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STATE OF ALASKA  
THE LEGISLATURE

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JUNEAU, ALASKA 99811  
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4-12-85	1:30 pm
"	4-13-85	9:00 Am
"	4-20-85	1:30 pm

# Alaska State Legislature



## House of Representatives House Judiciary Committee

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

House Bill 308 was heard by the House Judiciary Committee during interim work sessions on October 24, 1985 and November 21, 1985. See tapes F, G, and H, dated October 24 and tapes K through O, dated November 21.

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H-05  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3170

### DIVISION OF FAMILY AND YOUTH SERVICES

October 31, 1985

The Honorable M. Mike Miller  
Alaska State House  
House Judiciary  
Room 122  
Pouch V  
Juneau, AK 99811

Dear Representative Miller:

Frank Barthel has briefed me on the House Judiciary Committee hearing on October 24, 1985 in Anchorage. I would have responded to the committee's questions sooner; however, I just returned to the office this week.

Presently when criminal history clearance checks are requested of foster parents and all adult members of the foster home plus administrators of residential facilities, a criminal history consent form signed by the applicant (see attached consent form) is sent to the state (central) office of the Division of Family and Youth Services. A designated state office clerk who has the responsibility of requesting and receiving criminal history information, gives the consent form a log number and logs the date the request was received, the date the consent form was sent to the Department of Public Safety (DPS) for a criminal clearance, and the date DPS responds. If there is no criminal history the original consent form is returned to the licensing worker. If a criminal history is received it is noted in the log book, the licensing worker is called and the charges, date of charges, and disposition of the case is stated over the phone. The consent form is xeroxed, the xeroxed copy plus the criminal history received from DPS is filed in the state office and the original consent form is mailed to the licensing worker. License workers, who review criminal history clearances, are trained and procedures are in place for confidentiality of records. Frank Barthel has been receiving a copy of the criminal history information. However, in order to have only one copy in our office the designated criminal history clerk will keep all criminal history records in a locked filing cabinet. Security of criminal history records is a concern of the division. Except for a few cases, (for example recently an applicant had three pages of criminal activity), the actual criminal record is not sent to the field workers.

On the division's consent form it is stated that one is not automatically denied a license because of a criminal record. Once a licensing worker receives word that an applicant has a criminal history the worker must examine the nature of the offenses, the number of offenses and when the

offenses occurred. The licensing worker will discuss the criminal history with the applicant and if the applicant has a probation officer, ask the latter his/her's assessment of the applicant. If the worker and the supervisor feel that an applicant has rehabilitated himself and is no longer a threat, a license may be issued. On the other hand if the record indicates potential risk to children the applicant is encouraged to reconsider applying for a foster home license or to resubmit a license application once the threat is no longer in the home. In some cases, once a person is asked to complete a criminal history consent form they either decline or they take the consent form home and never complete their application. If an applicant, who is a potential risk to children, proceeds with his application the licensing worker would hold further consultation with the worker's supervisor and possibly the regional manager. If denial of a license is agreed upon often the Department of Law is also consulted.

As for the expungement of records, the division would in many cases have no problem with destroying our copies of criminal history records once those records were, by statute, officially expunged. However, in some cases the division should maintain the records because the division's primary responsibility is the safety of children. For example, last year a child was sexually abused by a husband of an operator of a family child care home. The husband had been convicted and jailed for sexually abusing a child in another state. However, that particular state had a policy of expunging a criminal record if a convicted criminal demonstrated proper behavior for a specific length of time. The division learned of the husband's past criminal behavior, but was advised that a license could not be denied to the wife because officially the husband's criminal sexual abuse record did not exist. As a result, a young child suffered harm and the state was sued. Hence, if the division learns that an individual has the potential of sexually or physically abusing children that information should be kept on file. Should that individual apply for a foster home license or live in a home of a person applying for a foster home license the licensing worker would deny the applicant a license or devise a protection plan where the person has no contact with children.

As for day care operators, according to the DPS less than five child (day) care centers have requested criminal history checks under AS 12.62.035 in little over a year. The number of requests may increase, however, as the new child care facilities' regulations (7 AAC 50.120 - 7 AAC 50.275) go into effect. Under 7 AAC 50.205 (g) an individual may not be employed if the individual "has been convicted of a crime of violence or moral turpitude within the previous 10 years." Furthermore, the city of Soldotna is considering adopting an ordinance requiring criminal history clearances for employees of child care centers. Should other municipalities pass similar ordinances, there would be an increase in criminal history clearance requests. According to DPS, once they receive a the criminal history sheet they screen the criminal information and release the pertinent information allowable under AS 12.62.035. The child care operator must destroy the criminal history records six months after they receive the criminal information. No guidelines have been established as to how to

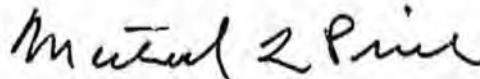
October 31, 1985

secure the records during the six month hold period; however, if the records are improperly used, the child care operator could be sued (see AS 12.62.060). Furthermore, DPS stamps the criminal history request form with the statement that the criminal history is confidential and misuse can result in a fine or imprisonment.

Except for sole proprietor, the board of directors does an employment check on all child care operators. The operator must furnish references which are then checked. Furthermore, the board of the child care center can, as an employer, request a AS 12.62.035 criminal history clearance on the administrator. The board would be subject to the same rules of confidentiality. The division does the employment check on a sole proprietor.

The division recognizes and agrees with the House Judiciary Committee's concern about the proliferation and confidentiality of criminal history records. The division trains and does everything within its power to protect these records. By statute and regulations, the child care operators must also maintain the records in a confidential matter or suffer the consequences.

Sincerely,



Michael L. Price  
Director

MLP/FB/sa

Enclosures

cc: Hayden Kaden

Connie J. Sipe  
Deputy Commissioner

Norma Lang  
Special Assistant to the Commissioner

Pat O'Brien  
SS Program Officer

LICENSING RECORD CLEARANCE REQUEST  
ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF FAMILY AND YOUTH SERVICES

SS  or YS   
REGION \_\_\_\_\_  
Worker \_\_\_\_\_  
Field Office or  
Private Agency \_\_\_\_\_

INSTRUCTIONS: Please read reverse side. Complete a separate request for each applicant and adult household member

APPLICANT/LICENSEE/ADULT HOUSEHOLD MEMBER INFORMATION:

\_\_\_\_\_  
LAST NAME FIRST NAME MIDDLE NAME JR., III, ETC.

ALSO KNOWN AS, ALIASES, MAIDEN NAME, PREVIOUS MARRIED NAME(S)

\_\_\_\_\_  
DATE OF BIRTH SEX SOCIAL SECURITY NUMBER

\_\_\_\_\_  
ADDRESS CITY STATE ZIP CODE

HAVE YOU OR ANY MEMBER OF YOUR HOUSEHOLD EVER BEEN CONVICTED OF A CRIME?  YES  NO  
HAVE YOU OR ANY MEMBER OF YOUR HOUSEHOLD BEEN CHARGED WITH A CRIMINAL OFFENSE?  YES  NO

IF YES, PLEASE EXPLAIN BELOW: (INDICATE TYPE AND DATE OF CONVICTION OR CRIMINAL CHARGE)

\_\_\_\_\_  
HAVE YOU BEEN PREVIOUSLY LICENSED TO CARE FOR A CHILD(REN) OR AN ADULT(S)? IF YES, PLEASE INDICATE LOCATION AND TYPE OF CARE: \_\_\_\_\_

\_\_\_\_\_  
HAS THERE EVER BEEN A CASE OF SUBSTANTIATED ABUSE OR NEGLECT IN WHICH YOU OR ANY MEMBER OF YOUR HOUSEHOLD WERE INVOLVED?  YES  NO

I hereby authorize the Alaska Department of Health and Social Services, Division of Family and Youth Services to submit my name and descriptive information to the Alaska Department of Public Safety for a criminal history search. I also certify that the information I have given on this form is, to the best of my ability, true and correct.

\_\_\_\_\_  
SIGNATURE OF APPLICANT/ADULT HOUSEHOLD MEMBER DATE

RECORDS CLEARANCE: (DIVISION OF FAMILY AND YOUTH SERVICES REGIONAL OFFICE USE ONLY.)

PROTECTIVE SERVICES:  NO  YES (DETERMINATION ATTACHED)

PREVIOUS LICENSE:  NO  YES (LIST NUMBER AND LOCATION) \_\_\_\_\_

\*\*\*\*\*  
LAW ENFORCEMENT CLEARANCE:



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

OFFICIAL BUSINESS

POUCH  
JUNEAU, AK 998  
465-375

MEMORANDUM

TO: MEMBERS OF HOUSE JUDICIARY AND HESS COMMITTEES  
FROM: NANCY BENNETT, HOUSE HESS STAFF  
DATE: NOVEMBER 13, 1985  
RE: SUMMARY OF TESTIMONY: CRIMINAL HISTORY BACKGROUND CHECKS

FISCAL IMPACT

DEPT. HEALTH AND SOCIAL SERVICES	128.0
DEPT. OF PUBLIC SAFETY	81.2
TOTAL	209.2

TESTIMONY - DEPARTMENT OF HEALTH AND SOCIAL SERVICES

The Department supports sections 1 through 3 of the bill, which would expand those who could access conviction records, and the expansion of the types of crimes which would be disclosed, including outstanding warrants.

The Department rejected placing mandatory criminal background checks on those persons licensed under Title 47.35 in HB 88, upon recommendation of the Governor's Criminal Justice Working Group, because of procedural and legal problems. These include: the high cost of criminal checks (\$20.00 for state and national checks plus \$7.50 for fingerprinting), the difficulty of fingerprinting in remote locations, the high rejection rate of fingerprints and the amount of time necessary to receive the results of the FBI computer run. Other questions have been raised about violations of civil liberties and confidentiality requirements.

ADOPTIONS - The department is not involved in 600 of the 800 adoptions in the state which take place each year because they are done privately. With only 30 days notice received before the adoption becomes final, the department would not have sufficient time to run a background check.

## LICENSING RECORD CLEARANCE REQUEST

Alaska Statute 47.35.010-080 and regulations for child foster homes, adult foster homes, residential child care facilities, and adult residential care facilities authorize the Division of Family and Youth Services to be satisfied that applicants for a foster home license and administrators of residential facilities are of reputable character, have sound judgement, are free from mental health problems, and are free from serious criminal history. In a foster home all members of the household 18 years or older must also be free of serious problems, including criminal history. If an adult joins a household during licensure, for an anticipated stay exceeding three weeks, a clearance request is to be submitted for that individual. The review of background records assists the Division in making a licensing determination. A failure on the part of an applicant to provide the Division with information and authorization requested on this form may be sufficient cause to deny issuance of a license.

There are two purposes of this form. First, the form will produce a Department of Public Safety check regarding the possible existence of an arrest resulting in a criminal charge and/or a criminal conviction record. Second, the form may produce a Division of Family and Youth Services file check regarding the possible existence of a substantiated child or adult abuse or neglect record. Division files also provide a check against current or previous licensing status of the applicant in the State of Alaska.

The existence of a criminal history record, or a substantiated child or abuse and neglect record does not necessarily disqualify an applicant for licensure. However, it does provide the Division with information which will be carefully evaluated to ensure that the applicant is able to meet licensing requirements.

If a license is denied, a renewal of a license is refused, or a license is revoked based upon a review of the records and a consequent determination of inability to provide adequate or appropriate care to persons being served in the licensed facility, the applicant or licensee will be furnished with a summary of findings on which the decision was made.

Under state statute and regulations child abuse or neglect and criminal history records are confidential with the exception of use in a licensing administrative or court hearing under the Alaska Administrative Procedures Act. This license record clearance form is treated as a confidential part of the licensing file. The Alaska Department of Public Safety affixes the following stamp in red to each form processed:

FOSTER CARE - The department currently runs state background checks on applicants for foster care and all adults residing within the home. Again, because of the time frame, the department is concerned that placements would be delayed, that emergency foster home (provisional licenses) would become unavailable and that the liability for the department may be increased if they are forced to grant provisional licenses pending the FBI information. There is a high turnover in foster care, with 1,725 clearances projected as the yearly need for background checks. Experience in background checks has proven to find few applicants with criminal histories, and only two applicants have been denied based on these checks.

DAY CARE - Day care centers and family day care homes licensed by the department would also come under the requirement for criminal background checks. However, 80% of the children in care are in facilities not licensed by the state (either because they are exempt - private/religious - or family homes who chose not to be licensed), and the costs of these checks would be borne by the day care facility.

#### TESTIMONY - DEPARTMENT OF PUBLIC SAFETY

The Department supports criminal history background checks on those working with children, but points out that the current demand is more than double what had been anticipated and that background checks have second priority.

NOTE: BOTH DEPARTMENTS HAVE MADE IT CLEAR THAT THIS BILL MUST BE PROPERLY FUNDED IN ORDER TO HAVE THE SYSTEM WORK.

#### JOHN WALSH RECOMMENDATIONS

In the document from the National Center for Missing and Exploited Children provided to us by John Walsh, criminal background checks are recommended as one of a variety of methods to protect children. Many states have a variety of background check laws ranging from checks on specific occupations to certain licensees and three states (Kentucky, California and Alaska) have permissive statutes allowing background checks on people working with children.

Excerpts of specific laws are included in the attached chapter on criminal background checks in your packet.

# 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 #85-112

April 2, 1985

The Honorable Mike Miller  
House Judiciary  
Pouch V  
Juneau, AK 99811

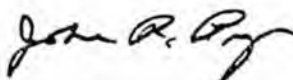
Dear Representative Miller:

In response to your March 25, 1985 letter, I am most appreciative of your suggestion and interest in protecting the children of the State of Alaska. I agree that one of the tools that can be utilized to reduce risk to children is a criminal history background clearance on employees who supervise minors. I am aware that under AS 12.62 employers have the ability to obtain criminal history checks on employees at this time.

Because of the high interest in mandatory criminal history background checks and the various issues involved, the division is receiving a great deal of information that would be useful to licensees. In particular, the U.S. Department of Health and Human Services published an excellent monograph regarding recruitment and selection of staff, and background checks. The Division of Family and Youth Services will develop a package of these materials, an explanation of current options available to the licensees to be sent at the end of the fiscal year. At that time it will be possible to give each of the licensees a copy of the enclosed brochure, an explanation of AS 12.62 and any new laws regarding child abuse and neglect that may be relevant to their operation. In this manner the licensees then would have more complete information about their options and responsibilities in hiring staff and also the State's responsibilities to them.

Thank you for your suggestion and continuing interest in protecting the children of Alaska.

Sincerely,



John R. Pugh  
Commissioner

Enclosure

# 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 #85-132

April 19, 1985

The Honorable M. Mike Miller  
Chairman, Judiciary Committee  
Alaska State House  
Pouch V  
Juneau, AK 99811

Dear Representative Miller:

This letter is in response to the Judiciary Committee's request that the Division of Family and Youth Services provide a definition for "child abuse or neglect" [AS 47.17.070(1)] for Committee Substitute for House Bill 88 and provide information on criminal history background checks for HB 308.

The definition presently in CS HB88 creates the problem that the reporter must determine if the physical harm to a child is nonaccidental. As a result, the reporter, not the division or law enforcement, would have to investigate and make a determination as to the cause of the injury. Frequently child abuse involves a determination as to the nature of the injury, that is, was the injury the result of an accident or was the injury deliberately inflicted. The division and law enforcement have the statutory authority and personnel to do investigative work. The division suggests that the language for the proposed statutory change in AS 47.17.070(i) be:

"[CHILD]" abuse [OR NEGLECT]" means physical injury [OR NEGLECT], sexual abuse, sexual exploitation, or maltreatment of a child [UNDER THE AGE OF 18] by any person [WHO IS RESPONSIBLE FOR THE CHILD'S WELFARE] under circumstances that [WHICH] indicate that the child's health or welfare is harmed or threatened thereby;

The committee suggested that the statutory language should state, as the present statute does, that the harm was inflicted or caused by "a person who is responsible for the child's welfare". However, because the reporting statute in AS 47.17.020 has been amended in CS Hf 88 to reflect two causes of injury to children, injury caused by family members and injuries caused by non-family members. Presently the child protection statutes address the issue of abuse and neglect when it occurs within the family. The division becomes involved in family matters only when the family relationships break down. If a stranger or non-family member commits the abusive behavior towards a child, it is a law enforcement

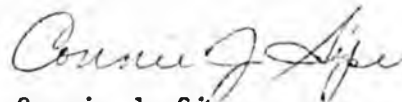
April 19, 1985

issue. A family can in most cases take care of their own problems. The family does not automatically need the division to intervene. The division could, if asked, offer advice and referral information.

With regard to criminal history background checks for persons in licensed facilities a copy of the Senate version, CS SB21, and the Department's position paper on that bill is enclosed for your information. The Senate bill was drafted with the assistance of the department. Under the provisions of the bill the department would perform a criminal history background check on all adults in home-sized facilities: family child care homes, child foster homes and adult foster homes. The department would also perform criminal history background checks on all administrators and operators of adult residential care facilities, residential child care facilities and child care centers except members of a corporation if those board members do not participate regularly in the program. As explained to the committee, in general there are a number of facilities exempt from the licensing statute including, programs exempt under federal law, programs operating less than 24 hours a day and claiming the primarily educational exemption, care provided by a relative, and care provided for four or fewer children in a child care program that operates less than 24 hours a day.

I hope this information is useful to the committee.

Sincerely,



Connie J. Sipe  
Deputy Commissioner

Enclosures

cc: All Members House  
Judiciary Committee

POSITION PAPER

COMMITTEE SUBSTITUTE for SENATE BILL 21 (HESS)

This bill relates to criminal background checks for persons supervising, caring for or adopting children.

Secs. 1, 2 and 3

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 1, 2 and 3 of this bill expand the types of convictions that may be reported to include all crimes that might pose a risk to children. Section 3 allows the state to inform an inquiring employer if there is a pending warrant for the arrest of the employee. These three sections contain the essential elements in the bill introduced by the Governor (HB 88) and so have the continuing support of the administration.

Secs. 4 and 5

Section 4 would require a criminal history background search on all petitioners for adoption.

Section 5 would require a criminal history background search on an applicant for a facility license, as defined in AS 47.35, or for facility employment. Either the Department of Health and Social Services or the facility would request the criminal clearance prior to license issuance or employment on a permanent status.

The department strongly supports reducing risk to adoptive children, foster children, children in child care facilities and dependent adults in foster care. There are problems with criminal background checks through the fingerprinting process. The Governor's Criminal Justice Working Group recommended that criminal history background checks for licensee's not be included in the administration's child protection package until some of those procedural and legal problems could be resolved. Concerns expressed include:

- the high cost of fingerprinting; there is a \$12.00 charge for the FBI clearance and an estimated \$8.00 state processing charge. These costs would impact local police departments and the Department of Public Safety;
- logistics costs associated with obtaining fingerprints particularly in remote locations both for the Department of Public Safety and the Department of Health and Social Services;

Position Paper  
CS SB 21  
Page 2

- the Department of Public Safety has stated that the rejection of unacceptable fingerprints runs as high as 40% causing extensive delays in the process;
- even if the fingerprints are acceptably rolled, up to ten weeks is required for processing for results;
- results may be as long as three months out-of-date depending on FBI processing timeframes;
- some professionals have raised civil liberties questions regarding fingerprinting.

With regard to criminal history clearance on adoptive homes, there are an estimated 800 non-stepparent adoptions each year. Most of those adoptions are private adoptions handled by attorneys. Only one quarter of all adoptions involve studies by the Department of Health and Social Services or licensed private adoption agencies. Currently the department is not involved in the other 600 private adoptions per year, other than to receive notice from the petitioners under AS 25.23.100 at least 20 days before the hearing. At this point, DHSS has no tracking system on the notices for private adoptions. The department would need to notify attorneys of this new requirement and establish a tracking system to allow time for processing the criminal history background clearances. The proposed statute does not require the court to delay the adoption pending the criminal history background check, consequently many adoptions would be final before receipt of the check results. The 20 day notice period coupled with a ten week processing period should a court desire the results of the FBI records check would delay the adoption proceedings. Finally, the department is not certain that the state can legally release FBI records to the court or adoptive parties under federal regulations. The Department of Public Safety should be consulted on confidentiality provisions.

Presently, the Division of Family and Youth Services within the department requires a criminal history background check to be completed by all applicants for a foster home license and all adult members of a foster home household. This is a state, not an FBI, criminal history records clearance. The authority for the department is contained in AS 12.62.010, AS 12.62.030, and 6 AAC 60.070(c). Under this authority the Division of Family and Youth Services has a users agreement to access state criminal history background checks based on name, social security number and birthdate rather than fingerprinting. Sec. 5 of this bill would not withdraw the department's current ability to do state criminal history background checks, but would require that a new system of fingerprinting and obtaining FBI record checks be utilized prior to licensure issuance. Presently the department is receiving criminal history hits on approximately 6% of all the applicants and adults residing in foster home. Most criminal history information obtained on applicants does not pose a substantial risk to children.

The criminal histories give department personnel an opportunity to discuss the circumstances and rehabilitation following a violation. For example, there may be an adult son in the home with substantial numbers of violations. In these cases the criminal history background checks allow the department an opportunity to counsel those persons out of applying for foster care until the son is no longer residing in the home. In only two cases has a license been denied based on criminal history background findings. Current processing under the state system runs up to 30 days.

At Senate HESS request the department has drafted a criminal records background clearance section under AS 47.35 to include child care facilities. The new draft would continue the department's practice of doing state criminal background checks on administrators in residential child care facilities and adult residential care facilities. However the new draft would expand the criminal history to include national criminal background checks on the administrators. Additionally it would also include state and national checks on all facility staff and adult occupants of the facilities (defined by the department as residential child and adult care facilities, family child care homes [formerly called day care homes], child care centers [formerly called day care centers], as well as child and adult foster homes). The department will do the criminal history clearance on home size facilities. The other facilities, under the authority in AS 12.62, will do the criminal history search on their staff. The cost for the criminal history search will be payed by the facility or applicant. However the department will pay the costs for foster homes that care for children in state custody.

The department currently issues provisional licenses prior to obtaining criminal history background checks because of emergency situations where a child must be placed before the licensing study can be completed. In these cases, DFYS obtains references, visits the home and gets a signed application, but there is no time for a criminal history clearance. When a child has been removed from an unsafe home and there is no licensed foster home available to take that child, issuance of a license under an emergency condition is appropriate. The department would need to continue that practice pending FBI criminal history clearances. Under the new language in the DFYS draft, licenses and employment would be provisional until it was determined that an individual did not pose a risk of harm to a child.

Under sections (b) and (c) of the DFYS proposed bill a determination would have to be made by the department or facility concerning an individual's potential risk of harm to a child. Consequently the bill would authorize the department or the facility to investigate law enforcement records and to deny licensing or employment unless the licensee or employee can demonstrate that past danger of a risk of harm to a child does not continue to the present. This will, hopefully, avoid the constitutional issue of denial of a license or employment solely because of the badge of a "scarlet letter".

Although some child abusers will lie regardless of the application form, the penalty, class A misdemeanor with a penalty of up to one year in jail, for unsworn falsifications (AS 11.56.210) should be a strong inducement to care providers to be truthful.

Recommendations

The department urges passage of Secs. 1, 2 and 3 of this bill to provide ability of employers supervising children to obtain criminal history background checks on their employees. The department appreciates being given the opportunity to draft criminal history provisions that will respond to litigation experienced in the last year and to the complexities of implementing criminal history clearances in licensed facilities. Attached is a fiscal note for the bill including section 4 (adoptions) and the department's proposal for a revised section 5 (expanded criminal history background checks). It should be noted that the costs on Secs. 4 and 5 of the bill are not in the Governor's proposed FY 86 budget.

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

DATE: March 29, 1985

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

DATE: 4-2-85

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST  
Bill/Resolution No.: Proposed CS SB No. 21  
Title: An Act relating to background checks  
Sponsor: HESS  
Requestor: \_\_\_\_\_  
Date of Request: 3/26/85

FISCAL DETAIL  
Agency Affected: Health and Social Services  
Program Category Affected: Social Services  
BRU, Program or Subprogram(s) Affected: Social Services BRU, Southcentral, Northern and Central Office Components

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		76.1	79.1	82.3	85.6	89.0
200 TRAVEL		6.6	6.9	7.1	7.4	7.7
300 CONTRACTUAL		37.4	29.1	30.3	31.5	32.7
400 SUPPLIES		1.2	1.3	1.3	1.4	1.4
500 EQUIPMENT		6.7				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>128.0</b>	<b>116.4</b>	<b>121.0</b>	<b>125.9</b>	<b>130.8</b>
<b>CAPITAL</b>		<b>-0-</b>				
<b>REVENUE</b>		<b>-0-</b>				

FUNDING: (Thousands of Dollars)

GENERAL FUND		128.0	116.4	121.0	125.9	130.8
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>128.0</b>	<b>116.4</b>	<b>121.0</b>	<b>125.9</b>	<b>130.8</b>

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME		2	2	2	2	2
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Michael L. [Signature] Phone: 465-3170  
Division: Family and Youth Services Date: 3/28/85

Approved by Commissioner: [Signature] Date: 4-2-85 *JCC*  
Agency: Health & Social Services

Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor

IV. ANALYSIS

A. Assumptions

This legislation would require the department to implement state and FBI criminal record checks, which include fingerprinting, for adoptive parents and all facility staff and adult occupants who work or reside within a facility. Because no system exists for this process and because there are numerous legal and logistics problems in implementing it, a full time professional position, Social Worker IV, will be required in the Central Office to work closely with the Department of Public Safety, division field offices, private adoption agencies and the Alaska Bar Association to secure implementation. In addition there will need to be extensive work with the Department of Law regarding confidentiality provisions and potential litigation. There will be a handling burden on offices in Fairbanks and Anchorage, requiring two permanent part-time positions, Clerk Typist III's, in those offices. Until the actual workload is examined it is difficult to measure and predict the actual fiscal impact of this legislation. There are currently 1,016 child and adult foster homes with an average of 2.3 adults in each home. Public Safety has advised that we process clearances at each biennial licensure evaluation. With a 15% turnover this will result in approximately 1,725 clearances in foster homes per year at \$20 per clearance. (\$12.00 FBI processing) (\$8.00 for contracted state processing). This fiscal note assumes that the \$20 background clearance processing cost in adoptions for the 800 new adoptions per year (x 2 adults) will be the responsibility of the adopting applicants.

B. Program Summary

New positions required by this legislation will be as follow:

Social Worker IV in Juneau;  
 Clerk Typist III, permanent part-time, one each in Anchorage and Fairbanks

C. Computations

Personal Services - Social Worker IV	\$ 48.8
Clerk Typist III	27.3
Travel	6.6
Contractual	37.4

1,016 x 15% divided by 2 x 2.3		
	= 1344 x 20.00	= \$26,880
Space Expense for S.W.		4,950
Space Expense for CT	2,250 x 2	= 4,500
General Contractual		1,100
		<u>\$37,430</u>

Supplies	1.2
Equipment - first year only	6.7
	<u>\$128.0</u>

Note: For successive fiscal years, space would be budgeted by Department of Administration. Computations for successive fiscal years at 4%.

D. Economic Impact

There will be no impact on the State economy.

E. Impact On Local Governments

There will be an economic impact on some local police departments.

Hein  
4/15/85 /

Original sponsors: Ferguson, Kelly,  
Faiks, et al

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IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

CS FOR SENATE BILL NO. 21 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to criminal background checks; and  
providing for an effective date."

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

\* Section 1. AS 12.62.035(a) is amended to read:

(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 of an individual for crimes that might pose a risk of harm to a child if the individual [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 individual [PERSON] has or would have supervisory or disciplinary power over a minor. The commission shall authorize the disclosure of the information to the requesting interested person and shall provide a copy of the information to the individual [PERSON] who is the subject of the request.

\* Sec. 2. AS 12.62.035(e)(1) is repealed and reenacted to read:

(1) "crime that might pose a risk of harm to a child" includes a violation or attempted violation of present or former Alaska statutes regarding the offenses now designated as murder, manslaughter, negligent homicide, assault, reckless endangerment, kidnapping, sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, incest, indecent exposure, robbery, arson, endangering the welfare of a minor, contributing to the delinquency of a minor, distribution of child pornography, promoting prostitution,

1 and felony offenses involving distribution of controlled substances;  
2 it also includes a violation or attempted violation of the laws of  
3 another jurisdiction if the offense would have been one of the crimes  
4 listed in this paragraph if committed in this state;

5  
6 \* Sec. 3. AS 12.62.035 is amended by adding a new subsection to read:

7 (f) In addition to the information for which disclosure is  
8 authorized under (a) of this section, the commission may disclose the  
9 existence of an outstanding warrant for the arrest of the person who  
10 is the subject of the request if the warrant is for a crime that might  
11 pose a risk of harm to a child.

12 \* Sec. 4. AS 25.23.100(d) is amended to read:

13 (d) Except as provided in (g) and (i) of this section, an inves-  
14 tigation shall be made by the department or any other qualified agency  
15 or person designated by the court to inquire into the conditions and  
16 antecedents of a minor sought to be adopted and of the petitioner for  
17 the purpose of ascertaining whether the adoptive home is a suitable  
18 home for the minor and whether the proposed adoption is in the best  
19 interest of the minor. The department shall request a state and  
20 national criminal record background check by the Department of Public  
21 Safety on each person who seeks to adopt a minor.

22 \* Sec. 5. AS 47.35 is amended by adding a new section to read:

23 Sec. 47.35.058. CRIMINAL RECORD BACKGROUND CHECKS. (a) For  
24 each person working or applying for work as a staff member of a facil-  
25 ity and for each adult occupant who works or resides in a facility,  
26 the department shall

27 (1) request a state and national criminal record background  
28 check by the Department of Public Safety;

29 (2) require a signed release authorizing the department to  
obtain the person's criminal records and to investigate reports,

1  
2 arrests, and convictions that indicate past behavior by the person  
3 that may pose a risk of harm to a child or to a dependent adult; and

4 (3) require the person to reveal, subject to the penalty  
5 for unsworn falsifications under AS 11.56.210, any pending trial of  
6 the person, or any allegation or charge against the person or con-  
7 viction of the person of a crime that might pose a risk of harm to a  
8 child, as defined in AS 12.62.035, regardless of whether the allega-  
9 tion resulted in criminal charges being filed or whether the charge  
10 was dismissed or whether the conviction was later set aside or cleared  
11 from the person's record.

12 (b) The department shall request a state and national criminal  
13 record background check on each facility administrator, each adult  
14 occupant of a foster home or family child care home, and each facility  
15 operator other than a board member of an incorporated facility who  
16 does not participate in the day-to-day operation of the facility. The  
17 department may license or continue to license only provisionally, and  
18 a facility may employ or continue to employ only provisionally, a  
19 person subject to a criminal record background check under this sub-  
20 section until the state criminal record background check has been  
21 completed and the department has determined, on the basis of the state  
22 check and other information available to the department, that the  
23 person does not pose a risk of harm to a child or dependent adult. A  
24 person subject to a criminal record background check under this sub-  
25 section may not be licensed under AS 47.35.040 or permanently employed  
26 by a facility until the department has reviewed the state and national  
27 criminal record background check and has determined that the person  
28 does not pose a risk of harm to a child or dependent adult. Notwith-  
29 standing the requirements of this subsection, the department may  
authorize temporary emergency placement of a child or dependent adult

1  
2 in a foster home before reviewing either the state or national crimi-  
3 nal record background check.

4 (c) An operator of a facility other than a foster home or family  
5 child care home shall, under the authority of AS 12.62, request a  
6 state and national criminal record background check on each staff  
7 member and each adult occupant of the facility. The facility operator  
8 may employ or continue to employ a staff member only provisionally,  
9 and may allow an adult occupant to reside in the facility only provi-  
10 sionally, until the operator has reviewed the state and national  
11 criminal record background check and has determined that the staff  
12 member or adult occupant does not pose a risk of harm to a child or  
13 dependent adult. A facility operator shall remove from the facility a  
14 staff member or adult occupant whom the operator has determined poses  
15 a risk of harm to a child or dependent adult.

16 (d) The department shall pay the cost of the state and national  
17 criminal background check of a foster home applicant who cares for  
18 children in state custody or cares for a dependent adult in state  
19 protective care. The cost of any other state and national criminal  
20 background check required under this section shall be paid by the  
21 facility operator or the job applicant.

22 (e) In this section, "family child care home" means a small  
23 nursery providing child care for six or fewer children who are not  
24 related to the facility operator and includes such a nursery in an  
25 occupied residence.

26 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.-  
27 10.070(c).  
28  
29

Sec. 5 AS 47.35 is amended by adding a new section to read:

Sec. 47.35.058. CRIMINAL RECORDS BACKGROUND CLEARANCE.

(a) All facility staff and adult occupants who work or reside within a facility shall:

(1) have a state and national criminal record background clearance;

(2) sign a release authorizing the department to obtain their law enforcement records and to undertake investigations of reports, arrests and convictions which indicate past behavior which may pose a risk of harm to a child or dependent adults; and

(3) reveal, subject to the penalty for unsworn falsifications, whether they are awaiting trial or have been previously found in a criminal or civil proceedings to have committed or attempted to commit crimes that might pose a risk of harm to a child as defined in AS 47.62.035(e)(1) regardless of whether an adjudication was later set aside, dismissed or otherwise cleared from their record.

(b) The department must request criminal clearances on all facility operators, except board members of a corporation; facility administrators; and all adult occupants of a foster home and a family care home. An individual subject to a background check under this section may receive a provisional license or be provisionally employed only after the department has received a state criminal background clearance except that in an emergency, a foster home may receive a child or dependent adult prior to either the state or national criminal background clearance review. The individual may not be licensed under

AS 47.35.040 or permanently employed until the national and state criminal background clearance is reviewed and the department makes a determination that the individual does not pose a risk of harm to a child or dependent adult.

(c) Operators of facilities other than foster homes and family child care homes shall, under the authority of AS 12.62, request a state and national criminal record background clearance on each staff member and adult occupant of the facility. The staff member may only be provisionally employed until the criminal record background clearance is reviewed by the operator and the operator makes a determination that the individual does not pose a risk of harm to a child or dependent adult. A facility must remove a staff member or adult occupant if the operator determines that the individual poses a risk of harm to a child or dependent adult.

(d) The costs of the state and federal background clearances must be paid by the applicant or the facility operator except that the department will pay the cost for foster home applicants who care for children in state custody or for dependent adults in state protective care.

(e) The failure of an individual, subject to a criminal history background clearance under this section, to demonstrate that the individual does not pose a risk of harm to a child or dependent adult shall be justification for denial of an application for a license or revocation of an existing license or denial of employment.

(f) As used in this section "family child care home" means a small nursery, usually an occupied residence in which child care is provided for no more than six children who are not related to the operator.

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H-05  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3170

### DIVISION OF FAMILY AND YOUTH SERVICES

March 28, 1985

The Honorable Max Gruenberg  
House Hess  
Pouch V  
Juneau, AK 99811

Dear Representative Gruenberg:

This is in follow-up to the testimony of Pat O'Brien on House Bill 308 related to criminal history background checks and the conversation following the meeting between Representative Gruenberg and Ms. O'Brien of my staff.

One concern expressed by Ms. O'Brien during the testimony was that it would not be possible to obtain FBI criminal history clearances on foster home applicants and other adult members of a foster home prior to licensure in emergency child placement situations. A child may need protective placement in a community where no foster home is available. Committee response to the concern was that the law only requires the department to request the criminal history background search, not to receive the results of the search prior to licensure. Representative Gruenberg you offered to issue a letter of legislative intent to this effect.

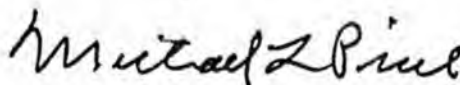
Representative Gruenberg and Pat O'Brien had a conversation following the meeting regarding the change in definition of an "interested person" in AS 12.62 to include individuals who contract for a service. The committee intent in including this provision was explained as giving parents the opportunity to obtain a criminal history background search on family child care operators and child care center employees. While the approach is innovative and may be the best that can be achieved at this time, it will not in most cases meet the needs of parents to reduce risk to their children in child care settings. Child care is difficult to find, particularly family child care homes. In all likelihood, if a parent asked for a criminal history background search on a family child care home operator, the parent would be told to take their child elsewhere. Second, there are up to six sets of parents utilizing a family child care home and consequently there is a potential for six parents to request a criminal history background search on the same family child care home provider. That number multiplies according to the number of licensed spaces in a child care center. Finally, in a family child care home, it is rarely the applicant caregiver but instead an adult member living in the home who poses the greatest risk to children in care. There is no provision in the law for the other adult members of the household to be subjected to a criminal history clearance.

March 28, 1985

The department appreciates the committee's recognition that most child foster homes serve children in state custody. The provision for payment for FBI criminal history searches in child foster homes will assist the division in obtaining and retaining foster homes. As discussed during and following the hearing, there are a number of serious complexities to implementing an FBI criminal records clearance that will place an additional work load on both the Department of Health and Social Services and the Department of Public Safety. A fiscal note is being prepared.

Thank you for your continuing interest in child protection and reducing risks to child in child care. Please let me know if I may provide any further information.

Sincerely,



Michael L. Price  
Director

MLP:PJOB:paj

SECTIONAL ANALYSIS OF HOUSE BILL 308 - CRIMINAL HISTORY BACKGROUND CHECKS; EFD

- SECTION 1 Provides that criminal history background checks on individuals applying for a position working with children will disclose convictions for "crimes that might pose a risk of harm to a child" (HB 88)
- SECTION 2 In the definition of crimes that might pose a risk of harm to a child, the following crimes were removed from the list provided in HB 88: criminal non-support and driving while intoxicated. (HB 88)
- SECTION 3 Adds language to the definition of "interested person" to indicate that a person who enters into a contract with someone to be in a supervisory position with children may request a criminal background check on that person.
- SECTION 4 This section was section 9 in HB 88, the only change being that information on outstanding warrants could be given out only for the crimes listed in Section 2.
- SECTION 5 Amends the adoption statute to require a criminal background check on any person seeking to adopt a child. (Walsh suggestion)
- SECTION 6 Provides for mandatory criminal background checks on Foster parent applicants (for every adult living in the home) both in-state and through the national computer. The cost of the check (estimated at \$20 for state and national) will be born by the department.
- SECTION 7 Immediate effective date.

COMMITTEE REPORT  
HOUSE

(7)

FURTHER: JUDICIARY

3/20/85

Date: 26 March 1985

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HR 308

"An Act relating to criminal background checks; and providing for an effective date."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HR 308 (HSS)  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

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature] co-chair  
CHAIRMAN

[Signature] co-chair



# Alaska State Legislature

## House of Representatives

COMMITTEE ON HEALTH, EDUCATION  
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCHV  
JUNEAU, AK 99811  
465-3759

### LETTER OF INTENT

It is the intent of the House Health, Education and Social Services Committee, in passing Committee Substitute for HB 308, that the Revisor of Statutes shall make the appropriate changes in Sections 1 through 3 consistent with HB 183.

Representative Max F. Gruenberg, Jr., Co-Chair

Representative Niilo Koponen, Co-Chair

Representative Robin Taylor, Vice-Chair

Representative Katie Hurley

Representative David Thompson

Representative Robin Taylor

Representative Fritz Pettyjohn

Representative Alyce Hanley

POSITION PAPER

COMMITTEE SUBSTITUTE FOR HOUSE BILL 308 (HESS)

This bill relates to criminal background checks for persons supervising, caring for or adopting children.

Secs. 1, 2 and 3

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 1, 2 and 3 of this bill expand the types of convictions that may be reported to include all crimes that might pose a risk to children. Section 3 allows the state to inform an inquiring employer if there is a pending warrant for the arrest of the employee. These three sections contain the essential elements in the bill introduced by the Governor (HB 88) and so have the continuing support of the administration.

Secs. 4 and 5

These sections would require a petitioner for an adoption and an applicant for a child or adult foster home license be subject to a criminal history background search by the Department of Health and Social Services prior to the adoption or, in the case of foster care, prior to license issuance.

The department strongly supports reducing risk to adoptive children, foster children and dependent adults in foster care. There are problems with criminal background checks through the fingerprinting process. The Governor's Criminal Justice Working Group recommended that criminal history background checks for licensee's not be included in the administration's child protection package until some of those procedural and legal problems could be resolved. Concerns expressed include:

- the high cost of fingerprinting; there is a \$12.00 charge for the FBI clearance and an estimated \$8.00 state processing charge. These costs would impact local police departments and the Department of Public Safety;
- logistics costs associated with obtaining fingerprints particularly in remote locations both for the Department of Public Safety and the Department of Health and Social Services;
- the Department of Public Safety has stated that the rejection of unacceptable fingerprints runs as high as 20% causing extensive delays in the process;
- even if the fingerprints are acceptably rolled, up to ten weeks is required for processing for results;

- results may be as long as three months out-of-date depending on FBI processing timeframes;
- some professionals have raised civil liberties questions regarding fingerprinting.

Because these issues have been raised, the department wishes to advise the committee of the possible difficulties and hardships of such a new policy.

With regard to criminal history clearance on adoptive homes, there are an estimated 800 non-stepparent adoptions each year. Most of those adoptions are private adoptions handled by attorneys. Only one quarter of all adoptions involve studies by the Department of Health and Social Services or licensed private adoption agencies. Currently the department is not involved in the other 600 private adoptions per year, other than to receive notice from the petitioners under AS 25.23.100 at least 20 days before the hearing. At this point, DHSS has no tracking system on the notices for private adoptions. The department would need to notify attorneys of this new requirement and establish a tracking system to allow time for processing the criminal history background clearances. The proposed statute does not require the court to delay the adoption pending the criminal history background check, consequently many adoptions would be final before receipt of the check results. The 20 day notice period coupled with a ten week processing period should a court desire the results of the FBI records check would delay the adoption proceedings. Finally, the department is not certain that the state can legally release FBI records to the court or adoptive parties under federal regulations. The Department of Public Safety should be consulted on confidentiality provisions.

Presently, the Division of Family and Youth Services within the department requires a criminal history background check to be completed by all applicants for a foster home license and all adult members of a foster home household. This is a state, not an FBI, criminal history records clearance. The authority for the department is contained in AS 12.62.010, AS 12.62.030, and 6 AAC 60.070(c). Under this authority the Division of Family and Youth Services has a users agreement to access state criminal history background checks based on name, social security number and birthdate rather than fingerprinting. Sec. 5 of this bill would not withdraw the department's current ability to do state criminal history background checks, but would require that a new system of fingerprinting and obtaining FBI record checks be utilized prior to licensure issuance. Presently the department is receiving criminal history hits on approximately 6% of all the applicants and adults residing in foster home. Most criminal history information obtained on applicants does not pose a substantial risk to children. The criminal histories give department personnel an opportunity to discuss the circumstances and rehabilitation following a violation. For example, there may be an adult son in the home with substantial numbers.

Position Paper  
CS HB 308  
Page 3

of violations. In these cases the criminal history background checks allow the department an opportunity to counsel those persons out of applying for foster care until the son is no longer residing in the home. In only two cases has a license been denied based on criminal history background findings. Current processing under the state system runs up to 30 days.

The department currently issues provisional licenses prior to obtaining criminal history background checks because of emergency situations where a child must be placed before the licensing study can be completed. In these cases references are obtained, a visit is made to the home and a signed application is completed but there is no time for a criminal history clearance. When a child has been removed from an unsafe home and there is no licensed foster home available to take that child, issuance of a license under an emergency condition is appropriate. The department would need to continue that practice pending FBI criminal history clearances.

Recommendations

The department urges passage of Secs. 1, 2 and 3 of this bill to provide ability of employers supervising children to obtain criminal history background checks on their employees. The costs of Secs. 4 and 5 of the bill are not in the Governor's proposed FY 86 budget.

RECOMMENDED:

Michael L. Price

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

DATE:

March 28, 1985

APPROVED:

John R. Pugh

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

DATE:

4/1/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 3/28/85

REQUEST

Bill/Resolution No.: CS HB No. 308  
 Title: An Act relating to back-ground checks  
 Sponsor: HESS  
 Requestor: \_\_\_\_\_  
 Date of Request: 3/26/85

FISCAL DETAIL

Agency Affected: Health and Social Services  
 Program Category Affected: Social Services  
 BRU, Program or Subprogram(s) Affected: Social Services BRU - Southcentral, Northern and Central Office Components

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		76.1	79.1	82.3	85.6	89.0
200 TRAVEL		6.6	6.9	7.1	7.4	7.7
300 CONTRACTUAL		37.4	29.1	30.3	31.5	32.7
400 SUPPLIES		1.2	1.3	1.3	1.4	1.4
500 EQUIPMENT		6.7				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>128.0</b>	<b>116.4</b>	<b>121.0</b>	<b>125.9</b>	<b>130.8</b>
<b>CAPITAL</b>		<b>-0-</b>				
<b>REVENUE</b>		<b>-0-</b>				

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUNDS		128.0	116.4	121.0	125.9	130.8
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>128.0</b>	<b>116.4</b>	<b>121.0</b>	<b>125.9</b>	<b>130.8</b>

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME		1	1	1	1	1
PART-TIME		2	2	2	2	2
TEMPORARY		-0-				

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Michael L. Price Phone: 465-3170  
 Division: Family and Youth Services Date: 3/28/85

Approved by Commissioner: John Eng Date: 4/1/85 JCC

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget



1.	POSITION TITLE SOCIAL WORKER IV				RANGE/STEP 18A	DARG. UNIT GGU	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		37.4							
6.	Benefits		11.4							
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES		01		48.8					
10.	Travel		02		6.6					
11.	Contractual		03		5.4					
12.	Commodities		04		.4					
13.	Equipment		05		1.5					
14.	Other									
15.	TOTAL COST				62.7					
JUSTIFICATION										
Personal Services based on FY 86 PAC'S.										
Travel based on 2 trips annually to the following: From Juneau to Bethel, Nome, Ketchikan, Anchorage and Fairbanks.										
Contractual, Supplies and Equipment based on FY 86 Budget submission data.										
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1007								
18.		C.F. Match 1003								
19.		General Funds 1004				62.7				
20.		I-A Receipts 1005								
21.		Program Receipts 1028								
		Other								
FOR B&M USE ONLY										
KEY NUMBER - - - - -										

**REQUEST FOR  
NEW POSITION**

AGENCY Health and Social Services  
Social and Economic Assistance  
PROGRAM for the General Population  
BRU Social Services  
COMPONENT Central Office

Page 1 of 3  
Revised Date \_\_\_\_\_

**FY 86**

1.	POSITION TITLE Clerk Typist III				RANGE/STEP 8A	ORG. UNIT GGU	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PPT	STAFF MONTHS 6	RP NUMBER	PCM NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>Personal Services calculations based on PAC'S.</p> <p>Calculations for Contractual, Supplies and Equipment based on FY 86 Budget submission.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	9.8								
6.	Benefits	2.6								
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES	01		12.4						
10.	Travel	02		-0-						
11.	Contractual	03		2.6						
12.	Commodities	04		.4						
13.	Equipment	05		2.6						
14.	Other									
15.	TOTAL COST			18.0						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		18.0						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
KEY NUMBER _____										

**REQUEST FOR  
NEW POSITION**

AGENCY Health and Social Services  
Social and Economic Assistance  
PROGRAM for the General Population  
BRU Social Services  
COMPONENT Southcentral Region

Page 2 of 3  
Revised Date \_\_\_\_\_

**FY 86**

1.	POSITION TITLE Clerk Typist III			RANGE/STEP 8A	BARG. UNIT GGU	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PPT	STAFF MONTHS 6	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL	ADDITION			JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT	Personal Services calculation based on PAC'S.  Calculations for Contractual, Supplies and Equipment based on FY 86 Budget submission.				
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	11.0							
6.	Benefits	3.9							
7.	Supplemental Benefits								
8.	Fixed Benefits								
9.	TOTAL PERSONAL SERVICES	01	14.9						
10.	Travel	02	-0-						
11.	Contractual	03	2.6						
12.	Commodities	04	.4						
13.	Equipment	05	2.6						
14.	Other								
15.	TOTAL COST		20.5						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		20.5					
19.		I-A Receipts 1005							
20.		Program Receipts 102B							
21.		Other							
FOR B&M USE ONLY									
KEY NUMBER _____									

**REQUEST FOR  
NEW POSITION**

AGENCY Health and Social Services  
 Social and Economic Assistance  
 PROGRAM for the General Population  
  
 BRU Social Services  
  
 COMPONENT Northern Region

Page 3 of 3  
 Revised Date \_\_\_\_\_

**FY 86**

# STATE OF ALASKA

## DEPARTMENT OF PUBLIC SAFETY

### OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N  
JUNEAU, ALASKA 99811  
PHONE: 465-4322

February 12, 1985

The Honorable Bettye Fahrenkamp  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear Senator Fahrenkamp:

This is in response to your letter of January 29, 1985, containing five follow-up questions related to this Department's testimony on SB21. The responses are in the same order as the questions asked.

1. Since the enactment of AS 12.62.035 in 1983, there have been 1015 background checks. The procedure is:
  - A. The applicant presents a completed application to a State Trooper detachment or post, along with a check for \$12.00 payable to the FBI if a record check is to be made by that agency also, and is fingerprinted.
  - B. The detachment or post sends the application, check if any, and fingerprints to the Crime Detection Laboratory in Anchorage.
  - C. The Fingerprint examiners process one fingerprint card through the Alaska Automated Fingerprint System (AAFIS). If there is a FBI records search request also, then a second fingerprint card, and the check for \$12.00, are sent to that agency for processing.
  - D. If the fingerprint card processed through AAFIS results in no record, such is noted on the card and it is returned to the requesting agency. If the search reflects a prior entry into the fingerprint system, it will indicate an AST number. Those having such a number are forwarded to Records and Identification for records checks.

The Honorable  
Bettye Fahrenkamp

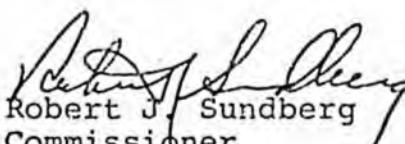
-2-

February 12, 1985

- E. If the records check reveals violations outlined in 12.62.035, that information is sent to the requesting agency, with a copy to the subject applicant.
2. Due to the poor quality of submitted applicant cards as well incorrect information typed on the cards, many must be returned to the submitter. Those that are correctly submitted are input after the criminal cards, which have priority. Normal turn around time, including checks through Records & Identification in Juneau, is ten days.
  3. Up to this time, there have been no persons processed that have records identified under 12.62.035.
  4. The procedure for notifying employers of the results of the records check is by form letter accompanied by the fingerprint card.
  5. As of this writing, there have been 850 requests for FBI records searches. It takes an average of eight to ten weeks to receive their response.

If this office can be of further assistance on this matter, please do not hesitate to call upon us.

Sincerely,

  
Robert J. Sundberg  
Commissioner

# STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH 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

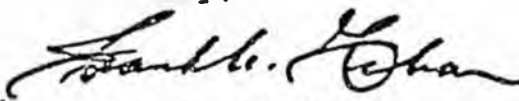
-2-

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 appropriated 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.

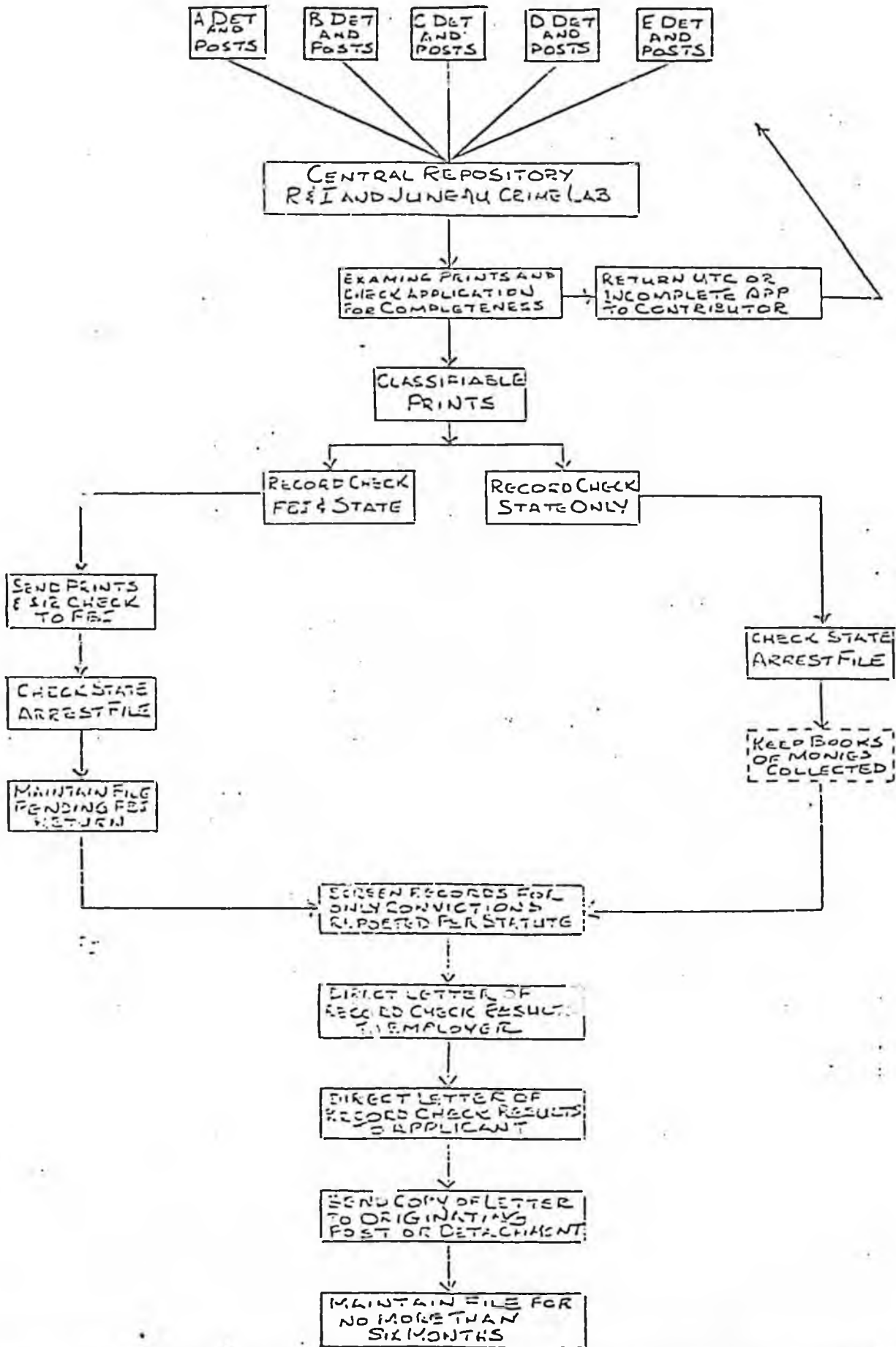
Sincerely,

  
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 (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 G)  private business
  - C)  nursery/day care center H)  individual
  - D)  church/religious organization I)  other
  - E)  youth organization
- 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. \_\_\_\_\_
- 15) Sex: \_\_\_\_\_ Hgt: \_\_\_\_\_, Wt: \_\_\_\_\_, Eye Color: \_\_\_\_\_ Hair Color: \_\_\_\_\_
- 16) Aliases or prior names: \_\_\_\_\_
- 17) Position subject now occupies or is being considered for: \_\_\_\_\_

PART II. AGREEMENT FOR THE DISSIPATION 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:

____ Driver's License No. _____	_____ Name of D.P.S. employee
____ 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

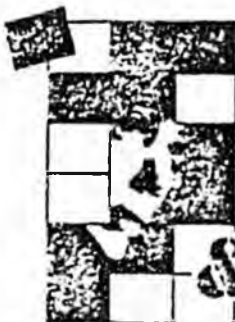
MAY BE RELEASED UNDER AS 12.62.035

(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

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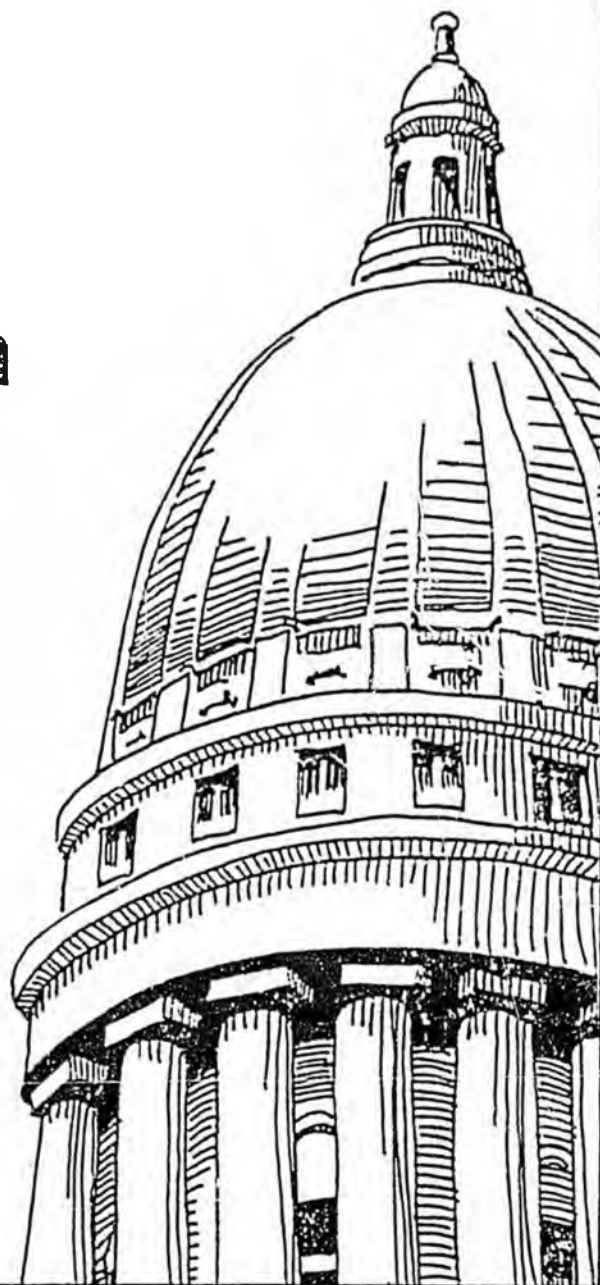
Also included are convictions for an attempt to commit any of the above crimes, and out-of-state convictions which would have been violations of one of these statutes if the offense had been committed in Alaska.



NATIONAL  
CENTER FOR  
**MISSING  
& EXPLOITED**  
CHILDREN

# **Selected State Legislation**

**A  
Guide for  
Effective  
State Laws  
to  
Protect  
Children**



## 8. Licensing and Criminal History Information

Unfortunately, many child sexual assault victims are molested by those in a position of trust and authority over them. And, it is a sad fact that many dedicated and sincere professionals who are deeply concerned about the welfare of children are working in organizations and institutions with those who would seek to harm or exploit children. The vast majority of those who work with children, however, are dedicated people who would *never* seek to harm a child in any way.

It is important to note that criminal history checks will *not* be a complete or thorough solution to the problem of child exploitation in specific institutions and child activities. It is one important step that many states have undertaken to protect children from criminal and sexual exploitation.

### Criminal History Information

One step that many states have undertaken to protect children from criminal and sexual exploitation is a check on an individual's criminal record. While some states have focused their attention on particular professions, such as school employees or day care personnel, it is more appropriate to consider all individuals who work with or volunteer to assist children in a variety of occupations and activities. The scope of the problem goes far beyond one or two institutions and activities.

*A criminal history check is a two-part process:*

1. A check through the state law-enforcement system to determine if there have been any particular kinds of offenses committed by that individual in the state.
2. A check through the federal law-enforcement information system to determine if other states have records of the criminal history of the individual. A record check through both systems will cost between \$20 and \$25.

Some of the state statutes providing for a criminal history authorize access by prospective employers; other statutes allow access to the information by authorizing or licensing an agency of the state government. Also, some states authorize a check by the individual's name and Social Security number, while others use fingerprints as well.

**Federal Law Requiring Background Information and Criminal Histories** In 1984 a federal law was passed that requires that any state wishing to receive certain specific funds under Title XX of the Social Security Act to enact, by September 1985, the following:

A state law or regulation to provide for employment history, background checks, and nationwide criminal record checks for all "existing and prospective operators, staff, or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction, or treatment facilities." (P.L. 98-473)

**State Laws Requiring a Criminal History Inquiry** Checking criminal histories is not an unusual procedure in some states. For example, one state allows such checks for a total of over 65 occupations or professional licenses, including licenses for acupuncture, automobile dealerships, barber shops, bingo operators, funeral directors, engineers, nurses, plumbers, public accountants, school bus drivers, and many others. Another source for background information is the state child abuse and neglect registry, which identifies abusers. Care must be taken to exclude those individuals who were referred to the registry but who were never proved to be abusers.

**Criminal History Information on Those Supervising Children** At least three states have enacted legislation to allow an employer to request information about convictions of sex crimes for *any person* who would have supervisory or disciplinary power over a minor. Kentucky (1984, H.B. 486) recently enacted such a law, an excerpt of which is reproduced below:

**SECTION 10.**

(1) Notwithstanding any other provisions of law, an employer may request from justice cabinet records of all available convictions involving any sex crimes of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The cabinet shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(2) Any request for records under subsection (1) of this section shall be on a form approved by the cabinet, and the cabinet may charge a fee to be paid by the employer for the actual cost of processing the request.

(3) The cabinet shall adopt regulations to implement the provisions of this section.

(4) As used in this section "employer" means any organization specified by the attorney general which employs or uses the services of volunteers or paid employes in positions in which the volunteer or employe has supervisory or disciplinary power over a child or children.

(5) As used in this section "sex crimes" means a conviction for a violation or attempted violation of KRS 510.040 to 510.150, 529.020 to 529.050, 529.070, 539.020, 530.020, 531.310, 531.320, 531.340, to 531.370, and the criminal offense of unlawful transaction with a minor. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky.

Alaska (§ 12.62.035) and California (Penal Code, §11105.2) have enacted legislation similar to Kentucky's. An excerpt from the California statute follows:

§11105.2. Record of conviction involving sex crime; availability to employer for applicant for position with supervisory or disciplinary power over minor.

(a) Notwithstanding any other provisions of law, an employer may request from the Department of Justice records of all convictions involving any sex crimes of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

New York law (§ 378-a) also provides an authorized agency access to records in the Criminal Justice Division to determine the qualifications of persons who will care for and supervise children. An excerpt from the New York statute follows:

§378-a. Access to conviction records by authorized agencies.

Subject to rules and regulations of the division of criminal justice services, an authorized agency shall have access to conviction records maintained by state law enforcement agencies pertaining to persons who have applied for and are under active consideration for employment by such authorized

agency in positions where such persons will be engaged directly in the care and supervision of children.

**Criminal History Information on Foster and Adoptive Parents** Connecticut legislation (§ 54-142K) provides for criminal conviction checks on prospective foster or adoptive parents. This statute, a portion of which is reproduced below, also provides for the Department of Children and Youth Services to obtain criminal conviction records for those working with children:

(f) Notwithstanding any other provisions of law to the contrary, upon request to a criminal justice agency by the department of children and youth services or by any other youth service agency approved by the department such criminal justice agency shall provide information to the department or youth service agency concerning the criminal conviction record of an applicant for a paid or voluntary position, including one established by contract, whose primary duty is the care or treatment of children, including applicants for adoption or foster parents. All information, including any criminal conviction record, procured by the department of children and youth services or any other youth service agency shall be confidential and shall not be further disclosed by such agencies or their representatives. Any violation of the provisions of this subsection relative to the confidentiality of information received by the department of children and youth services or other youth service agencies shall be punishable by a fine of not more than one thousand dollars.

**Criminal History Information on School Employees** Three states have enacted legislation that would require criminal history inquiries for anyone connected with the school system. California (Education Code, 45123) has mandated that no person who has been convicted of a sex offense may be employed by a school district. Following is an excerpt from the California statute:

45123. Employment after conviction of sex offense or narcotics offense.  
No person shall be employed or retained in employment by a school district who has been convicted of any sex offense.

Florida (1984, H.B. 969) has also recently mandated that applicants for teacher certification be subject to both state and federal criminal history checks to determine if the applicant had been convicted of a misdemeanor, felony, or other criminal charge.

The State of Nevada (391.020) requires that an applicant for teacher certification submit fingerprints and written permission authorizing a criminal history check:

391.020 Certificates granted by superintendent of public instruction: fingerprinting of applicants.

1. All certificates for teachers and other educational personnel are granted by the superintendent of public instruction. He may issue certificates to all qualified persons under the regulations of the state board of education.

2. Every applicant for a certificate shall submit with his application a complete set of his fingerprints and written permission authorizing the superintendent to forward such fingerprints to the Federal Bureau of Investigation for its report. The superintendent may issue a provisional certificate pending receipt of such report if he determines that the applicant is otherwise qualified.

3. Upon receipt of the report referred to in subsection 2 and a determination by the superintendent that the applicant is qualified, a certificate must be issued to the applicant.

## Licensing Child Care Institutions

Several states have enacted legislation requiring criminal record information on those connected specifically with *child care institutions*. New Hampshire (§170-E:4) requires investigations of all those dealing with children at particular child care facilities. An excerpt from the New Hampshire statute is reproduced below:

### 170-E:4 Applications.

I. Any person who intends to receive children, or arranges for care or placement of one or more children unrelated to the operator, shall apply for a license to operate one or more of the types of facilities for child care. Application for a license to operate a child care facility shall be made to the department in the manner and on forms prescribed by rule by the commissioner under RSA 541-A. In cooperation with the operator, there shall be an examination of the facility, an investigation of the program and person responsible for the care of children.

II. Upon receipt of any application, the department shall in every case examine the child abuse records of the division of welfare and the criminal conviction records of the state police to determine whether the applicant is of proper character. If the applicant is found to have any record in either the child abuse or the state police files, the department shall indicate that the record exists in its files on the applicant. If the applicant is found to have been convicted of child abuse, he shall not be issued a license.

Colorado (§26-6-104) has enacted legislation for screening the administrator, the applicant, an employee, or applicant for a license of a child care facility. The Colorado legislation, which follows, includes the stipulation that no license to operate a family care home or child care center will be issued to anyone convicted of child abuse or an unlawful sexual offense:

### 26-6-104. Licenses, out-of-state notices, and consent.

No license or certificate to operate a family care home or child care center shall be issued by the department, a county department, or a child placement agency licensed under the provisions of this article if:

(a) The person applying for such a license or certificate has been convicted of an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S. 1973, according to the records of the Colorado bureau of investigation; or

(b) The person applying for a license or certificate has not consulted with the Colorado bureau of investigation, as defined in section 13-21-115 (1)(c), C.R.S. 1973, to determine whether any employee of the family care home or child care center has, according to the bureau's records, been convicted of an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S. 1973.

Gruenberg. Those opposed are Representatives Sund, Clocksin, Phillips, and Taylor.

Number 323

Representative Phillips moves that the bill be moved out of committee with individual recommendations. There are no objections.

Number 402

The Chairman announces that the committee will now take up HB 308. Representative Clocksin has problems because many of the sections being amended are the same sections that are being amended by HB 183. It raises the same issues. Asks to take them both up during the interim.

Number 424

Representative Phillips is concerned with daycare centers.

There are no objections so it is put off till the interim. At 10:32 an at ease is called.

At 10:50 the meeting is called back to order. The Chairman talks about HB 88. There is a proposed Judiciary Committee Substitute in front of everyone in which there have been a number of deletions. Most of the controversial portions of the bill have been deleted.

Number 472

On page 1 of the HESS Cs delete everything below line 9. On page 2 section 3 is deleted, sections 4, 5, and 6 are left in. On page 3 sections 7, 8, and 9 are left in. On page 4 everything is left in. On page 5, line 11, have added the phrase "reasonable perceptions of the child that the touching is sexual in nature are relevant to the determination of whether the touching is sexual abuse". Section 12 is left in. Section 13, lines 6 through 19 are left in but changed. "Court investigators" is used and "employees or volunteers" are used. From Lines 20 through 29 on page 6 is deleted. Subsection (c) is deleted on page 7. Section 14 remains. Section 15 is deleted. Section 16 is deleted. Section 17 is deleted. Section 18 is deleted. Section 19 remains. Section 20 remains. Section 21 remains. Section 22 is deleted. Everything else remains except 28, which is deleted.

Number 538

Representative Peter Goll asks the impact of

H B

5 0 8

Sec. 5 AS 47.35 is amended by adding a new section to read:

Sec. 47.35.058. CRIMINAL RECORDS BACKGROUND CLEARANCE.

(a) All facility staff and adult occupants who work or reside within a facility shall:

(1) have a state and national criminal record background clearance;

(2) sign a release authorizing the department to obtain their law enforcement records and to undertake investigations of reports, arrests and convictions which indicate past behavior which may pose a risk of harm to a child or dependent adults; and

(3) reveal, subject to the penalty for unsworn falsifications, whether they are awaiting trial or have been previously found in a criminal or civil proceedings to have committed or attempted to commit crimes that might pose a risk of harm to a child as defined in AS 12.62.035(e)(1) regardless of whether an adjudication was later set aside, dismissed or otherwise cleared from their record.

(b) The department must request criminal clearances on all facility operators, except board members of a corporation; facility administrators; and all adult occupants of a foster home and a family care home. An individual subject to a background check under this section may receive a provisional license or be provisionally employed only after the department has received a state criminal background clearance except that in an emergency, a foster home may receive a child or dependent adult prior to either the state or national criminal background clearance review. The individual may not be licensed under

AS 47.35.040 or permanently employed until the national and state criminal background clearance is reviewed and the department makes a determination that the individual does not pose a risk of harm to a child or dependent adult.

(c) Operators of facilities other than foster homes and family child care homes shall, under the authority of AS 12.62, request a state and national criminal record background clearance on each staff member and adult occupant of the facility. The staff member may only be provisionally employed until the criminal record background clearance is reviewed by the operator and the operator makes a determination that the individual does not pose a risk of harm to a child or dependent adult. A facility must remove a staff member or adult occupant if the operator determines that the individual poses a risk of harm to a child or dependent adult.

(d) The costs of the state and federal background clearances must be paid by the applicant or the facility operator except that the department will pay the cost for foster home applicants who care for children in state custody or for dependent adults in state protective care.

(e) The failure of an individual, subject to a criminal history background clearance under this section, to demonstrate that the individual does not pose a risk of harm to a child or dependent adult shall be justification for denial of an application for a license or revocation of an existing license or denial of employment.

(f) As used in this section "family child care home" means a small nursery, usually an occupied residence in which child care is provided for no more than six children who are not related to the operator.



# Will criminal record checks protect children?

## Head Start background checks mandated

Background checks of prospective Head Start employees and volunteers will now be required, the federal Health and Human Services Department (HHS) announced in March.

Mandated to help prevent sexual abuse of children in the low-income preschool program, background checks nonetheless came under fire last month in an internal HHS report. Intensive background checks will be complex, time-consuming, expensive, and, worst of all, generally ineffective, the report said. □

Questions about the procedure and effectiveness of background checks of child care workers are raised by recent policy developments, particularly legislation requiring states receiving Social Services Block Grant (SSBG) funds to check employment and criminal records.

The new law governing SSBG funds provides little direction to states about performing background checks. Among the issues to be dealt with are the following:

- Which state agencies will be responsible for the checks?
- Who will pay for the checks, which may cost between \$12 and \$20 each: states, providers or prospective employees?
- What appeal rights do employees and prospective employees have?

- How does the law apply to substitute care-givers and volunteers?

- Must employers check each state's central child abuse registry, in addition to national and local records?

Aside from these unresolved questions, child advocates have expressed a number of concerns about the background checks.

• Legislators and policymakers may view criminal record checks as a solution to the child sexual abuse threat, which they clearly are not. Most adults who abuse

children have no prior convictions. The average molester of girls abuses 62 victims in a lifetime; the average molester of boys abuses 32 victims. Most of them harm many children without ever being accused, much less tried or convicted. If policy-makers believe they've taken major action against sexual abuse in mandating record checks, they may fail to support more important measures.

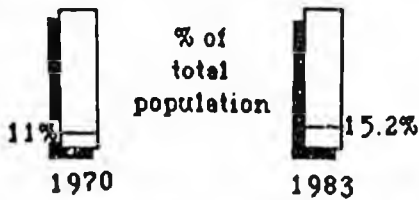
• In California and other states that review records, a significant number of child care job applicants convicted of crimes against children have been screened out. But the record checks take money and staff time, even if computers are used. Unless the government is willing to do record checks in conjunction with other measures, the money might be better spent in other ways.

• Since Congress requires states that use SSBG funds to check the records of already-employed care-givers, the initial review is likely to be sweeping and dramatic, possibly a media event. To keep it from becoming a witch-hunt, advocates say records should be kept confidential, only criminal convictions relating to the abuse of children should be relevant, and false accusations should not be part of an open and accessible record. As one researcher put it, "The assumption that criminal record checks are demeaning is not correct, but there are issues to watch as states decide how to implement these checks."

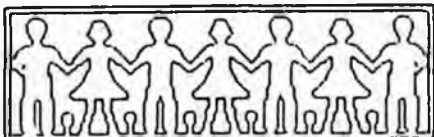
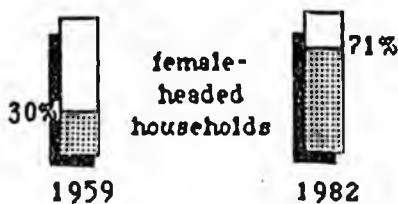
• Other policy responses to child sexual abuse need attention, too. These include requiring an open-door policy of centers, so parents can visit anytime; ongoing training of staff; voluntary credentialing of family day care; greater regulation of and parent involvement in field trips; and improved complaint procedures. □

### America's poor:

#### increasing inequity

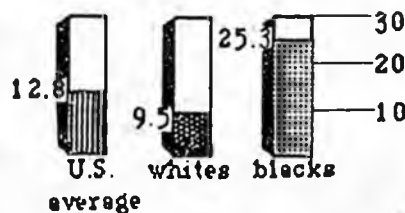


#### poor blacks



### infant mortality

per 1000 births



source: T. Berry Braselton