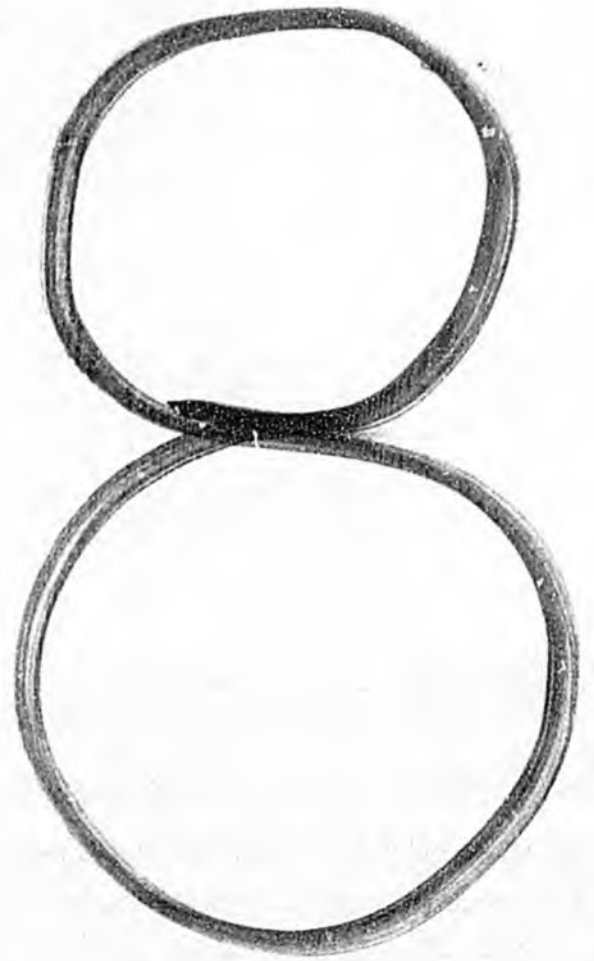
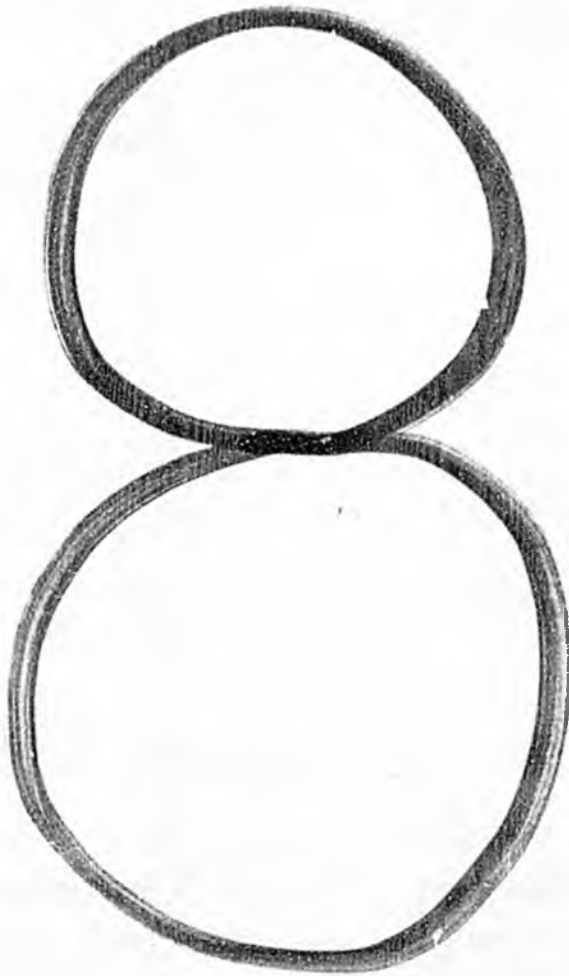


H B



COMMITTEE REPORT  
HOUSE

Judiciary

( 7 )

FURTHER: Finance

1/18/85

Date: April 9 1985

The Committee on Health, Education and Social Services has had HB 88

"An Act relating to the protection of children; and amending Rules 504, 505, and 506, Alaska Rules of Evidence, and Rule 6(r), Alaska Rules of Criminal Procedures."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 88 (HESS)  same title  
 new title
- and recommends do pass
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

Katie Hurley

Vivian John C. Tom Co.

Russ W. [Signature]

Cecilia [Signature]

[Signature]

[Signature]

[Signature]

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[Signature]  
CHAIRMAN



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 18, 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 which will enhance the state's ability to protect children who have been the victims of child abuse or neglect. The bill makes numerous changes to existing civil and criminal laws, and adds some badly needed provisions. A section-by-section analysis of the bill, explaining the reasons for and effect of the proposed changes, appears below.

In brief summary, secs. 1 and 2 of the bill create a new crime, endangering the welfare of a minor in the second degree, which would make it a crime for a daycare worker or other person entrusted with the care of a child to negligently expose the child to substantial risk of injury or to injure a child by unlawfully failing to provide the child with necessary food, care, clothing, or shelter. Section 3 strengthens existing law prohibiting sale and distribution of child pornography, and sec. 4 makes some technical amendments to an existing law which expands the statute of limitations in prosecutions for certain sexual offenses against children.

Section 5 adds a new statute to existing law, to allow the introduction of certain hearsay evidence in grand jury prosecutions for sexual offenses against children. Section 6 makes it clear that Alaska's "rape shield" statute applies to child victims as well as to adult victims. Sections 7, 8, and 9 expand existing law regarding a criminal records check of persons employed in positions of authority over children. Sections 10 and 11 revise the law regarding curfew violations; and sec. 12 revises the procedures for submission of predisposition reports in delinquency proceedings.

Section 13 and 14 revise existing procedures requiring the

Department of Health and Social Services, division of family and youth services (DFYS), to file a court petition to assume emergency custody of an abused or neglected child. Section 15 adds a definition of "sexual abuse" to the child abuse reporting laws, and secs. 16 and 23 add "mental injury" to the types of harm that must be reported. Sections 17, 18, 24, and 25 expand the classes of persons who are required under the law to report cases of suspected child abuse. Section 19 clarifies that a person who submits a report of abuse or neglect in good faith is immune from civil or criminal liability.

Section 20 abolishes the application of some evidentiary privileges that prevent the introduction of evidence in child abuse proceedings. Section 22 authorizes the state to seek an injunction prohibiting a person who has abused children in the past from having contact with a child not related to him. Section 26 allows the state to establish regulations devising a system of civil fines to enhance enforcement of child care licensing laws. Sections 27 and 28 describe the effect of two sections of the bill that would amend court rules.

#### SECTION-BY-SECTION ANALYSIS

##### Section 1

Under existing AS 11.51.100, endangering the welfare of a minor, it is class C felony offense for a parent or guardian to intentionally desert a child under circumstances which place the child in substantial danger of injury. Section 1 of this bill adds "in the first degree" to the title of the existing crime (sec. 2, below, adds a "second degree" form of the crime), and expands the law's coverage to children under the age of 18 (rather than under age 10).

##### Section 2

This section creates a new class A misdemeanor crime: endangering the welfare of a minor in the second degree. A person commits this crime if he has been entrusted with the care of a child under 13 and either: (1) negligently exposes the child to circumstances creating a substantial risk of injury or abuse, or (2) negligently exposes the child to physical injury by failing to provide the child with necessary care, food, shelter, or medical attention. This new provision would apply to child care providers (such as day care workers) who neglect children entrusted to their care or who allow the children to be exposed to dangerous conditions.

Section 3

Under AS 11.61.125, enacted in 1983, it is a class C felony offense to bring child pornography (visual depictions of children engaged in sex acts) into the state for sale or distribution. The law also prohibits possession or publication of such material with intent to sell it. As presently written, however, AS 11.61.125 does not explicitly prohibit the sale of child pornography. This omission makes prosecution under the new law more difficult. For example, who "possessed" illicit material sold over a bookstore counter? The store owner, or the clerk who actually made the sale? Under current law the answer is not clear. Section 3 of the bill clears up this ambiguity, and strengthens existing law, by explicitly including sale, distribution, or exhibition of child pornography for profit among the acts prohibited by law.

Section 4

AS 12.10.020(c), enacted in 1983, extended the general five-year statute of limitations for sex crimes against children. Under certain circumstances, a crime of this nature can be prosecuted up to 10 years after it was committed. This extension was adopted because, under the prior law, the five-year limitation period often expired before the child victim became old enough to report the assault. This was especially true when the victim was a very young child. Section 4 of this bill amends the language of AS 12.10.020 to include prostitution related offenses among those offenses to which the extension applies. The amended language also includes offenses committed under sections of the criminal code that were repealed when the laws relating to sexual offenses against children were revised in 1983.

Section 5

This section adds a new statute allowing a child's out of court ("hearsay") statement about a sexual offense to be introduced, under specified conditions, at grand jury proceedings. This would allow the grand jurors to hear and consider, for example, a videotaped statement given by the child victim immediately after the abuse was discovered. The statement must appear reliable and the child must either testify at the grand jury, or be "unavailable," as defined in the statute. Adoption of this measure will help to reduce the number of times a young child must be interviewed or testify about an assault, and will bring Alaska's procedure more in line with procedures used in other jurisdictions.

Section 6

AS 12.45.045, which limits the introduction in a sexual assault trial of evidence of the victim's previous sexual conduct, was adopted in 1978 as part of the new criminal code. Virtually all states have adopted some version of such a "rape shield" statute. The statute is designed to protect the sexual assault victim from unwarranted invasion into her private life. As originally adopted in the new criminal code, serious sexual offenses against children were included in the general sexual assault statutes. The protections included in AS 12.45.045 thus applied in child abuse cases as well as adult rape cases.

In 1983 the criminal laws regarding sexual offenses against children were revised; most sexual offenses against children are now called "sexual abuse of a minor" in one of four degrees. Unfortunately, the language of AS 12.45.045 was not altered to reflect the new designation for sexual crimes against children. Section 6 of this bill amends the statute to make it clear that the protections accorded to adult victims of a sexual assault apply to child victims as well.

Sections 7, 8, and 9

Existing AS 12.62.035 authorizes the release of certain criminal conviction records for persons who hold or are applying for paid or volunteer positions which would give them supervisory or disciplinary power over a child. Sections 7, 8, and 9 of this bill expand the types of convictions that may be reported to include all crimes that might pose a risk to children. Section 9 allows the state to inform an inquiring employer if there is a pending warrant for the arrest of the employee.

Sections 10 and 11

These sections revise existing law relating to curfews for minors. Section 10 provides that only a fine may be imposed upon a minor who violates a local curfew; no jail sentence may be given. Section 11 provides that curfew violations, like traffic and fish and game law violations, will be handled in an adult criminal court rather than in the juvenile justice system.

Under existing law, local communities have the authority to establish curfews for minors and to impose penalties for violations. Many communities, particularly in rural areas, have established curfews in hopes of controlling juvenile activity which might lead to delinquent behavior, and in hopes of providing protection for children and promoting family responsibility and unit. Present AS 29.43.110, passed in 1962, authorizes penalties of up to a \$300 fine and 30 days in jail for curfew violations.

These penalties cannot be enforced, however, because the statute conflicts with other state laws. Since minors alleged to have committed crimes come within the jurisdiction of AS 47.10, curfew violations must be handled through the juvenile court, which cannot impose fines or terms of imprisonment. Thus, juveniles accused of curfew violations may be adjudicated as delinquents, but may not be fined or sentenced as indicated in AS 29.43.110.

AS 29.43.110 reflects an outmoded approach to family and behavioral problems of youth. The intent of both federal and state laws passed within the last 15 years has been to limit the unnecessary detention of nondelinquent juveniles through the decriminalization of status offenses such as curfew violations. This is good public policy, especially since Alaska's juvenile detention facilities are already overcrowded by youth requiring secure detention in order to protect either the public or themselves.

In order to remove an anomolous provision from the state statutes, and at the same time provide municipalities with an effective method of enforcing curfews, this bill makes failure to comply with municipal curfew ordinances a violation rather than a crime, and requires that minors accused of violating curfew ordinances be made subject to prosecution, as they presently are subject to prosecution for violation of fish and game statutes or regulations and traffic laws.

A minor accused of a curfew violation would be charged and prosecuted in district court, and would be subject to a fine of up to \$300. The court could, of course, suspend any portion of the fine and require, as a condition of the suspension, that the minor complete a reasonable period of community service work or the fulfillment of similar reasonable conditions. This would reduce unnecessary detention of juvenile curfew violators. This is particularly important in rural areas where juveniles detained for such violations are held in adult jails which may not provide legally required sight and sound separation. It would also ensure that curfew violations are dealt with expeditiously, by allowing them to be handled by local law enforcement officers and judges. Communities would have greater flexibility in developing appropriate conditions to be met by violators.

#### Section 12

Under AS 47.10.081, before a juvenile court may "dispose of" (sentence) a delinquent minor, all parties must receive a predisposition report. This report is prepared by a DFYS worker. Section 12 amends AS 47.10.081(c) to provide that the report must be provided to all parties twc (rather

than 10) working days before the hearing.

The present 10-day requirement presents considerable practical problems, and often requires a delay in the disposition proceedings. In delinquency dispositions where there are 30 or less calendar days between adjudication and disposition, investigating probation officers may have fewer working days to complete their investigation and prepare the disposition report than the parties have to review the document prior to court. The ten day requirement also eliminates any possibility of a practical effort to reduce the total time between adjudication and disposition for those children detailed during that process.

The present "10-day rule" has resulted in lengthening periods of detention because additional time is necessary to complete predisposition investigations and disposition hearings must be postponed. While there is no question that parties to a disposition hearing, including a child's attorney, must have prior access to investigative reports, a full 10 days of advanced availability is unnecessary. Two full working days should be sufficient time to allow all parties to carefully review the report.

#### Section 13

This section would change the standard for assuming emergency custody in neglect cases to conform to the same standard used in abuse cases. It would thus allow earlier emergency intervention to protect neglected children. It would also allow assumption of custody of neglected children who need immediate medical attention rather than requiring that their life be endangered.

#### Section 14

Section 14 of the bill modifies the time constraints upon DFYS for filing of petitions when a minor is taken into emergency custody. The modification relaxes the time-frame (in conformity with current practices in Anchorage) to allow a petition to be filed on the next business day following the assumption of custody of the minor. The Anchorage courts have permitted this practice for several years, notwithstanding the requirement in current law that the petition be filed within 12 hours after the minor has been taken into custody. Practices around the state vary, and a recent legislative audit report strongly suggests that practices should be made uniform throughout the state.

In those courts that interpret the 12-hour requirement literally, cases are brought before magistrates on weekends and holidays. The initial probable cause determination is usually not made by the magistrate, however;

the case is held over to the next business day. Although there is some minimal screening which occurs when the case appears before the magistrate, the same issue is addressed again on the next business day before a judge or special master. The advantage of the proposed change is that it prevents this additional hearing, and allows the social worker to perform the many tasks needed after emergency custody is assumed (making arrangements for placement and medical or other care as needed), while still requiring that the social worker attempt to immediately notify the parent of the assumption of custody.

Section 14 also includes language that allows DFYS discretion in filing petitions when emergency custody has been assumed in situations that do not require continued protective custody or DFYS involvement. These instances constitute a small percentage of the emergency custody cases, and involve situations in which a primary or temporary caretaker has allowed the child to wander off and the child is discovered by parties who do not know the family. Under current law, in order to provide temporary shelter for the child until parents are located, DFYS must assume emergency custody. A request to dismiss is often filed with the petition in these situations, and the petition is filed only because the present statute appears to require it. This section eliminates the need for this unnecessary paperwork.

#### Section 15

Section 15 defines the term "sexual abuse" for purposes of civil child in need of aid (CINA) proceedings under AS 47. Although the term "sexual abuse" is now used in AS 47, it is not defined. The proposed definition would prevent constitutional challenges to the state's assumption of jurisdiction over children who are sexually abused by their parents.

To allow DFYS intervention in all cases of suspected sexual abuse, the definition is quite broad. It includes all sexual conduct which is also a crime. Other forms of inappropriate touching are also included, but conduct reasonably necessary for normal caretaker or medical responsibilities is excluded. CINA proceedings focus on the ill-effects of sexualized contacts and overtures by a child's parents. The provisions in AS 47 are intended to protect against the mental and emotional harm which results from inappropriate sexual contact between a parent and a child. Thus, it is important that reasonable perceptions of the child be considered by the court in determining whether or not sexual abuse has occurred. The proposed definition specifically allows for this.

Section 16

Although existing law allows DFYS intervention to protect children from mental harm, it does not require that the harm be reported by professionals as is the case with neglect and physical and sexual abuse. This section will correct that deficiency. Together with sec. 23, which clearly defines "mental injury," this change will provide greater protection for children who have suffered observable mental injury, by increasing the reporting of such incidents. Similar provisions are included in the statutes of 47 other states, and inclusion in child protection laws is encouraged by federal policies and law.

Section 17

This section revises and expands existing law requiring persons in certain professions to report to DFYS suspected abuse of a child by a parent or other caretaker. Under existing law, a significant number of persons who regularly have access to information that a child has suffered harm as the result of abuse or neglect by a caretaker are not required to report that information. The revised statute focuses upon those individuals who regularly have contact with a child, or a child's family, and are therefore in a position to gain knowledge of child abuse and neglect. These changes are needed to insure that all children abused or neglected by caretakers come to the attention of DFYS.

The word "professional" has been deleted from AS 47.17.020(a), since many persons who have regular access to children and information about harm are considered para-professionals. Paragraph (a)(2) of AS 47.17.020 has been expanded to include all employees or volunteers of private or public schools, not just teachers or administrative staff. The term "social workers" in existing paragraph (a)(3) has been expanded to include all human service providers (defined in sec. 25).

In paragraph (a)(6), "licensed day care providers and paid staff" has been broadened to include all child care providers, including foster parents. This change is recommended because many persons who regularly provide day care services need not be licensed under existing law, and because children are cared for in a number of situations other than day care or foster care. Reference to "licensed foster care providers" has been eliminated from paragraph (a)(7), because they are now included in the scope of (a)(6). Instead, (a)(7) requires all counselors, licensed and unlicensed, to report suspected instances of child abuse. Present law applies to psychiatrists and psychologists (as "practitioners of the healing arts"), but not to other individuals who regularly counsel families or child-

ren. New paragraphs (a)(8) -- (10) add other categories of persons required to report.

#### Section 18

Under present law, persons in the categories listed in AS 47.17.020(a) are required to report suspected child abuse or neglect only if the abuse or neglect is caused by or attributable to the actions of a person "responsible for the child's welfare." See AS 47.17.070(1) and (7). Thus, harm caused by a person not related to the child or residing in the child's home need not be reported to DFYS.

Section 18 of this bill adds a new section to the statutes: reports to law enforcement agencies. If a person listed in AS 47.17.020 (the general reporting statute) has reason to believe that a child has suffered harm as a result of injury, neglect, or exploitation by someone other than a family member or caretaker, the person must report that harm to a law enforcement officer (rather than DFYS). The law should require that all instances of abuse or neglect be reported to the authorities, not just intrafamily abuse. All children should be protected under the law, without regard to the identity of the perpetrator or the relationship to the child victim.

New subsec. (b) requires film processors to report suspected cases of child pornography to law enforcement authorities for investigation. Several other states have such a requirement. On at least one occasion in the past, an Alaska man who photographed a young child engaged in sex acts with him was apprehended as a result of a similar reporting requirement in another state. A person who knowingly fails to make a report as required in this section is guilty of a class B misdemeanor under AS 47.17.068 (see sec. 21, below).

#### Section 19

Section 19 amends the immunity provision in existing AS 47.17.050 to make it clear that a person who makes a child abuse report in good faith, and whose information or testimony is used in connection with criminal prosecution of the offender, as well as in a civil proceeding, is immune from liability for making the report. This clarification is necessary as a result of the appellate court's decision in State v. R.H. and Wetherhorn, 683 P.2d 269 (Alaska App. 1984). The Wetherhorn court held that the phrase "judicial proceeding," as used in AS 47.17.060 (dealing with evidence that is not privileged), refers only to civil proceedings -- i.e., "child protection proceedings" -- under AS 47.10 ("Delinquent Minors and Children in Need of Aid"). 683 P.2d at 280.

Section 20

This section of the bill clarifies existing law regarding evidence that may be admitted in civil or criminal proceedings regarding the abuse of a child. The amendment abrogates some evidentiary privileges that prevent the introduction of evidence of harm. The clergyman privilege would not apply if the communication was made during the course of counselling sessions (rather than in furtherance of a religious practice).

Section 21

This section contains a conforming amendment extending existing "B" misdemeanor penalties for failure to report suspected child abuse, as explained above regarding sec. 18.

Section 22

Section 22 of this bill provides broad authority to the state to enjoin or limit persons who endanger children in the ways specified from having contact with children. While there may be common law authority for this view, statutory confirmation of this authority removes one issue from possible litigation in cases where the attorney general chooses to bring an action to enjoin or limit a person from contact with children. This addresses the problem of no regulation of day care providers who care for less than five children without burdening the public with regulation of all day care providers.

Section 23

This section amends the existing definition of "child abuse or neglect" to include mental injury caused by a person responsible for the child's welfare. The rationale for including "mental injury" is described in connection with sec. 16, above.

Section 24

Existing law requires "practitioners of the healing arts" to report suspected child abuse or neglect. This section expands the definition of this term to include nurse practitioners and physician's assistants. Although these health care professionals are considered included in the current definition, this amendment clears up any possible uncertainty by specifically referring to persons who hold these positions.

Section 25

This section adds new definitions related to the expanded classes of persons who must report child abuse (see secs. 17 and 18 of the bill).

Section 26

Section 26 of this bill makes two changes. First, AS 47.35.070(a) is amended to bring this statute into conformity with the criminal code by making violations of child care licensing statutes and regulations a class B misdemeanor. Second, subsec. (b) adds language that gives statutory authority to the Department of Health and Social Services to establish a system of civil enforcement (including the levy of up to \$200 daily in civil penalties) for violations of its licensing statutes and regulations.

This authority will provide the department with a valuable regulatory tool. Presently, the department has only two choices with respect to licensees who violate statutes and regulations. The department can either revoke the license or do nothing. While the department can require the licensee to establish a plan of correction for violations, its only lever to enforce this requirement is the authority to revoke the license. If a system of civil penalties existed, the department would have the additional tool of fining licensees for minor violations of regulations and statutes. The new language makes it clear that imposition of a civil penalty would not preclude criminal prosecution in appropriate circumstances.

Section 27

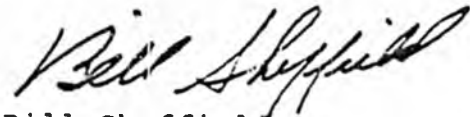
New AS 12.40.050, contained in sec. 5 of this bill, allows the introduction under certain circumstances of hearsay evidence of a child's statement in grand jury proceedings for sexual offenses against children. Section 28 indicates that this would have the effect of altering a court rule of criminal procedure. A two-thirds vote of each house is thus required on this section of the bill, under art. IV, sec. 15 of the Alaska Constitution.

Section 28

This section states that the changes proposed in sec. 20 of the bill would amend Alaska Rules of Evidence 504, 505, and 506 by preventing the application of the physician-patient privilege and the husband-wife privilege, and by limiting the application of the clergyman privilege, in civil or criminal proceedings arising from reports of abuse made under AS 47.17. A two-thirds vote of each house is required for passage of this section.

The problems related to the protection of children are among the most serious facing our society. Therefore, I urge your prompt, thoughtful, and favorable consideration of this measure.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield  
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

Page 1 of 2  
REQUEST  
 Bill/Resolution No.: HB 88, No.1  
 Title: Child Protection  
 Sponsor: Rules Committee  
 Requestor: Governor's Office  
 Date of Request: 1/17/85

FISCAL DETAIL  
 Agency Affected: Public Safety  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected:  
 1) Alaska State Troopers and  
 2) Administration (Records & Identification)

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		214.8	225.5	236.8	248.6	261.0
200 TRAVEL		6.0	6.3	6.6	7.0	7.3
300 CONTRACTUAL		2.9	3.1	3.2	3.4	3.5
400 SUPPLIES		5.0	5.3	5.5	5.8	6.1
500 EQUIPMENT		0.7	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>229.4</b>	<b>240.2</b>	<b>252.1</b>	<b>264.8</b>	<b>277.9</b>
<b>CAPITAL</b>		<b>0</b>				
<b>REVENUE</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND		229.4	240.2	252.1	264.8	277.9
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>229.4</b>	<b>240.2</b>	<b>252.1</b>	<b>264.8</b>	<b>277.9</b>

POSITIONS:

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME		1.0	1.0	1.0	1.0	1.0
TEMPORARY		0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

The reporting, investigative and follow-up functions will require increase in Staff. It is estimated that 3 Troopers (Statewide) at Range 76 will be needed at a total cost of \$72.6 per position in FY86.

Affirmative and detailed reporting requirements by the Records & Identification Section of the Division of Administrative Services is estimated to need one-half

Prepared By: Jos Mapranath Phone: 465-4336  
 Division: Administrative Services Date: 1/17/85

Approved by Commissioner: [Signature] Date: 1/17/85  
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

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

7/1/84

ANALYSIS, con't

HB 88, No. 1, Page 2 of 2

of a position at the level of Range 9, Clerk IV.

For subsequent years, an inflation of 5 percent is calculated.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Page 1 of 2

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 88, No. 2  
 Title: "An Act relating to the protection of children..."  
 Sponsor: House Rules/Governor  
 Requestor: Governor's Ofc./OMB  
 Date of Request: 1/16/85

FISCAL DETAIL

Agency Affected: Department of Law  
 Program Category Affected: General Government, Admin. of Justice  
 BRU, Program or Subprogram(s) Affected: Legal Services, Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Analysis attached.

Prepared By: Richard I. Pegues, Director  
 Division: Administrative Services  
 Approved by Commissioner: Richard I. Pegues FOR  
 Agency: Department of Law

Phone: 465-3672

Date: 1/16/85

Date: 1/16/85

Distribution (by Agency preparing fiscal note):

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

7/1/84

January 16, 1985

Governor Sheffield has made two major proposals that will enable the state to combat the alarming incidence of child abuse and neglect in Alaska. One, the Governor has proposed the allocation of substantial additional resources in the FY 86 operating budget to improve the state's ability to protect children who have been abused or neglected, including the stepped-up prosecution of offenders and the removal of abused and neglected children to a secure home environment. The Governor has also proposed a comprehensive child protection legislative package, contained in this bill, that makes numerous changes to existing civil and criminal laws, and adds some badly needed provisions.

While this bill will cause some additional impact on prosecution and Civil Division resources, we believe that we will be able to absorb this impact over the next fiscal year through use of the resources provided in the Governor's FY 86 operating budget. Enactment of the changes to the civil and criminal laws will greatly enhance the effectiveness of the new prosecutors, civil litigators, and social workers that have been requested in the budget proposal. To the extent that the budget proposal may be reduced, the effect of the child protection legislative package will be correspondingly reduced. In such event, fiscal note costs would be appropriate in order that the bill's provisions will be realized.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

HB 88, No. 3

Revision Date: \_\_\_\_\_

REQUEST  
Bill/Resolution No.: Governor's Request  
Title: An Act...child abuse and neglect.  
Sponsor: Governor  
Requestor:  
Date of Request: 1/16/85

FISCAL DETAIL  
Agency Affected: Health and Social Services  
Program Category Affected:  
BRU, Program or Subprogram(s) Affected:  
Social Services, Juvenile Custody

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

N/A

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 Date: 1/17/85

Approved by Commissioner: J. A. B. Jr.  
 Agency: Dept. of Health & Social Services

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- Legislative Finance
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SECTION-BY-SECTION ANALYSIS

Section 1

Under existing AS 11.51.100, endangering the welfare of a minor, it is class C felony offense for a parent or guardian to intentionally desert a child under circumstances which place the child in substantial danger of injury. Section 1 of this bill adds "in the first degree" to the title of the existing crime (sec. 2, below, adds a "second degree" form of the crime), expands the law's coverage to children under the age of 12 (rather than under age 10) and adds to the section a person "responsible for the welfare of a child".

Section 2

This section creates a new class A misdemeanor crime: endangering the welfare of a minor in the second degree. A person commits this crime if the person is a parent or guardian or is responsible for the welfare of a child under 12 and either: (1) negligently exposes the child to circumstances creating a substantial risk of injury or abuse, or (2) negligently exposes the child to physical injury by failing to provide the child with necessary care, food, shelter, or medical attention.

Sections 3 and 4

Under AS 11.61.125, enacted in 1983, it is a class C felony offense to bring child pornography (visual depictions of children engaged in sex acts) into the state for sale or distribution. The law also prohibits possession or publication of such material with intent to sell it. As presently written, however, AS 11.61.125 does not explicitly prohibit the sale of child pornography. Section 3 strengthens existing law, by explicitly prohibiting sale, and further, prohibits sale and distribution whether or not for commercial consideration.

Section 5

AS 12.10.020(c), enacted in 1983, extended the general five-year statute of limitations for sex crimes against children. Under certain circumstances, a crime of this nature can be prosecuted up to 10 years after it was committed. This extension was adopted because, under the prior law, the five-year limitation period often expired before the child victim became old enough to report the assault. This was especially true when the victim was a very young child. Section 4 of this bill amends the language of AS 12.10.020 to include prostitution related offenses among those offenses to which the extension applies. The amended language also includes offenses committed under sections of the criminal code that were repealed when the

laws relating to sexual offenses against children were revised in 1983.

#### Section 6

AS 12.45.045, which limits the introduction in a sexual assault trial of evidence of the victim's previous sexual conduct, was adopted in 1978 as part of the new criminal code. Virtually all states have adopted some version of such a "rape shield" statute. The statute is designed to protect the sexual assault victim from unwarranted invasion into her private life. As originally adopted in the new criminal code, serious sexual offenses against children were included in the general sexual assault statutes. The protections included in AS 12.45.045 thus applied in child abuse cases as well as adult rape cases.

In 1983 the criminal laws regarding sexual offenses against children were revised; most sexual offenses against children are now called "sexual abuse of a minor" in one of four degrees. Unfortunately, the language of AS 12.45.045 was not altered to reflect the new designation for sexual crimes against children. Section 6 of this bill amends the statute to make it clear that the protections accorded to adult victims of a sexual assault apply to child victims as well.

One minor change was made in subcommittee, the word "may" on page 3, line 4 was changed to "shall".

#### Section 7

Under AS 47.10.081, before a juvenile court may "dispose of" (sentence) a delinquent minor, all parties must receive a predisposition report. This report is prepared by a DFYS worker. Section 12 amends AS 47.10.081(c) to provide that the report must be provided to all parties six (rather than 10) working days before the hearing.

The present 10-day requirement presents considerable practical problems, and often requires a delay in the disposition proceedings. In delinquency dispositions where there are 30 or less calendar days between adjudication and disposition, investigating probation officers may have fewer working days to complete their investigation and prepare the disposition report than the parties have to review the document prior to court. The ten day requirement also eliminates any possibility of a practical effort to reduce the total time between adjudication and disposition for those children detailed during that process. The present "10-day rule" has resulted in lengthening periods of detention because additional time is necessary to complete predisposition investigations and disposition hearings must be postponed.

#### Section 8

This section would change the standard for assuming emergency custody in neglect cases to conform to the

same standard used in abuse cases. It would thus allow earlier emergency intervention to protect neglected children. It would also allow assumption of custody of neglected children who need immediate medical attention rather than requiring that their life be endangered.

#### Section 9

Section 9 allows DFYS discretion in filing petitions when emergency custody has been assumed in situations that do not require continued protective custody or DFYS involvement. These instances constitute a small percentage of the emergency custody cases, and involve situations in which a primary or temporary caretaker has allowed the child to wander off and the child is discovered by parties who do not know the family. Under current law, in order to provide temporary shelter for the child until parents are located, DFYS must assume emergency custody. A request to dismiss is often filed with the petition in these situations, and the petition is filed only because the present statute appears to require it. This section eliminates the need for this unnecessary paperwork.

#### Section 10

Section 10 defines the term "sexual abuse" for purposes of civil child in need of aid (CINA) proceedings under AS 47. Although the term "sexual abuse" is now used in AS 47, it is not defined. The proposed definition would prevent constitutional challenges to the state's assumption of jurisdiction over children who are sexually abused by their parents.

To allow DFYS intervention in all cases of suspected sexual abuse, the definition is quite broad. It includes all sexual conduct which is also a crime. Other forms of inappropriate touching are also included, but conduct reasonably necessary for normal caretaker or medical responsibilities is excluded.

#### Section 11

AS 47.17.010 is a statement of legislative intent that protective services should be provided to child victims of abuse and neglect to prevent further harm to the child, enhance the general well-being of children, and preserve family life. Section 11 clarifies that family life should be preserved whenever it is in the best interests of the child to do so.

#### Section 12

This section revises and expands existing law requiring persons in certain professions to report to DFYS suspected abuse of a child by a parent or other caretaker. Under existing law, a significant number of persons who regularly have access to information that a child has suffered harm as the result of abuse or neglect by a caretaker are not required to report that information. The revised

statute focuses upon those individuals who regularly have contact with a child, or a child's family, and are therefore in a position to gain knowledge of child abuse and neglect. These changes are needed to insure that all children abused or neglected by caretakers come to the attention of DFYS.

The subcommittee removed all reference to volunteers, counselors and clergy and changed "investigators" in subsection (7) to "personnel".

Under present law, persons in the categories listed in AS 47.17.020 are required to report suspected child abuse or neglect only if the abuse or neglect is caused by or attributable to the actions of a person "responsible for the child's welfare." Thus, harm caused by a person not related to the child or residing in the child's home need not be reported to DFYS.

Section 12 adds a new provision to the statutes: reports to law enforcement agencies. If a person listed in AS 47.17.020 (the general reporting statute) has reason to believe that a child has suffered harm as a result of injury, neglect, or exploitation by someone other than a family member or caretaker, the person must report that harm to a law enforcement officer (rather than DFYS). The law should require that all instances of abuse or neglect be reported to the authorities, not just intrafamily abuse. All children should be protected under the law, without regard to the identity of the perpetrator or the relationship to the child victim.

If the person reporting the abuse is not aware of the perpetrator's relationship to the victim, Section 12 allows a report to be made to either DFYS or a law enforcement officer.

### Section 13

Section 13 requires film processors to report suspected cases of child pornography to law enforcement authorities for investigation and provide the authorities with copies of the material. Several other states have such a requirement. On at least one occasion in the past, an Alaska man who photographed a young child engaged in sex acts with him was apprehended as a result of a similar reporting requirement in another state. A person who knowingly fails to make a report as required in this section is guilty of a class B misdemeanor under AS 47.17.068 (see sec. 21, below).

The subcommittee has requested a legal opinion from LAA Legal on the constitutionality of seizing a person's property without a search warrant.

### Section 14

The current scope of DFYS services does not extend beyond intra-family offenses. Section 14 clarifies that if, after a preliminary investigation, DFYS determines that the harm was not caused by a family member, the report shall be turned over to a local law enforcement officer.

#### Section 15 - 17

Sections 15, 16 and 17 amend the confidentiality, immunity, and privileged evidence provisions in existing AS 47.17 to make it clear that the applicability of these provisions applies to both civil and criminal proceedings. This clarification is necessary as a result of the appellate court's decision in State v. R.H. and Wetherhorn, 683 P.2d 269 (Alaska App. 1984). The Wetherhorn court held that the phrase "judicial proceeding," as used in AS 47.17.060 (dealing with evidence that is not privileged), refers only to civil proceedings.

The subcommittee specified in section 15 that the release of confidential information is a Class A misdemeanor.

The subcommittee has also requested a legal opinion on Section 17 to determine if it changes Rules of Evidence 504 and 505.

#### Section 18

Section 18 contains a conforming amendment per the clarified definition of abuse in Section 21.

#### Section 19

This section contains a conforming amendment extending existing "B" misdemeanor penalties for failure to report suspected child abuse, as explained above regarding Section 13.

#### Section 20

Section 20 of this bill provides broad authority to the state to enjoin or limit persons who endanger children in the ways specified from having contact with children. While there may be common law authority for this view, statutory confirmation of this authority removes one issue from possible litigation in cases where the attorney general chooses to bring an action to enjoin or limit a person from contact with children. This addresses the problem of no regulation of day care providers who care for less than five children without burdening the public with regulation of all day care providers.

#### Section 21

This section clarifies the definition of abuse in AS 47.17 (reporting statute) in light of existing definitions of "neglect" and "child" in this section. Abuse as used in Title 47 would apply to all incidents of harm against children regardless of who the perpetrator is unless it is specifically stated that the perpetrator must be a

person responsible for the child's welfare. This distinction is necessary, as DFYS's scope does not extend beyond intra-family abuses.

#### Section 22

Existing law requires "practitioners of the healing arts" to report suspected child abuse or neglect. This section expands the definition of this term to include dental hygienists, nurse practitioners, and physician's assistants. Although these health care professionals are considered included in the current definition, this amendment clears up any possible uncertainty by specifically referring to persons who hold these positions.

The subcommittee removed from the definition in existing law: "psychiatrist" and "psychologist" and "psychological associate" which was in the original draft.

#### Section 23

This section clarifies the definition of sexual exploitation in AS 47.17 (reporting statute).

#### Section 24

This section adds new definitions related to the expanded classes of persons who must report child abuse. All references to "volunteers" was removed by the subcommittee.

#### Sections 25 and 26

Section 25 amends AS 47.35.070(a) to bring this statute into conformity with the criminal code by making violations of child care licensing statutes and regulations a class B misdemeanor. Section 26 adds language that gives statutory authority to the Department of Health and Social Services to establish a system of civil enforcement (including the levy of up to \$200 daily in civil penalties) for violations of its licensing statutes and regulations.

This authority will provide the department with a valuable regulatory tool. Presently, the department has only two choices with respect to licensees who violate statutes and regulations. The department can either revoke the license or do nothing. While the department can require the licensee to establish a plan of correction for violations, its only lever to enforce this requirement is the authority to revoke the license. If a system of civil penalties existed, the department would have the additional tool of fining licensees for minor violations of regulations and statutes. The new language makes it clear that imposition of a civil penalty would not preclude criminal prosecution in appropriate circumstances.

Original sponsor: Rules/Governor

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 88 (HESS)

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 the protection of children."

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

8 \* Section 1. AS 11.51.100 is repealed and reenacted to read:

9 Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST  
10 DEGREE. (a) A person responsible for the welfare of a minor under  
11 the age of 12 commits the crime of endangering the welfare of a minor  
12 in the first degree if, the person intentionally abandons the minor  
13 under circumstances creating a substantial risk of physical injury to  
14 the minor.

15 (b) Endangering the welfare of a minor in the first degree is a  
16 class C felony.

17 \* Sec. 2. AS 11.51 is amended by adding a new section to read:

18 Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND  
19 DEGREE. (a) A person responsible for the welfare of a minor under 12  
20 years of age commits the crime of endangering the welfare of a minor  
21 in the second degree if the person with criminal negligence

22 (1) exposes the minor to circumstances creating a substan-  
23 tial risk of physical injury or sexual abuse; or

24 (2) exposes the minor to physical injury by failing to  
25 provide the minor with necessary food, care, clothing, shelter, or  
26 medical attention.

27 (b) Endangering the welfare of a minor in the second degree is a  
28 class A misdemeanor.

29 \* Sec. 3. AS 11.61.125(a) is amended to read:

1 (a) A person commits the crime of distribution of child pornog-  
2 raphy if the person brings or causes to be brought into the state for  
3 [SALE OR] distribution, or in the state distributes, or in the state  
4 possesses, prepares, publishes, or prints with intent to distribute,  
5 [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any mater-  
6 ial that visually depicts conduct described in [UNDER] AS 11.41.-  
7 455(a), knowing that the production of the material involved the use  
8 of a child under 18 years of age who engaged in the conduct.

9 \* Sec. 4. AS 11.61.125 is amended by adding a new subsection to read:

10 (d) In this section, "distribution" includes delivering, sell-  
11 ing, renting, leasing, lending, giving, circulating, exhibiting,  
12 presenting, providing, and exchanging, whether or not for monetary or  
13 other consideration.

14 \* Sec. 5. AS 12.10.020(c) is amended to read:

15 (c) Even if the general time limitation has expired, a prose-  
16 cution under AS 11.41.410 - 11.41.460, AS 11.66.110 - 11.66.130,  
17 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense  
18 committed against a person under the age of 16 may be commenced within  
19 one year after the crime is reported to a peace officer or the person  
20 reaches the age of 16, whichever occurs first. This subsection does  
21 not extend the period of limitation by more than five years.

22 \* Sec. 6. AS 12.45.045(a), is amended to read:

23 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR  
24 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)  
25 In prosecutions for the crimes [CRIME] of sexual assault in any de-  
26 gree, sexual abuse of a minor in any degree, or unlawful exploitation  
27 of a minor, or an attempt to commit any of these crimes [SEXUAL AS-  
28 SAULT IN ANY DEGREE], evidence of the complaining witness' previous  
29 sexual conduct may [SHALL] not be admitted nor reference made to it in

1 the presence of the jury except as provided in this section. When the  
2 defendart seeks to admit the evidence for any purpose, the defendant  
3 shall [MAY] apply for an order of the court at any time before or  
4 during the trial or preliminary hearing. After the application is  
5 made, the court shall conduct a hearing in camera to determine the  
6 admissibility of the evidence. If the court finds that evidence  
7 offered by the defendant regarding the sexual conduct of the complain-  
8 ing witness is relevant, and that the probative value of the evidence  
9 offered is not outweighed by the probability that its admission will  
10 create undue prejudice, confusion of the issues, or unwarranted inva-  
11 sion of the privacy of the complaining witness, the court shall make  
12 an order stating what evidence may be introduced and the nature of the  
13 questions that may [WHICH SHALL] be permitted. The defendant may then  
14 offer evidence under the order of the court.

15 \* Sec. 7. AS 47.10.081(c) is amended to read:

16 (c) The court shall inform the child, the child's parents, [AND]  
17 the attorneys representing the parties, and the guardian ad litem that  
18 the predisposition report will be available to them not less than six  
19 working [10] days before the disposition hearing.

20 \* Sec. 8. AS 47.10.142(a) is repealed and reenacted to read:

21 (a) The Department of Health and Social Services may take emer-  
22 gency custody of a minor upon discovering any of the following circum-  
23 stances:

24 (1) the minor has been abandoned;

25 (2) the minor has been grossly neglected by the minor's  
26 parents or guardian as "neglect" is defined in AS 47.17.070(5), and  
27 the department determines that immediate removal from the minor's  
28 surroundings is necessary to protect the minor's life or provide  
29 immediate necessary medical attention;

1 (3) the minor has been abused by a person responsible for  
2 the child's welfare, as "abuse" is defined in AS 47.17.070(1), and the  
3 department determines that immediate removal from the minor's  
4 surroundings is necessary to protect the minor's life or that immedi-  
5 ate medical attention is necessary; or

6 (4) the minor has been sexually abused under circumstances  
7 listed in AS 47.10.010(a)(2)(D).

8 \* Sec. 9. AS 47.10.142(c) is amended to read:

9 (c) When a child is taken into custody under (a) or (b) of this  
10 section, the department shall immediately, and in no event more than  
11 12 hours later unless prevented by lack of communication facilities,  
12 notify the parents or the person or persons having custody of the  
13 child. If the department determines that continued custody is neces-  
14 sary to protect the child, the department shall notify the court of  
15 the emergency custody by filing, within 24 hours after custody was  
16 assumed [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-  
17 tion alleging that the child is a child in need of aid.

18 \* Sec. 10. AS 47.10.290 is amended by adding a new paragraph to read:

19 (8) "sexual abuse" means

20 (A) conduct against a child that would constitute a  
21 sexual offense under AS 11;

22 (B) the perpetrator's knowingly touching, directly or  
23 through clothing, the genital area, groin, inner thighs, or  
24 buttocks of a child, or causing a child to touch, directly or  
25 through clothing, the genital area, groin, inner thighs, or  
26 buttocks of the perpetrator or another; sexual abuse does not  
27 include reasonable touching in the exercise of normal caretaker  
28 responsibilities for a child or normal caretaker interactions  
29 with a child or a recognized and lawful form of contact that is

1 reasonably adapted to promoting the physical or mental health of  
2 the child;

3 (C) exposing the genital area, anus, breast, groin, or  
4 buttocks of a child to the perpetrator or another for the sexual  
5 gratification of the child, the perpetrator, or another, or  
6 exposing the genital area, anus, breast, groin or buttocks of the  
7 perpetrator or another to a child for the sexual gratification of  
8 the child, the perpetrator, or another; or

9 (D) statements to a child that express a desire or  
10 intent to have sexual contact or sexual penetration with the  
11 child or encourage the child to have sexual contact or sexual  
12 penetration with the perpetrator or another.

13 \* Sec. 11. AS 47.17.010 is amended to read:

14 Sec. 47.17.010. PURPOSE. In order to protect children whose  
15 health and well-being may be adversely affected through the inflic-  
16 tion, by other than accidental means, of harm through physical injury,  
17 [ABUSE OR] neglect, [OR] sexual abuse, or sexual exploitation, the  
18 legislature requires the reporting of these cases by practitioners of  
19 the healing arts and others to the appropriate public authorities. It  
20 is the intent of the legislature that, as a result of these reports,  
21 protective services will be made available in an effort to prevent  
22 further harm to the child, to safeguard and enhance the general well-  
23 being of the children in this state, and to preserve family life  
24 whenever preserving it is in the best interests of the child [POS-  
25 SIBLE].

26 \* Sec. 12. AS 47.17.020 is repealed and reenacted to read:

27 Sec. 47.17.020. REPORTING OF CHILD ABUSE OR NEGLECT. (a) The  
28 following persons are required to report abuse or neglect of a child  
29 as required in (b) and (c) of this section:

- 1 (1) practitioners of the healing arts;  
2 (2) employees of private and public schools,  
3 (3) human services providers;  
4 (4) peace officers, and officers of the Department of  
5 Corrections;  
6 (5) administrative officers of institutions;  
7 (6) child care providers;  
8 (7) court personnel;  
9 (8) employees of domestic violence programs, sexual assault  
10 programs, or crisis shelters.

11 (b) A person listed in (a) of this section, who in the perfor-  
12 mance of the person's occupational duties has cause to believe that a  
13 child has suffered harm as a result of abuse or neglect by a person  
14 responsible for the child's welfare, shall promptly report the harm to  
15 the nearest office of the department. If the person making a report  
16 of harm under this subsection cannot reasonably contact the nearest  
17 office of the department and immediate action is necessary for the  
18 well-being of the child, the person shall make the report to a peace  
19 officer. The peace officer shall take immediate action to protect the  
20 child and shall, at the earliest opportunity, notify the nearest  
21 office of the department.

22 (c) A person listed in (a) of this section, who in the perfor-  
23 mance of the person's occupational duties has cause to believe that a  
24 child has suffered harm as a result of abuse or neglect, shall prompt-  
25 ly report the harm to the nearest law enforcement agency if the person  
26 making the report (1) has cause to believe that the harm was caused by  
27 a person who is not responsible for the child's welfare; or (2) is  
28 unable to determine (A) who caused the harm to the child; or (B)  
29 whether the person who is believed to have caused the harm has

1 responsibility for the child's welfare. If a person making a report  
2 under this subsection cannot reasonably contact the nearest law  
3 enforcement agency, and immediate action appears necessary for the  
4 well-being of the child, the person shall make the report to the  
5 nearest office of the department. The department shall take immediate  
6 action to protect the child and shall, at the earliest opportunity,  
7 notify the nearest law enforcement agency.

8 (d) This section does not prohibit the named persons from re-  
9 porting cases that have come to their attention in their nonoccupa-  
10 tional capacities, nor does it prohibit any other person from report-  
11 ing a child's harm that the person has cause to believe is a result of  
12 abuse or neglect. These reports shall be made to the nearest office  
13 of the department or to the nearest law enforcement agency in the  
14 manner set out in (b) and (c) of this section.

15 \* Sec. 13. AS 47.17 is amended by adding a new section to read:

16 Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person  
17 who, in the course of processing or producing visual or printed  
18 matter, either privately or commercially, has reason to believe that  
19 the matter visually depicts a minor engaged in conduct described in  
20 AS 11.41.455(a) shall promptly report this to the nearest law enforce-  
21 ment agency. The person shall provide copies of the material to the  
22 law enforcement agency along with all information known about the  
23 origin of the matter.

24 \* Sec. 14. AS 47.17.025 is repealed and reenacted to read:

25 Sec. 47.17.025. DUTIES OF PUBLIC AUTHORITIES. (a) After re-  
26 ceiving a report of harm to a child resulting from abuse or neglect  
27 a person responsible for the child's welfare, a law enforcement agency  
28 shall immediately notify the Department of Health and Social Services  
29 and the Department of Law. The Department of Health and Soc

1 Services shall investigate the report and, within 72 hours after  
2 receiving the report, shall provide a written report of its inves-  
3 tigation to the Department of Law for review. If after a preliminary  
4 investigation the Department of Health and Social Services determines  
5 that the harm was not caused by a member of the child's family, the  
6 department shall so notify the Department of Law.

7 (b) A report of harm to a child from abuse or neglect required  
8 from the department by this section must include:

9 (1) the names and addresses of the child and the child's  
10 parents or other persons responsible for the child's care, if known;

11 (2) the age and sex of the child;

12 (3) the nature and extent of the harm to the child;

13 (4) the name and age and address of the person known or  
14 believed to be responsible for the harm to the child, if known;

15 (5) information that the department believes may be helpful  
16 in establishing the identity of the person believed to have caused the  
17 harm to the child.

18 \* Sec. 15. AS 47.17.040(b) is amended to read:

19 (b) Investigation reports and reports of harm filed under this  
20 chapter are considered confidential and are not subject to public  
21 inspection and copying under AS 09.25.110 and 09.25.120. However, in  
22 accordance with department regulations, investigation reports may be  
23 used by appropriate governmental agencies with child-protection func-  
24 tions, inside and outside the state [ALASKA], in connection with  
25 investigations or civil or criminal [JUDICIAL] proceedings involving  
26 [CHILD] abuse, neglect, or child custody. A person, not acting in  
27 accordance with department regulations, who makes public information  
28 contained in confidential reports is guilty of a class A misdemeanor.

29 \* Sec. 16. AS 47.17.050 is amended to read:

1           Sec. 47.17.050. IMMUNITY. A person who, in good faith, makes a  
2 report under this chapter, or who participates in civil or criminal  
3 [JUDICIAL] proceedings related to the submission of reports under this  
4 chapter, is immune from any civil or criminal liability that [WHICH]  
5 might otherwise be incurred or imposed.

6 \* Sec. 17. AS 47.17.060 is amended to read:

7           Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. Neither the physi-  
8 cian-patient nor the husband-wife privilege is a ground for excluding  
9 evidence regarding a child's harm, or its cause, in a civil or crimi-  
10 nal [JUDICIAL] proceeding related to a report made under this chapter.

11 \* Sec. 18. AS 47.17.064 is repealed and reenacted to read:

12           Sec. 47.17.064. PHOTOGRAPHS AND X-RAYS. The department or a  
13 practitioner of the healing arts may, without the permission of the  
14 parents, guardian, or custodian, take the following actions with  
15 regard to a child believed to have suffered physical harm as a result  
16 of abuse or neglect:

17                   (1) take or have taken photographs of the areas of trauma  
18 visible on the child; and

19                   (2) if medically indicated, have a radiological examination  
20 of the child performed by a person who is licensed to administer  
21 radiological examination.

22 \* Sec. 19. AS 47.17.068 is repealed and reenacted to read:

23           Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person who  
24 knowingly fails or refuses to report as required under AS 47.17.020  
25 47.17.023 is guilty of a class B misdemeanor.

26 \* Sec. 20. AS 47.17 is amended by adding a new section to read:

27           Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney  
28 general may bring an action to enjoin or limit a person from contact  
29 with a child not related to the person if the person

- 1 (1) has sexually abused a child;  
2 (2) has physically abused a child;  
3 (3) has failed without lawful excuse to provide necessary  
4 food, care, clothing, shelter, supervision, or medical attention for a  
5 child entrusted to the care of the person; or  
6 (4) otherwise constitutes a substantial danger to the  
7 mental, emotional, or physical welfare of a child.

8 (b) The court may grant an order in the form that is best suited  
9 to protect a child from harm based upon the facts of the case. This  
10 section does not limit the authority of the attorney general or the  
11 court to act to protect a child.

12 \* Sec. 21. AS 47.17.070(1) is amended to read:

13 (i) "[CHILD] abuse [OR NEGLECT]" means nonaccidental [THE]  
14 physical injury [OR NEGLECT], sexual abuse, sexual exploitation, or  
15 maltreatment of a child [UNDER THE AGE OF 18 BY A PERSON WHO IS RE-  
16 SPONSIBLE FOR THE CHILD'S WELFARE] under circumstances that [WHICH]  
17 indicate that the child's health or welfare is harmed or threatened  
18 thereby;

19 \* Sec. 22. AS 47.17.070(6) is amended to read:

20 (6) "practitioner of the healing arts" includes chiroprac-  
21 tors, dental hygienists, dentists, health aides, nurses, nurse practi-  
22 tioners, optometrists, osteopaths, physical therapists, physicians,  
23 physician's assistants [PSYCHIATRISTS, PSYCHOLOGISTS], religious heal-  
24 ing practitioners, and surgeons;

25 \* Sec. 23. AS 47.17.070(7) is repealed and reenacted to read:

26 (7) "sexual exploitation" means  
27 (A) permitting, encouraging, inducing, or employing a  
28 child to engage in prostitution or in the promotion of prosti-  
29 tution as set out in AS 11.66.100 - 11.66.150; or

1 (B) engaging in conduct described in AS 11.41.455;

2 \* Sec. 24. AS 47.17.070 is amended by adding new paragraphs to read:

3 (8) "child care provider" means an adult individual, or an  
4 employee of an organization, who provides care and supervision to a  
5 child;

6 (9) "human services provider" includes an individual human  
7 services provider, and an employee of a human services organization,  
8 such as a social service, youth service, mental health, or substance  
9 abuse agency, or a shelter for runaway or homeless youth;

10 (10) "organization" means a group or entity that provides  
11 care and supervision to a child not related to the caregiver, and  
12 includes a child care facility, pre-elementary school, head start  
13 center, child foster home, residential child care facility, recreation  
14 program, children's camp, and children's club;

15 (11) "person responsible for the child's welfare" means the  
16 child's parent, guardian, foster parent, a person responsible for the  
17 child's care at the time of the alleged abuse or neglect, or a person  
18 responsible for the child's welfare in a public or private residential  
19 agency or institution.

20 \* Sec. 25. AS 47.35.070 is amended to read:

21 Sec. 47.35.070. VIOLATIONS. A person who violates a provision  
22 of this chapter [AS 47.35.010 - 47.35.100] or a regulation adopted  
23 under this chapter [AS 47.35.010 - 47.35.100] is guilty of a class  
24 misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE  
25 THAN \$200].

26 \* Sec. 26. AS 47.35.070 is amended by adding a new subsection to read:

27 (b) The department may by regulation devise a system of civil  
28 enforcement. The system may employ civil penalties not to exceed \$200  
29 for each day during which one or more violations of a licensure

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statute or licensing regulation occurs. The imposition of a civil penalty does not prevent prosecution and sentence for a criminal offense.

March 28, 1985

To: Representatives Koponen and Gruenberg  
House Health, Education, and Social Services  
Pcuch V  
Juneau, Alaska 99811

From: Pudge Kleinkauf  
4201 McInness  
Anchorage, Ak. 99508  
Phone: 786-1714 wk. 563-6073 hm.

Re: Testimony for H.E.S.S. hearing  
Thursday, March 28, 1985

( Please distribute to all committee members )

I object to removing psycho-therapists' from the list of  
health professionals required to report child abuse.

Present reporting law should not be diluted.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

To: House Hess Committee  
From: Margot Dick, Coordinator  
Re: HB88  
Date: 3/28/85

## Sections 1 and 2

There is a need to define "a person responsible for the welfare of a minor". The definition on page 11, line 15 of the bill refers to AS 47.17. Sections 1 and 2 are changes and additions to AS 11.51, which is a different statute with a different title.

In the Governor's original bill, it was my understanding that Section 1 was meant to apply to parents by the use of the language "person legally charged with the care of the child". And, Section 2 was meant to apply to day care providers and babysitters by the use of the language "entrusted with the care of a child".

Given the assumption that the definition of the new language, "a person responsible for the welfare of a minor," employed in Section 2 of this version would be identical to the definition in the bill under AS 47.17, the Network supports the use of the standard of criminal negligence. Without this, we have a concern that Section 2 could negatively impact low income mothers.

## Sections 12 and 22

For the record, the Network opposes the omission of psychiatrist and psychologist from the definition of "practitioner of the healing arts", and the deletion of "counselors, including church counselors, and therapists whether licensed or not."

It is our position that the welfare of the child supercedes the necessity for confidentiality in the client/therapist, counselor, psychologist, psychiatrist relationship. We feel this is especially true with respect to the reporting in instances of child sexual assault.

The treatment of child sex offenders is a new field and there is much controversy over its effectiveness. It is our opinion that reporting should not be left up to the discretion of the individual mental health professional, as they may not be in a position to adequately evaluate the damage the offender may cause to the child.

The Network requests that the definition of human service providers be expanded to include employees of domestic violence and sexual assault programs or crisis shelters, and that the separate reference to them in lines 9 and 10 be deleted.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 88  
 Title: An Act Relating to Child  
Protection  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: ALASKA COURT SYSTEM  
 Program Category Affected: \_\_\_\_\_  
Administration of Justice  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		123.9	131.3	139.2	147.6	156.5
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		123.9	131.3	139.2	147.6	156.5
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND		123.9	131.3	139.2	147.6	156.5
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		123.9	131.3	139.2	147.6	156.5

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME		3	3	3	3	3
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561  
 Division: Alaska Court System Date: 2/4/85

Approved by Commissioner: *[Signature]* Date: 2/4/85  
 Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):

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

12/1/83

HOUSE BILL 88

FISCAL NOTE ANALYSIS

Judges statewide have indicated that this legislation will require additional judicial resources. It is the administrative director's assessment that assignment of additional judges on a pro tempore basis would provide adequate judicial coverage while minimizing the cost to the state.

ALASKA COURT SYSTEM  
 HB 88 - CHILD PROTECTION  
 FISCAL IMPACT

PERSONAL SERVICES:

	SALARY	BENEFITS	TOTAL COST
Pro Tem Superior Court Judge Ketchikan - 6 months	\$9,203	\$13,418	\$22,621
Pro Tem Superior Court Judge Kenai - 6 months	9,847	13,563	23,410
Pro Tem Superior Court Judge Anchorage - 12 months	18,405	26,836	45,241
In-Court Clerk (Range 12B) Anchorage - 12 months	24,516	8,116	32,632 -----
Total Personal Services			\$123,904 =====

Subsequent fiscal years adjusted to reflect six percent inflation.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST:**

Bill/Resolution No.: House Bill 88  
 Title: "An Act relating to the protection of children..."  
 Sponsor: Rules/Governor  
 Requestor: (H) H.E.S.S.  
 Date of Request: January 25, 1985

**FISCAL DETAIL:**

Agency Affected: DEPARTMENT OF CORRECTIONS  
 Program Category Affected: \_\_\_\_\_  
Administration of Justice  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Offender Confinement, Reformation and Supervision

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

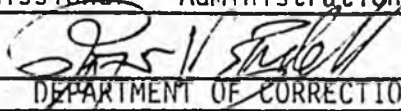
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary.

This legislation will have no fiscal impact on the Department of Corrections.

Prepared By: William W. Ladwig  
 Division: Deputy Commissioner - Administration

Phone: 465-3376  
 Date: January 29, 1985

Approved by Commissioner:   
 Agency: DEPARTMENT OF CORRECTIONS

Date: January 30, 1985

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

DEPARTMENT OF COPRECTIONS

POSITION PAPER

HB 88 "An Act relating to the protection of children, and amending Rules 504, 505, and 506, Alaska Rules of Evidence, and Rule 6(r), Alaska Rules of Criminal Procedure."

The Department of Corrections supports this legislation which will enhance the ability of the state to protect children who have or may potentially become victims of child abuse or neglect.

Prepared By:

*Cynthia Nelson*

Cynthia Nelson  
Special Assistant

Approved By:

*R. V. Endell*

Roger V. Endell  
Commissioner

Date:

*January 30, 1985*

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 2-5-85

REQUEST

Bill/Resolution No.: HB 88  
Title: Child Protection

Sponsor: Rules Committee  
Requestor: House HESS  
Date of Request: 1-17-85

FISCAL DETAIL

Agency Affected: Public Safety  
Program Category Affected: Administration of Justice  
BRU, Program or Subprogram(s) Affected:  
1) Alaska State Troopers &  
2) Administration (Records & Identification)

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger Phone: 465-4338  
Division: Administrative Services Date: 2-4-85  
Approved by Commissioner: Robert J. Sundberg Date: 2-4-85  
Agency: Public Safety

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

## DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

BILL SHEFFIELD, GOVERNOR

POUCH N  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-4356

OFFICE ADDRESS: 450 WHITTIER STREET

March 28, 1985

The Honorable Niilo Koponen, Co-Chair and  
The Honorable Max Gruenberg, Co-Chair  
House Health, Education & Social Services Committee  
Alaska State Legislature  
Capitol Building  
Pouch V  
Juneau, Alaska 99811

Dear Representatives Koponen and Gruenberg:

I am concerned about the proposed amendments to HB88 that remove requirements for psychologists and psychiatrists to report child abuse under AS 47.17.

The intent of AS 47.17 is to prevent further harm to a child by providing protective services. With the Legislature's and Governor's emphasis on child protection it is not consistent to dilute existing law which requires psychologists and psychiatrists to report child abuse. Psychiatrists and psychologists may, in the course of treating a client, learn that their client or someone else has abused a child. In the safety of the therapist's office, the client may assure the therapist that the abuse will not continue or minimize the extent of the abuse.

Offenders often rationalize or minimize their behavior by saying it's sex education or blaming the behavior on someone else, the child or a spouse. Believing it is wrong and knowing it is illegal and yet feeling it is not that harmful or is someone else's fault, may cause the offender to want to talk about it but not tell the complete truth.

Attached is a paper prepared by Maureen Saylor, Director of the Sex Offender Treatment Program at Western Washington State Hospital. Page five describes the sex offender's cycle of remorse and re-offending. It is possible to imagine an offender seeking help during the remorse phase and stopping therapy when the sexual abuse begins again.

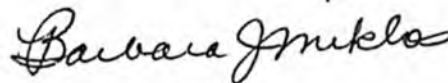
Not all therapists recognize the denial of sex offenders unless they have particular training and expertise in sex crimes. For years, society and its therapists have minimized the harm to children and the extent of the problem. Without investigating each case and talking to the victims, it cannot be known if the child is out of danger. Removing this reporting requirement would make it appear that protecting the child victim is really not one of our State's highest priorities.

Representatives Koponen and Gruenberg  
March 28, 1985  
Page Two

In addition, in order to be consistent with elder abuse reporting requirements, the list of people required to report should include some professionals listed in AS 47.24.010 which are now not covered in AS 47.17.020 or amended HB88:

a member of the clergy  
an emergency medical technician or paramedic in the mobile intensive care program.

Sincerely,



Barbara Miklos  
Executive Director

Enclosure a/s

THE CHILD MOLESTER CHARACTERISTICS

IMPACT AND TREATMENT

TESTIMONY BY

MAUREE SAYLOR, M.A.

DIRECTOR

SEX OFFENDER TREATMENT PROGRAM

WESTERN STATE HOSPITAL

FORT STEILACOOM, WASHINGTON

FOR

THE UNITED STATES ATTORNEY GENERAL'S TASK FORCE

ON

FAMILY VIOLENCE

January 19, 1984  
King County Courthouse  
Seattle, Washington

I am Maureen Saylor and I am the Director of the Sex Offender Treatment Program at Western State Hospital, Fort Steilacoom, Washington, south of Tacoma, Washington. I have over ten years experience with the evaluation, assessment and treatment of the sex offender. I have provided direct treatment services to the sex offender since June, 1973, and I have been the Director of the program since September, 1977. I have been involved, either directly, or as a member of the staff decision making body, in the evaluation, assessment and treatment of over 2,000 sex offenders.

The Sex Offender Program at Western State Hospital is one of the older programs in the country and began functioning in 1965. From the late 1960's to 1977, it was the Sex Offender Program for the entire State of Washington and received commitments through superior courts from all counties in the state. As the population grew and demands for services increased, it was decided to develop a second program east of the mountains in November, 1977, and since that time we have had principle responsibility for the counties west of the Cascade Mountains, but also including three counties east of the mountains, Yakima, Kittitas and Klickitat Counties. The program population has grown significantly over the last ten years. There was a population of approximately 120 in 1973, rising to 212 in 1977, and with the development of the Eastern State Hospital program, population stabilized temporarily, rising again to over 200 in 1980 at which time it became necessary to establish a waiting list for individuals committed to the program.

The individuals committed to the program are convicted felony sex offenders who have been sentenced and the sentence deferred or suspended to send them for evaluation and then subsequent commitment for treatment. Continuing criminal justice control resides in the superior court of initial commitment and is maintained throughout the duration in treatment, including the reentry phases and during the period of time the individual is actively on probation.

There are two methods of commitment. The first is in conjunction with Washington State Law, R.C.W. 71.06, the Sexual Psychopath Law which allows the prosecutor to file a petition to send the individual to the hospital for 90 days

observation to determine "sexual psychopathy". This again follows conviction and sentencing. The second method of commitment is as a condition of probation and the judge orders the individual to enter and successfully complete the treatment program as a condition of probation.

There are three phases of treatment, the inpatient phase which averages 24 to 30 months, but is contingent on individual behavioral change and may be longer if needed. At the end of the inpatient phase, when the offender has accomplished the objectives and treatment goals, he is referred back to the committing superior court for approval before he is allowed to go onto the reentry phases of work release and outpatient. During the work release phase (a minimum of three months) the individual continues to live at the hospital and go out during the day under definite scheduled leaves to work or go to school, whichever his discharge contract calls for. He is required to attend the evening meeting of his particular therapy group. Pleasure leaves are granted on the basis of fulfilling goals and objectives of work release and are given on a graduated basis. If the individual successfully completes work release, he is graduated onto the outpatient phase of treatment which is a minimum of 18 months and begins living in the local community, either reentering the home with a spouse or living with another program member. During both of these phases, the individual is jointly supervised by the program staff and a probation officer who has a specialized case load consisting of only the Sex Offender Program work release and outpatient probationers.

#### PROGRAM POPULATION:

There has been a significant increase in the demand for services and management of the sex offender over the last ten years. As was previously stated, the program population has doubled at times which necessitated the development of a waiting list and the current program census capacity is 198.

We believe the increased demand for services is the direct result of increased victim reporting as the result of good victim agencies; better apprehension of offenders by the police; increased charging and conviction by the special prosecuting units in Western Washington; and the increased credibility of the program as a better alternative for the management of certain kinds of sex offenders.

Currently, 60% of the offenders committed to the program are child molesters, the other 40% are adult rapists. As the result of an increased number of excellent community treatment specialists, the less "at risk" offender is more apt to be treated in the community and as a result, we are receiving the more recalcitrant, chronic, predatory and dangerous offender in the program.

#### THE CHILD MOLESTER

The child molesting population committed to our program consists predominantly of individuals who are either too chronic, too dangerous or present too many problems to be treated in the community, or those individuals who have been tried in community treatment and have been unable to live up to their conditions of probation and have therefore been revoked and sent to us for treatment. The spectrum of child molesting behavior ranges from the individual who has committed in-home offenses with his own daughters to the individual who makes friends of a family and molests their children, to the stranger who takes children off the streets and out of parks and playgrounds. It is important for you to be aware that the stranger is by far in the minority of those offenders committed to us for treatment. The child molester is much more frequently a known individual to the child who may be a father, relative, neighbor, friend, or other individual who has influence over the child's life and has access to them. For example, the school teacher, Boy Scout leader, big brother, etc. The average individual we have seen who has molested a child differs very little from any cross section of any community or the society at large. Perhaps what makes it so difficult for the public to understand is that on the face of things, the individual who commits child sexual abuse looks no different than anyone else. He quite frequently has held down a job for long periods of time, participates in community activities, relates (at least at a superficial level) to neighbors and friends, and in other areas of his life, conducts his life no differently than anyone else. He is not the proverbial "dirty old man" or some "crazed" individual who is readily identified and is the individual most of us grew up being told to stay away from. He is an individual who the child trusts and generally believes will do them no harm.

His manner of operating in the family situation is usually to use his position as father to get the child to participate in behavior he has identified

that they should do for a variety of different reasons. For example, "Daddy would not do anything to you that is not OK". "I am teaching you something you need to know". It may begin with a long, slow process of desensitizing the child through wrestling, tickling, partial undressing, etc. until they are desensitized to the fact that the behavior which is occurring ought not to happen. Most frequently, bribes and seductive kinds of activity on the part of the offender is their mode of operation. They attempt to make it a special relationship or a secret one which no one else should know about or else the child will lose the special privileges or attention the father is bestowing on them. With other relatives, friends, neighbors, etc., there is frequently what we refer to as a "grooming process" where once again the offender begins to slowly desensitize the child to the behavior and gradually works up to it in ever increasing steps. The frequent justification used again is "they haven't really said no", "they really are enjoying it", "I am not really hurting them", "someone should teach them about sex besides a stranger". Again, bribery and seduction are the usual mode of operation. However, sometimes threats of revealing or telling other people are used as well. It is also true that on occasion certain offenders may use threats of physical harm or actually physically coerce their own children or other children into engaging in the behavior. It is also important to be aware that most of these individuals are extremely manipulative in their behavior and activities and will deliberately pick times when their wives or other responsible adults are not in the area or are out of the home or will find opportunities to take children to other places where other adults will not have any control, i.e., a camping trip or other special activities where the offender and the child will be by themselves. It is not at all uncommon for an offender molesting within a family situation to serially molest several daughters as each approaches the particular age of his interest. As undoubtedly you have heard from others giving testimony, victims have been known to range all the way from a month and a half old babies up to adolescence. While the predominant number of victims for our offender population is girls, about 25 to 30% of our offenders have molested minor boys.

At this point in time, none of us actively engaged in providing treatment for the child molester can say ahead of time who will or will not engage in this particular behavior. As I have mentioned previously, there is really no particular

set of characteristics which are readily identifiable that sort this population out from the general public in any significant way prior to the behavior occurring.

What we do know, however, is the pattern of operation which usually exists for individuals engaging in child molesting behavior. There is often a preference for children which begins either pre-pubescent or early adolescence and may even be the result of the child molester having been molested as a child himself. In our particular population, we find that approximately 60% of the offenders who are committed to us for child molesting offenses were molested themselves as children. However, as the particular preference or interest in children begins, the individual begins to fantasize about the behavior, often masturbates to fantasies of the behavior and finds a good deal of pleasure in the thoughts and activity and reinforces his behavior with a very powerful mechanism of pleasurable sexual orgasm. Once the individual has begun to fantasize the behavior, he also begins to develop a thought process which justifies or rationalizes the particular behavior in his head. For example, she needs to know about sex, it is not going to hurt, I am not doing anything bad, etc. This is often coupled with the individual's personal inability to relate to peer appropriate people, to be assertive enough to get his needs met, etc. The important part that fantasy plays in his life is that it really is a preparation or planning for engaging in the particular behavior. It is not uncommon at all for the offender to identify a particular victim ahead of time, fantasize activity with the child ahead of ever committing it. Frequently after the offender has sexually abused the child, he will go through a period of feeling depressed and awful and terrible about what he has done. He will swear to himself that he will never repeat the behavior again. This will eventually be overcome again by the rationalizations he has used to engage in the behavior and once again, the behavior will occur. It is really a cycle pattern or operation that the offender moves from one point to the other. The behavior is an addictive, compulsive behavior similar in its dynamics and operation to other forms of addictive behavior like drugs, alcohol, over-eating and cigarette smoking. In the case of the sex offender, he has found his offending behavior to be extremely

pleasurable and important to him. Despite the fact that his behavior is disgusting, reprehensible and repugnant to society at large, he has rationalized his behavior sufficiently to overcome either the personal or societal prohibitions against it.

Most certainly, the period of time required between the various phases of the pattern development vary from individual to individual but in our experience, they most definitely are there and do exist.

Child molesting behavior is most definitely sexual in nature though certainly deviant and not normal. The sex offender/child molester has developed a deviant sexual arousal system and finds fantasy of sexual behavior and sexual behavior with children stimulating and pleasurable to him. There are certainly other components which may be connected with the offending behavior, but I strongly believe that stating child molesting is not a sexual behavior is to misinterpret the activity and to neglect one of the major areas which must be addressed if interference with the behavior is to occur. This particular bias is based on the program's experience as well as other colleagues and researchers who have clearly demonstrated sexual arousal to deviant themes existing in the child molester.

#### CHILD MOLESTER VERSUS INCEST OFFENDER:

There has periodically been discussion on the part of some individuals that there is a difference between the "child molester" and the "incest offender". In my experience, this does just not bear itself out, at least in terms of the dynamics of the behavior. It is often true that the incest offender may be at less risk than the child molester and therefore may be able to be more appropriately treated in the community if he is removed from the victim. It may also be that he has fewer victims. It may also be that there have been longer spans of time between his initial introduction to interest in the behavior than when he acted it out. However, we have found, and once again research has borne this out, that the pattern of offending behavior which was described earlier does not differ significantly between the incest offender and the child molester. Researchers have clearly found when measuring arousal in the child molester and incest offender that there is no significant difference in the way

that these two groups arouse to child items. The theory which purports that incest behavior is somehow not sexual, just does not bear itself out either in my experience or in the experience of researchers. From my opinion, this is perhaps most important when it comes to actually treating the incest offender the way they need to be treated and also in being conservative in one's estimate of the likelihood of the behavior recurring.

#### TREATMENT VERSUS INCARCERATION:

It is important, given the addictive, repetitive nature of the child molester's behavior, that when possible treatment/intervention to teach the offender to control his behavior occur. If the offender does not learn to significantly alter his pattern of operation, the likelihood is that his behavior will go on indefinitely. Prison terms do not tend to interfere with the behavior but only suspend it. Since generally speaking, as a society we are not prepared to lock offenders up forever, most will eventually get out and child molesting does not seem to be an age related phenomenon like rape. While we do not really know why there are few rapists over the age of 40. However, in the case of the child molester, he does seem to go on forever and we have personally seen individuals in their 60's, 70's and 80's who are still committing child molesting behavior and may have done so either intermitterdly or with regularity for 30, 40 or 50 years of their lives. It is not uncommon for this behavior to have been interrupted on several occasions by prison terms.

I do not believe that all child molesters can be treated. I believe it is the responsibility of the treatment community to conservatively estimate who it is they can treat and who they cannot treat. It is particularly important that we be conservative in our estimation of risk and that first and foremost in our minds, must be the protection of the community and the prevention of future victims. While it is indeed true that a number of incest offenders or perhaps other types of child molesters may be safely treated in the community, it is important that that selection is carefully done and proper controls be exerted if the offender is allowed to be in the community on probation and treated. There must always be a legal hold on sex offenders in order to get them to involve themselves and stay with the appropriate kind of treatment. In my experience,

and in the experience of many of my colleagues who treat individuals in the community, it is a rare sex offender who seeks treatment voluntarily and it is an even rarer individual who stays in treatment given the intensity and demands made on the individual. Over a ten year period of time, I no longer believe everyone can be helped but believe that energies and resources must be directed toward individuals who present less risk and more likelihood of success. Those who are repeat offenders, chronic and long term, usually present little likelihood of modifying a lifelong addictive behavior pattern and most certainly, the interests of the community and future victims would be better served if these individuals were locked up for very long terms.

I hope I have communicated that I do not believe all offenders can be treated, but there certainly are a fair group of child molesting offenders who can be successfully treated provided they are evaluated appropriately, risk is identified conservatively and the treatment agency or institution has the necessary staff and resources to provide the best treatment it can to change the offender's behavior. One of the greatest disservices that we as treatment experts can do is to make broad, sweeping claims and take on offenders who are either beyond our ability to control in the community or too chronic or too dangerous for us to ever be able to say that they are safe to be at large.

#### TREATMENT:

On the positive side, a good deal has been learned over the last ten years about the sex offender and what will work to change his behavior. There has been some excellent research done by a number of individuals which has contributed to our ability to both understand and treat the child molester. While they continue to be a difficult population to treat, we do have a number of means available to us to effect change in these individuals. We have very reasonable success when we evaluate individuals conservatively, select appropriate candidates for treatment and provide them with the kind of treatment which will change their behavior. We have a number of objective means available to evaluate change within the individual which further serves to help us identify whether we are being successful or not.

Treatment for the sex offender must include the existing known techniques which actively attack and decrease the individual's deviant sexual behavior system. If this area is not addressed in treatment, then the individual has not learned to control the major drive which leads to his offending behavior. Likewise, treatment must be aimed at changing the individual's thought process and the ways in which he has learned to justify, rationalize and minimize his behavior. If this area is not addressed as well, he returns to the community with the same reasons available to him which allowed him to reoffend in the first place. Therefore, measures must be taken to interfere with and change his thinking process, the way he views himself and the way he views other individuals. On the other side of the coin, there have been some deficit areas which have been identified in a significant number of individuals who engage in child sexual abuse. It is therefore necessary to assess for these deficits and provide the individual with information and training which will allow him to improve in these areas. These include social skills, communication skills, anger management, sex education, etc. Most definitely, a part of every sex offender's treatment needs to include assisting the individual in developing an appropriate sexual arousal system which will allow him to choose an appropriate partner to meet his sexual needs. Therefore in summary, treatment to be successful must on one hand, assist the sex offender in controlling his deviant sexual impulses and on the other hand, assist him in improving in other areas of life which will allow him to function more appropriately and be successful in peer relationships. At this point in time, and given "the state of the art", we most certainly do not have all the answers as of yet concerning sex offenders. But we do know a good deal about them and we do have means available to us to be reasonably successful in working with a select group of individuals.

#### SUMMARY:

In conclusion then, we have seen a significant increase in the number of offenders coming to our attention over the course of the last year. This is true of sex offenders in general but most particularly, individuals committing child sexual abuse. We have learned a good deal about the child molester and recognize that he is extremely difficult to identify prior to his engaging in

the behavior or being apprehended. We know that as a rule, these individuals are not significantly different from any other cross section of the community. We know that child sexual abuse is a sexual behavior and while there may be other components and reasons for the offender committing the behavior, it is certainly a key component to why he commits the behavior. While there may be degrees of difference in terms of the dangerousness or chronicity between the incest offender and the child molester, the basic components which make up their pattern of operation and their arousal system are not significantly different. This fact is of significant consideration in identifying what kind of treatment is necessary to effect change in either the child molester or incest offender. We have learned a good deal about treating these people in the last ten years and if we are conservative, adequately identify and estimate risk and pick clients who demonstrate a greater likelihood of success, we are able to have a significant impact on a fairly substantial number of individuals who molest children.

I would like to thank you for the opportunity in providing information and testifying before this committee.

AMENDMENTS

FOR DRAFT CS FOR HB 88

BY GRUENBERG

1. Page 1, line 11  
After "12" insert:  
as defined in AS 47.17.070 (11)
2. Page 1, line 20  
After "age" insert:  
as defined in AS 47.17.070 (11)
3. Page 4, line 23  
After "inner thighs," insert:  
breast
4. Page 9, line 29  
After "child", delete "not" and insert:  
, whether or not the child is

POSITION PAPER

HOUSE BILL NO. 88

For an Act entitled: "An Act relating to the protection of children; and amending Rules 504, 505, and 506, Alaska Rules of Evidence, and Rule 6(r), Alaska Rules of Criminal Procedure."

House Bill No. 88 is an important part of a comprehensive approach to enhancing the State's ability to protect children who have been abused or neglected. Both improved laws and resources are needed to provide effective State intervention in cases of child abuse or neglect.

House Bill No. 88 contains numerous improvements to existing civil and criminal law. This Bill is the result of extensive review and proposals by personnel in the Departments of Health and Social Services and Law. A detailed section by section analysis of the Bill was transmitted to Representative Ben Grussendorf and printed in the January 18, 1985 House Journal. Major components of the Bill will:

- facilitate prosecution where appropriate;
- improve the law as it applies to child victims, through hearsay evidence changes and a "rape shield";
- expand the criminal records check of persons employed in positions of authority over children;
- provide municipalities with an effective method of enforcing curfews;
- provide practical procedures for predisposition reports in delinquency proceedings and for assuming emergency custody of an abused or neglected child;
- expand the child abuse reporting law to include "mental injury" and expand the classification of persons required under the law to report suspected child abuse or neglect;
- authorize the State to enjoin dangerous persons from child contact; and
- authorize a system of civil fines to enhance enforcement of the child care licensing law.

Practical and important improvements to the State's civil and criminal laws are needed but will not alone meet the challenge of ensuring adequate protective services for children in Alaska. Both the child protection staff increments contained in the Division of Family and

Youth Services operating budget and the management information system for the division contained in the capital budget must be fully funded to adequately address the problem. Only with improved laws, resources, and an ability to manage will Alaska break the destructive cycle of child abuse and neglect.

RECOMMENDED: Michael L. Price  
Michael L. Price, Director  
Division of Family  
and Youth Services

DATE: Feb 5, 1985

APPROVED: John R. Pugh  
John R. Pugh, Commissioner  
Department of Health  
and Social Services

DATE: 2/5/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST Governor's  
Bill/Resolution No.: Request - HB 88  
Title: An Act.....child abuse and  
neglect  
Sponsor: Governor Sheffield  
Requestor: \_\_\_\_\_  
Date of Request: 1/16/85

FISCAL DETAIL  
Agency Affected: Health & Social Services  
Program Category Affected: \_\_\_\_\_  
BRU, Program or Subprogram(s) Affected:  
Social Services, Juvenile Custody

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Michael L. Price Phone: 465-3170  
Division: Family and Youth Services Date: 1/17/85

Approved by Commissioner: John R. Pugh Date: 2/10/85  
Agency: HEALTH + SOCIAL SERVICES

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

7/1/84

GOVERNOR'S REQUEST  
FISCAL NOTE  
PAGE 2

IV Analysis:

A. Assumptions

This legislation results in significant changes in the civil child protection laws and in the laws relating to criminal prosecution of persons who fail to provide adequate protection for children. As a result, there is a high potential for increased service demands on division social workers. The extent and magnitude of these impacts are undefinable at this time, and caseload impacts cannot be precisely quantified. It is believed that the child protection staff increments requested in the Governor's FY 86 budget will provide staff levels necessary to provide adequate levels of investigation and family protective services. It must be emphasized that this fiscal note does assume full funding of the Governor's FY 86 increments, otherwise an amended fiscal note will be required.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

January 25, 1985

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation, was established in 1977 to facilitate coordination of domestic violence and sexual assault services on a statewide basis. The Network represents 20 domestic violence and sexual assault programs.

Network programs have been involved in the prevention, intervention, and treatment of child sexual assault through community education and public awareness efforts, curriculum development and implementation, therapeutic counseling services, coordination with social service and criminal justice agencies, and legislative advocacy.

In June 1984 the Network formed a Child Sexual Assault Task Force for purposes of reviewing currently applied policies and practices to determine their appropriateness and the consistency of their application. The work product of the Task Force is the attached Summation of Major Issues Arising in Handling Child Sexual Assault Incest Cases and Recommendations for Resolution.

The Summation, which deals exclusively with child sexual assault perpetrated by a family member, outlines "ideal" policies and practices, those which we feel should be implemented in order to achieve the most favorable outcome. Some of these policies and practices have been implemented by some agencies in some communities; others are either inconsistently applied or not applied at all.

It is the Network's intention that the policies and practices detailed in the Summation be adopted by all agencies involved with child sexual assault cases. It is our firm belief that coordinated and comprehensive education, prevention, intervention, and treatment efforts will positively impact the high incidence of child sexual assault in our state.

We welcome your comments on this report, and suggest that you contact Ruth Lister, WICCA, Inc., Fairbanks (452-2293) or Rosemary Murray, Alaska Women's Resource Center, Anchorage (276-0528) to provide input or obtain additional information.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

SUMMATION OF MAJOR ISSUES ARISING IN HANDLING  
CHILD SEXUAL ASSAULT INCEST CASES  
& RECOMMENDATIONS FOR RESOLUTION

Prepared by:

Child Sexual Assault Task Force

Ruth Lister, WICCA, Inc.

Rosemary Murray, Alaska Women's Resource Center  
Co-chairs

Summation of Major Issues Arising in Handling  
Child Sexual Assault Incest Cases  
& Recommendations for Resolution

In all phases of involvement with child sexual assault incest cases, the Network accepts the following as a philosophy: the child victim's disclosure is to be credited, the non-offending parent should be encouraged to be supportive and protective of the child victim, and responsibility for the assault always rests with the offender. All policy statements are predicated on that philosophy.

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
1. <u>Intervention</u>	child reports sexual assault to non-offending parent and/or others; child is protected by DFYS or criminal intervention; if possible, child stays in the home; child receives immediate advocacy and support; number of interviews required of child should be minimized	assessment of non-offending parent's ability to protect & be supportive of child should be made; receives immediate advocacy to understand need to be supportive & protective of child; obtains TRO to protect child if needed	offender is investigated while child is protected; offender should be removed from the home if victim is living at home and non-offending parent is supportive
2. <u>Coordination</u>	DFYS and police/troopers coordinate investigation of victim's report of assault and provide protection of child; child is interviewed in private and is protected from onset of interview; initial and on-going advocacy should be provided by local or closest Network program or other advocacy agency  DFYS coordinates immediate contact with qualified treatment and/or advocacy program/people  Communities should develop protocols for purposes of protection of the child and to facilitate coordination. Community protocols should be reviewed on an annual basis and should include input from DFYS, law enforcement, criminal justice system, Network programs, mental health centers, schools, and other agencies involved in child sexual assault cases	DFYS and police/troopers coordinate investigation of assault, with inclusion of advocate for non-offending parent, if requested; initial and on-going advocacy should be provided by local or closest Network program or other advocacy agency	DFYS and police/troopers coordinate investigation of offender; report of investigation is made to DA

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ISSUES

VICTIM

NON-OFFENDING PARENT

OFFENDER

---

3. SAFETY

the priority issue is insuring the victim's safety so s/he is not placed in a position to be re-victimized

support given to non-offending parent in protecting the victim and other siblings; provide counseling, shelter, and support when domestic violence has also occurred

strict controls over access to victim and other potential victims are to be applied in setting bail conditions, incarceration, treatment, work release, and probation; safety issues are to be adequately addressed throughout the criminal justice process; regular monitoring and safety checks should occur while offender is on probation and should be conducted by Probation Officer; probation for no less than 10 years is recommended

because of the possibility of suicide and violence to family, arrest should occur immediately

Victim and family members must receive full protection from time of report. Monitoring and treatment services should be available for at least two (2) years

4. IMPRISONMENT

victim is reassured that s/he is not responsible for the incarceration ; victim is encouraged to understand that the offender is being punished for wrong-doing

provided support in assuming role as single parent while offender is in prison and/or treatment and out of the home; non-offending parent should not be required to comply with unreasonable and/or non-therapeutic court ordered obligations, such as visitation, etc.

punishment for crime through imprisonment; treatment and rehabilitation will be provided in a secure facility; treatment will continue if offender is in a work release program or halfway house

## ISSUES

## VICTIM

## NON-OFFENDING PARENT

## OFFENDER

5. Treatment

receives therapy and information necessary to work through difficulties arising from assault and subsequent disruption in family after disclosure; individual/group treatment is made available

victim is given choice, in her/his own time, whether or not to have contact with the offender; all contact between victim and offender must be supervised

receives support to work through any problems arising from single parenthood and any emotional/financial barriers faced in supporting child; individual/group treatment is made available

1) gets treatment with focus on sexual deviancy as first stage; 2) treatment provided in a secure facility and continuing treatment through community-based programs; 3) with continuation of treatment for sexual deviancy and at the request of the victim, later stages of treatment may focus on healing the relationship with the victim and other family members

All treatment staff must have adequate training in treatment model, and all treatment must be predicated on the basis that the responsibility for the assault always rests with the offender. The well-being of the child victim must be the primary concern for all family members and treatment providers. All decisions regarding the potential, possible, and/or actual reuniting of the family should be made only when the child victim agrees and only when treatment focusing on sexual deviancy will be continuing. Contact between the child victim and the offender or any other person who is not supportive of the child should be restricted and should only occur under circumstances that are therapeutic for and agreed upon by the child

6. Rural Issues

Local safe homes and support and advocacy must be immediately available to victims and non-offending parents. Community education and organizing, and prevention and education for children and adults, are high priorities. All personnel who are a part of prevention, intervention, and/or treatment in child sexual assault cases must be specifically trained in the dynamics of child sexual assault

7. Community Safety

Through media, education, and community organizing, the harmful effects of child sexual assault and the need for protection are made clear. Age appropriate prevention information should be made available to all children

There is no known "cure" for sex offenders except their control over their own behavior. Provision and/or "completion" of a treatment or rehabilitation program should not be assumed to guarantee the safety of the child victim or potential victims

8. Adult Survivors

Treatment should be made available, either free of charge or at reasonable sliding scale fees, for adult survivors of child sexual assault by qualified treatment staff

9. Training

All therapists providing treatment in the areas of child sexual assault must have a minimum of forty (40) hours of specialized training in victim, survivor, or offender treatment

Those working in the field without a master's degree in social work or counseling must, in addition to having received specialized training, be a staff member of a counseling agency or advocacy program and be supervised by a degreed person

Training in the dynamics of child sexual assault and appropriate recognition and intervention techniques should be made available to all who come into contact with victims, non-offending parents, and offenders. This training should, at the minimum, be provided to law enforcement personnel, criminal justice personnel, teachers, day care providers, social workers, and staff members of agencies providing counseling and advocacy

If limited funds are available for training, priority in allocation should be given to those agencies demonstrating a history of effective and broad based training experience and/or provision of service

# STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POLICE N  
JUNEAU, ALASKA 99811  
PHONE: 465-4322

September 13, 1984 RECEIVED

SEP 17 1984

Josephson,

The Honorable Joe P. Josephson  
Chair, Senate Health, Education,  
and Social Services Committee  
1024 W. 6th  
Anchorage, AK 99501

Dear Senator Josephson:

This is in response to the questions you raised regarding limited criminal background checks for all licensed day care employees under the proposed Department of Health & Social Services regulations.

At the outset, enclosed for your committee's perusal is a flow chart depicting the process for limited criminal background checks as related to those persons with supervisory power over children covered under AS 12.62.035. Also provided is the form this Department uses.

Your letter addressed the concern of child abuse in child care settings. At the present time, under AS 12.65.035, there are only certain conviction records that may be released. Enclosed is a list of those crimes. As you will note, child abuse is not among them.

The Department can only provide conviction information on the noted crimes. Arrests and charges cannot be released. The files are purged if there are no arrest entries of a person after seven years for misdemeanor or ten years for felonies. If there is an arrest after purging, the file is reactivated. If only a State record check is requested, only that information contained in the State's files is available. That is, if a person was arrested for crimes outside the State, but never arrested in this State, no records of such arrests would appear on the State criminal history files. If the request for the record check is to include the F.B.I. files, then an additional fingerprint card is required as is \$12.00, which is charged by the F.B.I. for each applicant record check.

The Honorable  
Senator Josephson

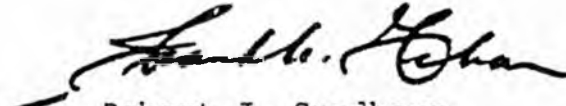
-2-

September 13, 1984

At this point in time, the impact of the criminal records check program has not been felt by the Department. Of the various school districts, only Fairbanks has recently implemented the program. No additional funding or personnel were appropriate to this Department as a result of passage of AS 12.62.035, although one additional person was requested when House Concurrent Resolution 45 was put forth to encourage use of the program. It was felt that once a common use of the criminal records check process under AS 12.65.035 was established, there would be a definite impact upon this Department's resources. If in fact the Department was required to process all licensed child care employees, in addition to other requests, that impact would become insurmountable. To handle the entire program, in light of the proposed child care regulations, would require two (2) additional Records & Identification personnel and a minimum of \$7.5 for postage, mailing material, and printing.

It is hoped this answers your questions on the subject.

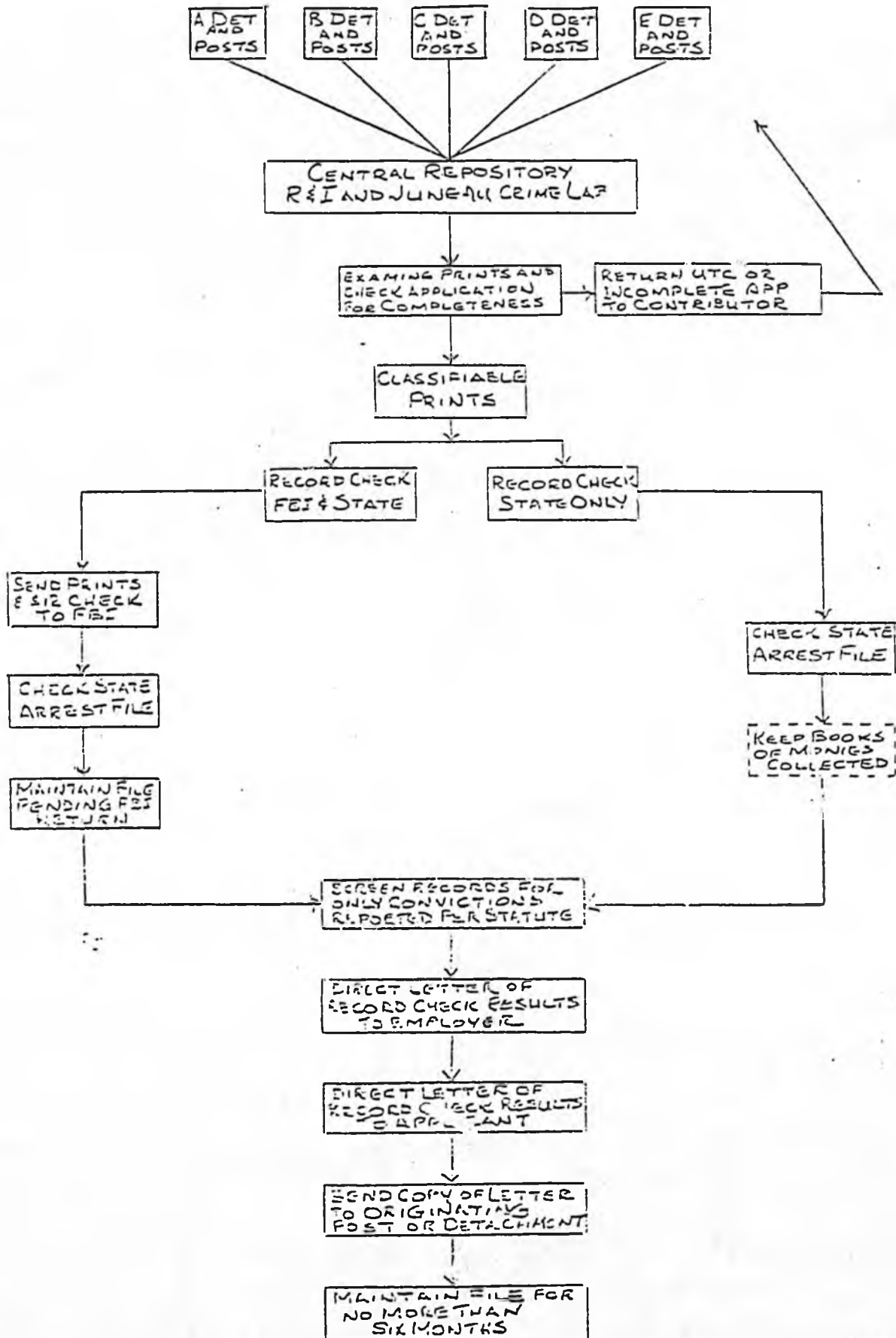
Sincerely,

  
For Robert J. Sundberg  
Commissioner .

Enclosures: a/s

FINGERPRINTS GENERATED BY AS 12.62.035

FLOW THRU CENTRAL REPOSITORY



STATE OF ALASKA  
DEPARTMENT OF PUBLIC SAFETY

AS 12.62.035 authorizes the release of certain criminal justice information to an "interested person." "Interested person" is defined in AS 12.62.-035(c)(2) as: "a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person, that employs or solicits the employment of a person to serve with or without compensation in a position in which the person has or would have supervisory or disciplinary power of over a minor." A minor is a child under the age of 18.

PART I. REQUEST FOR CRIMINAL HISTORY INFORMATION

"Applicant" is the person requesting the criminal justice information.  
"Subject" is the person about whom the request is made.

- 1) Name of Applicant: \_\_\_\_\_
- 2) Position or Title: \_\_\_\_\_
- 3) Organization (if any): \_\_\_\_\_
- 4) Address: \_\_\_\_\_
- 5) Mailing Address: \_\_\_\_\_
- 6) Phone Number: \_\_\_\_\_ IRS No. (if any): \_\_\_\_\_
- 7) Description of applicant. Check the box which best describes the applicant:
  - A)  public school/school district F)  local, state or federal government agency
  - B)  private school
  - C)  nursery/day care center G)  private business
  - D)  church/religious organization H)  individual
  - E)  youth organization I)  other
- 8) If box F, G, H, or I is checked above, describe the applicant. If an organization, explain its purpose and what it does. Explain specifically the duties the subject has, or will have, which involve supervisory power over children.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 9) List two people who are familiar with the organization (or individual applicant) and can serve as a reference:  
NAME: \_\_\_\_\_ PHONE NO: \_\_\_\_\_  
NAME: \_\_\_\_\_ PHONE NO: \_\_\_\_\_
- 10) Name of Subject: \_\_\_\_\_
- 11) Residence Address: \_\_\_\_\_
- 12) Mailing Address: \_\_\_\_\_

- 13) Phone Number: \_\_\_\_\_ Social Security No. \_\_\_\_\_
- 14) DOB: \_\_\_\_\_ Driver's License No. \_\_\_\_\_  
 Eye \_\_\_\_\_ Hair \_\_\_\_\_
- 15) Sex: \_\_\_\_\_ Hgt: \_\_\_\_\_, Wt: \_\_\_\_\_, Color: \_\_\_\_\_ Color: \_\_\_\_\_
- 16) Aliases or prior names: \_\_\_\_\_
- 17) Position subject now occupies or is being considered for: \_\_\_\_\_

PART II. AGREEMENT FOR THE DISSEMINATION OF CRIMINAL HISTORY INFORMATION

I hereby certify that I have read the information contained on the first page of this form, and that (check one:) I am \_\_\_\_\_ or I represent \_\_\_\_\_ an "interested person" as defined in AS 12.62.035. I hereby request a record of any convictions of the above-named subject for contributing to the delinquency of a minor or a sex crime as defined in AS 12.62.035(e).

I certify that the subject of this request (check one): is employed \_\_\_\_\_ or is being considered for employment \_\_\_\_\_ (with or without compensation) in a position involving supervisory or disciplinary power over a child or children under the age of 18. I certify that employment considerations are the sole reason for this request for information.

In exchange for the release of the requested information, I agree that any information released to me will remain confidential, and will be used only to make lawful employment decisions. I agree to take all possible precautions to prevent the disclosure of this information to unauthorized persons, and agree to immediately report to the Alaska State Troopers any intentional or accidental disclosure of this information by anyone to unauthorized persons.

I understand that unauthorized dissemination or other misuse of this information will result in the denial of future requests for information and may subject me to criminal penalties, including a fine of up to \$1,000, a jail sentence of up to one year, or both.

\_\_\_\_\_  
 Signature of Applicant

\_\_\_\_\_  
 Date

To be filled out by D.P.S. employee receiving this request:

Form of identification shown by applicant: \_\_\_\_\_  
 Name of D.P.S. employee \_\_\_\_\_

\_\_\_\_\_  
 Driver's License No. \_\_\_\_\_  
 State I.D. Card No. \_\_\_\_\_ Title \_\_\_\_\_

\_\_\_\_\_  
 Other. Describe: \_\_\_\_\_  
 Date \_\_\_\_\_

This request is for information contained in (check only one):

\_\_\_\_\_  
 Alaska Justice Information System - subject's fingerprint card attached.

\_\_\_\_\_  
 FBI criminal records - subject's fingerprint card and a check for \$12.00 made out to "Federal Bureau of Investigation" are attached.

CRIMES FOR WHICH CONVICTION RECORDS

MAY BE RELEASED UNDER AS 12.62.035

(Ch. 66, SLA 1983 - SCS CSHB 375 (Jud.) am S)

AS 11.41.410	Sexual Assault in the First Degree
AS 11.41.420	Sexual Assault in the Second Degree
AS 11.41.430	Sexual Assault in the Third Degree
AS 11.41.434	Sexual Abuse of a Minor in the First Degree
AS 11.41.436	Sexual Abuse of a Minor in the Second Degree
AS 11.41.438	Sexual Abuse of a Minor in the Third Degree
AS 11.41.440	Sexual Abuse of a Minor in the Fourth Degree
AS 11.41.450	Incest
AS 11.41.455	Unlawful Exploitation of a Minor
AS 11.41.460	Indecent Exposure
AS 11.51.130	Contributing To The Delinquency of A Minor
AS 11.61.110(a) (7)	Disorderly Conduct (exposure)
AS 11.66.100	Prostitution
AS 11.66.110	Promoting Prostitution in the First Degree
AS 11.66.120	Promoting Prostitution in the Second Degree
AS 11.66.130	Promoting Prostitution in the Third Degree

---

Also included are convictions for an attempt to commit any of the above crimes, and out-of-state convictions which would have been violations of one of these statutes if the offense had been committed in Alaska.

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

REPLY TO:

OFFICE OF THE CHIEF PROSECUTOR  
POUCH KC  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

December 27, 1984

Ms. Nancy Bennett  
Staff, Senate HESS Committee  
Pouch V  
Juneau, Alaska 99811

Dear Ms. Bennett:

At long last, I am answering your letter to Mr. Hickey regarding Alaska's child abuse laws. I apologize for the delay in responding to your letter; as you know, some of the questions you raised involve complicated legal and policy issues. I will do my best to answer your questions here, but, as always, we remain available to discuss any of these matters in greater detail with you or Senator Josephson. Addressing the issues in the order in which they were raised in your letter:

1. Videotaping and closed circuit television.

You were quite correct in your assumption that the use of videotaped evidence and closed circuit television at trial may raise significant constitutional problems. The most obvious area of concern is the defendant's right under the sixth amendment to the United States Constitution and Art. I, sec. 11 of the Alaska Constitution to confront and cross-examine the witnesses against him.

In terms of protecting the child victim from further trauma during the legal process, the best situation would be to allow the child to testify in an informal setting, with only the judge, the child, and the prosecutor present. This raises obvious confrontation issues. One solution might be the installation of a two-way closed circuit television system in the courtroom. The child could testify from an adjacent interview room, and her testimony broadcast into the courtroom. This would allow the defendant to observe the child and hear the testimony, but would allow the child to avoid the trauma of testifying in the presence of her assailant.

I don't know how much it would cost to install such a television system in Alaskan courts, but I'm sure the cost would be significant. A two-way television system has been installed on an experimental basis in a courtroom in Fairbanks. This system allows a defendant in a misdemeanor case to be arraigned

or sentenced without being transported from the jail to the courthouse. Deputy Commissioner James Vaden, Department of Public Safety, may be able to provide you with information regarding the cost of this system. Preliminary reports indicate that the system is working well, and it may eventually be expanded to other communities within the state.

There is another, perhaps more feasible, way to improve procedures for the presentation of evidence in child sexual abuse cases. The Criminal Division strongly favors the amendment of the criminal rules to allow the introduction of "hearsay" evidence in grand jury proceedings involving sexual offenses against children. The introduction of hearsay at the grand jury does not present confrontation problems because the sixth amendment right is a trial right -- it does not apply at the grand jury stage.

AS 12.45.047 presently allows the introduction at trial of the videotaped testimony of a child victim in sexual abuse cases. This process works similar to the two-way TV system discussed above, but contemplates the "pre-recording" of testimony which is later shown to the jury. The testimony is still taken in the defendant's presence, and the child is subject to cross-examination. AS 12.45.047 does not allow the introduction of a child's videotaped statement, given, for example, to a police officer or social worker during an initial interview. Such a statement is considered "hearsay," and is ordinarily not admissible at grand jury or trial.

Virtually all other jurisdictions, including the federal courts, allow the introduction of hearsay in grand jury proceedings for all crimes, not just child sexual abuse cases. If you would like to pursue this idea, I would be happy to assist in drafting a bill. Since the bill would require the amendment of a court rule of criminal procedure, a two-thirds vote of each house would be required for passage.

For your general information, I am attaching a recent article which discusses prosecution in child abuse cases, including the use of videotaped evidence.

## 2. Special child abuse units.

"Special crimes" prosecution units have been formed in both the Anchorage and Fairbanks District Attorney Offices to handle child sexual abuse cases. These units include two or three attorneys, a paralegal assistant, and secretarial staff. The members of the unit have been specially trained in the prosecution of child sexual abuse cases, and are sensitive to the needs of young victims and their families.

We have found that these units work very well. The attorneys develop professional contacts with the police investigators and social service workers who also deal with these cases. Because these are generally the only kind of cases the attorneys handle, they gain a great deal of practical experience and expertise. Another advantage of these units is that they allow "vertical prosecution." That means that the attorney who initially screens the case and interviews the victim and witnesses is one who also takes the case to grand jury and trial. This eliminates the need for multiple interviews of the child or family members, and allows the child to build a rapport with the attorney handling the case.

While the specialized unit concept is a good one, the feasibility of expanding its use to smaller offices is doubtful. Many of our district attorney offices in rural areas are staffed by one or two attorneys only. Obviously, those attorneys must handle all types of criminal cases, not just cases of child abuse.

There is a great deal of room for refinement in the present system, even in the specialized units used in the larger communities. The Governor's Criminal Justice Working Group has been studying the possibility of the creation of a pilot "Child Protection Unit" in Anchorage. As envisioned, this unit would be located in a separate office under the Department of Law. The unit would contain a director, several social workers, a therapist (to provide initial crisis counseling and continuing support during the legal proceedings), Anchorage Police Department and Alaska State Trooper investigators, paralegals, secretarial support staff, and several trained trial attorneys.

The attorney assigned to a particular case would handle both the criminal prosecution and the civil "child in need of aid" proceeding for that case. This combination of civil and criminal responsibilities would be one of the major advantages of this unit. Resources would be more effectively used, because the duplication of effort which sometimes occurs in the present system would be eliminated. The goals in both the civil and criminal proceedings would be more compatible, and the potential for conflicting court orders reduced.

In addition to centralizing various professionals now scattered among several state and municipal agencies in the Anchorage area, the Child Protection Unit could act as a training resource for other police departments, social service agencies, and prosecutors' offices statewide. The unit would also be able to offer legal and technical support in complicated cases which might otherwise be difficult to pursue in smaller communities.

A number of the staff positions required for such a unit could be transferred from existing agency positions. Other agency positions authorized in the governor's FY 86 operating budget could also be assigned to the unit. To function as envisioned, however, some additional positions would have to be created. If the creation of this unit is something that you believe Senator Josephson or the HESS committee would be interested in, I would be glad to meet with you to discuss the concept in more detail.

3. Criminal penalties for juvenile sex offenders.

As you note in your letter, the child sexual abuse laws were revised in 1983 (ch. 78, SLA 1983). AS 11.41.440 now provides that an offender under the age of 16 commits sexual abuse of a minor in the fourth degree, a class A misdemeanor, if he engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender.

We see two problems in the existing law. One is that, in some cases, this "A misdemeanor" classification is not sufficient to reflect the seriousness of the crime committed. For example, in the Palmer area about a year ago a group of boys forcibly raped a young child at knife point. The fact that even a forcible rape is a misdemeanor if it is committed by a person under the age of 16 makes it less likely that the district attorney will seek or the court grant a "waiver" of the offender to adult court, even if the offender appears not to be amenable to treatment under the juvenile justice system.

The other problem is that some sexual assault cases involving an offender under the age of 16 may not be pursued vigorously enough in the juvenile justice system. Studies indicate that most adult sex offenders began their assaultive behavior at a very young age. As a general rule, the younger the offender the greater the opportunity for successful treatment. Potential sex offenders should be identified and treated while still teens. By the time these offenders reach adulthood, it will be much more difficult to achieve any effective change in their attitudes and behavior.

4. DFYS confidentiality requirements.

AS 47.17.020 requires specified classes of professional persons to report suspected cases of child abuse. Under AS 47.17.040 these reports, and the results of DFYS investigations, are confidential. The statute allows the information to be used "in connection with investigations or judicial proceedings involving child abuse...." In State v. R.H. and Wetherhorn, 638 P.2d 269 (Alaska App. 1984) the Alaska Court of Appeals ruled that the phrase "judicial proceeding" as

used in the child abuse reporting laws referred only to civil child protection proceedings under AS 47. This has created some uncertainty about whether information contained in reports of harm or DFYS investigative reports may be provided to the Criminal Division for use in a criminal prosecution of the offender.

Prosecution of child molesters is a child protection function. Criminal prosecution, and the ensuing penalties, may sometimes be the only effective way to make sure that the offender does not continue to abuse young children. We suggest that the language in AS 47.17.010, 47.17.025, 47.17.040, and 47.17.060 be amended to establish that the legislature intends that the contents of child abuse reports be made available to law enforcement and prosecution authorities so that serious felony crimes can be detected, investigated, and prosecuted. Although effective treatment for sexual offenders is an important goal, unless and until an effective treatment system can be developed and thoroughly evaluated, criminal prosecution remains an essential facet of Alaska's child protection system.

#### 5. Criminal history background checks.

AS 12.62.035 allows an employer and other specified persons to request a check of the criminal history records of a person who holds or is applying for a position in which the person has or would have supervisory or disciplinary authority over a minor. The employer specifies whether he wishes a check of Alaska's records only, or of national FBI records as well. The FBI will process records check requests for a nominal fee (\$12), but such checks often take up to two months to be returned.

Under the present system, the Department of Public Safety (DPS) may release only that information specifically designated in the statute. Basically, this is convictions for a sex crime or crimes involving contributing to the delinquency of a minor. See AS 12.62.035(a), (e). These narrow restrictions mean that, for example, DPS may not inform an employer that there is an outstanding warrant for the arrest of the prospective employee. It also means that convictions for other serious crimes, such as murder or felony assault, may not be reported, even if the victim of the felony was a young child.

We recommend that the legislature consider amending the existing law to broaden the scope of information which may be released upon receipt of an appropriate request. Your suggestion about reporting arrest data raises some difficult constitutional problems, however. The mere fact that an arrest was made does not mean that the person actually committed the alleged offense and oftentimes criminal history records do not reflect the ultimate disposition of each arrest. A person

denied employment on the basis of arrest data might well be able to claim that he has been unfairly treated. Such a provision might well be struck down on due process grounds, or subject the state to potential civil liability.

6. Penalties for enticement of children.

As you know, there is no state "enticement" statute, although an attempt to commit sexual abuse of a minor in any degree is also a crime. A bill introduced last session, HB 444, would have added an enticement type law to the criminal code.

Generally speaking, existing sexual abuse laws already cover most objectionable conduct. There may be some few instances where the suspect's actions do not constitute sexual abuse or attempted abuse, and where a provision similar to that proposed in HB 444 would be of some value. The statute would have to be narrowly drawn to avoid challenge on overbreadth or vagueness grounds. While such a statute may be of limited value, we would certainly be willing to work with you in an effort to draft a constitutionally defensible provision.

7. Statewide Child Abuse Agreement; Draft Legislation.

Your letter invited us to comment on other issues relating to child abuse. In case you haven't seen it yet, I am enclosing a copy of Alaska's Statewide Child Sexual Abuse Agreement. This agreement, signed by the Governor and the Commissioners of the Departments of Law, Public Safety, Health and Social Services, and Corrections, establishes general guidelines for cooperation and coordination among state agencies in their response to reports of child sexual abuse.

Because of the vast differences in location, size, accessibility and availability of resources among Alaskan communities, it is only at the local level that the details of each agency's role in child sexual abuse cases can be worked out. The agreement therefore does not attempt to establish overly detailed statewide agency procedures. Instead, it represents a commitment to work with other agencies and organizations in local communities to develop more specific agreements among law enforcement, prosecution, social service, and treatment agencies, taking into account the needs of a particular community.

The agreement obligates each of the four state agencies to develop written internal policies and procedures to be used by agency personnel when responding to reports of child sexual abuse. The agencies are required to develop these policies and procedures by January 23, 1985, and to implement them by March 25, 1985. Agency staff are now drafting the internal policies and procedures for the various departments.


The Department of Law is also now in the process of drafting a comprehensive "child protection package" for the governor's consideration and submission to the legislature. We anticipate that this bill will address some of the problems discussed in this letter, including access to reports of harm and the use of hearsay evidence in grand jury proceedings in child abuse cases. The bill will also address day care licensing requirements, and will empower the state to seek civil injunctions against persons who are not qualified to provide child care.

I hope the above information is of assistance to you in considering legislative action during the next session. We appreciate the opportunity to comment on these issues. Once again, please accept my apologies for the delay in responding to your letter.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

DANIEL W. HICKEY  
CHIEF PROSECUTOR

By:   
Gayle A. Horetski  
Assistant Attorney General

November 30, 1984

The Honorable Joe Josephson  
Alaska State Senate  
1526 "F" Street  
Anchorage, AK 99501

Dear Senator Josephson:

These questions were presented for the Division of Family and Youth Services' response at the Department of Health and Social Services (DHSS) hearing. This response was prepared prior to the Policy Conference on Young Children which is being sponsored by your committee. Certainly, additional information and suggestions will come from the conference.

We are also transmitting the text of Michael Price's testimony (Enclosure 1) given at the hearing, as well as answers to the follow-up questions from Nancy Bennett.

I. ADEQUACY OR INADEQUACY OF EXISTING STATUTES:

1. Are existing statutes governing the licensing of child care facilities, child protection, and the prosecution of child sexual abuse cases adequate?

We have identified a number of improvements that could be made, but have not done a comprehensive analysis. Currently statutory improvements are being considered for administrative sponsorship. A child protection legislative package will be proposed.

2. If not, what suggestions are offered by witnesses to improve our statutes, either

- (a) with respect to the substantive definition of criminal offenses, or

DHSS is not proposing substantial changes to the definition of criminal offenses.

- (b) the procedural framework in which prosecutions are undertaken and conducted, or in which child care facilities are inspected and licensed, and the background of caregivers is examined?

You may be aware of the tri-departmental child sexual abuse agreement (Enclosure 2) which was signed by Governor Sheffield on September 25, 1984. The Departments of Public Safety, Law and Health and Social Services, in cooperation with other local

public and private agencies are currently developing a model protocol and local protocols relating to investigation and prosecution to provide assistance for children who have been sexually abused. Implementation of the protocols is scheduled for January 24, 1985.

The Child Protection Legislative Package mentioned in question # 1 addresses:

- enablement to prosecute day care providers and other caretakers who endanger children entrusted to their care through criminally negligent conduct;
- relief of DHSS from the obligation of conducting home studies and reports unless the child is a "hard to place" child;
- filing petitions for emergency custody on the next business day following the emergency assumption of custody;
- definition of the term "sexual abuse" for use in child in need of aid proceedings under AS 47.10;
- permitting prosecutors to use information in prosecuting offenses against children which is obtained from reports of abuse filed pursuant to AS 47.17;
- restriction of contact with children by persons who have neglected, sexually or physically abused children, or who present a danger to children;
- authorization to DHSS to perform criminal history checks on various people who are responsible for the care of children and who come in contact with children in state-licensed facilities
- increasing the criminal penalties for violations of state licensing statutes and regulations and provision of authority to DHSS to promulgate regulations creating a system of civil enforcement of licensing statutes and regulations,
- other provisions are being considered and drafted.

## II. ADEQUACY OR INADEQUACY OF DEPARTMENT OF HEALTH AND SOCIAL SERVICES FUNDING LEVELS.

3. How many child care facilities are now licensed by the Department of Health and Social Services?

At the time of the hearing there were 150 Child Care Centers and 567 Family Child Care Homes. A November 1, 1984 summary of Alaskan day care facilities and their capacity is Enclosure 3.

4. How are these facilities spread out around Alaska, and how many are in Anchorage alone?

Please refer to the same enclosure as for question # 3.

5. Does the Department require additional positions to monitor day care facilities?

Yes. Please see the enclosed 1984 "Child Abuse and Neglect" report (Enclosure 4) to Governor Sheffield. Five additional positions are being requested in the FY 86 budget. Governor Sheffield has gone on public record as supporting additional social workers, licensing staff and clerical staff in next year's budget.

6. If so, how many positions are required? Where would the positions be located, and what personnel qualifications and range levels for these positions are contemplated?

Please refer to Appendix A, "Recommended Staff Augmentation by Location" in the enclosed 1984 report to the Governor, and the enclosed class specifications for a Social Worker III and a Community Care Licensing Specialist I (Enclosure 5).

7. Is the Department making requests for additional positions to the Governor, for inclusion in the executive budget request for FY 1986?

Yes. As stated earlier, Governor Sheffield has gone on public record as supporting additional social work, licensing, and clerical staff. The budget review process is not yet completed.

### III. LICENSING AND STANDARDS FOR CHILD CARE.

8. What criteria are considered in the licensing process?

Please see the enclosed 1977 regulations (Enclosure 6) and the 1984 Child Care Facility Regulation revisions (Enclosure 7). The revisions have been adopted and are currently under review in the Department of Law.

9. Should the criteria be expanded?

Please see the cover for the 1977 Day Care Regulations and compare the contents with the cover page for the 1984 regulations.

10. If so, is a statutory change required?

A statutory change was considered desirable for criminal history clearance authority.

11. How do our licensing provisions compare with trends in other states where day care facilities are licensed?

After a review of comparative research done on the child care regulations of all the states, we have found that our requirements will be in line with requirements of other states. In addition, we have gained extensive experience since 1977. We are aware that cost is a factor. Our belief is that no criteria need be expanded beyond that presently proposed. A possible exception is on the criminal history clearance since we've not yet determined which persons will fall under required clearance.

12. Where are the standards for licensing articulated or promulgated?

The standards for licensing are promulgated in Alaska Administrative Code Title 7 Chapter 50.120 -- 275 under the authority of Alaska Statute Title 47 Chapter 35.010 -- 100.

13. What, if any, new criteria for licensure are under consideration by the Department?

Provisions have been proposed for

- the care of handicapped children upholding the principle that the parents or guardian have primary responsibility in working out a plan of care for the child after choosing a facility that can best care for the child;
- the creation of toddler and kindergarten categories and changes in the staff-to-child ratios;
- development of application wait listing and a processing sequence policy;
- the addition of the complaint investigations;
- implementation of an abbreviated annual monitoring policy;
- requirements for a facility to have at least one caregiver with basic current first aid and CPR training certificates on duty at all times;
- the requirement for orientation and training of caregivers;
- a change from an annual to a biennial licensing process in conformance with statute change;
- provisions for school age children; and
- night time care, and safer more adequate transportation.

Not all of the new areas under consideration have been delineated here, but these are some significant and important ones proposed for change.

14. Assuming that child sexual abuse does not just occur in licensed day care facilities, what ought to be the state's role with respect to the problem in other types of places or facilities, such as in licensed or contracted foster care homes, or other types of child care or pre-school institutions?

There are some persons who endanger children and should not have contact with children as was indicated in the hearing. Child sexual abuse may occur when a baby sitter goes into a child's home, in community service programs such as Boy Scout and Girl Scout programs, recreation programs, Big Brothers/Big Sisters, exempt private schools, pre-elementary schools, public schools, etc. As part of the child protective legislative package detailed in question # 2(b), we are considering legislation that would enjoin certain persons from contact with children. A comprehensive approach should be used by the state to safeguard against child sexual abuse. We support what others are doing too.

The division has embarked on its first public awareness effort through contracting with Alaska Video Productions for \$75,000 for production of a number of brochures, flyers, posters, television and radio spots.

- Five brochures will provide information on the child abuse reporting law for five target groups: early childhood personnel, school system personnel, medical professionals, mental health professionals, and community human service providers. Seven additional brochures will detail specific services available to the general public through the division including: child protective services, adult protective services, foster care and day care licensing, parent information on emergency custody, how to select an early childhood program for parents, youth service facilities, and community based youth probation programs.
- A one page fact sheet will address all division programs and the delinquent minors, child in need of aid, and elder abuse statutes with explanations suitable for the general public.
- Six separate posters with graphics depicting children and the elderly will address delinquency prevention, physical abuse, child neglect, child sexual abuse, elder abuse, and the need for foster homes.
- Five one minute television public services announcements address the following content: reporting child abuse and neglect; reporting elder abuse; healthy parenting techniques; positive family life; and the relationship of neglect and abuse to delinquency.

--- Five radio spots in five languages are being completed regarding child abuse and neglect reporting. Five elder abuse reporting radio spots are being produced and translated into five languages.

In the case of day care, parents are in the facility every day and share the responsibility to monitor the care being provided. This is why public awareness is a critical factor in the prevention of child abuse. Providers and other community agencies share in the responsibility.

The Policy Conference on Young Children initiated by you trains parents and child care providers to deal with child abuse. Child abuse and neglect prevention will be addressed.

The division will publish a guidebook to implement the revised Child Care Facility Regulations which will include employee screening guidelines, which employers may use before they hire an individual.

The Council on Domestic Violence, through contractors, is working with school districts to provide training to children to report "bad touching."

The division's current practice to guard against child sexual abuse in foster homes is to perform a criminal history background search on all adults residing in the home, to require three positive references, and to conduct an extensive interview of foster parent applicants.

The authority of AS 12.62.035 allows any employer to examine the criminal records of employees who supervise children. Finger printing is required under this authority.

The new Spiderman comic book published by the Marvel Comics Group in cooperation with the National Committee for Prevention of Child Abuse is a method of teaching children how to fend for themselves. Such publications should be given the importance of widespread distribution.

We understand limited federal funding has become available for an information and referral service to assist parents in child care selections. We are currently researching the authority statute and possible delivery mechanism.

No one agency or group can solve the problem of child abuse. All of us share the responsibility for protecting children. Achieving better protection of children will require a comprehensive systemic approach involving the public, parents, legislators, several departments of state government, and the court system, as well as the Division of Family and Youth Services. Above all, it will require a commitment to provide the necessary resources!

15. In what facilities can the Department assert jurisdiction, and in what facilities does existing law oust the Department from such an assertion?

The Department can assert jurisdiction in:

- a "child care center" which is a place in which child care is provided for seven or more children;
- a "family child care home" which is a place, usually a residence in which child care is provided for no more than six children who are not related to the operator;
- a "foster home" which is a private residence in which 24-hour care is provided for five or fewer children who are not related by blood, marriage, or adoption to the foster parent;
- an "adult foster home" which is a private residence in which 24-hours care is provided for five or fewer residents, who because of age infirmities or handicap, continuously require accommodations and care, including the immediate availability of the foster caregiver;
- a "residential child care facility" which is a place which provides 24-hour care for one or more children who are not related by blood, marriage, or legal adoption to the owner or operator and includes facilities called group homes, institutions, and maternity homes as defined in AS 47.35;
- an "adult residential care facility" which is any facility providing 24-hour care for one or more adult residents who because of age infirmities, advanced pregnancy, or handicap, continuously require accommodations and care including the immediate availability of care providers.

The Department does not assert jurisdiction over:

- a residence in which child care is regularly provided for four or fewer children, unrelated to the resident caregiver;
- an establishment whose purpose is primarily educational and serves children aged three years and older;
- a facility exempt from state regulations under federal law;
- a facility operated by the federal government, a municipality, or a school district;

--- a foster home or a residential facility for the first 90 days of operation.

16. Are the Department of Education or the Department of Community and Regional Affairs given regulatory jurisdiction over facilities for young children, aside from day care facilities?

The Department of Education regulates special education services and also has jurisdiction over schools for children ages three through five years when the schools primary function is educational. Those programs not approved by the Department of Education are supervised by DHSS unless they do not receive direct state or federal funding and are therefore exempt.

The Department of Community and Regional Affairs (CRA) may assist parents in paying for child care if the child care home or center is licensed either by the state or the city. When revocation or denial of the child care license is being considered, CRA is notified and may cease funding. (AS 44.47.250 -- 310)

17. Does the Department have the power to inspect child care facilities without advance notice to owners and operators?

AS 47.35.010 states that "the department may investigate and supervise licensees" and again in AS 47.35.030 that "the department may inspect and examine an institution, home or place, or the performance of a service." Attorneys have advised us that there are no limitations on this. We are making it clear in revised regulations, ". . . the division will, at its discretion, seek a search warrant".

18. If not, why not?

N/A

19. Are background checks available for day care center employees, and facility owners? If not, what (if any) statutory changes are required to provide for such background checks?

Please refer to question III. 10.

IV. INTERACTION OF ADMINISTRATIVE AND PROSECUTORIAL AUTHORITIES, AND OF STATE AND LOCAL AGENCIES.

20. How do the Department and local police agencies interact, when a facility is under criminal investigation?

The sexual abuse protocols will address interaction between the Department and local police agencies when a facility is under criminal investigation so there is a definite procedure in each location.

21. In this interaction, how are the interests of affected children safeguarded while an investigation is taking place?

If it is a licensed facility, our experience is limited, but includes; immediate license revocation; contact of parent(s) or guardian or placing agency, if any, within hours to bring about the best course of action for the child; obtaining a search warrant to secure child record cards in order to learn of additional children that may be receiving care at the facility; required removal of the alleged perpetrator from the facility until the investigation is complete; assistance to parents in child care facilities in obtaining alternate child care arrangements.

22. Is there a developed and standard protocol governing the rights of children and parents during the course of an ongoing investigation of a facility, and expressing, for example, when the parents are to be notified of a suspected problem under police investigation?

No, this, too, should be addressed in the protocol being developed.

23. Are videotapes used to interview children in cases of suspected child sexual abuse occurring in a day care facility? If not, why not?

AS 12.14.047 allows the videotaping of testimony of a child who has been sexually abused. The testimony is presented by the prosecutor and victim before the trial judge. The defendant has a right to be present and have an attorney present and the right to cross examine the victim. The testimony can then be used at the actual trial.

Video equipment is not always available in all locations, and even in urban areas where equipment is available there are still some logistic and educational/attitudinal problems to be solved. There is an attempt to use it when it is available though, and the division promotes its extensive use or the use of closed circuit TV testimony.

24. If this question is answerable without jeopardy to any ongoing criminal investigation, were videotapes used in the case to which I alluded in my opening statement? (The Committee has received conflicting information in this regard.)

Based upon a conversation which a Department employee had with the police, it is our understanding that the police did videotape the children that they were interviewing.

25. Does a contract exist with the Municipality of Anchorage to license (Enclosure 8) day care facilities within the Municipality? If so, is the state satisfied that the Municipality has enough investigators, with sufficient training, authority, and time to investigate child care providers and their staffs in Anchorage, pursuant to such a contract?

We do not have a contract with the Municipality of Anchorage, though AS 47.35 allows them to assume authority to license child care facilities within their jurisdiction. AS 47.35 (Enclosure 9) would also allow contracting. Pat O'Brien, of my staff, has met with Municipal officials to discuss changing the municipal ordinance to be compatible with state child care regulations. During our most recent meeting with them, municipal staff were informed that "the division views delegation of licensing powers similar to fire safety and police power delegation, meaning that the municipality would be responsible for funding a municipal licensing program. The state is experiencing a critical shortage of licensing workers and could not assist in the funding of a municipal licensing program."

The state has three full time staff who are Community Care Licensing Specialists functioning in the licensing of Child Care Centers and Homes in Anchorage. The municipality has two investigators and a supervisor to review Anchorage centers.

If the Municipality chose to assume licensing authority, training would be necessary. We were disappointed that they did not accept an invitation to attend the statewide licensing training given in September of this year. Please see the enclosed section 7 AAC 50.188, "Delegation and Withdrawal of Licensing Authority" from the Child Care Facility Regulations, which are now in the Department of Law for final approval.

#### V. ISSUES OF PUBLIC LIABILITY.

26. In what present litigation is the state a defendant, arising from alleged sexual abuse of a child in a day care facility?

The case of LM vs. State was settled out of court.

27. What degree of legal liability is borne by the state, or may be asserted against the state,

(a) where victims have been abused in a licensed facility under circumstances wherein the state knew, or ought to have known, of facts suggesting that no license ought to have been issued or renewed, or

In the child protection legislative package currently being considered and detailed in question number 2(b), the state hopes to attain adequate authority to have access to relevant criminal history facts, including expunged records. If the state gains that authority, state liability will certainly be reduced.

(b) in circumstances where no such facts existed?

In cases where no such facts exist, and where licensing staff followed procedures acting in good faith, there should be no liability. How-

ever, in Alaska, lawsuits against the state in social services increased in the last year. In other states, suits have long been more common.

28. What degree of legal liability is borne by the state, or may be asserted against the state, if there is a shortfall in the Municipality's performance under any contract requiring it to inspect day care facilities?

The state has been informed that there may be liability under contract related to inspection of child care facilities. To reduce liability and ensure appropriate use of state expertise, safeguards were included in the regulations. An agency must report any instance of noncompliance with the Child Care Facility Regulations that may cause imminent risk to the life or safety of a child in care, and a coordinated plan for investigation will be developed. An agency may make recommendations regarding licensing action, but actual implementation of these actions is the responsibility of the division. The division then sends verification of that action to the local agency. There may also be liability under delegated powers. Regulations would permit state oversight. A municipality must allow the division to review the municipality's facility records and conduct on-site standard by standard evaluations of facilities licensed by the municipality to determine if the municipality is appropriately exercising its delegated powers. (Please refer to 7 AAC 50.186 -- 7 AAC 50.188 which is enclosed.) Currently there are no contracts with any private agency or municipality for performing licensing investigations. Only the City of Bethel has assumed licensing powers.

#### VI. RESPONSIBILITIES WHEN CHILD ABUSE IS SUSPECTED OR PROVED.

29. When a parent becomes suspicious of a child's caregivers, in a situation of suspected sexual abuse, what steps should a parent take, and who should the parent contact? To what extent, if any, can a parent become liable for asking for investigation of a suspected case of child sexual abuse, if no abuse can be proved? Should the legislature consider any changes to the law of libel or slander, to afford a qualified or absolute privilege to parents acting in such a situation?

A parent who becomes suspicious of a child's caregivers in a situation of suspected sexual abuse should contact DHSS or law enforcement officers. AS 47.17.050, "Immunity", provides: "A person who, in good faith, makes a report under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability which might otherwise be incurred or imposed." To date no reporter has been sued in Alaska. If the report is made in "good faith", the statute provides protection.

30. What counseling or social or health services are provided by the state, or local governments, to assist the child victim and his or her family when such situations have occurred?

Counseling is provided for the child victim and the child's family at the local DFYS office in some situations. It is usually handled by referring the child and family to a Mental Health Clinic, or a women's shelter, or other local counseling agency. When abuse occurs outside the family, services are usually funded by the family if they are financially able to assume the costs.

31. What counseling or social or health services are available in such cases, through non-profit agencies recognized by the state for this purpose?

The state has contracted for counseling or social or health services from many non-profit organizations within the state. Specific services provided from the composite of organizations with which these contracts exist are diagnostic testing, prevention of child sexual abuse, intervention, crises line, volunteer parents, peer group counseling for perpetrators and victims, family/child/group therapy, consultation with other groups that show interest in working in these areas, community education, family therapy workshops, services to break child sexual abuse tendencies in youth, assistance in parenting skills, play therapy with children and follow-up.

32. What additional services are needed and should be provided? Should they be furnished directly by government or others? What estimated costs would accompany such provision of services?

Since 1977 the licensing caseload and the child protective services caseloads have more than doubled.

The minimum number of additional staff positions needed today to increase the agency's ability to provide necessary social services and perform required licensing functions is 35 positions. The cost is estimated to be:

\$1,840,500	Personal services, travel, contractual, equipment
71,900	Legal services
53,900	Staff development
26,400	Office space in Fairbanks
<u>\$1,992,700</u>	<b>Total</b>

Long term solutions to the problems currently being faced by the division will initially require additional resources in prevention and early intervention services and an altering of the configuration for allocation of resources.

Of at least 120 offenders in Alaska's jails who assault children, only 19 are definitely from within the family which is the group that

Family and Youth Services has direct responsibility for, and which includes victims, families -- siblings, the non-offending parent, and the offender. More skilled counselors are needed both in the private non-profit and public sectors to rehabilitate offenders and work with families. These services need not necessarily be provided by government.

33. Is the department recommending for FY 1986 that additional moneys become available to the victims and families of child sexual abuse, in such cases, for counseling, medical or psychological therapy, or other assistance?

The department is requesting more staff, but child physical or sexual services to all families when abuse occurs outside of the family setting has been estimated by some to require doubling of social service resources. The division will be studying fiscal note implications on the "enjoining dangerous persons from contact with children" part of the Child Protection Legislative Package.

In addition to the foregoing question, Nancy Bennett, of your staff, has queried the department on the following recommendations which came out of the child abuse hearing in Anchorage on August 16, 1984.

1. Closed circuit TV for interviewing child victims of sexual abuse.

Some children are being videotaped if it is thought that the trial will be a long time after the abuse. That evidence is used, though it is considered by prosecutors to be more convincing to place the child on the stand.

2. Creating a special unit for civil and criminal child abuse cases.

Presently DHSS does not have enough staff to address all complaints. We advocate creating a special unit for civil and criminal child abuse cases which take place outside of the family only. We further advocate that staff for the special unit be in the Department of Health and Social Services and Law Enforcement -- staff in addition to the current staff who are regular child protection service workers who would refer cases to the special unit. It is envisioned that the services of the special unit extend to any person(s) involved in the child molestation incident such as the home providers. In addition, since there are different prosecutions for different situations, someone must investigate before an individual can be enjoined. We would like the department to be relieved of this.

3. Comprehensive training for educators in child abuse.

The Division of Family and Youth Services is participating in two statewide conferences for educators as a means of providing information on child abuse: reporting laws, investigation, treatment and services. One of these is the Policy Conference on Young Children.

The other is the Conference for Small Schools. The division is also publishing a comprehensive pamphlet for educators which describes reporting laws, indicators of abuse, procedures, and services provided.

4. Admitting hearsay evidence in grand jury proceedings.

On a conceptual level, DHSS has no objection to such a provision, depending, of course, on the effects of a specific proposal. It would only indirectly impact DHSS programs, but may be of benefit to child victims of sexual abuse by allowing them to avoid testifying at such proceedings. This potential benefit must be weighed against other considerations.

5. Criminal penalties for juvenile sex offenders.

The department would not approve a bill which automatically subjects juveniles accused of sex offenses to prosecution under adult criminal jurisdiction. A blanket approach such as this is both unnecessary and ill conceived. A more effective, more just, and less expensive approach is to selectively identify those juveniles for whom adult sanctions are appropriate. The juvenile waiver mechanism (AS 47.10.060) was designed to differentiate between those juveniles who can be controlled and rehabilitated within the juvenile justice system and those who require the more stringent adult sanctions.

6. If DFYS confidentiality requirements inhibit prosecution.

No. DFYS supports prosecution of criminal offenses. Evidence related to prosecution of child abuse is forwarded to the Department of Law.

7. Requiring penalties for operating a day care facility without a license.

There is currently a penalty in the licensing statute, AS 47.35.070 under "violations." An individual operating a day care facility without a license is "guilty of a misdemeanor, and upon conviction is punishable by a fine of more than \$200." The division is considering a system of civil penalties as part of the legislative package.

8. Criminal history background checks on all people working with children.

In 1982 Alaska passed legislation (AS 12.62.035) which allows any employer to examine the criminal records (sexual abuse offenses only) of employees who supervise children. Fingerprinting is required. The statutory authority had not been used by an employer until this year. Many offenders have not been caught and hence will not have a record when they apply to work in a particular child care education or recreation setting. A legislative airing of this issue may be appropriate.

9. Establishing a uniform complaint procedure concerning day care.

A uniform complaint procedure is currently in place. It has recently been revised and is used in day care, foster care, and residential care, and will be adjusted after the child sexual abuse protocols are developed.

10. Voluntary accreditation for child care facilities.

The Department of Education has considered a voluntary accreditation standard. In addition, a voluntary accreditation system has been under development for approximately two years by the National Association for the Education of Young Children.

11. Public notification of day care violations.

This may be appropriate, but the division has not explored it. A Public Research Information Group in Anchorage reviewed all investigation files for child care facilities this year and published the results statewide, though distribution was limited. The publication included a listing of all licensed day care facilities, basic information about their program, and validated complaint investigations.

12. Criminal penalties for enticement of children.

The division could support such penalties if they provided greater protection for children than is provided by existing laws. The specifics of such proposals and their impacts on treatment of the victims and families would be important considerations in determining division support.

13. Establish standards for denial of license, create a provision to enjoin a closed center from re-opening.

The enjoining of a closed center from re-opening is being considered in the Child Protection Legislative Package. The division has enjoined a closed center from re-opening in three instances, but our authority was based on court precedent rather than on statutory authority.

If a facility does not meet standards, the license will be denied. If the facility has not been in the child care business previously, their plan for care must meet all standards for care prior to operation. If the facility is already operating, the program must meet standards for licensing before a license will be issued. For further details on denial of license, please see the enclosed information (Enclosure 10) taken from the "Community Care Licensing Manual" pp. 42 - 44.

November 30, 1984

14. What are resource needs?

Resource needs are extensive. Refer to the enclosed 1984 report to Governor Sheffield on "Child Abuse and Neglect in Alaska."

Thank you for your interest and support of efforts to reduce child abuse and neglect.

Sincerely,

Michael L. Price  
Director

Senate Health, Education and Social Services Committee  
Hearing - August 16, 1984  
3:00 pm to 7:45 pm

Re: Child Abuse in Child Care Centers  
Testimony Michael L. Price

Senator Josephson, you sent a letter to Commissioner Pugh on August 8, 1984, asking the Department of Health and Social Services a number of questions. I'm here today to answer those questions.

The first question you asked is whether our agency has adequate financial resources to protect the children of Alaska from Child Sexual Abuse.

Our system protects children in two ways: The licensing system has a preventive approach to reduce predictable risk to children's health and safety, and ensures an adequate opportunity for child development.

Secondly, we protect a child - if there is a complaint such as sexual or physical abuse or neglect. We investigate each complaint through our Child Protection Services Intake Units.

In answer to your question: No, we do not have the financial resources to provide a higher level of service either in licensing or in child protective services.

As a matter of fact: since 1977 the licensing caseload and the Child Protection Services caseloads have more than doubled.

In 1983, the Division of Family and Youth Services served 5,574 individuals in the following child protection categories: NEGLECT 3,497, PHYSICAL ABUSE 1,458, and SEXUAL ABUSE 619. Alaska's statistics reflect the national trend.

A Division of Family and Youth Services management study completed in January 1984 revealed that our agency needs 35 additional positions to meet a standard of 50 cases per worker.

There has been a dramatic growth in the number of licensed facilities in the recent years. In 1977 there were 895, today there is 1,766, serving 12,617 adults and children.

As public awareness of neglect and abuse of children has increased, the number of complaints received regarding licensed facilities has also increased in recent years. There are currently five sexual abuse allegations being investigated in licensed facilities.

The minimum number of additional licensing staff needed to meet current licensing responsibilities statewide is approximately seven.

Your second question asks what additional financial resources should be made available to the Division of Family and Youth Services.

We need additional staff resources in licensing, child protection services, clerical support, and central office.

Also, funding for an adequate information system and funds for staff training are of equal importance.

We are presently redesigning our Management Information System to ensure that the division has an adequate system to provide needed management information and to document events in individual cases. We want our system to provide us accurate, current intake data, client data, and licensing information. Division of Family and Youth Services has allocated substantial resources to establishing a data processing unit and this extensive Management Information System redesign will be ready for implementation in January, 1986 provided resources for these changes continue to be available.

EXAMPLE:

Additional financial resources are also needed to further professionalize the Division of Family and Youth Services staff. The Division of Family and Youth Services wants to establish classifications of positions that will result in higher entrance qualifications. The provision of funds to train new staff is also essential when professional quality is to be maintained.

Finally there is a critical need to fund a comprehensive public awareness program. Parents and the general public need to recognize that there are people who are dangerous to their children. A survey of sexual offenders conducted in December, 1983 revealed there were 250 sexual offenders in the Department of Correction system; 69 were convicted of RAPE against a CHILD; 42 were convicted of OTHER SEXUAL acts with CHILDREN; 19 INCEST; 14 were convicted for LEWD an LASCIVIOUS acts against adults or children.

Of at least 120 offenders in state jails; who assault children only 19 are definitely from within the family. It is our responsibility to help parents understand how important their role is in protecting their own children. This year the Division of Family and Youth Services has contracted for the preparation of a brochure entitled "A Parents Guide to Choosing Child Care." This is a small step in assisting the parent to select care that is safe and appropriate for their children. The Department of Community and Regional Affairs is attempting to establish funding for an information and referral service to also assist parents in child care selections.

In summary, significant augmentation of staff resources, continued professionalization of staff, development of a Management Information System, and resources to increase parent awareness are areas which if funded, could produce a systemic ability to better respond to the problems of child abuse and neglect in Alaska.

Is existing law adequate to protect children and if not, what changes does Division of Family and Youth Services recommend?

In answer to your third and fourth questions, the existing laws are generally adequate. However, there are some deficiencies: consideration might be given to expanding licensing authority. Currently a person may care for four or fewer children without a license.

Secondly, consideration should be given to requiring criminal history background checks on all persons who regularly supervise children in out of home situations. Two years ago legislation was enacted which allowed employers of persons who supervised children to require finger printing of their employees to obtain sexual abuse background information. To date no employer has utilized the authority of this statute.

Thirdly, the reporting statute 47.17 should be strengthened to include additional persons as required reporters such as pre-school personnel and all social service agencies personnel.

You have asked what steps Division of Family and Youth Services takes in investigating allegations of sexual abuse.

When the division receives an allegation of child sexual abuse, the information is accurately and fully recorded in a log. If the allegation is sexual abuse within the child's own home, a protective service worker is assigned to investigate on a priority basis in coordination with police. If the allegation is sexual abuse in a licensed facility, a joint investigation may occur. Police are contacted and may investigate jointly with a licensing worker or may utilize the expertise of a protection service worker in the investigation.

In either situation a report of child abuse form is completed by the social worker or the licensing worker and given to the Department of Law within 72 hours of receiving the report. Consultation with the attorney general's office occurs to determine the need for removal of the child from the home or to revoke a facility license. The chief prosecutor's portrayal of the Division of Family and Youth Services philosophy regarding child abuse is not accurate. Safety of children is the first consideration.

Do existing statutes and regulations permit the Department to inspect state-licensed facilities, and to perform background investigations of employees and owner-operators, of such facilities?

Existing statutes and regulations "do" permit inspections of state-licensed facilities. Current regulations allow the department to perform criminal background checks on operators of child and adult foster homes and on the administrator of residential facilities. Day care regulations currently in the final revision process, include criminal history checks on all adult members of a family which provides licensed child care. Day center administrators are also included and consideration is being given to including all personnel. Implementation of criminal background checks in day care facilities could result in more than 4,000 additional criminal history searches being required. Staff shortages in the Division of Family and Youth Services and the Department of Public Safety are significant factors for consideration should we adopt this policy. No matter how adequate the regulations are, there must be sufficient personnel to enforce them.

In the prosecution of cases of this nature, through the criminal law, what problems, if any, are presented by existing statutes?

The Department of Law has stated that our Child in Need of Aid Statute has problems of vagueness. Sexual abuse is not defined in AS 47.10. However, under the criminal statute sexual abuse of a minor is defined.

Secondly, the Division of Family and Youth Services would prefer the use of video tape cross examination or use of closed circuit TV testimony by young victims of child sexual assault, which are not practiced in Alaska. Other states have revised rules of evidence to better accommodate child victims, and we should too. More specific testimony should be given by the Department of Law.

What progress has been made by the Criminal Justice Working Group, appointed by Governor Sheffield, towards the development of protocols and procedures for the handling of reported cases of child sexual abuse?

A child sexual abuse agreement draft is now in the Governor's office.

Basically the above agencies will coordinate their efforts in order to provide better protection for children.

Local communities will develop their procedures that are consistent with the agreement and work with other local public and private agencies in providing assistance for children who have been sexually abused. Protocols are already in existence in many communities.

Does Division of Family and Youth Services have authority to prevent a person whose license has been revoked from obtaining employment in a child care facility?

The answer is: Not at the present time unless it is foster care. Revised day care regulations could address this issue, however, increase in staff resources for Division of Family and Youth Services and Public Safety would be needed to implement the regulation.

What is the States liability when a child is harmed in a licensed facility, such as recently occurred in a Ketchikan day care home?

In answer to the liability issue; Licensing is a consumer protection service designed to predictably reduce risk to children in care. It does not guarantee safety. Licensing reviews occur annually and all complaints are investigated. In the case of day care, parents are in the facility every day and share the responsibility to monitor the care being provided. This is why public awareness is a critical factor in the prevention of child abuse. In the field of social services, liability is a constant risk which must be balanced against the need to protect children.

For the second part of your question: I have been advised by the Department of Law that we are not at liberty to discuss the status of the Ketchikan case at this time since it is in litigation.

In answering all your questions, I have attempted to demonstrate that we all share the responsibility for protecting children. Achieving better protection of children will require a comprehensive systemic approach involving the parents, several departments of state government, and the court system, as well as the Division of Family and Youth Services. Above all, it will require a commitment of the legislature to provide the necessary resources!

Senator, thank you for this opportunity to present our views.

Again, Pat O'Brien and Martha Holmberg are available as well as myself to answer any questions you may have.

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## PUBLIC DEFENDER AGENCY

January 29, 1985

900 W. 5th Avenue, Suite 200  
Anchorage, Alaska 99501  
Phone: (907) 278-7541

Re: HB 88

Attention: Nancy Bennett

Max F. Gruenberg, Jr., Co Chair  
House Committee on Health, Education  
and Social Services  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Representative Gruenberg:

Thank you for soliciting my comments on HB 88. This bill addresses a number of different aspects of the important issue of child protection. Many of the provisions will serve to insure that children receive greater protection from our laws. Following is an analysis of the sections of the bill which could cause some problems.

Section 2. This section creates a new crime of Endangering the Welfare of a Minor in the Second Degree. This offense involves exposing a child under 18 to circumstances creating a substantial risk of physical injury as well as sexual abuse. Of particular concern is that the caregiver need act only with criminal negligence, which could theoretically cover any home accident. This section could have broad application to parents and caregivers who accidentally allow children to be hurt, even if there is no intent to do so. Thus, if a caregiver negligently allows a child to crawl into a cabinet which contains toxic cleaning chemicals or allows a child to get too close to a hot wood stove, that caregiver's behavior may expose him or her to criminal prosecution. It should be noted that this would be a Class A misdemeanor, carrying up to one year of jail time.

Section 5. This provision allows the use of hearsay evidence at the grand jury in prosecutions for sexual offenses. A grand jury functions to screen prosecution evidence to determine whether enough

DEPT. OF ADMINISTRATION  
OFFICE OF COMMISSIONER

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evidence exists to charge a suspect with a felony. Because being charged with a felony involves a potential for stigma as well as incarceration prior to trial, the constitutional right to a grand jury indictment must be carefully guarded. Taken to its extreme, allowing unlimited hearsay evidence at a grand jury proceeding would reduce that proceeding to a police officer reading the police report to the grand jurors. Since grand jurors currently are able to judge for themselves the weight and credibility of live witnesses, the issue of introduction of hearsay at the grand jury should be evaluated carefully.

Current Alaska case law allows the introduction of hearsay testimony at a grand jury when a compelling justification exists. If the legislature wishes to create a statutory exception to protect young victims of sexual assault, it should be as narrow and as close to a compelling circumstance as possible.

I would suggest the following changes in this provision if a hearsay exception is to be created for these cases:

1.) The exception should apply only to very young victims (under the age of 10) since the ability and motive for such children to fabricate is less than that of older children and the trauma of testimony could be gravest for children of a tender age.

2.) The hearsay exception should only apply to the actual victim of the offense. The provision in HB 28 would cover offenses other than child sexual offenses, including many sexual assaults not involving minors. The statute as now drafted would allow hearsay testimony of any witness under the age of sixteen, even if that witness was not a victim and the offense involved an assault on an adult rather than a child. This may allow a broader erosion of the rule against hearsay at the grand jury than first appears on the surface of the bill.

3.) The provisions of this statute allow hearsay testimony to be admitted when a child is unavailable. The definition of unavailability includes situations where the child does not remember what he or she said earlier or the child has been declared incompetent to testify by a judge. Both of these definitions of unavailability raise concerns since the grand jury should have an opportunity to judge the credibility of a witness. If a witness cannot remember details, the grand jury should be aware of this fact. Furthermore, one of the chief reasons a child may be declared by a judge to be incompetent is that the child is not able to distinguish between truth and falsehood.

Section 12. This section reduces the time required to make a pre-disposition report available to counsel in a juvenile delinquency hearing. This provision will create practical problems. If a pre-disposition report recommends institutionalization of the minor, an attorney who represents the juvenile client will often search for a less restrictive alternative placement for the juvenile. Furthermore, the attorney may wish to consult with the client to determine whether factual discrepancies exist in the report and to correct those discrepancies. Receipt of the report only two working days prior to an important disposition hearing in a juvenile delinquency matter will not allow the juvenile's attorney adequate time to prepare for the disposition hearing or to work to locate alternatives to institutionalization.

Section 14. This section removes the requirement that parents of children who have been removed from the home be notified of that event within 12 hours. The substitution of "make reasonable efforts" to immediately notify parents could be a problem. If a child has been removed from his or her home by the State, parents may become frantic when they learn their child is missing if they do not receive immediate notification. The outside limit of 12 hours is certainly not unreasonable and should not be removed.

This section also allows the Department of Health and Social Services to extend the time of notification of the court of the emergency custody by allowing a filing to be made within 24 hours excluding weekends or holidays. The current time limit is 12 hours with no exclusions. In such a serious matter as removing a child from the custody of his or her parents, the court should be notified as quickly as possible. Allowing 24 hours plus the exclusion of weekends or holidays could result in the following scenario. If a child were picked up on the Friday prior to a three day holiday weekend, the court would not have to be notified until the following Tuesday, four full days after the removal of the child.

Section 15. This section expands the conduct which permits the state to remove a child from the home of his or her parents. Certainly, conduct which constitutes a sexual offense against a child under AS 11, is appropriately contained within this section. Unfortunately, this section expands the definition of "sexual abuse" to include touching of a child's thighs, buttocks, or groin, or the child's touching of those areas of the parent or another. Although this section attempts to exclude "reasonable touching" in the exercise of "normal caretaker responsibilities", it cannot possibly contemplate every type of beneficial touching which might occur. For example, if a caretaker were to place a small child on his shoulders so that the child could better see a parade, that conduct could be classified as "sexual abuse" under this definition if the State felt that this was not a "reasonable touching within normal caretaker responsibility". Declaring a child to be in

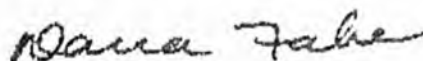
January 29, 1985

need of the state's protection is certainly necessary in many cases, but this expansion of the definition of sexual abuse will cause confusion, problems, and possible abuses of this function.

Section 23. Section 23 adds to the definition of child abuse or neglect the term "mental injury". This greatly broadens the category of children who may be declared in need of aid given the very broad definition of mental injury. Mental injury is defined as any psychological or intellectual injury evidenced by observable and substantial impairment in the child's ability to function within a normal range of performance and behavior. This definition appears to be much too broad, since many basically healthy child/parent relationships may still result in the child having some psychological or behavioral problems.

These are some of the concerns I have with HB 88. The fiscal impact of this legislation, in conjunction with the great increases in staffing requested in the operating budget of the Departments of Law and Health and Social Services as part of the Governor's Child Protection Package will require six new positions for this agency--two attorneys and four paralegals. Our detailed fiscal note and analysis for HB 88 is attached to this letter. Thank you again for asking for my comments on this bill. I also have been requested by your staff to testify on this bill during a teleconference from Anchorage on Wednesday, February 6, 1985 and plan to do so. Please let me know if I can be of any further assistance on this bill or on any other.

Very truly yours,



Dana Fabe  
Public Defender

Enclosures

DF:cms

**STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: 1/22/85

Page 1 of 9

**REQUEST**

Bill/Resolution No.: HB 88  
 Title: "An Act relating to the protection of children"  
 Sponsor: Rules Committee  
 Requestor: House Judiciary  
 Date of Request: 1/18/85

**FISCAL DETAIL**

Agency Affected: Administration  
 Program Category Affected: Due Process  
 BRU, Program or Subprogram(s) Affected: Public Defender Agency

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		347.7	368.6	390.7	414.1	439.0
200 TRAVEL		30.0	31.8	33.7	35.7	37.8
300 CONTRACTUAL		43.5	46.1	48.9	51.8	54.9
400 SUPPLIES		6.5	6.9	7.3	7.7	8.2
500 EQUIPMENT		9.5	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>437.2</b>	<b>453.4</b>	<b>480.6</b>	<b>509.3</b>	<b>539.9</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	437.2	453.4	480.6	509.3	539.9
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME	-0-	6.0	6.0	6.0	6.0	6.0
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary)**

See attached fiscal analysis

*Dana Fabe*

Prepared By: Dana Fabe, Public Defender  
 Division: Public Defender Agency

Phone: 279-7541  
 Date: 1/22/85

Approved by Commissioner: Lisa Rudd  
 Agency: Department of Administration

Date: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

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

House Bill 88  
 Fiscal Note Analysis  
 Prepared by: Division of Public Defender Agency  
 Department of Administration  
January 22, 1985

This legislation has been introduced by the Governor as part of a total child protection package. The various sections of this legislation will increase the number and strength of prosecutions of persons charged with offenses against children, particularly sexual abuse of minors. As part of this child protection package, the Governor's operating budget for the Department of Law requests 19 new positions, including seven attorneys, seven paralegals, and five legal secretaries. Furthermore, the budget of Health and Social Services contains numerous new positions. These increases in the budget of the Department of Law and Health and Social Services will increase both reporting of new offenses and prosecution of those offenses.

The increase of prosecutions in child sexual assault offenses will necessitate six new positions for this agency. These positions are the bare minimum necessary to handle the anticipated increase in workload and avoid inordinate delays in processing these cases through the courts:

Fiscal Analysis

Second Judicial District

Attorney III (Nome/Kotzebue)	
Personal Services	83.1
Travel	5.0
Contractual	
(office space, experts, etc.)	10.0
Supplies	2.0
Equipment	
(one time expenditure)	2.0
	subtotal 102.1

Third Judicial District

Attorney IV (Anchorage)	70.8	
Paralegal Asst II (Kenai)	45.5	
Paralegal Asst II (Palmer)	44.2	
Personal Services		160.5
Travel		15.0
Contractual		
(office space, experts, etc.)		17.0
Supplies		3.5
Equipment		
(one time expenditure)		4.5
		subtotal 200.5

(continued)

House Bill 88  
 Fiscal Note Analysis  
 Prepared by Division of Public Defender Agency  
 Department of Administration  
 January 22, \_\_\_\_\_, 1985

Fourth Judicial District

Paralegal Asst II (Fairbanks)	48.7	
Paralegal Asst II (Bethel)	55.4	
Personal Services		104.1
Travel		10.0
Contractual (office space, experts, etc.)		16.5
Supplies		3.0
Equipment (one time expenditure)		3.0
	subtotal	134.6
TOTAL ALL DISTRICT		437.2

CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION  
FOR ALASKA

A. Robert Hahn  
630 Oceanview Drive  
Anchorage, AK 99515

MEMORANDUM

TO: Representative Rick Uehling

DATE: January 26, 1985

FROM: A. Robert Hahn  
Committee on Publication for Alaska

RE: House Bill 88

New section 11.51.110, ENDANGERING THE WELFARE OF A MINOR, essentially covers the same idea in (a)(2) -- "failing to provide the child with ... medical attention" as is covered in 11.51.120, CRIMINAL NONSUPPORT, which has a specific exemption in subsection (b) which states:

(b)...There is no failure to provide medical attention to a child if the child 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.

This exemption is important to Christian Scientists as it protects their right to provide treatment by prayer for their children in lieu of medical treatment. It is important to recognize that Christian Science treatment through prayer is recognized by the Federal government, the legislatures of the states and the health insurance industry as a viable and effective alternative to treatment by medical means. We feel sure the Alaska legislature will wish to retain the right of individuals to treat their children through prayer as that same protection is accorded elsewhere in the Alaska Statutes. Attached is a suggested addition to the proposed new section 11.51.110 to accomplish this result.

In A.S. 47.17.070(1) it is also our position that in order to be consistent in maintaining the exemption granted in other sections of the code (see for example, A.S. 47.10.030(k) and A.S. 47.10.035) the language contained in the attached amendment should be included in that section.

Your assistance in securing these amendments is deeply appreciated.

A. Robert Hahn  
Committee on Publication  
for Alaska

A.S.11.51.110(a)(2) shall include the following language  
in order to make said section consistent with A.S.11.51.120(b):

There is no failure to provide medical attention  
to a child if the child 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.

A.S.47.17.070 is amended to read:

47.17.070 Definitions. (a) In this chapter

(1) ...etc....

(b) a child is not subjected to neglect or mental injury, solely by reason of a person related to and responsible for the welfare of a child under the age of 18 not providing medical attention to the child if the child is provided treatment 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.

# Memorandum

Alaska Court System

TO:  Karla Forsythe  
General Counsel

DATE : February 1, 1985

FROM: Victor D. Carlson  
Superior Court Judge

SUBJECT: House Bill No. 88,  
Protection of Children

In general I find the proposed legislation to be consistent with current practice and will promote the protection of children and the fair determination of cases relating to children. However, I have several specific comments:

1. Section 11 concerning traffic, etc. offenses. The phrase "in a district court" is redundant and serves no purpose, it is possible that a traffic offense would be prosecuted in the superior court and not just before a superior court judge sitting as a judge of the district court. Further, I question if it is the intent of the legislature to have children convicted of traffic, fish and game, and parks and recreation facilities violations sentenced to serve time in jail, e.g., on an operating a motor vehicle while under the influence of alcohol or drug. The current wording of this statute leaves this question and the amendments do not cure it.

2. Section 12 concerning predisposition reports. Two working days for review of a report appears to be reasonable and if more time is needed, the attorney for the child can move for a continuance. Currently, the defense attorneys use the ten-day requirement to create undue strain on the probation officers, it is nearly impossible to prepare a predisposition report and have it typed and distributed within twenty days of disposition, the current rules provide that no more than thirty days are to elapse between adjudication and disposition.

3. Section 14 concerning notification of emergency custody. A note expressing legislative intent that every effort must be made to notify the custodian when a child is taken into custody including the leaving of a note at the place where custody was taken, informing a neighbor or relative and anything else that will help to inform the custodian should be appended. I believe the court should be informed each time a child is taken into custody without a court order and a sworn statement of probable cause made to the court. Requiring a report to the court with a statement of probable cause will tend to police the discretion of the social workers. The only other policing technique is the civil suit for damages which is generally ineffective.

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TELECONFERENCE

- I. INTRODUCTION
- II. QUESTIONS
- III. WHY INCEST AND SEXUAL ASSAULT SHOULD BE SEPARATED —
  - A. THEY ARE DIFFERENT
  - B. FOR THE SAKE OF THE FAMILY
    - 1. Physically
    - 2. Emotionally
    - ∴ creation of latchkey children
- IV. Goals of the state, defined
  - A. To protect the children
  - B. To preserve family life
- V. How the goals of the state can ~~still~~ be ~~more~~ ~~effectively~~ ~~met~~ ~~without~~ ~~coercion~~
  - A. Without creating latchkey children
  - B. Without costing the state millions of dollars
  - C. Without overcrowding the jails
  - D. Without <sup>up</sup>splitting the family
  - E. Without institutionalizing the offender (inmate) to the point that he is never "capable of rehabilitation."

P 2 of 10

Members of the Hess Committee  
regarding HB 88

Because of an evening job I am unable  
to attend today's teleconference and we  
have a hunch that the entire hearing be  
taped so that I can listen to it  
perhaps to the bills as well as to the  
issues I wish to present.

I have a great deal of information  
which I would like to present but realize  
because of the subject matter that I may  
not have time to present at all.

Two questions in HB 88 have come  
to mind. The 1st is on page 4 line  
17 & 18. Why is the word "priests" used  
provided in brackets following clergy when  
referring to confessor? Please explain this.  
#2 ~~is~~ page 10, line 25, 26 & 27 states  
that clergymen do not have to report if  
the communication was made in furtherance  
of a religious practice or not for investigatory  
purposes. What does your mean by that? Does  
this refer to confessions to Catholic  
priests or does it also include protestant  
ministers or does it mean something totally  
different?

I noticed that some of those bills  
separate incest from sexual assault & I  
worry you to please consider that for the sake  
of the family, and also because they are  
different. "Incest is a psychological (behavioral)

Necessary to remove the perpetrator from the home for a period of time but the perpetrator is generally in danger to society. He should in all ways possible ~~be~~ <sup>be</sup> allowed and required to support the family financially. Most occur between two relatives who have known one another for a long time. There is a strong 'bonding' relationship between the victim & the perpetrator. This is due because of love and dependency for the innocent perpetrator. Generally in most most cases there is no violent physical attack. Whereas in sexual assault the act is almost always violent. Because of this 'bond' most happens many times and the victim is reluctant to report it. Whereas in sexual assault or rape there is no bonding relationship and in most cases it is reported immediately. Therefore the victim is only (usually) assaulted one time. Most most victims only want the act to stop and stay with the family. Whereas most sexual assault (rape) victims want the perpetrator to receive a long jail term."

A

Once the molester is jailed, if he was the financial support for the family, the family now becomes destitute. If they qualify for welfare and not all do, they become an additional burden to the taxpayers who are already supporting the molester at the sum of 100 plus dollars a day.

B-1

But the worse part is emotionally. With the physical splitting up of the family, the children are left with either one parent or

2  
2.

in foster homes, thus creating what an article in the Plain Truth magazine terms as latch key children. Latch key children are defined as children who are left alone at home for long periods of time or deprived of at least one parent. Because they carry their own house key, they have been given the name latch key children, a term derived from the common word *latch* - *key* - *key* for house key.

1  
-2  
a

**Socially Negative**

Reality is, our modern latchkey child-rearing trend, no matter what the cause, is unhealthy. Vance Packard in his book *Our Endangered Children: Growing up in a Changing World* goes as far as to label this latchkey age "anti-child."

Some would say this label is too harsh. But today's downplay of family importance and family togetherness has led to "latchkey thinking," and it is a definite negative in child rearing.

Researchers confirm how negative latchkey child rearing is. A recent study found that, depending on the age of the child, latchkey children often suffer deep loneliness, terrible scare-filled anxieties, as well as periods of boredom.

It is reported that some small children experience recurring nightmares and obsessive concern for their safety because they've been left home alone for long periods of time.

Analysts say latchkey children are more likely to be involved in accidents, fires, drug abuse and juvenile delinquency. These same researchers say latchkey children, when left home without parental supervision and protection, are more likely to do poorly in school and be sexually abused by older siblings and children, or even adults.

On the other hand, some experts feel being a latchkey child may not necessarily be so bad. According to them the experience encourages "independence, responsibility, street savvy and pride." But let's look at the big picture.

**Problems a Natural Result**

Worldwide, young people in droves, most lacking proper, needed parental guidance and supervision, have plunged into the drug culture. As many as 75 percent of high school and secondary school students experiment with, or regularly use drugs. It is not at all uncommon for grade school children to pop pills, take various kinds of drug trips or smoke marijuana.

Penal institutions are filled with errant youths. For the most part, they've gotten into trouble because

they've lacked proper parental guidance and supervision. They've been latchkey children during major portions of their growing years.

Teenagers' ability to be confident and trusting, to have affection for their families and be able to master inner feelings and impulses, has been on a steady decline since the 1950s. That's made clear in a U.S. survey of two groups of teenagers by psychiatrist Daniel Offer and psychologists Eric Ostrov and Kenneth I. Howard.

Their published survey, *The Adolescent: A Psychological Self-portrait*, compared a group of 1960 teenagers to a group growing up in the 1970s and 1980s. About 20 percent of the latter group reported feeling empty emotionally, being confused most of the time and feeling they would rather die than continue living.

These children clearly lack needed parental supervision and guidance. That's not to say all latchkey children get into trouble, and those with adequate parental guidance and supervision do not. But common sense should tell us that the chances of latchkey children getting into trouble or having

difficulty in society would be significantly higher.

**Father's Importance**

Fathers should especially consider their relationship with their children.

Dads must go out of their way and make a concentrated effort to spend time with children. Work and busi-

ness concerns, as well as a barrage of outside-the-home activities, usually leave fathers with insufficient time to spend with children.

It can be a major irony. A father can think he himself needs to work

long hours to give his family and children the best. In reality he may be denying his family and children what they need most—Dad.

Children need Dad's time, his concern, teaching, guiding, giving, loving, playing and correction. Money alone cannot buy or give family and children what they need most from a father—father himself.

A father's presence is important. This is true during crucial pre-school years when a child's sex-role identification, personality, motor skills, creativity and ability to achieve are being formed. It is also true when children are older, a time when they may need firm guidance and advice. Tests show that boys deprived of a father's presence on average have more limited chances of growing up to become well-adjusted, happy, productive young men. According to studies, father-deprived boys tend to exercise less self-control and lack somewhat in social responsibility.

Father-deprived girls also suffer in similar ways and especially suffer in their ability to relate appropriately to males as they grow into adulthood.

V.  
A & B

What are you doing by jailing these  
inmate offenders and thus creating lawless  
children when you clearly have another good  
alternative which will better meet your objective  
to protect the children, and yet preserve  
family life?

Page 8 line 25-27 of H 5 88 states that  
your intent is to preserve family life  
whenever possible. If this is truly your  
goal consider these alternatives to  
incarceration:

1. Work release program
2. Live away from home for a period of time

3. Probation (either regular or at 1/2 time to be served)
4. Treatment for the entire family through Parents United and/or private counseling
5. Physical or chemical castration (can only be used on a voluntary basis)
6. Suspended imposition of sentence with a condition that any time ~~that~~ must be served be served as a condition of probation.
7. Halfway house
8. Visitation with the family on a controlled basis
9. Community service

IV.  
C

INVEST

Last week I sent a suggestion to Katie Hurley regarding the problem of overcrowding in the jails and how the problem could be solved by releasing those violators whose families want them released and who upon ~~release~~ <sup>being released</sup> can then be placed on strict probation and into a treatment program.

S  
T  
K  
-  
C  
T

NC-1A30 PPD

I would like to elaborate on strict probation. Ideally I think the violator should be required to report to a probation officer 3 times a week; however depending on how many were released this could put a great strain on the probation officers, so I am proposing that a probation officer should be seen at least once weekly and that ~~the~~ <sup>the violator</sup> should be involved in a counseling/treatment program also at least once weekly. Regular interviewing of the victim (possibly once weekly also) should also

STRICT PROBATION

be conducted as a ~~means~~ <sup>means</sup> to insure that the ~~measures~~ <sup>measures</sup> are never repeated and that if it does the molestor should then be immediately jailed until the child is fully grown and out of the home. Length of time for continuing strict probation should be determined once yearly by a complete psychological evaluation to determine if a behavior change has taken place and the molestor is now "cured". Some molestors could well be off probation and through treatment within a very few years while others would be on strict probation and treatment until the children were grown and out of the home. But even this would not disrupt the family as much and creating latching children as throwing them molestors in jail now.

SEVERITY OF CASES

The list of alternatives to incarceration suggests in addition to probation that the molestors leave away from home for a period of time and/or that visits with the family be on a controlled basis. A would suggest that this is a more extreme solution than strict probation but certainly a valid proposal. A believe that in cases of often & repeated molesting, rape or severe physical abuse & trauma that in addition to strict probation and treatment, the molestor should have to live away from home and only be able to visit the family on a controlled basis such as chaperoned.

Who decides severity of cases? We set

P 8 of 10

least agree that most views in design of  
 severity. We are being legislated to decide.  
 Allow the spouse and the victim freedom  
 to decide if they want the molester removed  
 from the home (he should still be required  
 to support the family financially) or if  
 strict probation and counseling/treatment  
 is enough. The victim and the spouse  
 may need counseling to help decide this, but  
 the decision should be theirs; not the  
 governments' or the courts'.

The law defines severity of cases by the  
 age of the child. I disagree with that. I  
 think severity should be dependent on what  
 actually occurred, extent of physical and  
 emotional harm and the attitude of the  
 molester. If the molester acknowledges that he  
 needs help is willing to submit to a treatment  
 program he should be granted that and not  
 just shipped into jail. Best to protect the  
 child as well as ~~the family~~ to preserve the  
 family unit, seriously consider and allow  
 the wishes of first the victim and then the  
 spouse whether those wishes be to press  
 charges or to place a first offender on  
 probation and treatment. (love pays)

P 9 of 10  
as received in Nat-Su L10

[REDACTED]

1st  
Repeated offenses should require mandatory jail until the children are grown & out of the home.

[REDACTED]

Now those that are in jail at this time because of the old law.

The old law said that sexual assault in the 1st degree was a class A felony but page 1 of House Bill #88 makes it a class C felony & 2nd degree a class A misdemeanor. You have people in jail who are serving 15-20 year sentences because sexual assault in the 1st degree used to be a class A felony; mandatory 5 years per count. If this House Bill #88 became law a sexual assault in the 1st degree was considered a class C felony those people could serve 4 years in Eagle River in a treatment program & be released.

(2)

P 10 of 10

on probation for 15-20 years if appropriate. ~~that was outlined to~~  
 Katie Hurley <sup>has</sup> a proposal ~~A~~ <sup>with</sup> that has  
 a 3 fold purpose: ① it solves the overcrowding  
 in the jails by reviewing the cases of  
 those molesters who are in jail for incest,  
 ② it provides for the protection of children because  
 these molesters would be released on  
 strict probation into a counseling or treatment  
 program + ③ it preserves family life. ~~A will~~  
~~not repeat what I have said because~~  
~~Ms. Hurley has a copy of what I said to~~  
~~her.~~

IMPROVED  
 ATTACHED  
 CONCLUSIONS

A would like to end my statements  
 with a quote from a friend who has done  
 a lot of research into this problem: "The  
 treatment program for incest offenders takes  
 about 2 years to complete. Placing an  
 offender in incarceration longer than is  
NECESSARY may worsen him and therefore  
 he may never be capable of rehabilitation.  
 It appears that the presumptive sentence  
 could be good if there was parole to go with  
 it. The offender may have a chance to complete  
 a program for his incestuous crime and  
 could become a productive citizen again. The  
 are just a few of the things we must  
 consider."



**Alaska State Legislature**  
**House of Representatives**  
COMMITTEE ON HEALTH, EDUCATION  
AND SOCIAL SERVICES

*[Handwritten signature]*

OFFICIAL BUSINESS

POUCH V  
JUNEAU, AK 99811  
465-3759

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS  
FROM: NANCY BENNETT, COMMITTEE STAFF *NB*  
DATE: JANUARY 31, 1985  
RE: HB 89 "RELATING TO CHILD PROTECTION"

ENCLOSED, PLEASE FIND BACKUP MATERIAL FOR HB 88, INTRODUCED BY THE GOVERNOR, WHICH IS SCHEDULED IN THE COMMITTEE FOR A HEARING ON TUESDAY, FEBRUARY 5TH AND FOR STATEWIDE TELECONFERENCES ON WEDNESDAY AND THURSDAY, FEBRUARY 6 AND 7.

THIS BILL IS AN ATTEMPT TO TAKE A COMPREHENSIVE LOOK AT CHILD ABUSE AND REVISES MANY STATUTES. IT IS A COMPLEX ISSUE, AND I HOPE YOU WILL HAVE TIME TO REVIEW THESE DOCUMENTS PRIOR TO THE HEARINGS.

IN THE PACKET YOU WILL FIND:

1. The bill, transmittal letter and fiscal notes.
2. A position paper from the Network on Domestic Violence and Sexual Assault.
3. A letter from Public Safety concerning criminal background checks.
4. Committee minutes from Senate HESS on a child abuse hearing conducted in August of 1984 and responses from the Departments of Law and Health and Social Services concerning issues raised at that hearing.
5. Copies of all statutes referenced in HB 88.

ALSO SCHEDULED FOR FEBRUARY 5-7 ARE TWO OTHER CHILD ABUSE MEASURES:

HCR 2 - REQUESTING SCHOOL DISTRICTS TO CONDUCT APPROPRIATE BACKGROUND CHECKS ON EMPLOYEES WORKING WITH CHILDREN.

HB 67 - ALLOWING THE INTRODUCTION OF HEARSAY EVIDENCE IN GRAND JURY AND TRIAL FOR SEXUAL OFFENSES IN WHICH THE VICTIM IS A CHILD OF 10 OR YOUNGER.

Introduced: 1/16/85  
Referred: Health, Education & Social  
Services, Judiciary and Finance

1 IN THE HOUSE

BY PHILLIPS

2

HOUSE BILL NO. 67

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 hearsay evidence in prosecutions  
7 for certain sexual offenses; and amending Rules 803  
8 and 804, Alaska Rules of Evidence, and Rule 6(r),  
9 Alaska Rules of Criminal Procedure."

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

11 \* Section 1. AS 12.40 is amended by adding a new section to read:

12 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL  
13 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -  
14 11.41.440 or 11.41.455, hearsay evidence of a statement, not otherwise  
15 admissible, made by a child under the age of 10 who is the victim of  
16 the offense describing the conduct establishing the offense may be  
17 admitted into evidence before the grand jury if

18 (1) the circumstances of the statement indicate its relia-  
19 bility; and

20 (2) the child

21 (A) testifies at the grand jury proceeding; or

22 (B) is unavailable as a witness and there is addi-  
23 tional evidence introduced to corroborate the statement.

24 (b) In this section,

25 (1) "statement" means an oral or written assertion or  
26 nonverbal conduct if the nonverbal conduct is intended as an asser-  
27 tion;

28 (2) "unavailable" means the child

29 (A) has a lack of memory of the subject matter of the

1 statement being offered;

2 (B) is unable to attend or testify at the hearing  
3 because of death or then existing physical or mental illness or  
4 infirmity;

5 (C) is declared incompetent to testify by the judge;  
6 or

7 (D) is absent from the hearing and the proponent of  
8 the statement has been unable to procure the child's attendance  
9 by reasonable means.

10 (c) A child is not unavailable under this section if the un-  
11 availability is due to the procurement or wrongdoing of the proponent  
12 of the statement to prevent the child from attending or testifying.

13 \* Sec. 2. AS 12.45 is amended by adding a new section to read:

14 Sec. 12.45.049. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL  
15 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -  
16 11.41.440 or 11.41.455, hearsay evidence of a statement, not otherwise  
17 admissible, made by a child under the age of 10 who is the victim of  
18 the offense describing the conduct establishing the offense may be  
19 admitted into evidence at trial if

20 (1) the court determines in a hearing outside the presence  
21 of the jury that the circumstances of the statement indicate its  
22 reliability;

23 (2) the child

24 (A) testifies at the trial; or

25 (B) is unavailable as a witness and there is addi-  
26 tional evidence introduced to corroborate the statement; and

27 (3) the proponent of the statement informs the adverse  
28 party of the intention to offer the statement and the contents of the  
29 statement sufficiently before the proceedings to give the adverse

1 party a fair opportunity to respond to the statement.

2 (b) In this section,

3 (1) "statement" means an oral or written assertion or  
4 nonverbal conduct if the nonverbal conduct is intended as an asser-  
5 tion;

6 (2) "unavailable" means the child

7 (A) has a lack of memory of the subject matter of the  
8 statement being offered;

9 (B) is unable to attend or testify at the hearing  
10 because of death or then existing physical or mental illness or  
11 infirmity;

12 (C) is declared incompetent to testify by the judge;  
13 or

14 (D) is absent from the hearing and the proponent of  
15 the statement has been unable to procure the child's attendance  
16 by reasonable means.

17 (c) A child is not unavailable under this section if the un-  
18 availability is due to the procurement or wrongdoing of the proponent  
19 of the statement to prevent the child from attending or testifying.

20 \* Sec. 3. AS 12.40.110, added by sec. 1 of this Act, has the effect of  
21 amending Rule 6(r), Alaska Rules of Criminal Procedure, by making certain  
22 hearsay evidence admissible in grand jury proceedings for certain sexual  
23 offenses without requiring compelling justification.

24 \* Sec. 4. AS 12.45.049, added by sec. 2 of this Act, has the effect of  
25 amending Rules 803 and 804, Alaska Rules of Evidence, by allowing admission  
26 at trial of hearsay evidence of certain statements made by certain victims  
27 of certain sexual offenses.

Introduced: 1/16/85  
Referred: Health, Education & Social  
Services, Judiciary and Finance

1 IN THE HOUSE

BY PHILLIPS

2

HOUSE CONCURRENT RESOLUTION NO. 2

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

Relating to background checks on school

6

district employees who come into contact

7

with children.

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

9 WHEREAS sexual abuse of minors is a serious and widespread problem;

10 and

11 WHEREAS existing law permits employers of individuals having contact

12 with children to obtain certain information on convictions of these indi-

13 viduals relating to sex crimes (AS 12.62.035);

14 BE IT RESOLVED by the Alaska State Legislature that local school

15 districts are encouraged to implement appropriate background checks on all

16 school district employees who come into contact with children.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

January 25, 1985

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation, was established in 1977 to facilitate coordination of domestic violence and sexual assault services on a statewide basis. The Network represents 20 domestic violence and sexual assault programs.

Network programs have been involved in the prevention, intervention, and treatment of child sexual assault through community education and public awareness efforts, curriculum development and implementation, therapeutic counseling services, coordination with social service and criminal justice agencies, and legislative advocacy.

In June 1984 the Network formed a Child Sexual Assault Task Force for purposes of reviewing currently applied policies and practices to determine their appropriateness and the consistency of their application. The work product of the Task Force is the attached Summation of Major Issues Arising in Handling Child Sexual Assault Incest Cases and Recommendations for Resolution.

The Summation, which deals exclusively with child sexual assault perpetrated by a family member, outlines "ideal" policies and practices, those which we feel should be implemented in order to achieve the most favorable outcome. Some of these policies and practices have been implemented by some agencies in some communities; others are either inconsistently applied or not applied at all.

It is the Network's intention that the policies and practices detailed in the Summation be adopted by all agencies involved with child sexual assault cases. It is our firm belief that coordinated and comprehensive education, prevention, intervention, and treatment efforts will positively impact the high incidence of child sexual assault in our state.

We welcome your comments on this report, and suggest that you contact Ruth Lister, WICCA, Inc., Fairbanks (452-2293) or Rosemary Murray, Alaska Women's Resource Center, Anchorage (276-0528) to provide input or obtain additional information.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

SUMMATION OF MAJOR ISSUES ARISING IN HANDLING  
CHILD SEXUAL ASSAULT INCEST CASES  
& RECOMMENDATIONS FOR RESOLUTION

Prepared by:

Child Sexual Assault Task Force

Ruth Lister, WICCA, Inc.

Rosemary Murray, Alaska Women's Resource Center

Co-chairs

Summation of Major Issues Arising in Handling  
Child Sexual Assault Incest Cases  
& Recommendations for Resolution

In all phases of involvement with child sexual assault incest cases, the Network accepts the following as a philosophy: the child victim's disclosure is to be credited, the non-offending parent should be encouraged to be supportive and protective of the child victim, and responsibility for the assault always rests with the offender. All policy statements are predicated on that philosophy.

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
1. <u>Intervention</u>	child reports sexual assault to non-offending parent and/or others; child is protected by DFYS or criminal intervention; if possible, child stays in the home; child receives immediate advocacy and support; number of interviews required of child should be minimized	assessment of non-offending parent's ability to protect & be supportive of child should be made; receives immediate advocacy to understand need to be supportive & protective of child; obtains TRO to protect child if needed	offender is investigated while child is protected; offender should be removed from the home if victim is living at home and non-offending parent is supportive
2. <u>Coordination</u>	DFYS and police/troopers coordinate investigation of victim's report of assault and provide protection of child; child is interviewed in private and is protected from onset of interview; initial and on-going advocacy should be provided by local or closest Network program or other advocacy agency  DFYS coordinates immediate contact with qualified treatment and/or advocacy program/people  Communities should develop protocols for purposes of protection of the child and to facilitate coordination. Community protocols should be reviewed on an annual basis and should include input from DFYS, law enforcement, criminal justice system, Network programs, mental health centers, schools, and other agencies involved in child sexual assault cases	DFYS and police/troopers coordinate investigation of assault, with inclusion of advocate for non-offending parent, if requested; initial and on-going advocacy should be provided by local or closest Network program or other advocacy agency	DFYS and police/troopers coordinate investigation of offender; report of investigation is made to DA

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
3. <u>SAFETY</u>	the priority issue is insuring the victim's safety so s/he is not placed in a position to be re-victimized	support given to non-offending parent in protecting the victim and other siblings; provide counseling, shelter, and support when domestic violence has also occurred	<p>strict controls over access to victim and other potential victims are to be applied in setting bail conditions, incarceration, treatment, work release, and probation; safety issues are to be adequately addressed throughout the criminal justice process; regular monitoring and safety checks should occur while offender is on probation and should be conducted by Probation Officer; probation for no less than 10 years is recommended</p> <p>because of the possibility of suicide and violence to family, arrest should occur immediately</p>
	Victim and family members must receive full protection from time of report. Monitoring and treatment services should be available for at least two (2) years		
4. <u>IMPRISONMENT</u>	victim is reassured that s/he is not responsible for the incarceration ; victim is encouraged to understand that the offender is being punished for wrong-doing	provided support in assuming role as single parent while offender is in prison and/or treatment and out of the home; non-offending parent should not be required to comply with unreasonable and/or non-therapeutic court ordered obligations, such as visitation, etc.	punishment for crime through imprisonment; treatment and rehabilitation will be provided in a secure facility; treatment will continue if offender is in a work release program or halfway house

## ISSUES

## VICTIM

## NON-OFFENDING PARENT

## OFFENDER

5. Treatment

receives therapy and information necessary to work through difficulties arising from assault and subsequent disruption in family after disclosure; individual/group treatment is made available

victim is given choice, in her/his own time, whether or not to have contact with the offender; all contact between victim and offender must be supervised

receives support to work through any problems arising from single parenthood and any emotional/financial barriers faced in supporting child;

individual/group treatment is made available

1) gets treatment with focus on sexual deviancy as first stage; 2) treatment provided in a secure facility, and continuing treatment through community-based programs; 3) with continuation of treatment for sexual deviancy and at the request of the victim, later stages of treatment may focus on healing the relationship with the victim and other family members

All treatment staff must have adequate training in treatment model, and all treatment must be predicated on the basis that the responsibility for the assault always rests with the offender. The well-being of the child victim must be the primary concern for all family members and treatment providers. All decisions regarding the potential, possible, and/or actual reuniting of the family should be made only when the child victim agrees and only when treatment focusing on sexual deviancy will be continuing. Contact between the child victim and the offender or any other person who is not supportive of the child should be restricted and should only occur under circumstances that are therapeutic for and agreed upon by the child

6. Rural Issues

Local safe homes and support and advocacy must be immediately available to victims and non-offending parents. Community education and organizing, and prevention and education for children and adults, are high priorities. All personnel who are a part of prevention, intervention, and/or treatment in child sexual assault cases must be specifically trained in the dynamics of child sexual assault

7. Community Safety

Through media, education, and community organizing, the harmful effects of child sexual assault and the need for protection are made clear. Age appropriate prevention information should be made available to all children

There is no known "cure" for sex offenders except their control over their own behavior. Provision and/or "completion" of a treatment or rehabilitation program should not be assumed to guarantee the safety of the child victim or potential victims

8. Adult Survivors

Treatment should be made available, either free of charge or at reasonable sliding scale fees, for adult survivors of child sexual assault by qualified treatment staff

9. Training

All therapists providing treatment in the areas of child sexual assault must have a minimum of forty (40) hours of specialized training in victim, survivor, or offender treatment

Those working in the field without a master's degree in social work or counseling must, in addition to having received specialized training, be a staff member of a counseling agency or advocacy program and be supervised by a degreee' person

Training in the dynamics of child sexual assault and appropriate recognition and intervention techniques should be made available to all who come into contact with victims, non-offending parents, and offenders. This training should, at the minimum, be provided to law enforcement personnel, criminal justice personnel, teachers, day care providers, social workers, and staff members of agencies providing counseling and advocacy

If limited funds are available for training, priority in allocation should be given to those agencies demonstrating a history of effective and broad based training experience and/or provision of service

force or duress within charge of rape, 26 ALR2d 181  
 Criminal responsibility of husband for rape or assault to commit rape on wife, 51 ALR2d 1017  
 Fraud or misrepresentation, Rape by, 91 ALR2d 591  
 Incompetency as defense to charge of rape attempt to rape, or assault with intent to commit rape, 23 ALR2d 1351  
 Rape or similar offense based on intercourse with woman who is allegedly mentally deficient, 31 ALR2d 1227  
 Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR2d 901  
 Seizure or detention for purpose of comp-

mitting rape, robbery or similar offense as constituting separate crime of kidnapping, 41 ALR2d 609  
 Consent as defense in prosecution for sodomy, 58 ALR2d 636  
 Multiple instances of forcible intercourse involving same defendant and same victim as constituting multiple crimes of rape, 81 ALR2d 1225  
 What constitutes offense of "sexual battery," 87 ALR2d 1250  
 Constitutionality of rape laws limited to protection of females only, 99 ALR2d 129  
 Validity and construction of statute defining crime of rape to include activity traditionally punishable as sodomy or the like, 3 ALR2d 1009

**Sec. 11-41-410. Sexual assault in the first degree.** (a) A person commits the crime of sexual assault in the first degree if:

- (1) being any age, the defendant engages in sexual penetration with another person without consent of that person;
- (2) being any age, the defendant attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(b) *Repealed*, § 10 ch 78 SLA 1983.

(c) *Repealed*, § 10 ch 78 SLA 1983.

(d) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12-55. (S 3 ch 166 SLA 1978; am § 8 ch 102 SLA 1980; am § 6 ch 167 SLA 1982; am § 10 ch 78 SLA 1983)

**Class references.** For evidence of post sexual conduct in trials of sexual assault in any degree or attempt to commit sexual assault in any degree, see AS 12-15-015.

**Effect of amendments.** The 1980 amendment inserted "or and," indicates changes in language at person under 13 years of age to engage in sexual penetration with another person from the end of paragraph (c) to subsection (a). The 1982 amendment substituted "an

unclassified felony and is punishable as provided in AS 12-55" for "a class A felony" at the end of subsection (b).

The 1983 amendment repealed paragraphs (3) and (4) of subsection (a).

**Legislative history reports.** — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, at 1980 House Journal Supplement, No. 79, May 28, 1980.

#### NOTES TO DECISIONS

1. *Constitutionality.*

II. *Constitutionality.*

A. *Constitutionality.*

B. *Age of Consent.*

C. *Penetration.*

1. *Constitutionality.*

History of first degree sexual assault

Section 11-41-410, C.S. App.

1. *Constitutionality.*

must prove that the defendant knowingly engaged in sexual intercourse and recklessly disregarded his victim's lack of consent. Constructed in this way, the statute does not punish harmless conduct, and is neither vague nor overbroad. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Construing the Revised Code and the concurrent amendments governing sentences together indicates that the legislature has not irrationally failed to distinguish between degrees of culpability; and the penalty provisions of the sexual offenses provisions of the Revised Code did not subject defendant to cruel and unusual punishment or do him substantive due process or the equal protection of the laws. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Categories constitute some offense. — All of the categories contained within the definition of sexual assault in the first degree under subsection (a)(1) through (a)(4) of this section, constitute the same offense for legal purposes. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 523 (1982), modified on other grounds 259 (File No. 5606), 665 P.2d 30 (1983).

And none is more serious than others. — Nothing contained in the statutory language of this section or the legislative history of the provision suggests that the type of conduct listed in any one of subsection (a)'s four paragraphs was meant to be inherently more serious than any of the others. To the contrary, the grouping of these four separate sets of conduct together under the same criminal heading, with identical classifications as class A felonies, is a forceful indication of the legislature's conclusion that all four paragraphs were meant to be viewed as involving equally serious conduct. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 523 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Subsection (a)(1) is akin to the common law definition of rape. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 523 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Minimal state required under (a)(1). — Lack of consent is a surrounding circum-

stance<sup>1</sup> which requires a complementary mental state as well as conduct to constitute a crime. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

No specific mental state is mentioned in subsection (a)(1) of this section governing the surrounding circumstance of "consent"; therefore, the state must prove that the defendant acted "recklessly" regarding his putative victim's lack of consent. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Attempted sexual assault in the first degree and sexual assault in the second degree are closely related, since sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Constitutionality of conviction for similar offense. — Where defendant was charged with attempted sexual assault in the first degree, he was thereby assumed to have notice that he might be convicted of second-degree sexual assault because of the similarities in the elements of the two offenses, and his conviction for the latter offense did not violate due process. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Sufficient evidence of attempted assault. — A jury could reasonably infer that defendant's entering of victim's bed naked and undressed and fondling her breasts were "substantial steps" toward the commission of sexual assault in the first degree so as to provide sufficient evidence of attempted assault. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Instructions. — The trial court did not commit plain error in failing to specifically instruct the jury that defendant had to recklessly disregard a substantial risk that the victim did not consent to intercourse before he could be convicted of first-degree sexual assault. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Instructions on lesser included offenses. — In a prosecution of first-degree sexual assault, where the undisputed evidence, including defendant's testimony established sexual penetration, there was no duty to instruct on attempted sexual penetration or forcible sexual contact

Hadden v. State, Ct. App. Op. No. 147 (1981), 653 P.2d 1062 (1982).

The 10-year presumptive term for first-degree sexual assault under the provisions of AS 12.55.12(a)(1) was enacted by the legislature to be appropriate in the majority of cases, which are those cases involving conduct that is characteristic of the offense of rape and that fall into the middle-ground between the most serious and least serious extremes for the offense, and it must be recognized that this presumptive term takes into account the high potential for the use of violence and the likelihood of some physical injury in the first-degree sexual assaults falling within the definition of subsection (a)(1) of this section. Jundely v. State, Ct. App. Op. No. 72 (File No. 56066), 611 P.2d 824 (1982), modified on other grounds and affirmed on rehearing, Ct. App. Op. No. 259 (File No. 56066), 665 P.2d 30 (1983).

Sentence upheld. — See Reynolds v. State, Ct. App. Op. No. 262 (File No. 68300), 664 P.2d 621 (1983).

Where record supported finding that defendant was the leader of a group of three or more persons who participated in offense of sexual assault in the first degree, such evidence, combined with consideration of prior, similar actions and of defendant's apparent lack of remorse, warranted imposition of eight-year sentence. Willard v. State, Ct. App. Op. No. 240 (File No. 62855), 662 P.2d 971 (1983).

Sentence of 10 years imprisonment, with eight suspended, was not excessive for conviction of attempted sexual assault in first degree. Van Hatten v. State, Ct. App. Op. No. 269 (File No. 58773), 652 P.2d 198 (1983).

Sentence for attempted sexual assault and burglary held excessive. See Hancock v. State, Ct. App. Op. No. 218 (File No. 68033), 657 P.2d 802 (1983).

Applied in *Nalappigak v. State*, Ct. App. Op. No. 90 (File No. 58206), 615 P.2d 215 (1980). See *State v. Akiyok*, Ct. App. Op. No. 146 (File No. 66903), 653 P.2d 1066 (1982). *Inward v. State*, Ct. App. Op. No. 240 (File No. 61273), 661 P.2d 1044 (1983).

Lesser included offense. — The Alaska statutes do not proscribe fornication, and therefore, it could not be considered an offense of a lesser degree to statutory rape. *State v. Guest*, Sup. Ct. Op. No. 1709 (File No. 35333), 583 P.2d 836 (1978); *Tookak v. State*, Ct. App. Op. No. 108 (File No. 46560), 648 P.2d 1018 (1982).

The offense of assault with intent to commit rape is a lesser included offense to rape. *Tuckfield v. State*, Sup. Ct. Op. No. 2266 (File No. 45639), 621 P.2d 1350 (1981).

Attempt. — Every element of an attempt is comprised in an assault with intent to commit the offense of rape. *Sekimuff v. United States*, 283 F.38 (9th Cir. 1922).

Separate crimes. — Rape, assault with a dangerous weapon, and kidnapping were separate crimes with separate elements. *Lacy v. State*, sup. Ct. Op. No. 2039 (File No. 4741), 609 P.2d 19 (1980).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. *State v. Oochipunt*, Sup. Ct. Op. No. 1405 (File No. 30854), 562 P.2d 348 (1977).

B. Age of Consent.

Female under age of consent is in law incapable of consent. — The crime of rape is committed upon a female under the age of consent with or without her consent since she is in law incapable of consent. *Torres v. State*, Sup. Ct. Op. No. 103 (File No. 1931), 521 P.2d 386 (1974).

Thus, it is not necessary to establish her consent as an essential element of the crime. *Torres v. State*, Sup. Ct. Op. No. 103 (File No. 1931), 521 P.2d 386 (1974).

Indictment need not allege consent of female under age of consent. — An indictment for rape of a girl under the age of consent is not insufficient because it fails to allege that the act was done with her consent. *Callahan v. United States*, 240 F.683 (9th Cir. 1917); *Rose v. United States*, 240 F.685 (9th Cir. 1917).

Defense of reasonable mistake of age. — A charge of statutory rape was defendable where an honest and reasonable mistake of fact as to the victim's age was shown. *State v. Guest*, Sup. Ct. Op. No. 1709 (File No. 35333), 583 P.2d 836 (1978).

criminal liability without any criminal element. *State v. Guest*, Sup. Ct. Op. No. 1709 (File No. 35333), 583 P.2d 836 (1978).

While, where an offender was aware he was committing an act of fornication, a mistake of fact did not serve as a complete defense, it should have served to reduce the offense to that which the offender would have been guilty of had he not been mistaken. *State v. Guest*, Sup. Ct. Op. No. 1709 (File No. 35333), 583 P.2d 836 (1978).

Under former AS 11.15.120, if an accused had a reasonable belief that the person with whom he had sexual intercourse was 16 years of age or older, he could not have been convicted of statutory rape. If, however, he did not have a reasonable belief that the victim was 18 years of age or older, he could still have been criminally liable for contribution to the delinquency of a minor. *State v. Guest*, Sup. Ct. Op. No. 1709 (File No. 35333), 583 P.2d 836 (1978).

For approved instruction on consent of female under age of consent, see *Ince v. United States*, 240 F.685 (9th Cir. 1917).

C. Procedure.

Indictment charging attempted rape and citing only the rape statute held sufficient. — See *State v. Thomas*, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Charging defendant with the crime of murder committed "in the attempt to perpetrate a rape" fails to allege the separate crime of rape with sufficient clarity to support a conviction. *Alto v. State*, Sup. Ct. Op. No. 1443 (File No. 2330), 565 P.2d 492 (1977).

Severance of counts involving various victims. — Where defendant was prosecuted on multiple counts of unlawful entry with intent to rape, rape, assault, and burglary, involving various victims, the trial court did not err in denying severance of the counts since evidence regarding the attack on each of the alleged victims would have been admissible in the trial of each of the other charges if the charges had been separately tried. *Nix v. State*, Ct. App. Op. No. 157 (File No. 5810), 653 P.2d 1033 (1982).

Character evidence. — See *Freeman v. State*, Sup. Ct. Op. No. 763 (File No. 1040), 480 P.2d 967 (1971).

Questioning victim's credibility. — While a defendant could properly seek to impeach the credibility of the victim,

*Kogonahuk v. State*, Ct. App. Op. No. 176 (File No. 6331), 655 P.2d 339 (1982).

*Edwards v. State*, Ct. App. Op. No. 185 (File No. 6241), 656 P.2d 1199 (1982); *Ekker v. State*, Ct. App. Op. No. 190 (File No. 6726), 656 P.2d 577 (1982); *Nukappagak v. State*, Sup. Ct. Op. No. 2667 (File No. 58290), 657 P.2d 1198 (1983).

H. FORMER LAW.

A. Generally.

Editor's notes. — The cases cited in the note below were decided under former AS 11.15.120 and 11.15.130.

Forceful rape ranks among the most serious crimes. *Newson v. State*, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975); *State v. Lanaster*, Sup. Ct. Op. No. 1217 (File No. 2571), 550 P.2d 1257 (1976); *State v. Wassilie*, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 371 (1978); *Ahvik v. State*, Sup. Ct. Op. No. 2123 (File No. 45566), 613 P.2d 1252 (1980).

The reason such a crime as forcible rape is most serious is because it amounts to a desecration of the victim's person which is a vital part of her sanctity and dignity as a human being. *Gordon v. State*, Sup. Ct. Op. No. 83 (File No. 1545), 501 P.2d 772 (1972); *Torres v. State*, Sup. Ct. Op. No. 103 (File No. 1931), 521 P.2d 386 (1974); *Ames v. State*, Sup. Ct. Op. No. 1137 (File No. 2145), 533 P.2d 216, modified on rehearing on other grounds, 537 P.2d 1116 (1975); *Newson v. State*, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975); *State v. Lanaster*, Sup. Ct. Op. No. 1217 (File No. 2571), 550 P.2d 1257 (1976); *Brodwick v. State*, Sup. Ct. Op. No. 1500 (File No. 3311), 569 P.2d 184 (1977); *State v. Wassilie*, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 371 (1978).

Definition of rape under former law. — *Sekimuff v. United States*, 283 F.38 (9th Cir. 1922).

Criminal intent was required for conviction of statutory rape. — See *State v. Guest*, Sup. Ct. Op. No. 1709 (File No. 35333), 583 P.2d 836 (1978).

Although former AS 11.15.120 was about as to the requirement of intent, the requirement of criminal intent was inferred. *State v. Guest*, Sup. Ct. Op. No. 1709 (File No. 35333), 583 P.2d 836 (1978).

Each of several indictments charged all that is required for a conviction of each of the various offenses, commission of the offenses, and violation of AS 11.15.120.

extrinsic evidence on a collateral matter. *Moss v. State*, Sup. Ct. Op. No. 2239 (File No. 4389), 629 P.2d 674 (1980).

**Corroboration of prosecutor's testimony.** — No corroboration of the prosecutor's testimony is necessary in statutory rape cases. *Burke v. State*, Sup. Ct. Op. No. 2194 (File No. 3969), 624 P.2d 1240 (1980).

**Evidence of prior history of sexual activity with victim.** — Whether evidence in a statutory rape prosecution of prior history of sexual activity with the prosecutrix is justified as background or the ongoing nature of the relationship is probative, the nexus of these reasons justifies an exception to the general rule against admissibility of prior bad acts. *Burke v. State*, Sup. Ct. Op. No. 2194 (File No. 3969), 624 P.2d 1240 (1980).

**Evidence of prior misconduct.** — See *Freeman v. State*, Sup. Ct. Op. No. 703 (File No. 1046), 486 P.2d 967 (1971).

**Evidence of prior sexual offenses.** — See *Freeman v. State*, Sup. Ct. Op. No. 703 (File No. 1046), 486 P.2d 967 (1971).

**Determining age from appearances.** — See *Toures v. State*, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974).

**Admission of defendant's driver's license into evidence to establish his age was harmless beyond a reasonable doubt.** *Toures v. State*, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974).

**Psychiatric testimony.** — See *Freeman v. State*, Sup. Ct. Op. No. 703 (File No. 1046), 486 P.2d 967 (1971).

**Psychiatric evidence showing that an individual accused of sexually deviant misconduct is not a sexual psychopath should properly be regarded to be character evidence.** *Freeman v. State*, Sup. Ct. Op. No. 703 (File No. 1046), 486 P.2d 967 (1971).

**Hearsay testimony.** — It was not error to admit hearsay testimony concerning complaints made by a rape victim to her mother and a school counselor. *Greenway v. State*, Sup. Ct. Op. No. 2206 (File No. 4754), 626 P.2d 1069 (1980).

**Failure of preliminary hearing to state all the facts attending a claimed rape in response to an instruction to proceed and tell what happened is not a ground of impeachment.** *Tunksley v. United States*, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944).

**Error to admit recording of sodium enthal interview.** — In a prosecution for statutory rape and sodomy, it was error to admit the recording of a

prior consistent statement for the limited purpose of rehabilitating an impeached witness. *Lindsey v. United States*, 16 Alaska 268, 237 F.2d 893 (9th Cir. 1956).

**Or to exclude public from trial.** — The trial court erred in assuming the power of excluding the public from a trial on the charge of rape of an adult woman. *Tunksley v. United States*, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944).

**It would be denying the defendant his presumption of innocence and a prediction by the court of his guilt to hold that a married woman must be relieved of the embarrassment of a public trial because she is called upon to testify to the story of the defendant's crime and her shame.** *Tunksley v. United States*, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944).

**Verdict supported by evidence.** — Testimony of complaining witness of her conduct before and after the alleged rape, corroborated and contradicted, and her sole evidence of the rape itself, supports the verdict on the inference that the defendant's defense was untrue, and that she was the unfortunate victim of a brutal outrage. *Tunksley v. United States*, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944).

**Instructions.** — The use of the following instruction in a statutory rape case is prohibited: "A charge such as that made against the defendant in this case is one which is easily made and, once made, difficult to defend against, even if the person accused is innocent. Therefore, the law requires that you examine the testimony of the female person named in the indictment with caution." *Burke v. State*, Sup. Ct. Op. No. 2194 (File No. 3969), 624 P.2d 1240 (1980).

**Since specific intent is not an element of the offense of rape, giving an instruction that the law assumes that every person intends the natural consequences of his voluntary acts was not error.** *Walker v. State*, Sup. Ct. Op. No. 2570 (File No. 4921), 652 P.2d 88 (1982).

**Instruction sufficiently covering question of impeachment.** — See *Tunksley v. United States*, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944).

**For approved instruction on consent of female under age of consent, see those v. United States, 240 F. 685 (9th Cir. 1917).**

**Sentencing.** — The recommended five year maximum, except for cases involving particularly serious offenses, dangerous offenders and professional criminals, of *Hendon v. State*, Sup. Ct. Op. No. 1092

not in "any" of the crime of rape of a person under 16 years by a person 19 years or older, made punishable by former AS 11.15.130(a) by "any term of years." *Edenshaw v. State*, Ct. App. Op. No. 005 (File No. 5239), 631 P.2d 506 (1981).

**What must be reflected in sentence for forcible rape.** — Although the perpetrator of such a crime as forcible rape may not be beyond rehabilitation, the crime itself deserves community condemnation; in addition to serving rehabilitative purposes the sentence must reflect such condemnation as well as act as a deterrent to the offender and to others. *Newsom v. State*, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975).

**Sentence for rape upheld.** — See *Gordon v. State*, Sup. Ct. Op. No. 831 (File No. 1535), 577 P.2d 772 (1972); *Toures v. State*, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974); *Newsom v. State*, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975); *Ames v. State*, Sup. Ct. Op. No. 1137 (File No. 2145), 533 P.2d 246, modified on rehearing, 537 P.2d 1116 (1975); *Coleman v. State*, Sup. Ct. Op. No. 1288 (File No. 2331), 553 F.2d 40 (1976); *Nukapigak v. State*, Sup. Ct. Op. No. 1410 (File No. 2915), 562 P.2d 697 (1977), aff'd on rehearing, 576 P.2d 982 (1977); *Burdawick v. State*, Sup. Ct. Op. No. 1500 (File No. 3341), 569 P.2d 184 (1977); *Morrill v. State*, Sup. Ct. Op. No. 1677 (File No. 2790), 575 P.2d 1200 (1978); *Alexander v. State*, Sup. Ct. Op. No. 1622 (File No. 3505), 578 P.2d 591 (1978); *State v. Wassilie*, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978); *Moore v. State*, Sup. Ct. Op. No. 1880 (File No. 4032), 597 P.2d 975 (1979); *Wagner v. State*, Sup. Ct. Op. No. 1837 (File No. 4381), 598 P.2d 936 (1979); *Wikstrom v. State*, Sup. Ct. Op. No. 1987 (File No. 4535), 603 P.2d 908 (1979); *Tate v. State*, Sup. Ct. Op. No. 2020 (File No. 4550), 606 P.2d 1 (1980); *Mullott v. State*, Sup. Ct. Op. No. 2027 (File No. 3364), 608 P.2d 737 (1980); *Alexander v.*

*State*, Sup. Ct. Op. No. 2077 (File No. 3522), 611 P.2d 469 (1980); *Cochrane v. State*, Sup. Ct. Op. No. 2086 (File No. 4531), 611 P.2d 61 (1980); *Helmert v. State*, Sup. Ct. Op. No. 2181 (File No. 4383), 616 P.2d 884 (1980); *Tuckfield v. State*, Sup. Ct. Op. No. 2266 (File No. 4569), 621 P.2d 1350 (1981); *Edenshaw v. State*, Ct. App. Op. No. 005 (File No. 5239), 631 P.2d 506 (1981); *Kompkoff v. State*, Ct. App. Op. No. 015 (File No. 5324), 626 P.2d 1091 (1981); *Williams v. State*, Ct. App. Op. No. 139 (File No. 5676), 652 P.2d 478 (1982).

**Sentence for rape held excessive.** — See *Ahvik v. State*, Sup. Ct. Op. No. 2123 (File No. 4556), 613 P.2d 1252 (1980); *Hintz v. State*, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981); *Qualle v. State*, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

**Sentences of 15 years for rape of one victim; 10 years concurrent with the 15-year term for burglarizing her residence, 10 years for burglarizing another victim's residence; six months concurrent with the 10-year burglary term for assault on the second victim; 15 years for rape of a third victim; and 10 years concurrent with the 15-year sentence for burglarizing the third victim's residence, for a total of 40 years incarceration, was error.** *Nix v. State*, Ct. App. Op. No. 157 (File No. 5461), 653 P.2d 1093 (1982).

**Sentence for rape too lenient.** — See *State v. Lancaster*, Sup. Ct. Op. No. 1247 (File No. 2571), 550 P.2d 1247 (1976); *State v. Wassilie*, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978); *State v. Jensen*, Ct. App. Op. No. 126 (File No. 5879), 650 P.2d 422 (1982).

**Sentence for attempted rape upheld.** — See *Shelton v. State*, Sup. Ct. Op. No. 2074 (File No. 3908), 611 P.2d 24 (1980) (decided under former AS 11.15.130).

**Sentence for assault with intent to rape upheld.** — See *Fomin v. State*, Sup. Ct. Op. No. 2214 (File No. 5013), 619 P.2d 718 (1980).

**Sec. 11.41.420. Sexual assault in the second degree. (a) A offender committed the crime of sexual assault in the second degree if the offender engages in**

(1) sexual contact with another person without consent of that person;

(2) sexual penetration with a person who the offender knows (A) is suffering from a mental disorder or defect which renders the person incapable of appraising the nature of the conduct under circumstances in which a person who is capable of appraising the nature of the

(b) is incapacitated.

(b) Sexual assault in the second degree is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 78 SLA 1983)

**Effect of amendments.** — The 1983 amendment rewrote subsection (a).

#### NOTES TO DECISIONS

For cases construing former crime of rape, see notes to AS 11-41-410.

**Attempted sexual assault in the first degree and sexual assault in the second degree are closely related, since sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent.** Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

**Constitutibility of conviction where original charge was under AS 11-41-410.** — Where defendant was charged with attempted sexual assault in the first degree, he was thereby assumed to have notice that he might be convicted of second-degree sexual assault because of the similarities in the elements of the offenses, and his conviction for the lesser offense did not violate due process. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

**Evidence.** — Where victim woke up in the early morning hours to find defendant

in her bed and fondling her breast, and where she testified that she was temporarily in shock and afraid he would hurt her, a jury could find that victim's momentary acquiescence in defendant's fondling her breast constituted second-degree sexual assault. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

**Instructions.** — The trial judge did not err in refusing to instruct on the lesser included offense of attempted sexual contact in the second degree. Johnson v. State, Ct. App. Op. No. 267 (File No. 6662), 665 P.2d 566 (1983).

**Sentence upheld.** — Sentence of eight years with three years suspended for sexual assault in the second degree was not clearly mistaken. Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 651 P.2d 603 (1983).

**Cited in Storey v. State, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980).**

**Sec. 11-41-430. (Repealed, § 10 ch 78 SLA 1983. For current law, see AS 11-41-420(a)(2).)**

**Sec. 11-41-434. Sexual abuse of a minor in the first degree. (a)** An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person; or

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12-55. (§ 2 ch 78 SLA 1983)

#### NOTES TO DECISIONS

**Editor's notes.** — The cases cited in the note below were decided under former AS 11-15-134 and former AS 11-41-410(a)(4).

**For cases construing former rape statute, see AS 11-41-410. Notes to Decisions, analysis line II.**

**State's authority to control sexual conduct of children.** — Although juveniles may have certain rights to sexual privacy, the state may nevertheless exercise control over the sexual conduct of children beyond the scope of its authority to control adults. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Where juveniles have certain rights to privacy and to express their own autonomy, the state's interest in the well-being of its children may justify legislation that could not properly be applied to adults. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

**As to constitutionality of former statute making lewd and lascivious acts with children a crime, see Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).**

**Physical conduct punished under former statute.** — See Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977); Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

**Former section prohibited fellatio.** — See Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

**Consent is not at issue.** — The state may forbid an adult to have fellatio with a child under the statutorily prescribed age regardless of whether the child consents to the act. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

**Mitigating Factors.** — In prosecution for first-degree sexual assault, defendant's familiarity with his victim (his 12-year-old daughter) was not a mitigating factor. Hughes v. State, Ct. App. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

**Sentence under former AS 11-15-134 upheld.** — See Noble v. State, Sup. Ct. Op. No. 1286 (File No. 2169), 552 P.2d 142 (1976); Buchanan v. State, Sup. Ct. Op.

No. 1316 (File No. 2553), 554 P.2d 1163 (1976); Morgan v. State, Sup. Ct. Op. No. 1908 (File No. 4187), 594 P.2d 952 (1979); Baker v. State, Sup. Ct. Op. No. 1968 (File No. 4631), 602 P.2d 797 (1975); Alvarado v. State, Sup. Ct. Op. No. 2323 (File No. 5133), 626 P.2d 582 (1981).

**Sentence for assault upheld.** — In prosecution of defendant with no prior criminal record on two counts of first-degree sexual assault of his 12-year-old daughter, sentence of two consecutive eight-year terms with five years suspended was not excessive. Hodges v. State, Ct. App. Op. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

**In light of the substantial duration of defendant's sexual abuse of his stepdaughter (three years), his failure to learn from the earlier discovery of his prior offenses, his disregard of a court order that he avoid contact with the victim, and his total failure to take any meaningful step toward rehabilitation, 10-year sentence with four years suspended was not excessive for conviction of first-degree sexual assault.** Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

**Sentence under AS 11-15-134 held excessive.** — See Quave v. State, Ct. App. Op. No. 138 (File No. 5396), 652 P.2d 481 (1982).

**Sentence for assault held excessive.** — Sentence of 20 years imprisonment for first-degree sexual assault of two-year-old child was excessive and case was remanded for resentencing not to exceed 120 years. Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

**Sentence for assault held too lenient.** — Suspended five-year sentence for first-degree sexual assault of defendant's four-year-old son was disapproved as too lenient, with a 90-day to three-year sentence suggested. Langton v. State, Ct. App. Op. No. 236 (File No. 7188, 6247, 7114), 662 P.2d 954 (1983).

**Applied in Scymore v. State, Ct. App. Op. No. 196 (File No. 6195), 655 P.2d 786 (1982).**

**Sec. 11-41-436. Sexual abuse of a minor in the second degree.** (a) An offender commits the crime of sexual abuse of a minor in the second degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild; or

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) — (6).

(b) Sexual abuse of a minor in the second degree is a class B felony. (§ 2 ch 78 SLA 1983)

#### NOTES TO DECISIONS

**Prior law.** — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

**Sec. 11.41.438. Sexual abuse of a minor in the third degree.** (a) An offender commits the crime of sexual abuse of a minor in the third degree if, being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the third degree is a class C felony. (§ 2 ch 78 SLA 1983)

#### NOTES TO DECISIONS

**Prior law.** — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

**Sec. 11.41.440. Sexual abuse of a minor in the fourth degree.** (a) An offender commits the crime of sexual abuse of a minor in the fourth degree if, being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 9 ch 102 SLA 1980; am § 3 ch 78 SLA 1983)

**Effect of amendments.** — The 1980 amendment rewrote subsection (a). The 1983 amendment rewrote this section.

**Legislative history reports.** — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

#### NOTES TO DECISIONS

**Prior law.** — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

**Applied in** Goulden v. State, Ct. App. Op. No. 201 (File No. 6465), 656 P.2d 121P (1983).

**Cited in** *Stares v. State*, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980); *Hodges v. State*, Ct. App. Op. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

**Collateral references.** — Civil liability for carnal knowledge with actual consent of girl under age of consent, 45 ALR 780; 79 ALR 1229.

Assault with intent to ravish or rape consenting female under age of consent, 81 ALR 599.

Parent or person in loco parentis, liability

for rape of minor child, 19 ALR2d 460. Assault with intent to commit unnatural sex act upon minor as affected by latter's consent, 65 ALR2d 748.

Applicability of rape statute covering children of a specified age, with respect to a child who has passed the anniversary date of such age, 73 ALR2d 874.

**Sec. 11.41.445. General provisions.** (a) In a prosecution under AS 11.41.410 — 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless

- (1) the spouses were living apart; or
- (2) the defendant caused physical injury to the victim.

(b) In a prosecution under AS 11.41.410 — 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be that age or older, unless the victim was under 13 years of age at the time of the alleged offense. (§ 3 ch 166 SLA 1978)

**Sec. 11.41.450. Incest.** (a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

- (1) an ancestor or descendant of the whole or half blood;
- (2) a brother or sister of the whole or half blood; or
- (3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Death of defendant abated prosecution under former section. *Hartwell v. State*, Sup. Ct. Op. No. 391 (File No. 704).

423 P.2d 32 (1967), decided under former AS 11.40.110.

Collateral references. — Aiding and abetting offense of incest by one not related to party, 5 ALR 784; 74 ALR 1110; 131 ALR 1322.  
Relationship created by adoption as within statute regarding incest, 151 ALR 1146.  
Consent as element of incest, 36 ALR2d 1299.

Sexual intercourse between persons related by half blood, 72 ALR2d 706.  
Prosecutrix as accomplice or victim, 74 ALR2d 705.  
Rape, incest as included within charge of, 76 ALR2d 484.

**Sec. 11.41.455. Unlawful exploitation of a minor.** (a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
  - (2) the lewd touching of another person's genitals, anus, or breast;
  - (3) the lewd touching by another person of the child's genitals, anus, or breast;
  - (4) masturbation;
  - (5) bestiality; or
  - (6) the lewd exhibition of the child's genitals.
- (b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 57 SLA 1983)

Cross references. — For crime of distribution of child pornography, see AS 11.61.125.  
Effect of amendments. — The 1983 amendment, in subsection (a), substituted "magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person" for "or magazine that depicts such conduct, the person," substituted "18 years" for "16 years" in two places, and added "the following actual or simulated conduct" to the end, all in the introductory paragraph; substituted "lewd" for "obscene" in paragraphs (2), (3) and (6); and deleted "female" preceding "breast" in paragraph

(3). The amendment also redesignated former subsection (b) as subsection (c) and added present subsection (b).

NOTES TO DECISIONS

Applied in *Quelle v. State*, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

**Sec. 11.41.460. Indecent exposure.** (a) An offender commits the crime of indecent exposure if the offender intentionally exposes the offender's genitals to another person with reckless disregard for the offensive, insulting, or frightening effect the act may have on that person.

(b) Indecent exposure before a person under 16 years of age is a class A misdemeanor. Indecent exposure before a person 16 years of age or older is a class B misdemeanor. (§ 4 ch 78 SLA 1983)

**Sec. 11.41.470. Definitions.** For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

- (1) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct and physically unable to express unwillingness to act;
- (2) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;
- (3) "without consent" means that a person
  - (A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or
  - (B) is incapacitated as a result of an act of the defendant. (§ 3 ch 166 SLA 1978; am § 5 ch 78 SLA 1983)

Cross references. — For definition of substituted "one's own conduct and" for terms used in this title, see AS 11.81.900.  
Effect of amendments. — The 1983 amendment deleted "that a person is" preceding "temporarily incapable" and preceding "kidnapping" in paragraph (3)(A).

NOTES TO DECISIONS

Applied in *Nicholson v. State*, Ct. App. Op. No. 193 (File No. 6192), 655 P.2d 1209 (1982); *Junely v. State*, Ct. App. Op. No. 259 (File No. 5609), 655 P.2d 30 (1983); *Reynolds v. State*, Ct. App. Op. No. 262 (File No. 6890), 653 P.2d 1052 (1982).

Quoted in *Woods v. State*, Sup. Ct. Op. No. 2698 (File No. 6180), 653 P.2d 1052 (1982).  
Cited in *Hartley v. State*, Ct. App. Op. No. 153 (File No. 5737), 653 P.2d 1052 (1982).

## Chapter 50. Syndicalism.

(Repealed, § 21, ch. 166, SLA 1978. For Law on terrorististic threatening, see AS 11.56.810.)

## Chapter 51. Offenses Against the Family.

Section	Section
100. Endangering the welfare of a minor	130. Contributing to the delinquency of a minor
120. Criminal nonsupport	
125. Failure to permit visitation with a minor	140. Unlawful marrying

Collateral references. — 10 Am. Jur. 2d, Bigamy, § 1 et seq.; 42 Am. Jur. 2d, Infants, §§ 16, 17, 55, 65-74; 47 Am. Jur. 2d, Juvenile Courts, Etc., §§ 63-70; 59 Am. Jur. 2d, Parent and Child, §§ 45, 50-87.

10 C.J.S., Bigamy, § 1 et seq.; 43 C.J.S., Infants, §§ 10, 24, 58; 67 C.J.S., Parent and Child, §§ 41, 165-178.

**Sec. 11.51.100. Endangering the welfare of a minor.** (a) A person commits the crime of endangering the welfare of a minor if, being a parent, guardian, or other person legally charged with the care of a child under 10 years of age, the person intentionally deserts the child in any place under circumstances creating a substantial risk of physical injury to the child.

(b) Endangering the welfare of a minor is a class C felony. (§ 5 ch 166 SLA 1978)

Collateral references. — Liability of parent for injury to unemancipated child caused by parent's negligence — modern cases, 6 ALR4th 1066.

**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, the person fails without lawful excuse to provide support for the child.

(b) As used in this section "support" includes necessary food, r, are, clothing, shelter, medical attention, and education. There is no failure to provide medical attention to a child if the child 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)

## NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.35.010, 11.35.050 and 11.35.100.

A father has a primary and continuing obligation to support his children. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

And the inability of a father to engage in his chosen trade may not excuse him from that obligation. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

There is no room for professional or occupational pride where the duty of child support is involved. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

Former action included person's postdivorce obligation to support. — See *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

Applicability of former statute to putative fathers of illegitimate children. — See *S.L.W. v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 736 (File No. 1333), 490 P.2d 42 (1971).*

The purpose of contempt proceedings for nonpayment of child support decrees is to coerce the defendant to pay money. It is not to punish him for his past failure to pay. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

Alaska statutes classify indirect contempt for nonsupport as a crime. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

And a jury trial is available. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

If the defendant asserts that he lacks the ability to comply with the court's order of child support, then he is entitled to a jury trial on this issue. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

Procedural aspects of contempt proceedings in nonsupport cases. — For delineation of the procedural aspects of contempt proceedings in nonsupport cases where the purpose is to coerce the defendant's performance of his obligation, see *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

Changes of venue in nonsupport contempt cases. — It can be expected that courts hearing nonsupport contempt cases in the future may choose in some

cases to make use of the discretionary authority vested in them by AS 22.10.030 and will grant changes of venue. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

Inability to comply with a child support order is an affirmative defense. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

In a contempt action the father will not be permitted to succeed on the defense of having a legitimate reason or excuse for not complying with an order of child support where he has not made a reasonable effort to employ his earning capacity in directions other than the one he has chosen as his chief means of livelihood. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

Burden of proving noncompliance with court order of child support. — At a contempt trial, the burden of proving noncompliance, by a preponderance of the evidence, with the court's order of child support should be on the plaintiff, who initiates the action. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

Defendant must prove his inability to comply with a court order of child support. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

In almost all child support contempt cases, the crucial issue will concern the defendant's ability to comply. The burden of proof in this respect should remain with the defendant. This is where it presently rests, in this state and in other jurisdictions; such allocation of the burden of proof is appropriate. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

The shifting of the burden of proof entails a partial change of the ordinary standard employed in criminal cases. But this is still advantageous to both parties. The defendant's protection increases as the burden of proof is shifted. He needs only to show by a preponderance of the evidence that he is unable to pay. Once he has met this burden, incarceration, as a coercive method, serves no useful purpose. At the same time the interest of the complainants, in receiving money which defendant is able to pay, is protected under this approach. *Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).*

(6) the person recklessly creates a hazardous condition for others by an act which has no legal justification or excuse; or  
 (7) the offender intentionally exposes the offender's buttock or anus to another with reckless disregard for the offensive or insulting effect the act may have on that person.

(b) As used in this section, "noise" is "unreasonably loud" if, considering the nature and purpose of the defendant's conduct and the circumstances known to the defendant, including the nature of the location and the time of day or night, the conduct involves a gross deviation from the standard of conduct that a reasonable person would follow in the same situation. "Noise" does not include speech that is constitutionally protected.

(c) Disorderly conduct is a class B misdemeanor and is punishable as authorized in AS 12.55 except that a sentence of imprisonment, if imposed, shall be for a definite term of not more than 10 days. (§ 7 ch 166 SLA 1978; am § 6 ch 78 SLA 1983)

**Effect of amendments.** — The 1983 amendment, in paragraph (a)(7), removed personal pronouns and substituted

NOTES TO DECISIONS

**Editor's notes.** — The cases cited in the notes below were decided under former AS 11.40.080 and 11.45.030.  
**Constitutionality of former disorderly conduct statute.** — See Poole v. State, Sup. Ct. Op. No. 1060 (File No. 2104), 524 P.2d 286 (1974); State v. Martin, Sup. Ct. Op. No. 1122 (File No. 2143), 532 P.2d 316 (1975).  
**Disorderly conduct statute cannot be applied to behavior which is constitutionally exempt from criminal prohibition.** Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).  
**Policemen presumed least likely to be provoked.** — Insofar as the theory of disorderly conduct rests on the tendency of the actor's behavior to provoke violence in others, one must suppose that policemen, employed and trained to maintain order, would be least likely to be provoked to disorderly responses. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

It is only in the most limited circumstances that speech may be punished. Anniskette v. State, Sup. Ct. Op. No. 732

**Collateral references.** — 12 Am. Jur. 2d, *Breach of Peace, Etc.*, §§ 18-40.  
 11 C.J.S. *Breach of the Peace*, §§ 1-16.  
**Failure or refusal to obey police officer's order to move on, on street, as disorderly conduct.** 65 ALR2d 1152.  
**Misuse of telephones as disorderly conduct.** 97 ALR2d 504.

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

- (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;
  - (5) subjects another person to offensive physical contact; or
  - (6) violates a provision of an order issued under AS 25.35.010(b) or 25.35.020 restraining the respondent from communicating directly or indirectly with the petitioner.
- (b) Harassment is a class B misdemeanor. (§ 7 ch 166 SLA 1978; am § 10 ch 61 SLA 1982)

**Cross references.** — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).  
**Effect of amendments.** — The 1982 amendment added paragraph (6) to subsection (a).

NOTES TO DECISIONS

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

**Collateral references.** — Misuse of telephones as disorderly conduct, 97 ALR2d 504.  
**Validity, construction, and application**

**(Sec. 11.61.125. Distribution of child pornography.)** A person commits the crime of distribution of child pornography if the person brings or causes to be brought into the state for sale or distribution, or

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in the state possesses, prepares, publishes, or prints with intent to distribute, sell, or exhibit to others for commercial consideration, any material that visually depicts conduct described under AS 11.41.455(a), knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

(b) This section does not apply to acts that are an integral part of the exhibition or performance of a motion picture if the acts are performed within the scope of employment by a motion picture operator or projectionist employed by the owner or manager of a theater or other place for the showing of motion pictures, unless the motion picture operator or projectionist

(1) has a financial interest in the theater or place in which employed; or

(2) causes the performance or motion picture to be performed or exhibited without the consent of the manager or owner of the theater or other place of showing.

(c) Distribution of child pornography is a class C felony. (§ 2 ch 57 SLA 1983)

*Cross references.* — For crime of unlawful exploitation of a minor, see AS 11.41.455.

**Sec. 11.61.130. Misconduct involving a corpse.** (a) A person commits the crime of misconduct involving a corpse if

(1) except as authorized by law or in an emergency, the person intentionally disinters, removes, conceals, or mutilates a corpse; or

(2) the person engages in sexual penetration of a corpse; or

(3) the person detains a corpse for a debt or demand or upon a lien or charge.

(b) Misconduct involving a corpse is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

*Collateral references.* — 22 Am. Jur. 2d, Dead Bodies, §§ 47-50.

25A C.J.S., Dead Bodies, §§ 8(2)-(8)(4).

Action at law for desecration of grave, 172 ALR 554.

Immunity from liability for unlawful treatment of dead body in operation of hospital by state or governmental unit or agency, 25 ALR2d 244.

Liability in damages for withholding corpse from relatives, 48 ALR3d 240.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 ALR3d 1071.

**Sec. 11.61.140. Cruelty to animals.** (a) A person commits the crime of cruelty to animals if the person

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) recklessly neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe pain or suffering to the animal; or

(3) kills an animal by the use of a decompression chamber.

(b) It is a defense to a prosecution under (a)(1) or (2) of this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am § 1 ch 78 SLA 1980; am § 20 ch 59 SLA 1982)

*Effect of amendments.* — The 1980 amendment rewrote the section. may now be found in AS 11.61.145.

*Collateral references.* — 4 Am. Jur. 2d, Animals, §§ 27-30.

The 1982 amendment inserted "(a)(1) or (a)(2) of" in the introductory language of 3A C.J.S., Animals, §§ 99-112.

*Cruelty in trapping animals, 79 ALR Editor's notes.* — The provisions of 1308.

paragraphs (2) and (3) of subsection (a) as without constitutes statutory offense of it existed prior to the 1980 amendment cruelty, 82 ALR2d 794.

**Sec. 11.61.145. Promoting an exhibition of fighting animals.** (a) A person commits the crime of promoting an exhibition of fighting animals if the person

(1) owns, possesses, keeps, or trains an animal with intent that it be engaged in an exhibition of fighting animals;

(2) instigates, promotes, or has a pecuniary interest in an exhibition of fighting animals; or

(3) attends an exhibition of fighting animals.

(b) The animals, equipment, vehicles, money, and other personal property used by a person in a violation of (a)(1) or (2) of this section shall be forfeited to the state if the person is convicted of an offense under this section.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Promoting an exhibition of fighting animals

(1) under (a)(1) or (2) of this section is a class C felony;

(2) under (a)(3) of this section is a violation for the first offense and a class B misdemeanor for the second and each subsequent offense. (§ 2 ch 78 SLA 1980)

**Sec. 11.61.150. Obstruction of highways.** (a) A person commits the crime of obstruction of highways if the person knowingly

(1) places, drops, or permits to drop on a highway any substance that creates a substantial risk of physical injury to others using the highway; or

(2) renders a highway impassable or passable only with unreasonable inconvenience or hazard.

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- (b) Criminal possession of explosives is a  
(1) class A felony if the crime intended is murder in any degree or kidnapping;  
(2) class B felony if the crime intended is a class A felony;  
(3) class C felony if the crime intended is a class B felony;  
(4) class A misdemeanor if the crime intended is a class C felony;  
(5) class B misdemeanor if the crime intended is a class A or class B misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 31 Am. Jur. Possession of bomb, molotov cocktail, or Explosions and Explosives, similar device as criminal offense, 42 §§ 121-130. ALR3d 1230.

35 C.J.S., Explosives, § 12

**Sec. 11.61.250. Unlawful furnishing of explosives.** (a) A person commits the crime of unlawful furnishing of explosives if the person furnishes an explosive substance or device to another knowing that the other intends to use the substance or device to commit a crime.

(b) Unlawful furnishing of explosives is a class C felony. (§ 7 ch 166 SLA 1978)

## Chapter 65. Offenses Against Public Convenience.

*Secs. 11.65.010 — 11.65.020. [Renumbered as AS 30.50.020 and 30.50.010.]*

*Sec. 11.65.030. Tampering with posted notices. [Repeated, § 21, ch. 166, SLA 1978.]*

## Chapter 66. Offenses Against Public Health and Decency.

### Article

1. Prostitution and Related Offenses (§§ 11.66.100 — 11.66.150)
2. Gambling Offenses (§§ 11.66.200 — 11.66.280)

### Article 1. Prostitution and Related Offenses.

Section	Section
100. Prostitution	130. Promoting prostitution in the third degree
110. Promoting prostitution in the first degree	140. Corroboration of certain testimony not required
120. Promoting prostitution in the second degree	150. Definitions

§ 11.66.100

CRIMINAL LAW

§ 11.66.110

### NOTES TO DECISIONS

**Municipal ordinances not prohibited.** — The enactment of this article does not prohibit municipal ordinances penalizing the solicitation of prostitutes by putative customers. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).  
There is nothing in this article which would support an inference that the legislature sought to encourage men to patronize prostitutes nor is there any indication in this article that the legislature sought statewide uniformity in regulating commercial sexual relations. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

Collateral references. — 63 Am. Jur. 2d, Prostitution, § 1 et seq.

27 C.J.S., Disorderly Houses, § 1 et seq.; 73 C.J.S., Prostitution, § 1 et seq.  
Constitutionality and construction of pandering acts, 74 ALR 311.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignment — modern cases, 77 ALR3d 519.

**Sec. 11.66.100. Prostitution.** (a) A person commits the crime of prostitution if the person engages in or agrees or offers to engage in sexual conduct in return for a fee.

(b) Prostitution is a class B misdemeanor. (§ 3 ch 16 ; SLA 1978)

### NOTES TO DECISIONS

**Common law.** — The keeping of a bawdyhouse was a misdemeanor at common law, whereas fornication and prostitution were not. Elcozar v. United States, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956), decided under former AS 11.40.220.

**This section is not irreconcilable with a municipal ordinance prohibiting the solicitation of prostitutes by putative customers.** Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

**Actual payment of a fee is not required; an act of prostitution is com-**

plete when an offer is extended or an agreement made to engage in sexual conduct in return for a fee. Garibay v. State, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

**Proof.** — Customer's testimony that he agreed to purchase sexual favors for sum of \$200, his testimony that he charged the purchase price using his VISA card, and the VISA charge slip itself, were all highly probative of whether an agreement or offer to engage in sexual conduct in return for a fee was in fact made. Garibay v. State, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

Collateral references. — Prostitution as vagrancy, 14 ALR 1501.  
Entrapment to procure women for immoral purposes, 18 ALR 186; 66 ALR 478; 86 ALR 263.

**Sec. 11.66.110. Promoting prostitution in the first degree.** (a) A person commits the crime of promoting prostitution in the first degree if the person

(1) induces or causes a person to engage in prostitution through the use of force;

(2) as other than a patron of a prostitute, induces or causes a person under 16 years of age to engage in prostitution; or

(3) induces or causes a person in that person's legal custody to engage in prostitution.

(b) In a prosecution under (a)(2) of this section, it is not a defense that the defendant reasonably believed that the person induced or caused to engage in prostitution was 16 years of age or older.

(c) Except as provided in (d) of this section, promoting prostitution in the first degree is a class B felony.

(d) A person convicted under (a)(2) of this section is guilty of a class A felony. (§ 8 ch 166 SLA 1978; am §§ 1, 2 ch 50 SLA 1983)

**Effect of amendments.** — The 1983 (d) of this section" to the beginning of subsection (c) and added subsection (d).

#### NOTES TO DECISIONS

**For case construing former statute prohibiting importing or exporting females for immoral purposes, see State v. Adkerson, Sup. Ct. Op. No. 294 (File No. 520), 403 P.2d 673 (1965).**

**For case construing former procurement statute, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1335), 501 P.2d 762 (1972).**

**Collateral references.** — Transporting female for purpose of prostitution, 74 ALR 330.

Woman uninviting or consenting to own transportation, 84 ALR 376.

**Sec. 11.66.120. Promoting prostitution in the second degree.** (a) A person commits the crime of promoting prostitution in the second degree if the person

(1) manages, supervises, controls, or owns, either alone or in association with others, a prostitution enterprise other than a place of prostitution; or

(2) procures or solicits a patron for a prostitute.

(b) Promoting prostitution in the second degree is a class C felony. (§ 8 ch 166 SLA 1978)

#### NOTES TO DECISIONS

**For case construing former statute prohibiting soliciting or procuring for purpose of prostitution, see Pias v. State, Sup. Ct. Op. No. 1904 (File Nos. 3529, 3530), 598 P.2d 966 (1979).**

**Instruction.** — Trial court did not err in

refusing to give instruction requiring state to prove that prostitution enterprise involved in case was of an ongoing nature. *Curibay v. State, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).*

**Collateral references.** — Separate acts of taking earnings of or support from pimping, 3 ALR4th 1195.

**Sec. 11.66.130. Promoting prostitution in the third degree.** (a) A person commits the crime of promoting prostitution in the third degree if, with intent to promote prostitution, the person

(1) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;

(2) as other than a patron of a prostitute, induces or causes a person 16 years of age or older to engage in prostitution;

(3) as other than a prostitute receiving compensation for personally rendered prostitution services, receives or agrees to receive money or other property pursuant to an agreement or understanding that the money or other property is derived from prostitution; or

(4) engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

(b) Promoting prostitution in the third degree is a class A misdemeanor. (§ 8 ch 166 SLA 1978)

#### NOTES TO DECISIONS

**Editor's notes.** — The cases cited in the notes below were decided under former AS 11.40.260, 11.40.300, 11.40.330, 11.40.410, and 11.40.420.

**Common law.** — The keeping of a bawdyhouse was a misdemeanor at common law. *Ekozar v. United States, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956).*

**Lessor may be guilty as keeper.** — If a man leases his house to a woman to be kept as a bawdyhouse for purposes of prostitution, and it is kept for such purposes, with his knowledge, he is guilty as keeper. *Rosencranz v. United States, 155 F. 38 (9th Cir. 1907).*

**As well as agent of lessor.** — The agent of an owner, who rents a house knowing that it is to be used as a house of prostitution, and that it is so used, may be found guilty as a keeper. *Rosencranz v.*

*United States, 155 F. 38 (9th Cir. 1917).*

**For case construing former statute prohibiting employment in a house of prostitution or living on the earnings of a prostitute, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1338), 501 P.2d 762 (1972).**

**For case construing former statute prohibiting importing or exporting females for immoral purposes, see State v. Adkerson, Sup. Ct. Op. No. 294 (File No. 520), 403 P.2d 673 (1965).**

**For case construing former statute prohibiting pimping, see Johnson v. United States, 260 F. 783 (9th Cir. 1919).**

**For case construing former statute prohibiting a male's living with or on the earnings of a prostitute, see Dunn v. State, Sup. Ct. Op. No. 409 (File No. 735), 426 P.2d 993 (1967).**

**Sec. 12.05.010. Crime commenced outside state but consummated inside.** When the commission of a crime commenced outside the state is consummated inside the state, the defendant is liable to punishment in this state even though out of the state at the time of the commission of the crime charged, if the defendant consummated the crime through the intervention of an innocent or guilty agent, or by other means proceeding directly from the defendant. (§ 1.06 ch 34 SLA 1962)

**Legislative history reports.** — For collateral references. — 21 Am. Jur. report on original bill, see 1962 House Journal, pp. 224-231.

## Chapter 10. Limitations of Actions.

### Section

10. General time limitations  
20. Specific time limitation

### Section

30. When period of limitation runs  
40. When period of limitation does not run

**Sec. 12.10.010. General time limitations.** A prosecution for murder may be commenced at any time. Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any offense, not murder, unless the indictment is found or the information or complaint is instituted within five years next after such offense shall have been committed. (§ 1.02 ch 34 SLA 1962; am § 1 ch 99 SLA 1962)

**Cross references.** — For limitations on prosecutions under the election laws, see AS 15.13.120(e) and AS 15.56.120.

## NOTES TO DECISIONS

The statute of limitations is jurisdictional. *Padie v. State*, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

It is to be construed in favor of the defendant. *Padie v. State*, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

**Statute of limitations for manslaughter.** — While there is no statute of limitations in Alaska for the offense of murder, the crime of manslaughter is subject to a five-year statute of limitations. *Padie v. State*, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Defendant may not be convicted of time-barred lesser included offense. — Just as a defendant may not be charged with a time-barred offense, he may not be convicted of it, even as a lesser offense

mitigating effects of passion and provocation, requiring the jury to acquit him if he presented such evidence in mitigation and the state did not negate it. *Padie v. State*, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

A statute of limitations can be waived if the trial court determines that the following prerequisites have been met: (1) The waiver is knowing, intelligent, and voluntary; (2) it is made for the defendant's benefit and after consultation with counsel; and (3) the defendant's waiver does not handicap his defense or contravene any other public policy reasons motivating the enactment of the statute. *Padie v. State*, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Since defendant's waiver of the relevant statute of limitations was knowingly, intelligently, and voluntarily entered, it was made for defendant's benefit and after consultation with counsel; and defendant's waiver did not contravene any of the policy reasons underlying criminal statutes of limitations, the superior court possessed jurisdiction to accept defendant's plea of nolo contendere to the charge of manslaughter after the statute of limitations had run. *Padie v. State*, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

**Collateral references.** — 21 Am. Jur. 2d, Criminal Law, § 223 et seq.  
22 C.J.S., Criminal Law, § 223 et seq.

**Sec. 12.10.020. Specific time limitation.** (a) Even if the general time limitation has expired, a prosecution for any offense which includes a material element of fraud or breach of fiduciary obligation may be commenced within one year after the discovery of the offense by an aggrieved party or by a person who has legal capacity to represent an aggrieved party or a legal duty to report the offense and who is not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(b) Even if the general time limitation has expired, a prosecution for any offense based upon misconduct in office by a public officer or employee may be commenced within one year after discovery of the offense by a person having a duty to report such offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(c) Even if the general time limitation has expired, a prosecution under AS 11.41.410 — 11.41.460 for an offense committed against a person under the age of 16 may be commenced within one year after the crime is reported to a peace officer or the person reaches the age of 16, whichever occurs first. This subsection does not extend the period of limitation by more than five years. (§ 1.03 ch 34 SLA 1962; am § 7 ch 78 SLA 1983)

*Cross references.* — For applicability of (c) of this section, see § 11, ch. 78, SLA 1983, in the Temporary and Special Acts. *Effect of amendments.* — The 1983 amendment added subsection (c).

## NOTES TO DECISIONS

*Stated in State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984).*

**Sec. 12.10.030. When period of limitation runs.** (a) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution is commenced either when an indictment is found or when a warrant is issued, provided that such warrant is executed without unreasonable delay. (§ 1.04 ch 34 SLA 1962)

## NOTES TO DECISIONS

*Warrant requirements.* — Subsection (b) and AS 12.10.040(b) do not require that a warrant be based on an indictment, information, or other charging document before the statute of limitations is tolled by its issuance. *Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).*

*Reasonable delay found.* — Where defendant did not appear for sentencing on felony convictions and the trial court issued a bench warrant for his failure to appear, yet not until six years, 10 months,

and four days later was defendant indicted for his failure to appear, the issuance of the warrant constituted a pending prosecution under AS 12.10.040(b) which, when combined with the finding of the trial court that under subsection (b) there was a reasonable basis for delay in executing the warrant to toll the statute of limitations, was sufficient to bring prosecution of the offense within the five-year period allowed by the statute of limitations. *Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).*

*Collateral references.* — 21 Am. Jur. 2d, Criminal Law, § 157.

**Sec. 12.10.040. When period of limitation does not run.** (a) The period of limitation does not run during any time when the accused, with a purpose to avoid detection, apprehension, or prosecution, is outside the state or is absent from the accused's usual place of abode within the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(b) The period of limitation does not run during any time when a prosecution against the accused for the same conduct is pending in this state. (§ 1.05 ch 34 SLA 1962)

## NOTES TO DECISIONS

*Warrant requirements.* — AS 12.10.030(b) and subsection (b) do not require that a warrant be based on an indictment, information, or other charging document before the statute of limitations is tolled by its issuance. *Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).*

*Pending prosecution found.* — Where defendant did not appear for sentencing on felony convictions and the trial court issued a bench warrant for his failure to appear, yet not until six years, 10 months,

and four days later was defendant indicted for his failure to appear, the issuance of the warrant constituted a pending prosecution under subsection (b) which, when combined with the finding of the trial court that under AS 12.10.030(b) there was a reasonable basis for delay in executing the warrant to toll the statute of limitations, was sufficient to bring prosecution of the offense within the five-year period allowed by the statute of limitations. *Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).*

*Collateral references.* — Necessity of alleging in indictment or information limitation-tolling facts, 52 Al.R3d 922.

## Chapter 15. Parties.

*(Repeated, § 21 ch 166 SLA 1978. For present provisions, see AS 11.16.)*

## Chapter 20. Bars to Actions.

Section	Section
10. Conviction or acquittal elsewhere as bar	40. When conviction or acquittal is a bar to other offenses
20. When acquittal or dismissal is no bar	50. Dismissal as bar
30. When acquittal is a bar	60. Discharge of codefendant as bar

**Sec. 12.20.010. Conviction or acquittal elsewhere as bar.** When an act charged as a crime is within the jurisdiction of the United States, another state, or a territory, as well as of this state, a conviction or acquittal in the former is a bar to the prosecution for it in this state. (§ 1.11 ch 34 SLA 1962)

and amounts on the checks, including those to be uttered, and assisted in running the checks through the check processor, could have been indicted and punished for the offenses of which the defendants were convicted and was an accomplice. *Ing v. United States*, 278 F.2d 362 19th Cir. 1960.

**Facts showing witness was not accomplice.** — General statement by witness that he and defendant, "had talked over the fact of burglarizing King Builders" was not enough to show that he conspired in a prearranged plan to commit the particular crimes with which defendant was charged, or that he in any manner aided, abetted, assisted or participated in the criminal acts. *Taylor v. State*, Sup. Ct. Op. No. 216 (File No. 407), 391 P.2d 950 (1964).

That witness later disposed of the stolen goods, knowing they were stolen, did not make him an accomplice. *Taylor v. State*, Sup. Ct. Op. No. 216 (File No. 407), 391 P.2d 950 (1964).

**Evidence not connecting defendant's with crime.** — Where the facts and circumstances relied upon for corroboration did no more than show an opportunity for the defendants to have committed the crimes or connect them with the perpetrators, such evidence did not tend to connect the defendants with the commission of the crimes of which they were convicted. *Ing v. United States*, 278 F.2d 362 (9th Cir. 1960).

**Sufficiency of corroborating testimony.** — Corroborating testimony is not sufficient if it requires the interpretation and direction of the testimony to be corroborated. *Ing v. United States*, 278 F.2d 362 (9th Cir. 1960).

The statutory requirement of corroboration is satisfied when the corroborating evidence tends to induce in the minds of the jurors a rational belief that the accomplice was speaking the truth when he implicated the defendant in the criminal event. *Dimmick v. State*, Sup. Ct. Op. No. 632 (File No. 1098), 473 P.2d 616 (1970).

The corroborative evidence fulfills the requirement that it tend to connect the defendant with the commission of the crime where it serves as a means of inducing in the minds of the jurors a rational belief that the accomplice was speaking the truth when he implicated the defendant in the criminal event. *Futakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970).

Corroborating evidence need only be sufficient to induce in the minds of the jurors a rational belief that the accomplice was speaking the truth when he implicated the defendant in the criminal event. *Anthony v. State*, Sup. Ct. Op. No. 1025 (File No. 1774), 521 P.2d 486 (1974).

Evidence was sufficient to satisfy the statutory requirement of corroboration. *Thomas v. State*, Sup. Ct. Op. No. 200 (File No. 384), 391 P.2d 18 (1964).

In a prosecution for unnatural carnal copulation, there was ample corroboration of alleged accomplice's testimony. *Christy v. United States*, 17 Alaska 107, 261 F.2d 357 (9th Cir. 1958), cert. denied, 360 U.S. 919, 79 S. Ct. 1438, 3 L. Ed. 2d 1535, rehearing denied, 361 U.S. 857, 80 S. Ct. 47, 4 L. Ed. 2d 96 (1959).

**Raising issue of erroneously allowing uncorroborated testimony to go to jury.** — That it was error for the court to allow uncorroborated testimony to go to the jury is an issue properly raised by a motion for judgment of acquittal. *Beavers v. State*, Sup. Ct. Op. No. 765 (File No. 1387), 492 P.2d 88 (1971).

**Section inapplicable to grand jury proceedings.** — This section's evidentiary requirement of corroboration is inapplicable to grand jury proceedings. *Merrill v. State*, Sup. Ct. Op. No. 392 (File No. 688), 423 P.2d 686, cert. denied, 386 U.S. 1040, 87 S. Ct. 1497, 18 L. Ed. 2d 607 (1967).

Hence, indictment may be returned without corroboration of accomplice's testimony. — There is no requirement in either Alaska's Code of Criminal Procedure, or in its Rules of Criminal Procedure, that an accomplice's testimony be corroborated before an indictment can be properly returned. *Merrill v. State*, Sup. Ct. Op. No. 392 (File No. 688), 423 P.2d 686, cert. denied, 386 U.S. 1040, 87 S. Ct. 1497, 18 L. Ed. 2d 607 (1967).

Applied in *Carman v. State*, Sup. Ct. Op. No. 1979 (File No. 3555), 602 P.2d 1255 (1979); *Miller v. State*, Ct. App. Op. No. 24 (File No. 4972), 629 P.2d 546 (1981).

Quoted in *Oksoktaruk v. State*, Sup. Ct. Op. No. 2089 (File No. 3986), 611 P.2d 621 (1980); *Price v. State*, Ct. App. Op. No. 100 (File No. 5083), 647 P.2d 611 (1982); *State v. Daniels v. State*, Sup. Ct. Op. No. 185 (File No. 295), 388 P.2d 813 (1964).

**Secs. 12.45.030 — 12.45.040. Evidence required in certain cases. (Repealed, § 21 ch 166 SLA 1978.)**

**Sec. 12.45.045. Evidence of past sexual conduct inadmissible in rape and assault with intent to commit rape. (a)** In prosecutions for the crime of sexual assault in any degree or an attempt to commit sexual assault in any degree, evidence of the complaining witness' previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit the evidence for any purpose, the defendant may apply for an order of the court at any time before or during the trial or preliminary hearing. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, the court shall make an order stating what evidence may be introduced and the nature of the questions which shall be permitted. The defendant may then offer evidence under the order of the court.

(b) In the absence of a persuasive showing to the contrary, evidence of the complaining witness' sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

(c) In this section "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section. (§ 1 ch 165 SLA 1975; am § 18 ch 166 SLA 1978)

Cross references. — For similar court rule, see Evid. R. 404(a)(2).

NOTES TO DECISIONS

In camera hearing before presenting evidence. — In prosecution for attempted sexual assault in the first degree, defendant's counsel should have moved for an in camera hearing before presenting any evidence relating to the victim's prior sexual conduct. *Baden v. State*, Ct. App. Op. No. 285 (File No. 6832), 667 P.2d 1275 (1983). Applied in *Padgett v. State*, Sup. Ct. Op. No. 1801 (File No. 3317), 590 P.2d 432 (1979); *Moss v. State*, Sup. Ct. Op. No. 2239 (File No. 4389), 620 P.2d 674 (1980); *Kvasnikoff v. State*, Ct. App. Op. No. 314 (File No. 5588), 674 P.2d 302 (1983).

Collateral references. — Modern status of admissibility, in forcible rape prosecution, of complainant's prior sexual acts, 94 ALR2d 257.

Modern status of admissibility, in statutory rape prosecution, of complainant's prior sexual acts or general reputation for unchastity, 90 ALR2d 1300.

Effect of amendments. — The 1983 amendment inserted "and in AS 12.62.035" near the beginning of subsection (a).

**Sec. 12.62.035. Access to certain crime information.** (a) Notwithstanding any other provision of law, an interested person as defined in (e) of this section may request from the commission records of all convictions involving contributing to the delinquency of a minor and any sex crimes of a person who holds or applies for a position in which the person has or would have supervisory or disciplinary power over a minor. The commission shall authorize the disclosure of a copy of the information to the person who is the subject of the request.

(b) A request for records under (a) of this section shall include within it the fingerprints of the person who is the subject of the request and any other data specified in regulations adopted by the commission. The request shall be on a form approved by the commission, and the commission may charge a fee to be paid by the requesting interested person for the actual cost of processing the request. The commission shall destroy an application within six months after the requested information is sent to the requesting interested person and the person who is the subject of the request.

(c) The commission shall adopt regulations to implement the provisions of this section.

(d) If an individual is denied employment as a result of the disclosure of inaccurate or incomplete records under this section, an action may be brought against the state. No other action may be brought against the state, or an agency or employee of the state, as a result of disclosing or failing to disclose criminal justice information.

(e) As used in this section:

(1) "contributing to the delinquency of a minor" means a conviction for a violation or attempted violation of AS 11.51.130(a)(1), (3), or (5); former AS 11.40.130; or the laws of another jurisdiction if the offense would have been a crime in this state under AS 11.51.130(a)(1), (3), or (5) or former AS 11.40.130 if committed in the state;

(2) "interested person" means a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person, that employs or solicits the employment of a person to serve with or without compensation in a position in which the person has or would have supervisory or disciplinary power over a minor;

(3) "sex crime" means a conviction for a violation or attempted violation of AS 11.41.410 — 11.41.470, AS 11.61.110(a)(7), or AS 11.66.100 — 11.66.130; former AS 11.15.120, 11.15.134, or 11.15.160; former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420; or the laws of another jurisdiction if the offense would have been a crime in this state under one of the sections listed in this paragraph if committed in the state. (§ 2 ch 66 SLA 1983; am § 44 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment, in subsection (e), in paragraph (1), substituted "former AS 11.40.130, or 11.40.200 — 11.40.420, or the laws of another jurisdiction" for "or for a violation or attempted violation of an offense committed outside the state" and inserted "or former AS 11.40.130," and in paragraph (3) substituted "above sections."

**Sec. 12.62.040. Security, updating, and purging.** (a) Criminal justice information systems shall

(1) be dedicated to law enforcement purposes and be under the management and control of law enforcement agencies unless exempted under regulations adopted under AS 12.62.010;

(2) include operating procedures approved by the commission which are reasonably designed to assure the security of the information contained in the system from unauthorized disclosure, and reasonably designed to assure that criminal offender record information in the system is regularly and accurately revised to include subsequently furnished information;

(3) include operating procedures approved by the commission which are designed to assure that information concerning an individual shall be removed from the records, based on considerations of age, nature of record, and reasonable interval following the last entry of information indicating that the individual is still under the jurisdiction of a law enforcement agency.

(b) Notwithstanding any provision of this section, any criminal justice information relating to minors which is maintained as part of a criminal justice information system must be afforded at least the same protection and is subject to the same procedural safeguards for the benefit of the individual with respect to whom the information is maintained, in matters relating to access, use and security as it would be under AS 47.10.090. (§ 1 ch 161 SLA 1972)

**Sec. 12.62.050. Interstate systems for the exchange of criminal justice information.** (a) The commission shall regulate the participation by all state and local criminal justice agencies in an interstate system for the exchange of criminal justice information, and shall be responsible to assure the consistency of the participation with the provisions and purposes of this chapter. The commission may not compel any criminal justice agency to participate in an interstate system.

(b) Direct access to an interstate system for the exchange of criminal justice information shall be limited to those criminal justice agencies that are expressly designated for that purpose by the commission. When the system employs telecommunications access terminals, the commission shall limit the number and placement of the terminals to those for which adequate security measures may be taken and as to which the commission may impose appropriate supervisory regulations. (§ 1 ch 161 SLA 1972)

(b) If more than one power is proposed, each appears separately on the ballot.

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

### Chapter 41. Powers of Third Class Boroughs.

#### Section

10. Powers of third class boroughs  
20. Assembly to serve as school board

**Sec. 29.41.010. Powers of third class boroughs.** (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and zoning in accordance with AS 29.33.070 — 29.33.245 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

- (1) a number of voters equal to 15 per cent of the number of voters cast in the proposed service area at the preceding regular election may file a petition with the assembly; or
  - (2) the assembly may place the question on the ballot.
- (c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.58.150 — 29.58.340.

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of

district in which the military reservation is located. (§ 2 ch 118 SLA 1972; am § 4 ch 32 SLA 1973; am § 7 ch 72 SLA 1974; am § 7 ch 13 SLA 1975; am § 35 ch 124 SLA 1975; am §§ 1, 2 ch 93 SLA 1977)

**Legislative history reports.** — For Finance] am H], see 1974 House Journal, report on ch. 72, SLA 1974 (HCS CSSB 122 p. 519).

### NOTES TO DECISIONS

**Operation of military reservation schools.** — Nothing in the legislature's 1975 amendments requires local school districts that take over operation of military reservation schools to assume any risk of loss or duty to insure school buildings. *State v. Fairbanks N. Star Borough School Dist.*, Sup. Ct. Op. No. 2257 (File No. 4477), 621 P.2d 1329 (1981).

The state must bear the loss resulting from the fire destruction of a military reservation school operated by a local school district in the absence of provisions to the contrary. *State v. Fairbanks N. Star Borough School Dist.*, Sup. Ct. Op. No. 2257 (File No. 4477), 621 P.2d 1329 (1981).

**Sec. 29.41.020. Assembly to serve as school board.** The borough assembly is the borough school board for third class boroughs. The borough executive is the presiding officer of the borough assembly and a borough executive has all powers of a borough executive except for the veto power. (§ 2 ch 118 SLA 1972; am § 30 ch 94 SLA 1980)

**Effect of amendments.** — The 1980 amendment deleted the former second sentence, which read: "Where applicable, weighted voting shall apply to board decisions."

### Chapter 43. Powers of Cities Outside Boroughs.

#### Section

10. Additional powers  
20. Assessment and tax collection  
30. Education  
40. Planning and zoning

#### Section

100. Extension of curfews outside cities  
105. Enforcement of curfews  
110. Penalty for violation of curfew

**Sec. 29.43.010. Additional powers.** In addition to the powers granted by AS 29.48, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated. (§ 2 ch 118 SLA 1972)

**Sec. 29.43.020. Assessment and tax collection.** Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by AS 29.53 for boroughs. (Cities outside boroughs)

NOTES TO DECISIONS

Applied in City of Yakutat v. Kymath, Sup. Ct. Op. No. 2581 (File Nos. 6033, 6099), 654 P.2d 785 (1982).

Sec. 29.43.030. Education. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.33.050 for boroughs. (§ 2 ch 118 SLA 1972)

Sec. 29.43.040. Planning and zoning. (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may, provide for planning, platting and zoning, as provided by AS 29.33.070 — 29.33.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may, provide for planning, platting and zoning, as provided by AS 29.33.070 — 29.33.245 for boroughs. (§ 2 ch 118 SLA 1972; am §§ 8, 9 ch 93 SLA 1977)

Effect of amendments. — The 1977 "class" preceding "boroughs" in two places amendment inserted "first and second" in subsection (a) and added subsection (b).

Sec. 29.43.100. Extension of curfews outside cities. The provisions of a curfew ordinance enacted by a city of any class concerning minors shall be imposed in the total area within 20 miles of the limits of that city. If a given area lies within 20 miles of two or more cities with conflicting curfew ordinances, the provisions of the curfew ordinance of the city having the largest population prevails as to the overlapping area. (§ 1 ch 86 SLA 1962)

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978. Also in 1978, the words "or village" following the word

Sec. 29.43.105. Enforcement of curfews. (a) The municipal peace officers shall enforce the provisions of the ordinance inside the city limits. Under AS 29.43.100 — 29.43.110 the state peace officers shall enforce the provisions of the ordinance in the area outside the city limits.

(b) In an area where state peace officers are not available, the municipal peace officer may enforce the provisions of the ordinance in the area outside the city limits if the enforcement responsibilities are delegated by contract between the state and the municipality. (§ 3 ch

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978.

SECTION 110

Sec. 29.43.110. Penalty for violation of curfew. The penalty for violation of AS 29.43.100 — 29.43.110 is as prescribed by the curfew ordinance of the city, and a fine so paid shall be paid to the city when the violation takes place in the city. Otherwise the fine shall be paid to the state. However, the penalty shall not exceed a fine of \$300, or imprisonment for 30 days, or both. (§ 2 ch 86 SLA 1962)

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978.

Chapter 48. Powers Applicable to All Municipalities.

Article

- 1. General Powers (§§ 29.48.010 — 29.48.020)
- 2. Facilities, Services and Regulation (§§ 29.48.030 — 29.48.110)
- 3. Municipal Enactments (§§ 29.48.130 — 29.48.220)
- 4. Miscellaneous Provisions (§§ 29.48.250 — 29.48.270)
- 5. Construction of Powers (§§ 29.48.310 — 29.48.330)

Article 1. General Powers.

Section

- 10. General powers
- 20. Second class borough powers outside cities

Sec. 29.48.010. General powers. Municipalities have the following general powers, subject to other provisions of law:

- (1) to establish and prescribe the functions of municipal departments, offices or agencies;
- (2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;
- (3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;
- (4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;
- (5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;
- (6) to sue and be sued;
- (7) to levy taxes and special assessments;
- (8) to enforce ordinances and to prescribe penalties for violations;
- (9) to acquire, manage, control, use and dispose of real and personal

**Sec. 47.08.140. Definitions. In AS 47.08.010 — 47.08.140**

(1) "applicant" means a person who has suffered a catastrophic illness and is applying for assistance under AS 47.08.010 — 47.08.140 or is the subject of an application for assistance under AS 47.08.010 — 47.08.140;

(2) "applicant's share" means the amount of the total medical expense related to the catastrophic illness which the committee determines the applicant can reasonably be expected to pay based on income, assets, and number of dependents under AS 47.08.060;

(3) "catastrophic illness" means illness or injury which results in medical expenses of over \$1,000 during a period not to exceed 12 months, after all other sources of third-party payment have been exhausted;

(4) "committee" means the Catastrophic Illness Committee, created under AS 47.08.020;

(5) "elective medical or surgical procedures" means treatment which is not essential to the life or health of a person;

(6) "family" means two or more persons related by blood or marriage or adoption living as one economic unit;

(7) "liquid assets" means assets which can be readily converted to cash;

(8) "medical expense" means any financial obligation incurred in the course of treatment of illness as prescribed by a physician, including bills for ancillary services, patient transportation, transportation of a medical or family escort when reasonably necessary, or living expenses while receiving outpatient treatment in a community to which the applicant is not reasonably able to commute from the applicant's permanent place of abode;

(9) "nonliquid assets" means all assets which are not liquid assets; (10) "permanent place of abode" means a dwelling, or a dwelling unit in a multiple dwelling, including lots and outbuildings or an appropriate portion of these, which are necessary to convenient use of the dwelling unit;

(11) "provider" means a licensed physician, pharmacist, dentist, or other health service worker or a licensed hospital, clinic, skilled nursing home, intermediate care facility or health maintenance organization, which has provided services not excluded by AS 47.08.050 to an applicant as a result of a catastrophic illness;

(12) "third-party payments" means payments of medical expenses related to a catastrophic illness by sources other than the applicant or the committee, including but not limited to state and federal medical assistance programs, private health insurance, employment-related health insurance, military health insurance, workers' compensation, violent crime compensation, Indian Health Service of the United States Department of Health and Human Services, and awards in legal actions. (§ 1 ch 107 S.L.A. 1978)

## Chapter 10. Delinquent Minors and Children in Need of Aid.

**Article**

1. Children's Proceedings (§§ 47.10.010 — 47.10.142)
2. Juvenile Institutions (§§ 47.10.150 — 47.10.220)
3. Care of Children (§§ 47.10.230 — 47.10.260)
4. General Provisions (§§ 47.10.270 — 47.10.290)

**NOTES TO DECISIONS**

Cited in *Flores v. Flores*, Sup. Ct. Op. No. 1875 (File No. 3832), 698 P.2d 893 (1979).

**Article 1. Children's Proceedings.**

Section	Section
10. Jurisdiction	85. Child in need of aid; religious treatment
20. Investigation and petition	90. Records
30. Summons and custody of minor	95. Arrest of a minor
40. Release of minor	100. Retention of jurisdiction over minor
50. Appointment of guardian ad litem or attorney	110. Appointment of guardian or custodian
60. Waiver of jurisdiction	120. Support of minor
70. Hearings	130. Detention
75. Young adult advisory panels	140. Temporary detention and detention hearing
80. Judgments and orders	142. Emergency custody and temporary placement hearing
81. Predisposition hearing reports	
82. Best interests of the child	
83. Review hearing information	
84. Legal custody, guardianship, and residual parental rights and responsibilities	

**Sec. 47.10.010. Jurisdiction.** (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or of a municipality of the state; or  
(2) to be a child in need of aid as a result of

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to provide care, including physical abandonment by

- (i) both parents,
- (ii) the surviving parent, or
- (iii) one parent if the other parent's rights and responsibilities have been terminated under AS 47.10.080 or voluntarily relinquished;

(B) the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parents are unwilling to provide the medical treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian or custodian or the failure of the parent, guardian or custodian adequately to supervise the child;

(D) the child having been sexually abused either by the child's parent, guardian or custodian, or as a result of conditions created by the child's parent, guardian or custodian, or by the failure of the parent, guardian or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian or custodian; (F) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian or custodian.

(c) When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, a fish and game statute or regulation under AS 16 or a parks and recreational facilities statute or regulation under AS 41.21, excepting a statute the violation of which is a felony, the procedure prescribed in AS 47.10.020 — 47.10.090 may not be followed, except that a parent, guardian or legal custodian shall be present at all proceedings. The minor accused of a traffic offense, a fish and game statute or regulation violation under AS 16 or parks and recreational facilities violation under AS 41.21 shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

(c) In a controversy concerning custody of a minor, the court may appoint a guardian of the person and property of a minor and may order support from either or both parents. Custody of a minor may be given to the Department of Health and Social Services, and payment of support money to the department may be ordered. § 1 art I ch 145 SLA 1957; am § 1 ch 76 SLA 1961; am §§ 1, 2 ch 110 SLA 1967; am § 1 ch 61 SLA 1969; am § 6 ch 104 SLA 1971; am §§ 7, 8 ch 73 SLA 1977; am § 1 ch 104 SLA 1982)

Cross references. — See Rules of Child Procedure and Administration. For waiver of jurisdiction, see AS 47.10.060. For provisions relating to child protection, see AS 47.17. For provisions establishing office of child advocacy, see AS 47.50.

Editor's notes. — Section 7, ch. 110, SLA 1967, as amended by § 80, ch. 69, SLA 1970, provides: "In exercising its jurisdiction under AS 47.10, the superior court may designate district judges and magistrates as masters under Civil Rule 53."

Section 32, ch. 63, SLA 1977, provides: "Section 7 of this Act has the effect of changing Children's Rule 12 by deleting any references to 'Truant from school,' 'endangering) the morals or health,' 'being wayward or habitually disobedient,'

or 'uncontrolled,' and has the effect of substituting the words 'child in need of aid' for the terms 'child in need of supervision' and 'dependent' where those two terms appear in Rules of Children's Procedure."

#### NOTES TO DECISIONS

Applicability of 1977 amendment. — All cases pending at the time of the enactment of the new children's statute by the 1977 acts are entitled to hearing under the new, rather than the old, standards. In re J.M., Sup. Ct. Op. No. 1548 (File No. 3219, 3229), 573 P.2d 1376 (1978).

In order to provide guidance to the superior court for the administration of juvenile justice, children adjudged dependent under the standards of former subsection (a)(5) of this section prior to its repeal in 1977 are entitled, on request, to a dispositional hearing under the standards of the newly-enacted subsection (a)(2)(C) of this section. In re J.M., Sup. Ct. Op. No. 1548 (File No. 3219, 3229), 573 P.2d 1376 (1978).

Children adjudged dependent under former (a)(5) of this section are entitled on request to an adjudicatory hearing under the standards of subsection (a)(2)(C). In re C.L.T., Sup. Ct. Op. No. 1868 (File No. 3607), 597 P.2d 581 (1979).

Rehabilitation, rather than punishment, is the express purpose of juvenile jurisdiction. Mere confinement without treatment does not contribute to the goal of rehabilitation; such confinement constitutes cruel and unusual punishment. Rust v. State, Sup. Ct. Op. No. 1668 (File No. 3172), 582 P.2d 134 (1978).

Principal precept behind children's court concept is that a person under 18 years of age does not have mature judgment and may not fully realize the consequences of his acts, and that therefore he should not generally have to bear the stigma of a criminal conviction for the rest of his life. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

A child "in need of aid" appears to be the functional equivalent of a "dependent" child under this section as it existed prior to its 1977 amendment. In re C.L.T., Sup. Ct. Op. No. 1868 (File No. 3607), 597 P.2d 518 (1979).

The phrase "under 18 years of age" refers to the age of the accused person at the time of the alleged offense. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Jurisdiction dependent upon age of offender at time of act. — Juvenile jurisdiction of the superior court, in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent acts. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Child is exempt from criminal prosecution until children's court waives jurisdiction. — From the moment a child commits an offense he is exempt from criminal prosecution until the children's court properly waives its jurisdiction. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Deferring action against child until 18th birthday would frustrate purpose of juvenile courts. — To allow officials charged with the execution of the law to prosecute a child offender as a criminal merely by deferring action until the child's 18th birthday would frustrate the purpose of juvenile courts. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Serious constitutional issues would arise if the nature of the proceedings against a child offender were to depend on the arbitrary decision of law-enforcement officials. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

When person over or under certain age. — With respect to penal statutes, whether a person is over or under a certain age depends upon whether he has reached that particular anniversary of his birthday or not. State v. Linn, Sup. Ct. Op. No. 47 (File No. 122), 363 P.2d 361 (1961).

"Delinquent" status depends not upon a criminal conviction but upon proof that the juvenile committed acts which would have been criminal if committed by an adult. Rust v. State, Sup. Ct. Op. No. 1668 (File No. 3172), 582 P.2d 134 (1978).

One who committed a crime when 18 years of age could be criminally prosecuted, as an adult, when he had been previously adjudged a delinquent minor and the court had retained supervisory jurisdiction over him until age 19. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

former AS 17.12.110(d)(4) not in conflict. — Former AS 17.12.110(d)(4), which provided that a person who, while under the age of 18, possesses, controls or uses any amount of marijuana was, upon conviction, guilty of a misdemeanor punishable by a fine of not more than \$1000, was not in conflict with paragraph (a)(1) of this section and AS 47.10.080(b)(1). M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

State may interfere with certain conduct of children in need of aid. — Conduct of children alleged to be in need of supervision (see now children alleged to be in need of aid), such as running away from home and foster home placement, may constitutionally be interfered with by the state. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

Interests to be protected by legislation regarding children in need of aid. — See L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

Means chosen by the state to protect children are closely and substantially related to an appropriate government interest. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

The purpose of the supervision or treatment contemplated by the creation of the child in need of supervision (see now child in need of aid), and its predecessor non-criminal delinquency was reintroduction of the child into her family and resumption of parental custody including parental control. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

The discretion allotted a parent in the administration of punishment is not unlimited. Clearly it does not extend to punishment regularly causing the "substantial physical harm" which under subsection (a)(2)(C) determines that a child is in need of aid. In re D.C., Sup. Ct. Op. No. 1862 (File No. 3840), 596 P.2d 22 (1979).

A minor who has been adjudged a child in need of supervision [now child in need of aid] cannot be institutionalized under the Children's Code. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The Department of Health and Social Services does not possess the authority to institutionalize any minor, including one who has been declared a child in need of supervision (see now child in need of aid), who has been committed to its custody. It is unreasonable to construe Alaska children's statutes in a manner which would

result in the grant to the Department of Health and Social Services of broader powers of commitment than possessed by the trial court. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Requisites to determination of delinquency. — Before a juvenile can be determined delinquent in a proceeding which could result in commitment to an institution, thus curtailing his freedom, certain requisites must be met. First, written notice of the charges must be given to the juvenile and his parents sufficiently in advance of the proceedings to allow preparation to meet the charges. Second, the child and his parents must be apprised of the right to counsel, including appointed counsel in case of indigency. Third, the child may exercise his privilege against self-incrimination. Lastly, absent a valid confession, the determination of delinquency cannot be sustained in the absence of sworn testimony, which is subject to cross-examination. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Minor properly declared delinquent. — Where the lower court determined that a minor would not abide by any orders entered regarding her supervision under former subsection (j) of AS 47.10.080, this behavior constituted willful criminal contempt of the court's authority; were she an adult, her actions would be characterized as a "crime" under Alaska statutes. She was, therefore, properly declared a delinquent and subjected to those sanctions available for the correction of a delinquent minor's behavior. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

Where the parents' interests are hostile to the child's, the parents may not select the child's attorney. Wagstaff v. Superior Court, Family Court Div., Sup. Ct. Op. No. 1144 (File No. 2208), 535 P.2d 1220 (1975).

Then the child may retain the attorney of his choice or, in the alternative, ask the court to appoint an attorney for him. Wagstaff v. Superior Court, Family Court Div., Sup. Ct. Op. No. 1144 (File No. 2208), 535 P.2d 1220 (1975).

And court must respect choice. — If the child has retained counsel, the court must respect the child's choice. Wagstaff v. Superior Court, Family Court Div., Sup. Ct. Op. No. 1144 (File No. 2208), 535 P.2d 1220 (1975).

The required standard of proof has been increased from "a preponderance of

the evidence" to "beyond a reasonable doubt" in the adjudicatory stages of at least those delinquency proceedings in which a child is charged with an act that would be a crime if committed by an adult. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Privilege against self-incrimination. — See E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 786 (1977) (decided prior to the 1977 amendment to this section).

Violation of former law relating to purchase of intoxicating liquors by minors. — See Purdy v. United States, 16 Alaska 173, 146 F. Supp. 762 (D. Alaska 1956).

Prosecution for joyriding. — Subsection (b) of this section and former AS 28.35.010(d) demonstrated a clear legislative intent to exclude from the coverage and requirements of the juvenile code those cases involving alleged misdemeanor violations of Alaska's "joyriding" statute by persons under 18 years of age. State v. G.L.P., Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979).

One under 18 years of age could be charged, prosecuted and sentenced in the district court, as an adult, for a misdemeanor violation of Alaska's "joyriding" statute, former AS 28.35.010(a), before there had been an order by the superior court waiving the latter court's juvenile jurisdiction. State v. G.L.P., Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979).

Termination of parental rights due to abandonment. — In proceeding to terminate parental rights, although trial judge orally stated that he considered involuntary incarceration to constitute abandonment, where written findings of

fact, submitted by state and signed by court, referred to parent's voluntary absence from October of 1968 to June of 1981 as the relevant conscious disregard of parental obligations, there was no reversible error. Nada A. v. State, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 660 P.2d 436 (1983).

There is no statute authorizing awards of attorney's fees in child in need of aid proceedings, nor has any rule or order authorizing such an award been promulgated. Cooper v. State, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Appeal after serving sentence. — If there remain collateral legal disabilities apart from the sentence, an appeal is not mooted even though the sentence has been served. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Applied in In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976). Quoted in In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975); R.D.S.M. v. Inlake Officer, Sup. Ct. Op. No. 1449 (File No. 2821), 565 P.2d 855 (1977); N.P.A. v. State, Sup. Ct. Op. No. 2005 (File No. 4618), 604 P.2d 699 (1979); E.A. v. State, Sup. Ct. Op. No. 2289 (File No. 4687, 4870), 623 P.2d 1210 (1981). Stated in D.R.C. v. State, Ct. App. Op. No. 94 (File No. 4905), 646 P.2d 252 (1982).

Cited in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979); P.S. v. State, Ct. App. Op. No. 194 (File No. 6870), 655 P.2d 1319 (1982); State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984); Brower v. State, Ct. App. Op. No. 381 (File No. 7816), P.2d (1984).

Power of juvenile court to exercise continuing jurisdiction over inmate delinquent or offender. 76 ALR 667.

Marriage as affecting jurisdiction of juvenile court over delinquents or dependents. 14 ALR2d 336.

Horrible by juvenile as within jurisdiction of juvenile court. 48 ALR2d 662.

Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile court. 89 A.2d 506.

Collateral references. — 27 Am. Jur., infants, §§ 101 to 112; 31 Am. Jur., juvenile delinquents and delinquents, Dependent and Neglected Children, §§ 13 to 50.

Another court's jurisdiction over a child as affected by assumption of jurisdiction by juvenile court. 11 ALR 147; 78 ALR 317; 146 ALR 1163.

Vagrancy of minors. 14 ALR 1507.

Constitutionality of statute which, for reformulatory purposes, deprives parent of custody or control of child. 60 ALR 1342.

**Sec. 47.10.020. Investigation and petition.** (a) Whenever a person informs the court of the facts which bring a minor within this chapter, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the interests of the public or of the minor require that further action be taken. Upon the receipt of the report, the court may informally adjust or dispose of the matter without a hearing, or it may authorize the person having knowledge of the facts of the case to file with the court a petition setting out the facts. Where the court informally adjusts or disposes of the matter, the minor may not be detained or taken into the custody of the court, and the matter shall be closed by the court upon adjustment or disposition.

(b) The petition and all subsequent pleadings shall be styled as follows: "In the matter of . . . . ., a minor under 18 years of age." The petition may be executed upon the petitioner's information and belief, and shall be verified. It shall include the following information:

(1) the name, address and occupation of the petitioner, together with the petitioner's relationship to the minor, and the petitioner's interest in the matter;

(2) the name, age and address of the minor;

(3) a brief statement of the facts which bring the minor within this chapter;

(4) the names and addresses of the minor's parents;

(5) the name and address of the minor's guardian, or of the person having control or custody of the minor.

(c) If the petitioner does not know a fact required in this section, the petitioner shall so state in the petition. (§ 5 art I ch 145 SLA 1957)

*Cross references.* — For the preliminary inquiry referred to in (a) of this section, see Children's Rule 4, Alaska Rules of Court. As to the petition, see Children's Rule 8.

#### NOTES TO DECISIONS

Distinctions between this section and AS 25.24.310. — See *Crumato v. Occhipinti*, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 4-2 (1979). Cited in *M.O.W. v. State*, Ct. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Collateral references. — 42 Am. Jur. 2d, Infants, §§ 14 to 17, 20, 22 et seq.; 47 Am. Jur. 2d, Juvenile Courts and Delin- 43 C.J.S., Infants, §§ 6, 93 et seq.

**Sec. 47.10.030. Summons and custody of minor.** (a) After a petition is filed and after further investigation which the court directs, if

the person having custody or control of the minor has not appeared voluntarily, the court shall issue a summons which (1) recites briefly the substance of the petition; (2) clearly states that at the hearing it is possible that parental rights and responsibilities may be terminated forever and that the minor may at the hearing be committed to the Department of Health and Social Services for possible adoption; and (3) directs the person having custody or control of the minor to appear personally in court with the minor at the place and at the time set forth in the summons.

(b) In all cases under this chapter the minor, each parent of the minor and the guardian of the minor shall be given notice adequate to give actual notice of the proceedings and the possibility of termination of parental rights and responsibilities, taking into account education and language differences which are known or reasonably ascertainable by the petitioner or the department. The notice of the hearing shall contain all names by which the minor has been identified. Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law or in any manner the court by order directs. Proof of the giving of the notice shall be filed with the court before the petition is heard. The court may also subpoena the parent of the minor, or any other person whose testimony may be necessary at the hearing. A subpoena or other process may be served by a person authorized by law to make the service, and where personal service cannot be made, the court may direct that service of process be in a manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law or in any manner the court directs.

(c) If the minor is in such condition or surroundings that the minor's welfare requires the immediate assumption of custody by the court, the court may order, by endorsement upon the summons, that the officer serving the summons shall at once take the minor into custody and make the temporary placement of the minor which the court directs. (§ 6 art I ch 145 SLA 1957; am § 1 ch 110 SLA 1960; am § 6 ch 104 SLA 1971; am § 9 ch 63 SLA 1977)

#### NOTES TO DECISIONS

*Editor's notes.* — *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971) and *John Doe v. State*, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971). See below, were decided prior to the 1977 amendment to this section, which rewrote subsection (b).

The child and his parents must receive notice which would be deemed adequate in a civil or criminal proceeding. These requirements suggest that Alaska civil and criminal rules should be

looked to for techniques of service on children. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971). Personal service upon the child is required. *John Doe v. State*, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971). Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded. *RLR v.*

**Sec. 47.10.060. Waiver of jurisdiction.** (a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as an adult.

(b) *[Repealed, § 8 ch 110 SLA 1967.]*

(c) *[Repealed, § 8 ch 110 SLA 1967.]*

(d) A minor is unamenable to treatment under this chapter if the minor probably cannot be rehabilitated by treatment under this chapter before reaching 20 years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

(e) A person who has been tried as an adult under this section, or the Department of Health and Social Services on the person's behalf, may petition the superior court to seal the records of all criminal proceedings, except traffic offenses, initiated against the person, and all punishments assessed against the person, while the person was a minor. A petition under this subsection may not be filed until five years after the completion of the sentence imposed for the offense for which the person was tried as an adult. If the superior court finds that the punishment assessed against the person has had its intended rehabilitative effect, the superior court shall order the record of proceedings and the record of punishments sealed. Sealing the records restores civil rights removed because of a conviction. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court. (§ 9 art 1 ch 145 SLA 1957; am § 1 ch 118 SLA 1962; am §§ 3, 8 ch 110 SLA 1967; am § 6 ch 104 SLA 1971; am § 13 ch 63 SLA 1977)

*Cross references.* — For hearings before the juvenile court, see AS 47.10.070. See also, Children's Rule 3, Alaska Rules of Court.

#### NOTES TO DECISIONS

**Non-criminal treatment of child offenders to be rule.** — The statutory framework for dealing with child offenders which the children's court judge determines that non-criminal treatment is to be the rule and adult criminal disposition the exception. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Section provides means to determine amenability to treatment available for

The court's authority to impose a penal sentence on a juvenile is limited under the strict procedures of subsections (a) and (d) and Children's Rule 3. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

A minor may move to waive children's court jurisdiction pursuant to subsection (a), M.O.W. v. State, Ct. App. Op. No. 55 (File No. 4846), 645 P.2d 1229 (1982).

A minor under the age of 18 cannot "elect" to be tried as an adult. M.O.W. v. State, Ct. App. Op. No. 55 (File No. 4846), 645 P.2d 1229 (1982).

Where no waiver hearing has been conducted, the court has no authority to sentence a delinquent child as an adult. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Before treating a juvenile as an adult, the court must first conduct a waiver hearing. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Option available to prosecution absent waiver. — A proceeding in children's court, which is limited to the positions set forth in AS 47.10.080(b), is the only option available to the prosecution absent waiver under subsection (a) of this section, and the standards established in subsection (a) are sufficiently clear to prevent arbitrary enforcement. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

But hearing is not criminal in nature. — A waiver hearing is not criminal in nature and is dispositional, rather than adjudicatory. N.P.A. v. State, Sup. Ct. Op. No. 2005 (File No. 4618), 604 P.2d 599 (1979).

And right to attend may be waived. — Although a minor had a constitutional right to attend her waiver hearing, she waived that right when she voluntarily failed to appear at the hearing by refusing to waive extradition from another state. N.P.A. v. State, Sup. Ct. Op. No. 2005 (File No. 4618), 604 P.2d 599 (1979).

Findings necessary to justify waiver. — To justify waiver, the children's court judge must find, on sufficient evidence that probable cause is established at the hearing for believing that the child committed the act with which he was charged in the petition and which if committed by an adult would constitute a crime and the child is not amenable to the treatment provided under this article. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

As a prerequisite to criminal prosecution, the children's court must find not only that the child is properly accused but also that he would not be receptive to the rehabilitative programs available to the court. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The inability to predicate a plan for a defendant during the short time remaining before his 19th birthday coupled with the obvious need of treatment as disclosed by the record may be sufficient to justify a waiver to adult jurisdiction. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The court may close out the case as a juvenile matter only upon finding cause to believe that the minor is delinquent and that the minor is amenable to treatment. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

A court must find that there is probable cause to believe that the minor is delinquent and that the minor is not amenable to treatment before jurisdiction may be waived. In re J.H.B., Sup. Ct. Op. No. 1626 (File No. 2947), 578 P.2d 146 (1978).

Subsection (d) is clear on its face that age 20 is the proper age for determining whether a minor is amenable to treatment. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The 1977 amendments of this section and 47.10.080 show that it is the legislature's intent that age 20 is the age to be used in determining the amenability issue. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Binding advance consent to treatment. — In order to give effect of the legislature's intent that a court may consider treatment until age 20 in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know it unless the child can give binding consent at the time of the hearing. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

The portion of the opinion in In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978) that held that a minor in a waiver hearing could not give a binding advance consent to treatment beyond age 19 was mistaken. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

Waiver of opinion without testimony of psychologist or psychiatrist. — A waiver of juvenile jurisdiction decision can be made without the testimony of a psychologist or psychiatrist, since such testimony is germane to at most two of the four factors set out in subsection (d) of this section, and not all four of those facts need be determined adversely to the youth to warrant waiver of juvenile jurisdiction. In re J.R., Sup. Ct. Op. No. 2165 (File No. 5194), 616 P.2d 865 (1980).

There is no conflict between subsection (d) and AS 47.10.080(b)(1). In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The inconsistency between subsection (d) of this section and 47.10.080(b)(1) that existed prior to the 1977 amendments to these sections has been eliminated in that subsection (d) now provides that the determinative age is 20 and AS 47.10.080(b)(1) provides that the maximum limitation of confinement of minors is to the age of 20. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Factors to be considered in judging seriousness of alleged offense. — In judging the seriousness of the alleged offense, the children's court judge may consider not only the type of crime charged but also the circumstances surrounding its commission, the factors leading to delinquency, history of delinquency, and facilities available for rehabilitation. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The amenability decision rests in the sound discretion of the children's court judge. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972); In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

But the latitude afforded him is not unbounded. The proper exercise of that discretion must be predicated not only upon procedural regularity sufficient to satisfy the basic requirements of due process but also on a full inquiry into the amenability issue. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The trial court must make an evidentiary record and make written findings of fact, as required by Children's Rule 3(b), as to each of these four factors enunciated in subsection (d). In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

These findings must be supported by substantial evidence. In re F.S., Sup. Ct.

Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Substantial evidence must be presented before jurisdiction may be waived. D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Based on these findings, the trial court, within its sound discretion, must make a decision as to the minor's amenability to treatment. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Factors to be considered in determining amenability. — Subsection (d) of this section suggests four factors which may be considered by the court when inquiring into the amenability issue: (1) the seriousness of the offense; (2) the delinquency of the minor; (3) the probable cause of the delinquent behavior; and (4) the facilities available for the treating of the minor. J.W.H. v. State, Sup. Ct. Op. No. 1708 (File No. 3812), 583 P.2d 227 (1978).

All four factors listed in subsection (d) need not be resolved against the child to justify waiver. Nor is there value in requiring the children's court to make an arithmetic calculation as to the weight to be given each factor. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

But there must be a thorough examination of the child, his background and alternative strategies of rehabilitation short of adult criminal treatment. Lacking such an examination, the children's court has no evidentiary basis for the decision. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972); D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Though the standards for determining amenability to treatment through the children's court lack explicit definition, it is clear from the statute that the court in most cases must go beyond the circumstances surrounding the alleged delinquent acts and the age of the child. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Even though the children's court may have independent knowledge concerning children's treatment programs and facilities, it is necessary to make the existence and evaluation of such programs a part of the waiver proceedings to enable proper review by the supreme court. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

At a waiver hearing there must be a thorough examination of (1) the probable

cause for believing that the child committed the act with which he was charged and (2) the amenability of the child to juvenile treatment. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

In the absence of such an examination there is no evidentiary basis for a waiver decision. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974); J.W.H. v. State, Sup. Ct. Op. No. 1708 (File No. 3812), 583 P.2d 227 (1978).

The record must disclose the existence and evaluation of the available children's treatment programs in all future cases in order to establish the validity of the hearing. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

The constitutional prerequisites for a valid waiver of juvenile court treatment are reflected in Rule of Children's Procedure 3 which guarantees the child a hearing before the children's court judge after adequate notice thereof, counsel at the hearing who has had access to records and reports relevant to issues before the court, and a statement of reasons accompanying the waiver order. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Compliance with Rule of Children's Procedure 3(b) is essential to insure that the waiver hearing is not a "mere ritual" and to provide a meaningful basis for review. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

The waiver hearing is a critically important stage in criminal proceedings against a child. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

At stake at a child's waiver hearing is the statutory promise of special rehabilitative treatment in lieu of the harsher sanction of criminal conviction. Because the consequences of waiver are great, the hearing must measure up to the essentials of due process and fair treatment. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The investigation at a waiver hearing cannot be a mere ritual. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

There must be a hearing which measures up to the essential of due process and fair treatment. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974); J.W.H. v. State, Sup. Ct. Op. No. 1708 (File No. 3812), 583 P.2d 227 (1978).

The right of confrontation applies to children's proceedings in which the child is charged with misconduct for which he may be incarcerated. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Waiver without hearing is denial of due process. — To waive children's court jurisdiction without a hearing or opportunity for adversary presentation is a denial of fair process. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

As is waiver without substantial evidence of unameness to treatment. — To waive children's court jurisdiction without substantial evidence having been presented that the child is unamenable to juvenile rehabilitation programs is denial of fair process. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The proper standard of proof as to the amenability of a minor to treatment is the "preponderance of the evidence" standard. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Probable cause determination cannot be based on hearsay testimony. — The probable cause determination of a court at a waiver hearing concerning juveniles cannot be based upon hearsay testimony. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Exclusion of testimony held proper. — Although proffered testimony was relevant to the amenability issue, the superior court did not abuse its discretion in excluding it because its prejudicial impact outweighed its probative value. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Insufficient evidence. — Where the court had little information concerning the probable cause of the minor's delinquent behavior, it was aware only of the nature of the offenses, of the fact that the minor was apparently not in need of funds, and of his statement that he regarded the commission of the crimes as a game, this information was insufficient to satisfy the requirements of this subsection. D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Waiver hearing did not comply with the standards set forth in this section and Rule of Children's Procedure 3. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

Trial court's conclusion that minor was amenable to treatment was abuse of discretion. — See in re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

**Prosecution for juryriding.** — One under 18 years of age could be charged, prosecuted and sentenced in the district court, as an adult, or a misdemeanor violation of Alaska's "joyriding" statute, former AS 24.35.010(a), before there had been an order by the superior court waiving the latter court's juvenile jurisdiction. State v. G.L.R., Sup. Ct. Op. No. 1786 (File No. 2974), 590 P.2d 65 (1979).

Applied in State v. Jensen, Ct. App. Op.

No. 126 (File No. 5879), 650 P.2d 422 (1982).  
Quoted in Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Cited in E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 787 (1977); State v. R.H., Ct. App. Op. No. 375 (File No. 7738), P.2d (1984); Brower v. State, Ct. App. Op. No. 381 (File No. 7816), P.2d (1984).

**Sec. 47.10.070. Hearings.** The court may conduct the hearing in an informal manner in the courtroom or in chambers. A hearing may be held before a young adult advisory panel in accordance with AS 47.10.075. The court shall give notice of the hearing. The court shall also transmit a copy of the petition to the department. The representative of the department may also be heard at the hearing. The public shall be excluded from the hearing, but the court, in its discretion, may permit individuals to attend a hearing, if their attendance is compatible with the best interests of the minor. Nothing in this section may be applied in such a way as to deny a child's rights to a public trial and to a trial by jury. (§ 101) art I ch 145 SLA 1957; am § 1 ch 49 SLA 1966; am § 53 ch 71 SLA 1972)

**Cross references.** — For waiver hearings, see AS 47.10.060.

**Editor's notes.** — John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487

#### NOTES TO DECISIONS

**Constitutionality.** — See In re Gault, 387 U.S. 1, 87 Sup. Ct. 1428, 18 L. Ed. 2d 527 (1967), discussing due process requirements in juvenile delinquency proceedings.

**Constitutional requirements apply to children.** RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Hence, states must afford juveniles due process of law in delinquency proceedings that might result in the child's incarceration, and accordingly juveniles must be afforded the right to be represented by counsel, must be given proper and timely notice, must be given the right of confrontation and cross-examination of witnesses, and afforded the privilege against self-incrimination. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

While the U.S. Supreme Court has pre-

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the adjudicatory stage has no necessary applicability to other steps of the juvenile process. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

**Due process standards must be observed at a detention inquiry** since it may result in the deprivation of the child's liberty. Due process requires at the very least that detention orders be based on competent, sworn testimony, that the child have the right to be represented by counsel at the detention inquiry, and that the detention order state with particularity the facts supporting it. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

**Incarceration, when applied to children, is a taking of liberty** under the 14th amendment, regardless of benevolent-sounding labels. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The due process clause of the 14th amendment applies when a child is charged with misconduct for which he may be incarcerated in an institution, regardless of the labels of the adjudication and institution, or the child is entitled to notice of charges, counsel, confrontation and cross-examination, and the privilege against self-incrimination. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

**The right to grand jury indictment** is not so fundamental that due process is offended by alternate methods for instituting children's proceedings where the child is charged with having violated a criminal statute. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Children who are charged with acts which would be chargeable only by grand jury indictment, if committed by an adult, need not be indicted by a grand jury. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Children are constitutionally entitled to jury trial in the adjudicatory stage of a delinquency proceeding. However, due to the uniqueness of some facets of the procedures governing children's court proceedings and the potential damage which may accrue to the child by a public trial, the child should first consult with his counsel and his parents or guardian when appropriate, and then affirmatively assert the right to a trial by jury before it is finally granted. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971). But see McKeiver v.

Pennsylvania, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971), in which it was held that trial by jury in the juvenile court's adjudicatory stage is not a constitutional requirement.

Whenever a child in a delinquency proceeding is charged with acts which would be a crime, subject to incarceration if committed by an adult, Alaska Const., art. I, § 11, guarantees him the right to jury trial. To the extent In re White, Sup. Ct. Op. No. 507 (File No. 1013), 445 P.2d 813 (1968) [subsequently overruled, in re G.K., Sup. Ct. Op. No. 796 (File Nos. 1627, 1654, 1674), 497 P.2d 914 (1972)] is inconsistent with this opinion, it is overruled. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The purposes of the right to jury trial, such as protection against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge, apply as much in children's cases as in adults' cases. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

If the child waives jury trial, the state may not require it, but jury trial shall be provided only on demand. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The Hammonds test of waiver (Hammonds v. State, Sup. Ct. Op. No. 483 (File No. 828), 442 P.2d 39 (1968)), applies to infants as well as adults. The consequences of application will differ for infants, because some decisions can be by persons of fuller knowledge and maturity. An infant not advised by an attorney could make few knowledgeable and intelligent decisions about whether to waive rights in judicial proceedings. On the other hand, in areas where an adult ordinarily delegates to his attorney decision-making authority, as in deciding whether to object to introduction of evidence, the competence of the attorney rather than of the client generally determines whether waivers satisfy the Hammonds criteria. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The right to counsel extends to children charged with delinquency. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

A juvenile must be afforded the right to be represented by counsel at the delinquency proceeding, and a denial of that right violates due process. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

**Right to reasonable time to prepare for trial.** — It is unquestionable that the right to the assistance of counsel of necessity includes the concomitant right to have a reasonable time in which to prepare for trial. *John Doe v. State*, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

While an adult defendant in a criminal case must be brought to trial within a reasonable time, due process requires that he may not be brought to trial too soon. He must be given a reasonable time to consult with his counsel and to prepare his defense. *John Doe v. State*, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

This section provides for the exclusion of the public from children's hearings. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

But such provision involves only persons whose presence is not desired by child. — The area of discretion in the rule, where the court may refuse to open the hearing, involves persons whose presence is not desired by the child. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

It is an abuse of discretion for the court to refuse admittance to individuals whose presence is favored by the child, except in special circumstances such as the unavailability of a courtroom sufficiently large to hold all the individuals whose presence is sought. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

If the child or his guardian ad litem

wants the press, friends, or others to be free to attend, then the hearing must be open to them. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

As children are guaranteed the right to a public trial by the Alaska Constitution. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Due process requires that children have the right to a public trial by jury where they are charged with acts which would be a crime if committed by an adult. *John Doe v. State*, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

The fundamental constitutional right of public trial by jury must be afforded children in delinquency adjudication proceedings, in spite of the possible interference with the benevolent motives of the children's court system which have, in the past, justified denial of those rights. *John Doe v. State*, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

The reasons for the constitutional guarantees of public trial apply as much to juvenile delinquency proceedings as to adult criminal proceedings. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Delinquency must be proved beyond a reasonable doubt under the due process clause of the 14th amendment. *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Cited in *In re P.N.*, Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975); *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1978).

**Collateral references.** — Power of juvenile court to require testimony by children, 151 ALR 1229.  
Applicability of rules of evidence in juvenile delinquency proceedings, ALR2d 1128.  
Degree of proof in juvenile delinquency proceedings, ALR2d 1138.

**Sec. 47.10.075. Young adult advisory panels.** (a) Unless the minor objects, the court may select a young adult advisory panel to hear the case and advise the court of the panel recommendations in making its judgment and order in the case.

(b) The principal of each high school shall submit annually to the court a list of the students enrolled in grades 10, 11 and 12. The court shall determine the method of selecting the members of each panel.

(c) A student shall be excused from attending school while serving as a panel member. A student may not serve more than once each year on a panel.

(d) A student shall be excused from service as a panel member if the student submits a written request to the court indicating the reason for not wishing to serve. (§ 2 ch 49 SLA 1966)

**Legislative history reports.** — For report on ch. 49, SLA 1966, see 1966 House Journal, p. 52.

**Sec. 47.10.080. Judgments and orders.** (a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not delinquent or a child in need of aid.

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the Department of Health and Social Services for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility which the department considers appropriate and which may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.10.200;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person, if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(3) order the minor committed to the department and placed on probation, to be supervised by the department, and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions

of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(4) order the minor to make suitable restitution in lieu of or in addition to the court's order under (1), (2) or (3) of this subsection.

(5) order the minor committed to the Department of Health and Social Services for placement in an adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed.

(c) If the court finds that the minor is a child in need of aid, it shall

(1) order the minor committed to the department for placement in an appropriate setting for a period of time not to exceed two years or in any event past the date the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; the department may transfer to the minor, in the minor's best interests, from one placement setting to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer;

(2) order the minor released to the minor's parents, guardian, or some other suitable person, and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and treatment; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor, but the court may dispense with the department's supervision if the court finds that the adult to whom the minor is released will adequately care for the minor without supervision; the department's supervision may not exceed two years or in any event extend past the date the minor reaches age 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision which do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(3) by order, upon a showing in the adjudication by clear and convincing evidence that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct and upon a showing in the disposition by clear and convincing evidence that the parental conduct is likely to continue to exist if there is no termination of parental rights, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, and the department or guardian shall report annually to the court on efforts being made to find a permanent placement for the child.

(d) An order issued under (c) (3) of this section authorizes the commissioner of health and social services or a designee or the guardian of the person of the child to consent to the adoption of the child.

(e) If the court finds that the minor is not delinquent or a child in need of aid, it shall immediately order the minor released from the department's custody and returned to the minor's parents, guardian, or custodian, and dismiss the case.

(f) A minor found to be delinquent or a child in need of aid is a ward of the state while committed to the department or the department has the power to supervise the minor's actions. The court shall review an order made under (b) or (c)(1) or (2) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public. The department, the minor, the minor's parents, guardian, or custodian are entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel reasonable notice in advance of the review and hold a hearing where these parties and their counsel shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review.

(g) No adjudication under this chapter upon the status of a child may operate to impose any of the civil disabilities ordinarily imposed by conviction upon a criminal charge, nor may a minor afterward be considered a criminal by the adjudication, nor may the adjudication be afterward deemed a conviction, nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter. The commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceedings in any other court, nor does the commitment and placement or evidence operate to disqualify a minor in a future civil service examination or appointment in the state.

(b) The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings which result in the release of the minor.

(i) A minor, the minor's parents or guardian acting on the minor's behalf, or the department may appeal, or enlargement of a judgment or order issued by the court under this chapter.

*(j) [Repeated, § 29 ch 63 SLA 1977.]*

(k) In making its order under (c) of this section the court shall consider the fact, if it is a fact, that the minor was being provided treatment 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. (§ 10(2) art I ch 145 SLA 1957; am § 2 c. '9 SLA 1960; am § 2 ch 118 SLA 1962; am § 1 ch 40 SLA 1967; am §§ 1-4 ch 27 SLA 1970; am §§ 2-15 ch 245 SLA 1970; am § 6 ch 104 SLA 1971; am §§ 6, 7 ch 1 SLA 1972; am §§ 1, 2 ch 125 SLA 1974; am §§ 14-18, 29 ch 62 SLA 1977; am § 6 ch 86 SLA 1979)

**Cross reference.** — For the standard this Act which specify the length of proof for findings under this section, see Children's Rule 21, Alaska Rules of Court. See also, Children's Rules 22 and 23.

**Editor's notes.** — Section 31, ch. 63, JLA 1977, provides, "Section 18 of this Act has the effect of adding to the court's responsibilities when holding a review under Rule 28, Alaska Rules of Children's Procedure, by requiring the court to hold a hearing upon a showing of good cause, give notice, and afford an opportunity to be heard."

Section 34, ch. 63, SLA 1977, in the first sentence provides: "The portions of AS 47.10.080(b) and (c) in secs. 15 and 16 of SLA 1977.

**NOTES TO DECISIONS**

**Each category of children mandates differences regarding content of dispositional orders.** — Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children for purposes of "administering Alaska children's laws. Of controlling significance is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court can enter. *In re A Minor Child*, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Where a delinquent child was sentenced for a fixed time period and ordered to an adult institution, this

**Authority to order placement of delinquent child.** — In enacting paragraph (b)(3), the legislature intended for the department, not the court, to make the decisions concerning placement of the minor. *State, Dept of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).*

Paragraph (b)(3) of this section provides the court authority to order the delinquent minor placed on probation to the Department of Health and Social Services; it is then up to the department to determine whether the minor should be placed with his parents or in another setting. *State, Dept of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).*

**Review of placement decision.** — The superior court has the authority to review the decision of the department to determine if the placement is in the best interest of the minor, but in reviewing a decision of the department, the superior court may not substitute its judgment for the judgment of the department; since the legislature has committed the decision of placement to the department's discretion, the question for the court is whether the agency abused its discretion. *State, Dept of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).*

**Jurisdiction dependent upon age of offender at time of act.** — Juvenile jurisdiction of the superior court in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent act. *Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).*

Where a delinquent child was under the age of 18 at the time the acts of delinquency were committed, he is considered a minor for the purposes of adjudication and disposition. *B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).*

**Option available to prosecution absent waiver under AS 47.10.060(a).** — A proceeding in children's court, which is limited to the dispositions set forth in AS 47.10.090(b), is the only option available to the prosecution absent waiver under AS 47.10.060(a), and the standards established in that section are sufficient, by their prevention of arbitrary enforcement. *M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 615 P.2d 1229 (1982).*

One who committed a crime when 18 years of age could be criminally prosecuted, as an adult, when he had

previously adjudged a delinquent minor and the court had retained supervisory jurisdiction over him until age 19. *Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).*

**Section is maximum sentencing statute.** — Statutes requiring release upon a specified birthday are, in effect, maximum sentencing statutes. *Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).*

**Sentence reduction to 19 years of age not retroactive.** — There was nothing in the amendatory legislation to this section that indicated an intention that the sentence reduction should operate retrospectively. *Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).*

**There is no conflict between subsection (b)(1) and AS 47.10.060(d).** In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

**Age 20 is the proper age for determining whether a minor is amenable to treatment.** In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

**The consistency between AS 47.10.060(d) and subsection (b)(1) of this section that existed prior to the 1977 amendments to these sections has been eliminated in that AS 47.10.060 (d) now provides that the determinative age is 20 and subsection (b)(1) provides that the maximum limitation of confinement of minors is 20.** In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

**Binding advance consent to treatment.** — In order to give effect to the legislature's intent that a court may consider treatment until age 20 in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know this unless the child can give binding consent at the time of the hearing. *State v. F.L.A., Sup. Ct. Op. No. 2144 (File No. 4333), 608 P.2d 12 (1980).*

**A minor may bindingly consent to an additional period of supervision as provided by subsection (b)(1) of this section.** In determining the effect to be given to such consent, the court should consider the age and maturity of the juvenile and whether he has the advice of counsel. To protect a minor from making a decision adverse to his own interests, a guardian ad litem may be appointed. *State v. F.L.A., Sup. Ct. Op.*

No. 2041 (File No. 4333), 608 P.2d 12 (1980).

The portion of the opinion in *In re F.S.*, Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978) that held that a minor in a waiver hearing could not give a binding advance consent to treatment beyond age 19 was mistaken. *State v. F.L.A.*, Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

While it is true, as indicated in *In re F.S.*, Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978), that the statute contemplates that the determination of the additional period of treatment be made after the initial hearing, such an intent does not mandate that an advance consent to treatment given by the minor may not be regarded as binding. *State v. F.L.A.*, Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

The lower court erred in considering the purported consent of a minor to an additional year of supervision because: (1) the minor could withdraw his consent upon reaching majority and (2) even assuming the minor's consent could not be withdrawn, subsection (b)(1) requires that the department petition the court and that additional commitment be in the minor's best interests before the court has jurisdiction to order the additional one-year period. *In re F.S.*, Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Subsection (b)(1) requires that the department petition for an additional one-year period of supervision and that continued supervision be in the best interests of the minor before the court may order an additional year. Thus, a minor's prospective consent to additional supervision is not a material factor unless the other two conditions of the statute are fulfilled. *In re F.S.*, Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

This statute contemplates that the decision to extend the period of supervision be made after the initial dispositional hearing. To give effect to the minor's advance consent would thus be contrary to the apparent intent of the legislature. *In re F.S.*, Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The court must choose between commitment to the Department of Health and Social Services and probation, and may not delegate the choice to the Department of Health and Social Services. This is a correct textual analysis, especially in light of the provision in subsection (b) for subsequent court order for probation following placement or

determination. The legislature has clearly indicated its intent to place this choice in the hands of the court. *R.R. v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

**Court-ordered probation.** — Probation cannot be deemed court-ordered under subsection (b) of this section unless it is directly ordered. It cannot be "triggered" by a decision of the department that the juvenile has successfully completed a rehabilitation program, even if the court judgment states that institutionalization will end upon such successful completion. *In re L.C. v. State*, Sup. Ct. Op. No. 2277 (File No. 4401, 4411), 625 P.2d 839 (1981).

The hearing judge erred by placing a delinquent child on probation until his 20th birthday. *B.A.M. v. State*, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

**Petition necessary to extend probation beyond 19th birthday.** — The superior court was without authority to extend probation beyond the delinquent child's 19th birthday without a petition from the department to extend the probationary period for an additional year. *B.A.M. v. State*, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

A minor who has been adjudged a child in need of supervision (see now child in need of aid) cannot be institutionalized under the Children's Code. *In re A. Minor Child*, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Where a runaway child is found to be a child in need of supervision (see now child in need of aid), not a delinquent minor, no legal basis exists for his incarceration. *In re A. Minor Child*, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The only instance under Alaska children's laws authorizing institutionalization of a minor is when the child has violated the laws of the state, or any of its political subdivisions, and in turn has been adjudged a delinquent minor. *In re A. Minor Child*, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The legislature has authorized institutionalization only where the child is found to be a delinquent minor. *In re A. Minor Child*, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

— Power of court under subsection (c).

other suitable person. *In re A. Minor Child*, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

**The Department of Health and Social Services does not possess the authority to institutionalize any minor, including one who has been declared a child in need of supervision (see now child in need of aid), who has been committed to its custody. It is unreasonable to construe Alaska children's statutes in a manner which would result in the grant to the Department of Health and Social Services of broader powers of commitment than possessed by the trial court. *In re A. Minor Child*, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).**

A child "in need of aid" appears to be the functional equivalent of a "dependent" child under AS 47.10.010 as it existed prior to its 1977 amendment. *In re C.L.T.*, Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

**Parental right to custody and control is not absolute.** — While a parent has a right to the care, custody and control of his or her children, this right is not absolute, and "courts have become increasingly aware of the rights of children." The Alaska legislature has struck a balance between these potentially competing rights by requiring the state to prove its allegations by clear and convincing evidence in parental rights termination cases. Once this burden of proof has been met, however, the statute mandates a termination. *In re D.C.*, Sup. Ct. Op. No. 1862 (File No. 3840), 592 P.2d 22 (1979).

The discretion allotted a parent in the administration of punishment is not unlimited. Clearly it does not extend to punishment regularly causing the "substantial physical harm" which under AS 47.10.010(a)(2)(C) determines that a child is in need of aid. *In re D.C.*, Sup. Ct. Op. No. 1862 (File No. 3840), 592 P.2d 22 (1979).

**Statutory provisions governing judgments and orders terminating parental rights have been changed. In order to terminate parental rights, the court must now find that the child is in need of aid under AS 47.10.010(a)(2) as the result of parental conduct proved by clear and convincing evidence and that the parental conduct is likely to continue to exist if there is no termination of parental rights, proved again by clear and convincing evidence. AS 47.10.080(c)(3). *In re C.L.T.*, Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).**

In order to terminate parental rights under this section, the court must find by clear and convincing evidence (1) that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct, and (2) that the parental conduct is likely to continue. *E.A. v. State*, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Under former AS 47.10.010(a)(5) and subsection (a) and former subsection (c)(3)(D) of this section, in order to terminate parental rights, the superior court was required to find (1) that the child was a "dependent minor" and (2) that the parent had demonstrated by her conduct, proved by clear and convincing proof, that she was unfit to continue to exercise her parental rights and responsibilities. *In re C.L.T.*, Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

**Parent's Impulsive Personality Disorder not ground for termination of rights.** — Where after finding that child was in need of aid, trial judge found that the parent "is likely to continue to demonstrate a conscious disregard of the obligation owed by a parent to a child even after her release from incarceration, because she suffers from an impulsive personality disorder," such finding was insufficient to satisfy requirement of clear and convincing evidence that conduct leading to determination that child is in need of aid is likely since an impulsive personality disorder itself is not conduct and thus, not a ground for termination. *Nada v. State*, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 660 P.2d 436 (1983).

**Findings.** — A finding that the parental conduct is likely to continue must be made expressly on the record prior to ordering the termination of parental rights. *E.A. v. State*, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

**Abandonment.** — For cases construing former language in subsection (c) providing for termination of parental rights and responsibilities when the child had been abandoned, see *D.M. v. State*, Sup. Ct. Op. No. 962 (File No. 1843), 515 P.2d 1234 (1973); *In re B.J.*, Sup. Ct. Op. No. 1110 (File No. 2161), 530 P.2d 747 (1975); *In re E.J. (I)*, Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

A rehabilitation program is not a common practice in the trial courts absent approval by a representative of the state. *In re E.J. (I)*, Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

Trial court did not abuse discretion in failing to consider possibility of setting up plan for reestablishing family relationship between father and son. — See *In re E.J. (T.)*, Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

Role of trial court in proceeding involving termination of parental rights. — See *In re E.J. (T.)*, Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

Applicability of burden of proof. — A burden of proof is not applicable to a dispositive hearing other than when termination of parental rights is involved. In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976). See also *In re C.L.T.*, Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Determination of the standard to be applied by the court at the dispositive phase of a child hearing was not tantamount to establishing a burden of proof requirement. Such a requirement had been set forth in former subsection (c)(3)(D) [see now subsection (c)(3)]. No such requirement had been set forth in situations such as where termination of parental rights was not involved. In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976).

Standard of proof held constitutional. — Allowing parental rights to be terminated based on a standard of proof less stringent than "beyond a reasonable doubt" does not violate the due process clause of the United States Constitution or the Alaska Constitution. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Since in proceedings brought to terminate parental rights, the parent is neither charged with criminal behavior nor subject to incarceration as a direct consequence of the proceeding, there is nothing in the federal constitution that compels adoption of the proof beyond a reasonable doubt standard in termination proceedings. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Clear and convincing proof is a more demanding standard than a mere preponderance of the evidence and is adequate to protect the parent's substantial interest in his or her child custody rights. This evidentiary standard balances the competing interests involved in a proceeding brought to terminate parental rights, one of which is the right of a child to an adequate home. In re C.L.T., Sup. Ct.

Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

The due process clause did not require a standard of proof greater than clear and convincing evidence when the state sought to terminate parental rights because of unfitness under former subsection (c)(3)(D). In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Standard of proof under former subsection (c)(3)(D) calling for "clear and convincing" evidence of the natural mother's unfitness for the care and custody of the child was held proper. In re K.S., Sup. Ct. Op. No. 1219 (File No. 2359), 543 P.2d 1191 (1975).

Protection provided by Indian Child Welfare Act. — The Indian Child Welfare Act, 25 U.S.C. § 1901 — 1963, enacted in 1978, provides a higher standard of protection to the rights of parents in termination proceedings involving Indians and Native Alaskans than that provided in this section. *E.A. v. State*, Sup. Ct. Op. No. 2289 (File No. 4687, 4670), 623 P.2d 1210 (1981).

Orders terminating parental rights meet statutory and rule of court requirements regarding findings of fact. — See *In re C.L.T.*, Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Review of orders terminating parental rights. — Orders made under subsection (c)(3) of this section are not entitled to automatic review, inasmuch as subsection (f) of this section specifies which orders are entitled to this review and orders under subsection (c)(3) of this section are not included within the list. *Rita T. v. State*, Sup. Ct. Op. No. 2291 (File No. 5036), 623 P.2d 344 (1981).

All orders made pursuant to this section, including orders under subsection (c)(3) of this section, are to be reviewed upon application of an interested party if the party establishes good cause for the review, and if the child is still a ward of the court. *Rita T. v. State*, Sup. Ct. Op. No. 2291 (File No. 5036), 623 P.2d 344 (1981).

As long as a child remains the ward of the court, under subsection (f) of this section his or her natural parents are entitled to a review of the order terminating their parental rights upon a showing of good cause for the hearing. *Rita T. v. State*, Sup. Ct. Op. No. 2291 (File No. 5036), 623 P.2d 344 (1981).

Good cause could be established if the parents showed that it would be in the best interests of the child to resume living with them because they have sufficiently rela-

bilitated themselves so that they can provide proper guidance and care for the child. *Rita T. v. State*, Sup. Ct. Op. No. 2291 (File No. 5036), 623 P.2d 344 (1981).

Where, when a mother applied for a hearing before the superior court, she indicated that as a result of a 14-month rehabilitation program she had overcome the problems that had led to the termination of her parental rights and also indicated that professional counselors, social workers and others would be able to establish that she was now capable of providing a warm and loving home for the child, this was a sufficient showing of good cause to entitle her to a review of the order terminating her parental rights if the child had not yet been adopted. *Rita T. v. State*, Sup. Ct. Op. No. 2291 (File No. 5036), 623 P.2d 344 (1981).

Former AS 17.12.110(d)(4) not in conflict. — Former AS 17.12.110(d)(4), which provided that a person who, while under the age of 18, possesses, controls or uses any amount of marijuana was, upon conviction, guilty of a misdemeanor punishable by a fine of not more than \$1000, was not in conflict with AS 47.10.010(a)(1) and paragraph (b)(1) of this section. *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

For reference to apparent conflict between subsection (c)(1) as it read prior to 1977 amendment and Children's Rule 22(f), see footnote 30 in *In re S.D.*, Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976).

Peremptory challenge procedure inapplicable to juvenile proceedings. — While juvenile proceedings have some of the characteristics of both civil and criminal actions, they are basically different from both, and the words "civil or criminal" as used in AS 22.20.022 must be strictly construed. The trial judge's challenge procedure applied only to civil and criminal actions and not to juvenile proceedings. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Nor to justify dispensing with constitutional safeguards. — The benevolent social theory supposedly underlying children's court acts does not

furnish justification for dispensing with constitutional safeguards. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The right of confrontation is paramount to the state's policy of protecting a juvenile offender. *Davis v. State*, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

But state's interest in secrecy of juvenile adjudications need not always fall before confrontation right. — See *Gonzales v. State*, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed.2d 106 (1974).

Prosecution witness impeachable by cross-examination for bias from probationary status as juvenile delinquent. — The confrontation clause requires that a defendant in a criminal case be allowed to impeach the credibility of a prosecution witness by cross-examination directed at possible bias deriving from the witness's probationary status as juvenile delinquent although such an impeachment would conflict with a state's asserted interest in preserving the confidentiality of juvenile adjudications of delinquency. *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Whatever temporary embarrassment might result to a prosecution witness or his family by disclosure of his juvenile record — if the prosecution insisted on using him to make its case — is outweighed by petitioner's right to probe into the influence of possible bias on the testimony of a crucial identification witness. *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The state cannot, consistent with right of confrontation, require the defendant to bear the full burden of vindicating the state's interest in the secrecy of juvenile criminal records. *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The United States supreme court has held that the constitutional right of confrontation required that defense counsel be allowed to investigate the potential bias of a crucial prosecution witness, even where that potential bias arose out of a juvenile adjudication and its resultant probationary status. *Gonzales v. State*, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

The United States supreme court concluded that Alaska's interest in protecting the anonymity of the juvenile offender was outweighed by the more

critical need to afford a criminal defendant reasonable inquiry into the motives of prosecution witnesses. *Gonzales v. State*, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**Conflict between section and decision in *Davis v. Alaska* is superficial.** — The conflict between this section and the supreme court's decision in *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), is only superficial. *Gonzales v. State*, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**Since disclosure required because of probationary status, not juvenile adjudication.** — The constitutional requirement of disclosure in the facts in *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), is created not by the juvenile adjudication itself but by the probationary status of the juvenile at the time of *Davis*' trial, with its potential for motivating false testimony. *Gonzales v. State*, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**Where the witness was not on juvenile probation, it cannot be seriously argued that the fact of previous juvenile convictions, standing alone, provided any inference of potential bias.** *Gonzales v. State*, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**State adjudications directed solely at credibility do not conflict with confrontation right.** — Juvenile adjudications which are stale by Alaska's standards and directed solely at general credibility rather than bias are generally not sufficiently prohibitive to create a genuine conflict with the defendant's right of confrontation. *Gonzales v. State*, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**Where the attempted impeachment was of general credibility by proof of prior convictions, the probative value of this type of evidence is considerably less than that which suggests false or distorted testimony because of bias, and the need to confront a witness with such evidence is correspondingly less.** *Gonzales v. State*, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**As a general rule, the trial courts could properly refuse evidence of state con-**

victions or juvenile adjudications where these were offered for the purpose of discrediting the witness generally rather than to show some specific potential for bias or prejudice toward the defendant. *Thomas v. State*, Sup. Ct. Op. No. 1010 (File Nos. 1888, 1854), 522 P.2d 528 (1974).

**Privilege against self-incrimination.** — When a person under the age of 18 years violated former AS 47.10.016(a)(1), he could be adjudged a "delinquent minor," one possible consequence of which adjudication was commitment to a juvenile facility until the age of 19 (new 20). Moreover, if there was probable cause to believe the minor was delinquent and the court found that he was not amenable to treatment as a juvenile, he could be prosecuted as if he were an adult. Thus, there was always some danger of incarceration, or other criminal sanctions, when a child committed an act which would have been a crime if committed by an adult. Under such circumstances a child had a privilege against self-incrimination. *E.L.L. v. State*, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 786 (1977).

**A child adjudicated delinquent for selling LSD may be incarcerated, possibly even in a city jail, until age 19, which may be many years.** *RLR v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

**Subsection (g) provides in part that a juvenile offender may not be considered a criminal by reason of the adjudication, nor may the adjudication be afterward deemed a conviction.** *Gonzales v. State*, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

**A judge cannot consider a juvenile offense as a criminal conviction for the purpose of prescribing a mandatory sentence.** *Berfield v. State*, Sup. Ct. Op. No. 581 (File No. 969), 458 P.2d 1008 (1969).

**The judge's consideration of factors relating to accused's life, characteristics, background and behavior prior to reaching the age of 18 years did not mean that he considered accused a criminal or that he was using the juvenile offenses as criminal convictions in determining the sentence to impose.** *Berfield v. State*, Sup. Ct. Op. No. 581 (File No. 969), 458 P.2d 1008 (1969).

**Consideration of the juvenile record is proper by the court imposing a sentence upon an adult offender.** *Penn v. State*, Sup. Ct. Op. No. 1774 (File No. 3873), 588 P.2d 288 (1978).

**Use of the juvenile history of the offender in sentencing proceedings does not amount to the use of those proceedings as evidence against the offender within the proscription of such a statute as this section.** *Penn v. State*, Sup. Ct. Op. No. 1774 (File No. 3873), 588 P.2d 288 (1978).

**When sentence determined. — The sentence which may be imposed upon a convicted adult is determined as of the time of the final judgment of conviction, or as of the time of commission of the offense.** These rules have been applied to juvenile sentencing. *Davenport v. McGinnis*, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

**Review of custody orders. — The new children's law, as a result of the 1977 act, provides for review of custody orders annually or more often if good cause is shown.** *In re J.M.*, Sup. Ct. Op. No. 1648 (File Nos. 3219, 3229), 573 P.2d 1376 (1978).

**Appeal of detention order. — Under this section and Children's Rule 29(a), a minor who is detained may appeal his detention order.** *A.M. v. State*, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

**Appellants are authorized to bring juvenile bail appeals under App. R. 207 to ensure that juvenile detention hearings**

**are not initiated from review.** *A.M. v. State*, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

**Appeal from detention order dismissed as untimely. — See *A.M. v. State*, Ct. App. Op. No. 17 (File No. 6105), 653 P.2d 345 (1982).**

**Appellate Jurisdiction. — AS 22.05.010 places final appellate jurisdiction in all cases in the supreme court. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).**

**Applied in *L.A.M. v. State*, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976); *Adams v. Ross*, Sup. Ct. Op. No. 1281 (File No. 2458), 551 P.2d 948 (1976); *D.H. v. State*, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).**

**Quoted in *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1424, 1436), 499 P.2d 1025 (1972).**

**Stated in *In re G.K.*, Sup. Ct. Op. No. 796 (File Nos. 1627, 1654, 1674), 497 P.2d 914 (1972).**

**Cited in *Elliason v. State*, Sup. Ct. Op. No. 898 (File No. 1750), 511 P.2d 1065 (1973); *D.L.J. v. W.D.R.*, Sup. Ct. Op. No. 2433 (File No. 5411), 635 P.2d 834 (1981); *S.O. v. W.S.*, Sup. Ct. Op. No. 2491 (File No. 5856), 643 P.2d 997 (1982).**

**ceeding for involuntary termination of parental rights, 80 ALR3d 1141.**

**Sec. 47.10.081, Predisposition hearing reports. (a) Before the disposition hearing of a delinquent minor the department shall submit a predisposition report with a recommended plan of treatment to aid the court in its selection of a disposition, and any further information which the court may request.**

**(b) Before the disposition hearing of a child in need of aid the department shall submit a predisposition report to aid the court in its selection of a disposition. This report shall include, but is not limited to, the following:**

**(1) a statement of changes in the child's or parent's behavior, which will aid the court in determining that supervision of the family or placement is no longer necessary;**

**(2) if removal from the home is recommended, a description of the reasons the child cannot be protected or rehabilitated adequately in the home, including a description of any previous efforts to work with the parents and the child in the home and the parents' attitude toward placement of the child;**

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(3) a description of the potential harm to the child which may result from removal from the home and any efforts which can be made to minimize such harm; and

(4) any further information which the court may request.

→ The court shall inform the child, the child's parents and the attorneys representing the parties and the guardian ad litem that the predisposition report will be available to them not less than 10 days before the disposition hearing.

(d) For purposes of this section "parents" means the natural or adoptive parents, and any legal guardian, relative, or other adult person with whom the child has resided and who has acted as a parent in providing for the child for a continuous period of time before this action. (§ 26 ch 63 SLA 1977)

#### NOTES TO DECISIONS

Applied in *Granato v. Occhipinti*, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979). Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 47.10.082. Best interests of the child.** In making its dispositional order under AS 47.10.080(b) the court shall consider the best interests of the child and the public, and in making its dispositional order under AS 47.10.080(c) the court shall consider the best interests of the child; in either case the court shall consider also the ability of the state to take custody and to care for the child to protect the child's best interests under AS 47.10.010 — 47.10.142. (§ 26 ch 63 SLA 1977)

#### NOTES TO DECISIONS

Showing required to justify termination of parental rights. — While best interests of the child become relevant at some point, there first must be a showing of parental conduct sufficient to justify termination. *Nuda A. v. State*, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 600 P.2d 436 (1983). Cited in *Granato v. Occhipinti*, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979); M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 47.10.083. Review hearing information.** In the case of a child in need of aid, the child shall be returned home at the review hearing under AS 47.10.080(f) unless the court finds by a preponderance of the evidence that the basis upon which the child was adjudicated under AS 47.10.010(a)(2) continues to exist. If the child is not returned home, the court shall establish on the record

- (1) why the child was removed from the home;
- (2) what services have been provided to or offered to the parents to facilitate reunion;

(3) what services were utilized by the parents to facilitate reunion;

(4) the visitation history between the parents and the child;

(5) whether additional services are needed to facilitate the return of the child to the child's parents;

(6) when return of the child can be expected. (§ 26 ch 63 SLA 1977)

#### NOTES TO DECISIONS

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 47.10.084. Legal custody, guardianship, and residual parental rights and responsibilities.** (a) When a child is committed under AS 47.10.080(b)(1) or (c)(1) to the department or released under AS 47.10.080(b)(2) or (3) or (c)(2) to the child's parents, guardian, or other suitable person, a relationship of legal custody exists. This relationship imposes on the department and its authorized agents or the parents, guardian, or other suitable person the responsibility of physical care and control of the child, the determination of where and with whom the child shall live, the right and duty to protect, train and discipline the child, and the duty of providing the child with food, shelter, education, and medical care. These obligations are subject to any residual parental rights and responsibilities and rights and responsibilities of a guardian if one has been appointed. When parental rights have been terminated, or there are no living parents and no guardian has been appointed, the responsibilities of legal custody include those in (b) and (c) of this section. The department or person having legal custody of the child may delegate any of the responsibilities under this section, except authority to consent to marriage, adoption, and military enlistment may not be delegated. For purposes of this chapter a person in charge of a placement setting is an agent of the department.

(b) When a guardian is appointed for the child, the court shall specify in its order the rights and responsibilities of the guardian. The guardian may be removed only by court order. The rights and responsibilities may include, but are not limited to, having the right and responsibility of reasonable visitation, consenting to marriage, consenting to military enlistment, consenting to major medical treatment, obtaining representation for the child in legal actions, and making decisions of legal or financial significance concerning the child.

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation,

consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section. (§ 26 ch 63 SLA 1977)

**Effect of being foster parents on husband-wife evidentiary privilege.** — A foster child is a child of the foster parents for purposes of applying the exception to the husband-wife privilege set forth in Alaska Evidence Rule 505(a)(2)(D)(i); one foster parent cannot rely on the husband-wife privilege to refuse to testify

against the other concerning evidence relating to an assault on the foster child. *Daniels v. State*, Ct. App. Op. No. 357 (File No. A-366), P.2d (1984).  
Cited in *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 47.10.085. Child in need of aid; religious treatment.** In a case in which the minor's status as a child in need of aid is sought to be based on the need for medical care, the court may, upon consideration of the health of the minor and the fact, if it is a fact, that the minor is being provided treatment 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, dismiss the proceedings and thereby close the matter. This may be done, in the interests of justice and religious freedom, on the court's own motion or upon the application of a party to the proceedings, at any stage of the proceedings after information is given to the court under AS 47.10.020(a). (§ 8 ch 1 SLA 1972; am § 19 ch 63 SLA 1977)

#### NOTES TO DECISIONS

Cited in *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

**Sec. 47.10.090. Records.** (a) The court shall make and keep records of all cases brought before it. The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. All information and social records pertaining to a minor and prepared by an employee of the court or by a federal, state or city agency in the discharge of the employee's or agency's official duty, are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law-enforcement agency shall disclose information regarding a case which is needed by the person or agency charged with

making a preliminary investigation for the information of the court. Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court relinquishes jurisdiction over the minor, the court shall order sealed all the court's official records, information and social records pertaining to that minor, as well as records of all criminal proceedings against the minor and punishments assessed against the minor except for traffic offenses. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.

(b) The name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent child or a child in need of aid unless authorized by order of the court, except that the name of a minor who is found for the second time to have violated a law, which if committed by an adult would be a felony, shall be made public unless the court, for good cause, in certain individual cases, enters an order prohibiting the disclosure.

(c) A person who violates a provision of this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500 or by imprisonment for not more than one year, or by both. (§ 10(3)(4) art I ch 145 SLA 1957; am § 1 ch 124 SLA 1972; am § 1 ch 90 SLA 1975; am § 20 ch 63 SLA 1977)

**Cross references.** — For explanation of how amendments in 1976 changed Rules SLA 1975.

#### NOTES TO DECISIONS

**Purpose for enacting subsection (a).** — Reading this section together with other sections of the laws relating to children's proceedings leads one to believe that subsection (a) was enacted principally for the purpose of protecting the child against the possible adverse effects an unauthorized revelation of his social record would have. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

There is no indication that subsection (a) was intended to authorize the granting of testimonial use immunity to parents. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

The supreme court could not say with certainty that this section would be construed to forbid the use, in a subsequent criminal action against a parent, of testimony that the parent gave at a child's

proceeding. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

**Waiver of provisions of section.** — In the case of use of restraints more severe than placement in adjustment rooms (solitary confinement), the approval of the director of McLaughlin Youth Center must be obtained and a report made to the child's attorney and the family court. The provisions of this section are waived for this purpose. T.M. v. Director of McLaughlin Youth Center, Superior Court, No. 72-449 (1973).

Stated in *R.I.R. v. State*, Sup. Ct. Op. No. 706 (File No. 1156), 437 P.2d 77 (1971).  
Cited in *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982); *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

**Sec. 47.10.095. Arrest of a minor.** The arrest of a minor other than for a traffic offense is not considered an arrest for any purpose except for the purpose of the disposition of a proceeding arising out of that arrest. (§ 2 ch 124 SLA 1972)

**Sec. 47.10.100. Retention of jurisdiction over minor.** (a) The court retains jurisdiction over the case and may at any time stay execution, modify, set aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its power of protection over the minor and for the minor's best interest, for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, unless sooner discharged by the court, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. An application for any of these purposes may be made by the parent, guardian, or custodian acting in behalf of the minor, or the court may, on its own motion, and after reasonable notice to interested parties and the appropriate department, take action which it considers appropriate.

(b) If the court determines at a rehearing that it is for the best interests of the minor to be released to the care or custody of the minor's parent, guardian, or custodian, it may enter an order to that effect and the minor is discharged from the control of the department.

(c) If a minor is adjudicated a delinquent or a child in need of aid before the minor's 18th birthday, the court may retain jurisdiction over the minor after the minor's 18th birthday for the purpose of supervising the minor's rehabilitation, but the court's jurisdiction over the minor under this chapter never extends beyond the minor's 19th birthday, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. The department may retain jurisdiction over a child between the child's 18th and 19th birthdays for the purpose of supervising the child's rehabilitation, if the child has been placed under the supervision of the department before the child's 18th birthday, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. (§ 11 art I ch 145 SLA 1957; am §§ 16, 17 ch 245 SLA 1970; am § 21 ch 63 SLA 1977)

#### NOTES TO DECISIONS

When one commits a criminal offense after reaching the age of 18 years, he is no longer entitled to claim the benefits of the Children's Code. *Henson v. State*, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).  
Offenses to which court's jurisdiction not extended. — Neither subsection

(a) nor subsection (c) purports to extend the court's juvenile jurisdiction to newly committed offenses occurring between the offender's 18th and 19th birthdays. *Henson v. State*, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).  
Jurisdiction defeated only by expressly retroactive statute. — Once

**Sec. 47.10.110. Appointment of guardian or custodian.** When, in the course of a proceeding under this chapter, it appears to the court that the welfare of a minor will be promoted by the appointment of a guardian or custodian of the minor's person, the court may make the appointment. The court shall have a summons issued and served upon the parents of the minor, if they can be found, in a manner and within a time before the hearing which the court considers reasonable. The court may determine whether the father, mother, or the Department of Health and Social Services shall have the custody and control of the minor. If the minor is of sufficient age and intelligence to state desires, the court shall consider them. (§ 12 art I ch 145 SLA 1957; am § 6 ch 104 SLA 1971; am § 22 ch 63 SLA 1977)

Collateral references. — 39 Am. Jur. 2d, Guardian and Ward, § 17.  
39 C.J.S., Guardian and Ward, §§ 20 to 29.

Right of infant to select his own guardian, 85 ALR2d 921.

**Sec. 47.10.120. Support of minor.** (a) When a child in need of aid is committed under this chapter, the court may, after giving the parent a reasonable opportunity to be heard, adjudge that the parent shall pay in a manner which the court directs a sum which will cover in full or in part the support of the child in need of aid. When a delinquent minor is committed under this chapter, the court shall order that the parent of the minor pay in a manner which the court directs a sum which will cover in full or in part the support of the delinquent minor.

(b) If a parent wilfully fails or refuses to pay the sum fixed, the parent may be proceeded against as provided by law in cases of family desertion and nonsupport.

(c) The sum collected from a parent under this section shall be directly credited to the general fund of the state. (§ 13 art I ch 145 SLA 1957; am § 1 ch 31 SLA 1959; am § 1 ch 141 SLA 1959; am § 23 ch 63 SLA 1977)

**Sec. 47.10.130. Detention.** No minor under 18 years of age who is detained pending hearing may be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view adult prisoners convicted of, under arrest for, or charged with a crime. When a minor is detained pending hearing, the minor's parent, guardian, or custodian shall be notified immediately. (§ 14 art I ch 145 SLA 1957)

Cross references. — For conditions of detention, see Children's Rule 27, Alaska Rules of Court.

A detention which was twice continued by the master of the children's court for a total period of six days 1538), 504 P.2d 837 (1972).

**Sec. 47.10.140. Temporary detention and detention hearing.** (a) A peace officer may arrest a minor who violates a law or ordinance in the officer's presence, or whom the officer reasonably believes is a fugitive from justice. A peace officer may continue a lawful arrest made by a citizen. The officer may have the minor detained in a juvenile detention facility if in the officer's opinion it is necessary to do so to protect the minor or the community.

(b) A peace officer who has a minor detained under (a) of this section shall immediately, and in no event more than 12 hours later, notify the court, the minor's parents or guardian, and the Department of Health and Social Services of the officer's action. The department may file with the court a petition alleging delinquency before the detention hearing.

(c) The court shall immediately, and in no event more than 48 hours later, hold a hearing at which the minor and the minor's parents or guardian if they can be found shall be present. The court shall determine whether probable cause exists for believing the minor to be delinquent. The court shall inform the minor of the reasons alleged to constitute probable cause and the reasons alleged to authorize the minor's detention. The minor is entitled to counsel and to confrontation of adverse witnesses.

(d) If the court finds that probable cause exists, it shall determine whether the minor should be detained pending the hearing on the petition or released. It may either order the minor held in detention or released to the custody of a suitable person pending the hearing on the petition. If the court finds no probable cause, it shall order the minor released and close the case.

(e) Except for temporary detention pending a detention hearing or temporary detention under (f) of this section, a minor may not be detained except by court order.

(f) A peace officer may detain a minor who is evading the person having the minor's legal custody if the minor is not otherwise subject to arrest or detention under (a) of this section, for the sole purpose of either (1) returning the minor to the person having legal custody or (2) if the minor prefers, taking the minor to an office specified by the Department of Health and Social Services, facility or contract agency of the Department of Health and Social Services where such exists in the community. Immediately upon detaining a minor under this provi-

§ 47.10.142 **Welfare, Social Services and Institutions § 47.10.142** sion, the peace officer shall advise the minor of the right to social services under AS 47.10.142(b), and, if known, the peace officer shall advise the person having the legal custody of the minor of the detention.

(g) A minor who is detained under (f) of this section may not be detained in a jail or other facility unless kept out of contact with adult persons convicted or accused of a crime. A minor may not be detained in a jail or other detention facility which has not been approved by the Department of Health and Social Services before detention of the minor. (§ 15 art 1 ch 145 SLA 1957; am § 3 ch 118 SLA 1962; am § 2 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am §§ 1, 2 ch 128 SLA 1972)

Cross references. — For custody without a court order, see Children's Rules 6 and 7, Alaska Rules of Court.

#### NOTES TO DECISIONS

Detention orders neither based on notes under this catchline, AS 47.10.080, competent testimony nor accompanied A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 316 (1982). by the required statement of facts are invalid. In re P.H., Sup. Ct. Op. No. 857 Cited in State v. R.I.I., Ct. App. Op. No. (File No. 1538), 504 P.2d 837 (1972). 375 (File No. 7768), P.2d (1984).

Appeal of detention order. — See

**Sec. 47.10.142. Emergency custody and temporary placement hearing.** (a) The Department of Health and Social Services may take emergency custody of a minor upon discovering any of the following circumstances:

- (1) the minor has been abandoned;
- (2) the minor has been grossly neglected by the minor's parents or guardian as "neglect" is defined in AS 47.17.070(5), so that immediate removal from the minor's surroundings is, in the determination of the department, necessary to protect the minor's life;
- (3) the minor has been abused, as "abuse" is defined in AS 47.17.070(1), so that immediate medical attention is necessary, in the determination of the department;
- (4) the minor has been sexually abused under circumstances listed in AS 47.10.010(a)(2)(D).

(b) A minor who has left home and is evading the person having legal custody of the minor may obtain the services of the department. The department shall assess the situation and furnish the minor with the social services it considers appropriate to protect the well-being of the minor and to preserve the minor's family life if preserving it is considered desirable under the circumstances. If, after assessing the situation, considering the wishes of the minor, and furnishing appropriate social services, the department considers it necessary, the department may take emergency custody of the minor.

SECTION 17

When a child is taken into custody under (a) or (b) of this section, the department shall immediately, and in no event more than 12 hours later unless prevented by lack of communication facilities, notify the parents or the person or persons having custody of the child and the court of the action and file with the court a petition alleging that the child is a child in need of aid.

(d) The court shall immediately, and in no event more than 48 hours after being notified unless prevented by lack of transportation, hold a hearing at which the minor, if the minor's health permits, and the minor's parents or guardian, if they can be found, shall be permitted to be present. The court shall determine whether probable cause exists for believing the minor to be a child in need of aid, as defined in AS 47.10.290. The court shall inform the minor, and the minor's parents or guardian if they can be found, of the reasons given as constituting probable cause and the reasons given as authorizing the minor's temporary placement.

(e) If the court finds that probable cause exists it shall order the minor committed to the department for temporary placement, or order the minor returned to the custody of the minor's parents or guardian subject to the department's supervision of the minor's care and treatment. If the court finds no probable cause it shall order the minor returned to the custody of the minor's parents or guardian. (§ 3 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 24 ch 63 SLA 1977; am § 2 ch 104 SLA 1982)

#### NOTES TO DECISIONS

Effect of amendments. — The 1982 amendment added paragraph (f) to subsection (a). Cited in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), p.2d (1984).

#### Article 2. Juvenile Institutions.

Section	Section
150. General powers of department over juvenile institutions	190. Conditions governing detention
160. Duties of department	200. Releasing juveniles after commitment
170. Power of cities to maintain separate home or facility	210. Youth counselors
180. Operation of homes and facilities	220. Grants-in-aid

**Sec. 47.10.150. General powers of department over juvenile institutions.** The Department of Health and Social Services may

- (1) purchase, lease or construct buildings or other facilities for the care, detention, rehabilitation and education of children in need of aid or delinquent minors;
- (2) adopt plans for construction of juvenile homes, juvenile detention facilities, and other juvenile institutions;

(3) adopt standards and regulations under this chapter for the design, construction, repair, maintenance and operation of all juvenile detention homes, facilities, and institutions;

(4) inspect periodically each juvenile detention home, facility, or other institution to ensure that the standards and regulations adopted are being maintained;

(5) reimburse cities maintaining and operating juvenile detention homes and facilities;

(6) enter into contracts and arrangements with cities and state and federal agencies to carry out the purposes of this chapter;

(7) do all acts necessary to carry out the purposes of this chapter;

(8) accept donations, gifts or bequests of money or other property for use in construction of juvenile homes, institutions or detention facilities;

(10) operate juvenile homes when municipalities are unable to do so;

(11) receive, care for, and place in a juvenile detention home, the minor's own home, a foster home, or correctional school or treatment institution all minors committed to its custody under this chapter. (§ 3 art. II ch 145 SLA 1957; am § 1 ch 152 SLA 1959; am § 6 ch 104 SLA 1971; am § 25 ch 63 SLA 1977)

Cross references. — For operation of the welfare of children under the care of juvenile detention homes and facilities, the department. see AS 47.10.250. see AS 47.10.180. For standards of care for

#### NOTES TO DECISIONS

Department ordered to promulgate standards for operation of juvenile detention homes. — See T.M. v. Director of McLaughlin Youth Center, Superior Court, No. 72-449 (1973).

Collateral references. — 60 Am Jur. 2d, Penal and Correctional Institutions, § 1 et seq.

**Sec. 47.10.160. Duties of department.** The Department of Health and Social Services shall

- (1) accept all minors committed to the custody of the department and all minors who are involved in a written agreement under AS 47.10.130(c), and provide for the welfare, control, care, custody, and placement of these minors in accordance with this chapter;
- (2) require and collect statistics on juvenile offenses and offenders in

Alaska;

diction the institution is operated, or whose department or agency is charged with performing the service. (§ 3 ch 88 SLA 1960)

**Sec. 47.15.040. Financial arrangements.** The compact administrator, subject to the approval of the commissioner of administration, may make or arrange for the payments necessary to discharge the financial obligations imposed upon this state by the compact or by a supplementary agreement made under the compact. (§ 4 ch 88 SLA 1960)

**Sec. 47.15.050. Appointment of attorney or guardian.** Appointment of an attorney or guardian ad litem under the provisions of this compact shall be made in accordance with AS 25.24.310 or AS 44.21.400 — 44.21.440. (§ 5 ch 88 SLA 1960; am § 55 ch 94 SLA 1980; am § 16 ch 55 SLA 1984)

**Cross references.** — See Admin. R. 13, item appointed under the provisions of Alaska Rules of Court.  
**Effect of amendments.** — The 1984 amendment rewrote this section, which formerly read "A council or guardian ad

**Sec. 47.15.060. Enforcement.** The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which are within their respective jurisdiction. (§ 6 ch 88 SLA 1960)

**Sec. 47.15.070. Additional procedures not precluded.** In addition to the procedures provided in articles IV and VI of the compact for the return of a runaway juvenile, the particular states, the juvenile or the juvenile's parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile. (§ 7 ch 88 SLA 1960)

**Sec. 47.15.080. Short title.** This chapter may be cited as the Uniform Interstate Compact on Juveniles. (§ 8 ch 88 SLA 1960)

## Chapter 17. Child Protection.

Section	Section
10. Purpose	50. Immunity
20. Persons required to report	60. Evidence not privileged
25. Duties of public authorities	64. Photographs and x-rays
30. Action on reports; termination of parental rights	68. Penalty for failure to report
40. Central registry; confidentiality	70. Definitions

**Sec. 47.17.010. Purpose.** In order to protect children whose health and well-being may be adversely affected through the infliction, by

other than accidental means, of harm through physical abuse or neglect or sexual abuse or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of the children in this state, and to preserve family life whenever possible. (§ 1 ch 100 SLA 1971; am § 3 ch 104 SLA 1982)

**Effect of amendments.** — The 1982 amendment, in the first sentence, substituted "neglect or sexual abuse or sexual exploitation" for "neglect requiring the attention of a practitioner of the healing arts" and inserted "of the healing arts."

### NOTES TO DECISIONS

**Use of reports.** — The reports of child abuse and neglect required by this section are intended for use in child protection proceedings and are not intended for use in criminal proceedings. *State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).* See also notes to AS 47.17.060, under catchline "Judicial proceeding."

**Collateral references.** — 42 Am. Jur. 2d, Infants, § 16, 17.

43 C.J.S., Infants, §§ 36 to 39, 70 to 75, 94.

Medical attention, criminal neglect by failure to provide, 12 ALR2d 1047.

Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR3d 904.

Validity and construction of penal statute prohibiting child abuse, 1 ALR4th 38.

**Sec. 47.17.020. Persons required to report.** (a) The following persons who, in the performance of their professional duties, have cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the department:

- (1) practitioners of the healing arts;
- (2) school teachers and school administrative staff members;
- (3) social workers;
- (4) peace officers, and officers of the Department of Corrections;
- (5) administrative officers of institutions;
- (6) licensed day care providers and paid staff;
- (7) licensed foster care providers.

(b) This section does not prohibit the named persons from reporting cases which have come to their attention in their nonprofessional capacities nor does it prohibit any other person from reporting a child's harm which the person has cause to believe is a result of abuse or neglect. These reports shall be made to the nearest office of the department.

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(c) If the person making a report of harm under this section cannot reasonably contact the nearest office of the department and immediate action is necessary for the well-being of the child, the person shall make the report to a peace officer. The peace officer shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest office of the department. (§ 1 ch 100 SLA 1971; am §§ 4, 5 ch 104 SLA 1982; am E.O. No. 55, § 42 (1984))

Effect of amendments. — The 1982 amendment substituted "Department of Corrections" for "Division of corrections" in paragraph (4) of subsection (a). The 1984 amendment substituted "school administrative staff members" at the end of paragraph (2) and added paragraphs (6) and (7).

NOTES TO DECISIONS

Cited in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Collateral references. — Civil liability report battered child syndrome, 97 ALR3d of physician for failure to diagnose or 338.

Sec. 47.17.025. Duties of public authorities. (a) A law enforcement agency shall immediately notify the department of any receipt of a report of harm to a child from abuse. Upon receipt from any source of a report of harm to a child from abuse, the department shall notify the Department of Law and investigate the report and, within 72 hours of the receipt of the report, shall provide a written report of its investigation of the harm to a child from abuse to the Department of Law for review.

- (b) The report of harm to a child from abuse required from the department by this section shall include:
  - (1) the names and addresses of the child and the child's parent or other persons responsible for the child's care, if known;
  - (2) the age and sex of the child;
  - (3) the nature and extent of the harm to the child from abuse;
  - (4) the name and age and address of the person known or believed to be responsible for the harm to the child from abuse, if known;
  - (5) information that the department believes may be helpful in establishing the identity of the person believed to have caused the harm to the child from abuse. (§ 6 ch 104 SLA 1982)

Applied in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Sec. 47.17.030. Action on reports; termination of parental rights. (a) If a child, concerning whom a report of harm is made, is believed to reside within the boundaries of a local government exercising health functions for the area in which the child is believed to reside, the department may, upon receipt of the report, refer the matter to the appropriate health or social services agency of that local government. For cases not referred to an agency of a local government, the department shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child.

(b) A local government health, or social services agency receiving a report of harm shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child. In addition, the agency receiving a report of harm shall forward a copy of its report of the investigation, including information the department requires by regulation, to the department.

(c) Action shall be taken regardless of whether the identity of the person making the report of harm is known.

(d) Before the department or a local government health or social services agency may seek the termination of parental rights, under AS 47.10.080(c)(3), it shall offer protective social services and pursue all other reasonable means of protecting the child.

(e) In all actions taken by the department or a health and social services agency of a local government under this chapter that result in a judicial proceeding, the child shall be represented by a guardian ad litem in that proceeding. Appointment of a guardian ad litem shall be made in accordance with AS 25.24.310. (§ 1 ch 100 SLA 1971; am § 1 ch 222 SLA 1976; am § 17 ch 55 SLA 1984)

Effect of amendments. — The 1984 amendment added the second sentence in subsection (e).

NOTES TO DECISIONS

Effect of subsection (d). — Subsection (d) of this section is clearly intended to prevent further abuse by providing protective services to the child, and it does not place a mandatory duty on the state to provide counseling and other support services to the family prior to seeking termination of parental rights. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4570), 623 P.2d 1210 (1981).

Applied in *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Quoted in *Granato v. Occhiuzzi*, Sup. Ct. Op. No. 1962 (File No. 3736), 602 P.2d 442 (1979).

Collateral references. — 43 C.J.S., *Infants*, § 71, 72.

Physical abuse of child by parent as ground for termination of parent's right to child, 53 ALR3d 605.

Sexual abuse of child by parent as

ground for termination of parent's right to child, 58 ALR3d 1074.

Validity of state statute providing for termination of parental rights, 22 ALR4th 774.

**Sec. 47.17.040. Central registry; confidentiality.** (a) The department shall maintain a central registry of all investigation reports but not of the reports of harm.

(b) Investigation reports and reports of harm filed under this chapter are considered confidential and are not subject to public inspection and copying under AS 09.25.110 and 09.25.120. However, in accordance with department regulations, investigation reports may be used by appropriate governmental agencies with child-protection functions, inside and outside Alaska, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody. A person, not acting in accordance with department regulations, who makes public information contained in confidential reports is guilty of a misdemeanor. (§ 1 ch 100 SLA 1971; am § 2 ch 222 SLA 1976)

NOTES TO DECISIONS

**Psychotherapist/patient privilege.** — Child abuse reports are not open to the public, and are therefore not within A.R.E.R. 504(d)(5), which provides that there is no physician or psychotherapist/patient privilege "as to information that the physician or

**Sec. 47.17.050. Immunity.** A person who, in good faith, makes a report under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability which might otherwise be incurred or imposed. (§ 1 ch 100 SLA 1971)

**Sec. 47.17.060. Evidence not privileged.** Neither the physician-patient nor the husband-wife privilege is a ground for excluding evidence regarding a child's harm, or its cause, in a judicial proceeding related to a report made under this chapter. (§ 1 ch 100 SLA 1971)

NOTES TO DECISIONS

**For discussion of constitutional problems in interpreting this section to abrogate psychotherapist privilege in criminal proceedings,** see *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

**Applicability to psychologists.** — The court assumed but did not decide that this section applies to psychologists, who are not physicians. *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

**"Judicial proceeding"** — This section only applies to child protective proceedings instituted under AS 47.10 and not to criminal proceeding for sexual abuse. *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Giving the Department of Health and Social Services primary control of the abused child again indicates a legislative intent that the "judicial proceedings"

referred to in this section occur through the department in relation to protective services, and are civil rather than criminal. *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Since AS 47.17.025 refers to the Department of Law, without reference to the criminal division, AS 47.17.025 does not, standing alone, necessarily resurrect the requirement of former AS 11.67.040 that the district attorney receive child abuse reports; nor does it establish an intent that

child abuse reports result in criminal prosecutions; and consequently, the Court of Appeals could not find that a criminal prosecution for child sexual abuse is necessarily "a judicial proceeding related to a report made under this chapter" pursuant to this section. *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

**Sec. 47.17.064. Photographs and x-rays.** The department or a person required under AS 47.17.020(a)(1) to report that a child suffered substantial harm as a result of physical abuse or neglect may without the permission of the parents

- (1) take or have taken photographs of the areas of trauma visible on the child; and
- (2) if medically indicated, have a radiological examination of the child performed. (§ 7 ch 104 SLA 1982)

**Sec. 47.17.068. Penalty for failure to report.** A person required to file a report of abuse or neglect under AS 47.17.020 who willfully or knowingly fails or refuses to report the harm required under AS 47.17.020 is guilty of a class B misdemeanor. (§ 7 ch 104 SLA 1982)

Cross references. — For penalties for misdemeanor, see AS 12.55.135.

**Sec. 47.17.070. Definitions.** In AS 47.17.010 — 47.17.070

- (1) "child abuse or neglect" means the physical injury or neglect, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;
- (2) "child" means a person under 18 years of age;
- (3) "department" means the Department of Health and Social Services;

(4) "institution" means a private or public hospital or other facility providing medical diagnosis, treatment, or care;

(5) "neglect" means the failure to provide necessary food, care, clothing, shelter, or medical attention for a child;

(6) "occupations of the healing arts" includes chiropractors, dentists, health aides, nurses, optometrists, osteopaths, physical therapists, physicians, psychiatrists, psychologists, religious healing practitioners, and surgeons;

(7) "sexual exploitation" means

(A) permission or encouragement to a child for prostitution prohibited by AS 11.66.100 — 11.66.150 by a person responsible for the child's welfare;

(B) permission, encouragement, or activity involved in the unlawful exploitation of a minor prohibited by AS 11.41.455 by a person responsible for the minor's welfare. (§ 1 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 3 ch 222 SLA 1976; am §§ 56, 57 ch 94 SLA 1980; am §§ 8, 9 ch 104 SLA 1982)

Effect of amendments. — The 1980 amendment inserted "or amendment substituted "18" for "neglect" and "sexual exploitation" in paragraph (1), and substituted "18" for "16" in paragraph (2).

#### NOTES TO DECISIONS

Where parents refuse permission for blood transfusion because of religious conviction, the state may intercede and make the child a dependent minor by the parents' failure to provide medical attention under paragraph (6) of this section, obtaining custody and thereafter consenting to the operation. In re Lausterer, Superior Court, 3rd Jud. Dist., No. CP2720 (1972).

### Chapter 20. Exceptional Children.

Section	Section
05. Purpose	20. Standards for assistance
10. Assistance authorized	50. Definitions

Sec. 47.20.005. Purpose. It is the purpose of AS 47.20.005 — 47.20.050 to provide appropriate public education and training for the exceptional children in this state who have not reached the age of three. To the maximum extent possible, the department shall establish a learning program which emphasizes individual needs, is home based, and involves parents in the education and training of their children. (§ 1 ch 77 SLA 1978)

Sec. 47.20.010. Assistance authorized. (a) The department shall provide professional guidance and financial assistance to organized groups of parents, nonprofit corporations, school districts, and regional educational attendance areas according to regulations adopted by the

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department for providing special services, evaluation, and special training required by exceptional children.

(b) The program established under (a) of this section shall emphasize individual needs and, where possible, be home based and involve parents in the education and training of their children. (§ 2 ch 118 SLA 1961; am § 6 ch 104 SLA 1971; am § 2 ch 77 SLA 1978)

Sec. 47.20.020. Standards for assistance. The department shall assist organized parental groups, school districts, regional educational attendance areas, and nonprofit corporations which have requested assistance and have arranged for the necessary facilities and equipment for training centers for exceptional children. (§ 3 ch 118 SLA 1961; am § 3 ch 77 SLA 1978)

Secs. 47.20.030 — 47.20.040. Appropriations; purpose. [Repealed, § 6 ch 77 SLA 1978.]

Sec. 47.20.050. Definitions. In this chapter

(1) "department" means the Department of Health and Social Services;

(2) "evaluation" means the physical and mental examinations necessary to determine the extent of the handicap;

(3) "exceptional children" includes those children who have not reached age of three and whose development is significantly delayed due to mental retardation, physical, neurological, or emotional handicaps;

(4) "professional guidance" means the consultative services or other medical and educational specialists developed by the department for the education and training of exceptional children;

(5) "special service" means evaluation and special training;

(6) "special training" means (A) nursery or pre-school training to compensate for the special handicaps of exceptional children in order to prepare them when possible, for admission to special classes in a regular school at the age determined by law, or (B) training in self-help skills, safety, social and simple occupational skills for trainable mentally retarded children of school age who are incapable of academic subjects. (§ 5 ch 118 SLA 1961; am §§ 4—6 ch 77 SLA 1978)

Revisor's notes. — Reorganized in 1984 to alphabetize the terms defined.

### Chapter 21. Adventure-Based Education.

Section
10. Establishment
20. Program

(C) manifests a current intent to carry out plans of serious harm to that person's self or another;

(11) "mental health professional" means a psychiatrist or physician who is licensed to practice in this state or employed by the federal government; a clinical psychologist licensed by the state Board of Psychologists and Psychological Associate Examiners; a psychological associate trained in clinical psychology and licensed by the Board of Psychologists and Psychological Associate Examiners; a registered nurse with a master's degree in psychiatric nursing, licensed by the State Board of Nursing; and a social worker with a master's degree in social work and substantial experience in the field of mental illness;

(12) "mental illness" means an organic, mental, or emotional impairment that has substantial adverse effects on an individual's ability to exercise conscious control of the individual's actions or ability to perceive reality or to reason or understand; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

(13) "peace officer" includes a state police officer, municipal or other local police officer, state, municipal, or other local health officer, public health nurse, United States marshal or deputy United States marshal, or a person authorized by the court;

(14) "professional person in charge" means the senior mental health professional at a facility or that person's designee; in the absence of a mental health professional it means the chief of staff or a physician designated by the chief of staff;

(15) "provider of outpatient care" means a mental health professional or hospital, clinic, institution, center, or other health care facility designated by the department to accept for treatment patients who are ordered to undergo involuntary outpatient treatment by the court or who are released early from inpatient commitments on condition that they undergo outpatient treatment;

(16) "screening investigation" means the investigation and review of facts which have been alleged to warrant emergency examination or treatment, including interviews with the persons making the allegations, any other significant witnesses who can readily be contacted for interviews, and, if possible, the respondent, and an investigation and evaluation of the reliability and credibility of persons providing information or making allegations;

(17) "state" means a state of the United States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico, and, with the approval of the United States Congress, Canada. (§ 1 ch 84 SLA 1981; am §§ 26-30 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment inserted "or operated by the federal government" in paragraph (5); added the subparagraph (A) designation in paragraph (7), added "or" to the end of that subparagraph, and added subparagraph (B); reworded subparagraphs (10)(A) and (C) and paragraph (12) to remove personal pronouns; deleted "imminent and substantial" preceding "bodily harm" and substituted "behavior causing, attempting or threatening that harm" for "attempts at suicide or bodily harm" in paragraph (10)(A); substituted "harm to others" for "imminent and substantial bodily harm to

one or more other persons" and the language beginning "recent behavior causing, attempting" or "behavior causing or attempting harm, including, in regard to evaluations, at least one incident within 30 days before the filing of a petition for emergency hospitalization" in paragraph (10)(B); substituted "manicure" for "demonstrates" in paragraph (10)(C); substituted "trained in clinical psychology and licensed" for "with a clinical psychology or counseling specialty licensed" near the middle of paragraph (11); and inserted "substantial" preceding "experience" near the end of paragraph (11).

### Chapter 35. Private Institutions.

Section	Section
10. Powers of department	75. Licensure of providers of care for dependent adults by municipalities
20. License or permit required	90. Licensure and supervision of maternity homes
30. Authority to issue regulations	100. Licenses required
40. Licensing	900. Definitions
55. Provisional license	
60. Records required	
70. Violations	

#### Sec. 47.35.010. Powers of department. (a) The department may

- (1) license and supervise boarding homes, foster homes, group homes, nurseries, institutions caring for children and foster homes, group homes and institutions caring for dependent adults;
- (2) investigate and supervise licensees;
- (3) enforce the standards established by it;
- (4) contract with private or municipal agencies to investigate and make recommendations to the department for the licensing and supervision of boarding homes, foster homes, group homes, nurseries, institutions caring for children and foster homes, group homes and institutions caring for dependent adults under procedures and standards of operation established by the department.

(b) The department shall, within 90 days after receiving a written request that it do so, delegate its powers relating to nurseries under this section and under AS 47.35.040 — 47.35.060 to a municipality which has adopted an ordinance providing for day care licensing under home rule powers or as authorized under AS 29.48.035(a)(20). A municipality to which these powers have been delegated may waive or modify any regulation or standard established by the department under the authority of AS 47.35.010 — 47.35.080 as it applies to nurseries or the application of any such regulation or standard as it applies to a particular day care licensee but must notify the department of any waiver. (§ 2 ch 17 SLA 1951; am §§ 1, 2 ch 42 SLA 1973; am §§ 1, 2 ch 253 SLA 1976; am § 1 ch 45 SLA 1977; am § 1 ch 98 SLA 1977; am § 135 ch 6 SLA 1984)

Revisor's notes. -- In 1984 "former" was inserted before the reference to AS 47.35.050. That section was repealed by sec. 5, ch. 97, SLA 1982.

able alternative is established that meets the purpose of the provision and reasonably assures the well-being of persons in care.

(d) A license may not be transferred to a different facility or owner.

(e) The department shall give written notice of revocation or modification under (b) of this section 30 days before the effective date of the action. However, if the health or well-being of children or dependent adults is in jeopardy, the revocation or modification action is effective immediately upon the issuance of written notice by the department. (§§ 5, 8 ch 17 SLA 1951; am § 4 ch 42 SLA 1973; am § 2 ch 97 SLA 1982)

#### NOTES TO DECISIONS

Cited in *J.M.A. v. State*, Sup. Ct. Op. No. 1201 (File No. 2391), 542 P.2d 170 (1975).

**Sec. 47.35.020. License or permit required.** A person may not, without a license or permit to do so,

(1) maintain or conduct, for more than 90 days, a boarding home, foster home, group home, institution, or other place for the regular reception or care of children under 16 years of age, or a foster home, group home, or institution for the care of dependent adults; or

(2) engage in the business of receiving or caring for children under 14 years of age, with or without compensation, in a nursery in which five or more children not related by blood or marriage, or legal adoption, to the owner, operator or manager of the business are lodged. (§ 3 ch 17 SLA 1951; am § 3 ch 42 SLA 1973; am § 3 ch 253 SLA 1976; am § 2 ch 45 SLA 1977; am § 1 ch 97 SLA 1982)

**Effect of amendments.** -- The 1982 amendment inserted "for more than 90 days" near the beginning of paragraph (1) and made minor changes in style.

**Sec. 47.35.030. Authority to issue regulations.** The department may adopt regulations and standards consistent with other requirements of law. This authority does not deny a religious group from establishing and operating an institution solely because of the prior installation or operation of another religious group in the same area. The authority to adopt regulations and standards shall be exercised to insure compliance with the intent and purpose of AS 47.35.010 -- 47.35.100. The department may inspect and examine an institution, home or place, or the performance of a service. (§ 4 ch 17 SLA 1951; am § 4 ch 77 SLA 1967)

**Sec. 47.35.040. Licensing.** (a) The department shall issue a license to a facility if it determines that the facility has met the standards for operation set out in AS 47.35.010 -- 47.35.080 and the regulations adopted under AS 47.35.010 -- 47.35.080.

(b) A license is valid for two years after the date of issuance unless it is revoked or modified. The department may revoke a license or modify a license to provisional status if it determines that a facility is not in compliance with AS 47.35.010 -- 47.35.080 or the regulations adopted under AS 47.35.010 -- 47.35.080.

(c) The department may waive compliance with a standard set out in regulations adopted under AS 47.35.010 -- 47.35.080 if an accept-

§ 47.35.050 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.35.060

**Effect of amendments.** -- The 1982 amendment rewrote this section.

**Sec. 47.35.050. Duration of license or permit.** (Repealed, § 5 ch 97 SLA 1982. For current law see AS 47.35.040(b) and (e).)

**Sec. 47.35.055. Provisional license.** (L) The department shall issue a provisional license to a new facility if the facility submits to the department an acceptable plan for operation that is in conformity with the provisions of AS 47.35.010 -- 47.35.080 and the regulations adopted under AS 47.35.010 -- 47.35.080. After the department determines that the new facility is operating in conformity with the provisions of AS 47.35.010 -- 47.35.080 and the regulations adopted under AS 47.35.010 -- 47.35.080, the department shall issue a license under AS 47.35.040 to the facility.

(b) The department may issue a provisional license to a facility that is licensed under AS 47.35.040 but is temporarily unable to conform to the provisions of AS 47.35.010 -- 47.35.080 or the regulations adopted under AS 47.35.010 -- 47.35.080.

(c) The department may issue a provisional license under (b) of this section only if the facility submits to the department an acceptable plan to bring the facility into conformity with the provisions of AS 47.35.010 -- 47.35.080 and the regulations adopted under AS 47.35.010 -- 47.35.080 within the time specified in the provisional license.

(d) A provisional license is valid for a period not exceeding one year from the date of issuance. The department may renew a provisional license for an additional period not to exceed one year. (§ 3 ch 97 SLA 1982)

**Sec. 47.35.060. Records required.** Each licensee or permit holder shall keep records regarding each child or adult in its control and care, or placed by it, which the department prescribes, and shall report to the department the facts which the department requires with reference to the children or adults. All records regarding individuals placed for care in an institution or home under this chapter are confidential and shall be safeguarded from improper disclosure by the agency or department. (§ 9 ch 17 SLA 1951; am § 4 ch 45 SLA 1977)

**Sec. 47.35.070. Violation.** A person who violates a provision of AS 47.35.010 — 47.35.100 or a regulation adopted under AS 47.35.010 — 47.35.100 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$200. (§ 11 ch 17 SLA 1951; am § 2 ch 77 SLA 1967)

**Sec. 47.35.075. Licensure of providers of care for dependent adults by municipalities.** A first or second class borough or a first or second class city outside a first or second class borough may license and supervise institutions caring for dependent adults. If a borough or city chooses not to license care providers for dependent adults, the department shall be the licensing authority; if a borough or city chooses to license care providers for dependent adults, the borough or city may exercise any power or responsibility granted to the department under this chapter and shall enforce regulations adopted by the department under AS 47.35.030. (§ 5 ch 45 SLA 1977)

**Sec. 47.35.080. [Renumbered as AS 47.35.900.]**

**Sec. 47.35.090. Licensing and supervision of maternity homes.** Maternity homes shall be licensed and supervised in the same manner as boarding homes or foster homes, nurseries and other institutions caring for children as provided in AS 47.35.010 — 47.35.080. In this section "maternity home" means an institution or place of residence whose primary function is to give care to pregnant girls or women, regardless of age, before or during confinement, or which provides care, as needed, to mothers and their infants after confinement, with or without compensation. (§ 1 ch 108 SLA 1960)

**Sec. 47.35.100. License required.** (a) Without a license issued by the department in accordance with its regulations a person may not operate an agency providing any of the following services:

- (1) the placement of children for foster home care;
  - (2) the placement of children for adoption; or
  - (3) individual and family counseling.
- (b) The license shall remain in effect until revoked for cause. The department shall give written notice of revocation at least 90 days before the effective date of the revocation.
- (c) In this section "agency" does not include an individual who occasionally provides the services set out in (a) of this section. (§ 4 ch 77 SLA 1967)

**Sec. 47.35.900. Definitions.** In this chapter

- (1) "boarding home or foster home" means an establishment providing regular care for less than six children not related by blood or marriage to the foster parents;
- (2) "department" means the Department of Health and Social Services;

(3) "facility" means the administration, program, and physical plant of a nursery caring for children, or a foster home, group home, or institution caring for children or dependent adults;

(4) "group home" means a small establishment providing care and services for 10 or fewer children not related by blood, marriage or legal adoption to the foster parent and which is

(A) noncontiguous to another institution; and

(B) stresses normal family living.

(5) "institution" means an establishment providing regular care and services for 11 or more children not related by blood or marriage to the owner or operator;

(6) "nursery" means an establishment providing care and services for any part of the 24-hour day for a child not related by blood or marriage to the owner or operator, but does not include any establishment whose primary purpose is educational. (§ 1 ch 17 SLA 1951; am § 3 ch 77 SLA 1967; am § 2 ch 69 SLA 1971; am § 6 ch 104 SLA 1971; am §§ 6, 7 ch 42 SLA 1973; am § 4 ch 97 SLA 1982)

**Revisor's notes.** — Formerly AS 47.35.080. Renumbered in 1984. Reorganized in 1984 to alphabetize the terms defined. Effect of amendments. — The 1982 amendment added paragraph (3).

## Chapter 37. Uniform Alcoholism and Intoxication Treatment Act.

Section	Section
10. Declaration of policy	180. Emergency commitment
20. Office of alcoholism and drug abuse	190. Involuntary commitment of alcoholics
30. Powers of office	200. Hearing on petition for involuntary commitment of alcoholics and intoxicated persons
40. Duties of office	210. Records of alcoholics and intoxicated persons
50. Interdepartmental coordinating committee	220. Visitation and communication of patients
60. Review board on alcoholism	230. Establishment of emergency service unit
70. Composition	240. Payment for treatment
80. Qualifications of board members	245. Wages of patients
90. Term of office and vacancies	250. Nonapplicability
100. Compensation, per diem, or expenses	260. Application of Administrative Procedure Act
110. Duties	270. Definitions
120. Alcoholism program coordinator	
130. Comprehensive program for treatment; regional facilities	
140. Public and private treatment facilities	
150. Acceptance for treatment	
160. Voluntary treatment of alcoholics	
170. Treatment and services for intoxicated persons and persons incapacitated by alcohol	

**Revisor's notes.** — AS 47.37.970 — 47.37.270 were enacted as AS 47.37.062 — 47.37.210. Renumbered in 1972. Collateral references. — 41 Am. Jur. 2d, Incompetent Persons, § 7. 28 C.J.S., Drunkards, § 1 et seq.

# STATE OF ALASKA

## DEPT. OF HEALTH AND SOCIAL SERVICES

### OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH H 01  
JUNEAU, ALASKA 99811

PHONE: 465-3030

DOCUMENT #85-47

February 20, 1985

The Honorable Max Gruenberg  
Co-Chairman  
House Health, Education and  
Social Services Committee  
Pouch V  
Juneau, AK 99811

Dear Representative Gruenberg:

The House HESS Committee has requested that the Division of Family and Youth Services (DFYS) respond to questions raised by individuals testifying to the committee regarding HB 88, Section 12.

#### DELINQUENCY AND CINA CASES

The committee was asked if the amended version of AS 47.10.081(c) (Sec. 12 HB 88) would apply in child in need of aid cases (CINA). The proposed amended version only changes the time period hence it would, as does the present law, apply both to delinquent cases and CINA cases. Both DFYS Regional Managers of social workers and Regional Administrators of Youth Services have requested that change, in order to give their workers more time to properly evaluate and treat children in their custody.

#### PREDISPOSITION HEARING REPORT RECOMMENDATION

The committee received several comments stating that the time period of two days as proposed in SEC. 12 does not allow an attorney sufficient time in a CINA case to advise and counsel their client. The Barrow office of Alaska Legal Service Corporation (ALSC) was contacted and they would accept a compromise of five days in the place of two working days, although they would prefer five working days. After discussions with field managers the department agrees to support a "five day rule". Therefore the department requests that the wording of the proposed amended statute be changed to "five days", rather than the "two working days" proposed in HB 88.

#### HISTORY AND RATIONALE

When Title 47.10 was substantially amended in 1977, a new section was added entitled 47.10.081, Predisposition hearing reports. Paragraph (c) of that section requires that predisposition reports prepared by DFYS workers will be available for distribution to the child, his parents, attorney, and Guardian Ad Litem not less than ten days before the disposition hearing.

AS 47.10.08(c) was introduced at the recommendation of a specifically formed Children's and Family Code Task Force which had been formed by a joint effort of the legislative and executive branches of government to recommend modifications to Title 47. The Task Force recommended reports be available to parties three days prior to hearing. Prior to the statutory change, disposition reports could be submitted by DFYS workers as late as the actual hearing. During the legislative process, ten days was substituted for three days on the recommendation of the Public Defender Agency.

In delinquency dispositions where there are 30 or fewer calendar days between adjudication and disposition, investigating probation officers may have fewer working days to complete their investigation and prepare the disposition report than the parties have to review the document prior to the court hearing. The current ten day requirement also eliminates any possibility of a practical effort to reduce the total time between adjudication and disposition for those children detained during that process.

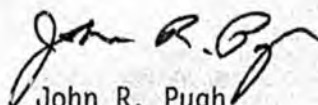
In practice, the so-called "ten day rule" has resulted in lengthening periods of detention because additional time is necessary to complete predisposition investigations, and disposition hearings must be postponed.

In CINA cases the social workers must complete their investigation, assess the child's needs, and institute a treatment plan after taking custody of a child and before a disposition report can be submitted. In those areas of the state where the adjudication and disposition hearings are held together, the current "ten day rule" is a hardship on the social worker. Often the social worker will have 10-12 days to work on the case before the disposition report is due. This is an unrealistic time period to build a case, make a case plan, and provide services. As in delinquent proceedings, the legal community in some cases has as much time to review what the social worker has done and plans to do as the social worker has available to assist the child and prepare the disposition report prior to the disposition hearing.

There is no question that parties to a disposition hearing including a child's attorney must have prior access to our investigative reports. A full five days availability would be a reasonable time for parties to review our reports.

Thank you for the opportunity to respond to these questions.

Sincerely,

  
John R. Pugh  
Commissioner

March 18, 1985

The Honorable Peter Goll  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Peter Goll:

I am asking you to support and enact HB 88 relating to the protection of children.

In Sections 47.17.069(4) and .070(1) of the bill, the terms "mental injury" and "emotional injury" are vague and need to be clarified.

In Section 11.51.100(1), what is and who determines "substantial risk"?

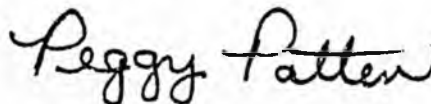
A provision stating that if the State assumes custody of 1 child in a family—all other children in the family need to be protected in the same way.

Also a provision protecting the rights of a preverbal child needs to be included.

I am currently involved in a case with the Division of Family and Youth Services and a preverbal child. The information on the case is attached.

If you can use my testimony or have any questions, please contact me at the numbers or address listed below.

Thank you.



Peggy Patten  
Wk. 465-2570  
Hm. 789-2825  
P. O. Box 3053  
Juneau, AK 99803

The case with the Division of Family and Youth Services involves 1 child (4 years old) in a family who was determined by the State to be a child in need of aid (CINA) and removed from the mother's home. After this action was taken by the State, this same mother took custody of her other 18 month old child who had been living with an aunt for 14 months as a foster child. This same mother lived 2 streets over from where her 18 month old child had lived but only visited her child 5 times in the 14 months and for no longer than 30 minutes per visit.

The case was brought to court to get a temporary restraining order preventing the mother from having custody of this child during the mother's probationary period, (the same time period the other child was in custody of the state). The judge ruled that due to the vagueness of the law he had to award custody of the daughter to the natural mother even though:

1. Her other 4 year old child was determined by the State to be a Child in Need of Aid and removed from her home;
2. She failed the first 3 months of her probation/rehabilitation program with the State and was not making progress with her second 3 months (second chance);
3. She is living with a man who has a record of woman/child abuse.
4. This 19 month old, preverbal child is left alone in the care of this known abuser while the mother goes to her required classes during the days and evening.
5. The judge also ruled that the child was in a potential abusive situation and appointed a guardian at litem who was not named until 4 weeks after the hearing in court.

(The mother was abused as a child. Her State programs include parent aide, homemakers program, and alcoholic counseling.)

REPRESENTATIVE  
PETER GOLL



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4925

STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

April 17, 1984

The Honorable Bill Sheffield  
Governor  
State of Alaska  
M/S0100

Dear Governor Sheffield:

Thank you very much for your letter of April 19, regarding AS47.17.

I appreciate your continuing interest in this matter.

If all goes well, I will pre-file the bill incorporating  
your language in early December, 1984.

Thanks again.

Best regards,

A handwritten signature in cursive script, appearing to read "Peter Goll".

Peter Goll



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 19, 1984

The Honorable Peter Goll  
Alaska State House  
Pouch V  
Juneau, AK 99811

Dear Representative Goll:

Thank you for your letter of February 13, 1984, regarding amending AS 47.17 to include language regarding psychological injury as a form of child abuse. Currently Alaska law does not provide explicit protection of children from harm to their mental or emotional well-being. Existing statutes focus on physical harm to children and neglect the equally handicapping and often more far-reaching effects of mental or emotional maltreatment. While physically abused children are almost always emotionally maltreated as well, emotional maltreatment may occur alone. Children suffering only mental maltreatment are presently unprotected under Alaska law. This gap in protection of children can generally be attributed to dissatisfaction with criteria for defining and identifying mental or emotional maltreatment and a fear that an insufficient definition would provide too great an opportunity for unwarranted governmental intrusion into Alaskan family life. It is this Administration's position that these issues can be adequately addressed.

We recommend the following amendments to AS 47.17:

- 1) That the term "mental injury" be used.
- 2) That a section be added to the Bill to amend AS 47.17 as follows:

AS 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical or mental abuse or neglect or sexual abuse or sexual exploitation, the Legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the Legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of children in this state, and to preserve family life whenever possible.


- 3) That a section be added to amend AS 47.17.010(1) to read as follows:
  - (1) "Child abuse or neglect" means the physical or mental injury or neglect, sexual abuse, sexual exploitation or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;
- 4) That a section be added amending AS 47.17.070 by adding a new paragraph to read:
  - (9) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance and behavior, with due regard to his culture.

These changes would remove any ambiguity about the intent of the Legislature and would require that harm to the mental health of a child be reported and investigated where such harm appears to have arisen by intent of the person responsible for the child's welfare.

The Department of Health and Social Services has concluded that the suggested amendments to AS 47.17 would require no additional fiscal resources. It is expected that instances of reported emotional injury to children will be relatively small in number and can be investigated satisfactorily with existing staff.

Finally, we believe that this legislation should be changed for the above stated policy reasons. The benefits which would accrue to the State by becoming eligible for funding under PL 95-266 are a secondary gain.

Sincerely,

  
Bill Sheffield  
Governor



Official Business

# Alaska State Legislature

## House of Representatives

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 17, 1984

Dr. Robert London Smith  
Commissioner  
Department of Health and Social Services  
Pouch H 01  
Juneau, AK 99811

Dear Commissioner Smith:

Thank you for your letter of March 9, concerning the issue of psychological abuse to minors.

I am pleased to have the support of the Department on this critical issue.

Should I decide to introduce this legislation next Session, I will contact you in a timely fashion.

Best Regards,

  
Peter Coll

BILL SHEFFIELD, GOVERNOR

**DEPT. OF HEALTH AND SOCIAL SERVICES**

**OFFICE OF THE COMMISSIONER**

POUCH H 01  
JUNEAU, ALASKA 99811

PHONE:  
DOCUMENT NO. 84-78

March 9, 1984

The Honorable Peter Goll  
Representative  
The Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Goll:

Thank you for your letter of February 21, 1984, regarding psychological abuse. The Department continues to be in support of legislative changes to AS 47.17 which would add emotional injury to the problem areas which must be reported to the Department. We do believe that such a change would provide additional legal protection to an unknown number of children. Should you be willing to introduce such legislation, the Department would certainly be in support, and would be happy to provide any available information which would be helpful.

Sincerely,

*for* *E. S. Ribeau, M.D.*  
Robert London Smith, Ph.D.  
Commissioner



STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

February 21, 1984

Robert London Smith, PhD  
Commissioner  
Department of Health and Social Services  
Pouch H-01  
Juneau, Alaska 99811

Dear Commissioner Smith:

Thank you for your letter of February 15, regarding federal funds for child abuse prevention under PL 95-266.

I understand that there would be costs to the state should we implement programs based upon psychological abuse. I further understand that the income from federal sources would not be very significant given the expenses involved, and so forth.

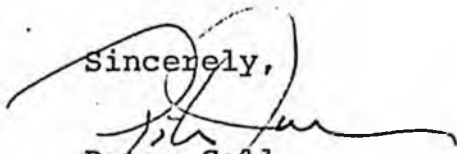
I will appreciate a statement as to whether you wish to pursue legislation next year to bring the state into conformity.

I am confident that your judgement on the economic pros and cons will be sufficient to my needs. I understand, of course, that including psychological abuse might provide legal protection for children which may be needed.

Your recommendations will be appreciated. From the statements received thus far, it seems that need for the legislation rather than income which would be derived therefrom will be the deciding factor.

Thank you.

Sincerely,

  
Peter Goll

BILL SHEFFIELD, GOVERNOR

**DEPT. OF HEALTH AND SOCIAL SERVICES**

**OFFICE OF THE COMMISSIONER**

POUCH H 01  
JUNEAU, ALASKA 99811  
PHONE: 465-3030

Document No. 84-35

February 15, 1984

The Honorable Peter Goll  
Representative  
Alaska State Legislative  
Pouch V  
Juneau, AK 99811

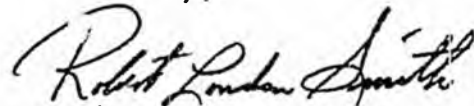
Dear Representative Goll:

This letter is in response to your letter of January 24, 1984, in which you asked whether the \$44,450 we could receive in federal funds would be comparable to the expenses of implementing a change in AS 47.17. This Department has not done a cost benefit analysis of the impact of this change. However, we would like to point out that funds available to states under P.L. 95-266 are allocated on the basis of population. Thus, for states with larger populations, there is more incentive than there is to Alaska. The Federal Government specifies that these funds are to be used for grants to community agencies in the area of child abuse and neglect (CAN) and also requires that a state CAN liason attend yearly national meetings which are generally held on the east coast. Thus, the travel costs must come out of the state's allocation.

If Alaska were to receive these funds, they would be added to the Division of Family and Youth Services' Preventative Services grant program, which is currently funded at the level of \$1.9 million. We would, of course, be pleased to have this additional funding added to the grant program, as it could fund another small program somewhere in the State, or help to fund a larger program.

We hope this information clarifies the situation.

Sincerely,



Robert London Smith, Ph.D.  
Commissioner



STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

December 22, 1983

Robert London Smith, Phd  
Commissioner  
Department of Health and  
Social Services  
Pouch H-01  
Juneau, Alaska 99811

Dear Commissioner Smith:

Thank you for your letter of November 23, regarding the changes in the budget structure for mental health.

The theory you express will be most valuable if the results are as you project.

There have been a number of issues recently raised about community mental health. But the need for community programs is clear and pressing. These programs must be structured and maintained to generate the greatest possible amount of service availability to rural Alaska.

This will not only have human service benefits, but will save the state money over time as fewer persons are sent to various institutions. These include abused children, alcoholics, violent individuals, persons suffering from emotional and minor psychiatric problems, persons required by the court to seek counseling, and others.

Your continued support for community mental health services is appreciated. The grouping of institutional and community services has clearly caused significant worry in the local community programs. I would appreciate a brief comment from your office on what method will be used to prevent the situation you mention of one component suffering due to the needs of another component. I recognize your personal commitment to this, but would like to report some procedural safeguards to the persons who have expressed concern.

I concur, incidentally, that if properly implemented, a cooperative funding process could increase our ability to ensure the availability of money when needed. However, the appearance that competition will be created necessitates a procedural safeguard. Your comments are appreciated.

Best regards,

  
Peter Goll

83/12/22-1

STATE OF ALASKA  
**DEPT. OF HEALTH AND SOCIAL SERVICES**

**OFFICE OF THE COMMISSIONER**

*file Mental Health center*  
**BILL SHEFFIELD, GOVERNOR**

POUCH H 01  
JUNEAU, ALASKA 99811  
PHONE:

465-3030

November 23, 1983

DOCUMENT #83-271

The Honorable Peter Goll  
Representative  
Alaska State Legislature  
P.O. Box 581  
Haines, AK 99827

Dear Representative Goll:

I have received a number of letters regarding the FY 85 budget structure change proposed by the Division of Mental Health and Developmental Disabilities. I know that you have also been made aware of the issue. I agree with the concerns that the community mental health centers must remain intact and that the budget structure should not interfere with their funding. The decision to collapse budget request units (BRU) such as the API and community mental health centers into one BRU was made to reduce the administrative tasks required in the initial budget preparation and presentation to the Legislature.

The budget structure change does not signify a major policy shift. In fact, we support both the API and the community mental health centers as critical components necessary for the safety, welfare, and well being of all Alaskans. Our goal is that each component will maintain its integrity and control its own resource. The change will allow shifting small amounts of money which might otherwise lapse or be unutilized which we also believe to be a plus.

We feel this would ease minor operations in the interest of all concerned individuals. This administrative flexibility would promote training, education, staff exchange, unforeseen travel, and other such events to occur which might otherwise be precluded by the prior multiple BRU structure.

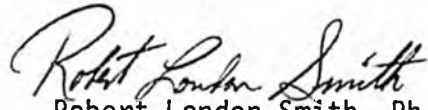
It is our view that such minor shifts would be in the interest of all mental health workers, consumers, patients and families and that no one component would suffer at the hands of another component. We are currently working very hard to achieve the proper delicate balance between the API and community programs. This budget structure change can promote that balance.

Any change, however small, would have to leave an audit trail available for all concerned to follow. A major policy change in view of the Legislative appropriation to each component which serves as the Legislature's intent, would be unwise and is certainly not what the Division has in mind.

Again, it is my view that the BRU change will streamline the budgetary process and is in the interest of the entire mental health community. Even though we are prepared to live as we have within the FY 84 budgetary boundaries, we remain convinced that this is a cumbersome structure and it prevents the Division from serving all of the people in the most fluid and flexible manner possible. It is our intention and belief that mental health centers would profit from a change.

I hope this letter addresses your concerns. Thank you for your consideration of this response.

Sincerely,

  
Robert London Smith, Ph.D.  
Commissioner

REPRESENTATIVE  
PETER GOLL



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4925

STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

February 28, 1984

Mr. Bernard E. Kelly  
Regional Director  
Department of Health and Human Services  
Region X  
2901 Third Avenue  
Seattle, Washington 98121

Dear Mr. Kelly:

Thank you very much for your letter of February 24. I will contact the Department of Health and Social Services and make every effort to resolve this issue in a productive manner.

I appreciate your time and interest in this matter.

Sincerely,

Peter Goll



Region X  
M/S 504  
2901 Third Avenue  
Seattle, WA 98121  
February 24, 1984

The Honorable Peter Goll  
State of Alaska  
House of Representatives  
Juneau, Alaska 99811

Dear Mr. Goll:

This is in response to your December 28 letter to Mr. Bruce Berglund of the Department of Health and Human Services Administration for Children, Youth and Families (ACYF). You had requested our office to review with the Department of Health and Social Services (DHSS) the necessary steps to comply with Federal standards to be eligible for NCCAN funds and further to advise you of specific language to be included in Alaska statutes.

DHSS recently contacted our ACYF staff which provided them with the information on specific steps necessary for Alaska to now meet eligibility standards for NCCAN grants. In addition, Edward Singler, Regional Administrator for Human Development Services which oversees the ACYF, wrote to Commissioner Smith and provided him with information and program guidelines to assist Alaska's efforts toward eligibility for funding.

One of the guidelines which DHSS personnel may have difficulty meeting is the March 31, 1984 deadline to apply for NCCAN funds. If this is the case, the recent program instruction which DHSS has received as a part of Mr. Singler's letter included a statement on a waiver of this deadline. The waiver reads:

States which are presently ineligible but have legislation in progress which might affect their eligibility should request, from the Regional Program Director, a waiver of the March 31, 1984 deadline for the submission of their Statements of Assurance. However, the deadline cannot be extended beyond June 30, 1984, as State allocations must be made by that date in order that awards can be made before the end of FY 1984. Finally, the waiver of the deadline and extension of time applies only to the Statement of Assurance. The application for Federal Assistance (Form 424) must be made by all applicants no later than March 31, 1984.

In addition to the specific steps needed for eligibility mentioned in our letter to Ms. Heidi Borson, in Mr. Singler's letter and enclosures, and in our telephone discussion with DHSS personnel, following are several other considerations:

- o Senate Bill 327, Senator Slurgulewski's bill on emotional injury, changes both the Alaska criminal code (11.51.100(a)) as well as the Child Protection Definition or Reporting Statute (Sec.47.17.070). If there is a possibility of the "under 10 years of age" restriction in the criminal code being construed to apply to the reporting statute, it would not be an acceptable standard to protect children or meet NCCAN eligibility.
- o Generally we agree with the DHSS position paper on Senate Bill 327. Many of the comments reflect information that we have sent to DHSS. It appears DHSS does not feel that the "under 10 years" in the criminal code would affect the Reporting Statute and indeed the wording they suggest is satisfactory.
- o In discussing a definition of "mental injury," the DHSS staff, on page 3, item 4(9) of the position paper, state that "Mental injury means . . . substantial impairment in the child's ability to function within a normal range of performance . . . ." The Federal intent is to evaluate a child on what is normal for his maturation and circumstances rather than attempting to compare him with others. Our preference would be to change the phrase to ". . . function within that child's normal range of performance . . . ."

A copy of Senator Slurgulewski's bill is enclosed as well as a copy of the DHSS position paper on the bill. We have also enclosed a comment regarding the definition of mental injury.

Our recommendation for the inclusion of mental injury in your Reporting Statute is to keep the definition simple because of the necessity of a broad definition to meet the legislature's intent which is maximum protection of children; of the impossibility of the legislature to predict every instance of mental injury; reasonable parents receive enough guidance by the statute to behave accordingly; and definitions do not cede to the agencies' blanket authority to exercise their discretion.

We urge passage of Alaska Senate Bill 327 since this could very possibly eliminate a major barrier to Alaska's eligibility for program funding, unless earlier comments about the criminal code and "under 10" apply. If this bill does not pass the present legislative session, pending Federal legislation may still provide Alaska an opportunity to be eligible for NCCAN funds. As you may be aware, the United States House of Representatives recently passed H.R. 1904 which contains a different waiver for States. The waiver reads:

States that do not qualify may be granted a waiver for two years if the Secretary determines the State is making a good faith effort to comply.

It appears the Senate also will include this waiver, though it is not presently in the companion bill, S.1003. In addition, the Department of Health and Human Services will need to publish Federal regulations to accommodate this provision which would delay Alaska's receiving funds for another year. Therefore, even if this waiver is eventually passed by both Houses, there may not be enough time for Alaska to apply for fiscal year 1964 funds.

I am enclosing another copy of the Statement of Assurance that Governor Sheffield needs to sign for eligibility. I suggest your legal services and Attorney General review all 15 assurances.

I appreciate the important efforts you are making on behalf of Alaska's children. If you need additional assistance or further information, please contact me.

Sincerely,

Bernard E. Kelly  
Regional Director

Enclosures

cc:  
Governor William Sheffield  
Commissioner Robert L. Smith



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

*abuse*

Fourth Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

November 16, 1983

MEMORANDUM

TO: Representative Peter Goll

FROM: Heidi Borson<sup>HB</sup>  
Legislative Analyst

RE: Child Abuse  
Research Request 83-202

After sending you our report on child abuse and neglect, I received some materials which may interest you. Attached is a letter from Bruce Berglund, Child Abuse and Neglect Specialist for Region X of the Department of Health and Human Services. His letter outlines the materials he enclosed, and also provides a description of steps Alaska needs to take in order to meet National Center on Child Abuse and Neglect (NCCAN) state grant eligibility requirements, and a history of previous attempts to bring Alaska statutes into conformance with NCCAN standards.

I also received a fact sheet on Michigan's Children's Trust Fund and copies of the bills which established the fund from Sharon Shay, Council for the Prevention of Child Abuse and Neglect. If you would like to review any of the materials Ms. Shay and/or Mr. Berglund sent me, please let me know. I will gladly forward copies to you.

Attachments

HB

Region X  
M/S 413  
2901 Third Avenue  
Seattle, WA 98121

November 3, 1983

Heidi Borson  
40 House Research Agency  
Pouch Y  
Juneau, Alaska 99811

Dear Ms. Borson:

As a supplement to our October 31st telephone conversation, I am sending you some material that relates to child abuse and neglect, Alaska and Federal standards to help Alaskan children.

- (1) Please refer to the enclosed "Study Findings" that gives a picture of the extent of the problem.
- (2) Also enclosed is relevant information on the National Center of Child Abuse and Neglect (NCCAN).
  - a) The Federal Law on NCCAN
  - b) The NCCAN Code of Federal Register (CFR)
  - c) Statement of Assurance for Eligibility
  - d) Instructions for Making Application
  - e) Funding
- (3) The proposed CFR on FY'84 Demonstrations.

Federal eligibility determination includes a review of Alaska's application, current laws and interpretation of those laws. Until Alaska makes formal application there will be some doubt where the state stands. Based on what we have, Alaska needs to:

- (1) Pass an amendment to their CA/N reporting law to include the words, "mental injury". For an example of a total reporting law that meets federal eligibility please refer to PL95-266, Section 3.
- (2) Either an amendment or a formal opinion by the Alaska Attorney General indicating that persons responsible for the child includes public and private institutions.
- (3) Either an amendment or a formal opinion by the Attorney General stating that, "having cause to believe" is synonymous with, "suspect" in child abuse and neglect reporting.
- (4) Review the Alaska inclusion of sexual abuse and sexual exploitation of children in your reporting law. Alaska statutes do not need to use the same words as long as the

state covers the conditions and situation, described in CFR Part 1340.2(d). The last General Council review of Alaska statutes was before the issuance of the January 26, 1983 CA/N CFR which details eligibility in this area for the first time.

The DHHS, Regional and Central Offices have encouraged Alaskans to meet NCCAN state grant eligibility (standards) since 1974.

Alaska has declined every year but one to apply for their allocation under Subsection 4(b) (2). The most serious ineligibility factor in Alaska is the failure of the legislators to pass legislation including mental injury as a part of the state's definition of CAN.

In 1976, legislation was introduced to specifically include mental injury in the state's definition of CAN. After considerable debate the legislators did make the decision not to expand on the present definition.

In 1978, an attempt was made to secure an Attorney General's opinion that existing statutes could be interpreted to include mental injury. This approach turned out not to be feasible.

In 1979, some Alaska legislators made an unsuccessful attempt to remove neglect from the existing CAN statutes. As a result of these limited efforts the Department chose not to attempt to broaden the definition of CAN.

In 1980, legislation was reintroduced to include mental injury in the state's definition of CAN. (H.B. 545). The CAN Regional Resource Centers (RRC) efforts to educate legislators about CAN was apparently responsible for the introduction of H.B. 545.

Also in 1980 the Director of the Anchorage Child Abuse Board with urging from the Regional CA/N Specialist offered to continue working with Alaska legislators in reintroducing legislation including mental injury in the Alaska statute defining CAN.

When the Regional CAN Specialist met with Commissioner Beirne in 1981, she felt that mental injury should by all means be included in Alaska's statute definition. She said that such a proposal to legislators would however need to come from outside the Department.

Regional Office efforts continued in 1982.

In 1983 due to OHDS reorganization the Regional CA/N Specialist worked with the Alaska HHS Representative rather than with Alaska's directly.

As I said over the phone Ms. Borson, we are very interested in Alaska

Page 3.

children being helped thru these NCCAN standards and would welcome an opportunity to pursue eligibility issues with you and other Alaska citizens.

Please let us know the response to this material and where we might help.

You may reach me at (206) 442-8109.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce Berglund".

Bruce Berglund  
CA/N Specialist

Enclosures



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the  
Regional Director

Region X  
M/S 504  
2901 Third Avenue  
Seattle, WA 98121  
February 24, 1984



The Honorable Peter Goll  
State of Alaska  
House of Representatives  
Juneau, Alaska 99811

Dear Mr. Goll:

This is in response to your December 28 letter to Mr. Bruce Berglund of the Department of Health and Human Services Administration for Children, Youth and Families (ACYF). You had requested our office to review with the Department of Health and Social Services (DHSS) the necessary steps to comply with Federal standards to be eligible for NCCAN funds and further to advise you of specific language to be included in Alaska statutes.

DHSS recently contacted our ACYF staff which provided them with the information on specific steps necessary for Alaska to now meet eligibility standards for NCCAN grants. In addition, Edward Singler, Regional Administrator for Human Development Services which oversees the ACYF, wrote to Commissioner Smith and provided him with information and program guidelines to assist Alaska's efforts toward eligibility for funding.

One of the guidelines which DHSS personnel may have difficulty meeting is the March 31, 1984 deadline to apply for NCCAN funds. If this is the case, the recent program instruction which DHSS has received as a part of Mr. Singler's letter included a statement on a waiver of this deadline. The waiver reads:

States which are presently ineligible but have legislation in progress which might affect their eligibility should request, from the Regional Program Director, a waiver of the March 31, 1984 deadline for the submission of their Statements of Assurance. However, the deadline cannot be extended beyond June 30, 1984, as State allocations must be made by that date in order that awards can be made before the end of FY 1984. Finally, the waiver of the deadline and extension of time applies only to the Statement of Assurance. The application for Federal Assistance (Form 424) must be made by all applicants no later than March 31, 1984.

In addition to the specific steps needed for eligibility mentioned in our letter to Ms. Heidi Borson, in Mr. Singler's letter and enclosures, and in our telephone discussion with DHSS personnel, following are several other considerations:

- o Senate Bill 327, Senator Slurgulewski's bill on emotional injury, changes both the Alaska criminal code (11.51.100(a)) as well as the Child Protection Definition or Reporting Statute (Sec.47.17.070). If there is a possibility of the "under 10 years of age" restriction in the criminal code being construed to apply to the reporting statute, it would not be an acceptable standard to protect children or meet NCCAN eligibility.
- o Generally we agree with the DHSS position paper on Senate Bill 327. Many of the comments reflect information that we have sent to DHSS. It appears DHSS does not feel that the "under 10 years" in the criminal code would affect the Reporting Statute and indeed the wording they suggest is satisfactory.
- o In discussing a definition of "mental injury," the DHSS staff, on page 3, item 4(9) of the position paper, state that "Mental injury means . . . substantial impairment in the child's ability to function within a normal range of performance . . . ." The Federal intent is to evaluate a child on what is normal for his maturation and circumstances rather than attempting to compare him with others. Our preference would be to change the phrase to ". . . function within that child's normal range of performance . . . ."

A copy of Senator Slurgulewski's bill is enclosed as well as a copy of the DHSS position paper on the bill. We have also enclosed a comment regarding the definition of mental injury.

Our recommendation for the inclusion of mental injury in your Reporting Statute is to keep the definition simple because of the necessity of a broad definition to meet the legislature's intent which is maximum protection of children; of the impossibility of the legislature to predict every instance of mental injury; reasonable parents receive enough guidance by the statute to behave accordingly; and definitions do not cede to the agencies' blanket authority to exercise their discretion.

We urge passage of Alaska Senate Bill 327 since this could very possibly eliminate a major barrier to Alaska's eligibility for program funding, unless earlier comments about the criminal code and "under 10" apply. If this bill does not pass the present legislative session, pending Federal legislation may still provide Alaska an opportunity to be eligible for NCCAN funds. As you may be aware, the United States House of Representatives recently passed H.R. 1904 which contains a different waiver for States. The waiver reads:

States that do not qualify may be granted a waiver for two years if the Secretary determines the State is making a good faith effort to comply.

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I am enclosing another copy of the Statement of Assurance that Governor Sheffield needs to sign for eligibility. I suggest your legal services and Attorney General review all 15 assurances.

I appreciate the important efforts you are making on behalf of Alaska's children. If you need additional assistance or further information, please contact me.

Sincerely,

*James D. Kelly*  
*acting for* Bernard E. Kelly  
Regional Director

Enclosures

cc:  
Governor William Sheffield  
Commissioner Robert L. Smith

1 IN THE SENATE

BY STURGULEWSKI

2

SENATE BILL NO. 327

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to child abuse."

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

8 \* Section 1. AS 11.51.100(a) is amended to read:

9 (a) A person commits the crime of endangering the welfare of a  
10 minor if, being a parent, guardian, or other person legally charged  
11 with the care of a child under 10 years of age, the person intention-  
12 ally deserts the child in any place under circumstances creating a  
13 substantial risk of physical or emotional injury to the child.

14 \* Sec. 2. AS 47.17.070 is amended by adding a new paragraph to read:

15 (8) "harm" means physical or emotional injury to a child  
16 which threatens a child's health or welfare.

POSITION PAPER  
SENATE BILL 327

"An act relating to child abuse."

Senate Bill 327 would amend Alaska's criminal code to include placing a child in circumstances creating substantial risk of emotional injury to the child in the definition of the crime of endangering the welfare of a minor. It would also amend Alaska's child protection statute to define harm to a child as both physical and emotional injury which threatens the child's health or welfare.

By defining harm to include emotional injury SB 327 would also have the effect of requiring professional persons who must report harm from physical abuse to also report instances of emotional injury. The Department would in turn be required to investigate such reports and act appropriately to protect children.

The Department supports SB 327 as an appropriate and needed expansion of the range of protection provided for Alaskan children. As presently constructed, Alaska law does not provide explicit protection of children from harm to their mental or emotional well-being. Existing statutes focus on physical harm to children and neglect the equally handicapping and often more far-reaching effects of mental or emotional maltreatment. While physically abused children are almost always emotionally maltreated as well, emotional maltreatment may occur alone. Children suffering only mental maltreatment are presently unprotected under Alaska law.

This gap in protection of children can generally be attributed to dissatisfaction with criteria for defining and identifying mental or emotional maltreatment and a fear that an insufficient definition would provide too great an opportunity for unwarranted governmental intrusion into Alaskan family life. It is the Department's position that these issues can be adequately addressed.

Emotional maltreatment can be differentiated as a category of child abuse and neglect apart from ineffective or even occasionally harmful parenting through four criteria which can be made implicit in the definition of emotional or mental maltreatment. These criteria are:

1. Emotional maltreatment is generally a chronic pattern of parental behavior rather than an occasional lapse; and it has an adverse effect on the child. It causes an emotional or mental injury.
2. The effect of emotional maltreatment is observable in the child's abnormal performance or behavior.
3. The effect of such maltreatment is long-lasting. The maltreatment brings about an erosion of the child's capacity to think and feel.

## POSITION PAPER

SENATE BILL 327  
PAGE 2

4. The effect of emotional or mental maltreatment constitutes a handicap to the child. It causes substantial impairment of the child's ability to think, to learn, and to enter into relationships with others and to find satisfaction in his/her endeavors.

Although emotional or mental maltreatment is rarely manifested in physical signs, there are a few physical indicators: speech disorders, lags in physical development, and failure to thrive syndrome (which is a progressive wasting away usually associated with the lack of mothering). More often emotional harm is indicated through behavior which is often similar to that of emotionally disturbed children. Emotionally injured children are impaired in their ability to function and often exhibit poor self concepts and impaired overall thought processes. They often have low impulse control and high levels of aggression, anxiety, and self-destructiveness. Such children often display high levels of anti-social behavior as they grow older. These anti-social behaviors such as truancy, extreme aggressiveness, delinquency, and attempted suicide often require the intervention of State or local government agencies and the provision of special services which are often far more expensive and certainly less protective of the child than prevention or intervention at an earlier time would have been.

The Department recommends four amendments to SB 327 to clarify the intent to provide protection of children from emotional harm and to provide a clearer, more legally practicable definition of mental injury. Suggested amendments are as follows:

1. That the term "mental injury" be substituted for emotional injury in Sections 1 and 2 of the Bill.
2. That a section be added to the Bill to amend AS 47.17.010 as follows:

AS 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical or mental abuse or neglect or sexual abuse or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of children in this State, and to preserve family life whenever possible.

POSITION PAPER

SENATE BILL 327  
PAGE 3

3. That a section be added to amend AS 47.17.010(1) to read as follows:
  - (1) "Child abuse or neglect" means the physical or mental injury or neglect, sexual abuse, sexual exploitation or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;
4. That a section be added amending AS 47.17.070 by adding a new paragraph to read:
  - (9) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance and behavior, with due regard to his culture.

These changes would remove any ambiguity about the intent of the legislature and would require that harm to the mental health of a child be reported and investigated where such harm appears to have arisen by intent of the person responsible for the child's welfare.

The vast majority, 47 of the 50 states, have statutory provisions protecting children from mental abuse or neglect similar to those recommended by the Department. Such provisions are encouraged by the Federal Department of Health and Human Services and the inclusion of such provisions in State law makes states eligible to receive federal grant funds under Public Law 93-247. Passage of SB 327 would make Alaska eligible to receive \$45,379 which could in turn be granted for the provision of child abuse prevention and treatment programs and services.

The Department has concluded that passage of SB 327 as it is presently constructed or with the suggested changes would require no additional fiscal resources. It is expected that instances of reported emotional injury to children will be relatively small in number and can be investigated satisfactorily with existing staff.

POSITION PAPER

SENATE BILL 327  
PAGE 4

RECOMMENDED: Michael L. Price  
Michael L. Price; Director  
Division of Family and  
Youth Services

DATE: 1/25/84

APPROVED BY: \_\_\_\_\_  
Robert London Smith, Ph.D.  
Commissioner  
Department of Health and  
Social Services

DATE: \_\_\_\_\_

"Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in his ability to function within his normal range of performance and behavior, with due regard to his culture.

#### Comment

This subsection defines the term "mental injury" which appears in subsection 4(c)(i), supra. However, since that section requires that the parent or other person responsible for the child's welfare "inflict" or "allow to be inflicted" the "mental injury," the mental injury must be clearly attributable to the acts or omissions of the parents and the mental injury to the child must be established clearly before the child can be considered abused or neglected. The causes of mental injury or emotional illness are complex; it would be unfair to automatically blame the parents for a child's mental or emotional condition, and yet, this is an all too common consequence of abuse and neglect. It is important to note that the Model Act requires that the mental injury be "evidenced" by an "observable and substantial impairment." This might include failure to thrive; inability to think and reason; inability to control aggressive or self-destructive impulses; acting-out or misbehavior, including incorrigibility, ungovernability, or habitual truancy. Expert psychiatric or psychological examination often can demonstrate the relationship between a child's mental condition and the acts or omissions of the persons responsible for his welfare, especially if the child improves during the time he is in agency care or his family is under an agency's supervision. Finally, the Model Act is careful to acknowledge the need to make all such judgments about mental injury "with due regard" to the child's culture. Thus, a low IQ score should be evaluated within the context of the cultural distortion inherent in most measures of intelligence.

STATEMENT OF ASSURANCE

NOTE: Please do not attempt to complete this form without first reviewing the Program Instructions for making application for a State Child Abuse and Neglect Grant.

Applicable Section  
of CFR 1340

Statement .....

Statement No. 1

1340.1-2(b)

The State definition of "child abuse and neglect," is in accordance with all aspects of the following:

"Child abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare.

"Harm or threatened harm to a child's health or welfare" can occur through: Nonaccidental physical(1) or mental injury(2); sexual abuse, as defined by State law(3); or negligent treatment or maltreatment, including the failure to provide adequate food, clothing or shelter(4). Provided, however, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent(5).

"Child" means a person under the age of eighteen(6).

"A person responsible for a child's health or welfare" includes the child's parent(7), guardian (8) or other person responsible for the child's health or welfare(9), whether in the same home as the child(10), a relative's home(11), a foster care home(12) or a residential institution (13).

NOTE: Items numbered (1) through (13) indicate different aspects of the requirements for the definition.

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State Statutory Provision

Statement No. 2

1340.3-3(d)(1)

The State has in effect a State child abuse and neglect reporting law.

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State Statutory Provision

Statement No. 3

1340.3-3(d)(1)

The State provides all persons reporting known or reasonably (good faith) suspected instances of child abuse and neglect with immunity from civil and criminal prosecution under any State or local law, arising out of such reporting.

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State Statutory Provision

Statement No. 4

1340.3-3(d)(2)

The State provides for mandatory reporting by some persons(1) and permissive reporting by all persons(2) of known or suspected instances(3) of child abuse and neglect(4) to a properly constituted authority with the power and responsibility to perform an investigation (5) and take necessary ameliorative and protective steps as required in paragraph (d)(i) of section 1340.3-3(6).

NOTE: (1)-(5): These include the various aspects which must be satisfied in order to meet this requirement. Only the mandatory reporting provision (1) requires documentation from State law.

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State Statutory Provision

Statement No. 5

1340.3-3(d)(2)

The State provides that the reporting referred to in paragraph (d)(2)(i) must be to an agency other than the agency, institution or other facility involved in the acts or omissions, if the report of child abuse and neglect involves the acts or omissions of a public or private agency or other instituton or facility.

Statement No. 6

1340.3-3(d)(3)

The State provides that upon receipt of a known or suspected instance of child abuse or neglect an appropriate investigation is initiated promptly by a properly constituted authority to substantiate the accuracy of the report.

Statement of No. 7

1340.3-3(d)(3)

The State provides that, upon a finding of abuse or neglect, immediate steps are taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

Statement No. 8

1340.3-3(d)(4)

The State has in effect throughout the State such administrative procedures, such trained personnel, such training procedures, such institutional and other facilities (public and private) and such related multidisciplinary programs and services as may be necessary to assure effective enforcement of the child abuse and neglect laws, specifically including: provision for the receipt, investigation and verification of reports; provision for the determination of treatment or ameliorative social service needs; provision of such services; and, when necessary, resort to criminal or juvenile court.

Statement No. 9

1340.3-3(d)(5)

(a) The State provides by law for the preservation of the confidentiality of all records concerning reports of child abuse and neglect in order to protect the rights of the child, his parents or guardians.

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State Statutory Provision

(b) Unauthorized dissemination of the contents of the records concerning reports of child abuse and neglect is a crime.

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State Statutory Provision

Statement No. 10

1340.3-3(d)(6)

The State provides for the cooperation of law enforcement officials, courts of competent jurisdiction and all appropriate State agencies providing human services in relation to preventing, identifying and treating child abuse and neglect.

Statement No. 11

1340.3-3(d)(7)

The State provides that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem is appointed to represent the child in such proceeding.

Note: Please check one of the following and attach documentation.

- A State law that such appointments must be made in all cases.
- A State law which permits appointments and a Governor's statement that appointments are made in all cases.
- A State Attorney General's opinion that required appointments can be made and a Governor's statement that such appointments are made in all cases.
- A State Attorney General's opinion that the attorney charged with the presentation in a judicial proceeding is also required to represent the rights of the child where such responsibility is not indicated in law.

Statement No. 12

1340.3-3(d)(8)

The State provides that the aggregate of support for programs or projects related to child abuse and neglect assisted by State funds has not been reduced below the level provided during Federal fiscal year 1973.

Statement No. 13

1340.3-3(d)(8)

The State has policies and procedures designed to assure that Federal funds made available under this Act, for any fiscal year, will be used to supplement, and, to the extent practicable, increase the level of State funds which would, in the absence of Federal funds, be available for such programs and projects.

Applicable Section  
of CFR 1340

Statement

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Statement No. 14

1340.3-3(d)(9)

The State provides for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat instances of child abuse and neglect.

Statement No. 15

1340.3-3(d)(10)

The State insures, to the extent feasible, that parental organizations combating child abuse and neglect, as recognized by the State, receive preferential treatment.

I HEREBY STATE AND ATTEST THAT the information supplied in this form is true, to the best of my information and belief, and that should any facts or circumstances leading to such information be modified, I shall, within 30 days, so inform the Department of Health and Human Services.

Dated \_\_\_\_\_

BY \_\_\_\_\_

Governor

# Federal Register

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Wednesday  
January 26, 1993

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Part II

## Department of Health and Human Services

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Office of Human Development Services

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Child Abuse and Neglect Prevention and  
Treatment Program; Final Rule

**Final Rule**

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**Wednesday**  
**January 26, 1983**

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**Part II**

**Department of  
Health and Human  
Services**

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**Office of Human Development Services**

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**Child Abuse and Neglect Prevention and  
Treatment Program; Final Rule**

**Federal Register**

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**Wednesday  
January 26, 1983**

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**Part II**

**Department of  
Health and Human  
Services**

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**Office of Human Development Services**

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**Child Abuse and Neglect Prevention and  
Treatment Program; Final Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Office of Human Development Services

**45 CFR Part 1340**

**Child Abuse and Neglect Prevention and Treatment Program**

**AGENCY:** Office of Human Development Services, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Department of Health and Human Services is issuing final regulations to implement the amendments to the Child Abuse Prevention and Treatment Act contained in Title 1 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. 95-266, as amended. The regulations also clarify, simplify and eliminate where repetitive of the statute, the rules governing the Child Abuse and Neglect Prevention and Treatment Program and those related to the coordination of Federal activities related to child abuse and neglect.

**EFFECTIVE DATE:** February 25, 1983.

**FOR FURTHER INFORMATION CONTACT:**

Jay Olson, Special Assistant to the Director, National Center on Child Abuse and Neglect, Room 2008D, Donohoe Building, 400 8th Street SW., P.O. Box 1182, Washington, D.C. 20013, (202) 245-2859.

**SUPPLEMENTARY INFORMATION**

**Background**

The Child Abuse Prevention and Treatment Act (Pub. L. 93-247) (the Act) (42 U.S.C. 5101 et seq.) was enacted in 1974. It established within the Department of Health, Education and Welfare (now the Department of Health and Human Services) the National Center on Child Abuse and Neglect. The National Center is organizationally located within the Children's Bureau of the Administration for Children, Youth and Families, Office of Human Development Services.

The National Center on Child Abuse and Neglect, through the Act, was given responsibility for:

- Compiling and disseminating an annual summary of recent and on-going research on child abuse and neglect,
- Developing and maintaining an information clearinghouse,
- Compiling, publishing and disseminating training materials,
- Providing technical assistance to public and nonprofit private agencies and organizations,
- Conducting research, and

- Making a complete and full study of the national incidence of child abuse and neglect.

The Act also authorized the Center to make grants or enter into contracts with public agencies or nonprofit private organizations for demonstration programs and projects designed to prevent, identify, and treat child abuse and neglect, as well as make grants to States to assist States in developing, strengthening and carrying out child abuse and neglect prevention and treatment programs.

Finally, the Act provided that the Secretary appoint an Advisory Board to assist in coordinating Federal programs and activities related to child abuse and neglect and develop Federal standards for child abuse and neglect prevention and treatment programs and projects.

Pub. L. 95-266, enacted on April 24, 1978, extended the Child Abuse Prevention and Treatment Act through September 30, 1981. It also amended the Act by adding, in Section 3, sexual exploitation to the definition of child abuse and neglect. As a result, States applying for a State child abuse and neglect grant under Section 4(b)(1) of the Act are required to include sexual exploitation in their definition of child abuse and neglect.

The Department published a Notice of Proposed Rulemaking (NPRM) on May 27, 1980 (45 FR 35794) to implement these amendments.

Subsequently, Title VI, Chapter 7, of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, extended the programs authorized by the Child Abuse Prevention and Treatment Act, Pub. L. 93-247, as amended, through Fiscal Years 1982 and 1983.

In addition to the changes in the regulation required by Pub. L. 95-266, the Department of Health and Human Services is taking this opportunity to clarify and simplify the existing regulation in accordance with the Secretary's regulatory reform principles. In this context, we have omitted from these final rules those provisions contained in the NPRM which merely repeat the statute.

**Discussion of Major Comments and Changes**

The Department received approximately 60 comments from 24 agencies, organizations and individuals in response to the NPRM published on May 27, 1980 (45 FR 35794). Included below is a summary of the major comments from respondents, our response to those comments, and a discussion of the changes that we have made in the regulations.

**Subpart A—General Provisions**

**Section 1340.1 Purpose and Scope**

Section 1340.1(b)(3) authorizes the National Center on Child Abuse and Neglect to make grants or contracts for research, demonstration, and service improvement programs and projects. Eligibility for an award of a grant or contract in these specific areas is governed by the Act and is different for research applicants and demonstration and service improvement applicants. Therefore, the phrase "with public or private agencies and organizations" has been deleted as it pertained to only one category of eligible applicant; also there is no need to repeat the Statute.

**Section 1340.2 Definitions**

There were a number of supportive comments for many provisions of the proposed regulation. This included support for the definition of child abuse and neglect contained in § 1340.2.

**Definition of Sexual Abuse and Sexual Exploitation (§ 1340.2(d) (1) and (2))**

**Comment.**—Some respondents were particularly concerned about the possibility that States may need a legislative change to include sexual exploitation in their definition of child abuse and neglect. (The definition of child abuse and neglect specifies the reportable conditions or situations of child maltreatment.)

**Response.**—The 1978 amendments to the Child Abuse Prevention and Treatment Act added "sexual exploitation" to the definition of child abuse and neglect in the Act (42 U.S.C. 5102). The current regulations include within the definition of "child abuse and neglect" the phrase "sexual abuse as defined by State law." In order to avoid confusion in the meaning of the terms "sexual abuse" and "sexual exploitation" we added definitions for each of these terms in the Notice of Proposed Rulemaking (see § 1340.2(d) (1) and (2)).

A State is not required to have the words "sexual abuse" and "sexual exploitation" in its State statute as long as the State statute covers the conditions and situations described in the definition of these terms in these regulations. If a State needs to amend its statute to include sexual exploitation as a reportable condition, it has until the close of the second general legislative session of the State legislature that convenes after the effective date of these regulations to do so (see § 1340.13(a)(1)). We believe that the definitions of "sexual abuse" and "sexual exploitation" in these

regulations implement the intent of Congress, to assure that the various forms of sexual mistreatment of children are reported. In addition, we believe the provision that allows States that do not now provide for the reporting of sexual exploitation a reasonable period of time to amend their statutes is a fair and reasonable method of enabling them to comply with the requirements of the Act.

**Comment.**—Concern was also expressed that the phrase "for commercial purposes" limited the definition of sexual exploitation. Commentors asserted that sexual exploitation for commercial purposes omits sexually exploitive acts by those persons using children for non-commercial purposes, e.g., out of a deviant interest and desire for personal gratification.

**Response.**—We agree. Therefore, in § 1340.2(d)(2), we have dropped the words "for commercial purpose," from the definition as proposed in the NPRM. It is our intent to include within this new definition all sexual exploitation of children.

#### *Definition of Negligent Treatment* (§ 1340.2(d)(3))

**Comments.**—We received strong recommendations that the definition of "negligent treatment or maltreatment" be expanded to include failure to provide medical care.

**Response.**—We have reviewed this matter and agree with the recommendation. The definition of negligent treatment or maltreatment in a majority of State reporting laws now includes the failure of parents or caretakers to provide adequate food, clothing, shelter and medical care. Thus, the basic needs of children are identified in most State statutes; failure to supply these necessities of life are cause to make a report to the agency mandated by statute to investigate reported cases of child abuse and neglect.

Also, recent events in which parents or guardians failed to provide needed medical care or treatment to handicapped infant children who later died suggest that legal protections are needed for these infants.

In addition, the language of the Child Abuse Prevention and Treatment Act, as amended, supports the inclusion of failure to provide adequate medical care as a reportable condition. Section 3 of the Act (42 U.S.C. 5102) defines "child abuse and neglect" to cover acts or situations constituting abuse or neglect which occurs "under circumstances which indicates that the child's health or welfare is harmed or threatened

thereby \* \* \*." Section 4(b)(2)(C) of the Act (42 U.S.C. 5103(b)(2)(C)) provides that "upon a finding of abuse or neglect, immediate steps shall be taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect; \* \* \*"

Legislative history also reflects Congressional concern about the need to provide specific medical treatment for a child, unless it is not provided for religious reasons, by persons responsible for the child's health or welfare. The Report of the House Education and Labor Committee contains the following:

The Committee recognized that "negligent treatment" is difficult to define, but it is not the intent of the Committee that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specific medical treatment for a child is for that reason alone considered to be a negligent parent. To clarify further, no parent or guardian who in good faith is providing to a child treatment solely by spiritual means such as prayer according to the tenets and practices of a recognized church through a duly accredited practitioner shall for that reason alone be considered to have neglected the child. (H. Rep. 93-885, 93rd Cong., 1st Sess. (1973), pp. 4-5). (Emphasis in original)

In light of these factors and the need to insure the protection of children's health, we have included the failure to provide adequate medical care as a part of the definition of negligent treatment in § 1340.2(d)(3). If a State needs to amend its statute to include the "failure to provide adequate medical care" as a reportable condition, it has until the close of the second general legislative session of the State legislature following the effective date of these regulations to do so.

The definition of "harm or threatened harm to a child's health or welfare" in the existing regulations, 45 CFR 1340.1-2(b)(1), contains a religious exception which was interpreted by the Department to be an eligibility requirement for a State grant under Section 4(b)(2) of the Act (42 U.S.C. 5103(b)(2)). This is an exception which provides that a parent or guardian who does not provide medical treatment for a child because of the parent's religious beliefs is not considered, for that reason alone, to be a negligent parent or guardian.

The religious exception in the proposed regulations appeared as a "Note" to the definition of 'negligent treatment or maltreatment' in § 1340.2(3) and was intended to be retained as an eligibility requirement for a State grant. That "Note" exempted a parent or

guardian from being considered to have neglected his/her child if medical treatment is not provided because the parent or guardian is legitimately practicing his/her religious beliefs.

Eight respondents commented on this "Note" to the definition of "negligent treatment or maltreatment". Two respondents agreed with the deletion of the clause included in the current regulations, which recognizes the power of a court to require medical treatment over the religiously-based objections of the parent or guardian. These respondents also conveyed the satisfaction that had been expressed to them by the Christian Science Church with this part of the proposed regulation. One respondent requested that the substance of the "Note" be clearly stated as a regulation or be deleted.

Five of the respondents objected to this exemption and urged its removal from the proposed regulations. They presented several reasons for removing the proposed religious exemption from final regulations. Four respondents claimed that some children suffer and die as a result of their parents relying on spiritual healing under circumstances in which medical treatment could have prevented such results. Two respondents added that the religious exception impedes discovery of cases so that even if courts retain their power to order medical treatment, the exercise of that power often comes too late. Three respondents argued that all children deserve the protection of the law, with two of them observing that the religious exception served to deny children their constitutional right to life and to equal protection of the law. One respondent was also of the opinion that the religious exception inhibited criminal prosecution of parents, even if their child had died as a result of the failure to provide medical treatment. Another suggested that there should be a religious exception from criminal prosecution, but not one that impedes protective action under civil law. Finally, one respondent called attention to the fact that objections had been raised to the inclusion of the religious exception in the current regulations and that objections continue to be presented.

**Response.**—All of these responses were considered in the context of the Act, the regulation and the legislative history of the Act [H.R. Report No. 93-885, November 30, 1973, 93rd Congress, 1st Session (1973)]. The latter reported to the House of Representatives the bill that became the Child Abuse Prevention and Treatment Act, and contained a statement supporting a religious exception. As enacted, however, the Act

contained eligibility requirements for grants under Section 4(b)(2) (42 U.S.C. 5103(b)(2)); but did not include among them a religious exception. The Notice of Proposed Rulemaking of August 28, 1974 (39 FR 31507) to implement the Act included a religious exception as part of the definition of "child abuse and neglect." Although the Department received objections to this exception it concluded that the exception was intended by Congress. Consequently, in order to receive grant under Section 4(b)(1) of the Act (42 U.S.C. 5103(b)(1)), States were required to have a religious exception in their statutes or to certify their recognition of an exception by a State Attorney General's opinion. In 1978, when the Congress reauthorized the Act, it passed several amendments, including one that modified the definition of "child abuse and neglect." Again, however, the legislation failed to include mention of a religious exception. It was nonetheless included in the proposed regulations and elicited the comments noted above.

In light of this history and the objections of respondents, we have reexamined the legal support for a religious exception as an eligibility requirement under Section 4(b)(2) of the Act (42 U.S.C. 5103(b)(2)). We have concluded that such an eligibility provision is not required by the Act. Therefore, § 1340.2(d)(3)(ii) of the final regulation states that the regulations are not to be construed as prohibiting or requiring a finding of negligent treatment or maltreatment when a parent practicing his/her religious beliefs does not, for that reason alone, provide medical treatment for a child. Thus, States are free to recognize or not recognize a religious exception without that choice having any effect on eligibility for a State child abuse grant. The regulation provides at § 1340.2(d)(3)(ii) that if under State law a finding of negligent treatment is prohibited when medical treatment is withheld for religious reasons, that prohibition does not limit the authority of the State to insure that needed medical treatment is provided.

#### *Definition of Threatened Harm* (§ 1340.2(d)(4))

*Comments.*—One respondent requested that the regulation clarify the definition of "threatened harm to a child's health or welfare," which the proposed regulation defined as "a substantial risk of harm to the child's health or welfare." It was suggested that some less ambiguous term be used.

*Response.*—As there were no additional suggestions for changing or clarifying this definitional term and

because we could find no substitute language which seemed to be clearer, it was decided that no change would be made.

"Threatened harm" is a part of the definition of child abuse and neglect in both the Act and regulations. The NPRM defined threatened harm to mean a substantial risk of harm to the child's health or welfare. The Act defines child abuse and neglect so as to include acts or omissions including child abuse, sexual abuse and child neglect by persons responsible for a child's welfare under circumstances which indicate harm or threatened harm to the health or welfare of the child. (42 U.S.C. 5102.) The reasons for the inclusion of "threatened harm" is based on the premise that society should not have to wait until a child is actually injured before protective action is taken. At the same time we recognize that, in some instances the harm that is threatened is not of a sufficient degree to necessitate State intervention. The term "substantial risk" is used to clarify that a State need not intervene until, in its judgment, the threat of harm to the child is real and significant.

#### *Definition of a Person Responsible for a Child's Welfare* (§ 1340.2(d)(6))

*Comments.*—The proposed regulation defined "a person responsible for a child's welfare" to include those persons responsible for around the clock care of children (§ 1340.2(5), now § 1340.2(d)(6)). A suggestion was made to add others to this definition such as teachers and employees of public or private institutions.

*Response.*—For children in settings which provide less than 24-hour care such as day care centers and schools, we believe that primary reliance should be placed on parents to protect their own children by voicing their concerns to school officials or seeking criminal action. Therefore, we do not believe a change in the language of the regulation to include personnel of day care centers and schools is necessary or desirable.

#### *Coordination Requirements* (§ 1340.4)

We have added a new § 1340.4 to the final rules which requires that all Federal agencies responsible for programs related to child abuse and neglect must provide information as required by the Commissioner to insure effective coordination of effort.

This is not a new requirement but is derived from Subpart D as proposed in the NPRM.

#### *Subpart D—Grants to States*

##### *Section 1340.11 Allocation of Funds Available*

*Comment.*—One comment suggested that the amount of State grant funds available for States that do not apply or are found ineligible should be allocated among the eligible States, deleting the second option in the proposed regulation that would permit the Commissioner of ACYF to authorize the use of funds "for such other purposes under the Act."

*Response.*—The suggestion is consistent with our current practices. Therefore, we have revised the regulation to limit reallocation of State grant funds to eligible States.

##### *Section 1340.12 Application Process*

We have deleted § 1340.12(b) of the NPRM which provided for the solicitation of State grant applications each Federal fiscal year by a publication in the Federal Register of a "Notice of Availability of funds for State grants." Since the only eligible applicants for State grants are the State agencies designated by the Governor to apply for such funds (§ 1340.12(a)), we have eliminated the annual Federal Register Notice effective in fiscal year 1982. Instead, we have substituted a specific program instruction, mailed directly to the appropriate State agencies, which includes necessary application forms, allocations and deadline for submission of the State grant application.

*Comment.*—A suggestion was made that eligible applicants for State grants include local public housing authorities.

*Response.*—State grants are made only to States. However, local public housing authorities may apply for a demonstration, research or service improvement grant under Section 2(b)(5) or Section 4 of the Act (42 U.S.C. 5101(b)(5) or 42 U.S.C. 5103).

##### *Section 1340.14 Eligibility Requirements*

*Comments.*—Some commentors objected to the deletion of the language found in the current regulation at 45 CFR 1340.3-3(b) pertaining to the definition of child abuse and neglect. That section explains that definitions of child abuse and neglect used by States which are the "same in substance" as the ones set forth in the regulation will be sufficient to meet Federal definitional requirements.

*Response.*—The language was deleted from the proposed regulations as unnecessary. However, respondents correctly pointed out that State laws never been required to have language identical to the Act or regulation.

order to qualify for a grant. Therefore, we will retain the language of the current regulation in § 1340.14, to provide that a State's definition of child abuse and neglect which is the same in substance as the one set forth in the regulation will be acceptable.

Section 1340.14 of the proposed regulation also contained an elaboration of the ten eligibility requirements which a State must satisfy to qualify for a State grant. However, after more careful review of Section 4 (b) (2) of the Act, it was our decision not to repeat the provisions of the Act in regulations. Therefore, those requirements in the NPRM which duplicate the language of the Act have been eliminated. Of course, the requirements of the Act in Section 4 (b) (2) remain fully applicable.

Section 1340.14(c) of the NPRM providing immunity for persons reporting instances of child abuse and neglect from prosecution has been deleted because it duplicates the language of the Act in Section 4(b) (2) (A).

*Comment.*—One respondent requested further clarification of what was meant by a "different properly constituted authority" in § 1340.14(e).

*Response.*—In instances of child abuse and neglect that occur in an institutional setting, the investigating agency must be separate enough from the agency alleged to have abused or neglected a child to ensure an adequate impartial and objective investigation. This means that the State agency having responsibility for the investigation of reports of abuse or neglect may not investigate reported instances of child abuse or neglect made against institutions operated by that agency.

The same respondent also asked whether the State agency responsible for investigating allegations of institutional child abuse can investigate a reported instance of child abuse and neglect if the alleged abuse or neglect was by a contract vendor or purchase of service provider.

It is acceptable for the State mandated agency responsible for investigating reports of known and suspected instances of child abuse or neglect to investigate reports from residential facilities as long as such facilities do not have on their staff employees from the mandated agency and are not directly operated by the mandated agency. As these comments were related to the respondent's request for clarification of the meaning of the regulation we believe that no change in the regulation is necessary.

Section 1340.14(h) was revised by omitting that language which was duplicative of the Act. Sections

1340.14(i), (j), (k) and (l) were omitted as they were duplicative of provisions in the Act.

*Comment.*—Comments on § 1340.14(g) which mandates the appointment of a guardian *ad litem* in all judicial proceedings, involving an abused or neglected child, were concerned about: (1) The appropriateness of the person presenting the evidence in a judicial proceeding also serving as the guardian *ad litem*; and (2) the absence of a provision which would permit a State to satisfy the guardian *ad litem* requirement by court rule.

*Response.*—On the basis of the comments received we are making two changes in § 1340.14(g). First, we are eliminating as a person who may serve as a guardian *ad litem* the attorney who presents the evidence in a judicial proceeding alleging child abuse or neglect. This was done to eliminate the possibility of conflicting roles as there is serious question about having a presenter of the evidence also serve as a child's guardian *ad litem*.

Secondly, a State may elect to promulgate Court Rules mandating the appointment of a guardian *ad litem* in judicial proceedings. This will now be an added option for the State in satisfying the guardian *ad litem* requirement.

**Subpart C—Discretionary Grants and Contracts**

There were no comments from respondents on Subpart C of the NPRM. Two of the three sections in this Subpart proposed in the NPRM have been eliminated from the final rule because they duplicate the language of the Act in Sections 2(b) and 4(b)(1) (discretionary grants and contracts). Only the provision regarding confidentiality (§ 1340.20) has been retained in Subpart C to afford the same protection of personal facts or circumstances about individuals involved in discretionary projects or programs as is provided to individuals under the State grant program.

**Subpart D—Coordination of Federal Activities**

Except for the coordination requirements for Federal agencies which now appears in new § 1340.4, we have eliminated Subpart D. We do not believe it is necessary to publish the administrative and procedural requirements for the Advisory Board in regulations.

**Impact Analysis**

**Executive Order 12291**

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects. The Department concludes that this final rule is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of \$100 million or more or otherwise meet the threshold criteria.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980, Pub. L. 96-354, requires that an agency prepare a regulatory flexibility analysis for a proposed rule, or a final rule issued after a proposal, if a rule would have a significant economic impact on a substantial number of small businesses, small nonprofit organizations, or small governmental jurisdictions. However, this requirement does not apply to final rules for which a proposed rule was published before January 1, 1981 (section 4 of the Regulatory Flexibility Act). Because the proposed rule that preceded this final rule was published earlier, an analysis is not required under the Regulatory Flexibility Act.

**Recordkeeping and Reporting Requirements**

Under the Paperwork Reduction Act of 1980 the Department is required to submit to the Office of Management and Budget, for review and approval, any information collection or reporting requirement. Reporting requirements within § 1340.3(a) and 1340.12 requiring OMB approval, which was granted, are:

Section	Reporting requirements	Form/OMB Nos	Expiration date
1340.3(a)—Application of department-wide regulations.	45 CFR 74.73, Financial Status Report.	SF-268, 0980-0122...	10/31/83
1340.12—Application process.	State grant application.	SF-424, 0980-0016...	2/28/84

**List of Subjects in 45 CFR Part 1340**

Child welfare, Family violence, Grant programs—health, Grant programs—social programs, Reporting requirements, Research, Technical assistance, Youth.

(Catalog of Federal Domestic Assistance Program No. 13.828, Child Abuse and Neglect Prevention and Treatment)

Dated: July 20, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: JANUARY 4, 1983.

Richard S. Schwalker,

Secretary.

For the reasons set forth in the preamble, Part 1340 of 45 CFR is revised to read as follows:

## PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

### Subpart A—General Provisions

Sec.

1340.1 Purpose and scope.

1340.2 Definitions.

1340.3 Applicability of Department-wide regulations.

1340.4 Coordination requirements.

### Subpart B—Grants to States

1340.10 Purpose of this subpart.

1340.11 Allocation of funds available.

1340.12 Application process.

1340.13 Approval of applications.

1340.14 Eligibility requirements.

### Subpart C—Discretionary Grants and Contracts

1340.20 Confidentiality.

Authority: The Child Abuse Prevention and Treatment Act Pub. L. 93-247, 88 Stat. 4; Pub. L. 95-266, 92 Stat. 205; Secs. 609-610, Pub. L. 97-35, 95 Stat. 488 (42 U.S.C. 5101 et seq.)

### Subpart A—General Provisions

#### § 1340.1 Purpose and scope.

(a) This part implements the Child Abuse Prevention and Treatment Act of 1974, as amended. As authorized by the Act, the National Center on Child Abuse and Neglect seeks to assist agencies and organizations at the national, State and community levels in their efforts to improve and expand child abuse and neglect prevention and treatment activities.

(b) The National Center on Child Abuse and Neglect seeks to meet these goals through:

(1) Conducting activities directly (by the Center);

(2) Making grants to States to improve and expand their child abuse and neglect prevention and treatment programs;

(3) Making grants to and entering into contracts for: Research, demonstration; and service improvement programs and projects, and training, technical assistance and informational activities; and

(4) Coordinating Federal activities related to child abuse and neglect. This part establishes the standards and procedures for conducting the grant funded activities and contract and coordination activities.

(c) Requirements related to child abuse and neglect applicable to programs assisted under titles IV-A and IV-B of the Social Security Act are implemented by regulation at 45 CFR Part 1392, Subpart E.

(d) Federal financial assistance is not available under the Act for the construction of facilities.

#### § 1340.2 Definitions

For the purposes of this part:

(a) "A properly constituted authority" is an agency with the legal power and responsibility to perform an investigation and take necessary steps to prevent and treat child abuse and neglect. A properly constituted authority may include a legally mandated, public or private child protective agency, or the police, the juvenile court or any agency thereof.

(b) "Act" means the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101, et seq.

(c) "Center" means the National Center on Child Abuse and Neglect established by the Secretary under the Act to administer this program.

(d) "Child abuse and neglect" means the physical or mental injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term encompasses both acts and omissions on the part of a responsible person.

(1) "Sexual abuse" includes rape, incest, and sexual molestation as those acts are defined by State law, by a person responsible for the child's welfare.

(2) "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, as defined by State law, by a person responsible for the child's welfare; and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child as those acts are defined by State law, by a person responsible for the child's welfare.

(3)(i) "Negligent treatment or maltreatment" includes failure to provide adequate food, clothing, shelter, or medical care.

(ii) Nothing in this Part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing

his or her religious beliefs does not, for that reason alone, provide medical treatment for a child; provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to insure that medical services are provided to the child when his health requires it.

(4) "Threatened harm to a child's health or welfare" means a substantial risk of harm to the child's health or welfare.

(5) "A person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an employee of a public or private residential home or facility or other person legally responsible under State law for the child's welfare in a residential setting.

(e) "Commissioner" means the Commissioner of the Administration for Children, Youth and Families of the Department of Health and Human Services.

(f) "Grants" includes grants and cooperative agreements.

(g) "Secretary" means the Secretary of Health and Human Services, or other HHS official or employee to whom the Secretary has delegated the authority specified in this part.

(h) "State" means each of the several States, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific.

#### § 1340.3 Applicability of Department-wide regulations.

(a) The following HHS regulations are applicable to all grants made under this part:

- 45 CFR Part 18—Procedures of the Departmental Grant Appeals Board.
- 45 CFR Part 46—Protection of human subjects
- 45 CFR Part 74—Administration of grants
- 45 CFR Part 75—Informal grant appeals procedures
- 45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of Title VI of the Civil Rights Act of 1964
- 45 CFR Part 81—Practice and procedure for hearings under Part 80
- 45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

(b) The following regulations are applicable to all contracts awarded under this part:

- 47 CFR Chapter 1—Federal procurement regulations.
- 41 CFR Chapter 3—Federal procurement regulations—Department of Health and Human Services.

**§ 1340.4 Coordination requirements.**

All Federal agencies responsible for programs related to child abuse and neglect shall provide information as required by the Commissioner to insure effective coordination of efforts.

**Subpart B—Grants to States****§ 1340.10 Purpose of this subpart.**

This subpart sets forth the requirements and procedures States must meet in order to receive discretionary grants to improve or expand State child abuse and neglect prevention and treatment programs under sections 4(b) (1) and (2) of the Act (42 U.S.C. 5103(b) (1) and (2)).

**§ 1340.11 Allocation of funds available.**

(a) The Commissioner shall allocate the funds available for grants to States for each fiscal year among the States on the basis of the following formula:

(1) An amount of \$25,000 or such other amount as the Commissioner may determine; plus

(2) An additional amount bearing the same ratio to the total amount made available for this purpose (reduced by the minimum amounts allocated to the States under paragraph (a)(1) of this section) as the number of children under the age of eighteen in each State bears to the total number of children under eighteen in all the States. Annual estimates of the number of children under the age of eighteen, provided by the Bureau of the Census of the Department of Commerce, are used in making this determination.

(b) If a State has not qualified for assistance under the Act and this subpart prior to a date designated by the Commissioner in each fiscal year, the amount previously allocated to the State shall be allocated among the eligible States.

**§ 1340.12 Application process.**

(a) The Governor of the State may submit an application or designate the State office, agency, or organization which may apply for assistance under this subpart. The State office, agency, or organization need not be limited in its mandate or activities to child abuse and neglect.

(b) Grant applications must include a description of the activities presently conducted by the State and its political subdivisions in preventing and treating child abuse and neglect, the activities to be assisted under the grant, a statement of how the proposed activities are expected to improve or expand child abuse prevention and treatment programs in the State, and other information required by the

Commissioner in compliance with the paperwork reduction requirements of 44 U.S.C. Chapter 35 and any applicable directives issued by the Office of Management and Budget.

(c) States shall provide with the grant application a statement signed by the Governor that the State meets the requirements of the Act and of this subpart. This statement shall be in the form and include the documentation required by the Commissioner.

**§ 1340.13 Approval of applications.**

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

(1) The State is qualified and has met all requirements of the Act and § 1340.14 of this Part, except for the definitional requirement of § 1340.14(a) with regard to the definition of "sexual exploitation" (see § 1340.2(2)) and the definitional requirement of negligent treatment as it relates to the failure to provide adequate health care (see 1340.2(d)(3)). The State must include these two definitional requirements in its definition of child abuse and neglect no later than the close of the second general legislative session of the State legislature following February 25, 1983;

(2) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(3) The State is otherwise in compliance with these regulations.

(b) At the time of an award under this subpart, the amount of funds not obligated from an award made eighteen or more months previously shall be subtracted from the amount of funds under the award, unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

**§ 1340.14 Eligibility requirements.**

In order for a State to qualify for an award under this subpart, the State must satisfy each of the following requirements:

(a) The State must satisfy each of the requirements provided in Section 4(b)(2) of the Act.

(b) *Definition of Child Abuse and Neglect.* Wherever the requirements below use the term "Child Abuse and Neglect" the State must define that term in accordance with § 1340.2. However, it is not necessary to adopt language identical to that used in § 1340.2, as long as the definition used in the State is the same in substance.

(c) *Reporting.* The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and

suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.

(d) *Investigations.* The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect. This investigation may include the use of reporting hotlines, contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, psychological and social evaluations, and reviews by multidisciplinary teams.

(e) *Institutional child abuse and neglect.* The State must have a statute or administrative procedure requiring that when a report of known or suspected child abuse or neglect involves the acts or omissions of the agency, institution, or facility to which the report would ordinarily be made, a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action.

(f) *Emergency services.* If an investigation of a report reveals that the reported child or any other child under the same care is in need of immediate protection, the State must provide emergency services to protect the child's health and welfare. These services may include emergency caretaker or homemaker services; emergency shelter care or medical services; review by a multidisciplinary team; and, if appropriate, criminal or civil court action to protect the child, to help the parents or guardians in their responsibilities and, if necessary, to remove the child from a dangerous situation.

(g) *Guardian ad litem:* In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's

Uniform Court Rule mandating appointments in every case. However, the guardian *ad litem* shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.

(h) *Prevention and treatment services:* The State must demonstrate that it has throughout the State procedures and services deal with child abuse and neglect cases. These procedures and services include the determination of social service and medical needs and the provision of needed social and medical services.

(i) *Confidentiality.* (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

(i) The agency (agencies) or organizations (including its designated multidisciplinary case consultation team) legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect;

(ii) A court, under terms identified in State statute;

(iii) A grand jury;

(iv) A properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of a report;

(v) A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

(vi) A person legally authorized to place a child in protective custody when the person has before him or her a child whom he or she reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

(vii) An agency authorized by a properly constituted authority to diagnose, care for, treat, or supervise a child who is the subject of a report or record of child abuse or neglect;

(viii) A person who is responsible for the child's welfare, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person;

(ix) A child named in the report or record alleged to have been abused or neglected or (as his/her representative) his/her guardian or guardian ad litem;

(x) An appropriate State or local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions; and

(xi) A person, agency, or organization engaged in a bonafide research or evaluation project, but without information identifying individuals

named in a report or record unless having that information open for review is essential to the research or evaluation, the appropriate State official gives prior written approval, and the child, through his/her representative as cited in paragraph (i), gives permission to release the information.

(3) Nothing in this section shall be interpreted to prevent the properly constituted authority from summarizing the outcome of an investigation to the person or official who reported the known or suspected instances of child abuse or neglect or to affect a State's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

(4) HHS and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

#### Subpart C—Discretionary Grants and Contracts

##### § 1340.20 Confidentiality.

All projects and programs supported under the Act must hold all information related to personal facts or circumstances about individuals involved in those projects or programs confidential and shall not disclose any of the information in other than summary, statistical, or other form which does not identify specific individuals, except in accordance with § 1340.14(i).

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ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

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Juneau, Alaska 99811  
(907) 465-3991

November 7, 1983

MEMORANDUM

TO: Representative Peter Goll

FROM: Heidi Borson/Jay Livey *JL*  
Legislative Analysts

RE: Child Abuse  
Research Request 83-202

In response to your request, this memorandum provides information on the following topics:

- various ways the State currently intervenes in child abuse situations, modes of treatment and their effectiveness;
- model treatment and prevention programs in other states and their applicability in Alaska; and
- a description of the State's delivery of social services related to child abuse and other family issues to District 2 communities.

Because of the scope of this request, we have divided this memorandum into three sections which correspond to the topics outlined above.

## SUMMARY OF FINDINGS

### Intervention in Child Abuse Situations

- The legal authority which allows the State to intervene in child abuse and neglect situations is found Title 47, Chapter 10 of the Alaska Statutes.

- Intervention consists of three main steps:

Intake - initial contact with the case, preliminary investigation and assessment, initial development of the case plan;

Case Management - monitoring the progress of the treatment plan; and

Placement - removing the child from the home. A special provision in the Indian Child Welfare Act governs the placement of Native children.

### Effectiveness of Treatment Programs

- Most professionals feel that the State effectively protects children in abuse situations and concludes investigations rapidly. Some criticism was voiced that investigations are incomplete.
- One suggestion called for a change in placement laws to give the courts more flexibility in placement decisions.
- Many professionals argue that stronger efforts should be made to maintain the family. Some believe that the case management approach is not tailored to the family and does not respond well to potential abuse situations. Professionals also cite a lack of State resources committed to child abuse.
- Social service professionals are enthusiastic about the home based services approach to maintaining the family; this approach offers comprehensive services such as counselling, day care, homemaker services, alcohol and drug rehabilitation and vocational training to families in the home. Fewer cases are assigned to case workers involved with home services to allow for the increase in the intensity of services.
- Service providers agree that in order to break the cyclical nature of child abuse more emphasis must be put on prevention and early intervention.

- Prevention programs in small communities and public schools were recommended. Support was also voiced for a statewide assessment of existing child abuse treatment and prevention services as a basis for development of a State prevention and treatment plan.

#### Program Alternatives for Alaska

- Each year, the U.S. Department of Health and Human Services issues research/demonstration grants and state grants through the National Center on Child Abuse and Neglect. Groups in Alaska may apply for research/demonstration grants, but Alaska is not eligible to receive yearly state grants because its child abuse reporting statute does not mandate reporting emotional abuse.
- Recently, many states have enacted laws concerning child abuse and neglect which reflect an interest in long-term, innovative funding approaches, and a shift in emphasis from treatment to prevention, and from State to local delivery of services.
- Twelve states have implemented children's trust fund legislation to fund child abuse prevention programs through license surcharges or designated income tax refunds. The Alaska State Constitution prohibits dedicating funds, but Alaska could implement a trust fund by appropriating money from the general fund.
- Alaska could also change its mandatory reporting law by including emotional abuse, providing a penalty for failing to make a mandatory report, and including language to institute child protection teams and increased public education.
- Various model treatment and prevention programs abound on federal, state, and local levels. These include support groups, media programs, coordinated community services, training abusive parents to work as child care providers, home based services, and emergency child care services.

#### Delivery of Services to District 2

- The Division of Family and Youth Services (DFYS) is soliciting bids for a comprehensive study of services in the Southeast for child abuse and related family problems.
- Services provided by DFYS are divided into two groups: social services and youth services. Recipients of social services are designated as "children in need of aid", and are assigned social workers. Youth services recipients are adjudicated as "delinquent", and are assigned probation officers. Services to most communities in District 2 are provided out of field offices.

## INTERVENTION AND TREATMENT IN ALASKA

### INTERVENTION IN CHILD ABUSE SITUATIONS

The legal authority that allows the State to intervene in child abuse or neglect situations is found in Title 47, Chapter 10 of the Alaska Statutes. This chapter assigns the responsibility for compliance with the law to the Department of Health and Social Services (DHSS). Within this department, the Division of Family and Youth Services (DFYS) has functional responsibility for child abuse and neglect. To implement the statutes, the DHSS has developed an administrative manual that details the procedures used by the DFYS personnel to comply with State law. The intervention process consists of the following general steps: intake, case management and placement.

#### Intake

Intake is a multi-step procedure that involves the initial contact with the case, preliminary investigation and assessment, initial determination and development of the case plan.

Initial Reporting. Alaska has a mandatory reporting law [AS 47.17]. This means that certain practitioners and people in specified occupations are required to report suspected cases of abuse and neglect to the DHSS. Those required to report include: practitioners of the healing arts, school teachers, social workers, public safety officers and administrative officers of institutions. People who make a report in good faith under this chapter are immune from any civil or criminal liability that otherwise might result from the report. In some areas of the State, there may be no representative of the DHSS to receive the report of suspected abuse. In these cases, the report can be made to a peace officer who notifies the DHSS as soon as possible.

Deanne Grummet<sup>1</sup> of the DFYS office in Juneau feels that the majority of reports which come to that office are from schools, but frequent reports also come from day care providers and neighbors. In some cases, voluntary reports are received from parents who are afraid they are out of control and are potentially abusive. The DHSS is obligated to investigate all reports regardless of the source.

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<sup>1</sup> Ms. Deanne Grummet, Division of Family and Youth Services, Juneau Regional Office; 515 Willoughby Avenue, 586-1861.

Investigation and Assessment. Upon receipt of a report of child abuse, the DHSS can either investigate the report itself or refer the report to a local health agency [AS.47.17.030]. In either case, an investigation must be done in accordance with Alaska Statutes and the DHSS administrative manual. This manual describes the particular steps to be taken in the investigation, the information to be gathered by the investigation and the time frame in which the investigation must take place. The purpose of this investigation is to gather enough information to make an initial determination as to the validity of the case and to determine if the child is in danger.

The investigation generally requires interviews with the parents and the child. Critics have charged that this investigation is an invasion of family privacy, especially in cases in which the initial report was from an anonymous source. Most professionals involved in child abuse situations, however, feel that reports of abuse must be investigated to protect the child and maintain the credibility of the reporting law. If this law is not enforced, they feel that more child abuse would go undetected.

Disposition of Initial Determination. This stage in the intake process refers to the decision of the social worker concerning the disposition of the case. The basic decision is whether to continue the case or to close it. DHSS regulations state that this determination shall be made within thirty days of the initial case contact.

Treatment Plan. After the initial determination, the case worker may wish to continue the assessment of the case. According to DHSS regulations, this must be concluded within sixty days from the date of the initial contact. This assessment and the facts gathered in the initial investigation are used to formulate the case plan. This plan will vary depending on the specific elements of the case, but in general, will be designed to protect the child and maintain the family unit if possible.

A variety of treatment options are used by the DFYS. These range from individual counselling to backup services (such as homemaker and day care) to out of home placements in foster homes and institutions. Whenever possible, the plan should be accepted by the parents and the child and the responsibilities of all the parties should be in writing to assure understanding.

#### Case Management

Case management is the process of monitoring the progress of the treatment plan. It involves the coordination of any services, such as counselling or family support activities that the plan requires. The case worker is expected to maintain close contact with the family to make

sure that the services are being used and that they are relevant to the family problems. The extent to which social workers become involved in providing direct services varies with the case. The general approach, however, is to avoid becoming involved with direct services if other providers are available.

### Placement

Placement is the process of removing a child from the home. Two types of placement can be used: emergency placement to prevent harm and non-emergency placement as part of the treatment plan. Two major administrative procedures govern placement. First is that emergency placements will be made only when the child is in imminent danger and, secondly, placement shall not occur unless attempts have been made to provide services to the family. The Indian Child Welfare Act (P.L. 95-608) requires that additional special provisions be followed in the placement of Native children. These will be discussed in a special section.

Emergency Placements. Emergency placements are situations in which immediate action must be taken to protect the child. Alaska Statutes state that "if the minor is in such condition or surroundings that his welfare requires the immediate assumption of his custody by the court, the court may order, by endorsement upon the summons, that the officer serving the summons shall at once take the minor into custody and make the temporary placement of the minor that the court directs." [A.S. 47.10.030(c)] This emergency situation may exist during the initial investigation of the reported abuse or during the treatment process.

In these cases, the child is taken into emergency custody prior to a court order assigning care. After assumption of custody, the DHSS files a petition with the court to justify the emergency assumption of custody. If the court agrees with the DHSS, it will grant temporary custody and authority for the temporary placement of the child.

Non Emergency Placements. Non emergency placements are placements in which the child is not in immediate danger but is considered a "child in need of aid" as defined in Alaska Statutes [A.S. 47.10.010]. When the child is found by the court to be a child in need of aid, the minor is brought under the jurisdiction of the court. The court hears the case and decides if sufficient facts exist to decide if the child needs DHSS aid. If not, the case is dismissed. If the court finds that the child does need aid, the recommendations of the social worker are considered in deciding the disposition of the child. The court has a variety of options in the disposition of the case. It can mandate services and order the DHSS to implement a treatment plan that is designed to protect the child and preserve the family. The court can also temporarily place the child outside of the home during treatment or, in some cases, may permanently remove the child from the parents.

During the court process, all parties are represented. The DHSS is represented in court by the Attorney General's office. Parents are represented by their own lawyer, or by one appointed by the court. The child is represented by a guardian ad litem or attorney according to A.S. 47.10.050. The guardian ad litem is the advocate for the best interests of the child. If the court gives custody to the DHSS, the parents can petition the court to have custody returned to them at any time. In addition, the DHSS must appear before the court every two years to renew custody [A.S.47.10.080].

Indian Child Welfare Act. The Indian Child Welfare Act contains special provisions concerning the placement of Native children. The State is required to notify the tribes at the time that it takes custody of a native child. Also, the court has a higher burden of proof in demonstrating that continued custody by the parents is harmful to the child. The State must show clear and convincing evidence, supported by expert witnesses, that the child is in danger of harm if not removed. If placements outside the home are made, priorities for the placement are found in the Act.

#### EFFECTIVENESS OF TREATMENT PROGRAMS

Your research request asked that we look at the effectiveness of programs used in the treatment of child abusers and the victims of that abuse. In the course of our research, we talked with many professionals who are working with child abuse treatment programs. Most of these professionals think that the best way to look at the treatment programs is in the context of the entire range of services to abusers and victims.

The approach used in this report, then, is to look at the effectiveness of various treatment services that are offered by both State and non profit agencies within the child abuse service network. Our main emphasis will be:

- Protecting the child;
- Maintaining the family unit; and
- Prevention and early detection of abuse.

#### Protecting the Child

The State, through the Department of Health and Social Services (DHSS), has been given the legal authority to intervene in situations of suspected child abuse. Because it has this special authority, the DHSS is looked to as the lead agency in investigating situations of suspected abuse and protecting the child in those instances. Most of the

professionals that we contacted felt that the State did a good job of protecting children that are in abusive situations by concluding investigations rapidly and thoroughly.

One criticism of DHSS activity was voiced by a counselor from the Juneau School District. The main complaints were that investigations by DHSS were not complete and lacked follow through in some cases. In addition, it was felt that the DHSS personnel were reluctant to become involved in a case unless there was physical proof of abuse or eyewitness reports of abuse.

Tom Janidlo<sup>2</sup> of the Attorney General's office in Anchorage agrees that the State does well in intervening and protecting the child. However, he feels that changes in the law that would offer judges a wider range of options should be studied. Mr. Janidlo believes that in some cases in which the abuse is minor, the courts have little coercive power to impose treatment on the parents. If the parents refuse treatment, the courts must choose between taking custody of the child or subjecting the child to possible future harm. Because assuming custody has such severe effects on the child and the family, the court is unwilling to do this if the abuse is minor. Janidlo feels that other options could be made available to the social workers and the court to avoid this dilemma.

#### Maintaining the Family

The majority of professionals that we talked with believe that, whenever possible, attempts should be made to keep the family together after abuse. In many cases, the potential to bring the family back together and avoid future abuse is present. Most professionals agree, however, that the child abuse service system is not very effective in doing this.

One problem mentioned by several service providers is the case management approach used by the DHSS. Social workers using this approach coordinate and monitor services to clients rather than providing the services directly. Ms. Shaw<sup>3</sup> of the Juneau Mental Health Center thinks that at times this is a problem. She feels that by referring the case to other providers, the social worker ceases to be the focal point of the case. Situations develop in which services are being provided to

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<sup>2</sup> Mr. Tom Janidlo, Assistant Attorney General; General Civil Section, 1031 W. 4th Ave., Anchorage, 276-3550. Mr. Janidlo is also a representative of the National Committee for Child Abuse Treatment and Prevention.

<sup>3</sup> Ms. Deborah Shaw, Juneau Mental Health Center; 529 Gold, Juneau, 586-3580.

the family by a variety of sources but without a central control to coordinate the activities and assess if any progress is being made. Mr. Jandillo disagrees that the case management approach is ineffectual. He feels that it does sometimes remove the DHSS social workers from direct contact with clients, but that this allows the State to spread limited resources further by increasing case loads.

A second problem mentioned by several providers is the inability of the system to respond to potentially abusive situations. Tom Gunderson<sup>4</sup> of Alaska Childrens Services commented that it was possible for people to slip through cracks in the system. Because the State is the designated agency to receive child abuse reports, investigating these reports takes up most of their time and resources. This leaves little time to actually work with clients that may be in the early stages of an abusive situation. These clients may be referred to other agencies but there is little follow up to see if any services were ever received. Mr. Gunderson feels that in some instances this leads to serious abuse that could eventually cause the family to break up.

The major reason given by providers for this problem is the lack of State resources. As stated above, many of the resources available for child abuse are used to investigate abuse reports and protect the child. Many of the professionals that we contacted agree that State social workers do not have the time to personally stay in close contact with each client. Yvonne Elder<sup>5</sup>, of the Division of Family and Youth Services, reports that the average case load for a State social worker is above 50 cases. (The Juneau office reports their case load to be about 70 per case worker.) The standard that is recommended by social work professionals is a maximum of 25 cases per case worker at any point in time.

One proposed solution to alleviate these problems is the "home based services" approach. Many professionals we consulted were very enthusiastic about the potential of this approach to reduce the need for out-of-home placements. This approach offers comprehensive services such as counselling, day care, homemaker services, alcohol and drug rehabilitation and vocational training to families in the home. The case worker maintains direct contact with the family while these services are provided. Fewer cases are assigned to each case worker to allow this increase in the intensity of services. This close contact that the worker maintains with the family allows more freedom to the DHSS

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<sup>4</sup> Mr. Tom Gunderson, Alaska Childrens Services Inc; 1200 E. 27th Ave., Anchorage, 276-4515

<sup>5</sup> Ms. Yvonne Elder, Division of Family and Youth Services, Juneau, 465-3170.

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and the courts in placement decisions that involve the well being of the child. Demonstration programs have been used in several states, and preliminary evaluations show that in some programs as many as 70 to 90 percent of families at high risk of placement are able to stay together.<sup>6</sup>

At first glance, the home based services approach would appear to be more expensive because the small case load for each social worker would result in the need for more workers. However, this does not seem to be the experience of other states that have tried this approach. Because the home based approach delivers services more intensively, cases are concluded in a shorter period of time. Also, home based services reduce the need for expensive foster and residential care. Studies based on this approach in other states conclude that the cost of providing these services to one family does not exceed the total cost of one average foster home placement and can be provided for from one-half to one-tenth the cost of residential or psychiatric placement.<sup>7</sup>

It is true, however, that the transition to a home based approach may require additional resources. This is because of the need to cover the existing and new cases as the home based services begin functioning.

The State of Alaska has begun a pilot project which provides this type of service through the Family Service Unit in Anchorage. Anita Stevens<sup>8</sup>, director of the unit, says that the prevention of out-of-home placements through intensive family based services is the primary goal of the program. The unit currently has two case workers who each have a case load of seven. A short term approach is taken to the cases which means that the case must be closed within four months or else transferred out of the Family Unit. This limits the cases that can be referred to the unit to those that do not involve chronic problems such as alcohol or drug abuse or mental health problems. Ms. Stevens estimates that approximately 50 per cent of all child abuse cases could be assigned to the Family Unit. She also says that the court has recognized the services offered by the unit as an alternative to placement.

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<sup>6</sup> Northwest Regional Child Welfare Training Center, University of Washington School of Social Work, Research Capsule No. 16, Home Based Services, December 22, 1981.

<sup>7</sup> Ibid.

<sup>8</sup> Anita Stevens, Supervisor, Division of Family and Youth Services, Family Services Section; 400 Gambell St., Anchorage, 276-1450.

Support services are another aspect of the child abuse service system that most providers feel is valuable in maintaining the family. Home-maker and day care services can effectively reduce tensions that lead to abuse. Other organizations, such as Parent Aid<sup>9</sup>, organize groups that allow parents to discuss problems with their peers as a way of understanding and reducing frustrations. These services provide an early intervention option to case workers and in many situations will help defuse potentially abusive situations or stop the abuse in its early stages. Both of these results help avoid the need for placements.

#### Prevention

Among the service providers that we talked with, there was unanimous agreement that to reduce the incidence of child abuse in the future, more emphasis has to be put on prevention and early detection. The child abuse cycle has been clearly documented over the past ten years. This cycle tells us that most abusive parents were abused as children. Professionals agree that to break the cycle, child abuse has to be prevented and not just treated after it occurs.

Several suggestions for prevention activities were made by service providers that we interviewed. Francine Eddy Jones<sup>10</sup> of the Tlingit-Haida Central Council sees a need to promote prevention in the smaller communities by training on site workers and developing backup services and support groups. Several providers suggested that parenting classes are needed, and concluded that these classes should become part of high schools' curriculums. It was also suggested that more public education was needed to train people to recognize parents in the high risk group of potential abusers.

In general, providers feel that the State should take a more aggressive role in developing and promoting prevention services. Bob Bowers<sup>11</sup> of the Center for Children and Parents thinks that the current service delivery system is characterized by uncertain funding and fragmented services. He feels that a statewide assessment of the child abuse and prevention needs should be done as the basis for the development of a State child abuse and prevention plan. This plan, he feels, would help focus the limited resources that are available for child abuse and prevention services.

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<sup>9</sup> Parent Aid; Sue Sandwell, Director, 416 5th, Juneau, 586-3785.

<sup>10</sup> Francine Eddy Jones, Tlingit-Haida Central Council; Juneau, 586-1432.

<sup>11</sup> Mr. Bob Bowers, Director, Center for Children and Parents; 800 "E" Street, Anchorage, 276-4994

## PROGRAM ALTERNATIVES FOR ALASKA

The second part of this research request presents information on model treatment and prevention programs in other states and their applicability to Alaska. In collecting data on model treatment and prevention programs, we also compiled information on federal programs and state laws which may affect the delivery of local child abuse prevention and treatment services. In this section, federal and state options are presented first, followed by examples of community-based model treatment programs.

### FEDERAL PROGRAMS

In 1974, the Child Abuse Prevention and Treatment Act was signed into law, establishing the National Center for Child Abuse and Neglect (NCCAN) in the Office of Child Development under the Department of Health and Human Services. The NCCAN serves as a resource for funds and information for states. Functions of the Center include:

- conducting studies on child abuse and neglect;
- awarding research and demonstration grants to groups seeking new methods of preventing, identifying, and treating child abuse and neglect; and
- giving grants to eligible states to help increase and improve their child protective services. States must have an approved legal and investigatory framework in place against child abuse to qualify for NCCAN grants.

Specifically, the Department of Health and Human Services (DHSS) issues two kinds of grants through the National Center on Child Abuse and Neglect: research/demonstration grants and state grants. Each year, the Office of Human Development Services in DHSS announces in the Federal Register that it is accepting competing applications for new research and demonstration grants. At that time, priority topics and proposal requirements for the upcoming year are announced. Any state, public or non-profit organization involved with child abuse prevention and treatment may apply for a grant to be used to research or demonstrate new approaches to the problem of child abuse and neglect. The competition for grants is stiff as each year only 15 to 20 research/demonstration grants are awarded nationwide through the NCCAN.

State grants are awarded in a much different manner. A state's legal and investigatory framework for child abuse must meet the requirements of the National Center on Child Abuse and Neglect before the state is eligible to receive grant monies. However, once a state qualifies for

a state grant, it automatically receives a yearly grant as long as the Governor of the particular state submits annual proof of legal eligibility. Currently, six million dollars are awarded nationwide through the NCCAN state grant program. Each state receives a percentage of the money based on its population. The money is awarded in a lump sum to be used for child abuse prevention and treatment services. The Center requests that funds be used to develop more efficient ways to prevent, treat, and ultimately alleviate child abuse. Within that framework, states may use the funds as they see fit.

We spoke with Bruce Berglund, Child Abuse and Neglect Specialist for Federal Region Ten of the NCCAN, about Alaska's eligibility for research and state grants<sup>12</sup>. He informed us that groups in Alaska may currently qualify for a research/demonstration grant if their proposal is selected by the Office of Human Development Services. However, Alaska is not eligible to receive a yearly state grant because its child abuse reporting statute does not mandate reporting emotional abuse, sometimes referred to as mental injury. According to Mr. Berglund, if Alaska included mental injury in its reporting statute and submitted an application to receive a state grant, Alaska could receive a yearly federal grant to go towards preventing and treating child abuse. Mr. Berglund stated that 47 states currently include mental injury in their child abuse reporting statutes.

#### STATE LEGISLATIVE OPTIONS

In recent years, many states have enacted laws which address child abuse and neglect. This legislation reflects an interest in long-term innovative funding approaches, and a shift in emphasis from treatment to prevention, and from state to local delivery of services. In compiling information on possible legislative actions for Alaska, we contacted representatives in several states which have recently changed their child protection laws and consulted numerous publications on recent legislative actions in the states.

#### Shift to Prevention Programs

Presently, many states are attempting to break the cyclical nature of child abuse by preventing abuse through greater community coordination of family programs, localized intervention services, and increased public education about child abuse and neglect.

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<sup>12</sup> Mr. Bruce Berglund, Child Abuse and Neglect Specialist, Administration for Children, Youth and Families, Department of Health and Social Services; Seattle, 206-442-8109.

For example, in the 1982 session, the Florida legislature passed House Bill 296 which established child abuse prevention as a state priority and mandated the development of a statewide comprehensive plan for prevention through local coordination of services. The state plan will be developed by local task forces made up of private and public organizations. On the local level, the mandated planning process calls for a survey of available services, placement of existing services on a continuum from prevention to treatment, and isolation of gaps in the service delivery system. The legislature also committed \$1.1 million for a six-month period to fill the gaps in the existing services continuum.

State and public care providers in Alaska agree that there are long-term benefits in shifting emphasis from treatment to prevention. However, for this shift to occur, funds must be secured for prevention programs. A formal recognition by the Alaska legislature of the value and necessity of prevention programs could help facilitate the shift in emphasis, as well as provide a stable source of revenue for prevention programs. A state plan coordinating prevention programs in Alaska could also alleviate duplication of services while ensuring statewide provision of care.

#### Shift to Community Based Programs

In an attempt to increase the capacities of community based programs, California passed House Bill 1733 in 1982. The bill "authorized a ten million dollar general fund appropriation to encourage public and private child abuse prevention and intervention programs aimed at high-risk children and families in which no reportable offenses have yet occurred."<sup>13</sup> The law provides each county with a \$50,000 base appropriation. The state also makes training and technical assistance available on a local level through the Office of Child Abuse Prevention and the California Consortium of Child Abuse Councils.

#### Alternative Funding Mechanisms

A key factor in the success of child abuse prevention and treatment programs is the availability of long-term funding; consequently, some states have implemented alternative funding mechanisms such as children's trust fund legislation. Common goals of children's trust funds are to relieve some of the pressure on state social services' budgets, foster the growth of community based programs, and emphasize the prevention of child abuse and neglect.

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<sup>13</sup> Michele R. Magri, "Breaking the Cycle of Child Abuse," State Legislatures, March 1983, pp. 14-17.

In general, the fund is generated through a surcharge on marriage licenses, birth certificates, or divorce decrees, or by specially designated income tax refunds. The revenues are earmarked for community-based child abuse prevention programs, and are often administered by the state department of social services. Advisory boards are established to determine priorities for the distribution of funds.

To date, seven states (California, Iowa, Virginia, West Virginia, Wisconsin, Kansas, and Rhode Island) have established children's trust funds by placing surcharges on marriage licenses, divorce decrees, or birth certificates. Five other states (Alabama, Illinois, Louisiana, Michigan, and Missouri) generate children's trust funds by permitting tax payers to designate up to two dollars of their state income tax refunds for the children's trust fund. In addition, these 12 states also allow state appropriations and private donations to be added to the funds.

In Michigan, where the trust fund operates through a tax refund check off, part of the receipts are used to directly fund child abuse prevention programs. The balance is then invested and earnings are credited to the children's trust fund. When the fund reaches \$20 million, the refund check-off will be halted and programs will be financed by interest earned on the account. While this method of funding provides an alternative to direct state appropriations, it also serves as a method of increasing public awareness of child abuse and its possible solutions. Sharon Shay, contact person for the Michigan Children's Trust Fund, reports that \$800,000 was collected in 1982-83, the program's first year of existence. Revenues are projected to increase as public awareness of the fund increases.

Kansas, on the other hand, places a seven dollar surcharge on marriage licenses to fund its family and children trust fund. The advisory board is also considering an additional surcharge on divorce decrees or birth certificates. January Scott, Executive Director of the Kansas Committee for Prevention of Child Abuse, provided copies of the statutes which established the Kansas Family and Children Trust Fund, information on the advisory committee composition and functions, programs which have received trust fund grants, and operation guidelines for the fund.<sup>14</sup> We have attached that information at the end of this memorandum (see attachment A). Ms. Scott suggested that states set up a trust fund which includes both children and families, since child abuse and family problems are so closely related.

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<sup>14</sup> January Scott, Executive Director, Kansas Committee for Prevention of Child Abuse; Topeka, Kansas, 913-354-7738.

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The Alaska State Constitution prohibits dedicating proceeds of a State tax or license for special purposes, with the exception of the Permanent Fund. However, Alaska could possibly implement a children's trust fund by appropriating money from the general fund for child abuse programs. In fact, Mr. Thomas Janidlo, Assistant Attorney General and member of the National Committee for the Prevention of Child Abuse (NCPCA) has already written a proposal for trust fund legislation in Alaska. The proposal includes several funding options, among them a one-time, large appropriation which would generate interest to fund programs on a rotating basis. Through the help of volunteers and the community, programs are expected to become self-sufficient within four years. The proposal was submitted to Governor Sheffield last session, but no action resulted. Consequently, the Alaska chapter of the NCPCA is looking for a legislative sponsor. If you would like further information, Mr. Janidlo can be reached at 276-3550 in Anchorage.

#### Child Protection Teams

Another legislative option for Alaska would be to incorporate child protection teams into its current reporting statutes. In Alaska, social workers usually investigate a case of reported abuse, and are then required to determine whether or not the child was abused, the chances for successful treatment of the child and for the development of a treatment plan based on the child's needs and available community services.

Contending that this procedure may place an unreasonable demand on the social worker, eleven states changed their laws and implemented child protection teams made up of professionals in medicine, psychology, social work, law and education. The teams are developed to oversee and coordinate all child abuse cases within a particular state or geographic region, and are either locally or state administered. Besides developing and implementing individual treatment plans, teams are responsible for surveying services offered in a particular area, identifying the gaps which exist in the delivery of services and recommending how to fill them. Child protection teams are also called on to serve as an education bureau to increase public awareness of the problem and possible solutions.

In Pennsylvania, for example, each county is required to develop a child protection team to coordinate and oversee local child abuse prevention and treatment services. The handbook used in Pennsylvania as a guide for developing multidisciplinary teams (child protection teams) is enclosed (see attachment B). Other states which have enacted child protection teams legislation are California, Colorado, Indiana, Massachusetts, Michigan, Mississippi, South Carolina, Tennessee, Utah and Virginia.

### Mandatory Reporting Laws

Finally, with regards to legislative action, Alaska could make some changes to its mandatory reporting law (AS 47.17.010-070). Possible changes include:

- the inclusion of emotional abuse in mandatory reporting provisions as was discussed in the federal programs section of this memorandum;
- provision of a penalty for failure to make a mandatory report;
- authorization of the use of color photos and/or x-rays as evidence; and
- provision for the institution of child protection teams and increased public education.

For a review of child protection laws in other states, please see attachment C. Most of the attached chart describes the child abuse reporting laws of each state.

### MODEL TREATMENT AND PREVENTION PROGRAMS

With the necessary legal and monetary support in place, communities may implement model child abuse prevention and treatment programs. Ideas for model programs abound on the federal, state, and local levels. Programs such as children's trust funds and the National Center on Child Abuse and Neglect research grants have encouraged the development of innovative approaches to the prevention and treatment of child abuse. Brief descriptions of some model programs are provided below.

#### Support Groups

The support group approach to child abuse treatment is similar to the Alcoholics Anonymous treatment concept. In the area of child abuse, self-help groups are geared towards specific populations such as abusive parents or adolescent victims of abuse. One program, FACES, Formerly Abused Children Emerging in Society, is aimed at young adults who were abused as children. FACES, which meets weekly, serves as a nurturing, surrogate family for formerly abused young adults and includes the services of two volunteer co-facilitators. The group focuses on helping members deal with current personal issues such as lack of trust, feelings of isolation, and low self esteem.

Members are also assisted in understanding the present in relation to the past. A major goal of FACES is to break the cyclical nature of child abuse. FACES is sponsored by the Manchester Memorial Hospital in Manchester, Connecticut. Groups meet in a living room setting at Manchester Community College. The weekly meetings are free to participants.

Another self-help group, Parents Anonymous, is designed to help abusive parents help themselves. As such, the program is only effective for those parents who admit they have a problem. The group, aimed at physical and verbal abusers, usually meets on a weekly basis. Parents Anonymous, which has chapters nationwide, is also active in child abuse public education. Federal and state monies, as well as private donations fund the program. At one time, Alaska had a Parents Anonymous group in Anchorage, but that group dissolved due to the lack of a sponsor to host and coordinate meetings.

#### Media

An example of a pioneer media program is "The Bubbylonian Encounter: A Drama to Prevent Sexual Child Abuse", written by Gene MaKay, artistic director of the Theater for Young America, Inc. The play which is presented in two mediums, a live production by the Theater for Young America, Inc. or a videotape, is designed especially for elementary school children, a group which constitutes one-half of all sexual assault victims. The thirty-minute play is about Bub from the planet Bubbylonia whose inhabitants are deprived of the sense of touch. Bub comes to earth and learns about the joys and perils of touching, and the differences between positive touching and forced sexual touching. In scenes where Bub encounters forced sexual touching, the message is that Bub should tell someone and suggestions are offered for who Bub might tell. In the play, Bub serves as a role model for children in her lack of knowledge about touch, her eagerness to learn, and her assertive manner in dealing with forced sexual touching.

The Bubbylonian Encounter was tested on 82 children in grades three through six after viewing the play to measure what they learned. The results indicate that 97 percent of the children were able to distinguish between forced sexual touching and other types of touching, 82 percent knew how to respond appropriately if sexually assaulted, and 87 percent understood that family members could abuse them.

The Division of Family and Youth Services recognizes the potential of media for educating the public, especially children, about child abuse, and is considering some films for possible use.

### Coordinated Community Services

In line with the recent move to coordinate community prevention efforts, EPIC, Effective Parenting Information for Children, attempts to unify three major institutions which affect children's lives: home, school, and community. EPIC, a two-year pilot program, is a primary prevention approach which aims at training children to become responsible parents and persons.

In the school, EPIC provides a sequential parenting skills curriculum in grades kindergarten through twelve. The home component involves parent workshops led by trained volunteers which cover topics such as parenting styles, nurturing, communication, coping, and behavior management. Workshops are held at schools, churches, hospitals, and community centers, and child care is provided. To involve the community, the EPIC Board of Directors is composed of representatives from local schools, universities, businesses, churches, human service organizations, and governments.

EPIC is currently based in Buffalo, New York; however, its ultimate goal is to create a home/school/community model that can be replicated in any community in the country. An EPIC package, including a procedures manual and tabulated results of its first year of operation, is now available. We are requesting the EPIC information packet, and will forward a copy of the material to you upon receipt.

### Other Model Programs

While discussing treatment alternatives with us, Ann Spohnholz of the Parent Training Center mentioned a program which involves training abusive parents to work as child care providers in day care centers.<sup>15</sup> Under initial close supervision, abusive parents learn how to nurture their own children, while also caring for other children and learning a job skill. In some cases, parents are then employed by the centers to serve as child care providers. Programs designed to provide emergency child care services to parents in need of time out have also been implemented in some communities. These programs operate under the premise that child abuse is more likely to occur in periods of heightened parental stress, and are aimed at high risk parents. Another new approach, home-based services, was described earlier in this memorandum, and is currently the subject of a demonstration project in Anchorage.

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<sup>15</sup> Ms. Ann Spohnholz, Parent Training Center; Anchorage, 272-1722.

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November 7, 1983  
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## DELIVERY OF SERVICES TO DISTRICT II

As you are aware, the Division of Family and Youth Services is soliciting bids for a comprehensive study of services in the Southeast for child abuse and related family problems. Through this study, the division hopes to identify key people in each community who are in a position to identify cases of abuse, provide training to these key people in child abuse identification and intervention, and develop community specific procedures for reporting. The division's ultimate goal is to ensure regionwide provision of care without duplication of services.

As it seems that this study will provide a comprehensive survey of community child abuse services currently available in the Southeast, we have not attempted to duplicate that effort at this time. Consequently, our focus in this section is the State's delivery of child and family services in the District 2 area. We would be happy to review and comment on the division's study when it is completed.

### SERVICES PROVIDED BY DIVISION OF FAMILY AND YOUTH SERVICES

Services provided by the Division of Family and Youth Services are divided into two groups: social services and youth services. Social services are delivered to children who have been abused or neglected. Recipients of social services are designated as "children in need of aid," and are assigned social workers. Youth services, on the other hand, are provided to delinquent youth. Recipients of youth services are adjudicated as delinquent, and are assigned probation officers.

#### Social Services

The social services field office for each community mainly provides child protective services. These include initial investigations, court work, and case management. Under case management, social workers may utilize foster home placement, day care services, homemaker services, or counseling referrals for alcohol and drug related problems, marital and other problems. The delivery of social services is more thoroughly described in the first section of this memorandum.

#### Youth Services

Youth services revolve around juvenile probation. Probation officers are involved with preliminary intakes of referred juveniles, assessment of the problem, and determination of whether or not to temporarily place the youth in detention, proceed with probation, or defer the complaint. If the complaint is deferred, the probation officer will contact the appropriate agency such as Family and Youth Services, or probation, the probation officer conducts an intake interview. Juvenile delinquents may then be assigned informal probation for a six-month

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period, or may be sent before the court for more serious charges. If the youth is found guilty, the probation officer completes a predisposition report describing the youth's background and recommending a course of action, whether it be formal probation, parental custody, community-based treatment, or institutional confinement. If the State is given custody of the youth, the probation officer is called upon to act as a surrogate parent for the delinquent.

Explanation of charts

The following charts outline the provision of services by the Division of Family and Youth Services to the District 2 area. One chart covers the delivery of social services, and the other youth services. Each chart provides the locations of the regional office and field offices which serve District 2 communities.

. . . .

We hope the information provided in this memorandum is useful. Feel free to contact us if we may be of further assistance.

Attachments

HB/JL

DIVISION OF FAMILY AND YOUTH SERVICES (DHSS)  
Delivery of Youth Services to Communities in Election District 2

Regional Manager's Location

Juneau

Office Locations:

Juneau

Sitka

Petersburg

Anchorage

Ketchikan

Communities Served:

- Juneau
- Gustavus
- Haines
- Hoonah
- Klukwan
- Skagway
- Wrangell
- Yakutat

Sitka  
Angeon

Petersburg  
Kake

Cordova

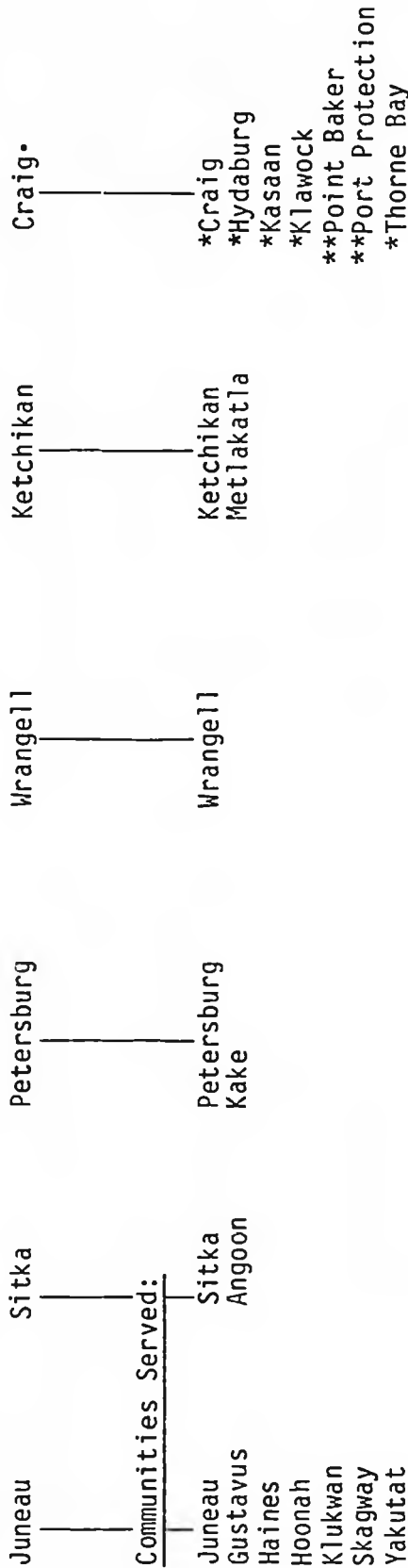
- Ketchikan
- Metlakatla
- Craig
- Hydaburg
- Kasaan
- Klawock
- Point Baker
- Port Protection
- Thorne Bay

DIVISION OF FAMILY AND YOUTH SERVICES (DHSS)  
Delivery of Social Services to Communities in Election District 2

Regional Manager's Location

Ketchikan

Office Locations:



\* In cases requiring superior court actions, these communities would receive such services out of Ketchikan.

\*\* Point Baker and Port Protection may also receive social services out of the Sitka and Wrangell offices.

• The Division of Family and Youth Services Social Worker III position in Craig is presently vacant. According to Southeast Regional Office representatives, the position should be filled by November 11, 1983.



**KANSAS COMMITTEE FOR  
PREVENTION OF CHILD ABUSE**

214 West 6th, Suite 301  
Topeka, Kansas 66603-3792  
913-354-7738

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January H. Scott

October 24, 1983

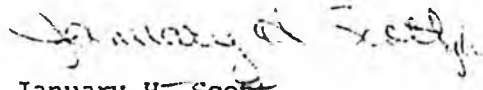
Heidi Borson  
c/o House Research Agency  
Pouch Y  
Juneau, AK 99881

Dear Ms. Borson:

Enclosed is the information you requested on the Kansas Family & Children's Trust Fund legislation.

I hope this information will be helpful to you. If you should have further questions, please do not hesitate to contact our office.

Sincerely,

  
January H. Scott  
Executive Director

JHS:jh  
Enc.

STATUTES ESTABLISHING THE KANSAS FAMILY AND CHILDREN TRUST FUND

**23-110.** Index of records; certified copies; fees; disposition of moneys; family and children trust fund; vital statistics fee fund. The secretary of health and environment shall index all records thus received and, when applied to, shall issue a certified copy of the same which shall be prima facie evidence in all courts and places of the facts stated therein. For each certified copy a fee shall be paid to the secretary in an amount prescribed in accordance with K.S.A. 65-2418 and amendments thereto and to be disposed of in the manner provided therein. The secretary shall keep an accurate account of all fees received from the judges of the district court and all other sources. Such secretary shall remit all moneys received by or for such secretary from the marriage license fee provided for by K.S.A. 1980 Supp. 23-108 and amendment thereto to the state treasurer at least monthly. Upon receipt of each such remittance the state treasurer shall deposit the entire amount thereof in the state treasury. Twenty percent (20%) of each such deposit shall be credited to the state general fund and of the balance of each such deposit, seventy percent (70%) shall be credited to the family and children trust fund, and thirty percent (30%) shall be credited to the vital statistics fee fund. All expenditures from the family and children trust fund shall be made in accordance with K.S.A. 1980 Supp. 75-5328, and all expenditures from the vital statistics fee fund shall be made in accordance with K.S.A. 65-2418.

**75-5328.** Family and children trust fund; grants, gifts and bequests; expenditures for certain purposes; "educational programs" defined; director of services to children and youth to exercise powers and duties under section. (a) There is hereby created in the state treasury the family and children trust fund. The secretary of social and rehabilitation services may apply for, receive and accept grants, gifts and bequests from any source, governmental or private, for the purposes for which money may be expended from the family and children trust fund under subsection (b), and the secretary shall remit all moneys so received to the state treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the family and children trust fund.

(b) Moneys in the family and children trust fund shall be used for the following purposes: (1) Matching federal moneys to purchase services relating to community-based programs for the prevention of problems of families and children; (2) providing start-up or expansion grants for community-based prevention projects or educational programs for the problems of families and children, primarily but not limited to, child abuse and neglect and family abuse; and (3) study and evaluate community-based prevention projects and educational programs for the problems of families and children. For the purpose of this subsection (b), "educational programs" shall include instructional and demonstration programs whose main purpose is to disseminate information and techniques or to provide services for the prevention of problems of families and children. No moneys in the family and children trust fund shall be used for the purpose of providing services for the voluntary termination of pregnancy.

(c) The advisory committee to the division of services to children and youth established by K.S.A. 75-5325, or its successor, shall advise the secretary and the director of services to children and youth in detail on the expenditures of moneys in the family and children trust fund.

(d) All expenditures from the family and children trust fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of social and rehabilitation services or by a person or persons designated by the secretary.

(e) The secretary shall designate the director of services to children and youth to exercise the powers and perform the duties granted to and imposed upon the secretary under this section.

## CHILDREN AND YOUTH ADVISORY COMMITTEE

The Secretary of Health and Environment or designee  
The Secretary of Social & Rehabilitation Services or designee  
The Secretary of Human Resources or designee  
The Commissioner of Education or designee  
The Chief Justice of the Supreme Court or designee  
Two State Senators appointed by the President of the Senate  
Two State Representatives appointed by the Speaker of the House  
Five Members appointed by the Governor

Has broad general powers of oversight with regard to children's programs. Is the final awarding authority for the Family and Children Trust Fund Grants.

## FAMILY AND CHILDREN TRUST FUND SUBCOMMITTEE

Four Members of the Children and Youth Advisory Group  
One Member Representing Kansas Action for Children  
One Member Representing Kansas Committee for the Prevention of Child Abuse  
One Member Representing Kansas Association of Domestic Violence Programs  
One Member Representing Mental Health Association in Kansas  
One Member Representing Kansas Congress of Parents and Teachers

Has primary responsibility for developing guidelines, reviewing grant applications, and monitoring the progress of projects.

August, 1982

FAMILY AND CHILDREN TRUST FUND GRANT AWARDS

- GRANTEE: Regional Crisis Center  
PROJECT TITLE: Children in Crisis  
FUNDING: \$11,940 (2nd yr)  
DESCRIPTION: A support program geared to identifying and alleviating stress as it impacts upon children in crisis. A comprehensive approach of assessment, treatment and/or referral will be conducted under the direction of a child specialist. Assistance via parental skill building and counseling for mothers/parents will be facilitated by a family therapist. Training for staff and volunteers in child development, assessment and case management will be provided on a weekly basis.
- GRANTEE: Parents Time Out  
PROJECT TITLE: Parents Time Out  
FUNDING: \$12,000 (2nd yr)  
DESCRIPTION: This program is designed to provide parent educational support to families. The focus is on positive parenting without overt identification of high risk families. The service is provided based upon ability to pay with low-or-no pay slots reserved for referred or identified high stress families.
- Services include: 1) Respite child care with age appropriate programming focused on development of positive self-image; 2) parent education, including intervention with child care staff about each child and his/her development, a resource library and room, weekly opportunity for support, group discussion and periodic parenting program; and 3) support for identified support and interaction/counseling by the project coordinator around parent/child issues.
- GRANTEE: Domestic Violence Assoc. of Central Kansas  
PROJECT TITLE: Implementation of Educational Services to USD #305 Public Schools on Prevention of Sexual Abuse to Children and Domestic Violence  
FUNDING: \$7,540  
DESCRIPTION: The implementation of educational services to the USD #305 Public School system. Two components of this project are the prevention of sexual abuse of children and understanding of the dynamics of domestic violence within the family unit from a child's perspective.
- GRANTEE: Reno County Health Department  
PROJECT TITLE: Parental Support Project  
FUNDING: \$14,986  
DESCRIPTION: Establish a Basic Parenting Educational Program consisting of 12 two hour sessions; child growth and development, parenting skills and techniques and resources available to assist parents. The course would cover needs of children from infancy to 18 years, and entered at any age level needed by parents.
- GRANTEE: USD #259, Wichita Public Schools, Curriculum Services Division  
PROJECT TITLE: Pilot Project: Program for Implementing a Prevention Program on Child Sexual Assault in grades 4-6.  
FUNDING: \$4,905  
DESCRIPTION: This educational program is focused on 1) providing teachers with an understanding of child sexual assault and 2) making children aware

of choices they have for personal safety. Teachers will be trained as well as support personnel through workshops, enabling them to pass on information through the classroom and other contacts with students and parents.

GRANTEE: Four County Mental Health Center  
PROJECT TITLE: Sexual Abuse Diversion Program Seminar, Live Productions of Bubbylonian Encounter  
FUNDING: \$1,450  
DESCRIPTION: A community professional training seminar on the sexual abuse diversion program, an advanced training seminar for community professionals; Live performance of the play "Bubbylonian Encounter" which is for children about the sense of touch and teaches them a definition of forced sexual contact and what to do if it should happen.

GRANTEE: St. Mary College  
PROJECT TITLE: Goal Setting - A Realistic Structure for Professionals and Parents in Working with High Risk Children  
FUNDING: \$15,000  
DESCRIPTION: To provide both professionals and parents with the information and structure needed to set realistic goals and to achieve them as they work with high risk children ages 0-12. It offers a goal-setting conference for professionals in the county and an individualized home parenting program for parents along with developmental services for preschool-age children. With some direction and organization as well as good communications, parents and professionals can become actively involved in prevention of abuse or neglect of children who are borderline candidates for such a condition.

GRANTEE: Johnson County Mental Health Center  
PROJECT TITLE: Self-Care Education Project  
FUNDING: \$2,500  
DESCRIPTION: To publish an instructor's manual for "I'm in Charge", which would be disseminated to Johnson County Coalition for the Prevention of Child Abuse. The number one neglect report in Johnson County is for children left unattended.

GRANTEE: Family & Child Educational Services  
PROJECT TITLE: Family & Child Educational Services  
FUNDING: \$3,608 (2nd yr)  
DESCRIPTION: To prevent child abuse by education through a home visitor program, which is a "grandmother role" volunteer; telephone counseling for crisis and community information on a 24 hour basis; parenting classes; provide education for parenthood in local school system; film service to parents pertaining to parent education; volunteers showing family service films on infant care in local hospital; FOOTSTEPS series for use in home economics and family living classes.

GRANTEE: American Assoc. of University Women  
PROJECT TITLE: Atchison Health Start Program  
FUNDING: \$7,951.20 (2nd yr)  
DESCRIPTION: This program would provide support and assistance for parents with early infant care through a trained volunteer home visitor. This will minimize some of the frustration and stress for new parents, thus decreasing the possibility of child abuse and neglect.

# The Children's Trust Fund



## Children's Trust Fund

In the spring of 1980 Kansas became the first state to pass legislation creating a Family and Children's Trust Fund that would use revenues from surcharges placed on marriage licenses for prevention programs for children.

We reported on the new program in our January-February 1981 issue and carried an update, "Kansas and The Children's Trust Fund" by Jean Glenn in the May-June 1982 issue. Now we thought readers would like to know that six other states—Washington, Iowa, Virginia, Michigan, Rhode Island and California—have also established public funds to support preventive services. Thomas L. Birch describes the growth and operation of the Trust Fund concept in the following article, condensed and reprinted with permission from *Caring* (Vol. 8, No. 4), published by the National Committee for Prevention of Child Abuse.

**A**n approach to preventing child abuse that is catching on rapidly is the Children's Trust Fund. . . .

*Thomas L. Birch is coordinator of the National Child Abuse Coalition, Washington, D.C.*

Revenues to build the Children's Trust Funds are generated by surcharges on marriage licenses, birth certificates, or divorce decrees, or by specially designated refunds of the state income tax. Grants from the fund go to preventive programs for child and family abuse, and dis-

tribution of the grants is supervised by an advisory group of individuals with a demonstrated interest in preventing child abuse.

Prevention is the central focus of the Children's Trust Fund concept. The idea was first conceived by Ray E. Helfer, M.D., a pediatrician widely recognized for his pioneer work in the field of child abuse. Helfer is a former vice president of the National Committee for Prevention of Child Abuse (NCPCA).

NCPCA state chapters have been in the forefront of the Children's Trust Fund movement. Through the efforts of NCPCA volunteers, Kansas, in April 1980, became the first state to create this funding mechanism. The Kansas statute resulted from two pieces of legislation. One established a Family and Children's Trust Fund by placing a \$7 surcharge on each marriage license issued. The second bill created a 14-member Children and Youth Advisory Committee of nine state agency members and five concerned citizens appointed by the governor.

Approximately \$130,000 is generated each year for the Kansas Family and Children's Trust Fund. The fund is administered by the Division of Services to Children and Youth under the guidance of the advisory committee. The members of the committee, acting as children's advocates, also advise state agencies serving children and recommend statutory policy to the governor and the legislature.

Grants from the Kansas fund are limited to \$15,000 and go to community-based preventive projects or educational programs. Examples of projects that have received help are

*(Continued on inside back cover)*

crime rates, friendliness between neighbors, the age of members within the community, the number of children and neighborhood and family support systems. Developing measures to assess such characteristics from community to community is crucial to accurate research. We have made progress to the point where we can ask, "What characteristics in the latchkey child's environment affect that child's personal and social development?"

"U.S. Department of Labor, Women's Bureau, "Working Mothers, Fastest Segment of the Labor Force," Release No. 82-313, Washington, D.C., September 3, 1982.

"U.S. Department of Commerce, Bureau of the Census, *Daytime Care of Children*, Current Population Reports, Series P-20, No. 298, Washington, D.C., U.S. Govern-

ment Printing Office, October 1976.

"U.S. Department of Labor, Women's Bureau, *Employers and Child Care: Establishing Services Through the Workplace*, Pamphlet No. 23, Washington, D.C., August 1982.

"Initial Results From the 1981 Survey of Child Care Arrangements," Labour Force Survey Research Paper No. 31, Statistics Canada, September 1982.

"A. C. Emlen, *When Parents Are at Work: A Three-Company Survey of How Employed Parents Arrange Child Care*, Greater Washington Research Center's Task Force on Local Government Response to Fiscal Pressure, Washington, D.C., December 1982.

"U. Bronfenbrenner, "The Origins of Alienation," in U. Bronfenbrenner and M. Mahoney (Eds.), *Influence on Human Development*, Hinsdale, Ill., Dryden Press, 1975.

"J. Garbarino, "Latchkey Children: Getting the Short End of the Stick?," *Vital Issues*, Center for Information on America, Washington, Connecticut, November 1980, Vol. 30, No. 3.

"M. B. Woods, "The Unsupervised Child

of the Working Mother," *Developmental Psychology*, 1972, 6 [a].

"D. Gold and D. Andres, "Comparisons of Adolescent Children With Employed and Nonemployed Mothers," *Merrill-Palmer Quarterly*, 1978, 24 [b].

"D. Gold and D. Andres, "Developmental Comparisons Between 10-year-old Children With Employed and Nonemployed Mothers," *Child Development*, 1978, 49.

"T. J. Long and L. Long, *Latchkey Children: The Child's View of Self-Care*, unpublished manuscript, Loyola College, 1982.

"L. L. Cowen, et al., "A Quick Screening Device for Early Identification of School Maladaptation," *American Journal of Community Psychology*, 1973, 1.

"S. Harter, "A New Self-report Scale of Intrinsic Versus Extrinsic Orientation in the Classroom: Motivational and Informational Components," *Developmental Psychology*, 1981, 17.

"Gold and Andres, [a] and [b], op. cit.

"Long and Long, op. cit.

"G. Elder, *Children of the Great Depression*, University of Chicago Press 1974.

## Children's Trust Fund (Continued from page 25)



a play program for children who have been subjected to stress by violence at home; a training course for volunteers to act as advisers to new parents; a coalition for developing primary preventive services; and a self-care course for "latchkey children" in elementary school.

The Children's Trust Fund approach is flexible. Each of the six other states that have established funds—all with legislation enacted in 1982—adapted the concept to suit its own constituency. For example, while Virginia, Washington, Rhode

Island and Iowa, like Kansas, have increased the fees for marriage licenses, California's law puts a surcharge on birth certificates.

The state of Michigan has taken a different tack. Its legislature enables taxpayers to designate up to \$2 of their state income tax refund to the Children's Trust Fund. Part of each year's receipts go to fund programs; the rest is invested, and earnings are credited to the trust fund. The refund checkoff will be halted when the fund reaches \$20 million. After that, programs will be financed from interest on the money in the account.

In states like Virginia and Iowa policy prohibits establishing a specially designated fund of state money. In those states the extra fees from marriage licenses go into general revenues and then are passed along to support prevention programs.

The composition of the advisory group varies, too, from state to state. The Michigan statute mandates a board of 15 members; Iowa has an advisory council of five. Some states must include specified

heads of governmental agencies on their boards; others draw all their members from the public. Governors make appointments in some states; elsewhere legislative leaders also have appointees.

Typically, the Children's Trust Fund program is administered through the state department of social services. Michigan's Child Abuse and Neglect Prevention Board, however, is an autonomous agency within the Department of Management and Budget, and the Washington Council on Child Abuse and Neglect is an entity of the governor's office. . .

The flexibility of the Children's Trust Fund concept is one of its strengths. . . The approach appeals to several concerns. It takes pressure off the regular state social services budget to fund often neglected protective services. It fosters creation of community-based programs and shifts some of the responsibility for planning to the community level. Most important, the Children's Trust Fund focuses attention on services that can prevent child abuse and neglect. ■

GRANTEE: Catholic Social Services  
PROJECT TITLE: ASSIST project  
FUNDING: \$11,999.20 (2nd yr)  
DESCRIPTION: Single Parents and Family Support Program focused on information, socialization, and recreation, operating on the philosophy that family functioning may be enhanced by providing single parents the opportunity to learn, share, and have some of their own needs met, thereby child abuse or neglect may be reduced or prevented.

The Grantparent group is based on the belief that general family functioning in households incorporating single parents and their children can be enhanced by addressing concerns of grandparents and acknowledging their importance in the parenting process.

These "high risk" families are single, poor, isolated, immature, and have unrealistic expectations of children, personal difficulties and usually reside with own family.

GRANTEE: Johnson County Coalition for Prevention of Child Abuse  
PROJECT TITLE: Self-Care Education Project  
FUNDING: \$4,800 (2nd yr)  
DESCRIPTION: This will be used to develop a manual and provide training (not printing costs or printing plastic cards) "I'm in Charge" for latchkey children and their parents.

GRANTEE: Kansas Research Institute  
PROJECT TITLE: Family Life Education: On the Job  
FUNDING: \$13,900  
DESCRIPTION: This project was to establish and develop a primary child abuse prevention program through a family life education curriculum applicable to industrial and other business settings. Objectives are to improve family functions, reductions in number of children separated from their families, increase job satisfaction and lower overall public costs. Provide a course in family functioning skills through training workshops for company employees during working hours.

GRANTEE: Ourselves and our Families  
PROJECT TITLE: Ourselves and our Families  
FUNDING: \$15,000  
DESCRIPTION: To establish community awareness and prevention program for the prevention of child abuse and neglect through on-going training program for parents to establish effective disciplining skills and education in the role of effective parenting. To establish trained elementary teachers in the program on self-esteem, peer pressure, communication skills, decision-making and problem solving techniques. A primary prevention program for parents in pre-natal care and post-natal care in the home through home visitors.

GRANTEE: Kansas Committee for Prevention of Child Abuse  
PROJECT TITLE: Prevention Assistance  
FUNDING: \$5,000  
DESCRIPTION: This project will provide assistance to the Family & Children Trust Fund Subcommittee in assessing the progress of five trust fund projects and planning for improvement in the second year of the projects of the Trust Fund Subcommittee.

## FAMILY AND CHILDREN TRUST FUND GUIDELINES

The Family and Children Trust Fund was authorized in the 1980 Kansas legislative session by Senate Bill 609. The Trust Fund will provide funding for community based projects for the prevention of child abuse/neglect or spouse abuse. The program is administered by the Kansas State Department of Social and Rehabilitation Services. The Children and Youth Advisory Committee is responsible for review and approval of proposals.

### I. Eligibility of Applicants

To be eligible to receive Trust Fund grants, applicants must be organizations, agencies, community groups, governmental units or sub-units, public schools, colleges, or universities.

### II. Proposals Eligible for Funding Consideration

All proposals will be reviewed on the following criteria. If the criteria are met, the proposals are eligible for further review for funding consideration.

- A. Projects which focus on the prevention of child abuse/neglect or spouse abuse will be considered for funding. Prevention projects are those which are directed toward decreasing occurrences of abuse and neglect through community education, parent education, and services to families and children. Projects targeting either high-risk groups or the population at large are eligible.
- B. Projects dealing primarily with alcohol and drug abuse, juvenile delinquency, the developmentally disabled, or providing funds for day care centers will not be considered for funding as there are other grant funds specifically targeted for these services.
- C. The service to be provided is not a duplication of existing services available in the community.
- D. The project develops a new service or substantially expands on existing service. Proposals to simply maintain existing services will not be considered.

### III. Proposal Review Criteria

- A. The following criteria will be used in reviewing proposals that are found eligible for funding consideration.
  - 1. Does this project focus on prevention as opposed to treatment?
  - 2. Does the service to be provided offer a reasonable approach to the prevention of child abuse/neglect or spouse abuse in general, and for the target community or group in particular?
  - 3. Innovativeness of the project.
  - 4. Demonstration of community need for the particular type of service.
  - 5. Soundness of project start-up plans. Soundness of plan for on-going provision and administration of the services.
  - 6. Ability of agency to administer the program and deliver the service. Adequacy of staffing pattern and personnel qualifications.
  - 7. Degree to which the proposal reflects cooperation with and support from community, professional and voluntary organizations and individuals.
  - 8. Reasonableness of the budget.
  - 9. Adequacy of plan for assumption of cost by non-Trust Fund sources.

THE FAMILY AND CHILDREN'S TRUST FUND

The Kansas Committee learned a great deal from the process involved in implementing the Family and Children's Trust Fund. The following key steps are necessary in attempting to pass an original piece of legislation.

1) BEGIN EARLY AND ORGANIZE

We formed an Advocacy Committee six months prior to the opening of the legislative session. This committee was composed of representatives from the Governor's office, state agencies, children's advocacy organizations, legislators wives, and interested citizens. The First Lady of Kansas, Ramona Carlin, acted as co-chairperson of this committee. The adoption of the Trust Fund by the Governor in his legislative program was crucial in its passage.

2) DRAFT LEGISLATION AND DISTRIBUTE FOR REACTIONS

Our first draft was disseminated five months prior to the session to legislators and other interested individuals. Their reactions were extremely important in defining problem areas and possible solutions.

3) ALWAYS BE AWARE OF YOUR OPPOSITION THROUGHOUT THE PROCESS

It came to our attention that women's groups were interested in enacting similar legislation for shelters, which had been precendented in other states. We met with individuals from these groups, and broadened our concept to prevention of family abuse and family problems.

4) CHOOSE CAREFULLY THE LEGISLATORS WHO WILL ACT AS SPONSORS OF THE LEGISLATION

A DIVERSE GROUP IS IMPORTANT. Senator Frank Smith was very instrumental in this process, due to his committment to the bill and his awareness of the political climate in the Kansas Legislature.

5) DEVELOP A BROAD-BASED, STATEWIDE CONSTITUENCY NETWORK

We had the endorsement of 38 organizations and agencies. Within many of these organizations, there was an available statewide network. This component is of vital

importance from the beginning to the end of the process. Legislators vote according to their constituency's concerns. We prepared guidelines for support letters to enable individuals to feel more comfortable in their letter writing and phone calls.

6) BE AWARE OF COMMON CONCERNS EXPRESSED BY LEGISLATORS

One concern we heard continuously was regarding the means of funding. We prepared a statement explaining our rationale for using the marriage license fee, and distributed this to every legislator. Another concern was regarding what type of programs this money would be funding. Again, we prepared a concise outline or fact sheet explaining the various programs, and distributed it to every legislator.

7) LOBBY, LOBBY, LOBBY

We visited almost every legislator to explain the bill, answer questions, and confirm votes. If we received an indication of a possible "no" or a "maybe" from a legislator, we called on our constituency network. It worked miracles!

We encountered many potential crises in the last days of the session. It is important to anticipate possible problems, and above all, be aware of and available to your key legislators. Do not afford yourself the luxury of being secure no matter how positive it appears. It is our hope that every state will secure a Family and Children's Trust Fund. It makes a powerful statement of our commitment to the importance of the well-being of the family in our society. We are extremely proud of the process and of the time, support and commitment of the many, many individuals in our state which led to the enactment of the first state children's trust fund legislation, the Kansas Family and Children's Trust Fund law.

Attachment B

# Child Abuse Model Standards and Guidelines

FOR MULTIDISCIPLINARY TEAMS  
IN PENNSYLVANIA

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## INTRODUCTION

This handbook is intended to assist county child welfare agency staffs and other interested parties to develop and improve Multidisciplinary Team services to abused and neglected children and their families.

On October 1, 1976 Frank S. Beal, Secretary of the Department of Public Welfare, requested top level staff assistance from various State Departments to join with the Department of Public Welfare to establish a State level Multidisciplinary Team.

The Team's major goal for 1976-77 was to develop a model with standards and guidelines for use by county child welfare agencies in establishing a county Multidisciplinary Team. This booklet represents the Team's efforts at pulling together all the general ideas on the Multidisciplinary Team concept and adapting them to Pennsylvania's law and particular needs.

The following individuals were assigned to represent their respective departments on this Statewide Team:

### DEPARTMENT OF JUSTICE

Attorney General's Office  
Mr. Paul Schilling, Deputy Attorney General

### JUVENILE COURT JUDGES COMMISSION

Honorable Harvey N. Schmidt

### DEPARTMENT OF EDUCATION

Ms. Frances DeWitt, Special Assistant,\* Deputy Secretary's Office  
Mr. John Christopher, Director, Bureau of Instructional Support Services  
Ms. Marian Lohr, Coordinator\*\*, School Health Services

### DEPARTMENT OF HEALTH

Dr. Annette Lynch, Director, Bureau of Children's Services

### PENNSYLVANIA STATE POLICE

Captain Salvador Rodriquez, Director, Community Relations Division

**GOVERNOR'S COUNCIL ON DRUG & ALCOHOL ABUSE**

Mr. Peter Pennington, Executive Assistant Director  
Ms. Debbie Metz, Co-member\*\*

**DEPARTMENT OF PUBLIC WELFARE**

Office of Mental Health:

Dr. Alan Handford, Director, Children & Youth Services  
Dr. James Reisinger, Staff Assistant

Office of Mental Retardation:

Ms. Carol Chalick, Chief, Division of Preventive Services

Office of Children and Youth:

Mr. Joseph Spear, Child Welfare Specialist\*\*\*  
Mr. Lee Miller, Administrator, ChildLine

**FEDERAL REGION III**

Mr. Gary Koch, Child Development Specialist, Department of Health,  
Education & Welfare

**DEVELOPMENT ASSOCIATES**

Ms. Patricia Vasquez, Project Director, Development Associates

I thank those Team Members who took time, including weekends,  
from their busy schedules and contributed valuable information and assist-  
ance to us.

We hope the remaining pages of information are meaningful to you  
and we welcome your comments.

Gordon Johnson, Team Coordinator  
Director, Bureau of Child Welfare

- \* Resigned from the Team
- \*\* New Member
- \*\*\* Assistant Team Coordinator

## PREFACE

The management of child abuse cases cuts across various professional disciplines and at one time or another may require the expertise of physicians, social workers, attorneys, psychologists, nurses, etc. With this in mind the concept of the Multidisciplinary Team was developed to prevent confusion to the child and parents and to allow the various professionals involved to work cooperatively for the betterment of all concerned. The treatment approach can be planned and implemented and services increased or decreased as the need arises. Through proper case management by the Team, the child can be maintained in his/her home environment with minimal risk and maximum treatment benefits.

The use of Multidisciplinary Teams also removes the awesome decisions and responsibilities from one person and distributes the responsibility among the various Team members. Since it does transcend one profession, it is appropriate that all professions involved in a particular case should meet to discuss the best approach to helping each particular family.

The use of Multidisciplinary Teams has the added advantage of minimizing the confusion to the client because it presents a systemized approach and coordinates the activities of all concerned and involved. This prevents a flood of helping persons from visiting the family and offering services which may be in direct contradiction to one another. It allows one person to take the leadership role with a particular family and to coordinate and arrange for other services as they are needed or indicated.

Multidisciplinary Teams can serve another valuable function for both the community in general and the child welfare agency administrator in particular by identifying gaps in service in the community and working to see that the necessary services are developed to fill this void. The Multidisciplinary Team can either develop these services directly or use their influence to convince the appropriate political structure that expansion or development of services is necessary.

#### Legal Mandate:

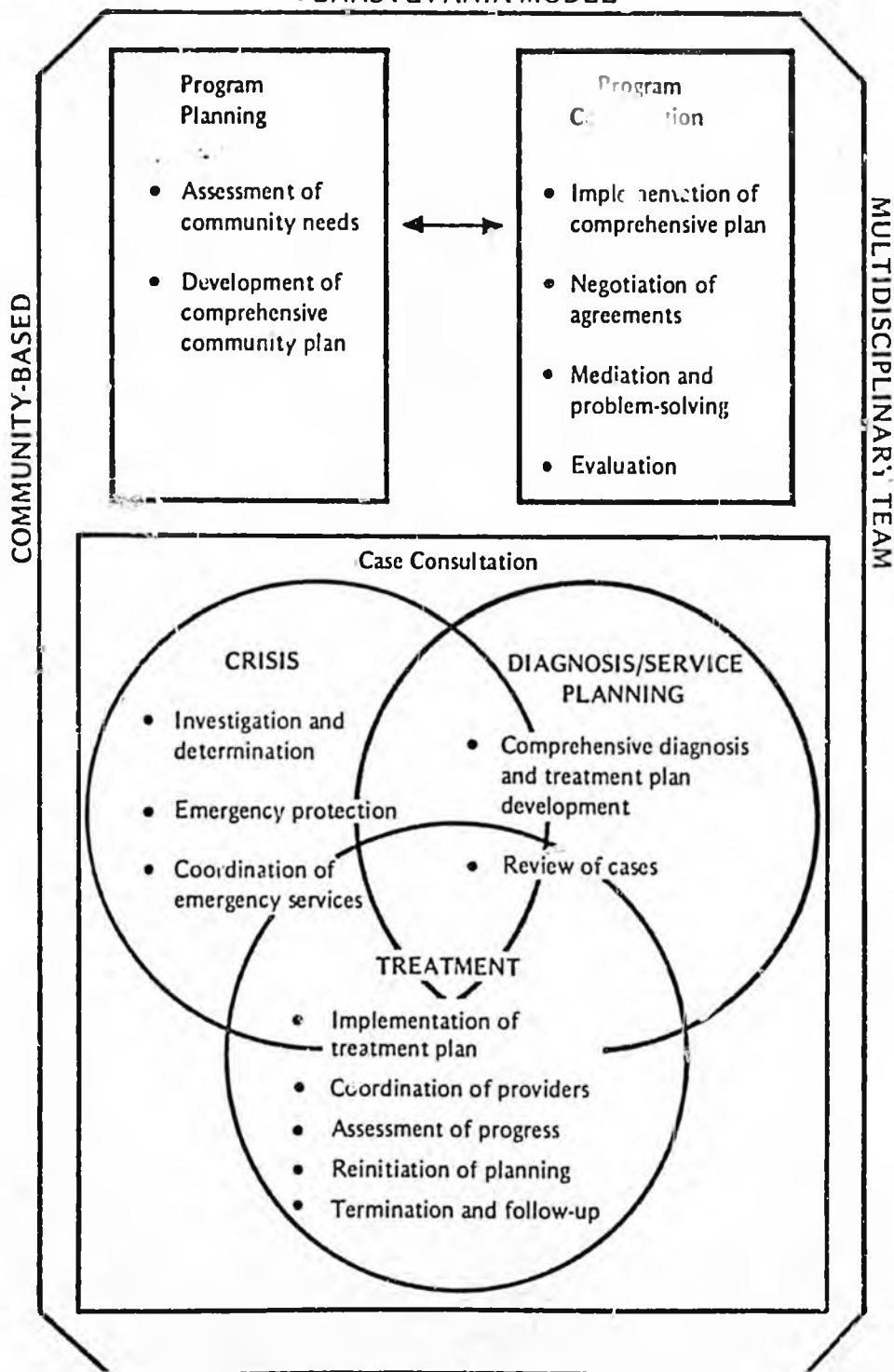
The Child Protective Services Law, Act of November 26, 1975, P.L. 438 (No. 124) mandates each county's child protective service to make available among its services for the prevention and treatment of child abuse the benefits of a Multidisciplinary Team. Attending departmental regulations, Chapter II, Section 23, stipulate that the Child Protective Service shall consult with and utilize the services of professional disciplines within their communities such as health, mental health, social services, education, law and law enforcement for the purposes of developing, reviewing, and implementing treatment plans for abused children and their families, and for receiving recommendations as to the improvement of overall service delivery by the Child Protective Service.

#### Acknowledgements:

In 1974 Congress enacted the Child Abuse Prevention and Treatment Act which made available for the first time monies to be used specifically for research and training in the area of child abuse and neglect. Part of this money was used to develop a contract with Development Associates, Inc., a Management and Governmental Consulting Firm located in Washington, D.C. The purpose of this contract was to conduct needs assessment surveys in all ten Federal Regions to ascertain what state and county agencies perceived as their greatest need in delivering services to abused and neglected children. The consensus of the various professions engaged in the planning and delivery of services to abused and neglected children in Region III was that there was a need for assistance in planning for and carrying out the roles of a Multidisciplinary Team as well as staff development assistance for the various state agencies involved in serving abusing and neglecting families.

The Office of Child Development which is implementing this act awarded a second contract to Development Associates to assist the states in Region III in developing a state model for Multidisciplinary Teams based on the uniqueness of each state's law and administrative structure for delivering services to abused children and their parents. The first step in this process was to designate a Team composed of the various professions that carried program planning and development responsibilities for child abuse at the state level. One of the functions of this team was to develop the following model and guidelines for local communities to use in developing Multidisciplinary Teams. The Bureau of Child Welfare in the Department of Public Welfare was assigned primary responsibility to coordinate the activities of this Team.

PENNSYLVANIA MODEL



## DESCRIPTION OF THE PENNSYLVANIA MODEL: COMPONENTS OF SERVICE

The schematic on page five (5) is a functional model for community-based teams – that is, it outlines the essential, interdependent functions necessary to a coordinated community approach to child abuse. The organizational structure adopted by different communities, however, will differ with their characteristics and needs. One community might, for example, develop a single group to undertake these functions while another might develop a number of highly specialized subcommittees. A team might also be composed of permanent members who meet regularly and consulting members who undertake a specific task or who bring special knowledge or skills needed for an individual case consultation.

It is anticipated that the process of implementing the total model will be a gradual one, with each community determining which functions it will address first. Because of any number of variables, counties are in a continuum in establishing MDT's. The Department of Public Welfare does not expect every county to implement MDT as described in this booklet. The purpose of the model, standards and guidelines is to assist communities in establishing a MDT. Counties are not required to develop their MDT's after the model described herein, but encouraged to take those parts or suggestions that would be of benefit to them.

This book should be considered as a beginning. Comments on its usefulness and suggested techniques would be appreciated.

I. Team Functioning/Organizational Issues

A. THE COMMUNITY-BASED TEAM SHALL HAVE A WRITTEN STATEMENT CLEARLY DELINEATING IT'S MISSION OR PURPOSE AND MEASURABLE GOALS.

1. The team should establish priorities among its goals and objectives which should include the following:

- review and assess community needs and resources
- assist the child welfare agency in the development of its local plan
- assist in developing needed resources
- develop public awareness of the problem of child abuse
- develop a component to provide consultation to the child welfare agency in specific cases
- assist in the identification and development of interagency relationships
- assist in educating organizations and individuals in identifying and reporting suspected child abuse
- seek citizen participation (Sec. III, Citizen Participation)

2. Specific objectives leading to the achievement of each goal should be identified.

3. Specific action steps, members' responsibilities and deadlines should be outlined.

B. THE COMMUNITY-BASED TEAM SHALL HAVE A WRITTEN STATEMENT OF HOW IT WILL OPERATE (OR A CONSTITUTION AND BY-LAWS IF MORE FORMAL STRUCTURE IS REQUIRED).

1. The statement should include:

- a method of nominating and selecting officers
- responsibilities of officers and members
- term of service for officers and members
- frequency, times and locations of meetings
- whether meetings are open or closed to the public
- a set of ground rules for the conduct of meetings
- attendance at meetings
- use of subcommittees

C. THE COMMUNITY-BASED TEAM, NOT THE INDIVIDUAL MEMBERS, SHALL BE PERMANENT SINCE EFFECTIVE PLANNING AND COORDINATION ARE A COMPLEX AND DYNAMIC PROCESS.

D. THE COMMUNITY-BASED TEAM SHALL SEEK THE SUPPORT OR SANCTION OF GOVERNMENTAL GROUPS IN THE COMMUNITY.

1. The community-based team should advise the political leadership of its efforts and provide periodic reports on its progress.
2. Plans and mechanisms for coordination of efforts with other pertinent public and voluntary citizens' committees should be developed by the team.
3. Firm linkages should exist between program planning/coordination and case coordination.
4. The team should meet regularly with the administrators of cooperating programs to review progress being made in the development of a coordinated service delivery system.

## COMMENTS

The purpose of developing by-laws or statements of operation is to provide clarity in goals and objectives as well as a permanent structure for the team. Equally important is a clear understanding of how the team is to operate. Each member should understand his or her responsibilities as well as such ground rules as how decisions are to be made. The team can also begin to build a support base in the community by informing the political leadership, other significant public and voluntary citizens' committees or councils as well as the community at large of its goals and progress in achieving them.

### II. Team Composition

#### A. THE COMPOSITION OF THE COMMUNITY-BASED TEAM SHALL REFLECT THE RANGE OF AMELIORATIVE AND TREATMENT RESOURCES AVAILABLE TO ABUSED AND NEGLECTED CHILDREN AND THEIR FAMILIES.

1. Representatives from the fields of social service, health, mental health, education, law enforcement, legal profession, and elected governmental officials should be included.
2. In areas where military bases are located, a representative of this sector should be included.
3. There should be representatives from the community at large (non-agency members) selected on the basis of geographical distribution; community patterns of ethnic background, income levels, educational levels, and occupations, as well as willingness to serve, expertise, and concern.

#### B. QUALIFICATIONS OF TEAM MEMBERS SHALL INCLUDE THE ABILITY TO CONTRIBUTE TO THE SOLUTION OF PROBLEMS AND TO CARRY OUT THE RESPONSIBILITIES OF MEMBERSHIP THROUGH A WILLINGNESS TO SERVE ON A CONTINUING BASIS. MINIMALLY, MEMBERS SHALL HAVE DEMONSTRATED AN INTEREST IN AND CONCERN ABOUT CHILD ABUSE AND NEGLECT.

1. Members who represent agencies should be persons of sufficient stature that their actions reflect their agencies' policies. At the program coordination level, these members should be administrators; at the case level, supervisory and direct service staff. In either case, members should be able to make commitments on behalf of their individual organizations.

#### COMMENTS

7. Initial composition and size of a team will most often be determined by purpose and goals as well as by the level of interest and commitment on the part of agencies and individuals. A team should strive to incorporate all organizations in the community which are or which could be providing ameliorative and treatment services. While a team should be large enough to be representative of the area it serves, caution must be taken so that it does not become unwieldy. A team might, for example, be composed of permanent and consulting members or might use mechanisms such as ad hoc committees.

If a community-based team is to become a realistic and effective joint planning and decision-making body, it is critical that members appointed by various organizations have the authority to represent their agencies' interests and points of view. Members should be able to stimulate implementation of plans by influencing the necessary political and administrative action and financing.

### III. Citizen Participation

A. THE COMMUNITY-BASED TEAM SHALL DEVELOP MECHANISMS TO SEEK CITIZEN PARTICIPATION IN ORDER TO ENSURE AN ACCURATE VIEW OF AREA NEEDS AND PATTERNS AS WELL AS CITIZENS' SUPPORT OF PROGRAMS WITH THEIR IDEAS, LABOR, FUNDS, AND UTILIZATION OF THE SERVICES.

1. The team should identify sources of leadership in both the public and private sector.
2. The team should identify persons or groups in the community which do or could help in preventing child abuse and neglect.
3. The team should identify social and economic problems or patterns in the community which contribute to the problem of child abuse and neglect.
4. The team should make reports to the community detailing problems and needs, program plans and progress, and recommendations for changes needed to improve service effectiveness.
5. Team meetings dealing with community needs assessment, program planning, and program evaluation must be open to the public.
6. The team should develop linkages with voluntary organizations and citizens' groups.
7. The team should assist in the development of public awareness and education campaigns.

#### IV. Area/Coverage

- A. THE CPS IN ALMOST ALL CASES FUNCTIONS ON A SINGLE COUNTY BASIS. HOWEVER, THE COMMUNITY-BASED TEAM MAY DEFINE ITS SERVICE AREA DIFFERENTLY, BASED ON SUCH FACTORS AS:
1. Sufficient population base;
  2. Necessary financial resources;
  3. Linkage through common business and social interests and transportation systems;
  4. Political boundaries;
  5. Existing service delivery boundaries or catchment areas.

#### COMMENTS

One of the first decisions which a team must make is the area which it will serve -- a single county; sections of a large city; or, particularly in some rural areas, all or part of several counties. Factors such as the type of team, size of the population requiring services, proximity of the people to the services, team staffing and budgetary constraints will all affect this decision. The team should also determine whether or not the area chosen has common problems which are amenable to solution through joint efforts.

#### V. Community Standards of Care

- A. THE COMMUNITY-BASED TEAM SHALL WORK WITH THE CPS IN DEVELOPING REALISTIC AND ATTAINABLE STANDARDS AND GUIDELINES COMPATIBLE WITH EXISTING REGULATIONS FOR USE BY COOPERATING AGENCIES AND INDIVIDUAL PROFESSIONS IN WORKING WITH CHILD ABUSE/NEGLECT CASES.

1. The standards and guidelines should include at least the following areas:

- criteria for treatment plans
- minimum frequency of contacts with families
- criteria for format and timing of case review
- criteria for maximum caseload size-for team and type of staff
- criteria for determining timing and procedures for termination of stabilization of cases
- time between maximum progress and termination/stabilization
- policies re follow up of terminated/stabilized cases
- procedures for monitoring follow up contacts

#### COMMENTS

The team should bear in mind that if standards are set too low, they may be easily achieved but may restrict progress. On the other hand, standards that are set too high may not be attainable in some communities, and frustration can be the result. By determining desirable patterns of services that are within the realm of reality and practicality, teams can measure needs by comparing existing patterns with the desirable ones. This process will provide the necessary groundwork for thorough program planning and development.

#### VI. Program Planning/Development

- A. THE COMMUNITY-BASED TEAM SHALL IDENTIFY, REVIEW AND ASSESS COMMUNITY PROGRAMS FOR ABUSING AND NEGLECTING FAMILIES, WITH A VIEW TOWARDS DESCRIBING THE EXISTING SERVICE DELIVERY SYSTEM. THE TEAM SHALL DEVELOP A REPORT OUTLINING ITS CONCLUSIONS AS TO THE COMMUNITY'S PROBLEMS, SIGNIFICANT GAPS OR OVERLAPS, AND OBSTACLES TO THE DEVELOPMENT OF A COORDINATED SERVICE DELIVERY SYSTEM.

## THE DEVELOPMENT OF A COORDINATED SERVICE DELIVERY SYSTEM.

1. The elements of a coordinated system include:
  - identification and reporting
  - investigation
  - diagnosis and treatment planning
  - long and short term treatment and follow up
  - training of professionals
  - community education
  - prevention
  - program evaluation and monitoring
2. The review and assessment should include not only those organizations and individuals currently providing services but also others in the community which could provide ameliorative or treatment services.
3. Input should be sought from any human service agencies and/or planning groups in the community.
4. Information on problems and needs should be sought from clients of the service delivery system.
5. The team should review coordination procedures within and among agencies.
6. The report on conclusions should describe the procedures currently used to serve abusing and neglecting families, the types of services provided, and the agencies providing services. The assessment should consist of relevant statistical information as well as opinion, and the analysis of these to determine problems.

B. BASED ON THE CONCLUSIONS AND FINDINGS OF THE REVIEW AND ASSESSMENT, A COMPREHENSIVE COMMUNITY PLAN SHALL BE DEVELOPED TO STRENGTHEN THE SERVICE DELIVERY SYSTEM.

1. The plan should establish roles and responsibilities for cooperative community structures to prevent and treat child abuse and neglect.
2. The plan should recognize Child Welfare's mandate and legal responsibility to establish and maintain a MDT.
3. The plan should include:
  - measurable goals (short term, intermediate, and long term)
  - priorities
  - operational objectives
  - specific action steps to be undertaken by the team
  - mechanisms for ongoing evaluation
4. The plan should consider adaptation of existing services as well as development of new ones.
5. Recommendations for coordination needed at both the program or system level and case level should be included.
6. The broadest possible community participation should be sought in the development of the plan.
7. This plan should include recommendations to assist the agency director in developing the "Local Plan."

C. THE COMMUNITY-BASED TEAM SHALL ASSIST THE COMMUNITY, LOCAL CITY AND COUNTY GOVERNMENTAL OFFICIALS AND STATE LEGISLATORS IN UNDERSTANDING CHILD ABUSE AND NEGLECT AND IN THE FORMULATING OF LEGISLATION AND REALISTIC APPROPRIATIONS FOR SERVICES TO ABUSING AND NEGLECTFUL FAMILIES.

1. The team should inform the community and its political leadership of the results of its needs assessment.
2. The team should be an advocate for its comprehensive plan with public and private agencies and the political leaders.
3. The team should participate in the public hearings for the local plan.

D. THE COMMUNITY-BASED TEAM SHALL SET THE DIRECTION FOR SOCIAL ACTION TO IMPROVE THE ECONOMIC AND SOCIAL CONDITIONS WHICH CONTRIBUTE TO THE PROBLEM OF ABUSE AND NEGLECT THROUGH THE DEVELOPMENT OF PUBLIC POLICIES WHICH STRENGTHEN FAMILY LIFE.

E. THE TEAM SHALL OBTAIN WRITTEN AGREEMENTS FROM THE AGENCIES AND ORGANIZATIONS WITHIN THE COMMUNITY'S SERVICE DELIVERY SYSTEM SPECIFYING THEIR ROLE IN IMPLEMENTING THE COMPREHENSIVE COMMUNITY PLAN.

1. The agreements might include:

- referral procedures
- criteria for cases to be accepted by each
- procedures for sharing information on the diagnosis and progress of cases involving more than one agency
- mechanisms for regular review of agreements and revision as necessary
- procedures for joint staff training
- financial agreements

## COMMENTS

A thorough needs assessment must be undertaken before an effective plan can be developed. It is crucial that real needs based on facts, not merely opinion be identified. The problems which appear most obvious may be those for which a solution is already known and may not reflect the more critical problems underlying the service delivery system which should be addressed in the plan.

The more directly that a goal can be related to a specific part of a problem, the more successful planning efforts will be. Although it is difficult to develop realistic long-range plans because changes in conditions upon which goals are based are not always predictable, it is important that community-based teams attempt long-range planning to set the overall framework of their shorter term goals and efforts. It is also essential that the team establish priorities among its goals to reduce confusion as to which activity is most important and to provide direction as to where scarce resources can best be used. In doing this, the team should always keep in mind the interdependence of various activities.

Using the service delivery standards, data from their needs assessment, and the comprehensive plan as a foundation, the team should seek appropriate agreements from all of the organizations in the service delivery system, specifying their roles and responsibilities and how they will interface with others. Most organizations have written policies and regulations which govern their actions and determine the area they serve, clients served, and kinds of services provided. The inter-agency agreements will serve as mechanisms for implementing the comprehensive community plan.

## VII. Case Consultation

THE COMMUNITY-BASED TEAM SHALL OFFER THE SERVICES OF MULTIDISCIPLINARY CASE CONSULTATION GROUP(S) TO THE CHILD WELFARE AGENCY. WHEN THE AGENCY UTILIZES SUCH CONSULTATION, THE MULTIDISCIPLINARY GROUP BECOMES A PART OF THE CHILD PROTECTIVE SERVICES. AS SUCH THEY ARE BOUND BY THE SAME CONFIDENTIALITY STRICTURES AS THE CPS STAFF.

- \* Multidisciplinary consultation should be available during the three basic phases of the management of child abuse cases - crisis intervention, diagnosis/treatment planning, and treatment implementation.
- \* Depending on a county's characteristics and its needs, the community based team might develop one group which could coordinate services in each of the three phases; or it might develop a number of specialized groups.
- \* The multidisciplinary consultation group(s) should provide a forum for the sharing of appropriate information on diagnosis, treatment plans and progress among professionals involved with a child abuse case.
- \* The multidisciplinary group(s) should ensure that information on problems of coordination and needs for resources is shared with program planning and coordination components of the community based team.

THE LOCAL CHILD WELFARE AGENCY SHALL DETERMINE WHICH CASES ARE IN NEED OF A MULTIDISCIPLINARY CASE CONSULTATION GROUP'S ASSISTANCE.

- \* Appropriate cases for referral to a multidisciplinary group should include those where it is questionable whether or not a child can safely remain in the home, where specific treatment needs are not clear, where it is questionable whether or not a child can be safely returned to the home, or where numerous community resources and treatment services must be coordinated.

MULTIDISCIPLINARY CONSULTATION GROUPS DEALING WITH CRISIS INTERVENTION SHALL INCLUDE THOSE PROFESSIONALS NECESSARY TO ASSIST CPS WITH ITS INVESTIGATION, PROVIDE IMMEDIATE PROTECTION TO THE CHILD, AND COORDINATE EMERGENCY SERVICES TO THE FAMILY.

- \* A crisis group should meet when child abuse is suspected and pool and evaluate available information in order to make two critical decisions - do the injuries seem to indicate child abuse and is the home safe for the immediate return of the child.
- \* The crisis group should coordinate the provision of emergency services to ensure that the family is served more efficiently in times of crisis by the various disciplines without long waits for services. Services might include short term counseling, medical assistance, emergency homemaker or child care, emergency financial assistance, family shelters, crisis nursery, emergency removal and placement of the child.
- \* The crisis group should ensure that duplicate investigations of a family do not occur, i.e., that information already collected is used where possible and allowable by law.

THE MULTIDISCIPLINARY GROUP PROVIDING CONSULTATION TO CPS ON DIAGNOSIS AND THE DEVELOPMENT OF TREATMENT PLANS FOR CHILD ABUSE CASES SHALL INCLUDE ONLY PROFESSIONALS WITH THE REQUIRED EXPERTISE TO FULFILL THE PURPOSE OF THE GROUP, I.E. ASSESSING MEDICAL, PSYCHOLOGICAL, LEGAL, AND SOCIAL ASPECTS OF COMPLEX CASES AND DEVELOPING A COMPREHENSIVE TREATMENT PLAN.

- \* The group should include skilled representatives of the various disciplines who will meet regularly as a core group to provide consultation to CPS on cases as well as ad hoc consulting members who have knowledge or a special skill needed for a particular case. The specific professions represented on the core group will vary with availability as well as the contribution they may be expected to make to the team. Where possible, professionals should be drawn from local treatment agencies in order to provide a referral liaison between the team and agency.
- \* This group should assist the CPS by developing a comprehensive diagnosis and treatment plan for each case referred to it. The plan should include:
  - a. a statement of the specific problems a family has and possible causes
  - b. an assessment of the needs and strengths of the family
  - c. treatment goals, short and long range objectives—with dates
  - d. identification of resources to be used
  - e. a schedule for providing services, coordinating the needs of a family and those of the service providers
  - f. a schedule for reviewing treatment progress
  - g. designation of a case monitor to maintain frequent and supportive contact with the family and service providers.
- \* This group should also assist in:
  - a. identifying and resolving potential problems in service delivery
  - b. developing a recall system to ensure that cases will be reviewed at predetermined intervals
  - c. reviewing a representative sample of cases to assess whether services are being utilized as planned and whether agencies are responsive to referrals of abusing families
  - d. ascertaining reasons for inadequate utilization of services
  - e. developing procedures for intervening when serious problems of coordination of service delivery occur.

## COMMENTS

The county child welfare agency should assume the leadership role in establishing a MDT in the county. If there are two or more component groups, a member of the CPS does not necessarily have to be chairperson of each component. Because the CPS has the legal mandate to provide protective services, a member of the CPS should be directly responsible for the Case Management Component.

### VIII. Parents'/Children's Rights

THE CASE MANAGEMENT TEAM SHALL ADHERE TO THE CPS LAW AND REGULATIONS CONCERNING THE RIGHTS OF PARENTS AND CHILDREN INCLUDING BUT NOT LIMITED TO THE FOLLOWING.

- \* Their rights to confidentiality of information.
- \* Their right to legal representation at any stage of the proceeding.
- \* Their right to receive all necessary treatment and social services to prevent future abuse and/or neglect if appropriate.
- \* Their right to court hearings for detention hearings, transfer of custody, etc.
- \* Their rights regarding amending, sealing, and expunging reports in which they are named.
- \* Children's right to admission to any public or private hospital for treatment
- \* Their right to a completed investigation within 30 days
- \* Children's right to protective custody
- \* Their right to appropriate and proper notification regarding receipt of the report status, changes, etc.

THE CASE MANAGEMENT TEAM SHALL ENDEAVOR TO INVOLVE THE PARENT(S) AND, IF APPROPRIATE, THE CHILD IN THE DIAGNOSIS AND TREATMENT PLANNING PROCESS AND DURING ONGOING REVIEWS.

- \* The team should invite the parent(s) and the child, if appropriate, to participate in meetings during which decisions are made about them.
- \* The case management team should develop procedures for assisting the family in understanding the results of meetings, decisions, and the status of the child.
- \* The team should endeavor to obtain the family's agreement to (or at least acknowledgement of) the treatment plan selected.

THE CASE MANAGEMENT TEAM SHALL DEVELOP A MECHANISM FOR CLIENT PARTICIPATION IN PROGRAM PLANNING AND EVALUATION.

#### COMMENTS

While the team must be guided by existing law and regulations regarding parents' and children's rights, it should give careful consideration to developing procedures for involving families in the decisions made about them in order to secure their cooperation in the treatment plan.

There has been increased legislative activity and litigation concerning the individual's right to privacy and freedom of information as well as parents' rights and professional malpractice. Case management teams should be aware of these trends in order to make fully informed decisions in regard to their own practices and procedures.

**IX. Program Evaluation/Research**

**A. THE COMMUNITY-BASED TEAM SHALL ENCOURAGE ALL AGENCIES TO MAINTAIN THE TYPES AND AMOUNT OF DATA NECESSARY FOR PROGRAM PLANNING AND EVALUATION.**

**1. The team should have access to data such as:**

- number of cases identified--by source
- number of cases investigated
- number of cases founded, indicated, unfounded
- classification of cases (type of abuse or neglect)
- amount of recidivism in founded and indicated cases
- number of organizations providing services -- by organization
- services provided--by organization
- cost of services--by type and per client
- number of case conferences held
- number of joint treatment plans developed
- number of cases terminated
- number of professional training sessions--by source
- number and types of public awareness endeavors
- other information as might be necessary e.g., age, sex, and location of child.

**B. THE COMMUNITY-BASED TEAM SHALL REVIEW AND EVALUATE THE COMMUNITY'S OVERALL SERVICE DELIVERY SYSTEM FOR CHILD ABUSE/NEGLECT CASES ON A REGULAR BASIS--THE EFFECTIVENESS AND EFFICIENCY AS WELL AS THE ACCEPTABILITY OF SERVICES.**

1. The team should establish mechanisms which will assure a regular means of securing feedback from all cooperating agencies providing services and from service recipients.
  2. The team should build measurable factors into all goal statements.
- C. THE COMMUNITY-BASED TEAM SHALL COOPERATE WITH INDIVIDUALS AND GROUPS WHO ARE CONDUCTING BONA FIDE RESEARCH ON CHILD ABUSE AND NEGLECT BY PROVIDING APPROPRIATE INFORMATION.
1. The team should ensure the confidentiality of clients by providing only non-identifiable information.
  2. The team should ensure that the researcher is adhering to acceptable research practices such as those governing the protection of human subjects.

#### COMMENTS

In order to do effective planning, the team must evaluate, on a regular basis, the total system's effectiveness and efficiency as well as its impact on individual families. An assessment which includes management policies and procedures as well as service practices will provide the team with the data necessary to inform policy makers and the community at large of needs for progressive changes in policies and procedures as well as the need for additional and/or different resources.

# State Action on Child Protection

Attachment C

	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Missouri	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska
<b>What Elements of Child Abuse Must Be Reported</b>																											
nonaccidental	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
neglect	X	X	X	X	X	X	X	X	X	X	X	1	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
sexual abuse	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
emotional abuse	X			X	X		X	X	X				X			X	X	X		X	X	X		X	X	X	
<b>Who Must Report</b>																											
doctors	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X
social workers	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X
teachers	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X
law enforcement	X	X	X	X	X	X	X			X			2	X	X	X			X	X	X	X	X	X	X	X	
<b>When Must Report Be Made</b> <i>(I = Immediately, P = Promptly, S = Soon, L = Longer)</i>	I	I	I	I	L	I	I	I	I	I	P	L	I	I	L	P	I	I	I	S	I	I	I	I	I	P	3
<b>To Whom Must Report Be Made</b> <i>(SS = Social Services, C = Court, PO = Law Enforcement)</i>	SS PC	SS	SS PO	SS PO	SS PO	SS PO	SS PO	SS	SS	SS	SS	PO	SS	SS/ PO	SS	SS/ C	SS	SS/ PO	SS	SS/ SS	SS/ SS	SS	SS	SS/ PO	SS	SS	PC
<b>Immunity for Good Faith Report</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Penalty for Not Making Report</b> <i>(CR = Criminal, CI = Civil)</i>	CR		CR	CR/ CI	CR	CR/ CI	CR	CR	CR	CR				CR	CR/ CI	CR	CR	CR	CI		CR	CI	CR	CR	CR	CR	CI
<b>Abrogation of Privileged Communication</b>																											
husband		X				X	X				X		X	X						X	X					X	X
doctor	X	X				X					X		X	X												X	X
all but attorney/client	X		X	X				X	X			X		X		X	X	X		X	X				X		X
<b>Photographs and X-rays</b>			PX	PX	PX	PX			PX				PX	PX	PX		PX		PX		PX				PX		PX
<b>Temporary Protective Custody - Emergency Removal</b>	X	X	X	X	X	X	X		X			X	X	X		X	X	X		X	X	X	X	X	X	X	X
<b>Central Registry</b>	X	X	X	X	X	X	X	X	X	5	X	X	X	5	X		5	X		X	X	X	5	X	X	X	X
<b>Child Protection Team</b>					6	X							X							6	6	6		6	6	6	X
<b>Guardian ad Litem/Counsel</b>	X	X	X	X	X	X	X		X	X		X	X	X		X	X		X	X		X	X	X	X	X	X
<b>Public Education</b>					X				X						X	X		X				X	X	X	X	X	X

	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming	Washington, D.C.	Total
<b>What Elements of Child Abuse Must Be Reported</b>																									
nonaccidental	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	51
neglect	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	50
sexual abuse	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	46
emotional abuse	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	37
<b>Who Must Report</b>																									
doctors	X	X	2	X	X	X	X	2	X	X	X	2	X	X	2	2	2	X	X	X	X	X	2	X	51
social workers	X	X	2	X	X	X	X	X	X	X	X	2	X	X	2	2	2	X	X	X	X	X	2	X	51
teachers	X	X	2	X	X	X	X	X	X	X	X	2	X	X	2	2	2	X	X	X	X	X	2	X	51
law enforcement	X	2	X	X	X	X	X	X	X	X	X	2	X	X	2	2	2	X	X		X	X	2	X	42
<b>When Must Report Be Made</b> <i>(I = Immediately, P = Promptly, S = Soon, L = Longer)</i>	P		P	I	I	3	I	I	P	I	I	L	3	I	I	I	I	3	I	I	I	I	I	I	I=36, P=6, L=4, S=1
<b>To Whom Must Report Be Made</b> <i>(SS = Social Services, C = Court, PO = Law Enforcement)</i>	SS/ PO	SS	SS	4/ SS	SS	SS	SS	SS/ PO	SS	SS/ PO	SS	SS	SS/ PO	4/ SS	all	SS/ PO	SS/ PO	SS	SS	SS/ PO	SS	SS/ PO	SS/ PO	SS/ PO	SS=28, SS/PO=19, PO=2, SS/CI=1, all=1
<b>Immunity for Good Faith Report</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	51
<b>Penalty for Not Making Report</b> <i>(CR = Criminal, CI = Civil)</i>	CR	CR	CR	CR	CR/ CI	CR		CR	CR	CR	CR	CR	CR/ CI	CR	CR	CR	CR	CR	C	CR	CR	CR	CR	CR	CR=33, CI=2, CR/CI=5
<b>Abrogation of Privileged Communication</b>																									
husband					X	X				X	X			X					X					X	19
doctor	X	X		X	X	X		X	X	X	X		X			X			X	X		X		X	22
all but attorney/client	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	20
<b>Photographs and X-rays</b>			PX	PX			PX		P	PX		PX				X	PX		PX		PX		PX		PX=21, P=2, X=1
<b>Temporary Protective Custody - Emergency Removal</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	38
<b>Central Registry</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5	X	X	41
<b>Child Protection Team</b>											6		6		X				X				X	6	
<b>Guardian ad Litem/Counsel</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	46
<b>Public Education</b>					X					X											X	X	X	X	13

1 "Neglected child" is defined but not included in the required reporting statute.  
2 Require reporting by "any person."

Trends in Child Protection Laws - 1979


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January H. Scott

October 24, 1983

Heidi Borson  
c/o House Research Agency  
Pouch Y  
Juneau, AK 99881

Dear Ms. Borson:

Enclosed is the information you requested on the Kansas Family & Children's Trust Fund legislation.

I hope this information will be helpful to you. If you should have further questions, please do not hesitate to contact our office.

Sincerely,

*January H. Scott*

January H. Scott  
Executive Director

JHS: jh  
Enc.

STATUTES ESTABLISHING THE KANSAS FAMILY AND CHILDREN TRUST FUND

**23-110.** Index of records; certified copies; fees; disposition of moneys; family and children trust fund; vital statistics fee fund. The secretary of health and environment shall index all records thus received and, when applied to, shall issue a certified copy of the same which shall be prima facie evidence in all courts and places of the facts stated therein. For each certified copy a fee shall be paid to the secretary in an amount prescribed in accordance with K.S.A. 65-2418 and amendments thereto and to be disposed of in the manner provided therein. The secretary shall keep an accurate account of all fees received from the judges of the district court and all other sources. Such secretary shall remit all moneys received by or for such secretary from the marriage license fee provided for by K.S.A. 1980 Supp. 23-108 and amendments thereto to the state treasurer at least monthly. Upon receipt of each such remittance the state treasurer shall deposit the entire amount thereof in the state treasury. Twenty percent (20%) of each such deposit shall be credited to the state general fund and of the balance of each such deposit, seventy percent (70%) shall be credited to the family and children trust fund, and thirty percent (30%) shall be credited to the vital statistics fee fund. All expenditures from the family and children trust fund shall be made in accordance with K.S.A. 1980 Supp. 75-5328, and all expenditures from the vital statistics fee fund shall be made in accordance with K.S.A. 65-2418.

**75-5328.** Family and children trust fund; grants, gifts and bequests; expenditures for certain purposes; "educational programs" defined; director of services to children and youth to exercise powers and duties under section. (a) There is hereby created in the state treasury the family and children trust fund. The secretary of social and rehabilitation services may apply for, receive and accept grants, gifts and bequests from any source, governmental or private, for the purposes for which money may be expended from the family and children trust fund under subsection (b), and the secretary shall remit all moneys so received to the state treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the family and children trust fund.

(b) Moneys in the family and children trust fund shall be used for the following purposes: (1) Matching federal moneys to purchase services relating to community-based programs for the prevention of problems of families and children; (2) providing start-up or expansion grants for community-based prevention projects or educational programs for the problems of families and children, primarily but not limited to, child abuse and neglect and family abuse; and (3) study and evaluate community-based prevention projects and educational programs for the problems of families and children. For the purpose of this subsection (b), "educational programs" shall include instructional and demonstration programs whose main purpose is to disseminate information and techniques or to provide services for the prevention of problems of families and children. No moneys in the family and children trust fund shall be used for the purpose of providing services for the voluntary termination of pregnancy.

(c) The advisory committee to the division of services to children and youth established by K.S.A. 75-5325, or its successor, shall advise the secretary and the director of services to children and youth in detail on the expenditures of moneys in the family and children trust fund.

(d) All expenditures from the family and children trust fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of social and rehabilitation services or by a person or persons designated by the secretary.

(e) The secretary shall designate the director of services to children and youth to exercise the powers and perform the duties granted to and imposed upon the secretary under this section.

## CHILDREN AND YOUTH ADVISORY COMMITTEE

The Secretary of Health and Environment or designee  
The Secretary of Social & Rehabilitation Services or designee  
The Secretary of Human Resources or designee  
The Commissioner of Education or designee  
The Chief Justice of the Supreme Court or designee  
Two State Senators appointed by the President of the Senate  
Two State Representatives appointed by the Speaker of the House  
Five Members appointed by the Governor

Has broad general powers of oversight with regard to children's programs. Is the final awarding authority for the Family and Children Trust Fund Grants.

## FAMILY AND CHILDREN TRUST FUND SUBCOMMITTEE

Four Members of the Children and Youth Advisory Group

One Member Representing Kansas Action for Children  
One Member Representing Kansas Committee for the Prevention of Child Abuse  
One Member Representing Kansas Association of Domestic Violence Programs  
One Member Representing Mental Health Association in Kansas  
One Member Representing Kansas Congress of Parents and Teachers

Has primary responsibility for developing guidelines, reviewing grant applications, and monitoring the progress of projects.

## FAMILY AND CHILDREN TRUST FUND GRANT AWARDS

GRANTEE: Regional Crisis Center  
 PROJECT TITLE: Children in Crisis  
 FUNDING: \$11,940 (2nd yr)  
 DESCRIPTION: A support program geared to identifying and alleviating stress as it impacts upon children in crisis. A comprehensive approach of assessment, treatment and/or referral will be conducted under the direction of a child specialist. Assistance via parental skill building and counseling for mothers/parents will be facilitated by a family therapist. Training for staff and volunteers in child development, assessment and case management will be provided on a weekly basis.

GRANTEE: Parents Time Out  
 PROJECT TITLE: Parents Time Out  
 FUNDING: \$12,000 (2nd yr)  
 DESCRIPTION: This program is designed to provide parent educational support to families. The focus is on positive parenting without overt identification of high risk families. The service is provided based upon ability to pay with low-or-no pay slots reserved for referred or identified high stress families.

Services include: 1) Respite child care with age appropriate programming focused on development of positive self-image; 2) parent education, including intervention with child care staff about each child and his/her development, a resource library and room, weekly opportunity for support, group discussion and periodic parenting program; and 3) support for identified support and interaction/counseling by the project coordinator around parent/child issues.

GRANTEE: Domestic Violence Assoc. of Central Kansas  
 PROJECT TITLE: Implementation of Educational Services to USD #305 Public Schools on Prevention of Sexual Abuse to Children and Domestic Violence  
 FUNDING: \$7,540  
 DESCRIPTION: The implementation of educational services to the USD #305 Public School system. Two components of this project are the prevention of sexual abuse of children and understanding of the dynamics of domestic violence within the family unit from a child's perspective.

GRANTEE: Reno County Health Department  
 PROJECT TITLE: Parental Support Project  
 FUNDING: \$14,986  
 DESCRIPTION: Establish a Basic Parenting Educational Program consisting of 12 two hour sessions; child growth and development, parenting skills and techniques and resources available to assist parents. The course would cover needs of children from infancy to 18 years, and entered at any age level needed by parents.

GRANTEE: USD #259, Wichita Public Schools, Curriculum Services Division  
 PROJECT TITLE: Pilot Project Program for Implementing a Prevention Program on Child Sexual Assault in grades 4-6.  
 FUNDING: \$4,905  
 DESCRIPTION: This educational program is focused on 1) providing teachers with an understanding of child sexual assault and 2) making children aware

# The Children's Trust Fund



## Children's Trust Fund

In the spring of 1980 Kansas became the first state to pass legislation creating a Family and Children's Trust Fund that would use revenues from surcharges placed on marriage licenses for prevention programs for children.

We reported on the new program in our January-February 1981 issue and carried an update, "Kansas and The Children's Trust Fund" by Jean Glenn in the May-June 1982 issue. Now we thought readers would like to know that six other states—Washington, Iowa, Virginia, Michigan, Rhode Island and California—have also established public funds to support preventive services. Thomas L. Birch describes the growth and operation of the Trust Fund concept in the following article, condensed and reprinted with permission from *Caring* (Vol. 8, No. 4), published by the National Committee for Prevention of Child Abuse.

**A**n approach to preventing child abuse that is catching on rapidly is the Children's Trust Fund. . . .

*Thomas L. Birch is coordinator of the National Child Abuse Coalition, Washington, D.C.*

Revenues to build the Children's Trust Funds are generated by surcharges on marriage licenses, birth certificates, or divorce decrees, or by specially designated refunds of the state income tax. Grants from the fund go to preventive programs for child and family abuse, and dis-

tribution of the grants is supervised by an advisory group of individuals with a demonstrated interest in preventing child abuse.

Prevention is the central focus of the Children's Trust Fund concept. The idea was first conceived by Ray E. Helfer, M.D., a pediatrician widely recognized for his pioneer work in the field of child abuse. Helfer is a former vice president of the National Committee for Prevention of Child Abuse (NCPCA).

NCPCA state chapters have been in the forefront of the Children's Trust Fund movement. Through the efforts of NCPCA volunteers, Kansas, in April 1980, became the first state to create this funding mechanism. The Kansas statute resulted from two pieces of legislation. One established a Family and Children's Trust Fund by placing a \$7 surcharge on each marriage license issued. The second bill created a 14-member Children and Youth Advisory Committee of nine state agency members and five concerned citizens appointed by the governor.

Approximately \$130,000 is generated each year for the Kansas Family and Children's Trust Fund. The fund is administered by the Division of Services to Children and Youth under the guidance of the advisory committee. The members of the committee, acting as children's advocates, also advise state agencies serving children and recommend statutory policy to the governor and the legislature.

Grants from the Kansas fund are limited to \$15,000 and go to community-based preventive projects or educational programs. Examples of projects that have received help are

*(Continued on inside back cover)*

GRANTEE: Catholic Social Services  
PROJECT TITLE: ASSIST project  
FUNDING: \$11,999.20 (2nd yr)  
DESCRIPTION: Single Parents and Family Support Program focused on information, socialization, and recreation, operating on the philosophy that family functioning may be enhanced by providing single parents the opportunity to learn, share, and have some of their own needs met, thereby child abuse or neglect may be reduced or prevented.

The Grantparent group is based on the belief that general family functioning in households incorporating single parents and their children can be enhanced by addressing concerns of grandparents and acknowledging their importance in the parenting process.

These "high risk" families are single, poor, isolated, immature, and have unrealistic expectations of children, personal difficulties and usually reside with own family.

GRANTEE: Johnson County Coalition for Prevention of Child Abuse  
PROJECT TITLE: Self-Care Education Project  
FUNDING: \$4,800 (2nd yr)  
DESCRIPTION: This will be used to develop a manual and provide training (not printing costs or printing plastic cards) "I'm in Charge" for latchkey children and their parents.

GRANTEE: Kansas Research Institute  
PROJECT TITLE: Family Life Education: On the Job  
FUNDING: \$13,900  
DESCRIPTION: This project was to establish and develop a primary child abuse prevention program through a family life education curriculum applicable to industrial and other business settings. Objectives are to improve family functions, reductions in number of children separated from their families, increase job satisfaction and lower overall public costs. Provide a course in family functioning skills through training workshops for company employees during working hours.

GRANTEE: Ourselves and our Families  
PROJECT TITLE: Ourselves and our Families  
FUNDING: \$15,000  
DESCRIPTION: To establish community awareness and prevention program for the prevention of child abuse and neglect through on-going training program for parents to establish effective disciplining skills and education in the role of effective parenting. To establish trained elementary teachers in the program on self-esteem, peer pressure, communication skills, decision-making and problem solving techniques. A primary prevention program for parents in pre-natal care and post-natal care in the home through home visitors.

GRANTEE: Kansas Committee for Prevention of Child Abuse  
PROJECT TITLE: Prevention Assistance  
FUNDING: \$5,000  
DESCRIPTION: This project will provide assistance to the Family & Children Trust Fund Subcommittee in assessing the progress of five trust fund projects and planning for improvement in the second year of the projects of the Trust Fund Subcommittee.

## FAMILY AND CHILDREN TRUST FUND GUIDELINES

The Family and Children Trust Fund was authorized in the 1980 Kansas legislative session by Senate Bill 609. The Trust Fund will provide funding for community based projects for the prevention of child abuse/neglect or spouse abuse. The program is administered by the Kansas State Department of Social and Rehabilitation Services. The Children and Youth Advisory Committee is responsible for review and approval of proposals.

### I. Eligibility of Applicants

To be eligible to receive Trust Fund grants, applicants must be organizations, agencies, community groups, governmental units or sub-units, public schools, colleges, or universities.

### II. Proposals Eligible for Funding Consideration

All proposals will be reviewed on the following criteria. If the criteria are met, the proposals are eligible for further review for funding consideration.

- A. Projects which focus on the prevention of child abuse/neglect or spouse abuse will be considered for funding. Prevention projects are those which are directed toward decreasing occurrences of abuse and neglect through community education, parent education, and services to families and children. Projects targeting either high-risk groups or the population at large are eligible.
- B. Projects dealing primarily with alcohol and drug abuse, juvenile delinquency, the developmentally disabled, or providing funds for day care centers will not be considered for funding as there are other grant funds specifically targeted for these services.
- C. The service to be provided is not a duplication of existing services available in the community.
- D. The project develops a new service or substantially expands on existing service. Proposals to simply maintain existing services will not be considered.

### III. Proposal Review Criteria

- A. The following criteria will be used in reviewing proposals that are found eligible for funding consideration.
  - 1. Does this project focus on prevention as opposed to treatment?
  - 2. Does the service to be provided offer a reasonable approach to the prevention of child abuse/neglect or spouse abuse in general, and for the target community or group in particular?
  - 3. Innovativeness of the project.
  - 4. Demonstration of community need for the particular type of service.
  - 5. Soundness of project start-up plans. Soundness of plan for on-going provision and administration of the services.
  - 6. Ability of agency to administer the program and deliver the service. Adequacy of staffing pattern and personnel qualifications.
  - 7. Degree to which the proposal reflects cooperation with and support from community, professional and voluntary organizations and individuals.
  - 8. Reasonableness of the budget.
  - 9. Adequacy of plan for assumption of cost by non-Trust Fund sources.

THE FAMILY AND CHILDREN'S TRUST FUND

The Kansas Committee learned a great deal from the process involved in implementing the Family and Children's Trust Fund. The following key steps are necessary in attempting to pass an original piece of legislation.

1) BEGIN EARLY AND ORGANIZE

We formed an Advocacy Committee six months prior to the opening of the legislative session. This committee was composed of representatives from the Governor's office, state agencies, children's advocacy organizations, legislators wives, and interested citizens. The First Lady of Kansas, Ramona Carlin, acted as co-chairperson of this committee. The adoption of the Trust Fund by the Governor in his legislative program was crucial in its passage.

2) DRAFT LEGISLATION AND DISTRIBUTE FOR REACTIONS

Our first draft was disseminated five months prior to the session to legislators and other interested individuals. Their reactions were extremely important in defining problem areas and possible solutions.

3) ALWAYS BE AWARE OF YOUR OPPOSITION THROUGHOUT THE PROCESS

It came to our attention that women's groups were interested in enacting similar legislation for shelters, which had been precendented in other states. We met with individuals from these groups, and broadened our concept to prevention of family abuse and family problems.

4) CHOOSE CAREFULLY THE LEGISLATORS WHO WILL ACT AS SPONSORS OF THE LEGISLATION

A DIVERSE GROUP IS IMPORTANT. Senator Frank Smith was very instrumental in this process, due to his committment to the bill and his awareness of the political climate in the Kansas Legislature.

5) DEVELOP A BROAD-BASED, STATEWIDE CONSTITUENCY NETWORK

We had the endorsement of 38 organizations and agencies. Within many of these organizations, there was an available statewide network. This component is of vital

importance from the beginning to the end of the process. Legislators vote according to their constituency's concerns. We prepared guidelines for support letters to enable individuals to feel more comfortable in their letter writing and phone calls.

6) BE AWARE OF COMMON CONCERNS EXPRESSED BY LEGISLATORS

One concern we heard continuously was regarding the means of funding. We prepared a statement explaining our rationale for using the marriage license fee, and distributed this to every legislator. Another concern was regarding what type of programs this money would be funding. Again, we prepared a concise outline or fact sheet explaining the various programs, and distributed it to every legislator.

7) LOBBY, LOBBY, LOBBY

We visited almost every legislator to explain the bill, answer questions, and confirm votes. If we received an indication of a possible "no" or a "maybe" from a legislator, we called on our constituency network. It worked miracles!

We encountered many potential crises in the last days of the session. It is important to anticipate possible problems, and above all, be aware of and available to your key legislators. Do not afford yourself the luxury of being secure no matter how positive it appears. It is our hope that every state will secure a Family and Children's Trust Fund. It makes a powerful statement of our commitment to the importance of the well-being of the family in our society. We are extremely proud of the process and of the time, support and commitment of the many, many individuals in our state which led to the enactment of the first state children's trust fund legislation, the Kansas Family and Children's Trust Fund law.

# Child Abuse Model Standards and Guidelines

FOR MULTIDISCIPLINARY TEAMS  
IN PENNSYLVANIA

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## INTRODUCTION

This handbook is intended to assist county child welfare agency staffs and other interested parties to develop and improve Multidisciplinary Team services to abused and neglected children and their families.

On October 1, 1976 Frank S. Beal, Secretary of the Department of Public Welfare, requested top level staff assistance from various State Departments to join with the Department of Public Welfare to establish a State level Multidisciplinary Team.

The Team's major goal for 1976-77 was to develop a model with standards and guidelines for use by county child welfare agencies in establishing a county Multidisciplinary Team. This booklet represents the Team's efforts at pulling together all the general ideas on the Multidisciplinary Team concept and adapting them to Pennsylvania's law and particular needs.

The following individuals were assigned to represent their respective departments on this Statewide Team:

### DEPARTMENT OF JUSTICE

Attorney General's Office

Mr. Paul Schilling, Deputy Attorney General

### JUVENILE COURT JUDGES COMMISSION

Honorable Harvey N. Schmidt

### DEPARTMENT OF EDUCATION

Ms. Frances DeWitt, Special Assistant,\* Deputy Secretary's Office

Mr. John Christopher, Director, Bureau of Instructional Support Services

Ms. Marian Lohr, Coordinator\*\*, School Health Services

### DEPARTMENT OF HEALTH

Dr. Annette Lynch, Director, Bureau of Children's Services

### PENNSYLVANIA STATE POLICE

Captain Salvador Rodriquez, Director, Community Relations Division

**GOVERNOR'S COUNCIL ON DRUG & ALCOHOL ABUSE**

Mr. Peter Pennington, Executive Assistant Director  
Ms. Debbie Metz, Co-member\*\*

**DEPARTMENT OF PUBLIC WELFARE**

Office of Mental Health:

Dr. Alan Handford, Director, Children & Youth Services

Dr. James Reisinger, Staff Assistant

Office of Mental Retardation:

Ms. Carol Chalick, Chief, Division of Preventive Services

Office of Children and Youth:

Mr. Joseph Spear, Child Welfare Specialist\*\*\*

Mr. Lee Miller, Administrator, ChildLine

**FEDERAL REGION III**

Mr. Gary Koch, Child Development Specialist, Department of Health,  
Education & Welfare

**DEVELOPMENT ASSOCIATES**

Ms. Patricia Vasquez, Project Director, Development Associates

I thank those Team Members who took time, including weekends, from their busy schedules and contributed valuable information and assistance to us.

We hope the remaining pages of information are meaningful to you and we welcome your comments.

Gordon Johnson, Team Coordinator  
Director, Bureau of Child Welfare

- \* Resigned from the Team
- \*\* New Member
- \*\*\* Assistant Team Coordinator

## PREFACE

The management of child abuse cases cuts across various professional disciplines and at one time or another may require the expertise of physicians, social workers, attorneys, psychologists, nurses, etc. With this in mind the concept of the Multidisciplinary Team was developed to prevent confusion to the child and parents and to allow the various professionals involved to work cooperatively for the betterment of all concerned. The treatment approach can be planned and implemented and services increased or decreased as the need arises. Through proper case management by the Team, the child can be maintained in his/her home environment with minimal risk and maximum treatment benefits.

The use of Multidisciplinary Teams also removes the awesome decisions and responsibilities from one person and distributes the responsibility among the various Team members. Since it does transcend one profession, it is appropriate that all professions involved in a particular case should meet to discuss the best approach to helping each particular family.

The use of Multidisciplinary Teams has the added advantage of minimizing the confusion to the client because it presents a systemized approach and coordinates the activities of all concerned and involved. This prevents a flood of helping persons from visiting the family and offering services which may be in direct contradiction to one another. It allows one person to take the leadership role with a particular family and to coordinate and arrange for other services as they are needed or indicated.

Multidisciplinary Teams can serve another valuable function for both the community in general and the child welfare agency administrator in particular by identifying gaps in service in the community and working to see that the necessary services are developed to fill this void. The Multidisciplinary Team can either develop these services directly or use their influence to convince the appropriate political structure that expansion or development of services is necessary.

**Legal Mandate:**

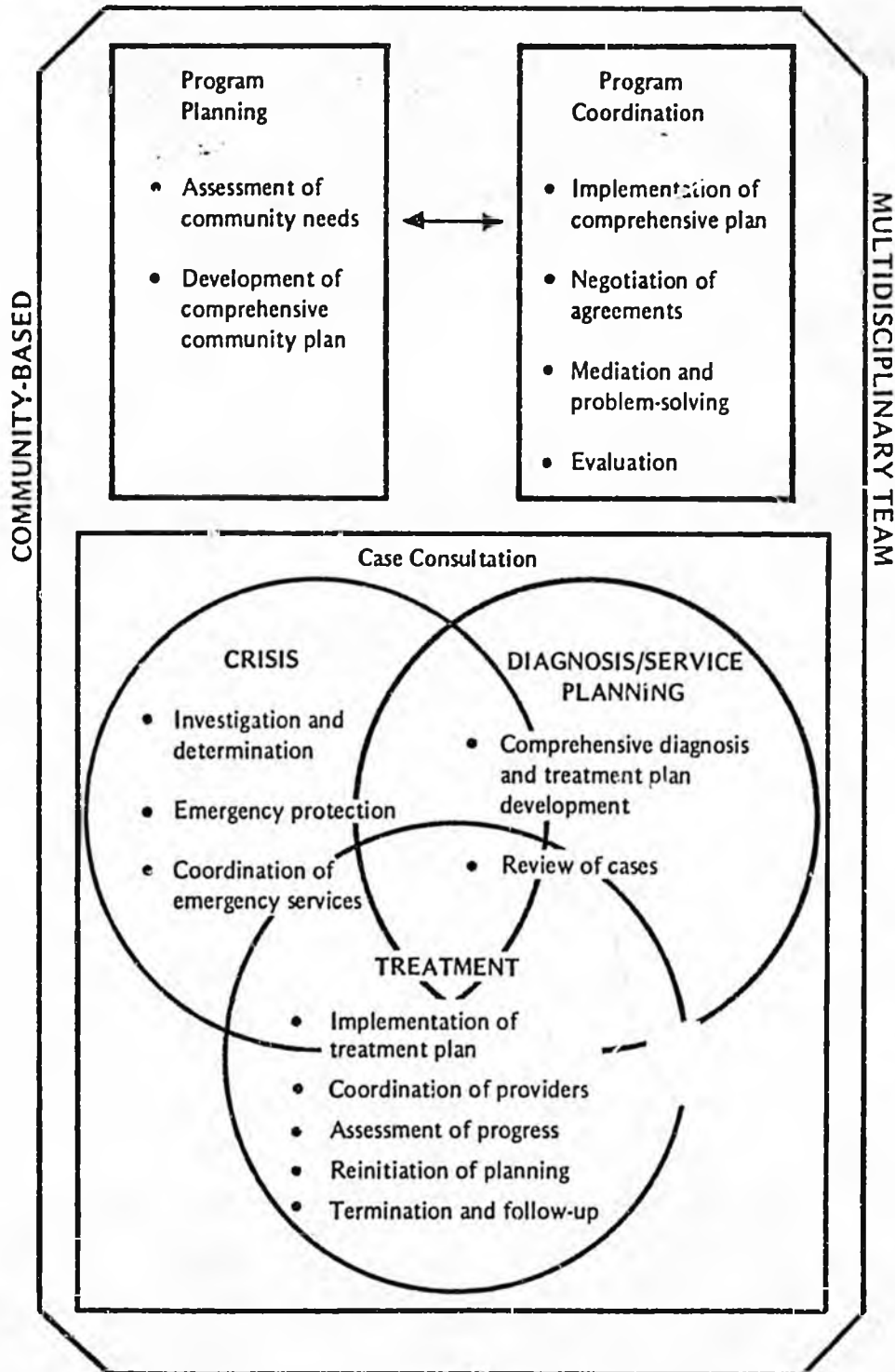
The Child Protective Services Law, Act of November 26, 1975, P.L. 438 (No. 124) mandates each county's child protective service to make available among its services for the prevention and treatment of child abuse the benefits of a Multidisciplinary Team. Attending departmental regulations, Chapter II, Section 23, stipulate that the Child Protective Service shall consult with and utilize the services of professional disciplines within their communities such as health, mental health, social services, education, law and law enforcement for the purposes of developing, reviewing, and implementing treatment plans for abused children and their families, and for receiving recommendations as to the improvement of overall service delivery by the Child Protective Service.

**Acknowledgements:**

In 1974 Congress enacted the Child Abuse Prevention and Treatment Act which made available for the first time monies to be used specifically for research and training in the area of child abuse and neglect. Part of this money was used to develop a contract with Development Associates, Inc., a Management and Governmental Consulting Firm located in Washington, D.C. The purpose of this contract was to conduct needs assessment surveys in all ten Federal Regions to ascertain what state and county agencies perceived as their greatest need in delivering services to abused and neglected children. The consensus of the various professions engaged in the planning and delivery of services to abused and neglected children in Region III was that there was a need for assistance in planning for and carrying out the roles of a Multidisciplinary Team as well as staff development assistance for the various state agencies involved in serving abusing and neglecting families.

The Office of Child Development which is implementing this act awarded a second contract to Development Associates to assist the states in Region III in developing a state model for Multidisciplinary Teams based on the uniqueness of each state's law and administrative structure for delivering services to abused children and their parents. The first step in this process was to designate a Team composed of the various professions that carried program planning and development responsibilities for child abuse at the state level. One of the functions of this team was to develop the following model and guidelines for local communities to use in developing Multidisciplinary Teams. The Bureau of Child Welfare in the Department of Public Welfare was assigned primary responsibility to coordinate the activities of this Team.

## PENNSYLVANIA MODEL



COMMUNITY-BASED

MULTIDISCIPLINARY TEAM

## DESCRIPTION OF THE PENNSYLVANIA MODEL: COMPONENTS OF SERVICE

The schematic on page five (5) is a functional model for community-based teams -- that is, it outlines the essential, interdependent functions necessary to a coordinated community approach to child abuse. The organizational structure adopted by different communities, however, will differ with their characteristics and needs. One community might, for example, develop a single group to undertake these functions while another might develop a number of highly specialized subcommittees. A team might also be composed of permanent members who meet regularly and consulting members who undertake a specific task or who bring special knowledge or skills needed for an individual case consultation.

It is anticipated that the process of implementing the total model will be a gradual one, with each community determining which functions it will address first. Because of any number of variables, counties are in a continuum in establishing MDT's. The Department of Public Welfare does not expect every county to implement MDT as described in this booklet. The purpose of the model, standards and guidelines is to assist communities in establishing a MDT. Counties are not required to develop their MDT's after the model described herein, but encouraged to take those parts or suggestions that would be of benefit to them.

This book should be considered as a beginning. Comments on its usefulness and suggested techniques would be appreciated.

i. Team Functioning/Organizational Issues

A. THE COMMUNITY-BASED TEAM SHALL HAVE A WRITTEN STATEMENT CLEARLY DELINEATING ITS MISSION OR PURPOSE AND MEASURABLE GOALS.

1. The team should establish priorities among its goals and objectives which should include the following:

- review and assess community needs and resources
- assist the child welfare agency in the development of its local plan
- assist in developing needed resources
- develop public awareness of the problem of child abuse
- develop a component to provide consultation to the child welfare agency in specific cases
- assist in the identification and development of interagency relationships
- assist in educating organizations and individuals in identifying and reporting suspected child abuse
- seek citizen participation (Sec. III, Citizen Participation)

2. Specific objectives leading to the achievement of each goal should be identified.

3. Specific action steps, members' responsibilities and deadlines should be outlined.

B. THE COMMUNITY-BASED TEAM SHALL HAVE A WRITTEN STATEMENT OF HOW IT WILL OPERATE (OR A CONSTITUTION AND BY-LAWS IF MORE FORMAL STRUCTURE IS REQUIRED).

1. The statement should include:

- a method of nominating and selecting officers
- responsibilities of officers and members
- term of service for officers and members
- frequency, times and locations of meetings
- whether meetings are open or closed to the public
- a set of ground rules for the conduct of meetings
- attendance at meetings
- use of subcommittees

C. THE COMMUNITY-BASED TEAM, NOT THE INDIVIDUAL MEMBERS, SHALL BE PERMANENT SINCE EFFECTIVE PLANNING AND COORDINATION ARE A COMPLEX AND DYNAMIC PROCESS.

D. THE COMMUNITY-BASED TEAM SHALL SEEK THE SUPPORT OR SANCTION OF GOVERNMENTAL GROUPS IN THE COMMUNITY.

1. The community-based team should advise the political leadership of its efforts and provide periodic reports on its progress.
2. Plans and mechanisms for coordination of efforts with other pertinent public and voluntary citizens' committees should be developed by the team.
3. Firm linkages should exist between program planning/coordination and case coordination.
4. The team should meet regularly with the administrators of cooperating programs to review progress being made in the development of a coordinated service delivery system.

## COMMENTS

The purpose of developing by-laws or statements of operation is to provide clarity in goals and objectives as well as a permanent structure for the team. Equally important is a clear understanding of how the team is to operate. Each member should understand his or her responsibilities as well as such ground rules as how decisions are to be made. The team can also begin to build a support base in the community by informing the political leadership, other significant public and voluntary citizens' committees or councils as well as the community at large of its goals and progress in achieving them.

### II. Team Composition

#### A. THE COMPOSITION OF THE COMMUNITY-BASED TEAM SHALL REFLECT THE RANGE OF AMELIORATIVE AND TREATMENT RESOURCES AVAILABLE TO ABUSED AND NEGLECTED CHILDREN AND THEIR FAMILIES.

1. Representatives from the fields of social service, health, mental health, education, law enforcement, legal profession, and elected governmental officials should be included.
2. In areas where military bases are located, a representative of this sector should be included.
3. There should be representatives from the community at large (non-agency members) selected on the basis of geographical distribution; community patterns of ethnic background, income levels, educational levels, and occupations, as well as willingness to serve, expertise, and concern.

#### B. QUALIFICATIONS OF TEAM MEMBERS SHALL INCLUDE THE ABILITY TO CONTRIBUTE TO THE SOLUTION OF PROBLEMS AND TO CARRY OUT THE RESPONSIBILITIES OF MEMBERSHIP THROUGH A WILLINGNESS TO SERVE ON A CONTINUING BASIS. MINIMALLY, MEMBERS SHALL HAVE DEMONSTRATED AN INTEREST IN AND CONCERN ABOUT CHILD ABUSE AND NEGLECT.

1. Members who represent agencies should be persons of sufficient stature that their actions reflect their agencies' policies. At the program coordination level, these members should be administrators; at the case level, supervisory and direct service staff. In either case, members should be able to make commitments on behalf of their individual organizations.

#### COMMENTS

The initial composition and size of a team will most often be determined by its purpose and goals as well as by the level of interest and commitment on the part of agencies and individuals. A team should strive to incorporate all organizations in the community which are or which could be providing ameliorative and treatment services. While a team should be large enough to be representative of the area it serves, caution must be taken so that it does not become unwieldy. A team might, for example, be composed of permanent and consulting members or might use mechanisms such as ad hoc committees.

If a community-based team is to become a realistic and effective joint planning and decision-making body, it is critical that members appointed by various organizations have the authority to represent their agencies' interests and points of view. Members should be able to stimulate implementation of plans by influencing the necessary political and administrative action and financing.

### III. Citizen Participation

A. THE COMMUNITY-BASED TEAM SHALL DEVELOP MECHANISMS TO SEEK CITIZEN PARTICIPATION IN ORDER TO ENSURE AN ACCURATE VIEW OF AREA NEEDS AND PATTERNS AS WELL AS CITIZENS' SUPPORT OF PROGRAMS WITH THEIR IDEAS, LABOR, FUNDS, AND UTILIZATION OF THE SERVICES.

1. The team should identify sources of leadership in both the public and private sector.
2. The team should identify persons or groups in the community which do or could help in preventing child abuse and neglect.
3. The team should identify social and economic problems or patterns in the community which contribute to the problem of child abuse and neglect.
4. The team should make reports to the community detailing problems and needs, program plans and progress, and recommendations for changes needed to improve service effectiveness.
5. Team meetings dealing with community needs assessment, program planning, and program evaluation must be open to the public.
6. The team should develop linkages with voluntary organizations and citizens' groups.
7. The team should assist in the development of public awareness and education campaigns.

#### IV. Area/Coverage

A. THE CPS IN ALMOST ALL CASES FUNCTIONS ON A SINGLE COUNTY BASIS. HOWEVER, THE COMMUNITY-BASED TEAM MAY DEFINE ITS SERVICE AREA DIFFERENTLY, BASED ON SUCH FACTORS AS:

1. Sufficient population base;
2. Necessary financial resources;
3. Linkage through common business and social interests and transportation systems;
4. Political boundaries;
5. Existing service delivery boundaries or catchment areas.

#### COMMENTS

One of the first decisions which a team must make is the area which it will serve -- a single county; sections of a large city; or, particularly in some rural areas, all or part of several counties. Factors such as the type of team, size of the population requiring services, proximity of the people to the services, team staffing and budgetary constraints will all affect this decision. The team should also determine whether or not the area chosen has common problems which are amenable to solution through joint efforts.

#### V. Community Standards of Care

A. THE COMMUNITY-BASED TEAM SHALL WORK WITH THE CPS IN DEVELOPING REALISTIC AND ATTAINABLE STANDARDS AND GUIDELINES COMPATIBLE WITH EXISTING REGULATIONS FOR USE BY COOPERATING AGENCIES AND INDIVIDUAL PROFESSIONS IN WORKING WITH CHILD ABUSE/NEGLECT CASES.

1. The standards and guidelines should include at least the following areas:

- criteria for treatment plans
- minimum frequency of contacts with families
- criteria for format and timing of case review
- criteria for maximum caseload size--for team and type of staff
- criteria for determining timing and procedures for termination of stabilization of cases
- time between maximum progress and termination/stabilization
- policies re follow up of terminated/stabilized cases
- procedures for monitoring follow up contacts

#### COMMENTS

The team should bear in mind that if standards are set too low, they may be easily achieved but may restrict progress. On the other hand, standards that are set too high may not be attainable in some communities, and frustration can be the result. By determining desirable patterns of services that are within the realm of reality and practicality, teams can measure needs by comparing existing patterns with the desirable ones. This process will provide the necessary groundwork for thorough program planning and development.

#### VI. Program Planning/Development

- A. THE COMMUNITY-BASED TEAM SHALL IDENTIFY, REVIEW AND ASSESS COMMUNITY PROGRAMS FOR ABUSING AND NEGLECTING FAMILIES, WITH A VIEW TOWARDS DESCRIBING THE EXISTING SERVICE DELIVERY SYSTEM. THE TEAM SHALL DEVELOP A REPORT OUTLINING ITS CONCLUSIONS AS TO THE COMMUNITY'S PROBLEMS, SIGNIFICANT GAPS OR OVERLAPS, AND OBSTACLES TO THE DEVELOPMENT OF A COORDINATED SERVICE DELIVERY SYSTEM.

## THE DEVELOPMENT OF A COORDINATED SERVICE DELIVERY SYSTEM.

1. The elements of a coordinated system include:
  - identification and reporting
  - investigation
  - diagnosis and treatment planning
  - long and short term treatment and follow up
  - training of professionals
  - community education
  - prevention
  - program evaluation and monitoring
2. The review and assessment should include not only those organizations and individuals currently providing services but also others in the community which could provide ameliorative or treatment services.
3. Input should be sought from any in service agencies and/or planning groups in the community.
4. Information on problems and needs should be sought from clients of the service delivery system.
5. The team should review coordination procedures within and among agencies.
6. The report on conclusions should describe the procedures currently used to serve abusing and neglecting families, the types of services provided, and the agencies providing services. The assessment should consist of relevant statistical information as well as opinion, and the analysis of these to determine problems.

B. BASED ON THE CONCLUSIONS AND FINDINGS OF THE REVIEW AND ASSESSMENT, A COMPREHENSIVE COMMUNITY PLAN SHALL BE DEVELOPED TO STRENGTHEN THE SERVICE DELIVERY SYSTEM.

1. The plan should establish roles and responsibilities for cooperative community structures to prevent and treat child abuse and neglect.
2. The plan should recognize Child Welfare's mandate and legal responsibility to establish and maintain a MDT.
3. The plan should include:
  - measurable goals (short term, intermediate, and long term)
  - priorities
  - operational objectives
  - specific action steps to be undertaken by the team
  - mechanisms for ongoing evaluation
4. The plan should consider adaptation of existing services as well as development of new ones.
5. Recommendations for coordination needed at both the program or system level and case level should be included.
6. The broadest possible community participation should be sought in the development of the plan.
7. This plan should include recommendations to assist the agency director in developing the "Local Plan."

C. THE COMMUNITY-BASED TEAM SHALL ASSIST THE COMMUNITY, LOCAL CITY AND COUNTY GOVERNMENTAL OFFICIALS AND STATE LEGISLATORS IN UNDERSTANDING CHILD ABUSE AND NEGLECT AND IN THE FORMULATING OF LEGISLATION AND REALISTIC APPROPRIATIONS FOR SERVICES TO ABUSING AND NEGLECTFUL FAMILIES.

1. The team should inform the community and its political leadership of the results of its needs assessment.
2. The team should be an advocate for its comprehensive plan with public and private agencies and the political leaders.
3. The team should participate in the public hearings for the local plan.

D. THE COMMUNITY-BASED TEAM SHALL SET THE DIRECTION FOR SOCIAL ACTION TO IMPROVE THE ECONOMIC AND SOCIAL CONDITIONS WHICH CONTRIBUTE TO THE PROBLEM OF ABUSE AND NEGLECT THROUGH THE DEVELOPMENT OF PUBLIC POLICIES WHICH STRENGTHEN FAMILY LIFE.

E. THE TEAM SHALL OBTAIN WRITTEN AGREEMENTS FROM THE AGENCIES AND ORGANIZATIONS WITHIN THE COMMUNITY'S SERVICE DELIVERY SYSTEM SPECIFYING THEIR ROLE IN IMPLEMENTING THE COMPREHENSIVE COMMUNITY PLAN.

1. The agreements might include:

- referral procedures
- criteria for cases to be accepted by each
- procedures for sharing information on the diagnosis and progress of cases involving more than one agency
- mechanisms for regular review of agreements and revision as necessary
- procedures for joint staff training
- financial agreements

## COMMENTS

A thorough needs assessment must be undertaken before an effective plan can be developed. It is crucial that real needs based on facts, not merely opinion be identified. The problems which appear most obvious may be those for which a solution is already known and may not reflect the more critical problems underlying the service delivery system which should be addressed in the plan.

The more directly that a goal can be related to a specific part of a problem, the more successful planning efforts will be. Although it is difficult to develop realistic long-range plans because changes in conditions upon which goals are based are not always predictable, it is important that community-based teams attempt long-range planning to set the overall framework of their shorter term goals and efforts. It is also essential that the team establish priorities among its goals to reduce confusion as to which activity is most important and to provide direction as to where scarce resources can best be used. In doing this, the team should always keep in mind the interdependence of various activities.

Using the service delivery standards, data from their needs assessment, and the comprehensive plan as a foundation, the team should seek appropriate agreements from all of the organizations in the service delivery system, specifying their roles and responsibilities and how they will interface with others. Most organizations have written policies and regulations which govern their actions and determine the area they serve, clients served, and kinds of services provided. The inter-agency agreements will serve as mechanisms for implementing the comprehensive community plan.

## VII. Case Consultation

THE COMMUNITY-BASED TEAM SHALL OFFER THE SERVICES OF MULTIDISCIPLINARY CASE CONSULTATION GROUP(S) TO THE CHILD WELFARE AGENCY. WHEN THE AGENCY UTILIZES SUCH CONSULTATION, THE MULTIDISCIPLINARY GROUP BECOMES A PART OF THE CHILD PROTECTIVE SERVICES. AS SUCH THEY ARE BOUND BY THE SAME CONFIDENTIALITY STRICTURES AS THE CPS STAFF.

- \* Multidisciplinary consultation should be available during the three basic phases of the management of child abuse cases - crisis intervention, diagnosis/treatment planning, and treatment implementation.
- \* Depending on a county's characteristics and its needs, the community based team might develop one group which could coordinate services in each of the three phases; or it might develop a number of specialized groups.
- \* The multidisciplinary consultation group(s) should provide a forum for the sharing of appropriate information on diagnosis, treatment plans and progress among professionals involved with a child abuse case.
- \* The multidisciplinary group(s) should ensure that information on problems of coordination and needs for resources is shared with program planning and coordination components of the community based team.

THE LOCAL CHILD WELFARE AGENCY SHALL DETERMINE WHICH CASES ARE IN NEED OF A MULTIDISCIPLINARY CASE CONSULTATION GROUP'S ASSISTANCE.

- \* Appropriate cases for referral to a multidisciplinary group should include those where it is questionable whether or not a child can safely remain in the home, where specific treatment needs are not clear, where it is questionable whether or not a child can be safely returned to the home, or where numerous community resources and treatment services must be coordinated.

MULTIDISCIPLINARY CONSULTATION GROUPS DEALING WITH CRISIS INTERVENTION SHALL INCLUDE THOSE PROFESSIONALS NECESSARY TO ASSIST CPS WITH ITS INVESTIGATION, PROVIDE IMMEDIATE PROTECTION TO THE CHILD, AND COORDINATE EMERGENCY SERVICES TO THE FAMILY.

- \* A crisis group should meet when child abuse is suspected and pool and evaluate available information in order to make two critical decisions – do the injuries seem to indicate child abuse and is the home safe for the immediate return of the child.
- \* The crisis group should coordinate the provision of emergency services to ensure that the family is served more efficiently in times of crisis by the various disciplines without long waits for services. Services might include short term counseling, medical assistance, emergency homemaker or child care, emergency financial assistance, family shelters, crisis nursery, emergency removal and placement of the child.
- \* The crisis group should ensure that duplicate investigations of a family do not occur, i.e., that information already collected is used where possible and allowable by law.

THE MULTIDISCIPLINARY GROUP PROVIDING CONSULTATION TO CPS ON DIAGNOSIS AND THE DEVELOPMENT OF TREATMENT PLANS FOR CHILD ABUSE CASES SHALL INCLUDE ONLY PROFESSIONALS WITH THE REQUIRED EXPERTISE TO FULFILL THE PURPOSE OF THE GROUP, I.E. ASSESSING MEDICAL, PSYCHOLOGICAL, LEGAL, AND SOCIAL ASPECTS OF COMPLEX CASES AND DEVELOPING A COMPREHENSIVE TREATMENT PLAN.

- \* The group should include skilled representatives of the various disciplines who will meet regularly as a core group to provide consultation to CPS on cases as well as ad hoc consulting members who have knowledge or a special skill needed for a particular case. The specific professions represented on the core group will vary with availability as well as the contribution they may be expected to make to the team. Where possible, professionals should be drawn from local treatment agencies in order to provide a referral liaison between the team and agency.
- \* This group should assist the CPS by developing a comprehensive diagnosis and treatment plan for each case referred to it. The plan should include:
  - a. a statement of the specific problems a family has and possible causes
  - b. an assessment of the needs and strengths of the family
  - c. treatment goals, short and long range objectives—with dates
  - d. identification of resources to be used
  - e. a schedule for providing services, coordinating the needs of a family and those of the service providers
  - f. a schedule for reviewing treatment progress
  - g. designation of a case monitor to maintain frequent and supportive contact with the family and service providers.
- \* This group should also assist in:
  - a. identifying and resolving potential problems in service delivery
  - b. developing a recall system to ensure that cases will be reviewed at predetermined intervals
  - c. reviewing a representative sample of cases to assess whether services are being utilized as planned and whether agencies are responsive to referrals of abusing families
  - d. ascertaining reasons for inadequate utilization of services
  - e. developing procedures for intervening when serious problems of coordination of service delivery occur.

## COMMENTS

The county child welfare agency should assume the leadership role in establishing a MDT in the county. If there are two or more component groups, a member of the CPS does not necessarily have to be chairperson of each component. Because the CPS has the legal mandate to provide protective services, a member of the CPS should be directly responsible for the Case Management Component.

### VIII. Parents'/Children's Rights

THE CASE MANAGEMENT TEAM SHALL ADHERE TO THE CPS LAW AND REGULATIONS CONCERNING THE RIGHTS OF PARENTS AND CHILDREN INCLUDING BUT NOT LIMITED TO THE FOLLOWING.

- \* Their rights to confidentiality of information.
- \* Their right to legal representation at any stage of the proceeding.
- \* Their right to receive all necessary treatment and social services to prevent future abuse and/or neglect if appropriate.
- \* Their right to court hearings for detention hearings, transfer of custody, etc.
- \* Their rights regarding amending, sealing, and expunging reports in which they are named.
- \* Children's right to admission to any public or private hospital for treatment
- \* Their right to a completed investigation within 30 days
- \* Children's right to protective custody
- \* Their right to appropriate and proper notification regarding receipt of the report status, changes, etc.

THE CASE MANAGEMENT TEAM SHALL ENDEAVOR TO INVOLVE THE PARENT(S) AND, IF APPROPRIATE, THE CHILD IN THE DIAGNOSIS AND TREATMENT PLANNING PROCESS AND DURING ONGOING REVIEWS.

- \* The team should invite the parent(s) and the child, if appropriate, to participate in meetings during which decisions are made about them.
- \* The case management team should develop procedures for assisting the family in understanding the results of meetings, decisions, and the status of the child.
- \* The team should endeavor to obtain the family's agreement to (or at least acknowledgement of) the treatment plan selected.

THE CASE MANAGEMENT TEAM SHALL DEVELOP A MECHANISM FOR CLIENT PARTICIPATION IN PROGRAM PLANNING AND EVALUATION.

#### COMMENTS

While the team must be guided by existing law and regulations regarding parents' and children's rights, it should give careful consideration to developing procedures for involving families in the decisions made about them in order to secure their cooperation in the treatment plan.

There has been increased legislative activity and litigation concerning the individual's right to privacy and freedom of information as well as parents' rights and professional malpractice. Case management teams should be aware of these trends in order to make fully informed decisions in regard to their own practices and procedures.

**IX. Program Evaluation/Research**

**A. THE COMMUNITY-BASED TEAM SHALL ENCOURAGE ALL AGENCIES TO MAINTAIN THE TYPES AND AMOUNT OF DATA NECESSARY FOR PROGRAM PLANNING AND EVALUATION.**

**1. The team should have access to data such as:**

- number of cases identified--by source
- number of cases investigated
- number of cases founded, indicated, unfounded
- classification of cases (type of abuse or neglect)
- amount of recidivism in founded and indicated cases
- number of organizations providing services -- by organization
- services provided--by organization
- cost of services--by type and per client
- number of case conferences held
- number of joint treatment plans developed
- number of cases terminated
- number of professional training sessions--by source
- number and types of public awareness endeavors
- other information as might be necessary e.g., age, sex, and location of child.

**B. THE COMMUNITY-BASED TEAM SHALL REVIEW AND EVALUATE THE COMMUNITY'S OVERALL SERVICE DELIVERY SYSTEM FOR CHILD ABUSE/NEGLECT CASES ON A REGULAR BASIS--THE EFFECTIVENESS AND EFFICIENCY AS WELL AS THE ACCEPTABILITY OF SERVICES.**

1. The team should establish mechanisms which will assure a regular means of securing feedback from all cooperating agencies providing services and from service recipients.
  2. The team should build measurable factors into all goal statements.
- C. THE COMMUNITY-BASED TEAM SHALL COOPERATE WITH INDIVIDUALS AND GROUPS WHO ARE CONDUCTING BONA FIDE RESEARCH ON CHILD ABUSE AND NEGLECT BY PROVIDING APPROPRIATE INFORMATION.
1. The team should ensure the confidentiality of clients by providing only non-identifiable information.
  2. The team should ensure that the researcher is adhering to acceptable research practices such as those governing the protection of human subjects.

#### COMMENTS

In order to do effective planning, the team must evaluate, on a regular basis, the total system's effectiveness and efficiency as well as its impact on individual families. An assessment which includes management policies and procedures as well as service practices will provide the team with the data necessary to inform policy makers and the community at large of needs for progressive changes in policies and procedures as well as the need for additional and/or different resources.

# State Action on Child Protection

Attachment C

	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	
<b>What Elements of Child Abuse Must Be Reported</b>																												
nonaccidental	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
neglect	X	X	X	X	X	X	X	X	X	X	X	1	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
sexual abuse	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
emotional abuse	X			X	X		X	X	X		X		X										X	X	X	X	X	
<b>Who Must Report</b>																												
doctors	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X	
social workers	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X	
teachers	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X	
law enforcement	X	X	X	X	X	X	X			X		X	2	X	X	X			X	X	X	X	X	X	X	X	X	
<b>When Must Report Be Made</b> <i>(I = Immediately, P = Promptly, S = Soon, L = Longer)</i>	I	I	I	I	L	I	I	I	I	I	P	L	I	I	L	P	I	I	I	S	I	I	I	I	I	P	3	
<b>To Whom Must Report Be Made</b> <i>(SS = Social Services, C = Court, PO = Law Enforcement)</i>	SS/PO	SS	SS/PO	SS	SS/PO	SS/PO	SS/PO	SS	SS	SS	SS	PO	SS	SS/PO	SS	SS/C	SS	SS/PO	SS	SS/SS	SS	SS	SS/PO	SS	SS	SS	PO	
<b>Immunity for Good Faith Report</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Penalty for Not Making Report</b> <i>(CR = Criminal, CI = Civil)</i>	CR		CR	CR/CI	CR	CR/CI	CR	CR	CR	CR				CR	CR/CI	CR	CR	CR	CI		CR	CI	CR	CR	CR	CR	CR	
<b>Abrogation of Privileged Communication</b>																												
husband		X				X	X				X		X	X	X				X	X		X		X		X	X	
doctor		X				X					X		X	X	X					X		X		X		X	X	
all but attorney/client...	X		X	X			X	X				X			X	X	X	X				X			X		X	
<b>Photographs and X-rays</b>			PX	PX	PX	PX			PX				PX	PX	PX		PX		PX				PX			PX		
<b>Temporary Protective Custody - Emergency Removal</b>	X	X	X	X	X	X	X		X			X	X	X		X	X	X		X	X	X	X	X	X	X	X	
<b>Central Registry</b>	X	X	X	X	X	X	X	X	X	5	X	X	X	5	X		5	X		X	X	X	5	X	X	X	X	
<b>Child Protection Team</b>					6	X							X								6	6			6			
<b>Guardian ad Litem/Counsel</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
<b>Public Education</b>					X				X						X	X		X				X		X		X	X	

	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming	Washington, D.C.	Total	
<b>What Elements of Child Abuse Must Be Reported</b>																										
nonaccidental	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	51
neglect	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	50
sexual abuse	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	46
emotional abuse	X	X	X	X	X		X	X	X	X	X	X	X		X	X	X		X		X		X		37	
<b>Who Must Report</b>																										
doctors	X	X	2	X	X	X	X	2	X	X	2	X	X	2	2	2	2	X	X	X	X	X	2	X	2	51
social workers	X	X	2	X	X	X	X	X	X	X	2	X	X	2	2	2	2	X	X	X	X	X	2	X	2	51
teachers	X	X	2	X	X	X	X	X	X	X	2	X	X	2	2	2	2	X	X	X	X	X	2	X	2	51
law enforcement	X	2	X	X	X	X	X	X	X	X	2	X	X	2	2	2	2	X		X		X	2	X	2	42
<b>When Must Report Be Made</b> <i>(I = Immediately, P = Promptly, S = Soon, L = Longer)</i>	P	I	P	I	I	3	I	I	P	I	I	L	3	I	I	I	I	3	I	I	I	I	I	I	I	I=36, P=6, L=4, S=1
<b>To Whom Must Report Be Made</b> <i>(SS = Social Services, C = Court, PO = Law Enforcement)</i>	SS/PO	SS	SS	4/SS	SS	SS	SS	SS/PO	SS	SS/PO	SS	SS	SS/PO	4/SS	all	SS/PO	SS/PO	SS	SS	SS/PO	SS	SS/PO	SS/PO	SS/PO	SS/PO	SS=28, SS/PO=19, PO=2, SS/C=1, all=1
<b>Immunity for Good Faith Report</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	51
<b>Penalty for Not Making Report</b> <i>(CR = Criminal, CI = Civil)</i>	CR	CR	CR	CR	CR/CI		CR		CR	CR	CR		CR/CI	CR	CR	CR	CR	CR	CR	CR	CR	CR	CR	CR	CR	CR=33, CI=2, CR/CI=5
<b>Abrogation of Privileged Communication</b>																										
husband					X	X			X	X				X					X				X		19	
doctor				X	X	X		X	X	X				X					X				X		22	
all but attorney/client	X	X			X		X	X	X	X		X		X		X			X	X			X		20	
<b>Photographs and X-rays</b>			PX	PX			PX		P	PX		PX				X	PX		PX	P	PX		PX		PX=21, P=2, X=1	
<b>Temporary Protective Custody - Emergency Removal</b>			X	X	X	X	X	X		X	X	X	X	X	X	X	X		X	X		X	X	X	38	
<b>Central Registry</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5	X	X	5	41
<b>Child Protection Team</b>										6		6		X		X		X					X		6	
<b>Guardian ad Litem/Counsel</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	46
<b>Public Education</b>					X					X												X		X		13

1 "Neglected child" is defined but not included in the required reporting statute.  
 2 Require reporting by "any person."  
 3 No...

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