HB

88

FILE #1

CHILD ABUSE AND CHILD PROTECTION BILLS

IN THE HOUSE

HB 18 - training of teachers and principals on the subject of abuse of children - - H. HESS

*HB 19 (CSHB 19 Jud) - runaway minors - ch. 42 SLA 85

*HB 67 (CSHB 67 Fin Am S) - hearsay evidence from child victims in sex cases - ch. 41 SLA 85

HB 87 - extending termination date of Council on Domestice Violence and Sexual Assault - H. Fin.

*HB 88 (SCS CSHB 88 Fin) - relating to the protection of children (omnibus bill) - ch. 39 SLA 85

HB 174 - requiring training in basic emergency care and the recognition of child abuse by all certified teachers - S. HESS

HB 308 - criminal background checks - H. Jud.

HB 330 - establishing a unit in the troopers for the investigation of criminally exploited and missing children - H. Jud.

IN THE SENATE

*SB 1 (HCS CSSB 1 Jud am H) - relating to the jurisdiction of the superior and district court - provides, among other things, for concurrent jurisdiction over domestic violence petitions - ch. 17 SLA 85

SB 8 - personal safety curriculum in public schools - S. Fin.

SB 21 (CSSB 21 HESS) - criminal background checks on employees who come in contact with children - H. HESS

*SB 27 (CSSB 27 Fin) - Special appropriation to Council on Domestic Violence and Sexual Assault for training program on sexual and physical abuse of minors - ch. 96 SLA 85

SB 28 (CSSB 28 HESS am) - training program for certain state and school district employees on recognition and reporting of child abuse and neglect - H. Rules

*SB 29 (HCS CSSB 29 Rls) - expanding definition of domestic violence - ch. 43 SLA 85

SB 85 - teacher and principal training on abuse of children - S. St. Aff.

SB 165 - child care centers in state buildings - S. Fin.

SCR 3 (CS SCR 3 HESS) - background checks on school district employees who come into contact with children - H. Rls.

*SCR 5 - Milk carton information on missing children - Legis. Resolve 6

SECTIONS REMOVED FROM HB 88

Section 1

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

Section 2

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

Section 5

This section adds a new statute allowing a child's out of court ("hearsay") statement about a sexual offense to be introduced, under specified conditions, at grand jury proceedings. This would allow the grand jurors to hear and consider, for example, a videotaped statement given by the child victim immediately after the abuse was discovered. The statement must appear reliable and the child must either testify at the grand jury, or be "unavailable," as defined in the statute.

A version of this section was adopted in HB 67 which was enacted as ch. 41 SLA 85.

Sections 7, 8, and 9

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

Similar provisions are found in HB 308.

Sections 10 and 11

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

Under existing law, local communities have the authority to establish curfews for minors and to impose penalties for violations. Many communities, particularly in rural areas, have established curfews in hopes of controlling juvenile activity which might lead to delinquent behavior. Present AS 29.43.110, passed in 1962, authorizes penalties of up to a $300 fine and 30 days in jail for curfew violations. These penalties cannot be enforced, however, because the statute conflicts with other state laws. Since minors alleged to have committed crimes come within the jurisdiction of AS 47.10, curfew violations must be handled through the juvenile court, which cannot impose fines or terms of imprisonment. Thus, juveniles accused of curfew violations may be adjudicated as delinquents, but may not be fined or sentenced as indicated in AS 29.43.110.

This bill makes failure to comply with municipal curfew ordinances a violation rather than a crime, and requires that minors accused of violating curfew ordinances be made subject to prosecution, as they

presently are subject to prosecution for violation of fish and game statutes or regulations and traffic laws.

A minor accused of a curfew violation would be charged and prosecuted in district court, and would be subject to a fine of up to $300. The court could, of course, suspend any portion of the fine and require, as a condition of the suspension, that the minor complete a reasonable period of community service work or the fulfillment of similar reasonable conditions.

[Final version of HB 88 inserted a new section (sec. 5) amending AS 47.10.010(a). The jurisdiction over a child in need of aid procedings is amended to include: the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or <u>in need of treatment for</u> mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's <u>parent, guardian, or custodian has knowingly failed</u> to provide treatment; and children who have been <u>or are in imminent and substantial danger of being</u> sexually abused.]

<u>Section 12</u>

Under AS 47.10.081, before a juvenile court may "dispose of" (sentence) a delinquent minor, all parties must receive a predisposition report. This report is

prepared by a DFYS worker. Section 12 amends AS 47.10.081(c) to provide that the report must be provided to all parties two (rather than 10) working days before the hearing.

Section 14

Section 7 of the final version of HB 88 modified considerably the original provisions of this section. The original provisions relaxed the 12 hour time frame on DFYS for filing petitions when a minor is taken into emergency custody. Language was also included which allowed DFYS discretion in filing petitions when emergency custody was assumed and then found not to be necessary.

The final version still requires the department to notify the parents within 12 hours and file a "child in need of aid" petition within 12 hours after custody was assumed if custody will continue. If, however, the department decides to return the child to the parents or guardian within 12 hours after assuming custody, the department needs only to file a report with the court which explains why the child was taken into custody. When a petition is filed, the court must open a file on the matter. However, when a report is provided the court, no file is opened but the court is advised as to the justification for the temporary custody.

Section 15

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

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

Section 16

Although existing law allows DFYS intervention to protect children from mental harm, it does not require that the harm be reported by professionals as is the case with neglect and physical and sexual abuse. This section

will correct that deficiency. Together with sec. 23, which clearly defines "mental injury," this change will provide greater protection for children who have suffered observable mental injury, by increasing the reporting of such incidents.

Section 17

This section was adopted somewhat intact as section 8 of the final version with the following changes, paragraph by paragraph:

(2) retained old language but added "of public and private schools";

(3) retained old language, i.e., social workers;

(7) - (10) were deleted and a new paragraph added to include "paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.900."

[The final version inserted two new sections as secs. 9 and 10.

Sec. 9 was a housekeeping change and replaced "nonprofessional" with "nonoccupational".

Sec. 10 provided that religious healing practitioners are not required to report as neglect of a child the failure to provide medical attention, if the child is treated by spiritual means.]

Section 18

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

Section 18 adds a new section to the statutes: reports to law enforcement agencies. If a person listed in AS 47.17.020 (the general reporting statute) has reason to believe that a child has suffered harm as a result of injury, neglect, or exploitation by someone other than a family member or caretaker, the person must report that harm to a law enforcement officer (rather than DFYS).

Section 19

Section 19 amends the immunity provision in existing AS 47.17.050 to make it clear that a person who makes a child abuse report in good faith, and whose information or testimony is used in connection with criminal prosecution of the offender, as well as in a civil proceeding, is immune from liability for making the report. This clarification is necessary as a result of the appellate court's decision in State v. R.H. and Wetherhorn, 683 P.2d 269 (Alaska App. 1984). The Wetherhorn court held

that the phrase "judicial proceeding," as used in AS 47.-17.060 (dealing with evidence that is not privileged), refers only to civil proceedings -- i.e., "child protection proceedings" -- under AS 47.10 ("Delinquent Minors and Children in Need of Aid"). 683 P.2d at 280.

Section 20

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

[A new section was added in the final version amending AS 47.17.064 which allows for the taking of photos and X-rays of a child believed to have suffered physical harm as a result of child abuse or neglect. While parental permission is not necessary, the parents, guardian or custodian must be notified after the photo or X-ray is taken.]

Section 23

This section amends the existing definition of "child abuse or neglect" to include mental injury caused

by a person responsible for the child's welfare. The rationale for including "mental injury" is described in connection with sec. 16, above.

Section 27

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

See HB 67 (ch. 41 SLA 85).

Section 28

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

BILL SHEFFIELD
GOVERNOR

Those sections deleted from the final version of HB 88 (SCS CSHB 88 fin.) are so indicated.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 18, 1985

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

Dear Representative Grussendorf:

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

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

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

Section 13 and 14 revise existing procedures requiring the

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

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

SECTION-BY-SECTION ANALYSIS

Section 1

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

Section 2

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

Section 3

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

Section 4

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

Section 5

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

See HB 67 ch. 41 SLA 85

Section 6

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

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

Sections 7, 8, and 9

See HB 308

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

Sections 10 and 11

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

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

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

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

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

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

Final version of HB 88 inserted a new section amending AS 47.10.010(a)

Section 12

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

than 10) working days before the hearing.

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

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

Section 13

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

Section 14

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

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

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

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

Section 15

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

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

Section 16

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

Section 17

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

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

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

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

final version inserted a new section amending 47.17.020(b) and adding a new subsection (d)

Section 18

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

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

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

Section 19

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

Section 20

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

Final version inserted a new section amending 47.17.064

Section 21

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

Section 22

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

Section 23

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

Section 24

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

Section 25

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

Removed "human services provider" and "mental injury" from definitions.

final version added definition of "person responsible for the child's welfare."

Section 26

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

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

Section 27

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

Section 28

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

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

Sincerely,

Bill Sheffield
Governor

SECTIONAL ANALYSIS FOR

SENATE CS FOR CS FOR HOUSE FOR HB 88 (FINANCE)

Sections 1 and 2.

These two sections relate to the crime of distribution of child pornography and the definition of "distribution". The wording contained in these sections is based on a recent United States Supreme Court case, New York v Ferber, 458 U.S. 747 (1982), which allows the state to constitutionally regulate the production and distribution of material that depicts children engaged in sexual activity even when the material is not legally obscene.

Section 3.

This section allows prosecutions under AS 11.41.410 - 11.41.460 (sexual offenses), AS 11.66.110 - 11.66.130 (prostitution) and former AS 11.41.430 or former AS 11.51.130(a)(4) (formerly sexual assault and contributing to the delinquency of a minor), for an offense committed against a person under the age of 16. Prosecution may be commenced within one year after the crime is reported to a peace officer or the person reaches the age of 16 which ever occurs first. The period of limitation is not extended by more than five years.

Section 4.

AS 12.45.045, evidence of past sexual conduct in trials for sexual offenses, is amended to include, sexual abuse of a minor in any degree, or unlawful exploitation of a minor, or any attempt to commit any of these crimes. This statute provides for an in camera hearing to determine the admissibility of evidence.

Section 5.

The jurisdiction over a child in need of aid proceedings is amended to include: the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or in need of treatment for mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parent, guardian, or custodian has knowingly failed to provide treatment; and children which have been or are in imminent and substantial danger of being sexually abused.

Section 6.

This section rewrites the circumstances under which the Department of Health and Social Services may take emergency custody of a minor. AS 47.10.142(a)(2) allows the department to take emergency custody of minors that have been abandoned, or grossly neglected by their parents or guardian, if the department determines that immediate removal from the minor's surrounding is necessary to protect the minor's life, or provide immediate necessary medical attention. Previously the wording of this subsection read, "s that immediate removal from the minor's surrounding is, in the determination of the department, necessary to protect the minor's life." This is a minor change in the wording.

Section 7.

This section modifies the procedure that the Department of Health and Social Services must follow when children are taken into their custody. Presently the person having custody of the child and the court must be notified immediately, and in no event more than 12 hours after the child is taken into custody. The court must be notified through the filing of a "child in need of aid" petition.

Senate CS for CS HB 88(Finance) still requires the department to notify the parents within 12 hours and file a "child in need of aid" petition within 12 hours after custody was assumed if custody will continue. If, however, the department decides to return the child to ~~their~~ his/her parents or guardian within 12 hours after custody was assumed, the department need only file a report with the court which explains why the child was taken into custody. When a petition is filed, the court must open a file on the matter. However, when a report is provided the court, no file is opened, but the court is advised as to the justification for the temporary custody.

This amendment ensures that justification for assuming custody of children will always be promptly presented to the court. Protection of the child, notification to the parents, justification to the court, and reasonable procedures for the department are all assured under this amendment.

Section 8.

This section expands the list of individuals required to report instances of child abuse or neglect to the nearest office of the department. Presently school teachers and school administrative staff members must report; ~~however,~~ Senate CS for CS HB 88(Finance) specifically designates that this applies to both public and private schools. In addition, child care providers, not just licensed day care providers, must report. Finally, paid employees of domestic violence and sexual assault programs and crisis prevention programs are required to report.

Section 9.

This section primarily represents housekeeping changes and replaces "non-occupational" for "nonprofessional".

Section 10.

This section provides that religious healing practitioners are not required to report as neglect of a child the failure to provide medical attention to the child, if the child is provided treatment solely by spiritual means.

Section 11.

This section makes it mandatory for persons who process or produce visual or printed matter containing child pornography to report to law enforcement.

Section 12.

This section allows for the taking of photographs and x-rays of a child believed to have suffered physical harm as a result of child abuse or neglect. While parental permission is not necessary, the parents, guardian or custodian must be notified after the photograph or x-ray is taken.

Section 13.

This section provides that a person who knowingly fails or refuses to report an incidence of harm is guilty of a class B misdemeanor. This section deletes "willfully" which is no longer used.

Section 14.

Protective injunctions may be sought in cases against persons who have physically abused a child, or engaged in conduct that constitutes a clear and present danger to the mental, emotional, or physical welfare of a child. The purpose of this section is to give the Department of Law the ability to enjoin persons from association with children in the event that it is proved by a preponderance of the evidence that the person has committed the act.

Section 15.

The definition of practitioner of the healing arts is expanded to include: dental hygienists, nurse practitioners, physician's assistants and psychological associates. This definition is used for the required recording under AS 47.17.020.

Section 16.

Definitions for "child care provider", "organization" and "persons responsible for the child's welfare" are provided.

Section 17.

This section provides that violations of Title 47 or a regulation adopted under that chapter will be prosecuted as a class B misdemeanor. The prior fine under this section is deleted.

Section 18.

A system of civil enforcement may be adopted by the department for violations of a licensing statute or licensing regulation. This is seen as a needed provision for ensuring compliance by licensed day care facilities.

Section 19.

This Act takes effect July 1, 1985.

CSHB 88 (HESS), Relating to the protection of children

SECTION-BY-SECTION ANALYSIS

Section 1

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

Section 2

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

Section 3

Adds a new definition to Title 11, exactly like the one in 47.17.070, for "person responsible for the welfare of a minor".

Sections 4 and 5

Under AS 11.61.125, enacted in 1983, it is a class C felony offense to bring child pornography (visual depictions of children engaged in sex acts) into the state for sale or distribution. The law also prohibits possession or publication of such material with intent to sell it. As presently written, however, AS 11.61.125 does not explicitly prohibit the sale of child pornography. Section 4 strengthens existing law, by explicitly prohibiting sale, and further, prohibits sale and distribution whether or not for commercial consideration.

Section 6

AS 12.10.020(c), enacted in 1983, extended the general five-year statute of limitations for sex crimes against children. Under certain circumstances, a crime of this nature can be prosecuted up to 10 years after it was committed. This extension was adopted because, under the prior law, the five-year limitation period often expired before the child victim became old enough to report the assault. This was especially true when the victim was a very young child. Section 6 of this bill amends the

language of AS 12.10.020 to include prostitution related offenses among those offenses to which the extension applies. The amended language also includes offenses committed under sections of the criminal code that were repealed when the laws relating to sexual offenses against children were revised in 1983.

Section 7

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

In 1983 the criminal laws regarding sexual offenses against children were revised; most sexual offenses against children are now called "sexual abuse of a minor" in one of four degrees. Unfortunately, the language of AS 12.45.045 was not altered to reflect the new designation for sexual crimes against children. Section 7 of this bill amends the statute to make it clear that the protections accorded to adult victims of a sexual assault apply to child victims as well.

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

Section 8

Under AS 47.10.081, before a juvenile court may "dispose of" (sentence) a delinquent minor, all parties must receive a predisposition report. This report is prepared by a DFYS worker. Section 8 amends AS 47.10.081(c) to provide that the report must be provided to all parties six (rather than 10) working days before the hearing.

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

predisposition investigations [illegible] disposition hearings must be postponed.

Section 9

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

Section 10

Section 10 allows DFYS discretion in filing petitions when emergency custody has been assumed in situations that do not require continued protective custody or DFYS involvement. These instances constitute a small percentage of the emergency custody cases, and involve situations in which a primary or temporary caretaker has allowed the child to wander off and the child is discovered by parties who do not know the family. Under current law, in order to provide temporary shelter for the child until parents are located, DFYS must assume emergency custody. A request to dismiss is often filed with the petition in these situations, and the petition is filed only because the present statute appears to require it. This section eliminates the need for this unnecessary paperwork.

Section 11

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

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

Section 12

AS 47.17.010 is a statement of legislative intent that protective services should be provided to child victims of abuse and neglect to prevent further harm to the child, enhance the general well-being of children, and preserve family life. Section 12 clarifies that family life should be preserved whenever it is in the best interests of the child to do so.

Section 13

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

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

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

Section 13 adds a new provision to the statutes: reports to law enforcement agencies. If a person listed in AS 47.17.020 (the general reporting statute) has reason to believe that a child has suffered harm as a result of injury, neglect, or exploitation by someone other than a family member or caretaker, the person must report that harm to a law enforcement officer (rather than DFYS). The law should require that <u>all</u> instances of abuse or neglect be reported to the authorities, not just intrafamily abuse. All children should be protected under the law, without regard to the identity of the perpetrator or the relationship to the child victim.

If the person reporting the abuse is not aware of the perpetrator's relationship to the victim, Section 13 allows a report to be made to either DFYS or a law enforcement officer.

<u>Section 14</u>

Section 14 requires film processors to report suspected cases of child pornography to law enforcement authorities for investigation. Several other states have such a requirement. On at least one occasion in the past, an Alaska man who photographed a young child engaged in sex acts with him was apprehended as a result of a similar reporting requirement in another state. A person who knowingly fails to make a report as required in this section is guilty of a class B misdemeanor under AS 47.17.068 (see sec. 20, below).

Section 15

The current scope of DFYS services does not extend beyond intra-family offenses. Section 15 clarifies that if, after a preliminary investigation, DFYS determines that the harm was not caused by a family member, the report shall be turned over to a local law enforcement officer.

Section 16 - 18

Sections 16, 17 and 18 amend the confidentiality, immunity, and privileged evidence provisions in existing AS 47.17 to make it clear that the applicability of these provisions applies to both civil and criminal proceedings. This clarification is necessary as a result of the appellate court's decision in State v. R.H. and Wetherhorn, 683 P.2d 269 (Alaska App. 1984). The Wetherhorn court held that the phrase "judicial proceeding," as used in AS 47.17.060 (dealing with evidence that is not privileged), refers only to civil proceedings.

The House HESS subcommittee specified in section 16 that the release of confidential information is a Class A misdemeanor.

Section 18 has been changed to provide that the only priviledges are lawyer/client, psychotherapist/patient and clergy.

Section 19

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

Section 20

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

Section 21

Section 21 of this bill provides broad authority to the state to enjoin or limit persons who endanger children in the ways specified from having contact with children. While there may be common law authority for this view, statutory confirmation of this authority removes one issue from possible litigation in cases where the attorney general chooses to bring an action to enjoin or limit a person from contact with children. This addresses the problem of no regulation of day care providers who care for less than five children without burdening the public with regulation of all day care providers.

Section 22

This section clarifies the definition of abuse in AS 47.17 (reporting statute) in light of existing definitions of "neglect" and "child" in this section. Abuse

as used in Title 47 would apply to all incidents of harm against children regardless of who the perpetrator is unless it is specifically stated that the perpetrator must be a person responsible for the child's welfare. This destinction is necessary, as DFYS's scope does not extend beyond intra-family abuses.

The Department recommends removal of the term nonaccidental, as the person reporting should not have to make that determination.

Section 23

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

Section 24

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

Section 25

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

Sections 26 and 27

Section 26 amends AS 47.35.070(a) to bring this statute into conformity with the criminal code by making violations of child care licensing statutes and regulations a class B misdemeanor. Section 27 adds language that gives statutory authority to the Department of Health and Social Services to establish a system of civil enforcement (including the levy of up to $200 daily in civil penalties) for violations of its licensing statutes and regulations.

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

Section 28

This section is new, based on LAA legal opinion, to reference Section 18 as changing the Alaska Rules of Evidence.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M March 28, 1985

SUBJECT: Sections 13 and 17 of CSHB 88 (HESS) (3/27/85 draft)

TO: Representative Max Gruenberg
Co-Chairman, House Health,
Education and Social Services Committee

FROM: Edward H. Hein EH
Legislative Counsel

You have asked two questions about CSHB 88 (HESS). I address them in the order asked.

1. Is section 13 unconstitutional in that it allows seizure of property without a search warrant?

Section 13 requires photo processors who come across pornographic pictures of children to report that fact to the police and to provide police with copies of the pictures and any information they have about the origin of the pictures.

Article I, section 14 of the Alaska Constitution prohibits unreasonable searches and seizures of property by law enforcement agents. This protection extends only to situations in which the property owner has an actual, subjective expectation of privacy and one that society is prepared to recognize as reasonable. Smith v. State, 510 P.2d 793, 797 (Alaska, 1973). There is no reasonable expectation of privacy in an object if the owner knowingly exposes the object to strangers. By providing in the statutes that photo processors must report and turnover to police evidence of child pornography, the public is put on notice that they cannot expect such photos to remain private. In addition, section 13 expresses society's view that such an expectation is unreasonable.

Without a reasonable expectation of privacy, a search is not unreasonable and the constitutional provision does not

protect the property from search by law enforcement agents. Once police lawfully view evidence of a crime they are entitled to seize it without a warrant. Thus, the search and seizure provided for in section 13 is not unreasonable and does not violate the search and seizure provisions of the constitution.

I note that the second sentence of section 13 is somewhat ambiguous and may present some problems of interpretation. The sentence requires processors to provide police with "copies" of the pornography. It is not clear whether this means the processor must make duplicates prints for the police or whether the processor is to send negatives and prints to police and refuse to return any of it to the customer. It may avoid legal and practical problems to rephrase this sentence to require the processor to allow the police access to the photos and let the police decide whether they constitute evidence of a crime and whether they should be seized. The police presumably are better trained than processors to make this initial legal determination.

2. Does section 17 change Rules of Evidence 504 and 505? (It states "a child's harm", not necessarily a child in the family of a husband/wife). Do we need a title change?

Section 17 amends AS 47.17.060 by changing the phrase "judicial proceeding" to "civil or criminal proceeding". The Alaska Court of Appeals in State v. R. H. and Mitchell Wetherhorn, 683 P.2d 269 (1984), held that the phrase "judicial proceeding" in that statute refers only to child protection proceedings under AS 47.10.010. Therefore, the amendment in section 17 extends the applicability of AS 47.17.060 to additional proceedings, such as criminal prosecutions of sexual abusers that arise from reports submitted under the child abuse reporting statutes. Extending the applicability of AS 47.17.060 would change Evidence Rules 504 and 505 only if it changed the applicability of the physician- patient privilege or the husband-wife privileges as they are currently provided for in those court rules. I conclude that the amendment does change both Evidence Rules by further restricting the applicability of the privileges. Therefore, both a title change and the insertion of a new section in the bill explaining the changes is required.

The physician-patient privilege of Evidence Rule 504 is changed by section 17 because it would make the privilege

inapplicable not only in child protection proceedings under AS 47.10.010, but also in other proceedings that might arise from those reports, such as a tort action brought by an abuse victim. The amendment of section 17 has no effect on the physician-patient privilege in criminal proceedings, since the privilege is already excluded in all criminal proceedings by subsection (d)(7) of Evidence Rule 504.

Evidence Rule 505 contains two husband-wife privileges, both of which are changed by the amendment of section 17. The amendment would further restrict the applicability of both the spousal immunity and the confidential marital communications privilege by expanding the coverage of AS 47.17.060 to criminal and civil proceedings other than child protection proceedings under AS 47.10.010. Both husband-wife privileges may not be invoked in certain civil and criminal proceedings specified in subsection (a)(2) and (b)(2) of Evidence Rule 505. But section 17 would make the privileges inapplicable in civil and criminal cases not specified in the exceptions to the rule. Therefore, the amendment changes the evidence rule.

If you have any questions or comments, feel free to contact me at your convenience.

MH:ojb
J13/039

AS 47.35

Enforcement Activities

This is a summary of enforcement activities under the licensing statute for community care facilities. The enforcement activities of monitoring, consultation, standard-by-standard evaluations, and plans of correction are not included. The listing is limited to enforcement that has prevented operation of new facilities or resulted in closure of existing facilities.

Explanation of Terms

Voluntary - A voluntary application withdrawal or cessation of operation is a decision of the applicant or operator. A voluntary application withdrawal or closure relieves the Division of the necessity to revoke, suspend, or deny a license or to seek injunctive relief. Voluntary actions are usually obtained through the persuasion of the licensing representative. The Department of Law advises that voluntary action is a right of the applicant, licensee, or person operating without a license. Those making a voluntary decision should be informed that they are forfeiting their right to appeal.

Suspension - A suspension of operation is time limited, usually to a month or two.

Denial - A license denial is initiated by serving a statement of issues (listing of non-compliances) to an applicant for a license or renewal of a license.

Revocation - A license revocation is initiated by serving an accusation (listing of non-compliances) to the operator of a facility.

Injunctive Relief - Court ordered injunctive relief is obtained to require closure of a facility.

Other Closures - Other closures have been obtained through monitoring following court ordered action regarding the safety of persons in care and persuasion by the licensing representative to sell or close the facility.

NOTE:

This record is not complete. There is no centralized record on new applicants who are persuaded to withdraw their application. Several voluntary closures of foster homes for serious abuse of foster children have not been submitted to the central office licensing record. Finally, there have been numerous voluntary and required suspensions of operation in family day care homes operating without a license and several day care centers that have not been submitted to the central office licensing record.

I. DAY CARE CENTERS

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Charile Brown	Anchorage	1976	Monitored court removal from facility, facility sold	Sexual Misconduct of the owner
Valley Christian Schools	Palmer	1977	immediate revocation, facility closed	life/safety risks
A.B.C.	Anchorage	1978	immediate revocation, administrative hearing, permanent closure	life/safety risks, substantial non-compliance
Rainbow Center	Juneau	1979	Denial of renewal application, closure	Too many chilren in care consistently
Plaza Bingo	Anchorage	1980	court ordered injunctive relief, permanent closure	life/safety risks
XXXXX	Anchorage	1980	license renewal denial, facility sold	abuse reports, substantial non-compliance
New Life	Fairbanks	1982	monitored court prohibited facility contact; facility eventually closed	commune member sexual abuse of children
Powell	Palmer	1982	vol. closure	reports and compaints of inadequate supervision and to many children in care
House of Little People	Fairbanks	1982	immediate revocation, facility sold	director, sexual abuse of children
St. Annes Nursery	Juneau	1982	voluntary suspension for one month	outbreak of contagious disease
Salisbury, Pat	Palmer	1982	withdrawn application	past C.P. case- Pat family instability

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Sitka Day Care Center	Sitka	1982	required supension for one month until licensed	operating without a license
Fellowship Center	Kenai	1983	voluntary closure	life/safety risks, operating without a license
Anderson, Betty	Anchorage	1984	license revocation	child abuse
II. FAMILY DAY CARE HOMES				
Johnson, Melody	Sitka	1979	license revocation	children seriously injured in care
Caselegno, Norma	Fairbanks	1979	denial of application	health and social risks, accidents
Gnath, Jean	Fairbanks	1980	license revocation	University wouldn't allow day care in their housing
McRae, Sarah	Juneau	1982	denial of reapplication of licensure; hearing request was withdrawn	reports regarding substantial risk and too many children in care
Wang, Louella	Anchorage	1982	immediate revocation	children in jeopardy, serious life safety risks
XXXXX	Anchorage	1982	voluntary withdrawal of application for license	unwilling to suspend spaking of babies causing bruising
Metcalf, Shirlyann	Anchorage	1982	license revocation search warrant necessary to censure compliance	substantiated complaints of too many children in care and life safety risks
Rowland, Bonnie	Anchorage	1982	immediate license revocation	too many children in care, children hidden in tent, serious risks

II. FAMILY DAY CARE HOMES (CONTINUED)

NAME	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Bida, Le 'a	Fairbanks	1982	license revocation	operator no at facility, substitute not cleared
Weis, Maria	Fairbanks	1982	license revocation	operator not at facility, subustitute not cleared
Lenear, Theresa	Fairbanks	1982	license revocation	child was providing care
Quarterman, Vermont	Anchora	1983	license revocation	unsafe and unsanitary conditions verified
Papano, Christina	Fairbanks	1983	denial of application	fire exiting not adequate
Kim, Jeanne	Fairbanks	1983	voluntary closure	serious depression and instability of operator
XXXXX	Sitka	1984	denial	violence, drinking

III. RESIDENTIAL CHILD CARE

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Hills, Cookson	Homer	1980	voluntary closure	director-sexual abuse of children
Turning Point	Rainy Pass	1980	voluntary suspension for three months until licensed	child's finger shot off by a staff member, operating without a license
Holland House		1982	license denial, administrative hearing, denial decision upheld	non-compliance with regulations

IV. CHILD FOSTER HOMES

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
XXXXX	Anchorage	1980	denial of re-licensing	accusation by foster child of sexual abuse
XXXXX	Anchorage	1981	vol. closure pending denial of re-licensing	accusation by foster child of sexual abuse
XXXXX	Wasilla	1981	vol. closure pending Mrs. XXXXX contacted office regarding matter	sexual abuse of daughter
XXXXX	Anchorage	1981	voluntary closure	a convicted pedophile
XXXXX	Anderson	1981	voluntary closure	sexual misconduct with a minor
XXXXX	Anchorage	1982	license revocation	unwilling to suspend spanking of babies causing bruising
XXXXX	Fairbanks	1982	voluntary closure	sexual abuse with own child
Cortez, Jeaniie Cortez	Anchorage	1982	denial of reapplication for licensure Administrative hearing upheld contuned licensure	reports o inadequate supervision and risk to children in care
McFarland, Danny and Barbara	Anchorage	1982	vol. closure pending revocation	conviction for sexual abuse of minor (foster child)
Nelson, Shari	Fairbanks	1982	voluntary closure	alcohol/drug problems
Carland, Larry S.	Anchorage	1983	application withdrawn	evidence of poor judgement in home
Miller, Yvonne A.	Anchorage	1983	denial of license	conviction record of adult male in home

IV. CHILD FOSTER HOMES

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Sherbahn, Ben and	Anchorage	1983	voluntary closure pending revocation	conviction of sexual abuse of minor (foster child)
Brower, John	Barrow	1984	denial, no appeal pursued	1981 Michigan conviction for sexual misconduct with a minor

V. ADULT RESIDENTIAL CARE FACILITIES

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Turnagain	Achorage	1982	license revocation, hearing initiated, voluntary closure	serious physical plant risks, inadequate supervision, operator unable to provide adequate care/safety

1983-1984 Revocation/Denial
(3) (5)

We have not listed voluntary closure (4), those whose license the division would have sought rebocation or denials have vountary closure not occurred. Nor have we listed or pending voluntary closure (8) cases. Nor have we listed denials of initial applications.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSHB 308 (HESS)

SUPPORT

CSHB 308 (HESS) - "An act relating to criminal background checks..."

The Department of Public Safety supports background checks as specified in this bill.

At present, we are exceeding our projected workload for personnel in our fingerprint identification center. Our projections from four years ago indicated a maximum input level of 35 latents and 75 ten print cards per day. We are presently receiving more than 75 criminal cards daily.

With our present backgrounds which are required, plus the applicant cards for school teachers and others supervising children, we are unable to keep up with the workload in a timely manner. This unit must be able to provide timely service to Health and Social Services as well as other employees. Criminal cases take priority over the applicant and background checks.

We propose hiring a clerk and an AAFIS operator to work swing shift. Their primary responsibility will be checks required by this bill.

Each request must be handled several times. We would first complete a background check based on name and demographics. The requester would be notified at our preliminary findings.

After receiving the cards, we would: 1. Acknowledge receipt; 2. Send one card to the FBI with the required funds. The card would be run through AAFIS to verify the persons identity. If different than on the card, a second computer check would have to be accomplished.

After the information is received from the FBI, correspondence would have to be sent to the requesting person or agency.Tickler files would have to be established and maintained to insure backgrounds are done and to avoid duplication.

This bill does not address who is responsible for rolling the prints. We assume it is the applicants responsibility.

Private firms are presently available in Anchorage and Juneau to perform this service. I'm certain that other security firms in other cities would also be interested in providing this service.

The cost in Anchorage is $5.50 and in Juneau $7.50 for this service.

Robert J. Sundberg
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 308(HESS)

Title: "... background checks... contact with children"

Sponsor: House HESS

Requestor: House Judiciary

Date of Request: 04/03/85

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: Administration of Justice

BRU, Program or Subprogram(s) Affected: AST Support & Service - Laboratory Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		70.2	70.2	70.2	70.2	70.2
200 TRAVEL		1.5	1.6	1.7	1.8	1.9
300 CONTRACTUAL		6.0	6.3	6.6	6.9	7.2
400 SUPPLIES		3.5	3.7	3.9	4.1	4.3
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		81.2	81.8	82.4	83.0	83.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		81.2	81.8	82.4	83.0	83.6
FEDERAL FUNDS						
OTHER						
TOTAL		81.2	81.8	82.4	83.0	83.6

POSITIONS:

FULL-TIME		2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie

Phone: 465-4349

Division: Administrative Services

Date: 4-3-85

Approved by Commissioner:

Date: 4/6/85

Agency: Public Safety

Distribution (by Agency preparing fiscal note):

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

7/1/84

COST ANALYSIS

CSHB 308 (HESS)

100 Personal Services			
Both positions to work swing shift			$70.2
Latent Fingerprint Examiner I (Range 15A)		$41.6	
Clerk-Typist III (Range 8B)		28.6	
200 Travel			1.5
Travel for training to keep current in fingerprint technique			
300 Contractual Services			6.0
Postage, telephone	3.5		
Printing of fingerprint cards	2.5		
Training fees	.5		
400 Supplies & Materials			3.5
Supplies for computerized fingerprint system	2.0		
Office & library supplies	1.5		
		TOTAL	$81.2

An effective date of July 1, 1985 is assumed.

A 5% annual inflation factor on line items 200-400 is included beginning in FY 87.

	POSITION TITLE				RANGE/STEP	BARG. UNIT	PAGE/LINE	COV.	APPROV.	DISAPP.
1.	Latent Fingerprint Examiner I				15/A	G				
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL	ADDITION								

	TYPE OF EXPENDITURE 1	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	31,349	
6.	Benefits	5,661	
7.	Supplemental Benefits	1,922	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	41,562
10.	Travel	02	1,500
11.	Contractual	03	1,000
12.	Commodities	04	500
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		44,562

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	44.6
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BAR USE ONLY
KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

An additional fingerprint examiner will be necessary to run print comparisons required under the proposed legislation. The individual will load the cards into the fingerprint system, edit computerized print minutiae and run comparison checks against possible aliases, etc.

This additional workload cannot be absorbed by current staffing and, in fact, this position is budgeted to work swing shift. We originally anticipated running 75 ten-print cards and 35 latent prints through the system daily. Currently, more than 100 ten-print cards and over 35 latent prints are being processed each day.

REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID and Apprehension

BRU AST Support & Service

COMPONENT Laboratory Services

Page of

Revised Date

FY 86

01-1136 (7/82)-13

1.	POSITION TITLE Clerk-Typist III				RANGE/STEP 8/B	BARG. UNIT G	PAGE/LINE	GOV.	APPROV. / DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL		ADDITION						

4. TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
5. Salary 1678/mo + 3.75%	20,891	
6. Benefits	3,772	
7. Supplemental Benefits	1,281	
8. Fixed Benefits	2,630	
9. TOTAL PERSONAL SERVICES	01	28,574
10. Travel	02	
11. Contractual	03	500
12. Commodities	04	1,000
13. Equipment	05	
14. Other		
15. TOTAL COST		30,074

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	30.1
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR BSM USE ONLY
KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This position would provide clerical support for background checks under proposed AS 47.35.065. Duties would include correspondence with employers or individuals concerned, accessing of original fingerprint cards on file and refiling, return of cards to applicants, maintaining tickler files and preliminary checks on the Alaska Public Safety Information Network.

The additional clerical workload which would result from passage of SB 21 cannot be absorbed by the two existing clerical positions in the Lab.

This position will work closely with a requested Latent Fingerprint Examiner and is budgeted at the swing shift rate.

REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID and Apprehension

BRU AST Support & Service

COMPONENT Laboratory Services

Page of

Revised Date

FY 86

01-1136 (7/82) - 13

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

January 25, 1985

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

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

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

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

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

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

110 SEWARD #13 JUNEAU ALASKA 99801 (907) 586-3650

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

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

Prepared by:

Child Sexual Assault Task Force
Ruth Lister, WICCA, Inc.
Rosemary Murray, Alaska Women's Resource Center
Co-chairs

110 SEWARD #13 JUNEAU ALASKA 99801 (907) 586-3650

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

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

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

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

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
5. Treatment	receives therapy and information necessary to work through difficulties arising from assault and subsequent disruption in family after disclosure; individual/group treatment is made available victim is given choice, in her/his own time, whether or not to have contact with the offender; all contact between victim and offender must be supervised	receives support to work through any problems arising from single parenthood and any emotional/financial barriers faced in supporting child; individual/group treatment is made available	1) gets treatment with focus on sexual deviancy as first stage; 2) treatment provided in a secure facility and continuing treatment through community-based programs; 3) with continuation of treatment for sexual deviancy and at the request of the victim, later stages of treatment may focus on healing the relationship with the victim and other family members

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

6. Rural Issues

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

7. Community Safety

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

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

8. Adult Survivors

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

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
9. Training	All therapists providing treatment in the areas of child sexual assault must have a minimum of forty (40) hours of specialized training in victim, survivor, or offender treatment Those working in the field without a master's degree in social work or counseling must, in addition to having received specialized training, be a staff member of a counseling agency or advocacy program and be supervised by a degreed person Training in the dynamics of child sexual assault and appropriate recognition and intervention techniques should be made available to all who come into contact with victims, non-offending parents, and offenders. This training should, at the minimum, be provided to law enforcement personnel, criminal justice personnel, teachers, day care providers, social workers, and staff members of agencies providing counseling and advocacy If limited funds are available for training, priority in allocation should be given to those agencies demonstrating a history of effective and broad based training experience and/or provision of service		

STATE OF ALASKA
DEPARTMENT OF PUBLIC SAFETY
COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

BILL SHEFFIELD, GOVERNOR

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

OFFICE ADDRESS: 450 WHITTIER STREET

October 31, 1985

The Honorable Mike Miller, Chair
House Judiciary Committee
Alaska State Legislature
Capitol Building
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

I've learned about your interim hearings to address legislation to further protect children. Thank you for the attention your committee has and continues to pay to these issues. I cannot attend the hearings on November 21-23, so I am writing this letter to provide input to your process.

The Council on Domestic Violence and Sexual Assault is grateful for the legislation regarding child protection that passed last session. It clarified and closed gaps in existing legislation. One section of HB88 that did not pass, which we feel is important, required reporting of child abuse committed by an individual who is not responsible for the child's welfare. Section 18 of the original HB88 amended AS 47.17 to address what we consider a major gap in the existing system.

AS 47.17.02 requires reporting to the Department of Health and Social Services if "in the performance of their professional duties", a person listed in statute has "cause to believe that a child has suffered harm as a result of abuse or neglect". Section 47.17.070(i) defines child abuse or neglect as "the physical injury or neglect, sexual abuse, sexual exploitation or maltreatment of a child....by a person who is responsible for the child's welfare..." Therefore, there is no existing mandate for a professional to report abuse by a non-caretaker. For instance, a teacher who has reason to believe that another teacher is harming a child is not mandated to report.

Although, national statistics show that most abuse occurs in the home, it is obvious from talking to Alaskan professionals and reading the newspaper and police reports that there are many non-family incidences in our state. Often parents can and do take action if a non-family member is abusing the child. However, they may not know that abuse is occurring or where to turn if it does. Reporting these crimes will further protect children.

We also feel it is necessary for the system to address the emotional needs of the child victims and families when abuse is by a person who is not responsible for the child's welfare. Presently, in Alaska, there are insufficient support and treatment resources for these cases. Domestic violence and sexual assault programs provide support, assistance and, in some cases, counseling to victims and their families. However, these services are severely limited due to insufficient funding. In order to address the needs of all victims and their families, legislation must address child protection adequately and resources must be provided so children throughout the state are given the services they need to grow up to be healthy adults.

Sincerely,

Barbara J Miklos

Barbara Miklos
Executive Director

cc: Members, Council on Domestic
Violence & Sexual Assault

Council funded programs

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

Document No. 85-119

April 8, 1985

The Honorable Max Gruenberg
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Gruenberg:

This letter is to provide you information regarding the impacts of inclusion of "mental injury" in HB 88.

While the per capita reporting of physical abuse and neglect in Alaska is twice the national average, the percentage breakdowns for physical abuse, child sexual abuse, and neglect are comparable ("Trends in Child Abuse and Neglect: A National Perspective"). That is to say, the proportions of abuse and neglect in Alaska parallel the national occurrence for these categories. Hence, it may be assumed that should the State implement mental injury reporting requirements, the impact would be comparable to the national experience. Nationally, emotional maltreatment was reported as a type of harm suffered in 17% of all reported cases of child abuse or neglect from 1976 - 1982. I estimate the ultimate number of mental injury reports in Alaska to be somewhat lower - approximately 10% of abuse/neglect reports - since some mental injury cases are already being dealt with under existing law, AS 47.10.010 (a)(2)(B), and because some overlap occurs. Reports of harm may include more than one type of maltreatment, e.g., physical abuse <u>and</u> mental injury so that the expected number of reports which involved <u>only</u> mental injury would be lower than 17% of the total, more likely about 10%. I would also expect that the full impact of implementing mental injury reporting requirements would not be experienced immediately. Rather, it would occur over a period of time as public awareness increased and reporters became more familiar with both the requirement to report and indicators of emotional maltreatment. As explained, I would estimate a 10% increase in total child protection reports to ultimately occur. However, I project only a 5% increase during the first year of implementation, with additional increases in succeeding years. Based on FY 84 caseloads, this would mean an additional 527 reports in FY 86, increasing to over 1,000 additional reports by FY 88.

Because of the nature and complexity of these cases, mental injury investigations are expected to require approximately twice the staff time needed to investigate reports of other types of harm. It is much easier to assess observable, physical evidence such as bruises, than it is to confirm a child's aberrant behavior as being the result of the parents' actions. A very conservative estimate of time needed would

indicate two full work days per mental injury investigation. At a minimum, five additional investigative staff would be required statewide in FY 86 to respond to these additional reports.

Of the 527 intakes, it is estimated that 150, or approximately 30%, would become ongoing cases. This percentage is significantly less than the 50 - 55% of all abuse and neglect reports that become open cases, according to our Anchorage line staff estimate. The difference again reflects the complexity of substantiating mental injury. Using the State's caseload standard of 50 cases per worker, 3 additional line workers would be required to provide ongoing services. Total investigative, ongoing services, and clerical staff need in FY 86 would be 10.

Because of the nature of the presenting problems, considerable treatment resources would need to be provided to children who are diagnosed as being mentally abused. These costs for FY 86 would be as follows:

1.	Psychological evaluations	$ 47,000
	(60% of all reports @ $150/evaluation - evaluation necessary to assess mental injury)	
2.	Psychological counseling	$180,000
	(50% of ongoing cases will require psychological sessions for 3 months, twice monthly for 9 months @ $80/session)	
3.	Substitute Care	
	A. Foster care (38 FTE's @ $ 19.24/day)	$310,000
	B. Institutional care (11 FTE's @ $121.00/day)	$473,580

The number of psychological evaluations and the level of ongoing psychological counseling is expected to be higher than what is being provided to other abuse and neglect clients as a result of behavioral impairment. Substitute care estimates are based on the level of out-of- home care now being provided to children in custody.

The total estimated cost for FY 86 is as follows:

1.	Staff/support costs	$ 570.8
2.	Psychological services	227.0
3.	Institutional care	473.6
4.	Foster care	310.8
		$ 1,582.2

Costs for succeeding years would, of course, reflect increases based on projections from actual cases in FY 86.

I hope this information is helpful when assessing the inclusion of mental injury in proposed legislation.

Sincerely,

John R. Pugh
Commissioner

cc: The Honorable Peter Goll
Alaska State House

Christian Science suggested amendment:

47.17.020 add.

(e) This section does not require a religious healing practitioner to report as neglect of a child the failure to provide medical attention to the child if the child is provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

(Received by Connie J. Sipe from Richard Block)

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1984

The Honorable Peter Goll
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Goll:

Thank you for your letter of February 13, 1984, regarding amending AS 47.17 to include language regarding psychological injury as a form of child abuse. Currently Alaska law does not provide explicit protection of children from harm to their mental or emotional well-being. Existing statutes focus on physical harm to children and neglect the equally handicapping and often more far-reaching effects of mental or emotional maltreatment. While physically abused children are almost always emotionally maltreated as well, emotional maltreatment may occur alone. Children suffering only mental maltreatment are presently unprotected under Alaska law. This gap in protection of children can generally be attributed to dissatisfaction with criteria for defining and identifying mental or emotional maltreatment and a fear that an insufficient definition would provide too great an opportunity for unwarranted governmental intrusion into Alaskan family life. It is this Administration's position that these issues can be adequately addressed.

We recommend the following amendments to AS 47.17:

1) That the term "mental injury" be used.

2) That a section be added to the Bill to amend AS 47.17 as follows:

   AS 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical or mental abuse or neglect or sexual abuse or sexual exploitation, the Legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the Legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of children in this state, and to preserve family life whenever possible.

3) That a section be added to amend AS 47.17.010(1) to read as follows:

(1) "Child abuse or neglect" means the physical or mental injury or neglect, sexual abuse, sexual exploitation or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

4) That a section be added amending AS 47.17.070 by adding a new paragraph to read:

(9) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance and behavior, with due regard to his culture.

These changes would remove any ambiguity about the intent of the Legislature and would require that harm to the mental health of a child be reported and investigated where such harm appears to have arisen by intent of the person responsible for the child's welfare.

The Department of Health and Social Services has concluded that the suggested amendments to AS 47.17 would require no additional fiscal resources. It is expected that instances of reported emotional injury to children will be relatively small in number and can be investigated satisfactorily with existing staff.

Finally, we believe that this legislation should be changed for the above stated policy reasons. The benefits which would accrue to the State by becoming eligible for funding under PL 95-266 are a secondary gain.

Sincerely,

Bill Sheffield
Governor

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

Document No. 84-35

February 15, 1984

The Honorable Peter Goll
Representative
Alaska State Legislative
Pouch V
Juneau, AK 99811

Dear Representative Goll:

This letter is in response to your letter of January 24, 1984, in which you asked whether the $44,450 we could receive in federal funds would be comparable to the expenses of implementing a change in AS 47.17. This Department has not done a cost benefit analysis of the impact of this change. However, we would like to point out that funds available to states under P.L. 95-266 are allocated on the basis of population. Thus, for states with larger populations, there is more incentive than there is to Alaska. The Federal Government specifies that these funds are to be used for grants to community agencies in the area of child abuse and neglect (CAN) and also requires that a state CAN liason attend yearly national meetings which are generally held on the east coast. Thus, the travel costs must come out of the state's allocation.

If Alaska were to receive these funds, they would be added to the Division of Family and Youth Services' Preventative Services grant program, which is currently funded at the level of $1.9 million. We would, of course, be pleased to have this additional funding added to the grant program, as it could fund another small program somewhere in the State, or help to fund a larger program.

We hope this information clarifies the situation.

Sincerely,

Robert London Smith

Robert London Smith, Ph.D.
Commissioner

06-F38LH

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

abuse

November 16, 1983

MEMORANDUM

TO: Representative Peter Goll

FROM: Heidi Borson HB
Legislative Analyst

RE: Child Abu
Research est 83-202

After sending you our report on child abuse and neglect, I received some materials which may interest you. Attached is a letter from Bruce Berglund, Child Abuse and Neglect Specialist for Region X of the Department of Health and Human Services. His letter outlines the materials he enclosed, and also provides a description of steps Alaska needs to take in order to meet National Center on Child Abuse and Neglect (NCCAN) state grant eligibility requirements, and a history of previous attempts to bring Alaska statutes into conformance with NCCAN standards.

I also received a fact sheet on Michigan's Children's Trust Fund and copies of the bills which established the fund from Sharon Shay, Council for the Prevention of Child Abuse and Neglect. If you would like to review any of the materials Ms. Shay and/or Mr. Berglund sent me, please let me know. I will glady forward copies to you.

Attachments

HB

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Human
Development Services

Region X
M/S 413
2901 Third Avenue
Seattle, WA 98121

November 3, 1983

Heidi Borson
40 House Research Agency
Pouch Y
Juneau, Alaska 99811

Dear Ms. Borson:

As a supplement to our October 31st telephone conversation, I am sending you some material that relates to child abuse and neglect, Alaska and Federal standards to help Alaskan children.

(1) Please refer to the enclosed "Study Findings" that gives a picture of the extent of the problem.

(2) Also enclosed is relevant information on the National Center of Child Abuse and Neglect (NCCAN).

a) The Federal Law on NCCAN
b) The NCCAN Code of Federal Register (CFR)
c) Statement of Assurance for Eligibility
d) Instructions for Making Application
e) Funding

(3) The proposed CFR on FY'84 Demonstrations.

Federal eligibility determination includes a review of Alaska's application, current laws and interpretation of those laws. Until Alaska makes formal application there will be some doubt where the state stands. Based on what we have, Alaska needs to:

(1) Pass an amendment to their CA/N reporting law to include the words, "mental injury". For an example of a total reporting law that meets federal eligibility please refer to PL95-266, Section 3.

(2) Either an amendment or a formal opinion by the Alaska Attorney General indicating that persons responsible for the child includes public and private institutions.

(3) Either an amendment or a formal opinion by the Attorney General stating that, " having cause to believe" is synonymous with, "suspect" in child abuse and neglect reporting.

(4) Review the Alaska inclusion of sexual abuse and sexual exploitation of children in your reporting law. Alaska statutes do not need to use the same words as long as the

state covers the conditions and situations described in CFR Part 1340.2(d). The last General Council review of Alaska statutes was before the issuance of the January 26, 1983 CA/N CFR which details eligibility in this area for the first time.

The DHHS, Regional and Central Offices have encouraged Alaskans to meet NCCAN state grant eligibility (standards) since 1974.

Alaska has declined every year but one to apply for their allocation under Subsection 4(b) (2). The most serious ineligibility factor in Alaska is the failure of the legislators to pass legislation including mental injury as a part of the state's definition of CAN.

In 1976, legislation was introduced to specifically include mental injury in the state's definition of CAN. After considerable debate the legislators did make the decision not to expand on the present definition.

In 1978, an attempt was made to secure an Attorney General's opinion that existing statutes could be interpreted to include mental injury. This approach turned out not to be feasible.

In 1979, some Alaska legislators made an unsuccessful attempt to remove neglect from the existing CAN statutes. As a result of these limited efforts the Department chose not to attempt to broaden the definition of CAN.

In 1980, legislation was reintroduced to include mental injury in the state's definition of CAN. (H.B. 545). The CAN Regional Resource Centers (RRC) efforts to educate legislators about CAN was apparently responsible for the introduction of H.B. 545.

Also in 1980 the Director of the Anchorage Child Abuse Board with urging from the Regional CA/N Specialist offered to continue working with Alaska legislators in reintroducing legislation including mental injury in the Alaska statute defining CAN.

When the Regional CAN Specialist met with Commissioner Beirne in 1981, she felt that mental injury should by all means be included in Alaska's statute definition. She said that such a proposal to legislators would however need to come from outside the Department.

Regional Office efforts continued in 1982.

In 1983 due to OHDS reorganization the Regional CA/N Specialist worked with the Alaska HHS Representative rather than with Alaska's directly.

As I said over the phone Ms. Borson, we are very interested in Alaska

children being helped thru these NCCAN standards and would welcome an opportunity to pursue eligibility issues with you and other Alaska citizens.

Please let us know the response to this material and where we might help.

You may reach me at (206) 442-8109.

Sincerely,

Bruce Berglund
CA/N Specialist

Enclosures

March 18, 1985

The Honorable Peter Goll
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Peter Goll:

I am asking you to support and enact HB 88 relating to the protection of children.

In Sections 47.17.069(4) and .070(1) of the bill, the terms "mental injury" and "emotional injury" are vague and need to be clarified.

In Section 11.51.100(1), what is and who determines "substantial risk"?

A provision stating that if the State assumes custody of 1 child in a family-all other children in the family need to be protected in the same way.

Also a provision protecting the rights of a preverbal child needs to be included.

I am currently involved in a case with the Division of Family and Youth Services and a preverbal child. The information on the case is attached.

If you can use my testemony or have any questions, please contact me at the numbers or address listed below.

Thank you.

Peggy Patten

Peggy Patten
Wk. 465-2570
Hm. 789-2825
P. O. Box 3053
Juneau, AK 99803

The case with the Division of Family and Youth Services involves 1 child (4 years old) in a family who was determined by the State to be a child in need of aid (CINA) and removed from the mother's home. After this action was taken by the State, this same mother took custody of her other 18 month old child who had been living with an aunt for 14 months as a foster child. This same mother lived 2 streets over from where her 18 month old child had lived but only visited her child 5 times in the 14 months and for no longer than 30 minutes per visit.

The case was brought to court to get a temporary restraining order preventing the mother from having custody of this child during the mother's probationary period, (the same time period the other child was in custody of the state). The judge ruled that due to the vagueness of the law he had to award custody of the daughter to the natural mother even though:

1. Her other 4 year old child was determined by the State to be a Child in Need of Aid and removed from her home;

2. She failed the first 3 months of her probation/rehabilitation program with the State and was not making progress with her second 3 months (second chance);

3. She is living with a man who has a record of woman/child abuse.

4. This 19 month old, preverbal child is left alone in the care of this known abuser while the mother goes to her required classes during the days and evening.

5. The judge also ruled that the child was in a potential abusive situation and appointed a guardian at litem who was not named until 4 weeks after the hearing in court.

(The mother was abused as a child. Her State programs include parent aide, homemakers program, and alcoholic counseling.)

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 17, 1984

Dr. Robert London Smith
Commissioner
Department of Health and Social Services
Pouch H 01
Juneau, AK 99811

Dear Commissioner Smith:

Thank you for your letter of March 9, concerning the issue of psychological abuse to minors.

I am pleased to have the support of the Department on this critical issue.

Should I decide to introduce this legislation next Session, I will contact you in a timely fashion.

Best Regards,

Peter

Peter Goll

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE:

DOCUMENT NO. 84-78

March 9, 1984

The Honorable Peter Goll
Representative
The Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Goll:

Thank you for your letter of February 21, 1984, regarding psychological abuse. The Department continues to be in support of legislative changes to AS 47.17 which would add emotional injury to the problem areas which must be reported to the Department. We do believe that such a change would provide additional legal protection to an unknown number of children. Should you be willing to introduce such legislation, the Department would certainly be in support, and would be happy to provide any available information which would be helpful.

Sincerely,

for E. A. Richeau, MD
Robert London Smith, Ph.D.
Commissioner

06-F38LH

REPRESENTATIVE
PETER GOLL

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

February 28, 1984

Mr. Bernard E. Kelly
Regional Director
Department of Health and Human Services
Region X
2901 Third Avenue
Seattle, Washington 98121

Dear Mr. Kelly:

Thank you very much for your letter of February 24. I will contact the Department of Health and Social Services and make every effort to resolve this issue in a productive manner.

I appreciate your time and interest in this matter.

Sincerely,

Peter Goll

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the
Regional Director

Region X
M/S 504
2901 Third Avenue
Seattle, WA 98121

February 24, 1984

The Honorable Peter Goll
State of Alaska
House of Representatives
Juneau, Alaska 99811

Dear Mr. Goll:

This is in response to your December 28 letter to Mr. Bruce Berglund of the Department of Health and Human Services Administration for Children, Youth and Families (ACYF). You had requested our office to review with the Department of Health and Social Services (DHSS) the necessary steps to comply with Federal standards to be eligible for NCCAN funds and further to advise you of specific language to be included in Alaska statutes.

DHSS recently contacted our ACYF staff which provided them with the information on specific steps necessary for Alaska to now meet eligibility standards for NCCAN grants. In addition, Edward Singler, Regional Administrator for Human Development Services which oversees the ACYF, wrote to Commissioner Smith and provided him with information and program guidelines to assist Alaska's efforts toward eligibility for funding.

One of the guidelines which DHSS personnel may have difficulty meeting is the March 31, 1984 deadline to apply for NCCAN funds. If this is the case, the recent program instruction which DHSS has received as a part of Mr. Singler's letter included a statement on a waiver of this deadline. The waiver reads:

> States which are presently ineligible but have legislation in progress which might affect their eligibility should request, from the Regional Program Director, a waiver of the March 31, 1984 deadline for the submission of their Statements of Assurance. However, the deadline cannot be extended beyond June 30, 1984, as State allocations must be made by that date in order that awards can be made before the end of FY 1984. Finally, the waiver of the deadline and extension of time applies only to the Statement of Assurance. The application for Federal Assistance (Form 424) must be made by all applicants no later than March 31, 1984.

In addition to the specific steps needed for eligibility mentioned in our letter to Ms. Heidi Borson, in Mr. Singler's letter and enclosures, and in our telephone discussion with DHSS personnel, following are several other considerations:

- Senate Bill 327, Senator Slurgulewski's bill on emotional injury, changes both the Alaska criminal code (11.51.100(a)) as well as the Child Protection Definition or Reporting Statute (Sec.47.17.070). If there is a possibility of the "under 10 years of age" restriction in the criminal code being construed to apply to the reporting statute, it would not be an acceptable standard to protect children or meet NCCAN eligibility.

- Generally we agree with the DHSS position paper on Senate Bill 327. Many of the comments reflect information that we have sent to DHSS. It appears DHSS does not feel that the "under 10 years" in the criminal code would affect the Reporting Statute and indeed the wording they suggest is satisfactory.

- In discussing a definition of "mental injury," the DHSS staff, on page 3, item 4(9) of the position paper, state that "Mental injury means . . . substantial impairment in the child's ability to function within a normal range of performance . . . ." The Federal intent is to evaluate a child on what is normal for his maturation and circumstances rather than attempting to compare him with others. Our preference would be to change the phrase to ". . . function within that child's normal range of performance . . . ."

A copy of Senator Slurgulewski's bill is enclosed as well as a copy of the DHSS position paper on the bill. We have also enclosed a comment regarding the definition of mental injury.

Our recommendation for the inclusion of mental injury in your Reporting Statute is to keep the definition simple because of the necessity of a broad definition to meet the legislature's intent which is maximum protection of children; of the impossibility of the legislature to predict every instance of mental injury; reasonable parents receive enough guidance by the statute to behave accordingly; and definitions do not cede to the agencies' blanket authority to exercise their discretion.

We urge passage of Alaska Senate Bill 327 since this could very possibly eliminate a major barrier to Alaska's eligibility for program funding, unless earlier comments about the criminal code and "under 10" apply. If this bill does not pass the present legislative session, pending Federal legislation may still provide Alaska an opportunity to be elibile for NCCAN funds. As you may be aware, the United States House of Representatives recently passed H.R. 1904 which contains a different waiver for States. The waiver reads:

> States that do not qualify may be granted a waiver for two years if the Secretary determines the State is making a good faith effort to comply.

It appears the Senate also will include this waiver, though it is not presently in the companion bill, S.1003. In addition, the Department of Health and Human Services will need to publish Federal regulations to accommodate this provision which would delay Alaska's receiving funds for another year. Therefore, even if this waiver is eventually passed by both Houses, there may not be enough time for Alaska to apply for fiscal year 1984 funds.

I am enclosing another copy of the Statement of Assurance that Governor Sheffield needs to sign for eligibility. I suggest your legal services and Attorney General review all 15 assurances.

I appreciate the important efforts you are making on behalf of Alaska's children. If you need additional assistance or further information, please contact me.

Sincerely,

Bernard E. Kelly
Regional Director

Enclosures

cc:
Governor William Sheffield
Commissioner Robert L. Smith

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the
Regional Director

Region X
M/S 504
2901 Third Avenue
Seattle, WA 98121

February 24, 1984

Fire Training
Abuse

The Honorable Peter Goll
State of Alaska
House of Representatives
Juneau, Alaska 99811

Dear Mr. Goll:

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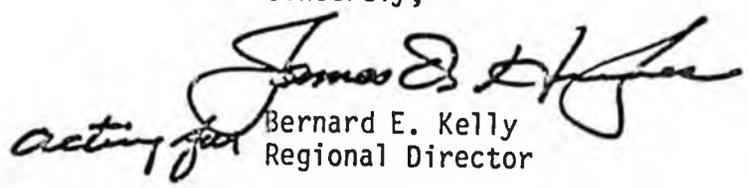
Sincerely,



Bernard E. Kelly
Regional Director

Enclosures

cc:
Governor William Sheffield
Commissioner Robert L. Smith

1 IN THE SENATE BY STURGULEWSKI

2 SENATE BILL NO. 327

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child abuse."

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

8 * Section 1. AS 11.51.100(a) is amended to read:

9 (a) A person commits the crime of endangering the welfare of a

10 minor if, being a parent, guardian, or other person legally charged

11 with the care of a child under 10 years of age, the person intention-

12 ally deserts the child in any place under circumstances creating a

13 substantial risk of physical <u>or emotional</u> injury to the child.

14 * Sec. 2. AS 47.17.070 is amended by adding a new paragraph to read:

15 (8) "harm" means physical or emotional injury to a child

16 which threatens a child's health or welfare.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
SENATE BILL 327

"An act relating to child abuse."

Senate Bill 327 would amend Alaska's criminal code to include placing a child in circumstances creating substantial risk of emotional injury to the child in the definition of the crime of endangering the welfare of a minor. It would also amend Alaska's child protection statute to define harm to a child as both physical and emotional injury which threatens the child's health or welfare.

By defining harm to include emotional injury SB 327 would also have the effect of requiring professional persons who must report harm from physical abuse to also report instances of emotional injury. The Department would in turn be required to investigate such reports and act appropriately to protect children.

The Department supports SB 327 as an appropriate and needed expansion of the range of protection provided for Alaskan children. As presently constructed, Alaska law does not provide explicit protection of children from harm to their mental or emotional well-being. Existing statutes focus on physical harm to children and neglect the equally handicapping and often more far-reaching effects of mental or emotional maltreatment. While physically abused children are almost always emotionally maltreated as well, emotional maltreatment may occur alone. Children suffering only mental maltreatment are presently unprotected under Alaska law.

This gap in protection of children can generally be attributed to dissatisfaction with criteria for defining and identifying mental or emotional maltreatment and a fear that an insufficient definition would provide too great an opportunity for unwarranted governmental intrusion into Alaskan family life. It is the Department's position that these issues can be adequately addressed.

Emotional maltreatment can be differentiated as a category of child abuse and neglect apart from ineffective or even occasionally harmful parenting through four criteria which can be made implicit in the definition of emotional or mental maltreatment. These criteria are:

1. Emotional maltreatment is generally a chronic pattern of parental behavior rather than an occasional lapse; and it has an adverse effect on the child. It causes an emotional or mental injury.

2. The effect of emotional maltreatment is observable in the child's abnormal performance or behavior.

3. The effect of such maltreatment is long-lasting. The maltreatment brings about an erosion of the child's capacity to think and feel.

POSITION PAPER/Department of Health & Social Services

4. The effect of emotional or mental maltreatment constitutes a handicap to the child. It causes substantial impairment of the child's ability to think, to learn, and to enter into relationships with others and to find satisfaction in his/her endeavors.

Although emotional or mental maltreatment is rarely manifested in physical signs, there are a few physical indicators: speech disorders, lags in physical development, and failure to thrive syndrome (which is a progressive wasting away usually associated with the lack of mothering). More often emotional harm is indicated through behavior which is often similar to that of emotionally disturbed children. Emotionally injured children are impaired in their ability to function and often exhibit poor self concepts and impaired overall thought processes. They often have low impulse control and high levels of aggression, anxiety, and self-destructiveness. Such children often display high levels of anti-social behavior as they grow older. These anti-social behaviors such as truancy, extreme aggressiveness, delinquency, and attempted suicide often require the intervention of State or local government agencies and the provision of special services which are often far more expensive and certainly less protective of the child than prevention or intervention at an earlier time would have been.

The Department recommends four amendments to SB 327 to clarify the intent to provide protection of children from emotional harm and to provide a clearer, more legally practicable definition of mental injury. Suggested amendments are as follows:

1. That the term "mental injury" be substituted for emotional injury in Sections 1 and 2 of the Bill.

2. That a section be added to the Bill to amend AS 47.17.010 as follows:

   AS 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical or mental abuse or neglect or sexual abuse or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of children in this State, and to preserve family life whenever possible.

3. That a section be added to amend AS 47.17.010(1) to read as follows:

   (1) "Child abuse or neglect" means the physcial or mental injury or neglect, sexual abuse, sexual exploitation or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

4. That a section be added amending AS 47.17.070 by adding a new paragraph to read:

   (9) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance and behavior, with due regard to his culture.

These changes would remove any ambiguity about the intent of the legislature and would requir that harm to the mental health of a child be reported and investigated where such harm appears to have arisen by intent of the person responsible for the child's welfare.

The vast majority, 47 of the 50 states, have statutory provisions protecting children from mental abuse or neglect similar to those recommended by the Department. Such provisions are encouraged by the Federal Department of Health and Human Services and the inclusion of such provisions in State law makes states eligible to receive federal grant funds under Public Law 93-247. Passage of SB 327 would make Alaska eligible to receive $45,379 which could in turn be granted for the provision of child abuse prevention and treatment programs and services.

The Department has concluded that passage of SB 327 as it is presently constructed or with the suggested changes would require no additional fiscal resources. It is expected that instances of reported emotional injury to children will be relatively small in number and can be investigated satisfactorily with existing staff.

POSITION PAPER/Department of Health & Social Services

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

DATE: 1/25/84

APPROVED BY: _____
Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

DATE: _____

"Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in his ability to function within his normal range of performance and behavior, with due regard to his culture.

Comment

This subsection defines the term "mental injury" which appears in subsection 4(c)(i), supra. However, since that section requires that the parent or other person responsible for the child's welfare "inflict" or "allow to be inflicted" the "mental injury," the mental injury must be clearly attributable to the acts or omissions of the parents and the mental injury to the child must be established clearly before the child can be considered abused or neglected. The causes of mental injury or emotional illness are complex; it would be unfair to automatically blame the parents for a child's mental or emotional condition, and yet, this is an all too common consequence of abuse and neglect. It is important to note that the Model Act requires that the mental injury be "evidenced" by an "observable and substantial impairment." This might include failure to thrive; inability to think and reason; inability to control aggressive or self-destructive impulses; acting-out or misbehavior, including incorrigibility, ungovernability, or habitual truancy. Expert psychiatric or psychological examination often can demonstrate the relationship between a child's mental condition and the acts or omissions of the persons responsible for his welfare, especially if the child improves during the time he is in agency care or his family is under an agency's supervision. Finally, the Model Act is careful to acknowledge the need to make all such judgments about mental injury "with due regard" to the child's culture. Thus, a low IQ score should be evaluated within the context of the cultural distortion inherent in most measures of intelligence.

STATEMENT OF ASSURANCE

NOTE: Please do not attempt to complete this form without first reviewing the Program Instructions for making application for a State Child Abuse and Neglect Grant.

Applicable Section of CFR 1340	Statement
	Statement No. 1
1340.1-2(b)	The State definition of "child abuse and neglect," is in accordance with all aspects of the following:

"Child abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare.

"Harm or threatened harm to a child's health or welfare" can occur through: Nonaccidental physical(1) or mental injury(2); sexual abuse, as defined by State law(3); or negligent treatment or maltreatment, including the failure to provide adequate food, clothing or shelter(4). Provided, however, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent(5).

"Child" means a person under the age of eighteen(6).

"A person responsible for a child's health or welfare" includes the child's parent(7), guardian (8) or other person responsible for the child's health or welfare(9), whether in the same home as the child(10), a relative's home(11), a foster care home(12) or a residential institution (13).

NOTE: Items numbered (1) through (13) indicate different aspects of the requirements for the definition.

State Statutory Provision

Applicable Section of CFR 1340	Statement
	Statement No. 2
1340.3-3(d)(1)	The State has in effect a State child abuse and neglect reporting law.
	State Statutory Provision
	Statement No. 3
1340.3-3(d)(1)	The State provides all persons reporting known or reasonably (good faith) suspected instances of child abuse and neglect with immunity from civil and crimin- prosecution under any State or local law, arising out of such reporting.
	State Statutory Provision
	Statement No. 4
1340.3-3(d)(2)	The State provides for mandatory reporting by some persons(1) and permissive reporting by all persons(2) of known or suspected instances(3) of child abuse and neglect(4) to a properly constituted authority with the power and responsibility to perform an investigation (5) and take necessary ameliorative and protective steps as required in paragraph (d)(3) of section 1340.3-3(6).
NOTE:	(1)-(6): These include the various aspects which must be satisfied in order to meet this requirement. Only the mandatory reporting provision (1) requires documentation from State law.
	State Statutory Provision
	Statement No. 5
1340.3-3(d)(2)	The State provides that the reporting referred to in paragraph (d)(2)(i) must be to an agency other than the agency, institution or other facility involved in the acts or omissions, if the report of child abuse and neglect involves the acts or omissions of a public or private agency or other institutiton or facility.

Applicable Section of CFR 1340	Statement
	Statement No. 6
1340.3-3(d)(3)	The State provides that upon receipt of a known or suspected instance of child abuse or neglect an appropriate investigation is initiated promptly by a properly constituted authority to substantiate the accuracy of the report.
	Statement of No. 7
1340.3-3(d)(3)	The State provides that, upon a finding of abuse or neglect, immediate steps are taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.
	Statement No. 8
1340.3-3(d)(4)	The State has in effect throughout the State such administrative procedures, such trained personnel, such training procedures, such institutional and other facilities (public and private) and such related multidisciplinary programs and services as may be necessary to assure effective enforcement of the child abuse and neglect laws, specifically including: provision for the receipt, investigation and verification of reports; provision for the determination of treatment or ameliorative social service needs; provision of such services; and, when necessary, resort to criminal or juvenile court.
	Statement No. 9
1340.3-3(d)(5)	(a) The State provides by law for the preservation of the confidentiality of all records concerning reports of child abuse and neglect in order to protect the rights of the child, his parents or guardians.
	State Statutory Provision
	(b) Unauthorized dissemination of the contents of the records concerning reports of child abuse and neglect is a crime.
	State Statutory Provision

Applicable Section of CFR 1340	Statement
	Statement No. 10
1340.3-3(d)(6)	The State provides for the cooperation of law enforcement officials, courts of competent jurisdiction and all appropriate State agencies providing human services in relation to preventing, identifying and treating child abuse and neglect.
	Statement No. 11
1340.3-3(d)(7)	The State provides that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem is appointed to represent the child in such proceeding.
Note:	Please check one of the following and attach documentation.

____A State law that such appointments must be made in all cases.

____A State law which permits appointments and a Governor's statement that appointments are made in all cases.

____A State Attorney General's opinion that required appointments can be made and a Governor's statement that such appointments are made in all cases.

____A State Attorney General's opinion that the attorney charged with the presentation in a judicial proceeding is also required to represent the rights of the child where such responsibility is not indicated in law.

	Statement No. 12
1340.3-3(d)(8)	The State provides that the aggregate of support for programs or projects related to child abuse and neglect assisted by State funds has not been reduced below the level provided during Federal fiscal year 1973.
	Statement No. 13
1340.3-3(d)(8)	The State has policies and procedures designed to assure that Federal funds made available under this Act, for any fiscal year, will be used to supplement, and, to the extent practicable, increase the level of State funds which would, in the absence of Federal funds, be available for such programs and projects.

Applicable Section of CFR 1340	Statement
	Statement No. 14
1340.3-3(d)(9)	The State provides for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat instances of child abuse and neglect.
	Statement No. 15
1340.3-3(d)(10)	The State insures, to the extent feasible, that parental organizations combating child abuse and neglect, as recognized by the State, receive preferential treatment.

I HEREBY STATE AND ATTEST THAT the information supplied in this form is true, to the best of my information and belief, and that should any facts or circumstances leading to such information be modified, I shall, within 30 days, so inform the Department of Health and Human Services.

Dated_____ BY_____

Governor

federal register

Wednesday
January 26, 1983

Part II

Department of Health and Human Services

Office of Human Development Services

Child Abuse and Neglect Prevention and Treatment Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1340

Child Abuse and Neglect Prevention and Treatment Program

AGENCY: Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is issuing final regulations to implement the amendments to the Child Abuse Prevention and Treatment Act contained in Title 1 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. 95–266, as amended. The regulations also clarify, simplify and eliminate where repetitive of the statute, the rules governing the Child Abuse and Neglect Prevention and Treatment Program and those related to the coordination of Federal activities rel[illegible] to child abuse and neglect.

EFFECTIVE DATE: February 25, 1983.

FOR FURTHER INFORMATION CONTACT: Jay Olson, Special Assistant to the Director, National Center on Child Abuse and Neglect, Room 2008D, Donohoe Building, 400 6th Street SW., P.O. Box 1182, Washington, D.C. 20013, (202) 245-2859.

SUPPLEMENTARY INFORMATION

Background

The Child Abuse Prevention and Treatment Act (Pub. L. 93–247) (the Act) (42 U.S.C. 5101 et seq.) was enacted in 1974. It established within the Department of Health, Education and Welfare (now the Department of Health and Human Services) the National Center on Child Abuse and Neglect. The National Center is organizationally located within the Children's Bureau of the Administration for Children, Youth and Families, Office of Human Development Services.

The National Center on Child Abuse and Neglect, through the Act, was given responsibility for:

- Compiling and disseminating an annual summary of recent and ongoing research on child abuse and neglect,
- Developing and maintaining an information clearinghouse,
- Compiling, publishing and disseminating training materials,
- Providing technical assistance to public and nonprofit private agencies and organizations,
- Conducting research, and
- Making a complete and full study of the national incidence of child abuse and neglect.

The Act also authorized the Center to make grants or enter into contracts with public agencies or nonprofit private organizations for demonstration programs and projects designed to prevent, identify, and treat child abuse and neglect, as well as make grants to States to assist States in developing, strengthening and carrying out child abuse and neglect prevention and treatment programs.

Finally, the Act provided that the Secretary appoint an Advisory Board to assist in coordinating Federal programs and activities related to child abuse and neglect and develop Federal standards for child abuse and neglect prevention and treatment programs and projects.

Pub. L. 95–266, enacted on April 24, 1978, extended the Child Abuse Prevention and Treatment Act through September 30, 1981. It also amended the Act by adding, in Section 3, sexual exploitation to the definition of child abuse and neglect. As a result, States applying for a State child abuse and neglect grant under Section 4(b)(1) of the Act are required to include sexual exploitation in their definition of child abuse and neglect.

The Department published a Notice of Proposed Rulemaking (NPRM) on May 27, 1980 (45 FR 35794) to implement these amendments.

Subsequently, Title VI, Chapter 7, of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, extended the programs authorized by the Child Abuse Prevention and Treatment Act, Pub. L. 93–247, as amended, through Fiscal Years 1982 and 1983.

In addition to the changes in the regulation required by Pub. L. 95–266, the Department of Health and Human Services is taking this opportunity to clarify and simplify the existing regulation in accordance with the Secretary's regulatory reform principles. In this context, we have omitted from these final rules those provisions contained in the NPRM which merely repeat the statute.

Discussion of Major Comments and Changes

The Department received approximately 60 comments from 24 agencies, organizations and individuals in response to the NPRM published on May 27, 1980 (45 FR 35794). Included below is a summary of the major comments from respondents, our response to those comments, and a discussion of the changes that we have made in the regulations.

Subpart A—General Provisions

Section 1340.1 Purpose and Scope

Section 1340.1(b)(3) authorizes the National Center on Child Abuse and Neglect to make grants or contracts for research, demonstration, and service improvement programs and projects. Eligibility for an award of a grant or contract in these specific areas is governed by the Act and is different for research applicants and demonstration and service improvement applicants. Therefore, the phrase "with public or private agencies and organizations" has been deleted as it pertained to only one category of eligible applicant; also there is no need to repeat the Statute.

Section 1340.2 Definitions

There were a number of supportive comments for many provisions of the proposed regulation. This included support for the definition of child abuse and neglect contained in § 1340.2.

Definition of Sexual Abuse and Sexual Exploitation (§ 1340.2(d) (1) and (2))

Comment.—Some respondents were particularly concerned about the possibility that States may need a legislative change to include sexual exploitation in their definition of child abuse and neglect. (The definition of child abuse and neglect specifies the reportable conditions or situations of child maltreatment.)

Response.—The 1978 amendments to the Child Abuse Prevention and Treatment Act added "sexual exploitation" to the definition of child abuse and neglect in the Act (42 U.S.C. 5102). The current regulations include within the definition of "child abuse and neglect" the phrase "sexual abuse as defined by State law." In order to avoid confusion in the meaning of the terms "sexual abuse" and "sexual exploitation" we added definitions for each of these terms in the Notice of Proposed Rulemaking (see § 1340.2(d) (1) and (2)).

A State is not required to have the words "sexual abuse" and "sexual exploitation" in its State statute as long as the State statute covers the conditions and situations described in the definition of these terms in these regulations. If a State needs to amend its statute to include sexual exploitation as a reportable condition, it has until the close of the second general legislative session of the State legislature that convenes after the effective date of these regulations to do so (see § 1340.13(a)(1)). We believe that the definitions of "sexual abuse" and "sexual exploitation" in these

regulations implement the intent of Congress, to assure that the various forms of sexual mistreatment of children are reported. In addition, we believe the provision that allows States that do not now provide for the reporting of sexual exploitation a reasonable period of time to amend their statutes is a fair and reasonable method of enabling them to comply with the requirements of the Act.

Comment.—Concern was also expressed that the phrase "for commercial purposes" limited the definition of sexual exploitation. Commentors asserted that sexual exploitation for commercial purposes omits sexually exploitive acts by those persons using children for non-commercial purposes, e.g., out of a deviant interest and desire for personal gratification.

Response.—We agree. Therefore, in § 1340.2(d)(2), we have dropped the words "for commercial purposes" from the definition as proposed in the NPRM. It is our intent to include within this new definition all sexual exploitation of children.

Definition of Negligent Treatment (§ 1340.2(d)(3))

Comments.—We received strong recommendations that the definition of "negligent treatment or maltreatment" be expanded to include failure to provide medical care.

Response.—We have reviewed this matter and agree with the recommendation. The definition of negligent treatment or maltreatment in a majority of State reporting laws now includes the failure of parents or caretakers to provide adequate food, clothing, shelter and medical care. Thus, the basic needs of children are identified in most State statutes: failure to supply these necessities of life are cause to make a report to the agency mandated by statute to investigate reported cases of child abuse and neglect.

Also, recent events in which parents or guardians failed to provide needed medical care or treatment to handicapped infant children who later died suggest that legal protections are needed for these infants.

In addition, the language of the Child Abuse Prevention and Treatment Act, as amended, supports the inclusion of failure to provide adequate medical care as a reportable condition. Section 3 of the Act (42 U.S.C. 5102) defines "child abuse and neglect" to cover acts or situations constituting abuse or neglect which occurs "under circumstances which indicates that the child's *health* or welfare is harmed or threatened thereby * * *." Section 4(b)(2)(C) of the Act (42 U.S.C. 5103(b)(2)(C)) provides that "upon a finding of abuse or neglect, immediate steps shall be taken to protect the *health* and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect; * * *"

Legislative history also reflects Congressional concern about the failure to provide specific medical treatment for a child, unless it is not provided for religious reasons, by persons responsible for the child's health or welfare. The Report of the House Education and Labor Committee contains the following:

> The Committee recognized that "negligent treatment" is difficult to define, but it is not the intent of the Committee that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specific medical treatment for a child is *for that reason alone* considered to be a negligent parent. To clarify further, no parent or guardian who in good faith is providing to a child treatment solely by spiritual means such as prayer according to the tenets and practices of a recognized church through a duly accredited practitioner shall *for that reason alone* be considered to have neglected the child. (H. Rep. 93–685, 93*rd* Cong., 1*st* Sess. (1973), pp. 4–5). (Emphasis in original)

In light of these factors and the need to insure the protection of children's health, we have included the failure to provide adequate medical care as a part of the definition of negligent treatment in § 1340.2(d)(3). If a State needs to amend its statute to include the "failure to provide adequate medical care" as a reportable condition, it has until the close of the second general legislative session of the State legislature following the effective date of these regulations to do so.

The definition of "harm or threatened harm to a child's health or welfare" in the existing regulations, 45 CFR 1340.1–2(b)(1), contains a religious exception which was interpreted by the Department to be an eligibility requirement for a State grant under Section 4(b)(2) of the Act (42 U.S.C. 5103(b)(2)). This is an exception which provides that a parent or guardian who does not provide medical treatment for a child because of the parent's religious beliefs is not considered, for that reason alone, to be a negligent parent or guardian.

The religious exception in the proposed regulations appeared as a "Note" to the definition of 'negligent treatment or maltreatment' in § 1340.2(3) and was intended to be retained as an eligibility requirement for a State grant. That "Note" exempted a parent or guardian from being considered to have neglected his/her child if medical treatment is not provided because the parent or guardian is legitimately practicing his/her religious beliefs.

Eight respondents commented on this "Note" to the definition of "negligent treatment or maltreatment". Two respondents agreed with the deletion of the clause included in the current regulations, which recognizes the power of a court to require medical treatment over the religiously-based objections of the parent or guardian. These respondents also conveyed the satisfaction that had been expressed to them by the Christian Science Church with this part of the proposed regulation. One respondent requested that the substance of the "Note" be clearly stated as a regulation or be deleted.

Five of the respondents objected to this exemption and urged its removal from the proposed regulations. They presented several reasons for removing the proposed religious exemption from final regulations. Four respondents claimed that some children suffer and die as a result of their parents relying on spiritual healing under circumstances in which medical treatment could have prevented such results. Two respondents added that the religious exception impedes discovery of cases so that even if courts retain their power to order medical treatment, the exercise of that power often comes too late. Three respondents argued that all children deserve the protection of the law, with two of them observing that the religious exception served to deny children their constitutional right to life and to equal protection of the law. One respondent was also of the opinion that the religious exception inhibited criminal prosecution of parents, even if their child had died as a result of the failure to provide medical treatment. Another suggested that there should be a religious exception from criminal prosecution, but not one that impedes protective action under civil law. Finally, one respondent called attention to the fact that objections had been raised to the inclusion of the religious exception in the current regulations and that objections continue to be presented.

Response.—All of these responses were considered in the context of the Act, the regulation and the legislative history of the Act [H.R. Report No. 93–685, November 30, 1973, 93rd Congress, 1st Session (1973)]. The latter reported to the House of Representatives the bill that became the Child Abuse Prevention and Treatment Act, and contained a statement supporting a religious exception. As enacted, however, the Act

contained eligibility requirements for grants under Section 4(b)(2) (42 U.S.C. 5103(b)(2)); but did not include among them a religious exception. The Notice of Proposed Rulemaking of August 28, 1974 (39 FR 31507) to implement the Act included a religious exception as part of the definition of "child abuse and neglect." Although the Department received objections to this exception it concluded that the exception was intended by Congress. Consequently, in order to receive grants under Section 4(b)(1) of the Act (42 U.S.C. 5103(b)(1)), States were required to have a religious exception in their statutes or to certify their recognition of an exception by a State Attorney General's opinion. In 1978, when the Congress reauthorized the Act, it passed several amendments, including one that modified the definition of "child abuse and neglect." Again, however, the legislation failed to include mention of a religious exception. It was nonetheless included in the proposed regulations and elicited the comments noted above.

In light of this history and the objections of respondents, we have reexamined the legal support for a religious exception as an eligibility requirement under Section 4(b)(2) of the Act (42 U.S.C. 5103(b)(2)). We have concluded that such an eligibility provision is not required by the Act. Therefore, § 1340.2(d)(3)(ii) of the final regulation states that the regulations are not to be construed as prohibiting or requiring a finding of negligent treatment or maltreatment when a parent practicing his/her religious beliefs does not, for that reason alone, provide medical treatment for a child. Thus, States are free to recognize or not recognize a religious exception without that choice having any effect on eligibility for a State child abuse grant. The regulation provides at § 1340.2(d)(3)(ii) that if under State law a finding of negligent treatment is prohibited when medical treatment is withheld for religious reasons, that prohibition does not limit the authority of the State to insure that needed medical treatment is provided.

Definition of Threatened Harm (§ 1340.2(d)(4))

Comments.—One respondent requested that the regulation clarify the definition of "threatened harm to a child's health or welfare," which the proposed regulation defined as "a substantial risk of harm to the child's health or welfare." It was suggested that some less ambiguous term be used.

Response.—As there were no additional suggestions for changing or clarifying this definitional term and because we could find no substitute language which seemed to be clearer, it was decided that no change would be made.

"Threatened harm" is a part of the definition of child abuse and neglect in both the Act and regulations. The NPRM defined threatened harm to mean a substantial risk of harm to the child's health or welfare. The Act defines child abuse and neglect so as to include acts or omissions including child abuse, sexual abuse and child neglect by persons responsible for a child's welfare under circumstances which indicate harm or threatened harm to the health or welfare of the child. (42 U.S.C. 5102.) The reasons for the inclusion of "threatened harm" is based on the premise that society should not have to wait until a child is actually injured before protective action is taken. At the same time we recognize that, in some instances the harm that is threatened is not of a sufficient degree to necessitate State intervention. The term "substantial risk" is used to clarify that a State need not intervene until, in its judgment, the threat of harm to the child is real and significant.

Definition of a Person Responsible for a Child's Welfare (§ 1340.2(d)(6))

Comments.—The proposed regulation defined "a person responsible for a child's welfare" to include those persons responsible for around the clock care of children (§ 1340.2(5), now § 1340.2(d)(6)). A suggestion was made to add others to this definition such as teachers and employees of public or private institutions.

Response.—For children in settings which provide less than 24-hour care such as day care centers and schools, we believe that primary reliance should be placed on parents to protect their own children by voicing their concerns to school officials or seeking criminal action. Therefore, we do not believe a change in the language of the regulation to include personnel of day care centers and schools is necessary or desirable.

Coordination Requirements (§ 1340.4)

We have added a new § 1340.4 to the final rules which requires that all Federal agencies responsible for programs related to child abuse and neglect must provide information as required by the Commissioner to insure effective coordination of effort.

This is not a new requirement but is derived from Subpart D as proposed in the NPRM.

Subpart B—Grants to States

Section 1340.11 Allocation of Funds Available

Comment.—One comment suggested that the amount of State grant funds available for States that do not apply or are found ineligible should be allocated among the eligible States, deleting the second option in the proposed regulation that would permit the Commissioner of ACYF to authorize the use of funds "for such other purposes under the Act."

Response.—The suggestion is consistent with our current practices. Therefore, we have revised the regulation to limit reallocation of State grant funds to eligible States.

Section 1340.12 Application Process

We have deleted § 1340.12(b) of the NPRM which provided for the solicitation of State grant applications each Federal fiscal year by a publication in the Federal Register of a "Notice of Availability of funds for State grants." Since the only eligible applicants for State grants are the State agencies designated by the Governor to apply for such funds (§ 1340.12(a)), we have eliminated the annual Federal Register Notice effective in fiscal year 1982. Instead, we have substituted a specific program instruction, mailed directly to the appropriate State agencies, which includes necessary application forms, allocations and deadline for submission of the State grant application.

Comment.—A suggestion was made that eligible applicants for State grants include local public housing authorities.

Response.—State grants are made only to States. However, local public housing authorities may apply for a demonstration, research or service improvement grant under Section 2(b)(5) or Section 4 of the Act (42 U.S.C. 5101(b)(5) or 42 U.S.C. 5103).

Section 1340.14 Eligibility Requirements

Comments.—Some commentors objected to the deletion of the language found in the current regulation at 45 CFR 1340.3–3(b) pertaining to the definition of child abuse and neglect. That section explains that definitions of child abuse and neglect used by States which are the "same in substance" as the ones set forth in the regulation will be sufficient to meet Federal definitional requirements.

Response.—The language was deleted from the proposed regulations as unnecessary. However, respondents correctly pointed out that States have never been required to have language identical to the Act or regulation in

order to qualify for a grant. Therefore, we will retain the language of the current regulation in § 1340.14, to provide that a State's definition of child abuse and neglect which is the same in substance as the one set forth in the regulation will be acceptable.

Section 1340.14 of the proposed regulation also contained an elaboration of the ten eligibility requirements which a State must satisfy to qualify for a State grant. However, after more careful review of Section 4 (b) (2) of the Act, it was our decision not to repeat the provisions of the Act in regulations. Therefore, those requirements in the NPRM which duplicate the language of the Act have been eliminated. Of course, the requirements of the Act in Section 4 (b) (2) remain fully applicable.

Section 1340.14(c) of the NPRM providing immunity for persons reporting instances of child abuse and neglect from prosecution has been deleted because it duplicates the language of the Act in Section 4(b) (2) (A).

Comment.—One respondent requested further clarification of what was meant by a "different properly constituted authority" in § 1340.14(e).

Response.—In instances of child abuse and neglect that occur in an institutional setting, the investigating agency must be separate enough from the agency alleged to have abused or neglected a child to ensure an adequate impartial and objective investigation. This means that the State agency having responsibility for the investigation of reports of abuse or neglect may not investigate reported instances of child abuse or neglect made against institutions operated by that agency.

The same respondent also asked whether the State agency responsible for investigating allegations of institutional child abuse can investigate a reported instance of child abuse and neglect if the alleged abuse or neglect was by a contract vendor or purchase of service provider.

It is acceptable for the State mandated agency responsible for investigating reports of known and suspected instances of child abuse or neglect to investigate reports from residential facilities as long as such facilities do not have on their staff employees from the mandated agency and are not directly operated by the mandated agency. As these comments were related to the respondent's request for clarification of the meaning of the regulation we believe that no change in the regulation is necessary.

Section 1340.14(h) was revised by omitting that language which was duplicative of the Act. Sections 1340.14(i), (j), (k) and (l) were omitted as they were duplicative of provisions in the Act.

Comment.—Comments on § 1340.14(g) which mandates the appointment of a guardian *ad litem* in all judicial proceedings, involving an abused or neglected child, were concerned about: (1) The appropriateness of the person presenting the evidence in a judicial proceeding also serving as the guardian *ad item;* and (2) the absence of a provision which would permit a State to satisfy the guardian *ad litem* requirement by court rule.

Response.—On the basis of the comments received we are making two changes in § 1340.14(g). First, we are eliminating as a person who may serve as a guardian *ad litem* the attorney who presents the evidence in a judicial proceeding alleging child abuse or neglect. This was done to eliminate the possibility of conflicting roles as there is serious question about having a presenter of the evidence also serve as a child's guardian *ad litem.*

Secondly, a State may elect to promulgate Court Rules mandating the appointment of a guardian *ad litem* in judicial proceedings. This will now be an added option for the State in satisfying the guardian *ad litem* requirement.

Subpart C—Discretionary Grants and Contracts

There were no comments from respondents on Subpart C of the NPRM. Two of the three sections in this Subpart proposed in the NPRM have been eliminated from the final rule because they duplicate the language of the Act in Sections 2(b) and 4(b)(1) (discretionary grants and contracts). Only the provision regarding confidentiality (§ 1340.20) has been retained in Subpart C to afford the same protection of personal facts or circumstances about individuals involved in discretionary projects or programs as is provided to individuals under the State grant program.

Subpart D—Coordination of Federal Activities

Except for the coordination requirements for Federal agencies which now appears in new § 1340.4, we have eliminated Subpart D. We do not believe it is necessary to publish the administrative and procedural requirements for the Advisory Board in regulations.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concludes that this final rule is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Pub. L. 96-354, requires that an agency prepare a regulatory flexibility analysis for a proposed rule, or a final rule issued after a proposal, if a rule would have a significant economic impact on a substantial number of small businesses, small nonprofit organizations, or small governmental jurisdictions. However, this requirement does not apply to final rules for which a proposed rule was published before January 1, 1981 (section 4 of the Regulatory Flexibility Act). Because the proposed rule that preceded this final rule was published earlier, an analysis is not required under the Regulatory Flexibility Act.

Recordkeeping and Reporting Requirements

Under the Paperwork Reduction Act of 1980 the Department is required to submit to the Office of Management and Budget, for review and approval, any information collection or reporting requirement. Reporting requirements within § 1340.3(a) and 1340.12 requiring OMB approval, which was granted, are:

Section	Reporting requirements	Form/OMB Nos	Expiration date
1340.3(a)—Application of department-wide regulations	45 CFR 74.73, Financial Status Report	SF-269, 0980-0122	10/31/83
1340.12—Application process	State grant application	SF-424, 0980-0016	2/28/84

List of Subjects in 45 CFR Part 1340

Child welfare, Family violence, Grant programs—health, Grant programs—social programs, Reporting requirements, Research, Technical assistance, Youth.

(Catalog of Federal Domestic Assistance Program No. 13.628, Child Abuse and Neglect Prevention and Treatment)

Dated: July 20, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: January 4, 1983.

Richard S. Schweiker,

Secretary.

For the reasons set forth in the preamble, Part 1340 of 45 CFR is revised to read as follows:

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

Subpart A—General Provisions

Subpart B—Grants to States

Subpart C—Discretionary Grants and Contracts

Authority: The Child Abuse Prevention and Treatment Act Pub. L. 93-247, 88 Stat. 4; Pub. L. 95-266, 92 Stat. 205; Secs. 609-610, Pub. L. 97-35, 95 Stat. 488 (42 U.S.C. 5101 et seq.)

Subpart A—General Provisions

§1340.1 Purpose and scope.

(a) This part implements the Child Abuse Prevention and Treatment Act of 1974, as amended. As authorized by the Act, the National Center on Child Abuse and Neglect seeks to assist agencies and organizations at the national, State and community levels in their efforts to improve and expand child abuse and neglect prevention and treatment activities.

(b) The National Center on Child Abuse and Neglect seeks to meet these goals through:

(1) Conducting activities directly (by the Center);

(2) Making grants to States to improve and expand their child abuse and neglect prevention and treatment programs;

(3) Making grants to and entering into contracts for: Research, demonstration and service improvement programs and projects, and training, technical assistance and information activities; and

(4) Coordinating Federal activities related to child abuse and neglect. This part establishes the standards and procedures for conducting the grant funded activities and contract and coordination activities.

(c) Requirements related to child abuse and neglect applicable to programs assisted under titles IV-A and IV-B of the Social Security Act are implemented by regulation at 45 CFR Part 1392, Subpart E.

(d) Federal financial assistance is not available under the Act for the construction of facilities.

§ 1340.2 Definitions

For the purposes of this part:

(a) "A properly constituted authority" is an agency with the legal power and responsibility to perform an investigation and take necessary steps to prevent and treat child abuse and neglect. A properly constituted authority may include a legally mandated, public or private child protective agency, or the police, the juvenile court or any agency thereof.

(b) "Act" means the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101, et seq.

(c) "Center" means the National Center on Child Abuse and Neglect established by the Secretary under the Act to administer this program.

(d) "Child abuse and neglect" means the physical or mental injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term encompasses both acts and omissions on the part of a responsible person.

(1) "Sexual abuse" includes rape, incest, and sexual molestation as those acts are defined by State law, by a person responsible for the child's welfare.

(2) "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, as defined by State law, by a person responsible for the child's welfare; and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child as those acts are defined by State law, by a person responsible for the child's welfare.

(3)(i) "Negligent treatment or maltreatment" includes failure to provide adequate food, clothing, shelter, or medical care.

(ii) Nothing in this Part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child: provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to insure that medical services are provided to the child when his health requires it.

(4) "Threatened harm to a child's health or welfare" means a substantial risk of harm to the child's health or welfare.

(5) "A person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an employee of a public or private residential home or facility or other person legally responsible under State law for the child's welfare in a residential setting.

(e) "Commissioner" means the Commissioner of the Administration for Children, Youth and Families of the Department of Health and Human Services.

(f) "Grants" includes grants and cooperative agreements.

(g) "Secretary" means the Secretary of Health and Human Services, or other HHS official or employee to whom the Secretary has delegated the authority specified in this part.

(h) "State" means each of the several States, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific.

§ 1340.3 Applicability of Department-wide regulations.

(a) The following HHS regulations are applicable to all grants made under this part:

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

(b) The following regulations are applicable to all contracts awarded under this part:

47 CFR Chapter 1—Federal procurement regulations.
41 CFR Chapter 3—Federal procurement regulations—Department of Health and Human Services.

§ 1340.4 Coordination requirements.

All Federal agencies responsible for programs related to child abuse and neglect shall provide information as required by the Commissioner to insure effective coordination of efforts.

Subpart B—Grants to States

§ 1340.10 Purpose of this subpart.

This subpart sets forth the requirements and procedures States must meet in order to receive discretionary grants to improve or expand State child abuse and neglect prevention and treatment programs under sections 4(b) (1) and (2) of the Act (42 U.S.C. 5103(b) (1) and (2)).

§ 1340.11 Allocation of funds available.

(a) The Commissioner shall allocate the funds available for grants to States for each fiscal year among the States on the basis of the following formula:

(1) An amount of $25,000 or such other amount as the Commissioner may determine; plus

(2) An additional amount bearing the same ratio to the total amount made available for this purpose (reduced by the minimum amounts allocated to the States under paragraph (a)(1) of this section) as the number of children under the age of eighteen in each State bears to the total number of children under eighteen in all the States. Annual estimates of the number of children under the age of eighteen, provided by the Bureau of the Census of the Department of Commerce, are used in making this determination.

(b) If a State has not qualified for assistance under the Act and this subpart prior to a date designated by the Commissioner in each fiscal year, the amount previously allocated to the State shall be allocated among the eligible States.

§ 1340.12 Application process.

(a) The Governor of the State may submit an application or designate the State office, agency, or organization which may apply for assistance under this subpart. The State office, agency, or organization need not be limited in its mandate or activities to child abuse and neglect.

(b) Grant applications must include a description of the activities presently conducted by the State and its political subdivisions in preventing and treating child abuse and neglect, the activities to be assisted under the grant, a statement of how the proposed activities are expected to improve or expand child abuse prevention and treatment programs in the State, and other information required by the Commissioner in compliance with the paperwork reduction requirements of 44 U.S.C. Chapter 35 and any applicable directives issued by the Office of Management and Budget.

(c) States shall provide with the grant application a statement signed by the Governor that the State meets the requirements of the Act and of this subpart. This statement shall be in the form and include the documentation required by the Commissioner.

§ 1340.13 Approval of applications.

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

(1) The State is qualified and has met all requirements of the Act and § 1340.14 of this Part, except for the definitional requirement of § 1340.14(a) with regard to the definition of "sexual exploitation" (see § 1340.2(2)) and the definitional requirement of negligent treatment as it relates to the failure to provide adequate health care (see 1340.2(d)(3)). The State must include these two definitional requirements in its definition of child abuse and neglect no later than the close of the second general legislative session of the State legislature following February 25, 1983;

(2) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(3) The State is otherwise in compliance with these regulations.

(b) At the time of an award under this subpart, the amount of funds not obligated from an award made eighteen or more months previously shall be subtracted from the amount of funds under the award, unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

§ 1340.14 Eligibility requirements.

In order for a State to qualify for an award under this subpart, the State must satisfy each of the following requirements:

(a) The State must satisfy each of the requirements provided in Section 4(b)(2) of the Act.

(b) *Definition of Child Abuse and Neglect.* Wherever the requirements below use the term "Child Abuse and Neglect" the State must define that term in accordance with § 1340.2. However, it is not necessary to adopt language identical to that used in § 1340.2, as long as the definition used in the State is the same in substance.

(c) *Reporting.* The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.

(d) *Investigations.* The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect. This investigation may include the use of reporting hotlines, contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, psychological and social evaluations, and reviews by multidisciplinary teams.

(e) *Institutional child abuse and neglect.* The State must have a statute or administrative procedure requiring that when a report of known or suspected child abuse or neglect involves the acts or omissions of the agency, institution, or facility to which the report would ordinarily be made, a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action.

(f) *Emergency services.* If an investigation of a report reveals that the reported child or any other child under the same care is in need of immediate protection, the State must provide emergency services to protect the child's health and welfare. These services may include emergency caretaker or homemaker services; emergency shelter care or medical services; review by a multidisciplinary team; and, if appropriate, criminal or civil court action to protect the child, to help the parents or guardians in their responsibilities and, if necessary, to remove the child from a dangerous situation.

(g) *Guardian ad litem:* In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's

Uniform Court Rule mandating appointments in every case. However, the guardian *ad litem* shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.

(h) *Prevention and treatment services:* The State must demonstrate that it has throughout the State procedures and services deal with child abuse and neglect cases. These procedures and services include the determination of social service and medical needs and the provision of needed social and medical services.

(i) *Confidentiality.* (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

(i) The agency (agencies) or organizations (including its designated multidisciplinary case consultation team) legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect;

(ii) A court, under terms identified in State statute;

(iii) A grand jury;

(iv) A properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of a report;

(v) A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

(vi) A person legally authorized to place a child in protective custody when the person has before him or her a child whom he or she reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

(vii) An agency authorized by a properly constituted authority to diagnose, care for, treat, or supervise a child who is the subject of a report or record of child abuse or neglect;

(viii) A person who is responsible for the child's welfare, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person;

(ix) A child named in the report or record alleged to have been abused or neglected or (as his/her representative) his/her guardian or guardian ad litem;

(x) An appropriate State or local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions; and

(xi) A person, agency, or organization engaged in a bonafide research or evaluation project, but without information identifying individuals named in a report or record unless having that information open for review is essential to the research or evaluation, the appropriate State official gives prior written approval and the child, through his/her representative as cited in paragraph (i), gives permission to release the information.

(3) Nothing in this section shall be interpreted to prevent the properly constituted authority from summarizing the outcome of an investigation to the person or official who reported the known or suspected instances of child abuse or neglect or to affect a State's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

(4) HHS and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

Subpart C—Discretionary Grants and Contracts

§ 1340.20 Confidentiality.

All projects and programs supported under the Act must hold all information related to personal facts or circumstances about individuals involved in those projects or programs confidential and shall not disclose any of the information in other than summary, statistical, or other form which does not identify specific individuals, except in accordance with § 1340.14(i).

[FR Doc. 83-2149 Filed 1-25-83; 8:45 am]

BILLING CODE 4130-01-M

State Action on Child Protection

Attachment C

	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska
What Elements of Child Abuse Must Be Reported																											
nonaccidental	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
neglect	X	X	X	X	X	X	X	X	X	X	X	1	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
sexual abuse	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
emotional abuse	X			X	X		X	X	X		X		X			X	X	X	X	X	X	X		X	X	X	X
Who Must Report																											
doctors	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X
social workers	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X
teachers	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X
law enforcement	X	X	X	X	X	X	X			X			X	2	X	X	X		X	X	X	X	X	X	X	X	
When Must Report Be Made (I = Immediately, P = Promptly, S = Soon, L = Longer)	I	I	I	I	L	I	I	I	I	I	P	L	I	I	L	P	I	I	I	S	I	I	I	I	I	P	3
To Whom Must Report Be Made (SS = Social Services, C = Court, PO = Law Enforcement)	SS PO	SS	SS PO	SS	SS PO	SS/ PO	SS PO	SS	SS	SS	SS	PO	SS	SS/ PO	SS	SS/ C	SS	SS/ PO	SS	SS/ SS	SS	SS	SS/ PO	SS	SS	SS	PO
Immunity for Good Faith Report	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Penalty for Not Making Report (CR = Criminal, CI = Civil)	CR		CR	CR/ CI	CR	CR/ CI	CR	CR	CR	CR				CR	CR/ CI	CR	CR	CR	CI		CR	CI	CR	CR	CR		CI
Abrogation of Privileged Communication																											
husband		X				X	X				X		X	X	X					X	X		X			X	X
doctor		X				X					X			X	X						X		X			X	X
all but attorney/client	X		X	X				X	X			X				X	X	X	X			X			X		
Photographs and X-rays			PX	PX	PX	PX			PX				PX	PX	PX		PX		PX			PX			PX		
Temporary Protective Custody — Emergency Removal	X	X	X	X	X	X	X		X			X	X	X		X	X	X		X	X	X	X	X	X	X	
Central Registry	X	X	X	X	X	X	X	X	X	5	X	X	X	5	X		5	X		X	X	X	5	X	X	X	2
Child Protection Team					6	X								X							6	6			6		
Guardian ad Litem/Counsel	X	X	X	X	X	X	X		X	X		X	X	X	X	X		X	X		X	X	X	X	X	X	3
Public Education					X				X						X	X		X				X			X		

	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming	Washington, D.C.	Total
What Elements of Child Abuse Must Be Reported																									
nonaccidental	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	51
neglect	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	50
sexual abuse	X	X	X		X	X		X	X	X	X	X	X				X	X	X	X	X	X	X	X	46
emotional abuse	X	X	X	X	X		X	X	X		X	X	X		X	X	X		X		X		X	X	37
Who Must Report																									
doctors	X	X	2	X	X	X	X	X	2 X	X	X	2	X	X	2	2	2 X	X	X	X	X	X	2	X	51
social workers	X	X	2	X	X	X	X	X	X	X	X	2	X	X	2	2	2	X	X	X	X	X	2	X	51
teachers	X	X	2	X	X	X	X	X	X	X	X	2	X	X	2	2	2	X	X	X	X	X	2	X	51
law enforcement		X	2	X	X	X	X		X	X	X	2	X	X	2	2	2	X	X		X	X	2	X	42
When Must Report Be Made (I = Immediately, P = Promptly, S = Soon, L = Longer)	P	I	P	I	I	3	I	I	P	I	I	L	3	I	I	I	I	3	I	I	I	I	I	I	I=36, P=6, L=4, S=1
To Whom Must Report Be Made (SS = Social Services, C = Court, PO = Law Enforcement)	SS/ PO	SS	SS	4/ SS	SS	SS		SS/ PO	SS	SS/ PO	SS	SS	SS/ PO	4/ SS	all	SS/ PO	SS/ PO	SS	SS	SS/ PO	SS	SS/ PO	SS/ PO	SS/ PO	SS=28, SS/PO=19, PO=2, SS/C=1, all=1
Immunity for Good Faith Report	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	51
Penalty for Not Making Report (CR = Criminal, CI = Civil)	CR	CR	CR	CR	CR/ CI		CR		CR	CR	CR		CR/ CI	CR	CR	CR	CR	CR	CR	CR	CR	CR		CR	CR=33, CI=2, CR/CI=5
Abrogation of Privileged Communication																									
husband					X	X				X	X				X				X					X	19
doctor				X	X	X		X	X	X	X			X			X		X	X		X		X	22
all but attorney/client	X	X					X					X	X			X					X		X		20
Photographs and X-rays			PX		PX			PX		P	PX		PX			X	PX		PX	P	PX		PX		PX=21, P=2, X=1
Temporary Protective Custody -- Emergency Removal			X	X	X	X	X	X			X	X	X	X	X	X	X		X	X		X	X		38
Central Registry	X	X	X		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	5	X	X	5	41
Child Protection Team											6				X		X		X				X		6
Guardian ad Litem/Counsel		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	46
Public Education					X						X		X						X		X	X			13

[1] "Neglected child" is defined but not included in the required reporting statute.
[2] Require reporting by "any person."
[3] [illegible]

Trends in Child Protection Laws - 1979

House Ness Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

A group calling itself VOCAL (Victims of Child Abuse Laws) is trying to form a chapter in this state. The group originated in Minnesota. We want to see children protected from all forms of abuse including what the State does fit to inflict upon them. We are enclosing a petition which we wish to see made into law: Separate incest from sexual assault (paragraphs 1, 2, 3) and solve jail overcrowding by establishing specific programs to help and preserve the family, instead of training it ~~apart~~ apart. (see paragraph 5) VOCAL has only met twice; you will be receiving many more petitions as the one enclosed until we hear that you are drafting legislation to protect and bless the family instead of destroying it. Please separate incest from sexual assault so that families can be preserved.

I would also like to remind you that because you have limited Commissioner Endelis request for funds to expand correctional facilities for increased jail needs you must consider some alternatives. We are presenting you a cost effective, safe alternative & Mr. Sharp has already sent you statistical information to prove that

unless offenders respond to counseling. Implement the ideas in this petition. If you would like to respond to us our address is VOCAL, General Delivery, Wasilla, Alaska 99687.

thank you.

To Max Thurnberg

LEGISLATE FREEDOM

We the undersigned citizens and voters want to see incest and sexual assualt separated from each other. In cases of sexual assualt there is usually one victim and that victim is harmed once but in cases of incest the whole family becomes the victim of the state and the victim is harmed twice: once by the molester and then again by the state. In cases of sexual assualt, not of incest, the victim's and the family's rights are not taken away and they are not forced to testify. In cases of incest it is most common that the victim's rights and that of the family are taken away and it is common also that the victim is forced to testify against a family member, and any other family member also, to the state's satisfaction, are forced to testify than are separated.

We further believe that incest should be regarded as an illness such as alcoholism or drug abuse. In cases of incest there should be a maximum two year sentence and mandatory counseling, and that repeat offenders of incest may then be considered to fall under the presumptive sentence. And considering the severity of individual cases, that probation with the appropriate counseling should be considered before a jail sentence. A courtroom should be considered a last resort in many cases.

Additionally, the family's rights or freedoms should never be violated. Family members should have the right to press charges and testify if they so desire, and to be protected when they request it. However those who don't want to press charges should not be forced to. Contrary to the opinion of the existing laws, individuals are intelligent enough to make wise decisions by themselves concerning their family. Families that seek counseling should be able to receive such without the threat of jail.

Sexual assualt, child abuse or molestation are not being condoned here; it is the family unit that is condoned. The family unit is the most important part of society but the most vulnerable and abused. The family unit must not be forced to destroy itself by the state forcing the family members to testify against each other. The seriousness of incest should not be overlooked, but neither should the family unit in such cases, and their vulnerability to actions taken by the state.

We would also request that all those presently serving sentences for incest have their cases reviewed, that family members be interviewed, the the victim's statements be more seriously considered; the molesters afterwards to be interviewed to decide whether a release should be considered or denied. Qualified counselors should have the deciding factor in whether the sentence is reduced or if release on probation is appropriate.

There are equal rights for blacks, women, and even dogs; victims have equal rights and so do their families except in cases of incest. Should not the family unit have equal rights in this society or is it all going to the dogs?

NAME	ADDRESS AND PHONE	OCCUPATION	AGE
[illegible]	303 W. 23rd # 4	Janitorial	28
[illegible]	SRA Box 6229H Palmer, AK	Resp. Therapy	25
[illegible]	SR 5395 Wasilla, AK 99687	Computer	33
Thomas D. [illegible]	Box 771522 694-3180 Eagle River, AK 99577	Aircraft Mech	36
Patricia J. Brown	8429 E. 6th Ave Apt. 1 Anch. AK. 99504 333-5046	housewife	28
Carol S. Stein	2621 N. Tudor Rd. 23A Anch. AK. 99507	Home Maker	37
[illegible]	Box 3583 Palmer	CONTRACTOR	40
[illegible]	Box 17-064 Big Lake	CONSTRUCTION	30
[illegible]	PO Box 91 Houston Ak.	Construction	43

To: Mac Greenberg

LEGISLATE FREEDOM

We the undersigned citizens and voters want to see incest and sexual assault separated from each other. In cases of sexual assault there is usually one victim and that victim is harmed once but in cases of incest the whole family becomes the victim of the state and the victim is harmed twice: once by the molester and then again by the state. In cases of sexual assault, not of incest, the victim's and the family's rights are not taken away and they are not forced to testify. In cases of incest it is most common that the victim's rights and that of the family are taken away and it is common also that the victim is forced to testify against a family member, and any other family member also, to the state's satisfaction, are forced to testify than are separated.

We further believe that incest should be regarded as an illness such as alcoholism or drug abuse. In cases of incest there should be a maximum two year sentence and mandatory counseling, and that repeat offenders of incest may then be considered to fall under the presumptive sentence. And considering the severity of individual cases, that probation with the appropriate counseling should be considered before a jail sentence. A courtroom should be considered a last resort in many cases.

Additionally, the family's rights or freedoms should never be violated. Family members should have the right to press charges and testify if they so desire, and to be protected when they request it. However those who don't want to press charges should not be forced to. Contrary to the opinion of the existing laws, individuals are intelligent enough to make wise decisions by themselves concerning their family. Families that seek counseling should be able to receive such without the threat of jail.

Sexual assault, child abuse or molestation are not being condoned here; it is the family unit that is condoned. The family unit is the most important part of society but the most vulnerable and abused. The family unit must not be forced to destroy itself by the state forcing the family members to testify against each other. The seriousness of incest should not be overlooked, but neither should the family unit in such cases, and their vulnerability to actions taken by the state.

We would also request that all those presently serving sentences for incest have their cases reviewed, that family members be interviewed, the the victim's statements be more seriously considered; the molesters afterwards to be interviewed to decide whether a release should be considered or denied. Qualified counselors should have the deciding factor in whether the sentence is reduced or if release on probation is appropriate.

There are equal rights for blacks, women, and even dogs; victims have equal rights and so do their families except in cases of incest. Should not the family unit have equal rights in this society or is it all going to the dogs?

NAME	ADDRESS AND PHONE	OCCUPATION	AGE
Stephen R. Beals	P.O. Box 770769, Eagle River 99577	Ordained Minister	51
Carole Beals	PO Box 770769 Eagle River 99577	Housewife	51
Jeannette Lenhart	2610 TOROSITNA DR E.R 99577	Homemaker	42
Robert [illegible]	Cross Quest CPO B. 770699 ER 99577	Therapist	29
Rosemary Knapper	P.O. Box 670157 Chugiak AK 99567	Housewife	41
Eleanor Carey	SR1 Box 1013 Chugiak, AK 99567	Homemaker	36
Patricia M. Swenson	P.O. Box 770443 Eagle River AK 99577	Real Estate Agent / Reg Nurse	32
Carol J. Hedrick	1011 Friendly Cove #B Juneau AK 99504	College Student / Homemaker	38
[illegible]	P.O. Box 770767 Eagle River AK 99577		39

INTRA-FAMILIAL CHILD SEXUAL ABUSE

with reference to Community Based Treatment programs
(San Jose, Ca. and Anchorage, Ak.) and the
Incarceration of Incest Offenders

Prepared by Ray Clements, Ph.D.

First draft April 21, 1983
Revised draft April 27, 1983
Second revision, May 7, 1983

We

I presume the author sent it — show to Nancy
- the program is in Anchorage

PREFACE

The following material is a limited study of the subject presented. Considerable more research time should be given to this topic, as well as various aspects of it. For instance, an entire research paper, if not an entire book, could be devoted to the similarities and differences of incest and rape. It is the intention of this writer to continue to collect information and data on this area of concern and to refine and "polish" it.

TABLE OF CONTENTS

What Is Incest?

Incest may be defined as any contact of a sexual nature - from propositioning to sexual intercourse between an adult and a child; when the adult holds a position of authority over the child, e.g. such as between a parent, step-parent, older sibling, or other older relative and a child.

Extent of the Problem

Sexual exploitation of children by adults is a serious and widespread problem. It is generally accepted today that one out of four families will experience some form of intra-familial child sexual abuse.

For many years incest was a taboo subject. It was an embarrassing topic. People did not want to talk about it. However, gradually during the past ten years it has broken through the threshold of the "locked closet" where family secrets are kept. Therapy, counseling, self-help support groups, and other forms of treatment have become available. Victims, non-offending adults, and offenders are stepping forward in larger numbers and are beginning to talk about incest.

Similarities and Differences Between Rape and Incest

1. In most cases incest is not a violent act. Whereas, in many cases, rape involves a physical attack.

2. In most cases incest occurs between two relatives who have known each other for an extended period of time. There is often a strong "bonding" relationship which exists between the offender and the victim in an incestuous relationship. Whereas, while the act of rape does not always occur between two complete strangers (this is a sterotype), the offender and the victim are acquainted with each other prior to the sexual assault. However, the type of "bonding" relationship which exists in most incest cases, is not found to the same degree in rape.

3. Frequently, incest has occurred between relatives over an extended period of time. Whereas, the act of rape is most often a one time event with a particular victim.

4. Frequently, incest victims and members of their families are reluctant to reveal their incestuous relationships. This is due, in part, to the bonding relationship which exists between the victim and the offender. While incest is no longer the "taboo" it once was, there is still a hesitation to disclose the secrets of this relationship. Whereas, the subject of rape, while still a very sensitive subject to discuss, is not bound by the hesitation

of disclosure due to a bonding influence.

5. It appears that most incest victims and their families, while in favor of some form of punishment for offenders which may include incarceration, have a strong desire to seek help and that all family members receive treatment in form of therapy, counseling, and participation in self-help support groups. Whereas, it appears that most rape victims are primarily concerned that rape offenders receive stiff (long) jail sentences.

Family Dynamics and Incest

Unlike most rape cases, incest, by it's very nature, has extreme complex involvement with family dynamics. A "typical" situation is the father/daughter/mother triangle. In these cases there is often a reversal of roles between the mother and the daughter. The "agape" love which exists between a father and a daughter is extended to include a sexual relationship as well.

In most cases, the offender places pressure on the victim to "keep our secret." Frequently, an offending father urges his daughter not to tell because if she did it would break up the family, disolve the marriage, he would be sent to jail, and he would no longer be able to financially support the family. These and other reasons why the daughter should not tell are a heavy burden for a minor to carry on her shoulders.

When the breaking point comes and the story is told - many of the "warning threats" made by the offending father occur. The marriage falters. The father is removed from the home by court order. In most cases, the offender faces a presumptive jail sentence. The family is confronted with financial hardships. When the offending "father" is removed from his home he has to set up separate living accommodations. In most cases, this puts a severe strain on the family finances. When the offender is found guilty and is sentenced to serve time in jail, his income is reduced to almost zero. The family is no longer able to depend on him for financial support.

All members of the family, but especially the victim, have emotional, mental, social and personal scars that they have to try to heal. All members of the family are harmed by inter-familial sexual abuse. This includes the siblings who were not molested, but are part of the family.

When the incest offender is sent to jail for an extended period of time it reduces the chance that the family will remain together as a complete family unit. An extended period of incarceration puts a severe strain on a marriage.

For many weeks, months, and years, family members will search for an answer to such questions as: Why did it happen to us?, What caused it?, Why couldn't it have been prevented?, Why did my "father" do it to me?, and What did I do wrong, that this occurred in my family?

Heavy issues of guilt, anger, and frustration will need to be worked out by each member of the family (victim, non-offending adult, siblings, and offender) over an extended period of time, before even some of the major questions will even be partially answered and understood.

Community Based Treatment of Incest Victims and their Families

The community based treatment model for incest victims and their families was started by Henry and Anna Giarretto in 1970 - 1971 in San Jose, California.

As Henry Giarretto, a family counselor, discovered an increasing number of families involved in intra-familial child sexual abuse, he began to specialize in the treatment of these cases. The treatment model which he developed takes into account the viewpoint and insights provided by various professionals who have significant contact with incest victims and their families. These persons include: social workers, District Attorneys, Public Defenders, police investigators, individual and family therapists, physicians, public health workers, and others.

In large measure, the integrated treatment of child sexual abuse, as set forth by Henry and Anna Giarretto, has gained success because it has not isolated individuals within the family, but rather tries to understand their behavior based on the matrix of interwoven personal relationships and the social, economic, political, religious, and cultural conditions which effect the family.

It is both wholistic and interdisciplinary in its approach to help understand family dynamics and individual behavior. It places stong emphasis on working in cooperation with child protective agencies (Division of Family and Youth Services), the police (Anchorage Police Department), and the civil and criminal court system.

Some of the major components of the Giarretto model include:

1. Weekly "one -on-one" individual therapy/counseling sessions.

2. Weekly participation in self help support groups.

3. Participation in a Sponsors Program. Newcomers are matched with "older" "seasoned" members. They provide a "listening" ear for newcomers and are available on a 24 hour basis to respond to crisis calls from them.

4. A Speakers Bureau which enables "seasoned" trained members to relate to other members of the public what it means to be a part of the integrated treatment program.

5. Use of interns and volunteer professionals who co-facilitate self-help support groups. They co-lead groups with "peer" co-facilitators who are "seasoned" members of the integrated treatment program. Interns, professionals and peer facilitators receive specialized training prior to assuming the responsibility of leading groups.

6. Formation of Parents United chapters to help administer and implement the intergrated treatment of child sexual abuse model. Each Parents United chapter may hire staff, secure office accommodations, adopt By-Laws, and is administered by a Board of Directors and and Advisory Board.

7. Under the Parents United "umbrella" there are also Daughters and Sons United and Adults Molested as Children United components. Adults molested as children are an important part of the integrated treatment of child sexual abuse. Many adults have never had a chance to adequately deal with the issues of sexual abuse which took place in their younger years. This group enables such persons a chance to begin to deal with sexual abuse issues which have been held back for a long period of time.

The community based integrated treatment of child sexual abuse developed by Henry and Anna Giarretto in the early 1970's in San Jose, California has spread to more than 90 cities across the country. One of the local chapters is located in Anchorage, Alaska.

Parents United Chapter, Anchorage, Alaska

Begun in 1980, under the primary leadership of Ken Duff, a family counselor, once again an increasing number of incest cases was the factor which led to the establishment of a special treatment program for incest victims and their families.

Started and maintained as a non-profit self-help support program, people who enter - whether they are victims, non-offending adults, adults molested as children, siblings or offenders - discover they are not alone. A network of individual and group support is built up and carried on by participants in the Sponsor Program and the weekly Self-Help Support Group meetings.

Following on site training in San Jose, Ca. at the Parents United headquarters (which has become a national training center for the integrated treatment of child sexual abuse), Ken Duff and others began the first eight week self-help support group sessions.

The Parents United program is limited to individual and group self-help support, community education, and early intervention and prevention of child sexual abuse. While, one-on-one individual and group therapy and counseling is conducted by

such centers as the Humans Relations Center and the Langdon Clinic.

The primary goals and objectives of Parents United are:

1. To help break the cycle of child sexual abuse.
2. To help heal the wounds that have been caused by incest.
3. To promote early intervention and prevention of child sexual abuse.
4. To let individuals and families decide for themselves if they wish to remain as married families.
5. To enable adults molested as children, who have never had an opportunity to deal with their past, to do so as adults.

The Parents United Chapter of Anchorage is funded by the Division of Family and Youth Services, Department of Health and Social Services, State of Alaska and the Municipality of Anchorage, Department of Health and Environmental Protection.

It's components include: Parents United, Daughter and Sons United, and Adults Molested as Children United. Main programs include: Self-Help Support Groups, Individual Sponsorship, and a Speakers Bureau. It is administered by a Board of Directors and an Advisory Board.

Parents United records reveal that in March of 1982 there were between 25 - 30 persons attending 4 self-help support groups, while in March of 1983 there were more than 125 participants attending 13 self-help support groups. These groups included the following:

1. Orientation I
2. Orientation II
3. Fathers
4. Mothers
5. Couples
6. Adults Molested as Children, "Survivors"
7. Spouse/Special Friend of Survivors
8. Female Teens I
9. Female Teens II
10. Female Pre-Teens
11. Male Pre-Teens/Teens
12. Siblings
13. Hiland Mountain Correctional Center, Fathers

Some generalizations can be made about each of these groups:

1. Orientation: this self-help support group consists of both non-offending adults (in most cases wives), offenders (in most cases husbands) and sometimes adults who were molested as children. The focus of this group is to confront the offender and to help the offender recognize that he is responsible for the incest which

has occurred in the family. At first, fathers frequently deny their guilt. Upon the completion of a full eight weeks of Orientation, fathers move on to the Fathers self-help support group and the mothers advance to a Mothers support group.

2. Fathers are frequently concerned about the eight year presumtive sentence and other legal issues. Parents United, however, does not offer legal advice. Instead, it provides individual and group self-help support with a focus on working out frustrations, anger and guilt.

3. Mothers are seeking to reestablish their role as "mother" and "wife" within the family. Often these roles have been distorted and changed when the daughter has assumed some of them. It is also difficult for the mother to actually reclaim her role as wife, since her husband has been court ordered from the home. They are also often faced with a difficult financial situation; trying to adequately feed and clothe their families, without their husband's full financial support. Some wives come to the defense of their husbands. This deepens the split between the mother and the daughter. Mothers are frequently frightened by the dissolutionment of their marriage, family and home if their spouse is sent to jail for eight years.

4. Couples come together to form a Couples group after first completing 8 weeks of Orientation, followed by two 8 week sessions in the Fathers and Mothers groups. At this stage in their relationship they are dealing with such questions as: Shall we remain married?, What does the future hold?, How might I prepare myself to be a better parent? Couples frequently want to spend as much time together as possible, if there is a desire to continue their marriage, since the husband is likely to be incarcerated in the near future.

5. The majority of female victims participating at present in the self-help support groups are between 13 to 16 years of age. There are two Teen support groups. One is for newcomers. The other is for those who have completed at least 8 weeks in a Teen I group. They are trying to cope with a lot of anger. They frequently face the loss of friends when they find out what has happened to them. This is reflected in the Daughters and Sons United (DSU) motto in Anchorage, "a friend to the end." One of their most burning questions is: Why did he do it to me?

6. At present, there are just a few male youth victims in their self-help support group. However, it is believed that this is just the tip of the iceberg. It is difficult for young boys to admit that they have been sexually abused. Gradually, this taboo is also coming out of the closet.

7. Frequently, a neglected and overlooked member of an incest family are siblings who are not molested, but are part of the family. They have questions and concerns as well as those who were molested. Such as: Why did this happen to our family?, Why did my father do it to my sister? and What's going to happen to us if he has to go to jail?

8. In response to the need to follow up on offenders when they are incarcerated, a self-help support group has been formed at the Hiland Mountain Correctional Center, Eagle River, Ak. Some of the questions men in this group ask: How can I expalin to my son what I am doing in this place and why I can't come home?, How can I communicate my true feelings to my daughter and wife? and How can I become a contributing member of society again?

Incarceration of Incest Offenders

Effective October 1, 1982, the new Alaska Criminal Code includes an eight year presumptive sentence for first time first degree incest offenders. Prior to Oct. 1, 1982, the Criminal Code permitted Judges the option of imposing an alternative sentence, rather than a long jail sentence, for incest offenders. An example was an extended period of probation, such as five years, plus an appropriate length of time spent in therapy or counseling and participation in self-help support group meetings.

The initial response to the new eight year presumptive sentence for first time first degree incest offenders and related parts of the new code have been mixed.

The following are some of the reactions to the new 8 year presumptive sentence which affects incest offenders:

1. According to Pam Kirk, Counselor, Human Relations Center, Anchorage, 30 female victims have said they would not have reported their fathers had they know he would face an eight year jail sentence for what he has done.

2. Others have said that an eight year sentence will help deter this crime.

3. It is the only way of assuring that an offender does not remolest.

4. Preliminary reports indicate there is a higher rate of denial on the part of incest offenders, than prior to the new criminal code. It also appears that more cases are going to trial.

5. Those that turn in incest offenders, without knowledge of the eight year presumptive sentence, will now have to deal with this issue in counseling and self-help support groups.

6. The chance to provide an effective integrated treatment of of child sexual abuse is greatly reduced when the offender is separated from his family and sent to jail for an extended period of time.

7. It is questionable, in fact, sending an offender to jail will actually break the cycle of child sexual abuse. What a man experiences and learns and jail will influence his behavior upon release from incarceration. Periods of long incarceration may have a negative effect on offender. What are the chances that his rate of remolest may be higher having been sent to prison for 8 years?

8. Sending an offender to jail for an 8 year sentence will place an added hardship on the offender's family. Incarceration causes both psychological and economic stress and burden on the family left behind. Incarceration of the abuser may leave the family destitute. When the "bread winner" is in jail members of his family may be forced to go on welfare.

9. Incest offenders, who are going to jail for extended periods of time, will help to compound the present overcrowded Alaska Correctional system. In addition to the lack of appropriate inmate bed space, there's a cost factor of at least $20,000 per inmate per year, according to Frank Sauser, Superintendent, Hiland Mountain Correctional Center. *

10. An 8 year presumptive sentence for incest offenders overlooks a crucial factor which is pointed out by Dr. James Harper, Psychologist, Langdon Clinic, Anchorage, Ak. It has not taken into account the fact that there are different rates of "rehabilitation" for each offender. Some offenders may satisfactorily complete their sex therapy program within two years, andthen have an additional 6 years of "flat" time to serve.

11. It appears that Alaska State legislators, a year ago, in an attempt to enforce stricter penalties for sexual assualt perpetrators inadvertently placed rape and incest within the same criminal code without giving due consideration to the significant difference in treatability of these distinctly different sexual offenses.

12. The author of this paper, in concluding this section, would like to quote from Guides to Sentencing the Dangerous Offender, Council of Judges of the National Council on Crime and Deliquency, National Council on Crime and Delinquency, N.Y., N.Y. 1969, pp. 14 - 15.

"If the defendant is not dangerous but is mentally disturbed, the judge should be cautious about committing him to prison. Penal commitment of a nonassaultive sex offender may worsen his aberration. In such a case, probation with psychiatric treatment

*Roger Lang, assistant corrections director for administration, reports the current amount spent on each prisoner is $36,800 annually. See article, Anchorage Daily [illegible] April 28, 1983.

or with out-patient service at a psychiatric clinic should be used. If no psychiatric service is available, then probation supervision alone, by knowledgeable officers competent to deal with disturbed offenders, should be the preferred disposition. The Model Sentencing Act provides that no commitment shall have a minimum term of parole eligibility; and, where possible under the statute, the sentence should not state a minimum. A minimum term might conceivably be justified if precise prediction were a reality; since it is not, the time of release is best left to the releasing authority without the restriction of a minimum term. The severe sentence imposed on the dangeous offender assures protection of the public against the violent repeater, but security does not rule out the penal system's need for therapeutic resources. It is the obligation of both the psychiatrist who is working in a penal institution and the judge who is committing offenders to it to exercise leadership so that the necessary treatment resources be provided."

13. Another quote from the above mentioned source is also worthy of mention. The page references are the same.

"Many sexually psychopath statues fail to differentiate between violent and nonviolent acts, and they are usually applied to persons who have committed a nonviolent act such as exhibitionism or sodomy with a consenting adult partner. At best, these statutes are ineffectual and give the public only the illusion of protection. The Model Sentencing Act (MSA) would repeal the sexual psychopath statutes; by emphasizing instead the dangerousness of any offender whose crime is seriously assaultive, it would provide broader protection to the community. The key to the MSA definition of dangerousness is not exclusively a finding of "mental or emotional disorder" but rather the finding of a "mental or emotional disorder indicating a propensity toward continuing criminal activity of a dangerous nature." The objective is prevention of future serious crimes, carefully avoiding use of the criminal process to commit to penal institutions those mentally ill offenders whose aberrations are not of the assaultive type."

Recidivism Rates of the Child Sexual Abuse Treatment Program

The Child Sexual Abuse Treatment Program(CSATP) begun by Henry Giarretto in 1971 has treated more clients than any other single agency in its field. More than 3,500 sexually abused children and their families - in all, more than 12,000 individuals - have received help from this program. These clients include children recently molested by family members or other individuals, the offending and non-offending parents, adolescent offenders, and adults who were molested as children.

As noted by Henry Giarretto in his book, Integrated Treatment of Child Sexual Abuse, A Treatment and Training Manual, Science and Behavior Books, Palo Alto, Ca., 1982, p. 54 "recidivism rates are an indication of the

Child Sexual Abuse Treatment Program's (Parents United, San Jose, Ca.) success in preventing remolestation. Despite the fact that 4 out of 5 fathers return to live with families and their daughters (of those served by Parents United, San Jose, Ca.) only three (3) repeats have been reported among the more than 1,500 families who have received treatment to formal termination. The recidivism rate to date for all client families (Parents United, San Jose, Ca.) is less than one percent. While recidivism rates in other child sexual abuse treatment programs have ranged from two to twenty percent."

It must be pointed out that recidivism statistics are limited to the available facts. Reporting can be misleading. The number of unreported remolests is an unknown figure. Considering these limitations, the CSATP of Parents United, San Jose, Ca. is very impressive.

The Child Sexual Abuse Treatment Program of the Parents United Chapter, Anchorage, Ak. has also produced significant positive results. In the past 18 months approximately 40 offenders have progressed through a major portion of the self-help support groups, or have received these services through formal termination. Of this number there have not been any known repeat molests.

Some Factors Contributing to the Low Recidivism Rates for CSATP

The following are some of the factors which help an incest offender keep from remolesting when he successfully participates in the Parents United Child Sexual Abuse Treatment Program.

1. Knowledge that the offender is not alone. There are others with similar problems.

2. Help from Self-Help Support Groups.

3. Help from his Sponsor, who is on call 24 hours a day.

4. Gaining some answers to why he committed the incest and how he can prevent it from happening again.

5. Being court ordered to leave his home and abiding by the no contact order with the victim.

6. Confrontation with his non-offending spouse, adults molested as children, facilitators, other group members, and eventually with the victim and other siblings in the family.

7. Recognition of the seriousness of the offense.

8. Gaining information on parenting skills and marriage relationships.

9. Participation in all phases of the Parents United self-help group program.

10. Involvement not only in the Parents United program, but also in individual counseling/therapy provided by the Human Relations Center, Langdon Clinic or other counseling centers.

11. Help is not limited to incest offenders. All members of the family in which incest has occurred are participants in the sexual abuse treatment program.

12. Offenders, after they have successfully completed at least three 6 week self-help support group sessions, may be trained to serve as Co-facilitators for support groups. They may also serve as "sponsors" for new offenders entering the Parents United program. In addition, they volunteer to be part of the Speaker's Bureau. This self-help volunteer aspect of the on-going Parents United program enables offenders provide a helping hand for self-help.

13. Parents United maintains follow up on offenders when they have satisfactorily completed the entire CSATP and are no longer court ordered to attend. Frequently, they continue their involvement in Parents United as a volunteer.

Concluding Observations

This paper has sought to briefly examine what is incest, the extent of the problem, similarities and differences between rape and incest, family dynamics and incest, community based treatment of incest victims and their families (Giarretto model), Parents United Chapter, Anchorage, incarceration of incest offenders, recidivism rates of the Child Sexual Abuse Treatment Program, and some factors contributing to the low recidivism rates for CSATP. This beginning effort needs to be followed up by further research on these and related subjects.

The writer welcomes the review and crique of this material.

A few concluding obervations are focused on incarcerated incest offenders.

1. It is important that the child sexual abuse treatment program does not end when an offender is sent to prison. This is a vital part of the total CSATP.

2. Incest offenders are often the lowest on the inmate scale of type of offenses committed by men in incarceration. Consequently, many incest offenders relate in a positive way to their own self-help support group.

3. Few correctional center have adequate child sexual abuse treatment programs. There are only two CSATP's in Alaska. One is at the Lemon Creek Correctional Center, Juneau and the other at the Hiland Mountain Correctional Center, Eagel River. Both of these programs are limited in scope and size. For instance, as of April 15, 1983 there were 64 inmates at Hiland Mt. in need of the CSATP and only

17 enrolled in the program.

Concluding Recommendations

1. Incest and rape are not the same. They should be treated differently by the Alaska Criminal Code.

2. The code should take into account the different rates of progress incest offenders make in their Child Sexual Abuse Treatment Program.

3. A well structured and administered CSATP can help reduce the rate of recidivism. It needs to be expanded within the major correctional centers within the State of Alaska. Funding for these programs needs to be increased.

4. The CSATP for inmate offenders should not be limited to just incest perpetrators, but also should involve all of the members of the family.

5. An important component which needs to be established is the self-help support group for adults molested as children within major correctional centers.

6. An approved escort program needs to be established which would enable inmate incest offenders a chance to periodically visit and participate in self-help support groups outside of incarceration when they have earned the privilege for such visits.

7. The current 8 year presumptive sentence for first degree incest offenders should be reconsidered and changed. If jail time is appropriate for first degree incest offenders, the question remains how long of a jail sentence? As mentioned above in #2, the code should take into account the different rates of progress incest offenders make in their CSAP. A sentence based on an offenders CSATP, rather than on a predetermined presumotive sentence, should be considered. The Santa Clara Country, California criminal code for incest offenders could serve as a model. It combines an initial short period of incarceration for first time incest offenders followed by a work release program for an extended period of time during which the offender participates in the CSATP.

Incest as included within charge of rape, 56 ALR2d 181.

Criminal responsibility of husband for rape, or assault for commit rape on wife, 84 ALR2d 1017.

Fraud or impersonation, rape by, 91 ALR2d 591.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape, 23 ALR3d 1351.

Rape or similar offense based on intercourse with woman who is allegedly mentally deficient, 31 ALR3d 1227.

Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR3d 901.

Seizure or detention for purpose of committing rape, robbery or similar offense as constituting separate crime of kidnapping, 13 ALR3d 699.

Consent as defense in prosecution for sodomy, 58 ALR3d 636.

Multiple instances of forcible intercourse involving same defendant and same victim as constituting multiple crimes of rape, 81 ALR3d 1228.

What constitutes offense of "sexual battery," 87 ALR3d 1250.

Constitutionality of rape laws limited to protection of females only, 99 ALR3d 129.

Validity and construction of statute defining crime of rape to include activity traditionally punishable as sodomy or the like, 5 ALR4th 1009.

Sec. 11.41.410. Sexual assault in the first degree. (a) A person commits the crime of sexual assault in the first degree if,

(1) being any age, the defendant engages in sexual penetration with another person without consent of that person;

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

(3) *[Repealed. § 10 ch 78 SLA 1983.]*

(4) *[Repealed. § 10 ch 78 SLA 1983.]*

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 3 ch 166 SLA 1978; am § 8 ch 102 SLA 1980; am § 6 ch 143 SLA 1982; am § 10 ch 78 SLA 1983)

Cross references. — For evidence of past sexual conduct in trials of sexual assault in any degree or attempt to commit sexual assault in any degree, see AS 12.45.045.

Effect of amendments. — The 1980 amendment inserted "or aids, induces, causes or encourages a person under 13 years of age to engage in sexual penetration with another person" near the end of paragraph (3) in subsection (a).

The 1982 amendment substituted "an unclassified felony and is punishable as provided in AS 12.55" for "a class A felony" at the end of subsection (b).

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

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 14, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

I. General Considerations.
II. Elements.
A. Generally.
B. Acts and Conduct.
C. Procedure.

I. GENERAL CONSIDERATION.

History of first-degree sexual assault statute. — [illegible]

Constitutionality. — In order to prove [illegible] the state must prove that the defendant knowingly engaged in sexual intercourse and recklessly disregarded the victim's lack of consent. Construed in this way, the statute does not punish harmless conduct and is neither vague nor overbroad. Reynolds v. State, Ct. App. Op. No. 262 (File No. 68900, 664 P.2d 621 (1983).

Construing the Revised Code and the concurrent amendments governing sentences together indicates that the legislature has not irrationally failed to distinguish between degrees of culpability; and the penalty provisions of the Revised Code did not subject defendant to cruel and unusual punishment or deny him substantive due process or the equal protection of the laws. Reynolds v. State, Ct. App. Op. No. 262 (File No. 68900, 664 P.2d 621 (1983).

Categories constitute same offense. — All of the categories contained within the definition of sexual assault in the first degree under subsection (a)(1) through (a)(4) of this section, constitute the same offense for legal purposes. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

And none is more serious than others. — Nothing contained in the statutory language of this section or the legislative history of the provision suggests that the type of conduct listed in any one of subsection (a)'s four paragraphs was meant to be inherently more serious than any of the others. To the contrary, the grouping of these four separate sets of conduct together under the same criminal heading, with identical classifications as class A felonies, is a forceful indication of the legislature's conclusion that all four paragraphs were meant to be viewed as involving equally serious conduct. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Subsection (a)(1) is akin to the common law definition of rape. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Mental state required under (a)(1). — Lack of consent is a "surrounding circumstance" which requires a complementary mental state as well as conduct to constitute a crime. Reynolds v. State, Ct. App. Op. No. 262 (File No. 68900), 664 P.2d 621 (1983).

No specific mental state is mentioned in subsection (a)(1) of this section governing the surrounding circumstance of "consent"; therefore, the state must prove that the defendant acted "recklessly" regarding his putative victim's lack of consent. Reynolds v. State, Ct. App. Op. No. 262 (File No. 68900), 664 P.2d 621 (1983).

Attempted sexual assault in the first degree and sexual assault in the second degree are closely related, since sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent. Nicholson v. State, Ct. App. Op. No. 192 (File No. 6192), 656 P.2d 1209 (1982).

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

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

Instructions. — The trial court did not commit plain error in failing to specifically instruct the jury that defendant had to recklessly disregard a substantial risk that the victim did not consent to intercourse before he could be convicted of first-degree sexual assault. Reynolds v. State, Ct. App. Op. No. 262 (File No. 68900, 664 P.2d 621 (1983).

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

Hartley v. State, Ct. App. Op. No. 153 (File No. 5737), 653 P.2d 1052 (1982).

The 10-year presumptive term for first-degree sexual assault under the provisions of AS 12.55.125(c) was meant by the legislature to be appropriate in the majority of cases, which are those cases involving conduct that is characteristic of the offense of rape and that fall into the middle-ground between the most serious and least serious extremes for the offense, and it must be recognized that this presumptive term takes into account the high potential for the use of violence and the likelihood of some physical injury in the first-degree sexual assaults falling within the definition of subsection (a)(1) of this section. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Sentence upheld. — See Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Where record supported finding that defendant was the leader of a group of three or more persons who participated in offense of sexual assault in the first degree, such evidence, combined with consideration of prior, similar actions and of defendant's apparent lack of remorse, warranted imposition of eight-year sentence. Willard v. State, Ct. App. Op. No. 240 (File No. 6285), 662 P.2d 971 (1983).

Sentence of 10 years imprisonment, with eight suspended, was not excessive for conviction of attempted sexual assault in first degree. Van Hatten v. State, Ct. App. Op. No. 269 (File No. 5877), P.2d (1983).

Sentence for attempted sexual assault and burglary held excessive. — See Hansen v. State, Ct. App. Op. No. 218 (File No. 6965), 657 P.2d 862 (1983).

Applied in Nukapigak v. State, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 215 (1982); Seymore v. State, Ct. App. Op. No. 196 (File No. 6995), 655 P.2d 786 (1982); Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Stated in Born v. State, Ct. App. Op. No. 41 (File No. 5095), 633 P.2d 1021 (1981); Peetook v. State, Ct. App. Op. No. 178 (File No. 6630), 655 P.2d 1308 (1982); Tazruk v. State, Ct. App. Op. No. 195 (File No. 6954), 655 P.2d 788 (1982).

Cited in Stores v. State, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980); State v. Jane Doe, Ct. App. Op. No. 104 [illegible] Koganaluk v. State, Ct. App. Op. No. 176 (File No. 6531), 655 P.2d 339 (1982); Erhart v. State, Ct. App. Op. No. 185 (File No. 6244), 656 P.2d 1199 (1982); Ecker v. State, Ct. App. Op. No. 190 (File No. 6726), 656 P.2d 577 (1982); Nukapigak v. State, Sup. Ct. Op. No. 2667 (File No. 5820), P.2d (1983).

II. FORMER LAW.

A. Generally.

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

Forcible rape ranks among the most serious crimes. Newson v. State, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975); State v. Lancaster, Sup. Ct. Op. No. 1247 (File No. 2571), 550 P.2d 1257 (1976); State v. Wassilie, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978); Ahvik v. State, Sup. Ct. Op. No. 2123 (File No. 4556), 613 P.2d 1252 (1980).

The reason such a crime as forcible rape is most serious is because it amounts to a desecration of the victim's person which is a vital part of her sanctity and dignity as a human being. Gordon v. State, Sup. Ct. Op. No. 831 (File No. 1535), 501 P.2d 772 (1972); Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974); Ames v. State, Sup. Ct. Op. No. 1137 (File No. 2145), 533 P.2d 246, modified on rehearing on other grounds, 537 P.2d 1116 (1975); Newsom v. State, Sup. Ct. Op. No. 1135 (File No. 2189), 533 P.2d 904 (1975); State v. Lancaster, Sup. Ct. Op. No. 1247 (File No. 2571), 550 P.2d 1257 (1976); Bordewick v. State, Sup. Ct. Op. No. 1560 (File No. 3341), 569 P.2d 184 (1977); State v. Wassilie, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978).

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

Criminal intent was required for conviction of statutory rape. — See State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

Although former AS 11.15.120 was silent as to any requirement of intent, the requirement of criminal intent was inferred. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

Rape is a general intent crime, and all that is required for a conviction is proof of the voluntary commission of the prohibited act. Walker v. State, Sup. Ct. Op. No. 2570 (File No. 1921), 657 P.2d 88 [illegible]

Lesser included offense. — The Alaska statutes do not proscribe fornication, and therefore, it could not be considered an offense of a lesser degree to statutory rape. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978); Tookak v. State, Ct. App. Op. No. 108 (File No. 4656), 648 P.2d 1018 (1982).

The offense of assault with intent to commit rape is a lesser included offense to rape. Tuckfield v. State, Sup. Ct. Op. No. 2266 (File No. 4569), 621 P.2d 1350 (1981).

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

Separate crimes. — Rape, assault with a dangerous weapon, and kidnapping were separate crimes with separate elements. Lacy v. State, sup. Ct. Op. No. 2039 (File No. 3741), 608 P.2d 19 (1980).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. State v. Occhipinti, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

B. Age of Consent.

Female under age of consent is in law incapable of consent. — The crime of rape is commited upon a female under the age of consent with or without her consent since she is in law incapable of consent. Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974).

Thus, it is not necessary to establish her consent as an essential element of the crime. Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974).

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

Defense of reasonable mistake of age. — A charge of statutory rape was defensible where an honest and reasonable mistake of fact as to the victim's age was shown. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

The charge of statutory rape was legally unsupportable unless a defense of reasonable mistake of age was allowed. To refuse criminal liability without any criminal mental element. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

While, where an offender was aware he was committing an act of fornication, a mistake of fact did not serve as a complete defense, it should have served to reduce the offense to that which the offender would have been guilty of had he not been mistaken. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

Under former AS 11.15.120, if an accused had a reasonable belief that the person with whom he had sexual intercourse was 16 years of age or older, he could not have been convicted of statutory rape. If, however, he did not have a reasonable belief that the victim was 18 years of age or older, he could still have been criminally liable for contribution to the delinquency of a minor. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

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

C. Procedure.

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

Charging defendant with the crime of murder committed "in the attempt to perpetrate a rape" fails to allege the separate crime of rape with sufficient clarity to support a conviction. Alto v. State, Sup. Ct. Op. No. 1443 (File No. 2339), 565 P.2d 492 (1977).

Severance of counts involving various victims. — Where defendant was prosecuted on multiple counts of unlawful entry with intent to rape, rape, assault, and burglary, involving various victims, the trial court did not err in denying severance of the counts since evidence regarding the attack on each of the alleged victims would have been admissible in the trial of each of the other charges if the charges had been separately tried. Nix v. State, ct. App. Op. No. 157 (File No. 5841), 653 P.2d 1093 (1982).

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

Questioning victim's credibility. — While a defendant could properly seek to question the victim's credibility, the estab- [illegible]

extrinsic evidence on a collateral matter. Moss v. State, Sup. Ct. Op. No. 2239 (File No. 4389), 620 P.2d 674 (1980).

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

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

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

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

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

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

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

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

Hearsay testimony. — It was not error to admit hearsay testimony concerning complaints made by a rape victim to her mother and a school counselor. Greenway v. State, Sup. Ct. Op. No. 2206 (File No. 4754), 626 P.2d 1060 (1980).

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

Error to admit recording of sodium pentothal interview. — In a prosecution for statutory rape and sodomy, it was error to admit the recording of a [illegible]

prior consistent statement for the limited purpose of rehabilitating an impeached witness. Lindsey v. United States, 16 Alaska 26[illegible] 237 F.2d 893 (9th Cir. 1956).

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

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

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

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

Since specific intent is not an element of the offense of rape, giving an instruction that the law assumes that every person intends the natural consequences of his voluntary acts was not error. Walker v. State, Sup. Ct. Op. No. 2570 (File No. 4921), 652 P.2d 88 (1982).

Instruction sufficiently covering question of impeachment. — See Tanksley v. United States, 10 Alaska 443, 145 F.2d 58 (9th Cir. 1944).

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

Sentencing. — The recommended five year maximum, except for cases involving particularly serious offenses, dangerous offenders and professional criminals, of Doulon v. State, Sup. Ct. Op. No. 1092 [illegible]

not applicable to the crime of rape of a person under 16 years by a person 19 years or older, made punishable by former AS 11.15.130(a) by "any term of years." Edenshaw v. State, Ct. App. Op. No. 005 (File No. 5239), 631 P.2d 506 (1981).

What must be reflected in sentence for forcible rape. — Although the perpetrator of such a crime as forcible rape may not be beyond rehabilitation, the crime itself deserves community condemnation; in addition to serving rehabilitative purposes the sentence must reflect such condemnation as well as act as a deterrent to the offender and to others. Newsom v. State, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975).

Sentence for rape upheld. — See Gordon v. State, Sup. Ct. Op. No. 831 (File No. 1535), 501 P.2d 772 (1972); Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974); Newsom v. State, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975); Ames v. State, Sup. Ct. Op. No. 1137 (File No. 2145), 533 P.2d 246, modified on rehearing, 537 P.2d 1116 (1975); Coleman v. State, Sup. Ct. Op. No. 1288 (File No. 2331), 553 P.2d 40 (1976); Nukapigak v. State, Sup. Ct. Op. No. 1410 (File No. 2915), 562 P.2d 697 (1977), aff'd on rehearing, 576 P.2d 982 (1978); Bordewick v. State, Sup. Ct. Op. No. 1500 (File No. 3341), 569 P.2d 184 (1977); Morrell v. State, Sup. Ct. Op. No. 1577 (File No. 2790), 575 P.2d 1200 (1978); Alexander v. State, Sup. Ct. Op. No. 1622 (File No. 3505), 578 P.2d 591 (1978); State v. Wassilie, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978); Moore v. State, Sup. Ct. Op. No. 1880 (File No. 4032), 597 P.2d 975 (1979); Wegner v. State, Sup. Ct. Op. No. 1897 (File No. 4381), 598 P.2d 936 (1979); Wikstrom v. State, Sup. Ct. Op. No. 1987 (File No. 4535), 603 P.2d 908 (1979); Tate v. State, Sup. Ct. Op. No. 2020 (File No. 4550), 606 P.2d 1 (1980); Mullott v. State, Sup. Ct. Op. No. 2027 (File No. 3364), 608 P.2d 7[illegible] (1980); Alexander v. State, Sup. Ct. Op. No. 2077 (File No. 3522), 611 P.2d 469 (1980); Cochrane v. State, Sup. Ct. Op. No. 2086 (File No. 4531), 611 P.2d 61 (1980); Helmer v. State, Sup. Ct. Op. No. 2181 (File No. 4383), 616 P.2d 384 (1980); Tuckfield v. State, Sup. Ct. Op. No. 2266 (File No. 4569), 621 P.2d 1350 (1981); Edenshaw v. State, Ct. App. Op. No. 005 (File No. 5239), 631 P.2d 506 (1981); Kompkoff v. State, Ct. App. Op. No. 015 (File No. 5324), 626 P.2d 1091 (1981); Williams v. State, Ct. App. Op. No. 139 (File No. 5676), 652 P.2d 478 (1982).

Sentence for rape held excessive. — See Ahvik v. State, Sup. Ct. Op. No. 2123 (File No. 4556), 613 P.2d 1252 (1980); Hintz v. State, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981); Qualle v. State, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

Sentences of 15 years for rape of one victim; 10 years concurrent with the 15-year term for burglarizing her residence; 10 years for burglarizing another victim's residence; six months concurrent with the 10-year burglary term for assault on the second victim; 15 years for rape of a third victim; and 10 years concurrent with the 15-year sentence for burglarizing the third victim's residence, for a total of 40 years incarceration, was error. Nix v. State, Ct. App. Op. No. 157 (File No. 5481), 653 P.2d 1093 (1982).

Sentence for rape too lenient. — See State v. Lancaster, Sup. Ct. Op. No. 1247 (File No. 2571), 550 P.2d 1257 (1976); State v. Wassilie, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978); State v. Jensen, Ct. App. Op. No. 126 (File No. 5879), 650 P.2d 422 (1982).

Sentence for attempted rape upheld. — See Shelton v. State, Sup. Ct. Op. No. 2074 (File No. 3908), 611 P.2d 24 (1980) (decided under former AS 11.15.130).

Sentence for assault with intent to rape upheld. — See Fomin v. State, Sup. Ct. Op. No. 2214 (File No. 5313), 619 P.2d 718 (1980).

Sec. 11.41.420. Sexual assault in the second degree. (a) An offender commits the crime of sexual assault in the second degree if the offender engages in

(1) sexual contact with another person without consent of that person; or

(2) sexual penetration with a person who the offender knows

(A) is suffering from a mental disorder or defect which renders the person incapable of appraising the nature of the conduct under circumstances in which a person who is capable of appraising the nature of the

(B) is incapacitated.

(b) Sexual assault in the second degree is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 78 SLA 1983)

Effect of amendments. — The 1983 amendment rewrote subsection (a).

NOTES TO DECISIONS

For cases construing former crime of rape, see notes to AS 11.41.410.

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

Constitutionality of conviction where original charge was under AS 11.41.410. — Where defendant was charged with attempted sexual assault in the first degree, he was thereby assumed to have notice that he might be convicted of second-degree sexual assault because of the similarities in the elements of the two offenses, and his conviction for the latter offense did not violate due process. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Evidence. — Where victim woke up in the early morning hours to find defendant in her bed and fondling her breast, and where she testified that she was temporarily in shock and afraid he would hurt her, a jury could find that victim's momentary acquiescence in defendant's fondling her breast constituted second-degree sexual assault. Nicholson v. State, Ct. App. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Instructions. — The trial judge did not err in refusing to instruct on the lesser included offense of attempted sexual contact in the second degree. Johnson v. State, Ct. App. Op. No. 267 (File No. 6662), 665 P.2d 566 (1983).

Sentence upheld. — Sentence of eight years with three years suspended for sexual assault in the second degree was not clearly mistaken. Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Cited in Stores v. State, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980).

Sec. 11.41.430. [Repealed, § 10 ch 78 SLA 1983. For current law, see AS 11.41.120(a)(2).]

Sec. 11.41.434. Sexual abuse of a minor in the first degree. (a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person; or

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the note below were decided under former AS 11.15.134 and former AS 11.41.410(a)(4).

For cases construing former rape statute, see AS 11.41.410, Notes to Decisions, analysis II.

State's authority to control sexual conduct of children. — Although juveniles may have certain rights to sexual privacy, the state may nevertheless exercise control over the sexual conduct of children beyond the scope of its authority to control adults. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Where juveniles have certain rights to privacy and to express their own autonomy, the state's interest in the well-being of its children may justify legislation that could not properly be applied to adults. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

As to constitutionality of former statute making lewd and lascivious acts toward children a crime, see Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Physical conduct punished under former statute. — See Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977); Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Former section prohibited fellatio. — See Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Consent is not at issue. — The state may forbid an adult to have fellatio with a child under the statutorily prescribed age regardless of whether the child consents to the act. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Mitigating Factors. — In prosecution for first-degree sexual assault, defendant's familiarity with his victim (his 12-year old daughter) was not a mitigating factor. Hodges v. State, Ct. App. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

Sentence under former AS 11.15.134 upheld. — See Noble v. State, Sup. Ct. Op. No. 1286 (File No. 2468), 552 P.2d 142 (1976); Buchanan v. State, Sup. Ct. Op. No. 1316 (File No. 2553), 554 P.2d 1153 (1976); Morgan v. State, Sup. Ct. Op. No. 1908 (File No. 4187), 598 P.2d 952 (1979); Baker v. State, Sup. Ct. Op. No. 1968 (File No. 4631), 602 P.2d 797 (1979); Alvarado v. State, Sup. Ct. Op. No. 2323 (File No. 5133), 626 P.2d 582 (1981).

Sentence for assault upheld. — In prosecution of defendant with no prior criminal record on two counts of first-degree sexual assault of his 12-year old daughter, sentence of two consecutive eight-year terms with five years suspended was not excessive. Hodges v. State, Ct. App. Op. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

In light of the substantial duration of defendant's sexual abuse of his stepdaughter (three years), his failure to learn from the earlier discovery of his prior offenses, his disregard of a court order that he avoid contact with the victim, and his total failure to take any meaningful step toward rehabilitation, 10-year sentence with four years suspended was not excessive for conviction of first-degree sexual assault. Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Sentence under AS 11.15.134 held excessive. — See Quelle v. State, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

Sentence for assault held excessive. — Sentence of 20 years imprisonment for first-degree sexual assault of two-year old child was excessive and case was remanded for resentencing not to exceed 120 years. Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Sentence for assault held too lenient. — Suspended five-year sentence for first-degree sexual assault of defendant's four-year old son was disapproved as too lenient, with a 90-day to three-year sentence suggested. Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Applied in Seymore v. State, Ct. App. Op. No. 196 (File No. 6995), 655 P.2d 786 (1982).

Sec. 11.41.436. Sexual abuse of a minor in the second degree. (a) An offender commits the crime of sexual abuse of a minor in the second degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild; or

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) — (6).

(b) Sexual abuse of a minor in the second degree is a class B felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Sec. 11.41.438. Sexual abuse of a minor in the third degree. (a) An offender commits the crime of sexual abuse of a minor in the third degree if, being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the third degree is a class C felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree. (a) An offender commits the crime of sexual abuse of a minor in the fourth degree if, being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 9 ch 102 SLA 1980; am § 3 ch 78 SLA 1983)

Effect of amendments. — The 1980 amendment rewrote subsection (a).

The 1983 amendment rewrote this section.

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

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Applied in Goulden v. State, Ct. App. Op. No. 201 (File No. 6465), 656 P.2d 1218 (1983).

Cited in Stores v. State, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980), Hodges v. State, Ct. App. Op. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

Collateral references. — Civil liability for carnal knowledge with actual consent of girl under age of consent, 45 ALR 780; 79 ALR 1229.

Assault with intent to ravish or rape consenting female under age of consent, 81 ALR 599.

Parent or person in loco parentis, liability for rape of minor child, 19 ALR2d 460.

Assault with intent to commit unnatural sex act upon minor as affected by latter's consent, 65 ALR2d 748.

Applicability of rape statute covering children of a specified age, with respect to a child who has passed the anniversary date of such age, 73 ALR2d 874.

Sec. 11.41.445. General provisions. (a) In a prosecution under AS 11.41.410 — 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless

(1) the spouses were living apart; or

(2) the defendant caused physical injury to the victim.

(b) In a prosecution under AS 11.41.410 — 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be that age or older, unless the victim was under 13 years of age at the time of the alleged offense. (§ 3 ch 166 SLA 1978)

Sec. 11.41.450. Incest. (a) A person commits the crime of incest if, being 18 years of age or older, the person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

(1) an ancestor or descendant of the whole or half blood;

(2) a brother or sister of the whole or half blood; or

(3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Death of defendant abated prosecution under former section. Hartwell v. State, Sup. Ct. Op. No. 391 (File No. 704), 423 P.2d 282 (1967) decided under former AS 11.40.110.

Collateral references. — Aiding and abetting offense of incest by one not related to party, 5 ALR 784; 74 ALR 1110; 131 ALR 1322.

Relationship created by adoption as within statute regarding incest, 151 ALR 1146.

Consent as element of incest, 30 ALR2d 1299.

Sexual intercourse between persons related by half blood, 72 ALR2d 706.

Prosecutrix as accomplice or victim, 74 ALR2d 705.

Rape, incest as included within charge of, 76 ALR2d 484.

Sec. 11.41.455. Unlawful exploitation of a minor. (a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

(1) sexual penetration;

(2) the lewd touching of another person's genitals, anus, or breast;

(3) the lewd touching by another person of the child's genitals, anus, or breast;

(4) masturbation;

(5) bestiality; or

(6) the lewd exhibition of the child's genitals.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 57 SLA 1983)

Cross references. — For crime of distribution of child pornography, see AS 11.61.125.

Effect of amendments. — The 1983 amendment, in subsection (a), substituted "magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person" for "or magazine that depicts such conduct, the person," substituted "18 years" for "16 years" in two places, and added "the following actual or simulated conduct" to the end, all in the introductory paragraph; substituted "lewd" for "obscene" in paragraphs (2), (3) and (6); and deleted "female" preceding "breast" in paragraph (3). The amendment also redesignated former subsection (b) as subsection (c) and added present subsection (b).

NOTES TO DECISIONS

Applied in Qualle v. State, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

Sec. 11.41.460. Indecent exposure. (a) An offender commits the crime of indecent exposure if the offender intentionally exposes the offender's genitals to another person with reckless disregard for the offensive, insulting, or frightening effect the act may have on that person.

(b) Indecent exposure before a person under 16 years of age is a class A misdemeanor. Indecent exposure before a person 16 years of age or older is a class B misdemeanor. (§ 4 ch 78 SLA 1983)

Sec. 11.41.470. Definitions. For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

(1) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct and physically unable to express unwillingness to act;

(2) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;

(3) "without consent" means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

(B) is incapacitated as a result of an act of the defendant. (§ 3 ch 166 SLA 1978; am § 5 ch 78 SLA 1983)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

Effect of amendments. — The 1983 amendment deleted "that a person is" preceding "temporarily incapable" and substituted "one's own conduct and" for "his conduct and is" in paragraph (1) and deleted "imminent" preceding "death" and preceding "kidnapping" in paragraph (3)(A).

NOTES TO DECISIONS

Applied in Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982); Juneby v. State, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983); Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), P.2d (1983).

Quoted in Woods v. State, Sup. Ct. Op. No. 2698 (File No. 6180), P.2d (1983).

Cited in Hartley v. State, Ct. App. Op. No. 153 (File No. 5737), 653 P.2d 1052 (1982).

Chapter 59. Syndicalism.

[Repealed, § 21, ch. 166, SLA 1978. For Law on terroristic threatening, see AS 11.56.810.]

Chapter 51. Offenses Against the Family.

Collateral references. — 10 Am. Jur. 2d, Bigamy, § 1 et seq.; 42 Am. Jur. 2d, Infants, §§ 16, 17, 55, 65-74; 47 Am. Jur. 2d, Juvenile Courts, Etc., §§ 63-70; 59 Am. Jur. 2d, Parent and Child, §§ 45, 50-87.

10 C Bigamy, § 1 et seq.; 43 C.J.S., Infants, §§ 10, 24, 98; 67 C.J.S., Parent and Child, §§ 41, 165-178.

SECTION 1 & 2

Sec. 11.51.100. Endangering the welfare of a minor. (a) A person commits the crime of endangering the welfare of a minor if, being a parent, guardian, or other person legally charged with the care of a child under 10 years of age, the person intentionally deserts the child in any place under circumstances creating a substantial risk of physical injury to the child.

(b) Endangering the welfare of a minor is a class C felony. (§ 5 ch 166 SLA 1978)

Collateral references. — Liability of parent for injury to unemancipated child caused by parent's negligence — modern cases, 6 ALR4th 1066.

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

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

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

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.35.010, 11.35.090 and 11.35.100.

A father has a primary and continuing obligation to support his children. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

And the inability of a father to engage in his chosen trade may not excuse him from that obligation. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

There is no room for professional or occupational pride where the duty of child support is involved. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Former section included person's postdivorce obligation to support. — See Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Applicability of former statute to putative fathers of illegitimate children. — See S.L.W. v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 736 (File No. 1333), 490 P.2d 42 (1971).

The purpose of contempt proceedings for nonpayment of child support decrees is to coerce the defendant to pay money. It is not to punish him for his past failure to pay. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Alaska statute classify indirect contempts for nonsupport as a crime. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

And a jury trial is available. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

If the defendant asserts that he lacks the ability to comply with the court's order of child support, then he is entitled to a jury trial on the issue. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Procedural aspects of contempt proceedings in nonsupport cases. — For delineation of the procedural aspects of contempt proceedings in nonsupport cases where the purpose is to coerce the defendant's performance of his obligation, see Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Changes of venue in nonsupport contempt cases. — It can be expected that courts hearing nonsupport contempt cases in the future may choose in some cases to make use of the discretionary authority vested in them by AS 22.10.030 and will grant changes of venue. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Inability to comply with a child support order is an affirmative defense. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

In a contempt action the father will not be permitted to succeed on the defense of having a legitimate reason or excuse for not complying with an order of child support where he has not made a reasonable effort to employ his earning capacity in directions other than the one he has chosen as his chief means of livelihood. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Burden of proving noncompliance with court order of child support. — At a contempt trial, the burden of proving noncompliance, by a preponderance of the evidence, with the court's order of child support should be on the plaintiff, who initiates the action. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

Defendant must prove his inability to comply with a court order of child support. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

In almost all child support contempt cases, the crucial issue will concern the defendant's ability to comply. The burden of proof in this respect should remain with the defendant. This is where it presently rests, in this state and in other jurisdictions; such allocation of the burden of proof is appropriate. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

The shifting of the burden of proof entails a partial change of the ordinary standard employed in criminal cases. But this is still advantageous to both parties. The defendant's protection increases as the burden of proof is shifted. He needs only to show by a preponderance of the evidence that he is unable to pay. Once he has met this burden, incarceration, as a coercive method, serves no useful purpose. At the same time the interest of the complainants, is receiving money which defendant is able to pay, is protected under this approach. Johansen v. State, Sup. Ct. Op. No. 746 (File No. 1309), 491 P.2d 759 (1971).

(6) the person recklessly creates a hazardous condition for others by an act which has no legal justification or excuse; or

(7) the offender intentionally exposes the offender's buttock or anus to another with reckless disregard for the offensive or insulting effect the act may have on that person.

(b) As used in this section, "noise" is "unreasonably loud" i considering the nature and purpose of the defendant's conduct a / the circumstances known to the defendant, including the nature of the location and the time of day or night, the conduct involves a gross deviation from the standard of conduct that a reasonable person would follow in the same situation. "Noise" does not include speech that is constitutionally protected.

(c) Disorderly conduct is a class B misdemeanor and is punishable as authorized in AS 12.55 except that a sentence of imprisonment, if imposed, shall be for a definite term of not more than 10 days. (§ 7 ch 166 SLA 1978; am § 6 ch 78 SLA 1983)

Effect of amendments. — The 1983 amendment, in paragraph (a)(7), removed personal pronouns and substituted "buttock or anus" for "genitals, buttock, anus, or female breast."

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.40.080 and 11.45.030.

Constitutionality of former disorderly conduct statute. — See Poole v. State, Sup. Ct. Op. No. 1060 (File No. 2104), 524 P.2d 286 (1974); State v. Martin, Sup. Ct. Op. No. 1122 (File No. 2143), 532 P.2d 316 (1975).

Disorderly conduct statute cannot be applied to behavior which is constitutionally exempt from criminal prohibition. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

Policemen presumed least likely to be provoked. — Insofar as the theory of disorderly conduct rests on the tendency of the actor's behavior to provoke violence in others, one must suppose that policemen, employed and trained to maintain order, would be least likely to be provoked to disorderly responses. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

It is only in the most limited circumstances that speech may be punished. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

For discussion of speech prohibited under former disorderly conduct statute, see Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

Telephone call criticizing public officer. — There is neither legislative language nor constitutional power to read this section as including within its ambit a single telephone call criticizing a public officer for the performance of his official duties. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

That an officer was personally offended by defendant's telephone call did not render the defendant's conduct a crime. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

As to application of former AS 11.40.080, prohibiting indecent exposure and exhibition, see E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 786 (1977).

Collateral references. — 12 Am. Jur. 2d, Breach of Peace, Etc., §§ 18-40.

11 C.J.S., Breach of the Peace, §§ 1-16.

Failure or refusal to obey police officer's order to move on, on street, as disorderly conduct, 65 ALR2d 1152.

Misuse of telephones as disorderly conduct, 97 ALR2d 504.

Vagueness as invalidating statutes or ordinances dealing with disorderly persons or conduct, 12 ALR3d 1448.

Larceny as within disorderly conduct statute or ordinance, 71 ALR3d 1156.

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

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

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

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

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

(5) subjects another person to offensive physical contact; or

(6) violates a provision of an order issued under AS 25.35.010(b) or 25.35.020 restraining the respondent from communicating directly or indirectly with the petitioner.

(b) Harassment is a class B misdemeanor. (§ 7 ch 166 SLA 1978; am § 10 ch 61 SLA 1982)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

Effect of amendments. — The 1982 amendment added paragraph (6) to subsection (a).

NOTES TO DECISIONS

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

Collateral references. — Misuse of telephones as disorderly conduct, 97 ALR2d 504.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass, 95 ALR3d 411.

SECTION 3

Sec. 11.61.125. Distribution of child pornography. (a) A person commits the crime of distribution of child pornography if the person brings or causes to be brought into the state for sale or distribution, or

in the state possesses, prepares, publishes, or prints with intent to distribute, sell, or exhibit to others for commercial consideration, any material that visually depicts conduct described under AS 11.41.455(a), knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

(b) This section does not apply to acts that are an integral part of the exhibition or performance of a motion picture if the acts are performed within the scope of employment by a motion picture operator or projectionist employed by the owner or manager of a theater or other place for the showing of motion pictures, unless the motion picture operator or projectionist

(1) has a financial interest in the theater or place in which employed; or

(2) causes the performance or motion picture to be performed or exhibited without the consent of the manager or owner of the theater or other place of showing.

(c) Distribution of child pornography is a class C felony. (§ 2 ch 57 SLA 1983)

Cross references. — For crime of unlawful exploitation of a minor, see AS 11.41.455.

Sec. 11.61.130. Misconduct involving a corpse. (a) A person commits the crime of misconduct involving a corpse if

(1) except as authorized by law or in an emergency, the person intentionally disinters, removes, conceals, or mutilates a corpse;

(2) the person engages in sexual penetration of a corpse; or

(3) the person detains a corpse for a debt or demand or upon a lien or charge.

(b) Misconduct involving a corpse is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 22 Am. Jur. 2d, Dead Bodies, §§ 47-50.

25A C.J.S., Dead Bodies, §§ 8(2)-8(4).

Action at law for desecration of grave, 172 ALR 554.

Immunity from liability for unlawful treatment of dead body in operation of hospital by state or governmental unit or agency, 25 ALR2d 244.

Liability in damages for withholding corpse from relatives, 48 ALR3d 240.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 ALR3d 1071.

Sec. 11.61.140. Cruelty to animals. (a) A person commits the crime of cruelty to animals if the person

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) recklessly neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe pain or suffering to the animal; or

(3) kills an animal by the use of a decompression chamber.

(b) It is a defense to a prosecution under (a)(1) or (2) of this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am § 1 ch 78 SLA 1980; am § 20 ch 59 SLA 1982)

Effect of amendments. — The 1980 amendment rewrote the section.

The 1982 amendment inserted "(a)(1) or (a)(2) of" in the introductory language of subsection (b).

Editor's notes. — The provisions of paragraphs (2) and (3) of subsection (a) as it existed prior to the 1980 amendment may now be found in AS 11.61.145.

Collateral references. — 4 Am. Jur. 2d, Animals, §§ 27-30.

3A C.J.S., Animals, §§ 99-119.

Cruelty in trapping animals, 79 ALR 1308.

What constitutes statutory offense of cruelty, 82 ALR2d 794.

Sec. 11.61.145. Promoting an exhibition of fighting animals. (a) A person commits the crime of promoting an exhibition of fighting animals if the person

(1) owns, possesses, keeps, or trains an animal with intent that it be engaged in an exhibition of fighting animals;

(2) instigates, promotes, or has a pecuniary interest in an exhibition of fighting animals; or

(3) attends an exhibition of fighting animals.

(b) The animals, equipment, vehicles, money, and other personal property used by a person in a violation of (a)(1) or (2) of this section shall be forfeited to the state if the person is convicted of an offense under this section.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Promoting an exhibition of fighting animals

(1) under (a)(1) or (2) of this section is a class C felony;

(2) under (a)(3) of this section is a violation for the first offense and a class B misdemeanor for the second and each subsequent offense. (§ 2 ch 78 SLA 1980)

Sec. 11.61.150. Obstruction of highways. (a) A person commits the crime of obstruction of highways if the person knowingly

(1) places, drops, or permits to drop on a highway any substance that creates a substantial risk of physical injury to others using the highway; or

(2) renders a highway impassable or passable only with unreasonable inconvenience or hazard.

(b) Criminal possession of explosives is a

(1) class A felony if the crime intended is murder in any degree or kidnapping;

(2) class B felony if the crime intended is a class A felony;

(3) class C felony if the crime intended is a class B felony;

(4) class A misdemeanor if the crime intended is a class C felony;

(5) class B misdemeanor if the crime intended is a class A or class B misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 31 Am. Jur. 2d, Explosions and Explosives, §§ 121-130.

35 C.J.S., Explosives, § 12.

Possession of bomb, molotov cocktail, or similar device as criminal offense, 42 ALR3d 1230.

Sec. 11.61.250. Unlawful furnishing of explosives. (a) A person commits the crime of unlawful furnishing of explosives if the person furnishes an explosive substance or device to another knowing that the other intends to use the substance or device to commit a crime.

(b) Unlawful furnishing of explosives is a class C felony. (§ 7 ch 166 SLA 1978)

Chapter 65. Offenses Against Public Convenience.

Secs. 11.65.010 — 11.65.020. [Renumbered as AS 30.50.020 and 30.50.010.]

Sec. 11.65.030. Tampering with posted notices. [Repealed, § 21, ch. 166, SLA 1978.]

Chapter 66. Offenses Against Public Health and Decency.

Article

1. Prostitution and Related Offenses (§§ 11.66.100 — 11.66.150)
2. Gambling Offenses (§§ 11.66.200 — 11.66.280)

Article 1. Prostitution and Related Offenses.

NOTES TO DECISIONS

Municipal ordinances not prohibited. — The enactment of this article does not prohibit municipal ordinances penalizing the solicitation of prostitutes by putative customers. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

There is nothing in this article which would support an inference that the legislature sought to encourage men to patronize prostitutes nor is there any indication in this article that the legislature sought statewide uniformity in regulating commercial sexual relations. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

Collateral references. — 63 Am. Jur. 2d, Prostitution, § 1 et seq.

27 C.J.S., Disorderly Houses, § 1 et seq.; 73 C.J.S., Prostitution, § 1 et seq.

Constitutionality and construction of pandering acts, 74 ALR 311.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases, 77 ALR3d 519.

Sec. 11.66.100. Prostitution. (a) A person commits the crime of prostitution if the person engages in or agrees or offers to engage in sexual conduct in return for a fee.

(b) Prostitution is a class B misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law, whereas fornication and prostitution were not. Eleazar v. United States, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956), decided under former AS 11.40.220.

This section is not irreconcilable with a municipal ordinance prohibiting the solicitation of prostitutes by putative customers. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

Actual payment of a fee is not required; an act of prostitution is complete when an offer is extended or an agreement made to engage in sexual conduct in return for a fee. Garibay v. State, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

Proof. — Customer's testimony that he agreed to purchase sexual favors for sum of $200, his testimony that he charged the purchase price using his VISA card, and the VISA charge slip itself, were all highly probative of whether an agreement or offer to engage in sexual conduct in return for a fee was in fact made. Garibay v. State, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

Collateral references. — Prostitution as vagrancy, 14 ALR 1501.

Entrapment to procure women for immoral purposes, 18 ALR 186; 66 ALR 478; 86 ALR 263.

Sec. 11.66.110. Promoting prostitution in the first degree. (a) A person commits the crime of promoting prostitution in the first degree if the person

(1) induces or causes a person to engage in prostitution through the use of force;

(2) as other than a patron of a prostitute, induces or causes a person under 16 years of age to engage in prostitution; or

(3) induces or causes a person in that person's legal custody to engage in prostitution.

(b) In a prosecution under (a)(2) of this section, it is not a defense that the defendant reasonably believed that the person induced or caused to engage in prostitution was 16 years of age or older.

(c) Except as provided in (d) of this section, promoting prostitution in the first degree is a class B felony.

(d) A person convicted under (a)(2) of this section is guilty of a class A felony. (§ 8 ch 166 SLA 1978; am §§ 1, 2 ch 50 SLA 1983)

Effect of amendments. — The 1983 amendment added "Except as provided in (d) of this section" to the beginning of subsection (c) and added subsection (d).

NOTES TO DECISIONS

For case construing former statute prohibiting importing or exporting females for immoral purposes, see State v. Adkerson, Sup. Ct. Op. No. 294 (File No. 520), 403 P.2d 673 (1965).

For case construing former procurement statute, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1338), 501 P.2d 762 (1972).

Sentence for procurement upheld. — See Price v. State, Sup. Ct. Op. No. 1450 (File No. 2794), 565 P.2d 858 (1977).

For case construing former statute concerning necessary evidence for prostitution or seduction, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1338), 501 P.2d 762 (1972).

Collateral references. — Transporting female for purpose of prostitution, 74 ALR 330.

Woman conniving or consenting to own transportation, 84 ALR 376.

Sec. 11.66.120. Promoting prostitution in the second degree. (a) A person commits the crime of promoting prostitution in the second degree if the person

(1) manages, supervises, controls, or owns, either alone or in association with others, a prostitution enterprise other than a place of prostitution; or

(2) procures or solicits a patron for a prostitute.

(b) Promoting prostitution in the second degree is a class C felony. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former statute prohibiting soliciting or procuring for purpose of prostitution, see Plas v. State, Sup. Ct. Op. No. 1904 (File Nos. 3529, 3530), 598 P.2d 966 (1979).

Instruction. — Trial court did not err in refusing to give instruction requiring state to prove that prostitution enterprise involved in case was of an ongoing nature. Garibay v. State, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

Collateral references. — Separate acts of taking earnings of or support from prostitute as separate or continuing offenses of pimping, 3 ALR4th 1195.

Sec. 11.66.130. Promoting prostitution in the third degree. (a) A person commits the crime of promoting prostitution in the third degree if, with intent to promote prostitution, the person

(1) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;

(2) as other than a patron of a prostitute, induces or causes a person 16 years of age or older to engage in prostitution;

(3) as other than a prostitute receiving compensation for personally rendered prostitution services, receives or agrees to receive money or other property pursuant to an agreement or understanding that the money or other property is derived from prostitution; or

(4) engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

(b) Promoting prostitution in the third degree is a class A misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.40.260, 11.40.300, 11.40.330, 11.40.410, and 11.40.420.

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law. Eleazar v. United States, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956).

Lessor may be guilty as keeper. — If a man leases his house to a woman to be kept as a bawdyhouse for purposes of prostitution, and it is kept for such purposes, with his knowledge, he is guilty as keeper. Rosencranz v. United States, 155 F. 38 (9th Cir. 1907).

As well as agent of lessor. — The agent of an owner, who rents a house knowing that it is to be used as a house of prostitution, and that it is so used, may be found guilty as a keeper. Rosencranz v. United States, 155 F. 38 (9th Cir. 1907).

For case construing former statute prohibiting employment in a house of prostitution or living on the earnings of a prostitute, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1338), 501 P.2d 762 (1972).

For case construing former statute prohibiting importing or exporting females for immoral purposes, see State v. Adkerson, Sup. Ct. Op. No. 294 (File No. 520), 403 P.2d 673 (1965).

For case construing former statute prohibiting pimping, see Johnson v. United States, 260 F. 783 (9th Cir. 1919).

For case construing former statute prohibiting a male's living with or on the earnings of a prostitute, see Dunn v. State, Sup. Ct. Op. No. 409 (File No. 733), 426 P.2d 993 (1967).

Sec. 12.05.010. Crime commenced outside state but consummated inside. When the commission of a crime commenced outside the state is consummated inside the state, the defendant is liable to punishment in this state even though out of the state at the time of the commission of the crime charged, if the defendant consummated the crime through the intervention of an innocent or guilty agent, or by other means proceeding directly from the defendant. (§ 1.06 ch 34 SLA 1962)

Legislative history reports. — For report on original bill, see 1962 House Journal, pp. 224-231.

Collateral references. — 21 Am. Jur. 2d, Criminal Law, § 386.

Chapter 10. Limitations of Actions.

Sec. 12.10.010. General time limitations. A prosecution for murder may be commenced at any time. Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any offense, not murder, unless the indictment is found or the information or complaint is instituted within five years next after such offense shall have been committed. (§ 1.02 ch 34 SLA 1962; am § 2 ch 29 SLA 1962)

Cross references. — For limitations on prosecutions under the election laws, see AS 15.13.120(e) and AS 15.56.130.

NOTES TO DECISIONS

The statute of limitations is jurisdictional. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

It is to be construed in favor of the defendant. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

Statute of limitations for manslaughter. — While there is no statute of limitations in Alaska for the offense of murder, the crime of manslaughter is subject to a five-year statute of limitations. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Defendant may not be convicted of time-barred lesser included offense. — Just as a defendant may not be charged with a time-barred offense, he may not be convicted of it, even as a lesser offense included in one which is not time-barred. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

But jury may be instructed on elements of such offense. — A criminal trial jury may be instructed on the elements of a lesser included offense when the statute of limitations has run on the lesser offense but not the charged offense. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

Where defendant was charged with first degree murder and the statute of limitations had run on the lesser offense of manslaughter, while the jury should not be instructed that they might find defendant guilty of manslaughter, defendant was entitled to an instruction on the mitigating effects of passion and provocation, requiring the jury to acquit him if he presented such evidence in mitigation and the state did not negate it. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

A statute of limitations can be waived if the trial court determines that the following prerequisites have been met: (1) The waiver is knowing, intelligent, and voluntary; (2) it is made for the defendant's benefit and after consultation with counsel; and (3) the defendant's waiver does not handicap his defense or contravene any other public policy reasons motivating the enactment of the statute. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Since defendant's waiver of the relevant statute of limitations was knowingly, intelligently, and voluntarily entered; it was made for defendant's benefit and after consultation with counsel; and defendant's waiver did not contravene any of the policy reasons underlying criminal statutes of limitations, the superior court possessed jurisdiction to accept defendant's plea of nolo contendere to the charge of manslaughter after the statute of limitations had run. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Case-by-case analysis as to waivability issue. — Although most courts have treated the waivability issue as dependent on whether a statute is treated as jurisdictional or as an affirmative defense, this arbitrary distinction should be abandoned in favor of a case-by-case analysis focusing on the language of the applicable statute of limitations and the public policies behind its enactment. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

By seeking an instruction on an offense which is time-barred, defendant does not waive the defense of this section. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976), aff'd on other grounds, Sup. Ct. Op. No. 1465, 566 P.2d 1024 (1977).

Applied in Coffey v. State, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978).

Stated in Yarbor v. State, Sup. Ct. Op. No. 1240 (File No. 2397), 546 P.2d 564 (1976); State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984).

Cited in Marks v. State, Sup. Ct. Op. No. 787 (File No. 1414), 496 P.2d 66 (1972); In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Collateral references. — 21 Am. Jur. 2d, Criminal Law, § 223 et seq.
22 C.J.S., Criminal Law, § 223 et seq.

SECTION 4

Sec. 12.10.020. Specific time limitation. (a) Even if the general time limitation has expired, a prosecution for any offense which includes a material element of fraud or breach of fiduciary obligation may be commenced within one year after the discovery of the offense by an aggrieved party or by a person who has legal capacity to represent an aggrieved party or a legal duty to report the offense and who is not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(b) Even if the general time limitation has expired, a prosecution for any offense based upon misconduct in office by a public officer or employee may be commenced within one year after discovery of the offense by a person having a duty to report such offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(c) Even if the general time limitation has expired, a prosecution under AS 11.41.410 — 11.41.460 for an offense committed against a person under the age of 16 may be commenced within one year after the crime is reported to a peace officer or the person reaches the age of 16, whichever occurs first. This subsection does not extend the period of limitation by more than five years. (§ 1.03 ch 34 SLA 1962; am § 7 ch 78 SLA 1983)

Cross references. — For applicability of (c) of this section, see § 11, ch 78, SLA 1983, in the Temporary and Special Acts.

Effect of amendments. — The 1983 amendment added subsection (c).

NOTES TO DECISIONS

Stated in State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984).

Sec. 12.10.030. When period of limitation runs. (a) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution is commenced either when an indictment is found or when a warrant is issued, provided that such warrant is executed without unreasonable delay. (§ 1.04 ch 34 SLA 1962)

NOTES TO DECISIONS

Warrant requirements. — Subsection (b) and AS 12.10.040(b) do not require that a warrant be based on an indictment, information, or other charging document before the statute of limitations is tolled by its issuance. Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).

Reasonable delay found. — Where defendant did not appear for sentencing on felony convictions and the trial court issued a bench warrant for his failure to appear, yet not until six years, 10 months, and four days later was defendant indicted for his failure to appear, the issuance of the warrant constituted a pending prosecution under AS 12.10.040(b) which, when combined with the finding of the trial court that under subsection (b) there was a reasonable basis for delay in executing the warrant to toll the statute of limitations, was sufficient to bring prosecution of the offense within the five-year period allowed by the statute of limitations. Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).

Collateral references. — 21 Am. Jur. 2d, Criminal Law, § 157.

Sec. 12.10.040. When period of limitation does not run. (a) The period of limitation does not run during any time when the accused, with a purpose to avoid detection, apprehension, or prosecution, is outside the state or is absent from the accused's usual place of abode within the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

(b) The period of limitation does not run during any time when a prosecution against the accused for the same conduct is pending in this state. (§ 1.05 ch 34 SLA 1962)

NOTES TO DECISIONS

Warrant requirements. — AS 12.10.030(b) and subsection (b) do not require that a warrant be based on an indictment, information, or other charging document before the statute of limitations is tolled by its issuance. Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).

Pending prosecution found. — Where defendant did not appear for sentencing on felony convictions and the trial court issued a bench warrant for his failure to appear, yet not until six years, 10 months, and four days later was defendant indicted for his failure to appear, the issuance of the warrant constituted a pending prosecution under subsection (b) which, when combined with the finding of the trial court that under AS 12.10.030(b) there was a reasonable basis for delay in executing the warrant to toll the statute of limitations, was sufficient to bring prosecution of the offense within the five-year period allowed by the statute of limitations. Shaw v. State, Ct. App. Op. No. 50 (File No. 5311), 634 P.2d 381 (1981).

Collateral references. — Necessity of alleging in indictment or information limitation-tolling facts, 52 ALR3d 922.

Chapter 15. Parties.

[Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 11.16.]

Chapter 20. Bars to Actions.

Sec. 12.20.010. Conviction or acquittal elsewhere as bar. When an act charged as a crime is within the jurisdiction of the United States, another state, or a territory, as well as of this state, a conviction or acquittal in the former is a bar to the prosecution for it in this state. (§ 1.11 ch 34 SLA 1962)

and amounts on the checks, including those to be uttered, and assisted in running the checks through the check protector, could have been indicted and punished for the offenses of which the defendants were convicted and was an accomplice. Ing v. United States, 278 F.2d 362 (9th Cir. 1960).

Facts showing witness was not accomplice. — General statement by witness that he and defendant, "had talked over the fact of burglarizing King Builders" was not enough to show that he conspired in a prearranged plan to commit the particular crimes with which defendant was charged, or that he in any manner aided, abetted, assisted or participated in the criminal acts. Taylor v. State, Sup. Ct. Op. No. 216 (File No. 407), 391 P.2d 950 (1964).

That witness later disposed of the stolen goods, knowing they were stolen, did not make him an accomplice. Taylor v. State, Sup. Ct. Op. No. 216 (File No. 407), 391 P.2d 950 (1964).

Evidence not connecting defendants with crime. — Where the facts and circumstances relied upon for corroboration did no more than show an opportunity for the defendants to have committed the crimes or connect them with the perpetrators, such evidence did not tend to connect the defendants with the commission of the crimes of which they were convicted. Ing v. United States, 278 F.2d 362 (9th Cir. 1960).

Sufficiency of corroborating testimony. — Corroborating testimony is not sufficient if it requires the interpretation and direction of the testimony to be corroborated. Ing v. United States, 278 F.2d 362 (9th Cir. 1960).

The statutory requirement of corroboration is satisfied when the corroborating evidence tends to induce in the minds of the jurors a rational belief that the accomplice was speaking the truth when he implicated the defendant in the criminal event. Dimmick v. State, Sup. Ct. Op. No. 632 (File No. 1098), 473 P.2d 616 (1970).

The corroborative evidence fulfills the requirement that it tend to connect the defendant with the commission of the crime where it serves as a means of inducing in the minds of the jurors a rational belief that the accomplice was speaking the truth when he implicated the defendant in the criminal event. Pulakis v. State, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970).

Corroborating evidence need only be sufficient to induce in the minds of the jurors a rational belief that the accomplice was speaking the truth when he implicated the defendant in the criminal event. Anthony v. State, Sup. Ct. Op. No. 1025 (File No. 1774), 521 P.2d 486 (1974).

Evidence was sufficient to satisfy the statutory requirement of corroboration. Thomas v. State, Sup. Ct. Op. No. 200 (File No. 384), 391 P.2d 18 (1964).

In a prosecution for unnatural carnal copulation, there was ample corroboration of alleged accomplice's testimony. Christy v. United States, 17 Alaska 107, 261 F.2d 357 (9th Cir. 1958), cert. denied, 360 U.S. 919, 79 S. Ct. 1438, 3 L. Ed. 2d 1535, rehearing denied, 361 U.S. 857, 80 S. Ct. 47, 4 L. Ed. 2d 96 (1959).

Raising issue of erroneously allowing uncorroborated testimony to go to jury. — That it was error for the court to allow uncorroborated testimony to go to the jury is an issue properly raised by a motion for judgment of acquittal. Beavers v. State, Sup. Ct. Op. No. 765 (File No. 1387), 492 P.2d 88 (1971).

Section inapplicable to grand jury proceedings. — This section's evidentiary requirement of corroboration is inapplicable to grand jury proceedings. Merrill v. State, Sup. Ct. Op. No. 392 (File No. 688), 423 P.2d 686, cert. denied, 386 U.S. 1040, 87 S. Ct. 1497, 18 L. Ed. 2d 607 (1967).

Hence, indictment may be returned without corroboration of accomplice's testimony. — There is no requirement in either Alaska's Code of Criminal Procedure, or in its Rules of Criminal Procedure, that an accomplice's testimony be corroborated before an indictment can be properly returned. Merrill v. State, Sup. Ct. Op. No. 392 (File No. 688), 423 P.2d 686, cert. denied, 386 U.S. 1040, 87 S. Ct. 1497, 18 L. Ed. 2d 607 (1967).

Applied in Carman v. State, Sup. Ct. Op. No. 1979 (File No. 3555), 602 P.2d 1255 (1979); Miller v. State, Ct. App. Op. No. 24 (File No. 4972), 629 P.2d 546 (1981).

Quoted in Oksoktaruk v. State, Sup. Ct. Op. No. 2089 (File No. 3986), 611 P.2d 521 (1980); Price v. State, Ct. App. Op. No. 100 (File No. 5083), 647 P.2d 611 (1982).

Stated in Daniels v. State, Sup. Ct. Op. No. 185 (File No. 295), 388 P.2d 813 (1964).

Secs. 12.45.030 — 12.45.040. Evidence required in certain cases. [Repealed, § 21 ch 166 SLA 1978.]

Section 16

Sec. 12.45.045. Evidence of past sexual conduct in trials of rape and assault with intent to commit rape. (a) In prosecutions for the crime of sexual assault in any degree or an attempt to commit sexual assault in any degree, evidence of the complaining witness' previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit the evidence for any purpose, the defendant may apply for an order of the court at any time before or during the trial or preliminary hearing. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, the court shall make an order stating what evidence may be introduced and the nature of the questions which shall be permitted. The defendant may then offer evidence under the order of the court.

(b) In the absence of a persuasive showing to the contrary, evidence of the complaining witness' sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

(c) In this section "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section. (§ 1 ch 165 SLA 1975; am § 18 ch 166 SLA 1978)

Cross references. — For similar court rule, see Evid. R. 404(a)(2).

NOTES TO DECISIONS

In camera hearing before presenting evidence. — In prosecution for attempted sexual assault in the first degree, defendant's counsel should have moved for an in camera hearing before presenting any evidence relating to the victim's prior sexual conduct. Baden v. State, Ct. App. Op. No. 285 (File No. 6832), 667 P.2d 1275 (1983).

Applied in Padgett v. State, Sup. Ct. Op. No. 1801 (File No. 3317), 590 P.2d 432 (1979); Moss v. State, Sup. Ct. Op. No. 2239 (File No. 4389), 620 P.2d 674 (1980); Kvasnikoff v. State, Ct. App. Op. No. 314 (File No. 5588), 674 P.2d 302 (1983).

Collateral references. — Modern status of admissibility, in forcible rape prosecution, of complainant's prior sexual acts, 94 ALR3d 257.

Modern status of admissibility, in statutory rape prosecution, of complainant's prior sexual acts or general reputation for unchastity, 90 ALR3d 1300.

Effect of amendments. — The 1983 amendment inserted "and in AS 12.62.035" near the beginning of subsection (a).

SECTION 7

Sec. 12.62.035. Access to certain crime information. (a) Notwithstanding any other provision of law, an interested person as defined in (e) of this section may request from the commission records of all convictions involving contributing to the delinquency of a minor and any sex crimes of a person who holds or applies for a position in which the person has or would have supervisory or disciplinary power over a minor. The commission shall authorize the disclosure of the information to the requesting interested person and shall provide a copy of the information to the person who is the subject of the request.

(b) A request for records under (a) of this section shall include within it the fingerprints of the person who is the subject of the request and any other data specified in regulations adopted by the commission. The request shall be on a form approved by the commission, and the commission may charge a fee to be paid by the requesting interested person for the actual cost of processing the request. The commission shall destroy an application within six months after the requested information is sent to the requesting interested person and the person who is the subject of the request.

(c) The commission shall adopt regulations to implement the provisions of this section.

(d) If an individual is denied employment as a result of the disclosure of inaccurate or incomplete records under this section, an action may be brought against the state. No other action may be brought against the state, or an agency or employee of the state, as a result of disclosing or failing to disclose criminal justice information.

SECTION 8

(e) As used in this section

(1) "contributing to the delinquency of a minor" means a conviction for a violation or attempted violations of AS 11.51.130(a)(1), (3), or (5); former As 11.40.130; or the laws of another jurisdiction if the offense would have been a crime in this state under As 11.51.130(a)(1), (3), or (5) or former AS 11.40.130 if committed in the state;

(2) "interested person" means a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person, that employs or solicits the employment of a person to serve with or without compensation in a position in which the person has or would have supervisory or disciplinary power over a minor;

(3) "sex crime" means a conviction for a violation or attempted violation of AS 11.41.410 — 11.41.470, AS 11.61.110(a)(7), or AS 11.66.100 — 11.66.130; former AS 11.15.120, 11.15.134, or 11.15.160; former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420; or the laws of another jurisdiction if the offense would have been a crime in this state under one of the sections listed in this paragraph if committed in the state. (§ 2 ch 66 SLA 1983; am § 44 ch 6 SLA 1984)

SECTION 9

Effect of amendments. — The 1984 amendment, in subsection (e), in paragraph (1), substituted "former AS 11.40.130; or the laws of another jurisdiction" for "or for a violation or attempted violation of an offense committed outside the state" and inserted "or former AS 11.40.130," and in paragraph (3) substituted "former AS 11.15.120, 11.15.134, or 11.15.160, former 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420, or the laws of another jurisdiction" for "or for a violation or attempted violation of an offense committed outside the state" and "sections listed in this paragraph" for "above sections."

Sec. 12.62.040. Security, updating, and purging. (a) Criminal justice information systems shall

(1) be dedicated to law enforcement purposes and be under the management and control of law enforcement agencies unless exempted under regulations adopted under AS 12.62.010;

(2) include operating procedures approved by the commission which are reasonably designed to assure the security of the information contained in the system from unauthorized disclosure, and reasonably designed to assure that criminal offender record information in the system is regularly and accurately revised to include subsequently furnished information;

(3) include operating procedures approved by the commission which are designed to assure that information concerning an individual shall be removed from the records, based on considerations of age, nature of record, and reasonable interval following the last entry of information indicating that the individual is still under the jurisdiction of a law enforcement agency.

(b) Notwithstanding any provision of this section, any criminal justice information relating to minors which is maintained as part of a criminal justice information system must be afforded at least the same protection and is subject to the same procedural safeguards for the benefit of the individual with respect to whom the information is maintained, in matters relating to access, use and security as it would be under AS 47.10.090. (§ 1 ch 161 SLA 1972)

Sec. 12.62.050. Interstate systems for the exchange of criminal justice information. (a) The commission shall regulate the participation by all state and local criminal justice agencies in an interstate system for the exchange of criminal justice information, and shall be responsible to assure the consistency of the participation with the provisions and purposes of this chapter. The commission may not compel any criminal justice agency to participate in an interstate system.

(b) Direct access to an interstate system for the exchange of criminal justice information shall be limited to those criminal justice agencies that are expressly designated for that purpose by the commission. When the system employs telecommunications access terminals, the commission shall limit the number and placement of the terminals to those for which adequate security measures may be taken and as to which the commission may impose appropriate supervisory regulations. (§ 1 ch 161 SLA 1972)

(b) If more than one power is proposed, each appears separately on the ballot.

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results. (§ 2 ch 118 SLA 1972; am § 9 ch 200 SLA 1972)

Chapter 41. Powers of Third Class Boroughs.

Section
10. Powers of third class boroughs
20. Assembly to serve as school board

Sec. 29.41.010. Powers of third class boroughs. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and zoning in accordance with AS 29.33.070 — 29.33.245 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 per cent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.58.150 — 29.58.340.

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of

district in which the military reservation is located. (§ 2 ch 118 SLA 1972; am § 4 ch 32 SLA 1973; am § 7 ch 72 SLA 1974; am § 7 ch 13 SLA 1975; am § 35 ch 124 SLA 1975; am §§ 1, 2 ch 93 SLA 1977)

Legislative history reports. — For report on ch. 72, SLA 1974 (HCS CSSB 122 (Finance) am H), see 1974 House Journal, p. 519.

NOTES TO DECISIONS

Operation of military reservation schools. — Nothing in the legislature's 1975 amendments requires local school districts that take over operation of military reservation schools to assume any risk of loss or duty to insure school buildings. State v. Fairbanks N. Star Borough School Dist., Sup. Ct. Op. No. 2257 (File No. 4477), 621 P.2d 1329 (1981).

The state must bear the loss resulting from the fire destruction of a military reservation school operated by a local school district in the absence of provisions to the contrary. State v. Fairbanks N. Star Borough School Dist., Sup. Ct. Op. No. 2257 (File No. 4477), 621 P.2d 1329 (1981).

Sec. 29.41.020. Assembly to serve as school board. The borough assembly is the borough school board for third class boroughs. The borough executive is the presiding officer of the borough assembly and president of the school board. The borough executive has all powers of a borough executive except for the veto power. (§ 2 ch 118 SLA 1972; am § 30 ch 94 SLA 1980)

Effect of amendments. — The 1980 amendment deleted the former second sentence, which read: "Where applicable, weighted voting shall apply to board decisions."

Chapter 43. Powers of Cities Outside Boroughs.

Section
10. Additional powers
20. Assessment and tax collection
30. Education
40. Planning and zoning
100. Extension of curfews outside cities
105. Enforcement of curfews
110. Penalty for violation of curfew

Sec. 29.43.010. Additional powers. In addition to the powers granted by AS 29.48, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated. (§ 2 ch 118 SLA 1972)

Sec. 29.43.020. Assessment and tax collection. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by AS 29.53 for boroughs. Cities outside boroughs

NOTES TO DECISIONS

Applied in City of Yakutat v. Ryman, Sup. Ct. Op. No. 2581 (File Nos. 6033, 6099), 654 P.2d 785 (1982).

Sec. 29.43.030. Education. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.33.050 for boroughs. (§ 2 ch 118 SLA 1972)

Sec. 29.43.040. Planning and zoning. (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may, provide for planning, platting and zoning, as provided by AS 29.33.070 — 29.33.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may, provide for planning, platting and zoning, as provided by AS 29.33.070 — 29.33.245 for boroughs. (§ 2 ch 118 SLA 1972; am §§ 8, 9 ch 93 SLA 1977)

Effect of amendments. — The 1977 amendment inserted "first and second class" preceding "boroughs" in two places in subsection (a) and added subsection (b).

Sec. 29.43.100. Extension of curfews outside cities. The provisions of a curfew ordinance enacted by a city of any class concerning minors shall be imposed in the total area within 20 miles of the limits of that city. If a given area lies within 20 miles of two or more cities with conflicting curfew ordinances, the provisions of the curfew ordinance of the city having the largest population prevails as to the overlapping area. (§ 1 ch 86 SLA 1962)

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978. Also in 1978, the words "or village" following the word "city" were deleted as the classification of municipalities in this title no longer includes villages. See AS 29.08.

Sec. 29.43.105. Enforcement of curfews. (a) The municipal peace officers shall enforce the provisions of the ordinance inside the city limits. Under AS 29.43.100 — 29.43.110 the state peace officers shall enforce the provisions of the ordinance in the area outside the city limits.

(b) In an area where state peace officers are not available, the municipal peace officer may enforce the provisions of the ordinance in the area outside the city limits if the enforcement responsibilities are delegated by contract between the state and the municipality. (§ 3 ch

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978.

SECTION 10

Sec. 29.43.110. Penalty for violation of curfew. The penalty for violation of AS 29.43.100 — 29.43.110 is as prescribed by the curfew ordinance of the city, and a fine so paid shall be paid to the city when the violation takes place in the city. Otherwise the fine shall be paid to the state. However, the penalty shall not exceed a fine of $300, or imprisonment for 30 days, or both. (§ 2 ch 86 SLA 1962)

Revisor's notes. — Formerly AS 11.60.250. Renumbered in 1978 under § 22, ch. 166, SLA 1978.

Chapter 48. Powers Applicable to All Municipalities.

Article 1. General Powers.

Sec. 29.48.010. General powers. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments;

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal

Sec. 47.08.140. Definitions. In AS 47.08.010 — 47.08.140

(1) "applicant" means a person who has suffered a catastrophic illness and is applying for assistance under AS 47.08.010 — 47.08.140 or is the subject of an application for assistance under AS 47.08.010 — 47.08.140;

(2) "applicant's share" means the amount of the total medical expense related to the catastrophic illness which the committee determines the applicant can reasonably be expected to pay based on income, assets, and number of dependents under AS 47.08.060;

(3) "catastrophic illness" means illness or injury which results in medical expenses of over $1,000 during a period not to exceed 12 months, after all other sources of third-party payment have been exhausted;

(4) "committee" means the Catastrophic Illness Committee, created under AS 47.08.020;

(5) "elective medical or surgical procedures" means treatment which is not essential to the life or health of a person;

(6) "family" means two or more persons related by blood or marriage or adoption living as one economic unit;

(7) "liquid assets" means assets which can be readily converted to cash;

(8) "medical expense" means any financial obligation incurred in the course of treatment of illness as prescribed by a physician, including bills for ancillary services, patient transportation, transportation of a medical or family escort when reasonably necessary, or living expenses while receiving outpatient treatment in a community to which the applicant is not reasonably able to commute from the applicant's permanent place of abode;

(9) "nonliquid assets" means all assets which are not liquid assets;

(10) "permanent place of abode" means a dwelling, or a dwelling unit in a multiple dwelling, including lots and outbuildings or an appropriate portion of these, which are necessary to convenient use of the dwelling unit;

(11) "provider" means a licensed physician, pharmacist, dentist, or other health service worker or a licensed hospital, clinic, skilled nursing home, intermediate care facility or health maintenance organization which has provided services not excluded by AS 47.08.050 to an applicant as a result of a catastrophic illness;

(12) "third-party payments" means payments of medical expenses related to a catastrophic illness by sources other than the applicant or the committee, including but not limited to state and federal medical assistance programs, private health insurance, employment-related health insurance, military health insurance, workers' compensation, violent crimes compensation, Indian Health Service of the United States Department of Health and Human Services, and awards in legal actions. (§ 1 ch 107 SLA 1978)

Chapter 10. Delinquent Minors and Children in Need of Aid.

NOTES TO DECISIONS

Cited in Flores v. Flores, Sup. Ct. Op. No. 1875 (File No. 3832), 598 P.2d 893 (1979).

Article 1. Children's Proceedings.

Sec. 47.10.010. Jurisdiction. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or of a municipality of the state; or

(2) to be a child in need of aid as a result of

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to provide care, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 47.10.080 or voluntarily relinquished;

(B) the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parents are unwilling to provide the medical treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian or custodian or the failure of the parent, guardian or custodian adequately to supervise the child;

(D) the child having been sexually abused either by the child's parent, guardian or custodian, or as a result of conditions created by the child's parent, guardian or custodian, or by the failure of the parent, guardian or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian or custodian;

(F) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian or custodian.

SECTION 11 [redacted] When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, a fish and game statute or regulation under AS 16 or a parks and recreational facilities statute or regulation under AS 41.21, excepting a statute the violation of which is a felony, the procedure prescribed in AS 47.10.020 — 47.10.090 may not be followed, except that a parent, guardian or legal custodian shall be present at all proceedings. The minor accused of a traffic offense, a fish and game statute or regulation violation under AS 16 or parks and recreational facilities violation under AS 41.21 shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

(c) In a controversy concerning custody of a minor, the court may appoint a guardian of the person and property of a minor and may order support from either or both parents. Custody of a minor may be given to the Department of Health and Social Services, and payment of support money to the department may be ordered. (§ 4 art I ch 145 SLA 1957; am § 1 ch 76 SLA 1961; am §§ 1, 2 ch 110 SLA 1967; am § 1 ch 61 SLA 1969; am § 6 ch 104 SLA 1971; am §§ 7, 8 ch 63 SLA 1977; am § 1 ch 104 SLA 1982)

Cross references. — See Rules of Children's Procedure, Alaska Rules of Court Procedure and Administration. For waiver of jurisdiction, see AS 47.10.060. For provisions relating to child protection, see AS 47.17. For provisions establishing office of child advocacy, see AS 47.50.

Effect of amendments. — The 1982 amendment added the paragraph (2)(F) to subsection (a).

Editor's notes. — Section 7, ch. 110, SLA 1967, as amended by § 80, ch. 89, SLA 1970, provides: "In exercising its jurisdiction under AS 47.10, the superior court may designate district judges and magistrates as masters under Civil Rule 53."

Section 32, ch. 63, SLA 1977, provides: "Section 7 of this Act has the effect of changing Children's Rule 12 by deleting any references to 'Truant from school,' 'endangerling) the morals or health,' 'being wayward or habitually disobedient,' or 'uncontrolled,' and has the effect of substituting the words 'child in need of aid' for the terms 'child in need of supervision' and 'dependent' where those two terms appear in Rules of Children's Procedure."

NOTES TO DECISIONS

Applicability of 1977 amendment. — All cases pending at the time of the enactment of the new children's statute by the 1977 acts are entitled to hearing under the new, rather than the old, standards. In re J.M., Sup. Ct. Op. No. 1548 (File Nos. 3219, 3229), 573 P.2d 1376 (1978).

In order to provide guidance to the superior court for the administration of juvenile justice, children adjudged dependent under the standards of former subsection (a)(5) of this section prior to its repeal in 1977 are entitled, on request, to a dispositional hearing under the standards of the newly-enacted subsection (a)(2)(C) of this section. In re J.M., Sup. Ct. Op. No. 1548 (File Nos. 3219, 3229), 573 P.2d 1376 (1978).

Children adjudged dependent under former (a)(5) of this section are entitled, on request to an adjudicative hearing under the standards of subsection (a)(2)(C). In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 581 (1979).

Rehabilitation, rather than punishment, is the express purpose of juvenile jurisdiction. Mere confinement without treatment does not contribute to the goal of rehabilitation; such confinement constitutes cruel and unusual punishment. Rust v. State, Sup. Ct. Op. No. 1668 (File No. 3172), 582 P.2d 134 (1978).

Principal precept behind children's court concept is that a person under 18 years of age does not have mature judgment and may not fully realize the consequences of his acts, and that therefore he should not generally have to bear the stigma of a criminal conviction for the rest of his life. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

A child "in need of aid" appears to be the functional equivalent of a "dependent" child under this section as it existed prior to its 1977 amendment. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

The phrase "under 18 years of age" refers to the age of the accused person at the time of the alleged offense. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Jurisdiction dependent upon age of offender at time of act. — Juvenile jurisdiction of the superior court in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent acts. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Child is exempt from criminal prosecution until children's court waives jurisdiction. — From the moment a child commits an offense he is exempt from criminal prosecution until the children's court properly waives its jurisdiction. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Deferring action against child until 18th birthday would frustrate purpose of juvenile courts. — To allow officials charged with the execution of the law to prosecute a child offender as a criminal merely by deferring action until the child's 18th birthday would frustrate the purpose of juvenile courts. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Serious constitutional issues would arise if the nature of the proceedings against a child offender were to depend on the arbitrary decision of law-enforcement officials. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

When person over or under certain age. — With respect to penal statutes, whether a person is over or under a certain age depends upon whether he has reached that particular anniversary of his birthday or not. State v. Linn, Sup. Ct. Op. No. 47 (File No. 122), 363 P.2d 361 (1961).

"Delinquent" status depends not upon a criminal conviction but upon proof that the juvenile committed acts which would have been criminal if committed by an adult. Rust v. State, Sup. Ct. Op. No. 1668 (File No. 3172), 582 P.2d 134 (1978).

One who committed a crime when 18 years of age could be criminally prosecuted, as an adult, when he had been previously adjudged a delinquent minor and the court had retained supervisory jurisdiction over him until age 19. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Former AS 17.12.110(d)(4) not in conflict. — Former AS 17.12.110(d)(4), which provided that a person who, while under the age of 18, possesses, controls or uses any amount of marijuana was, upon conviction, guilty of a misdemeanor punishable by a fine of not more than $1000, was not in conflict with paragraph (a)(1) of this section and AS 47.10.080(b)(1). M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

State may interfere with certain conduct of children in need of aid. — Conduct of children alleged to be in need of supervision [see now children alleged to be in need of aid], such as running away from home and foster home placement, may constitutionally be interfered with by the state. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

Interests to be protected by legislation regarding children in need of aid. — See L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

Means chosen by the state to protect children are closely and substantially related to an appropriate government interest. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

The purpose of the supervision or treatment contemplated by the creation of the child in need of supervision [see now child in need of aid], and its predecessor noncriminal delinquency was reintegration of the child into her family and resumption of parental custody including parental control. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

The discretion allotted a parent in the administration of punishment is not unlimited. Clearly it does not extend to punishment regularly causing the "substantial physical harm" which under subsection (a)(2)(C) determines that a child is in need of aid. In re D.C., Sup. Ct. Op. No. 1862 (File No. 3840), 596 P.2d 22 (1979).

A minor who has been adjudged a child in need of supervision [now child in need of aid] cannot be institutionalized under the Children's Code. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The Department of Health and Social Services does not possess the authority to institutionalize any minor, including one who has been declared a child in need of supervision [see now child in need of aid], who has been committed to its custody. It is unreasonable to construe Alaska children's statutes in a manner which would result in the grant to the Department of Health and Social Services of broader powers of commitment than possessed by the trial court. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Requisites to determination of delinquency. — Before a juvenile can be determined delinquent in a proceeding which could result in commitment to an institution, thus curtailing his freedom, certain requisites must be met. First, written notice of the charges must be given to the juvenile and his parents sufficiently in advance of the proceedings to allow preparation to meet the charges. Second, the child and his parents must be apprised of the right to counsel, including appointed counsel in case of indigency. Third, the child may exercise his privilege against self-incrimination. Lastly, absent a valid confession, the determination of delinquency cannot be sustained in the absence of sworn testimony, which is subject to cross-examination. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Minor properly declared delinquent. — Where the lower court determined that a minor would not abide by any orders it entered regarding her supervision under former subsection (j) of AS 47.10.080, this behavior constituted willful criminal contempt of the court's authority; were she an adult, her actions would be characterized as a "crime" under Alaska statutes. She was, therefore, properly declared a delinquent and subject to those sanctions available for the correction of a delinquent minor's behavior. L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976).

Where the parents' interests are hostile to the child's, the parents may not select the child's attorney. Wagstaff v. Superior Court, Family Court Div., Sup. Ct. Op. No. 1144 (File No. 2208), 535 P.2d 1220 (1975).

Then the child may retain the attorney of his choice or, in the alternative, ask the court to appoint an attorney for him. Wagstaff v. Superior Court, Family Court Div., Sup. Ct. Op. No. 1144 (File No. 2208), 535 P.2d 1220 (1975).

And court must respect choice. — If the child has retained counsel, the court must respect the child's choice. Wagstaff v. Superior Court, Family Court Div., Sup. Ct. Op. No. 1144 (File No. 2208), 535 P.2d 1220 (1975).

The required standard of proof has been increased from "a preponderance of the evidence" to "beyond a reasonable doubt" in the adjudicatory stages of at least those delinquency proceedings in which a child is charged with an act that would be a crime if committed by an adult. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Privilege against self-incrimination. — See E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 786 (1977) (decided prior to the 1977 amendment to this section).

Violation of former law relating to purchase of intoxicating liquors by minors. — See Purdy v. United States, 16 Alaska 173, 146 F. Supp. 76[illegible] (D. Alaska 1956).

Prosecution for joyriding. — Subsection (b) of this section and former AS 28.35.010(d) demonstrated a clear legislative intent to exclude from the coverage and requirements of the juvenile code those cases involving alleged misdemeanor violations of Alaska's "joyriding" statute by persons under 18 years of age. State v. G.L.P., Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979).

One under 18 years of age could be charged, prosecuted and sentenced in the district court, as an adult, for a misdemeanor violation of Alaska's "joyriding" statute, former AS 28.35.010(a), before there had been an order by the superior court waiving the latter court's juvenile jurisdiction. State v. G.L.P., Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979).

Termination of parental rights due to abandonment. — In proceeding to terminate parental rights, although trial judge orally stated that he considered involuntary incarceration to constitute abandonment, where written findings of fact, submitted by state and signed by court, referred to parent's voluntary absence from October of 1980 to June of 1981 as the relevant conscious disregard of parental obligations, there was no reversible error. Nada A. v. State, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 660 P.2d 436 (1983).

There is no statute authorizing awards of attorney's fees in child in need of aid proceedings, nor has any rule or order authorizing such an award been promulgated. Cooper v. State, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Appeal after serving sentence. — If there remain collateral legal disabilities apart from the sentence, an appeal is not mooted even though the sentence has been served. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Applied in In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976).

Quoted in In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975); R.D.S.M. v. Intake Officer, Sup. Ct. Op. No. 1449 (File No. 2821), 565 P.2d 855 (1977); N.P.A. v. State, Sup. Ct. Op. No. 2005 (File No. 4618), 604 P.2d 599 (1979); E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Stated in D.R.C. v. State, Ct. App. Op. No. 94 (File No. 4905), 646 P.2d 252 (1982).

Cited in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979); P.S. v. State, Ct. App. Op. No. 194 (File No. 6870), 655 P.2d 1319 (1982); State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984); Brower v. State, Ct. App. Op. No. 381 (File No. 7816), P.2d (1984).

Collateral references. — 27 Am. Jur., Infants, §§ 101 to 112; 31 Am. Jur., Juvenile Courts and Delinquents, Dependent and Neglected Children, §§ 13 to 50.

43 C.J.S., Infants, §§ 6, 93 et seq.

Another court's jurisdiction over a child as affected by assumption of jurisdiction by juvenile court, 11 ALR 147; 78 ALR 317; 146 ALR 1153.

Vagrancy of minors, 14 ALR 1507.

Constitutionality of statute which, for reformatory purposes, deprives parent of custody or control of child, 60 ALR 1342.

Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender, 76 ALR 657.

Marriage as affecting jurisdiction of juvenile court over delinquents or dependents, 14 ALR2d 336.

Homicide by juvenile as within jurisdiction of juvenile court, 48 ALR2d 662.

Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile court, 89 ALR2d 506.

Sec. 47.10.020. Investigation and petition. (a) Whenever a person informs the court of the facts which bring a minor within this chapter, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the interests of the public or of the minor require that further action be taken. Upon the receipt of the report, the court may informally adjust or dispose of the matter without a hearing, or it may authorize the person having knowledge of the facts of the case to file with the court a petition setting out the facts. Where the court informally adjusts or disposes of the matter, the minor may not be detained or taken into the custody of the court, and the matter shall be closed by the court upon adjustment or disposition.

(b) The petition and all subsequent pleadings shall be styled as follows: "In the matter of ....., a minor under 18 years of age." The petition may be executed upon the petitioner's information and belief, and shall be verified. It shall include the following information:

(1) the name, address and occupation of the petitioner, together with the petitioner's relationship to the minor, and the petitioner's interest in the matter;

(2) the name, age and address of the minor;

(3) a brief statement of the facts which bring the minor within this chapter;

(4) the names and addresses of the minor's parents;

(5) the name and address of the minor's guardian, or of the person having control or custody of the minor.

(c) If the petitioner does not know a fact required in this section, the petitioner shall so state in the petition. (§ 5 art I ch 145 SLA 1957)

Cross references. — For the preliminary inquiry referred to in (a) of this section, see Children's Rule 4, Alaska Rules of Court. As to the petition, see Children's Rule 8.

NOTES TO DECISIONS

Distinctions between this section and AS 25.24.310. — See Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Collateral references. — 42 Am. Jur. 2d, Infants, §§ 14 to 17, 20, 22 et seq.; 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 13 to 33.

43 C.J.S., Infants, §§ 6, 93 et seq.

Sec. 47.10.030. Summons and custody of minor. (a) After a petition is filed and after further investigation which the court directs, if the person having custody or control of the minor has not appeared voluntarily, the court shall issue a summons which (1) recites briefly the substance of the petition; (2) clearly states that at the hearing it is possible that parental rights and responsibilities may be terminated forever and that the minor may at the hearing be committed to the Department of Health and Social Services for possible adoption; and (3) directs the person having custody or control of the minor to appear personally in court with the minor at the place and at the time set forth in the summons.

(b) In all cases under this chapter the minor, each parent of the minor and the guardian of the minor shall be given notice adequate to give actual notice of the proceedings and the possibility of termination of parental rights and responsibilities, taking into account education and language differences which are known or reasonably ascertainable by the petitioner or the department. The notice of the hearing shall contain all names by which the minor has been identified. Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law or in any manner the court by order directs. Proof of the giving of the notice shall be filed with the court before the petition is heard. The court may also subpoena the parent of the minor, or any other person whose testimony may be necessary at the hearing. A subpoena or other process may be served by a person authorized by law to make the service, and where personal service cannot be made, the court may direct that service of process be in a manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law or in any manner the court directs.

(c) If the minor is in such condition or surroundings that the minor's welfare requires the immediate assumption of custody by the court, the court may order, by endorsement upon the summons, that the officer serving the summons shall at once take the minor into custody and make the temporary placement of the minor which the court directs. (§ 6 art I ch 145 SLA 1957; am § 1 ch 110 SLA 1960; am § 6 ch 104 SLA 1971; am § 9 ch 63 SLA 1977)

NOTES TO DECISIONS

Editor's notes. — RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971) and John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971), cited below, were decided prior to the 1977 amendment to this section, which rewrote subsection (b).

The child and his parents must receive notice which would be deemed adequate in a civil or criminal proceeding. These requirements suggest that Alaska civil and criminal rules should be looked to for techniques of service on children. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Personal service upon the child is required. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded. RLR v.

Sec. 47.10.060. Waiver of jurisdiction. (a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as an adult.

(b) *[Repealed, § 8 ch 110 SLA 1967.]*

(c) *[Repealed, § 8 ch 110 SLA 1967.]*

(d) A minor is unamenable to treatment under this chapter if the minor probably cannot be rehabilitated by treatment under this chapter before reaching 20 years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

(e) A person who has been tried as an adult under this section, or the Department of Health and Social Services on the person's behalf, may petition the superior court to seal the records of all criminal proceedings, except traffic offenses, initiated against the person, and all punishments assessed against the person, while the person was a minor. A petition under this subsection may not be filed until five years after the completion of the sentence imposed for the offense for which the person was tried as an adult. If the superior court finds that the punishment assessed against the person has had its intended rehabilitative effect, the superior court shall order the record of proceedings and the record of punishments sealed. Sealing the records restores civil rights removed because of a conviction. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown, or may order their use by an officer of the court in making a presentencing report for the court. (§ 9 art I ch 145 SLA 1957; am § 1 ch 118 SLA 1962; am §§ 3, 8 ch 110 SLA 1967; am § 6 ch 104 SLA 1971; am § 13 ch 63 SLA 1977)

Cross references. — For hearings before the juvenile court, see AS 47.10.070. See also, Children's Rule 3, Alaska Rules of Court.

NOTES TO DECISIONS

Non-criminal treatment of child offenders is to be rule. — The statutory framework for dealing with child offenders contemplates that non-criminal treatment is to be the rule and adult criminal disposition the exception. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Section provides means to determine amenability to treatment available for child offenders. — The waiver procedure set out in this section and in Rule of Children's Procedure 3 provides the means by which the children's court judge determines, prior to adjudicating the delinquency petition, that an accused child is not a suitable subject for the treatment available for child offenders. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The court's authority to impose a penal sentence on a juvenile is limited under the strict procedures of subsections (a) and (d) and Children's Rule 3. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

A minor may move to waive children's court jurisdiction pursuant to subsection (a). M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

A minor under the age of 18 cannot "elect" to be tried as an adult. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Where no waiver hearing has been conducted, the court has no authority to sentence a delinquent child as an adult. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Before treating a juvenile as an adult, the court must first conduct a waiver hearing. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Option available to prosecution absent waiver. — A proceeding in children's court, which is limited to the dispositions set forth in AS 47.10.080(b), is the only option available to the prosecution absent waiver under subsection (a) of this section, and the standards established in subsection (a) are sufficiently clear to prevent arbitrary enforcement. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

But hearing is not criminal in nature. — A waiver hearing is not criminal in nature and is dispositional, rather than adjudicatory. N.P.A. v. State, Sup. Ct. Op. No. 2005 (File No. 4618), 604 P.2d 599 (1979).

And right to attend may be waived. — Although a minor had a constitutional right to attend her waiver hearing, she waived that right when she voluntarily failed to appear at the hearing by refusing to waive extradition from another state. N.P.A. v. State, Sup. Ct. Op. No. 2005 (File No. 4618), 604 P.2d 599 (1979).

Findings necessary to justify waiver. — To justify waiver, the children's court judge must find, on sufficient evidence, that probable cause is established at the hearing for believing that the child committed the act with which he was charged in the petition and which if committed by an adult would constitute a crime and the child is not amenable to the treatment provided under this article. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

As a prerequisite to criminal prosecution, the children's court must find not only that the child is properly accused but also that he would not be receptive to the rehabilitative programs available to the court. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The inability to predicate a plan for a defendant during the short time remaining before his 19th birthday coupled with the obvious need of treatment as disclosed by the record may be sufficient to justify a waiver to adult jurisdiction. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The court may close out the case as a juvenile matter only upon finding cause to believe that the minor is delinquent and that the minor is not amenable to treatment. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

A court must find that there is probable cause to believe that the minor is delinquent and that the minor is not amenable to treatment before jurisdiction may be waived. In re J.H.B., Sup. Ct. Op. No. 1626 (File No. 2947), 578 P.2d 146 (1978).

Subsection (d) is clear on its face that age 20 is the proper age for determining whether a minor is amenable to treatment. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The 1977 amendments of this section and 47.10.080 show that it is the legislature's intent that age 20 is the age to be used in determining the amenability issue. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Binding advance consent to treatment. — In order to give effect of the legislature's intent that a court may consider treatment until age 20 in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know this unless the child can give binding consent at the time of the hearing. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

The portion of the opinion in In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978) that held that a minor in a waiver hearing could not give a binding advance consent to treatment beyond age 19 was mistaken. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

Waiver decision without testimony of psychologist or psychiatrist. — A waiver of juvenile jurisdiction decision can be made without the testimony of a psychologist or psychiatrist, since such testimony is germane to at most two of the four factors set out in subsection (d) of this section, and not all four of those facts need be determined adversely to the youth to warrant waiver of juvenile jurisdiction. In re J.R., Sup. Ct. Op. No. 2165 (File No. 5154), 616 P.2d 865 (1980).

There is no conflict between subsection (d) and AS 47.10.080(b)(1). In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The inconsistency between subsection (d) of this section and 47.10.080(b)(1) that existed prior to the 1977 amendments to these sections has been eliminated in that subsection (d) now provides that the determinative age is 20 and AS 47.10.080(b)(1) provides that the maximum limitation of confinement of minors is to the age of 20. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Factors to be considered in judging seriousness of alleged offense. — In judging the seriousness of the alleged offense, the children's court judge may consider not only the type of crime charged but also the circumstances surrounding its commission, the factors leading to delinquency, history of delinquency, and facilities available for rehabilitation. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The amenability decision rests in the sound discretion of the children's court judge. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972); In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

But the latitude afforded him is not unbounded. The proper exercise of that discretion must be predicated not only upon procedural regularity sufficient to satisfy the basic requirements of due process but also on a full inquiry into the amenability issue. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The trial court must make an evidentiary record and make written findings of fact, as required by Children's Rule 3(h), as to each of these four factors enunciated in subsection (d). In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

These findings must be supported by substantial evidence. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Substantial evidence must be presented before jurisdiction may be waived. D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Based on these findings, the trial court, within its sound discretion, must make a decision as to the minor's amenability to treatment. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Factors to be considered in determining amenability. — Subsection (d) of this section suggests four factors which may be considered by the court when inquiring into the amenability issue: (1) the seriousness of the offense; (2) the delinquency of the minor; (3) the probable cause of the delinquent behavior; and (4) the facilities available for the treating of the minor. J.W.H. v. State, Sup. Ct. Op. No. 1708 (File No. 3812), 583 P.2d 227 (1978).

All four factors listed in subsection (d) need not be resolved against the child to justify waiver. Nor is there value in requiring the children's court to make an arithmetic calculation as to the weight to be given each factor. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

But there must be a thorough examination of the child, his background and alternative strategies of rehabilitation short of adult criminal treatment. Lacking such an examination, the children's court has no evidentiary basis for the decision. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972); D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Though the standards for determining amenability to treatment through the children's court lack explicit definition it is clear from the statute that the court in most cases must go beyond the circumstances surrounding the alleged delinquent acts and the age of the child. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Even though the children's court may have independent knowledge concerning children's treatment programs and facilities, it is necessary to make the existence and evaluation of such programs a part of the waiver proceedings to enable proper review by the supreme court. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

At a waiver hearing there must be a thorough examination of (1) the probable cause for believing that the child committed the act with which he was charged and (2) the amenability of the child to juvenile treatment. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

In the absence of such an examination there is no evidentiary basis for a waiver decision. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974); J.W.H. v. State, Sup. Ct. Op. No. 1708 (File No. 3812), 583 P.2d 227 (1978).

The record must disclose the existence and evaluation of the available children's treatment programs in all future cases in order to establish the validity of the hearing. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

The constitutional prerequisites for a valid waiver of juvenile court treatment are reflected in Rule of Children's Procedure 3 which guarantees the child a hearing before the children's court judge after adequate notice thereof, counsel at the hearing who has had access to records and reports relevant to issues before the court, and a statement of reasons accompanying the waiver order. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Compliance with Rule of Children's Procedure 3(h) is essential to insure that the waiver hearing is not a "mere ritual" and to provide a meaningful basis for review. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

The waiver hearing is a critically important stage in criminal proceedings against a child. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

At stake at a child's waiver hearing is the statutory promise of special rehabilitative treatment in lieu of the harsher sanction of criminal conviction. Because the consequences of waiver are great, the hearing must measure up to the essentials of due process and fair treatment. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The investigation at a waiver hearing cannot be a mere ritual. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

There must be a hearing which measures up to the essential of due process and fair treatment. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974); J.W.H. v. State, Sup. Ct. Op. No. 1708 (File No. 3812), 583 P.2d 227 (1978).

The right of confrontation applies to children's proceedings in which the child is charged with misconduct for which he may be incarcerated. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Waiver without hearing is denial of due process. — To waive children's court jurisdiction without a hearing or opportunity for adversary presentation is a denial of fair process. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

As is waiver without substantial evidence of unamenability to treatment. — To waive children's court jurisdiction without substantial evidence having been presented that the child is unamenable to juvenile rehabilitation programs is denial of fair process. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

The proper standard of proof as to the amenability of a minor to treatment is the "preponderance of the evidence" standard. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Probable cause determination cannot be based on hearsay testimony. — The probable cause determination of a court at a waiver hearing concerning juveniles cannot be based upon hearsay testimony. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Exclusion of testimony held proper. — Although proffered testimony was relevant to the amenability issue, the superior court did not abuse its discretion in excluding it because its prejudicial impact outweighed its probative value. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Insufficient evidence. — Where the court had little information concerning the probable cause of the minor's delinquent behavior, it was aware only of the nature of the offenses, of the fact that the minor was apparently not in need of funds, and of his statement that he regarded the commission of the crimes as a game, this information was insufficient to satisfy the requirements of this subsection. D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Waiver hearing did not comply with the standards set forth in this section and Rule of Children's Procedure 3. R.J.C. v. State, Sup. Ct. Op. No. 1022 (File No. 2038), 520 P.2d 806 (1974).

Trial court's conclusion that minor was amenable to treatment was abuse of discretion. — See In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Prosecution for joyriding. — One under 18 years of age could be charged, prosecuted and sentenced in the district court, as an adult, for a misdemeanor violation of Alaska's "joyriding" statute, former AS 28.35.010(a), before there had been an order by the superior court waiving the latter court's juvenile jurisdiction. State v. G.L.R., Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979).

Applied in State v. Jensen, Ct. App. Op. No. 126 (File No. 5879), 650 P.2d 422 (1982).

Quoted in Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Cited in E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 787 (1977); State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984); Brower v. State, Ct. App. Op. No. 381 (File No. 7876), P.2d (1984).

Sec. 47.10.070. Hearings. The court may conduct the hearing in an informal manner in the courtroom or in chambers. A hearing may be held before a young adult advisory panel in accordance with AS 47.10.075. The court shall give notice of the hearing to the department and it may send a representative to the hearing. The court shall also transmit a copy of the petition to the department. The representative of the department may also be heard at the hearing. The public shall be excluded from the hearing, but the court, in its discretion, may permit individuals to attend a hearing, if their attendance is compatible with the best interests of the minor. Nothing in this section may be applied in such a way as to deny a child's rights to a public trial and to a trial by jury. (§ 10(1) art I ch 145 SLA 1957; am § 1 ch 49 SLA 1966; am § 53 ch 71 SLA 1972)

Cross references. — For waiver hearings, see AS 47.10.060.

Editor's notes. — John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971) and RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971), cited below, were decided prior to the 1972 amendment of this section.

NOTES TO DECISIONS

Constitutionality. — See In re Gault, 387 U.S. 1, 87 Sup. Ct. 1428, 18 L. Ed. 2d 527 (1967), discussing due process requirements in juvenile delinquency proceedings.

Constitutional requirements apply to children. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Hence, states must afford juveniles due process of law in delinquency proceedings that might result in the child's incarceration, and accordingly juveniles must be afforded the right to be represented by counsel, must be given proper and timely notice, must be given the right of confrontation and cross-examination of witnesses, and afforded the privilege against self-incrimination. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

While the U.S. Supreme Court has not held that children must be afforded due process rights in the pre-adjudication stages of the juvenile process, the Alaska supreme court believes that due process safeguards are necessary not only at the adjudicative hearing, but at any stage which may result in deprivation of the child's liberty. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

The extension to children of fundamental constitutional rights does not mean a total substitution of the adult criminal model for the present children's court system. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

The problems of pre-adjudication treatment of juveniles are unique to the juvenile process; hence, what is held with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Due process standards must be observed at a detention inquiry since it may result in the deprivation of the child's liberty. Due process requires at the very least that detention orders be based on competent, sworn testimony, that the child have the right to be represented by counsel at the detention inquiry, and that the detention order state with particularity the facts supporting it. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Incarceration, when applied to children, is a taking of liberty under the 14th amendment, regardless of benevolent-sounding labels. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The due process clause of the 14th amendment applies when a child is charged with misconduct for which he may be incarcerated in an institution, regardless of the labels of the adjudication and institution, so the child is entitled to notice of charges, counsel, confrontation and cross-examination, and the privilege against self-incrimination. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The right to grand jury indictment is not so fundamental that due process is offended by alternate methods for instituting children's proceedings where the child is charged with having violated a criminal statute. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Children who are charged with acts which would be chargeable only by grand jury indictment, if committed by an adult, need not be indicted by a grand jury. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Children are constitutionally entitled to jury trial in the adjudicative stage of a delinquency proceeding. However, due to the uniqueness of some facets of the procedures governing children's court proceedings and the potential damage which may accrue to the child by a public trial, the child should first consult with his counsel and his parents or guardian when appropriate, and then affirmatively assert the right to a trial by jury before it is finally granted. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971). But see McKeiver v. Pennsylvania, 403 U.S. 528, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971), in which it was held that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement.

Whenever a child in a delinquency proceeding is charged with acts which would be a crime, subject to incarceration if committed by an adult, Alaska Const., art. I, § 11, guarantees him the right to jury trial. To the extent In re White, Sup. Ct. Op. No. 507 (File No. 1013), 445 P.2d 813 (1968) [subsequently overruled, in re G.K., Sup. Ct. Op. No. 796 (File Nos. 1627, 1654, 1674), 497 P.2d 914 (1972)] is inconsistent with this opinion, it is overruled. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The purposes of the right to jury trial, such as protection against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge, apply as much in children's cases as in adults' cases. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

If the child waives jury trial, the state may not require it, but jury trial shall be provided only on demand. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The Hammonds test of waiver [Hammonds v. State, Sup. Ct. Op. No. 483 (File No. 828), 442 P.2d 39 (1968)], applies to infants as well as adults. The consequences of application will differ for infants, because some decisions can be "knowingly and intelligently" made only by persons of fuller knowledge and maturity. An infant not advised by an attorney could make few knowledgeable and intelligent decisions about whether to waive rights in judicial proceedings. On the other hand, in areas where an adult ordinarily delegates to his attorney decision-making authority, as in deciding whether to object to introduction of evidence, the competence of the attorney rather than of the client generally determines whether waivers satisfy the Hammonds criteria. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

The right to counsel extends to children charged with delinquency. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

A juvenile must be afforded the right to be represented by counsel at the delinquency proceeding, and a denial of that right violates due process. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

Right to reasonable time to prepare for trial. — It is unquestionable that the right to the assistance of counsel of necessity includes the concomitant right to have a reasonable time in which to prepare for trial. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

While an adult defendant in a criminal case must be brought to trial within a reasonable time, due process requires that he may not be brought to trial too soon. He must be given a reasonable time to consult with his counsel and to prepare his defense. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

This section provides for the exclusion of the public from children's hearings. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

But such provision involves only persons whose presence is not desired by child. — The area of discretion in the rule, where the court may refuse to open the hearing, involves persons whose presence is not desired by the child. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

It is an abuse of discretion for the court to refuse admittance to individuals whose presence is favored by the child, except in special circumstances such as the unavailability of a courtroom sufficiently large to hold all the individuals whose presence is sought. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

If the child or his guardian ad litem wants the press, friends, or others to be free to attend, then the hearing must be open to them. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

As children are guaranteed the right to a public trial by the Alaska Constitution. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Due process requires that children have the right to a public trial by jury where they are charged with acts which would be a crime if committed by an adult. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

The fundamental constitutional right of public trial by jury must be afforded children in delinquency adjudication proceedings, in spite of the possible interference with the benevolent motives of the children's court system which have, in the past, justified denial of those rights. John Doe v. State, Sup. Ct. Op. No. 707 (File No. 1240), 487 P.2d 47 (1971).

The reasons for the constitutional guarantees of public trial apply as much to juvenile delinquency proceedings as to adult criminal proceedings. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Delinquency must be proved beyond a reasonable doubt under the due process clause of the 14th amendment. RLR v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Cited in In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975); M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Collateral references. — Power of juvenile court to require testimony by children, 151 ALR 1229.

Applicability of rules of evidence in juvenile delinquency proceedings, 43 ALR2d 1128.

Degree of proof in juvenile delinquency proceedings, 43 ALR2d 1138.

Sec. 47.10.075. Young adult advisory panels. (a) Unless the minor objects, the court may select a young adult advisory panel to hear the case and advise the court of a recommended judgment and order. The court may consider any of the panel recommendations in making its judgment and order in the case.

(b) The principal of each high school shall submit annually to the court a list of the students enrolled in grades 10, 11 and 12. The court shall determine the method of selecting the members of each panel.

(c) A student shall be excused from attending school while serving as a panel member. A student may not serve more than once each year on a panel.

(d) A student shall be excused from service as a panel member if the student submits a written request to the court indicating the reason for not wishing to serve. (§ 2 ch 49 SLA 1966)

Legislative history reports. — For report on ch. 49, SLA 1966, see 1966 House Journal, p. 52.

Sec. 47.10.080. Judgments and orders. (a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not delinquent or a child in need of aid.

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the Department of Health and Social Services for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility which the department considers appropriate and which may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.10.200;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(3) order the minor committed to the department and placed on probation, to be supervised by the department, and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions

of probation; the department may transfer the minor, in the minor's best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice of the transfer; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(4) order the minor to make suitable restitution in lieu of or in addition to the court's order under (1), (2) or (3) of this subsection.

(5) order the minor committed to the Department of Health and Social Services for placement in an adventure-based education program established under AS 47.21.020 with conditions the court considers appropriate concerning release upon satisfactory completion of the program or commitment under (1) of this subsection if the program is not satisfactorily completed.

(c) If the court finds that the minor is a child in need of aid, it shall

(1) order the minor committed to the department for placement in an appropriate setting for a period of time not to exceed two years or in any event past the date the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; the department may transfer the minor, in the minor's best interests, from one placement setting to another, and the minor, the minor's parents or guardian and the minor's attorney are entitled to reasonable notice of the transfer;

(2) order the minor released to the minor's parents, guardian, or some other suitable person, and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and treatment; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor, but the court may dispense with the department's supervision if the court finds that the adult to whom the minor is released will adequately care for the minor without supervision; the department's supervision may not exceed two years or in any event extend past the date the minor reaches age 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision which do not extend beyond the minor's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(3) by order, upon a showing in the adjudication by clear and convincing evidence that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct and upon a showing in the disposition by clear and convincing evidence that the parental conduct is likely to continue to exist if there is no termination of parental rights, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, and the department or guardian shall report annually to the court on efforts being made to find a permanent placement for the child.

(d) An order issued under (c)(3) of this section authorizes the commissioner of health and social services or a designee or the guardian of the person of the child to consent to the adoption of the child.

(e) If the court finds that the minor is not delinquent or a child in need of aid, it shall immediately order the minor released from the department's custody and returned to the minor's parents, guardian, or custodian, and dismiss the case

(f) A minor found to be delinquent or a child in need of aid is a ward of the state while committed to the department or the department has the power to supervise the minor's actions. The court shall review an order made under (b) or (c)(1) or (2) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public. The department, the minor, the minor's parents, guardian, or custodian are entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel reasonable notice in advance of the review and hold a hearing where these parties and their counsel shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review.

(g) No adjudication under this chapter upon the status of a child may operate to impose any of the civil disabilities ordinarily imposed by conviction upon a criminal charge, nor may a minor afterward be considered a criminal by the adjudication, nor may the adjudication be afterward deemed a conviction, nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter. The commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceedings in any other court, nor does the commitment and placement or evidence operate to disqualify a minor in a future civil service examination or appointment in the state.

(h) The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings which result in the release of the minor.

(i) A minor, the minor's parents or guardian acting on the minor's behalf, or the department may appeal a judgment or order, or the stay, modification, setting aside, revocation, or enlargement of a judgment or order issued by the court under this chapter.

(j) *[Repealed, § 29 ch 63 SLA 1977.]*

(k) In making its order under (c) of this section, the court shall consider the fact, if it is a fact, that the minor was being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination. (§ 10(2) art I ch 145 SLA 1957; am § 2 ch 110 SLA 1960; am § 2 ch 118 SLA 1962; am § 1 ch 40 SLA 1967; am §§ 1—4 ch 27 SLA 1970; am §§ 12—15 ch 245 SLA 1970; am § 6 ch 104 SLA 1971; am §§ 6, 7 ch 1 SLA 1972; am §§ 1, 2 ch 125 SLA 1974; am §§ 14—18, 29 ch 63 SLA 1977; am § 6 ch 86 SLA 1979)

Cross references. — For the standard of proof for findings under this section, see Children's Rule 21, Alaska Rules of Court. See also, Children's Rules 22 and 23.

Editor's notes. — Section 31, ch. 63, SLA 1977, provides: "Section 18 of this Act has the effect of adding to the court's responsibilities when holding a review under Rule 28, Alaska Rules of Children's Procedure, by requiring the court to hold a hearing upon a showing of good cause, give notice, and afford an opportunity to be heard."

Section 34, ch. 63, SLA 1977, in the first sentence provides: "The portions of AS 47.10.080(b) and (c) in secs. 15 and 16 of this Act which specify the length of commitment to the department or probation or supervision by the department are applicable to those minors affected under former AS 47.10.080(b), (c) and (j) before the effective date of this Act (August 26, 1977) so that the commitment, probation or supervision of minors by the department before the effective date of this Act (August 26, 1977) shall continue, but may not exceed two years from the effective date of this Act (August 26, 1977) unless two-year extensions have been granted by the court under this Act." Subsection (j) of AS 47.10.080 was repealed by § 29, ch. 63, SLA 1977.

NOTES TO DECISIONS

Each category of children mandates differences regarding content of dispositional orders. — Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children for purposes of administering Alaska children's laws. Of controlling significance is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court can enter. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Where a delinquent child was sentenced for a fixed time period and ordered to an adult institution, this amounted to a penal sentence as opposed to the juvenile disposition required under subsection (b)(1). B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Court cannot place child in particular institution. — Under this section as amended, the court no longer has discretion to order the delinquent child placed in a particular institution. The court only has authority to commit the child to the department, which then places the child. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974); A.A. v. State, Sup. Ct. Op. No. 1181 (File No. 2400), 538 P.2d 1004 (1975).

Authority to order placement of delinquent child. — In enacting paragraph (b)(3), the legislature intended for the department, not the court, to make the decisions concerning placement of the minor. State, Dep't of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).

Paragraph (b)(3) of this section provides the court authority to order the delinquent minor placed on probation to the Department of Health and Social Services; it is then up to the department to determine whether the minor should be placed with his parents or in another setting. State, Dep't of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).

Review of placement decision. — The superior court has the authority to review the decision of the department to determine if the placement is in the best interest of the minor, but in reviewing a decision of the department, the superior court may not substitute its judgment for the judgment of the department; since the legislature has committed the decision of placement to the department's discretion, the question for the court is whether the agency abused its discretion. State, Dep't of Health & Social Servs. v. A.C., Ct. App. Op. No. 384 (File No. 7643), P.2d (1984).

Jurisdiction dependent upon age of offender at time of act. — Juvenile jurisdiction of the superior court in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent acts. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Where a delinquent child was under the age of 18 at the time the acts of delinquency were committed, he is considered a minor for the purposes of adjudication and disposition. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Option available to prosecution absent waiver under AS 47.10.060(a). — A proceeding in children's court, which is limited to the dispositions set forth in AS 47.10.080(b), is the only option available to the prosecution absent waiver under AS 47.10.060(a), and the standards established in that section are sufficiently clear to prevent arbitrary enforcement. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

One who committed a crime when 18 years of age could be criminally prosecuted, as an adult, when he had been previously adjudged a delinquent minor and the court had retained supervisory jurisdiction over him until age 19. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Section is maximum sentencing statute. — Statutes requiring release upon a specified birthday are, in effect, maximum sentencing statutes. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

Sentence reduction to 19 years of age not retroactive. — There was nothing in the amendatory legislation to this section that indicated an intention that the sentence reduction should operate retrospectively. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

There is no conflict between subsection (b)(1) and AS 47.10.060(d). In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Age 20 is the proper age for determining whether a minor is amenable to treatment. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The inconsistency between AS 47.10.060(d) and subsection (b)(1) of this section that existed prior to the 1977 amendments to these sections has been eliminated in that AS 47.10.060(d) now provides that the determinative age is 20 and subsection (b)(1) provides that the maximum limitation of confinement of minors is 20. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Binding advance consent to treatment. — In order to give effect to the legislature's intent that a court may consider treatment until age 20 in determining waiver of juvenile jurisdiction, it is necessary that the judge be able to evaluate at the time of the waiver hearing whether the juvenile will in fact be available for treatment. It is not possible for the judge to know this unless the child can give binding consent at the time of the hearing. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

A minor may bindingly consent to an additional period of supervision as provided by subsection (b)(1) of this section. In determining the effect to be given to such consent, the court should consider the age and maturity of the juvenile and whether he has the advice of counsel. To protect a minor from making a decision adverse to his own interests, a guardian ad litem may be appointed. State v. F.L.A., Sup. Ct. Op.

No. 2041 (File No. 4333), 608 P.2d 12 (1980).

The portion of the opinion in In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978) that held that a minor in a waiver hearing could not give a binding advance consent to treatment beyond age 19 was mistaken. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

While it is true, as indicated in In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978), that the statute contemplates that the determination of the additional period of treatment be made after the initial hearing, such an intent does not mandate that an advance consent to treatment given by the minor may not be regarded as binding. State v. F.L.A., Sup. Ct. Op. No. 2041 (File No. 4333), 608 P.2d 12 (1980).

The lower court erred in considering the purported consent of [illegible] r to an additional year of supe[illegible] ecause: (1) the minor could with[illegible] onsent upon reaching majority [illegible] 2) even assuming the minor's con[illegible] ld not be withdrawn, subsection (b)(1) requires that the department petition the court and that additional commitment be in the minor's best interests before the court has jurisdiction to order the additional one-year period. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

Subsection (b)(1) requires that the department petition for an additional one-year period of supervision and that continued supervision be in the best interests of the minor before the court may order an additional year. Thus, a minor's prospective consent to additional supervision is not a material factor unless the other two conditions of the statute are fulfilled. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

This statute contemplates that the decision to extend the period of supervision be made after the initial dispositional hearing. To give effect to the minor's advance consent would thus be contrary to the apparent intent of the legislature. In re F.S., Sup. Ct. Op. No. 1756 (File No. 4015), 586 P.2d 607 (1978).

The court must choose between commitment to the Department of Health and Social Services and probation, and may not delegate the choice to the Department of Health and Social Services. This is a correct textual analysis, especially in light of the provision in subsection (b)(1) for subsequent court order for probation following placement or detention. The legislature has clearly indicated its intent to place this choice in the hands of the court. R.L.R. v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Court-ordered probation. — Probation cannot be deemed court-ordered under subsection (b) of this section unless it is directly ordered. It cannot be "triggered" by a decision of the department that the juvenile has successfully completed a rehabilitation program, even if the court judgment states that institutionalization will end upon such successful completion. In re L.C. v. State, Sup. Ct. Op. No. 2277 (File Nos. 4401, 4411), 625 P.2d 839 (1981).

The hearing judge erred by placing a delinquent child on probation until his 20th birthday. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

Petition necessary to extend probation beyond 19th birthday. — The superior court was without authority to extend probation beyond the delinquent child's 19th birthday without a petition from the department to extend the probationary period for an additional year. B.A.M. v. State, Sup. Ct. Op. No. 1104 (File No. 2144), 528 P.2d 437 (1974).

A minor who has been adjudged a child in need of supervision [see now child in need of aid] cannot be institutionalized under the Children's Code. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Where a runaway child is found to be a child in need of supervision [see now child in need of aid], not a delinquent minor, no legal basis exists for his incarceration. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The only instance under Alaska children's laws authorizing institutionalization or incarceration is when the child has violated the laws of the state, or any of its political subdivisions, and in turn has been adjudged a delinquent minor. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The legislature has authorized institutionalization only where the child is found to be a delinquent minor. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Power of court under subsection (c). — Under subsection (c) of this section, the court is empowered to order the minor committed to the Department of Health and Social Services or order the minor released to his parents, guardian, or some other suitable person. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The Department of Health and Social Services does not possess the authority to institutionalize any minor, including one who has been declared a child in need of supervision [see now child in need of aid], who has been committed to its custody. It is unreasonable to construe Alaska children's statutes in a manner which would result in the grant to the Department of Health and Social Services of broader powers of commitment than possessed by the trial court. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

A child "in need of aid" appears to be the functional equivalent of a "dependent" child under AS 47.10.010 as it existed prior to its 1977 amendment. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Parental right to custody and control is not absolute. — While a parent has a right to the care, custody and control of his or her children, this right is not absolute, and "courts have become increasingly aware of the rights of children." The Alaska legislature has struck a balance between these potentially competing rights by requiring the state to prove its allegations by clear and convincing evidence in parental rights termination cases. Once this burden of proof has been met, however, the statute mandates a termination. In re D.C., Sup. Ct. Op. No. 1862 (File No. 3840), 592 P.2d 22 (1979).

The discretion allotted a parent in the administration of punishment is not unlimited. Clearly it does not extend to punishment regularly causing the "substantial physical harm" which under AS 47.10.010(a)(2)(C) determines that a child is in need of aid. In re D.C., Sup. Ct. Op. No. 1862 (File No. 3840), 592 P.2d 22 (1979).

Statutory provisions governing judgments and orders terminating parental rights have been changed. In order to terminate parental rights, the court must now find that the child is in need of aid under AS 47.10.010(a)(2) as the result of parental conduct proved by clear and convincing evidence and that the parental conduct is likely to continue to exist if there is no termination of parental rights, proved again by clear and convincing evidence, AS 47.10.080(c)(3). In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

In order to terminate parental rights under this section, the court must find by clear and convincing evidence (1) that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct, and (2) that the parental conduct is likely to continue. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Under former AS 47.10.010(a)(5) and subsection (a) and former subsection (c)(3)(D) of this section, in order to terminate parental rights, the superior court was required to find (1) that the child was a "dependent minor" and (2) that the parent had demonstrated by her conduct, proved by clear and convincing proof, that she was unfit to continue to exercise her parental rights and responsibilities. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Parent's impulsive personality disorder not ground for termination of rights. — Where after finding that child was in need of aid, trial judge found that the parent "is likely to continue to demonstrate a conscious disregard of the obligation owed by a parent to a child even after her release from incarceration because she suffers from an impulsive personality disorder," such finding was insufficient to satisfy requirement of clear and convincing evidence that conduct leading to determination that child is in need of aid is likely since an impulsive personality disorder itself is not conduct and thus, not a ground for termination. Nadu A. v. State, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 660 P.2d 436 (1983).

Findings. — A finding that the parental conduct is likely to continue must be made expressly on the record prior to ordering the termination of parental rights. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Abandonment. — For cases construing former language in subsection (c) providing for termination of parental rights and responsibilities when the child had been abandoned, see D.M. v. State, Sup. Ct. Op. No. 962 (File No. 1843), 515 P.2d 1234 (1973); In re B.J., Sup. Ct. Op. No. 1110 (File No. 2161), 530 P.2d 747 (1975); In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

A rehabilitation program is not a common practice in the trial courts absent approval by a representative of the state. In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

Trial court did not abuse discretion in failing to consider possibility of setting up plan for reestablishing family relationship between father and son. — See In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

Role of trial court in proceeding involving termination of parental rights. — See In re E.J. (T.), Sup. Ct. Op. No. 1348 (File No. 2775), 557 P.2d 1128 (1976).

Applicability of burden of proof. — A burden of proof is not applicable to a dispositive hearing other than when termination of parental rights is involved. In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976). See also In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Determination of the standard to be applied by the court at the dispositive phase of a child hearing was not tantamount to establishing a burden of proof requirement. Such a requirement had been set forth in former subsection (c)(3)(D) [see now subsection (c)(3)]. No such requirement had been set forth in situations such as where termination of parental rights was not involved. In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976).

Standard of proof held constitutional. — Allowing parental rights to be terminated based on a standard of proof less stringent than "beyond a reasonable doubt" does not violate the due process clause of the United States Constitution or the Alaska Constitution. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Since in proceedings brought to terminate parental rights, the parent is neither charged with criminal behavior nor subject to incarceration as a direct consequence of the proceeding, there is nothing in the federal constitution that compels adoption of the proof beyond a reasonable doubt standard in termination proceedings. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Clear and convincing proof is a more demanding standard than a mere preponderance of the evidence and is adequate to protect the parent's substantial interest in his or her child custody rights. This evidentiary standard balances the competing interests involved in a proceeding brought to terminate parental rights, one of which is the right of a child to an adequate home. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

The due process clause did not require a standard of proof greater than clear and convincing evidence when the state sought to terminate parental rights because of unfitness under former subsection (c)(3)(D). In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Standard of proof under former subsection (c)(3)(D) calling for "clear and convincing" evidence of the natural mother's unfitness for the care and custody of the child was held proper. In re K.S., Sup. Ct. Op. No. 1219 (File No. 2359), 543 P.2d 1191 (1975).

Protection provided by Indian Child Welfare Act. — The Indian Child Welfare Act, 25 U.S.C. §§ 1901 — 1963, enacted in 1978, provides a higher standard of protection to the rights of parents in termination proceedings involving Indians and Native Alaskans than that provided in this section. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Orders terminating parental rights met statutory and rule of court requirements regarding findings of fact. — See In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

Review of orders terminating parental rights. — Orders made under subsection (c)(3) of this section are not entitled to automatic review, inasmuch as subsection (f) of this section specifies which orders are entitled to this review and orders under subsection (c)(3) of this section are not included within the list. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

All orders made pursuant to this section, including orders under subsection (c)(3) of this section, are to be reviewed upon application of an interested party if the party establishes good cause for the review, and if the child is still a ward of the court. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

As long as a child remains the ward of the court, under subsection (f) of this section his or her natural parents are entitled to a review of the order terminating their parental rights upon a showing of good cause for the hearing. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

Good cause could be established if the parents showed that it would be in the best interests of the child to resume living with them because they have sufficiently rehabilitated themselves so that they can provide proper guidance and care for the child. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

Where, when a mother applied for a hearing before the superior court, she indicated that as a result of a 12-month rehabilitation program she had overcome the problems that had led to the termination of her parental rights and also indicated that professional counselors, social workers and others would be able to establish that she was now capable of providing a warm and loving home for the child, this was a sufficient showing of good cause to entitle her to a review of the order terminating her parental rights if the child had not yet been adopted. Rita T. v. State, Sup. Ct. Op. No. 2294 (File No. 5036), 623 P.2d 344 (1981).

Former AS 17.12.110(d)(4) not in conflict. — Former AS 17.12.110(d)(4), which provided that a person who, while under the age of 18, possesses, controls or uses any amount of marijuana was, upon conviction, guilty of a misdemeanor punishable by a fine of not more than $1000, was not in conflict with AS 47.10.010(a)(1) and paragraph (b)(1) of this section. M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

For reference to apparent conflict between subsection (c)(1) as it read prior to 1977 amendment and Children's Rule 22(f), see footnote 30 in In re S.D., Sup. Ct. Op. No. 1255 (File No. 2530), 549 P.2d 1190 (1976).

Peremptory challenge procedure inapplicable to juvenile proceedings. — While juvenile proceedings have some of the characteristics of both civil and criminal actions, they are basically different from both, and the words "civil or criminal" as used in AS 22.20.022 must be strictly construed. The trial judge was correct in holding that peremptory challenge procedure applied only to civil and criminal actions and not to juvenile proceedings. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Nor to justify dispensing with constitutional safeguards. — The benevolent social theory supposedly underlying children's court acts does not furnish justification for dispensing with constitutional safeguards. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

The right of confrontation is paramount to the state's policy of protecting a juvenile offender. Davis v. State, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

But state's interest in secrecy of juvenile adjudications need not always fall before confrontation right. — See Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L.Ed.2d 106 (1974).

Prosecution witness impeachable by cross-examination for bias from probationary status as juvenile delinquent. — The confrontation clause requires that a defendant in a criminal case be allowed to impeach the credibility of a prosecution witness by cross-examination directed at possible bias deriving from the witness's probationary status as juvenile delinquent although such an impeachment would conflict with a state's asserted interest in preserving the confidentiality of juvenile adjudications of delinquency. Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Whatever temporary embarrassment might result to a prosecution witness or his family by disclosure of his juvenile record — if the prosecution insisted on using him to make its case — is outweighed by petitioner's right to probe into the influence of possible bias on the testimony of a crucial identification witness. Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The state cannot, consistent with right of confrontation, require the defendant to bear the full burden of vindicating the state's interest in the secrecy of juvenile criminal records. Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The United States supreme court has held that the constitutional right of confrontation required that defense counsel be allowed to investigate the potential bias of a crucial prosecution witness, even where that potential bias arose out of a juvenile adjudication and its resultant probationary status. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

The United States supreme court concluded that Alaska's interest in protecting the anonymity of the juvenile offender was outweighed by the more

critical need to afford a criminal defendant reasonable inquiry into the motives of prosecution witnesses. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Conflict between section and decision in Davis v. Alaska is superficial. — The conflict between this section and the supreme court's decision in Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), is only superficial. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Since disclosure required because of probationary status, not juvenile adjudication. — The constitutional requirement of disclosure in the facts in Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), is created not by the juvenile adjudication itself but by the probationary status of the juvenile at the time of Davis' trial, with its potential for motivating false testimony. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Where the witness was not on juvenile probation, it cannot be seriously argued that the fact of previous juvenile convictions, standing alone, provided any inference of potential bias. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

State adjudications directed solely at credibility do not conflict with confrontation right. — Juvenile adjudications which are stale by Alaska's standards and directed solely at general credibility rather than bias are generally not sufficiently probative to create a genuine conflict with the defendant's right of confrontation. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

Where the attempted impeachment was of general credibility by proof of prior "convictions," the probative value of this type of evidence is considerably less than that which suggests false or distorted testimony because of bias, and the need to confront a witness with such evidence is correspondingly less. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

As a general rule, the trial courts could properly refuse evidence of stale convictions or juvenile adjudications where these were offered for the purpose of discrediting the witness generally rather than to show some specific potential for bias or prejudice toward the defendant. Thomas v. State, Sup. Ct. Op. No. 1040 (File Nos. 1888, 1854), 522 P.2d 528 (1974).

Privilege against self-incrimination. — When a person under the age of 18 years violated former AS 47.10.010(a)(1), he could be adjudged a "delinquent minor," one possible consequence of which adjudication was commitment to a juvenile facility until the age of 19 [now 20]. Moreover, if there was probable cause to believe the minor was delinquent and the court found that he was not amenable to treatment as a juvenile, he could be prosecuted as if he were an adult. Thus, there was always some danger of incarceration, or other criminal sanctions, when a child committed an act which would have been a crime if committed by an adult. Under such circumstances a child had a privilege against self-incrimination. E.L.L. v. State, Sup. Ct. Op. No. 1540 (File No. 3374), 572 P.2d 786 (1977).

A child adjudicated delinquent for selling LSD may be incarcerated, possibly even in a city jail, until age 19, which may be many years. R.R. v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Subsection (g) provides in part that a juvenile offender may not be considered a criminal by reason of the adjudication, nor may the adjudication be afterward deemed a conviction. Gonzales v. State, Sup. Ct. Op. No. 1030 (File No. 2002), 521 P.2d 512, cert. denied, 419 U.S. 868, 95 S. Ct. 125, 42 L. Ed. 2d 106 (1974).

A judge cannot consider a juvenile offense as a criminal conviction for the purpose of prescribing a mandatory sentence. Berfield v. State, Sup. Ct. Op. No. 581 (File No. 960), 458 P.2d 1008 (1969).

The judge's consideration of factors relating to accused's life, characteristics, background and behavior prior to reaching the age of 18 years did not mean that he considered accused a criminal or that he was using the juvenile offenses as criminal convictions in determining the sentence to impose. Berfield v. State, Sup. Ct. Op. No. 581 (File No. 960), 458 P.2d 1008 (1969).

Consideration of the juvenile record is proper by the court imposing a sentence upon an adult offender. Penn v. State, Sup. Ct. Op. No. 1774 (File No. 3873), 588 P.2d 288 (1978).

Use of the juvenile history of the offender in sentencing proceedings does not amount to the use of those proceedings as evidence against the offender within the proscription of such a statute as this section. Penn v. State, Sup. Ct. Op. No. 1774 (File No. 3873), 588 P.2d 288 (1978).

When sentence determined. — The sentence which may be imposed upon a convicted adult is determined as of the time of the final judgment of conviction, or as of the time of commission of the offense. These rules have been applied to juvenile sentencing. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

Review of custody orders. — The new children's law, as a result of the 1977 acts, provides for review of custody orders annually or more often if good cause is shown. In re J.M., Sup. Ct. Op. No. 1548 (File Nos. 3219, 3229), 573 P.2d 1376 (1978).

Appeal of detention order. — Under this section and Children's Rule 29(a), a minor who is detained may appeal his detention order. A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

Appellants are authorized to bring juvenile bail appeals under App. R. 207 to ensure that juvenile detention hearings are not insulated from review. A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

Appeal from detention order dismissed as untimely. — See A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

Appellate jurisdiction. — AS 22.05.010 places final appellate jurisdiction in all cases in the supreme court. In re A Minor Child, Sup. Ct. Op. No. 737 (File No. 1524), 490 P.2d 658 (1971).

Applied in L.A.M. v. State, Sup. Ct. Op. No. 1249 (File No. 2221), 547 P.2d 827 (1976); Adams v. Ross, Sup. Ct. Op. No. 1281 (File No. 2458), 551 P.2d 948 (1976); D.H. v. State, Sup. Ct. Op. No. 1396 (File No. 2837), 561 P.2d 294 (1977).

Quoted in Davis v. State, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972).

Stated in In re G.K., Sup. Ct. Op. No. 796 (File Nos. 1627, 1654, 1674), 497 P.2d 914 (1972).

Cited in Ellinson v. State, Sup. Ct. Op. No. 898 (File No. 1750), 511 P.2d 1066 (1973); D.L.J. v. W.D.R., Sup. Ct. Op. No. 2433 (File No. 5411), 635 P.2d 834 (1981); S.O. v. W.S., Sup. Ct. Op. No. 2491 (File No. 5856), 643 P.2d 997 (1982).

Collateral references. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights. 80 ALR3d 1141.

SECTION 12

Sec. 47.10.081. Predisposition hearing reports. (a) Before the disposition hearing of a delinquent minor the department shall submit a predisposition report with a recommended plan of treatment to aid the court in its selection of a disposition, and any further information which the court may request.

(b) Before the disposition hearing of a child in need of aid the department shall submit a predisposition report to aid the court in its selection of a disposition. This report shall include, but is not limited to, the following:

(1) a statement of changes in the child's or parent's behavior, which will aid the court in determining that supervision of the family or placement is no longer necessary;

(2) if removal from the home is recommended, a description of the reasons the child cannot be protected or rehabilitated adequately in the home, including a description of any previous efforts to work with the parents and the child in the home and the parents' attitude toward placement of the child;

(3) a description of the potential harm to the child which may result from removal from the home and any efforts which can be made to minimize such harm; and

(4) any further information which the court may request.

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

(d) For purposes of this section "parents" means the natural or adoptive parents, and any legal guardian, relative, or other adult person with whom the child has resided and who has acted as a parent in providing for the child for a continuous period of time before this action. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Applied in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 47.10.082. Best interests of the child. In making its dispositional order under AS 47.10.080(b) the court shall consider the best interests of the child and the public, and in making its dispositional order under AS 47.10.080(c) the court shall consider the best interests of the child; in either case the court shall consider also the ability of the state to take custody and to care for the child to protect the child's best interests under AS 47.10.010 — 47.10.142. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Showing required to justify termination of parental rights. — While best interests of the child become relevant at some point, there first must be a showing of parental conduct sufficient to justify termination. Nada A. v. State, Sup. Ct. Op. No. 2632 (File Nos. 6546, 6693), 660 P.2d 436 (1983).

Cited in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979); M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 47.10.083. Review hearing information. In the case of a child in need of aid, the child shall be returned home at the review hearing under AS 47.10.080(f) unless the court finds by a preponderance of the evidence that the basis upon which the child was adjudicated under AS 47.10.010(a)(2) continues to exist. If the child is not returned home, the court shall establish on the record

(1) why the child was removed from the home;

(2) what services have been provided to or offered to the parents to facilitate reunion;

(3) what services were utilized by the parents to facilitate reunion;

(4) the visitation history between the parents and the child;

(5) whether additional services are needed to facilitate the return of the child to the child's parents;

(6) when return of the child can be expected. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 47.10.084. Legal custody, guardianship, and residual parental rights and responsibilities. (a) When a child is committed under AS 47.10.080(b)(1) or (c)(1) to the department or released under AS 47.10.080(b)(2) or (3) or (c)(2) to the child's parents, guardian, or other suitable person, a relationship of legal custody exists. This relationship imposes on the department and its authorized agents or the parents, guardian, or other suitable person the responsibility of physical care and control of the child, the determination of where and with whom the child shall live, the right and duty to protect, train and discipline the child, and the duty of providing the child with food, shelter, education, and medical care. These obligations are subject to any residual parental rights and responsibilities and rights and responsibilities of a guardian if one has been appointed. When parental rights have been terminated, or there are no living parents and no guardian has been appointed, the responsibilities of legal custody include those in (b) and (c) of this section. The department or person having legal custody of the child may delegate any of the responsibilities under this section, except authority to consent to marriage, adoption, and military enlistment may not be delegated. For purposes of this chapter a person in charge of a placement setting is an agent of the department.

(b) When a guardian is appointed for the child, the court shall specify in its order the rights and responsibilities of the guardian. The guardian may be removed only by court order. The rights and responsibilities may include, but are not limited to, having the right and responsibility of reasonable visitation, consenting to marriage, consenting to military enlistment, consenting to major medical treatment, obtaining representation for the child in legal actions, and making decisions of legal or financial significance concerning the child.

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation,

consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section. (§ 26 ch 63 SLA 1977)

NOTES TO DECISIONS

Effect of being foster parents on husband-wife evidentiary privilege. — A foster child is a child of the foster parents for purposes of applying the exception to the husband-wife privilege set forth in Alaska Evidence Rule 505(a)(2)(D)(i); one foster parent cannot rely on the husband-wife privilege to refuse to testify against the other concerning evidence relating to an assault on the foster child. Daniels v. State, Ct. App. Op. No. 357 (File No. A-366), P.2d (1984).

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 47.10.085. Child in need of aid; religious treatment. In a case in which the minor's status as a child in need of aid is sought to be based on the need for medical care, the court may, upon consideration of the health of the minor and the fact, if it is a fact, that the minor is being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination, dismiss the proceedings and thereby close the matter. This may be done, in the interests of justice and religious freedom, on the court's own motion or upon the application of a party to the proceedings, at any stage of the proceedings after information is given to the court under AS 47.10.020(a). (§ 8 ch 1 SLA 1972; am § 19 ch 63 SLA 1977)

NOTES TO DECISIONS

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 47.10.090. Records. (a) The court shall make and keep records of all cases brought before it. The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. All information and social records pertaining to a minor and prepared by an employee of the court or by a federal, state or city agency in the discharge of the employee's or agency's official duty, are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law-enforcement agency shall disclose information regarding a case which is needed by the person or agency charged with

making a preliminary investigation for the information of the court. Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court relinquishes jurisdiction over the minor, the court shall order sealed all the court's official records, information and social records pertaining to that minor, as well as records of all criminal proceedings against the minor and punishments assessed against the minor except for traffic offenses. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.

(b) The name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent child or a child in need of aid unless authorized by order of the court, except that the name of a minor who is found for the second time to have violated a law, which if committed by an adult would be a felony, shall be made public unless the court, for good cause, in certain individual cases, enters an order prohibiting the disclosure.

(c) A person who violates a provision of this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500 or by imprisonment for not more than one year, or by both. (§ 10(3)(4) art I ch 145 SLA 1957; am § 1 ch 124 SLA 1972; am § 1 ch 90 SLA 1975; am § 20 ch 63 SLA 1977)

Cross references. — For explanation of how amendments in 1975 changed Rules of Children's Procedure, see § 2, ch. 90, SLA 1975).

NOTES TO DECISIONS

Purpose for enacting subsection (a). — Reading this section together with other sections of the laws relating to children's proceedings leads one to believe that subsection (a) was enacted principally for the purpose of protecting the child against the possible adverse effects an unauthorized revelation of his social record would have. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

There is no indication that subsection (a) was intended to authorize the granting of testimonial use immunity to parents. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

The supreme court could not say with certainty that this section would be construed to forbid the use, in a subsequent criminal action against a parent, of testimony that the parent gave at a children's proceeding. In re P.N., Sup. Ct. Op. No. 1127 (File No. 2191), 533 P.2d 13 (1975).

Waiver of provisions of section. — In the case of use of restraints more severe than placement in adjustment rooms (solitary confinement), the approval of the director of McLaughlin Youth Center must be obtained and a report made to the child's attorney and the family court. The provisions of this section are waived for this purpose. T.M. v. Director of McLaughlin Youth Center, Superior Court, No. 72-449 (1973).

Stated in R.L.R. v. State, Sup. Ct. Op. No. 706 (File No. 1156), 487 P.2d 27 (1971).

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982); State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Sec. 47.10.095. Arrest of a minor. The arrest of a minor other than for a traffic offense is not considered an arrest for any purpose except for the purpose of the disposition of a proceeding arising out of that arrest. (§ 2 ch 124 SLA 1972)

Sec. 47.10.100. Retention of jurisdiction over minor. (a) The court retains jurisdiction over the case and may at any time stay execution, modify, set aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its power of protection over the minor and for the minor's best interest, for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, unless sooner discharged by the court, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. An application for any of these purposes may be made by the parent, guardian, or custodian acting in behalf of the minor, or the court may, on its own motion, and after reasonable notice to interested parties and the appropriate department, take action which it considers appropriate.

(b) If the court determines at a rehearing that it is for the best interests of the minor to be released to the care or custody of the minor's parent, guardian, or custodian, it may enter an order to that effect and the minor is discharged from the control of the department.

(c) If a minor is adjudicated a delinquent or a child in need of aid before the minor's 18th birthday, the court may retain jurisdiction over the minor after the minor's 18th birthday for the purpose of supervising the minor's rehabilitation, but the court's jurisdiction over the minor under this chapter never extends beyond the minor's 19th birthday, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. The department may retain jurisdiction over a child between the child's 18th and 19th birthdays for the purpose of supervising the child's rehabilitation, if the child has been placed under the supervision of the department before the child's 18th birthday, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. (§ 11 art I ch 145 SLA 1957; am §§ 16, 17 ch 245 SLA 1970; am § 21 ch 63 SLA 1977)

NOTES TO DECISIONS

When one commits a criminal offense after reaching the age of 18 years, he is no longer entitled to claim the benefits of the Children's Code. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Offenses to which court's jurisdiction not extended. — Neither subsection (a) nor subsection (c) purports to extend the court's juvenile jurisdiction to newly committed offenses occurring between the offender's 18th and 19th birthdays. Henson v. State, Sup. Ct. Op. No. 1590 (File No. 3024), 576 P.2d 1352 (1978).

Jurisdiction defeated only by expressly retroactive statute. — Once the sentencing court acquires jurisdiction over the individual, only an expressly retroactive statute could defeat its continuing jurisdiction for the duration of the sentence originally imposed. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

Sec. 47.10.110. Appointment of guardian or custodian. When, in the course of a proceeding under this chapter, it appears to the court that the welfare of a minor will be promoted by the appointment of a guardian or custodian of the minor's person, the court may make the appointment. The court shall have a summons issued and served upon the parents of the minor, if they can be found, in a manner and within a time before the hearing which the court considers reasonable. The court may determine whether the father, mother, or the Department of Health and Social Services shall have the custody and control of the minor. If the minor is of sufficient age and intelligence to state desires, the court shall consider them. (§ 12 art I ch 145 SLA 1957; am § 6 ch 104 SLA 1971; am § 22 ch 63 SLA 1977)

Collateral references. — 39 Am. Jur. 2d, Guardian and Ward, § 17.

39 C.J.S., Guardian and Ward, §§ 20 to 29.

Right of infant to select his own guardian, 85 ALR2d 921.

Sec. 47.10.120. Support of minor. (a) When a child in need of aid is committed under this chapter, the court may, after giving the parent a reasonable opportunity to be heard, adjudge that the parent shall pay in a manner which the court directs a sum which will cover in full or in part the support of the child in need of aid. When a delinquent minor is committed under this chapter, the court shall order that the parent of the minor pay in a manner which the court directs a sum which will cover in full or in part the support of the delinquent minor.

(b) If a parent wilfully fails or refuses to pay the sum fixed, the parent may be proceeded against as provided by law in cases of family desertion and nonsupport.

(c) The sum collected from a parent under this section shall be directly credited to the general fund of the state. (§ 13 art I ch 145 SLA 1957; am § 1 ch 31 SLA 1959; am § 1 ch 141 SLA 1959; am § 23 ch 63 SLA 1977)

Sec. 47.10.130. Detention. No minor under 18 years of age who is detained pending hearing may be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view adult prisoners convicted of, under arrest for, or charged with a crime. When a minor is detained pending hearing, the minor's parent, guardian, or custodian shall be notified immediately. (§ 14 art I ch 145 SLA 1957)

Cross references. — For conditions of detention, see Children's Rule 27, Alaska Rules of Court.

NOTES TO DECISIONS

A detention which was twice continued by the master of the children's court for a total period of six days exemplifies a usurpation of judicial power. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Sec. 47.10.140. Temporary detention and detention hearing. (a) A peace officer may arrest a minor who violates a law or ordinance in the officer's presence, or whom the officer reasonably believes is a fugitive from justice. A peace officer may continue a lawful arrest made by a citizen. The officer may have the minor detained in a juvenile detention facility if in the officer's opinion it is necessary to do so to protect the minor or the community.

(b) A peace officer who has a minor detained under (a) of this section shall immediately, and in no event more than 12 hours later, notify the court, the minor's parents or guardian, and the Department of Health and Social Services of the officer's action. The department may file with the court a petition alleging delinquency before the detention hearing.

(c) The court shall immediately, and in no event more than 48 hours later, hold a hearing at which the minor and the minor's parents or guardian if they can be found shall be present. The court shall determine whether probable cause exists for believing the minor to be delinquent. The court shall inform the minor of the reasons alleged to constitute probable cause and the reasons alleged to authorize the minor's detention. The minor is entitled to counsel and to confrontation of adverse witnesses.

(d) If the court finds that probable cause exists, it shall determine whether the minor should be detained pending the hearing on the petition or released. It may either order the minor held in detention or released to the custody of a suitable person pending the hearing on the petition. If the court finds no probable cause, it shall order the minor released and close the case.

(e) Except for temporary detention pending a detention hearing or temporary detention under (f) of this section, a minor may not be detained except by court order.

(f) A peace officer may detain a minor who is evading the person having the minor's legal custody if the minor is not otherwise subject to arrest or detention under (a) of this section, for the sole purpose of either (1) returning the minor to the person having legal custody or (2) if the minor prefers, taking the minor to an office specified by the Department of Health and Social Services, facility or contract agency of the Department of Health and Social Services where such exists in the community. Immediately upon detaining a minor under this provi-

sion, the peace officer shall advise the minor of the right to social services under AS 47.10.142(b), and, if known, the peace officer shall advise the person having the legal custody of the minor of the detention.

(g) A minor who is detained under (f) of this section may not be detained in a jail or other facility unless kept out of contact with adult persons convicted or accused of a crime. A minor may not be detained in a jail or other detention facility which has not been approved by the Department of Health and Social Services before detention of the minor. (§ 15 art I ch 145 SLA 1957; am § 3 ch 118 SLA 1962; am § 2 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am §§ 1, 2 ch 128 SLA 1972)

Cross references. — For custody without a court order, see Children's Rules 6 and 7, Alaska Rules of Court.

NOTES TO DECISIONS

Detention orders neither based on competent testimony nor accompanied by the required statement of facts are invalid. In re P.H., Sup. Ct. Op. No. 857 (File No. 1538), 504 P.2d 837 (1972).

Appeal of detention order. — See notes under this catchline, AS 47.10.080, A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

Cited in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

SECTION 13

Sec. 47.10.142. Emergency custody and temporary placement hearing. (a) The Department of Health and Social Services may take emergency custody of a minor upon discovering any of the following circumstances:

(1) the minor has been abandoned;

(2) the minor has been grossly neglected by the minor's parents or guardian as "neglect" is defined in AS 47.17.070(5), so that immediate removal from the minor's surroundings is, in the determination of the department, necessary to protect the minor's life;

(3) the minor has been abused, as "abuse" is defined in AS 47.17.070(1), so that immediate medical attention is necessary, in the determination of the department;

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

(b) A minor who has left home and is evading the person having legal custody of the minor may obtain the services of the department. The department shall assess the situation and furnish the minor with the social services it considers appropriate to protect the well-being of the minor and to preserve the minor's family life if preserving it is considered desirable under the circumstances. If, after assessing the situation, considering the wishes of the minor, and furnishing appropriate social services, the department considers it necessary, the department may take emergency custody of the minor.

SECTION 14

When a child is taken into custody under (a) or (b) of this section, the department shall immediately, and in no event more than 12 hours later unless prevented by lack of communication facilities, notify the parents or the person or persons having custody of the child and the court of the action and file with the court a petition alleging that the child is a child in need of aid.

(d) The court shall immediately, and in no event more than 48 hours after being notified unless prevented by lack of transportation, hold a hearing at which the minor, if the minor's health permits, and the minor's parents or guardian, if they can be found, shall be permitted to be present. The court shall determine whether probable cause exists for believing the minor to be a child in need of aid, as defined in AS 47.10.290. The court shall inform the minor, and the minor's parents or guardian if they can be found, of the reasons given as constituting probable cause and the reasons given as authorizing the minor's temporary placement.

(e) If the court finds that probable cause exists it shall order the minor committed to the department for temporary placement, or order the minor returned to the custody of the minor's parents or guardian subject to the department's supervision of the minor's care and treatment. If the court finds no probable cause it shall order the minor returned to the custody of the minor's parents or guardian. (§ 3 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 24 ch 63 SLA 1977; am § 2 ch 104 SLA 1982)

NOTES TO DECISIONS

Effect of amendments. — The 1982 amendment added paragraph (4) to subsection (a).

Cited in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Article 2. Juvenile Institutions.

Sec. 47.10.150. General powers of department over juvenile institutions. The Department of Health and Social Services may

(1) purchase, lease or construct buildings or other facilities for the care, detention, rehabilitation and education of children in need of aid or delinquent minors;

(2) adopt plans for construction of juvenile homes, juvenile detention facilities, and other juvenile institutions;

(3) adopt standards and regulations under this chapter for the design, construction, repair, maintenance and operation of all juvenile detention homes, facilities, and institutions;

(4) inspect periodically each juvenile detention home, facility, or other institution to ensure that the standards and regulations adopted are being maintained;

(5) reimburse cities maintaining and operating juvenile detention homes and facilities;

(6) enter into contracts and arrangements with cities and state and federal agencies to carry out the purposes of this chapter;

(7) do all acts necessary to carry out the purposes of this chapter;

(8) adopt the regulations necessary to carry out this chapter;

(9) accept donations, gifts or bequests of money or other property for use in construction of juvenile homes, institutions or detention facilities;

(10) operate juvenile homes when municipalities are unable to do so;

(11) receive, care for, and place in a juvenile detention home, the minor's own home, a foster home, or correctional school or treatment institution all minors committed to its custody under this chapter. (§ 3 art II ch 145 SLA 1957; am § 1 ch 152 SLA 1959; am § 6 ch 104 SLA 1971; am § 25 ch 63 SLA 1977)

Cross references. — For operation of juvenile detention homes and facilities, see AS 47.10.180. For standards of care for the welfare of children under the care of the department, see AS 47.10.250.

NOTES TO DECISIONS

Department ordered to promulgate standards for operation of juvenile detention homes. — See T.M. v. Director of McLaughlin Youth Center, Superior Court, No. 72-449 (1973).

Collateral references. — 60 Am Jur. 2d, Penal and Correctional Institutions, § 1 et seq.

Sec. 47.10.160. Duties of department. The Department of Health and Social Services shall

(1) accept all minors committed to the custody of the department and all minors who are involved in a written agreement under AS 47.10.230(c), and provide for the welfare, control, care, custody, and placement of these minors in accordance with this chapter;

(2) require and collect statistics on juvenile offenses and offenders in Alaska;

diction the institution is operated, or whose department or agency is charged with performing the service. (§ 3 ch 88 SLA 1960)

Sec. 47.15.040. Financial arrangements. The compact administrator, subject to the approval of the commissioner of administration, may make or arrange for the payments necessary to discharge the financial obligations imposed upon this state by the compact or by a supplementary agreement made under the compact. (§ 4 ch 88 SLA 1960)

Sec. 47.15.050. Appointment of attorney or guardian. Appointment of an attorney or guardian ad litem under the provisions of this compact shall be made in accordance with AS 25.24.310 or AS 44.21.400 — 44.21.440. (§ 5 ch 88 SLA 1960; am § 55 ch 94 SLA 1980; am § 16 ch 55 SLA 1984)

Cross references. — See Admin. R. 13, Alaska Rules of Court.

Effect of amendments. — The 1984 amendment rewrote this section, which formerly read "A council or guardian ad litem appointed under the provisions of this compact may be paid as provided in the Rules Governing the Administration of all Courts."

Sec. 47.15.060. Enforcement. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which are within their respective jurisdiction. (§ 6 ch 88 SLA 1960)

Sec. 47.15.070. Additional procedures not precluded. In addition to the procedures provided in articles IV and VI of the compact for the return of a runaway juvenile, the particular states, the juvenile or the juvenile's parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile. (§ 7 ch 88 SLA 1960)

Sec. 47.15.080. Short title. This chapter may be cited as the Uniform Interstate Compact on Juveniles. (§ 8 ch 88 SLA 1960)

Chapter 17. Child Protection.

SECTION 16

Sec. 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by

other than accidental means, of harm through physical abuse or neglect or sexual abuse or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of the children in this state, and to preserve family life whenever possible. (§ 1 ch 100 SLA 1971; am § 3 ch 104 SLA 1982)

Effect of amendments. — The 1982 amendment, in the first sentence, substituted "neglect or sexual abuse or sexual exploitation" for "neglect requiring the attention of a practitioner of the healing arts" and inserted "of the healing arts."

NOTES TO DECISIONS

Use of reports. — The reports of child abuse and neglect required by this section are intended for use in child protection proceedings and are not intended for use in criminal proceedings. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984). See also notes to AS 47.17.060, under catchline "Judicial proceeding."

Collateral references. — 42 Am. Jur. 2d, Infants, §§ 16, 17.

43 C.J.S., Infants, §§ 36 to 39, 70 to 75, 94.

Medical attention, criminal neglect by failure to provide, 12 ALR2d 1047.

Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR3d 904.

Validity and construction of penal statute prohibiting child abuse, 1 ALR4th 38.

SECTION 17

Sec. 47.17.020. Persons required to report. (a) The following persons who, in the performance of their professional duties, have cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the department:

(1) practitioners of the healing arts;

(2) school teachers and school administrative staff members;

(3) social workers;

(4) peace officers, and officers of the Department of Corrections;

(5) administrative officers of institutions;

(6) licensed day care providers and paid staff;

(7) licensed foster care providers.

(b) This section does not prohibit the named persons from reporting cases which have come to their attention in their nonprofessional capacities nor does it prohibit any other person from reporting a child's harm which the person has cause to believe is a result of abuse or neglect. These reports shall be made to the nearest office of the department.

(c) If the person making a report of harm under this section cannot reasonably contact the nearest office of the department and immediate action is necessary for the well-being of the child, the person shall make the report to a peace officer. The peace officer shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest office of the department. (§ 1 ch 100 SLA 1971; am §§ 4, 5 ch 104 SLA 1982; am E.O. No. 55, § 42 (1984))

Effect of amendments. — The 1982 amendment, in subsection (a), added "and school administrative staff members" at the end of paragraph (2) and added paragraphs (6) and (7).

The 1984 amendment substituted "Department of Corrections" for "division of corrections" in paragraph (4) of subsection (a).

NOTES TO DECISIONS

Cited in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Collateral references. — Civil liability of physician for failure to diagnose or report battered child syndrome, 97 ALR3d 338.

Sec. 47.17.025. Duties of public authorities. (a) A law enforcement agency shall immediately notify the department of the receipt of a report of harm to a child from abuse. Upon receipt from any source of a report of harm to a child from abuse, the department shall notify the Department of Law and investigate the report and, within 72 hours of the receipt of the report, shall provide a written report of its investigation of the harm to a child from abuse to the Department of Law for review.

(b) The report of harm to a child from abuse required from the department by this section shall include:

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

(2) the age and sex of the child;

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

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

(5) information that the department believes may be helpful in establishing the identity of the person believed to have caused the harm to the child from abuse. (§ 6 ch 104 SLA 1982)

NOTES TO DECISIONS

Applied in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Sec. 47.17.030. Action on reports; termination of parental rights. (a) If a child, concerning whom a report of harm is made, is believed to reside within the boundaries of a local government exercising health functions for the area in which the child is believed to reside, the department may, upon receipt of the report, refer the matter to the appropriate health or social services agency of that local government. For cases not referred to an agency of a local government, the department shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child.

(b) A local government health or social services agency receiving a report of harm shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child. In addition, the agency receiving a report of harm shall forward a copy of its report of the investigation, including information the department requires by regulation, to the department.

(c) Action shall be taken regardless of whether the identity of the person making the report of harm is known.

(d) Before the department or a local government health or social services agency may seek the termination of parental rights, under AS 47.10.080(c)(3), it shall offer protective social services and pursue all other reasonable means of protecting the child.

(e) In all actions taken by the department or a health and social services agency of a local government under this chapter that result in a judicial proceeding, the child shall be represented by a guardian ad litem in that proceeding. Appointment of a guardian ad litem shall be made in accordance with AS 25.24.310. (§ 1 ch 100 SLA 1971; am § 1 ch 222 SLA 1976; am § 17 ch 55 SLA 1984)

Effect of amendments. — The 1984 amendment added the second sentence in subsection (e).

NOTES TO DECISIONS

Effect of subsection (d). — Subsection (d) of this section is clearly intended to prevent further abuse by providing protective services to the child, and it does not place a mandatory duty on the state to provide counseling and other support services to the family prior to seeking termination of parental rights. E.A. v. State, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Applied in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Quoted in Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Collateral references. — 43 C.J.S., Infants, §§ 71, 72.

Physical abuse of child by parent as ground for termination of parent's right to child, 53 ALR3d 605.

Sexual abuse of child by parent as ground for termination of parent's right to child, 58 ALR3d 1074.

Validity of state statute providing for termination of parental rights, 22 ALR4th 774.

Sec. 47.17.040. Central registry; confidentiality. (a) The department shall maintain a central registry of all investigation reports but not of the reports of harm.

(b) Investigation reports and reports of harm filed under this chapter are considered confidential and are not subject to public inspection and copying under AS 09.25.110 and 09.25.120. However, in accordance with department regulations, investigation reports may be used by appropriate governmental agencies with child-protection functions, inside and outside Alaska, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody. A person, not acting in accordance with department regulations, who makes public information contained in confidential reports is guilty of a misdemeanor. (§ 1 ch 100 SLA 1971; am § 2 ch 222 SLA 1976)

NOTES TO DECISIONS

Psychotherapist/patient privilege. — Child abuse reports are not open to the public, and are therefore not within A.R.E.R. 504(d)(5), which provides that there is no physician or psychotherapist/patient privilege "as to information that the physician or psychotherapist is required to report to a public employee or as to information required to be recorded in a public office, if such report or record is open to public inspection." State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

SECTION 19

Sec. 47.17.050. Immunity. A person who, in good faith, makes a report under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability which might otherwise be incurred or imposed. (§ 1 ch 100 SLA 1971)

SECTION 20

Sec. 47.17.060. Evidence not privileged. Neither the physician-patient nor the husband-wife privilege is a ground for excluding evidence regarding a child's harm, or its cause, in a judicial proceeding related to a report made under this chapter. (§ 1 ch 100 SLA 1971)

NOTES TO DECISIONS

For discussion of constitutional problems in interpreting this section to abrogate psychotherapist privilege in criminal proceedings, see State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Applicability to psychologists. — The court assumed but did not decided that this section applies to psychologists, who are not physicians. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

"Judicial proceeding". — This section only applies to child protective proceedings instituted under AS 47.10 and not to criminal proceeding for sexual abuse. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Giving the Department of Health and Social Services primary control of the abused child again indicates a legislative intent that the "judicial proceedings" referred to in this section occur through the department in relation to protective services, and are civil rather than criminal. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Since AS 47.17.025 refers to the Department of Law, without reference to the criminal division, AS 47.17.025 does not, standing alone, necessarily resurrect the requirement of former AS 11.67.040 that the district attorney receive child abuse reports; nor does it establish an intent that child abuse reports result in criminal prosecutions; and consequently, the Court of Appeals could not find that a criminal prosecution for child sexual abuse is necessarily "a judicial proceeding related to a report made under this chapter" pursuant to this section. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Sec. 47.17.064. Photographs and x-rays. The department or a person required under AS 47.17.020(a)(1) to report that a child suffered substantial harm as a result of physical abuse or neglect may without the permission of the parents

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

(2) if medically indicated, have a radiological examination of the child performed. (§ 7 ch 104 SLA 1982)

SECTION 21

Sec. 47.17.068. Penalty for failure to report. A person required to file a report of abuse or neglect under AS 47.17.020 who wilfully or knowingly fails or refuses to report the harm required under AS 47.17.020 is guilty of a class B misdemeanor. (§ 7 ch 104 SLA 1982)

Cross references. — For penalties for misdemeanors, see AS 12.55.135.

SECTION 22

Sec. 47.17.070. Definitions. In AS 47.17.010 — 47.17.070

(1) "child abuse or neglect" means the physical injury or neglect, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

(2) "child" means a person under 18 years of age;

(3) "department" means the Department of Health and Social Services;

(4) "institution" means a private or public hospital or other facility providing medical diagnosis, treatment, or care;

(5) "neglect" means the failure to provide necessary food, care, clothing, shelter, or medical attention for a child;

SECTION 24

(6) "practitioner of the healing arts" includes chiropractors, dentists, health aides, nurses, optometrists, osteopaths, physical therapists, physicians, psychiatrists, psychologists, religious healing practitioners, and surgeons;

(7) "sexual exploitation" means

(A) permission or encouragement to a child for prostitution prohibited by AS 11.66.100 — 11.66.150 by a person responsible for the child's welfare;

(B) permission, encouragement, or activity involved in the unlawful exploitation of a minor prohibited by AS 11.41.455 by a person responsible for the minor's welfare. (§ 1 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 3 ch 222 SLA 1976; am §§ 56, 57 ch 94 SLA 1980; am §§ 8, 9 ch 104 SLA 1982)

Effect of amendments. — The 1980 amendment substituted "18" for "eighteen" near the middle of paragraph (1), and substituted "18" for "16" in paragraph (2).

The 1982 amendment inserted "or neglect" and "sexual exploitation" in paragraph (1) and added paragraph (7).

NOTES TO DECISIONS

Where parents refuse permission for blood transfusion because of religious conviction, the state may intercede and make the child a dependent minor by the parents' failure to provide medical attention under paragraph (5) of this section, obtaining custody and thereafter consenting to the operation. In re Lausterer, Superior Court, 3rd Jud. Dist., No. CP2720 (1972).

Chapter 20. Exceptional Children.

Sec. 47.20.005. Purpose. It is the purpose of AS 47.20.005 — 47.20.050 to provide appropriate public education and training for the exceptional children in this state who have not reached the age of three. To the maximum extent possible, the department shall establish a learning program which emphasizes individual needs, is home based, and involves parents in the education and training of their children. (§ 1 ch 77 SLA 1978)

Sec. 47.20.010. Assistance authorized. (a) The department shall provide professional guidance and financial assistance to organized groups of parents, nonprofit corporations, school districts, and regional educational attendance areas according to regulations adopted by the

department for providing special services, evaluation, and special training required by exceptional children.

(b) The program established under (a) of this section shall emphasize individual needs and, where possible, be home based and involve parents in the education and training of their children. (§ 2 ch 118 SLA 1961; am § 6 ch 104 SLA 1971; am § 2 ch 77 SLA 1978)

Sec. 47.20.020. Standards for assistance. The department shall assist organized parental groups, school districts, regional educational attendance areas, and nonprofit corporations which have requested assistance and have arranged for the necessary facilities and equipment for training centers for exceptional children. (§ 3 ch 118 SLA 1961; am § 3 ch 77 SLA 1978)

Secs. 47.20.030 — 47.20.040. Appropriations; purpose. [Repealed, § 6 ch 77 SLA 1978.]

Sec. 47.20.050. Definitions. In this chapter

(1) "department" means the Department of Health and Social Services;

(2) "evaluation" means the physical and mental examinations necessary to determine the extent of the handicap;

(3) "exceptional children" includes those children who have not reached age of three and whose development is significantly delayed due to mental retardation, physical, neurological, or emotional handicaps;

(4) "professional guidance" means the consultative services or other medical and educational specialists developed by the department for the education and training of exceptional children;

(5) "special service" means evaluation and special training;

(6) "special training" means (A) nursery or pre-school training to compensate for the special handicaps of exceptional children in order to prepare them, when possible, for admission to special classes in a regular school at the age determined by law, or (B) training in self-help skills, safety, social and simple occupational skills for trainable mentally retarded children of school age who are incapable of academic subjects. (§ 5 ch 118 SLA 1961; am §§ 4—6 ch 77 SLA 1978)

Revisor's notes. — Reorganized in 1984 to alphabetize the terms defined.

Chapter 21. Adventure-Based Education.

(C) manifests a current intent to carry out plans of serious harm to that person's self or another;

(11) "mental health professional" means a psychiatrist or physician who is licensed to practice in this state or employed by the federal government; a clinical psychologist licensed by the state Board of Psychologists and Psychological Associate Examiners; a psychological associate trained in clinical psychology and licensed by the Board of Psychologists and Psychological Associate Examiners; a registered nurse with a master's degree in psychiatric nursing, licensed by the State Board of Nursing; and a social worker with a master's degree in social work and substantial experience in the field of mental illness;

(12) "mental illness" means an organic, mental, or emotional impairment that has substantial adverse effects on an individual's ability to exercise conscious control of the individual's actions or ability to perceive reality or to reason or understand; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

(13) "peace officer" includes a state police officer, municipal or other local police officer, state, municipal, or other local health officer, public health nurse, United States marshal or deputy United States marshal, or a person authorized by the court;

(14) "professional person in charge" means the senior mental health professional at a facility or that person's designee, in the absence of a mental health professional it means the chief of staff or a physician designated by the chief of staff;

(15) "provider of outpatient care" means a mental health professional or hospital, clinic, institution, center, or other health care facility designated by the department to accept for treatment patients who are ordered to undergo involuntary outpatient treatment by the court or who are released early from inpatient commitments on condition that they undergo outpatient treatment;

(16) "screening investigation" means the investigation and review of facts which have been alleged to warrant emergency examination or treatment, including interviews with the persons making the allegations, any other significant witnesses who can readily be contacted for interviews, and, if possible, the respondent, and an investigation and evaluation of the reliability and credibility of persons providing information or making allegations;

(17) "state" means a state of the United States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico, and, with the approval of the United States Congress, Canada. (§ 1 ch 84 SLA 1981; am §§ 26-30 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment inserted "or operated by the federal government" in paragraph (5); added the subparagraph (A) designation in paragraph (7), added "or" to the end of that subparagraph, and added subparagraph (B); reworded subparagraphs (10)(A) and (C) and paragraph (12) to remove personal pronouns; deleted "imminent and substantial" preceding "bodily harm" and substituted "behavior causing, attempting or threatening that harm" for "attempts at suicide or bodily harm" in paragraph (10)(A); substituted "harm to others" for "imminent and substantial bodily harm to one or more other persons" and the language beginning "recent behavior causing, attempting" or "behavior causing or attempting harm, including, in regard to evaluations, at least one incident within 30 days before the filing of a petition for emergency hospitalization" in paragraph (10)(B); substituted "manifests" for "demonstrates" in paragraph (10)(C); substituted "trained in clinical psychology and licensed" for "with a clinical psychology or counseling specialty licensed" near the middle of paragraph (11); and inserted "substantial" preceding "experience" near the end of paragraph (11).

Chapter 35. Private Institutions.

Sec. 47.35.010. Powers of department. (a) The department may

(1) license and supervise boarding homes, foster homes, group homes, nurseries, institutions caring for children and foster homes, group homes and institutions caring for dependent adults;

(2) investigate and supervise licensees;

(3) enforce the standards established by it;

(4) contract with private or municipal agencies to investigate and make recommendations to the department for the licensing and supervision of boarding homes, foster homes, group homes, nurseries, institutions caring for children and foster homes, group homes and institutions caring for dependent adults under procedures and standards of operation established by the department.

(b) The department shall, within 90 days after receiving a written request that it do so, delegate its powers relating to nurseries under this section and under AS 47.35.040 — 47.35.060 to a municipality which has adopted an ordinance providing for day care licensing under home rule powers or as authorized under AS 29.48.035(a)(20). A municipality to which these powers have been delegated may waive or modify any regulation or standard established by the department under the authority of AS 47.35.010 — 47.35.080 as it applies to nurseries or the application of any such regulation or standard as it applies to a particular day care licensee but must notify the department of any waiver. (§ 2 ch 17 SLA 1951; am §§ 1, 2 ch 42 SLA 1973; am §§ 1, 2 ch 253 SLA 1976; am § 1 ch 45 SLA 1977; am § 1 ch 98 SLA 1977; am § 135 ch 6 SLA 1984)

Revisor's notes. — In 1984 "former" was inserted before the reference to AS 47.35.050. That section was repealed by sec. 5, ch. 97, SLA 1982.

Effect of amendments. — The 1984 amendment changed an internal reference in subsection (b).

NOTES TO DECISIONS

Cited in J.M.A. v. State, Sup. Ct. Op. No. 1201 (File No. 23911, 542 P.2d 170 (1975).

Sec. 47.35.020. License or permit required. A person may not, without a license or permit to do so,

(1) maintain or conduct, for more than 90 days, a boarding home, foster home, group home, institution, or other place for the regular reception or care of children under 16 years of age, or a foster home, group home, or institution for the care of dependent adults; or

(2) engage in the business of receiving or caring for children under 14 years of age, with or without compensation, in a nursery in which five or more children not related by blood or marriage, or legal adoption, to the owner, operator or manager of the business are lodged. (§ 3 ch 17 SLA 1951; am § 3 ch 42 SLA 1973; am § 3 ch 253 SLA 1976; am § 2 ch 45 SLA 1977; am § 1 ch 97 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "for more than 90 days" near the beginning of paragraph (1) and made minor changes in style.

Sec. 47.35.030. Authority to issue regulations. The department may adopt regulations and standards consistent with other requirements of law. This authority does not deny a religious group from establishing and operating an institution solely because of the prior installation or operation of another religious group in the same area. The authority to adopt regulations and standards shall be exercised to insure compliance with the intents and purpose of AS 47.35.010 — 47.35.100. The department may inspect and examine an institution, home or place, or the performance of a service. (§ 4 ch 17 SLA 1951; am § 1 ch 77 SLA 1967)

Sec. 47.35.040. Licensing. (a) The department shall issue a license to a facility if it determines that the facility has met the standards for operation set out in AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080.

(b) A license is valid for two years after the date of issuance unless it is revoked or modified. The department may revoke a license or modify a license to provisional status if it determines that a facility is not in compliance with AS 47.35.010 — 47.35.080 or the regulations adopted under AS 47.35.010 — 47.35.080.

(c) The department may waive compliance with a standard set out in regulations adopted under AS 47.35.010 — 47.35.080 if an acceptable alternative is established that meets the purpose of the provision and reasonably assures the well-being of persons in care.

(d) A license may not be transferred to a different facility or owner.

(e) The department shall give written notice of revocation or modification under (b) of this section 30 days before the effective date of the action. However, if the health or well-being of children or dependent adults is in jeopardy, the revocation or modification action is effective immediately upon the issuance of written notice by the department. (§§ 5, 8 ch 17 SLA 1951; am § 4 ch 42 SLA 1973; am § 2 ch 97 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote this section.

Sec. 47.35.050. Duration of license or permit. [Repealed, § 5 ch 97 SLA 1982. For current law see AS 47.35.040(b) and (e).]

Sec. 47.35.055. Provisional license. (a) The department shall issue a provisional license to a new facility if the facility submits to the department an acceptable plan for operation that is in conformity with the provisions of AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080. After the department determines that the new facility is operating in conformity with the provisions of AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080, the department shall issue a license under AS 47.35.040 to the facility.

(b) The department may issue a provisional license to a facility that is licensed under AS 47.35.040 but is temporarily unable to conform to the provisions of AS 47.35.010 — 47.35.080 or the regulations adopted under AS 47.35.010 — 47.35.080.

(c) The department may issue a provisional license under (b) of this section only if the facility submits to the department an acceptable plan to bring the facility into conformity with the provisions of AS 47.35.010 — 47.35.080 and the regulations adopted under AS 47.35.010 — 47.35.080 within the time specified in the provisional license.

(d) A provisional license is valid for a period not exceeding one year from the date of issuance. The department may renew a provisional license for an additional period not to exceed one year. (§ 3 ch 97 SLA 1982)

Sec. 47.35.060. Records required. Each licensee or permit holder shall keep records regarding each child or adult in its control and care, or placed by it, which the department prescribes, and shall report to the department the facts which the department requires with reference to the children or adults. All records regarding individuals placed for care in an institution or home under this chapter are confidential and shall be safeguarded from improper disclosure by the agency or department. (§ 9 ch 17 SLA 1951; am § 4 ch 45 SLA 1977)

SECTION 26

Sec. 47.35.070. Violations. A person who violates a provision of AS 47.35.010 — 47.35.100 or a regulation adopted under AS 47.35.010 — 47.35.100 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $200. (§ 11 ch 17 SLA 1951; am § 2 ch 77 SLA 1967)

Sec. 47.35.075. Licensure of providers of care for dependent adults by municipalities. A first or second class borough or a first or second class city outside a first or second class borough may license and supervise institutions caring for dependent adults. If a borough or city chooses not to license care providers for dependent adults, the department shall be the licensing authority; if a borough or city chooses to license care providers for dependent adults, the borough or city may exercise any power or responsibility granted to the department under this chapter and shall enforce regulations adopted by the department under AS 47.35.030. (§ 5 ch 45 SLA 1977)

Sec. 47.35.080. [Renumbered as AS 47.35.900.]

Sec. 47.35.090. Licensing and supervision of maternity homes. Maternity homes shall be licensed and supervised in the same manner as boarding homes or foster homes, nurseries and other institutions caring for children as provided in AS 47.35.010 — 47.35.080. In this section "maternity home" means an institution or place of residence whose primary function is to give care to pregnant girls or women, regardless of age, before or during confinement, or which provides care, as needed, to mothers and their infants after confinement, with or without compensation. (§ 1 ch 108 SLA 1960)

Sec. 47.35.100. License required. (a) Without a license issued by the department in accordance with its regulations a person may not operate an agency providing any of the following services:

(1) the placement of children for foster home care;

(2) the placement of children for adoption; or

(3) individual and family counseling.

(b) The license shall remain in effect until revoked for cause. The department shall give written notice of revocation at least 90 days before the effective date of the revocation.

(c) In this section "agency" does not include an individual who occasionally provides the services set out in (a) of this section. (§ 4 ch 77 SLA 1967)

Sec. 47.35.900. Definitions. In this chapter

(1) "boarding home or foster home" means an establishment providing regular care for less than six children not related by blood or marriage to the foster parents;

(2) "department" means the Department of Health and Social Services;

(3) "facility" means the administration, program, and physical plant of a nursery caring for children, or a foster home, group home, or institution caring for children or dependent adults;

(4) "group home" means a small establishment providing care and services for 10 or fewer children not related by blood, marriage or legal adoption to the foster parent and which is

(A) noncontiguous to another institution; and

(B) stresses normal family living.

(5) "institution" means an establishment providing regular care and services for 11 or more children not related by blood or marriage to the owner or operator;

(6) "nursery" means an establishment providing care and services for any part of the 24-hour day for a child not related by blood or marriage to the owner or operator, but does not include any establishment whose primary purpose is educational. (§ 1 ch 17 SLA 1951; am § 3 ch 77 SLA 1967; am § 1 ch 69 SLA 1971; am § 6 ch 104 SLA 1971; am §§ 6, 7 ch 42 SLA 1973; am § 4 ch 97 SLA 1982)

Revisor's notes. — Formerly AS 47.35.080. Renumbered in 1984.

Reorganized in 1984 to alphabetize the terms defined.

Effect of amendments. — The 1982 amendment added paragraph (3).

Chapter 37. Uniform Alcoholism and Intoxication Treatment Act.

Revisor's notes. — AS 47.37.070 — 47.37.270 were enacted as AS 47.37.062 — 47.37.210. Renumbered in 1972.

Collateral references. — 41 Am. Jur. 2d, Incompetent Persons, § 7.

28 C.J.S., Drunkards, § 1 et seq.

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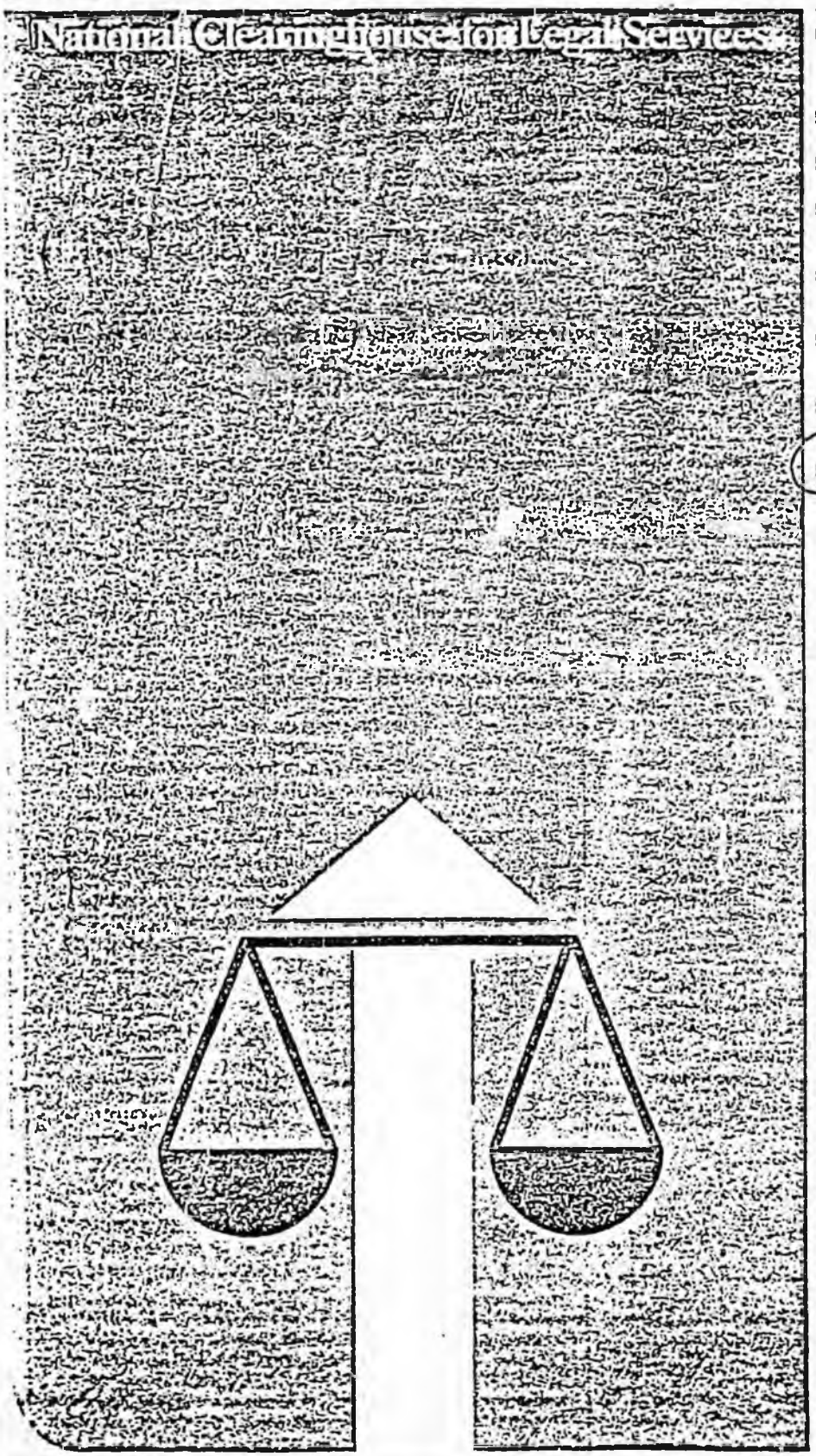

Contents

VOL. 14, NO. 6, OCTOBER 1980

Massachusetts husbands have been convicted of rape of their estranged wives.[2] There are no reported cases regarding marital rape in Mississippi, Virginia and the District of Columbia.

Lobbying efforts to end this archaic and sexist "marital right" or protection afforded husbands have been hard fought and, to a large extent, unsuccessful. Opposition to legislative efforts is being met with the following typical arguments:

> ...the state of Florida has absolutely no business intervening into the sexual relationship between a husband and a wife.... We don't need Florida invading the sanctity and the intimacy of a husband and wife's sexual relationship. [Rep. Tom Bush, Ft. Lauderdale, Fla., Transcript of Floor Debate on House Bill 680, at 3-4, May 29, 1980];

> ...the Bible doesn't give the state permission anywhere in that Book for the state to be in your bedroom, and that is just exactly what this bill has gone to, its meddling in your bedroom, the State of Florida, as an entity, deciding what you can do and what you can't do. [Rep. John Mica, Winter Park, Fla., Transcript of Floor Debate on House Bill 680, at 6, May 29, 1980];

> ...But if you can't rape your wife, who can you rape?[2] [California State Senator Bob Wilson, addressing a group of women lobbyists regarding California's Marital Rape Bill AB 546, Spring 1979].

To date, only three states have totally abolished the marital rape exemption. The express exemptions in Oregon and Nebraska statutes were stricken (Neb. Rev. Stat. §§28-319, 28-320, effective 1976, repealing and replacing §§28-403.03 and §28-403.04; Or. Rev. Stat. §163.305, amended by 1977 c. 644). New Jersey legislators went one step further in abrogating the marital rape exemption by including an express statutory provision that "no actor shall be presumed to be incapable of committing [sexual offense] because of . . . marriage to the victim." (N.J. Stat. Ann. §2C.14-5(b), effective Sept. 1, 1979). Additionally, the exemption has been deleted in most, but not all, cases in California (Cal. Penal §262, effective Jan. 1, 1980, establishing a separate crime of spousal rape), Minnesota (Minn. Stat. Ann. §609.349, amended in 1980, deletes the exemption in most cases), and Iowa (Iowa Code Ann. §709.2-709.4, exemption deleted from first and second degree sexual abuse; exemption retained in third degree).

Delaware and Hawaii have amended their rape statutes by deleting the marital rape exemption on one hand, but then granting an exemption to a previously unprotected class of defendants. In Delaware the marital exemption was deleted from first and second degree rape (Del. Code Ann. §§763, 764). However, in first degree rape the marital exemption was replaced with an exemption for "voluntary social companions" *(see infra)*. The Hawaii legislature amended its rape statutes to provide for gender neutral terms, and in so doing deleted the marital rape exemption. However, like Delaware, a "voluntary social companion" exemption was included in first degree rape (Hawaii Rev. Stat. §707-730).

Expansion of the Marital Rape Exemption

The marital rape exemption has traditionally only applied to, and protected, husbands in legally valid marriages. Various theories, in addition to Hale's "matrimonial consent," have been subsequently offered as the basis for this marital right or privilege of rape: the "unity of person" common-law doctrine, whereby the legal identity of a woman merged upon marriage into that of her husband and made rape by her husband legally impossible since he could not rape himself; or the position of women as property or chattel of their husbands meant that a husband's rape of his wife was merely making use of his own property. All of these "rationales" underlying the marital rape exemption depended upon and required a valid marriage contract.

Exemption for Unmarried Cohabitants

While efforts to abolish the marital rape exemption are meeting strong resistance, legislators in 13 states (Alabama, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Maine, Minnesota, Montana, North Dakota, Pennsylvania, Texas, West Virginia) have extended this "privilege of marriage" to unmarried persons. Eleven of these states extend the marital rape exemption to persons living together who are not married to each other (*i.e.*, cohabitation relationships). For example, Montana provides that "...the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship." Mont. Rev. Codes Ann. §45-5-506(2). *See also* Alabama (Crim. Code §13A-6-60(4)); Delaware (Code Ann. §772(b); Iowa (Code Ann. §709.4, exemption only for third-degree sexual abuse); Minnesota (Stat. Ann. §609.342, exemption only for statutory rape and specified cases involving handicapped couples); Pennsylvania (Stat. Ann. Title 18 §3103); Texas (Penal Code §21.12). In West Virginia (Code §61-8B-1(2)) and Kentucky (R.S.A. §510.010(3)) "marriage" is defined in the criminal statute to include unmarried cohabiting persons. Connecticut (Penal Code §53a-67(6)) and Maine (R.S.A. Title 17-A §252.2) expressly provide that cohabitation shall be an affirmative defense to rape.

The expansion of the marital rape exemption to cover unmarried cohabitants is "justified" in the Practice Commentary following Texas Penal Code §21.12:

> Adults cohabiting may terminate their relationship if one dislikes the other's sexual conduct, and there is no justification for the criminal law's intrusion into the relationship. This section restates and expands the prior law's recognition of this commonsense notion, which was reflected in [Texas] Penal Code art. 1183's definition of rape to exclude sexual intercourse between husband and wife.

While men in these unmarried cohabiting relationships are increasingly being granted the "marital privilege" of rape, women in these relationships have fared far worse in their attempts to obtain privileges of marriage such as spousal sup-

2. Commonwealth v. Chretien, No. 99983-84, 85 (Essex County Superior Court, Mass.; Sept. 1979); People v. Finley, No. CRC 80-877 (Criminal Division, Pinellas County Circuit Court, Florida; Apr. 1980).

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The Marital Rape Exemption In the Criminal Law

The battered women's movement has brought to public light the abuse and violence women suffer from their husbands, ex-husbands, male mates and ex-mates. Researchers and advocates on behalf of battered women have realized that this violence includes severe physical abuse as well as non-physical violence such as threats of severe harm or degradation. Until recently, however, rape of women by their husbands and male mates has remained a silent and hidden crime. Men's right to rape their wives is in fact not a crime in most states. The legal right of marital rape is known as the "marital rape exemption" and is embodied in state criminal statutes as well as the Model Penal Code (sections 213 *et seq.*). There has been limited progress towards the erosion of the marital rape exemption, but this has been more than offset by the significant extension of the exemption to additional classes of defendants.

The legal system has been and continues to be a not-so-silent partner to this "marital right" of violence. Historically, battering and rape of wives has been recognized as a husband's legal right. The legal system's condonation of wife-beating was expressed in 1824 by the Mississippi Supreme Court which held that a "husband should be permitted to chastise his wife moderately in cases of great emergency 'without subjecting himself to vexatious prosecution for assault and battery, resulting in the discredit and shame of all parties concerned.'" *Bradley v. State*, 2 Miss. (Walker), 156, 158. Other states limited the husband's common law right to beat his wife by the "Rule of Thumb": He was allowed to beat her as long as the stick was "no thicker than his thumb." Prosser, *Handbook of the Law of Torts*, 136 (4th ed. 1971). Since the mid-1800's, wife-beating has been a crime in every state, yet these laws have not been enforced against battering husbands or boyfriends. Today, this "marital right" is upheld in the policies of noninvolvement by the courts, nonarrest by police, and nonprosecution by district attorneys.

The principle that a husband cannot, as a matter of law, rape his wife first appeared in written English Law in the 18th century and was stated in the following manner:

> But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given herself in this kind unto her husband which she cannot retract. 1 Hale, *History of the Pleas of the Common Crown* 629 (1736 ed.).

Lord Matthew Hale authored this alleged common-law rule with absolutely no supporting authority. Lord Hale's misogyny was not, unfortunately, restricted to the area of marriage. His infamous statement that rape is a charge "easily to be made and hard to be proved, and harder to be defended" (1 Hale, *The History of the Pleas of the Crown*, 635 (1978)) is preserved in state jury instructions (*see* 61 Cal. L.R. 919, 931-932 (1973)). Additionally, Hale played a significant role in the persecution of witches in England. For a thorough analysis and discussion of the lack of support for this alleged common-law rule see Drucker, *The Common Law Does Not Support A Marital Exception for Forcible Rape*, 5 Women's Rights L. Rep. 181 (1979).

Present Status of the Marital Rape Exemption

Today, a husband's "marital right" to rape his wife is expressly recognized in at least 37 states. Husbands are afforded this right through an express statutory exemption provided in state criminal statutes.

> (a) A male person of the age of 14 years and upwards who has sexual intercourse with a female, *not his wife*, by force and against her will, commits rape. (Emphasis added). Ill. Ann. Star., ch. 38, §11-1 (1977).

In 10 states (Alabama, Connecticut, Illinois, Kansas, Oklahoma, South Dakota, Texas, Vermont, West Virginia and Washington)[1] the statutory marital rape exemption is absolute. It applies regardless of whether the parties are living apart voluntarily or by court order; only a *final* decree of divorce terminates the exemption.

In 27 states certain limitations are placed upon the statutory marital rape exemption. These limitations reflect the varying degrees in which states recognize a wife's intent to extricate herself from the marriage as a basis for limiting the exemption. In 11 states (Kentucky, Louisiana, Maryland, Missouri, New York, North Carolina, North Dakota, Rhode Island, South Carolina, Utah and Wyoming) the statutory exemption is denied to a spouse once a judicial decree or order of separation is entered. The exemption still applies, however, when the spouses are living apart, and/or legal action to terminate the marriage is pending. In six states (Indiana, Michigan, Nevada, Ohio, Tennessee and Wisconsin) the marital exemption ends when the spouses are living apart *and* a petition for annulment, divorce or separation has been filed. In 10 states (Alaska, Arizona, Colorado, Idaho, Iowa, Maine, Montana, New Hampshire, New Mexico and Pennsylvania) the marital rape exemption ends once the parties are living apart; no court order is required.

Rape statutes in seven jurisdictions (Arkansas, Florida, Georgia, Massachusetts, Mississippi, Virginia and the District of Columbia) contain no express marital exemption. Whether the alleged common-law exemption applies in these states, thereby barring prosecution of husbands for marital rape, remains a matter of judicial decision and legislative intent. Arkansas and Georgia provide express marital exemptions for statutory rape (Ark. Stat. §§41-1804-1806; Ga. Code Ann. §26-2018) but not forcible rape (Ark. Stat. §§41-1801, 1803; Ga. Code Ann. §26-2001). It is therefore arguable that the legislatures of these states did not intend a common-law exemption to apply when the statute is silent. In Florida and

1. Citations to state statutes are available upon request from the National Center on Women and Family Law.

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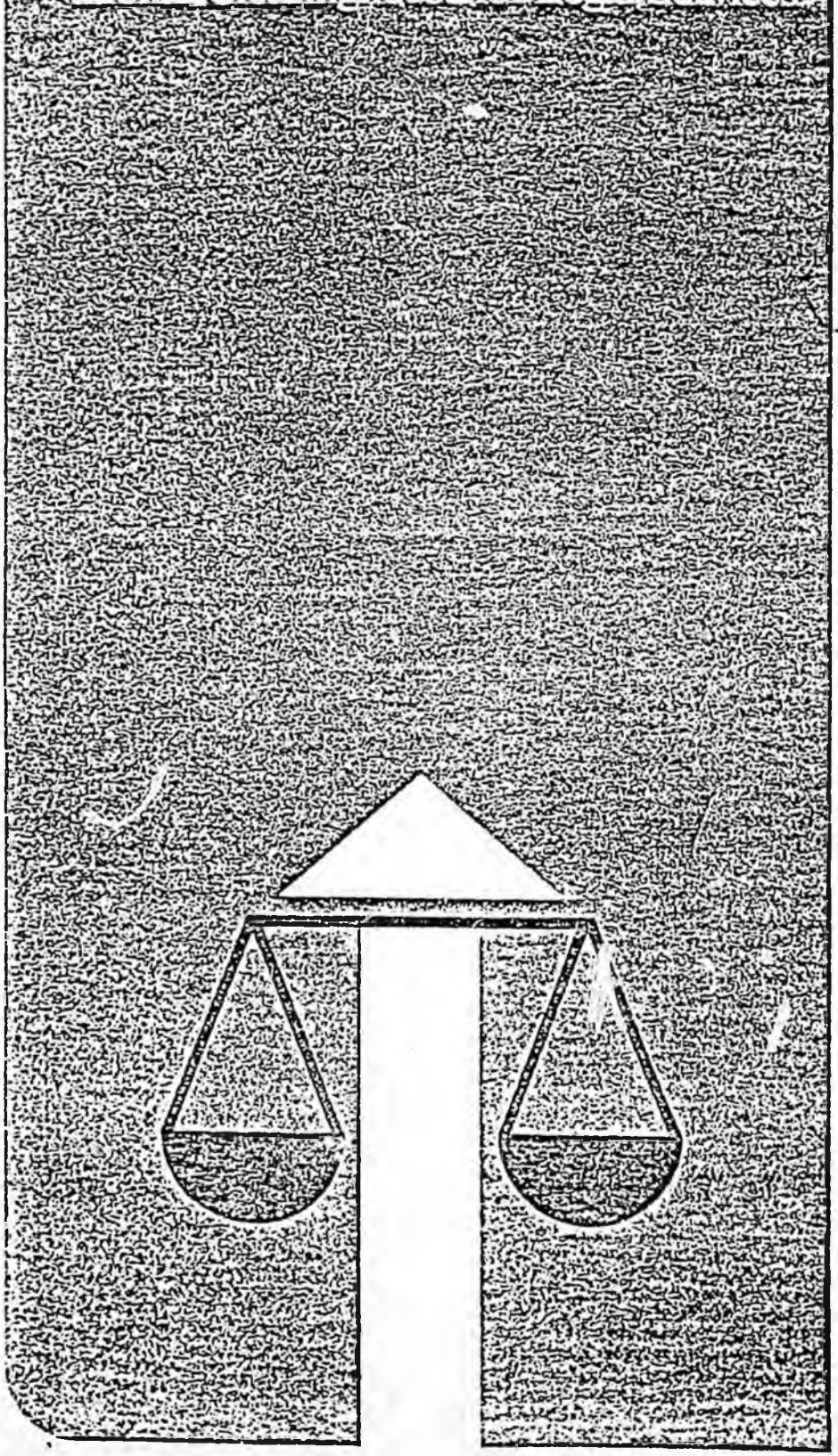

Contents

VOL. 15, NO. 4

AUGUST/SEPTEMBER 1981

change it. The Appellate Division affirmed the dismissal. As a result of these actions, the New Jersey Legislature amended its rape statute in 1979 to provide expressly that marriage to the victim was not a defense to the charge of rape. N.J. Stat. Ann. 2C: 14-5(b).

On February 10, 1981, the Supreme Court of New Jersey reversed the trial court's dismissal and reinstated the rape count against the defendant. (The decision should be useful in those states that do not have express spousal provisions in their rape statutes.[3])

The New Jersey court first examined the history of Hale's Doctrine, concluding that:

> *Without deciding whether an exemption existed in any situations at all,* we think that it was not meant to exist during the entire legal duration of a marriage. Therefore, we decline to apply mechanically a rule whose existence is in some doubt and which may never have been intended to apply to the factual situation presented by this case. (Emphasis added.)

The court went on to discuss the three major justifications for a common law marital exemption: Women as the property of their husband or father; the "unity concept" whereby husband and wife became one person upon marriage, and a husband could therefore not be charged with rape of himself; and the contractual consent rationale, whereby a woman upon entering a marriage contract consented to sexual intercourse with her husband. The court held that none of these justifications were viable today given the enactment of laws which recognized married women as independent citizens (*e.g.*,Married Women's Property Acts; abolition of spousal tort immunity; women's right to make their own choices regarding reproduction). The court held that New Jersey's no-fault divorce law made Hale's contractual consent rationale (*see* discussion below) inapplicable:

> By separating from her husband and living apart for 18 months, a wife is entitled to a divorce without further proof of proper grounds. The corollary of this right is that a wife can refuse sexual intercourse with her husband during the period of separation. If a wife has a right to refuse intercourse, or deny consent, then a husband's forcible carnal knowledge of his wife clearly includes all three essential elements of the crime of rape.

The court held that, given the separation of the parties, the defendant could not claim that his wife consented to have sexual intercourse with him. "Whether or not any other husband could have based a defense on such implied consent — a proposition that we doubt seriously but do not decide — this husband could not."

The New Jersey court limited its decision to the facts of the *Smith* case. Because of the 1979 revision of the rape statute, the court did not need to go beyond the *Smith* facts. Yet the court made clear its distaste for the alleged common law exemption:[4]

> The enactment of the new Criminal Code has made it unnecessary for this court to discuss at length all the inequities of a medieval rule that denies some women protection against sexual attack and treats them as sexual property of their husbands....
>
> But neither was the law of this State under the former rape statute as blind to personal liberty and privacy as defendant would have this court believe. A man separated from his wife — and perhaps one not separated — could not invoke an outdated and doubtful rule to avoid prosecution for rape simply because he was still legally married to his victim.

Commonwealth v. James K. Chretien

On September 21, 1979, defendant-husband was convicted by a jury of raping his wife and breaking and entering her home. Defendant received a three- to five-year prison sentence and three years' probation after release. At the time of the incident, defendant and victim were separated pursuant to a preliminary divorce decree that had not yet become final. At trial, defendant claimed that he could not be prosecuted for the rape of his wife because of the common law spousal exemption which, he asserted, still applied despite the preliminary divorce decree. The trial court denied his motion for dismissal. The Supreme Judicial Court, on March 9, 1981, unanimously affirmed the conviction.

In its opinion, the court first analyzed the history of the common law exemption. It examined various Massachusetts rape statutes, beginning with the colonial laws of 1649. The court held that the legislature's comprehensive revision of the rape laws in 1974 was intended to criminalize marital rape and eliminate any spousal exemption.

In examining the 1974 revisions, the court noted that "the rape statutes themselves contain no statement of legislative intent or policy concerning the spousal exclusion." However, the court found that the legislature's enactment of domestic violence legislation in 1978 expressed the legislature's intent to criminalize marital rape:

> This act [Domestic Violence Act] provides a wide range of remedies for "abuse" and expressly defines "abuse" to cover involuntary sexual relations engaged in by spouses when one spouse is made to submit by force, threat of force or duress....We think that G.L.C.209A [Domestic Violence Act] provides us with a clear legislative statement of public policy which...reflects the intent of the Legislature to criminalize such conduct.

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3. ARK. STAT. ANN. § 41-1801, -1803 (1976); FLA. STAT. ANN. § 794.011 (1979); GA. CODE ANN. § 26.2001 (1978); MASS. ANN. LAWS ch.265, § 22, ch. 277, § 39 (1979) (Michie/Law Co-op); MISS. CODE ANN. § 97-3-65(2)(1979) VA. CODE § 18.2-61 (1979 Supp.); D.C. CODE ANN. § 22-2801 (1967).

4. NCOWFL filed an amicus brief arguing that Hale's Doctrine, by its terms, constituted sex discrimination because it excluded one class of women victims (those married to the rapist) from the protection of the criminal laws. *New Jersey* v. *Smith*, *supra* note 1 (Amicus brief, filed by NCOWFL on behalf of New Jersey). Clearinghouse No. 30,489A. If Hale's Doctrine were read into the statute by the court, the otherwise constitutional statute would violate the equal protection clause. Although the court in *Smith* discussed this theory during oral argument and alluded to it in its opinion, the case was decided on other grounds.

AFDC and SSI recipients on emergency room and hospital outpatient services whenever it would promote "more cost-efficient utilization." The Secretary could also permit states to share the cost-savings generated by the Medicaid recipients' enrollment in a more cost-effective system of medical care as long as "the waiver is not inconsistent with the purposes of the Medicaid Act."

G. Conclusion

As we have discussed in previous columns, state Medicaid agencies were experiencing large deficits and cutting back on benefits and services before the Reagan administration proposal to cap Medicaid. This $1.2 billion cut in available federal matching will compound the problems facing state Medicaid administrators.

The prime villain in rising Medicaid costs has been generalized inflation in the health care industry. Because of federal reimbursement policies for hospitals and nursing homes, which account for 80 percent of Medicaid expenditures, the national phenomenon of health care inflation has been passed through to the Medicaid program. Many state agencies have found it easier to cut eligibles and services than to control hospital and nursing home rates.

The Administration's flexibility proposals would give the National Governor's Association and the State Medicaid Directors virtually every mechanism which they have asked for to control the rate of increases for nursing home and hospital costs. It also proposes to give them vast and potentially very dangerous authority to rewrite their Medicaid programs. This new authority may set off a new fight in the states as state administrators seek to redistribute Medicaid funds to meet the states' needs for fiscal relief, as the hospital and nursing home lobbies seek to preserve their rate structures, and as recipients seek to preserve their services and eligibility. Moreover, because Medicaid programs could now be designed which maximize services to the elderly while minimizing eligibility and services for children and the disabled, fights among the poor over the allocation of Medicaid dollars would become a real possibility. It is vital that advocates begin to evaluate the problems posed by the new "flexibility," and address them together, equitably and fairly.[15]

15. For further information about these developments, please contact Michael Parks and Lucien Wulsin, Jr., in NHeLP's West Coast office, or David Cnavkin and Judith Waxman at NHeLP East.

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Battered Women Score Major Victories in New Jersey and Massachusetts Marital Rape Cases

The highest courts of New Jersey and Massachusetts recently declared that no common law marital rape exemption exists in their states' rape statutes and husbands thus can be prosecuted for rape of their wives. These landmark decisions establish that a married woman's right to be a separate person under the law extends to her personal, sexual self-determination; she cannot legally be compelled to have sexual relations with her husband against her will. The effect of these holdings is to extend the equal protection of the criminal law to battered wives.

State of New Jersey v. Smith[1] (hereinafter *Smith*) and *Commonwealth v. Chretien*[2] (hereinafter *Chretien*) both involved interpretations of rape statutes that did not contain an express spousal exemption. Defendant-husbands claimed that, although the statutes were silent as to spousal exclusion, a "common law marital exemption" was incorporated by implication into the statutes and the husbands therefore could not be prosecuted for rape of their wives. Prosecutors for the states argued that a common law exemption never existed, and even if it did, the exemption would not apply to the current revised rape statutes. The New Jersey and Massachusetts courts, while analyzing the history and doubtful validity and existence of the alleged common law exemption, based their holdings on narrower grounds. Both courts held that, even if an exemption existed at common law, it was not now a part of the rape statutes so as to exempt defendant-husbands from prosecution and conviction for rape of their spouses.

State of New Jersey v. Albert Smith

On January 5, 1976, defendant-husband was charged with rape of his wife, atrocious assault and battery, private lewdness and impairing the morals of a minor (his son). Defendant moved to dismiss the rape charge on the ground that he was legally married to the victim at the time of the incident.

At the time of the alleged rape, defendant and victim had been living apart in different cities. Court proceedings for divorce or separation had not been initiated, nor had the parties entered into a formal separation agreement.

The trial court reluctantly granted defendant's motion to dismiss, 148 N.J. Super. 219 (Law Div. 1977), believing that a common law marital exemption was incorporated into the state's rape statute. Although the trial judge expressed unequivocal disapproval of such an anachronistic rule of law, he considered it the prerogative of the legislature to

1. New Jersey v. Smith, No. 16246 (N.J. Sup. Ct., Feb. 10, 1981). Clearinghouse No. 30,489B.
2. Commonwealth v. Chretien, No. E-2276 (Mass. Sup. Jud. Ct., Mar. 9, 1981). Clearinghouse No. 31,388.

> In reality, marital rape is often *more traumatic* than stranger rape. When you have been intimately violated by a person who is supposed to love and protect you, it can destroy your capacity for intimacy with anyone else. Moreover, many wife victims are trapped in a reign of terror and experience repeated sexual assaults over a period of years. When you are raped by a stranger you have to live with a frightening memory. *When you are raped by your husband, you have to live with your rapist.*
>
> (Testimony and Statement to the Judiciary Committee, New Hampshire State Legislature on March 25, 1981, in support of HB 516, bill to remove spousal exception to sexual assault offenses.)

Until recently legislators and the legal system in general have refused to consider marital rape as a crime rather than a "right" of marriage. Thirty-seven states continue to recognize a husband's "marital right" to rape his wife through an express statutory exemption provided in state rape statutes.[10] Since 1976, legislatures in California, Connecticut, Minnesota, Nebraska, New Jersey, and Oregon have removed the marital rape exemption from their criminal statutes so as to permit rape prosecution of spouses in all or most circumstances.[11] Similar legislation in New Hampshire is awaiting signature by the Governor. By their decisions, New Jersey and Massachusetts now join this small but growing number of states that have criminalized rape of a woman by her husband.

Criminalization of marital rape, either by court decision, as in New Jersey and Massachusetts, or by legislation, has significant legal and social ramifications. Criminalization notifies the victim that rape is not a part of her marriage contract, nor is it her "wifely duty" to submit to such violence. Criminalization serves as a deterrent to domestic violence by notifying otherwise law-abiding husbands that their acts are crimes, not "rights." Criminalization will allow poor women to obtain publicly funded abortions which, in many states, are only available when the pregnancy is caused by legally recognized rape or incest. Criminalization of marital rape will allow a woman to get out of a violent marriage by permitting the rape to serve as grounds for divorce.[12] Criminalization will protect children by requiring courts hearing custody trials to consider the criminal rape as evidence of parental unfitness.[13] Finally, criminalization will permit battered women, who have been forced to kill their abusive husbands, to use the rape as a basis for a self-defense claim in a prosecution for murder.[14]

The role of criminal law in our society is to label those behaviors which are so reprehensible that a civilized society will not tolerate them. Rape of a woman is such behavior and should be so labeled in all cases, even if the victim happens to be married to the rapist.

Joanne Schulman,
Staff Attorney

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10. *See The Marital Rape Exemption in the Criminal Law*, 14 CLEARINGHOUSE REV. 538 (Oct. 1980); State-by-State Summary of Marital Rape Exemption and Resource Packet, *available from* NCOWFL.
11. Information on legislation to repeal the marital rape exemption is available from the National Clearinghouse for Marital Rape, 2325 Oak St., Berkeley, CA 94708, (415) 548-1770. This is a nonprofit, membership organization. Requests for information or assistance must be accompanied by a self-addressed, stamped envelope and tax-deductible membership fee.
12. The *New York Times* recently reported an incident where a woman seeking an order of protection in New York's Family Court was told by the judge, when she attempted to bring up the rape by her husband, that "I don't want to hear about these things. You're a married woman." Barden, *Confronting the Moral and Legal Issue of Marital Rape*, N.Y. Times, June 1, 1981, §B, at 5.
13. *See, e.g.*, Jarrett v. Jarrett, 78 Ill.2d 337, 400 N.E.2d 421 (1979), *cert. denied*, 49 U.S.L.W. 3286 (Oct. 21, 1980). In *Jarrett*, the court considered the parent's violation of a criminal fornication statute as evidence in a custody battle.
14. *See, e.g.* Priem, *Marital Rape: What Happens When Women Fight Back?*, 3 NEW WOMEN'S TIMES (May 1981); Schneider and Jordan, Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault, pamphlet available from the Center for Constitutional Rights, 853 Broadway, New York, NY 10003, (212) 674-3303.

For battered women's advocates, the impact of this finding is extremely important. By expressly including sexual abuse in domestic violence legislation, a foundation is laid for the elimination of the marital rape exemption.

The Massachusetts decision went further than that of the New Jersey court. It did not limit the opinion to only those rapes occurring after the entry of a preliminary divorce decree or occurring after the spouses had separated. By holding that the 1974 revisions eliminated the spousal exemption altogether, spouses in ongoing marriages, even while living together, are subject to prosecution under the 1974 revised Massachusetts rape statute.

Hale's Doctrine: Common Law or One Man's Opinion?

At issue in *Smith* and *Chretien* was whether a rape statute that did not include an express provision exempting spouses (*i.e.*, a "silent statute") incorporated an alleged common law principle that:

> [T]he husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract....[I]n marriage she hath given up her body to her husband....[5]

This statement, known as Hale's Doctrine, first appeared in a treatise (not a case) written by Lord Matthew Hale, a 17th century English jurist. Lord Hale provided no supporting authority for his statement, and this lack of authority was subsequently criticized by several English justices.[6]

Prior to *Smith* and *Chretien*, Hale's unsupported statement was accepted as part of the common law without question by American legislatures, courts and criminal law authorities. The New Jersey court in *Smith*, pointed out that:

> [t]he marital exemption rule expressly adopted by many of our sister states has its source in a bare, extra-judicial declaration made some 300 years ago. Such a declaration cannot itself be considered a definitive and binding statement of the common law, although legal commentators have often restated the rule since the time of Hale without evaluating its merits, (citations omitted). (*Smith*, slip op. at 9 .

Prior to *Smith* and *Chretien*, Hale's Doctrine had only been raised in the United States in two Texas cases, and went unchallenged.[7] In *Frazier v. State*, 48 Tex. Crim. 142, 86 S.W. 754 (1905), the court simply held that "so far as we are aware all of the authorities hold that a man cannot himself be guilty of actual rape upon his wife." (at 143). *Frazier* was the basis for the holding in the second case, 41 years later. *State v. Duckett*, 149 Tex. Crim. 100, 191 S.W. 2d 879 (1946). Thus, the Massachusetts court, in *Chretien*, accurately stated that:

> [W]e have never been directly presented with the question of whether any rape statute preceding that enacted in 1974 encompassed the common law exception.... (*Chretien*, slip op. at 7).

Unfortunately, both the New Jersey and Massachusetts courts refused to decide the threshold question of whether Hale's Doctrine constituted part of the common law. While both courts severely criticized the validity and existence of the doctrine, they based their holdings on the assumption that an exemption was part of the common law. As the Massachusetts court explained in the beginning of its decision, "To assume otherwise would terminate our discussion by resolving the question against the defendant." (*Chretien*, slip op. p. 8, fn. 5).

However, in future cases challenging the existence of a common law marital rape exemption, the *Smith* and *Chretien* decisions will prove invaluable. These two decisions now stand as the leading case law on the issue in the United States. Neither court found or held that a marital rape exemption exists under common law. Instead, both courts, and especially the New Jersey court, severely criticized and questioned its existence.

These two decisions make clear that regardless of whether such an exemption existed at common law, there is no place in today's society, given today's laws, for such a concept.

> The personal liberty of women and the recognition of them as independent citizens under the law had developed beyond question through legislative and judicial actions over more than a century....No person in this State in 1975 could justifiably claim that a man had a legal right to impose his sexual will forcefully and violently on a woman, even if it was his wife, over her unmistakable objection. (*Smith*, slip op. at 25-26).

Conclusion

Rape of a woman by her husband is not a bizarre, unusual or isolated act. Rather, marital rape is a problem of serious magnitude and consequence. Professor Richard Gelles, sociologist at Rhode Island University who has done extensive research on battered women, has estimated that the number of women in the United States who are raped by their husbands, as part of a beating or as a sequel to it, could be well over two million.[8] Over one third of the women who appear at battered women's shelters report having been sexually assaulted by their husbands.

Studies of marital rape victims[9] show that these women suffer severe and long-lasting psychological harm as a result of these rapes. Dr. David Finkelhor, Assistant Director of the Family Violence Research Program at the University of New Hampshire and author of *Forced Sex in Marriage: A Preliminary Research Report* (March 1980), explained the devastating effects of marital rape on victims when he testified before the New Hampshire Legislature:

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5. 1 HALE, PLEAS OF THE COMMON CROWN 628-29 (1736).
6. *See, e.g.*, New Jersey v. Smith, *supra* note 1, at 12n.3; Commonwealth v. Chretien, *supra* note 2, at 5n.1.
7. Durcker, *The Common Law Does Not Support a Marital Exception for Forcible Rape*, 5 WOMEN'S RIGHTS L. REP. 181,182 (1979).
8. Hersay, Jan. 1, 1979, at 2.
9. For a survey and discussion of marital rape studies *see New Jersey v. Smith*, *supra* note 4 (amicus brief by NCOWFL).

it is a landmark case that lays the groundwork for future constitutional challenges to the marital rape exemption. In reaching its decision that New York's marital rape exemption violates the rights of married women under the equal protection clause, the court examined and rejected the traditional justifications for the exemption. In clear and powerful language, the court went further than any previous tribunal in pointing out the absurdity and inherent sexism of the exemption and the arguments used to defend it.

The couple in *De Stefano* were separated after 14 years of marriage. Defendant husband had moved out of the marital home in June 1982. On November 3, 1982, the wife obtained a temporary order of protection requiring defendant to remain away from the marital home at all times and to refrain from acts or threats of physical violence towards her. On November 27, 1982, defendant allegedly entered the family residence in violation of the order of protection and raped his wife at knifepoint. Defendant, who was charged with first degree rape and first degree burglary, moved to dismiss the rape indictment.

Defendant husband challenged the constitutionality of New York's rape statute. Because the spouses were living apart at the time of the attack and the victim-wife had obtained an order of protection, the husband was considered "not married" under New York's spousal exemption.[13] Defendant claimed that his equal protection rights were violated because New York law deprived him of the right to nonconsentual sexual intercourse with his wife, a right the law granted to other husbands. Defendant also claimed that New York's rape law violated his due process rights by failing to notify him that he was not allowed to engage in nonconsensual sexual intercourse with his estranged wife and that such action could result in a rape charge. Defendant "thus presented the court with a rare opportunity to examine the validity of the exemption" and to determine whether it violated the equal protection rights of married women.[14]

The court's opinion began with a quote from John Stuart Mill: "Marriage is the only actual bondage known to our law. There remains no legal slaves, except the mistress of every house."[15] The court then examined the traditional justifications for the marital rape exemption and concluded that none of them constituted a governmental interest sufficient to meet any of the three tests associated with equal protection analysis. The court began with an examination of the origins of the marital rape exemption, Hale's Doctrine.[16] The court found that the doctrine was not judicial authority and thus "should not have been considered a binding and definitive statement of the common law."[17]

The court then reviewed the arguments used to sustain the marital rape exemption, focusing on the central rationale of "implied consent" whereby upon marriage a woman irrevocably consents to sexual intercourse with her husband and relinquishes the right to say "no" in any and all situations. The court held the "implied consent" theory invalid because of the recognized constitutional right of a woman to have an abortion and use birth control without her husband's approval. The court concluded that the "logical extension" of those rights is that a woman has the right to refuse the physical act that leads to pregnancy and that a woman's right "to individual autonomy and to control procreation are but part of the more comprehensive right to bodily integrity."[18]

In examining the other justifications offered for the marital rape exemption, the court dismissed the theory that a wife is the property of her husband as having "no validity" in the United States.[19] The court rejected the related theory that, upon marriage, husband and wife become one legal entity and that a man cannot therefore be guilty of raping himself. In so ruling, the court noted that a wife's separate legal identity was established as long ago as 1848 by the "Married Women's Act."

The court also addressed defendant's argument that the abandonment of the marital rape exemption would cause insurmountable evidentiary problems and invite fabricated complaints of marital rape. The court noted that lack of consent is the most difficult element to prove in all rape cases, not merely interspousal rape cases, and that fabricated complaints of marital rape would be unlikely because of the stigma society attaches to rape victims. The court also pointed out that false reports of other crimes occur, but "[o]nly in marital rape do we remove an entire class of potential victims from the protection of the law in order to protect from a abstract possibility of a false claim that the criminal justice system is unable to deal with appropriately."[20]

The court also dismissed as "ludicrous" the argument that the prosecution of husbands for raping their wives would impede reconciliation of marriages.[21] The court rejected the argument that other remedies are available to victims of interspousal rape, since the victim had already obtained an order of protection before being raped at knifepoint.

Finding that there was no governmental interest or basis for the marital rape exemption the court struck down New

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12. *(cont'd from p. 745)*
who are living apart pursuant to "(i) order issued by a court of competent jurisdiction which by its terms or in its effect requires such living apart, or (ii) decree or judgement of separation, or (iii) written agreement of separation . . . which contains provisions specifically indicating that the actor may be guilty of the commission of a crime for engaging in conduct which constitutes an offense prescribed by this article against and without the consent of the female."
13. N.Y. PENAL LAW § 130.00(4) (b) (i); *see supra* note 12.
14. De Stefano, 467 N.Y.S.2d at 509.
15. J.S. MILL, THE SUBJECTION OF WOMEN (1869).
16. "[T]he husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract . . . [I]n marriage she hath given up her body to her husband..." 1 HALE, PLEAS OF THE CROWN 628-29 (1736). This statement, known as Hale's Doctrine, first appeared in a treatise (not a case) written by Lord Matthew Hale, a 17th century English jurist. Lord Hale provided no supporting authority for his statement; this lack of authority was subsequently criticized by several English justices.
17. *De Stefano*, 467 N.Y.S.2d at 510.
18. *Id.* at 513-14.
19. *Id.* at 512.
20. *Id.* at 515.
21. *Id.*

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Florida, New York, and Virginia Courts Declare Marital Rape a Crime

Introduction

Rape is a serious felony; in most states, it is second in seriousness only to homicide. In the last decade, battery of a wife has been recognized as a serious and widespread crime that leaves millions of women and children in this country physically and emotionally scarred. Consequently, it may seem surprising that marital rape has not received serious attention. Many people do not consider a husband's forced sexual intercourse with his wife rape. In most states, this behavior is legally protected.

In fact, marital rape is a form of rape. It has the "brutality and terror and violence and humiliation to rival the most graphic stranger rape."[1] It is a traumatic experience; in many cases, more traumatic than stranger rape.

> When you have been intimately violated by a person who is supposed to love and protect you, it can destroy your capacity for intimacy with anyone else. Moreover, many wife victims are trapped in a reign of terror and experience repeated sexual assaults over a period of years. When you are raped by a stranger you have to live with a frightening memory. When you are raped by your husband, you have to live with your rapist.[2]

Like battery of a wife, marital rape is not uncommon. While statistics are few,[3] Diane Russell's study, published in *Rape and Marriage*[4] found that 14 percent of the women surveyed were victims of rape or attempted rape by their husbands or ex-husbands.[5] Indeed, "[s]exual assaults by husbands were the most common kinds of sexual assault reported, occurring over twice as often as sexual assault by a stranger."[6]

Legislatures have been slow to recognize the problem. As of January 1984, the rape laws of 28 states still provide an express marital rape exemption; only 8 states have entirely abandoned the exemption.[7] The courts, however, have been more responsive. In 1981, courts in New Jersey,[8] Massachusetts[9] and Florida[10] refused to apply the alleged "common-law" marital rape exemption to their rape laws and held that husbands were not immune from prosecution for the rape of their wives. In 1983 and 1984, three more courts rejected the exemption.[11] These cases form a substantial and unanimous body of case law recognizing that a husband's forced sexual intercourse with his wife is rape. This column examines the reasoning and implication of the three recent cases and reports on statutory development of the past three years.

People v. De Stefano

People v. De Stefano was the first case in this country to examine the constitutionality of an express statutory marital rape exemption.[12] Although *De Stefano* is a lower court decision,

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1. Address by David Finkelhor, Marital Rape: The Misunderstood Crime, New York County Lawyers Association (May 3, 1984). (Available from National Center on Women and Family Law, Inc. (NCOWFL)).
2. Testimony and Statement in Support of H.B. 51[illegible] to remove spousal exemption to sexual assault offenses by Dr. David Finkelhor to the Judiciary Committee, New Hampshire State Legislature (Mar. 25, 1981).
3. Because marital rape is not a crime in most states, there are few statistics reporting the incidence of marital rape. In addition to Russell's statistics, Professor R.J. Gelles reports that the number of wives raped as part of or sequel to a beating could be well over two million. Other studies and surveys report that 10-14 percent of all married women are victims of marital rape, and that 36-37 percent of battered women have been marital rape victims. *See* Finkelhor & Yllo, *Rape in Marriage: A Sociological View*, *in* THE DARK SIDE OF FAMILIES: CURRENT FAMILY VIOLENCE RESEARCH 119-20 (1983).
4. D. RUSSELL, RAPE AND MARRIAGE (1982). The author received funding in 1977 from the National Institute of Mental Health to do a large scale study of women in San Francisco upon the prevalence of marital rape.
5. Russell, *supra* note 4, at 57.
6. Finkelhor & Yllo, *supra* note 3, at 120.
7. See NCOWFL's Marital Rape Exemption Packet, which includes a state-by-state summary of the exemption in criminal statutes (Price: $9.00.) *See also* Statutory Update, *infra* p. 749.
8. New Jersey v. Smith, 426 A.2d 38 (N.J. 1981); New Jersey v. Morrison, 426 A.2d 47 (N.J. 1981).
9. Massachusetts v. Chretien, 417 N.E.2d 1203 (Mass. 1981).
10. Florida v. Smith, 401 So. 2d 1126 (Fla. Dist. Ct. App. 1981).
11. People v. De Stefano, 467 N.Y.S.2d 506, 121 Misc. 2d 113 (1983). Available from the Clearinghouse, No. 36,888; State v. Rider, 9 Fla. Law Weekly 887 (No. 83-821, Fla. Ct. App., 3d Dist., Apr. 17, 1984) [Editor's Note: the official cite is 449 So. 2d 903 (Fla. Dist. Ct. App. 1984).]. Available from the Clearinghouse, No. 36,890; Weishaupt v. Virginia, No. 830616 (Va. Sup. Ct. Apr. 27, 1984) [Editor's Note: the official cite is 315 S.E.2d 847 (Va. 1984).] Available from the Clearinghouse, No. 36,889.
12. N.Y. PENAL LAW § 130.00(4). New York's marital rape exemption is "partial." Under certain circumstances spouses are defined as "not married" for purposes of the exemption and therefore certain husbands are not granted immunity for the rape of their wives. N.Y. PENAL LAW § 130.00(4) defines "not married" as spouses

In *Weishaupt*, the victim-wife had been living apart from her husband and had not engaged in sexual intercourse with him for almost a year prior to the attack. Although she had not filed for or obtained a divorce, order of protection or separation agreement, she had consulted an attorney regarding a divorce and had been advised to wait until she had been separated for one year before initiating divorce proceedings. Defendant husband's motion to dismiss the rape indictment on the basis of a common-law marital rape exemption was rejected by the trial court. Defendant was tried before a jury and convicted of attempted rape. He received a two-year prison sentence, which was suspended pending outcome of the appeal. The Virginia Supreme Court affirmed the conviction, holding that a common-law exemption did not apply when the victim-wife had clearly manifested her intent to end the marriage.

The *Weishaupt* court examined the history of the common-law exemption and determined that Hale's "absolute" exemption is not and never was English common law. The court found that under English common law a wife could revoke her implied consent to sexual intercourse with her husband. According to the court's interpretation of English common law, obtaining a court order of separation or a written separation agreement entered into by both parties constituted a revocation of the wife's "implied consent," although living apart from the husband and filing for, but not obtaining, a divorce did not.

Thus, the *Weishaupt* court found that under a direct application of the English common law, the defendant in the instant case could not be guilty of raping his wife. However, the court held that both Virginia statutory law and case law empower courts "to adopt from English common law those principles that fit our way of life and reject those which do not."[28]

The court noted that during Hale's lifetime women were considered the property of their fathers and husbands, but that that is not the case today. The court relied upon a line of Virginia cases illustrating wives' growing autonomy over their property and financial affairs. In these cases, Virginia courts have rejected the argument that the so-called legal unity of husband and wife permits a husband to steal his wife's property, and have held that a husband's right of access to his wife does not give him the right to break into his wife's separate home with intent to commit assault and battery. These cases "suggest that if a woman's independent control over her property is protected by law, then her independent control over her physical person should likewise be protected."[29]

The *Weishaupt* court also reviewed cases from other states that have abolished the marital exemption. The court found that the trend in these marital rape cases is in accord with the Virginia cases granting wives autonomy and independence with respect to property rights. "Both sets of cases point to an increasingly recognized role of the autonomy and independence of women [and] . . . suggest a break with the ancient rules that cast women in a subservient position."[30] The court also found that an absolute marital rape exemption is inconsistent with Virginia's no-fault divorce law which requires spouses to live apart for a specified time without cohabitation before obtaining a no-fault divorce. Since the law contemplates a voluntary withdrawal by either spouse from the marital relationship, the court stated that it "embodies a legislative endorsement of a woman's unilateral right to withdraw an implied consent to marital sex." Like the Florida court in *Rider*, the *Weishaupt* court found that since a wife has a statutory right to make a de facto withdrawal from the marriage contract, it would be irrational to forbid her from revoking a "term" of the contract.

The court also termed "absurd" defendant husband's contention that abandonment of the marital rape exemption would be disruptive to marriages. "[I]t is hard to imagine how charging a husband with the violent crime of rape can be more disruptive of marriages than the violent act itself."[32] The *Weishaupt* court refused to address the argument that a marital rape exemption should be abandoned altogether. Thus the question of whether an exemption would apply if the spouses were cohabiting at the time of the rape is left open. In the concurring opinion, however, three of the justices expressed their "understanding that the court's decision is specifically limited to the precise facts of this case . . . that the decision today does not violate or furnish any support for prosecution of husbands when there is a cry of 'Rape!' by wives who have not demonstrated over a prolonged period of time a clear intention permanently to separate from the husband and such complete separation has, in fact, occurred."[33] Such a distinction actually encourages violence by husbands since in order to avoid losing his immunity for prosecution for wife rape, a husband would be best served by regular and forcible rape of his wife. This would guarantee that she would not be able to meet the requirements of prolonged and in fact separation, which were set out in the concurring opinion.

The concurrence further states that "[W]hile we have recognized in our case the independence of women in this state, this recognition should not operate to discriminate against men."[34] These justices seem to believe that a husband has the right to forcible rape of his wife absent her affirmative and demonstrated action to terminate the marriage, and that this right prevails over a wife's legally recognized rights of independence and autonomy. The *Weishaupt* concurrence is a sad and distressing note to an otherwise formidable and unanimous body of marital rape cases over the last four years. It should serve as a warning to battered women's advocates that a wife's right to live free of violence in her home is not yet universally accepted. Fortunately, the majority decision does not uphold an exemption as applied to cohabiting spouses. It expressly limits its holding to the facts of the case before it. While the *Weishaupt* decision does not go as far as *De Stefano* or *Rider*, the majority opinion does reject the application of the exemption where there has been a de facto end to the marriage; it does not

28. Weishaupt, No. 830616 at 12.
29. *Id.* at 14.
30. *Id.* at 16.
31. *Id.*
32. *Id.* at 19.
33. *Id.* at 22.
34. *Id.* at 21.

York's statutory marital rape exemption as violative of the equal protection clauses of the state and federal constitutions. In disposing of defendant husband's other constitutional claims, the court held that the order of protection directing defendant husband to stay away from his estranged wife and to refrain from violence toward her constituted sufficient notice so that he could be charged with rape. Furthermore, the court held that no specific notice was necessary since defendant never had a right to engage in forced sexual intercourse with his wife.

State v. Rider

On April 17, 1984, the Florida Court of Appeals held that Florida's sexual battery statute, which contains no express spousal exemption, does not incorporate a common-law exemption.

In the *Rider* case, the spouses were living together as husband and wife at the time of the rape. No divorce or separation proceedings had been initiated, and no temporary restraining order or separation agreement existed. The wife testified that her husband had never physically abused her prior to the sexual battery. Defendant was charged with two counts of sexual battery after striking his wife on the head with a piece of metal, disrobing her, and tying her to the bed with "duct tape" in a spread-eagle position. Defendant moved to dismiss the sexual battery charges on the basis of a common-law interspousal rape exemption. The trial court granted defendant's motion on the basis that no objective manifestation of the wife's withdrawn consent to sexual intercourse with her husband existed, such as legal or physical separation of the parties. The state appealed the dismissal; the Court of Appeals reversed and remanded for prosecution. On August 30, 1984, after two hours of deliberation, a four-woman, two-man jury found defendant guilty on both counts of sexual battery. On September 19, 1984, defendant husband was sentenced to 14 years in prison.[22]

Rider is the second Florida case to address the marital rape exemption. In the 1981 case of *Florida v. Smith*,[23] the Florida Court of Appeals for the Fifth District held that no common-law exemption exists in Florida. *Smith* involved spouses who were living apart at the time of the alleged attack. Although the *Smith* court explicitly stated that its ruling was based on a finding that no common-law spousal exemption exists in Florida, instead of a finding that the victim-wife had revoked her "implied consent" by obtaining a restraining order and filing for a divorce, it was nevertheless unclear whether future courts would limit *Smith* only to separated spouses, as did the trial court in *Rider*. The Court of Appeals in *Rider* adopted a broad interpretation of *Smith* and refused to distinguish between spouses living together and those living apart for purposes of eliminating the marital rape exemption. The *Rider* decision, like the 1981 Massachusetts case of *Commonwealth v. Chretien*, expressly held that no common-law marital exemption exists even in the case of cohabitating spouses.

As in *De Stefano*, the *Rider* court found that the origin of the marital rape exemption, Sir Matthew Hale's "single statement, which stands alone, naked of citation to any authority judicial or otherwise," provides no reasonable basis for the exemption.[24] The court held that no common-law spousal exemption had ever been adopted in Florida. The court hypothesized that even if such an exemption had at one time existed in Florida, the repeal of Florida's rape law and its replacement with a "sexual battery" statute would have abolished the exemption by "abrogat[ing] any common-law assumptions concerning the crime of rape."[25]

The *Rider* court also stated that "even if we were to assume that a common law implied consent interspousal exception once existed and still exists . . . it does not follow . . . that such consent can never be withdrawn . . . ."[26] The court stated that since a spouse may terminate the marriage contract, she may terminate a "term" of the contract, or withdraw consent to sexual intercourse. The court noted that the husband's remedy for this "breach of contract" is through the courts, not through violence against his wife. Finally, in refusing to adopt a common-law exemption, the court noted that when the validity of a common-law doctrine is extremely dubious a court can take into account societal changes in determining whether to apply the doctrine.

These two Florida cases are the first in the country to expressly find that a common-law spousal exemption had never been adopted in their state. While the landmark cases, *Commonwealth v. Chretien* and *New Jersey v. Smith*, severely criticized the Hale Doctrine, they assumed that it was part of the common law. Although the marital exemption is often referred to as if it were an established common-law rule, in fact, prior to the recent cases discussed in this article, Hale's Doctrine had only been raised in the United States in two early Texas cases and had gone unchallenged.[27] Thus, the Florida cases are extremely significant in states that have no express statutory exemption, for they suggest that when courts in those states adjudicate marital rape cases they are not confronted with a choice of *applying* or *abolishing* a legitimate common-law doctrine, but with *adopting* an antiquated doctrine of dubious origins that is incompatible with 20th century legal and societal concepts of marriage and women's autonomy.

Weishaupt v. Virginia

Weishaupt v. Virginia involves a rape statute that also contains no express spousal exemption. The Virginia Supreme Court held that a common-law marital rape exemption does not apply when there has been a "de facto" end to the marriage. The court refused to decide whether a common-law exemption should be abandoned altogether, limiting its holding to the particular facts of the case.

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22. N.Y. Times, Sept. 2, 1984, § 1, at 32; Chicago Tribune, Sept. 19, 1984, § 1, at 16.
23. Florida v. Smith, 401 So. 2d 1126 (1981).

24. *Rider*, 9 Fla. Law Weekly at 887.
25. *Id.* at 888.
26. *Id.*
27. Drucker, *The Common Law Does Not Support a Marital Exemption for Forcible Rape*, 5 Women's Rts. L. Rep. 181, 182 (1979); Schulman, *Battered Women Score Major Victories in New Jersey and Massachusetts Marital Rape Cases*, 15 Clearinghouse Rev. 342, 344 (1981).

be prosecuted for rape of his wife, even when the parties were separated pursuant to court order.

Texas

Like Oklahoma, Texas amended its absolute exemption in 1983 to permit prosecution of a husband for rape of his wife once the parties are living apart, or when one spouse has initiated legal proceedings to terminate the marriage. TEX. PENAL CODE § 22.011(c). The Texas 1983 amendment also abolished the prior law's expanded "cohabitor exemption" that barred prosecution of a man for rape of the woman with whom he was living but to whom he was not legally married. Texas will no longer extend the marital "right" or privilege of wife rape absent a legally valid marriage.

Wisconsin

In 1982, Wisconsin abolished the marital rape exemption in its entirety. Wis. Stat. Ann 940.225(6) (effective May 1, 1982). Like New Jersey's, Wisconsin's law now expressly and affirmatively provides "MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant." WIS. STAT. ANN. 940.225(6). This express and affirmative elimination of the marital rape exemption is preferable to merely deleting the exemption from the statute. The New Jersey-Wisconsin method does not leave open to question (or litigation) whether the alleged common-law exemption, Hale's Doctrine, applies once the statute becomes silent as to a spousal exemption.

Wyoming

In 1983, Wyoming amended its law and eliminated the marital rape exemption from first and second degree sexual assault. WYO. STAT. §§ 6-2-301, 302, 307. Unfortunately, the exemption was left intact in Wyoming's third and fourth degree sexual assault statutes. WYO. STAT. §§ 6-2-304, 305.

Conclusion

There has been significant progress in the courts and, to a lesser extent, the legislatures in abolishing the marital rape exemption. However, since 1982 only the Wisconsin state legislature has entirely rid its laws of the marital rape exemption. Analysis of the types of legislative changes made over the last few years shows that few legislatures are willing to accept a wife's *absolute* right to control her bodily integrity and to live free from her husband's violence.

De Stefano, *Rider* and *Weishaupt* offer hope that courts will no longer tolerate marital rape. The abandonment of the exemption in these case recognizes that marital rape is "a crime of violence, not a crime of sex,"[36] and that the gravity of injury to the raped wife is the violent "assault on freedom . . . injury to autonomy, to self-esteem . . . ."[37] Both the *De Stefano* and *Weishaupt* courts scornfully reject the argument that marital rape prosecutions will injure marriages by preventing reconciliation. This view is a significant departure from the attitude that it is the woman's job to keep the family together, regardless of the cost. As the *Weishaupt* court pointed out, it is the husband's violence, not society's recognition and punishment of that violence, which is destructive to marriage.[38]

De Stefano, *Weishaupt* and *Rider* recognize that it is time that rape laws be employed to protect a woman's autonomy, not a husband's proprietary interests in his wife.

Monica Rickenberg
Joanne Schulman

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36. *Rider*, 9 Fla. Law Weekly at 887.
37. *De Stefano*, 467 N.Y.S.2d at 512.
38. *Weishaupt*, No. 830616 at 19.

SEE Computer and Research News section for results of computer research based on this article, page 816.

require that the victim have obtained or filed for a divorce, separation or order of protection. Thus, *Weishaupt* is an important step in the right direction.

The *Weishaupt* case is also significant for drawing an analogy between a woman's right to control her property and a woman's right to control her body, thereby suggesting a connection between a woman's economic position in society and male violence against women. As a practical matter the legal gains women have made in the economic sphere mean little if a woman cannot control such a basic aspect of her life as freedom from physical violence in her own home. A woman cannot exercise her legal right to maintain property separately from her husband if her actions are controlled by her husband's use or threat of physical violence. Conversely, a woman has no power to eradicate the violence in her life if she is economically oppressed. A woman's ability to escape a violent domestic situation is constrained by lack of employment opportunities, the threat of losing custody of her children because of poverty, and the inadequacy of child care and child support.

Statutory Update

As of January 1984, 28 states still expressly prohibit prosecution of a husband for rape of his wife if the parties are living together at the time of the rape. In addition, 12 states still expand the marital rape exemption to cover unmarrieds: these states bar or limit prosecution of a man who rapes the woman he is living with, but to whom he is not legally married. Eighteen states have abolished the marital rape exemption and permit prosecution of a husband for wife rape in all or most cases.[35]

These numbers do not reveal the progress that has been made over the last two years in eliminating the marital rape exemption from criminal rape and sexual assault laws. While state legislatures have been slower than courts in rectifying these discriminatory laws, legislatures have been responding to the public's demand for change. The following is a review of the legislative changes in 1982, 1983 and the first half of 1984.

California

California established a separate crime of spousal rape in 1980. CAL. PENAL CODE 262. This spousal rape law originally required that the victim-wife report the rape to a law enforcement agency within 30 days. In 1983, this reporting time period was extended to 90 days. However, there is no reporting requirement under the "stranger rape" statute. CAL. PENAL CODE 261. Thus, wives are still not receiving the same treatment and protection afforded other rape victims.

Illinois

In 1983, Illinois abolished the marital rape exemption in "aggravated criminal assault" provided the assault is reported to law enforcement within 30 days. ILL. REV. STAT. ch. 38, §§ 12-18(c), 12-14 (1983). This is a very minor improvement since the exemption is only abolished with respect to the most severe form of rape. The exemption remains applicable to all other sexual offenses even if the parties are separated or have initiated divorce proceedings. It is an "absolute bar" to prosecution of a husband for rape of his wife.

Indiana

Indiana law provides that a husband can be prosecuted for the rape of his wife if the parties are living apart at the time of the rape and a petition for annulment, divorce or separation has been filed. In 1983, Indiana amended its law to terminate the spousal exemption upon the filing of a petition for an order of protection. While this does not constitute major progress in abolishing the marital rape exemption, it does provide some much-needed protection for battered wives who often do not have the funds to hire an attorney in order to file for divorce or cannot obtain legal services assistance because of funding cutbacks.

Kansas

Kansas provided battered and raped wives with a major victory in 1983. The marital rape exemption was entirely eliminated for the crime of rape. KAN. STAT. ANN. §§ 21-3501, 3502. However, a limited spousal exemption still remains for the crime of "indecent liberties with a child under sixteen years of age," though the exemption ends if the underage spouses are living apart or have initiated some form of legal action to end the marriage, including seeking an order of protection. KAN. STAT. ANN. § 21-3503.

Louisiana

In 1984, Louisiana took a small step by eliminating the marital rape exemption from their most severe rape offense, "aggravated sexual battery." LA. REV. STAT. ANN. 14.43.2. However, a marital exemption remains applicable in all other sexual offenses and only becomes ineffective when the parties are separated pursuant to court order.

North Dakota

In 1983, North Dakota, like Illinois and Louisiana, abolished its marital rape exemption for first degree rape ("Gross Sexual Imposition"), but left the exemption intact for all other sexual offenses. N.D. CENT. ANN. §§ 12.01-20-01, 02, 12.01-03-12. However, unlike Illinois and Louisiana, the North Dakota statute includes a "voluntary social companion" exemption, which applies if defendant and victim were "voluntary social companions" at the time of the rape and the victim "at any time previously" permitted defendant "sexual liberties." N.D. CENT. ANN. § 12.01-20-02:3. The voluntary social companion exemption, also adopted by the Model Penal Code, is broader than the traditional marital rape exemption because it does not require a legally valid marriage. Instead, the exemption may apply to marital rape, cohabitant rape, and date rape. Thus, because the voluntary social companion exemption was retained, North Dakota's deletion of the spousal exemption may amount to no change at all.

Oklahoma

Oklahoma amended its statute so that, effective November 1, 1984, the marital rape exemption will terminate once the parties are living apart, or one spouse has initiated legal proceedings to end the marriage, including petitions for orders of protection. Thus, it will be possible to prosecute a husband for rape of his wife even if the parties are living together at the time of the rape, provided a legal action has been initiated. OKLA. STAT. ANN. tit. 21 1111(B), *amended by* 1983 OKLA. SESS. LAWS 1, ch. 41. These amendments constitute a major change in Oklahoma law. Prior to the amendments, Oklahoma's marital rape exemption was "absolute": a husband could never

35. For a state-by-state analysis, *see* NCOWH's Marital Rape Exemption Packet (Price: $9.00).

These three -- battering, non-battering and obsessive -- were the types of rape we identified from our interviews with marital rape victims. There may be other types; we may need to refine our conceptions. The important point is that marital rape happens in a wide variety of contexts. We need an imagery that encompasses this variety, and we can only get it by listening to the stories of the women it happens to.

The absence of these stories from the conscience of the community results in another misunderstanding about marital rape -- this one concerning its impact. People do not believe that marital rape hurts. In 1979, a nationally syndicated columnist invented some experts to bolster his own prejudices and wrote that "many U.S. jurists agree that when a husband compels his wife to engage in sex relations, she suffers relatively little of the psychological trauma incurred in rape by a stranger" (Lloyd Shearer, Parade Magazine, April 22, 1979).

(Notice how the husband only "compels his wife" while what the stranger does is rape.)

"This isn't like he's grabbing some lady off the street", argued John Rideout's defense attorney Charles Burt. "This is a woman he may have made love to hundreds of times before." In other words, if he had made love to her hundreds of times before, how traumatic could one more time be?

Opinions like this betray a fundamental misunderstanding of the trauma of rape in general as well as the trauma of marital rape in particular. Rape is traumatic not because it is with someone you don't know, but because it is with someone you don't want -- whether stranger, friend or husband.

Burt's idea is akin to saying that if your business partner empties your joint account and runs off to Venezuela, it shouldn't hurt, because after all, you'd written him hundreds of checks before.

Rape is the intimate violation of a person's trust and autonomy. Prior intimate contact only makes the violation that much more so.

In fact the studies that have looked at this question empirically have indeed found that the victims of marital rape do suffer greater and longer term trauma than other rape victims. This finding is not surprising to those who have talked to marital rape victims and have come to recognize the three special injuries of marital rape: the betrayal, the entrapment and the isolation.

More so than victims of any other kind of rape, the victims of marital rape suffer a profound betrayal. Among the women we interviewed, the fact that someone whom they had loved and needed could violate them in such an intimate way destroyed their ability to trust others. "I thought so highly of him and he turned out to be a rapist," said one woman. The experience also sapped their confidence in themselves and their faith that they had the capacity to choose trustworthy companions. Years later, many of those women found it impossible to contemplate intimacy with a man. This is a component to marital rape that has no parallel in stranger rape.

A second component that makes marital rape different and more traumatic than other forms of rape is the entrapment. Most marital rape victims are raped not just once but many times. Half of our interviewees had been sexually

assaulted twenty times or more by their husbands. They lived for months, sometimes years, with ongoing violation. Many grappled with never-ending anxiety about when the next forced sex episode might occur. This took its toll in the form of chronic terror, emotional numbing, involuntary panics, and repetitive nightmares that often lasted for years after the relationship had ended and the threat of rape had gone. In the sexual sphere, victims suffered from flashbacks and inability to engage in sex. The corrosive impact of marital rape could be summed up thus: when you are raped by a stranger you have to live with a frightening memory. When you are raped by your husband you have to live with your rapist.

Finally, while all rape victims suffer shame and stigma, few suffer the total isolation of marital rape. No relatives or friends commiserated with those women about the pain. No police or court confirmed the judgement that they had been wronged. In their isolation they usually blamed themselves, and saw themselves as inadequate and different. It was a profound psychological scar that was difficult to erase.

It is to erase this scar of isolation that I think we owe our first priority. The debate about criminalizing marital rape speaks to many issues: justice, fairness, equality, deterrence of crime, and retribution against offenders. Yet the issue that is paramount for me is compassion for victims.

We must reach out to the victim of marital rape and extend legitimacy to and compassion for what they have suffered. Doctors need to be aware, for example, that it is not a simple matter for some women to avoid sex post-operatively, even though their recovery urgently requires it. Family planning agencies need to take into account that in some women's marriages, contraceptives like a diaphragm will not be adequate protection.

Attorneys need to recognize and alert divorcing women to the particular vulnerability they face from embittered husbands during the period following a separation. Marriage counselors need to know that the unspoken and unacknowledged grievance plaguing many wives is that their husband sexually assaults them.

(Incidentally, it is interesting to note that in the whole 25 year literature on sex therapy and marital sex, one can search in vain for any reference to the problem of marital rape, an experience that may be occurring to one in ten wives.)

Marital rape has been a non-problem for too long. Unfortunately, when people suffer from non-problems, they tend to become non-persons, both in their own eyes and in the eyes of others. Making marital rape a crime will put a few offenders out of our community, but it will bring a whole lot of victims back in. The invitation is long overdue.

#6

Address to the New York County Lawyer's Association,
May 1, 1984

MA 3

May, 1984

MARITAL RAPE: THE MISUNDERSTOOD CRIME

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Marital rape is a crime with a name, but without a reality. Even where it exists in our legislation, it does not exist in our imagination. Despite debates in the congress and in the courts, people have only the vaguest and most misleading picture of what it is. The stories of the victims of this crime -- victims humiliated by their assailants, ashamed among their closest friends, deprived of the protection of the law, and ignored by the professionals -- these stories have not yet touched the conscience of the community.

It was to hasten this process that my colleague Kersti Yllo and I recruited and interviewed fifty women who had been sexually assaulted by their husbands. The women were ordinary women, most of them clients at family planning agencies who were asked as part of their regular medical history if they had ever been sexually assaulted by their partner. Many were telling their stories for the first time.

The depth of popular ignorance about the problem of marital rape runs deep. When we asked groups of students, for example, to invent vignettes of marital rape, one wrote, "He wants to. She doesn't. He wins". Can you imagine a stranger rape so described: "He wants to. She doesn't. He wins." No; the imagery of stranger rape has knives and dark alleys and terror and violence and degradation.

So does marital rape! People are apt to think of marital rape, if they think of anything at all, as a bedroom squabble over whether to have sex tonight. No wonder they rate it in surveys as being about as serious an offense as driving while drunk. But marital rape does have brutality and terror and violence and humiliation to rival the most graphic stranger rape.

Among the fifty women we interviewed:

--one had been raped at knifepoint by a husband who held her up against the wall and threatened to kill her.

--one was jumped in the dark by her husband and raped in the anus while slumped over a woodpile.

--one was gang raped by her husband and his friend holding blackjacks after they surprised her alone in a vacant apartment.

--one had her baby kidnapped by an estranged husband who compelled her to have sex as a condition for returning the child.

--one had a 6 centimeter gash ripped in her vagina by a husband who was trying "to pull her vagina out".

None of these atrocities (and there were others of equal brutality) were ever reported to the police or to a newspaper. Some were never reported to anybody.

And these were marital rapes. If other people had these images inscribed in their memories when they thought of marital rape in the same indelible way that my colleague and I do, I do not think we would hear nearly so much nonsense about this problem.

However, this imagery of marital rape is not the whole reality either. From a survey we did of 521 women in Boston and from one Diana Russell did of 930 women in San Francisco, we estimate that marital rape is amazingly frequent -- occurring to as many as 10 to 14% of all married women. When talking about a problem of these dimensions, it is no more fair to say that marital rape is always a savage attack than it is to say that it is always a bedroom squabble. We are talking about a spectrum of which both of these are a part.

To make some sense of this spectrum, my colleague and I, after carefully analyzing the cases of the women we interviewed, found that it was useful to divide them into three broad categories. We decided to call these three categories battering rapes, non-battering rapes and obsessive rapes.

Battering rapes were the most brutal and included most of the incidents I listed earlier. They occurred in relationships where, in addition to the sexual abuse, there was a large amount of physical abuse. These husbands tended to have problems with alcohol and drugs. They had enormous reservoirs of anger which they vented on their wives and often other people in their environment. The rapes tended to take place in capricious and unpredictable circumstances, much like the other violence. They seemed to have little to do with sexual issues per se. In fact, many of these women said they made themselves sexually available whenever their husband wanted them. Rather, these men seemed to be motivated by an intense desire to punish, humiliate, degrade, and retaliate against their wives using rape as the vehicle. (About forty-five percent of the women we interviewed suffered from battering rapes.)

The non-battering rapes were substantially different. They occurred in more middle class marriages where there was much less of a history of violence and abuse. The immediate precipitant of these rapes was more likely to be a specifically sexual grievance, for example, over how often to have sex or what kinds of sex. The force involved was often more restrained, enough to gain sexual access, but not enough to cause severe injury. These rapes seemed to be motivated less by anger than by a desire to assert power, establish control, teach a lesson, show who was boss. (Another forty-five percent of the rapes were of this sort.)

Finally, there was a third kind of marital rape we uncovered in about 10% of the situations that we called obsessive rapes. In these relationships, the husbands had unusual sexual preoccupations. Most were obsessed with pornography; they wanted their wives to help them make it. Most were obsessed with their sexual problems; they were afraid of being impotent or homosexual. Often they had highly structured rituals about sex. They could only get aroused if their wives were in a certain position, or if they touched them in a certain way, or if they "staged" a rape. There was a sense that many of these men needed violence or struggle in order to have sex. They found the humiliation very stimulating. The women felt as though they were being used as masturbatory objects. There was a definite sadistic component to some.

3. *Fact or Fiction?* "MARITAL RAPE IS A BIZARRE AND UNUSUAL ACT AND DOESN'T NEED LEGISLATIVE ACTION."

   As a matter of fact, most experts consider rape to be the most underreported of all crimes and marital rape even more so. Over a third of women who appear at battered women's shelters report being sexually assaulted by their husbands. It is seldom discussed. Humiliated and ashamed, marital rape victims don't talk about it. They don't report it because the law does not help them.

4. *Fact or Fiction?* "WHEN A WOMAN MARRIES, SHE CONSENTS TO SEXUAL INTERCOURSE WITH HER HUSBAND."

   As a matter of fact, sexual expression in love is one thing. Forced, brutalized sex is another. No one consents to violence by marrying. Under current law prosecution is impossible for even the most brutal rapes in marriage.

5. *Fact or Fiction?* "IF PROSECUTIONS ARE ALLOWED FOR MARITAL RAPE, A LOT OF INNOCENT HUSBANDS WILL HAVE RAPE CHARGES FILED AGAINST THEM BY ANGRY, VENGEFUL WIVES WHO HOPE TO BARGAIN FOR A BETTER PROPERTY SETTLEMENT IN A DIVORCE ACTION."

   As a matter of fact, this myth is built on the ill-founded belief that women are innately vengeful and willing to go through the tortures of a courtroom trial in order to "get back" at a man, and that somehow women should be treated as less credible victims of crime than others. Actually, there are many other types of complaints which a woman could file for retaliation that would require less public self-exposure and trauma. Further, our legal system has built in mechanisms to determine the merits of a complaint. Police investigations, prosecutor discretion, and jury deliberations are employed to determine the truth or falsity of other allegations. Why should marital rape be treated any differently? Finally, no such misuse has been documented by the states that have eliminated immunity of spouses from prosecution for rape. Only the most extremely brutal and horrifying incidents of marital rape have been reported.

National Center on Women & Family Law

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MARITAL RAPE FACT SHEET*

1. *Fact or Fiction?* "MARITAL RAPE ISN'T AS SERIOUS AS RAPE BY A STRANGER--IT'S JUST A WOMAN NOT BEING IN THE MOOD AND HER HUSBAND INSISTING."

   As a matter of fact, marital rape is often just as violent, just as degrading, and oftentimes more traumatic than rape by a stranger. It is perpetrated with knives, at gunpoint, repeatedly, brutally, in front of others, and most often is the final violent act culminating a series of physical abuses. One woman has reported being beaten and raped by her husband virtually every day for six months, anally raped 9 or 10 times. He told her that, if she ever tried to leave, he would kill her. In terror she fled to another state, changed her name, and lived there for a year in cognito.

2. *Fact or Fiction?* "MARITAL RAPE ISN'T OFFENSIVE--AFTER ALL, A WIFE HAS HAD SEX WITH HER HUSBAND BEFORE, WHAT'S ONE MORE TIME?"

   As a matter of fact, a woman raped by a stranger has to live with the memory of that experience. A woman raped by her husband has to live with her rapist. Many wife victims, trapped in a reign of terror, experience repeated sexual assaults over a number of years. What happens to a capacity for intimacy when the person who has promised to love and protect, and on whom one may be economically dependent, commits such a brutal and violent violation?

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* Prepared and distributed by the Pennsylvania Commission on the Status of Women.

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9. *Fact or Fiction?* "MARITAL RAPE LAWS WILL DESTROY MARRIAGES BY PREVENTING ANY POSSIBLE RECONCILIATION."

As a matter of fact, isn't a marriage in which a husband rapes his wife and she presses charges already destroyed? Withholding justice and equal protection to try to hold together such a marriage is an unrealistic and improper goal for the criminal law. The law now protects a raping husband rather than a victim wife, and women can be coerced into staying in violent marriages. Should the law encourage such forced cohabitation?

10. *Fact or Fiction?* "SINCE SO FEW CASES ARE BROUGHT TO TRIAL, WHY BOTHER WITH A MARITAL RAPE LAW?"

As a matter of fact, the law protects either the victim or the rapist. Husbands who commit acts of violence against wives now receive special protection from the law in Pennsylvania. Should such special protection more rightly belong with the victim? Passage of H.B. 1122 would call attention to the problem, let the victims know there can be help, and, by removing society's sanction for such behavior, work to deter it.

6. *Fact or Fiction?* "MARITAL RAPE IS SIMPLY ONE SPOUSE'S WORD AGAINST THE OTHER, HENCE IT WILL BE DIFFICULT TO PROSECUTE."

   As a matter of fact, when has difficulty to prosecute determined what a crime is? Treason, conspiracy, child abuse, and incest are difficult to prove, but there is no outcry to decriminalize them.

7. *Fact or Fiction?* "THERE ALREADY EXIST REMEDIES FOR MARITAL RAPE--A WOMAN CAN FILE ASSAULT CHARGES OR GET A DIVORCE."

   As a matter of fact, all rapists assault their victims. Rape is a crime different from assault. That is why special rape laws exist. Rape involves a special humiliation and special violation. Assault is a less serious crime, its penalty less a deterrent. Even though a woman might escape as a victim by filing for divorce, should the committer of the criminal acts escape punishment for them? An appropriate deterrent to this type of violent behavior is not now available.

8. *Fact or Fiction?* "MARITAL RAPE LAWS WOULD HAVE THE STATE MEDDLING IN PEOPLE'S BEDROOM AFFAIRS."

   As a matter of fact, the state is meddling in the bedroom whether there is a marital rape law or not. In one case the state allows husbands to rape their wives. In the other, the state protects wives from this type of violence. Should murder and assault between spouses be decriminalized just because it's a family affair? A husband should no more fear criminalization of marital rape than a parent fears laws on incest or child abuse. The law should condemn a brutal, hostile, revengeful, hateful, and anti-social act whether it happens within a marriage or without.

(over)

MA4

June, 1984

THE PROSECUTION OF MARITAL RAPE:

THE CALIFORNIA EXPERIENCE #1

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Carol Richards brought these articles back from a conference she attended. I thought these were the best of the lot

Barbara Nikolos

In the debate over removing the spousal exemption to rape, much concern has been expressed over how or even whether a law criminalizing rape would work.(#2) Opponents of the change have raised several different spectors of insidious consequences that would ensue if marital rape is criminalized. For example, they have warned that deleting the spousal exemption would risk flooding the criminal justice system with frivolous complaints brought by "vindictive" wives.(#3) They have also raised the fear that cases brought under such a law would be impossible to prosecute, either because wives would be unreliable witnesses or because the cases would boil down to her word against his.(#4) In short, they have predicted that marital assault prosecutions would bog down and frustrate the criminal justice system.

Until recently, arguments over these claims have been mostly hypothetical. There has been little empirical evidence against which to judge them. However, now that several states have eliminated the spousal exemption, and have gained experience about what happens once the exemption is removed, it is possible to see how a spousal rape law works in actuality.

A state well situated for a study of the effects of criminalizing marital rape is California. California changed its law as early as January, 1980, and has had a total of more than four years experience without the spousal exemption. As the most populous state in the country, California has also generated a large number and variety of spousal rape cases. Moreover, since the change of the law was hotly debated and widely publicized in California, public attention to marital rape cases has been relatively high there, making information on the subject easier to collect.

On the other hand, using California to study the operation of marital rape prosecutions has some drawbacks. California's legal situation with regard to marital rape is not entirely parallel to that of other states which have criminalized rape between a husband and a wife who are still living together. When California changed the law on spousal rape, the legislators did not merely delete the spousal exemption. Instead, they drafted a totally new section of the criminal code on the matter of spousal rape. One important special condition attached to the California spousal rape law is that victims were limited (until recently) to bringing such charges within 30 days of their occurrence. Another is that marital rape, unlike non-marital rape, can be a misdemeanor rather than a felony. Nonetheless, a great deal of valuable insight into the question of whether marital rape is a viable legal concept can be gleaned by looking at the situation in California.

GATHERING DATA

Gathering the needed data on the operation of the marital rape law in California has not been a simple task. Unfortunately, the state Bureau of Criminal Statistics does not keep very thorough or very detailed information on marital rape prosecutions in spite of the fact that an important public policy issue is at stake.(#5)

So the staff of the National Clearinghouse on Marital Rape (NCMR) has been forced to compile data on its own -- a frustrating and cumbersome task. Marital rape cases have been identified in a variety of ways -- but primarily through a newspaper clipping service. The staff of the Clearinghouse, after hearing about a marital rape prosecution, made contacts with the journalists, attorneys, prosecutors, court officials, probation officers and sometimes rape crisis

workers familiar with the case, in an effort to get as much detail as possible about the events of the case, the backgrounds of the offender and the victim, and the disposition of the case within the legal system. District attorneys were generally the best and most reliable sources of information. Occasionally, these officials referred NCMR staff to other cases which had not been identified through the news clipping service.

Altogether, NCMR staff identified 39 cases of marital rape which came to the attention of the police or courts from January, 1980 through December, 1981. This is not necessarily a complete inventory of all such cases, however.

One piece of evidence suggests it is fairly thorough, though. The state Burerau of Criminal Statistics did compile what it believed to be a complete tally of all arrests for marital rape in 1980. This official tally showed 11 arrests. For the comparable time period, the NCMR inventory showed 17 cases that even the official reporting statistics did not pick up.

Nonetheless, it must be said that although NCMR believes it to be fairly complete, there is no way of knowing how totally complete the NCMR inventory of rape cases is. Moreover, without the information about its completeness, we cannot vouch for its representativeness either. There is every reason to believe that the cases not identified, if there were any, would be less sensational cases that did not proceed as far in the criminal justice system.

In other words, the cases that were identified would be more brutal, contain more evidence, and be more likely to result in a hearing or trial that would bring it to greater public attention than other cases. Whether this group of cases is biased in this way, we do not know.

With these possible caveats in mind, we present the information on the California cases. One advantage of generating data through calls to District Attorneys, newspapers and so forth, rather than through the state reporting system, was that a great deal more information could be gathered. The NCMR, by diligent sleuthing, was able to inform itself about age, race, occupations of the husband and wife, and the nature of the incident in addition to all the data about the court disposition.

NATURE OF THE CASES

A first thing to note about the cases is that they were, on the whole, extremely brutal. Especially brutal cases are probably more apt to end up on the police blotter and in the newspaper, and that may account in part for the array of incredible violence illustrated in the chart. The cases include one where a woman was raped with a crowbar and a sixteen inch tire iron and then had her breasts slashed with the same instruments. In another, a woman complained that her husband forced her to have sex with other men and dogs. In still another, the fugitive husband murdered the victim before he could be apprehended for her rape. The use of knives and guns was a common feature among these cases and several included very severe beatings.

A second important feature of the cases was that a majority of the rapes occurred between spouses who were separated, sometimes very recently so. In only 18 percent of the cases were the couple still living together (See Table 1). It is not surprising that cohabiting couples constitute a minority of cases. Wives who are still living with their husbands no doubt have a much more

difficult time seeing what happened to them as a rape and choosing to present such charges to the police. Also, a woman who is living in a separate household would expect less skepticism and ridicule on the part of police when she made such a charge. And it may be easier for such women to establish evidence of force and non-consent. As time goes on, normative standards change, and women become more aware of their rights, the proportion of cases involving cohabiting spouses may increase.

The deletion of the exemption for cohabiting spouses also has a "multiplier" effect, we suspect, on the prosecution of estranged husbands. When the exemption for cohabiting spouses is removed, there is generally a great deal of publicity about the problem. Prosecutors, police officers and women in general learn about the possibility of charging spouses with rape. This no doubt leads to an increased number of cases involving estranged husbands as well as cohabiting husbands.

Incidentally, there are some interesting similarities among the cases of women raped by estranged husbands. A number of them were kidnapped before they were raped, driven somewhere in a car against their will or taken somewhere at gunpoint. Others were deceived by husbands who told them they wanted to see them in order to talk with them about their children or about their finances.

THE OFFENDERS

The NCMR researchers were able to gather some valuable information about the offenders as well as about the court disposition (See Table 1). The offenders were, by and large, young. Sixty-four percent were under 30 and 33 percent under 25. This corresponds to what we found in our interview population of marital rape victims.(#5) Marital rape coming to public attention is predominantly a younger man's crime.

Occupationally, the offenders whose marital rapes come to public attention were also a lower status group. Large numbers, 31 percent, were unemployed, and another 31 percent were blue-collar workers. This may not tell us anything about marital rape in general, however. We have to remember that is it typically men from lower social classes who are the clientele of the criminal justice system. Well-to-do criminals tend to be more successful at evading detection and prosecution. Nonetheless, this inventory of cases shows that some middle-class marital rapists are being prosecuted. The law is being applied to a spectrum of husbands, not just one class.

The racial and ethnic breakdown of the offenders shows a distribution roughly typical of the California population as a whole. Of those whose race we could ascertain, about two-thirds were white and the remaining third divided between Black and Hispanic.

DISPOSITION OF CASES

The most interesting information we can glean from these cases is not so much about the phenomenon of marital rape itself but rather about how the phenomenon is handled in the criminal justice system. The cases are certainly not a representative set of marital rapes, the vast majority of which we know are never reported. But they are in all likelihood a representative sample of cases that make their way into the legal system. What happens to marital rape

cases once they arrive there? (See Table 2)

First of all, a substantial number of cases get dropped before they go very far, often before trial, and sometimes before arraignment. In 28 percent of the cases in this sample the charges were dropped.

Unfortunately, the information on why the charges were dropped is not among the most reliable in the chart. Many times the reason given depends on the perspective of the person giving the information. District attorneys often choose to drop charges because they think they do not have a good case but then blame it on lack of cooperation by the wife. From the wife's perspective, she may see the dropping of charges as the decision of the D.A. The real state of affairs is difficult to determine.

It is certain that in some cases charges are dropped at the request of the wife. Where NCMR researchers could ascertain the reasons the wife gave for such requests they included such things as: 1) the wife was pressured by relatives of the offender to drop the charge, 2) the wife did not want to face the embarrassment of a trial, 3) the wife forgave her husband and wanted him back or 4) the wife got what she most wanted (divorce and protection) in other ways.

Of course, another common reason for wives dropping charges, especially in wife abuse cases, is fear of further retaliation by the husband.

It does not appear from the available information that the cases where the charges were dropped were frivolous or fraudulent. Some of these dropped charges involved severe assaults, replete with injuries and winesses. In fact, one involved the woman who was raped and battered with the tire iron.

The remaining cases (72 percent) went on for prosecution, and of these a remarkable 89 percent (25 out of 28) resulted in a conviction. There were several routes to a conviction The most common was a simple guilty plea on the part of the offender: 60 percent (17 of 28) of the offenders pleaded guilty, usually to the charge of spousal rape itself. In a little less than a third of such pleas, though, the charge was bargained down to another charge, usually the less onerous one of assault or battery.

In 11 cases the offender pleaded not guilty and went to trial. Of these, eight resulted in a guilty verdict -- seven by a jury and one by a judge. There were three non-guilty verdicts handed down to marital rape charges, two by a jury and one by a judge. (Actually in the one jury acquittal, there were two jury trials: one ended in a deadlock, the other in an acquittal.)

SENTENCING

All together, 25 of the 28 cases brought to trial in the two year period resulted in a guilty finding, and all offenders received sentences of some sort. The sentences were not particularly severe. Ten of the convicted men received no jail term whatsoever. Most of these got off with suspended sentences and fines. Some were remanded to counseling and one was ordered to do community service.

Fifteen of the 25 did go to jail or prison, however, with sentences ranging from 30 days to 16 years. The severe sentences tended to be meted out only when other crimes had been committed in tandem with the marital rape. In the case

where one judge imposed a 16 year sentence, the offender had abducted and raped another unrelated woman during the same episode where the spousal rape had occurred. A man who held his son hostage with a sawed off shotgun was sentenced to four years. The longest sentence meted out for a marital rape uncomplicated by other crimes and weapon violations was three years. The maximum possible term for felony spousal rape is eight years.

IMPLICATIONS: NO FLOOD OF CASES

From an analysis of these 39 cases, it is possible to draw some important conclusions about how the criminal justice system deals with the issue of marital rape once it is criminalized. They are conclusions which contribute directly to the debate on policy which for the last few years has been taking place in legislatures and courts.

First, there is little evidence that the courts will be swamped by a large number of marital rape complaints. Thirty, forty or even fifty cases reaching the courts over a two-year period in a state of 20 million people is a miniscule burden on the system. In the case of California, the load works out, as far as we can tell, to be approximately one case per year per million inhabitants. At that rate, most states in the country can probably expect less than a dozen prosecutions per year following the criminalization of spousal rape. If we are talking about states where the exemption only applies to a husband and wife living together, the increase in cases will be even smaller.

As to the matter of these cases being non-serious, the opposite would appear to be true. If California's experience holds true elsewhere, the type of cases that will come to court will tend to be the most blatant, the most brutal and the most heinous.

Of course, these conclusions only apply to cases in the courts. Those opposed to criminalizing marital rape also are concerned about the police being inundated with a large number of frivolous complaints. From the data we have collected, we cannot draw any conclusions about the experience of the police. However, we are skeptical that the police experience in California has been much different.

IMPLICATION: DROPPING OF CHARGES

Clearly a large number of marital rape charges later get dropped. As in the case of wife abuse, where similarly large numbers of cases are dropped, there is controversy about why the attrition rate is so high. Police and prosecutors tend to blame the wives for being fickle. Advocates for battered women tend to blame the criminal justice system for being insensitive.

The key problem, however, is not in determining who is to blame but in improving the level of mutual cooperation between victims and the criminal justice system. Where special victim assistance programs have been set up around the country, for example, and where prosecutors have learned more about the dilemmas facing victims, this level of cooperation has increased.(*7)

If the cases noted here are any indication, women do not drop charges because they were trumped up in the first place. Rather, they retract these charges after having suffered from fear, from embarassment, or from pressure by

relatives. Sometimes sensitive and on-going personal contact between the prosecutor and the victim is enough to prevent case attrition. As prosecutors recognize marital rape as a legitimate crime and gain more experience with marital rape cases, we expect that their record will improve as they learn how best to work with victims to insure their participation.

IMPLICATION: HIGH CONVICTION RATE

Perhaps the most impressive finding from our analysis of the California experience is that, contrary to what many opponents have claimed, marital rape prosecutions can be very effective indeed.

The number of convictions as a percentage of the number of cases brought in California was actually extraordinarily high. In 64 percent of all cases where a charge was lodged, a conviction was obtained. In fully 89 percent of all cases which reached the prosecution stage a conviction was obtained.

Compare this, for example, to non-marital rape prosecutions. According to statistics for 1980 gathered by the California State Department of Justice, of 3,126 cases of forcible rape where arrests were made, 1,368 or 44 percent resulted in a conviction. Of all forcible rape cases reaching actual prosecution (2,026), the percentage resulting in conviction was 67 percent.(*8) In short, the prosecution of marital rape cases in California was more likely to result in success than the prosecution of non-marital rape.

This is an extremely important finding since a main concern of prosecutors is that their time will be wasted in pursuing marital rape cases. It is often imagined that the prosecution of such cases will be hampered by lack of evidence, doubt about whether sex was forced or consensual and prejudice among jurors against the idea of convicting a husband on the word of his wife. Based on California cases, these concerns do not seem to be well founded. Marital rape cases, once they get to the stage of prosecution, do not seem to be extraordinarily time consuming. In three-fifths of the cases, the offenders pleaded guilty (this was true of only one-fifth of the ordinary rape cases in Philadelphia), avoiding the necessity of a trial altogether. Hence the system actually worked very efficiently from a prosecutor's point of view.

It is significant that so many offenders pleaded guilty to the spousal rape charge. Defendants and their attorneys did not automatically think that it was an easy charge to beat. Nor did prosecutors. Otherwise, they might have been more likely to bargain away the spousal rape charge. The prosecutors used the charge and they convinced the defendants to plead guilty to it. This shows that the charge of spousal rape can be an effective piece of ammunition in the prosecutor's possession.

The number of guilty pleadings meant that there were rather few jury trials involving marital rape charges, making it harder to tell from the California experience how juries react to marital rape. However, there was a small amount of evidence. Of the nine jury trials, seven ended in convictions, showing that juries are not averse to bringing in a conviction against a husband, as some might have thought. Moreover, the fact that there was at least two acquittals, too, may relieve others of the fear that no man will ever receive a fair hearing in front of a jury on such a charge -- a difficult position for us to believe given the amount of popular skepticism that exists about marital rape.

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#1. This paper is based on research conducted by Laura X, Jodie Berg, Sumaya Newland, Roxanne Alaniz, Shelly Barrios, Laurie Smelter, and Cathy Stephenson at the National Clearinghouse for Marital Rape in Berkeley, California. We are greatly indebted to them for their diligent efforts.

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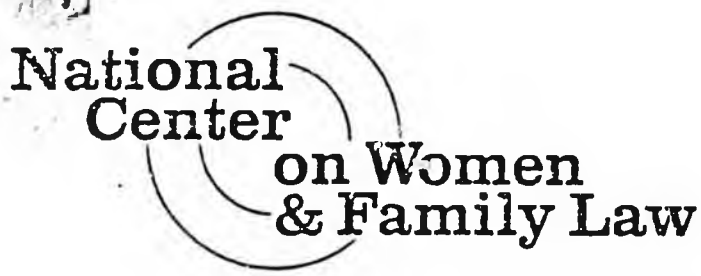

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Enclosed please find the materials that you requested from our Center.

Sincerely yours,

Joanne Schulen

Staff of the National Center
on Women and Family Law, Inc.

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COURT OF APPEALS
STATE OF NEW YORK

Twenty Minutes Argument
Requested by Sarah Wunsch
(212) 674-3303

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PEOPLE OF THE STATE OF NEW YORK,

Respondent,

v.

MARIO LIBERTA,

Defendant-Appellant.

----------X

BRIEF AMICUS CURIAE OF
ALBANY COUNTY RAPE CRISIS CENTER; ALTERNATIVES FOR BATTERED WOMEN, INC.; CAROL BELLAMY, NEW YORK CITY COUNCIL PRESIDENT; BROOKLYN WOMEN'S ANTI-RAPE EXCHANGE; BUFFALO CHAPTER OF NATIONAL ORGANIZATION FOR WOMEN; CENTER FOR THE ELIMINATION OF VIOLENCE IN THE FAMILY, INC.; COALITION FOR ABUSED WOMEN, INC.; ERIE COUNTY CITIZENS' COMMITTEE ON RAPE AND SEXUAL ASSAULT; FAMILY ADULT SHELTER; ITHACA RAPE CRISIS, INC.; JEFFERSON COUNTY WOMEN'S CENTER, INC.; LONG ISLAND WOMEN'S COALITION; METROPOLITAN ASSISTANCE CORPORATION (VICTIM SERVICES/TRAVELERS AID); NATIONAL ASSOCIATION OF SOCIAL

[continued on inside cover]

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Dated: September 18, 1984
New York, New York

WORKERS, NEW YORK STATE CHAPTER; NATIONAL ASSOCIATION OF SOCIAL WORKERS, NASSAU DIVISION; NATIONAL CLEARINGHOUSE ON MARITAL RAPE; NATIONAL ORGANIZATION FOR WOMEN, NEW YORK STATE; NATIONAL ORGANIZATION FOR WOMEN, NEW YORK CITY CHAPTER; NEW YORK CITY ADVISORY TASK FORCE ON RAPE; NEW YORK CITY COMMISSION ON THE STATUS OF WOMEN; NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE; NEW YORK WOMEN AGAINST RAPE; OLDER WOMEN'S LEAGUE, NASSAU CHAPTER; THE PARK SLOPE SAFE HOMES PROJECT; PLANNED PARENTHOOD OF SCHENECTADY & AFFILIATED COUNTIES, INC.; THE RAPE CRISIS COALITION OF EASTERN NEW YORK; RAPE CRISIS SERVICE OF PLANNED PARENTHOOD OF ROCHESTER AND MONROE COUNTY, INC.; ROCKLAND FAMILY SHELTER; SCHENECTADY YWCA SERVICES TO FAMILIES IN VIOLENCE; TOMPKINS COUNTY TASK FORCE FOR BATTERED WOMEN; UNITY HOUSE FAMILIES IN CRISIS PROGRAM; VICTIMS INFORMATION BUREAU OF SUFFOLK, INC.; WOMEN AGAINST PORNOGRAPHY; WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK; YONKERS WOMEN'S TASK FORCE, INC.; YWCA HALL HOUSE AND RAPE CRISIS SERVICE; YWCA OF BUFFALO AND ERIE COUNTY

Table of Contents

Table of Cases and Authorities

Cases | Page

Constitutions and Statutes

Other Authorities

INTEREST OF AMICI CURIAE

Amici are 36 national, New York State, and local organizations and an individual representing the interests of women. Exhibit A contains the Statements of Interest of amici. Many of them provide shelter, counseling and advocacy for rape victims and battered women from all social and economic classes. Amici have first hand knowledge of the serious physical and psychological injury to married women caused by New York's forcible marital rape and sodomy exemptions at issue in this case. Amici share the belief that the exemption of forcible marital rape and sodomy from criminal penalty licenses husbands to rape their wives, deprives married women of their fundamental rights to privacy, bodily integrity and equal protection, and perpetuates the historical inferior legal status and stereotypical role of women in marriage. Amici represent the only voice for married women whose rights are directly affected by this case and urge the Court to hear this voice and take cognizance of their claims in ruling on the constitionality of the forcible marital rape and sodomy exemptions.

Introduction

This appeal challenges the constitutionality of New York's criminal forcible rape and sodomy laws which exempt women married to the perpetrator from their protection.[1] Amici submit that the

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[1] Penal Law §130.35(1):

A male is guilty of rape in the first degree when he engages
(Footnote Continued)

exemption should be struck down, but that the defendant's conviction should be affirmed.

The defendant-appellant, Mario Liberta, a married man treated as unmarried by virtue of a court order of protection directing him in effect to live apart from his wife, argues that he is deprived of the equal protection of the laws by these statutes since other married men are permitted to forcibly rape and sodomize their wives while he is not permitted to do so. (Appellant's Brief, pp. 15-19.) As to his claim, the People need prove a rational basis for treating Liberta as an unmarried rapist and not punishing married rapists. People v. Onofre, 51 N.Y.2d 476, 491-92, 434 N.Y.S.2d 947, 953 (1980).

(Footnote Continued)

in sexual intercourse with a female ... by forcible compulsion.

Penal Law §130.00(4):

"Female" means any female person who is not married to the actor.

[Not married is defined as lack of a marital relationship recognized by law or as the living apart of a husband and wife and the existence of a court order requiring the husband and wife to live apart or a separation agreement specially acknowledged providing that rape may be charged.]

Penal Law §130.50(1):

A person is guilty of sodomy in the first degree when he engages in deviate sexual intercourse with another person ... by forcible compulsion.

Penal Law §130.00(2):

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and penis, or the mouth and the vulva.

But before this Court rules upon the showing necessary to uphold the classification of this rapist as unmarried, the Court is urged to acknowledge the real victims of this statutory classification -- married women who have no protection against forced violent sexual assaults by their husbands.[2]

For the woman who is not yet divorced, for the wife who cannot afford to go to court or is in the process of obtaining a court order, for the woman who by religious or other belief continues to live with her husband, and for every wife who, for reasons of her own, wishes on a particular occasion not to engage in sexual activity -- as to these women, the statutes deprive them of the fundamental right to privacy and control of their bodies and deny them the equal protection of the laws. People v. Onofre, 51 N.Y.2d 476.

The existence of a criminal law which excludes a category of people from its protection is an anomaly in our modern legal system. Indeed, Justice White in Linda R.S. v. Richard D., 410 U.S. 614, 621 (1973) (dissent), posed a hypothetical law to which there would be universal opposition: "If a State were to pass a law that made only the murder of a white person a crime, I would

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[2]This Court may consider the claims of the women victims on the assertion of the defendant that the exemption is unconstitutional. The issue "raised is of sufficient public importance" that the merits should be reached "despite [his] individual lack of standing." People v. Parker 41 N.Y.2d 21, 15, 390 N.Y.S.2d 837, 840 (1976). Cf., People v. DeStefano, 121 Misc.2d 223, 467 N.Y.S.2d 506, 509 (Suffolk Co. Ct. 1983) (equal protection rights of married women considered in challenge by male defendant to marital rape exemption).

think that Negroes as a class would have sufficient interest to seek a declaration that the law invidiously discriminated against them." There was, however, an era when the criminal laws regularly operated in this fashion For example:

> The criminal offence of assault and battery cannot, at common law, be committed on the person of a slave. For notwithstanding for some purposes a slave is regarded in law as a person, yet generally he is a mere chattel personal, and his right of personal protection belongs to his master, who can maintain an action for trespass for the battery of his slave.

State v. Maner, 2 Hill's S.C. Rept. 453 (1834), cited in J. Wheeler, A Practical Treatise on the Law of Slavery (1837) (reprinted Negro Universities Press, 1968).

> [T]he violation of the person of a female slave, carries with it no other punishment than the damages which the master may recover for the trespass of his property.

T.R. Cobb, An Inquiry into the Law of Negro Slavery in the United States of America (1858) (reprinted Negro Universities Press, 1968), §107 at 99.

> Whoever shall unlawfully and carnally know any white woman against her will or consent, or by force, or while she is insensible, shall be guilty of rape, and shall be punished by confinement in the penitentiary for a period of not less than ten nor more than twenty years, or by death, in the discretion of the jury.

Kentucky Laws, Adj. Sess., 1869 (chap. 1659), p.52, cited in K. Stampp, ed., The Civil Rights Record: Black Americans and the Law, 1849-1970 (1981) at 81 (emphasis added).

Today, we look upon these laws with deep shame. They excluded from the protection of the criminal law slaves and black women even after the Civil War. Just as the slave codes condoned brutality against one class of people by calling the victims chattel or property, and by cautioning against state interference with a private relationship between master and slave, so does the wife rape exemption at issue in this case. It is derived historically from a conception of women as inferior beings, the

property of their husbands, lacking a separate legal identity, or by law presumptively consenting to all acts of their husbands against them. Note, The Marital Rape Exemption, 52 N.Y.U. L. Rev. 306 (1977) (hereinafter "NYU Note"). The modern attempts to justify such laws are but a new variant on the old theme.

One New York trial court recently found the wife rape exemption unconstitutional as a vestige of archaic notions of the status of women in marriage which deprives them of the equal protection of the laws without reasonable government justification. People v. DeStefano, 121 Misc.2d 223, 467 N.Y.S.2d 506, 516 (Suffolk Co.Ct. 1983.) The highest courts in other jurisdictions have rejected every rationale put forward as support for the wife rape exemption. State v. Smith, 85 N.J. 193, 426 A.2d 38 (1981); State v. Smith, 401 So.2d 1126 (Fla.District Ct.App. 1981); State v. Rider, 9 Fla. Law Weekly 887 (Fla.District Ct.App., Apr. 27, 1984); State v. Chretien, 417 N.E.2d 1203 (Mass. 1981).

This Court has both an opportunity and a duty in this case to end a shameful episode of New York legal history and bring the criminal law into line with the principles of the equality and autonomy of women it has enunciated in other areas. Amici ask the Court to hold that the wife rape exemption stigmatizes married women as inferior, and deprives them of their fundamental right to privacy, bodily integrity and autonomy, and of the equal protection and due process of law, all protected by both the New York and United States Constitutions.

I.

WIFE RAPE IS A SERIOUS PROBLEM CAUSING INJURY TO A SIGNIFICANT NUMBER OF WOMEN.

Wife rape is brutal, violent sexual attack often committed in the context of battering or against a wife who no longer lives with her husband. It is often, as in this case, a sexual assault committed intentionally in front of a child. Frieze, Investigating the Causes and Consequences of Marital Rape, Signs: Journal of Women in Culture and Society 532, 535 (1983) (hereinafter "Frieze"). The unsupported fear of some that an end to the marital rape exemption will cause improper state interference with consensual sexual conduct in the marital bedroom is a red herring. Marriage is not consent to rape; it is consent to voluntary sexual relations for mutual gratification, companionship and procreation. Private consensual sexual activity between adults must be distinguished from its antithesis-- non-consensual, violent sexual attack. Cf., People v. Onofre, 51 N.Y.2d at 490.

Just as assault and murder are crimes when committed by the victim's husband or a stranger, so too a rape is a violent act done to injure, degrade and humiliate the victim. A rape is "a hit-and-run attack, a brief expression of physical power, a conscious process of intimidation, a blunt, ugly sexual invasion with possible lasting psychological effects on all women." S. Brownmiller, Against Our Will: Men, Women and Rape, 423-24 (1975) (hereinafter "Brownmiller"). "Rape is not the aggressive expression of sexuality. It is the sexual expression of aggression." Groth & Gary, Marital Rape: Forced Sex in Marriage

in Medical Aspects of Human Sexuality (1980) (hereinafter "Groth and Gary). "In terms of the perpetrator's motives, rape bears a closer resemblance to violent crimes such as assault and robbery than it does to sexual intercourse with a consenting woman." Law Enforcement Assistance Administration, Dept. of Justice, A Prescriptive Package: Rape and Its Victims 149 (1979). Groth's studies show that "forcible sexual assault is motivated more by retaliatory and compensatory motives than by sexual ones." Groth, Men Who Rape: The Psychology of the Offender 2 (1979).

The harm caused by rape is exacerbated in the marital relationship because it is a violation of trust. It is more severe and longlasting than when a woman is raped by someone she does not know. D. Russell, Rape in Marriage 190-99 (1982)(hereinafter "Russell"); D. Martin, Battered Wives, 181-82 (1976); Finklehor and Yllo, Rape in Marriage, in The Dark Side of Families: Current Family Violence Research 119, 126-27 (1983). The harm is both physical and psychological. It is an assault on her autonomy and decision-making about her sexual behavior. Finklehor and Yllo, Rape in Marriage at 126-27; Geis, Rape-in-Marriage: Law and Law Reform in the United Kingdom, United States, and Sweden, 6 Adel. L. Rev. 284, 303 (1979) (hereinafter "Geis"). It is a present injury that carries the potential of long-term consequences.

> If we divide rapists into categories based on intimacy with the victim -- stranger, acquaintance, date, relative, and lover or husband -- we find that the incidence of adverse sexual effects rises by leaps and bounds, from less than a third of the cases of rape by a stranger to nearly three-quarters of the cases of rape by a lover or husband...

Bart, Rape Doesn't End With a Kiss, Viva 39,41-42(June,1975). See also Gelles, Violence in the Family , 132-33 (1979); Russell, at 190-205 (marital rape, along with childhood incest, has the greatest long-term effects of any rape experience); Finkelhor & Yllo, Forced Sex in Marriage: A Preliminary Research Report, 28 Crime & Delinquency 459 (1982).

When a woman is raped in marriage, she cannot walk away from the criminal. A comparison therefore can be made to the plight of a prison rape victim. A prisoner who is raped in jail suffers in a setting where he is locked in a cage with the offender. Similarly, a wife who is abused and raped is locked into a situation where the offender comes home every day with the real possibility of raping her. In one study, half of the victims "had been sexually assaulted twenty times or more by their husbands. They lived for months, sometimes years, with ongoing violation....this took its toll in the form of chronic terror..." D. Finklehor, Marital Rape: The Misunderstood Crime, Address to the New York County Lawyers Association 3-4 (May 3, 1984) (hereinafter "Marital Rape Address")(Attached hereto as Exhibit B). Even if the woman moves out of her home, she is not protected against rape by her husband until she has obtained a court order. Penal Law §130.00(4)(b). Thus, wife rape invades and permanently changes the woman's sense of self as an autonomous human being.

In addition to being a violent crime, a betrayal of inter-spousal trust, and more emotionally and psychologically damaging than stranger rape, wife rape often occurs in the

context of an ongoing violent relationship, part of or as a sequel to a battering. Russell, at 88; Finkelhor and Yllo, Rape in Marriage at 120. In one reported study, 93% of the victims of marital rape were also victims of wife battering. Russell, at 88. Moreover, wives who are raped by their husbands, are likely to have been abused by their husbands more often than wives who were abused but not raped. J. Doron, Conflict and Violence in Intimate Relationships: Focus on Marital Rape 5 (paper presented to the American Sociological Association, August 1980).

The reality of the violence and harm of wife rape can best be seen in the record of this case. On the day Denise Liberta was raped, she was intimidated by death threats and physically abused. Her husband threatened to kill her if she screamed.[3] He also inflicted scratch and dig marks all over her neck, bumps and bruises on her head, and a bruise four inches wide on her back.[4] He then forced her to perform fellatio and have sexual intercourse with him in front of their son.[5] A study of marital rape shows this kind of violence to be typical. Finkelhor, Marital Rape Address. Of fifty women raped by their husbands,

> one had been raped at knife point by a husband who held her up against the wall and threatened to kill her....one was jumped in the dark by her husband and raped in the anus....One had her baby kidnapped by an estranged husband who compelled her to have sex as a condition for returning the child....One had a six

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[3] Trial transcript at 52.

[4] Id. at 55, 98, 99.

[5] Id. at 52-53.

centimeter gash ripped in her vagina by a husband who was trying 'to pull her vagina out.'

Finkelhor, Marital Rape Address at 1.

The prevalence of wife rape has only recently been documented.[6] In a major random sample study, 14% of the 644 married women in the sample were raped by their husbands. Russell at 57-58.[7] See Statements of Interest of Amici (Exhibit A hereto) which detail the prevalence of marital rape in New York State. See also Finkelhor and Yllo, Rape in Marriage, at 119-121.

The New York marital rape exemption, by refusing to treat marital rape as a crime, effectively grants married men a license

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[6]Marital rape may be the most frequent but unrecognized and therefore unreported form of rape in our society. Frieze, at 536 and 543. Married women themselves have learned that the word "rape" does not apply to what has been done to them. Finkelhor and Yllo, Rape in Marriage at 121.

[7]These results are generally viewed as underreporting the actual incidence of wife rape. Interviewers often ask only about "intercourse," which for most people would exclude other forced sex activity such as oral, anal, or digital. Women studied are usually in fixed abodes, which excludes those who reside in institutions, such as mental hospitals, prisons, shelters, nursing homes, or halfway houses; "it seems probable that women who have been subjected to very traumatic experiences including wife rape are over-represented in institutions, or among street people," Russell, at 59. Studies do not include women who are no longer alive, either as a result of suicide or murder, and cannot report that they were raped. Battered women are more likely to be murdered by their husbands, and 33% of all battered wives are also raped. Russell, at 59. This estimate also appears to be low. See Frieze, at 542 (34% of battered women reported rape); Pagelow, Does the Law Help Battered Women: Some Research Notes (unpublished paper) (37%), cited in Russell at 61. The Women's Crisis Center in Brattleboro, Vermont, reported 60% of their married clients reported rape. Clancy, Equal Protection Considerations of the Spousal Assault Exclusion, 16 N. Eng. L. Rev. 1, 25 n.150 (1980) (hereinafter "Equal Protection Considerations").

to rape their wives. It not only encourages the commission of the acts, but also exacerbates the harm.

> [W]hile all rape victims suffer shame and stigma, few suffer the total isolation of marital rape. No relatives or friends commiserated with these women about the pain. No police or court confirmed the judgment that they had been wronged. In their isolation they usually blamed themselves....It was a profound psychological scar that was difficult to erase....Unfortunately, when people suffer from non-problems, they tend to become non-persons, both in their own eyes and in the eyes of others. Making marital rape a crime will put a few offenders out of our community, but it will bring a whole lot of victims back in.

Finklehor, Marital Rape Address at 4.

The physical injury, trauma, betrayal and sense of inferiority which result from being brutalized by a husband are compounded by the knowledge that the law authorizes the harm. The exemption must be struck down, not only to deter husbands from raping wives, but also to bring to an end another example of anachronistic views of women and their role in society.

II.

THE MARITAL RAPE EXEMPTION IS BASED ON ARCHAIC VIEWS ABOUT WOMEN

A. Historical Background

The wife rape exemption is a shocking vestige of the common law system that viewed women as inferior to men and as subjects of their husbands. This view was reflected in various concepts and doctrines which today are viewed as archaic and intolerable. At the core of this sytem was the view that a woman is the property of either her father or her husband. The purpose of rape laws generally was to preserve the "value" of the sexual object. See Brownmiller at 6-22; NYU Note at 309. For example,

under Mosaic law the rapist of a virgin was penalized by forcing him to pay the bride price to the father and to marry the woman. Deuteronomy 22:13-29. Similarly, under ancient Babylonian law, criminal rape was "the theft of virginity, an embezzlement of (the woman's) fair price on the market." Brownmiller, at 9.

These ancient ideas continued into Western law. At common law, the woman victim could save her attacker from the death sentence or blinding and castration by accepting him as her husband; marriage might be said to be repayment for the destruction of her marriage value by rape, that is, the ruination of property. Note, Rape and Battery Between Husband and Wife, 6 Stan. L. Rev. 719, 724 & n.26 (1954).

Within the family and against third parties, "the husband ... had a property [interest] in the body, and a right to the personal enjoyment, of his wife..." Oppenheim v. Kridel, 140 N.E. 227, 228 (1923). See also, Kline v. Ansell, 414 A.2d 929, 930 (Md. 1980). Since the wife was viewed as the husband's property, courts were reluctant to interfere in the relationship.

> The husband also (by the old law) might give his wife moderate correction. For, as he is to answer for her misbehavior, the law thought it reasonable to entrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children; for whom the master or parent is also liable in some cases to answer.

1 W. Blackstone, Commentaries on the Laws of England 444 (Garland, 1978).[8]

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[8] By 1823, the New York courts had rejected the common law standard. People v. Winters, 2 Park. 10 (N.Y. 1823).

The common law embodied the wife's duty of service (or the husband's ownership of her service) in a number of causes of action. Criminal conversation was a husband's action against a third party for adultery committed with his wife. "The husband's cause of action [was] based upon his proprietary right in the person of his wife.... predicated upon the possessory right of the superior being in the body of the inferior." Oppenheim v. Kridel, 140 N.E. at 228. Modern courts have rejected this concept. Kline v. Ansell, 414 A.2d at 930.

Loss of consortium was also a cause of action originally granted only to the husband. Damages for loss of consortium were meant to cover "deprivation of the society, fellowship and affectionate relations of the wife ... and the sexual intercourse with the wife, together with any estimated loss in the future." Prosser, The Law of Torts, §125 at 890 (1971). Blackstone explained the absence of a wife's cause of action for loss of consortium as stemming from the inequality inherent in the relationship:[9]

> We may observe that in these relative injuries, notice is only taken of the wrong done to the superior of the parties related ... while the loss of the inferior by such injuries is totally unregarded.

3 Blackstone Commentaries on the Laws of England 143 (Garland, 1978).

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[9] In Bennett v. Bennett, 23 N.E. 17 (1889), this Court rationalized the wife's inability to sue for loss of consortium is a procedural one. In theory, the wife had the same rights as the husband, but was just unable to enforce them since she could not sue in her own name.

This concept of the woman as the property of her husband has been squarely repudiated by every court that has ruled on wife rape exemptions. "Of course, the theory has no validity in this country and nowhere in modern society is a woman regarded as a chattel." DeStefano, 467 N.Y.S.2d at 512, citing Trammel v. United States, 445 U.S. 40 (1980). See also State v. Smith, 426 A.2d at 43-44; Clancy, Equal Protection Considerations at 17.

Consistent with the notion of woman as the property of her husband that underlay the general rape laws, the married woman was viewed as merged in her husband's identity, subject to his authority and duty-bound to provide sexual as well as other services.

> By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated ... into that of the husband, under whose wing, protection and cover she performs everything..."

1 Blackstone, Commentaries on the Laws of England 442 (Garland, 1978). Accordingly, with wives having no distinct legal identities, a husband could not be convicted of raping himself. See NYU Note at 310.[10]

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[10] This merger of legal existence also gave the husband the power legally to act for this wife. "[H]e was regarded as her head and representative in the social state..." Bradwell v. Illinois, 83 U.S. (16 Wall) 130, 141 (1873) (Bradley, J. concurring). A married woman could not bind herself by contract; her contracts were considered void, as an infant's, not just voidable. Her husband gained control and managment of her real property and complete ownership of her personal property. Her services belonged to her husband and therefore he had sole right to any wages she earned outside the home. His domicile became hers. She could not sue or be sued; her husband had to be joined

(Footnote Continued)

The passage of the Married Women's Property Act in 1848, now codified at N.Y. Dom. Rel. Law, §§50-61 (McKinney 1977), established a wife's separate legal identity and her right to contract and acquire and dispose of property. "Chip by chip, over the years those archaic notions have been cast aside so that '[n]o longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas.'" Trammel v. United States, 445 U.S. at 52, citing Stanton v. Stanton, 421 U.S. 7, 14-15 (1975).

Within the context of the views of women as property and as having no separate legal identity in marriage there arose a third justification for the marital rape exemption -- usually attributed to Sir Matthew Hale, the 17th Century English jurist noted for his misogyny.[11] Hale wrote:

> But the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given up herself in this kind unto her husband which she cannot retract.

Hale, Historia Placitorum Coronae (History of the Pleas of the Crown) 629 (pub. posthumously 1736), cited in People v. DeStefano, 467 N.Y.S. 2d at 510. This statement of the wife's irrevocable consent and contract to all sexual intercourse with

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(Footnote Continued)
in any legal action. If any recovery was obtained through a suit, the money belonged to him. Babcock, Freedman, Norton and Ross, Sex Discrimination and the Law: Causes and Remedies 575 et seq. (1975).

[11] Lord Hale's "judicial opinions and his homiletic writings are strikingly antagonistic to the interests of women." Geis, at 286.

her husband was made without any supporting citations to authority. Indeed, today it has been subject to extensive criticism for failing to be an accurate statement of the law even in Hale's time.[12]

Despite Hale's failure to cite any authority for his statement, the principle was adopted by many states in enacting their rape statutes or was recognized as a defense at common law. Legislators and judges acted upon the view of society of their time that women were simply not equal to the males they married and owed sexual service to their husbands and were presumed to consent. Since consent marks the essential distinction between rape and sexuality, how could a married woman be raped? This notion--that married women lack legal capacity to refuse sex--flies in the face of modern recognition of the right of every person to make these decisions. Point III., infra.

B. History of the New York Marital Rape Exemption

Prior to the passage of a comprehensive penal code in 1881, New York statutes defined rape as "(1) By carnally and unlawfully knowing any female child under age of ten years; or, (2) by forcibly ravishing any woman of the age of ten years or upwards." Revised Statutes of the State of New York, Vol. II, Part IV, ch.

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[12] See, People v. DeStefano, 467 N.Y.S.2d at 510; State v. Smith, 426 A.2d at 41; Griffin, In 44 States, It's Legal to Rape Your Wife, Student Lawyer, (Sept. 1980) 21; NYU Note, supra; Geis, supra; Gonring, Spousal Exemption to Rape, 65 Marq. L. Rev. 120 (1981); Dearrows, Abolishing the Marital Exemption for Rape, 1983 U.Ill.L. Rev. 201; Drucker, Comment, The Common Law Does Not Support a Marital Exemption for Forcible Rape, 5 Women's Rights L. Rep. 181 (1979).

I., Title II., §22 at 849 (4th ed. 1852). Although no explicit marital exemption appears, a contemporary treatise on New York criminal law claimed that a husband's immunity at English common law was considered part of the statute. "A man cannot be guilty of a rape upon his own wife, for the matrimonial consent cannot be retracted." Barbour, Treatise on the Criminal Law of the State of New York 71 (2d ed. 1852).

The first comprehensive penal code, passed in 1881, enacted the marital rape exemption. "Rape is an act of sexual intercourse with a female not the wife of the perpetrator, committed against her will or without her consent." Penal Code of the State of New York §278 (1881). The legislative history fails to reveal why the exemption was made explicit or if it was considered part of the law prior to the 1881 code. Rather, the authors of the code claimed that the code "makes little or no new law; ... its provisions are almost entirely a codification either of common law regarding crime or of the state statutes on the subject." New York Tribune, Dec. 1, 1881, at 8.

Subsequently, the New York courts adopted Hale's explanation that a husband could not be guilty of raping his wife "because the husband of a woman cannot himself be guilty of an actual rape upon his wife, on account of the matrimonial consent which she has given and which she cannot retract." People v. Meli, 193 N.Y.S. 365 (1922).

In 1978, the New York Legislature restricted the marital exemption, by broadening the statutory definition of "not married." Penal Law §130.00(4). A court order requiring living

apart or a particular type of separation agreement now define the couple as not married for purposes of forcible rape and sodomy prosecutions. This amendment was seen as "a logical extension of the substantive and procedural changes in our sex crimes law of recent years which have recognized and given effect to the rights of women-victims." Penal Law §130.00, 1978 Supplementary Practice Commentaries, Arnold D. Hechtman, Pocket Part p. 288 at 289 (McKinney's Supp. 1983), cited in People v. DeStefano, 467 N.Y.S.2d at 511 (emphasis added).

The sponsor of the amendment, Senator Manfred Ohrenstein, stated in a letter to the Governor (dated August 8, 1978 at p.1) (attached hereto as Exhibit C) that "the change...is demanded by the growing recognition of equality between men and women." Ohrenstein noted that the common law wife rape exemption "rests upon the view that a wife is merely the property of her husband and like his other property he is free to do with her as he pleases." Id. The Senator recognized that this view and the view that the woman's legal identity merged with the husband's had been abandoned. He suggested, therefore, that "[s]ince the basis for the rape exemption has fallen, it seems anomalous that the ancient structure should remain standing." Id. at p.2.

Despite the legislative intent to repeal an "outdated vestige of discarded legal concepts," (Ohrenstein letter at p.3) most married women are still subject to the archaic view of their role as wives which underlies the exemption. They are obligated to submit to their husband's violent enforcement of the marital "contract." The 1978 amendment was a step in the right

direction; but the step not taken--the continued license to rape within an ongoing marriage, or to rape a wife who has separated from her husband--is not constitutionally tolerable.

III.
THE MARITAL EXEMPTIONS DEPRIVE WOMEN OF THE RIGHT TO PRIVACY PROTECTED BY THE NEW YORK AND U.S. CONSTITUTIONS.

The forcible marital rape and sodomy exemptions constitute a license for husbands to sexually attack their wives. The state thereby has authorized interference with a wife's fundamental right to privacy which includes the right to make decisions about childbearing, contraception, engaging in private consensual sexual activity and the right to bodily autonomy and integrity. All of these rights are denied when it is lawful for a man to rape his wife.

People v. Onofre, 51 N.Y.2d at 485, compels invalidation of the exemption on privacy grounds. There, this Court described the right to privacy as "a right of independence in making certain kinds of important decisions, with a concomitant right to conduct oneself in accordance with those decisions, undeterred by government restraint... The right ... has been called 'the most comprehensive of rights and the right most valued by civilized men...'" (citations omitted.) Decisions protected by this privacy right include "personal decisions relating to marriage (Loving v. Virginia, 388 U.S. 1, 12); procreation (Skinner v. Oklahoma, 316 U.S. 535); contraception (Eisenstadt v. Baird, 405 U.S. 438); ... and abortion (Roe v. Wade, 410 U.S. 113)." Onofre, 51 N.Y.2d at 486.

Most pointedly, this Court held that "the right of privacy [protects] individual decisions as to indulgence in acts of sexual intimacy...so long as the decisions are voluntarily made by adults in a noncommercial, private setting." Onofre, 51 N.Y.2d at 488. In Onofre, the issue was whether unmarried persons had this right which was assumed to be an entitlement of the married. Here the issue is whether that right is shared by both partners to the marital relationship. The U.S. Supreme Court addressed that question in Eisenstadt v. Baird, 405 U.S. 438 (1972), uttering words which this Court recognized as the cornerstone of its decision in Onofre:

> [T]he marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right to privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.

Eisenstadt v. Baird, 405 U.S. at 453 (emphasis in original); see also, People v. Onofre, 51 N.Y.2d at 487; Carey v. Population Services International, 431 U.S. 678, 688 (1977) (underscoring the individual nature of the interests). Today, women have the constitutional right to choose to have an abortion without the consent of their husbands (Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976)), or choose to have a hysterectomy (Murray v. Vandevander, 522 P.2d 302 (Okla.App. 1974)) or be sterilized (Ponter v. Ponter, 135 N.J.Super. 50, 342 A.2d 574 (1975)). In New York, a wife has the unilateral right to practice birth control. Zagarow v. Zagarow, 105 Misc.2d 1054, 430 N.Y.S.2d 247 (S.Ct., Sp. Term, Suffolk Co., 1980).

The right to make private decisions about reproduction and sexual intimacy is founded on the right of bodily integrity and the right of personal autonomy in the definition and determination of one's person and one's life. Union Pacific Railway v. Botsford, 141 U.S. 250 (1891); Olmstead v. United States, 277 U.S. 438 (1928); Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942); Griswold v. Connecticut, 381 U.S. 479 (1965); Loving v. Virginia, 388 U.S. 1 (1967); Stanley v. Illinois, 405 U.S. 645 (1972); Roe v. Wade, 410 U.S. 113 (1973).[13]

The right to control one's own body means two things: the right to preserve and enjoy one's capacities free of unwarranted interference by the state; and the right not to be compelled by a third party to use or dispose of one's body or labor against one's will. As the Supreme Court recognized in Union Pacific Railway v. Botsford, 141 U.S. at 251:

> No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others....'The right to one's person may be said to be a right of complete immunity; to be let alone.' (citation omitted.)

Constitutional protection of this right was later recognized in Skinner v. Oklahoma, 316 U.S. 535. As amici discuss in Point

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[13] The New York State Constitution provides at least equal if not greater protection for fundamental rights than the U.S. Constitution. Cooper v. Morin, 49 N.Y.2d 69, 79-80 (1979), cert. denied sub. nom. Lombard v. Cooper, 446 U.S. 984 (1980); People v. Isaacson 44 N.Y.2d 511, 519 (1978); Sharrock v. Del' Buick, 45 N.Y.2d 152, 159-60 (1978).

VI., infra, the right to own one's body and the labor and service of which it is capable is at the heart of the 13th Amendment--the prohibition against involuntary servitude.

The right to bodily integrity cannot be subordinated to either the whims or the profound personal goals of another person. "Human rights theory posits that the moral imperative of treating persons as equals requires that each person's capacity for autonomy be accorded equal value." Richards, The Individual, the Family and the Constitution: A Jurisprudential Perspective, 55 N.Y.U. L. Rev. 1, 8-9 (1980). See generally, Henkin, Privacy and Autonomy, 74 Col. L. Rev. 1410 (1974); Eichbaum, Towards an Autonomy-Based Theory of Constitutional Privacy Beyond the Ideology of Familial Privacy, 14 Harv. Civ. R. L. L. Rev. 361 (1979).

By permitting men to rape their wives, the New York law licenses destruction of the right of the woman to make decisions not simply about whether or not to engage in sex (People v. Onofre), but also about whether or not to use contraceptives or natural birth control methods (Griswold), and whether or not to undertake procreation (Skinner v. Oklahoma; Roe v. Wade). This wholesale destruction of rights thus denies a married woman her right to autonomy in the use of her body.

Violent sexual attack by males on their wives is often justified by the knowledge that the law gives the man the right to rape.

> He approached me sexually when I was still very injured, and I said, "No, please don't. Not now..." His reaction was, "I have rights and you're my wife, and as long as you're my wife, it is my conjugal right. So don't fight me..." When

> I saw that he was determined to go ahead, I really couldn't believe it, and I started crying. He proceeded, and when he was finished he left the room and slammed the door.

Mrs. White, rape victim, in Russell, Rape in Marriage, at 169 (emphasis added).

* * *

> It was a very brutal marriage. He was so patriarchal. He felt he owned me and the children -- that I was his property. In the first three weeks of our marriage, he told me to regard him as God and his word as gospel. If I didn't want sex and he did, my wishes didn't matter. Our third child was a result of out-and-out rape.

Mrs. Kearney, rape victim, Russell at 123 (emphasis added).

As the Statements of Interest of the amici demonstrate, these stories are not unique. Women have become pregnant as a result of being raped by their husbands. The marital rape and forcible sodomy exemptions constitute marriage licenses to deprive wives of fundamental liberties.

A male who believes he is being denied his right to engage in sex with his wife as a result of her choices has a remedy in divorce. He has no right to destroy by force her right to decide when and how to engage in sex. Just as a man could not obtain a court injunction ordering his wife to submit to sex or childbearing (Bank v. Bank, 180 Md. 254, 23 A.2d 700, 705 (1942); Doe v. Doe, 365 Mass. 556, 314 N.E.2d 128, 132 (1974)), so too the state may not deny the woman's right to privacy by a statute which licenses rape.

New York's legal license for rape within marriage impermissibly forces women to choose between the fundamental right of privacy and the fundamental right to marry. Zablocki v. Redhail, 434 U.S. 374, 375 (1978); Loving v. Virginia, 388 U.S. 1 (1967); Cooper v. Morin, 49 N.Y.2d at 80. Women are deterred

from marrying because they do not wish to be subjected to or risk legalized rape. One victim of marital rape stated:

> I vowed I'd never ever marry again. I'd never be in a position where men have authority over me. Marriage is license to do anything you want. You've not a whole person because no one respects your rights as a human being.

Mrs. James, rape victim, cited in Russell, at 196.

Where a statutory classification burdens or infringes a fundamental right, the state must establish that the classification is "'necessary to the achievement of a compelling state interest...'" Onofre, 51 N.Y.2d at 492,n.6, citing Eisenstadt v. Baird, 405 U.S. at 447, n.7 (emphasis in original.) See also, Shapiro v. Thompson, 394 U.S. 618, 634 (1969); Zablocki v. Redhail, 434 U.S. at 383. As demonstrated above, the historical reasons for the wife rape exemption have been rejected as archaic and inhumane. In Point V., amici will show that the more modern justifications are simply less crass, but no less inimical to the fundamental rights of married women to privacy, bodily integrity and autonomy.

IV.
THE FORCIBLE MARITAL RAPE AND SODOMY EXEMPTIONS DENY MARRIED WOMEN THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE NEW YORK AND U.S. CONSTITUTIONS.

Article 1, §11 of the New York Constitution states in part that "No person shall be denied the equal protection of the laws of this state..." The Fourteenth Amendment to the United States Constitution provides similarly. One of the central purposes of the Fourteenth Amendment was to remedy the failure of states

equally to protect persons from injury to life, liberty and property:

> [M]en were murdered, houses were burned, women were outraged, men were scourged ... and the State made no successful effort to bring the guilty to punishment or afford protection or redress to the outraged and innocent.

Cong. Globe, 42nd Cong., 1st Sess., App. 428 (1871), cited in Monroe v. Pape, 365 U.S. 167, 175 (1960). But a state's failure to enforce its laws equally was not the clearest problem to be remedied by the Fourteenth Amendment and the Civil Rights Acts passed to enforce it. There was no disagreement that

> 'If the State Legislature pass a law discriminating against any portion of its citizens, or if it fails to enact provisions equally applicable to every class for the protection of their person and property, it will be admitted that the State does not afford the equal protection.'

Monroe v. Pape, 365 U.S. at 178, citing Cong. Globe, 42nd Cong., 1st Sess., App. 315 (emphasis supplied).

As detailed above, married women who are forcibly raped or sodomized by their husbands suffer serious physical and psychological injury. They are denied the basic right to protection from physical harm which the state provides without regard to marital status for every other violent crime. There is no other physical harm intentionally inflicted on a wife by her husband which is not punishable through the criminal laws. Here, the state itself has recognized that forcible rape and sodomy are criminal acts. Yet, the state has chosen to exempt married women raped by their husbands from the protection of these statutes. This failure to provide the most basic of protections--safety for

one's life and liberty--is a classification based on sex and marital status that cannot survive constitutional scrutiny.

A. Sex Based Classification

The concepts that women are the property of their husbands or fathers and that they lose their separate legal identity upon marriage have been solidly rejected in other contexts. See Point II., supra. As we have shown, the forcible marital rape and sodomy exemptions are vestiges of these doctrines and the general legal inferiority of women. While these forcible exemptions appear to be classifications based on marriage, the origins of the exemptions lie in the discriminatory attitude that women are inferior and are subject to the commands of the men they marry.[14]

In Trammel v. United States, 445 U.S. 40 (1980), a privilege against adverse spousal testimony which, on its face, applied neutrally to both husbands and wives, was examined in light of its sex biased origins. The Court found that the privilege derived, in part, from the same concept on which the marital rape exemption is based, namely, the view that "the women had no recognized separate legal existence..." apart from their husbands. Id. at 44. As with the marital rape exemption, the

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[14]The forcible rape marital exemption burdens one group of females, those who marry. This Court has recognized that sex discrimination underlies acts directed at only certain groups of women. For example, discrimination against pregnant women has been viewed as sex discrimination by New York courts despite contrary rulings by the U.S. Supreme Court. Brooklyn Union Gas Co. v. Appeal Bd., 41 N.Y.2d 84 (1976); Union Free School District No. 6 v. N.Y.S. Human Rights Appeal Bd., 35 N.Y.2d 371 (1974).

common law rule was maintained over the years until "it was deemed so well established a proposition as to 'hardly requir[e] mention.'" Id. at 44 (citation omitted.)

Despite the modern justifications for the privilege, the Court recognized its sex discriminatory origins. Id. at 53. In striking down the privilege, the Court firmly grounded its determination on the fact that

> [t]he ancient foundations for so sweeping a privilege have long since disappeared. Nowhere in the common-law world--indeed in any modern society--is a woman regarded as chattel or demeaned by denial of a separate legal identity and the dignity associated with recognition as a whole human being.

Id. at 52. Cf. Kline v. Ansell, 414 A.2d 929, 933 (Md. 1980) (striking sex-based rule and refusing to render it gender neutral since rule was based on repudiated ideology that husband has property interest in wife).[15]

Here, the maintenance of forcible marital rape and sodomy exemptions not only licenses physical and mental harm, but also "perpetuat[es] 'archaic and stereotypic notions'" and "stigmatiz[es] members of the disfavored group as 'innately inferior' and therefore as less worthy participants in the political community." Heckler v. Mathews, __ U.S. __, 104 S.Ct. 1387, 1395 (1984), citing Mississippi University for Women v. Hogan, 458 U.S. 718, 725 (1982). Cf. Strauder v. West Virginia,

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[15] The elimination of the marital exemption here, not sex-neutralizing it, is required by the fact that deprivation of the right to privacy cannot be justified on the grounds of equal "non-protection."

100 U.S. 303, 308 (1880)(statute excluding black men from juries constitutes "a brand upon them, affixed by the law; an assertion of inferiority and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others.")

Because the wife rape exemption is at heart an invidious gender-based classification which stimulates prejudice and rewards brutal disrespect (see Point II, supra.), it can only be upheld if it serves an important governmental objective and is substantially related to the achievement of that objective. Mississippi University for Women v. Hogan, 458 U.S. 718 (1982); Craig v. Boren, 429 U.S. 190, 197 (1976). The New York Constitution, like the federal Constitution, requires that gender classifications be "substantially related" to achievement of "important government objectives." People v. Whidden, 51 N.Y.2d 457, 460 (1980).

As will be shown infra at Point V, this standard cannot be met by current justifications for the marital rape and forcible sodomy exemptions and they must be struck down as violative of the right to equal protection.

B. Marital Status

In addition to constituting discrimination on the basis of sex, the definitional sections of the law which create the exemptions constitute on their face classifications based on marriage. Penal Law §§130.00(4), 130.00(2). Women who are married to their rapists are treated differently than women who are raped by someone other than their spouse. A classification

based on marriage, as in Onofre, is normally judged by "whether there is, as a minimum, 'some ground of difference that rationally explains the different treatment accorded married and unmarried persons' under the statute." 51 N.Y.2d at 491, citing Eisenstadt v. Baird, 405 U.S. at 447. It is, however, apparent that even using this least strict standard, the marital exemptions cannot be justified. Point V. infra.

V.

THE JUSTIFICATIONS FOR THE FORCIBLE MARITAL RAPE AND SODOMY EXEMPTIONS FAIL TO MEET THE REQUIRED COMPELLING INTEREST, SUBSTANTIAL OR EVEN RATIONAL BASIS TESTS

Penal Law §130.35(1), in conjunction with Penal Law §130.00(4), criminalizes rape committed by a man against a woman to whom he is not married, while legally permitting a man to rape his wife. Penal Laws §130.50(1) and §130.00(2) discriminate between married persons and unmarried persons, punishing nonconsensual sodomy when performed by the unmarried. These laws have a classification similar to that which this Court found to constitute an interference with the right to privacy and to deny the equal protection of the law on the basis of marriage. People v. Onofre, 51 N.Y.2d 476 (1981). This Court held that no rational showing could be made by the state to justify punishing unmarried persons who engaged in consensual sodomy. Here the converse is true. No rational justification or compelling interest can be

provided for failing to punish males who forcibly rape their wives.[16]

Modern arguments in support of maintaining the wife rape exemption rely on the implied consent or contract theory as well as claims that to punish males for raping or forcibly sodomizing their wives would interfere with "marital privacy," prevent efforts at reconciliation, lead women to fabricate criminal complaints, and weaken the legal system by creating a crime difficult to prove.

None of these claims has any rational basis,[17] a substantial relationship to important governmental interests, or a compelling state interest. They have been rejected by virtually every commentator,[18] including the Attorney General of the State of New

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[16] The man who rapes his wife has no claim to the protection afforded private consensual sexual activity between adults which was at issue in Onofre. On the other hand, married women who are raped by their husbands do have a privacy right at stake and are entitled to the equal protection of the laws. Thus, instead of striking the law in its entirety, as was required in Onofre, this Court should extend the protection of the rape law to all women. See infra Point IX.

[17] In New York, the mere assertion of legitimate state objectives is insufficient to meet the requirements of the rational basis test. This Court has demanded a showing by the state that the classification in the statute actually furthers the societal interests asserted. People v. Onofre, 51 N.Y.2d at 492, 434 N.Y.S.2d at 953.

[18] See, e.g., Clancy, Equal Protection Considerations of the Spousal Sexual Assault Exclusion, 16 N. Eng. L. Rev. 1, 17-28; Note, Abolishing the Marital Exemption for Rape, 1 Univ. of Ill. L. Rev. 200, 205-12 (1983); NYU Note, at 307-16; Note, Spousal Exemption to Rape29, 65 Marquette L. Rev. 120, 125-28 (1981); Schwartz, The Spousal Exemption for Criminal Rape Prosecution, 7 Vt. L. Rev. 33, 42-54 (1982); Price, Issues in Marital Rape

(Footnote Continued)

York, who has stated that "[t]he reasons traditionally given for not prosecuting husbands who rape their wives simply do not hold up." R. Abrams, N.Y. Attorney General, Remarks Before N.Y. County Lawyers' Assn., May 3, 1984, p. 1 (Attached hereto as Exhibit D.)

These justifications have also been rejected consistently by courts as lacking even a rational basis. See People v. DeStefano, 467 N.Y.S.2d 506 (1983); State v. Smith, 85 N.J. 193, 426 A.2d 38 (1981); State v. Chretien, 417 N.E.2d 1203 (Mass. 1981); State v. Smith, 401 So.2d 1126 (Fla.Dist.Ct.App. 1981).

1. The Implied Consent Rationale

As noted above, Lord Hale stated the view that by marrying, a woman has given her consent and contracted to engage in sexual relations with her husband. The District Attorney in this case used the implied consent argument as his sole argument in the Appellate Division to justify the (Respondent's Brief, App.Div.: Fourth Dept. at 14-16). He claimed that the doctrine of implied consent "protect[s] the institution of marriage." Id. at 14. This assertion, without any showing of validity, fails to meet the rational basis test, as well as the stricter tests. It completely ignores the fact that the exemption actually licenses behavior which destroys marriage, and deters women from marrying

(Footnote Continued)
Exemption Dictate Abandonment of Doctrine, N.Y. Law J., May 1, 1984, at 38, col.1. But cf., Hilf, Marital Privacy and Spousal Rape, 16 N. Eng. L. Rev. 31 (1980).

by giving husbands a legal license for forced sex. Points I and III, supra.

In fact, New York State's position is completely the opposite of that asserted here by the People. The state is on record as not tolerating violence within marriage. Bruno v. Codd, 47 N.Y.2d 582, 419 N.Y.S.2d 901, 903-906 (1979); Ch.444,L.1977; Ch.628,629,L.1978; Ch.530,531,532,843,L.1980; Ch.143, 416, L.1981; Ch.925, L.1983. In his approval message for chapters 530, 531 and 532, Laws of 1980, eliminating Family Court jurisdiction over assault in the first degree between spouses, the Governor adopted the justification presented by the Task Force on Domestic Violence.

> As the Justice Subcommittee stated in regard to this significant jurisdictional change:
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> > 'This exclusion, like the present exclusion of attempted murder, is a public statement that serious acts of violence between family members will not be tolerated. Violence in the home is as serious a breach of public order and safety as violence in the streets....Strengthening of legal sanctions against violence in the home is a step toward stopping it in individual cases, and toward educating the public that violence in the homes is as much a criminal act as violence in a public place.'

McKinney's 1980 Session Laws of New York A329, 330. Thus, the public policy of this state is that the marriage is protected by strong efforts to stop violence within that institution.

The idea that marriage constitutes a contract for forced sexual relations at any time is not supported by New York law. Under certain circumstances, New York courts recognize the right of a wife to refuse to have sexual relations with her husband without creating a cause of action for divorce. Angelis v. Angelis, 54 A.D.2d 1088, 388 N.Y.S.2d 744, aff'd. 388 N.Y.S.2d

1023 (1976). The implied consent theory infringes on the wife's individual right to privacy which encompasses the right to make decisions about engaging in sex (People v. Onofre, 51 N.Y.2d at 485-88), procreation, contraception, and bodily integrity and autonomy. People v. DeStefano, 467 N.Y.S.2d at 513.

The rulings discussed in Point III, supra, which articulate the woman's constitutional right to choose to have an abortion, a hysterectomy, to be sterilized, or to use birth control without her husband's consent make the forcible rape and sodomy exemptions unsupportable on implied consent grounds. "The logical extension of these holdings is that if a wife may unilaterally prevent or terminate a pregnancy does she not also unilaterally possess a right to refuse the physical act which leads to such pregnancy." DeStefano, 467 N.Y.S.2d at 513. Moreover, as Judge Rohl noted in DeStefano, "the implied consent rationale, besides being offensive to the right to control over one's own body is illogical where marriage itself is not irrevocable." Id. at 514, citing N.Y. Dom. Rel. Law §170, subd. 1 (McKinney 1977) (divorce permitted for cruel and inhuman treatment or constructive sexual abandonment).

Moreover, in the realm of ordinary contracts for personal service, there is simply no contract which is enforceable by one party through self-help or the use of force; nor could a husband invoke the equitable power of the court to enforce such an agreement. The notion of "implied consent" is a holdover from the days when women were legally inferior to and the possessions of their husbands. "The equality principle of modern marital

relations have relegated the implied contract theory to the history books--it has no place in the world of the living." DeStefano, 467 N.Y.S.2d at 515.

2. Interference with Marital Privacy

Some argue that a prohibition against marital rape would infringe upon the right of "marital privacy." Hilf, Marital Privacy and Spousal Rape, 16 N. Eng. L. Rev. 31 (1980). The cases relied upon to support this right, however, involve purely voluntary conduct. Hilf at 35-40 and cases cited therein. There has never been a ruling that the right to marital privacy protects non-consensual, violent sexual assault. The right of personal privacy involves "a shield for the private citizen against government action, not a sword of government assistance to enable him to overturn the private decisions of his fellow citizens." Doe v. Doe, 314 N.E.2d 128, 130 (Mass. 1974).

Marital privacy is not inviolate. The state has acted to impinge on the marital relationship in many ways. Inter-spousal tort immunity has been abolished. Gen. Obligations Law §3-313,subd.2. In Trammel v. United States, 445 U.S. at 44-45, married women were held to be permitted to testify against their husbands despite an assertion that the privilege against adverse spousal testimony was necessary to foster the harmony and sanctity of the marriage relationship." Cf. Planned Parenthood v. Danforth, 428 U.S. at 71 (state cannot give husband veto over wife's abortion in name of furthering marital harmony and mutuality of decision making.)

Married women are protected by the criminal law from all other non-sexual assaults by their husbands. Penal Law Art. 120. The state determines who may marry and how marriages are solemnized. D.R.L. Art. 3. Finally, the state determines the circumstances under which a marriage may be dissolved. D.R.L. Art. 10. All of this indicates the irrationality of justifying a wife rape exemption on grounds of marital privacy, particularly where the wife has asked the state to intervene by seeking to file criminal charges and where her own privacy rights must be protected.

A justification related to the marital privacy argument is the argument that marital rape prosecution would destroy marriages by preventing reconciliation. "Not only is this claim ludicrous, but it hardly appears to be an expected or likely consequence of a relationship that has deteriorated to the point of forcible and unwanted sexual contact." DeStefano, 467 N.Y.S.2d at 515. Accord, Trammel v. United States, 445 U.S. at 52. Moreover, "other remedies" are inadequate[19] and offer little

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[19] Until a woman has been able to obtain counsel and go to court to obtain a court order, she has no protection from rape by her husband. She may be forced to resort to self-defense as her only remedy when her husband resorts to forcible rape and sodomy to self-enforce his marital "contract." See e.g., People v. Hartwell, No. 75-091591-FM (Wayne Co., Mich.Cir.Ct., Mar. 16, 1976) cited in NYU Note at 321 (woman raped by her husband killed him in self-defense).

protection. The serious nature of the crime of rape makes this justification irrational and inadequate.[20]

Criminal laws serve to deter the commission of harmful acts as well as to punish offenders. Schwartz, The Spousal Exemption, at 50. The marital rape exemption in fact licenses actions by husbands which will undermine the marriage, certainly not strengthen or protect it. Finklehor and Yllo, Rape in Marriage at 129.

3. Abuse of the Criminal Justice System

The claim is also made that criminalization of wife rape will lead to a deluge of possibly fabricated complaints. See Gonring at 126; Schwartz, The Spousal Rape Exemption for Criminal Rape Prosecution, 7 Vt. L. Rev. 33 (1982). This claim has been disproven when used to counter rape shield laws,[21] rape corroboration requirements, and removal of interspousal tort immunity.[22]

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[20] In California, wife-beating was made a more serious crime than other assaults. That classification was upheld on the grounds that "the state has a greater interest in deterring crimes which disrupt the marriage relationship..". People v. Cameron, 126 Cal.Rptr. 44, 48 (1976). This too indicates the irrationality of permitting wife rape and forcible sodomy on the grounds that it will protect the institution of marriage.

[21] See Schwartz & Clear, Toward a New Law on Rape, 26 Crime & Delinquency 129 (1980).

[22] See Schwartz & Clear, Toward a New Law on Rape, 26 Crime & Delin. 129 (1980); Schwartz & Clear, Feminism and Rape Law Reform, 6 Bull. Am. Acad. Psych. & Law 313 (1978); Woods, Litigation on Behalf of Battered Women, 7 Women's Rights L.Rep. 39 (1981).

The legislative history of the corroboration requirement in New York, for example, demonstrates that this false complaint concern is gender-biased and unwarranted. Prior to 1974, New York had the most stringent corroboration requirement for forcible sex offenses: it extended to every element of the crime. People v. Radunovic, 21 N.Y.2d 186, 287 N.Y.S.2d 33, 35 (1967). Rape is the only crime in New York which by definition is committed against women only. Penal Law §130.35. It is the only crime of violence for which corroboration was ever required. Hechtman, Practice Commentaries to Penal Law §130.16, 39 McKinney's 456-58 (1975). The 1974 amendment to Penal Law §130.16 eliminated the corroboration requirement for first degree forcible sex offenses. The Governor's approval message underscored the sex discrimination inherent in the corroboration requirement.

> Furthermore, the implicit suggestion in the corroboration rule that the testimony of women, who are most often complainants in sex cases, is inherently suspect and should not be trusted without the support of the independent evidence, is without justification and contrary to our strong belief in the principle of complete equality for women in our society.

Governor's Approval Memorandum, c.14, L. 1974, Feb. 19, 1974, McKinney's Session Laws of New York A-113, 114 (1974). In the ten years since repeal of the corroboration requirement, there has been no scholarly or other evidence claiming an increase in false complaints or urging reenactment of the corroboration requirement.

Raising the charge of rape has the built-in disincentives of publicity and social stigma. Schwartz, The Spousal Exemption, at

52-53. Myths about rape and rape victims discourage victims from reporting. It is commonly believed that a woman cannot be raped unless she lets it happen; women charge rape falsely; and women precipitate rape by seductive behavior. 3 Forcible Rape: A National Survey of the Response by Prosecutors 4-5, Law Enforcement Assistance Administration, 1977. These attitudes produce prejudices against rape victims which often result in harsh treatment in the criminal justice system. Id. at 6-7.[23]

The experience of California, New Jersey, Massachusetts, Florida and Oregon, as well as Sweden, Denmark, the Soviet Union, Czechoslovakia, and Poland demonstrates that permitting prosecution for wife rape does not produce a flood of criminal charges. DeStefano, 467 N.Y.S.2d at 515; Russell at 344; see also Geis at 302; Brownmiller at 428-29.

Moreover, there is no reason to presume that the entire criminal justice system, including its nature as a "truth seeking system" and the use of prosecutorial discretion, will fail for cases of marital rape. DeStefano, 467 N.Y.S.2d at 515. As pointed out in the Governor's Memorandum approving repeal of corroboration for forcible rape,

> For those who express concern over the possibility of false charges being brought, it should be pointed out that our legal system protects innocent persons through many procedural safeguards,...and through the normal screening process in our criminal justice system whereby unwarranted charges may be dismissed before trial....

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[23] See also Kalven & Zeisel, The American Jury 248-57 (1966); Field & Bienen, Jurors and Rape 74-88, 91, 141-42 (1980); The Rape Corroboration Requirement: Repeal, Not Reform, 81 Yale L.J.

(Footnote Continued)

Governor's Approval Memorandum, c.14, L.1974, McKinney's Session Laws of New York at A-114. The legal system can determine when these complaints are fabricated, to the same extent that it can determine when any charge is false. The very assertion that spurned or vengeful wives are likely to fabricate charges against their husbands reflects a bias and hostility against women which has no place in our system of laws.

The fact that a crime is difficult to prove has not led legislatures to ignore the crime itself.[24] Sex crimes against children, non-sexual spousal assaults, and other offenses against spouses are heard by the courts.

> Clearly no argument can be raised in today's society to justify a husband's being exempted from raping his wife. She has a right to the protection the law provides for non-spouses and has been denied equal protection of the law by the existence of the immunity. No governmental interest can be served by its continued existence and it bears no reasonable relation to the class it should protect.

DeStefano, 467 N.Y.S.2d at 515.

If the justifications asserted cannot surmount the "rational basis" test, a fortiori it cannot be demonstrated that the exemption is necessary to achieve a compelling state interest, in order to justify interference with fundamental rights. In this

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(Footnote Continued)
1365-91 (1972); Schwartz & Clear, Feminism and Rape Law Reform, Bull. of Amer. Academy of Psychiatry and the Law 313-21 (1978).

[24] It is easy to foresee difficulties involved in proving that a person has engaged in a sex act with an animal or a corpse, both crimes under New York law. Penal Law §130.20(3) (McKinney's 1975). Despite the potential difficulties, the legislature was not deterred from making these acts criminal. Ironically, corpses and animals appear to have greater protection from rape than wives in this state.

situation, the marital rape and forcible sodomy exemptions must be declared violative of the right to privacy and to the equal protection of the laws, guaranteed by the New York and United States Constitutions.

VI.
THE MARITAL RAPE EXEMPTION VIOLATES THE THIRTEENTH AMENDMENT.

The Thirteenth Amendment to the U.S.Constitution prohibits all slavery and involuntary servitude, "irrespective of the manner or authority by which it is created." Clyatt v. United States, 197 U.S. 207, 25 S.Ct. 429, 430 (1905). "While the immediate concern was with African slavery, the Amendment was not limited to that. It was a charter of universal civil freedom for all persons..." Bailey v. Alabama, 219 U.S. 219, 31 S.Ct. 146, 151 (1911). The prohibition applies to both private and state action. Pollock v. Williams, 322 U.S. 4, 7-11 (1944). State statutes and practices contrary to that prohibition can be invalidated. Pollock v. Williams, 322 U.S. at 25; People v. Lavender, 48 N.Y.2d 334, 338-39 (1979); Dale v. State, 355 A.D.2d 384, 355 N.Y.S.2d 485, 488-89 (3d Dept. 1974), aff'd without opinion, 36 N.Y.2d 833 (1975); Jobson v. Henne, 355 F.2d 129, 132 n.3 (2d Cir. 1966). The New York marital rape exemption violates this constitutional command and should be struck down.

A. The Exemption Imposes Involuntary Servitude on Married Women.

By withholding the protection of the criminal law from married women, the state forces them to provide involuntary sexual services to their husbands. This is an actual, presently imposed servitude, created and sanctioned by law, in violation of

the Thirteenth Amendment. The exemption, by declaring that a husband's sexual force against his wife is not criminal, leaves the wife with no choice but compliance. The exemption "compels performance or a continuation of the service." Clyatt v. United States, 25 S.Ct. at 430. The Supreme Court in Clyatt pointed out that the inability to break a contract, and pay damages for breach if necessary, is the essence of involuntary servitude. The common law has never required specific performance of contracts for personal service, even if the contract was initially wholly voluntary. The Case of Mary Clark, 1 Blackf.122 (Ind. 1821) (the attempt to continue involuntarily an originally voluntary indenture for personal service was void under a state constitutional provision banning involuntary servitude).

Even if this Court accepts the argument that a wife, upon marrying, contracts to provide sexual services to her husband, a law that requires continued performance under all circumstances is unconstitutional.[25] A wife's remedy through legal separation or divorce is insufficient. D. R. L. §§170, 200. A principal function of the criminal law is deterring potential violations. F. Zimring and G. Hawkins, Deterrence: The Legal Threat in Crime Control, 71 (1973). The exemption not only fails to deter husbands but affirmatively sanctions behavior that is otherwise criminal and subject to severe punishment. Nor is it possible for a woman, by moving out of the marital residence, to end the

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[25] Point V., supra, discusses the contract argument.

threat of forced sex with her husband. The exemption follows her. The prospect of civil relief some months hence does nothing to deter a husband from rape.[26]

B. The Exemption Carries Forward the Historical Involuntary Servitude of Women.

The sexual servitude imposed on married women by the exemption is a continuation of what was once the total legal subordination of women to their husbands. Point II., supra. This subordination was explicitly sexual. The husband's right to his wife's body and sexual services was unilateral and virtually absolute, as seen in the actions for criminal conversation[27] and loss of consortium.[28]

Sexual subordination was part of a regime of "civil death" for wives. They were unable to own property, were unable to enter into contracts without their husbands' consent, and were required to make his domicile their own.[29] The husband owned all

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[26]This is another reason for this Court to affirm the finding below that the issuance of an Order of Protection operates to eliminate the husband's exempt status. Point VII infra.

[27]The husband had "personal and exclusive rights" in his wife's body, Tinker v. Colwell, 193 U.S. 473, 481 (1903). See also Oppenheim v. Kridel, 140 N.E. 227, 228-29 (N.Y. 1923).

[28]See Kronenbitter v. Washburn Wire Co., 4 N.Y.2d 524, 527 (1958) ("the wife was regarded in law in some respects as her husband's chattel.") A gender-neutral action for loss of consortium was recognized in Millington v. Southeastern Elevator Co., 22 N.Y.2d 498 (1968).

[29]These conditions were altered by statute in New York. Dom. Rel. Law §§50-61; Real Property Law §§11, 302; General Obligations Law §3-301 (McKinney 1978). The view that "the

(Footnote Continued)

of his wife's assets and could dispose of them as he pleased. Ryder v. Hulse, 24 N.Y. 372 (1862). This state of unfreedom, created and enforced by law, shared many of the attributes of chattel slavery in the United States.[30] It is entirely incompatible with the "universal civil freedom" declared by the Thirteenth Amendment. The maintenance of any present vestiges of it, such as the marital rape exemption, violates the Constitution and should be ended.

VII.
THE ORDER OF THE FAMILY COURT SATISFIES THE CRITERIA OF PENAL LAW §130.00(4)(b)(i).

Amici urge this Court to adopt the holding of the Appellate Division, 90 A.D.2d 681, that an Order of Protection issued pursuant to Family Court Act article 8 is the type of court order contemplated in Penal Law §130.00(4)(b) which provides that "the female and the actor are living apart...pursuant to a valid and effective: (i)order issued by a court of competent jurisdiction

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(Footnote Continued)
domicile of the wife is the place where the husband has his domicile," Vetrano v. Vetrano, 54 N.Y.S.2d 537, 538 (Sup.Ct. Queens Co. 1945), has been tenacious. "The law is clear that the wife must go to the home which her husband provides (citations omitted)." Fox v. Fox, 186 N.Y.S.2d 542, 547 (Sup.Ct. N.Y. Co. 1958). This has obvious implications for a husband's exercise of his "right" to his wife's sexual services.

[30] Married non-slave women were, of course, not subject to some of the most inhumane aspects of the slavery system: being the literal property of another, subject to sale at any time; being unable to contract a legal marriage; and having no protection whatever from rape by any man (the remedies were the master's for trespass). See Introduction at 3-4. The marital rape exemption is analogous to the slave woman's legal vulnerability to rape: the law has defined a particular group of women who can be raped by a particular group of men, wholly as an incident to their legal status.

which by its terms or in its effect requires such living apart..."

The Order of Protection in the instant case by its terms and in its effect, required the spouses to live apart. The Order required both that defendant move out of the specified marital residence and that he remain away from his wife's home. Appellant's Appendix, A-37.

The New York Legislature intended that Penal Law §130.00(4)(b)(i) apply to Orders of Protection. The Appellate Division, on the motion to dismiss the indictment, held:

> Not only does the legislative history...support the conclusion that the Legislature intended to extend the protection of the rape statute to a wife who is living apart pursuant to a Family Court order of protection, but the language of the statute itself leads to the same conclusion.

People v. Liberta, 90 A.D.2d 681,682 (1982). The Appellate Division based this conclusion on its review of the original bill, the amended and final version and the sponsor's memorandum which stated that "unmarried" included those spouses living apart based on "a court determination that the spouses should, for the well being of one or both, live apart." Quoted at 90 A.D.2d at 682.

To hold otherwise is irrational and would deny protection to those wives most in need: women who have obtained Orders of Protection from the Family Court. These women have been found to be victims of assault or attempted assault. Family Court Act §§812(1); 821; 832.

Research shows that spouse abuse is likely to increase when the victim attempts to leave the marriage or seek outside help.

"[T]he period during and after the breakup of the relationship may indeed be one of high vulnerablity for marital rape." Finkelhor, Forced Sex in Marriage, at 477. It is precisely those women who have been victims of domestic violence during the ongoing marriage and have sought intervention by the Family Court to protect themselves, who are most in need of the full protection of the Penal Law.

VIII.
THE UNIQUE STATUTORY SCHEME OF ARTICLE 130 OF THE NEW YORK PENAL LAW PERMITS THE GENDER-SPECIFIC ASPECT OF PENAL LAW §130.35 TO WITHSTAND CONSTITUTIONAL SCRUTINY

Defendant's claim that New York's gender-specific rape provision, Penal Law §130.35, unconstitutionally discriminates on the basis of sex, is without merit.[31] The unique nature of New York's statutory scheme under Article 130 of the Penal Law needs to be examined before declaring a particular provision unconstitutional. Men are protected from, and women can be prosecuted for, violent acts defined and punished equally by the

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[31] As pointed out by the Appellate Division, Fourth Department, in its Order and Memorandum, dated March 6, 1984 (unanimously affirming defendant Liberta's conviction for rape and sodomy), New York's gender-based rape statute has consistently withstood constitutional challenge in New York's lower courts. This Court can also construe the statute in a way that preserves its constitutionality. It is an accepted technique of statutory construction to read a statute in a way that avoids constitutional questions. New York courts have applied this technique to preserve statutory schemes from challenge as sex discriminatory. See, e.g., Matter of Carter v. Carter, 58 A.D.2d 438, 397 N.Y.S.2d 88 (2d Dept. 1977) (court read former sections 413 and 414 of Family Court Act together, excising part of Sec. 414 so that "there is no unequal treatment ... on the basis of .. sex.") 58 A.D.2d at 447.

various provision of the state's statutory scheme. Thus, the defendant has no equal protection claim.

New York's statutory scheme is divided into categories based upon the type of sexual assault, with rape being only one of several types. Under Article 130 of the New York Penal law, women are criminally liable for sexual assaults upon men for forcible sodomy,[32] sexual abuse,[33] aggravated sexual abuse,[34] and sexual misconduct.[35] Thus, any type of sexual assault that a female can perpetrate against a male is punished in New York under one of these four provisions. Only New York's rape provisions[36] provide that males alone can be prosecuted for these acts against females.[37]

The validity of the Art. 130 statutory scheme is further shown by an examination of the penalties it prescribes. The penalties for rape and forcible sodomy are equal: First degree rape (P.L. §130.35) and sodomy (P.L. §130.50) are class B felonies; second degree rape (P.L. §130.30) and sodomy (P.L. §130.45) are class D felonies; third degree rape (P.L. §130.25)

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[32] Penal Law §§130.40, 130.45, 130.50.

[33] Penal Law §§130.55, 130.60, 130.65.

[34] Penal Law §130.70.

[35] Penal Law §130.20, subd. 2 and 3.

[36] Penal Law §§130.25, 130.30, 130.35.

[37] It is significant that females cannot be prosecuted for raping females under New York's rape provision. As with males, females can be prosecuted for all forms of sexual offenses commited against other females under the other four provisions.

and sodomy (P.L. §130.40) are class E felonies. The sexual abuse provisions (P.L. §§130.55, 130.50, 130.65) are gender-neutral. Offenses under §130.20 (sexual misconduct) are class A misdemeanors, subjecting both male and female perpetrators to equal punishment.

Thus, all types of sexual assault are outlawed in New York. Men are therefore protected when they are sexually assaulted by females (or males), and women are subject to prosecution when they sexually assault any person. It is not the defendant, or male sexual assault victims who are denied equal protection under New York's statutory scheme; rather it is women who have been raped or sodomized by their husbands.

IX.
ALTHOUGH THE MARITAL RAPE AND FORCIBLE SODOMY EXEMPTIONS ARE INVALID, THE DEFENDANT'S CONVICTION SHOULD BE UPHELD.

As a general rule, parts of a statute or an act may be upheld as valid by a court while the invalid parts are severed. 1 McKinney's Statutes, §150 (1971). This principle of severability should be applied where the remaining valid portions can stand on their own and where the legislature would have wanted the valid portion to remain. Id. See I.N.S. v. Chadha, __ U.S. __, 103 S.Ct. 2764, 2774-75 (1983); Champlin Refining Co. v. Corporation Commission, 286 U.S. 210, 234 (1932); People v. Mancuso, 255 N.Y. 463, 472-73 (1931); 2 Sands, Sutherland Statutory Construction, Ch. 44 (1972).

> In New York, "[t]he whole tendency during recent years ... has been to apply the principle of severance with increasing liberality. 'Severance' we have said ... 'does not depend upon the separation of the good from the bad by paragraphs or sentences in the text of the enactment... The principle

> of division is not a principle of form. It is a principle of function' 'Our duty is to save unless in saving we pervert.'
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> * * *
>
> 'The question is in every case whether the Legislature, if partial invalidity had been foreseen, would have wished the statute to be enforced with the invalid part exscinded, or rejected altogether.' [Citations omitted.]

People v. Mancuso, 255 N.Y. at 473-74.

In this case, the marital exemptions can be struck down as unconstitutional, while the remaining forcible rape and sodomy statutes can survive on their own. It is inconceivable that the legislature would not agree with this result. Rape and forcible sodomy are universally condemned as crimes. Surely our lawmakers would continue to punish those acts even if they were not constitutionally permitted to exempt forcible rape and sodomy of wives by husbands.

Penal Law §130.35(1), the rape statute, may be read by itself to define the crime of rape without reference to the odd definition of "female" contained in Penal Law §130.00(4) that creates the marital exemption. The common definition of "female" is sufficient. 1 McKinney's Statutes §232. Penal Law §130.50(1), the forcible sodomy statute, and Penal Law §130.00(2) may be upheld by severing the phrase "not married to each other" contained in Penal Law §130.00(2). This severability process has been applied to statutes involving definitions, Matter of Patricia A., 31 N.Y.2d 83 (1972), and criminal statutes, People v. Ditta, 52 N.Y.2d 657, 439 N.Y.S.2d 855 (1981).

Amici have devoted significant attention to the question of remedy in this case because of the importance of the general

rule, grounded in the separation of powers, that legislatures and not courts are responsible for establishing criminal sanctions. People v. Ryan, 267 N.Y. 133, 195 N.E. 882 (1935) (definition of substantive criminal offense is legislative function). Upholding the forcible rape and sodomy statutes while striking the marital exemptions would not cause the Court to be engaged improperly in the legislative process of creating crimes. State v. Smith, 401 So.2d at 1127 (exemption does not affect definition of rape, only goes to existence of element of consent). The Legislature has criminalized the commission of non-consensual forcible sex acts. The unconstitutional exclusion of a particular class from protection against those criminal acts is separate from the creating of the crime and prescription of penalties. As this Court noted in People v. Ditta, 52 N.Y.2d at 660, 439 N.Y.S.2d at 857, "[c]riminal liability is imposed under section §130.65, not under §130.00, the definitional section" (crime of sexual abuse in the first degree).

Moreover, a distinction must be drawn between legislative definitions which set out the component acts of a crime (People v. Shapiro, 4 N.Y.2d 597, 601 (1958)), and a definition of the crime victims which by invidious discrimination excludes members of a particular class from protection by the statute, and violates the strictures of the New York Constitution and the 13th and 14th Amendments of the U.S. Constitution. Here, the substance of the crime would be unchanged. Cf. United States v. Jackson, 390 U.S. 570, 585-86 (1968) (substance of crime of kidnapping unchanged by severing capital punishment clause). In

striking the marital exemptions, the Court would not be "extending" the definition of the crime, but remedying the discriminatory underinclusion in the class of victims.

Courts have remedied invidious underinclusion by extension in criminal cases such as Welsh v. United States, 398 U.S. 333 (1970), as well as in the civil area, where the extension of a statute to remedy invidious underinclusion is commonplace. See e.g., Califano v. Westcott, 443 U.S. 76, 89-90 (1979).

This case is particularly appropriate for the Court to strike the marital exemptions while upholding the rape and sodomy statutes. The defendant falls within the present definition of "unmarried" in Penal Law §130.00(4). The Court, therefore, may affirm his conviction while striking the marital exemption, because his exposure to criminal prosecution is not newly created or increased thereby. His situation is not that of a married man who could claim lack of notice if charged with a rape committed before the exemption was struck down.

The public policy of this state is to punish those who commit forcible sexual attacks on others. The appropriate outcome of this case is to extend that protection to women who marry, while upholding the defendant's conviction. Defendant's actions come squarely within the prohibitions of the criminal laws as now written.

CONCLUSION

As a vestige of the "antediluvian assumptions concerning the role and status of women in marriage and society," People v. DeStefano, 467 N.Y.S.2d at 515-16, the marital rape and forcible sodomy exemptions have no place in the statute books of New York State.

Justice Holmes put the matter succinctly:

> It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.

Holmes, The Path of the Law, 10 Harv. L. Rev. 457, 469 (1897).

The marital exemptions should be struck down as unconstitutional and the remaining rape and forcible sodomy provisions should be upheld.

Respectfully submitted,

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AMICI'S STATEMENT OF INTEREST

Albany County Rape Crisis Center

Albany County Rape Crisis Center is a not-for-profit agency funded by Albany County, New York. Our services to rape victims include 24-hour crisis intervention counseling, short term professional counseling, legal and medical advocacy, and referrals to other community service agencies.

Since its inception ten years ago, the Center has been contacted by over a thousand rape victims, many of whom were married to their assailants. A woman who is sexually assaulted by her husband suffers the same physical and psychological reactions as a woman whose assailant was someone other than her husband. While other victims who are rendered helpless during the assault are often able to recover their lost sense of power and control over their lives by seeing the assailant prosecuted, no such avenue of recovery is available to the victim who is married to her offender. She is rendered totally helpless because she is unable to pursue the legal process. She is, in effect, being told by the legal system that the assault did not really occur. Her experience is invalidated, creating a situation that makes recovery all the more difficult. We support a change in the law that will assure legal rights to all victims of sexual assault.

EXHIBIT A

Alternatives For Battered Women, Inc.

Alternatives for Battered Women, Inc. (ABW) is a not-for-profit corporation in the State of New York, providing shelter, counseling, a 24-hour Hotline, referral, information, and advocacy for battered women and their children. ABW's clients are battered women of Rochester, Monroe County, and the surrounding area, and represent persons in every social, educational and economic group. We serve approximately 1,200 hotline (non-residents) clients per year, and 160 women and their 220 children per year.

Women who sought shelter at ABW reported being punched, slapped, choked, kicked, burned, stabbed, threatened or hit with a gun, and sexually attacked. Sexual assault occurs frequently, but is rarely reported to the authorities. A current resident of our shelter has been physically ill since the beginning of her pregnancy. Her husband has demanded daily intercourse with her despite her illness. When she refuses to comply, she is beaten. She believed that she had no recourse for this sexual abuse because she is married to her abuser. It was only when she came into the shelter, eight months pregnant, and was able to escape her husband's abuse that her physical illness finally subsided. All ABW staff who regularly see women affected by marital rape, strongly support an end to the marital rape exemption.

Brooklyn Women's Anti-Rape Exchange

The Brooklyn Women's Anti-Rape Exchange (BWARE) is a non-profit organization providing telephone counseling to victims of sexual assault in the borough of Brooklyn, community education about the crime of rape and training for community organizations serving rape victims. Approximately one-third of all rapes reported to the New York City Police Department occur in the borough of Brooklyn.

BWARE provides counseling to married women who have been raped by their husbands, and our experience has shown us that marital rape is at least as traumatic to those victimized as is rape by a stranger. It is imperative that the law afford those women protection from sexual assault by their husbands so that the marriage license no longer be tantamount to a license to rape.

Buffalo Chapter of the National Organization For Women

The Buffalo Chapter of the National Organization for Women (Buffalo NOW) is a not-for-profit unincorporated organization seeking to bring women into the mainstream of American society on an equal basis with men. Buffalo NOW has approximately 600 members.

Buffalo NOW activities include working for changes in laws more equitable to women and repealing discriminatory laws;

educating the public on their rights under the law; providing referral services to support agencies and groups, and working for programs addressing women's needs. Buffalo NOW opposes the marital rape exemption because of its discriminatory nature: women who are raped by their husbands are denied the same protection as other rape victims.

Center for the Elimination of Violence in the Family, Inc.

Center for the Elimination of Violence in the Family, Inc. (CEVFI) is a not-for-profit corporation in New York State that sponsors programs to service victims of domestic violence. Our major program is a residential shelter for battered women, Women's Survival Space.

Almost all of the battered women we work with report being raped by husbands and boyfriends. Significantly, they describe rape but rarely use that term. Clearly, part of their physical and mental abuse is their loss of rights over their own body. For some, it's "be raped" or "be beaten." For others, it's be beaten and raped. Rape is an integral component of the violence. Children in these families are traumatized by what they've seen.

Coalition For Abused Women, Inc.

The Coalition for Abused Women is a not-for-profit corporation incorporated in New York State whose clients are victims of domestic violence residing in Nassau County, New York. The Coalition provides a hotline, counseling, legal services, emergency housing, information and referrals, community education and training.

An analysis of 25 reported cases of rape by a spouse cohabitant, close friend or relative (21 of whom were married) collected by the Coalition over a nine-month period revealed that: (1) The rapes occurred among all racial and religious groups which proportionately reflected the overall population of Nassau County; (2) The rapes were often accompanied by physical threats, beating, and/or the victim was physically restrained or tied. In three cases a gun was used; (3) Protest or resistance by the victim could lead to additional beating; (4) The victims reacted with fear, terror, fright andenormous emotional trauma; (5) In some cases children were involved as observers; over 50 percent of these children were victims of abuse themselves (sometimes sexual) by the woman's husband or partner.

Erie County Citizens' Committee on Rape and Sexual Assault

The Erie County Citizens' Committee on Rape and Sexual Assault is an unincorporated, not-for profit advisory board

composed of private citizens. The Committee is mandated by the Erie County Charter to coordinate the existing public and private services available to victims of rape and sexual assault and to provide support and assistance to victims and their families.

The Committee has provided direct services to at least 1000 rape and sexual assault victims in the last three (3) years. The marital rape victims we have seen exhibit as much trauma as those victims raped by non-spouses. The marital rape exemption deters victims of spousal rape from reporting the crime and obtaining relief through the criminal justice system.

Family Adult Shelter

The Family Adult Shelter is a non-profit agency located in Woodstock, New York, which provides shelter, counseling and advocacy for women and children who are victims of domestic violence. In the past four years we have served and sheltered approximately 500 women and many have been victims of marital rape. We feel strongly that women's rights and dignity cannot be protected in New York State without strong laws to protect women from marital rape.

Ithaca Rape Crisis, Inc.

Ithaca Rape Crisis, Inc. is a not-for-profit corporation

incorporated in the state of New York. Ithaca Rape Crisis provides counseling, referral and advocacy services to victims of rape and other forms of sexual assault, as well as providing educational and preventive information to the community at large. Approximately 100 sexual assault victims per year request services from Ithaca Rape Crisis.

Our clients who are victims of marital rape have limited access to the criminal justice system. New York's marital rape exemption denies most marital rape clients the same protection afforded to unmarried victims, and we believe interferes with and hinders our ability to assist these clients.

Jefferson County Women's Center, Inc.

The Jefferson County Women's Center is a not-for-profit corporation in New York State whose purpose it is to assist women in crisis situations, particularly battered women.

Jefferson County with a population of 88,151, is a rural area in Northern New York. In the last five years, over 1,000 women have come to the Women's Center for help, most of whom were married. One-third of those married experienced rape and/or sodomy as one form of the abuse they suffered. The following excerpt from a four-part series on battered women in Jefferson County in the Watertown Daily Times, May 31, 1983, tells how one client was affected by marital rape: "Another time, Debbie

spurned Jimmy's sexual advances. 'He beat me with a belt and said he'd kill me. I almost passed out. So, I did what he wanted.' Debbie was raped and sodomized countless times. Jimmy regarded the sexual abuse as a punishment for Debbie's shortcomings. Debbie says of the sexual abuse, 'You can get over the pain of a slapping, but not the emotional pain of that kind of humiliation.'"

Long Island Women's Coalition

The Long Island Women's Coalition is a not-for-profit, tax exemption organization. The Long Island Women's Coalition, Inc. established in 1976, provides services and shelter to battered women and their minor children, primarily in Suffolk County, through a network of volunteer safe-homes, a shelter facility which accomodates up to eighteen people, a 24-hour hotline, a paid staff of fifteen counselors, shelter workers, child care and administrative personnel, and approximately 40 volunteers.

Metropolitan Assistance (Victim Services/Travelers Aid) Corp.

Metropolitan Assistance Corporation (MAC) is a not-for-profit corporation of New York State. MAC provides crisis counseling and services to more than 90,000 victims of crime in New York City. MAC operates programs within the Criminal and

Family Courts in New York City as well as in nine community offices throughout the City's five boroughs. Recent figures indicate that the Corporation serves 15,000 victims of rape and battering each year.

The majority of our clients are at the poverty level and are unable to obtain readily the services of attorneys for divorce proceedings (Legal Services programs often have waiting lists extending for several years). The marital rape exemption is particularly dangerous for indigent women who often must remain legally married and in the same household as their husbands for for longer periods than they would like or feel it is safe.

National Association of Social Workers, New York State Chapter

The New York State Chapter of the National Association of Social Workers represents more than 7,000 of the 90,000 members of NASW, the largest professional association for social workers in the world.

Historically, we have had a commitment to issues of concern to women, and for that reason have supported legislation to strike down the marital exemption regarding rape. It is our contention that the exemption unlawfully discriminates againstwomen on the basis of sex and marital status.

National Association of Social Workers, Inc., (Nassau Division)

The National Association of Social Workers, Inc. is the United States professional organization for persons with a Bachelor's of Social Work, Masters of Social Work or Doctor of Social Work, degree. It is a not-for-profit corporation that represents both the professionals within the discipline and the clients with whom they work.

The Nassau Division of NASAW, which is the largest individual unit under the New York State Chapter, has a membership of over 1,500 persons including students and active and retired social workers. Our members are people who work at agencies such as Nassau County Rape Crisis hotline, South Nassau Hospital rape counseling program, Coalition for Abused Women, Inc. and Nassau County's Family Service Association to name a few.

The primary professional concern of our members is their ability to improve the quality of life for their clients. Our concern in this case is that rape is a crime of violence. It should make no difference whether or not the victim knows the perpetrator, or whether or not the victim is married to the assailant. To be forced to give your own body in an act against your will is to create deep psychological scars.

National Clearinghouse on Marital Rape

The National Clearinghouse on Marital Rape is a project of the Women's History Research Center, Inc., which is a non-profit, tax-exempt foundation and a New York corporation qualified to do business in California. The Clearinghouse maintains a reference library on all aspects of marital rape and works to eliminate the marital exemption from state laws through education, research, and victim assistance. Our services and publications are used by prosecutors, family lawyers, attorneys for marital rape survivors, state Attorney Generals and judges.

The Clearinghouse collects information and statistics on marital rape prosecutions. Our statistics show that between 1980-1983, (1) Out of 80 cases in California, there were 58 convictions (72.5%); (2) Out of 51 cases outside of California, there were 29 convictions (57% conviction rate). These conviction rates are higher than those in most other serious crimes.

National Organization for Women - New York State

The National Organization for Women of New York State is the state affiliate of the National Organization for Women, Inc. which is incorporated in Washington, D.C. as a non-profit organization. NOW-NYS has 37 chapters in New York and over 17,000 members. Our membership is dedicated to achieving social and legal equality for women.

A major priority area for NOW-NYS is combatting violence against women. NOW-NYS has worked actively with other organizations to establish and maintain shelters, counseling, and other support systems for battered women and rape victims. NOW-NYS has been active in supporting through legislative reform the elimination of the marital rape exemption.

National Organization for Women, New York City Chapter

The National Organization for Women, New York City Chapter is a not-for-profit unincorporated association dedicated to bringing women into the mainstream of American society. We lobby on legislation; provide a Women's Help Hotline to refer women for emergency and other services; and provide legal seminars on women's rights during the separation and divorce process. We believe that continuation of the marital rape exemption perpetrates women's unequal status in society by treating a wife as the "property" of her husband.

New York City Advisory Task Force on Rape

The New York City Advisory Task Force on Rape is a network of 35 public and private agencies in New York City who provide services to rape victims and public education about rape. Members include representatives from the New York City Police Department, the five District Attorneys' offices, the Human Resources Administration, hospital and health service providers,

and grassroot community groups. The marital rape exemption has been of major concern to Task Force members. We have found in our work with marital rape victims that the inability to prosecute for rape has caused trauma additional to that of the rape.

New York City Commission on the Status of Women

The New York Commission on the Status of Women was established by Mayoral Executive Order in 1975 to advise the Mayor of New York City on issues affecting the City's 3.5 million women, to support and promote the rights of women in the private and public sectors of New York City and to advocate change to promote women's equalty.

We are aware from frequent calls received by our office from New York City women that marital rape is a pervasive problem in this City and that the marital exemption from prosecution in these cases has given license to men to rape their wives without the slightest fear of punishment. The existence of the marital exemption has caused immeasurable harm and suffering by thousands of women who have no legal recourse when their husbands force them to submit to sexual acts. Eighteen states, including Connecticut and New Jersey, now recognize rape of a wife by a cohabiting husband as a prosecutable offense. New York State law should not tolerate a definition of marriage that makes a woman the sexual property of her husband and denies her control of her body and protection of the law.

New York City Council President Carol Bellamy

Carol Bellamy, a taxpayer and citizen of the State of New York, is a citywide elected official of the City of New York, President of its City Council, and is charged with the responsibility to represent the interest of the people of New York City as Ombudsman. In that capacity, she has received numerous complaints from women and women's representatives regarding violence against them by their husbands, and believes that the marital rape exemption contributes to that violence.

New York State Coalition Against Domestic Violence (NYSCADV)

The New York State Coalition Against Domestic Violence (NYSCADV) is a not-for-profit membership organization made up of battered women's shelters, safe home projects, counseling and advocacy programs, and individuals working to eliminate domestic violence in New York State. NYSCADV sponsors two projects: The New York State Domestic Violence Hotline, and the Newsletter/Data Collection Project. The New York State Domestic Violence Hotline receives at least 4,000 calls per year, and provides crisis counseling to callers and referrals to local services. Many of these callers are women who have been raped by their husbands. Clients who call the NYSCADV Hotline, as well as battered women in shelters, are unable to get adequate legal relief if they are raped by their husbands.

New York Women Against Rape

New York Women Against Rape (NYWAR) is a not-for-profit organization in New York City that offers counseling, information and referrals to sexual assault victims. We also provide training to social workers, police officers, hospital personnel and other professionals. NYWAR opened in 1973 and has served over 15,000 victims, many of whom have been raped by their husbands. Helping marital rape victims has been difficult because many live with their assailants and because the victimization is currently legal. We have found that assaults in which the rapist is known to the victim are particularly damaging because of the violation of trust. Some of these cases have resulted in institutionalization of the victim, suicide or murder.

Older Women's League, Nassau Chapter

The Older Women's League (OWL), Nassau Chapter is a not-for-profit organization. We are a local chapter of National OWL with headquarters in Washington, D.C. and chapters across the country. National OWL has about 7,000 members; our chapter has over 200 members.

The purpose of our organization is public education and advocacy. We are committed to correcting the social, political and economic inequities faced by midlife and older women. One of our priorty areas is adult abuse; all forms of such abuse, including marital rape, are of concern.

The Park Slope Safe Homes Project

The Park Slope Safe Homes Project is sponsored by the Good Shepherd Services, Inc., an unincorporated not-for-profit organization in New York State. The Project provides a hotline, short-term shelter and counseling for battered women and their children in Park Slope, Brooklyn. Two-thirds of the women we serve are married, and we have found that approximately forty (40) percent have been raped and/or sexually abused by their male partner.

Married women report having their clothes torn off, being burned by cigarettes, and being threatened with weapons if they refuse to have sex with their husbands. One woman who had been separated from her husband for several months was asleep when her husband climbed through the bedroom window of her apartment and raped her. Her humiliation and emotional injury were compounded by an unwanted pregnancy that seriously hampered her attempts to reconstruct her life for herself and her 18 month old daughter. These examples are only a small sample of the kind of sexual coercion and abuse suffered by women in the "safety" of their own homes.

Planned Parenthood of Schenectady and Affiliated Counties, Inc.

The Rape Crisis Service is a program of Planned Parenthood of Schenectady and Affiliated Counties, Inc., a non-profit

women's health care agency. The Rape Crisis Service provides supportive services to victims of rape and their families, and develops community awareness about the problem of violence against women through public education programs. In our ten years of operation, Rape Crisis Service has assisted over 2,000 hotline callers.

We feel strongly that all women in New York State should be protected against sexual assault and that all men who commit these crimes should be prosecuted, regardless of the relationship between victim and assailant. More women are raped by their husbands each year than by strangers, acquaintances or other persons. Nearly 6 million wives will be abused by their husbands in any one year, and rape is usually a form of this abuse.

The Rape Crisis Coalition of Eastern New York

The Rape Crisis Coalition of Eastern New York was formed four years ago and represents rape crisis programs from 10 counties in New York. Collectively we have assisted hundreds of women who have been sexually assaulted by their husbands. On numerous occasions, crisis counselors have encountered resistance from law encorcement officers to taking a formal complaint, and reluctance by Emergency Room physicians to examine and collect medical evidence from women victimized by their husbands. We believe that if the marital rape exemption was eliminated these women would receive adequate medical attention and legal recourse through the courts.

Rape Crisis Service of Planned Parenthood of Rochester and Monroe County, Inc.

The Planned Parenthood Rape Crisis Service is a not-for-profit corporation serving Monroe County. It provides 24-hour crisis intervention, counseling, advocacy, and professional and community education on sexual assault issues. In 1983, the Rape Crisis Service had contact with 392 clients. Many had been sexually assaulted by their husbands and the marital exemption limited their options to have the perpetrator held responsible. This directly effected their safety as well as their ability to recover emotionally.

Rockland Family Shelter for Victims of Domestic Violence

Rockland Family Shelter, Inc., is a private not-for-profit corporation located in Spring Valley, New York, that provides a 24-hour crisis hotline, emergency shelter, second stage housing and supportive services, advocacy and counseling to victims of domestic violence and rape and their family members. Since opening in 1979, we have assisted over 4,000 familes through our domestic violence services.

Many of our clients have been raped and sexually abused by their mates. We found that one-half of our shelter residents in 1984 had been raped during their marriage or were victims of incest. Melinda B. came to the shelter due to a serious assault;

each of her three children most probably were conceived during episodes of rape.

In 1983, Sue B. had secured a temporary Order of Protection against her abusive husband. In July, 1984, her husband became abusive again and she went bank to Family Court and filed a new petition. After receiving her Order of Protection in July, 1984, Sue's husband sodomized her and then spread semen all over her body. She wanted to press criminal charges but was told she could not do so because she was married. Instead, she filed a complaint for assault which was eventually dropped.

Schenectady YWCA Services to Families in Violence

Schenectady YWCA Services to Families in Violence is a not-for-profit corporation serving battered women and their children. It has been in existence 5 years, has served 2,200 women and sheltered over 600 battered women and 1,200 children, primarily from Schenectady and Albany county, but also from across New York state and from many distant states. Our hotline has handled more than 20,000 phone calls.

We estimate that about 90 percent of our cases include marital rape. Most of these women are repeatedly attacked sexually by their husbands. Most of the women who come to us do not have any money and will be unable to afford a divorce for years to come. The local Legal Aid Society stopped helping these women obtain divorces because of a 4-year backlog.

One of our clients had an Order of Protection, and was living separately from her husband. She went back to the marital home for some clothing and was raped by her husband. Another client's husband held her child hostage until she submitted sexually. He held her prisoner and raped her repeatedly over 18 hours; he later killed himself and their child.

Tompkins County Task Force for Battered Women, Inc.

The Tompkins County Task Force for Battered Women, Inc., is a private, not-for-profit corporation in New York State. The Task Force provides peer counseling, information and referral, advocacy and shelter to battered women and their children. Approximately 270 battered women and 40 sexually abused children use our services each year. Many of the battered women we work with are affected by marital rape: the issue comes up frequently in our support groups and in one-to-one discussions between volunteer advocates and battered women.

Unity House Families in Crisis Program

Unity House is a not-for-profit corporation in New York State, incorporated under the Diocesan Health and Social Services of Albany, Catholic Diocese. We provide shelter, counseling, advocay and children's programming for battered women and their families.

Victims Information Bureau of Suffolk, Inc.

The Victims Information Bureau is a not-for-profit agency that provides a 24-hour hotline, client advocacy services and on-going therapeutic counseling to victims of rape and family abuse. Approximately 6,700 women sought services from our agency in 1983. In 1983 and 1984, our agency worked with approximately 67 women who identified occasions of fear, force and intimidation by their spouses for the purpose of sexual contact. Some of these cases involved the use of a weapon; in some cases the husband literally beat the woman helpless in order to gain physical control of her and her body. In some cases the husband used intimidation and threats against the woman or their children. Had these situations occurred outside the partnership of marriage, the women involved would have had legal recourse.

Women Against Pornography

Women Agaisnt Pornography is a not-for-profit corporation whose purpose is to educate the public about the myths pornography perpetuates about women's sexuality, i.e., that women enjoy being raped, beaten, harassed and molested. We have a membership of over 10,000. Some of our members have come to us specifically because they have been victims of a sex crime from their husbands or boyfriends.

Women's Bar Association of the State of New York

The Women's Bar Association of the State of New York, which is comprised of 14 chapters and approximately 2,000 members, joins in the submission of the [illegible]ant amicus brief. The Association endorses the positions herein, namely that the lower court was correct in ruling that an Order of Protection is sufficient to terminate the marital rape exemption and further that the marital rape exemption unconstitutionally discriminates against married women on the basis of sex and marital status.

Yonkers Women's Task Force, Inc.

Yonkers Women's Task Force is a not-for-profit corporation and sponsors the Shelter for Victims of Domestic Violence. The Shelter serves abused women and their children from Westchester County, and provides emergency housing, a 24-hour hotline, advocacy and referral. We have served 388 abused women and 526 children over the last five years. Approximately five percent of our clients admit to having been victims of marital rape. Presently, we have a 19-year old mother of two children who is now pregnant as the result of a forcible sexual assault by her husband.

YWCA Hall House and Rape Crisis Services

YWCA Hall House and Rape Crisis Services is a not-for-profit organization incorporated in New York State that provides crisis

services to battered women and children, and to survivors of sexual assault. The client population is primarily from Oneida County although not limited to that area. Hall House provided shelter services to 267 women and children during program year 1983. Rape Crisis Services provided services to 120 victims and family members during program year 1983.

Although there is no formal statistical account, we estimate that at least 25 percent of Hall House clients have indicated being sexually assaulted by a spouse. Many of these women have received counseling as a result of the physical assault; counseling was the only remedy for the sexual assault. Many of these women became pregnant as a result of the attacks. Many of the sexual assault episodes occurred after other forms of physical violence; in other cases the episodes of rape were isolated events. Some clients were living apart from their husbands at the time of the attacks, but remained legally married because they were unable to afford divorce proceedings.

YWCA of Buffalo and Erie County

The YWCA of Buffalo and Erie County is a not-for-profit association dedicated to the drawing together into responsible membership women and girls of diverse experiences and faiths. We represent 4,000 members and associates. This YWCA was founded in 1870 and has conducted programs of research, education and advocacy on social issues with special impact on women and children. Through this work, the YWCA has been increasingly

concerned with the issue of family violence. We are especially concerned by the discriminatory attitude toward marital rape victims.

Address to the New York County Lawyer's Association,
May 1, 1984

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May, 1984

MARITAL RAPE: THE MISUNDERSTOOD CRIME

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Marital rape is a crime with a name, but without a reality. Even where it exists in our legislation, it does not exist in our imagination. Despite debates in the congress and in the courts, people have only the vaguest and most misleading picture of what it is. The stories of the victims of this crime -- victims humiliated by their assailants, ashamed among their closest friends, deprived of the protection of the law, and ignored by the professionals -- those stories have not yet touched the conscience of the community.

It was to hasten this process that my colleague Kersti Yllo and I recruited and interviewed fifty women who had been sexually assaulted by their husbands. The women were ordinary women, most of them clients at family planning agencies who were asked as part of their regular medical history if they had ever been sexually assaulted by their partner. Many were telling their stories for the first time.

The depth of popular ignorance about the problem of marital rape runs deep. When we asked groups of students, for example, to invent vignettes of marital rape, one wrote, "He wants to. She doesn't. He wins". Can you imagine a stranger rape so described: "He wants to. She doesn't. He wins." No, the imagery of stranger rape has knives and dark alleys and terror and violence and degradation.

So does marital rape! People are apt to think of marital rape, if they think of anything at all, as a bedroom squabble over whether to have sex tonight. No wonder they rate it in surveys as being about as serious an offense as driving while drunk. But marital rape does have brutality and terror and violence and humiliation to rival the most graphic stranger rape.

Among the fifty women we interviewed:

--one had been raped at knifepoint by a husband who held her up against the wall and threatened to kill her.

--one was jumped in the dark by her husband and raped in the anus while sleeping over a woodpile.

--one was gang raped by her husband and his friend holding blackjacks after they surprised her alone in a vacant apartment.

--one had her baby kidnapped by an estranged husband who compelled her to have sex as a condition for returning the child.

--one had a 6 centimeter gash ripped in her vagina by a husband who was trying "to pull her vagina out".

None of these atrocities (and there were others of equal brutality) were ever reported to the police or to a newspaper. Some were never reported to anybody.

And these were marital rapes. If other people had these images inscribed in their memories when they thought of marital rape in the same indelible way that my colleague and I do, I do not think we would hear nearly so much nonsense about this problem.

However, this imagery of marital rape is not the whole reality either. From a survey we did of 521 women in Boston and from one Diana Russell did of 930 women in San Francisco, we estimate that marital rape is amazingly frequent -- occurring to as many as 10 to 14% of all married women. When talking about a problem of these dimensions, it is no more fair to say that marital rape is always a savage attack than it is to say that it is always a bedroom squabble. We are talking about a spectrum of which both of these are a part.

To make some sense of this spectrum, my colleague and I, after carefully analyzing the cases of the women we interviewed, found that it was useful to divide them into three broad categories. We decided to call these three categories battering rapes, non-battering rapes and obsessive rapes.

Battering rapes were the most brutal and included most of the incidents I listed earlier. They occurred in relationships where, in addition to the sexual abuse, there was a large amount of physical abuse. These husbands tended to have problems with alcohol and drugs. They had enormous reservoirs of anger which they vented on their wives and often other people in their environment. The rapes tended to take place in capricious and unpredictable circumstances, much like the other violence. They seemed to have little to do with sexual issues per se. In fact, many of these women said they made themselves sexually available whenever their husband wanted them. Rather, these men seemed to be motivated by an intense desire to punish, humiliate, degrade, and retaliate against their wives using rape as the vehicle. (About forty-five percent of the women we interviewed suffered from battering rapes.)

The non-battering rapes were substantially different. They occurred in more middle class marriages where there was much less of a history of violence and abuse. The immediate precipitant of these rapes was more likely to be a specifically sexual grievance, for example, over how often to have sex or what kinds of sex. The force involved was often more restrained, enough to gain sexual access, but not enough to cause severe injury. These rapes seemed to be motivated less by anger than by a desire to assert power, establish control, teach a lesson, show who was boss. (Another forty-five percent of the rapes were of this sort.)

Finally, there was a third kind of marital rape we uncovered in about 10% of the situations that we called obsessive rapes. In these relationships, the husbands had unusual sexual preoccupations. Most were obsessed with pornography; they wanted their wives to help them make it. Most were obsessed with their sexual problems; they were afraid of being impotent or homosexual. Often they had highly structured rituals about sex. They could only get aroused if their wives were in a certain position, or if they touched them in a certain way, or if they "staged" a rape. There was a sense that many of these men needed violence or struggle in order to have sex. They found the humiliation very stimulating. The women felt as though they were being used as masturbatory objects. There was a definite sadistic component to some.

These three -- battering, non-battering and obsessive -- were the types of rape we identified from our interviews with marital rape victims. There may be other types; we may need to refine our conceptions. The important point is that marital rape happens in a wide variety of contexts. We need an imagery that encompasses this variety, and we can only get it by listening to the stories of the women it happens to.

The absence of these stories from the conscience of the community results in another misunderstanding about marital rape -- this one concerning its impact. People do not believe that marital rape hurts. In 1979, a nationally syndicated columnist invented some experts to bolster his own prejudices and wrote that "many U.S. jurists agree that when a husband compels his wife to engage in sex relations, she suffers relatively little of the psychological trauma incurred in rape by a stranger" (Lloyd Shearer, Parade Magazine, April 22, 1979).

(Notice how the husband only "compels his wife" while what the stranger does is rape.)

"This isn't like he's grabbing some lady off the street", argued John Rideout's defense attorney Charles Burt. "This is a woman he may have made love to hundreds of times before." In other words, if he had made love to her hundreds of times before, how traumatic could one more time be?

Opinions like this betray a fundamental misunderstanding of the trauma of rape in general as well as the trauma of marital rape in particular. Rape is traumatic not because it is with someone you don't know, but because it is with someone you don't want -- whether stranger, friend or husband.

Burt's idea is akin to saying that if your business partner empties your joint account and runs off to Venezuela, it shouldn't hurt, because after all, you'd written him hundreds of checks before.

Rape is the intimate violation of a person's trust and autonomy. Prior intimate contact only makes the violation that much more so.

In fact the studies that have looked at this question empirically have indeed found that the victims of marital rape do suffer greater and longer term trauma than other rape victims. This finding is not surprising to those who have talked to marital rape victims and have come to recognize the three special injuries of marital rape: the betrayal, the entrapment and the isolation.

Here so than victims of any other kind of rape, the victims of marital rape suffer a profound betrayal. Among the women we interviewed, the fact that someone whom they had loved and needed could violate them in such an intimate way destroyed their ability to trust others. "I thought so highly of him and he turned out to be a rapist," said one woman. The experience also sapped their confidence in themselves and their faith that they had the capacity to choose trustworthy companions. Years later, many of these women found it impossible to contemplate intimacy with a man. This is a component to marital rape that has no parallel in stranger rape.

A second component that makes marital rape different and more traumatic than other forms of rape is the entrapment. Most marital rape victims are raped not just once but many times. Half of our interviewees had been sexually

assaulted twenty times or more by their husbands. They lived for months, sometimes years, with ongoing violation. Many grappled with never-ending anxiety about when the next forced sex episode might occur. This took its toll in the form of chronic terror, emotional numbing, involuntary panics, and repetitive nightmares that often lasted for years after the relationship had ended and the threat of rape had gone. In the sexual sphere, victims suffered from flashbacks and inability to engage in sex. The corrosive impact of marital rape could be summed up thus: when you are raped by a stranger you have to live with a frightening memory. When you are raped by your husband you have to live with your rapist.

Finally, while all rape victims suffer shame and stigma, few suffer the total isolation of marital rape. No relatives or friends commiserated with these women about the pain. No police or court confirmed the judgement that they had been wronged. In their isolation they usually blamed themselves, and saw themselves as inadequate and different. It was a profound psychological scar that was difficult to erase.

It is to erase this scar of isolation that I think we owe our first priority. The debate about criminalizing marital rape speaks to many issues: justice, fairness, equality, deterrence of crime, and retribution against offenders. Yet the issue that is paramount for me is compassion for victims.

We must reach out to the victim of marital rape and extend legitimacy to and compassion for what they have suffered. Doctors need to be aware, for example, that it is not a simple matter for some women to avoid sex post-operatively, even though their recovery urgently requires it. Family planning agencies need to take into account that in some women's marriages, contraceptives like a diaphragm will not be adequate protection.

Attorneys need to recognize and alert divorcing women to the particular vulnerability they face from embittered husbands during the period following a separation. Marriage counselors need to know that the unspoken and unacknowledged grievance plaguing many wives is that their husbands sexually assaults them.

(Incidentally, it is interesting to note that in the whole 25 year literature on sex therapy and marital sex, one can search in vain for any reference to the problem of marital rape, an experience that may be occurring to one in ten wives.)

Marital rape has been a non-problem for too long. Unfortunately, when people suffer from non-problems, they tend to become non-persons, both in their own eyes and in the eyes of others. Making marital rape a crime will put a few men out of our community, but it will bring a whole lot of victims back. The invitation is long overdue.

C '35

THE SENATE
STATE OF NEW YORK

MANFRED OHRENSTEIN
MINORITY LEADER
270 BROADWAY
NEW YORK, N.Y. 10007

AUG 10 1978

August 8, 1978

RECEIVED AFTER ACTION BY GOVERNOR

Honorable Hugh L. Carey
Governor of the State of New York
Executive Chamber
State Capitol
Albany, New York 12221

Re: Senate Bill Number 7666-C

Attention: Honorable Judah Gribetz
Counsel to the Governor

Dear Governor Carey:

You have asked that I communicate my views as the sponsor of the above legislation now pending before you.

This bill removes the bar to criminal prosecution of a husband who sexually assaults his wife while they are legally separated. It is a change in the law that has been long overdue. It is a change that is demanded by the growing recognition of the equality of men and women. Our state, like many others, still clings to the common law rule that a man cannot be guilty of sexually abusing his wife. That rule rests upon the view that a wife is merely the property of her husband and like his other property he is free to do with her as he pleases. J. S. Mill noted that,

> "[A] female slave has (in Christian countries) an admitted right, and is considered under a moral obligation, to refuse to her master the last familiarity. Not so the wife: however brutal a tyrant she may unfortunately be chained to - though she may know that he hates her, though it may be his daily pleasure to torture her, and though she may feel it impossible not to loathe him - he can

EXHIBIT C

> claim from her and enforce the lowest degradation of a human being, that of being made the instrument of an animal function contrary to her inclinations."
> J. S. Mill, "The Subjection of Women," in On Liberty and Other Essays (E. Neff ed. 1926) p. 226.

The property concept was supplemented by the view that a man and wife were legally the same person. Upon this premise rested rules barring women from holding and conveying property. The view that the legal identity of the wife merged into that of her husband also was the basis for holding that a man could not be guilty of raping his wife because a man cannot rape himself. Both of those concepts have been abandoned in large measure since the enactment in England and the United States of the Married Woman's Property Acts which permitted wives to hold and convey property. As pointed out in a recent law review article:

> "today a man does not have license by way of marriage to do with his wife's property what he will. Public policy seeking to uphold the marital relationship does not see as detrimental to that relationship the recognition of rights in married women over their property. The feasibility of a contention that there should be a rule to give a husband a license to do with his wife's person as he pleases is thus brought into question."
> Jocelynne A. Scutt, "Consent in Rape: The Problem of the Marriage Contract," Monash University Law Review, Vol. 3, June 19 7, p. 270.

Since the basis for the rape exemption has fallen, it seems anomalous that the ancient structure should remain standing. Two states, that once expressly provided for a husband's exemption from the rape laws, have recently abolished exemption. S. D. Compiled Laws. Ann. § 22-22-1 (Supp. 1976); Del. Code Tit. 11 §763 (Supp. 1976). Other states have made partial retreats from the exemption rule. Hawaii does not provide an exemption for husbands either statutorily or by common law, but its rape statute requires that the victim must not have permitted sexual contact by the aggressor in the previous 12 months. HAW. Penal Code

Honorable Hugh L. Carey
Governor of the State of New York

(Page 3)

730-732 (1972). Therefore, a husband who was not permitted sexual contact with his wife for 12 months can be liable for rape, if it occurs. The statute also provided that regardless of previous social relationship, an aggressor is guilty if he inflicts serious bodily injury. Nine states that have the statutory exemption limit its application. Colorado, New Hampshire and Oregon bar the exemption if the couple are living apart. Michigan, Minnesota and Nevada bar the rule if the couple are living apart and one has filed for divorce or separate maintenance. Finally, Louisiana, Maryland and North Dakota require that there be a court ordered separation.

S-7666-C does not go as far as South Dakota and Delaware in removing the exemption completely. Rather it is in line with the nine states that place restrictions upon the exemption. A recent article noted that,

> "In view of some recent abortive attempts to abrogate or modify the immunity, it is unlikely that many legislators would repeal it altogether. A suitable compromise might be to eliminate the exemption for husbands and wives who are living apart. This proposal has the advantage of allaying evidentiary fears and of attracting the support of even those who believe a wife has a duty to have sex with her husband upon his request." "The Marital Rape Exemption," N.Y.U. Law Review (Vol. 52:2, May 1977) p. 323.

This is precisely what this bill achieves in barring the exemption when the parties are living apart pursuant to a legal separation and the attack has been forcible.

I respectfully urge your approval of this bill so that this outdated vestige of discarded legal concepts can be removed from our statutes.

Sincerely,

Manfred Ohrenstein

REMARKS OF ATTORNEY GENERAL ROBERT ABRAMS

BEFORE

NEW YORK COUNTY LAWYERS ASSOCIATION

MAY 3, 1984

IT IS ALWAYS AN HONOR TO APPEAR BEFORE THE NEW YORK COUNTY LAWYER'S ASSOCIATION. AS ON OTHER OCCASIONS WHEN I HAVE SPOKEN HERE, WE HAVE A KNOWLEDGEABLE PANEL AND AN IMPORTANT SUBJECT TO ADDRESS.

THE PROBLEM OF MARITAL RAPE IS AN OLD ONE. WHAT IS NEW AND DIFFERENT IS THE PUBLIC PRESSURE TO IMPOSE CRIMINAL SANCTIONS ON HUSBANDS WHO RAPE THEIR WIVES, A PRESSURE THAT IS REFLECTED NATIONALLY IN SOME 16 STATES THAT, BY STATUTE OR CASE LAW, HAVE NOW MADE MARITAL RAPE A CRIME. NEW YORK IS NOT ONE OF THOSE STATES. THE TIME HAS COME FOR NEW YORK TO REPEAL THE MARITAL EXEMPTION TO OUR RAPE AND SEXUAL ABUSE STATUTES. THE REASONS TRADITIONALLY GIVEN FOR NOT PROSECUTING HUSBANDS WHO RAPE THEIR WIVES SIMPLY DO NOT HOLD UP.

THE IDEA THAT THE WIFE BY SIGNING THE MARRIAGE CONTRACT CONSENTS TO SEX ON ANY OCCASION AND UNDER ANY CONDITIONS IS ARCHAIC - - INDEED, LITERALLY SO. IT WAS MORE THAN 300 YEARS AGO IN ENGLAND THAT THE MARITAL EXEMPTION FROM RAPE WAS FIRST

RECOGNIZED. THE WORDS...

EXHIBIT D

RECOGNIZED. THE WORDS ARE THOSE OF SIR MATTHEW HALE (WHO I WOULD ADD PARENTHETICALLY WAS ALSO KNOWN FOR HIS OVERZEALOUS HANGING OF WITCHES):

> ". . . THE HUSBAND CANNOT BE GUILTY OF RAPE COMMITTED BY HIMSELF UPON HIS LAWFUL WIFE, FOR BY THEIR MUTUAL MATRIMONIAL CONSENT AND CONTRACT, THE WIFE HATH GIVEN UP HERSELF . . . UNTO HER HUSBAND. . . ."

CERTAINLY, WE HAVE GONE FAR BEYOND THE POINT WHERE WE SAY THAT WHEN A WOMAN MARRIES SHE GIVES UP THE RIGHT TO WITHHOLD CONSENT, OR MERGES INTO THE PERSON OF HER HUSBAND, OR BECOMES THE PROPERTY OF HER HUSBAND, HAVING PREVIOUSLY BEEN THE PROPERTY OF HER FATHER.

NONETHELESS, NEW YORK HAS MADE RAPE IN MARRIAGE A CRIME ONLY UNDER EXTREMELY LIMITED CIRCUMSTANCES. THE FIRST IS IF THE MARRIAGE IS NOT VALID UNDER OUR LAWS. THE SECOND IS IF THE HUSBAND AND WIFE ARE LIVING APART PURSUANT TO A COURT ORDER "WHICH BY ITS TERMS OR IN ITS EFFECT REQUIRES SUCH LIVING APART", OR IF THEY ARE LIVING APART PURSUANT TO A JUDGMENT OF SEPARATION OR A SEPARATION AGREEMENT SPECIFICALLY ACKNOWLEDGING POTENTIAL LIABILITY FOR MARITAL RAPE.

THESE LIMITATIONS ON..

THESE LIMITATIONS ON NEW YORK'S MARITAL RAPE EXEMPTION ARE WRITTEN INTO PENAL LAW §130.00 BY A PROCESS THAT IS SO IRONIC AS TO REFLECT A DEEP SEATED CHAUVINISM ON THE PART OF THE LEGISLATURE. SECTION 130 DEFINES "FEMALE" FOR THE PURPOSE OF SEX OFFENSES AS "ANY FEMALE PERSON WHO IS NOT MARRIED TO THE ACTOR" AND THEN DEFINES "NOT MARRIED" TO ENCOMPASS THE CIRCUMSTANCES I HAVE JUST DESCRIBED. AS A RESULT, ACCORDING TO THE NEW YORK CRIMINAL LAW, A WIFE WHO IS LIVING TOGETHER WITH HER HUSBAND IS NOT A FEMALE, AND ANY RAPE OR SEXUAL ABUSE OF HER BY HER HUSBAND CAN BE COMMITTED WITHOUT RISK OF CRIMINAL PENALTY.

NOT SURPRISINGLY THERE HAVE BEEN EXTREMELY FEW -- LESS THAN A HALF DOZEN -- PROSECUTIONS UNDER THIS LAW. THE BEST KNOWN ARE PEOPLE V. LIBERTA AND PEOPLE V. DE STEFANO.

IN LIBERTA, A HUSBAND, REQUIRED TO MOVE OUT OF THE HOUSE AND STAY AWAY FROM HIS WIFE UNDER A FAMILY COURT ORDER OF PROTECTION, CAME BACK AND RAPED HER. TO AVOID PROSECUTION HE MADE A NUMBER OF CLAIMS INCLUDING THAT THE "ORDER OF PROTECTION" WAS NOT AN ORDER "REQUIRING LIVING APART" AS CONTEMPLATED BY PENAL LAW §130.00, AND THAT, IN ANY CASE, THE EXCLUSION OF SEPARATED COUPLES FROM THE MARITAL RAPE EXEMPTION PUT HIM IN A SPECIAL AND IRRATIONAL CLASS OF MARRIED PEOPLE. THE APPELLATE DIVISION IN ROCHESTER REJECTED HIS CHALLENGE AND, JUST LAST YEAR,

THE COURT OF..

THE COURT OF APPEALS DENIED LEAVE TO APPEAL. FOLLOWING TRIAL BY JURY, MR. LIBERTA WAS CONVICTED OF RAPE IN THE FIRST DEGREE AND SODOMY IN THE FIRST DEGREE. THE FOURTH DEPARTMENT AFFIRMED THE CONVICTION IN MARCH.

IN PEOPLE V. DE STEFANO, THE HUSBAND WAS SUBJECT TO AN ORDER OF PROTECTION REQUIRING HIM TO STAY AWAY FROM HIS WIFE. IGNORING THE ORDER HE RETURNED TO HIS HOME AND ALLEGEDLY RAPED HIS WIFE. JUDGE ROHL OF THE SUFFOLK COUNTY COURT USED THE HUSBAND'S CHALLENGE TO HIS INDICTMENT FOR RAPE AND BURGLARY AS AN OPPORTUNITY TO EXAMINE THE CONSTITUTIONALITY OF THE MARITAL RAPE EXEMPTION. HE CONCLUDED THAT THE EXEMPTION VIOLATES THE EQUAL PROTECTION RIGHTS OF MARRIED WOMEN. THERE WAS NO APPEAL. FOLLOWING A JURY TRIAL, THE HUSBAND WAS CONVICTED OF CRIMINAL TRESPASS IN THE SECOND DEGREE.

TO THE BEST OF MY KNOWLEDGE, ONLY ONE OTHER MARITAL RAPE CASE IN THE HISTORY OF THE STATE HAS GOTTEN AS FAR AS INDICTMENT. I WILL LEAVE IT FOR MR. ADAMS, THE PROSECUTOR IN THAT CASE, TO DISCUSS IT.

ONE THING THAT THE SHORT LIST OF CASES SHOWS IS THAT MARITAL RAPE CASES ARE NOT BEING PROSECUTED IN THIS STATE. IN LARGE MEASURE THAT IS DUE TO THE LIMITED SITUATIONS IN WHICH RAPE

MAY BE CHARGED..

MAY BE CHARGED DURING MARRIAGE. I DO NOT THINK THAT THE LACK OF PROSECUTION IS BECAUSE NO ONE CARES. IN 1981, I CONDUCTED A SERIES OF MEETINGS ON THE LEGAL RIGHTS OF WOMEN IN NEW YORK. REPEATEDLY, THE PEOPLE WHO ATTENDED WANTED TO KNOW MORE ABOUT THE PROGRESS OF LEGISLATION TO ELIMINATE THE EXEMPTION FROM PROSECUTION FOR MARITAL RAPE. THEY WERE CONCERNED THAT, AS THE TITLE OF PROFESSOR FINKELHOR'S BOOK SUGGESTS, A NEW YORK MARRIAGE LICENSE IS A LICENSE TO RAPE.

THE QUESTION THEN IS WHAT SOCIETY CONSIDERS THE APPROPRIATE REMEDY TO DETER AND TO PUNISH MARITAL RAPE. THE POSSIBILITY OF TORT ACTIONS HAS HAD LITTLE EFFECT IN THE PAST. A FEW LAWSUITS HAVE BEEN BROUGHT AND A FEW HEADLINES GAINED BY LARGE VERDICTS IN OTHER STATES. WHETHER SUCH LAWSUITS WILL BE VIABLE IN NEW YORK IS AN OPEN QUESTION. BUT THE HUSBAND WHO IS ANGRY ENOUGH TO RAPE IS UNLIKELY TO BE DETERRED AT THE PROSPECT OF PAYING DAMAGES. NOR WILL THE PROSPECT OF DAMAGES SERIOUSLY DETER A PERSON WHO HAS NO ASSETS.

SOME ARGUE THAT MARITAL RAPE NEED NOT BE CHARGED, FOR THERE WILL BE ADEQUATE DETERENCE AND PUNISHMENT FROM THE CRIMINAL PENALTIES AVAILABLE FOR THE ACTS OF ASSAULT THAT ARE PART OF THE RAPE. THE LEGAL THEORY IS SOUND, BUT THE PRACTICE IS OFTEN TO THE CONTRARY. FOR EXAMPLE, IN <u>LIBERTA</u>, IT WAS UNDISPUTED THAT

THE HUSBAND PHYSICALLY..

THE HUSBAND PHYSICALLY ABUSED THE WIFE IN THE PRESENCE OF THEIR CHILD, AN ACT SEPARATE FROM THE ACTUAL RAPE. BUT THE ASSAULT WAS NOT CHARGED. PEOPLE V. MACK, 53 NY2D 803, DECIDED LAST YEAR BY THE COURT OF APPEALS, IS ONE OF THE FEW CASES IN WHICH A HUSBAND WAS CHARGED CRIMINALLY FOR ASSAULT WHERE SEXUAL ABUSE WAS ALSO INVOLVED. OF COURSE, THE CONVICTION WAS FOR ASSAULT ONLY; THE HUSBAND'S ALLEGED SEXUAL ABUSE OF HIS WIFE WAS PERFECTLY LEGAL.

THE MARITAL RAPE EXEMPTION HAS NO PLACE IN TODAY'S LEGAL SYSTEM. IT IS TIME TO BURY, ONCE AND FOR ALL, THE ANTIQUATED NOTION THAT A MARRIAGE LICENSE IS A LICENSE TO RAPE.

* * *

COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, -against- MARIO LIBERTA, Defendant-Appellant.	NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

PLEASE TAKE NOTICE that upon the annexed affirmation of SARAH WUNSCH, dated September 18, 1984, the Statements of Interest of Amici Curiae (Exhibit A attached to the proposed Brief Amicus Curiae), and the Brief Amicus Curiae, the undersigned will move this Court at the Courthouse at Court of Appeals Hall, 20 Eagle Street, Albany, New York, on the 1st day of October, 1984, at 2 p.m., or as soon thereafter as counsel may be heard, for an order granting permission to file a brief amicus curiae in this matter and for oral argument on behalf of the interested organizations and individual whose Statements of Interest are attached.

Dated: September 18, 1984
New York, New York

Sarah Wunsch

SARAH WUNSCH
ANNE E. SIMON
CENTER FOR CONSTITUTIONAL RIGHTS
853 Broadway, 14th Floor
New York, NY 10003
(212) 674-3303

LAURIE WOODS
JOANNE SCHULMAN
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RHONDA COPELON
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Attorneys for Amici Curiae

TO: RICHARD J. ARCARA
District Attorney of Erie County
200 Erie County Hall
25 Delaware Avenue
Buffalo, NY 14202
Attn: Jo W. Faber
Attorney for Respondent
(716) 855-2424

ROSE H. SCONIERS
Legal Aid Bureau of Buffalo
205 Convention Tower
Buffalo, NY 14202
Attn: Barbara Howe
Attorney for Appellant
(716) 853-9555

COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, -against- MARIO LIBERTA, Defendant-Appellant.	AFFIRMATION

SARAH WUNSCH, an attorney duly licensed to practice law before the Courts of the State of New York, hereby affirms under the penalty of perjury:

1. I am one of the attorneys for the 36 organizations and individual whose statements of interest are attached to the proposed Brief Amicus Curiae and who represent the interests of married women whose constitutional rights are at stake in this case. I submit this affirmation in support of their request for permission to file a brief amicus curiae and participate in oral argument.

2. Amici invite the Court's attention to arguments which neither appellant nor respondent has presented: the argument for the complainant rape victim.

3. Neither party is capable of presentation of the interests of the marital rape victim. Movant would remedy this deficiency. Without presentation of the concerns of the marital rape victim, the Court will not hear a full and adequate presentation of the issues.

4. Amici argue that many women are injured physically and emotionally as a result of forcible rape and sodomy by their husbands. The marital forcible rape and sodomy exemptions contained in Penal Law §§130.00(4) and 130.00(2) are based on anachronistic and discriminatory legal and social concepts. They are based on discarded notions of wives as the property of their husbands. These concepts violate current constitutional rights of privacy and bodily integrity accorded to wives, even against invasion by husbands. Amici further urge that the marital forcible rape and sodomy exemptions from prosecution violate wives' right of equal protection, as well as the Thirteenth Amendment prohibition against involuntary servitude. Finally amici argue that this Court may affirm defendant's conviction while striking the marital rape exemption because defendant is deemed unmarried under the present definition in Penal Law §130.00(4).

5. The defendant-appellant argues that the marital rape exemption is unconstitutional because it permits prosecution of some husbands who rape their wives while barring prosecution of others, and that the rape statute is unconstitutional because it is not gender-neutral.

6. The District Attorney on behalf of Respondent argues that the statutory scheme is constitutional and rationally related to the state's important objective to preserve marriage, and the reality that rape is a crime committed almost exclusively by men against women.

7. The Appellate Division held that the gender classification and marital exemption serve important governmental interests and are substantially related to the achievement of those objectives.

8. Amici present aspects of these constitutional issues not presented by the parties. This presentation is essential because this is a case of first impression in this Court. This is the first time this Court is asked to rule on the constitutionality of New York's marital forcible rape and sodomy exemption from prosecution. There is a recent body of case law from the highest courts of other states, holding the marital rape exemption to be in violation of the U.S. Constitution, which amici seek to present from the perspective of the raped wife. Neither respondent nor appellant is capable of representing the concerns of the marital rape victim whose interests are different from those of each party.

9. Complainant in this matter is the wife of defendant-appellant. She is within the class of married women rape victims which most of amici assist. Complainant's interests are identical to the interests of the raped wives aided by the amici. As appears from the attached Statements of Interest, the amici's clients or constituents have sought relief from forcible rape by their husbands but have found no protection through criminal prosecution.

10. Thus, the amici seek to present their argument to the Court because their clients or constituents need the protection available through the criminal process. These women have been

harmed seriously by the denial of this protection. This Court is requested to grant to raped wives the equal protection of the law.

11. Amici request twenty minutes for oral argument. Leave for amici to argue has been granted in other criminal cases which have a serious impact on the rights of women. See State of New Jersey v. Kelly, A-99 (N.J., July 24, 1984) (amici N.J. Coalition for Battered Women and ACLU); State of Washington v. Allery, 101 Wash.2d 591 (1984) (amicus Northwest Women's Law Center).

12. No previous request has been made for the relief requested herein.

WHEREFORE, I request that the amici be granted permission to file a brief amicus curiae and to participate in oral argument.

Affirmed: New York, New York
September 18, 1984

Sarah Wunsch

SARAH WUNSCH

STATE OF NEW YORK
COURT OF APPEALS

PEOPLE OF THE STATE OF NEW YORK, Respondent, vs. MARIO LIBERTA, Defendant-Appellant.	AFFIRMATION OF SERVICE

SARAH WUNSCH, an attorney duly admitted to practice in the courts of the State of New York, hereby affirms under penalty of perjury:

1. On September 18, 1984, I served a copy of the within Notice of Motion, Affirmation, and Proposed Brief Amicus Curiae on each of the following:

Rose H. Sconiers
Attorney for Appellant
The Legal Aid Bureau of Buffalo, Inc.
205 Convention Tower
Buffalo, New York 14202
Attn: Barbara Howe

Richard J. Arcara
District Attorney
200 Erie County Hall
25 Delaware Avenue
Buffalo, New York 14202
Attn: John J. DeFranks
Jo W. Faber

by depositing true copies of the same, with first class postage affixed, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Dated: September 18, 1984
New York, New York

Sarah Wunsch
SARAH WUNSCH

National Center on Women & Family Law

799 Broadway, Room 402 • New York, New York 10003 • (212) 674-8200

1984

Item 95

MARITAL RAPE EXEMPTION PACKET

____1. Marital Rape Exemption Chart -- State-by-state summary of the exemption in criminal statutes (10 pages). $2.50

____2. Marital Rape Litigation -- Summary and citations of case law (6 pages). $1.50

____3. Resources on Marital Rape -- Bibliography of general and legal articles, studies and testimony (5 pages). $1.50

____4. Schulman, J., "The Marital Rape Exemption in the Criminal Law," 14 Clearinghouse Review 538 (Oct. 1980) (4 pages). $1.00

____5. Schulman, J., "Battered Women Score Major Victories in New Jersey and Massachusetts Marital Rape Cases," 15 Clearinghouse Review 342 (Aug/Sept 1981) (4 pages). $1.00

____6. Rickenberg & Schulman, "Florida, New York and Virginia Courts Declare Marital Rape a Crime," 18 Clearinghouse Review 451 (Nov. 1984) (6 pages). $1.50

(Over)

____7. Finkelhor, D., Ph.D., Marital Rape: The Misunderstood Crime, Address to the New York County Lawyer's Assoc., May 3, 1984 (2 pages). $.50

____8. Marital Rape Fact Sheet (4 pages). $1.00

TOTAL PACKET: $10.50

If you wish to receive any of these materials, please check off and enclose appropriate payment. Payment covers costs of xeroxing and postage only.

Thank you.

MAR 13 1985

4 March 85

Dear Mr Miller,

the reason I have taken this opportunity to write is because I strongly oppose the "presumptive sentencing for first offenders. The only thing the statute has done for the correctional system is to over-crowd it.

In 1982 the Edna McConnell Clark Foundation did a nation wide study and discovered the "Rockerfeller Drug Laws" of New York and the "Use a Gun Increase the Time Law" of California only became a tool in the hands of the District Attorney to obtain a plea bargain. These same things are being used here.

There is a program well known throughout the United States, Canada, and Australia that deals with oneof the presumptive laws here: (Sexual Assault and Abuse of Children) within the family to include a live in boyfriend. This program ia Parents United. The person responsible for it is Dr Hank Giaretto, Ph D., who is world renowned for the program.

I am quite certain that if requested he would come to Alaska to speak with all of you.

There is a Parents United in Anchorage but it is lacking in support probably because of the laws themselves. Even if a person commits only one offense then seeks help, he still gets eight years. The fact that he is seeking help in itself should be a mitigator.

I just ask that you review the Parents United Program along with the other material I have sent to the Judicary Committee and what is happening in other states then see if the merits are worthy of a change in the statutes.

P.S. Please Respond?

Respectfully,

Alvin Sharp

Alvin Sharp

Box 103155
Anchorage, Ak
99510

JOHN WALSH PRESENTATION
JOINT HOUSE/SENATE JUDICIARY COMMITTEE MEETING
FEBRUARY 12, 1985

My name is John Walsh, I am an administration-appointed special consultant to the National Center for Missing and Exploited Children. I appreciate the opportunity to be here today to address this special joint committee. There has been a tremendous reception and overture from legislators, from the Governor on down, to both houses of this legislature to deal with much-needed legislation in Alaska. That sometimes isn't the case in other states, but I am warmed and surprised and encouraged by the response and the treatment I've gotten so far in Alaska in my two days here.

My son was murdered in 1981, and after his murder, we tried to become actively involved in doing something to prevent the exploitation and what happened to my son. I've testified before the U.S. Congress nine times. I've testified before I don't know how many joint legislative sessions of states. From here I'm on my way to Alabama and to Nevada to address a joint legislative session there. I've met with I don't know how many Governors as it relates to this issue, and I always have had a difficult time putting together statistics. I'm going to go over some statistics for about five minutes to give you an idea and an overview of the exploitation of America's children and how poor of a job we have done as adults, legislators, individuals in the criminal justice system, any form of government bodies in protecting our children.

When I researched the F.B.I. Uniform Crime Report in 1981 it did not even keep statistics of crimes against children. Crimes against adults were the main categories, and homicides of children were lumped in with homicides of adults. I then went to the Uniform Crime Reports of each individual state, such as Alaska. Only one state mandated that rapes, molestations, physical abuse, kidnappings, non-custodial parental kidnappings, and homicides and deaths of children be kept in separate statistics. That state was Texas, the only state that thought enough of the crimes against their children. I've been in this state, trying to garner statistics of the exploitation of Alaska's children. I've talked to individuals from the F.B.I., from your exploited child units, from your law enforcement, both state and local agencies, and have been unable to garner any accurate statistics on what's happening to Alaska's children.

But I'll tell you what's happening to America's children. In 1981, there were 1.8 million children reported missing in this country, and 1.5 to 1.8 million every year since then.

The question has been how does this break down. It breaks down into this: this was put together by a Senate investigation in an oversight committee who was trying to garner statistics. They didn't get good cooperation from cities or states, but this is the best that they could manage. Of the 1.8 million missing children, about 20,000 to 50,000 of those children are suspected victims of foul play. Their cases are not solved at the end of the year, no one seems to know what's happened to those children.

On top of that, we have between 50,000 to high-end estimate of 300,000 and now with recent investigations the feeling by the F.B.I. and state authorities is the higher end is closer to 300,000, of children that are victims of non-custodial parental abduction. That's an act of violence, an act of vengeance, where the left-behind parent without custody takes the child not in an act of love again, but an act of vengeance from the left-behind parent. Runs around the country, changing the identity of the child, hiding out, registering them in schools, in many cases abusing the children. I could go on and on about statistics of children that have been murdered by their own non-custodial parents, physically, sexually abused. We retrieved 22 children from the roll-call of Adam. Most of those were non-custodial parental abductions, and several of those children had been horribly abused by their own parents. States have not deemed those children important enough to legislate for them. Many states do not even consider it a felony to run within the state with your child and hide out within the state. Some states even don't even consider it a felony to cross the state line.

On top of those non-custodial missing children, the suspected victims of foul play. We do know that about 10,000 children are murdered each year in this country, either by their own parents, by live-in relatives, step-daddys, boyfriends, distraught mommys, pedophiles - people who prefer sex with children, child pornographers, people who use children in child prostitution, and mobile and serial murderers, a recent phenomena which has escalated from 1966 when there were about 600 women and children murdered by mobile and serial murderers, to last year there were over 5,000 women alone in this country murdered by mobile and serial murderers. This state suffers from some of those murderers coming up into here.

We also are still burying hundreds of unidentified dead children in this country. We bury between 3,000 to 5,000 unidentified dead persons in this country every year, any given year hundreds of those are children, because states such as Alaska, even with the passage of the federal missing children's bill that we fought for and they made the movie Adam about, created a special division for unidentified dead in the National Crime Information Computer, and a special

division for missing children, Alaska does not mandate that all your missing children be put into the NCIC. Those of you that are parents, imagine the nightmare of your child become missing, and because law enforcement did not put it in the NCIC, never knowing that your child was buried in Oregon or Washington or Nevada, and spending the rest of your life and all the money you can borrow searching for that child and never knowing. You had a missing children's bill last year that was a pretty weak one. Most states have mandated that there be no waiting period. You have a bill before you now that would allow a waiting period. We discussed the waiting period. Many states have passed and abolished the arbitrary waiting period. Every report of a missing child should be taken immediately by law enforcement. We know that they are understaffed, underfunded, but no parent should be turned away to wait 24, 48, 72, whatever the arbitrary waiting period, and law enforcement in many areas won't tell you. The report should be taken immediately, and entered into the NCIC. That at least gives the parents a chance if they have fingerprints or dental records of their child to get the body back. I don't think that's too much to ask.

Of all those children that I talked about we roll into the category of about a half million, the question keeps coming up from legislators, what happened to the other million missing children in the United States. They are arbitrarily listed by the misnomer as runaways by law enforcement agencies. In many cases those children are not runaways. The first 17 of the 29 children that were murdered in Atlanta were listed by the Atlanta police as runaways even though some of the children were as young as 6 years old and gifted students. John Wayne Gasey, a long-time convicted child molester on parole from Iowa killed 33 boys in Chicago. One of those boys was the son of Sgt. Robert Gilroy of the Chicago police. Because the boy was 15½ years old the Chicago police assumed he was a runaway and listed him. Gilroy couldn't convince his own peers in the Chicago police department that his son wasn't a runaway. He spent two years and his life savings searching for the boy when the boy's body was buried four blocks from his home in Gasey's basement - Gasey had picked him up on the way home. No police agency has the arbitrary right to sign the death warrant of your child by listing him as a runaway. We have new statistics on the runaways. 80% - 85% of the children that are listed by law enforcement and thrown away and disregarded by this society and legislators were either physically or sexually abused in the home. New startling statistics are that 30% of runaways are throw-away children. They often are children of a single parent family, usually a welfare mother with smaller children, who says I can no longer care for you because you are 12 years old now - you have to leave. Or a drunken father, live-in boyfriend, or someone who says "Out on the street." Those children are

involuntary runaways, labeled as throw-aways. Imagine particularly this lady right here. If your husband or boyfriend threw you out on the streets of Anchorage tonight without your credit cards, without your money with nowhere to go, how do you think you'd fare on the streets? You wouldn't fare very well, but imagine being a 12 year old girl, or 11 year old boy, or 13 year old boy being thrown out in society. We have to change our attitudes towards those runaways.

Those are some of the statistics on missing children. On top of that, there is an estimated 1 million children physically abused in the home each year. I have talked to your law enforcement agencies here, and they have almost no ability whatsoever to deal with physically abused. The state and local authorities I've talked to have, in your small, understaffed exploited unit are working as many as 70 cases. I defy you to work on 70 bills in one day and get anything done. They have told me they cannot even investigate the physical abuse cases because they're dealing and overloaded with the sexual abuse cases. So what happens to that child when the social worker or that policeman doesn't get out there for upwards of 2 months, and I asked them what the waiting period on some of the sexual assault cases were. That child is abused and abused and winds up in a morgue in Anchorage or Fairbanks or somewhere because you haven't been able to respond as a legislature to that problem.

On top of the physically abused, the missing children, the F.B.I. statistics because of legislatures such as California, Michigan, Florida which have mandated education on the curriculums in schools, children are coming forward in ever-increasing numbers reporting sexual abuse, physical abuse at home. Between 1 million and 3 million sexually molested in this country. I've only been in this state 2 days, and I have seen your newspapers full of it. Day-care centers' sex abuses. The citizen of the year in 1970, the boy scout leader who was just sentenced to 31 years in prison for molesting 20 children in Homer, wherever that is. The children that are brought up here like the man who brought the little girl up here. You suffer the same fate that some other states do such as Florida, my home state. You get a lot of the trash from other parts of the country, who come up here and think this is the wild west and they can change their name and hide out in Alaska, and commit crimes against your children and do whatever they want to do in Alaska. I don't think that should be the case. Florida has to suffer through that, some sun-belt states have seen that phenomenon, and you're seeing that phenomenon here.

I think the statistics that I've quoted are unacceptable, they're overwhelming. I don't think anyone ever realized the extent of the exploitation of America's children. I

think that a society that can put a spacecraft on the moon, and has the money that certain states do, including this state, should do a better job of protecting its children. I also learned in the last 31 years that the real battle is on the state level. This country is comprised of 50 little feudal kingdoms called states, and I've often said that Alaska might as well be Austria, Nevada might as well be Switzerland, because the quality of children's lives is determined by the state legislature, and the quality of children's lives in some states is far superior to others. You've done some excellent things for your children, you have. I've looked at some of your laws that you've passed in the past. In some areas you're 3 and 4 years behind other states in meaningful legislation. I think in a way that's an advantage, because some states have passed bad bills, poorly written bills, ineffective bills, bills with no fiscal appropriations. I think you have the opportunity to pass the Rolls Royce bills. This packet of legislation, selected state legislation, has been comprised over the last couple of years, by individuals in Washington, that we put together - the American Bar, the National Association of District Attorneys, Nova, different groups that have compared model legislation in states and made recommendations. And I want to talk about the areas here of children's legislation that could impact the future of your state. And I say consider this: those of you who are parents who love children have a vested interest. Those of you who don't have children, and really aren't concerned with children, but won't admit it publicly consider this: 80% of the convicted felons in federal prisons, by an F.B.I. survey, were physically or sexually abused as children. 75% of the violently mental ill in state institutions were physically or sexually assaulted as children. If you want to deal with the problem now, you won't have to pay later, because the 12 year old on the streets of Anchorage tonight, or the sexually or physically abused child in your schools today may become the rapist murderer in Alaska's future and you'll have to deal with that with a much larger appropriation and much bigger cells. So there's a way to break the chain, and that's by protecting children now, and helping the victim, and stopping them from becoming the future criminal.

There are 13 areas - Missing Children; The state of Florida, New Jersey, Kentucky, numerous states have created missing children's clearinghouses, and missing and unidentified dead clearinghouses. The state of Florida has an $87,000 appropriation. They have a 24 hour toll-free hotline that any law enforcement agency or citizen can use to call the missing children's clearinghouse in Florida. By state mandate they have a bulletin that they distribute to every school listing pictures of missing children, every law enforcement agency, every coroner throughout the state on a monthly basis. They do prevention programs and train other

law enforcement agencies throughout the state of Florida, and Florida, along with numerous other states, have abolished the arbitrary waiting period and mandated that all reports of missing children be put into the national crime information computer immediately.

Sexual Abuse and Exploitation; Many states, including Kentucky, have wonderful sexploitation units to deal with the child as the victim. They're primarily comprised of a social worker, someone from the court, possibly someone as a guardian ad litum, someone from the district attorney's office, and someone from the law enforcement agency. They get to the problem immediately, they give the child some justice in the courtroom. They prepare the case, and they get conviction. I was speaking to your two representatives from your major law enforcements yesterday, and they said that because they are so back-logged there are pedophiles that have possibly as many as 20 suspected cases of sexual abuse of children on the streets right now because they feel they can't even get to investigate those cases for a month. So those people are walking around looking for new victims, possibly your children, within the system right now because of the inability of your exploitation units to deal with the problem of sexual and physical abuse in the state of Alaska.

Criminal Codes; Too complicated to get into right here and take up the time, but I give you this: criminal codes need to be upgraded constantly. Some of your criminal codes are excellent, some of them haven't been looked at in 10 years or so. You need to look at your criminal codes as it relates to statute of limitations for crimes against children, and penalties. You have some excellent penalties for repeat offenders in this state. I just came back from a big psychiatric convention where 20 psychologists and psychiatrists admitted that they had used everything from shock therapy to Deproprevara to try to treat the hard-core, repeat, fixated pedophile, and they all agreed conclusively that all they could recommend was incarceration or separation of the individuals from children. They said we have failed - they made the analogy - it's difficult to take a man that's a heterosexual, or a woman, and try to treat them for 5 or 6 years and convince them that they enjoy sex with goats - that's about the success that we've had with hard-core pedophiles.

Child in the Courtroom; Videotaping of children's testimony. Lots of states have passed lousy videotaping bills. The videotaping is primarily to spare the child the trauma of being interviewed 16 and 17 times. We studied 20 sexual assault cases in 20 states. The average continuance was 250 times. Some of these children don't get to their trial for 2 years. Some of them are interviewed 16, 17 times. You take the child after the assault, put them behind a one-way mirror. You bring the defendant, the

defense counsel, the pediatrician, the social worker, the assistant district attorney, whomever you want there to witness it, and take the videotape of the child. Hold it, let the child psychologically repair until the time of the trial. We are not suggesting the videotaping be used in lieu of the 6th amendment rights of the defendant of the accused to confront the accuser. Videotaping is shown during the trial so the jury can get an idea of what was in the child's mind when the assault was fresh. Children have a hard time remembering what day it was, especially if they're 6 or 7, what the date was, and defense attorneys treat children just as they do adults in the courtroom. Now, what is the humane way to do it? Many states have closed-circuit monitoring, live television monitoring. Yes, the defendant should have the right to confront the accused. The child is put i another room with a live, closed-circuit monitor, and the defense is allowed to cross-examine the child. I make this analogy, and it was done by the National Association of District Attorneys. It happens we have only one woman here. Say that you were raped. I cross-examined you on the stand. We expect in the courtroom that I am allowed to ask you any detail, the most intimate detail of that sexual assault in a roomful of strangers. Imagine a 6 year old child. I defy any man to come up here and relate to this room his most intimate sexual experience with his wife or girlfriend, his last one, detail by detail. I doubt if there's a man in the room who could do it. We expect children to do it in the courtroom. I think our treatment of them is barbaric. Competency of the witness; federal rules of evidence in any federal courtroom, criminal or civil, presume that every witness is competent. You can be a pathological liar and convicted murder and testify in a trial in Alaska as long as you're an adult. Do not leave it up to these archaic laws allowing the judge, a judge who may not have been to a continuing education seminar for 10 or 15 years, to qualify a child witness. Children should be presumed competent. If they want to testify, let the jury decide whether they're telling the truth or not. Many small children may not be able to remember all the details, but they have no point of reference to fantasize or imagine sexual intercourse such as anal or oral intercourse. Children are excellent witnesses when given the opportunity to testify. You should not throw it out of the courtroom by allowing a judge to qualify the competency of a child.

Protection of the Privacy of the Child Victim; 3 states have prohibited by misdemeanor penalty the media, electronic or print, from portraying or putting forward a picture or the name of a woman or a child in a sexual assault. It has been upheld in a 1975 Supreme Court decision, saying that states have the right by legislature, and not a violation of the 1st amendment rights of the media, to prohibit the name or picture of the sexual assault victim being used in the media. It's tough enough to get over sexual trauma, or

rape, without everyone in your neighborhood, at your job, in your school knowing that you were raped by a motorcycle gang and sodomized 27 times. That's not necessary that we portray the names of the victims. It's a simple law that can be passed easily.

Education and Prevention; California has mandated $11 million for prevention and education in the state of California. They have mandated that those pompous principals and board of supervisors who say that it borders too much on sex education, that psychologically approved programs to teach your children how to resist molesters and abductors are on the curriculum twice a year. I asked the entire Florida legislature how many of you parents have told your children the private parts of their body are sacred to them alone, that they can resist molesters, if they are molested they can tell you and you will do something about it. Three quarters of the Florida legislature stood up and said they had never told their children. I said, case in point, it needs to be taught to all of Alaska's children. Latchkey, poor, white, red, native, black, rich or poor all need to know in a psychologically approved program how to resist molesters. We had one of those pompous principals who refused to use the program in south Florida. He had an 8 year old girl raped on the school grounds. They had to remove her entire uterus. The parents sued them, the school board settled for $4 million out of court. That man will be regretting the rest of his life that he didn't have a program in that school to teach that little girl how to resist molesters and abductors. It's the obligation of the state to teach your children how to protect themselves.

Schools; Lists of missing children should be sent to schools on a monthly basis. In this state, you can't get into school unless you have proof of a small pox vaccine, but known pedophiles can register strange or abducted kids, or non-custodial parents can put their children in school as easy as I'm talking to you right now without any verification that those children belong to them.

Licensing and Criminal History; Many states have passed background checks. You have some pretty wimpy, weak background check bills before your legislature. Number one, you passed a voluntary background check bill. I talked to your law enforcement agencies. They said those agencies that have requested background checks, because of the lack of appropriation of funds and our inability to deal with it, we can't even process them for 6 months. So a child molester has at least a 6 month jump on Alaska to molest children before he's even checked. The states that have passed them have mandated that school teachers, day care center workers, Big Brothers, Boy Scout leaders, certain child protection, day center workers, and the day care center organizations and associations throughout the country

support this legislation because they would like to run background checks, they don't want to be sued by employing a molester. They mandate that the background check be taken on a state and federal level. There is no fiscal appropriation to it - the person applying for the job must pay for the application. Question - is it a violation of civil liberties? In every state, including Alaska, there are at least 30 - 50, in some states 100 occupations that are mandated to have background checks. You cannot be a doctor, a lawyer, you cannot be a police officer, in 30 some states you cannot be a hairdresser. You cannot be a groom. In any state that has paramutuel betting in this country, you cannot be a groom without a state and federal background check - you cannot rub down a horse. But in Alaska you can be a convicted child murderer or child molester and teach school or run a day care center. It's food for thought.

Most of the people who work with children are not into molesting children, but many people gravitate to it. Florida had 300 sexual assaults of children by teachers - the first state to keep statistics. 37 of those teachers were convicted felons. One of them was a child murderer who was put on parole from Illinois after 11 years, 3 of them were child pornographers who set up a child pornography ring. Since Florida passed the background checks of teachers, sexual assaults of children have been reduced by 500%. Florida and other states have sent a message: if you're a convicted child molester, don't come into my state. Where do they go? Maybe to Alaska, I don't know.

Training for Youth System, Social Services and Criminal Justice Professionals; I and many people believe that the real key to this whole issue is prevention awareness training. We need to train your District Attorneys. I spoke to your District Attorneys in Anchorage. They are so overworked, wish they were able to be trained in sexual assaults and physical abuse cases, wish they could get more convictions, wish that they had the benefit of outside expertise. That needs to be mandated. Law enforcement needs continual training. Law enforcement will readily admit, and candidly admit, that they know very little about dealing with the child victim in the courtroom. That needs to be mandated and monies need to be spent as a relation to that.

Treatment and Rehabilitation of the Child Victim; Most states, of course, pay for rehabilitation or psychological counseling of the convicted perpetrator. Many states have allocated that the perpetrator reimburse the child, reimburse the victim, pay for the psychological counseling. Parents spend upwards of tens of thousands of dollars to try to treat their children out of their own pockets for psychological counseling.

Court-Appointed Special Advocates; That may be the only help of the child until we do change the system. In some states it has to be an attorney, in other states it's a qualified individual who is appointed by the court to liaison between the social worker, who may not know what they're doing, or be suffering from burn-out because they're handling 75 cases, between the law enforcement officer who's frustrated and wants to choke the D.A., or doesn't show up for 2 hearings, the D.A. who says I just got out of law school and I've got 45 cases and I want to plea-bargain this one. The parents are saying, "The child wants justice. we want to prosecute." That court-appointed special advocate acts for liaison in the system and gives that child some odds in our unfair criminal justice system. And they're are federal funds that will match what you allocate in this state for court-appointed special advocates programs, and for background checks of day care center workers - there are matching federal funds for that.

Parental Kidnapping; it needs to be a felony intra-state because some parents know that once they cross the state line they can be pursued by the F.B.I. as a felony, but they can stay within the borders of certain states and hide out, and that parent has no recourse. I don't know how many destroyed, heartbroken parents I talked to in the two days I was here, that are victims of non-custodial parental abduction that the law enforcement agencies are so overworked that will even barely talk to them.

Child Pornography and Child Prostitution; Those statutes need to be upgraded. Don't get caught in the bind of lumping child pornography with adult pornography - it's apples and oranges. Children are not allowed by federal statutes or any state statutes to be used in child pornography. You need to look at some of your statutes as it relates to commercial distribution. Many pedophiles never sell the child pornography. They're collectors and they exchange it without any exchange. Many that we have caught have kept diaries, and Polaroid pictures. The man who was just caught in Rhode Island with the little boy who happened to be in the NCIC, and we got back, was a long-time collector of child pornography. In certain states you can't prosecute pedophiles for just commercial distribution. In certain states they don't allow you to prosecute because you can't determine the age of the child. In many states they have passed rules where experts are allowed to testified in the trial, determining the age of the child - that it is 12-year-old boy that may look like he's 16. It is a 14-year-old girl that looks like she's 18, by expert testimony, and you can get some of the child pornographers. Child prostitution statutes are complicated. There's a whole 3-page section in this book telling you how to upgrade your child prostitution statutes.

Those are some of the areas of protection that you need to do for Alaska's children. I think you have a good opportunity here to leave a lasting monument to your children. I know that I've heard a lot of rhetoric here about the children of Alaska being the future, or oil being the future. I really think the children of Alaska are the future, because without those well-intended, well brought up children, we won't have an oil future, or a mining future, or whatever. I don't live in this state, I don't vote in this state, my children won't be raised in this state, but your children will. I believe that what I have learned is that law is permanent. You can impact the future of Alaska by what you pass this session. You can force agencies that don't want to respond to the problem of child molestation, abduction, missing children, to respond. And you can empower and give money to agencies that want to, that need just a few more dollars, just need a little bit of direction. I think you can tip the scales for your children in Alaska. I'll be glad to work with you, I've come back into many states to testify, we have a full-time legislative person at the National Center for Missing and Exploited Children by the name of Janet Kossett. We review bills from every state. We say what you've left out. We tell you what we think you should put in. We tell you what wording you need to do. It's a bi-partisan issue - this is wonderful to see people of both parties, both houses, here thinking about this. Children's legislation traditionally moves very slowly through legislatures, because there are $150,000 a year paid oil lobbyists ranking you up to get the bills out. People say, well it's in somebody else's committee. I would hope because of your concern and your overture that you would monitor these bills and see they don't get caught in that long, tedious process of getting something onto the floor. And I think there's a tremendous amount of community awareness and support from the people I've met in the state of Alaska who've said we want to see some changes. And I know you're ready to make the changes, and I just look forward to working with you, and I appreciate the time you gave me today.

Selected State Legislation

A Guide for Effective State Laws to Protect Children

January 1985

National Center for Missing & Exploited Children

The resources to print this guide were generously provided by people who care about children: Commtron Corporation and video software dealers from around the country.

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Contents

Foreword

Each year in this country hundreds of thousands of children disappear, and thousands more become the victims of criminal and sexual exploitation. Our efforts to prevent crimes against children and to treat cases of child victimization have not been adequate to assure the safety and protection of all children.

There has been an urgent demand from all walks of American life that initiatives be undertaken to address the problem of missing and exploited children. Effective legislation at the state level will have a dramatic impact on our society's ability to prevent crimes against children and to deal with the child victim of abduction or exploitation.

Is Your State Legislation Adequate?

The professionals who deal with cases of missing and exploited children have learned that it is critical that methods for dealing with child victimization be updated and improved. New programs are desperately needed to educate children and their families on prevention techniques. We have made good progress, but in every state we can do more to protect our children.

Some states have passed laws to meet the growing need for comprehensive legislation to address the issue of child victimization. Some state codes, however, remain seriously deficient in provisions protecting children. There is a critical need for state and local agencies to share information about the most effective and innovative child protection programs, many of which were made law in 1984.

By comparing the examples of legislation in this book with your own state code, you will be able to see where your statutes may need improvement. Each state, however, has its own system for criminal, youth, and social services. Users of this selection should recognize that existing legislation serves a particular jurisdiction and that the examples and model legislation must be modified to meet each state's special needs.

The National Center for Missing and Exploited Children

The National Center for Missing and Exploited Children, in cooperative agreement with the U.S. Department of Justice, was chartered as a clearinghouse of information and assistance on the issues of missing children and the criminal and sexual exploitation of children. The Center's staff is made up of professionals and experts trained in the treatment of missing and exploited children.

The Center has received thousands of letters and calls from governors, legislators, concerned organizations, and citizens requesting information about legislative measures that can be taken to protect our children. To develop this legislation package, the Center obtained copies of the existing effective state legislation and then analyzed and summarized it. In instances where there is no legislation addressing a certain child protection issue, this package includes basic principles or models for guidance.

The professionals who screened and analyzed this legislation constitute a multidisciplinary team of attorneys, prosecutors, youth service providers, child advocates, law-enforcement officers, and others interested in the welfare and protection of children.

The Purpose of This Selection of State Legislation

This information package is designed to highlight some of the most effective state laws that concern child victimization. It is a resource intended for use by state legislators, governors, and state officials as well as all citizens concerned about protecting children.

This legislation package is not comprehensive. For example, it does not include any statistical data, nor does it cover all child protection issues or all existing state legislation in these areas. Rather, it contains a sampling of varied legislation from a number of states around the country. The samples chosen demonstrate how the complex issues of missing and exploited children are treated most effectively in each state.

How You Can Contribute

The National Center for Missing and Exploited Children will be expanding this legislation package as more information becomes available. We urge you to submit any information you may have about child protection issues and actions. Even if only a small part of the legislation seems new or worthwhile, please send it to the Center. We intend to act as a central resource in this area and would greatly appreciate any and all contributions.

A Message to the Citizen

There are a number of different ways in which you can be instrumental in effecting new laws in your state. The most common approach is to contact your state representatives or state senators and explain what provisions you feel are needed. Give them a copy of this selection of state laws. If they support the concepts in the laws, they will introduce a bill in your state legislature.

A second approach is to contact your governor, who can, in many instances, initiate legislation. Even when your state representative is introducing a bill, it is helpful to secure the backing of the governor. Remember, the governor is definitely in a position to influence legislation.

No matter which approach you take, though, it is wise to solicit the support of community organizations and local interest groups. You may want to organize a meeting between your state representatives and senators and those individuals and organizations that are working for the safety and protection of children.

Getting a bill through the state legislature is not a mystery. A few general rules apply. You should contact elected representatives from both sides of the legislature if your state has a two-part legislature. It is also wise to contact members of both parties: Laws to protect children should transcend party affiliation. In addition, bills that are cosponsored and have bipartisan support are the most likely to succeed.

Finally, you should make an effort to track the bill througnout the legislative process. Citizens can attend hearings, assess the bill's problems, and lobby for its passage by contacting state representatives who seem undecided about the issue. Furthermore, some states have provisions that allow citizens to comment directly on pending bills.

1. Missing Children

The problem of missing children is one of the most pressing concerns in our country today. While no one is sure of the exact numbers, it is estimated that at least 1,500,000 children are missing from their homes each year, many of whom end up abused or even victims of homicide.

The U.S. Congress highlighted this problem and took important steps to resolve it by passing the Missing Children Act in 1982 and, later, the Missing Children Assistance Act in 1984. Establishment of the National Center for Missing and Exploited Children is another example of the federal government's commitment to solving the problem of missing and exploited children.

Much more can be done on the state level, however. Comprehensive state legislation is critically needed to address the particular needs of missing and exploited children and to help solve problems that are unique to the state level.

State Boards and Clearinghouses

Several states have enacted important legislation to address the problem of missing and criminally or sexually exploited children. Such legislation includes creating a *state board or commission* with a variety of responsibilities, or establishing a *clearinghouse* or central registry for the state.

Kentucky The State of Kentucky (1984, H.B. 486) recently enacted comprehensive legislation addressing the problem of missing and exploited children in the state. The Kentucky statute creates a special state child abuse and exploitation prevention board within the office of the attorney general that does the following:

1. Coordinates and exchanges information on prevention programs.
2. Provides educational and public information seminars on prevention of child sexual abuse and exploitation.
3. Encourages the development of community prevention programs.
4. Recommends to the governor and the state assembly changes in state programs and policies that will reduce the problem of child sexual abuse and exploitation.
5. Provides prevention services to children and parents or guardians.
6. Authorizes a trust fund as a resource for a private nonprofit or public organization to develop or operate a prevention program.
7. Funds local task forces.

One of the most important provisions of the Kentucky statute is the creation of a state clearinghouse on missing children. Kentucky established a Kentucky Missing Child Information Center that serves as a central repository, or clearinghouse, of information about Kentucky children believed to be missing and children from other states believed to be located in Kentucky. The Missing Child Information Center is required to issue flyers with descriptive information about these children. And, a very important provision of this law is that within 24 hours after completing a missing chil-

dren report, the local law-enforcement agency is required to send the report to the Kentucky Missing Child Information Center and, from there, to the National Crime Information Center computer at the FBI.

The provisions of the Kentucky legislation on this state board appear on pages 4-7.

New Jersey Like Kentucky, the State of New Jersey (1984, Com. Sub. A. 1121, 1647) recently established a State Commission on Missing Persons. This Commission is mandated to provide state action plans and guidance for future legislation to address the problem of missing and exploited children. The New Jersey statute also establishes a Missing Persons Unit in the Department of Law and Public Safety, which does the following:

1. Coordinates, files, and investigates all missing children cases in the state and creates a central office on missing children.
2. Collects and maintains data on missing children and unidentified bodies in New Jersey and throughout the United States.
3. Coordinates with other states and with the federal government in investigating cases of missing children and unidentified bodies.
4. Provides special training to law-enforcement officers and medical examiners to help them handle cases of missing children and unidentified bodies.

Illinois The State of Illinois (1984, S.B. 1655) has also passed comprehensive legislation addressing the problem of missing and exploited children. The Illinois legislation established local units that do the following:

1. Establish a data system to collect and disseminate information that can assist agencies in recovering missing children.
2. Require law-enforcement agencies to furnish to the Department of Law Enforcement any information relating to sex crimes in their areas.
3. Set up education and prevention programs and provide prevention guidelines for children.

Florida, Kansas, and Minnesota Both Florida (§937.033) and Kansas (1984, S.B. 803) have established clearinghouses that allow parents to report cases of missing children to a central file. Florida has created a Missing Children Information Clearinghouse within the Department of Law Enforcement. The clearinghouse is a centralized file of information on missing children that allows any parent, guardian, or legal custodian to submit a missing children report. It requires all state and local law-enforcement agencies to submit a missing children report to the clearinghouse—information which is then transmitted to the National Crime Information Center of the FBI. Florida has also set up a statewide 1-800 telephone line to receive reports on missing children.

The clearinghouse maintained by the State of Kansas allows for the comparison of reports of unidentified deceased persons with reports of missing children. In addition, the Kansas statute mandates that any law-enforcement agency that fails to make reports of missing children is liable to pay a civil penalty.

The State of Minnesota (1984, H.F. 1428) has placed the responsibility upon the Commissioner of Public Safety to perform a variety of services, including the following:

1. Compiling annual statistics on the number of missing children.
2. Developing recommendations for better reporting and use of computer systems.
3. Providing the necessary equipment for the use of the National Crime Information Center by all local law-enforcement agencies.

Unidentified Deceased Persons

In addition to clearinghouses, there is a great need for state legislation to address the problem of *unidentified deceased persons*. These are people, many of whom are children, who are buried nameless in "John Doe" or "Jane Doe" graves each year.

The Missing Children Act, mentioned above, provides for a nationwide system to identify deceased persons. As a result, the FBI established an extremely sophisticated and comprehensive tracking system both for missing persons and for the unidentified dead. The section of the FBI that houses this operation is called the National Crime Information Center (NCIC). Each year the Center locates thousands of missing children and has also begun to identify deceased individuals who were buried as unknowns. It is critical that the federal systems have the support of each state.

Several states have enacted legislation to set up a centralized file of information crucial to identifying missing and deceased persons. The state file operates on the same principle as the National Crime Information Center computer. The reason for having such a file at the state level, however, is to ensure that all state and local agencies participate in this important program. The National Crime Information Center is an excellent resource, but states and communities must be required to *use* it, by state legislative mandate.

California (§11113, 11114), Michigan (1980, S.B. 961), and Georgia (Act 980) provide that dental records and other descriptive information on missing children be collected at the state level. In addition, the medical examiners and coroners in those states are required to report descriptive information concerning deceased persons who remain unidentified. This information is then correlated with the missing children information. State law, in addition, should require that this information be forwarded to the NCIC national files on missing or deceased individuals.

Eliminating Waiting Periods

A continuing problem with missing children cases is that official action is sometimes delayed because of 24-, 48-, or 72-hour *waiting periods* before an investigation is undertaken. As a result, precious hours are lost—often the most important hours in the investigation. Because of the critical nature of the first few hours of an investigation, some states, such as Iowa (1984, S.F. 517) and Kentucky (1984, H.B. 486), require prompt reporting and *investigating* procedures. Following is an excerpt from the Iowa legislation:

> Sec. [illegible] Report on a Missing Person
>
> 1. A law enforcement agency in which a complaint of a missing person has been filed shall prepare, as soon as practicable, a report on a missing person. That report shall include, but is not limited to, the following:
>
> a. All information contained in the complaint on a missing person.
>
> b. All information or evidence gathered by a preliminary investigation, if one was made.
>
> c. A statement, by the law enforcement officer in charge, setting forth that officer's assessment of the case based upon all evidence and information received.
>
> d. An explanation of the next steps to be taken by the law enforcement agency filing the report.
>
> Sec. 4. Dissemination of Report. Upon completion of the report, a copy of the report shall be forwarded to:
>
> 1. All law enforcement agencies having jurisdiction of the location in which the missing person lives or was last seen.
>
> 2. All law enforcement agencies considered to be potentially involved by the law enforcement agency filing the report.
>
> 3. All law enforcement agencies which the complainant requests the report to be sent to, if the request is reasonable in light of the information contained in the report.

4. Any law enforcement agency requesting a copy of the missing person report.

Requiring Data Entry into the National Computer

Nationwide surveys indicate that not all law-enforcement agencies regularly relay descriptive information about missing children to the appropriate state agency or enter it into the National Crime Information Center (NCIC) computer operated by the FBI. Such data entry into the NCIC computer is critical to ensure an effective nationwide distribution of information on a missing child and to compare missing children data with the records of the unidentified dead.

Both Texas (1983, H.B. 2333) and Minnesota (1984, H.F. 1428) have mandated that appropriate information about missing persons be shared promptly with the FBI National Crime Information Center computer. Minnesota requires that law-enforcement agencies, after a preliminary investigation, immediately enter descriptive information on missing children into the NCIC computer and also requires prompt notification to NCIC when the child is located. Following is an excerpt from the Minnesota legislation:

> Sec. 3. [299C.53]
>
> Subdivision 1. Upon receiving a report of a child believed to be missing, a law enforcement agency shall conduct a preliminary investigation to determine whether the child is missing. If the child is determined to be missing, the agency shall immediately enter identifying and descriptive information about the child through the CJIS into the NCIC computer. Law enforcement agencies having direct access to the CJIS and the NCIC computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies which do not have direct access to the systems.
>
> Subd. 2. Immediately after a missing child is located, the law enforcement agency which located or returned the missing child shall notify the law enforcement agency having jurisdiction over the investigation, and that agency shall cancel the entry from the NCIC computer.

The Texas legislation also requires that every law-enforcement agency provide to the FBI any information that would assist in locating and identifying missing children.

Kentucky Legislation

Following are sections of the Kentucky legislation referred to in the text.

> (H.B. 486)
>
> ACT relating to sexually abused, missing and exploited children, including those persons who commit offenses relating thereto.
>
> Be it enacted by the General Assembly of the Commonwealth of Kentucky:
>
> SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:
>
> (1) As used in Section 1 through 9 of this Act:
>
> (a) "Child" means a person under eighteen (18) years of age;
>
> (b) "Child sexual abuse and exploitation" means harm to a child's health or welfare by any person, responsible or not for the child's health or welfare, which harm occurs or is threatened through nonaccidental sexual contact which includes violations of KRS 510.040 to 510.150, 530.020, 530.070, 531.310, 531.320 and 531.370;
>
> (c) "Local task force" means an organization which meets the criteria described in Section 9 of this Act;
>
> (d) "State board" means the state child sexual abuse and exploitation prevention board created in Section 3 of this Act;

(e) "Prevention program" means a system of direct provision of child sexual abuse and exploitation prevention services to a child, parent, or guardian, but shall not include research programs related to prevention of child sexual abuse and exploitation; and

(f) "Trust fund" means the child victims' trust fund established in the office of the state treasurer.

SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The state child sexual abuse and exploitation prevention board is created as an autonomous agency within the office of the attorney general.

(2) The state board may appoint an executive director of the state board to exercise the powers and carry out the duties of the state board.

SECTION 3. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The state board shall be composed of the following members:

(a) The secretary of the human resources cabinet, the secretary of finance and administration cabinet, the superintendent of public instruction, the commissioner of the state police, and the attorney general, or designees authorized to speak on their behalf; and

(b) Ten (10) public members appointed by the governor. It is recommended that, as a group, the public members shall demonstrate knowledge in the area of child sexual abuse and exploitation prevention; shall be representative of the demographic composition of this state; and, to the extent practicable, shall be representative of all the following categories: parents, school administrators, law enforcement, the religious community, the legal community, the medical community, professional providers of child sexual abuse and exploitation prevention services, and volunteers in child sexual abuse and exploitation prevention services

(2) The term of each public member shall be three (3) years, except that of the public members first appointed, three (3) shall serve for three (3) years, three (3) for two (2) years, and four (4) for one (1) year. A public member shall not serve more than two (2) consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(3) The attorney general shall serve as chairman or designate a chairperson of the state board in which case the chairperson shall serve in that position at the pleasure of the attorney general. The state board may elect other officers and committees as it considers appropriate.

(4) There shall be no per diem compensation; however, the schedule for reimbursement of expenses for the public members of the state board shall be the same as for state employes. The reimbursement, executive director and staff salaries, and all actual and necessary operating expenses of the state board shall be paid from the trust fund, pursuant to an authorization as provided in Section 8 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The business which the state performs shall be conducted at a public meeting of the state board held in compliance with the open meetings act.

(2) A wr[illegible] prepared, owned, used, in the possession of, or retained by the state b[illegible] the performance in an official function shall be made available t[illegible] olic in compliance with the open records act.

SECTIO[illegible] A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The state board shall do all of the following:

(a) Meet not less than twice annually at the call of the chairperson;

(b) One (1) year after the original appointment of the state board, and biennially thereafter, develop a state plan for the distribution of funds from the trust fund. In developing the plan, the state board shall review already existing prevention programs. The plan shall assure that an equal opportunity exists for establishment of prevention programs and receipt of trust fund money among all geographic areas in this state. The plan shall be transmitted to the clerk of the house of representatives, to the clerk of the senate, and to the governor;

(c) Provide for the coordination and exchange of information on the establishment and maintenance of prevention programs;

(d) Develop and publicize criteria for the receipt of trust fund money by eligible local task forces and eligible prevention programs;

(e) Review, approve, and monitor the expenditure of trust fund money by local task forces and prevention programs;

(f) Provide statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the prevention of child sexual abuse and exploitation; encourage professional persons and groups to recognize and deal with prevention of child sexual abuse and exploitation; encourage and coordinate the development of local task forces; make information about the prevention of child sexual abuse and exploitation available to the public and organizations and agencies which deal with problems of child sexual abuse and exploitation; and encourage the development of community prevention programs; and

(g) Establish a procedure for an annual, internal evaluation of the functions, responsibilities, and performance of the state board. In a year in which the biennial state plan is prepared, the evaluation shall be coordinated with the preparation of the state plan.

(2) The state board may enter into contracts with public or private agencies to fulfill the requirements of this section. The state board shall utilize existing state resources and staff of participating departments whenever practicable.

SECTION 6. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The state board may recommend to the governor and the general assembly changes in state programs, statutes, policies, budgets, and standards which will reduce the problem of child sexual abuse and exploitation, improve coordination among state agencies that provide prevention services and improve the condition of children and parents or guardians who are in need of prevention program services.

SECTION 7. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

The state board may accept federal funds granted by the Congress or executive order for the purposes of this Act as well as gifts and donations from individuals, private organizations, or foundations. All funds received in the manner described in this section shall be transmitted to the state treasurer for deposit in the trust fund, and shall be made available for expenditure as appropriated by the general assembly.

SECTION 8. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

(1) The state board may authorize the disbursement of available money from the trust fund, upon legislative appropriations, for exclusively the following purposes, which are listed in the order of preference for expenditure:

(a) To fund a private nonprofit or public organization in the development or operation of a prevention program if at least all of the following conditions are met:

1. The appropriate local task force has reviewed and approved the program. This subparagraph does not apply if a local task force does not exist for the geographic area to be served by the program;

2. The organization demonstrates an ability to match through money fifty percent (50%) of the amount of any trust fund money received;

3. The organization demonstrates a willingness and ability to provide program models and consultation to organizations and communities regarding program development and maintenance; and

4. Other conditions that the state board may deem appropriate.

(b) To fund local task forces; and

(c) To fund the state board created in Section 2 of this Act for the actual and necessary operating expenses that the board incurs in performing its duties.

(2) Authorizations for disbursement of trust fund money under subsection (1)(c) of this section shall be kept at a minimum in furtherance of the primary purpose of the trust fund which is to disburse money under subsec-

tions (1)(a) and (b) of this section to encourage the direct provision of services to prevent child abuse and exploitation.

SECTION 9. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

In making grants to a local task force, the state board shall consider the degree to which the local task force meets the following criteria:

(1) Has as its primary purpose the development and facilitation of a collaborative community prevention program in a specific geographical area. The prevention program shall utilize trained volunteers and existing community resources wherever practicable;

(2) Is comprised of local law enforcement and social services representatives and does not exclude any organization or person that the state board deems necessary;

(3) Demonstrates a willingness and ability to provide prevention program models and consultation to organizations and communities regarding prevention program development and maintenance;

(4) Demonstrates an ability to match through money fifty percent (50%) of the amount of any trust fund money received. The amount and types of in-kind services are subject to the approval of the state board; and

(5) Other criteria that the state board deems appropriate.

. . .

SECTION 11. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) The justice cabinet shall establish within the cabinet a "Kentucky Missing Child Information Center," which shall serve as a central repository of and clearinghouse for information about Kentucky children believed to be missing and children from other states believed to be missing in Kentucky.

(2) The cabinet shall provide the missing child information center with computer equipment and a computer program which shall list and be capable of immediately retrieving the name and complete description of any missing Kentucky child referred to in subsection (1) of this section.

(3) The cabinet shall design the computer program so as to accept and generate complete information on a missing child, which information shall be retrievable by the child's name and date of birth, social security number, fingerprint classification, any number of physical descriptions, including hair and eye color and body marks, and known associates and locations.

(4) Only law enforcement agencies shall be authorized to order missing child information entered into or retrieved from the missing child information center computer, except that a parent or guardian may order from the state police information on his or her child to be entered or retrieved when another law enforcement agency has refused to enter or retrieve such missing child information.

(5) The cabinet, through the Kentucky missing child information center, shall regularly issue flyers containing physical and situational descriptions of missing children when requested by a law enforcement agency or when determined by the cabinet.

(6) For purposes of this Act, child shall mean any person under eighteen (18) years of age or any person certified or known to be mentally incompetent or disabled.

(7) A complete written report shall be issued annually by the cabinet, which report shall include statistical information on the numbers of missing children entered on the computer and located and recommendations for more accurate and timely reports and better usage of the computer.

(8) The cabinet may issue regulations in conformance with this section which provide for the orderly receipt of missing child information and requests for retrieval of missing child information.

(9) The Kentucky state police and each city, county, and urban county police department and each sheriff's office shall fingerprint children without charge on forms provided by the cabinet. The completed fingerprint forms shall be delivered to the child's parent or guardian and no copy of the fingerprint form shall be retained by the police department or sheriff's office.

SECTION 12. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

(1) Upon notification by a parent or guardian that a child is missing, the law enforcement agency receiving notification shall immediately complete a missing person's report in a form prescribed by the justice cabinet and which shall include such information as the cabinet deems necessary for the identification of the missing child, including the child's physical description, last known location and known associates.

(2) Within twenty-four (24) hours after completion of the missing person's report form, the law enforcement agency shall transmit the report for inclusion within the Kentucky missing child information center computer and shall cause the report to be entered into the national crime information center computer.

(3) Within twenty-four (24) hours thereafter, the law enforcement agency shall investigate the report, shall inform all appropriate law enforcement officers of the existence of the missing child report, and shall communicate the report to every other law enforcement agency having jurisdiction in the area.

(4) Within twenty-four (24) hours after a missing child is located and returned to his parent, guardian or to the state, if a ward of the state, the law enforcement agency which found or returned the missing child shall notify both the missing child information center and the national crime information center of that fact.

2. Sexual Abuse and Exploitation

The National Center for Missing and Exploited Children is chartered to address the problem of children who are criminally or sexually exploited, which includes child molestation, child prostitution, and child pornography. State legislation can be effectively used to improve many laws regarding the treatment of criminally or sexually exploited children. The state legislation referred to in this section has proved highly successful in addressing the problems of exploited children. (See also "Child Pornography and Child Prostitution," pages 45-47.)

Reporting and Investigating Cases of Child Sexual Exploitation

Who Must Report? In order to ensure that all cases of child abuse or exploitation are indeed reported, some states include a broad category of citizens who are required to report.

The State of Delaware (§16-903) has mandated that reports are required from physicians, persons in the healing arts, school employees, social workers, psychologists, medical examiners, and *any other person*.

The State of Kentucky (§199.335) requires reports from many of the same professions as the Delaware statute and adds child care personnel as well. Virginia (§63.1-248.3) specifies social workers, nurses, probation officers, mental health professionals, and law-enforcement officers as well. Both the Delaware and Kentucky laws are significant because they include the words *or any other person* to include all citizens in general. It is not appropriate, however, to penalize citizens in the same way that professionals are penalized for failure to report.

North Carolina (§7A-543) requires "any person or institution that has cause to suspect that any juvenile is abused or neglected" to report such cases. South Dakota (§26-10-11) specifically requires abuse reports by hospital and school personnel and notification of the officials in charge. An excerpt from the South Dakota statute follows:

> 26-10-11. Child abuse reports by hospital personnel—Failure as misdemeanor—Written policy required as to reporting. When the attendance of any person under §26-10-10 with respect to a child is pursuant to the performance of services as a member of a staff of a hospital or similar institution, such person shall, in addition to the report required by §26-10-10, forthwith notify the person in charge of the institution or his designated delegate, who shall report or cause reports to be made in accordance with the provisions of §26-10-12. Any such person in charge or delegate who knowingly and intentionally fails to make a report required of him is guilty of a Class 1 misdemeanor. Each hospital or similar institution shall have a written policy on reporting of child abuse and neglect.
>
> 26-10-11.1. Child abuse reports by school personnel—Failure as misdemeanor—Written policy required as to reporting. When the presence of any person under §26-10-10 is pursuant to the performance of services as a teacher, school nurse, school counselor, school official or administrator, such person shall, in addition to the report required by §26-10-10, notify the school principal or school superintendent or his designate who shall report or cause reports to be made in accordance with the provisions of §26-10-12.

Any such school principal or superintendent or their delegate, who knowingly and intentionally fails to make a report required of him is guilty of a Class 1 misdemeanor. Each school district shall have a written school district policy on reporting of child abuse and neglect.

What Kinds of Abuse Must Be Reported? It is critical that state legislation require that cases of *sexual assault* and *exploitation* be included in the definition of child abuse. The State of Delaware (§16-903) defines child abuse and neglect to include physical injury or mental and emotional injury resulting from abuse, neglect, sexual abuse, or exploitation. This definition of child abuse includes *exploitation*—which would encompass sexual exploitation, as in child pornography. Therefore, in Delaware, child pornography would constitute child abuse even though the child was not physically harmed or even touched. Louisiana (1984, H.B. 1206) recently enacted legislation that includes sexual exploitation in the definition of abuse. It is critical that sexual abuse and exploitation be subject to abuse reporting requirements.

To Whom Are the Reports Made? Many communities have had difficulties in handling cases of child sexual assault because not all the appropriate agencies are notified. The District of Columbia (§6-2102) provides that, upon receipt of a report, the social services division immediately inform the police. Following is an excerpt from the District of Columbia statute:

§ 6-2102. Handling of reports—By Division.

(a) Upon the receipt of an oral report, the Division shall immediately inform the police of the contents of the report, if it alleges a child is or may have been an abused child.

Some states, such as New Mexico (§32-1-15), require that the report be made to the proper social services agency *or* to the local district attorney. The State of Kentucky (§199.335) mandates that the person making the report also make an oral report to a law-enforcement agency.

The State of Florida (1984, Com. Sub., H.B. 988) has taken important action to ensure that reports of child abuse or neglect by school employees be immediately reported to the school board itself. In addition, Florida requires that the Social Services Department make a full written report to the local prosecutor within three days of receiving the oral report.

Sharing Information Among Agencies Law-enforcement and social service agencies are often unable or are not required to *share information* about cases of child exploitation. Kentucky (§199.335) has solved this problem by mandating that social service agencies report cases of child abuse to other medical, psychological, social service, or law-enforcement agencies. Florida (1984, Com. Sub., H.B. 988) requires a joint criminal investigation conducted by both law-enforcement authorities and social service agencies in cases involving sexual assault, abuse, or death of a child.

Temporary Protection for the Child Simply because a case of child abuse or exploitation has been reported does not mean that the child is not still in grave danger. The State of Alabama (§26-14-6) addressed this problem by ensuring *temporary protection* for the child. In Alabama, in a case of child abuse, a law-enforcement officer, state or county employee, hospital official, or physician may keep the child in his or her custody without the consent of the parent or guardian. The State of Kentucky (§199.335) allows similar procedures for hospitals and physicians.

Kentucky's legislation also allows for a *search warrant* to be issued if there is cause to suspect child abuse or neglect. If the child is indeed in danger, he or she may be removed by a police officer. Following is an excerpt from the Kentucky statute:

(4) A search warrant shall be issued upon a showing of probable cause that a child is being abused or neglected. If, pursuant to a search under a

warrant a child is discovered and appears to be in imminent danger, the child may be removed by the local law enforcement officer. In the event a child who is in a hospital or under the immediate care of a physician appears to be in such certain danger of injury or death if he is returned to the persons having custody of him, the physician or hospital administrator may hold a child in the physician's office or the hospital without court order provided that an attempt is made to obtain such court order at the earliest practicable time not to exceed seventy-two (72) hours. Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person responsible for such child, if the officer has reasonable cause to believe that there exists an imminent danger to the child's life or health.

Protecting Individuals or Institutions That Report Many cases of child abuse may go unreported because people are afraid that they will be penalized in some way. Therefore, a number of states have instituted *immunity* and *protective measures* for those who report. The following examples of state legislation provide critical support and protection measures for those who report child abuse, neglect, and exploitation.

The states of Mississippi (§43-21-355) and South Dakota (§26-10-14) protect those who report "in good faith." The State of Kentucky (§199.335) protects those who report based upon a "reasonable cause." Further, Mississippi law (§43-21-355) provides for *immunity from liability*, civil or criminal, for individuals who are acting "in good faith." That means that a civil or criminal suit cannot be brought against those who report. Criminal liability can mean a possible jail sentence or fine.

The State of Vermont (T.33§683) provides for the *confidentiality of the name* of the person making the report or any person mentioned in the report. The State of Colorado (§19-10-110) ensures that the person reporting "in good faith" is immune from civil or criminal liability or termination of employment that otherwise might result. Following is an excerpt from the Colorado statute:

19-10-110. Immunity from liability—persons reporting. Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this title, the taking of photographs or X rays, or the placing in temporary protective custody of a child pursuant to this article or otherwise performing his duties or acting pursuant to this article shall be immune from any liability, civil or criminal, or termination of employment that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking photographs or X rays, and any person who has legal authority to place a child in protective custody shall be presumed.

Kentucky (§199.335) provides for immunity from liability for photographs, x-rays and other appropriate medical procedures taken without the consent of the parent as part of an investigation. Finally, Rhode Island (1984, H. 7519) recently provided that those who report child abuse be advised about the agency efforts that may have taken place because of the report.

Penalties for Failure to Report Many states impose criminal sanctions or fines upon those professionals who do not report cases of child abuse, neglect, or exploitation. For example, the State of Michigan (§722.633) provides that a person required to report an instance of child abuse is civilly liable for the damages caused by the failure. Of course, this kind of penalty should apply only to professionals required to report.

But in states requiring regular citizens to report such cases, it is not fair to make the penalties as high for the ordinary citizen as they are for the trained professional. A civil fine is as serious as the penalty should be for a citizen. And, certain protections, such as immunity from liability, should also apply to the average individual who reports child abuse, neglect, and exploitation.

Child Protection Teams

Child abuse, neglect, and exploitation are highly complicated cases involving many different interests—the child's physical, mental, and emotional health, the family, and the legal concerns. Therefore, a few states have mandated the use of *child protection teams* to handle such reports. The child protection team concept ensures that, at the community level, a seasoned group of professionals from different disciplines will handle the cases. The team concept, however, can only benefit child victims if *exploitation* is included in the state's definition of child abuse.

Tennessee (§37-1-407) has mandated a multi-disciplinary advisory team that is composed of representatives from the following:

1. Department of Human Services
2. Physicians
3. Psychologists or psychiatrists
4. Social workers
5. Local juvenile court
6. Local law-enforcement agency

Following is an excerpt from the Tennessee statute:

> 37-1-407. Child abuse review teams.—(a) The department shall make available to each community a multi-disciplinary advisory team to be known as the child abuse review team.
>
> (b) The team shall be composed of at least the following persons: a representative of the department of human services who shall serve as team coordinator, a physician, a psychologist or psychiatrist, and a social worker. A representative of the local juvenile court may participate if desired by the juvenile judge, and a representative of the local law-enforcement agency may participate if requested by the district attorney general. . . . The department shall choose its representative and all other persons on the team with the exception of the representatives of the local law-enforcement agency and the local juvenile court who shall be chosen by the chief officer of their respective operating units.

Indiana (§31-6-11-14) has added a requirement that local law-enforcement agencies participate as well as persons from local schools, nurses, attorneys, and those trained in mental health and mental retardation. Indiana's child protection team is required to be supplied with copies of reports of child abuse and neglect. This ensures that all reports are received and reviewed by the entire team.

The Florida (Chapter 84-226) team concept includes a variety of responsibilities, which are listed in the statute below:

> Section 9. Section 415.5055, Florida Statutes, is created to read:
>
> 415.5055 Child protection teams; services; eligible cases.—The department shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the department's service districts. Such teams may be composed of representatives of appropriate health, mental health, social service, legal service, and law enforcement agencies.
>
> (1) The department shall utilize and convene the teams to supplement the single intake and protective services activities of the children, youth, and families program of the department. Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report all suspected or actual cases of child abuse or neglect or sexual abuse of a child pursuant to s. 415.504. The role of the teams shall be to support activities of the program and to provide services to abused and neglected children upon referral as deemed by the teams to be necessary and appropriate for such children. The specialized diagnostic assessment, evaluation, co-

ordination, consultation, and other supportive services that the teams shall be capable of providing include, but are not limited to, the following:

(a) Medical diagnosis and evaluation services, including provision or interpretation of X-rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.

(b) Telephone consultation services in emergencies and in other situations.

(c) Medical evaluation related to abuse or neglect, as defined by department policy or rule.

(d) Such psychological and psychiatric diagnosis and evaluation services for the child, parent or parents, guardian or guardians, or other care givers, or any other individual involved in a child abuse or neglect case, as a child protection team may determine to be needed.

(e) Short-term psychological treatment. It is the intent of the Legislature that short-term psychological treatment be limited to no more than 6 months' duration after treatment is initiated, except that the appropriate district administrator may authorize such treatment for individual children beyond this limitation if he deems it appropriate.

(f) Expert medical, psychological, and related professional testimony in court cases.

(g) Case staffings to develop, implement, and monitor treatment plans for a child whose case has been referred to a child protection team. A child protection team may provide consultation on any other child who has not been referred to a team, but who is alleged or is shown to be abused, which consultation shall be provided at the request of a representative of the children, youth, and families program or at the request of any other professional involved with a child, his parent or parents, guardian or guardians, or other care givers. In all such child protection team case staffings, consultations, or staff activities involving a child, a children, youth, and families program representative shall attend and participate.

(h) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(i) Such training services for program and other department employees as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse and neglect cases.

(j) Educational and community awareness campaigns on child abuse and neglect in a effort to enable citizens more successfully to prevent, identify, and treat child abuse and neglect in the community.

(2) Child abuse and neglect cases that are appropriate referrals by the children, youth, and families program to child protection teams for support services as set forth in subsection (1) include, but are not limited to, cases involving:

(a) Bruises, burns, or fractures in a child under the age of 3 years and in a nonambulatory child of any age.

(b) Unexplained or implausibly explained bruises, burns, fractures, or other injuries in a child of any age.

(c) Sexual abuse of a child in which vaginal or anal penetration is alleged, or in which other unlawful sexual conduct has been determined to have occurred.

(d) Venereal disease, or any other sexually transmitted disease, in a prepubescent child.

(e) Reported malnutrition of a child and failure of a child to thrive.

(f) Reported medical, physical, or emotional neglect of a child.

(g) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected abuse or neglect, where any sibling or other child remains in the home.

(h) Symptoms of serious emotional problems in a child where emotional or other abuse or neglect is suspected.

In all instances where a child protection team is providing certain services to abused or neglected children, other offices and units of the department shall avoid duplicating the provision of those services.

Payment for Physical Exams

Unfortunately, in many states, the victim of a sexual assault must, in addition to suffering from the effects of the crime, pay for the required medical examination. Some states have protected the victim by mandating that such exams be paid for out of social services, law enforcement, or other community funds. Following is a Montana statute (§46-15-411) that requires the local law-enforcement agency to pay for the required exam.

> 46-15-411. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent when the examination is directed by such agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.
>
> (2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

Also, the State of Minnesota (§609.35) has mandated that the cost of the examination of the victim of a sexual assault will not be charged to the victim.

Emergency Protection for the Child

Because of the unique nature of child sexual assault and exploitation, special measures are often necessary to provide immediate protection for the child. The State of Colorado (§19-10-116) has allowed its juvenile courts to issue *restraining orders* to prevent sexual offenses. This emergency protection includes preventing anyone from threatening, molesting, or injuring a child. It also can exclude someone from the family home or prevent someone from contacting the child elsewhere. An excerpt from the Colorado statute follows:

> 19-10-116. Restraining orders and emergency protection orders.
>
> (1) (a) The juvenile court and the district court shall have authority to issue restraining orders to prevent an unlawful sexual offense . . . when requested by the local law enforcement agency, county department, or a responsible person who asserts, in a verified petition supported by affidavit, that there are reasonable grounds to believe that a child is in danger in the reasonably foreseeable future of being the victim of an unlawful sexual offense, based upon an allegation of a recent actual unlawful sexual offense or threat of the same.

The Colorado law also provides that the person who disobeys the restraining order can be held in contempt of court.

Limiting the Number of Interviews

The demands of the social services and criminal justice system often mean that a child victim of a sexual assault may be interviewed about the assault as many as a dozen times—by a social services investigator, the police, the local prosecutor's office, therapists, and many others. This would be a great strain on any adult, let alone a child already under extreme stress.

The State of Florida (1984, S.B. 890) recently considered a bill that would require the chief judge of each local circuit to provide for *reasonable limits on the number of interviews* a child victim would have to undergo. An excerpt from the Florida legislation is reproduced below:

> Section 1. Child abuse and sexual abuse victims under age 12: limits on interviews.—The chief judge of each judicial circuit, after consultation with

the state attorney for the judicial circuit and the sheriff of each county within the judicial circuit, shall provide by rule for reasonable limits on the number of interviews a victim of a violation of s. 794.011, s. 827.03, or s. 827.04, Florida Statutes, who is under 12 years of age must submit to for law enforcement or discovery purposes. The rule shall, to the extent possible, protect the victim from the psychological damage of repeated interrogation while preserving the rights of the public, the victim, and the person charged with the violation.

3. Criminal Code Provisions

The provisions of state *criminal codes* dealing with child abuse, sexual offenses, and kidnapping directly affect the issue of missing and exploited children. State criminal codes determine what acts are considered crimes and how these crimes are punished. In addition, criminal code provisions determine who is released early from prison (paroled) and under what circumstances. State legislation can be used to strengthen state criminal codes to protect missing and exploited children.

Time Limits (Statute of Limitations)

A recurring difficulty in prosecuting cases of child victimization is the fact that many cases go unreported for years. Because the children are often very young, confused, and feel responsible for the act, they are afraid to report or may not even know that what happened is indeed a crime. This is especially true in incest cases, but it also occurs in cases involving molestation by those other than family members. As a result, many cases of child victimization cannot be prosecuted simply because the child did not report it until years later and the *statute of limitations* had expired.

Many states, therefore, are extending their statute of limitations for crimes involving children. These extensions ensure that crimes against children can be prosecuted even several years after the offense has occurred. The State of Minnesota (Chapter 496) recently lengthened its statute of limitations from three years to seven years for any criminal or sexual conduct involving a minor. Utah (1984 H.B. 209) extended this time limitation to eight years. Florida (Chapter 84-86) took a different approach and mandated that if the victim is under the age of 16, the time limitation does not begin until the victim has reached the age of 16 or until the violation is reported, whichever is earlier. Actually, the statute of limitations in these cases should be at least 15 years.

"Consent" and Past Sexual Experiences of the Child Victim

Two obstacles sometimes encountered in prosecuting child victimization cases are 1) a requirement to prove that the child did not consent to the act, and 2) an inquiry into the child's prior sexual experiences. The State of Florida (Chapter 84-86) now requires that neither the victim's lack of chastity nor the victim's consent is a defense for certain sexual offenses committed against children. Utah (1984. H.B. 209) provides that a seizure, confinement, detention, or transportation is considered against the will of any victim under 14, if it is without the consent of the parent or guardian. Of course, this provision was not intended to apply to cases of parental kidnapping.

Mandatory Prison Sentences for Sexual Offenders

Some states have enacted legislation that provides for mandatory prison sentences for those convicted of certain specified sexual crimes against children (California Penal Code §1203.066; Kentucky, 1984, Chapter 382; Utah, 1984, H.B. 209). While these statutes do address the critical problem of the serious or repeat offender who does not have to serve any time in jail or prison, they do raise two issues that will need to be

addressed. Both issues concern the unique nature of cases of incest or intrafamily sexual abuse. If the child who is a victim of these particular intrafamily crimes learns that his or her father or stepfather faces an automatic prison sentence, it often makes the child reluctant to report the crime or to continue to tell the truth throughout the investigation and court procedures. In addition, family members and friends may put significant pressure upon the child to recant a truthful account of the crime so that the defendant does not have to serve any period of imprisonment.

What this means is that any state law that includes mandatory imprisonment should also include provisions that allow the judge, at his or her discretion, to impose a probated (no incarceration) or suspended sentence if there are specific findings, which follow:

1. The defendant is a natural parent, stepparent, adoptive parent, relative, other legal guardian, or a member of the victim's household who has lived in the household.
2. It is in the victim's best interest that the defendant not be incarcerated.
3. There is no continuing threat of physical harm to the child if the defendant is not incarcerated.
4. The defendant has been accepted for mental health treatment in a recognized center that deals with therapy for the kind of offense committed.

These provisions are an attempt to deal with the conflicting interests of the required incarceration of a child molester and the needs of the child who is a victim of intrafamily sexual abuse. Also, the judge is still free to impose a mandatory jail sentence if it is in the best interest of the child.

Registering Sexual Offenders

In order to know the whereabouts of those convicted of sex offenses, the State of Ohio (§2950.02) and the State of Utah (1984, H.B. 209) have mandated that sex offenders register with local or state officials in that state. The Utah provisions are comprehensive and also require that notice be given to the victim before the offender is released from prison. Both provisions are significant.

Paroling Sexual Offenders

Because many sexual offenders repeat their crimes against children, some states have legislated specific provisions to guarantee more protection for children. Legislation in Utah (1984, H.B. 209) is an excellent answer to the problem of repeat offenders. The Utah legislation includes the following:

1. A requirement that the prosecutor inform the parole board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and other background information.
2. Provisions for notifying the local prosecutor and the victim concerning a parole hearing on an individual convicted of certain specified offenses against children.
3. An examination before parole by a disinterested third party to determine whether or not the individual is a continuing danger to children.
4. Requirement for three years of outpatient treatment for paroled individuals convicted of certain crimes against children.

The above recently enacted state laws regarding parole are innovative steps to protect children that all states should consider.

4. The Child in the Courtroom

The child victim or witness faces a particularly difficult time in the courtoom. Various criminal justice system procedures subject the child to repeated interrogation and a traumatic ordeal that some experts refer to as a second victimization. Some procedures and laws make it difficult or impossible for the child victim to have his or her story heard in the courtroom by a judge or jury. In addition, the formal procedures in the criminal courtroom force the child to relive the episode of exploitation or abuse in a public setting. State legislation addressing these difficult issues is described in this chapter.

Courtroom Procedures Protecting the Child Victim or Witness

Some states have adopted certain courtroom procedures that make it less traumatic for the child victim or witness to testify, such as allowing the child to testify, permitting leading questions, allowing additional evidence, using videotapes and closed-circuit television to record testimony, and removing corroboration rules.

Allowing the Child to Testify Many state laws require that the child pass a specific set of threshold inquiries before he or she is allowed to testify. The child may have to show an understanding of the difference between a true statement and an untrue statement and an appreciation of the nature of the oath to tell the truth. Also included are requirements that the child have an ability to sufficiently recall and relate the details of the incident of abuse or exploitation. Some scholars of law have characterized this kind of prejudice against a child's testimony as "archaic." It is important to note, however, that fewer than half the states in the United States have these provisions, and the Federal Rules of Evidence, applicable in federal courtrooms, presume that every person is competent to be a witness.

If the child is allowed to testify, it is still up to the trier of fact (the judge or the jury) to determine if the child's ability to recall and relate the incidents and his or her understanding of the oath to tell the truth is sufficient to make the testimony convincing. This is a guarantee that the child's testimony will be appropriately evaluated in the trial.

The State of Utah (1984, H.B. 209) recently attempted to address the problem of prejudice against the child's testimony by enacting the following provisions:

> Notwithstanding any other provision of law or rule of evidence, a child victim of sexual abuse, under the age of ten, shall be considered a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding. The trier of fact shall be permitted to determine the weight and credibility to be given to the testimony.

The age of ten is included in the Utah statute because of particular provisions of that state's laws. Actually, any child victim of sexual assault should be accorded this protection.

Permitting Leading Questions In most courtroom situations, *leading questions* (those simply requiring a yes or no answer) are prohibited. A child, however, obviously

has difficulty in articulating complete and detailed sentences. Therefore, several states, including California (1984, S.B. 1899) allow that, in certain kinds of crimes, "the court may in the interests of justice permit a leading question to be asked of a child under ten years of age."

Allowing Additional Evidence Traditionally, the criminal justice system excludes as evidence any statements made outside the courtroom. To make it easier for the child, however, Colorado (§18-3-411, §19-1-107) recently enacted provisions that would allow as evidence any out-of-court statements made by a child describing any act of sexual contact, intrusion, or penetration. Most states that have enacted this kind of legislation have also included provisions such as those required by Minnesota (Chapter 588), which ensure the reliability of out-of-court statements. This is a determination made by the judge in the case. Such a specific evaluation of the reliability of the statement is critical.

Similar legislation has been enacted in Indiana (1984, H. 1205) and Utah (1984, H.B. 209). The Utah legislation contains the following provisions:

> (1.) Notwithstanding any other provision of law or rule of evidence, a child victim's out of court statement regarding sexual abuse of the child is admissible into evidence although it does not qualify under an existing hearsay exception so long as: (1) the child testifies; or (2) in the event that the child does not testify, there is other corroborative evidence of the abuse. Before admitting such a statement into evidence, the judge shall determine whether the general purposes of the evidence are such that the interest of justice will best be served by admission of the statement into evidence. In addition, the court shall consider the age and maturity of the child, the nature and duration of the abuse, the relationship of the child to the offender, the reliability of the assertion, and the reliability of the child witness in deciding whether to admit such a statement.

Some states have required that out-of-court statements by children will be admissible if the judge finds, among other conclusions, that "the emotional or psychological well-being of the child would be impaired" by testifying. Maine (§1205) has such a law. CAUTION: These innovative attempts to address the needs of the child victim are being tested by the courts.

Videotaping the Child's Testimony Some state legislatures have attempted to lessen the child victim's ordeal of testifying in the courtroom about a sexual assault. The State of New Mexico (§30-9-17) mandated that *videotaping* may be used to record the child's testimony:

> A. In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, upon motion of the district attorney and after notice to the opposing counsel, the district court may, for a good cause shown, order the taking of a videotaped deposition of any alleged victim under the age of sixteen years. The videotaped deposition shall be taken before the judge in chambers in the presence of the district attorney, the defendant and his attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the videotaped deposition in the same manner as permitted in a trial under the provisions of Rule 611 of the New Mexico Rules of Evidence. Any videotaped deposition taken under the provisions of this act (this section) shall be viewed and heard at the trial and entered into the record in lieu of the direct testimony of the alleged victim.
>
> B. For the purposes of this section, "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.
>
> C. The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of this act.

D. The cost of such videotaping shall be paid for by the state.

E. Videotapes which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

For examples of similar legislation, see the statutes enacted in Arkansas (§43-2036), Colorado (§18-3-411), Iowa (§232.96), Kentucky (Chapter 382), Ohio (1984, H.B. 555), Florida (1984, S.B. 140), and Wisconsin (Act 197). CAUTION: These procedures are currently being tested in the state courts. Their constitutionality has not yet been determined. Videotaping may not provide a comprehensive answer to the plight of the child victim.

Closed-Circuit Television Another alternative considerd by some state legislatures is the use of *closed-circuit television* to record the child's testimony. The following excerpt from Texas law (§38.071) is an example:

> Section 3. The court may, on the motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom and be televised by the closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

Note: The Sixth Amendment to the United States Constitution guarantees that the accused person shall enjoy the right to be confronted with the witnesses against him. The use of videotaping or closed-circuit television will be a subject of state court decisions in the months ahead. The validity of a provision that prevents the child from hearing or seeing the defendant has not yet been ruled upon by the courts.

Removing Corroboration Rules Several states have requirements that make it extremely difficult for the child victim or witness to testify. These are called *corroboration rules*, which require that 1) the child cannot simply testify as to the sexual assault without other evidence to substantiate the child's story, or 2) if the child is allowed to testify, as soon as that testimony is questioned, attacked, or impeached, then it is required that additional evidence be introduced to substantiate the child's story. Obviously, these kinds of procedures interfere with the child's ability to seek justice in the courtroom. If these corroboration rules exist by statute or court decision, state legislators should carefully consider removing or eliminating them.

Anatomically Correct Dolls

The child victim of a sexual assault usually finds it very difficult to tell the story in adult language. Therefore, some states have tried to make this procedure easier for the child. Pennsylvania (1984, S.B. 1361) recently passed a provision that allows for the use of *anatomically correct dolls* to assist a child victim in testifying in the courtroom. An excerpt from the Pennsylvania statute follows:

> § 5986. Use of anatomically correct dolls.
>
> In any criminal proceeding charging unlawful sexual contact or penetration with or on a child, the court shall permit the use of anatomically correct dolls or mannequins to assist an alleged victim in testifying on direct and cross-examination.

Prompt Disposition

Because the trial process is extremely stressful for a child, the State of Pennsylvania (1984, S.B. 1361) recently passed legislation that would require the court and the prosecuting attorney to ensure a *prompt disposition* of a case of a child victim. This also assists the young child who may not remember the details of the offense itself for an extended period of time. An excerpt from the Pennsylvania statute follows:

> § 5983. Duty to expedite proceedings.
>
> In all criminal cases and juvenile proceedings involving a child victim or witness, the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

The Rights of Child Victims or Witnesses

At least two states have adopted a specific listing of victims' rights—in particular, child victims. This "bill of rights" assures that children will be given certain assistance during the course of a criminal proceeding. An excellent example of this kind of legislation is the Wisconsin Bill of Rights for Children (§950.055), which is reproduced below:

> 950.055 Child victims and witnesses; rights and services
>
> (1) Legislative intent. The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually afforded to adults. The legislature intends, in this section, to provide these children with additional rights and protections during their involvement with the criminal justice system. The legislature urges the news media to use restraint in revealing the identity of child victims or witnesses, especially in sensitive cases.
>
> (2) Additional services. In addition to all rights afforded to victims and witnesses under s. 950.04 and services provided under s. 950.05, counties are encouraged to provide the following additional services on behalf of children who are involved in criminal proceedings as victims or witnesses:
>
> (a) Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.
>
> (b) Advice to the judge, when appropriate and as a friend of the court, regarding the child's ability to understand proceedings and questions. The services may include providing assistance in determinations concerning the taking of videotaped depositions under s. 967.04(7) and the duty to expedite proceedings under s. 971.105.
>
> (c) Advice to the district attorney concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.
>
> (d) Information about and referrals to appropriate social services programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.
>
> (3) Program responsibility. In each county, the county board is responsible for the enforcement of rights and the provision of services under this section. A county may seek reimbursement for services provided under this section as part of its program plan submitted to the department under s. 950.06. To the extent possible, counties shall utilize volunteers and existing public resources for the provision of these services.

5. Protecting the Privacy of the Child Victim

The child victim often faces the additional ordeal of the release and publication of highly personal information, including his or her name and the nature of the acts committed. Public release of the victim's name, address, picture, and the details of the assault violates the child's privacy. It is not only embarrassing and traumatic for the child and the family, but it can result in severe psychological and emotional harm.

The issue of the victim's privacy is not a simple one, however. Freedom of the press is guaranteed by the First Amendment and is applied to the states through the Fourteenth Amendment. In order to protect the child victim from undergoing the stress and stigma associated with publicity, it is critical that states enact legislation to protect the privacy of the child.

Protecting the Child's Identity

Traditionally, all fifty states have protected the identity of children *accused of* crimes for the reason that publicity interferes with the child's rehabilitation. Publicizing the names of juvenile defendants may hinder their adjustment in society and acceptance by the public. Protecting the child's identity also guards against embarrassment to the child's family. Unfortunately, though, while the privacy of juvenile offenders is protected in our court system, the privacy of child victims is not.

Several states have enacted legislation to attempt to protect the privacy of the sexual assault victim. The State of Minnesota (Chapter 573) has recently enacted legislation that keeps the name of the victim confidential in the court records and reports related to complaints or indictments of sexual abusers of children. The State of Connecticut (§54-46) exempts from public access official records containing the name and address of the victim of a sexual assault. In addition, the Connecticut statute provides for the use of a fictitious name for the child or no name at all in the indictment. Further, the defendant cannot learn the victim's name if it has been omitted from the documents.

Oregon's statute (§192.500) prevents disclosure of biographical information concerning both the complaining party and the victim. Nevada (§48.071) provides that the district attorney may exclude the victim's address and telephone number in any prosecution for sexual assault.

Criminal Penalties for Disclosing Information In the past, Florida (§794.03), South Carolina (§16-3-730), and Georgia (§26-9901) ruled it a misdemeanor for the news media or private person to publish the name of a sexual assault victim. Following is an excerpt from the Florida statute:

> 794.03 Unlawful to publish or broadcast information identifying sexual offense victim.— No person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense within this chapter. An offense under this section shall constitute a misdemeanor of the second degree.

In 1975, in *Cox Broadcasting Corp.* v. *Cohn* 420 U.S. 469 (1975), the Supreme Court of the United States ruled that states could prohibit, by criminal sanction, the disclosure of victims' names before they become part of the public record in a hearing or trial. After the name is part of the public record, however, the penalty cannot apply. Thus, the child's identity would be protected only before the record was made public.

In the *Cox* v. *Cohn* decision, however, the Supreme Court did authorize states to further protect sexual assault victims by keeping the victim's identity from becoming part of the public record in the first place. The Court stated the following:

> The First and Fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records. If there are privacy interests to be protected in judicial proceedings, the States must respond by means which avoid public documentation or other exposure of private information.

Model State Legislation for Protecting the Privacy of Child Victims of Sexual Assault

Because of the severe emotional and psychological trauma associated with sexual assaults, child victims need even stronger privacy protections. Because we could find no comprehensive protection for the child sexual assault victim, however, we have included an example of provisions that can be enacted by state legislatures. The following example was proposed by attorney Jacqueline Parker for an article appearing in the *Albany Law Review*, 1983 (Vol. 47).

> a) In order to protect the child from possible trauma resulting from publicity, the name of the child victim and identifying biographical information shall not appear on the indictment or any other public record. Instead, a Jane Doe or John Doe designation shall appear in all public records. Sealed non-public records containing the child's name and necessary biographical information shall be kept in order to insure that no defendant is indicted twice.
>
> b) In order to protect the child from stigma and trauma, no person shall disseminate via the print or broadcast media, the name, address, or other identifying information concerning the victim of any sexual offense. With the trial judge's approval, the victim's guardian, parent, or attorney may consent to release some or all of the identifying biographical information, unless the parent or guardian is involved in the alleged offense. This section does not apply to truthful information disclosed in court documents open to public inspection.
>
> c) Upon the request of the victim of a sexual offense, a judge may order that the name of the victim, and the details of the offense obtained by government agencies, be under protective order unless there is a demonstration of a need for disclosure. If the defendant demonstrates a need for disclosure in order to prepare his defense, dissemination of the identity of the child, or other biographical information, by the defendant or his agents, other than for the purpose of preparing his defense, will constitute contempt.

Note: If this model is used, the judge must consider the best interests of the child before releasing identifying information, even if the victim's guardian, parent or attorney consents. An alternative solution providing the same protection would be a two-part state legislative approach consisting of the following:

1. The prohibitions against disclosure identified in the Florida statute (page 23).
2. A state law providing that the court records concerning the identity of a child in a criminal or juvenile proceeding wherein the child is the victim of specified crimes will not be public. (This is the same kind of protection now accorded in all states to children who are accused of committing a crime.)

6. Education and Prevention

Educating children, families, and professionals about abduction, sexual exploitation, and child abuse is the best way to reduce crime against children. The schools are a good place to begin. The National Center for Missing and Exploited Children in late 1985 will provide information on effective training and education programs for the schools.

State legislation may be used to mandate that education and prevention programs for children be available throughout the state. In addition, state legislation may be used to set up community programs to educate professionals about child abuse and exploitation. It is important to note that these programs should be directed toward sexual abuse, exploitation, and abduction as well as child abuse.

State Programs

California (1984, A.B. 2443) recently passed a comprehensive education and training proposal to establish two state education centers and local prevention programs to address the issues of child abuse, sexual assault and, in general, the vulnerability of children. In enacting this important law, the legislature issued findings that included the following assessments of the school's unique ability to be the appropriate setting for the prevention program:

1. Child abuse and neglect is a severe and increasing problem in California.
2. School districts and preschools are able to provide an environment for training of children, parents, and all school district staff.
3. Primary prevention programs in the school districts are an effective and cost-efficient method of reducing the incidence of child abuse and neglect and for promoting a healthy family environment.
4. To ensure comprehensive and effective primary prevention education to all of California's public school children, it is the intent of the legislature to provide adequate funding for training for children four times in their school career, including once in preschool, elementary school, junior high school, and senior high school.

The legislature was careful to define the goal of the new initiative as one that included preventing physical abuse, sexual assault, neglect, and reducing the general vulnerability of children.

California established two distinct kinds of programs. The first is a primary prevention program that provides workshops for parents, teachers, and children. These workshops are designed to counteract common stereotypes about victims and offenders, provide parents and school staff personnel the proper training on child safety, how to detect abuse victims, what to do in a crisis, and how to report the information to the proper agencies.

In addition, the legislature had the foresight to provide for a period of counseling and reporting for the children after each children's workshop.

The second program provides for two Prevention Training Centers, which will act as state clearinghouses to provide information on prevention curriculums and technical assistance to local programs.

Kentucky (1984, H.B. 486) has established a child victims' trust fund that allows residents of that state to make a tax refund donation election of two dollars for individuals or four dollars for joint returns. One of the primary purposes of the trust fund is to help organizations in developing or operating prevention programs.

Regional or Community Programs

Illinois (1984, S.B. 1655), as part of its comprehensive missing children legislation, included education and prevention programs to be directed by its regional I-SEARCH units. These programs will do the following:

1. Establish and conduct programs to educate parents, children, and communities in ways to prevent the abduction of children.
2. Conduct training programs and distribute materials providing guidelines for children when dealing with strangers, casual acquaintances, or non-custodial parents, in order to avoid abduction or kidnapping situations.

The State of Utah (1984, H.B. 58) has specifically provided for community-based education and prevention efforts that include programs to prevent sexual molestation and exploitation. This is an important step because these kinds of programs are often most effective at the community level. The Utah legislation provides that the duties of the Director of the Division of Family Services include the following:

> (1) Contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to establish community-based educational and service programs designed to reduce the occurrence or recurrence of child abuse and neglect.

For more information on school-based programs, see "Schools," pages 27-29.

7. Schools

Schools provide a unique setting for child protection efforts. The school is an appropriate environment in which children can be calmly taught about child abuse, exploitation, and abduction. Lists of missing children may be circulated and compared with lists of enrolled students to identify victims of abduction or kidnapping. The school is an excellent center for the distribution of critical information and descriptive data on abducted children. Finally, the school should be made aware of the arrest of any school employees who have been charged with sexual offenses.

Protection and Other Programs in the Schools

One of the best ways to prevent the victimization of children is to set up in schools effective training procedures for child safety. These self-protection programs can be designed for the child from kindergarten all the way through high school.

State legislators should consider a mandate that education and prevention programs become a regular part of the school curriculum. Otherwise, there are no guarantees that all children will learn how to protect themselves. The State of California (1984, A.B. 2443) has designed a two-part prevention program that is described in "Education and Prevention," pages 25-26. The State of California (1984, S. Con. Res. 83) has also proposed legislation that would require yearly education programs and establish procedures for new students who cannot provide previous school records when enrolling. Following is an excerpt from the California legislation:

> (a) Any information regarding missing children submitted to the Superintendent of Public Instruction by their parents shall be distributed to the schools by the superintendent on a monthly basis.
>
> (b) Each school shall post the information distributed pursuant to subdivision (a), and other flyers and information concerning missing children provided by parents, law enforcement agencies, or volunteer groups, in an area accessible to both faculty and students, and shall update the posted information regularly.
>
> (c) Crisis information, including, but not limited to, phone numbers for local counseling, shelters, and runaway hotlines, shall be openly posted at schools.
>
> (d) Schools shall work with parent groups and law enforcement personnel to implement a voluntary child fingerprinting program and provide participating parents with a set of their child's fingerprints.
>
> *(e) Schools shall provide at least one annual presentation focusing on consequences leading to, and prevention of, abduction and runaways to pupils in kindergarten and grades 1 to 12, inclusive.*
>
> *(f) The Superintendent of Public Instruction shall develop procedures to be followed by school personnel in cases where new students are unable to provide complete school records when enrolling for classes.* The procedures shall include, but not be limited to, notification of agencies or groups involved with the recovery of missing children. All school personnel responsible for registering students shall receive information regarding these procedures. [italics ours]

Some states have mandated by law or regulation that any new student should have appropriate records from parents or previous schools. Many states require such evidence as birth certificates or other permanent records. In practice, however, these rules are not strictly followed, and many children are registered in school without proper documentation. State legislation can be used to step up enforcement of these laws.

Lists of Missing Children

Many missing children end up enrolled under their proper names in schools far from where they may have been kidnapped. A comparison of lists is an effective way to determine the location of missing children. Florida and Kentucky have enacted legislation that would require that *lists of missing children* at the state clearinghouse be circulated to all school districts and individual schools within the state. These lists of missing children would be compared with the rolls of students currently in school. Florida (1983, Com. Sub., H.B. 452) and Kentucky (1984, H.B. 486) require that lists of missing children be compared with lists of children currently in school. Following is an excerpt from the Florida statute:

> Section 1. Department of Education to compile list of missing Florida school children: forms: notification.—The Department of Education shall provide, by rule, for a program to identify and locate missing Florida school children who are enrolled in Florida public school districts in kindergarten through grade 12. Pursuant to such program, the department shall:
>
> (1) Collect each month a list of missing Florida school children as provided by the Florida Crime Information Center. A missing Florida school child shall be defined for the purposes of this section as a child 18 years or younger whose whereabouts are unknown. The list shall be designed to include such information as the department deems necessary for the identification of the missing school child.
>
> (2) Compile from the information collected pursuant to subsection (1) a list of missing Florida school children, to be distributed monthly to all public school districts admitting children to kindergarten through grade 12. The list shall include the names of all such missing children, together with such other information as the department deems necessary. The school districts shall distribute this information to the public schools in the district by whatever manner each district deems appropriate.
>
> Section 2. Duty of public school districts.—Every public school district in this state shall notify the Department of Education at its earliest known contact with any child whose name appears on the department's list of missing Florida school children.

The State of New Jersey (1984, A.B. 2024) provides that, in addition to comparison of lists, the withdrawal of children from school be noted in particular. A reproduction of the New Jersey legislation follows:

> 2. A board of education shall furnish to the Missing Persons Unit of the Division of State Police within the Department of Law and Public Safety and to the Department of Education the name of, and other pertinent information about, any child enrolled in a school administered by that board if either:
>
> a. The child's parent or guardian withdraws the child from school and the school does not receive an official request for the child's records from another school within 15 school days if the withdrawal occurs during the school term or within 60 calendar days if the withdrawal occurs at the end of the school term; or
>
> b. The child does not attend school for 5 consecutive school days and school officials are unable to locate or otherwise account for the student.

Report of Arrest of School Employee

The State of Utah (1984, H.B. 209) has recently enacted legislation that requires a sheriff or chief of police to notify the school district, the department of pubiic safety, and the superintendent of schools if a public school teacher is arrested for offenses involving sexual conduct. In addition, if the school employee is a non-teacher, the sheriff or police chief shall notify the superintendent of schools concerning information about the arrest.

In late 1985, the National Center for Missing and Exploited Children will be distributing information on the most effective programs for safety, training, and education in the schools. Any request for this kind of information should be sent to the National Center for Missing and Exploited Children. For additional information about education and prevention programs, see "Education and Prevention," pages 25-26.

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.

9. Training for Youth System, Social Services, and Criminal Justice Professionals

While many states specifically mandate training and instructional courses for social services professionals or criminal justice system investigators, few states mandate sufficient training and education in the critical area of child victimization and sexual assault. Professionals who regularly address cases of child victimization need to be prepared for the unique demands that this responsibility places upon them. The basic understanding of the child abuse, child sexual assault, and incest victim is critical to the successful processing of these cases through the social services and criminal justice systems. Sophisticated and effective techniques for understanding the particular needs of the child victim, interviewing the child victim or witness, and investigating these difficult cases is critically needed. Investigators need to understand the use of the National Crime Information Center and Federal Parent Locator systems. State requirements should be examined to ensure that this type of training is specifically included in educational and training programs for these professionals and that a sufficient number of hours are devoted to these types of cases.

The State of New Jersey addressed one part of this need for education and training in its recently created Commission on Missing Persons. New Jersey (1983, Chapter 467) directed its training specifically to cases of missing persons and unidentified bodies. The New Jersey Commission on Missing Persons will do the following:

> e. Provide specialized training to law enforcement officers and medical examiners in this State, in conjunction with the Police Training Commission, which would enable them to more efficiently handle the tracing of missing persons and unidentified bodies on the local level.

It is essential that each state consider mandating *pre-service and in-service training* for law enforcement and social services professionals. In addition, each state should require an additional one-week in-service training program for those investigators who deal specifically with cases of child victimization.

Each state may also want to consider legislative provisions that include in-service educational programs for prosecutors and judges. The State of Colorado (1984, Chapter 157) recently set up a teacher education and training program about laws concerning child abuse and exploitation and how to report such cases. Following is an excerpt from the Colorado statute:

> 22-32-109. Board of education- specific duties. (1) (z) To provide for a periodic in-service program for all district teachers which shall provide information about the "Child Protection Act of 1975," article 10 of title 19, C.R.S., instruction designed to assist teachers in recognizing child abuse or neglect, and instruction designed to provide teachers with information on how to report suspected incidents of child abuse or neglect and how to assist the child victim and his family.

10. Treatment and Rehabilitation of the Child Victim

It is a harsh reality that the person convicted of child victimization or child molestation is often not required to pay for the treatment and rehabilitation of the child. And, unfortunately, most of the social services and state and local programs do not automatically provide these services to the child victim. As a result, many children who are the victims of sexual assault, incest, child molestation, and other crimes are never effectively treated, counseled, or rehabilitated to give them the opportunity for a normal childhood.

Some states do provide that the person convicted of the assault pay for treatment and rehabilitation of the victim. For example, Colorado (§18-3-414) allows the judge to require the defendant to pay for rehabilitation and counseling of the child victim. Following is an excerpt from the Colorado statute:

> 18-3-414. Payment of treatment costs for the victim or victims of a sexual offense against a child. (1) In addition to any other penalty provided by law, the court may order any person who is convicted of an unlawful sexual offense, as defined in section 18-3-411 (1), to meet all or any portion of the financial obligations of treatment prescribed for the victim or victims of his offense.
>
> (2) At the time of sentencing, the court may order that an offender described in subsection (1) of this section be put on a period of probation for the purpose of paying the treatment costs of the victim or victims, which, when added to any time served, does not exceed the maximum sentence imposable for the offense.

In South Dakota (1984, H.B. 1097), a similar bill provides that the cost of treatment be paid for by the defendant. An excerpt from the South Dakota statute is reproduced below:

> Anyone convicted under §§ 26-10-1, 22-22-7, 22-22-19 or 22-22-19.1, or subdivision (4) or (5) of § 22-22-1, may be required as part of the sentence imposed by the court to pay the cost of any necessary medical, psychological or psychiatric treatment of the minor resulting from the act or acts for which the defendant is convicted.

11. Court-Appointed Advocates

In many states, abandoned, abused, or neglected children in juvenile family court proceedings receive special treatment by the court. In order to ensure that the specific needs of the child are met and his or her rights fully protected, some states appoint a special attorney to represent the child. This special attorney may be called a *guardian ad litem*.

The guardian ad litem represents only the child and is independent of the state prosecutor and the attorneys representing the parents. The guardian ad litem has full access to all evidence and reports; and he or she may interview witnesses, make recommendations to the court, and request additional examinations by doctors, psychologists, and psychiatrists. The appointment of the guardian ad litem ensures that the child will be effectively represented and his or her best interests protected.

In some states, a guardian ad litem can be a trained volunteer lay person, often called a *court-appointed special advocate*. Nevertheless, this representative of the child has the same privileges to receive notices and pleadings similar to others involved in the juvenile proceedings, such as parents, counselors, and attorneys.

The Guardian Ad Litem in Criminal Proceedings

Traditionally, the guardian ad litem has been appointed to represent abandoned, neglected, or abused children in the special juvenile or family court proceedings. Children who are the victims of crimes, such as physical or sexual assault, rarely have the support and protection of a guardian ad litem. A constructive addition to any state legislation would be to provide for the services of a guardian ad litem—who may or may not be an attorney—for the child who is simply the victim of a crime.

Two states have passed legislation that would expand the protection of the child victim in two ways:

1. Provide for a person to act on behalf of the child victim in criminal cases.
2. Permit a supporting person to assist the child.

Pennsylvania (1984, S.B. 1361) has recently enacted legislation that would provide for a person to act in the best interests of the child involved in juvenile proceedings *or* criminal proceedings. Following is an excerpt from the Pennsylvania legislation:

> §5982. Rights and services.
>
> (a) Designation of persons to act on behalf of children.—Courts of common pleas are directed to designate one or more persons to act in the best interest of the child and provide the following services on behalf of children who are involved in criminal proceedings or juvenile proceedings as victims or witnesses:
>
> (1) To explain, in language understood by the child, all legal proceedings in which the child will be involved.
>
> (2) To act, as a friend of the court, to advise the judge, whenever appropriate, of the child's ability to understand and cooperate with any court proceedings.
>
> (3) To assist the child and the child's family in coping with the emotional impact of the crime and subsequent criminal proceedings in which the child is involved.

The State of California (Penal Code §868.5) provides that victim witnesses under 16 years of age be accompanied by a parent, guardian, or sibling at hearings and during the trial. The child can choose who will attend and, of course, the person attending need not be an attorney. Part of the California statute is reproduced below:

> §868.5 Sex offense cases: attendance of supporting person at testimony of prosecuting witness 16 years of age or under.
>
> (a) Notwithstanding any other provision of law, a prosecuting witness 16 years of age or under in a case involving a violation of Section 243.4, 261, 285, 286, 288, 288a, 289 or 647a, or a violation of subdivision (1) of Section 314, shall be entitled for support to the attendance of a parent, guardian or sibling of his or her own choosing, whether or not a witness, at the preliminary hearing and at the trial, during the testimony of the prosecuting witness. The person so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person *** is related to the prosecuting witness as a parent, guardian or sibling and does not make notes during the hearing. ***
>
> (b) If the person so chosen is also a prosecuting witness, the prosecution shall present, on noticed motion, evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court must grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony.
>
> (c) The testimony of the person so chosen who is also a prosecuting witness shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during the person's testimony. Whenever the evidence given by the person would be subject to exclusion because given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

In the area of court-appointed advocates for the child, state legislation can accomplish two crucial goals:

1. Appointing a representative for children who are simply the victims of crimes.
2. Permitting the representative to be a trained lay person, not necessarily an attorney.

Those states interested in more information about the court-appointed special advocate program should contact the following:

The National Council of Juvenile and Family Court Judges
P.O. Box 8970
Reno, Nevada 89507
(702) 784-6012

12. Parental Kidnapping

A difficult problem encountered by the criminal and civil justice systems is *parental kidnapping*, in which a non-custodial spouse abducts a child. These abducted children are definitely at risk and often are the victims of physical abuse and emotional trauma. Estimates of the annual incidence of parental kidnapping range between 25,000 and 500,000 cases a year. No one knows the exact dimensions of the problem, but they are significant. In recent years, many states have sought to close the traditional loopholes in statutes dealing with parental kidnapping.

Traditional Problems in Enforcement

States differ on the question of whether the taking of a child is in fact a felony crime. Most states consider this offense a felony because of the grave risk and danger to the child. In addition, parental kidnapping is generally considered an interstate crime, which requires extradition (the return of the defendant to the state where the crime was committed). Normally, there is no extradition for minor offenses or misdemeanors. It is important to mandate that this crime will be a felony offense. A federal warrant for unlawful flight can only be issued if the crime is a felony for which extradition is assured.

There are several problems in enforcing the laws against parental kidnapping. Many states restrict enforcement by limiting the children protected to those below a certain age, instead of the traditional limitation being the age of emancipation (18 years in most states).

Many state statutes make parental kidnapping a felony crime only if the child is taken out of the state. In many cases, there is simply no proof of the child's whereabouts, and so it is impossible to establish the fact that the child was actually taken across state lines.

To address this problem, some states do allow enforcement of the law if the child is taken or simply concealed. The concealment provision is effective and should be included in every state statute. It also allows the crime to be regarded as a continuing offense. Therefore, state laws should be strengthened to make it a felony crime not only for taking a child but also for concealment of that child at any later date.

In many cases of parental kidnapping, the offending spouse uses other people to help kidnap the child. States may want to consider legislation that would make the crime applicable to any individual who assists or aids in the kidnapping of the child.

State Legislation for Protecting the Child Against Parental Kidnapping

There are many complex issues that must be considered when enacting legislation that concerns the crime of parental kidnapping. California (Penal Code §§ 277, 278, 278.5, 279, and 784.5) has recently made an attempt to deal with these difficult issues within the framework of a criminal statute. While no law effectively addresses all the issues concerned, the California statute below is a step in the right direction:

> 277. In the absence of a court order determining rights of custody or visitation to a minor child, every person having a right of custody of the child

who maliciously takes, detains, conceals, or entices away that child within or *without the state, without good cause, and with the intent to deprive the custody right of another person or a public agency also having a custody right to that child, shall be punisl ed by* imprisonment in the county jail for a period of not more than one year, a fine of one thousand dollars ($1,000), or both, or by imprisonment in the state prison for a period of *one year and one day*, a fine of five thousand dollars ($5,000), or both.

A subsequently obtained court order for custody or visitation shall not affect the application of this section.

For the purposes of this section, "a person having a right of custody" means the legal guardian of the child or a person who has a parent and child relationship with the child pursuant to Part 7 (commencing with Section 7000) of Division 4 of the Civil Code.

278. Every person, not having a right of custody, who maliciously takes, detains, conceals, or entices away, any minor child with intent to detain or conceal that child from a person, guardian, or public agency having the lawful charge of the child shall be punished by imprisonment in the state prison for two, three or four years, a fine of not more than ten thousand dollars ($10,000), or both, or imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both.

278.5. (a) Every person who in violation of the physical custody or visitation provisions of a custody order, judgment, or decree takes, detains, conceals, or retains the child with the intent to deprive another person of his or her rights to physical custody or visitation shall be punished by imprisonment in the state prison for 16 months, or two or three years, a fine of not more than ten thousand dollars ($10,000), or both; or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both.

(b) Every person who has a right to physical custody of or visitation with a child pursuant to an order, judgment or decree of any court which grants another person, guardian or public agency right to physical custody of or visitation with that child, and who within or without the state detains, conceals, takes, or entices away that child with the intent to deprive the other person of that right to custody or visitation shall be punished by imprisonment in the state prison for 16 months, or two or three years, a fine of not more than ten thousand dollars ($10,000), or both; or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both.

279. (a) A peace officer investigating a report of a violation of Section 277, 278, or 278.5 may take a minor child into protective custody if it reasonably appears to the officer that any person unlawfully will flee the jurisdictional territory with the minor child.

(b) A child who has been detained or concealed shall be returned to the person, guardian, or public agency having lawful charge of the child, or to the court in which a custody proceeding is pending, or to the probation department of the juvenile court in the county in which the victim resides.

(c) The offenses enumerated in Sections 277, 278, and 278.5 are continuous in nature, and continue for so long as the minor child is concealed or detained.

(d) Any expenses incurred in returning the child shall be reimbursed as provided in Section 4605 of the Civil Code. Those expenses, and costs reasonably incurred by the victim, shall be assessed against any defendant convicted of a violation of Section 277, 278, or 278.5.

(e) Pursuant to Sections 27 and 778, violation of Section 277, 278, or 278.5 is punishable in California, whether the intent to commit the offense is formed within or without the state, if the child was a resident of California or present in California at the time of the taking, or if the child thereafter is found in California.

784.5. The jurisdiction of a criminal action for a violation of Section 277, 278, or 278.5 shall be in any one of the following jurisdictional territories:

(a) Any jurisdictional territory in which the victimized person resides, or where the agency deprived of custody is located, *at the time of taking or deprivation.*

(b) The jurisdictional territory in which the minor child was taken, detained, or concealed.

(c) The jurisdictional territory in which the minor child is found.

When the jurisdiction lies in more than one jurisdictional territory, the district attorneys concerned may agree which of them will prosecute the case.

The enactment of these laws is significant because they address these issues:

1. The cases where no court order regarding custody or visitation has been issued.
2. Concealment of the child.
3. The individual who is outside the state but who entices or takes a child away from the lawful custodian.
4. The ability of a police officer to take a child into protective custody.
5. The continuing nature of the crime.
6. Reimbursement of the costs of returning the child.

Civil Provisions

Following is an important provision of civil law that may help to deter the incidence of parental kidnapping: Any parent who unlawfully takes or conceals a minor child, or any other person who knowingly aids the parent in the unlawful abduction or concealment of such a child, from the parent or legal guardian with the right to custody shall be liable for civil damages.

Finally, an important provision of state legislation would be to require that the state enter into an agreement with the Federal Parent Locator Service, a federal and state search system to locate the offending spouse. States should, by mandate of state law or by executive order, enter into an agreement with the federal government to use its service. Illinois (§10.3.2) has such a provision in its state law, which follows:

Sec. 10-3.2. Parent Locator Service. The Illinois Department through its Child and Spouse Support Unit shall enter into agreements with the Secretary of Health and Human Services or his designee under which the services of the Federal Parent Locator Service established by the Social Security Act are made available to this State and the Illinois Department for the purpose of locating an absent parent or child when the child has been abducted or otherwise improperly removed or retained from the physical custody of a parent or other person entitled to custody of the child, or in connection with the making or enforcing of a child custody determination in custody proceedings instituted under the Uniform Child Custody Jurisdiction Act, or otherwise in accordance with law. The Illinois Department shall provide general information to the public about the availability and use of the Parent Locator Service in relation to child abduction and custody determination proceedings, shall promptly respond to inquiries made by those parties specified by federal regulations upon receipt of information as to the location of an absent parent or child from the Federal Parent Locator Service and shall maintain accurate records as to the number of such inquiries received and processed by the Department.

13. Child Pornography and Child Prostitution

Recent Congressional inquiries have indicated that both the exploitation of children in pornography and the issue of child prostitution are critical problems that can be addressed at the state level. Traditionally, there have been significant obstacles to the effective investigation and prosecution of these cases because of the difficulties in enforcing particular state statutes.

The issue of child pornography is complex, involving both the issue of obscenity as well as the power of the First Amendment. Child prostitution has in some cases been a difficult crime to prevent because of relevant conduct that is not proscribed in the particular state law and because of the fact that many of these offenses are treated as misdemeanors or lesser crimes.

Because of the complexity of each issue and the wide variety of state laws impacting upon these crimes, the text of this section contains specific recommended principles for state legislation.

Child Pornography

New York v. Ferber In the summer of 1982, the United States Supreme Court decided a case, *New York* v. *Ferber*, 458 U.S. 747 (1982), that allowed the individual states to constitutionally regulate the production and distribution of material that depicts children engaged in sexual activity even when the material is not legally obscene. This opened the door for the federal government (the Child Protection Act of 1984, P.L. 98-292), as well as the states, to expand coverage of the proscribed conduct under the topic of child pornography. As a result, many states adopted legislation similar to Georgia's 1983 Sexual Exploitation of Children legislation (§16-12-100), which follows:

> 16-12-100. Sexual exploitation of children.
> (a) As used in the Code section, the term:
> (1) "Minor" means any person under the age of 18 years.
> (2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.
> (3) "Producing" means producing, directing, manufacturing, issuing, publishing, or advertising.
> (4) "Sexually explicit conduct" means actual or simulated:
> (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
> (B) Bestiality;
> (C) Masturbation;
> (D) Sadomasochistic abuse for the purpose of sexual stimulation; or
> (E) Lewd exhibition of the genitals or pubic area of any person.
> (5) "Visual or print medium" means any film, photograph, negative, slide, book, magazine, or other visual or print medium.
> (b) (1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to

engage in any sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(c) Any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 20 years or by a fine not more than $20,000.00, or both.

Enactment of this kind of statute is significant for the following reasons:

1. It protects children by allowing sexually explicit conduct to be defined as, among other things, "masturbation," or the "lewd exhibition of the genitals or pubic area" of any person. This is significant because much trading and exchange in child pornography is done with "mere nudes," which may involve an exhibition of the genital area.

2. A child or minor is defined to be any person under the age of 18 years. This is significant because in many statutes the protection for children only extends to age 14 or 16.

3. The statute penalizes individuals who use or entice children to engage in sexually explicit conduct as well as parents or individuals having custody or control of a minor who knowingly permit the child to engage in this kind of activity.

The Georgia statute could be improved by what California (Penal Code, § 11166) did when it defined "sexual conduct" to include "exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer." This definition would assist in covering many of the materials that are traded or exchanged in child pornography.

Of course, the additional provisions of the Penal Code in Georgia prohibit the *sale, loan, and exhibition* of this kind of child pornography.

Commercial Purpose A different kind of legislative improvement to restrict pornography was adopted by Colorado (1984, H.B. 1018). Colorado removed the requirement of a commercial purpose from the offense of sexual exploitation. This is critical because many of the transactions that occur in the world of child pornography are not done for commercial purposes or profit but rather as a straight exchange or trade.

Report by Processors A critical provision enacted by the State of California (Penal Code, § 11166) requires commercial film and photographic processors to report items that they observe in their professional capacity depicting a child under the age of 14 years engaged in the act of sexual conduct.

RICO It will be important for states to consider the use of the RICO (Racketeering Influenced Corrupt Organizations) provisions, which some states currently have and which allow for a judge or jury to be shown evidence of additional acts of a child pornography scheme. The RICO provisions are often used for such offenses as drug dealing, burglary, and car theft. The unique nature of child pornography means that the RICO provisions would give an added advantage to the investigation and prosecution

of these cases. Also, the provisions of these statutes often provide for seizure and forfeiture of the sources used to further the criminal activity.

Basic Principles It is recommended that any child pornography statute include provisions that will accomplish the following:

1. Cover the production, distribution, financing, and reproduction of such pornography, as well as pornographic modeling and performances in shows.
2. Provide for criminal penalties, regardless of whether the material is considered legally obscene.
3. Provide for criminal penalties regardless of whether or not there is any anticipation of profit or other commercial gain. Any distribution of child pornography should be prohibited.
4. Apply to all children through their eighteenth birthday.
5. Provide for the age of the child portrayed in the material to be established by expert testimony.
6. Include penalties for parents or custodians who knowingly allow their children to be used in child pornography.

Proof of Age of the Victim The State of New York has a law that allows the age of the child to be proved by an expert—for example, a physician or sociologist. This is critical because many times investigators have no knowledge of the identity of the child portrayed. That statute is as follows:

> §263.25 Proof of age of child—When it becomes necessary for the purposes of this article to determine whether a child who participated in a sexual performance was under the age of sixteen years the court or jury may make such determination by any of the following: personal inspection of the child; inspection of a photograph or motion picture which constituted the sexual performance; oral testimony by a witness to the sexual performance as to the age of the child based upon the child's appearance; expert medical testimony based upon the appearance of the child in the sexual performance; and any other method authorized by any applicable provision of law or by the rules of evidence at common law.

Child Prostitution

Because of the extremely diverse nature and variety of state laws affecting child prostitution, this section will include principles that address some of the typical problems. Each state should consider legislation that accomplishes the following:

1. Creates a separate offense for aiding, assisting, or promoting the prostitution of children, which has criminal penalties greater than those for promoting prostitution generally.
2. Provides for specific penalties for parents, guardians, or custodians who knowingly permit their children to engage in prostitution.
3. Defines a child as anyone under the age of 18.
4. Eliminates any existing statutory language that may require the children involved in prostitution to be of "previously chaste character."
5. Makes the act of patronizing a child prostitute a criminal offense and provides greater penalties where younger children are involved.

Finally, runaway and homeless youth programs like New York's (§ 532) have provided alternatives to the children on the street who often turn to prostitution.

Additional Sources

Because this legislation package is not comprehensive, additional sources of information are listed below. These agencies and organizations are working diligently in the areas of child abuse, victims' assistance, education, restitution, and parental kidnapping.

American Humane Association
9725 East Hampden Avenue
Denver, Colorado 80231
(303) 695-0811

American Humane offers expertise, technical assistance, training, advocacy, and information on child welfare, child protection, and related areas. While American Humane has published legislative analyses and has been involved in legislative advocacy, its efforts are now directed more toward continuing the compilation of national statistics on intrafamily child abuse and neglect and toward training of child welfare personnel and technical assistance to involved agencies.

Council of State Governments
P.O. Box 11910
Iron Works Pike
Lexington, Kentucky 40578
(606) 252-2291

The Council of State Governments is a nonprofit, state-supported service organization of all fifty states and the U.S. territories. The Council collects and distributes information, promotes interstate cooperation, and works to improve state administration and management on both a national and regional basis.

Juvenile Justice Clearinghouse
National Criminal Justice Reference Service
P.O. Box 6000
Rockville, Maryland 20850
(301) 251-5500
(800) 638-8736

The Clearinghouse, as part of the NCJRS, maintains and will access on request a data base containing information and research on all juvenile justice issues, including missing children and child exploitation. The data base includes, but is not a comprehensive source of, state and federal legislation and related materials. The Clearinghouse also provides information on current programs, policy issues, and other areas, and can refer callers to other sources.

National Association of Counsel for Children
1205 Oneida Street
Denver, Colorado 80220
(303) 321-3963

The Association, which serves attorneys representing children, guardians ad litem, juvenile court judges, and other advocates of children, has expertise in legislative developments in the states and litigation related to such areas as child abuse, child protection, children's rights, child prostitution and pornography, and child custody disputes. The Association publishes a newsletter with a section on state legislation, has assisted in the development of relevant state laws, and can make referrals to members throughout the country with expertise on specific legal issues.

National Clearinghouse on Child Abuse and Neglect Information
U.S. Department of Health and Human Services
P.O. Box 1182
Washington, D.C. 20013
(301) 251-5157

The Clearinghouse is a national resource for information on child abuse and child neglect, including medical neglect of handicapped infants and abuse in out-of-home day care facilities. The Clearinghouse disseminates model child protection legislation developed by the National Center on Child Abuse and Neglect and maintains a searchable data base available through DIALOG Information Services that contains, among other materials, portions of state laws relevant to child protection, child exploitation, and related issues. The Clearinghouse distributes several analyses based upon its collection.

National Committee for the Prevention of Child Abuse
332 South Michigan Avenue
Suite 1250
Chicago, Illinois 60604-4357
(312) 663-3520

The National Committee works for the prevention of child abuse and child neglect through state and national public awareness programs, a network of state chapters, and through advocacy and information dissemination. The National Committee supports, with the efforts of the National Child Abuse Coalition, an advocate in Washington, D.C., who tracks state child abuse legislation and lobbies for and monitors federal child abuse legislation. The National Committee publishes a newsletter and a variety of informational materials on child abuse, child neglect, and related issues.

National Conference of State Legislatures
1125 17th Street
Suite 1500
Denver, Colorado 80202
(303) 292-6600

The National Conference of State Legislatures is a nonpartisan organization that provides a wide range of services to the nation's 7,500 state legislators and their staffs. Its Children and Youth Program produces publications, responds to requests for information, conducts research, and provides technical assistance and seminars on child support and child welfare reform.

National Council of Juvenile and Family Court Judges
P.O. Box 8970
Reno, Nevada 89507
(702) 784-6012

The National Council, through its training arm, the National College of Juvenile Justice, provides membership services and training for judges and others involved in juvenile and family courts. Areas of interest include child support enforcement, permanency planning, and child advocacy. The Council's research arm, the National Center for Juvenile Justice, collects and analyzes juvenile court data and conducts statutory analyses in such areas as confidentiality, fingerprinting of juvenile offenders, waiver, and transfer. The Council publishes a newsletter, a quarterly journal, and a monthly digest of juvenile court decisions.

National District Attorneys Association
1033 North Fairfax Street
Suite 200
Alexandria, Virginia 22314
(703) 549-9222

The Association serves the nation's prosecuting attorneys and works to improve the ad-

ministration of j[illegible]rough educational and informational programs for its members. The Association prepares amicus briefs to assist the court, conducts surveys of prosecuting attorneys, awards scholarships to prosecuting attorneys, and publishes a variety of educational and resource materials, including a national directory of prosecuting attorneys. The Association has information and expertise on juvenile justice, juvenile delinquency, child welfare, and the prosecution of child sexual offenders, and can make referrals through its committees and its membership.

National Governors Association
444 North Capitol Street, N.W.
Washington, D.C. 20001
(202) 624-5300

The National Governors Association, founded in 1908, represents the governors of the fifty states, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the territories of the Virgin Islands, Guam, and American Samoa. Its missions are to influence the shaping and implementation of national policy and to apply creative leadership to the solution of state problems. The Association's operations are supported by member jurisdictions, and its policies and programs are formulated by the governors.

National Legal Resources Center for Child Advocacy and Protection
American Bar Association
1800 M Street, N.W.
Washington, D.C. 20036
(202) 331-2250

The Legal Resource Center provides technical assistance, consulting, and training on legal issues related to child welfare and child protection. The Center, through these activities and through dissemination of publications and analyses, promotes the reform of child welfare laws and administrative and judicial procedures. The Center produces publications and has expertise in the areas of parental kidnapping, missing children, and child sexual and criminal exploitation.

National Organization for Victim Assistance (NOVA)
1757 Park Road, N.W.
Washington, D.C. 20010
(202) 232-8560

NOVA, which recently established a child victimization committee, tracks victim-related state legislation and publishes a directory of legislation that reviews and gives citations for state laws related to victim rights and services. The directory includes, in an appendix, some model pieces of legislation. The 1985 edition, which will be available in January 1985, will include new legislative developments relevant to child sexual assault and exploitation. NOVA also publishes a victim service program directory.

National Victim Resource Center
Suite 1342
633 Indiana Avenue, N.W.
Washington, D.C. 20531
(202) 724-6134

The Center is a national clearinghouse of information on victim assistance and compensation and relevant legislation, programs, and organizations. A computerized data base of state laws concerning victimization includes some legislation on child victims of sexual assault and sexual exploitation, as well as videotaping of child victims for use in legal proceedings. The file tracks pending as well as enacted legislation and includes citations and summaries. The Center also maintains a computerized file of descriptions of national victim assistance programs.

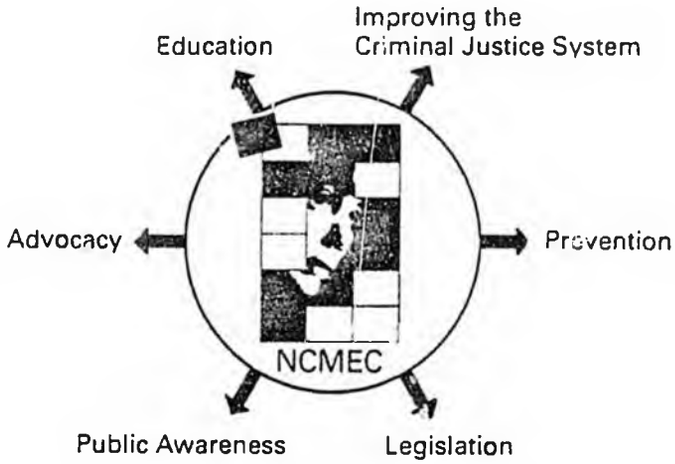
Index

The National Center for Missing and Exploited Children

- provides training assistance to law-enforcement and child protection agencies to develop effective procedures to investigate and prosecute cases of missing and exploited children
- assists individuals, groups, agencies, and state and local governments involved in investigating and prosecuting cases of criminally or sexually exploited children
- provides information and advice on effective state legislation to assure the safety and protection of children
- provides prevention and education programs for parents, schools, action groups, agencies, communities, volunteer organizations, law enforcement, and local, state, and federal institutions
- distributes comprehensive instruction packages to aid communities in protecting children
- organizes networks of information among school systems, school boards, parent-teacher organizations, and community organizations about proven techniques for implementing educational programs
- conducts an outreach program to alert families, communities, the criminal justice system, and concerned organizations about the nature and extent of child victimization and exploitation
- ensures coordination among parents, missing children groups and the media to distribute photos and descriptions of missing children
- coordinates the exchange of information regarding child exploitation

. . . Is at the Center of the Problem

The Center is a primary resource for assistance and expertise in all these areas:



Information Please

The National Center for Missing and Exploited Children offers a national clearinghouse that collects, compiles, exchanges, and disseminates information. Anyone who is seeking information or who wishes to contribute information about the problem should write to the following address:

The National Center for Missing and Exploited Children
1835 K Street, N.W.
Suite 700
Washington, D.C. 20006

1-85-001

Contents

ALASKA STATE SENATE

JOE P. JOSEPHSON
DISTRICT H — ANCHORAGE
1526 F STREET
ANCHORAGE, ALASKA 99501
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WHILE IN JUNEAU
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(907) 465-4525

OFFICE OF MINORITY WHIP

COMMITTEES

BUDGET & AUDIT
HEALTH, EDUCATION & SOCIAL SERVICES
RULES
TRANSPORTATION

SENATE CHAIR, ANCHORAGE CAUCUS

February 25, 1985

The Honorable Don Bennett
President
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

As Chair for the Senate Health, Education and Social Services Committee in the Thirteenth Alaska Legislature, I am pleased to transmit the report of the November, 1984, Policy Conference on Young Children.

The Conference was sponsored by the Senate HESS Committee of the Thirteenth Alaska Legislature, the Department of Education, the Department of Health and Social Services, and the Department of Community and Regional Affairs. I express my thanks to Commissioner Raynolds, Commissioner Pugh, and Commissioner Notti, and their staffs, for their participation and contributions to the success of the Conference. Former Senate President Jay Kerttula was especially supportive as well, and I wish to acknowledge that interest and helpfulness here.

The Policy Conference on Young Children brought hundreds of Alaskans together to discuss the needs and problems of young Alaskans of pre-school age. Papers presented at the Conference demonstrated the truth of the old adage that "As the twig is bent, so grows the tree." Studies show that children who receive the benefit of high quality early childhood education fare markedly better as adults in their adaptability to employment, educational achievement and social adjustment.

The implications of these data are especially significant in the light of the programmed federal budget reductions for pre-school children under the Johnson-O'Malley Act. I am informed that thousands of young Alaska Native children whose pre-school experience is federally funded are scheduled to lose funding support in FY 1986. The data also suggest that expanded state efforts on

behalf of this age group will be cost-effective in the long run with regard to reducing future demands upon the corrections, welfare and social service agencies of the State.

The attached report also describes some of the criteria for quality in early childhood education and in day care. This portion of the report is valuable, therefore, for policy makers and consumers alike.

An important factor, of course, in the development of healthy and well-adjusted adults is prevention, identification, and treatment of child neglect and abuse. Prevention is especially important and cost-effective.

Parental training and volunteer programs to provide respite for parents under emotional and physical stress may prove effective in reducing instances of neglect and abuse.

The several hundred Alaskans at the Conference took part actively in several workshops, which identified issues for guidance to policy makers. The attached Report summarizes the issues and policy proposals which were developed in the workshops.

The report should be viewed as a beginning, and not the end, of a process to develop coherent goals and objectives for young children. Since young children cannot advocate for themselves, the responsibility befalls to us as adults to speak on their behalf in the interests of generations of Alaskans yet to come.

With best wishes, I am

Sincerely,

Joe P. Josephson

Joe P. Josephson

JPJ:rak

Policy Conference on Young Children

Conference Summary

November 18, 19 & 20, 1984
Sheraton Hotel · Anchorage

Please, following a review of the Conference Summary, indicate below what priorities you would have regarding policy on young children.

(List up to 5)

1) _____

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2) _____

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5) _____

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Postage

Return to:

Senator Joe P. Josephson
Pouch V
Juneau, AK 99811

Policy Conference
on Young Children

Alaska State Legislature

Joe P. Josephson, Chairman
Vic Fischer
Paul Fischer
Rick Halford
H. Pappy Moss

Senate

Committee on

Health, Education & Social Services

Pouch V
State Capitol
Juneau, Alaska 99811

Dear Fellow Alaskan:

The attached document presents the composite results of the Policy Conference on Young Children sponsored by the Senate Committee on Health, Education and Social Services and the Departments of Education, Health and Social Services and Community & Regional Affairs. The conference was held in Anchorage from November 18th through the 20th at the Sheraton Hotel, featured three nationally renowned speakers and over 100 Alaskan specialists in workshops and panel discussions.

The conference addressed a wide range of issues affecting young children and families, including child abuse, quality in pre-elementary programs and responsibility for delivery of services.

This summary of the conference delineates the policy issues identified by attendees in the sixteen workshops held during the three days, and summarizes the addresses of the three major speakers: Dr. Donald C. Bross, from the Kempe National Child Abuse Center in Denver; Dr. David Weikart, Executive Director of the High/Scope Research Foundation, who specializes in early childhood research; and Dr. Shirley Moore, professor of Child Psychology with the Child Development Institute of the University of Minnesota.

Because the participants made up an energetic and devoted group of people who represented the spectrum of those involved in early childhood -- educators, parents, child care providers, social service agencies, attornies and state departments -- I hope this document will be considered an accurate statement of statewide concerns and will be used as a planning tool by Legislators and the Administration.

For more information or additional copies of this report, please contact my office at Pouch V, Juneau, Alaska 99811.

Sincerely yours, I am

Joe P. Josephson

Joe P. Josephson, Chair
Senate Committee on Health, Education and Social Services

Note: Please return the enclosed mailer immediately, to help us identify for possible legislative action, the top five priorities in early childhood. (Be as specific as possible in the space constraints).

Policy Conference on Young Children

TABLE OF CONTENTS

THE NATIONAL TRENDS IN CHILD ABUSE AND NEGLECT

Donald C. Bross, J.D., Ph.D
Henry Kempe National Center
Denver, Colorado

When parents are inadequate, society's remedies are limited. These limitations lead us to examine the evolution of recognized children's rights in our culture, and the parallel development of public education.

In the United States, mandatory education was not required until the middle of the last century. The field of child welfare also had its beginnings in the 1800's, followed by child health (pediatrics) which was recognized as a medical specialty early in the twentieth century. In this historical perspective, then, birth certificates, immunization programs, compulsory education, and mandatory reporting of abuse and neglect are recent phenomena. Indeed, the first statute requiring reporting of suspected child abuse and neglect was enacted in 1963.

In our society, physical abuse and extreme forms of violence are part of the experience of many children. Statistics suggest that between twenty to forty percent of our children are exposed to violence in the home. Figures released in 1980 by the United States Department of Health and Human Services suggest that there are 5.7 cases of abuse per 1000 total population.

In another study, forty-two percent of mentally ill adolescents had histories of physical abuse. In the mentally ill group with histories of physical abuse, seventy-two percent acted aggressively towards others, while in the mentally ill group with no such histories, only forty-six percent acted aggressively.

And it is an interesting footnote to the study that neither group showed aggressive behavior towards their parents. Children rarely attack their parents. But the adolescents who were abused at home were twice as likely to attack their peers, and four times as likely to have attacked their teachers.

Sexual abuse of children is not confined to any single socio-economic group. Many studies support findings of sexual abuse at all socio-economic levels. A study in Georgia found that rural households, and households headed by women, were at greater risk for sexual abuse than other households.

In the school setting, the reporting of suspected cases of child abuse is mandated by law. But in spite of the legal requirement to report, deterrent factors to reporting exist. Reports, of course, will affect the relationship between the school and its personnel, on the one hand, and the parent, on the other. And although personnel may be aware of the duty to report, and the consequences of failure to report, studies suggest a need for mandatory training. Moreover, training should focus upon not just the reporting and treatment of very obvious cases, but also upon the need to recognize and deal with degrees of maltreatment and upon cases of lesser obviousness. Instructing teachers and administrators about the basic facts and signs of child abuse and neglect can increase the chances of reporting.

Those children who have survived histories of child abuse and neglect reasonably well appear to have had the benefit of supportive and safe adults -- such as a respected teacher or neighbor -- to whom they were able to turn in their time of need.

Thus, children require the interest and concern of not only their families, but also of their teachers, school officials, social workers, mental health professionals, and law enforcement officers. All have a job to do. A workable model that is made up of these components can be used to examine situations of family and institutional abuse and can deal best with the problems of children who have been subjected to these situations.

In addition to dealing with cases where abuse has occurred, communities are seeking to develop the right programs for prevention, to reduce occurrences of abuse and neglect. Options for such programs can include home visits for new-borns; allowing parents the opportunity to relinquish children they cannot care for; and training in parenting skills. Twenty states have now enacted children's trust funds.

In this country, there is no visible individual, official guardian, or other public official whose primary function is the responsibility to bring cases or situations of institutional abuse, or general concern for children as a class, to the attention of the executive, legislative and judicial branches of government, and to the public.

Another forward step would be to provide education in the schools on child development, and on the misuse of children, to increase accountability.

It is a principle of our society to maximize individual opportunity. Henry Kempe, who coined the term "battered child syndrome", asserted that each child belongs to himself or herself, and is in the care of a parent (or in the care of others when the parent permits or when the parent has betrayed the trusteeship for that care).

Children have two major rights, the right to protection and the right to choice. The right to protection exists from prior to birth onwards, and the right of choice comes with development. Society must enforce the child's right to protection if the person who is affecting the child most directly cannot do so, or even violates the right to protection. If the future for children is to remain promising, we must develop our efforts to teach children about their rights and the manner in which disputes concerning children can be handled.

THE 19TH YEAR LONGITUDINAL STUDY OF THE PERRY PRE-SCHOOL PROJECT AND THE "PAY OFF" FOR ALASKA FROM EARLY CHILDHOOD EDUCATION

Dr. David Weikart
High/Scope Research Foundation
Ypsilanti, Michigan

Wherever a child may be, learning of some kind is taking place; wherever a child is, care of some kind is being provided. The vital question is about the quality of learning, and the quality of care.

In this address, I will focus upon early childhood education and care. I will refer to the experience of young children, and especially the long-term results of our Perry Pre-School Early Childhood Education Project which we conducted in Ypsilanti, Michigan. The results of the study, and its implications, may affect the thinking of policy makers and educational leaders in Alaska with respect to early childhood education and care. The Project's outcomes are important. The results show measurable and verifiable benefits, with respect to life achievement and social adjustment, from early childhood education.

The Project began in 1962, and has been continuing for 22 years. It is an experiment to learn whether or not early childhood education programs ought to be in existence. The Project does not evaluate programs. The pivotal question of the experiment is whether an early childhood education experience can make a long-term difference in the life of a child.

At the start, in 1962, there was opposition to the very idea of having young children, three and four years of age, taken from their homes and placed in a center-based program. This opposition was overcome, and the program began with children from one neighborhood in Ypsilanti who all met the criterion of coming from families of lower income and educational attainment.

The children were then divided, on a random basis, into two groups, Group A and Group B.

The long-term Project followed the children into adulthood. The experiment shows that high quality early childhood education makes a significant difference in the long-term outcomes of the lives of young children.

123 children began the project in the years 1962-1965. The experiment has followed the lives of all these children, who remained part of the experiment at age 19. Our researchers remained in contact with every child, including those who left Ypsilanti.

The two groups showed great differences in performance levels over time. Achievement patterns of those who had pre-school experience began to differentiate early in life from the patterns of those without the pre-school experience.

67 percent of those from Group A -- the group with the pre-school experience -- completed high school; only 49 percent of those from Group B -- the group without pre-school experience -- completed high school. We learned that the rate of high school attendance, and completion, can be increased by about 50 percent through pre-school programs.

38 percent of the Group A youngsters attended post-secondary job training programs or colleges, but only 21 percent from Group B attained comparable educational levels.

We also found that only 15 percent of the students from Group A required placement in the high cost, "special education" programs, while 35 percent of the students from Group B received such placement.

We looked at the world of work as well as educational attainment. The children from Group A, by age 15, were more apt to have part-time jobs: 50 percent of the Group A children held part-time jobs, but only 32 percent of the Group B children held employment.

By age 19, 45 percent of the Group A children were self-supporting, compared to only 25 percent of the Group B children.

Although workers from both groups reported dissatisfaction with wages, 42 percent of the Group A workers said they were satisfied with their work, in contrast with Group B workers, of whom only 26 percent reported job satisfaction.

These statistics suggest that there should be a dialogue between educators and business leaders to emphasize the link between early childhood education and the production of a reliable and employable work force.

And beyond educational attainment and employment, we examined social adjustment. We found that 31 percent from Group A, the group with pre-school experience, had arrest records,

while 51 percent from Group B had arrest records. Moreover, Group A showed fewer arrests for crimes of violence or property. Females who had pre-school education had lower pregnancy rates than women without pre-school education. And only 18 percent of the people from Group A were getting general assistance, compared to 32 percent fo the people from Group B.

In summary, these data lead to the conclusion that pre-school education produces a significant reduction in crime, teen-age pregnancies, welfare rolls, and other social problems and community burdens. Early childhood education sets the child upon a more promising course through life.

In the pre-school experience, the young child develops a willingness to try new things, and confront new issues, and the capacity to project this willingness and competence to others. Our studies suggest that for every dollar we invest in early childhood education, society receives a pay-back of seven dollars, after adjustments for inflation. Thus, there is little social or economic reason not to have early childhood education programs.

In light of these data, we must strengthen the dialogue among the political, business, and service sectors of our communities. We need, too, to link the efforts of early childhood education professionals with the efforts of others who serve young people. Of course, our investment in teen-age programs, through employment training and job corps or internship opportunities and similar efforts, must continue. But, while those of us involved in early childhood education and care must develop a common ground with other professionals, all concerned must seek to build sensible statewide policies which create a framework for prevention in order that, as early childhood education and care programs continue to grow and prove their effectiveness, the need for remedial programs may be lessened.

I wish to close by emphasizing one important caveat or "catch" to all this: in order for a pre-school program to be effective, its quality must be high. High quality is not determined by licensing standards, or any regulatory process that now exists. Licensing standards do not cause high quality; instead, they only help create an environment in which high quality can exist.

For quality, there are three important requirements. First, a program must have a clear and distinct curriculum. Second, it must have good supervision, leadership and management. Third, it must offer training for those who work with young children.

QUALITY PROGRAMS AND THE EDUCATION OF YOUNG CHILDREN

Dr Shirley Moore
Institute of Child Development
University of Minnesota, Minneapolis

As a group, early childhood professionals are dedicated to providing quality in early childhood education and care. When children are away from their homes in day care, it is important that attention be given to the quality of the programs that serve them. These programs must provide an all-around good experience for children, preparing them for school and caring for them effectively.

Quality in early childhood education and care is attainable and must continue to be the goal of the efforts of all early childhood professionals. Quality day care is not a frivolous expenditure. it is an important necessity. To improve the status quo, it is important to expand available resources. In this effort, early childhood professionals, active citizens, and parents will have to undertake the politically awesome task of ensuring that enough resources are provided for both education and child care.

It is expected that by 1990, three out of four mothers of young children will work outside the home. This will create an enormous need for out-of-home care of all kinds. It is important to attend to the quality of this care as this predicted growth occurs. Job related work ethics which focus on the child care needs of working parents will need to be developed and implemented in the workplace. Employers have a responsibility to accommodate working parents involved in child rearing.

The informal care network in the United States has broken down and for the most part is no longer available, in contrast to many other cultures where the child is cared for in extended family situations. The need for mothers to work outside of the home is a constantly increasing demand. Very little of the economic resources in this country are available to this group (working mothers with young children), yet the burden of rearing the next generation is primarily theirs. It is important to consider supplementing resources for early childhood education and care, as well as providing more flexible schedules to working mothers.

The early years of life are critically important to a child's development. Research suggests that the long-term positive affects of an environment that supports cognitive development in children and provides motivation to achieve in school is going to pay off. The fundamental research question has been "Are we damaging young children by having them in day care?". It is safe to generalize the conclusions which appear to indicate that children in day care programs do not differ from home care children in overall cognitive language skills and social development. The research is less extensive for infants and toddlers in day care; however, they too appear to fare reasonably well.

In more than one study it has been found that children who spent from early infancy on at day care centers seemed more assertive with peers and adults. Some observations show that these children were more aggressive than the home care children and that they must make adjustments to the orderliness of the school classroom.

Other studies have shown that day care children have been found to be more friendly with adults and other children, more involved in school activities, and more independent than home care children. Generally, there is no evidence of adverse affects on the development of children enrolled in good quality programs from their earliest months of life. Their health was found to be good and their attachments to their mothers and their mothers' attachment to them was not affected. It is important when considering the impact of day care on infants and toddlers to examine the effect on attachment and related psycho-social behavior. Infants and toddlers are considerably more dependent on primary care givers than are pre-school children. Pre-school children can incorporate a greater variety of people caring for them without losing their sense of security than can infants and toddlers.

One of the big issues surrounding attachment and care programs is the extent to which the child can be comforted when distressed. Evidence indicates that a careful nurturing and building of the relationship between the care giver and the child is essential. Currently, child care centers are studying how to introduce children into centers in a gradual way, a practice which helps them with making the adaptation. For babies, family day care may be preferred to day care centers because babies can adapt to a new relationship with one care giver better than with the three or four to whom a baby is likely to be exposed in a center situation.

Four indicators that make a difference in the quality of the experience that children are having in day care centers are:

1. Group size - it does appear to be significantly more difficult to provide a high quality social experience and a good program of cognitive activities in large groups compared to smaller groups, even when the child-to-adult ratio remains essentially the same;

2. Ratio of children to adults - a high ratio of children to adults culminates in the reduction of positive exchanges between the children and the adults, according to various studies;

3. Stability in child care givers - when given a chance to develop a relationship with a stable care giver, the observed children in some center programs did appear to form attachments with their care givers that allowed them to seek affection and help when needed, to play contentedly, to be comforted when distressed, and to express positive enjoyment in the company of the care giver;

4. Training for care givers - training increases the likelihood of a center offering a high quality child care program particularly training in early childhood development and education.

Having identified the quality indicators, it is important that we work toward their full implementation whenever possible. Our society will pay the price if poor child care is allowed to proliferate without the controls and resources to improve it.

Policy Conference
on Young Children

POLICY CONFERENCE ON YOUNG CHILDREN

ISSUES AND RECOMMENDATIONS

Each of the three days of the Policy Conference on Young Children, had a different emphasis. Participants gathered in workshops to identify issues to provide guidance for policy makers regarding the future well-being of young children in our state. The key issues identified by participants for each selected area of emphasis have been summarized below. The summary constitutes a list of proposals from the workshop participants.

TAKING ACTION ON CHILD ABUSE AND NEGLECT
(Conference Day No.1)

Criminal History Review

Revise access procedures to acquire better information - i.e., charges, arrests and convictions - about care givers.

Require criminal history background checks on all people working with children (school personnel, etc.).

Provide better training on fingerprinting methods and review effectiveness.

Require the registration of convicted criminals entering the state.

Prevention

Need full-time nurses and/or counselors in elementary schools.

Encourage schools and child care facilities to use available prevention curricula.

Educate children to distinguish appropriate touch from inappropriate touch.

Support increased funding for the Homemakers Program.

Develop community support groups, teams and networking throughout the state so that professionals, non-professionals and agencies are communicating with each other.

Promote networking between existing agencies.

Define corporal punishment, what it is (as opposed to abuse), who can use it, and under what circumstances it is appropriate.

Provide better training and supervision of child care staffs and better salaries to attract professionals and discourage turn-over.

Allocate resources for child care provider training in child abuse treatment.

Increase funding and staff resources for the Division of Family & Youth Services so all reports are investigated.

Require mandatory sentencing for "first degree" convicted offenders.

Training

Require mandatory training for child care providers and educators and allocate resources for this training.

Make available more funding for a statewide media campaign designed to increase public awareness of child abuse and neglect.

Teach parenting skills in High School.

Provide parenting education in the community; provide better family support; and, provide parents with enough information to know how to react and respond.

Provide funding for statewide child care information and referral agencies which may be able to coordinate the sharing of successful techniques between facilities and communities.

Promote networking between existing agencies.

Provide special mandatory training for those working in rural areas to promote cultural relevance and to encourage self-determination.

Centralize training in child abuse treatment, for consistency.

Work toward empowering community residents with resources and confidence to build trust within their communities.

(Conference Day No.1)

Treatment

Obtain better evaluations of child care programs which include perceptions of children.

Apply the mandatory reporting law as intended - protection, prevention, and rehabilitation.

Increase funding for offender treatment and continue support of programs so treatment can be increased.

Include juvenile offenders in the treatment plan.

Study the level of effectiveness of treatment programs.

Increase funding to establish a data base on follow-up studies of victims and offenders.

Treatment should be available to families in all communities.

Other

Stress videotaping of child victims of sexual assault.

Study presumptive sentencing, length of prison sentences and cost impact of mandates to see if they have had the desired effect.

Establish the use of hearsay evidence in grand jury proceedings with minors involved as victims of sexual assault.

Mandate investigations of runaway children.

Clarify reporting statute and add pre-school personnel and social service agency personnel to the list of those required to report.

Correct loophole in child pornography law.

Combine state and municipal licensing requirements and procedures, to eliminate redundancy in the Municipality of Anchorage.

WHO SHOULD RECEIVE EARLY CHILDHOOD SERVICES?
(Conference Day No. 2)

Funding

Increased funding is essential to support the development of the child and the stability of the family through early childhood programs.

State and federal governments should be urged to provide start-up dollars for early childhood information and referral programs at the local level.

Competition for funds should be broad-based across all state budget priorities with early childhood program funding receiving an appropriate, proportionate, share of social services funding within the over-all state budget.

Develop innovative ways of funding children and youth programs, including children's trust funds with receipts from marriage licenses, and birth certificates, luxury taxes, etc.

Special Needs

Day care subsidies are needed for handicapped children whose families are above the income limits of the current Department of Community & Regional Affairs regulations.

Physical space needs for special education programs must be included in the facilities planning and design stage of school buildings.

Programs for physically handicapped children must be provided in barrier-free accessible buildings.

Action is required to:

Enforce existing state laws requiring physical accessibility of buildings constructed with public funds.

Improve the process in Department of Transportation & Public Facilities for design specifications and design review of architectural plans for new or remodeled school facilities.

Programs for physically handicapped children must provide opportunities for mainstreaming and normalization.

Rewrite Special Education Definitions.

(Conference Day No.2)

Conduct an analysis of the discrepancy in the number of birth-to-three year old handicapped children served in infant learning programs as compared with three-to-five year olds in pre-elementary special education programs of school districts.

Administration and Special Needs

Steps must be taken administratively:

* to determine if children are not being served;

* to remedy difficulties in referring children from infant learning to special education programs;

* to address insufficient school district utilization and funding of Head Start and day care programs to serve these children;

* to establish reporting requirements and a data base for planning and services budgeting;

* to strengthen identification and screening of three-to-five year old children with special needs.

Administration

A mechanism for early childhood policy coordination at the state level, such as a mini-cabinet at the Governor's level, or establishing a new Office of Child Advocacy, is essential given:

1) the number of public and private sector agencies involved,

2) the fact that early childhood is a multi-million dollar business in Alaska,

3) evidence that Alaska far exceeds national rates in the number of families with young children, number of families with both parents working outside the home, and the number of single parent households,

4) the lack of coordinated statewide system of early childhood services, and

5) decreasing state revenues.

Better coordination is required, including a greater interchange of information among agencies and also between agencies and the public.

(Conference Day No.2)

Some agencies and activities can be consolidated in state administration so as to increase efficiency and prevention duplication.

All early childhood education programs should be licensed and/or certified through a single state agency or a single system coordinated among the various state agencies.

Regulations should be based on group size rather than child/staff ratio.

Education/Training/Research

Minimum training level standards, based on current research, need to be established and enforced for early childhood program staff.

The career of early childhood education needs professionalization.

A four-year degree program providing for specific competencies in child development (prenatal through age seven) with sub-specialties in program areas such as handicapped, gifted, child protection, cross-cultural programs, and family needs should be available through the University of Alaska statewide system.

Parenting education should commence in junior high school and continue through high school.

Implement Latchkey Programs for all school age children including kindergarten.

Require school buildings to be available for Latchkey Programs.

Continue research on young children, build data base and more extensive reporting.

Mandate Infant Learning Programs throughout the state.

Parent involvement should be sought throughout the educational system.

Systems that encourage regular parental input should be established in all educational endeavors and programs.

Initiate school curriculum that builds self-esteem in grades K-12.

(Conference Day No.2)

The home-based model of comprehensive services for children and parents should be expanded on a state-wide basis.

Cultural Differences

Bilingual Education needs to be brought to the pre-school level with all programs culturally as well as developmentally appropriate.

Develop child care programs for rural children.

Involve the parent(s) with language skills development.

Prevention

Programs and services that enhance early learning and parenting skills should be expanded to encourage prevention of learning problems and child abuse and neglect.

Determine whether or not the state should begin early prevention programs at birth rather than at age three, the present legal age for intervention.

ACHIEVING, MAINTAINING AND PROMOTING QUALITY IN EDUCATION
(Conference Day No. 3)

Education/Training/Research

Educate parents as consumers on what to look for in obtaining high quality child care.

Offer parent training classes.

Educate the public regarding the role of child care providers by increasing availability of publications, self-help booklets, and media campaigns.

Provide child care resource and referral services to be monitored through an early childhood agency.

Maintain resource centers and libraries.

Research parent home-based programs.

Training needs to come into the child care provider's home with follow-up visits from licensing office.

An educational process should be required of providers interested in obtaining a license.

Educate policy makers, i.e. legislators.

Improve the quality and availability of training in the University system, in regional schools/skill centers, and in high schools.

Child care providers need access to higher education whether through college classes, correspondence courses, teleconference network.

Funding

Provide a stable, dependable funding source.

Pool resources among different agencies and create partnerships with the business community.

Increase child care grant amounts to $100 per child.

Relate child care grants to a percentage capture of the maximum and to levels of quality.

Encourage parent cooperatives through funding and technical assistance.

(Conference Day No. 3)

Increase levels available to parents and adjust regional differentials.

Increase funding for infant learning programs and make day care centers eligible for funds.

Review day care assistance income guidelines.

Need tax incentives, credits, and deductions to benefit the individual.

Provide additional loans or grants for equipment for centers for handicapped children.

Licensing/Regulations

Improve the quality of licensing.

Generate uniform standards to determine quality in child care.

Reform pre-school regulations. Do not allow exemptions.

Combine and streamline the regulatory process presently practiced by the Municipality of Anchorage, Alaska Department of Health and Social Services, and the Alaska Department of Education.

Waive the $200 DHSS Licensing Fee.

Provide increased inspections of facilities without prior notice of when they are to occur.

Need distinctions between day care and pre-schools and licensing and regulatory requirements affecting them.

Add more licensing positions.

Teachers and staff should be required to have knowledge of early child educational development.

Provide standardized licensing via Department of Education with enforcement through the Department of Health & Social Services.

(Conference Day No. 3)

Cultural

Incorporate Native language and cultural programs into curriculum.

Increase awareness of cultural diversity by involving Native corporations in early childhood education.

Improving Conditions

Increase staff incentives to remain in the profession, by providing more adequate salaries and increasing employee benefits.

Unemployment insurance should be available for part-time employment.

Information on child care providers should be easily accessible.

Better communication is necessary between home providers and centers and between care providers and the state.

Expand availability of the food program to include for-profit centers.

Set criteria for defining quality pre-school co-ops.

Provide assistance for child care home providers to include a relief system and benefit package.

Develop an Office of Child Development.

Develop quality curriculum, programs and evaluation procedures.

Policy Conference
on Young Children

COMMENTS AND OBSERVATIONS

BY

DR. WEIKART AND DR. MOORE

COMMENTS AND OBSERVATIONS OF THE POLICY CONFERENCE ON YOUNG CHILDREN

BY

DR. WEIKART & DR. MOORE

Dr. Weikart

There is a commitment throughout Alaska to the idea of child development - the idea children build and construct their own knowledge, through their action and through participation in programs.

The role of men in early childhood education needs to be expanded.

Diagnostic screening tests and their value requires a look at the statistical sophistication of the instruments in order to predetermine courses of action for children.

The dilemma is actualizing the rhetoric statement of commitment to child growth and development through hard work and extensive effort.

Curriculum is a topic of major importance.

There needs to be a commitment to parents and to cultural issues by early childhood professionals.

Child abuse and reporting and the dilemma surrounding the rights of the individuals and responsibility to the community must continue to be dealt with.

There is a lack of hard data - actual facts and figures. The state should get more clarity as to exactly what the situation is, how it functions and what the relationships are.

The need for and the provision of training and the need for and the provision of supervision are key to staff development.

These two areas (training & supervision) need consideration and continued development with the services provided in Alaska both because of the extensive rural networks and because of the necessity to make programs function and be of high quality.

Dr. Moore

Carry forth - be tenacious and be tough.

Expand the base of support through very broad public awareness campaigns designed to impact people outside the ordinary spheres of influence.

Organize information and distribute it on any items that require action to 300 - 400 influential people throughout the state.

Become involved in the legislative process.
- Go to hearings.
- Get to people who are influential.
- Do your legislative homework.

Above all, be persistent.

Policy Conference
on Young Children

CONFERENCE AGENDA

Policy Conference on Young Children

A G E N D A

SUNDAY, NOVEMBER 18

8:00 AM - NOON	Registration	Mezzanine
NOON - 2:00 PM	Conference Luncheon & General Session	Ballroom A & B

Opening Remarks & Welcome
Senator Joe P. Josephson
Chair, Senate Committee on Health, Education and Social Services

Welcoming Remarks
The Honorable Bill Sheffeild, Governor
State of Alaska

Keynote Address

The National Trends in Child Abuse & Neglect
Dr. Donald C. Bross, J.D., Ph.D.
Assistant Professor, University of Colorado School of Medicine and Legal Counsel for C. Henry Kempe National Center, Denver, Colorado

Statewide Trends

An Alaskan Perspective on Child Abuse & Neglect
John Pugh, Commissioner, Alaska Department of Health & Social Services

S03-HOW CAN SMALL COMMUNITIES DEAL WITH CHILD ABUSE?

Room 308

Moderator: Kathy Tibbles, Regional Manager, Division of Family & Youth Services

Panelists: Representative Peter Goll, Haines
Jamie Buckner, Education Specialist, Southeast Regional Resource Center
Wes Terwilliger, Director, Gateway Community Mental Health Center, Ketchikan
Carolyn Epple, Project Coordinator for Southeast Abuse/Neglect Prevention Program, Southeast Alaska Health Systems Agency

S04-WHAT CAN PARENTS, TEACHERS AND CARE GIVERS TEACH CHILDREN TO PREVENT CHILD ABUSE?

Ballroom C

What Resources are available: What is "good touch and bad touch"? What is available in prevention curricula?

Moderator: Steve Wilson, Social Worker/Counselor Division of Family & Youth Services, Fairbanks

Panelists: Dr. Marianne von Hipple, Behavioral Pediatrician Anchorage
Susan Leddy, Education Services Coordinator, S T A R Anchorage
Carol McElroy, Co-Director, Bayshore Learning Center Anchorage
Aileen McInnis, Community Education Specialist, Resource Center for Parents & Children, Fairbanks
Sue Hull, State PTA Liason with the State Board of Education, Fairbanks

S05-WHAT IS BEING DONE TO REDUCE RISK?

Kuskokwim East

Regulations, criminal history background checks: screening those who work with children. Mandatory inservice training, public awareness: what is the future of risk reduction?

Moderator: Kathleen Shaw, Social Worker, Division of Family & Youth Services, Anchorage

Panelists: Bill Mellow, Assistant Attorney General, Juneau
Robert Sundberg, Commissioner, Alaska Department of Safety
Dorcas Lewis, Childcare Licensing Specialist, WIN-ANCHORAGE
Frank Millett, Big Brothers/Big Sisters, Anchorage

SUNDAY, NOVEMBER 18 - CONTINUED

2:30 - 5:00 PM Concurrent Workshops

TAKING ACTION ON CHILD ABUSE AND NEGLECT

S01-WHAT IS THE LEGAL RESPONSIBILITY OF THE SCHOOLS AND CHILD CARE FACILITIES RELATING TO CHILD ABUSE?

Kuskokwim West

The reporting law: what it means to teachers, care givers and administrators; interfacing with the law and the legal system.

Moderator: Dee Ann Grummett, Social Services Program Coordinator, Division of Family & Youth Services

Panelists: Steve Warner, Investigator Youth Services Bureau Anchorage Police Department
Noreen Thompson, Superintendent, Kodiak Island School District
Carolyn Cannava, Kindergarten Teacher and School Board Member, Kenai
Myra Munson, Assistant Attorney General, Human Services Section, Fairbanks
Wanda Spenny, Child Care Provider, Anchorage

S02-HOW DO YOU RECOGNIZE AND TREAT CHILD ABUSE?

Yukon Room

The signs; what to look for. The role of the teacher and child care provider on the treatment team - teaching trust and teaching sexually appropriate behavior. The aftermath of abuse: the view of the child.

Moderator: Carolyn Frichette, Staff Development Coordinator Division of Family & Youth Services

Panelists: Dr. Alan MacFarlane, Pediatrician, Fairbanks
Pam Kirk, Human Relations Center, Anchorage
Judy Moor, Regional Supervisor, Homemaker Program of Alaska, Juneau
Carol Comeau,Teacher, President, Anchorage Education Association
Susan Humphrey-Barnett, Director Statewide Programs, Alaska Department of Corrections

Policy Conference on Young Children

MONDAY, NOVEMBER 19

7:30 - 8:30 AM	Registration	Mezzanine
8:30 - 9:30 AM	General Session	Ballroom A & B

WHO RECEIVES AND WHO PROVIDES
EARLY CHILDHOOD SERVICES?

Remarks and Introductions
Senator Joe P. Josephson

Population Projections and Demographics of Alaska:
The Changing Role of Women in the Workforce
Greg Huff, Economist, Alaska Department of Labor

Profiles on the Range of Services Available in Alaska
Ms. Lare, Child Care Coordinator, Alaska Department of Community & Regional Affairs

MONDAY, NOVEMBER 19 - CONTINUED

9:30 - 11:00 AM A Panel Debate - Who Should Provide Early Childhood Services? **Ballroom A & B**

Introduction of Panelists
Senator Joe P. Josephson

Pro-Government
*On the State Level
Lisa Rudd, Commissioner
Alaska Department of Administration
*On the Local Level
Heather Flynn, Member
Anchorage Municipal Assembly
E.E. (Gene) Davis, Superintendent of Schools
Anchorage School District

What is the government providing and are these services a spending priority for: parents, the administration and the legislature? Day care assistance, child care tax credits, public school education and early intervention programs are only a few programs sponsored by the state.

Pro-Business
Sister Barabara Haase, Administrator,
Ketchikan General Hospital

The benefits of employer sponsored child care: to the industry, the parent, the child and the family unit.

Pro-Parent
Susan Clark, Chair, The Committee on Women
Alaska Division, American Association of University Women.
Chris Wright-Ibanez, Sr. Employee Relations Specialist, ARCO, ALASKA, Inc.

Parents, not government, have responsibility and control over the care and education of young children.

Summary of the Debate
Senator Joe P. Josephson

MONDAY, NOVEMBER 19 - CONTINUED

11:00 - 12:00 N Special Presentations

Kuskokwim East
RurAL CAP Early Childhood Planning Project
Debra Ward, Early Childhood Consultant

Kuskokwim West
Head Start Training Guide for Preventing Maltreatment of Children with Handicaps
Sharon Fortier, Resource Access Project

Yukon Room
Changing Roles of Native women and Family Structure in Rural Alaska
Lary Schafer, University of Alaska, Fairbanks

Room 305
Findings of the Alaska State Employee Child Care Survey Commissioned by the Alaska Department of Administration
Richard Smiley, Ph. D., Educational Psychologist
Southeast Regional Resource Center

Room 308
Day Care Based Research Concerning Environmental Organization and Staff Training
Dr. Todd Risely, Psychology Department
University of Alaska, Anchorage

Ballroom C
"Training For Quality", a film made at Islands Community College, the Betty Eliason Center, Mt. Edgecumbe pre-school and the Infant Learning Program in Sitka, showing the need for staff training in recognition of developmentally appropriate curricula for children.
Karen Marie, Program Coordinator for Early Childhood Education and the Betty Eliason Child Care Center

Room 301
Anchorage Youth At Risk, presentation of a report by the Anchorage Commission on Youth.
Patrick Burke-Reinhart
Youth Program Coordinator, M O A

MONDAY, NOVEMBER 19 - CONTINUED

12:00 - 1:30 PM Conference Luncheon & Keynote Address — Ballroom A & B

Introductions & Remarks
Emil Notti, Commissioner, Alaska Department of Community & Regional Affairs

Keynote Address

Nineteenth Year Longitudinal Study of the Perry Pre-School Project and the "Pay-Off" for Alaska from Early Childhood Education.
Dr. David Weikart, Executive Director
High/Scope Research Foundation
Ypsilanti, Michigan

1:30 - 4:30 PM Concurrent Workshops

WHO SHOULD RECEIVE EARLY CHILDHOOD SERVICES?

Each panel will address the question: Who should receive early childhood services? Identifying groups of children and issues relating to these children to be passed on to policy makers. Members of each panel are advocates for childrens' programs, and will plea the case of those they are most familiar with. The moderator will promote group discussion, keeping the central question in the forefront.

Room 308

Moderator: Dick Luther, Director Educational Program Support
Alaska Department of Education

Panelists: Dot Truran, Director, Governor's Council for the Handicapped and Gifted.
Gary Holthaus, Board Member, Center for Parents and Children
Jo Kuykendall, Directress, Discovery Center Fairbanks

MONDAY, NOVEMBER 19 - CONTINUED

1:30 - 4:30 PM Concurrent Workshops

Room 305

Moderator: Ms.Lare, Child Care Coordinator, Alaska Department of Community & Regional Affairs

Panelists: Carlos Ovando, Associate Professor, University of Alaska, Anchorage
Mary Jo Hotchkiss, Teacher - Early Childhood Education Anchorage Community College
Betty McCormick, Director, Career Center Lab School Anchorage School District
Karen Lamb, State Coordinator, Infant Learning Program Anchorage

Kuskokwim West

Moderator: Pat O'Brien, Social Services Program Officer Division of Family & Youth Services

Panelists: Mary Asper, State President, NAEYC
Margaret Lowe, Principal, Whaley Center, and Special Education Administrator, Anchorage School District
Kerry Reardon, AAEYC Child Care Resource Center
Theresa Scott, Gastineau Elementary School, Latchkey Douglas, Juneau

Ballroom C

Moderator: Annie Calkins, Early Childhood Coordinator, Alaska Department of Education

Panelists: Sandi Haynes, Program Supervisor, Anchorage Head Start RurAL CAP
Sharon Hodgins, Supervisor, Yukon-Kuskokwim Parent/ Child Program, Bethel
Dr. Marjorie Fields, Associate Professsor, Early Childhood, University of Alaska, Juneau & National Governing Board Member - NAEYC
Patti Dunlap, Principal, Rigel High School, Anchorage

MONDAY, NOVEMBER 19 - CONTINUED

1:30 - 4:30 PM Concurrent Workshops

Yukon Room

Moderator: Karen Perdue, Director, Division of Community Development, Alaska Department of Community & Regional Affairs, Juneau

Panelists: Joan Hurst, Campfire, Anchorage
Barabara Smith, Ph.D., Co-Director, Preschool Resources for Alaskan Special Education, Early Childhood Coordination Project, Anchorage
Mike Travis, Program Manager, BIB Education, Alaska Department of Education
Una Kernodle, Home Economics, Chugiak High School

Kuskokwim East

Moderator: Fran Rose, Special Assistant, Mini-Cabinet on Women, Juneau

Panelists: Dr. Marianne von Hipple, Pediatrician, Anchorage
Phyllis Murray, Bilingual Education Director, Lower Kuskokwim School District
Jackie Schakel, Project Director, Preschool Resources for Alaskan Special Education, Early Childhood Coordination Project

Policy Conference on Young Children

TUESDAY, NOVEMBER 20, 1984

8:30 - 10:00 AM General Session Ballroom A & B

Opening Remarks & Introductions
Harold Raynolds, Sr., Commissioner
Alaska Department of Education

Keynote Address

Quality Programs and the Education of Young Children
Dr. Shirley Moore, Professor of Child Psychology
Institute of Child Development
University of Minnesota

Quality like "excellence" is a term we recognize as desirable, but in terms of educating young children, what do we mean? Who determines what criteria define "quality"? What are national organizations doing to promote quality among their members? Are educators solely responsible for the quality of programs, and what is the relationship of the state and federal government to the parent in early childhood development?

10:00 - NOON Concurrent Workshops

ACHIEVING, MAINTAINING AND PROMOTING QUALITY IN EDUCATION

Issues and reality about quality - how has it been achieved, maintained and promoted? These workshops are discussion oriented rather than show-&-tell, to delve into issue exploration with the participants.

T01-FAMILY AND HOME BASED CARE

Kuskokwim West

Moderator: Betty Ramage, Chair, Alaska Women's Commission

Panelists: Julie Stone, Ketchikan Home Based Program
Deborah Jackson, Juneau Family Day Care Provider
Mary Carr, Director, Anchorage Infant Learning Program
Jo Putnam, Director, Kawarek Head Start, Nome
Pat Brunelle, President, Alaska Family Child Care Society, Anchorage
Sharon Hodgins, Supervisor, Yukon-Kuskokwim Parent/Child Program, Bethel

TUESDAY, NOVEMBER 20 - CONTINUED

10:00 AM - NOON Concurrent Workshops

T02-PRIVATE CHILD CARE/PRE-SCHOOL PROVIDERS

Ballroom C

Moderator: Marsha Hubbard, Special Assistant to the Governor

Panelists: Chris Booren, Bidarki Child Care Center, Cordova
Sue Adams, Director of Day Care, City of Kotzebue
Marian Estelle, Director, Petersburg Children's Center

T03-PARENT COOPERATIVES

Room 305

Moderator: Carol Richards, Director, Alaska Women's Resource Center, Anchorage

Panelists: Sally Bruce, Teacher/Director, Anchorage Co-Op Nursery
Gretchen Reynolds, Capitol Elementary School, Juneau
Linda Padden, New Horizons Pre-School, Anchorage

T04-SCHOOL DISTRICT PRE-SCHOOL PROGRAMS

Kuskokwim East

Moderator: Ernestine Griffin, President State School Board

Panelists: Felice Dunham, Chapter One Coordinator, Ipalook Elementary School, Barrow
Joe Cooper, Superintendent, Yukon-Koyukuk School District, Nenana
Mike Baumgartner, Elementary Education, Title VII Coordinator, Iditarod School District, McGrath
Alice Bosshard, Special Education Curriculum Director, Valdez School District

T05-PRIVATE PRE-SCHOOLS

Yukon Room

Moderator: Dr. Claudia Dybdahl, Assistant Professor, School of Education, University of Alaska, Anchorage

Panelists: Linda Schmidt, Director/Teacher, Mt. Edgecumbe Pre-School, Sitka
Joy Greison, Jewish Education Center, Anchorage
Mary Jo Kidd-Thomas, Director/Owner, St. Benedict's Pre-School, Anchorage
Mary Trosper, Administrator, Chugiak Children's Services

TUESDAY, NOVEMBER 20 - CONTINUED

NOON - 2:00 PM	Conference Luncheon & Closing Session	Ballroom A & B

"WHERE DO WE GO FROM HERE?"

Introductions
Senator Joe P. Josephson

Keynote Presentation

Dr. Shirley Moore

Dr. David Weikart

Dr. Weikart & Dr. Moore will review what happened at the conference, the issues identified, and reflect on what they heard Alaskans saying about the future of our young children.

Questions to the Speakers

Conference Evaluation

Closing Remarks
Senator Joe P. Josephson

Policy Conference
on Young Children

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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 Am
" "	4/20/85	1:30 pm

4/24

COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

4/10/85

Date: _____

The Committee on JUDICIARY has had HB 88

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

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 88 (O.J.) [ ] same title [✓] new title

and recommends it do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

Alaska State Legislature

House of Representatives

House Judiciary Committee

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

House Bill 88 was heard by the House Judiciary Committee during an interim work session on November 22, 1985. See tapes K, L, M, N, & O dated November 22.

Original sponsor: Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 88 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the protection of children and family members; and providing for an effective date."

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

* Section 1. AS 11.61.125(a) is amended to read:

(a) A person commits the crime of distribution of child pornography if the person brings or causes to be brought into the state for [SALE OR] distribution, or <u>in the state distributes, or</u> in the state possesses, prepares, publishes, or prints with intent to distribute, [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any material that visually depicts conduct described <u>in</u> [UNDER] AS 11.41.-455(a), knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

* Sec. 2. AS 11.61.125 is amended by adding a new subsection to read:

(d) In this section, "distribution" includes delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, and exchanging, whether or not for monetary or other consideration.

* Sec. 3. AS 12.10.020(c) is amended to read:

(c) Even if the general time limitation has expired, a prosecution under AS 11.41.410 - 11.41.460, <u>AS 11.66.110 - 11.66.130, former AS 11.41.430, or former AS 11.51.130(a)(4),</u> for an offense committed against a person under the age of 16 may be commenced within one year after the crime is reported to a peace officer or the person reaches the age of 16, whichever occurs first. This subsection does

not extend the period of limitation by more than five years.

* Sec. 4. AS 12.45.045(a) is amended to read:

Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a) In prosecutions for the crimes [CRIME] of sexual assault in any degree, sexual abuse of a minor in any degree, or unlawful exploitation of a minor, or an attempt to commit any of these crimes [SEXUAL ASSAULT IN ANY DEGREE], evidence of the complaining witness' previous sexual conduct may [SHALL] not be admitted nor may reference be made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit the evidence for any purpose, the defendant shall [MAY] apply for an order of the court at any time before or during the trial or preliminary hearing. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, the court shall make an order stating what evidence may be introduced and the nature of the questions that may [WHICH SHALL] be permitted. The defendant may then offer evidence under the order of the court.

* Sec. 5. AS 25.35.010(a) is repealed and reenacted to read:

(a) A person who is subjected to domestic violence may petition a superior court for injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent. The court may appoint a guardian ad litem or attorney to represent a minor who is subject to this chapter in the same manner as an attorney

may be appointed under AS 25.24.310.

* Sec. 6. AS 25.35.060 is amended to read:

Sec. 25.35.060. DEFINITIONS. In this chapter, "domestic violence" means a crime under AS 11.41 when the victim is a spouse or a former spouse of the respondent; a parent, grandparent, child, or grandchild of the respondent; [,] a member of the social unit composed [COMPRISED] of those living together in the same dwelling as the respondent; [,] or a person who is not a spouse or former spouse of the respondent but who previously lived in a spousal relationship with the respondent.

* Sec. 7. AS 47.10.010(a) is amended to read:

(a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or of a municipality of the state; or

(2) to be a child in need of aid as a result of

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to provide care, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 47.10.080 or voluntarily relinquished;

(B) the child being in need of medical treatment to cure, alleviate, or prevent substantial physical harm, or in need of treatment for mental harm as evidenced by failure to thrive,

severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parent, guardian, or custodian has knowingly failed [PARENTS ARE UNWILLING] to provide the [MEDICAL] treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian or custodian or the failure of the parent, guardian or custodian adequately to supervise the child;

(D) the child having been sexually abused either by the child's parent, guardian or custodian, or as a result of conditions created by the child's parent, guardian or custodian, or by the failure of the parent, guardian or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian or custodian;

(F) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian or custodian.

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

(a) The Department of Health and Social Services may take emergency custody of a minor upon discovering any of the following circumstances:

(1) the minor has been abandoned;

(2) the minor has been grossly neglected by the minor's parents or guardian as "neglect" is defined in AS 47.17.070(5), and the department determines that immediate removal from the minor's

surroundings is necessary to protect the minor's life or provide immediate necessary medical attention;

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

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

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

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

* Sec. 10. AS 47.17.010 is amended to read:

Sec. 47.17.010. PURPOSE. In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical injury, [ABUSE OR] neglect, [OR] sexual abuse, or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-

being of the children in this state, and to preserve family life whenever preserving it is in the best interests of the child [POSSIBLE].

* Sec. 11. AS 47.17.020(a) is amended to read:

(a) The following persons who, in the performance of their occupational [PROFESSIONAL] duties, have cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the department:

(1) practitioners of the healing arts;

(2) school teachers and school administrative staff members of public and private schools;

(3) social workers;

(4) peace officers, and officers of the Department of Corrections;

(5) administrative officers of institutions;

(6) child [LICENSED DAY] care providers [AND PAID STAFF];

(7) paid employees of domestic violence programs and crisis intervention and prevention programs as defined in AS 18.66.900 [LICENSED FOSTER CARE PROVIDERS].

* Sec. 12. AS 47.17.020(b) is amended to read:

(b) This section does not prohibit the named persons from reporting cases that [WHICH] have come to their attention in their nonoccupational [NONPROFESSIONAL] capacities, nor does it prohibit any other person from reporting a child's harm that [WHICH] the person has cause to believe is a result of abuse or neglect. These reports shall be made to the nearest office of the department.

* Sec. 13. AS 47.17.020 is amended by adding a new subsection to read:

(d) This section does not require a religious healing practitioner to report as neglect of a child the failure to provide medical

attention to the child if the child is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

* Sec. 14. AS 47.17 is amended by adding a new section to read:

Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reason to believe that the matter visually depicts a minor engaged in conduct described in AS 11.41.455(a) shall promptly report this to the nearest law enforcement agency.

* Sec. 15. AS 47.17.064 is repealed and reenacted to read:

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

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

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

(b) The department or a practitioner of the healing arts shall notify the parents, guardian, or custodian of a child as soon as possible after taking action under (a) of this section with regard to the child.

* Sec. 16. AS 47.17.068 is repealed and reenacted to read:

Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person who knowingly fails or refuses to report as required under AS 47.17.020 or

47.17.023 is guilty of a class B misdemeanor.

* Sec. 17. AS 47.17 is amended by adding a new section to read:

Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) A court may enjoin or limit a person from contact with a child if the attorney general establishes by a preponderance of the evidence that the person

(1) has sexually abused a child;

(2) has physically abused a child; or

(3) has engaged in conduct that constitutes a clear and present danger to the mental, emotional, or physical welfare of a child.

(b) This section does not limit the authority of the attorney general or the court to act to protect a child.

* Sec. 18. AS 47.17.070(6) is amended to read:

(6) "practitioner of the healing arts" includes chiropractors, <u>dental hygienists,</u> dentists, health aides, nurses, <u>nurse practitioners,</u> optometrists, osteopaths, physical therapists, physicians, <u>physician's assistants,</u> psychiatrists, psychologists, <u>psychological associates,</u> religious healing practitioners, and surgeons;

* Sec. 19. AS 47.17.070 is amended by adding new paragraphs to read:

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

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

(10) "person responsible for the child's welfare" means the child's parent, guardian, foster parent, a person responsible for the

child's care at the time of the alleged abuse or neglect, or a person responsible for the child's welfare in a public or private residential agency or institution.

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

* Sec. 21. AS 47.35.070 is amended by adding a new subsection to read:

(b) The department may by regulation devise a system of civil enforcement. The system may employ civil penalties not to exceed $200 for each day during which one or more violations of a licensing statute or licensing regulation occurs. The imposition of a civil penalty does not prevent prosecution and sentence for a criminal offense.

* Sec. 22. Section 5 of this Act takes effect September 30, 1985.

Hein
4/22/85

Original sponsor: Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 88 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the protection of children and family members; and providing for an effective date."

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(c) Even if the general time limitation has expired, a prosecution under AS 11.41.410 - 11.41.460<u>, AS 11.66.110 - 11.66.130, former AS 11.41.430, or former AS 11.51.130(a)(4),</u> for an offense committed against a person under the age of 16 may be commenced within one year after the crime is reported to a peace officer or the person reaches the age of 16, whichever occurs first. This subsection does

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10 of the child performed by a person who is licensed to administer a
11 radiological examination.
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25 (2) has physically abused a child; or
26 (3) has engaged in conduct that constitutes a clear and
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28 child.
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* Sec. 21. Section 5 of this Act takes effect September 30, 1985.

Hein
4/19/85

Original sponsor: Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 88 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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(d) In this section, "distribution" includes delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, and exchanging, whether or not for monetary or other consideration.

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

1 * Sec. 4. AS 12.45.045(a) is amended to read:
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4 In prosecutions for the crimes [CRIME] of sexual assault in any de-
5 gree, sexual abuse of a minor in any degree, or unlawful exploitation
6 of a minor, or an attempt to commit any of these crimes [SEXUAL AS-
7 SAULT IN ANY DEGREE], evidence of the complaining witness' previous
8 sexual conduct may [SHALL] not be admitted nor reference made to it in
9 the presence of the jury except as provided in this section. When the
10 defendant seeks to admit the evidence for any purpose, the defendant
11 shall [MAY] apply for an order of the court at any time before or
12 during the trial or preliminary hearing. After the application is
13 made, the court shall conduct a hearing in camera to determine the
14 admissibility of the evidence. If the court finds that evidence
15 offered by the defendant regarding the sexual conduct of the complain-
16 ing witness is relevant, and that the probative value of the evidence
17 offered is not outweighed by the probability that its admission will
18 create undue prejudice, confusion of the issues, or unwarranted inva-
19 sion of the privacy of the complaining witness, the court shall make
20 an order stating what evidence may be introduced and the nature of the
21 questions that may [WHICH SHALL] be permitted. The defendant may then
22 offer evidence under the order of the court.
23 * Sec. 5. AS 47.10.081(c) is amended to read:
24 (c) The court shall inform the child, the child's parents, [AND]
25 the attorneys representing the parties, and the guardian ad litem that
26 the predisposition report will be available to them not less than six
27 working [10] days before the disposition hearing.
28 * Sec. 6. AS 47.10.142(a) is repealed and reenacted to read:
29 (a) The Department of Health and Social Services may take emer-

gency custody of a minor upon discovering any of the following circumstances:

(1) the minor has been abandoned;

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

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

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

* Sec. 7. AS 47.10.142(c) is amended to read:

(c) When a child is taken into custody under (a) or (b) of this section, the department shall immediately, and in no event more than 12 hours later unless prevented by lack of communication facilities, notify the parents or the person or persons having custody of the child. <u>If the department determines that continued custody is necessary to protect the child, the department shall notify the court of the emergency custody by filing, within 24 hours after custody was assumed</u> [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a petition alleging that the child is a child in need of aid.

* Sec. 8. AS 47.10.290 is amended by adding a new paragraph to read:

(8) "sexual abuse" means

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

(B) the perpetrator's knowingly touching, directly or through clothing, the genital area, groin, inner thighs, breast, or buttocks of a child, or causing a child to touch, directly or through clothing, the genital area, groin, inner thighs, or buttocks of the perpetrator or another; sexual abuse does not include reasonable touching in the exercise of normal caretaker responsibilities for a child or normal caretaker interactions with a child or a recognized and lawful form of contact that is reasonably adapted to promoting the physical or mental health of the child; reasonable perceptions of the child that the touching is sexual in nature are relevant to the determination of whether the touching is sexual abuse;

(C) exposing the genital area, anus, breast, groin, or buttocks of a child to the perpetrator or another for the sexual gratification of the child, the perpetrator, or another, or exposing the genital area, anus, breast, groin or buttocks of the perpetrator or another to a child for the sexual gratification of the child, the perpetrator, or another; or

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

* Sec. 9. AS 47.17.010 is amended to read:

Sec. 47.17.010. PURPOSE. In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical <u>injury,</u> [ABUSE OR] neglect, [OR] sexual abuse, or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It

is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of the children in this state, and to preserve family life whenever preserving it is in the best interests of the child [POSSIBLE].

* Sec. 10. AS 47.17.020(a) is repealed and reenacted to read:

Sec. 47.17.020. REPORTING OF CHILD ABUSE OR NEGLECT. (a) The following persons are required to report abuse or neglect of a child:

(1) practitioners of the healing arts;

(2) employees of private and public schools;

(3) human services providers;

(4) peace officers, and officers of the Department of Corrections;

(5) administrative officers of institutions;

(6) child care providers;

(7) court investigators;

(8) employees of domestic violence programs, sexual assault programs, or crisis shelters.

(b) This section does not prohibit the named persons from reporting cases that have come to their attention in their nonoccupational capacities, nor does it prohibit any other person from reporting a child's harm that the person has cause to believe is a result of abuse or neglect.

* Sec. 11. AS 47.17 is amended by adding a new section to read:

Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reason to believe that the matter visually depicts a minor engaged in conduct described in

AS 11.41.455(a) shall promptly report this to the nearest law enforcement agency.

* Sec. 12. AS 47.17.064 is repealed and reenacted to read:

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

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

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

* Sec. 13. AS 47.17.068 is repealed and reenacted to read:

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

* Sec. 14. AS 47.17 is amended by adding a new section to read:

Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney general may bring an action to enjoin or limit a person from contact with a child if the person

(1) has sexually abused a child;

(2) has physically abused a child;

(3) has failed without lawful excuse to provide ne food, care, clothing, shelter, supervision, or medical attentior a child entrusted to the care of the person; or

(4) otherwise constitutes a substantial danger to the mental, emotional, or physical welfare of a child.

(b) The court may grant an order in the form that is best suited

to protect a child from harm based upon the facts of the case. This section does not limit the authority of the attorney general or the court to act to protect a child.

* Sec. 15. AS 47.17.070(6) is amended to read:

(6) "practitioner of the healing arts" includes chiropractors, dental hygienists, dentists, health aides, nurses, nurse practitioners, optometrists, osteopaths, physical therapists, physicians, physician's assistants, psychiatrists, psychologists, psychological assistants, religious healing practitioners, and surgeons;

* Sec. 16. AS 47.17.070(7) is repealed and reenacted to read:

(7) "sexual exploitation" means

(A) permitting, encouraging, inducing, or employing a child to engage in prostitution or in the promotion of prostitution as set out in AS 11.66.100 - 11.66.150; or

(B) engaging in conduct described in AS 11.41.455;

* Sec. 17. AS 47.17.070 is amended by adding new paragraphs to read:

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

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

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

(11) "person responsible for the child's welfare" means the

child's parent, guardian, foster parent, a person responsible for the child's care at the time of the alleged abuse or neglect, or a person responsible for the child's welfare in a public or private residential agency or institution.

* Sec. 18. AS 47.35.070 is amended to read:

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

* Sec. 19. AS 47.35.070 is amended by adding a new subsection to read:

(b) The department may by regulation devise a system of civil enforcement. The system may employ civil penalties not to exceed $200 for each day during which one or more violations of a licensing statute or licensing regulation occurs. The imposition of a civil penalty does not prevent prosecution and sentence for a criminal offense.

#2
Hein

A M E N D M E N T

Offered in the HOUSE

By Goll

TO: CSHB 88(HESS)

Page 3, after line 23:

Insert a new bill section to read:

"* Sec. 8. AS 47.10.010(a) is amended to read:

(a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or of a municipality of the state; or

(2) to be a child in need of aid as a result of

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to provide care, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 47.10.080 or voluntarily relinquished;

(B) the child being in need of medical or other treat-

[illegible]

of treatment of mental in harm

anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parent, guardian, or custodian has knowingly failed [PARENTS ARE UNWILLING] to provide the [MEDICAL] treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian or custodian or the failure of the parent, guardian or custodian adequately to supervise the child;

(D) the child having been sexually abused either by the child's parent, guardian or custodian, or as a result of conditions created by the child's parent, guardian or custodian, or by the failure of the parent, guardian or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian or custodian;

(F) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian or custodian."

Renumber remaining bill sections accordingly.

Contents - HB 88
April 12, 1985

Richard L. Block
2347 Hialeah Drive
Anchorage, AK 99503
April 10, 1985

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

Re. House Bill 88
An Act Relating to the Protection
of Children

Dear Mike:

I am a Christian Scientist and an active and practicing member of the Christian Science Church in Anchorage. In that capacity I have been asked by the Christian Science Committee on Publication for Alaska to bring to your attention the need to make two amendments to the child protection legislation pending before your committee.

As you are surely aware, a practicing Christian Scientist relies exclusively on prayer for healing of all problems, including healing of physical ailments, for himself and for the members of his family. This reliance on prayer as an exclusive method of healing and as an alternative to medical means for oneself and one's family is recognized legislatively by the laws of almost all states and the federal law. It is already so recognized by several Alaska statutes, including AS 11.51 and AS 47.10, which are the areas of law which HB 88 seeks to amend.

For example, in 11.51.120(b) there is statutory recognition that relying on treatment solely by spiritual means for healing of a child is not "failure to provide medical attention."

As your committee considers adding AS 11.51.110, a statute which would make it a misdemeanor to fail to provide medical attention to a child, albeit under more severe circumstances, we would suggest that the parent or guardian or person entrusted with the care of a child should not be considered guilty of such a crime by reason of that person's reliance on prayer. Accordingly, I would urge you to add to AS 11.51.110(2) the following:

> There is no failure to provide medical attention to a child if the child is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

Our other area of concern is in the reporting of child abuse provisions, under AS 47.17. The law already recognizes Christian Science practitioners as a "practitioner of the healing arts" (AS 47.17.070(6)), and requires them to report incidents of child abuse. Because the language of AS 47.17.020, particularly as amended as proposed in HB 88, read together with the definition of "neglect" as currently in the law (AS 47.17.070(5)), makes it incumbent upon a Christian Science practitioner to report a situation in which a child is not being provided medical care, it creates the very unfortunate situation that if a sincere and conscientious Christian Science parent seeks treatment solely by spiritual means for a child with a physical problem, the practitioner providing such treatment is guilty of a crime for not reporting it. We are certain this is not what the Legislature intends. It would be completely inconsistent with recognition given to treatment solely by spiritual means embodied in AS 47.10.085 and AS 47.10.080(k). We suggest that AS 47.17.020 be amended by adding a new subsection as follows:

> e) This section does not require a religious healing practitioner to report as neglect of a child the failure to provide medical attention to the child if the child is being provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

These amendments have been discussed with the Department of Health and Social Services and approved by them.

With appreciation for your consideration of our position I remain,

Cordially yours,

Richard L. Block

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

CS HB 88(HESS)

"An Act relating to the protection of children: and amending Rules 504 and 505, Alaska Rules of Evidence."

The Council on Domestic Violence and Sexual Assault (Council) is commenting upon those sections of CSHB88 (HESS) that directly affect the persons or programs the Council serves. The Council feels that other agencies and individuals have more information about the needs for sections not commented upon.

Sections 4 and 5. The Council supports the clarification and strengthening of AS 11.61.125(a) concerning child pornography. It is known that a large percentage of perpetrators of child sexual assault receive and utilize child pornography, and it is obvious that children who are presented in pornographic materials are victimized. Therefore, the Council feels that society should take the necessary steps to inhibit distribution of child pornography.

Section 6. The Council supports extending the statute of limitations in child prostitution cases and clarifying the extension of the statute of limitations in child sexual assault cases. As in child sexual assault, a child induced or forced into prostitution might be dependent upon a perpetrator or not have the information or wherewithal necessary to report the crime until he/she is older and more self confident. These crimes should receive the scrutiny of the criminal justice system even though they weren't reported immediately.

Section 7. The Council supports including child sexual assault cases in the rape shield law. A victim's past sexual conduct should not be admissible in court. This is as important for child victims as adult victims. Child sexual assault often makes victims more vulnerable to repeated assaults by adults in power; more knowledgeable and interested in sex and more sexually active than children who have not been victimized. Therefore, a child should be protected from further victimization by the court in making this information public.

Section 13. The Council supports expanding and clarifying the list of people required to report child abuse. It is the responsibility of all of us, particularly professionals and workers listed in this amendment to AS 47.17, to protect children.

The Council also supports adding section 13(c) to Alaska statutes so children who have been abused by an individual not responsible for the child's welfare can be guaranteed protection under the law. Under existing statute, reporting and protection is mandated only in cases where the abuse

or neglect is caused by a person who is responsible for the child's welfare. Recent cases in Alaska and national studies show that non-familial child sexual assault is a major problem. In a study of child sexual abuse, conducted by Anne Russell an expert on adult and child sexual assault, 11 per cent of the perpetrators were total strangers, 29 per cent were relatives and 60 per cent were known but unrelated to the victim. Child victims of non-family assaults should be protected by the criminal justice system and receive support and treatment for the assaults.

Section 13. The Council supports this section to require reporting of suspected child pornography for the reasons explained for Sections 3 and 4.

Robert D. Sundberg
Commissioner 4/15/85
Department of Public Safety

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSHB88(HESS)
Title: "An Act relating to the protection of children;
Sponsor: Rules/Governor
Requestor: HOUSE Judiciary
Date of Request: 4/10/85

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Council on Domestic Violence and Sexual Assault

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		200.0	200.0	200.0	200.0	200.0
800 MISCELLANEOUS						
TOTAL OPERATING		200.0	200.0	200.0	200.0	200.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		200.0	200.0	200.0	200.0	200.0
FEDERAL FUNDS						
OTHER						
TOTAL		200.0	200.0	200.0	200.0	200.0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See attached.

Prepared By: Barbara Miklos, Executive Director
Phone: 465-4356
Division: Council on Domestic Violence and Sexual Assault
Date: 4-17-85
Approved by Commissioner: Y Gross
Date: 4/17/85
Agency: Department of Public Safety

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

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: May 1, 1985

REQUEST

Bill/Resolution No.: CS HB No. 88

Title: An Act relating to the protection of children

Sponsor: Judiciary

Requestor:

Date of Request: 4/24/85

FISCAL DETAIL

Agency Affected: Health and Social Services

Program Category Affected: Social Services

BRU, Program or Subprogram(s) Affected: Social Services, Youth Services, Juvenile Custody BRU's

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES		1,360.0	1,414.4	1,471.0	1,529.8	1,591.0
200 TRAVEL		122.2	127.1	132.2	137.5	143.0
300 CONTRACTUAL		377.9	244.6	254.4	264.6	275.2
400 SUPPLIES		19.0	19.8	20.6	21.4	22.2
500 EQUIPMENT		87.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		1,966.3	1,805.9	1,878.2	1,953.3	2,031.4
CAPITAL		-0-				
REVENUE		-0-				

FUNDING: (Thousands of Dollars)

GENERAL FUND		1,966.3	1,805.9	1,878.2	1,953.3	2,031.4
FEDERAL FUNDS						
OTHER						
TOTAL		1,966.3	1,805.9	1,878.2	1,953.3	2,031.4

POSITIONS:

FULL-TIME		31	31	31	31	31
PART-TIME		8	8	8	8	8
TEMPORARY		-0-				

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Michael L. Price Michael L. Price Phone: 465-3170

Division: Family and Youth Services Date: 5/1/85

Approved by Commissioner: John A. Boyle Date: 5/2/85 JCC

Agency: Health and Social Services

Distribution (by Agency preparing fiscal note):

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

7/1/84

C. Computations

Personal Services			
15 Social Worker, 3 Licensing Specialists and 21 Clerical and Administrative			$1,360.0 *
Travel			
	New Positions	56.0	
	Staff Development	66.2	122.2
Contractual			
	New Positions	178.3 **	
	Increased Legal	138.9	
	Staff Development	30.7	
	WATS and Zenith Lines	30.0	377.9
Supplies			
	New Positions	14.2	
	Staff Development	4.8	19.0
Equipment			
	First Year Only		87.2
			$1,966.3

* In original FY 86 budget submission, personal services request for these positions was lower by $118.2 due to internal transfer of money. In the latest versions of the operating budget, this funding has been removed.

** In successive years, space will be budgeted by Department of Administration. Inflation calculated at 4%.

D. Economic Impact

The creation of these new positions will have a positive impact on local communities.

E. Impact on Local Governments

There is no quantifiable impact on local governments.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSHB88 (JUD)
Title: "An Act relating to the protection of children & family members
Sponsor: Rules/Governor
Requestor: House Judiciary
Date of Request: 4/24/85

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Council on Domestic Violence and Sexual Assault

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		200.0	200.0	200.0	200.0	200.0
800 MISCELLANEOUS						
TOTAL OPERATING		200.0	200.0	200.0	200.0	200.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		200.0	200.0	200.0	200.0	200.0
FEDERAL FUNDS						
OTHER						
TOTAL		200.0	200.0	200.0	200.0	200.0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See attached

Prepared By: Barbara Miklos, Executive Director
Phone: 465-4356
Division: Council on Domestic Violence and Sexual Assault
Date: 4/30/85
Approved by Commissioner: [signature]
Date: 4/30/85
Agency: Department of Public Safety

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

7/1/84

The Council on Domestic Violence and Sexual Assault funds twenty-three community based programs in FY85. Nineteen of these programs provide services for victims of child sexual assault and their families. Services that the programs provide related to child sexual assault include: crisis intervention on a 24-hour basis; information and community education about child sexual assault; referrals and reporting, counseling and support to victims and non-offending parents; advocacy for victims and non-offending parents with the criminal justice, medical and other systems; training for teachers and other community professionals; curricula in the schools and treatment.

Council funded programs have experienced increased requests for services in recent years due in large part to their efforts to educate the public. The Governor's budget for FY86 included an increase of $575,000 for grants to community based programs. Two hundred thousand dollars of these funds can be directly attributed to increased services for child victims.

Grants - Financially stabilize existing programs 75.0

Demands for child sexual assault services have increased dramatically in the past few years. Programs have not been provided with additional funding to provide these services and have simply met these requests by overburdening underpaid staff or volunteers. With no increases in funding for salaries for the past two years, programs will have to reduce services to make up for increased costs. This doesn't not begin to account for the increase in requests that will no doubt result from changes in legislation to increase reporting.

Grants - Provide adequate funding for underfunded programs 75.0

The Council has identifed six programs that do not have sufficient funding to maintain the programs at the basic level of services required by the communities they serve. These programs provide or project to provide needed child sexual assault services in their areas. They are: Cordova Women's Resource Center; Unalaskan's Against Sexual Assault and Family Violence; Southwestern Alaska Council for the Prevention of Child Sexual Abuse; Tanana Chiefs Conference; Kenai/Soldotna Women's Resource and Crisis Center and Valley Women's Resource Center (Wasilla and Palmer).

Grants - Increased Rural Services Delivery 50.0

Victims of domestic violence and sexual assault and their families have fewer resources in rural areas than in larger communites. Police protection may be limited or nonexistent, and there are few trained health and social services professionals. Children who are victims of sexual assault do not have the necessary resources to help them deal with the trauma of the assault, legal process and after effects. Yet most people living in rural areas do not have access to domestic violence and sexual assault services.

The Council on Domestic Violence and Sexual Assault funded two new rural programs for FY85 and provided additional funds to existing programs to enhance rural services. However, it is apparent that these minimal increases will not begin to provide services for the 1/3 of the population in Alaska who do not have access to domestic violence/sexual assault programs. The interior of Alaska (Doyon Region), in particular, is underserved. Existing domestic violence/sexual assault programs provide education/prevention and crisis services to rural areas. They have accomplished a great deal, with insufficient funding, to serve the rural areas . In addition, the following communities have applied to the Council to begin programs that specifically address the needs of child sexual assault victims: Naknek, Hooper Bay and RuralCAP.

The Council has received requests for services from 27 community based programs. This two hundred thousand would be dispersed through the Council's funding process to community based programs to provide needed services to child victims and their families.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

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

Prepared By: William W. Ladwig
Phone: 465-3376
Division: Deputy Commissioner - Administration
Date: January 29, 1985

Approved by Commissioner: [signature]
Date: January 30, 1985
Agency: DEPARTMENT OF CORRECTIONS

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

7/1/84

DEPARTMENT OF CORRECTIONS

POSITION PAPER

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

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

Prepared By: Cynthia Nelson
Special Assistant

Approved By: Roger W. Endell
Commissioner

Date: January 30, 1985

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/13/85

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

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		123.9	131.3	139.2	147.6	156.5
200 TRAVEL		22.0	23.3	24.7	26.2	27.8
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		145.9	154.6	163.9	173	184.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		145.9	154.6	163.9	173.8	184.3
FEDERAL FUNDS						
OTHER						
TOTAL		145.9	154.6	163.9	173.8	184.3

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561
Division: Alaska Court System Date: 2/13/85

Approved by Commissioner: L Cole for A Snowden Date: 2/13/85
Agency: Alaska Court System

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

12/1/83

ALASKA COURT SYSTEM

HB 88 - CHILD PROTECTION
FISCAL IMPACT

Judges statewide have indicated that this legislation will require additional judicial resources. It is the administrative director's assessment that assignment of additional judges on a pro tempore basis would provide adequate judicial coverage while minimizing the cost to the state. The original submission of this fiscal note overlooked the need for judges to travel to other superior court locations to hear these cases. Funds for judicial travel have been included in the revised fiscal note.

ALASKA COURT SYSTEM

HB 88 - CHILD PROTECTION
FISCAL IMPACT

PERSONAL SERVICES:	SALARY	BENEFITS	TOTAL COST
Pro Tem Superior Court Judge Ketchikan - 6 months	$9,203	$13,418	$22,621
Pro Tem Superior Court Judge Kenai - 6 months	9,847	13,563	23,410
Pro Tem Superior Court Judge Anchorage - 12 months	18,405	26,836	45,241
In-Court Clerk (Range 12B) Anchorage - 12 months	24,516	8,116	32,632
Total Personal Services			$123,904
TRAVEL			22,000
TOTAL			$145,904

Subsequent fiscal years adjusted to reflect six percent inflation.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 88
Title: An Act relating to the protection of children.
Sponsor:
Requestor: Rules by Governor
Date of Request: January 18, 1985

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Due Process
BRU, Program or Subprogram(s) Affected: Office of Public Advocacy

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES	0	155.1	164.4	174.3	184.8	195.9
200 TRAVEL	0	15.0	15.9	16.9	17.9	18.0
300 CONTRACTUAL	0	100.0	106.0	112.4	119.1	126.2
400 SUPPLIES	0	2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT	0	24.0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	296.1	288.4	305.8	324.1	343.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	296.1	288.4	305.8	324.1	343.5
FEDERAL FUNDS						
OTHER						
TOTAL	0	296.1	288.4	305.8	324.1	343.5

POSITIONS:

FULL-TIME	0	4	4	4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Brant McGee
Phone: 274-1684
Division: Public Advocate
Date: January 25, 1985

Approved by Commissioner: Lisa Rudd
Date: 1/30/85
Agency: Department of Administration

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

Rev. 7/1/84

HB 88
Fiscal Note Analysis
Prepared by Division of Public Advocacy
Department of Administration
January 25, 1985

Governor Sheffield has introduced this legislation as part of his child protection package. One purpose of the bill is to increase the number of child sexual abuse investigations and prosecutions. The Governor's operating budget requests new positions in the Department of Law and the Department of Health and Social Services to accomplish this goal.

The addition of new staff in the two departments that generate legal action in child abuse cases will necessitate the creation of four new positions in the Office of Public Advocacy. These positions and the additional contractual funds requested to assure the representation of the nonoffending parent in children's proceedings are the minimum necessary to guarantee fulfillment of the Office's function as children's guardians ad litem.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 88

Title: Child Protection

Sponsor: Rules Committee

Requestor: Governor's Office

Date of Request: 1/17/85

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: Administration of Justice

BRU, Program or Subprogram(s) Affected:

1) Alaska State Troopers and

2) Administration (Records & Identification)

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		229.4	240.2	252.1	264.8	277.9
FEDERAL FUNDS						
OTHER						
TOTAL		229.4	240.2	252.1	264.8	277.9

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

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

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

Prepared By: Jos Mapranath Telephone: 465-4336

Division: Administrative Services Date: 1/17/85

Approved by Commissioner: Date: 1/17/85

Agency: Public Safety

Distribution (by Agency preparing fiscal note):

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

7/1/84

ANALYSIS, con't

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

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

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/22/85

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	437.2	453.4	480.6	509.3	539.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis

Dana Fabe

Prepared By: Dana Fabe, Public Defender
Phone: 279-7541
Division: Public Defender Agency
Date: 1/22/85

Approved by Commissioner: Lisa Rudd
Date:
Agency: Department of Administration

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

Rev. 7/1/84

House Bill 88
Fiscal Note Analysis
Prepared by Division of Public Defender Agency
Department of Administration
January 22, 1981

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

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

Fiscal Analysis

Second Judicial District		
Attorney III (Nome/Kotzebue)		
Personal Services		83.1
Travel		5.0
Contractual (office space, experts, etc.)		10.0
Supplies		2.0
Equipment (one time expenditure)		2.0
subtotal		102.1
Third Judicial District		
Attorney IV (Anchorage)	70.8	
Paralegal Asst II (Kenai)	45.5	
Paralegal Asst II (Palmer)	44.2	
Personal Services		160.5
Travel		15.0
Contractual (office space, experts, etc.)		17.0
Supplies		3.5
Equipment (one time expenditure)		4.5
subtotal		200.5

(continued)

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

Fourth Judicial District

Paralegal Asst II(Fairbanks)	48.7		
Paralegal Asst II(Bethel)	55.4		
Personal Services			104.1
Travel			10.0
Contractual (office space, experts, etc.)			16.5
Supplies			1.0
Equipment (one time expenditure)			3.0
		subtotal	134.6
		TOTAL ALL DISTRICT	437.2

1.	POSITION TITLE Attorney III			RANGE/STEP 22A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Kotz/Nome	ELECTION DISTRICT 17	LEG.	

3. CONTINUATION LEVEL | ADDITION

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $5,540/mo	66,480	
6.	Benefits	11,286	
7.	Supplemental Benefits	2,680	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	83,076
10.	Travel	02	5,000
11.	Contractual	03	10,000
12.	Commodities	04	2,000
13.	Equipment	05	2,000
14.	Other		
15.	TOTAL COST		99,100

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	99,100
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This increment requests an attorney for Kotzebue, to handle child in need of aid proceedings and child sexual abuse prosecutions for both the Nome and Kotzebue offices. Currently, there are District Attorneys in Nome and Kotzebue as well as an Assistant Attorney General in Nome who splits her time between child in need of aid proceedings involving abuse of children and criminal prosecutions. Given the fact that in the Nome-Kotzebue area the number of child sexual assaults has increased drastically and may have tripled by the end of 1984, an additional attorney for this area is necessary at this time.

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Second Judicial District

FY 85

Revised Date 1/22/85

01-1136 (7/82) - 13

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $4663/mO	55,956	
6.	Benefits	9,499	
7.	Supplemental Benefits	2,680	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	70,765
10.	Travel	02	5,000
11.	Contractual	03	10,000
12.	Commodities	04	1,500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		88,765

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	88,765
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This increment requests an Attorney IV for Anchorage to handle representation of clients in the additional prosecutions which are anticipated due to the addition of a number of additional positions in the District Attorney's office in Anchorage including two attorneys, a paralegal, and legal secretary. Given the fact that the number of child sexual assault cases in 1984 has increased substantially over those filed in 1983, as well as the need to send an Anchorage Public Defender to handle sexual assault cases in such outlying areas as Dillingham, which is staffed by an on-site prosecution, Unalaska, and the Aleutian Chain, an additional attorney will be necessary to meet the increased caseload.

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Third Judicial District

FY 85

Revised Date 1/22/85

01-1136 (7/82) - 13

1.	POSITION TITLE Paralegal Assistant II			RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Kenai	ELECTION DISTRICT 10	LEG.	
3.	CONTINUATION LEVEL		ADDITION						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	
	PERSONAL SERVICES		
5.	Salary $2,895/mo	34,740	
6.	Benefits	5,897	
7.	Supplemental Benefits	2,129	
8.	Fixed Benefits	2,732	
9.	TOTAL PERSONAL SERVICES	01	45,498
10.	Travel	02	5,000
11.	Contractual	03	3,500
12.	Commodities	04	1,000
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		56,498

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	56,498
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR D&M USE ONLY
4A KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This increment requests a Paralegal II for the Kenai Office. The District Attorney's figures show that child sexual assault cases for the first half of 1984 are already running well ahead of the total for the entire year of 1983. The Department of Law predicts that there will be an even greater increase in these cases in the next year. The District Attorney's office plans to add an additional attorney and paralegal to its Kenai office to keep up with this increase in child sexual assault cases.

Despite the fact that the Public Defender's office in Kenai has three attorneys who cover child sexual assault cases in Kenai, Homer, Soldotna, Seldovia, Cordova, and Seward, and that office has no paralegal to conduct investigations, interview and coordinate witnesses for trial. The addition of this position will free attorney time and obviate the need to request an additional attorney for Kenai at this time.

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Third Judicial District

Revised Date 1/22/85

FY 85

01-1136 (7/82) - 13

1.	POSITION TITLE Paralegal Assistant II			RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Palmer	ELECTION DISTRICT 7	LEG.	

3. CONTINUATION LEVEL | ADDITION

4. TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
5. Salary $2,804/mo	33,648	
6. Benefits	5,712	
7. Supplemental Benefits	2,[illegible]2	
8. Fixed Benefits	2,732	
9. TOTAL PERSONAL SERVICES	01	44,154
10. Travel	02	5,000
11. Contractual	03	3,500
12. Commodities	04	1,000
13. Equipment	05	1,500
14. Other		
15. TOTAL COST		55,154

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	55,154
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This increment requests a Paralegal Assistant II to perform investigations, interview and coordinate witnesses for trial in child sexual assault cases in the Matanuska Valley. According to the Department of Law's statistics, the child sexual assault cases in Palmer are up substantially over last year. The two Assistant Public Defenders who currently staff our Palmer office are having difficulty at this time covering the ballooning caseload. The trend towards an increase of the child sexual assault cases and the addition of personnel to the District Attorney's office in Palmer necessitates a paralegal for the Palmer office to help prepare for trial in cases in Palmer, Glennallen, and Valdez.

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration
PROGRAM Due Process
CRU Public Defender Agency
COMPONENT Third Judicial District

Revised Date 1/22/85

FY 85

01-1136 (7/82) - 13

1.	POSITION TITLE Paralegal Assistant II				RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 16	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $3,113/mo	37,356	
6.	Benefits	6,342	
7.	Supplemental Benefits	2,289	
8.	Fixed Benefits	2,732	
9.	TOTAL PERSONAL SERVICES	01	48,719
10.	Travel	02	5,000
11.	Contractual	03	3,500
12.	Commodities	04	1,000
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		59,719

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	59,719
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

This increment requests a Paralegal II for the Fairbanks office. In Fairbanks, the number of child sexual assault cases is on the rise, and the District Attorney's office plans to add an attorney as well as paralegal and legal secretary help for that office. The Fairbanks Public Defender office has only one investigator who performs investigation for nine staff attorneys, including interviewing and coordinating witnesses for all criminal cases. Any increase in the child sexual assault caseload for that office will make it virtually impossible for one investigator to handle all of these tasks. A Paralegal II is thus requested for the Fairbanks office to handle the anticipated rise in caseload which will result from additional prosecutorial and paralegal personnel in the District Attorney's office. This will avoid a request for an additional lawyer for Fairbanks at this time.

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Fourth Judicial District

Revised Date 1/22/85

FY 85

01 1135 (7/82) - 15

1.	POSITION TITLE Paralegal Assistant II				RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Bethel	ELECTION DISTRICT 14	LEG.		
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $3564/mo	42,768	
6.	Benefits	7,260	
7.	Supplemental Benefits	2,680	
8.	Fixed Benefits	2,732	
9.	TOTAL PERSONAL SERVICES	01	55,440
10.	Travel	02	5,000
11.	Contractual	03	13,000
12.	Commodities	04	-0-
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		74,940

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	74,940
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

This position, which has already been requested in the Department of Administration's initial budget request, is made acutely more necessary due to the Department of Law's proposed addition of an attorney and paralegal to handle child sexual assault cases in Bethel. There already exists a need for a Yupik speaking paralegal who can perform investigations, coordinate witnesses for trial, and provide a cultural liaison with witnesses and victims in Bethel and outlying villages. The substantial increase in child sexual assault reports in this area and the addition of Department of Law personnel in Bethel will increase our caseload, making this position even more essential.

(13.0 in con. for new office space)

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Fourth Judicial District

FY 85

Revised Date 1/22/85

01-1136 (7/82) - 13

Memorandum

Alaska Court System

TO: Karla Forsythe
General Counsel

DATE : February 1, 1985

FROM: Victor D. Carlson
Superior Court Judge

SUBJECT: House Bill No. 88,
Protection of Children

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

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

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

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

VDC:rw
Adm. F-1
Rev. 2-73

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

PUBLIC DEFENDER AGENCY

900 W. 5th Avenue, Suite 200
Anchorage, Alaska 99501
Phone: (907) 279-7541

January 29, 1985

Re: HB 88

Attention: Nancy Bennett

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

Dear Representative Gruenberg:

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

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

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

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

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

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

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

2.) The hearsay exception should only apply to the actual victim of the offense. The provision in HB 88 would cover offenses other than child sexual offenses, including many sexual assaults not involving minors. The statute as now drafted would allow hearsay testimony of any witness under the age of sixteen, even if that witness was not a victim and the offense involved an assault on an adult rather than a child. This may allow a broader erosion of the rule against hearsay at the grand jury than first appears on the surface of the bill.

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

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

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

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

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

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

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

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

Very truly yours,

Dana Fabe

Dana Fabe
Public Defender

Enclosures

DF:cms

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February 13, 1985

Representative Max Gruenberg
Representative Niilo Koponen
Other Members of the House H.E.S.S. Committee
Pouch V
Juneau, Alaska 99811

Dear Representatives Gruenberg and Koponen:

Many thanks for the opportunity to submit written comments on House Bill 88, the Governor's child abuse bill. The bill addresses many problems, but we would like to focus on the sections which would most directly affect us and our clients. These sections of the bill would amend Title 47, the Social Services statute, to change the legal rules that apply to "child in need of aid" cases. In our view the rules may need changing, but the changes embodied in the bill are not the right changes to make.

We would also like to comment, more or less in passing, on other sections of the bill that caught our attention as we read through it. In light of the problems we see in the provisions which would most directly affect our clients, we are worried that there are still other flaws in the bill that people familiar with different kinds of legal practice -- for example, criminal defense -- might catch. We urge the committee to review the bill carefully and completely to redraft it if that is necessary.

The provisions that concern us most are the provisions which deal with children in need of aid. To take those provisions in the order in which they might affect the people we represent:

Section 13: What justifies emergency custody?

We live in a society which believes that parents are the best people to take care of children, and that state intervention in families should be rare. If children are not in immediate danger, a social services agency should allow them to remain in their parents' custody until a court decides that they should be removed from their homes. With this as its basic principle, Alaska law on emergency custody is relatively straightforward. If a child has been abandoned, if his life is in danger, if he needs immediate medical attention, if he has been sexually abused -- then emergency custody may be warranted. If these things are not true, he stays home until a court decides that an out of home placement is appropriate, weighing those facts which

have been proved against the basic right of the family to remain together. House Bill 88 would change this basic principle. It would also make the meaningless drafting imperfections in the existing law all too important and meaningful. The changes the bill proposes are wrong as a matter of policy and confusing as a matter of practice.

The policy problem is of course a matter for the Legislature. Our experience, and the experience of other Legal Services lawyers in Barrow, is that the existing legal rules rarely keep Social Services from taking emergency custody if a social worker feels emergency custody is needed. If the agency does not intervene and something disastrous does happen, the existing legal rules are not at fault. Rather, these failures to intervene have other obvious causes: lack of knowledge on the part of social workers and lack of resources on the part of the agency. The present rules allow emergency intervention when it is warranted and prohibit it when it is not. Changing the rules will not avert the disasters about which Social Services is legitimately worried.

What changing the emergency-custody rules <u>will</u> do, at least if House Bill 88's suggested changes are adopted, is to transform an existing but unimportant drafting problem in the present statutes into a setting for lawsuit after lawsuit. Here is the problem. AS 47.10.142(a)(2) now authorizes "immediate removal from the minor's surroundings" if that is "necessary to protect the minor's life" and there has been gross "neglect." AS 47.10.142(a)(3) authorizes emergency custody if immediate medical attention is necessary and the minor has been "abused." The distinction between "neglect" and "abuse" is not, in practice, particularly important -- which is fortunate, because the statutory definitions do not make this distinction clear. "Neglect" is defined in AS 47.17.070(5). "Abuse," on the other hand, has no separate definition. What AS 47.17.070(1) defines is "child abuse or neglect," which

> means the physical injury or neglect, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby.

What "abuse" itself means, as opposed to "child abuse or neglect," is, to say the least, unclear. It could simply mean physical injury under the requisite dangerous circumstances. It might mean "physical injury or maltreatment." It might also mean everything in the passage quoted above -- including "neglect."

Because authority for emergency custody has been limited to four obvious situations -- abandonment, danger to life, needed medical treatment, and sexual abuse -- defining

"abuse" has not been particularly important. If the Legislature enacts House Bill 88, however, it suddenly will be. For the bill authorizes "immediate removal from the minor's home" whenever removal is "necessary" and what has occurred is "abuse." Because the bill does not specify when removal is "necessary," an agency wanting to remove a child from his home will be tempted to treat everything as "abuse." So a court will have to decide what "abuse" means, and the statutory definition will not be at all helpful. The Legislature simply cannot allow Social Services' emergency authority to be this opaque. If it does, there will be lawsuits challenging the definition of "abuse" as impenetrable, vague and unconstitutional, and the courts will end up taking over the Legislature's responsibility to make rules.

(Incidentally, the Governor's transmittal letter does not explain this problem. Nor does it even mention the suggested change in AS 47.10.142(a)(3).)

Section 14: When do parents get a hearing?

When Social Services takes a child into emergency custody, it has 12 hours to get notice to the court, which must then hold a hearing within 48 hours of receiving notice. At least in theory, the time between assumption of custody and court hearing will be no more than two and one-half days. House Bill 88 could easily double that time. Reducing Social Services' paperwork burden is a fine objective, but making parents wait four or five days before a judicial officer can evaluate what has happened to the family is the wrong way to solve the paperwork problem.

Consider a fairly common situation. It is Friday night; parents are drinking and become incapacitated; Social Services arrives and takes emergency custody. Under present law Social Services files court papers on Saturday and the matter can be heard on Monday. Under House Bill 88, the court need not be notified until Monday -- or even Tuesday -- and the hearing will be delayed until Wednesday or Thursday. (If there is a court holiday on Monday, the hearing might not occur until the following Friday, a full week after "emergency custody" was taken.) What is important to recognize is that the court hearing is not, and should not be, an empty formality. Social Services must have compelling reasons to take emergency custody. If the agency's decision was unjustified -- and many of these decisions are -- then the parents have the right to have their children returned to them. Even if the decision was justified, the parents need counsel, and the court does not usually appoint counsel until the hearing. Doubling the time parents may have to wait, either for their child or for appointed counsel, is wrong, unless it is absolutely necessary.

It is not necessary. The transmittal letter says that preparing a petition within 12 hours is a burden. But this is a problem with an obvious and less drastic solution. The transmittal letter is right when it says that notice to a judicial officer, in itself, almost never produces any meaningful screening of cases. The real screening comes at the "48-hour hearing," which the court schedules after it receives notice. So long as the court gets notice within 12 hours and can thus schedule a hearing, we would have no objection to Social Services' filing its papers at some time after it orally notifies the court that custody has been taken. The next business day, provided that that day is before the 48-hour hearing, would be sufficient. Because this solution would reduce Social Services' burdens without depriving parents of a prompt hearing, it is preferable to the solution House Bill 88 offers.

We also see little need to change the rules on how parents must be notified that emergency custody has been taken. Formally, the law requires parents to be notified within 12 hours. As a practical matter, judges routinely excuse the failure to give notice if a social worker has a good explanation. Thus there is no need to change the notice requirement. In fact, explicitly recognizing that only "reasonable efforts" to notify the parents need be made, as the bill proposes to do, would be counterproductive: it might allow social workers to believe that notifying parents is low priority and that any effort social workers make will be considered "reasonable." Notifying parents that their children have been taken should not be low priority and present practice ensures that it is not.

If the Legislature does decide to rewrite the emergency custody statute, we suggest that it add a subsection limiting the time a child can be in Social Services' temporary custody. We have had several cases in which the court ordered a temporary placement under AS 47.10.142 and the child remained in the temporary placement for several months, the court ordering month-to-month extensions of temporary custody. The problem with this is that the state-law standard for temporary custody is very low: all Social Services needs to show is that there is probable cause to believe a child is a child in need of aid. The standard for more permanent legal custody is much stricter, and it is unfair to allow Social Services to avoid having to meet that strict standard by keeping children in temporary custody for extended periods.

Section 12: How much time should parents have to consider Social Services' recommendations?

After a child has been "adjudicated" -- determined to be a "child in need of supervision" or a "child in need of aid" -- the court has to decide where the child is to be placed. To help the court make this decision, Social Services

prepares a "predisposition report." The law, as it stands today, requires this important report to be made available to parents, the guardian ad litem, and the attorneys ten or more days before the "disposition" hearing. House Bill 88 would reduce the required lead time to two working days. This would impose a special handicap on parents, children and attorneys who live in rural areas.

The transmittal letter explains why a ten-day requirement is burdensome in Anchorage quasi-criminal cases. In Anchorage, quasi-criminal dispositions may be relatively routine: periods of detention at places like McLaughlin, periods of release with probation-like conditions. But civil children's cases in the Bush are quite different. In rural areas, the odds are that a "child in need of aid" is a Native child and that the special requirements of the Indian Child Welfare Act apply to his case. This Act, in 25 U.S.C. sec. 1915, establishes that some placements for a child are preferable and others are only acceptable if there is good cause not to place the child in a "preferred" setting. Dispositions can thus be both important and complicated. Social Services makes its first long-term placement recommendation in its predisposition report. Two working days is simply not enough time to evaluate Social Services' recommendations, discuss them with clients, who may need the report to be translated to them, determine why the agency rejected certain alternatives, and prepare testimony opposing the plan, if opposition is necessary.

It is of course possible to ask for a disposition hearing to be postponed. However, last-second postponements have at least three disadvantages:

-- If parents and witnesses live in a remote village, travel plans have to be changed. If the village is, say, Anaktuvuk Pass, and the court is in Barrow, this can be very hard to do -- and, of course, in any event it is a burden on the people who have to travel.

-- Superior courts in the Bush, at least in Barrow, have extensive criminal dockets and have to give priority to criminal cases. Civil postponements can therefore last much longer than anyone expects; delays of more than a month are not uncommon.

-- Hearings of this sort are an emotional strain on the parents and children who have to participate in them. It is easier for all concerned if the date set for the hearing is the date the hearing takes place.

For these reasons, among others, there is often substantial pressure to hold on to a hearing date at all costs. Last-second requests for continuances will generally be honored, but in the Bush, rather more than in Anchorage, asking for a continuance may risk alienating the decision-maker. Ten days is almost always enough time to do the investigative and preparatory work that needs to be done. Two days is never enough time.

Other problems and concerns

The reason "endangering the welfare of a minor" is a specially defined crime is that the law recognizes that young children need care and cannot protect themselves. By making desertion of any minor, even a 17-year-old, a Class C felony, Section 1 would abandon this focus on young children, and we oppose it.

According to the transmittal letter, Section 2 is aimed at child care providers and other people with whom parents and guardians leave their children. The transmittal letter implies that the new law would not be used against parents or guardians, who in a similar situation might be guilty of criminal nonsupport. But the bill itself is not so explicit. It refers to people "entrusted with the care of a child," and one obvious (but wrong) way to read "entrusted" is "entrusted by operation of law," that is, legally responsible for a child's care. That would include, not exclude, parents and guardians -- which is not what the section is designed to do. Guarding against a wrong interpretation might require redrafting or a formal statement in a legislative committee report. The Legislature should also do something to keep "entrusted" from being read to encompass everyone who has contact with a child.

Section 8 goes too far. It would authorize the special criminal record reporting system to release information on criminal convictions for, among other things, assault, reckless endangerment, and DWI, if specified employers ask for them. The apparent rationale is that a person convicted of these crimes poses a special risk to children. We doubt this is true. Assault and reckless endangerment are basically irrelevant unless the victim was a child. DWI convictions are irrelevant unless a prospective job involves driving. When the special criminal record reporting system was established, the Legislature recognized that wide dissemination of the information in it would invade people's constitutional right to privacy. The Legislature carefully designed the balance it struck between disclosure and nondisclosure, and the proposed change does too much to upset it.

In light of the recent "cultural touching" decision out of Kotzebue, Section 15 may be more trouble than it is worth. In practice, unraveling the social-workerese ("normal caretaker interactions") in the draft language may also be difficult.

Counselors and clergymen have raised objections to Section 17, and we see other problems with making more people report child abuse to the police and to Social Services. What are "human services providers"? The definition in Section 25 is remarkably vague. (We think of Alaska Legal Services, for example, as a "human services organization": like legislators and ombudsmen, we try to

help people with problems.) Certainly the Legislature needs to put more understandable boundaries around the concept. It also needs to realize that some "human services providers" have an institutional responsibility not to disclose information. Assume for a moment that Alaska Legal Services is a "human services provider." Under the bill's Section 20, we may not be forced to testify in court about information our clients give us. Under Section 17, however, we may be legally required to report that information to the authorities. If information is privileged there obviously should not be an obligation to report it.

There is a real moral problem with requiring child abuse reports from "child care providers," which Section 25 defines as all unrelated adults providing care and supervision for children. People often leave children with friends and reporting requirements, if anyone pays attention to them, get in the way of friendships. In practice this part of the law would be, and perhaps should be, routinely ignored. It would come into play only after a disaster, where the law, as often happens, tries to find as many people as possible to blame. Legislators should realize that by enacting these provisions they would be enacting rules that would expose thousands of people to civil as well as criminal liability.

Section 25's definition of "mental injury" should be changed to emphasize that "injury," not something like "failure to thrive," is what the Legislature is concerned about. "Failure to thrive" concepts are so subjective and culturally biased that in themselves they should never justify intrusion on a family.

When statutory changes conflict with court rules, the Legislature must explicitly override the court rule if its amendments are to be effective. Sections 27 and 28, which attempt to do this, are incomplete because they fail to include necessary references to the Rules of Children's Procedure. Children's Rule 7(b), for example, requires the State to hold a hearing within 48 hours after it detains a child or takes temporary custody, not excluding weekends and holidays. It is possible that present law is consistent with this Children's Rule, but the changes proposed in Section 14 clearly would not be.

Conclusion

These comments have been lengthy because House Bill 88 attempts to solve so many different problems. In the areas with which we are most familiar, the solutions the bill proposes seem inadvisable. The bill tries to reduce the burdens on social service agencies by limiting procedural and substantive rights which parents and guardians must have if they are to try to keep their families together. The real solution to these problems, we believe, is to devote more of

the State's resources to helping, not dividing, families. Social service agencies need more money and better training for their employees. A quick legal fix will not work.

Again, many thanks for inviting us to comment on this very important legislation.

Sincerely yours,

Linda Wingenbach

Linda Wingenbach
Supervising Attorney

Mark Regan
Staff Attorney

WISH

Women In Safe Homes

A Safe Alternative to Family Violence

P.O. Box 6552
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(907) 225-9474

February 8, 1985

Representative Max Gruenberg, Co-Chair
Health, Education & Social Services
Alaska State Legislature
Pouch V--M/S 3100
Juneau, AK 99811

Dear Representative Gruenberg:

I have been attending the committees teleconferences' on HB 67-HB 88. I want to first compliment you on the very fair and efficient manner you have conducted these hearings. I hope you will also accept my apology for correcting your mispronunciation of my name, on Wednesday. Being new to this system, I did not realize how difficult it was to keep all the parties straight.

The major reason for my letter is to express a concern that Ms. Dana Fabe's (Public Defender, Anchorage) testimony may have been given undue weight. She spoke very eloquently, and her expertise was obvious. However, her point of view was narrow--that of the offender. Our laws in this country, in theory, are the very best in the world when it comes to providing for due process and protecting the rights of the accused. For too long, however, the rights of children have been only minimally protected. It concerned me that the committee could have been distracted from the purpose of this bill by Ms. Fabe's testimony. If offenders are being treated unjustly, lets propose a bill to correct that issue. This bill purpose is to protect children from the control of adults who exploit and abuse. In short, we must move from a position where children are considered property to an position where they will be given a chance to grow up in a healthy environment.

For those who believe such measures are breaking up the family; cause trauma and pain to adults due to mandatory reportings; I must ask what about the pain of the child--the child who has few choices. Lets not place the burden on a child for the problems of his/her parents or us as adults. Lets not ask a child to make the choice between his/her father going to jail versus stopping the pain and trauma they feel.

Please keep the responsibility for abuse in the hands of the perpretrator not the child. Lets ask them to be accountable for their behavior as we do when someone runs a stop sign.

Finally, I have suggested Ms. Fabe view is narrow. I admit mine is just that. After 30 years in the Child Welfare Field, I

am convienced of one thing, power means change. What power do children have.

Thank you for taking the time to deal with this issue and please know your concern for children is obvious.

Sincerely,

Floyd H. Richmond
Executive Director

FHR:sms

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

April 2, 1985

Mr. A. Robert Hahn
Mr. Richard Block
Christian Science Committee
on Publication for Alaska
630 Oceanview Drive
Anchorage, AK 99515

RE: HB 88 Suggested Amendment by
Christian Science Committee

Dear Mr. Hahn and Mr. Block:

I have requested the Division of Family and Youth Services' staff to research and consider the suggested amendments to HB 88 which you had proposed to Representative Uehling, and to the House Health and Social Services Committee. We concur with your position regarding a change to the newly proposed AS 11.15.110, Endangering the Welfare of a Minor. Therefore, the Department will suggest to the Health and Social Services Committees that they add to AS 11.51.110(a)(2) a final sentence which states:

> "There is no failure to provide necessary medical attention to a child if the child is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination."

However, as to your suggestion that there be a change in the definition of "child abuse or neglect" at AS 47.17.070(1), we believe that such a change would not be good public policy. AS 47.17.070 is a definition section which applies to a very limited portion of the statutes, specifically AS 47.17.010--47.17.070. This chapter requires certain persons to report harm to children to public authorities, and requires the public officials to investigate every report of harm. Nothing in Chapter 17 requires any particular action by the public agency investigating the report, nor do these definitions serve for other parts of Title 47. To include an exemption for religious practitioners from the "child abuse and neglect" standards of Chapter 17 would insert undesirable ambiguity into the reporting statute.

In the interest of protecting all children by encouraging members of the public to report instances of harm, it is better that all reports be made and that a social worker investigate the reports. We believe that the protections provided to religious practitioners under AS 47.10.080(k) and AS 47.10.085 are adequate to protect practitioners in all circumstances of agency custody decisions and court decisions made under Title 47.

Chapter 17 of Title 47 should remain very clear and unambigious, to encourage the reporting of all suspected instances of harm to a child. A lay person, or even one of the professionals required by law to report under this statute, should not be required to make a determination whether the suspected child abuse or neglect is instead somehow associated with a religious choice of the family. It is better that the report be made and that a professional investigate the circumstances.

I hope that upon further consideration you will concur with our viewpoint on this issue, but we remain willing to discuss it further if you wish. Thank you for your participation in the legislative process on this important issue.

Sincerely,

Connie J. Sipe
Deputy Commissioner
for Social Services

cc: Rep. Max Gruenberg, Chair
Health, Education & Social Services Committee
Rep. Rick Uehling
Marsha Hubbard
Ray Gillespie
Gayle Horetski
Frank Barthel

CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION
FOR ALASKA

A. Robert Hahn
630 Oceanview Drive
Anchorage, AK 99515

279-1544

MEMORANDUM

TO: Representative Rick Uehling

DATE: January 26, 1985

FROM: A. Robert Hahn
Committee on Publication for Alaska

RE: House Bill 88

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

> (b)...There is no failure to provide medical attention to a child if the child is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

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

In A.S. 47.17.070(1) it is also our position that in order to be consistent in maintaining the exemption granted in other sections of the code (see for example, A.S. 47.10.080(k) and A.S. 47.10.085) the language contained in the attached amendment should be included in that section.

Your assistance in securing these amendments is deeply appreciated.

A. Robert Hahn
Committee on Publication
for Alaska

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

> There is no failure to provide medical attention to a child if the child is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

A.S.47.17.070 is amended to read:

47.17.070 Definitions. (a) In this chapter

(1) ...etc....

(b) a child is not subjected to neglect or mental injury, solely by reason of a person related to and responsible for the welfare of a child under the age of 18 not providing medical attention to the child if the child is provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredicted practitioner of the church or denomination.

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

DOCUMENT #85-47

February 20, 1985

The Honorable Niilo Koponen
Co-Chairman
House Health, Education and
Social Services Committee
Pouch V
Juneau, AK 99811

Dear Representative Koponen:

The House HESS Committee has requested that the Division of Family and Youth Services (DFYS) respond to questions raised by individuals testifying to the committee regarding HB 88, Section 12.

DELINQUENCY AND CINA CASES

The committee was asked if the amended version of AS 47.10.081(c) (Sec. 12 HB 88) would apply in child in need of aid cases (CINA). The proposed amended version only changes the time period hence it would, as does the present law, apply both to delinquent cases and CINA cases. Both DFYS Regional Managers of social workers and Regional Administrators of Youth Services have requested that change, in order to give their workers more time to properly evaluate and treat children in their custody.

PREDISPOSITION HEARING REPORT RECOMMENDATION

The committee received several comments stating that the time period of two days as proposed in SEC. 12 does not allow an attorney sufficient time in a CINA case to advise and counsel their client. The Barrow office of Alaska Legal Service Corporation (ALSC) was contacted and they would accept a compromise of five days in the place of two working days, although they would prefer five working days. After discussions with field managers the department agrees to support a "five day rule". Therefore the department requests that the wording of the proposed amended statute be changed to "five days", rather than the "two working days" proposed in HB 88.

HISTORY AND RATIONALE

When Title 47.10 was substantially amended in 1977, a new section was added entitled 47.10.081, Predisposition hearing reports. Paragraph (c) of that section requires that predisposition reports prepared by DFYS workers will be available for distribution to the child, his parents, attorney, and Guardian Ad Litem not less than ten days before the disposition hearing.

AS 47.10.08(c) was introduced at the recommendation of a specifically formed Children's and Family Code Task Force which had been formed by a joint effort of the legislative and executive branches of government to recommend modifications to Title 47. The Task Force recommended reports be available to parties three days prior to hearing. Prior to the statutory change, disposition reports could be submitted by DFYS workers as late as the actual hearing. During the legislative process, ten days was substituted for three days on the recommendation of the Public Defender Agency.

In delinquency dispositions where there are 30 or fewer calendar days between adjudication and disposition, investigating probation officers may have fewer working days to complete their investigation and prepare the disposition report than the parties have to review the document prior to the court hearing. The current ten day requirement also eliminates any possibility of a practical effort to reduce the total time between adjudication and disposition for those children detained during that process.

In practice, the so-called "ten day rule" has resulted in lengthening periods of detention because additional time is necessary to complete predisposition investigations and disposition hearings must be postponed.

In CINA cases the social workers must complete their investigation, assess the child's needs, and institute a treatment plan after taking custody of a child and before a disposition report can be submitted. In those areas of the state where the adjudication and disposition hearings are held together, the current "ten day rule" is a hardship on the social worker. Often the social worker will have 10-12 days to work on the case before the disposition report is due. This is an unrealistic time period to build a case, make a case plan, and provide services. As in delinquent proceedings, the legal community in some cases has as much time to review what the social worker has done and plans to do as the social worker has available to assist the child and prepare the disposition report prior to the disposition hearing.

There is no question that parties to a disposition hearing including a child's attorney must have prior access to our investigative reports. A full five days availability would be a reasonable time for parties to review our reports.

Thank you for the opportunity to respond to these questions.

Sincerely,

John R. Pugh

John R. Pugh
Commissioner

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M March 28, 1985

SUBJECT: Sections 13 and 17 of CSHB 88 (HESS) (3/27/85 draft)

TO: Representative Max Gruenberg
Co-Chairman, House Health,
Education and Social Services Committee

FROM: Edward H. Hein
Legislative Counsel

You have asked two questions about CSHB 88 (HESS). I address them in the order asked.

1. Is section 13 unconstitutional in that it allows seizure of property without a search warrant?

Section 13 requires photo processors who come across pornographic pictures of children to report that fact to the police and to provide police with copies of the pictures and any information they have about the origin of the pictures.

Article I, section 14 of the Alaska Constitution prohibits unreasonable searches and seizures of property by law enforcement agents. This protection extends only to situations in which the property owner has an actual, subjective expectation of privacy and one that society is prepared to recognize as reasonable. Smith v. State, 510 P.2d 793, 797 (Alaska, 1973). There is no reasonable expectation of privacy in an object if the owner knowingly exposes the object to strangers. By providing in the statutes that photo processors must report and turnover to police evidence of child pornography, the public is put on notice that they cannot expect such photos to remain private. In addition, section 13 expresses society's view that such an expectation is unreasonable.

Without a reasonable expectation of privacy, a search is not unreasonable and the constitutional provision does not

protect the property from search by law enforcement agents. Once police lawfully view evidence of a crime they are entitled to seize it without a warrant. Thus, the search and seizure provided for in section 13 is not unreasonable and does not violate the search and seizure provisions of the constitution.

I note that the second sentence of section 13 is somewhat ambiguous and may present some problems of interpretation. The sentence requires processors to provide police with "copies" of the pornography. It is not clear whether this means the processor must make duplicates prints for the police or whether the processor is to send negatives and prints to police and refuse to return any of it to the customer. It may avoid legal and practical problems to rephrase this sentence to require the processor to allow the police access to the photos and let the police decide whether they constitute evidence of a crime and whether they should be seized. The police presumably are better trained than processors to make this initial legal determination.

2. Does section 17 change Rules of Evidence 504 and 505? (It states "a child's harm", not necessarily a child in the family of a husband/wife). Do we need a title change?

Section 17 amends AS 47.17.060 by changing the phrase "judicial proceeding" to "civil or criminal proceeding". The Alaska Court of Appeals in State v. R. H. and Mitchell Wetherhorn, 683 P.2d 269 (1984), held that the phrase "judicial proceeding" in that statute refers only to child protection proceedings under AS 47.10.010. Therefore, the amendment in section 17 extends the applicability of AS 47.17.060 to additional proceedings, such as criminal prosecutions of sexual abusers that arise from reports submitted under the child abuse reporting statutes. Extending the applicability of AS 47.17.060 would change Evidence Rules 504 and 505 only if it changed the applicability of the physician- patient privilege or the husband-wife privileges as they are currently provided for in those court rules. I conclude that the amendment does change both Evidence Rules by further restricting the applicability of the privileges. Therefore, both a title change and the insertion of a new section in the bill explaining the changes is required.

The physician-patient privilege of Evidence Rule 504 is changed by section 17 because it would make the privilege

inapplicable not only in child protection proceedings under AS 47.10.010, but also in other proceedings that might arise from those reports, such as a tort action brought by an abuse victim. The amendment of section 17 has no effect on the physician-patient privilege in criminal proceedings, since the privilege is already excluded in all criminal proceedings by subsection (d)(7) of Evidence Rule 504.

Evidence Rule 505 contains two husband-wife privileges, both of which are changed by the amendment of section 17. The amendment would further restrict the applicability of both the spousal immunity and the confidential marital communications privilege by expanding the coverage of AS 47.17.060 to criminal and civil proceedings other than child protection proceedings under AS 47.10.010. Both husband-wife privileges may not be invoked in certain civil and criminal proceedings specified in subsection (a)(2) and (b)(2) of Evidence Rule 505. But section 17 would make the privileges inapplicable in civil and criminal cases not specified in the exceptions to the rule. Therefore, the amendment changes the evidence rule.

If you have any questions or comments, feel free to contact me at your convenience.

EHH:ojb
J13/039

AMENDMENT #5

TO: House Bill 88 By: Gruenberg

Page 1, line 28, insert the following sentence, "There is no failure to provide necessary medical attention to a child if the child is provided treatment solely by spiritual means through prayer in acordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination."

Christian Science suggested amendment:

47.17.020 add.

(e) This section does not require a religious healing practitioner to report as neglect of a child the failure to provide medical attention to the child if the child is provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

(Received by Connie J. Sipe from Richard Block)

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

April 12, 1985

The Honorable Max Gruenberg
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Gruenberg:

This letter is to provide you information on the fiscal impact of amending AS 47.10.010(a)(2)(B) to change the standard for assuming custody in cases of mental injury. It is our understanding that you will introduce an amendment removing language that requires the Department to prove that a parent is unwilling to provide medical treatment. Instead, your amendment will require the Department to show that a parent, guardian or custodian has failed to provide treatment for a child suffering from mental injury.

Fiscal impact information provided you in a letter of April 8, 1985 was based on the inclusion of mental injury in AS 47.17 which would require mandatory reporting, investigation and treatment, if warranted. That information remains accurate should mandatory reporting of mental injury be added to HB 88. If, however, only AS 47.10.01(a)(2)(B) is amended, the fiscal impact would be less but would gradually increase over time as awareness increases in the reporting community.

Currently, the Department is rarely able to assume custody in cases of mental injury unless there is accompanying physical harm or neglect because it is extremely difficult to prove the unwillingness of the parent to provide treatment. Once physical harm is proven the Department can assume custody because it does not have to show that the parent will in the future cease their abusive behavior towards the child. The amendment is welcomed, as it will provide the Department the same standard as is used in physical harm cases.

Because there will be no mandatory reporting, we estimate that fiscal impact would be 20 to 25% of the impact provided to you in my letter of April 8, 1985. It is estimated that three additional journeyman level Social Workers will be needed to respond to increased intakes and to provide ongoing services. As has been noted previously, considerable

treatment resources would need to be provided to children who are diagnosed as being mentally abused. These costs for FY 86 would be as follows:

1.	Psychological evaluations	$ 9,400
2.	Psychological counseling	$36,000
3.	Substitute Care	
	A. Foster care (9 FTE's @ $19.24/day)	$62,000
	B. Institutional care (2 FTE's @ $121.00/day)	$94,716

The number of psychological evaluations and the level of ongoing psychological counseling is expected to be higher than what is being provided to other abuse and neglect clients as a result of behavioral impairment. Substitute care estimates are based on the level of out-of-home care now being provided to children in custody.

The total estimated cost for FY 86 is as follows:

1.	Staff/support costs	$ 165.0
2.	Psychological services	45.4
3.	Institutional care	94.7
4.	Foster care	62.0
		$ 367.0

Costs for succeeding years would, of course, reflect increases based on projections from actual cases in FY 86.

I hope this information is helpful.

Sincerely,

Michael L. Price

Michael L. Price
Director

MLP:lp

cc: The Honorable Peter Goll
Alaska State House

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

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(1) 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 <u>any</u> person 'WHO IS RESPONSIBLE FOR THE CHILD'S WELFARE] under circumstances <u>that</u> [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 HB88 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

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

Connie J. Sipe
Deputy Commissioner

Enclosures

cc: All Members House
Judiciary Committee

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

January 23, 1985

The Honorable Mike Miller
Alaska State House
House Judiciary
Room 112
P.O. Box V
Juneau, AK 99811

Dear Representative Miller:

Representative Clocksin and other members of the House Judiciary Commitee expressed an interest, at the November 21, 1985 House Judiciary hearing on HB 88 in receiving Division of Family and Youth Services responses to issues raised by Fairbanks citizens, via teleconference.

The following is a summary of issues presented, followed by our response:

A. Issues

1. 60% of reported child abuse and neglect cases are unsubstantiated, therefore investigations needlessly disrupt families.

2. The Department of Health and Social Services through the Division of Family and Youth Services has too much authority and abuses that authority.

3. The emergency custody statute should be amended to shorten the time that the Division has to notify parents after emergency custody has been assumed from twelve hours to six hours.

The group also requested the Division to provide statistics for the the percent of total substantiated reports received each year from persons who are required to report.

B. Response

1. Abuse and neglect of children results in death to approximately 2000 children annually nationwide. In Alaska children have died as a result of abuse and neglect but comprehensive data does not exist.

   Alaska's child protection statutes are written, as are those of all fifty states, to mandate protection for children suspected

to be victims of abuse as defined in the statute. Title 47.10.010 sets out the circumstances under which a child may be considered a victim of abuse or neglect. All reports made to the Division which include elements described in statutes as constituting abuse or neglect must be investigated to ensure the child's safety. An agency bound with the responsibility of investigating reported cases can not predetermine before initiating the investigation which referrals will be substantiated. Failure to protect children and agency liability for failure to respond to complaints are at issue.

By its very nature, the investigation process in child abuse cases is volatile, threatening to parents, and conducive to misunderstanding and ill will towards investigators. The initial investigation, particularly if emergency custody is necessary, is the point of intervention most likely to produce a feeling among parents that their rights are being disregarded, and result in complaints about agency or individual social worker practice or procedure. This is unavoidable, but must be minimumized through effective casework, training, appropriate agency policy, and monitoring of policy implementation.

DFYS policy emphasizes employment of a nonthreatening investigative approach, and stresses an explanation to parents of the reasons for intervention and the investigation and legal processes. While the reduction of parental stress and trauma are important agency goals which may contribute to future success in working with families, these goals must not be allowed to take precedence over the primary mandate of the agency - - protection of children. Reducing parental stress or anger is always important, since it enables the intervening social worker to more readily enlist parental cooperation. However, this is difficult to achieve during investigations and must remain secondary to the goal of protecting the child.

Appendix A provides statistics for the total number of reports received by the Division of Family and Youth Services in FY 83 with a breakout of substantiated cases. This information was gathered manually in response to a request from the then Representative, Mae Tischer. Unfortunately this data is unavailable for FY 84. However, since the Division request for funding of the data system was not approved last session the Division has initiated a manual count of cases substantitated by each region on a monthly basis. As Appendix A indicates, in FY 83 56% of all sexual abuse reports received were substantiated as were 46% of the physical abuse reports. Statistics for neglect cases are not unavailable. It should be noted that in Appendix A the category of unsubstantiated cases refers to "cases where the social worker believes that the incident occurred; however, the

child was too young to have a provable case, there was insufficient evidence, or the child's safety was ensured. Therefore, in only 15% of the reported cases did the social worker believe that the evidence did not warrant the charge. It is also important to note that cases in the unconfirmed status are frequently re-reported.

Appendix B summarizes the intake for the Division of Family and Youth Services office in Fairbanks for the month of October 1985. The report states that 118 of a total of 220 reports of abuse and neglect were substantiated. *

In FY 83 the Ombudsman received seven (7) complaints against the division alleging that the division inappropriately intervened in family affairs. Of the seven complaints filed alleging errors in emergency custody action the ombudsman found six (6) complaints to be unsubstantiated. Only one complaint was found to be justified; in that case the division did not assume custody in a situation which resulted in a child's death.

Appendix C is a report by David Jones entitled "Reliable and Fictitious Accounts of Sexual Aubse in Children".

Action in response to complaints of abuse and neglect cannot be selective. Inaction can be lethal for children even though frequently disconcerting to parents.

2. The complaint that the division has too much authority and abuses that authority is so general that a response is not possible. I would welcome the opportunity to respond to specific situtations of excessive authority and instances in which there is a perception that authority has been abused.

3. With regard to shortening the hours the division has to notify the parents in emergency custody situations the current statute requires that parents be notified immediately, but no later than twelve hours after assumption of custody. Since it is division policy to notify parents as soon as possible, reducing the outside time limit would not significantly affect current practice, since the majority of parents are contacted immediately after custody has been assumed. There will always be

* The definition of unsubstantiated and unconfirmed were changed with the implementation of the manual court system. Unsubstantiated reports in Appendix A are defined as unconfirmed in Appendix B. Unconfirmed on reorts Appendix A were renamed invalid on Appendix B.

isolated instances where this is not possible, but practice is to heed the requirement to notify as soon as possible, not to wait for 12 hours prior to notice.

In regard to the request for aggregate statistics by reporter types, unfortunately our data system does not collect information regarding the reporter. Division plans for a new system would have provided this capability, but funding was not provided in FY 86, and the division will not be able to provide such data without an improved data system. The lack of an adequate automated management information system continues to limit the scope and quantity of division data.

The issues raised by VOCAL are representative of concerns that are being expressed nationally by various groups as child protective services have evolved from virtually no emphasis on child protection prior to the 1970's to the development nationally and in Alaska of effective systems for reporting and responding to child abuse and neglect situations.

It was not until the early 1960's that "the medical diagnosis" of child abuse was recognized and advanced by C. Henry Kempe and his associates, who introduced the "battered child syndrome" as a medical diagnosis for child maltreatment. As a result of this work all fifty states responded to protect children by passing mandatory reporting laws. In 1974 with the passage of the Federal Child Abuse and Neglect Prevention Act, protective services for children were nationally recognized as the primary function of government social services agencies. Previous to the passage of that act the majority of social services caseloads across the nation were comprised of families receiving Aide to Dependant Children. It is now widely recognized that child abuse is not directly related to income.

In more recent years, improvements in services have been due in part to the increased focus on sexual abuse which has enhanced investigative procedures and increased public awareness of children suffering all forms of abuse and neglect. The public has responded to this information with increased reporting, and child protection agencies have responded with improved systems for initial intervention - the point at which the child victim is at greatest risk.

At this point in the evolution of protection services to children we recognize that resources are inadequate to minimize the trauma of intervention to families. Alaska hopes ultimately to follow the course of several states including New York and Oregon where they have been successful in reducing the need for disrupting families by expanding pre-placement preventive services. These services including intensive in- home services to families in crisis, have enabled those states to reduce the numbers and length of time that children are in out of home care and to strengthen families. Reduced caseloads are necessary to implement intensive in-home services.

Failure to provide adequate services to families after intervention is a serious problem; however, this problem will not be resolved by questioning whether or not we should intervene to protect children in the first place.

We need now to commit our resources to improving services to families once they are in the system, rather than to question whether or not protection of children is a defensible goal.

Sincerely,

Michael L Price

Michael L. Price
Director

MLP:DAG:FB:pvp

Enclosures

cc: House Judiciary
Committee Members

APPENDIX A

REPORTED PHYSICAL AND SEXUAL ABUSE CASES
FY 83

Definitions

1. Substantiated: Cases where there was sufficient evidence to support a child in need of aid determination and/or criminal action;
2. Unsubstantiated: Cases where the social worker believes that an incident occurred; however, the child was too young to have a provable case, there was insufficient evidence, or the child's safety was ensured;
3. Unconfirmed: Cases where there was insufficient evidence to determine the incident occurred.

Sexual Abuse

Region	Substantiated		Unsubstantiated		Unconfirmed		Total
	#	%	#	%	#	%	#
Southcentral	146	60%	56	23%	41	17%	243
Northern	42	34%	57	47%	23	19%	122
Northwestern	7	46%	4	27%	4	27%	15
Southeastern	68	72%	19	20%	7	8%	94
Western	29	60%	15	31%	4	9%	48
Grand Total	292	56%*	151	29%*	79	15%	522

* Substantiated and unsubstantiated reports total 85%.

Physical Abuse

Region	Substantiated		Unsubstantiated		Unconfirmed		Total
	#	%	#	%	#	%	#
Southcentral	149	55%	89	33%	33	12%	271
Northern	36	25%	88	61%	21	14%	145
Northwestern	5	42%	7	58%	-0-	-0-	12
Southeastern	63	50%	34	27%	29	23%	126
Western	13	65%	6	30%	1	5%	20
Grand Total	266	46%*	224	39%*	84	15%	574

*Substantiated and unsubstantiated reports total 85%.

SUSP w/ out #

465-3030

Document No. 84-45

February 8, 1984

The Honorable Mae Tischer
Alaska State Legislature
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Tischer:

During the review of the Department before the Health, Education and Social Services Committee on January 20, 1984, you requested information regarding the number of reported incidents of sexual abuse. Enclosed is a chart breaking down the number of physical and sexual abuse cases by Division of Family and Youth Services' Regional offices.

Reported physical and sexual abuse cases are further broken down to designate if the cases were substantiated (there was sufficient evidence to support a child in need of aid determination and/or criminal action), unsubstantiated (the social worker believes that an incident occurred; however, the child was too young to have a provable case, there was insufficient evidence, or the child was protected adequately), and unconfirmed (there was insufficient evidence to determine the incident occurred). It should be noted 85% of the reported cases of sexual or physical abuse proved upon investigation to have actually occurred.

Should you wish any additional information, please feel free to contact me.

Sincerely,

Robert London Smith, Ph.D.
Commissioner

Enclosure

RLS/MLP/FH/pjb

1/SUSPEN/Tischer/D#418

APPENDIX B

MONTHLY INTAKE REPORT

Field Office: NORTHERN REGION Month: OCTOBER 1985

I. Total Number of Reports: 1. 220

2. Category	3. Number	4. Open Case	5. STATUS Substantiated	6. Unconfirmed	7. Invalid	8. Case Opened	PENDI
(A) Physical Abuse	21	6	14	4	2	16	2
(A) Neglect	64	16	33	29	5	35	3
(A) Sexual Abuse	18	3	12	5	2	16	1
(B) Runaway	11	1	11	0	0	9	
(C) *Other	106	0	48	2	1	10	
9. TOTALS	220	26	118	40	10	86	6

II. Emergency Custody

1. A. Total number of children requiring emergency custody: 16

2. Number of families involved: 12

3. B. Case Profile of Children taken into Emergency Custody

Age	Number of Children	Sex M	Sex F	Ethnic Cau	Ethnic Blk	Ethnic Nat.Am.	Ethnic Other	Open Case	Physical Abuse	Neglect	Sexual Abuse	Runaway	Other * (Specify)
0 - 2	4	3	1			4		3	2	2			
1)	2)	3)	4)	5)	6)	7)	8)	9)	10)	11)	12)	13)	14)

4. Example of injuries/neglect: 1-Strangulation

3 - 5	3	2	1	2		1				3			

Examples of injuries/neglect:

6 - 12													

APPENDIX B

MONTHLY INTAKE REPORT

Field Office: NORTHERN REGION Month: OCTOBER 1985

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0 - 2	4	3	1			4		3	2	2			
1)	2)	3)	4)	5)	6)	7)	8)	9)	10)	11)	12)	13)	14)

4. Examples of injuries/neglect: 1-Strangulation

3 - 5	3	2	1	2		1				3			

Examples of injuries/neglect:

6 - 12	4	4		1		1	2	1	1	3			

Examples of injuries/neglect:

13 - 18	5	2	3	1		4		4	1	1	1	2	

Examples of injuries/neglect:

5. TOTALS	16	11	5	4		10	2	8	4	9	1	2	

6. C. Parental Involvement

1. Number of cases in which parents were interviewed at the time emergency custody was assumed: 8
2. Number of cases in which notice was given after emergency custody was assumed: 6
3. Reasons for not interviewing parents prior to assumption of custody:

   a. Parents could not be located: ____
   b. Parents were incapacitated: 1
   c. Social worker determined inappropriate: 2

      1) Sexual abuse case: ____
      2) Other: 1
      List reasons for each of the "other" cases.

7. D. Legal status after emergency custody hearing:

   1. Custody not requested: ____

APPENDIX C

RELIABLE AND FICTITIOUS ACCOUNTS OF SEXUAL ABUSE IN CHILDREN*

David P.H. Jones, MRC Psych. DCH
Visiting Associate Professor of Child Psychiatry
University of Colorado School of Medicine
Clinical Director, C. Henry Kempe National Center
1205 Oneida Street
Denver, CO 80220

Abstract of Data Presented
at Seventh National Conference
on Child Abuse and Neglect
Chicago, Illinois, November 12, 1985

*This outline is a portion of the paper to be published in the Journal of Inter-personal Violence, June, 1986, Issue #2, where further details, both of the relevant background literature as well as the process of validation, will be detailed. The author requests any who quote from this abstract to give appropriate recognition and to note that these are preliminary findings and not the final version of this work.

This study that I shall describe, originates from my work with the Denver Social Services Sexual Abuse Program, and the Kempe National Center for the Prevention and Treatment of Child Abuse and Neglect in Denver, Colorado.

False reports of child sexual abuse are generally considered to be uncommon and to represent only a small proportion of any areas' cases. There has been recent concern, both within the media and professional literature, that perhaps many of the reports of sexual abuse which are classified as "unfounded" or "unsubstantiated" by local social services departments, may be false. The media has questioned whether there may be a "witch-hunt mentality" among the professionals who investigate these cases and therefore that there may be numerous maligned adults resulting from such allegations. Even if false reports are uncommon, they are a matter of serious concern, not only because of the potential false accusation, but also because of the wider distress that may be caused to other family members and eventually to the child his/herself.

The aim of this study was to find out how often reports are false (or fictitious), what are the characteristics of these fictitious accounts, and what implications can we draw from an examination of these cases?

I think we should move away from a dichotomy between "true" and "false", and attempt a more realistic assessment based upon degrees of probability that an event did or did not occur. After all, sexual abuse is a private crime usually involving two witnesses -- abused and abuser, and for very good reasons, both parties may not recall their behavior or experience.

Two samples were used for the purpose of answering these questions:

Sample 1 - All the cases reported to Denver Department of Social Services Sexual Abuse Team during 1983. Total number 576.

Sample 2 - Fictitious cases of child sexual abuse seen at the Kempe National Center between 1983 and 1985. Total number 21 (out of several hundred cases seen).

Sample 1 - Denver Social Services Cases:

Of the 576 cases, 54% were "founded" and 46% "unfounded".

TABLE 1

SAMPLE 1 - DENVER S.S. REPORTS		
	NUMBER	%
FOUNDED	309	53.65
UNFOUNDED	267	46.35
	576	100

Table 2 provides a more detailed breakdown of the cases seen.

TABLE 2

TYPE OF ACCOUNT	NO.	%
RELIABLE	284	49.31
RECANTATIONS	25	4.34
INSUFFICIENT EVIDENCE	126	21.88
APPROPRIATE CONCERN	96	16.67
FICTITIOUS:		
BY ADULT	36	6.25
BY CHILD	9	1.56
	576	100

Thus, 54% of the reports were reliable ones. Nearly 22% were unable to be explored any further because insufficient evidence was available to the abuse team and no further decision could be made. Nearly 17% of all the reports were made by adults who, either upon their own initiative, or because a counselor or doctor had required them to make a report, wer 'appropriately concerned'about the possibility of sexual abuse but, when the matter was investigated, they were satisfied with the conclusions of the sex abuse team and were not, in any sense, falsely creating an allegation, but merely following up on their feeling of concern. These cases were quite distinct from

the fictitious accounts.

Reports were made by adults and/or their children and were broken down into two groups in this sample. 6.25% of the total number of reports were fictitiously made by an adult, and 1.56% fictitiously generated by a child. Thus, a total of 7.81% of the reports made in Denver in 1983, were fictitiously generated.

Full case detail was not always available on these cases, however, the crude distinction between whether the adult or child was the prime originator of the allegation was not always apparent. In fact, several accounts existed where both parent and child had fused their allegations. Some themes did emerge from an examination of these cases:

Child generated fictitious allegations were made by female teenagers, between ages of 12--17, who all were suffering from symptoms suggestive of a Post-Traumatic Stress Disorder, based upon prior, documented sexual victimization in earlier years.

Two adults involved suffered from major psychoses -- one with hypomania, and the second with a paranoid psychosis.

Some of the adults were involved in bitter custody or visitation disputes with their estranged spouse and the allegations had arisen in this context.

When adults were either behind the allegation, or had fused in their fictitious allegation with their children, they commonly had been victims of sexual abuse themselves, when they were children, and had significant residual psychological after effects of this experience. Some had sufficient symptoms to be considered to have an extended, delayed traumatic neurosis.

Sample 2 - The Kempe Center Series:

This provided an opportunity to examine the characteristics of a series of fictitious accounts of sexual abuse in greater detail.

Sample 2 consisted of 17 female and 4 male children, between the ages of 1.5 and 10 years -- Table 3.

TABLE 3

SAMPLE 2 - KEMPE CENTER		
17	FEMALE	1.5 - 9 YRS.
4	MALE	5 - 10 YRS.

The cases seen were categorized as follows:

Table 4

	NO.
Child	5
Parent	9
Mixed	7
Total	21

The child accounts (5 children) were female children, between the ages of 3 and 9, all of whom delivered their account of sexual abuse with a lack of attendant emotion when they talked about the abusive experience. Furthermore, their accounts lacked a history of any threats or coercive elements. Four of the children had, themselves, been prior victims of sexual abuse (well documented), and were suffering from symptoms of post-traumatic stress disorder (with recollection experiences and significant anxiety symptoms). One of the childrens' parents was involved in a custody dispute.

The adult accounts (9) were brought by women, on behalf of 2 male and 7 female children, between the ages of 1-6 years. Seven of the adults were parents, bringing false allegations on behalf of their children, and 2 of the adults were professionals. In 6 of the 9 cases a custody or visitation dispute was in process. Six of the 9 adults were, themselves, prior victims of sexual abuse with significant residual, psychological symptoms again suggestive of an unresolved post-traumatic neurosis. The majority of the children (7), did not provide any history that they were sexually abused and, in fact, believeably stated that they had not been.

Seven cases consisted of mixed, or fused accounts, and all these were between mother and child involving 2 male and 5 female children, between the ages of 4-10 years. All these cases involved a custody or visitation dispute. An abnormal symbiotic or enmeshed relationship existed between

mother and child, with marked role reversal on the child's part. Similiarly to the fictitious childrens' accounts, the child's allegations lacked emotion and did not have the element of threat or coercion present. Again, 5 of the adults were prior victims of sex abuse in their own childhood with, again, significant residual after-effects.

Implications:

1. Fictitious accounts of child sexual abuse are not common, but do occur and involve children of all ages and both sexes.

2. The ability to spot such cases means that the evaluator has to entertain the possibility that fictitious cases can occur.

3. The diagnosis depends upon the early interviews with the child and parent, and then upon a search for a possible mechanism to explain a fictitious generation for the report. This search should include both the family situation and dynamics, as well as the presence or absence of the post-traumatic stress disorder in children and parents. The presence of any of the features which did occur in the 21 cases described above should not be taken to mean that the report is false, but should be regarded as a red flag to the evaluator. The reason for saying this is that there are many accounts which are known to be reliably made, where some of these features exist.

4. Features of the child's account which proved helpful were the absence of emotion, and of threats or coercive features when the abuse was being described.

5. An enmeshed and symbiotic mother/child relationship was present in all the mixed or fused accounts.

6. Although all the fused accounts were made within the context of custody or visitation disputes, a separate study of custody disputes containing child sex abuse allegations by this author, indicates only in a minority of such cases does the account of sexual abuse appear to be a fictitious one.

7. All those who made fictitious accounts required major psychological help, whether they were adults or children.

8. There are implications for the availability for child developmental specialists (therapists, child psychiatrists, or child psychologists) who need to be involved in the initial investigative procedures, at least in selected cases, at the time of intake to local social services departments in order to be able to help with these

difficult diagnostic decisions. It is probable that there will always be a series of cases about whom insufficient evidence exists; however, the aim should be to reduce the number of cases about whom uncertainty exists.

MEMORANDUM State of Alaska

TO: Representative Don Clocksin

DATE: April 12, 1985

FILE NO:

TELEPHONE NO:

FROM: Dana Fabe
Public Defender

SUBJECT: ~~SB 243~~ HB 88

Thank you for soliciting my comments on SB 243 which addresses a number of different aspects of the important issue of child protection. Following is an analysis of the sections of the bill which could cause some problems.

Section 2, Endangering the Welfare of a Minor in the Second Degree

This section creates a new criminal offense. It will be a Class A misdemeanor, punishable by one year, to expose a child under the age of 13 to circumstances creating a substantial risk of physical injury or sexual abuse. Of particular concern is that the parent or caregiver need act only with criminal negligence in exposing a child to the risk of harm.1/

This section could have broad application to parents and caregivers who accidentally allow their children to be hurt. If a caregiver negligently allows a child to crawl into a cabinet which contains toxic cleaning chemicals or get too close to a wood stove, that behavior may become subject to criminal prosecution. Similarly, if a parent should negligently allow a child to be cared for by an abuser, failing to perceive the risk to the child, that parent will be criminally liable just as the abuser is.

It is my opinion that the current statute is adequate. If, as a policy matter, the House feels that it is necessary to delineate an offense other than the current crime of intentionally exposing a child to the risk of physical injury, I have two suggestions. First, the state of mind required should be recklessness rather than negligence. A person acts recklessly if that person is aware of a risk and consciously disregards it. Second, the statute should apply only to exposing the child to actual injury or abuse rather than a risk of injury. There are many situations where a home accident is narrowly averted. A parent who sees a child about to drink household cleaner and is able to get the bottle of cleaner away from the child in time, may have exposed the child to a "substantial risk of injury" but not actual injury. Clearly, a parent or caregiver should not be punished for accidents which were able to be avoided.

1/ A person is criminally negligent when he or she fails to perceive a substantial risk and such failure is a gross deviation from the standard of care a reasonable person would observe.

The following change in language for this section would incorporate these suggestions.

> Section 11.51.110, Endangering the Welfare of a Minor in the Second Degree
>
> (a) a person commits the crime of endangering the welfare of a minor in the second degree if, being entrusted with the care of a child under 13 years of age, the person recklessly
>
> (1) exposes the child to sexual abuse; or
>
> (2) exposes the child to physical injury by failing to provide the child with necessary food, care, clothing, shelter, or medical attention.

Section 10,

This section expands to 24 hours the time given the Department to file a petition with the court after assuming emergency custody of a child. Given the broadened circumstances under which emergency custody of a child can be assumed under Section 9 the need for the court to quickly decide the propriety of the social worker's action is enhanced. Since the court now has 48 hours within which to schedule a hearing once it receives a petition, the Legislature may wish to look at the possibility of shortening that time. Furthermore, it is our experience in the Anchorage Public Defender office as appointed counsel for the parents that we do not usually receive notice of the initial hearing at which probable cause for the emergency custody is established. Thus, the parent must stand before the court unrepresented during this hearing. Given these concerns, the committee may wish to consider requiring appointed counsel to be called to appear at the initial hearing to establish probable cause.

Section 11,

This section expands the definition of "sexual abuse", permitting the State to remove a child from the home of his or her parents. Conduct which constitutes a criminal sexual offense against a child under AS 11. is appropriately contained within this section. Unfortunately, this section expands the definition of "sexual abuse" to include touching of a child's genitals, thighs, buttocks, or groin, or the child's touching those areas of the parent or another.

Although this section attempts to exclude "reasonable touching" for "normal" caregiver responsibilities, it cannot possibly contemplate every type of beneficial touching which might occur. The criminal statutes on sexual abuse contained in Title 11 would appear to adequately cover harmful touches. Disallowing all touching except for normal touching is like declaring illegal all driving except for safe driving. This overly broad method of prohibiting all conduct except for normal conduct is confusing and will allow social workers who may have only limited training to determine what is normal and reasonable conduct for parents.

If there is some specific type of touching which the Legislature feels that the criminal statutes do not cover but should be grounds for removing a child from a home, that type of touching should be specifically defined. Given the broad scope of the criminal statutes, I am unsure as to what conduct this section is aimed at covering. I would suggest eliminating subsection (3)(B) in its entirety.

These are my chief concerns with the bill. I appreciate your requesting my input. Please feel free to contact me if I can provide any other information.

DF:cms

CSHB 88 (Judiciary), Relating to the protection of children

SECTION-BY-SECTION ANALYSIS

Sections 1 and 2

Under AS 11.61.125, enacted in 1983, it is a class C felony offense to bring child pornography (visual depictions of children engaged in sex acts) into the state for sale or distribution. The law also prohibits possession or publication of such material with intent to sell it. As presently written, however, AS 11.61.125 does not explicitly prohibit the sale of child pornography. Section 1 strengthens existing law, by explicitly prohibiting sale, and further, prohibits sale and distribution whether or not for commercial consideration.

Section 3

AS 12.10.020(c), enacted in 1983, extended the general five-year statute of limitations for sex crimes against children. Under certain circumstances, a crime of this nature can be prosecuted up to 10 years after it was committed. This extension was adopted because, under the prior law, the five-year limitation period often expired before the child victim became old enough to report the assault. This was especially true when the victim was a very young child. Section 3 of this bill amends the language of AS 12.10.020 to include prostitution related offenses among those offenses to which the extension applies. The amended language also includes offenses committed under sections of the criminal code that were repealed when the laws relating to sexual offenses against children were revised in 1983.

Section 4

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

In 1983 the criminal laws regarding sexual offenses against children were revised; most sexual offenses against children are now called "sexual abuse of a minor" in one of four degrees. Unfortunately, the language of AS 12.45.045 was not altered to reflect the new designation for sexual crimes against children. Section 4 of this bill amends the statute to make it clear that the protections accorded to adult victims of a sexual assault apply to child victims as well.

Section 5

Under AS 47.10.081, before a juvenile court may "dispose of" (sentence) a delinquent minor, all parties must receive a predisposition report. This report is prepared by a DFYS worker. Section 5 amends AS 47.10.081(c) to provide that the report must be provided to all parties six (rather than 10) working days before the hearing.

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

Section 6

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

Section 7

Section 7 allows DFYS discretion in filing petitions when emergency custody has been assumed in situations that do not require continued protective custody or DFYS involvement. These instances constitute a small percentage of the emergency custody cases, and involve situations in which a primary or temporary caretaker has allowed the child to wander off and the child is discovered by parties who do not know the family. Under current law, in order to provide temporary shelter for the child until parents are located, DFYS must assume emergency custody. A request to dismiss is often filed with the petition in these situations, and the petition is filed only because the present statute appears to require it. This section eliminates the need for this unnecessary paperwork.

Section 7 also allows DFYS up to 24 hours to file its petition papers with the court. Notice to the parents must still occur within 12 hours, as provided in the current statute. DFYS workers often find it nearly impossible to prepare and file the court papers within the same 12 hour period -- immediately after assuming emergency custody -- when the worker must also find placement for the child, get medical attention for the child if needed, transport the child from a remote village to a location with placement, search for unavailable parents, and, of course, respond to other emergencies affecting other children.

Section 8

Section 8 defines the term "sexual abuse" for purposes of civil child in need of aid (CINA) proceedings under AS 47.

Sexual abuse literature often references the sexualized grooming process by which sexually abusive parents prepare children for their use for sexual purpose. The definition proposed in this legislation allows the child protective system to back up the child when the child says

"no" to the grooming conduct. This allows the child to enlist the aid of the child protective system to stop the sexual abuse before it becomes more serious and more damaging to the child or his or her family.

It is necessary to define the term "sexual abuse" to prevent legal attacks on the child protection statute [AS 47.10.010(a)(2)(d)] as void for vagueness. Because there is room for debate as to exactly what sexual abuse means, a court may not permit CINA cases to be brought under any facts other than conduct which constitutes a crime. While on its face this might seem to be acceptable, the following example is offered to highlight the harm which can arise in narrowing Child in Need of Aid jurisdiction to only "criminal" conduct.

> An intoxicated father strokes the upper inner-thigh of his 10-year-old daughter repeatedly while making highly sexualized comments to her. The child reports that she feels the contact was sexual, that she feels used sexually, demeaned, and expresses all the same fears and emotions of a sexually abused child. The child also reports extreme fear that the next step will be that her father will attempt intercourse with her. The child's father denies any sexual intent.

Under these facts, the State cannot prosecute the father. The child protection system, however, approaches cases solely from the perspective of child protection (i.e., not punishment). The circumstances described above cause harm to the child which is qualitatively the same as if actual intercourse had occurred (qualitatively one might predict that the consequences might be less harmful to the child in this case). The State has and will spend tens of thousands of dollars funding programs to tell children that they have a right to say "no" to adults initiating sexual contact with them. Limiting CINA jurisdiction only to those instances which can be prosecuted as a crime means that if a child says "no" to highly sexualized parent-child conduct which falls short of a crime, the child's protection system will not back him or her up. The child in the above example must wait until the sexual abuse progresses to the level of severity which warrants incarceration of her father. A vote against the inclusive language of this definition is a vote against early detection and prevention.

Reasonable perception of the child should be considered by the court. The reasonable perceptions of the child are critical to the determination of child in need of aid jurisdiction on the grounds of sexual abuse. Because the child protection statutes are designed to protect children from the mental and emotional harm which results from sexual contact between a parent and a child, the child's perception that he or she is being used sexually is highly relevant to determining whether sexual abuse has occurred. In the above example, it really does not matter if the father intended the conduct to be sexual or sexually gratifying. What is important for child protective purposes is that the child is being harmed because she reasonably perceives that her father's contact with her is sexual. Because her perception is reasonable, it should be considered by the court in arriving at its decision. If the child <u>reasonably</u> perceives the contact is sexual, the child

protective system ought to be able to step in to insist that the harmful conduct stop.

Section 9

AS 47.17.010 is a statement of legislative intent that protective services should be provided to child victims of abuse and neglect to prevent further harm to the child, enhance the general well-being of children, and preserve family life. Section 9 clarifies that family life should be preserved whenever it is in the best interests of the child to do so.

Section 10

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

Section 11

Section 11 requires film processors to report suspected cases of child pornography to law enforcement authorities for investigation and provide the authorities with copies of the material. Several other states have such a requirement. On at least one occasion in the past, an Alaska man who photographed a young child engaged in sex acts with him was apprehended as a result of a similar reporting requirement in another state. A person who knowingly fails to make a report as required in this section is guilty of a class B misdemeanor under AS 47.17.068 (see sec. 18 below).

Section 12

Section 18 contains a conforming amendment per the clarified definition of abuse in section 6.

Section 13

This section contains a conforming amendment extending existing "B" misdemeanor penalties for failure to report suspected child abuse, as explained above regarding section 11.

Section 14

Section 14 of this bill provides broad authority to the state to enjoin or limit persons who endanger children in the ways specified from having contact with children. While there may be common law authority for this view, statutory confirmation of this authority removes one issue from possible litigation in cases where the attorney general chooses to bring an action to enjoin or limit a person from contact with children. This addresses the problem of no regulation of day care providers who care for less than five children, without burdening the public with regulation of all day care providers.

Section 15

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

Section 16

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

Section 17

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

Sections 18 and 19

Section 18 amends AS 47.35.070(a) to bring this statute into conformity with the criminal code by making violations of child care licensing statutes and regulations a class B misdemeanor. Section 19 adds language that gives statutory authority to the Department of Health and Social Services to establish a system of civil enforcement (including the levy of up to $200 daily in civil penalties) for violations of its licensing statutes and regulations.

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

POSITION PAPER

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 88

For an Act entitled: "An Act relating to the protection of children and family members and providing for an effective date".

I. GROWTH IN CHILD ABUSE AND NEGLECT

A September, 1984, report to Governor Sheffield on child abuse and neglect in Alaska stated that reports of child abuse and neglect increased 219% in the six year period, FY 78 to FY 83.

- Physical abuse (26% of the total reports) increased 186%.
- Sexual abuse (11% of the total reports) increased 272%.
- Neglect (63% of the total reports) increased 219%.

A comprehensive approach to enhancing the state's ability to protect children who have been abused and neglected was formulated last fall by the department. Improved laws and resources have been proposed to provide effective state intervention in cases of child abuse or neglect. Proposals address criticisms in legislative audits and Ombudsman's reports. These audits and reports have recommended practical changes to Alaska statutes, additional resources, greater efficiency in use of resources, and the need for a more responsive management information system.

II. IMPROVED LAWS

Committee Substitute for HB 88 was the result of extensive reviews and proposals by the executive and legislative branches of government. Major components of the Bill will.

- strengthen existing pornography laws by prohibiting selling or distribution of child pornography and by requiring film processors to report suspected cases of child pornography;
- improve the law, as it applies to a child sexual assault victim, through a "rape shield" whereby the child is protected from unwarranted invasion into her/his private life;
- allow assumption of emergency custody of grossly neglected children who need immediate medical attention rather than requiring that their life be endangered before emergency custody can be assumed;
- expand the classification of persons required under the law to report suspected child abuse or neglect;
- authorize the state to enjoin dangerous persons from child contact; and
- authorize a system of civil fines to enhance enforcement of the child care licensing law.

The department understands that there will be interim work on the sections deleted from HB 88 and will be pleased to work with the interim committee to improve child protection laws.

III. CHILD PROTECTION RESOURCES

Practical and important improvements to the State's civil and criminal laws are needed but will not alone meet the challenge of ensuring adequate protective services for children in Alaska. Both the child protection staff increments originally contained in the Division of Family and Youth Services FY 86 operating budget and the management information system for the division contained in the capital budget must be fully funded to adequately address the problem.

A. Child Protection Staff Increments

- The division is understaffed to a degree which limits services to a level little greater than crisis response and may be inadequate to achieve minimally accepted child protection.

- In the September, 1984 report on child abuse and neglect during the six year period FY 78 to FY 83, caseloads in child protection increased by 122% and total caseload increased by 173%.

- During the period from January, 1980 to August, 1984, there was a 70% increase in the number of licensed facilities.

- Dramatic growth and demand in the six year period was met with a 6% increase in clerical support, a 23% increase in licensing staff, and a 22% increase in social work staff.

- At the end of FY 83, 35 social workers alone were needed to meet a caseload standard of 50 cases per worker. The report for FY 84, shows the need for an additional 9 social workers.

- The average caseload per social worker for FY 84 was 80 cases per worker. The state standard is 50 cases per worker and the national standard is 25 cases per worker.

- 35 positions were included in the division's operating budget proposal for FY 86: 15 full-time social work positions, 3 full-time licensing positions, and 17 full-time equivalent administrative and clerical support positions, the most cost-effective staffing pattern to provide direct service, supervision, and clerical support.

B. Management Information System

- Positions requested were predicated on having a Management Information System. Only those positions that are fully justified by FY 83 statistics are requested, because the Management Information System (SYSMIS) contained in the FY 86 capital budget will automate some worker responsibilities, improving staff and management efficiency.

POSITION PAPER/Department of Health & Social Services

- SYSMIS will enable the division to maximize federal claims. The additional federal revenues are estimated to result in the system paying for itself within 2.9 years.

- SYSMIS will enable the division to more adequately respond to needs for protective services and to track service outcomes and impacts. It should increase social work efficiency and provide better management information for administrative decisions.

- The division is also undertaking a case management study to provide a classification for prioritizing work. It will make line workers decision making more consistent, as well as more in line with the agency's policies. It will ensure that plans are well thought out to impact positively the outcome of a case. Workload information will enable the division to better assess client need and risk levels and to more efficiently deploy resources.

- The Management Information System (SYSMIS) integrates the case management system. It uses classification, case planning, and workload information to maintain accountability and provide sound data for planning, development, and evaluation.

A serious response to the problems of child abuse and neglect requires not only improvements in the law, but full authorization of adequate staff resources and full funding for the Management Information System to enable the department to more effectively respond to reports of harm and to break the destructive cycle of child abuse and neglect.

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

DATE: April 26, 1985

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

DATE: 4-30-85

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

ution No.: CS HB No. 88
Act relating to the
of children
Judiciary

uest: 4/24/85

FISCAL DETAIL

Agency Affected: Health and Social Services

Program Category Affected:
Social Services

BRU, Program or Subprogram(s) Affected:
Social Services, Youth Services, Juvenile Custody BRU's

S/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
NS						
ERVICES		1,360.0	1,414.4	1,471.0	1,529.8	1,591.0
		122.2	127.1	132.2	137.5	143.0
		404.3	244.6	254.4	264.6	275.2
		19.0	19.8	20.6	21.4	22.2
		87.2				
UCTURES						
AIMS						
OUS						
TING		1,992.7	1,805.9	1,878.2	1,953.3	2,031.4
		-0-				
		-0-				

Thousands of Dollars)

		1,992.7	1,805.9	1,878.2	1,953.3	2,031.4
		1,992.7	1,805.9	1,878.2	1,953.3	2,031.4

		31	31	31	31	31
		8	8	8	8	8
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ttach a separate page if necessary

tached

Michael L. Reese
Family & Youth Services

Phone: 5-3170
Date: April 26, 1985

ommissioner: John R. Perry
Health & Social Services

Date: 4-30-85

(by Agency preparing fiscal note):
e Finance
e Sponsor

Management and Budget
ency(ies)

IV. ANALYSIS

A. Assumptions

This legislation results in changes in the civil child protection laws. As a result, there is a potential for increased service demands on division social workers. Presently, the extent and magnitude of these impacts are undefinable because caseload impacts cannot be precisely quantified. This problem will be alleviated when DFYS' Management Information System (MIS) is in place.

The Governor has repeatedly emphasized a top priority of his administration is the need to address child abuse and neglect. First the Governor clearly stated in his budget that the major need, to effectively respond to the existing dramatically growing reports of harm to children, was additional resources. The child protection increments requested in the Governor's FY 86 operating budget and the $850.0 in the capital budget for the needed Management Information System was based on 1983 case statistics which documented need at that time. These increments did not take into consideration any statutory changes. The requested resources were necessary to provide adequate levels of services in order to investigate reports of child abuse and neglect, to provide family supportive services, and to enhance program management. Secondly, the Governor developed a comprehensive bill (HB 88) requesting statutory improvements in order to give children greater protection against abuse and neglect.

Full funding of the Governor's FY 86 increments has been assumed when previously analyzing fiscal impacts of HB 88 and CS HB 88. However, the Department has been informed that both the Senate and House budgets have deleted the Governor's requested increments and that the increments would be addressed as fiscal notes attendant to the child protection bills. Passage of this bill would result in some statutory refinements, however the major need to effectively respond to the increasing reports of harm to children is additional resources. Since the House has chosen to relate the child protection increments requested in the Governor's FY 86 operating budget to this bill, this fiscal note has been prepared.

B. Program Summary

The following new positions are required:

	Title		Location
2 -	Social Worker III		Kenai
2 -	Community Care Licensing Spec. I		Anchorage
1 -	Admin. Assistant III		Anchorage
1 -	Accounting Clerk III		Anchorage
1 -	Social Worker IV		Anchorage
2 -	Social Worker I		Anchorage
1 -	Clerk Typist III	PPT	Valdez
1 -	Clerk Typist III	PPT	Copper Center
1 -	Clerk Typist III	PPT	Unalaska
1 -	Clerk Typist III	PPT	Wasilla
1 -	Clerk Typist III	PPT	Cordova
1 -	Clerk Typist III	PPT	Dillingham
1 -	Social Worker III		Anchorage
1 -	Social Worker III		Homer
2 -	Clerk Typist III		Anchorage
1 -	Clerk Typist III		Homer
1 -	Admin. Assistant III		Fairbanks
1 -	Accounting Clerk III		Fairbanks
1 -	Clerk Typist III		Delta
1 -	Clerk Typist III		Barrow
2 -	Social Worker III		Fairbanks
1 -	Social Worker III		Delta
1 -	Clerk Typist III		Fairbanks
1 -	Clerk Typist III		Galena
1 -	Social Worker III		Galena
1 -	Social Services Assoc. III		Nenana
1 -	Clerk Typist III	PPT	Ft. Yukon
1 -	Social Worker IV		Juneau
1 -	Social Worker III		Ketchikan
1 -	Clerk Typist III		Ketchikan
1 -	Admin. Assistant I		Ketchikan
1 -	Social Worker III		Juneau
1 -	Community Care Licensing Spec. I		Ketchikan
1 -	Clerk Typist III	PPT	Craig

C. Computations

Personal Services			
15 Social Worker, 3 Licensing Specialists and 21 Clerical and Administrative			$1,360.0 *
Travel			
	New Positions	56.0	
	Staff Development	66.2	122.2
Contractual			
	New Positions	178.3 **	
	Increased Legal	138.9	
	Staff Development	30.7	
	WATS and Zenith Lines	30.0	
	Additional Space	26.4 **	404.3
Supplies			
	New Positions	14.2	
	Staff Development	4.8	19.0
Equipment			
	First Year Only		87.2
			$1,992.7

* In original FY 86 budget submission, personal services request for these positions was lower by $118.2 due to internal transfer of money. In the latest versions of the operating budget, this funding has been removed.

** In successive years, space will be budgeted by Department of Administration. Inflation calculated at 4%.

D. Economic Impact

The creation of these new positions will have a positive impact on local communities.

E. Impact on Local Governments

There is no quantifiable impact on local governments.

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=154903

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N192
UNAUTHORIZED PCN:
COMPONENT: 062103310100
SCENARIO: 1

SALARY COSTS/POSITION: 11012.40
BENEFITS COSTS/POSITION: 3928.05
TOTAL PERS. SERV. COSTS/POS.: 14940.45
ASSOCIATED COSTS/POSITION: 5500.00
TOTAL COSTS/POSITION: 20440.45

JOB CLASS CODE: 1123 CLASS TITLE: CLERK TYPIST III
LOCATION CODE: HCE LOCATION NAME: GLENALLEN
RP NUMBER:
BRU PRIORITY: 0
SEASONAL INDICATOR: P

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 6.0
BARGAINING UNIT: G
SCHEDULE: E
RANGE: 08 STEP: A
RETIREMENT CODE: A

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	0.0
CONTRACTUAL COSTS:	2.5
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	2.6
OTHER COSTS:	0.0

MONTHLY RATE: 0.00
HOURLY RATE: 0.00

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE 84254, TIME=154725

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N192 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

```
   1: NO CLERICAL SUPPORT IS PRESENTLY AVAILABLE FOR THE SOCIAL WO
   2: RKER. THIS POSITION WOULD PERFORM REQUIRED CLERICAL DUTIES;
   3: THIS POSITION IS ESSENTIAL TO PERMIT THE SOCIAL WORKER TO PR
   4: OVIDE DIRECT SERVICES.
   5:
   6:
   7:
   8:
   9:
  10:
  11:
  12:
  13:
  14:
  15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=155227

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N193
UNAUTHORIZED PCN:
COMPONENT: 062103310100
SCENARIO: 1

SALARY COSTS/POSITION: 11012.40
BENEFITS COSTS/POSITION: 3928.05
TOTAL PERS. SERV. COSTS/POS.: 14940.45
ASSOCIATED COSTS/POSITION: 5500.00
TOTAL COSTS/POSITION: 20440.45

JOB CLASS CODE: 1123 CLASS TITLE: CLERK TYPIST III
LOCATION CODE: DWA LOCATION NAME: CORDOVA
RP NUMBER:
BRU PRIORITY: 0
SEASONAL INDICATOR: P

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 6.0
BARGAINING UNIT: G
SCHEDULE: E
RANGE: 08 STEP: A
RETIREMENT CODE: A
MONTHLY RATE: 0.00
HOURLY RATE: 0.00

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	0.0
CONTRACTUAL COSTS:	2.5
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	2.6
OTHER COSTS:	0.0

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=155112

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N193 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

```
 1: NO CLERICAL SUPPORT IS PRESENTLY AVAILABLE FOR THE SOCIAL WO
 2: RKER. THIS POSITION WOULD PERFORM REQUIRED CLERICAL DUTIES;
 3: THIS POSITION IS ESSENTIAL TO PERMIT THE SOCIAL WORKER TO PR
 4: OVIDE DIRECT SERVICES.
 5:
 6:
 7:
 8:
 9:
10:
11:
12:
13:
14:
15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=155530

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
    SYSTEM ASSIGNED PCN: 06N194     SALARY COSTS/POSITION:                12058.20
    UNAUTHORIZED PCN:               BENEFITS COSTS/POSITION:               4171.33
    COMPONENT: 062103310100         TOTAL PERS. SERV. COSTS/POS.:         16229.53
    SCENARIO:  1                    ASSOCIATED COSTS/POSITION:             5500.00
                                    TOTAL COSTS/POSITION:                 21729.53
    JOB CLASS CODE: 1123         CLASS TITLE: CLERK TYPIST III
    LOCATION CODE: DAA         LOCATION NAME: DILLINGHAM
    RP NUMBER:                                NUMBER OF POSITIONS: 1
    BRU PRIORITY: 0                           MONTHS/POSITION:  6.0
    SEASONAL INDICATOR: F                     BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)        SCHEDULE: F
    TRAVEL COSTS:                0.0          RANGE: 08  STEP: A
    CONTRACTUAL COSTS:           2.5          RETIREMENT CODE: A
    SUPPLIES COSTS:              0.4
    EQUIPMENT COSTS:             2.6          MONTHLY RATE: 0.00
    OTHER COSTS:                 0.0          HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
       OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
       OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
       OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=155421

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N194 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: NO CLERICAL SUPPORT IS PRESENTLY AVAILABLE FOR THE SOCIAL WO
2: RKER. THIS POSITION WOULD PERFORM REQUIRED CLERICAL DUTIES;
3: THIS POSITION IS ESSENTIAL TO PERMIT THE SOCIAL WORKER TO
4: PROVIDE DIRECT SERVICES.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=160313

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N195
UNAUTHORIZED PCN:
COMPONENT: 062103310100
SCENARIO: 1

SALARY COSTS/POSITION: 34738.20
BENEFITS COSTS/POSITION: 10813.67
TOTAL PERS. SERV. COSTS/POS.: 45551.87
ASSOCIATED COSTS/POSITION: 8900.00
TOTAL COSTS/POSITION: 54451.87

JOB CLASS CODE: 4113 CLASS TITLE: SOCIAL WORKER III
LOCATION CODE: CYB LOCATION NAME: HOMER
RP NUMBER:
BRU PRIORITY: 0
SEASONAL INDICATOR: F

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 12.0
BARGAINING UNIT: G
SCHEDULE: D
RANGE: 14 STEP: A
RETIREMENT CODE: A
MONTHLY RATE: 0.00
HOURLY RATE: 0.00

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	1.5
CONTRACTUAL COSTS:	5.5
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	1.5
OTHER COSTS:	0.0

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

```
FROM TERMINAL HJ55 ON PRINTER HJH5, DATE=84254, TIME=160117


  NEW POSITION JUSTIFICATION HAS BEEN UPDATED
                    NEW POSITION JUSTIFICATION

      SYSTEM ASSIGNED PCN: 06N195            COMPONENT: 062103310100
  NEW POSITION JUSTIFICATION:
     1: THE HOME OFFICE IS CURRENTLY STAFFED BY ONE SOCIAL WORKER
     2: III AND HALF-TIME SOCIAL SERVICES ASSOCIATE. THE CURRENT CAS
     3: ELOAD IS 180, AND INTAKE AVERAGES 18 PER MONTH. THIS POSITIO
     4: N IS NECESSARY TO PROVIDE MANDATED CHIL AND ADULT PRETECTIV
     5: E RESPONSIBILITIES IN A TIMELY MANNER.
     6:
     7:
     8:
     9:
    10:
    11:
    12:
    13:
    14:
    15:
       PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
         OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
         OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE    0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=095220

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N196
UNAUTHORIZED PCN:
COMPONENT: 062103310100
SCENARIO: 1

SALARY COSTS/POSITION: 20777.40
BENEFITS COSTS/POSITION: 7565.91
TOTAL PERS. SERV. COSTS/POS.: 28343.31
ASSOCIATED COSTS/POSITION: 17700.00
TOTAL COSTS/POSITION: 46043.31

JOB CLASS CODE: 1123 CLASS TITLE: CLERK TYPIST III
LOCATION CODE: CYB LOCATION NAME: HOMER
RP NUMBER:
BRU PRIORITY: 0
SEASONAL INDICATOR: F

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 12.0
BARGAINING UNIT: G
SCHEDULE: D
RANGE: 08 STEP: A
RETIREMENT CODE: A
MONTHLY RATE: 0.00
HOURLY RATE: 0.00

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	0.0
CONTRACTUAL COSTS:	14.7
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	2.6
OTHER COSTS:	0.0

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

```
FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=160913


  NEW POSITION JUSTIFICATION HAS BEEN UPDATED
                    NEW POSITION JUSTIFICATION

      SYSTEM ASSIGNED PCN: 06N196            COMPONENT: 062103310100
  NEW POSITION JUSTIFICATION:
     1: THIS CLERK TYPIST III IS NEEDED AS THE HOMER OFFICE CURRENTL
     2: Y HAS NO CLERICAL SUPPORT, RESULTING IN AN INEFFICIENT ARRAN
     3: GEMENT OF SOCIAL WORKERS DOING THEIR OWN TYPING AND FILING.
     4:  THIS POSITION WILL PROVIDE NEEDED CLERICAL SUPPORT AND PERM
     5: IT SOCIAL WORKERS TO PROVIDE DIRECT SERVICES.
     6:
     7:
     8:
     9:
    10:
    11:
    12:
    13:
    14:
    15:
       PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
         OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
         OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE    0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=083613

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N197      SALARY COSTS/POSITION:                34738.20
UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:              10813.67
COMPONENT: 062103310100          TOTAL PERS. SERV. COSTS/POS.:         45551.87
SCENARIO:  1                     ASSOCIATED COSTS/POSITION:             8900.00
                                 TOTAL COSTS/POSITION:                 54451.87
JOB CLASS CODE: 4113          CLASS TITLE: SOCIAL WORKER  III
LOCATION CODE: DQA          LOCATION NAME: KENAI
RF NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: D
TRAVEL COSTS:                1.5           RANGE: 16  STEP: A
CONTRACTUAL COSTS:           5.5           RETIREMENT CODE: A
SUPPLIES COSTS:              0.4
EQUIPMENT COSTS:             1.5           MONTHLY RATE: 0.00
OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE    0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=083431

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N197 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: THIS POSITION IS NEEDED TO RESPOND TO GROWING DEMAND FOR DIV
2: ISION CHILD PROTECTION SERVICES. POPULATION INCREASES THROUG
3: HOUT THE KENAI PENINSULA HAVE BEEN EXTREME, RESULTING IN HEA
4: VY INTAKE INCREASES. INTAKE FOR MAY, 1984 WAS 36 CASES, INCL
5: UDING 5 SERIOUS SEXUAL ABUSE CASES; INTAKE HAS BEEN AVERAGIN
6: G 27 CASES A MONTH. THE PRESENT TWO SOCIAL WORKERS WERE CARR
7: YING A COMBINED CASELOAD OF 225 AS OF JUNE, 1984. THIS POSIT
8: ION WOULD BE ASSIGNED TO LICENSE AND SUPPORT FOSTER HOMES, D
9: AY CARE HOMES AND CENTERS, OUT-OF-TOWN INQUIRIES, AND ADOPTI
10: ONS.
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=084130

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
    SYSTEM ASSIGNED PCN: 06N198     SALARY COSTS/POSITION:              34738.20
    UNAUTHORIZED PCN:               BENEFITS COSTS/POSITION:            108.3.67
    COMPONENT: 062103310100         TOTAL PERS. SERV. COSTS/POS.:       45551.87
    SCENARIO:  1                    ASSOCIATED COSTS/POSITION:           8900.00
                                    TOTAL COSTS/POSITION:               54451.87
    JOB CLASS CODE: 4113         CLASS TITLE: SOCIAL WORKER  III
    LOCATION CODE: DQA         LOCATION NAME: KENAI
    RP NUMBER:                                NUMBER OF POSITIONS: 1
    BRU PRIORITY: 0                           MONTHS/POSITION: 12.0
    SEASONAL INDICATOR: F                     BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)        SCHEDULE: D
    TRAVEL COSTS:              1.5            RANGE: 16  STEP: A
    CONTRACTUAL COSTS:         5.5            RETIREMENT CODE: A
    SUPPLIES COSTS:            0.4
    EQUIPMENT COSTS:           1.5            MONTHLY RATE: 0.00
    OTHER COSTS:               0.0            HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
       OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
       OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
       OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=084024

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N198 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: THIS POSITION IS NEEDED TO RESPOND TO GROWING DEMAND FOR DIV
2: ISION CHILD PROTECTION SERVICES. POPULATION INCREASES THROUG
3: HOUT THE KENAI PENINSULA HAVE BEEN EXTREME, RESULTING IN HEA
4: VY INTAKE INCREASES. FOR EXAMPLE, INTAKE FOR MAY,1984 WAS 36
5: CASES, INCLUDING 5 SERIOUS SEXUAL ABUSE CASES; INTAKE HAS B
6: EEN AVERAGING 27 CASES A MONTH. THE PRESENT TWO SOCIAL WORKE
7: RS WERE CARRYING A COMBINED CASELOAD OF 225 CASES AS OF JUNE
8: , 1984. THIS POSITION WOULD BE ASSIGNED TO INTAKE AND SHORT
9: TERM CRISIS COUNSELING.
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=084441

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
    SYSTEM ASSIGNED PCN: 06N199      SALARY COSTS/POSITION:              11358.90
    UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:             4008.66
    COMPONENT: 062103310100          TOTAL PERS. SERV. COSTS/POS.:       15367.56
    SCENARIO:  1                     ASSOCIATED COSTS/POSITION:           5300.00
                                     TOTAL COSTS/POSITION:               20667.56
    JOB CLASS CODE: 1125          CLASS TITLE: CLERK TYPIST III
    LOCATION CODE: EAA          LOCATION NAME: VALDEZ
    RP NUMBER:                                 NUMBER OF POSITIONS: 1
    BRU PRIORITY: 0                            MONTHS/POSITION:  6.0
    SEASONAL INDICATOR: P                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)         SCHEDULE: I
    TRAVEL COSTS:              0.0             RANGE: 08  STEP: A
    CONTRACTUAL COSTS:         2.5             RETIREMENT CODE: A
    SUPPLIES COSTS:            0.2
    EQUIPMENT COSTS:           2.6             MONTHLY RATE: 0.00
    OTHER COSTS:               0.0             HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
       OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
       OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
       OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=084326

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N199 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

```
 1: NO CLERICAL SUPPORT IS PRESENTLY AVAILABLE FOR THE SOCIAL
 2: WORKER. THIS POSITION WOULD PERFORM REQUIRED CLERICAL DUTIES
 3: ; THIS POSITION IS ESSENTIAL TO PERMIT THE SOCIAL WORKER TO
 4: PROVIDE DIRECT SERVICES.
 5:
 6:
 7:
 8:
 9:
10:
11:
12:
13:
14:
15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=084811

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N200		SALARY COSTS/POSITION:	10067.40
UNAUTHORIZED PCN:		BENEFITS COSTS/POSITION:	3708.21
COMPONENT: 062103310100		TOTAL PERS. SERV. COSTS/POS.:	13775.61
SCENARIO: 1		ASSOCIATED COSTS/POSITION:	5300.00
		TOTAL COSTS/POSITION:	19075.61
JOB CLASS CODE: 1123	CLASS TITLE:	CLERK TYPIST III	
LOCATION CODE: ECE	LOCATION NAME:	WASILLA	
RP NUMBER:		NUMBER OF POSITIONS: 1	
BRU PRIORITY: 0		MONTHS/POSITION: 6.0	
SEASONAL INDICATOR: P		BARGAINING UNIT: G	
ASSOCIATED COSTS: (IN THOUSANDS OF $)		SCHEDULE: C	
TRAVEL COSTS:	0.0	RANGE: 08 STEP: A	
CONTRACTUAL COSTS:	2.5	RETIREMENT CODE: A	
SUPPLIES COSTS:	0.2		
EQUIPMENT COSTS:	2.6	MONTHLY RATE: 0.00	
OTHER COSTS:	0.0	HOURLY RATE: 0.00	

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=084658

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N200 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

```
 1: THE MAT-SU VALLEY HAS THE FASTEST GROWING POPULATION IN THE
 2: STATE. INCREASES WORKLOADS AND THE ADDITION OF TWO NEW POSIT
 3: IONS IN FY'S 84 & 85 HAS CREASTED A NEED FOR ADDITIONAL CLER
 4: ICAL SUPPORT.
 5:
 6:
 7:
 8:
 9:
10:
11:
12:
13:
14:
15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=085340

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N201      SALARY COSTS/POSITION:                12058.20
UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:               4171.33
COMPONENT: 062103310100          TOTAL PERS. SERV. COSTS/POS.:         16229.53
SCENARIO:  1                     ASSOCIATED COSTS/POSITION:             5300.00
                                 TOTAL COSTS/POSITION:                 21529.53
JOB CLASS CODE: 1123          CLASS TITLE: CLERK TYPIST III
LOCATION CODE: BKA          LOCATION NAME: UNALASKA
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION:   6.0
SEASONAL INDICATOR: P                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: F
TRAVEL COSTS:                0.0           RANGE: 08  STEP: A
CONTRACTUAL COSTS:           2.5           RETIREMENT CODE: A
SUPPLIES COSTS:              0.2
EQUIPMENT COSTS:             2.6           MONTHLY RATE: 0.00
OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5, DATE=84255, TIME=085238

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N201 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: NO CLERICAL SUPPORT IS PRESENTLY AVAILABLE FOR THE SOCIAL WO
2: RKER. THIS POSITION WOULD PERFORM REQUIRED CLERICAL DUTIES;
3: THIS POSITION IS ESSENTIAL TO PERMIT THE SOCIAL WORKER TO PR
4: OVIDE DIRECT SERVICES.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=04255, TIME=090218

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N202
UNAUTHORIZED PCN:
COMPONENT: 062103310100
SCENARIO: 1

SALARY COSTS/POSITION: 37359.00
BENEFITS COSTS/POSITION: 11423.35
TOTAL PERS. SERV. COSTS/POS.: 48782.35
ASSOCIATED COSTS/POSITION: 10400.00
TOTAL COSTS/POSITION: 59182.35

JOB CLASS CODE: 4114 CLASS TITLE: SOCIAL WORKER IV
LOCATION CODE: EBA LOCATION NAME: ANCHORAGE
RP NUMBER:
BRU PRIORITY: 0
SEASONAL INDICATOR: F

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 12.0
BARGAINING UNIT: G
SCHEDULE: A
RANGE: 18 STEP: A
RETIREMENT CODE: A
MONTHLY RATE: 0.00
HOURLY RATE: 0.00

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	3.0
CONTRACTUAL COSTS:	5.5
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	1.5
OTHER COSTS:	0.0

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=085647

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N202 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: THE CURRENT RATIO OF WORKERS TO SUPERVISORS IN THE ANCHORAGE
2: SERVICE UNIT IS ONE TO EIGHT. THIS POSITION IS ESSENTIAL TO
3: PROVIDE INCREASED SUPERVISION, CASEWORK CONSULTATION, AND L
4: IMITED DIRECT TREATMENT.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=090555

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N203        SALARY COSTS/POSITION:                32419.80
UNAUTHORIZED PCN:                  BENEFITS COSTS/POSITION:              10274.33
COMPONENT: 062103310100            TOTAL PERS. SERV. COSTS/POS.:         42694.13
SCENARIO:  1                       ASSOCIATED COSTS/POSITION:             8900.00
                                   TOTAL COSTS/POSITION:                 51594.13

JOB CLASS CODE: 4113          CLASS TITLE: SOCIAL WORKER  III
LOCATION CODE: EBA          LOCATION NAME: ANCHORAGE
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: A
TRAVEL COSTS:                .5            RANGE: 16  STEP: A
CONTRACTUAL COSTS:          5.5            RETIREMENT CODE: A
SUPPLIES COSTS:             0.4
EQUIPMENT COSTS:            1.5            MONTHLY RATE: 0.00
OTHER COSTS:                0.0            HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE    0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=090422

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N203 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: THIS POSITON WILL DUNCTION ON A REGION-WIDE BASIS WITH SPECI
2: FIC DUTIES TO INCLUDE ADOPTIONS, INTERSTATE COMPACT PLACEMEN
3: T COORDINATION, AND BACK-UP TO COVER FIELD OFFICES DURING AB
4: SENCES OF ASSIGNED STAFF.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5, DATE=84255, TIME=091211

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N204        SALARY COSTS/POSITION:                26460.00
UNAUTHORIZED PCN:                  BENEFITS COSTS/POSITION:               8887.87
COMPONENT: 062103310100            TOTAL PERS. SERV. COSTS/POS.:         35347.87
SCENARIO:  1                       ASSOCIATED COSTS/POSITION:             8000.00
                                   TOTAL COSTS/POSITION:                 43347.87
JOB CLASS CODE: 4111          CLASS TITLE: SOCIAL WORKER  I
LOCATION CODE: EBA          LOCATION NAME: ANCHORAGE
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: A
TRAVEL COSTS:                1.5           RANGE: 13  STEP: A
CONTRACTUAL COSTS:           4.6           RETIREMENT CODE: A
SUPPLIES COSTS:              0.4
EQUIPMENT COSTS:             1.5           MONTHLY RATE: 0.00
OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN   THOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=091032

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N204 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: POPULATION INCREASES, AVERAGING 15% ANNUALLY, NECESSITATE, T
2: HIS NEW POSITION. THIS POSITION WOULD PERFORM CASEWORK AND
3: CHILD PROTECTIVE DUTIES. A SOCIAL WORKER I IS BEING REQUEST
4: ED IN ORDER TO PROVIDE AN ENTRY LEVEL FOR A CAREER LADDER.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=091629

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
    SYSTEM ASSIGNED PCN: 06N205      SALARY COSTS/POSITION:                32419.00
    UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:              10274.33
    COMPONENT: 062103310100          TOTAL PERS. SERV. COSTS/POS.:         42694.13
    SCENARIO:  1                     ASSOCIATED COSTS/POSITION:             9000.00
                                     TOTAL COSTS/POSITION:                 51694.13
    JOB CLASS CODE: 4275          CLASS TITLE: COMMUNITY CARE LIC SP I
    LOCATION CODE: EBA          LOCATION NAME: ANCHORAGE
    RF NUMBER:                                 NUMBER OF POSITIONS: 1
    BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
    SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)         SCHEDULE: A
    TRAVEL COSTS:                1.5           RANGE: 16  STEP: A
    CONTRACTUAL COSTS:           5.6           RETIREMENT CODE: A
    SUPPLIES COSTS:              0.4
    EQUIPMENT COSTS:             1.5           MONTHLY RATE: 0.00
    OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
       OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
       OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
       OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=091458

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N205 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

```
 1: POPULATION INCREASE, AVERAGING 15% ANNUALLY, TOGETHER WITH A
 2:  70% STATEWIDE INCREASE IN COMMUNITY CARE FACILITIES LICENSE
 3: D THE PAST 6 YEARS NECESSITATE ADDITIONAL LICENSING STAFF.
 4: THIS POSITION WOULD BE ASSIGNED TO LICENSE AND SUPPORT FOSTE
 5: R HOMES, DAY CARE HOMES AND CENTERS, OUT-OF-TOWN INQUIRIES,
 6: AND ADOPTIONS.
 7:
 8:
 9:
10:
11:
12:
13:
14:
15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=092234

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N206
UNAUTHORIZED PCN:
COMPONENT: 062103310100
SCENARIO: 1

SALARY COSTS/POSITION: 32419.80
BENEFITS COSTS/POSITION: 10274.33
TOTAL PERS. SERV. COSTS/POS.: 42694.13
ASSOCIATED COSTS/POSITION: 8100.00
TOTAL COSTS/POSITION: 50794.13

JOB CLASS CODE: 1914 CLASS TITLE: ADMINISTRATIVE ASST III
LOCATION CODE: EBA LOCATION NAME: ANCHORAGE
RP NUMBER:
BRL PRIORITY: 0
SEASONAL INDICATOR: F

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 12.0
BARGAINING UNIT: G
SCHEDULE: A
RANGE: 16 STEP: A
RETIREMENT CODE: A

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	1.5
CONTRACTUAL COSTS:	4.6
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	1.6
OTHER COSTS:	0.0

MONTHLY RATE: 0.00
HOURLY RATE: 0.00

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=092115

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N206 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

```
 1: DECENTRALIZATION OF MANAGEMENT FOR DAY-TO-DAY OPERATIONAL FU
 2: NCTIONS NECESSITATES AN ADMINISTRATIVE ASSISTANT III TO PERF
 3: ORM A WIDE VARIETY OF ADMINISTRATIVE DUTIES, WHICH HAVE BEEN
 4: TRANSFERRED TO THE REGION.
 5:
 6:
 7:
 8:
 9:
10:
11:
12:
13:
14:
15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=092622

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N207        SALARY COSTS/POSITION:                22024.80
UNAUTHORIZED PCN:                  BENEFITS COSTS/POSITION:               7856.11
COMPONENT: 062103310100            TOTAL PERS. SERV. COSTS/POS.:         29880.91
SCENARIO:  1                       ASSOCIATED COSTS/POSITION:             6600.00
                                   TOTAL COSTS/POSITION:                 36480.91
JOB CLASS CODE: 1203            CLASS TITLE: ACCOUNTING CLERK III
LOCATION CODE: EBA            LOCATION NAME: ANCHORAGE
RP NUMBER:                                   NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                              MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                        BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)       SCHEDULE: A
TRAVEL COSTS:                0.0             RANGE: 10  STEP: A
CONTRACTUAL COSTS:           4.4             RETIREMENT CODE: A
SUPPLIES COSTS:              0.4
EQUIPMENT COSTS:             1.6             MONTHLY RATE: 0.00
OTHER COSTS:                 0.0             HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE    0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=092508

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N207 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: DECENTRALIZATION OF MANAGEMENT FOR DAY-TO-DAY OPERATIONAL FU
2: NCTIONS NECESSITATES AN ACCOUNTING CLERK III TO PERFORM ACCO
3: UNTING AND BOOKKEEPING DUTIES. THIS POSITION WILL DEVELOP RE
4: GIONAL BUDGETS AND MONITOR ADMINISTRATIVE AND PURCHASED SERV
5: ICE ALLOCATIONS.
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=094808

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N208      SALARY COSTS/POSITION:                19567.80
UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:               7284.52
COMPONENT: 062103310100          TOTAL PERS. SERV. COSTS/POS.:         26852.32
SCENARIO:  1                     ASSOCIATED COSTS/POSITION:            17700.00
                                 TOTAL COSTS/POSITION:                 44552.32
JOB CLASS CODE: 1123          CLASS TITLE: CLERK TYPIST III
LOCATION CODE: EBA          LOCATION NAME: ANCHORAGE
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: A
TRAVEL COSTS:                0.0           RANGE: 08  STEP: A
CONTRACTUAL COSTS:          14.7           RETIREMENT CODE: A
SUPPLIES COSTS:              0.4
EQUIPMENT COSTS:             2.6           MONTHLY RATE: 0.00
OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=092903

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N208 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: THIS POSITION IS NECESSARY TO SUPPORT NEW PROFESSIONAL STAFF
2: BEING REQUESTED FOR THE SERVICE UNIT. THE POSITION WILL PERF
3: ORM TELEPHONE/RECEPTIONIST DUTIES, TYPING, AND FILING.
4:
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=093519

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N209      SALARY COSTS/POSITION:              19567.60
UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:             7284.52
COMPONENT: 062103310100          TOTAL PERS. SERV. COSTS/POS.:       26852.32
SCENARIO:  1                     ASSOCIATED COSTS/POSITION:          17700.00
                                 TOTAL COSTS/POSITION:               44552.32
JOB CLASS CODE: 1123          CLASS TITLE: CLERK TYPIST III
LOCATION CODE: EBA          LOCATION NAME: ANCHORAGE
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: A
TRAVEL COSTS:                0.0           RANGE: 08  STEP: A
CONTRACTUAL COSTS:          14.7           RETIREMENT CODE: A
SUPPLIES COSTS:              0.4
EQUIPMENT COSTS:             2.6           MONTHLY RATE: 0.00
OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=093326

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N209 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: THIS POSITION IS NECESSARY TO SUPPORT NEW PROFESSIONAL STAFF
2: BEING REQUESTED FOR THE SERVICE UNIT. THE POSITION WILL PERF
3: ORM TELEPHONE/RECEPTIONIST DUTIES, TYPING, AND FILING.
4:
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=104018

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
    SYSTEM ASSIGNED PCN: 06N210      SALARY COSTS/POSITION:              26460.00
    UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:             8887.87
    COMPONENT: 062103310100          TOTAL PERS. SERV. COSTS/POS.:       35347.87
    SCENARIO:  1                     ASSOCIATED COSTS/POSITION:           8000.00
                                     TOTAL COSTS/POSITION:               43347.87
    JOB CLASS CODE: 4111          CLASS TITLE: SOCIAL WORKER  I
    LOCATION CODE: EBA          LOCATION NAME: ANCHORAGE
    RP NUMBER:                                 NUMBER OF POSITIONS: 1
    BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
    SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)         SCHEDULE: A
    TRAVEL COSTS:              1.5             RANGE: 13  STEP: A
    CONTRACTUAL COSTS:         4.6             RETIREMENT CODE: A
    SUPPLIES COSTS:            0.4
    EQUIPMENT COSTS:           1.5             MONTHLY RATE: 0.00
    OTHER COSTS:               0.0             HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
       OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
       OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
       OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=103910

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N210 COMPONENT: 062103310100

NEW POSITION JUSTIFICATION:

1: POPULATION INCREASES, AVERAGING 15% ANNUALLY, NECESSITATE
2: THIS NEW POSITION. THIS POSITION WOULD PERFORM CASEWORK AND
3: CHILD PROTECTIVE DUTIES. A SOCIAL WORKER I IS BEING REQUESTE
4: D IN ORDER TO PROVIDE AN ENTRY LEVEL FOR A CAREER LADDER.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON F :INTER HJH5; DATE=84254, TIME=104046

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N180
UNAUTHORIZED PCN:
COMPONENT: 062103310200
SCENARIO: 1

SALARY COSTS/POSITION: 25615.80
BENEFITS COSTS/POSITION: 8691.48
TOTAL PERS. SERV. COSTS/POS.: 34307.28
ASSOCIATED COSTS/POSITION: 5800.00
TOTAL COSTS/POSITION: 40107.28

JOB CLASS CODE: 1123 CLASS TITLE: CLERK TYPIST III
LOCATION CODE: MEA LOCATION NAME: BARROW
RP NUMBER:
BRU PRIORITY: 0
SEASONAL INDICATOR: F

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 12.0
BARGAINING UNIT: G
SCHEDULE: H
RANGE: 08 STEP: A
RETIREMENT CODE: A

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	0.0
CONTRACTUAL COSTS:	2.8
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	2.6
OTHER COSTS:	0.0

MONTHLY RATE: 0.00
HOURLY RATE: 0.00

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=103723

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N180 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

1: THERE ARE THEREE LINE STAFF ASSIGNED TO THE BARROW OFFICE
2: AND THERE IS NO CLERICAL SUPPORT. THIS POSITION WOULD PERFO
3: RM REQUIRED CLERICAL DUTIES, AND PERMIT SOCIAL WORKERS TO
4: INCREASE THE LEVEL OF DIRECT SERVICES.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=105843

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N182      SALARY COSTS/POSITION:              22717.80
UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:             8017.32
COMPONENT: 062103310200          TOTAL PERS. SERV. COSTS/POS.:       30735.12
SCENARIO:  1                     ASSOCIATED COSTS/POSITION:           5800.00
                                 TOTAL COSTS/POSITION:               36535.12
JOB CLASS CODE: 1123          CLASS TITLE: CLERK TYPIST III
LOCATION CODE: JJB          LOCATION NAME: DELTA JUNCTION
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: I
TRAVEL COSTS:              0.0             RANGE: 08  STEP: A
CONTRACTUAL COSTS:         2.8             RETIREMENT CODE: A
SUPPLIES COSTS.            0.4
EQUIPMENT COSTS            2.6             MONTHLY RATE: 0.00
OTHER COSTS:               0.0             HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=105709

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N182 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

1: THERE ARE PRESENTLY THREE LINE STAFF ASSIGNED TO THE DELTA
2: OFFICE AND THERE IS NO CLERICAL SUPPORT. THIS POSITION WOULD
3: PERFORM REQUIRED CLERICAL DUTIES, AND PERMIT SOCIAL WORKERS
4: TO INCREASE THE LEVEL OF DIRECT SERVICES.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=105340

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
    SYSTEM ASSIGNED PCN: 06N181      SALARY COSTS/POSITION:                38707.20
    UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:              11737.00
    COMPONENT: 062103310200          TOTAL PERS. SERV. COSTS/POS.:         50444.20
    SCENARIO:  1                     ASSOCIATED COSTS/POSITION:            10300.00
                                     TOTAL COSTS/POSITION:                 60744.20
    JOB CLASS CODE: 4113          CLASS TITLE: SOCIAL WORKER  III
    LOCATION CODE: JJB          LOCATION NAME: DELTA JUNCTION
    RP NUMBER:                                 NUMBER OF POSITIONS: 1
    BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
    SEASONAL INDICATOR: F                      BARGAINING UNIT: G.
ASSOCIATED COSTS:  (IN THOUSANDS OF $)         SCHEDULE: I
    TRAVEL COSTS:              2.5             RANGE: 16  STEP: A
    CONTRACTUAL COSTS:         5.9             RETIREMENT CODE: A
    SUPPLIES COSTS:            0.4
    EQUIPMENT COSTS:           1.5             MONTHLY RATE: 0.00
    OTHER COSTS:               0.0             HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
       OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
       OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
       OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=104550

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N181 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

1: THIS POSITION WOULD PROVIDE MANDATED CHILD AND ADULT PROTECT
2: IVE SERVICES. THERE ARE PRESENTLY THREE LINE STAFF ASSIGNED
3: TO THE OFFICE AND 180 CASES AS OF JUNE, L984. THE CASELOAD
4: IN THE DELTA AREA HAS GROWN RAPIDLY, AND IS EXPECTED TO CONT
5: INUE TO GROW AT 3% PER MONTH.
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=110413

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
    SYSTEM ASSIGNED PCN: 06N183      SALARY COSTS/POSITION:                25615.80
    UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:               8691.48
    COMPONENT: 062103310200          TOTAL PERS. SERV. COSTS/POS.:         34307.28
    SCENARIO:  1                     ASSOCIATED COSTS/POSITION:             5800.00
                                     TOTAL COSTS/POSITION:                 40107.28
    JOB CLASS CODE: 1123          CLASS TITLE: CLERK TYPIST III
    LOCATION CODE: HYC          LOCATION NAME: GALENA
    RP NUMBER:                                 NUMBER OF POSITIONS: 1
    BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
    SEASONAL INDICATOR: F                      BARGAINING UNIT: G.
ASSOCIATED COSTS:  (IN THOUSANDS OF $)         SCHEDULE: H
    TRAVEL COSTS:                0.0           RANGE: 08  STEP: A
    CONTRACTUAL COSTS:           2.8           RETIREMENT CODE: A
    SUPPLIES COSTS:              0.4
    EQUIPMENT COSTS:             2.6           MONTHLY RATE: 0.00
    OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
       OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
       OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
       OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

```
FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=110207


  NEW POSITION JUSTIFICATION HAS BEEN UPDATED
                    NEW POSITION JUSTIFICATION

      SYSTEM ASSIGNED PCN: 06N183            COMPONENT: 062103310200
  NEW POSITION JUSTIFICATION:
     1: THERE ARE PRESENTLY TWO LINE STAFF ASSIGNED TO THE GALENA
     2: OFFICE AND THERE IS NO CLERICAL SUPPORT.  THIS POSITION
     3: WOULD PERFORM REQUIRED CLERICAL DUTIES, AND PERMIT SOCIAL WO
     4: RKERS TO INCREASE THE LEVEL OF DIRECT SERVICES.
     5:
     6:
     7:
     8:
     9:
    10:
    11:
    12:
    13:
    14:
    15:
       PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
         OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
         OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=111021

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N184      SALARY COSTS/POSITION:                44377.20
UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:              13015.71
COMPONENT: 062103310200          TOTAL PERS. SERV. COSTS/POS.:         57392.91
SCENARIO:  1                     ASSOCIATED COSTS/POSITION:             9900.00
                                 TOTAL COSTS/POSITION:                 67292.91
JOB CLASS CODE: 4113          CLASS TITLE: SOCIAL WORKER  III
LOCATION CODE: HYC          LOCATION NAME: GALENA
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                      BARGAINING UNIT: G.
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: H
TRAVEL COSTS:                2.5           RANGE: 16  STEP: A
CONTRACTUAL COSTS:           5.5           RETIREMENT CODE: A
SUPPLIES COSTS:              0.4
EQUIPMENT COSTS:             1.5           MONTHLY RATE: 0.00
OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5, DATE=84254, TIME=110850

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N184 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

1: THERE ARE TWO LINE STAFF IN THE GALENA OFFICE; THE CASELOAD
2: AS OF JUNE, 1984 IS 140AND THE RELATIVE COMPLEXITY OF THE C
3: ASES IS INCREASING. THIS SOCIAL WORKE III WOULD PROVDIE MAN
4: DATED CHILD AND ADULT PROTECTIVE SERVICES, AND ASSIST THE
5: OFFICE IN RESPONDING TO THE INCREASED DEMAND FOR SERVICES.
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5, DATE=84254, TIME=112040

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
    SYSTEM ASSIGNED PCN: 06N185      SALARY COSTS/POSITION:              32419.80
    UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:            10274.33
    COMPONENT: 062103310200          TOTAL PERS. SERV. COSTS/POS.:       42694.13
    SCENARIO:  1                     ASSOCIATED COSTS/POSITION:           9000.00
                                     TOTAL COSTS/POSITION:               51694.13
    JOB CLASS CODE: 4106          CLASS TITLE: SOCIAL SVCS ASSOC III
    LOCATION CODE: JBM          LOCATION NAME: NENANA
    RF NUMBER:                                 NUMBER OF POSITIONS: 1
    BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
    SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)         SCHEDULE: G
    TRAVEL COSTS:              2.5             RANGE: 12  STEP: A
    CONTRACTUAL COSTS:         4.6             RETIREMENT CODE: A
    SUPPLIES COSTS:            0.4
    EQUIPMENT COSTS:           1.5             MONTHLY RATE: 0.00
    OTHER COSTS:               0.0             HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
       OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
       OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
       OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=111755

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N185 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

```
 1: THE NENANA OFFICE IS STAFFED WITH ONE SOCIAL SERVICES ASSOCI
 2: ATE III AND THERE ARE 90 CASES AS OF JUNE, 1984. THIS POSITI
 3: ON WOULD PROVIDE MANDATED CHILD AND ADULT PROTECTIVE SERVICE
 4: S; THE WORKLOAD STANDARD OF ONE LINE STAFF FOR EVERY FIFTY C
 5: ASES WOULD BE MET WITH THE ADDTION OF THIS POSITION.
 6:
 7:
 8:
 9:
10:
11:
12:
13:
14:
15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=112935

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N186      SALARY COSTS/POSITION:                12807.90
UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:               4345.73
COMPONENT: 062103310200          TOTAL PERS. SERV. COSTS/POS.:         17153.63
SCENARIO:  1                     ASSOCIATED COSTS/POSITION:             5300.00
                                 TOTAL COSTS/POSITION:                 22453.63
JOB CLASS CODE: 1123          CLASS TITLE: CLERK TYPIST III
LOCATION CODE: KJA          LOCATION NAME: FORT YUKON
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION:  6.0
SEASONAL INDICATOR: P                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: H
TRAVEL COSTS:                0.0           RANGE: 08  STEP: A
CONTRACTUAL COSTS:           2.5           RETIREMENT CODE: A
SUPPLIES COSTS:              0.2
EQUIPMENT COSTS:             2.6           MONTHLY RATE: 0.00
OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=112725

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N186 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

1: THERE IS ONE LINE WORKER ASSIGNED TO THE FORT YUKON OFFICE A
2: ND THERE IS NO CLERICAL SUPPORT. THIS POSITION WOULD PERFORM
3: REQUIRED CLERICAL DUTIES, AND PERMIT THE SOCIAL WORKER TO
4: INCREASE THE LEVEL OF DIRECT SERVICES.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=130443

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N187      SALARY COSTS/POSITION:              37359.00
UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:            11423.35
COMPONENT: 062103310200          TOTAL PERS. SERV. COSTS/POS.:       48782.35
SCENARIO:  1                     ASSOCIATED COSTS/POSITION:          18200.00
                                 TOTAL COSTS/POSITION:               66982.35
JOB CLASS CODE: 4113          CLASS TITLE: SOCIAL WORKER  III
LOCATION CODE: JBA          LOCATION NAME: FAIRBANKS
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: E
TRAVEL COSTS:                2.5           RANGE: 16  STEP: A
CONTRACTUAL COSTS:           5.5           RETIREMENT CODE: A
SUPPLIES COSTS:              0.4
EQUIPMENT COSTS:             9.8           MONTHLY RATE: 0.00
OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=130253

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N187 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

1: AN INTAKE RATE OF 160 CASES PER MONTH IN FAIRBANKS IS PROJEC
2: TED BY FY86 BASED ON PASTINVESTIGATIONS. THIS SOCIAL WORKE
3: R III WOULD BE ASSIGNED TO INTAKE, AND WOULD INVESTIGATE ABU
4: SE/NEGLECT REPORTS.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN. 06N188
UNAUTHORIZED PCN:
COMPONENT: 062103310200
SCENARIO: 1

SALARY COSTS/POSITION: 37359.00
BENEFITS COSTS/POSITION: 11423.35
TOTAL PERS. SERV. COSTS/POS.: 48782.35
ASSOCIATED COSTS/POSITION: 9900.00
TOTAL COSTS/POSITION: 58682.35

JOB CLASS CODE: 4113 CLASS TITLE: SOCIAL WORKER III
LOCATION CODE: JBA LOCATION NAME: FAIRBANKS
RP NUMBER:
BRU PRIORITY: 0
SEASONAL INDICATOR: F

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 12.0
BARGAINING UNIT: G
SCHEDULE: E
RANGE: 16 STEP: A
RETIREMENT CODE: A

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	2.5
CONTRACTUAL COSTS:	5.5
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	1.5
OTHER COSTS:	0.0

MONTHLY RATE: 0.00
HOURLY RATE: 0.00

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=135207

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N188 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

```
   1: THIS SOCIAL WORKER III WOUL BE IN THE ON-GOING SERVICES UNIT
   2: AND WOULD PROVIDE MANDATED CHILD AND ADULT PROTECTIVE CASEWO
   3: RK SERVICES.  THIS POSITION IS NEEDED TO RESPOND TO WHAT HAS
   4:  BEEN AN AVERAGE OF 2.5% INCREASE PER MONTH IN CASELOAD THRO
   5: UGHOUT FY84.
   6:
   7:
   8:
   9:
  10:
  11:
  12:
  13:
  14:
  15:
     PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
       OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
       OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=141452

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N159      SALARY COSTS/POSITION:                24859.80
UNAUTHORIZED PCN:                BENEFITS COSTS/POSITION:               8515.62
COMPONENT: 062103310200          TOTAL PERS. SERV. COSTS/POS.:         33375.42
SCENARIO:  1                     ASSOCIATED COSTS/POSITION:             6600.00
                                 TOTAL COSTS/POSITION:                 39975.42
JOB CLASS CODE: 1203          CLASS TITLE: ACCOUNTING CLERK III
LOCATION CODE: JBA          LOCATION NAME: FAIRBANKS
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: E
TRAVEL COSTS:                0.0           RANGE: 10  STEP: A
CONTRACTUAL COSTS:           4.6           RETIREMENT CODE: A
SUPPLIES COSTS:              0.4
EQUIPMENT COSTS:             1.6           MONTHLY RATE: 0.00
OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=141240

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N189 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

1: DECENTRALIZATION OF MANAGEMENT FOR DAY-TO-DAY OPERATIONAL
2: FUNCTIONS NECESSITATES AN ACCOUNTING CLERK III TO PERFORM AC
3: COUNTING AND BOOKKEEPING DUTIES. THIS POSITION WILL DEVELOP
4: REGIONAL BUDGETS AND MONITOR ADMINISTRATIVE AND PURCHASED SE
5: RVICE ALLOCATIONS.
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=1 .2018

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N190		SALARY COSTS/POSITION:	37359.00
UNAUTHORIZED PCN:		BENEFITS COSTS/POSITION:	11423.35
COMPONENT: 062103310200		TOTAL PERS. SERV. COSTS/POS.:	48782.35
SCENARIO: 1		ASSOCIATED COSTS/POSITION:	9900.00
		TOTAL COSTS/POSITION:	58682.35

JOB CLASS CODE: 1914 CLASS TITLE: ADMINISTRATIVE ASST III

LOCATION CODE: JBA LOCATION NAME: FAIRBANKS

RP NUMBER: NUMBER OF POSITIONS: 1

BRU PRIORITY: 0 MONTHS/POSITION: 12.0

SEASONAL INDICATOR: F BARGAINING UNIT: G

ASSOCIATED COSTS: (IN THOUSANDS OF $) SCHEDULE: E

TRAVEL COSTS:	2.0	RANGE: 16 STEP: A
CONTRACTUAL COSTS:	4.6	RETIREMENT CODE: A
SUPPLIES COSTS:	0.4	
EQUIPMENT COSTS:	2.9	MONTHLY RATE: 0.00
OTHER COSTS:	0.0	HOURLY RATE: 0.00

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMIN HJ55 ON PRINTER HJH5; DATE=84254, TIME=1 824

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N190 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

1: DECENTRALIZATION OF MANAGEMENT FOR DAY-TO-DAY OPERATIONAL FU
2: NCTIONS NECESSITATES AN ADMINISTRATIVE ASSISTANT III TO PERF
3: ORM A WIDE VARIETY OF ADMINISTRATIVE DUTIES WHICH HAVE BEEN
4: TRANSFERRED TO THE REGION.
5:
6:
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=142555

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N191		SALARY COSTS/POSITION:	22024.80
UNAUTHORIZED PCN:		BENEFITS COSTS/POSITION:	7856.11
COMPONENT: 062103310200		TOTAL PERS. SERV. COSTS/POS.:	29880.91
SCENARIO: 1		ASSOCIATED COSTS/POSITION:	5800.00
		TOTAL COSTS/POSITION:	35680.91
JOB CLASS CODE: 1123	CLASS TITLE: CLERK TYPIST III		
LOCATION CODE: JBA	LOCATION NAME: FAIRBANKS		
RP NUMBER:		NUMBER OF POSITIONS: 1	
BRU PRIORITY: 0		MONTHS/POSITION: 12.0	
SEASONAL INDICATOR: F		BARGAINING UNIT: G	
ASSOCIATED COSTS: (IN THOUSANDS OF $)		SCHEDULE: E	
TRAVEL COSTS:	0.0	RANGE: 08 STEP: A	
CONTRACTUAL COSTS:	2.8	RETIREMENT CODE: A	
SUPPLIES COSTS:	0.4		
EQUIPMENT COSTS:	2.6	MONTHLY RATE: 0.00	
OTHER COSTS:	0.0	HOURLY RATE: 0.00	

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84254, TIME=142413

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N191 COMPONENT: 062103310200

NEW POSITION JUSTIFICATION:

```
 1: THE CURRENT RATION OF FOUR TYPISTS FOR TWENTY-FIVE LINE STAF
 2: F IS MARGINAL DUE TO THE VOLUME OF ACTIVE CASES. THIS POSITI
 3: ON WOULD PERFORM A RANGE OF CLERICAL DUTIES IN SUPPORT OF TH
 4: E REGIONAL OFFICE.
 5:
 6:
 7:
 8:
 9:
10:
11:
12:
13:
14:
15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=115101

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N212		SALARY COSTS/POSITION:	37359.00
UNAUTHORIZED PCN:		BENEFITS COSTS/POSITION:	11423.35
COMPONENT: 062103310300		TOTAL PERS. SERV. COSTS/POS.:	48782.35
SCENARIO: 1		ASSOCIATED COSTS/POSITION:	10400.00
		TOTAL COSTS/POSITION:	59182.35
JOB CLASS CODE: 4114	CLASS TITLE: SOCIAL WORKER IV		
LOCATION CODE: AWA	LOCATION NAME: JUNEAU		
EP NUMBER:		NUMBER OF POSITIONS: 1	
BRU PRIORITY: 0		MONTHS/POSITION: 12.0	
SEASONAL INDICATOR: F		BARGAINING UNIT: G	
ASSOCIATED COSTS: (IN THOUSANDS OF $)		SCHEDULE: A	
TRAVEL COSTS:	3.0	RANGE: 18 STEP: A	
CONTRACTUAL COSTS:	5.5	RETIREMENT CODE: A	
SUPPLIES COSTS:	0.0		
EQUIPMENT COSTS:	1.5	MONTHLY RATE: 0.00	
OTHER COSTS:	0.0	HOURLY RATE: 0.00	

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=114940

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N212 COMPONENT: 062103310300

NEW POSITION JUSTIFICATION:

```
 1: THE SOCIAL WORKER IV POSITION IS ESSENTIAL TO PROVIDE
 2: INCREASED SUPERVISION, CASEWORK CONSULTATION, AND LIMITED DI
 3: RECT TREATMENT IN THE JUNAU AND SITKA FIELD OFFICES. DRAMATI
 4: C CASELOAD GROWTH AND INCREASED COMPLEXITY OF THE CASES NECE
 5: SSITATE EXPANDED CASE SUPERVISION IN THESE TWO OFFICES.
 6:
 7:
 8:
 9:
10:
11:
12:
13:
14:
15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=115906

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06H213		SALARY COSTS/POSITION:	32419.80
UNAUTHORIZED PCN:		BENEFITS COSTS/POSITION:	10274.33
COMPONENT: 062103310300		TOTAL PERS. SERV. COSTS/POS.:	42694.13
SCENARIO: 1		ASSOCIATED COSTS/POSITION:	9400.00
		TOTAL COSTS/POSITION:	52094.13

JOB CLASS CODE: 4113 CLASS TITLE: SOCIAL WORKER III
LOCATION CODE: AWA LOCATION NAME: JUNEAU
RP NUMBER:
BRU PRIORITY: 0
SEASONAL INDICATOR: F

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 12.0
BARGAINING UNIT: G
SCHEDULE: A
RANGE: 16 STEP: A
RETIREMENT CODE: A
MONTHLY RATE: 0.00
HOURLY RATE: 0.00

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	2.0
CONTRACTUAL COSTS:	5.5
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	1.5
OTHER COSTS:	0.0

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255 TIME=115624

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N213 COMPONENT: 062103310300

NEW POSITION JUSTIFICATION:

```
  1: THIS POSITION IS NEEDED TO RESPOND TO GRWOING DEMAND FOR DIV
  2: ISION CHILD PROTECTION SERVICES; INTAKES IN JUNEAU HAVE BEEN
  3:  AVERAGING 30 A MONTH, AND RURAL INTAKES HAVE BEEN INCREASIN
  4: G BECAUSE OF CP NETWORKING TRAINING.  THE SOCIAL WORKER III
  5: WOULD PROVIDE MANDATED INVESTIGATIVE AND CASEWORK DUTIES; TH
  6: E WORKLOAD STANDARD OF ONE LINE STAFF FOR EVERY FIFTY CASES
  7: WOULD BE MET WITH THE ADDITION OF THIS POSITION.
  8:
  9:
 10:
 11:
 12:
 13:
 14:
 15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=125941

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N214        SALARY COSTS/POSITION:                 9783.90
UNAUTHORIZED PCN:                  BENEFITS COSTS/POSITION:               3642.26
COMPONENT: 062103310300            TOTAL PERS. SERV. COSTS/POS.:         13426.16
SCENARIO:  1                       ASSOCIATED COSTS/POSITION:             5500.00
                                   TOTAL COSTS/POSITION:                 18926.16
JOB CLASS CODE: 1123            CLASS TITLE: CLERK TYPIST III
LOCATION CODE: AEA            LOCATION NAME: CRAIG
RP NUMBER:                                   NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                              MONTHS/POSITION:  6.0
SEASONAL INDICATOR: P                        BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)       SCHEDULE: A
TRAVEL COSTS                0.0              RANGE: 08  STEP: A
CONTRACTUAL COSTS:          2.5              RETIREMENT CODE: A
SUPPLIES COSTS:             0.4
EQUIPMENT COSTS:            2.6              MONTHLY RATE: 0.00
OTHER COSTS:                0.0              HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE    0
```

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=125358

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N214 COMPONENT: 062103310300

NEW POSITION JUSTIFICATION:

1: THERE IS PRESENTLY A SOCIAL WORKER III ASSIGNED TO THE CRAIG
2: OFFICE AND THERE IS NO CLERICAL SUPPORT. THIS POSITION TRAVE
3: LS EXTENSIVELY AS IT SERVES THE ENTIRE PRINCE OF WALES ISLAN
4: D, AND A HALF-TIME CLERICAL POSITION IS NEEDED TO PERFORM RE
5: QUIRED CLERICAL DUTIES, AND TO PERMIT THE SOCIAL WORKER TO I
6: NCREASE THE LEVEL OF DIRECT SERVICES.
7:
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=130515

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N215
UNAUTHORIZED PCN:
COMPONENT: 062103310300
SCENARIO: 1

SALARY COSTS/POSITION: 24859.80
BENEFITS COSTS/POSITION: 8515.62
TOTAL PERS. SERV. COSTS/POS.: 33375.42
ASSOCIATED COSTS/POSITION: 9500.00
TOTAL COSTS/POSITION: 42875.42

JOB CLASS CODE: 1912 CLASS TITLE: ADMINISTRATIVE ASST I
LOCATION CODE: ACA LOCATION NAME: KETCHIKAN
RP NUMBER:
BRU PRIORITY: 0
SEASONAL INDICATOR: F

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 12.0
BARGAINING UNIT: G.
SCHEDULE: A
RANGE: 12 STEP: A
RETIREMENT CODE: A
MONTHLY RATE: 0.00
HOURLY RATE: 0.00

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	1.5
CONTRACTUAL COSTS:	4.6
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	3.0
OTHER COSTS:	0.0

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=130219

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N215 COMPONENT: 062103310300

NEW POSITION JUSTIFICATION:

```
 1: DECENTRALIZATION OF MANGEMENT FOR DAY-TO-DAY OPERATIONAL FUN
 2: CTIONS NECESSITATES AN ADMINISTRATIVE ASSISTANT I TO PERFORM
 3: A WIDE VARIETY OF ADMINISTRATIVE AND FINANCIAL DUTIES WHICH
 4: HAVE BEEN TRANSFERRED TO THE REGION.
 5:
 6:
 7:
 8:
 9:
10:
11:
12:
13:
14:
15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=130937

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

```
SYSTEM ASSIGNED PCN: 06N216        SALARY COSTS/POSITION:                32419.00
UNAUTHORIZED PCN:                  BENEFITS COSTS/POSITION:              10274.33
COMPONENT: 062103310300            TOTAL PERS. SERV. COSTS/POS.:         42694.13
SCENARIO:  1                       ASSOCIATED COSTS/POSITION:             9500.00
                                   TOTAL COSTS/POSITION:                 52194.13
JOB CLASS CODE: 4275          CLASS TITLE: COMMUNITY CARE LIC SP I
LOCATION CODE: ACA          LOCATION NAME: KETCHIKAN
RP NUMBER:                                 NUMBER OF POSITIONS: 1
BRU PRIORITY: 0                            MONTHS/POSITION: 12.0
SEASONAL INDICATOR: F                      BARGAINING UNIT: G
ASSOCIATED COSTS:  (IN THOUSANDS OF $)     SCHEDULE: A
TRAVEL COSTS:                2.0           RANGE: 16  STEP: A
CONTRACTUAL COSTS:           5.6           RETIREMENT CODE: A
SUPPLIES COSTS:              0.4
EQUIPMENT COSTS:             1.5           MONTHLY RATE: 0.00
OTHER COSTS:                 0.0           HOURLY RATE: 0.00
PRESS ENTER TO UPDATE RECORD;
      OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
      OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
      OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE   0
```

FROM TERMINAL HJ55 ON PRINTER HJH5, DATE=84255, TIME=130759

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N216 COMPONENT: 062103310300

NEW POSITION JUSTIFICATION:

```
 1: POPULATION INCREASES TOGETHER WITH A 70% STATEWIDE INCREASE
 2: IN COMMUNITY CARE FACILITIES LICENSED THE PAST 6 YEARS NECES
 3: SITATE ADDITIONAL LICENISING STAFF. THIS POSITION WOULD FUNC
 4: TION ON AN REGION-WIDE BASIS WITH SPECIFIC DUTIES TO INCLUDE
 5:  LICENSING AND SUPPORTING FOSTER HOMES, DAY CARE HOMES AND C
 6: ENTERS, OUT-OF-TOWN INQUIRIES, AND ADOPTIONS.
 7:
 8:
 9:
10:
11:
12:
13:
14:
15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=131522

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N217
UNAUTHORIZED PCN:
COMPONENT: 062103310300
SCENARIO: 1

SALARY COSTS/POSITION: 32419.80
BENEFITS COSTS/POSITION: 10274.33
TOTAL PERS. SERV. COSTS/POS.: 42694.13
ASSOCIATED COSTS/POSITION: 9000.00
TOTAL COSTS/POSITION: 51694.13

JOB CLASS CODE: 4113 CLASS TITLE: SOCIAL WORKER III
LOCATION CODE: ACA LOCATION NAME: KETCHIKAN
RP NUMBER:
BRU PRIORITY: 0
SEASONAL INDICATOR: F

NUMBER OF POSITIONS: 1
MONTHS/POSITION: 12.0
BARGAINING UNIT: G
SCHEDULE: A
RANGE: 16 STEP: A
RETIREMENT CODE: A

ASSOCIATED COSTS: (IN THOUSANDS OF $)

TRAVEL COSTS:	1.5
CONTRACTUAL COSTS:	5.6
SUPPLIES COSTS:	0.4
EQUIPMENT COSTS:	1.5
OTHER COSTS:	0.0

MONTHLY RATE: 0.00
HOURLY RATE: 0.00

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5, DATE=84255, TIME=131404

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N217 COMPONENT: 062103310300

NEW POSITION JUSTIFICATION:

1: THIS POSTION IS NEEDED TO RESPOND TO GRWOING DEMAND FOR MAND
2: ATED CHILD PROTECTION SERVICES, INTAKES IN KETCHIKAN HAVE BE
3: EN AVERAGING 30 A MONTH, AND RURAL INTAKES HAVE GROWN DRAMAT
4: ICALLY BECAUSE OF CF NETWORKING TRAINING. THE SOCIAL WORKER
5: III WOULD PROVIDE MANDATED INVESTIGATIVE AND C/ "EWORK DUTIE
6: S; THE WORKLOAD STANDARD OF ONE LINE STAFF FOR EVERY FTY C
7: ASES WOULD BE MET WITH THE ADDITION OF THIS POSITION.
8:
9:
10:
11:
12:
13:
14:
15:

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=131955

RECORD HAS BEEN UPDATED

NEW POSITION REQUESTS

SYSTEM ASSIGNED PCN: 06N218		SALARY COSTS/POSITION:	19567.80
UNAUTHORIZED PCN:		BENEFITS COSTS/POSITION:	7284.52
COMPONENT: 062103310300		TOTAL PERS. SERV. COSTS/POS.:	26852.32
SCENARIO: 1		ASSOCIATED COSTS/POSITION:	5800.00
		TOTAL COSTS/POSITION:	32652.32
JOB CLASS CODE: 1123	CLASS TITLE: CLERK TYPIST III		
LOCATION CODE: ACA	LOCATION NAME: KETCHIKAN		
RP NUMBER:		NUMBER OF POSITIONS: 1	
BRU PRIORITY: 0		MONTHS/POSITION: 12.0	
SEASONAL INDICATOR: F		BARGAINING UNIT: G.	
ASSOCIATED COSTS: (IN THOUSANDS OF $)		SCHEDULE: A	
TRAVEL COSTS:	0.0	RANGE: 08 STEP: A	
CONTRACTUAL COSTS:	2.8	RETIREMENT CODE: A	
SUPPLIES COSTS:	0.4		
EQUIPMENT COSTS:	2.6	MONTHLY RATE: 0.00	
OTHER COSTS:	0.0	HOURLY RATE: 0.00	

PRESS ENTER TO UPDATE RECORD;
OR ENTER '1' OR PF1 FOR PREMIUM PAY SCREEN;
OR ENTER '2' OR PF2 TO UPDATE SAME REQUEST, NEXT SCENARIO;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

FROM TERMINAL HJ55 ON PRINTER HJH5; DATE=84255, TIME=131800

NEW POSITION JUSTIFICATION HAS BEEN UPDATED

NEW POSITION JUSTIFICATION

SYSTEM ASSIGNED PCN: 06N218 COMPONENT: 062103310300

NEW POSITION JUSTIFICATION:

```
  1: THERE ARE ELEVEN LINE AND SUPERVISORY STAFF ASSIGNED TO THE
  2: KETCHIKAN OFFICE, AND THERE ARE TWO CLERK-TYPISTS. THIS POSI
  3: TION WOULD PERFORM REQUIRED CLERICAL DUTIES RESULTING FROM I
  4: NCREASED DEMAND FOR PROTECTIVE SERVICES AND DECENTRALIZATION
  5: , AND PERMIT SOCIAL WORKERS TO INCREASE THE LEVEL OF DIRECT
  6: SERVICES.
  7:
  8:
  9:
 10:
 11:
 12:
 13:
 14:
 15:
```

PRESS ENTER TO UPDATE NEW POSITION JUSTIFICATION;
OR ENTER '1' OR PF1 FOR MORE TEXT ENTRY;
OR ENTER '12' OR PF12 TO EXIT THIS SCREEN WITHOUT UPDATE 0

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
General Counsel

303 K Street
Anchorage, AK 99501

April 9, 1985

Representative Max Gruenberg, Co-Chair
Representative Niilo Koponen, Co-Chair
House HESS Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Representatives Gruenberg and Koponen:

I am writing with regard to a work draft of CSHB 88, relating to the protection of children, which is before the committee for hearing today. My comments are specifically directed to proposed section 13 (page 6), which includes "court personnel" within the group of persons required to report abuse or neglect of a child.

The court system is opposed to this provision. Court personnel should not be held to a higher duty than ordinary citizens in reporting incidents of this nature, especially given the court's adjudicatory role. This requirement could create the appearance that the court is taking sides in any legal disputes which may later arise. The court system believes its role should be limited to adjudication of cases, and should not be expanded to include a nonadjudicatory reporting function.

This legislation is complemented by CSSB 28, which provides that a person employed by the state who is required to report abuse or neglect shall receive training. Departments are required to develop curriculum for employees including training about laws relating to child abuse and neglect, techniques for recognition and detection, information about agencies and organizations that offer aid, and procedures for notification.

If both CSSB 28 and CSHB 88 are enacted, court system personnel would be required to report abuse, the court system would be required to provide training. The court system would not independently develop training materials, but instead would rely upon materials developed by the executive branch. However, the court system would still have to reproduce and disseminate these materials, as well as provide some minimal training, in the

form of one visit by administrative staff to each judicial district to train supervisors. The total cost of this limited training program is estimated at $4,000. A copy of the court system's fiscal note is attached.

Thank you for this opportunity to provide comments. I will be glad to answer any questions.

Sincerely,

Karla L. Forsythe

Karla L. Forsythe
General Counsel

KLF:amh

cc: Representative Mike Miller
Chair, House Judiciary Committee

Representative Al Adams
Chair, House Finance Committee

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSSB 28
Title: AN ACT RELATING TO REPORTING CHILD ABUSE
Sponsor: FAIRKS
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: ALASKA COURT SYSTEM
Program Category Affected: ADMINISTRATION OF JUSTICE
BRU, Program or Subprogram(s) Affected: TRIAL COURTS

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		2.5	2.7	2.9	3.1	3.3
300 CONTRACTUAL		.5	.5	.6	.6	.6
400 SUPPLIES		1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		4.0	4.3	4.7	5.0	5.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		4.0	4.3	4.7	5.0	5.3
FEDERAL FUNDS						
OTHER						
TOTAL		4.0	4.3	4.7	5.0	5.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: ROBERT G. FISHER, FISCAL OFFICE
Phone: 264-0561
Division: ALASKA COURT SYSTEM
Date: 4/9/85

Approved by Commissioner: Arthur H. Snowden II
Date: 4/9/85
Agency: ALASKA COURT SYSTEM

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

7/1/84

ALASKA COURT SYSTEM

CSSB 28 - REPORTING OF CHILD ABUSE
FISCAL IMPACT

The committee substitute for Senate Bill 28 requires training certain court employees to recognize and report child abuse situations. To implement this bill, the Court System will have to develop and disseminate training materials to employees. Additional travel, postage, and supply expenses will be incurred in fulfilling this responsibility. Travel funds will be needed for trainers to visit major court sites around the state. Postage costs will increase from mailing training materials to other courts. The preparation of training packets for employees will increase supply costs. The following is an estimate of these costs:

TRAVEL - visits to major courts for training	$2,500
CONTRACTUAL - postage costs for mailing training materials	500
SUPPLIES - printshop time and materials for training packets	1,000
Total	$4,000

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: CSHB 67
Title: An Act Relating to Hearsay Evidence
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		255.2	270.5	286.7	303.9	322.1
200 TRAVEL		9.0	9.5	10.1	10.7	11.3
300 CONTRACTUAL		6.0	6.4	6.8	7.2	7.6
400 SUPPLIES		2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT		16.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		288.7	288.5	305.8	324.1	343.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		288.7	288.5	305.8	324.1	343.4
FEDERAL FUNDS						
OTHER						
TOTAL		288.7	288.5	305.8	324.1	343.4

POSITIONS:

FULL-TIME		4	4	4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert G. Fisher / Karla Forsythe Phone: 264-0561/264-0634
Division: Alaska Court System Date: 4/5/85

Approved by Commissioner: Arthur H. Snowden III Date: 4/11/85
Agency: Alaska Court System

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

7/1/84

ALASKA COURT SYSTEM

HB 67 - HEARSAY EVIDENCE IN CHILD ABUSE CASES
FISCAL IMPACT

PERSONAL SERVICES:

	SALARY	BENEFITS	TOTAL COST
Superior Court Judge - Anchorage	$73,620	$82,718	$156,338
In-Court Clerk - Anchorage (Range 12B)	24,512	8,116	32,628
Law Clerk - Anchorage (Range 13A)	25,332	8,299	33,631
Secretary - Anchorage (Range 12B)	24,512	8,116	32,628
Total Personal Services			255,225

TRAVEL (Judicial travel to outlying courts)	9,000
CONTRACTUAL (Word processing equipment, telephone, postage, etc.)	6,000
SUPPLIES	2,000
EQUIPMENT: (one-time items)	
Standard office equipment for all employees and legal reference materials for judge and law clerk.	16,534
TOTAL FY 86 COST	$288,759

Subsequent fiscal years adjusted to reflect 6% inflation.

NARRATIVE

CSHB 67 (HESS)

According to information provided verbally by the Department of Law, the department projects 250 child sexual assault cases during FY 85 (up from 120 in FY 83). The department also estimates that 80 - 90% of these cases would involve the testimony of a minor, and would require the hearing contemplated in paragraph (d). It is further estimated by the department that the majority of these hearings will require one-half day of court time.

Based on these estimates, 225 half-day hearings would require 112 days of judicial time. The department indicates that approximately two-thirds of these cases are heard in Anchorage. Thus, judicial resources would be needed to cover 78 days of judicial time in Anchorage, and 34 days elsewhere in the state.

These hearings would require an additional superior court judge to sit in Anchorage and to cover other court locations. The cost of this position and related court staff are detailed on the previous page, along with the cost of travel to court locations outside of Anchorage.

Robert M. Arvidson, Ph.D.
Box 258
Cordova, Alaska 99574

MAR 5 1985

March 2, 1985

House Hess Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 88, "An Act relating to the protection of children; ...."

Dear Committee Members,

This is a letter of support for House Bill No. 88. I urge passage of this Bill and in the meantime offer the following comments in three areas for your consideration.

Area 1. I suggest that psychological associates should be inserted between "psychologists" and "religious" in line 1, page 12. Psychological associates are not considered psychologists per se, and are licensed separately under AS 08.86. A distinction is made between psychologists and associates elsewhere in the statutes, namely AS 47.30.915 (11).

Area 2. I support Sec. 20 on page 10, but I am concerned that the term "psychotherapist" lacks statutory definition (the concern here is with the definition of psychotherapist as it relates to psychology, not psychiatry). As I understand it, Sec. 20 is a result of issues raised in Alaska v. R. H. and Wetherhorn, 683 P. 2d 269 (Alaska App. 1984). In the decision, Dr. Wetherhorn, a clinical psychologist is acknowledged as a psychotherapist, but this may be problematic for future reference since the psychology statutes (AS 08.86) do not specifically address the issue of specialty designations, such as clinical or counseling psychologist.

Reference is made in the above decision to Allred v. State, 554 P 2d. 411 (Alaska 1976), where psychotherapy and the practice thereof are defined, but this does not solve all conflicts. The Allred court did not extend evidentiary privilege "... to all manner of counselors, social workers, and psychological associates," 554 P 2d. at 418 (the particular focus concerned psychiatric social workers). The problem that I have here is that AS 08.86. 180 (d) recognizes the right of clinical social workers to hold out to the public as psychotherapists. Does this mean that clinical social workers, who are neither statutorily defined nor licensed under Title 8 are included in the exception stated in proposed Sec. 47.17.060 (2) ?

Clinical Social Workers would not typically meet the criteria established by the Allred court for psychotherapist, yet due to the nature of their training and occupational specialty, it is highly probable that these very individuals would be involved in sensitive child abuse consultations and proceedings.

Another area of concern is the exemption granted to qualified members of other professions in AS 08.86.180 (b) (3) where use of the terms psychotherapy and psychotherapeutic is not restricted.

My purpose here is to seek clarity rather than to be critical . The intent of of the section is to clarify existing law, yet application of the "plain meaning rule" might indicate that [illegible] psychotherapists will be granted evidentiary

privilege (due to the recency of various amendments to AS 08.86.180; 1980 and 1983 for AS 08.86.180 (b) (3) and (d) respectively v. 1976 for Allred). Is this the intent of Sec. 20?

As a note , psychotherapy is briefly defined in the Standards cited in 12 AAC 60.185 and the term is used in reference to the practice of psychology in AS 08.86.230. This, however, does not mean that all psychologists licensed under AS 08.86 are qualified as psychotherapists. Specialty guidlines (based on the generic Standards) which shed light on the definition of professional clinical psychologist have not been formally adopted in 12 AAC 60 (see, American Psychological Association, Committee on Professional Standards.*"Specialty guidlines for the delivery of services by clinical psychologists." American Psychologist , 36, 640-651; also available in booklet form).

Area 3. I request an amendment be made to HB 88 to the effect AS 08.86.200 include the provision that those licensed under AS 08.86 must report knowledge of child abuse or neglect as required by AS 47.17.020 (a) (1). My interpretation is that as it now reads, AS 08.86.200 (Confidentiality of Communication) is in conflict with AS 47.17.020 (Persons required to report). The amendment would bring AS 08.86.200 in line with existing law and with Principle 5 of "Ethical Principles of Psychologists;" (see 12 AAC 60.185). I have called this to the psychology boards attention in a letter dated Feb. 27, 198[4] (which should have read Feb. 27, 1985).

Sincerely yours,

Robert M. Arvidson

Robert M. Arvidson

cc: House Judiciary
House Finance
Gov. Sheffield
Rep. Cato
Senate HESS
Sen. Kerttula
Sen. DeVries
Board of Psychologists ... Examiners

* Insert (1981)

TELECOPY COVER SHEET

Rep M. Mike Miller PHONE 465-4990

FROM: Constance Brittith PHONE 225-5068

INSTRUCTIONS: Copy to Rep Taylor + Sund

RECEIVED: DATE: 4/10/85 TIME: pm

SENT: DATE: 4/11/85 TIME: 9:35 am

BY: (YOUR OFFICE & PHONE NUMBER) 225-9675

DISPOSAL OF ORIGINAL: THROW AWAY: _____

HOLD FOR PICK UP: _____

NUMBER OF PAGES 1 (NOT COUNTING THIS COVER SHEET)

Rep. Judiciary Minister Taylor Sund

RE: CS for HB #88 (HESS) In the House Judiciary Committee

DA: 10 April 1985 FR: C. Griffith, Ketchikan

Sec. 47.17.050. IMMUNITY. A person ~~who~~ other than the perpetrator who, in good faith, makes a report under this chapter, or who participates in civil or criminal (JUDICIAL) proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability that (WHICH) might otherwise be incurred or imposed.

DISCUSSION: Even though this ~~kkk~~ section of the bill is obviously designed to protect those who report instances of child abuse, and even though the phrase "in good faith" implies that the defendant may not use this section to gain immunity from his/her own criminal liability, still, to make this quite impossible, I am suggesting adding the phrase "other than the perpetrator" to the wording. It seems redundant, and yet a clever lawyer before a judge who is not keen on punishing someone for this sort of misbehavior might find the loophole and use it. Then the appeal process would have to be used.

I like Sec. ~~12~~ 10, a re-write of AS 47.10.142(c), in this draft. There were all sorts of loop-holes in the original draft.

Sec. 14 adding a section to AS 47.17 (adding .023) is good in ferreting out abuse of children for pornography.

DELIVER TO: JPOM

ORIGINAL
SENT: 04/13/85 TIME: 16:30
FROM: LIOSOL
SUBJECT: POM
PRINT DATE: 04/13/85 TIME: 16:31

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P.O.M.

TO:
REPRESENTATIVES CLOCKSIN, GRUENBERG, HANLEY, HURLEY, KOPONEN, M. M. MILLER, PETTYJOHN, PHILLIPS, SUND, TAYLOR, THOMPSON

FROM:
MARGUERITE LUPORI
329 MAIN
KENAI
283-9479

MESSAGE: REGARDING: HB 98 - CHILD ABUSE

I HAVE A GREAT CONCERN OVER THE SELECTION OF THE CLERGY WHEN IN A COUNSELLING ROLE AND THEIR BEING PROTECTED BY AS 47.17.050. IN MY WORK WITH VICTIMS OF INCEST A HIGH MAJORITY OF THE FAMILIES (PERPETRATORS) HAD BEEN IN RELIGIOUS COUNSELLING FOR AN EXTENDED PERIOD OF TIME; YET REPEATEDLY OFFENDED.

E.O.M.

James F. Harper, Ph. D.
Clinical Psychology
550 West Seventh Avenue, Suite 1310
Anchorage, Alaska 99501
Telephone (907) 276-7004

April 16, 1985

Honorable Max Gruenberg
HESS/Judiciary
Pouch V
Juneau Alaska 99581

Dear Representative Gruenberg:

I am writing you on behalf of the Alaska State Psychological Association as well as myself regarding S.B. 88 which would exempt psychiatrists, psychologists and psychological associates from reporting child sexual abuse at their own discretion. I was informed, just prior to our most recent meeting of the State Association, that such a bill existed. None of the officers present were aware of the bill, nor had any of them been consulted as to the advisiability of such legislation. The opinion of the Executive Committe was unanimous that such legislation was undesirable and possibly injurious to the public.

I have attached the concluding pages from an article by Steven Wolf, Director of Northwest Treatment Associates in Seattle pointing to the significant degree of educational and professional experience needed even to assess the degree of risk posed by a sexual offender, including an incestuous parent. The skills required for treatment are even more exacting. In my own experience from five years of extensive work in this area, including the evaluation of more than 300 offenders, and three years as the founder and co-director at the Treatment Program for Sex Offenders at Hiland Mountain, that there are no more than seven to ten mental health practioners in the State of Alaska who could even approximate the expertise required to know when to report, who to treat outpatient and when treatment is successful.

Please do not hesitate to call should you have any questions.

Yours truly,

James F. Harper, Ph.D.
Legislative Affairs Officer and
President Elect, Alaska Psychological Association

JFH:jn

CC: Paul Turner, Ph.D.
Representative, Mike Miler
Margo Dick

At all points along the fantasy continuum, the offender is justifying and rationalizing his behavior, thereby desensitizing himself to whatever social inhibitions might otherwise interfer with his carrying out his plan of action. This pattern has shown itself, in our clinical experience to be the same regardless of the offense type or the history of the offender. Again, it is not so much how the offenders are different in the style and structure of their fantasies, but rather how they are the same. In any case, once a continuing pattern of sexual acting out is established, the sexual preference cannot be "talked out of" the offender. Other more direct means must be found to alter the deviant patterns of arousal. This is true for virtually all repeat sexual offenders, including incestuous offenders. They share the same general historical and behavioral characteristics that child molesters manifest including a clear pattern of arousal to children. (Wolf, Conte, 1984). They, for example, will begin to recognize their child as a possible sex partner, begin to justify and reinforce their attraction with fantasy, frequently of themselves as the unwitting victim of the child's sexual aggression or their wife's rejection. As their interest in and sexual arousal for the child increases, they increase their interaction with the child, thus beginning to isolate the child from the rest of the family, and increase the probability that the offender will be able to be sexual with the child without the child's having anyone else to turn to.

CLINICAL IMPLICATIONS

Research and clinical experience suggests that individuals identified as sexual offenders are individuals who are acting on a clear pattern of sexual preference in their deviance. This pattern of behavior, once established, is chronic in nature and incorporated both as a result of and as part of the person's personality structure. With the development of one pattern of deviance, others are likely to develop. These qualities point to the need for thorough and comprehensive assessment of the sexually deviant individual along very specific lines. It should also be clear that the sexual offender's self-report is not adequate for this task. It is highly unlikely that any person identified as a sexual offender will, without some outside pressure, reveal the true nature of their sexually

deviant, illegal and inappropriate behaviors to a therapist who is a stranger to them and frequently seen as a potential threat to their freedom. As such, any form of comprehensive assessment of this individual has to include a review of all data available including victim statements, witness statements, attendant assessments of the offender by their therapist or by family members or friends or co-workers, etc. Increasingly it also includes psycho-physiological assessment involving instruments such as the penile plethysmograph (Zucherman, 19) and a clinical polygraph. It means assessing the person's developmental history for clues to the development of the person's personality as examined using instruments such as the MMPI. This also means assessing their past and present environment and behavioral response patterns in order to understand the problem as it exists now.

When one has completed this kind of comprehensive assessment of the sexual offender and understands the historical perspective as it applies to personality and environment, one then has a structure from which one can plan for treating the specific patterns of the offender's sexual arousal/addiction. For example, working wiht the offender to recognize the existance of distortions in his attitudes, beliefs and values (personality) and the role they play in creating and justifying his deviant behavior. Also working with him to recognize the role of his own childhood experiences (Potentiators) in creating these attitudes, beliefs and values. Next, working with the offender to recognize the cyclical/addictive nature of his deviant behavior including recognizing it and understanding the role of his personal disinhibitors in the maintenance of his sexual deviance. Then working with the offender to recognize and inhibit his deviant sexual behavioral preferences.

The above represents a number of different areas of therapeutic concerns, each with its own therapeutic approach. At our agency we use a combination of confrontive group therapy, "traditional" insight talk therapy, family therapy, couples therapy and cognitive behavioral counterconditioning and aversion therapies to address these needs. In each case we work to establish the developmental sequence of the deviance, work to inhibit or make aversive the deviant arousal and to strengthen the offender's

interpersonal skills and values. This comprehensive approach has shown itself very effective in lowering our clients' levels of deviant arousal, as measured by the penile plethysmograph and polygraph. It has also shown a good level of success in limiting their return to sexual aggression. However, this is still an experimental approach. Long term results (beyond ten years) have not been observed.

Based on this model, treatment of this population is neither easy nor rapid. it means in a very real sense oftentimes extensive reparenting of the individual offender to ameliorate the influences of Potentiating Factors. It means working with him and his family or extended family in restructuring their attitudes and beliefs about men and women, about adults and children, and about sexuality to provide a more appropriate/nonabusive atmosphere in which they can live.

It is my hope that my presentation of this theoretical model will be of some utility to the treatment community in assessing and working with this difficult and dangerous population. At the very least I hope that some of it has made enough sense to generate further research to either corroborate or disprove my offerings. From my own point of view, additional research is certainly needed in the area of personality assessment as well as psychophysiological assessment of identified offenders and identified "normals". It also seems important that we begin to look more closely at victims in terms of the impact of this behavior on nonoffended as well as offended family mambers. This is especially true in terms of the impact of this kind of experience on male children since statistically they are the most likely to grow up and become offenders themselves. Further exploration in the area of values and attitudes acquisition of children and adolescents would also seem to be a fruitful area of research. Finally, I would most like to see an increased effort made by all clinicians to keep and share data, through published articles, their experience and data gathered from their work with clients. It is my hope that the model I have presented will be of some assistance in generating that kind of cooperation and further research.

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McGuire, R.J., Carlisle, J.M. and Young, B.A.
1965 "Sexual Deviation as Conditioned Behavior: A Hypothesis. Behavior Research and Therapy 2, 1985-90.

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Silver, S.
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Skinner, B.F.
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1958 "Psychotherapy by Reciprocal Inhibition". Stanford University Press.

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Although I am in favor of house bill 88 being completely rewritten, the following is to me the things that should be immediately changed. I am going to list the 7 things that really bother me and then I am going to offer solutions to you that would still meet the goals of the legislature as mentioned in HB 88, that is: ① protect children + ② preserve family life.

1) incest is not separated from sexual assault
2) preservation of families is mentioned but not provided for (you ignore it)
3). no treatment or rehabilitative programs are mentioned for incest offenders
4) no diversion program is offered
5) Incest is not considered an illness as is drug abuse or alcoholism. Victims of the latter two can walk into a treatment center/hospital + get help; incest offenders are jailed.
6) Ministers, social workers + professional counselors should be able to help families of ~~incest~~ child abuse receive proper treatment instead of having to report them.
⑦ Background checks is going to create problems for fathers who may have been guilty of incest, reformed, + are now seeking jobs to support their families.

After I wrote the following solutions I went to the law library in Anchorage and looked through the Arizona and California statutes. I would like to ask you to consider the Arizona statutes Volume 2 # 8-248 pages 1050, 1051 and 1052 titled "Article 5 Family Counseling Programs". Also on page 1050 please note the historical note. I had never used the law

library before or the statutes and was not aware that I had to check the addendums for the most current laws, so I do not know if this program is still in effect. However I do know that you have all the states statutes available to you and that you can find out this information before I am able to return to Anchorage. Also in the California statutes, pilot programs were started for treatment of offenders. Volume 14200 - End pages 339 - 348. In the Child and Family Protection legislative package put together by Bettye Fahrenkamp and others, it says that there are 400 cases of sexual assault a year. According to Parents United, a counseling organization in Anchorage, 85% of all sexual assaults are incest. That means that 340 offenders are jailed for incest. As you know it costs about $100.00 a day to house these offenders in the state's jails or $30,000.00 a year per inmate. For a year that would amount to approximately $10,200,000.00. Would it cost that much to set up and operate a treatment program for incest offenders? I refer you to paragraph 5 of the legislate freedom petition which is enclosed; also to previous testimony sent to the house hess committee which is also enclosed.

If you find the following solutions too simplistic ~~I would ask it~~ or with too many loopholes I would ask that you write to me as I am not as well educated as you are but I would welcome

the opportunity to continue to do research and help you or work with you so that pro-family solutions could be put into effect that would ~~still~~ insure that families were preserved BUT that children would be protected!

Solutions

1) Separate incest from sexual assault

1. For those who are pending trial, ask them if they want counseling. If they are willing to attend counseling, put them on strict probation: must see a probation officer at least once or twice a week. Counseling sessions should be at least once weekly; perhaps twice weekly. Such up a diversion program such as is provided in the Oregon statutes page 1400: ORS 135.891, 135.896 and 135.901.

2. For those who are presently serving sentences for incest. Review their sentences by reading the presentence reports, court records etc., then interview the family. If the family wants the offender released, he should be released according to the conditions mentioned in #1 (above); however, counseling should be MANDATORY instead of voluntary. BUT the offender should have the right to decide if he wants individual or group counseling. A simple form such as is used now to determine if a person qualifies financially for a public defender could also be used to determine if the family or the state should pay for the counselor. The offender of course should be on strict probation as also mentioned above (#1). These offenders should be released under

suspended imposition of sentence; the conditions being that if probation is violated or if remolesting occurs, the remainder of the sentence is served presumptively. Possible interviews by licensed social workers with the victim (AND WITH the presence of the non-offending parent) could be conducted monthly to make sure that no remolest occured.

3. If incest and sexual assault were separated and as incest is a non-violent crime, these offenders could then qualify for the correctional restitution centers provided for in House bill 85. As the review process as suggested in #2 could take a long time, these offenders could be in the restitution centers and on work release programs, ~~thus~~ until their released as also mentioned in #2 was granted. This of course would reduce the amount of money being spent to house these ~~decen~~ offenders as well as the welfare payments being made to the families of these molestors.

4. Gail (I don't know her last name) at the Alaska Juvenile Crime Commission says that they are also anxious to have sexual assault & incest separated because it is hard to get a conviction of molesting outside of the family. A woman came to one of our VOCAL meetings and told us that they had proof that her granddaughter was molested but because ~~the~~ this group has not molested any other children the prosecutor won't take the case to court. As the testimony of one 3 1/2 year old

enough for a conviction? Yet incest is easy to get a conviction on. If you can't consider the needs of the families, at least do it (separate them) for the benefit of the juvenille Crim. Commission.

2) Treatment or rehabilitation programs

The judge who ruled in the Cleary suit has ordered the defendents, one of whom is Commissioner Endell to make a study of the jail overcrowding and what he is going to do about it. Because the legislature cut the funds to build and expand jail facilities and because it costs $100.00 plus a day to house an inmate, the legislature should be considering rehabilitative programs which would save the state millions of dollars.

Dana Fabe, public defender, mentioned the Child Sexual Abuse Treatment Program established by Henry Giaretto in California, and Al Sharp sent you a fact sheet published Nov. 1984 that said that less than 1% of the incest offenders ever repeat the molesting. A training manual written by Mr. Giaretto is mentioned on the fact sheet and available for $26.00. You should study this; have Mr. Giaretto speak to your committee or the whole Congress if possible, and then, if appropriate, the program should be adopted as ① a solution to jail overcrowding ② a cost effective alternative to the millions you are paying to house an inmate in jail and ③ an effective method for protecting children and Preserving families. You should also contact Oregon and find out what kind of treatment program is offered through their mental health division as outlined in their statutes:

135.930, 135.935, 135.940, 135.945, 135.950, pages 1400-1402.

3) Preservation of families is mentioned but Ignored

In house bill 88 and the Child & Family protection legislative package, preservation of families is totally ignored. Families are secondary. Families can be preserved, the bill says, if it is in the best interest of the child. Why does the government get to decide what is in the best interest of the child? And why isn't the child asked what she wants? After the father is jailed, the child is never asked what she wants. Incest is an illness and a family problem. If early help is available, the offender and the whole family can be helped. Henry Gharetto's program treats the entire family. This is why you should seriously consider it; because it will provide that children are protected, and will teach parents to be caring and effective. Reread the fact sheet and order the training manual.

4) No diversion program is offered

Although not much detail is given in the Oregon statutes, having a diversion program is a good idea because it gives families an opportunity to get help if they sincerely want it. According to the Oregon statutes, if the offender violates the diversion agreement, criminal proceedings resume. If you will read paragraph 2 of the legislate freedom petition, you will notice that we had a similar idea in mind. We suggest that

probation and counseling should be considered before a jail sentence; that a court room should be considered as a last resort in many cases. If I interpret the Oregon statute on diversion (ORS 135.881, 135.886, 135.891, 135.896 & 135.901) correctly, the diversion program is a form of probation and for incest offenders would be most appropriate. Also I recently heard that Colorado has a very good diversion program but have not been able to get a copy of it yet. Please don't pass house bill 88 until you get a chance to study these diversion programs.

5) <u>~~Incest~~ Incest SHOULD be considered as an illness as is Alcoholism or Drug abuse</u>

At least 5 or 6 times a day, the radio plays commercials for drug addicts and alcoholics so that these people can go and receive help. These people can admit to having a problem, go to a hospital, get cured and their families are pulled together and blessed. If an offender admits that he committed incest he will go to jail and perhaps <u>never</u> receive treatment or counseling because it isn't offered in all the jails. If incest was viewed as morally or ethnically <u>wrong</u> and legally as an illness instead of a crime, then treatment centers could be established to help <u>these</u> families ALSO, instead of forcing them apart. Because of the great rush the legislature has to pass house bill 88, I don't have time to compare Mr. Giaretto's program with anyone elses, but certainly <u>that</u> program is better than nothing. Besides that it works and in fact its effective rate should be very impressive to you. Until

you have had a chance to revise house bill 88 & include some of these things in it, Please don't pass it.

6) Priviledged information

Ministers, social workers and professional counselors should be able to help families of child abuse receive proper treatment, instead of having to ~~support~~ report them.

During the first teleconference that the hess committee held on house bill 88, a man by the name of Monty Slusher testified about clergy having to report cases of abuse. He basically stated that if you can't trust a preacher, who can you trust? I think the vast majority of people feel that way. A person faced with the problem of incest or any accusation of child abuse may go to a minister for a number of reasons: ① trust ② advice ③ help. When I say help I mean for a specific problem. If someone has an outragous temper and they abuse their kids, they may know it but not how to control their tempers. Surely a minister who reads & studies the scriptures could help a person who may recognize himself as abusive but doesn't know what to do about it. If the minister could help, he has helped the whole family but if he reports it, he has destroyed not only the trust of that person but anyone else who may find out that he turned that person in. Professional counselors and therapists also may be a great aid in teaching potentially abusive parents how to deal with themselves. If people are unafraid,

they are more willing to admit that they have a problem and more willing to seek help. In this way more children could be protected. There are MANY children who are abused but as the laws get more & more published, less parents will come forward. In order to preserve their families, more & more people will hide it. Ministers, professional counselors and social services should not be required to report child abuse cases, but instead should help the entire family including the offender receive the necessary treatment.

7) Background checks

Although I really appall sexual assault and view incest as a totally separate and distinct offense, I worry about the background checks legislation that has been added to house bill 88. I dont have a solution to offer. Perhaps I just would like you to consider another alternative. Because if a father has been convicted of incest and he is on probation, he is going to find it virtually impossible to get a job. Almost all jobs in some way deal indirectly at least, with children. I think that someone on probation should have a fair chance for employment. Perhaps you could require a letter from a probation officer and a counselor but I definitely think that even a convicted father needs to be able to be responsible for his family. Not being able to find a job is going to cause marital problems and possibly considerable depression as most men naturally feel a responsibility

to be the breadwinners for their wives and families.

I look forward to finding out if you feel my solutions are reasonable and your willingness to consider rewriting House Bill 88 instead of passing it, as is.

I thank you for reading this.

Sincerely
Mrs. Lynette Drumbarger

Previously sent to House Ness committee during the 1st teleconference they had in February: (house bill 88, hb 67 & hcr 2)

I noticed that none of these bills separate incest from sexual assault and I urge you to please consider that for the sake of the family and also because they are different. "Incest is a psychological (behavorial) disorder and can be treated. It may be necessary to remove the perpetrator from the home for a period of time but the perpetrator is generally no danger to society. He should in all ways possible be allowed and required to support the family financially. Incest occurs between two relatives who have known one another for a long time. There is a strong 'bonding' relationship between the victim and the perpetrator. This is due because of love & dependency for the incestious perpetrator. Generally in most incest cases there is no violent physical attack. Whereas in sexual assault the act is almost always violent. Because of this 'bond' incest happens many times and the victim is reluctant to report it. Whereas in sexual assault or rape there is no bonding relationship and in most cases it is reported immediately. Therefore the victim is only (usually) assaulted one time. Most incest victims only want the act to stop and stay with the family. Whereas most sexual assault (rape) victims want the perpetrator to receive a long jail term."

Once the molestor is jailed, if he was the financial support for the family, the family now becomes destitute. If they qualify for

welfare and not all do, they become an additional burden to the taxpayers who are already supporting the ~~mall~~ molester at sum of $100.00 plus a day.

But the worse part is emotionally. With the physical splitting up of the family, the children are left with either one parent or in foster homes, thus creating what an article in the Plain Truth magazine terms as latch key children. Latch key children are defined as children who are left alone at home for long periods of time or deprived of at least one parent. "Because they carry their own house key, they've been given the name latch key children, a name acquired from the common word used years ago for house key."

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

Problems a Natural Result

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

Penal institutions are filled with errant youths. For the most part, they've gotten into trouble because they've lacked proper parental guidance and supervision. They've been latchkey children during major portions of their growing years.

Teenagers' ability to be confident and trusting, to have affection for their families and be able to master inner feelings and impulses, has been on a steady decline since the 1960s. That's made clear in a U.S. survey of two groups of teenagers by psychiatrist Daniel Offer and psychologists Eric Ostrov and Kenneth I. Howard.

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

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

Basically Negative

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

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

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

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

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

Father's Importance

Fathers should especially consider their relationship with their children.

Dads must go out of their way and make a concentrated effort to spend time with children. Work and business concerns, as well as a barrage of outside-the-home activities, usually leave fathers with insufficient time to spend with children.

It can be a major irony. A father can think he himself needs to work long hours to give his family and children the best. In reality he may be denying his family and children what they need most—Dad.

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

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

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

What are you doing by jailing these incest offenders and thus creating latch key children when you clearly have another good alternative which even better meets your objective to protect the children and yet preserve family life?

Page 8 line 23-27 of HB 88 states that your intent is to preserve family life whenever possible. If this is ~~but~~ truely your goal, consider these alternatives to incarceration:

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

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

I would like to elaborate on strict

probation. Ideally I think the molestor should be required to report to a probation officer 3 times a week; however, depending on how many were released this could put a great strain on the probation offices, so I am proposing that a probation officer should be seen at least once weekly and that the molestor should be involved in a counseling/treatment program also at least once weekly. Regular interviewing of the victim (possibly once weekly also) should also be conducted as a means to insure that the molesting is never repeated and that if it does, the molestor should then be immediately jailed until the child is fully grown and out of the home. Length of time for continuing strict probation should be determined once yearly by a complete psychological evaluation to determine if a behavior change has taken place and the molestor is now "cured". Some molestors could well be off probation and through treatment within a very few years while others would be on strict probation and treatment until the children were grown and out of the home. But even this would not disrupt the family or create latchkey children as throwing these molestors in jail does.

The list of alternatives to incarceration suggests in addition to probation that the molestors live anywhere from home for a period of time and/or that visits with the family be on a controlled basis. I would suggest that this is a more extreme solution

than strict probation but certainly a valid proposal. I believe that in cases of often and repeated molesting, rape or real physical abuse and trauma that in addition to strict probation and treatment, the molestor should have to live away from home and only be able to visit the family on a controlled basis such as chaperoned.

Who decides severity of cases? We at least agree that incest varies in degree of severity. We are being legislated to death. allow the spouse and the victim freedom to decide if they want the molestor removed from the home (he should still be required to support the family financially) or if strict probation and counseling/treatment is enough. The victim and the spouse may need counseling to help decide this, but the decision should be theirs; not the governments' or the courts'.

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

Repeated offenses should require mandatory jail until the children are grown + out of the home -

Now: those that are in jail because of the present law. The present law says that sexual assault in the 1st degree is a class A felony but page 1 of HB 88 makes it a class C felony & 2nd degree a class A misdemenor. You have people who are in jail serving 15-20 years because sexual assault in the 1st degree is a class A felony; mandatory 15 years per count. If this House bill 88 becomes law & sexual assault in the 1st degree was made retroactive & considered a class C felony, these people could serve 4 years in Eagle River in a treatment program & then released.

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

We the undersigned citizens and voters want to see incest and sexual assualt separated from each other. In cases of sexual assualt there is usually one victim and that victim is harmed once but in cases of incest the whole family becomes the victim of the state and the victim is harmed twice: once by the molester and then again by the state. In cases of sexual assualt, not of incest, the victim's and the family's rights are not taken away and they are not forced to testify. In cases of incest it is most common that the victim's rights and that of the family are taken away and it is common also that the victim is forced to testify against a family member, and any other family member also, to the state's satisfaction, are forced to testify than are separated.

We further believe that incest should be regared as an illness such as alcoholism or drug abuse. In cases of incest there should be a maximum two year sentence and mandatory counseling, and that repeat offenders of incest may then be considered to fall under the presumptive sentence. And considering the severity of individual cases, that probation with the appropriate counseling should be considered before a jail sentence. A courtroom should be considered a last resort in many cases.

Additionally, the family's rights or freedoms should never be violated. Family members should have the right to press charges and testify if they so desire, and to be protected when they request it. However those who don't want to press charges should not be forced to. Contrary to the opinion of the existing laws, individuals are intelligent enough to make wise decisions by themselves concerning their family. Families that seek counceling should be able to receive such without the threat of jail.

Sexual assualt, child abuse or molestation are not being condoned here; it is the family unit that is condoned. The family unit is the most important part of society but the most vulnerable and abused. The family unit must not be forced to destroy itself by the state forcing the family members to testify against each other. The seriousness of incest should not be overlooked, but neigher should the family unit in such cases, and their vulnerability to actions taken by the state.

We would also request that all those presently serving sentences for incest have their cases reviewed, that family members be interviewed, the victim's statememts be more seriously considered; the molesters afterwards to be interviewed to decide whether a release should be considered or denied. Qualified counselors should have the deciding factor in whether the sentence is reduced or if release on probation is appropriate.

There are equal rights for blacks, women, and even dogs; victims have equal rights and so do their families except in cases of incest. Should not the family unit have equal rights in this society or is it all going to the dogs?

NAME	ADDRESS AND PHONE	OCCUPATION	AGE
Helen Daniels	500 Gold Key Ln	House Wife	29
Lynette Drumbarger	General Delivery Wasilla, AK 99687	homemaker	35
Charleen Jones	SR 5439-K Wasilla	sales clerk	30
[illegible]	GEN DEL WASILLA, AK	WORKER	32

LEGISLATE FREEDOM

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NAME	ADDRESS AND PHONE	OCCUPATION	AGE
Stephen R. Beals STEPHEN R. BEALS	P.O. Box 770769, Eagle River 99577	Ordained Minister	51
Carole Beals CAROLE BEALS	P.O. Box 770769, Eagle River 99577	Housewife	51
Jeannette Lerbert	2610 TOKOSITNA DR E.R 99577	Homemaker	42
Robin Kay Franklin	Chugiak P.O. Box 770693 E.R. 99577	Chaperone	29
Rosemary Knapper Rosemary Knapper	P.O. Box 670157 Chugiak, AK 99567	Housewife	41
Eleanor Corey	SR1 Box 1012 Chugiak, AK 99567	Homemaker	36
Patricia M. Swenson Patricia M. Swenson	P.O. Box 771243 Eagle River, AK 99577	Real Estate Agent Reg Nurse	32
Carol J. Herbrick	1011 Friendly Lane #B Inch, AK 99504	College Student Homemaker	38
[illegible]	P.O. Box 770767 Eagle River, AK 99577		39

LEGISLATE FREEDOM

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NAME	ADDRESS AND PHONE	OCCUPATION	AGE
Maria Gonzales	5303 W. 23rd Ave	Fruitcart	28
Joan Kennedy	SRA Box 6227H Palmer, AK	Resp. Therapy	35
[illegible]	SR 5385 Wasilla, AK 99687	Computer	23
Thomas D. Allen	Box 771522 694-3180 Eagle River, AK 99577	Aircraft Mech	36
Patricia J. Brown	8427 E. 6th Ave Apt. 1 Anch. AK. 99504 333-5046	housewife	28
Carol S. Stein	2621 N. Tahiti Apt. 23A Anch. AK. 99507	Home Maker	37
C.E. Wirth	Box 3583 Palmer	CONTRATOR	40
L Buck	Box 17064 Big Lake	CONSTRUCTION	30
[illegible]	[illegible]	[illegible]	13

Talkeetna Christian Center

Box 282, Talkeetna, Alaska 99676 • 907-733-2360

Preaching JESUS CHRIST the same yesterday, today and for ever

Rep. Mike Miller HESS

Alaska State Legislature

3/13/85

Dear Mike,

I am writing as a Pastor in regard to H.B. 88. " An Act Relating To The Protection of Children" requested by the Governor.

The Bill as it is now written would have the immediate effect of stopping all Pastoral Counseling regarding child abuse. No member of any congregation would come to seek help from a Pastor, as they should, if they knew he would immediately report them to the State Authorities. I as a Pastor, given the charge by God to counsel these people do not feel that it is proper or correct that I must at pain of imprisonment give up that responsibility to the State.

If someone comes to me, or as has happened in the past I receive a report of abuse in my congregation,I immediately check it out. Upon determining the facts I begin whatever counseling is appropriate. Rest assured that I, or any other Pastor watching over his people would report any case immediately when the people involved would not be willing to counsel and deal with the problem. That is the proper time to do so, not at the initial report to me.

As someone submits to Biblical Counsel, they must be allowed to deal with the problem without outside interferance. The Bill recognises that a psychotherapist may have that privelege, how much more should the State recognise the sanctity of the Pastor-Counselee relationship?

Line 26 and 27 of Sec 47.17.060 Should be deleted.

Also., I am very concerned about the term "Mental Injury. It is far too vague to be included in Law.

In a church, we must maintain the right to deal within the limits of our faith, with the people willing to do so. Please do not take the responsibility from us through this legislation.

Yours Sincerly,

Jim Hale

CC. Katie Harley
Governors Office