO: Members of the Health, Education and Social
Services Committee, Alaska House of Representatives

FROM: Grant Callow
General Counsel, Alaska Court System

SUBJECT: HB 287 - Domestic Violence

Proposed changes by the Alaska Court System:

(1) Substitute "or" for "and" on page 2, line 16,
and delete subsections (D), (E) and (F).

Same change for Sec. 8, page 3, and Sec. 10, page 4.

(2) Amend criminal law statutes relating to:

- a) Harassment (AS 11.61.120) (already
included in HB 287)
- b) Custodial interference (AS 11.41.320-.330)
- c) Criminal trespass (AS 11.46.320, .330, .350)
- d) Criminal nonsupport (AS 11.51.120)

Amendments to these statutes should provide that violations
of certain relevant provisions of court orders will be criminal
violations under these statutes.

(3) Amend Sec. 11, page 5, lines 10 and 12, to make
it clear that process shall be promptly served under section 600
of the Domestic Violence Act as well.

GC



Sec. 11.61.120. Harassment. (a) A person commits the crime of harassment if, with intent to harrass or annoy another person, he

(1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(3) makes repeated telephone calls at extremely inconvenient hours;

(4) makes an anonymous or obscene telephone call or a telephone call that threatens physical injury; or

(5) subjects another person to offensive physical contact.

(b) Harassment is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

For case construing former AS Ct. Op. No. 732 (File No. 1231), 489 P.2d 11.45.035 relating to illegal use of 1012 (1971).
telephones, see *Anniskette v. State*, Sup.

(Effective January 1, 1980)

Sec. 11.41.320. Custodial interference in the first degree. (a) A person commits the crime of custodial interference in the first degree if he violates § 330 of this chapter and causes the victim to be removed from the state.

(b) Custodial interference in the first degree is a class C felony. (§ 3 ch 166 SLA 1978)

ALR and C.J.S. references. — Fiction of authority of, parent or one in loco parentis, 77 ALR 317.
loss of services as condition of action for abduction of child, 72 ALR 847. 51 C.J.S., Kidnapping, § 1 et seq.

Kidnapping or other criminal offense by taking or removal of child by, or under

Sec. 11.41.330. Custodial interference in the second degree. (a) A person commits the crime of custodial interference in the second degree if, being a relative of a child under 18 years of age or a relative of an incompetent person and knowing that he has no legal right to do so, he takes, entices, or keeps that child or incompetent person from his lawful custodian with intent to hold him for a protracted period.

(b) Custodial interference in the second degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978)

Sec. 11.16.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if he enters or remains unlawfully

(1) on real property with intent to commit a crime on that real property; or

(2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Cross reference. -- As to trespass on or injury to state land, see AS 38.05.360.

Am. Jur., ALR and C.J.S. references. -- 22 Am. Jur., Forcible Entry and Detainer, §§ 53 to 56; 34 Am. Jur., Malicious Mischief, § 1 et seq.; 52 Am. Jur., Trespass, §§ 84 to 86.

Right to use force to obtain possession of real property to which one is entitled. 141 ALR 273.

36 C.J.S. Forcible Entry and Detainer § 1 et seq.; 54 C.J.S. Malicious Mischief § 1 et seq.; 87 C.J.S. Trespass §§ 140 to 165.

Sec. 11.16.330. Criminal trespass in the second degree. (a) A person commits the crime of criminal trespass in the second degree if he enters or remains unlawfully

(1) in or upon premises; or

(2) in a propelled vehicle.

(b) Criminal trespass in the second degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.16.350. Definition. (a) As used in §§ 300 — 350 of this chapter, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so; or

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to him by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978)

3

Sec. 11.51.120. Criminal nonsupport. (a) A person commits the crime of criminal nonsupport if, being a person legally charged with the support of a child under 18 years of age, he fails without lawful excuse to provide support for the child.

(b) As used in this section "support" includes necessary food, care, clothing, shelter, medical attention, and education. There is no failure to provide medical attention to a child if he is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

(c) Criminal nonsupport is a class A misdemeanor. (§ 5 ch 166 SLA 1978)



Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Donald E. Clocksin, Chairman
465-3797
465-3777

Pouch V
State Capitol
Juneau, Alaska 99811

TO: House HESS Members
FROM: Hollie Ploog, Staff Counsel
RE: Proposed Amendments HB 287
DATE: April 2, 1981

1. Sec. 2 page 1 line 14: Length of order - delete language from, "However" on line 14 thru "days" on line 24. Change 90 to 120 days in line 14.
2. Sec. 5 page 2 lines 12 - 27 and Sec. 8 lines 7 - 22: Definition of domestic violence - Keep former definition and add the following language after "respondent" on line 27 and line 22: "...or is related to the person who committed the crime by marriage or blood with the second degree of consanguinity."
3. Sec. 6 page 2 line 28: Add AS 11.46.320.330. Page 3 line 1: End sentence after 9.55.610.
4. Sec. 7 page 3 line 3 - 6: Eliminate intent as culpable mental state.
5. Add new sections to include crimes of: Custodial Interference - AS 11.41.320-330, Criminal Nonsupport AS 11.51.120 or create crime of Contempt in Violation of 9.55.600-610 as AS 09.50.025.
6. Cross reference all crimes with AS 12.25.030 (power to arrest).
7. Sec. 11 page 5 line 10: Add AS 09.55.600 after word under.

Proposed Amendments HB 287 - Continued.

8. Sec. 13 page 5 line 24: Repeal since violation already covered by contempt statute AS 09.50.010; if changed to require verified statement, violation would be perjury, a class B felony, rather than a fine of \$100 - \$300 as is.
9. Add new section to AS 12.55.135 changing assault in the third degree to assault in the fourth degree.

3 27-81

WB 287

Karla Huntington att. (VISTA att.)
with Pope Lenten

Arthur Brown, Federal officer gone,

Jim Vaden
Grant Callum