

S B

r i

TO: BETTYE
FROM: SANDRA

JANUARY 21, 1985

SB 21 RELATING TO BACKGROUND CHECKS ON CERTAIN EMPLOYEES WHO COME INTO CONTACT WITH CHILDREN.

1. WHO WILL BEAR THE COST OF PROVIDING BACKGROUND CHECKS?

(Currently State is absorbing cost of State record checks and charging the requestor \$12 for the F.B.I. record check. If background checks are mandatory, number of requests will increase dramatically,) with resultant increase in cost.

2. SB 21 REQUIRES THAT BACKGROUND CHECKS BE PERFORMED BEFORE HIRING; WILL THIS CREATE DELAYS?

To date, Dept. of Public Safety (Crime Lab) has received about 1500 requests for background checks and has another 1000 pending. About 25 have had criminal records, but no convictions for sexual abuse. Processing is backlogged now because of sheer numbers. Takes up to a month to do the state check, and 2-4 weeks (concurrently) to do the F.B.I. check.

3. RECORDS OF CONVICTIONS CAN BE RELEASED. WHAT ABOUT RECORDS OF ARRESTS AND CHARGES?

No. Governor's proposed bill (HB 88) would allow for release of outstanding arrest warrants.

4. IS IT LIKELY THAT THE BACKGROUND CHECKS ALLOWED UNDER CURRENT LAW WILL TRULY IDENTIFY CHILD MOLESTERS AND SEXUAL OFFENDERS?

Debatable. Many offenders have never been convicted, and only convictions can be released. In addition, misdemeanor records are only kept for 7 years; felony records for 10 years. Plus, only those crimes on the attached list are covered -- note that child abuse is not one of them.

Governor's legislation would enhance the background checks by expanding on those crimes covered and by allowing release of warrants.

5. ARE WE INCLUDING ALL THOSE EMPLOYEES THAT SHOULD BE CHECKED? WHAT ABOUT SCHOOL TEACHERS?

Ferguson's intent is to reach early childhood programs; purposely excluded school teachers. Rep. Phillips has introduced HCR 2, which would encourage school districts to perform background checks.

SCR 3 - Devries (same as Phillips)

6. IT IS MY UNDERSTANDING THAT FEDERAL TRAINING FUNDS (TOTAL \$25 MILLION) TO FIGHT CHILD ABUSE WILL BE AVAILABLE TO STATES WHOSE DAY CARE EMPLOYEES UNDERGO CRIMINAL RECORD CHECKS THIS YEAR. SHOULD WE BE PUSHING TO PERFORM THESE CHECKS BY THAT DEADLINE? HAS THE DEPARTMENT INVESTIGATED JUST WHAT FUNDS WOULD BE AVAILABLE?

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
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Senate Committee on Health, Education and Social Services

March 25, 1985

Senator Frank Ferguson
Pouch V
Juneau, AK 99811

Dear Frank:

I want to formally thank you for introducing Senate Bill 21 and providing the Senate Committee on Health, Education and Social Services with an opportunity to review the concept of criminal history record checks.

Senator, I share your concern for protection of our children, and agree that mandatory background checks are an important part of an overall solution to the ever-growing problem of child abuse in this state. However, as you know, the proposed committee substitute for SB 21, which is the product of our bi-partisan, bi-chamber working group on child protection, does not mandate criminal history checks on child care employees.

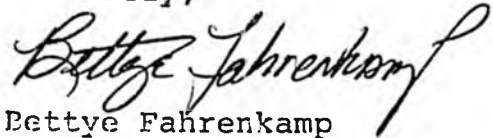
Several concerns regarding mandatory check remain unresolved. Specifically, we must address the fact that under current state licensing law many of our children are cared for in unlicensed child care facilities, and many others participate in youth oriented organizations which are outside of state oversight, such as Camp Fire Girls, Little League, and Big Brothers/Big Sisters. Also unresolved is how to cover the \$20 cost associated with each background check, how to provide for the 8-10 week period for processing each check, and the importance of balancing civil rights protections of adults with the rights of our children for protection.

Time constraints and the need to develop legislation that would have minimal fiscal impact prohibited the working group from resolving these concerns. However, this does not indicate a lack of commitment on my part to addressing this issue, and I fully intend to take a broader, more thorough look at mandating criminal history record checks during the 1985 legislative interim. I look

Senator Ferguson
March 25, 1985
page two

forward to working with you, Senator, in the development of legislation that answers these concerns and provides us with an effective tool for combatting child abuse.

Sincerely,

A handwritten signature in cursive script that reads "Bettye Fahrenkamp". The signature is written in dark ink and is positioned above the typed name.

Bettye Fahrenkamp
Chairman

BF/ss

Superseded

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 21 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

10 (a) Notwithstanding any other provision of law, an interested
11 person [AS DEFINED IN (e) OF THIS SECTION] may request from the com-
12 mission records of all convictions of an individual for crimes that
13 might pose a risk of harm to a child if the individual [INVOLVING
14 CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND ANY SEX CRIMES OF A
15 PERSON WHO] holds or applies for a position in which the individual
16 [PERSON] has or would have supervisory or disciplinary power over a
17 minor. The commission shall authorize the disclosure of the informa-
18 tion to the requesting interested person and shall provide a copy of
19 the information to the individual [PERSON] who is the subject of the
20 request.

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

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

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

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

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

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

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

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

22 Sec. 47.35.058. INVESTIGATIONS OF PROSPECTIVE FOSTER HOMES. The
23 department shall request a state and national criminal record check on
24 each adult residing in a home before that home may be licensed as a
25 foster home.

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

need to get at adults in day
care home.

DFYS
DRAFT
3/28/85
CS SB 21 (HESS)

contract for fingerprinting in smaller communities.

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

Sec. 47.35.058. CRIMINAL RECORDS BACKGROUND CLEARANCE.

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

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

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

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

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

per Ketchikan case

only foster homes where children in state custody. most adoptions private - 50 not paying.

800x2 no state not part

*1000+ foster parents
800+ day care facilities (600 homes, 200 centers)
Hunted # of lawsuits in homes.*

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

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

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

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

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



Fairbanks North Star Borough

FEB 18 1985

Mayor: B.B. Allen

February 12, 1985

Representative Randy Phillips
Alaska State Legislature
Pouch V
Juneau AK 99811

Dear Randy:

I enjoyed our telephone conversation recently concerning House Concurrent Resolution #2 relating to background checks on school district employees who come in contact with children. As we discussed, I would appreciate and request the words, "school district employees" be substituted by "government employees".

Last year our Borough had the unfortunate experience of having two employees, who were held in public trust, indicted and convicted of child molestation. I am convinced if information were available and that data was checked these child abuse incidents in our community would not have happened. The difficulty in background checks are many and I would like to share my thoughts on this with you.

A.S. 12.62.035 is the source statute authorizing the disclosure of court convictions dealing with "sex" crimes or "contributing to the delinquency of a minor" for those people who, as part of their job, have supervisory or disciplinary authority over minors. No other information may be provided under current statutes. For example, the public employer could not obtain records information relative to a convicted seller of narcotics. One of the child molesters mentioned above had a substantial record of police investigations for sexual offenses involving minors, but this information would not have been available to the Borough since it did not deal only with convictions. It is my own conviction that public employees should be held to a higher standard than private sector people, and because they have an inherent public trust, they do not have an all-inclusive right to privacy.

Randy, and members of the House Health, Education and Social Services Committee, I strongly urge your individual and collective support for the aforementioned resolution. Many crimes against the young and innocent appear unpreventable, but at least legislative intent and policy as directed by House Concurrent Resolution #2, is a positive step to reduce

Letter to Representative Randy Phillips
February 12, 1985
Page Two

such immoral activities by those who are held in a position of trust by the young people of our state.

Your favorable consideration will be appreciated.

Sincerely,



B.B. ALLEN
Borough Mayor

BBA:a1

cc: Rep. Niilo Koponen
Senator Bettye Fahrenkamp ✓
Editor, Fairbanks Daily News-Miner
Editor, Anchorage Times
Editor, Anchorage Daily News
Editor, Juneau Empire

ORIGINAL

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

1 IN THE HOUSE

BY PHILLIPS

2 HOUSE CONCURRENT RESOLUTION NO. 2
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 Relating to background checks on school
6 district employees who come into contact
7 with children.

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

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

11 WHEREAS existing law permits employers of individuals having contact
12 with children to obtain certain information on convictions of these indi-
13 viduals relating to sex crimes (AS 12.62.035);

14 BE IT RESOLVED by the Alaska State Legislature that local school
15 districts are encouraged to implement appropriate background checks on all
16 school district employees who come into contact with children.

POSITION PAPER
SENATE BILL NO. 21

Superseded

For an act entitled "An Act relating to background checks on certain employees who come in contact with children."

This bill will require an employer to do a criminal history check, through the national FBI records, on an employee applicant who will have "supervisory or disciplinary power over a minor" in licensed residential child care facilities, child day care facilities or child foster homes. The bill has the potential to prevent some cases of child sexual abuse by identifying persons who have endangered or harmed children in the past.

The bill as written raises several ambiguities. The cost of the federal records search (\$12) and of obtaining employee applicant fingerprints is apparently to be borne by each employer. However, the bill is not clear whether the employer must only request the background check before hiring the employee, or whether the employer must wait for the result of the background check, which takes a minimum of eight weeks. Also, if the employer hires the applicant while waiting for the background check but negative information does come forth, is the employer obligated to fire the employee, and will the employer be protected when doing so? If this bill is to become law, the department urges the legislature to eliminate these ambiguities.

Under licensing responsibilities contained in AS 47.35, the Department of Health and Social Services has long sought ways to reduce risk of harm to children and dependant adults who must receive care outside of their own homes. For the past two years the Division of Family and Youth Services has been doing criminal history checks, using Alaska records, not national records, on all foster home license applicants and adult members of the licensee family living in the foster home, and on all administrators in residential child or adult care facilities.

Currently public concern has focused on criminal background checks as a method to reduce child sexual abuse in child care settings. The national trend is for states to develop stricter regulations for criminal clearance of child care workers. Through a grant program, the federal government is encouraging states to fingerprint all day care workers so that potential abusers are not hired, but the grants being offered to states do not begin to cover the cost of such programs.

The public has met the proposed review of criminal histories with a mixed response. Many early childhood program operators and parents in Alaska have asked the department to commit itself to stricter scrutiny of all employees who work with children. On the other hand, employee groups and individuals, as well as facility operators, are concerned about privacy rights and logistical problems in using a background check system. Not only is this proposal subject to debate, but as Betty Caldwell, president of the National Association for the Education of Young Children, recently stated at a Congressional hearing:

Position Paper
SB 21
Page 2

Fingerprinting day care providers and running criminal checks on prospective employees may catch an incidental individual who should never have been allowed into a child care program.

But shortcut solutions of this nature will fail to address the underlying and far more pervasive problems: the low status and inadequate training of child care providers, insufficient encouragement of parental participation and meager resources for the implementation and monitoring or qualitative improvement in all types of child care arrangements.

The department supports attempts to reduce child sexual abuse. However, the department urges this committee to hear from all private and public agencies and individuals involved in this area to obtain their comments on the difficulties and possible hardships of such a new policy. Specifically, the department urges this committee to hold a public teleconference on this issue, inviting child care operators to share their concerns about the cost and delay inherent in requesting and waiting for criminal records check on all potential employees. In addition, the committee would wish to hear from the Department of Public Safety which this department understands will submit a fiscal note concerning the cost of such a program. The cost for this new program is not in the Governor's proposed FY 86 budget. Also, the Governor's Criminal History Working Group has expressed concerns over procedural and legal aspects of history checks.

Protection of children is an extremely important goal. However, in order for criminal history clearance checks to be effective, a commitment must be made to the total cost required in money and time, both public and private, to not only obtain the information but to take effective action upon negative information.

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

DATE: 1/24/85

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

DATE: 1/24/85

1 IN THE SENATE

BY FERGUSON

2 SENATE BILL NO. 21

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to background checks on certain
7 employees who come into contact with children."

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

9 * Section. 1. AS 47.35 is amended by adding a new section to read:

10 Sec. 47.35.065. BACKGROUND CHECKS ON EMPLOYEES. Before hiring
11 an employee who would have supervisory or disciplinary power over a
12 minor, a person that is required to be licensed under AS 47.35 shall
13 request from the Governor's Commission on the Administration of Jus-
14 tice the employee's records of convictions permitted under AS 12.62.-
15 035.

United States Senate

WASHINGTON, D.C. 20510

December 6, 1984

*Feed
background
chk*

Dear Governor:

I want to call your attention to some significant new Federal legislation to combat child sexual abuse in day care centers and other facilities for children. Aggressive state action is now needed to implement this legislation.

Public Law 98-473, the continuing resolution for fiscal year 1985, signed October 12, 1984, contains provisions which I authored offering financial incentives to states to establish requirements for (1) nationwide criminal record checks, (2) employment history checks, and (3) background checks for all operators, staff or employees, whether present or prospective, at child care facilities, juvenile detention facilities, juvenile correction facilities, and juvenile treatment facilities.

These provisions arise out of my work in this area as Chairman of the Senate Juvenile Justice Subcommittee. Our hearings demonstrated the breadth of the problem not only at day care centers, but also summer camps, recreation programs, and all types of residential facilities for youth. They also clearly showed that criminal record checks must be supplemented with reasonable noncriminal lines of inquiry into an individual's past employment or other background which might uncover past acts of child abuse, and they must be viewed, at least as far as day care is concerned, in the broader context of quality of care, staff training, and professional qualifications.

The Federal legislation (enclosed) mandates no action by the states; it instead offers as an incentive \$25 million of new funds under Title XX of the Social Security Act for training of child care workers. Half of the new \$25 million is expressly conditioned upon action by the states, not later than the end of fiscal year 1985, requiring the specified employee checks. In the case of any state not complying by September 30, 1985, one half the amount of that state's formula allotment from the \$25 million will be deducted from subsequent Title XX allotments.

Thus, prompt action by states is now necessary. And in taking such action, consideration should be given to a number of important side issues which are discussed in the enclosed memorandum.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Arten Specter
Arten Specter

Enclosure

Defining criminal record checks: The Federal legislation speaks of state laws, enacted in accordance with the provisions of Public Law 92-544 (86 Stat., at page 1115), requiring nationwide criminal checks. This means fingerprint checks through the FBI. This is not a new procedure, and does not raise new privacy or civil liberties problems; ever since 1972, Public Law 92-544 has authorized FBI criminal record checks for employment and licensing purposes for any occupation approved for such checks by state statute. Some 250 such state laws already exist, covering occupations such as securities trader, doctor, teacher, school bus driver, casino worker, and -- in four states -- day care employee. State statutes need simply be approved by the Justice Department as containing specific language requiring a check of FBI criminal history records consistent with the provisions of Public Law 92-544 (enclosed).

The nationwide aspect of these checks is important. An in-state check is far less effective. Only a search of the FBI's nationwide criminal history records can properly address the recurrent problem of child molesters moving from state to state to escape the record of their past criminal acts. For example, at one of our hearings, a parent testified about the molestation of her 5-year-old son at a Maryland day camp by a man whose previous conviction for child molestation in Pennsylvania was unknown to his new employers.

Clearinghouse: Public Law 92-544 permits dissemination of FBI records only to officials of state and local governments for their official use. Thus, each state should designate a single regulatory agency to function as a clearinghouse for criminal record information between the FBI, the State Identification Bureau, and participating employers. The state agency designated could be the agency currently having jurisdiction over social services and day care issues, or a separate new state agency could be established, comparable to a real estate commission or racing board.

The typical practice under current law is for the employer to arrange for fingerprinting through the local police. The fingerprint card is then forwarded to the State Identification Bureau together with the appropriate fee (see "cost," below) for transmittal to the FBI. (The state bureau is billed monthly by the FBI for reimbursement of fees collected.) The FBI then delivers the records to the state regulatory agency, which in turn advises the employer of their content.

The FBI records are in the form of a "rap sheet," containing the following items of information: The "contributing agency" (the law enforcement entity which made the arrest or filed the charges), the charge, the date filed, and disposition.

Procedural safeguards: States should consider legislatively establishing various procedural protections for the subjects of criminal record checks. An employee who is disqualified for employment by reason of criminal history should be afforded notice of the reasons for the disqualification (including information regarding the necessary procedures for challenging or correcting inaccurate information released) and an opportunity to be heard, whether in person or in writing, before the State regulatory agency. Prospective employees, even though lacking a

vested interest in the employment, might also be afforded such safeguards in order to provide protection against inaccurate or incomplete FBI records.

Eligibility to receive criminal history information should be restricted to owners, principal administrators or personnel administrators of the facilities affected. It might also be restricted in the case of privately-run facilities to employers already licensed in the state or jurisdiction. (Note that existing FBI regulations prohibit the use or redissemination of FBI criminal history information for any purpose other than the purpose for which it was requested.) The criminal record check should be undertaken only upon written consent of the employee or applicant.

Other safeguards which have been suggested by interested organizations in this area include various rights of redress for an aggrieved individual: for example, a cause of action against an employer for intentional or negligent redissemination to an ineligible party, or against the original contributing agency for any willful failure to correct inaccurate information. Alternatively, enforcement authority might be delegated solely to the state regulatory agency.

Defining disqualifying offenses: States must consider what types of criminal records should preclude what types of employment. Solely in terms of putting individual employees and applicants on notice, it would seem preferable to spell out in the state legislation the specific offenses which must result in disqualification. But there may be too many variables, in the broad range of employment situations which might arise, to attempt to enumerate each such offense and to preclude any element of discretion in determining what constitutes a disqualifying offense. An offense which might disqualify a teacher with regular unsupervised responsibility at a day care center might not be relevant in selecting a groundskeeper at the same facility with no possibility of unsupervised contact with children. An offense relevant in a day care situation, where infants and very young children are involved, might be less compelling for various job classifications in a detention facility primarily for adolescents. Nor is it realistic to limit consideration to a narrow class of offenses, such as sexual or "moral turpitude" offenses. Other factors may be equally important, such as the recentness of the offense or the extent and nature of multiple offenses viewed in totality: Should a long string of "bad check" convictions be any less disqualifying than a single conviction for soliciting, adultery or (in some jurisdictions) fornication? Is a pattern of white collar crime less disqualifying than one burglary committed many years previously? (Indeed, the FBI does not have the technical capability to edit rap sheets before they are disseminated; if it is done at all, it could only be done after it arrives at the state regulatory agency.)

There are some alternative approaches to consider. Discretion could be vested in each employer, on the basis that the state's sole duty is to provide information to the employer,

who shall be presumed to act upon that information in the best interests of the children involved. Or the authority to prescribe guidelines or regulations on the subject could be delegated to the state regulatory agency, with reasonable room for discretion in close cases. In any event, the state law must confront the question of whether there are circumstances under which disqualification is mandatory, or whether the sole requirement of the state law (and the minimum that would be consistent with the Federal legislation) is that criminal record checks be conducted.

Imprecise criminal history information: In an incident of child sexual molestation, arresting agencies usually provide only elementary charge information (e.g., "sexual assault," "indecent act" or "carnal knowledge"). Often as a result of a plea bargain, the charge may be simple assault, or some lesser charge. In either case, the true nature of the incident may require further exploration. Thus, states might consider requiring or recommending that elucidating information be sought, either from the subject or the contributing agency.

Arrest records: A similar issue arises from the unfortunate fact that a great many child molestation incidents result in arrests but are never pressed to conviction, often simply because parents may find themselves reluctant to put their children through the trauma of reliving the molestation in courtroom testimony. Thus, particularly in the area of child molestation, it would be extremely useful to have access to arrest as well as conviction information.

However, the FBI regulations severely limit the release of arrest records more than a year old (28 C.F.R. 50.12), except in the case of law enforcement employment. I have written to the Justice Department urging the removal of this limitation, particularly with respect to employment in facilities for children, but have not as yet received a commitment from the Attorney General to do so.

In the meanwhile, as this avenue is pursued, states should consider opening their own state arrest records for this purpose, in the same way that states have lifted restrictions on the availability of drunk driving arrest information in the case of school bus drivers.

Cost: Each FBI criminal record check costs \$12. Although a state may wish to provide for the appropriation of funds to relieve financially strapped private day care centers of some or all of the burden of these user fees, it may be preferable to provide that in all cases the cost shall be borne by the employer. Thus, with respect to public facilities, the fees would come out of public funds, while the effect on private child care facilities would be to require passing the cost along to parents. In my judgment there would be extremely few parents who would balk at a rate of perhaps a few dollars a year to cover the cost of ensuring that the well-being of their children is not entrusted to individuals with serious criminal records.

It should also be borne in mind that each state complying with the provisions of the Federal legislation will be entitled to a formula share of the \$25 million of Federal child care funds provided thereunder.

Statute versus regulations: Under the Federal legislation, states must provide for criminal record checks by statute. But the requirements for employment history and background checks, because they fall outside the parameters of Public Law 92-544, may be imposed by statute or regulation.

Employment history checks: As was noted in the discussion of arrest records, molestation cases frequently do not proceed to conviction. Quite often child molesters are quietly fired, before any criminal charges are filed, again to save the victims from courtroom trauma. (This raises the related issue, which all states should be strongly encouraged to confront legislatively, of implementing procedures to minimize this trauma, for example through closed-circuit television testimony by child victims, to insulate them both from the court and from direct contact with the defendant.) One witness before the Subcommittee, a convicted pedophile, expressed his amazement at the carelessness of one employer who hired him to be a director of a church boys' choir without even contacting a previous employer at a choir job from which the pedophile had been fired for sexually molesting his students.

This requirement of Federal legislation would be satisfied by the promulgation of state regulations requiring employers to make documented, good faith efforts to contact previous employers to obtain information or recommendations which may be relevant to the individual's fitness for employment in a facility for children.

Background checks: In a similar manner, this requirement extends to non-employment background information on an individual, such as education, organizational affiliations or other activities. In the case of both background checks and employment history checks, the regulation or law should specify certain minimum categories of information which should be furnished in full in any application for employment in a facility for children, in order to ensure that employers have a comprehensive base of information from which to launch such checks.

Child care standards: The Federal legislation is designed to recognize that criminal history and other background checks are just one aspect of ensuring highly qualified, motivated and dedicated child care workers and of minimizing the risk of child sexual abuse. The broader issues of quality care, staff training and job qualification requirements are also involved.

Accordingly, the Federal legislation requires the Department of Health and Human Services to develop, by January 12, 1985, a Model Child Care Standards Act, to provide guidance to the states in imposing some sensible uniform minimum regulation on the day care industry. The Model Act will cover matters such as the

training, development, supervision and evaluation of staff, job qualifications, staff-child ratios, probation periods for new staff, and parent visitation. The Model Act should be given the most serious consideration by all states in crafting their legislative approaches to the Federal legislation.

Public Law 98-473, title IV

October 12, 1984

Sec. 401.

(a)(1) Notwithstanding any provision of title XX of the Social Security Act, the amount applicable under section 2003(c)(3) of such Act shall be \$2,725,000,000 for fiscal year 1985. Of such amount, \$25,000,000 shall be allotted and used in accordance with this section.

(2) In addition to any other amounts appropriated under this resolution or any Act, there are hereby appropriated \$25,000,000 for fiscal year 1985 for carrying out title XX of the Social Security Act, to be used in accordance with the provisions of this section.

(3) Amounts appropriated under this section shall remain available until September 30, 1985, without regard to section 102 of this resolution.

(4) Except as otherwise provided in this section, each State's allotment of the additional amounts authorized and appropriated under this section shall be the same proportion of \$25,000,000 as such State's proportional allotment of other title XX funds for fiscal year 1985, as determined under section 2003 of the Social Security Act.

(b) The additional \$25,000,000 made available to the States for fiscal year 1985 pursuant to subsection (a) shall—

(i) be used only for the purpose of providing training and retraining (including training in the prevention of child abuse in child care settings) to providers of licensed or registered child care services, operators and staffs (including those receiving in-service training) of facilities where licensed or registered child care services are provided, State licensing and enforcement officials, and parents;

(ii) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated under this section, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to this section) for the purpose specified in paragraph (1), and shall in no case supplant such funds from other sources or reduce the level thereof; and

(3) be separately accounted for in the reports and audits provided for in section 2006 of the Social Security Act.

(c)(1) In order to provide guidance and assistance to the States in utilizing funds allocated pursuant to title XX of the Social Security Act, not later than 3 months after the date of enactment of this section, the Secretary shall draft and distribute to the States for their consideration, a Model Child Care Standards Act containing—

(A) minimum licensing or registration standards for day care centers, group homes, and family day care homes regarding matters including—

(i) the training, development, supervision and evaluation of staff;

(ii) staff qualification requirements, by job classification;

(iii) staff-child ratios;

(iv) probation periods for new staff;

(v) employment history checks for staff;

and

(vi) parent visitation; and

(2)(A) Any State receiving an allotment under such title from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—

(i) procedures, established by State law or regulations, to provide for employment history and background checks; and

(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92-544 (86 Stat. 115) requiring nationwide criminal record checks.

for all operators, staff or employees, or 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, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or programs.

(B) In the case of any State not meeting the requirements of subparagraph (A) by September 30, 1985, such State's allotment for fiscal year 1986 or 1987 shall be reduced in the aggregate by an amount equal to one half of the amount by which such State's allotment under such title was increased for fiscal year 1985 as a result of subsection (a).

(d) The determination and promulgation required by section 2003(b) of the Social Security Act with respect to the fiscal year 1985 (to take into account the preceding provisions of this section) shall be made as soon as possible after the date of the enactment of this Act.

October 25, 1972

Pub. Law 92-544

86 STAT. 1115

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

* * *

The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials or federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned appropriation.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 9, 1985

SUBJECT: CS Senate Bill 21(HESS)
TO: Senator Bettye Fahrenkamp
FROM: Michael F. Ford *M.F.*
Legislative Counsel

Your assistant, Sandra Shubert, requested that I draft new language for the above referenced bill, to ensure that persons convicted of a crime listed in AS 12.62.035 would not be issued a card indicating that a background check had been conducted. The following section would meet that request and should be inserted on page 13, line 5 in place of the subsection (b) that is currently in the bill:

(b) A licensee or employee who has completed the background check and who has no record involving contributing to the delinquency of a minor or any sex crimes, as defined in AS 12.62.035(e), shall be issued a card indicating that a background check has been conducted. The card is valid for two years.

Please contact me if I can be of further assistance.

MFF:ojb
J11/074



Committee urges day care support

Flexible parental leave policies, increased Social Services Block Grant (SSBG) spending, and more federal money to create local programs should be congressional priorities next session, says a report released by the bipartisan House Select Committee on Children, Youth and Families. It is the first major study of child care policies in ten years.

One member called for federal support of day care, pointing out that when his state increased child care funding, it "cut back on the need for welfare and public subsidies."

The committee recommends that Congress:

-Increase SSBG funding to

the maximum allowable under law.

-Consider withholding federal funds from states that don't enforce adequate health, safety, and law enforcement standards in child care facilities.

-Create incentives for businesses to support child care, through extended leave policies, information & referral services, and on-site facilities.

-Require three meals and two snacks under the Child Care Food Program, which was cut to two meals and one snack by the Reagan administration.

-Provide grants for latch-key programs in public and private schools. □

I & R and latchkey programs endorsed

Congress approved a two-year \$40 million block grant to the states for child care information & referral services and before- and after-school care for latchkey children.

Although the measure that authorizes the block grant, S. 2565, was approved, no money was appropriated. The congressional women's caucus says it will work to get the grant funded through a supplemental money bill in 1985.

Under the block grant, a state must spend 40 percent of a minimum \$50,000-a-year to set up dependent care I & R services. Some money may go to services for the elderly and handicapped, as well as children. Sixty percent of the grant monies will go to non-profit groups to set up before- and after-school care for children of working parents. ■

Employee background checks mandated

All employees of child care centers and homes must undergo employment and criminal record checks in a year if states want to receive their full share of new federal training funds.

States will receive \$25 million for three years to train providers, parents and government officials to fight child abuse. After fiscal '85, states must perform the checks themselves or lose half the funds. □

Where's the beef?

Child nutrition programs were cut a total of 28 percent between fiscal years '81 and '85. Had all the Reagan administration's proposals been enacted, they would have been cut 46 percent, according to a recent report by the Urban Institute.

Head Start reauthorized

Head Start was reauthorized by a bill passed in October which increases funding for fiscal '85 and '86. Even with the increase, however, only 18 percent of eligible children will take part in Head Start.

The bill emphasizes training of volunteers and requires that funds for training & technical assistance be spent at least at the level they were in 1982.

The bill also explicitly authorizes Head Start programs to serve preschool children for more than one year.

It extends the Follow Through program for two years, as well. The program began as a pilot to measure the results of Head Start participation and will receive decreasing allotments through fiscal '86. □

Child care training funded

General training of child care providers and training for providers and parents in the area of child abuse will be funded by a continuing resolution Congress passed shortly before adjournment in October. The resolution adds \$50 million to the Social Services Block Grant for training. □

Finding Out



a newsletter for Alaskans concerned about young children and their families

December 1984

First things first

Barbara J. Smith
ECCP Director

The first statewide Policy Conference on Young Children was held in Anchorage November 18-20. It was sponsored by Joe Josephson, chairperson of the Senate committee on Health, Education and Social Services, and the Departments of Education (DOE), Health and Social Services (DHSS), and Community and Regional Affairs (DCRA).

Presentations were made by Gov. Sheffield, Sen. Josephson, Commissioners Reynolds (DOE), Pugh (DHSS), and Notti (DCRA), as well as Greg Huff (Dept. of Labor), and Ms. Laré (child care coordinator, DCRA).

Three keynote addresses shed light on children's policy issues. Dr. Donald E. Bross of the University of Colorado and the Henry Kempe National Center spoke about national trends in child abuse and neglect. He stressed that training child care providers to identify and report child abuse can reduce its incidence.

Dr. David Weikart of the High/Scope Research Foundation in Ypsilanti, Michigan, reviewed the dramatic findings of the 22-year Perry Preschool Project and its implications for early childhood education in Alaska. The Perry Preschool study has followed 123 black children from poor families since the early '60s, from a carefully designed preschool program through school and beyond at age 19.

Nearly twice as many of the preschool graduates enrolled in college or job training as did their peers who did not attend preschool. The preschool group also had a lower rate of arrests and dependence on public assistance and a higher employment rate. The teenage pregnancy rate among women in the preschool group was half that of their peers. As a result of preschool education, considerably fewer of the children were placed in special education.

The return to society is \$7 for every \$1 spent on preschool programs, the study shows. But the benefits are only assured

from high-quality programs, Dr. Weikart cautioned. And the lives of children not from disadvantaged backgrounds may not be so dramatically transformed.

He named three key elements in quality programs: a clear philosophy and curriculum, careful supervision and management, and ongoing, on-site staff training.

Dr. Shirley Moore, a University of Minnesota professor, spoke about quality early education. Four measures are critical to sound programs, according to Dr. Moore. **Group size** should be limited to 15-20 children to ensure that they get individual attention. The **child/adult ratio** should be limited to three or four infants or toddlers per adult, and seven to ten three- to five-year-olds per adult. **Continuity in the staff** is important, particularly for infants and toddlers; a high turnover rate among caregivers is disturbing to children. **On-going staff training** is a key component in the best programs for young children.

In addition to the keynote presentations, smaller-group sessions at the conference focused on child abuse, quality education, and young Alaskans who have a special need for early childhood services.

Cassette tapes of the keynote addresses and general presentations are available from The Coordinators, P.O. Box 3-964 ECB, Anchorage 99501, for \$7 each.

Now the hard work continues for all advocates of quality care in Alaska! As Shirley Moore said, "We have to be willing to fight for what we know is right."

Policy Conference
on Young Children



Finding Out is published by the Early Childhood Coordination Project--Barbara J. Smith, director, and Monica L. Moses, program specialist. ECCP is sponsored by the Alaska Head Start Directors' Association. We welcome your comments and suggestions about the newsletter.

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

4. Admitting hearsay evidence in grand jury proceedings.

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

5. Criminal penalties for juvenile sex offenders.

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

6. If DFYS confidentiality requirements inhibit prosecution.

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

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

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

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

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

Sherry Goll
36-3650

Bonnie Lang
364-3281
midwifery
Judge Shorkell

SB 227

call Budget
marsh

position paper + fiscal note - social work

Mandatory background - intent letter - letter to Dept

It is the intent of the legislature
look at during interim.

According to DHS
Frank - 20% of kids not in licensed facilities?

do now?
number of other youth-oriented organizations
juvenile detention facilities
Campfire Girls, Big Brothers/Big Sisters

who will pay the cost of the checks
\$20 fee impact minimum wage workers
delay - waiting period prior to approved employment

volunteers + substitute caregivers

80% day care homes - 4 or less unrelated facilities
 607 day care homes - 4 or more unrelated
 161 centers - 8000 kids
 292 preschools - Dept Educ license if receive + ordered by
 84 are certified OOE. 13 also licensed by OHSS

potential expense

importance of ensuring adequate civil right protections

Sec of Health & Human Services is mandated to develop a model child care standards act for the guidance of states in their licensing requirements. would spell out the states' procedures for criminal record checks.

Criminal record checks can only be a small part of an overall solution.

Can only protect against those who've been convicted of a crime in the past. Most of the adults who abuse children have no prior convictions. According to Children's Defense Fund, average molester ^{of girls} abuses 62 victims in a lifetime & of boys 32.

To what extent directors base decisions upon records, & be held accountable if they entrust children to someone w/ a criminal record.

Balance the rights of the adults w/ the rights of the children for protection.

Pub Safety \$80,000 yr + fed \$12/ea who do fingerprinting?

av. 8-10 wks to receive FBI response

As of Feb '85, Pub Safe 1015 background checks. No persons processed have records.

background checks

INUICH IKAYUQTAAT SUTIGULLIQAA PITOURATIGUN

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

POST OFFICE BOX 309

BARROW, ALASKA 99723

TELEPHONE (907) 852-2311

March 29, 1985

APR 4 1985

Senate H.E.S.S. Committee
House H.E.S.S. Committee
Pouch V
Juneau, Alaska 99811

Dear Members of the Committees:

Thank you for the chance to comment on the new legislative "package" on child abuse. We commented on House Bill 88 in a February 13 letter, and in our view the package which the committees are now considering represents a considerable improvement. We note that if this package is enacted the predisposition reports in children's cases will be available to interested parties not less than six working days before the disposition hearing (sec. 7 of SB 243/CSHB 88); that hearings to review emergency custody will be held no more than three days after that custody is taken (sec. 9); and that someone has sensibly redrafted the definition of "abuse" in AS 47.17.070(1) (sec. 21). Some particularly complex issues -- presumptive vs. mandatory sentencing, mandatory background checks on licensees and employees of child care facilities, and so forth -- are properly being deferred for more detailed study. This suggests that the committees and their staffs are distinguishing between problems that have simple, technical solutions and problems which need further study because the impact of any particular legislative change would be hard to predict.

It is precisely because this package, taken as a whole, shows good judgment about what problems are really for the legislature to address, that we are concerned about the expansion of the criminal background record check system which CSHB 21/HB 308 proposes. Here, for the first time, is legislation which would not only create a long list of "crimes that might pose a risk of harm to a child," about which particular people could request information, but which requires the Division of Family and Youth Services to itself make these requests in particular kinds of cases. If CSHB 21/HB 308 is enacted in its present form, DFYS would have to request a criminal record check as part of every investigation of a prospective adoptive or foster home. This proposal has implications of which the committees may not yet be aware. We suggest that it be studied, along with the proposal for mandatory background checks on licensees and employees of child care facilities, during the interim between sessions. Because the two proposals deal with the same system and involve the same kinds of intrusions into

people's privacy, it would make sense to assess them together.

If the committees do decide that this proposal must be addressed at this time, we urge them to make changes in the way the present package approaches the problem. The first difficulty with the bills' existing language is that, technically, the proposed changes may not do what the people who drafted them probably intended. Because any criminal record check involves two different parts of state government -- the agency that requests the check and the agency that administers the record system -- a proposal which deals only with the agency that requests the check is dangerously incomplete. Under AS 12.62.030(a), "Criminal justice information may not be disseminated to an agency before the [Governor's Commission on the Administration of Justice] determines the agency's eligibility to receive the information." The commission has authorized routine dissemination of information to ten state agencies, but the Division of Family and Youth Services is not one of them. 6 AAC 60.060. Other agencies must jump through several bureaucratic hoops before receiving any information at all, 6 AAC 60.070(c), and there is nothing to indicate that DFYS has done this, or would be successful if it tries. If the legislature does decide to require DFYS to do criminal record checks, additional technical amendments to Title 12 would be necessary.

The second difficulty is that, perhaps through oversight, the draft language will leave DFYS uncertain about when criminal record checks must be requested. The agency ordinarily does not have to do a home study when a stepparent is seeking to adopt a child, or when the adoptive parents are closely related to the child. AS 25.23.100(g). Moreover, in other cases "the court may waive the investigation . . . if it appears that waiver is in the best interest of the minor and that the adoptive home and the minor are suited to each other." Id. (The court can also direct an agency other than DFYS to do the home study. AS 25.23.100(d).) If one takes the draft language out of context, it appears to change existing practice by requiring a check in all adoption actions, whether or not DFYS is making an investigation.

The department shall request a state and national criminal record background check by the Department of Public Safety on each person who seeks to adopt a minor.

However, CSSB 21/HB 308 would add this sentence to AS 25.23.100(d), which describes what a DFYS investigation must cover. We believe the bill thus limits the new requirement

to cases in which DFYS does a home study, and that the bill would not require the agency to do more evaluations than it now does -- but, given the ambiguity, we cannot be sure. We hope that the committees will resolve this problem by ~~rewriting the sentence to make it clear that criminal record checks are not required unless DFYS is doing a home study.~~ As the committees know all too well, DFYS is understaffed, and diverting social workers' energies to the paperwork needed to request additional criminal record checks keeps them from doing more important work.

However, even if social workers had unlimited time with which to request these checks, we would still oppose making the checks mandatory. The costs of mandatory criminal record checks outweigh their benefits. This is not just because in Alaska privacy is a value so important that it is explicitly recognized in the state constitution. What worries us is that criminal record checks are often unnecessary and can be counterproductive, especially in rural areas. Mandatory criminal record checks are only useful if natural parents and social workers do not know the people who want to adopt the child. In these situations, a criminal record check helps to screen out people who would be dangerous to children. If natural parents and social workers know the prospective adoptive parents -- and in rural communities most people know each other -- criminal record checks are unnecessary. Dangerous people, and the reasons why they are dangerous, are well known. Confirming what everyone already knows would be a waste of time and resources.

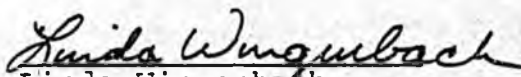
Worse, there are times when a criminal record check can be counterproductive. Inexperienced social workers react to a record check's recording of an assault conviction by attempting to block an adoption. They could disrupt an action that really is in a child's best interest. If an agency like DFYS decides to impose rigid rules about how recommendations must be made -- to decide, for example, that the presence of an assault conviction requires social workers to make a negative recommendation -- then, again, adoptions which would be in a child's best interest would be blocked. This is particularly true in rural areas. State-law adoptions in a place like Barrow tend to involve recognition of an established fact. Typically, a young woman decides to adopt her baby out to a relative: the relatives take the baby home from the hospital, become its parents under Inupiaq custom, and only later think about getting State law to recognize this fact. The State-law adoption, if it takes place at all, may not happen for years. Meanwhile, the child and the adoptive parents have become attached to each other.

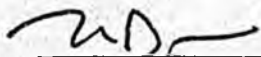
State-law adoptions, when they eventually occur, can be

very useful for children and their adoptive parents: children can be assured of the right to inherit, while parents can be sure that in encounters with officials and other outsiders children will be recognized as theirs. For other reasons, state-law adoptions are useful for natural parents: for example, they are free from the responsibility of supporting the children they have adopted out, and State agencies which inquire about this can be referred to the adoption decree. So long as natural parents and adoptive parents agree about an adoption, rural adoptions are almost always a good idea.

But the consequences of a failed State-law adoption can be disastrous. The customary relationship between adoptive parents and children is disturbed. DFYS is almost certain to be involved. There may be pressure for natural parents who really do not want a child to take it back. DFYS may feel compelled to uproot the child and place it with another family. Because adoptions are generally beneficial and failed adoptions are so disruptive, there is a powerful interest, at least in the Bush, in recognizing in State law what people have already done under local custom. Anything that makes it harder for this process to operate -- and we think mandatory criminal record checks are a bureaucratic obstacle which impedes the process -- is something that the legislature should not require without a clear understanding of the consequences. ~~If the legislature feels that criminal records checks are useful in urban adoption cases, it should give DFYS the option of requesting them.~~ But mandatory checks, required across the state, would be a mistake. We urge the committees to take a careful look at this problem, to solicit the views of social workers and rural residents, and to delete this particular proposal from the package while the problem is being considered.

Sincerely yours,


Linda Wingenbach
Supervising Attorney


Mark Regan
Staff Attorney

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate Committee on Health, Education and Social Services

March 25, 1985

Commissioner John Pugh
Department of Health & Social Services
Pouch H-01
Juneau, AK 99811

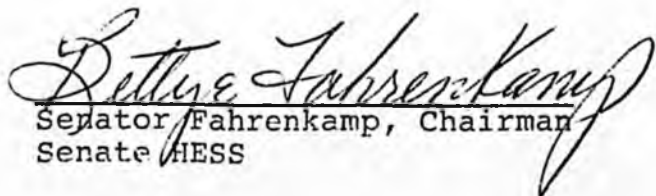
Dear Commissioner:

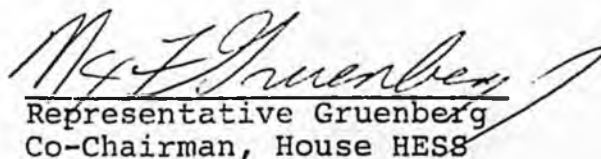
You are well aware of the alarming increase in reports of child abuse that prompted the legislature to undertake a review of existing laws and proposed measures relating to child protection. The use of criminal history record checks as a tool in combatting child abuse was part of this review. Although the concept of mandatory checks was set aside pending resolution of outstanding concerns, this is not an indication that the value of the checks is not recognized. In fact, interest in use of the checks remains high.

The purpose of this letter is to request that the Department of Health and Social Services, through a formal letter to each licensee under AS 47.35, inform employers of their ability to obtain criminal history checks on employees who supervise minors, and, further and more importantly, encourage employers to obtain such checks on existing and prospective employees.

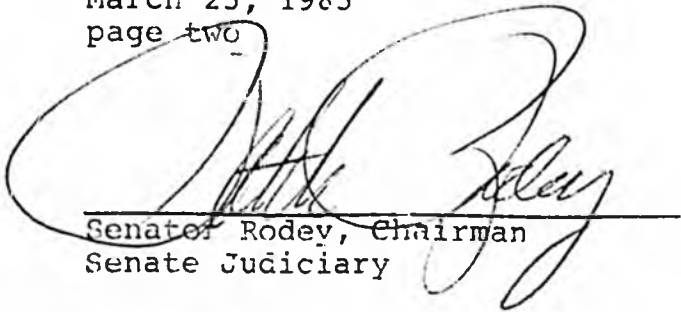
Commissioner, the need to protect our children cannot be overstated. We sincerely hope you share our commitment, and that you will take steps to see that the provision in current state law allowing release of conviction records is effectively implemented.

Sincerely,

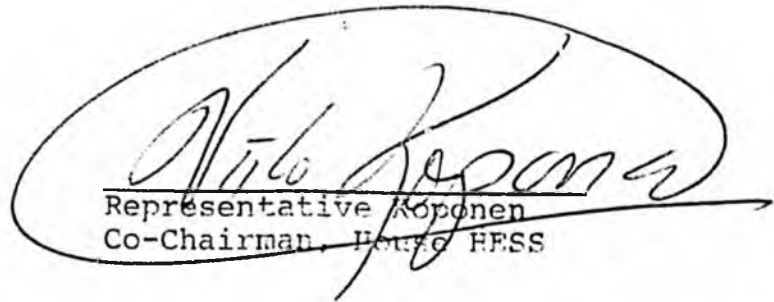

Senator Fahrenkamp, Chairman
Senate HESS


Representative Gruenberg
Co-Chairman, House HESS

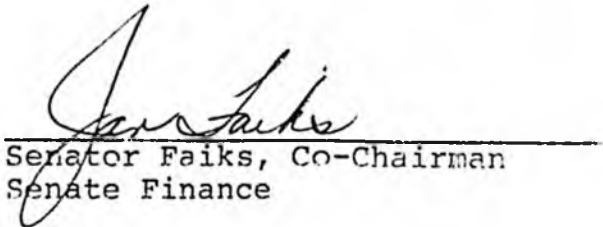
Commissoner Pugh
March 25, 1985
page two



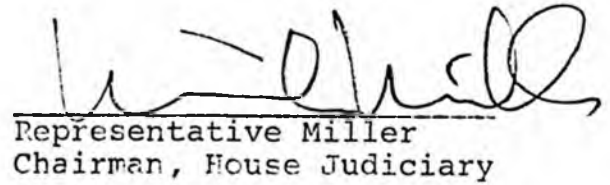
Senator Rodey, Chairman
Senate Judiciary



Representative Koponen
Co-Chairman, House FESS



Senator Faiks, Co-Chairman
Senate Finance



Representative Miller
Chairman, House Judiciary

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES



Sandra

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3634
(907) 465-3685

Senate Committee on Health, Education and Social Services

M E M O R A N D U M

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, April 16, 1985

DATE: April 15, 1985

On Tuesday, April 16, at 1:30 pm in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

SB 21, Relating to background checks on certain employees who come into contact with children.

SB 21, which has been the subject of previous committee hearings, addresses criminal history record checks on persons who supervise and care for children. Attached is a committee substitute which would:

- 1) authorize release of conviction records and outstanding warrants for any crime that might pose a risk of harm to a child,
- 2) require the Department to perform a criminal history check on all petitioners for adoption, and
- 3) require a state and national criminal history check on an applicant for a child care facility license or for facility employment, and on adult occupants of a facility.

The Department would do the check on facility operators and administrators, foster parents, and family care homes; the facilities would do the checks on their staff. The cost of the check would be paid by the facility or applicant, except the state would pay for foster parent checks. The bill provides for provisional licensing and provisional employment pending the national check, and allows for emergency foster care to be provided prior to the state or national check.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

HES 2-12-85 1:38pm
1-24-85 1:32pm
4-16-85 1:38pm

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

September 13, 1984

RECEIVED
SEP 17 1984

Josephson,

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

Dear Senator Josephson:

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

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

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

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

The Honorable
Senator Josephson

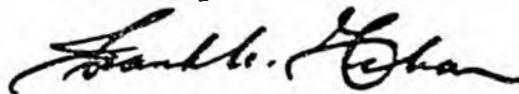
-2-

September 13, 1984

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

It is hoped this answers your questions on the subject.

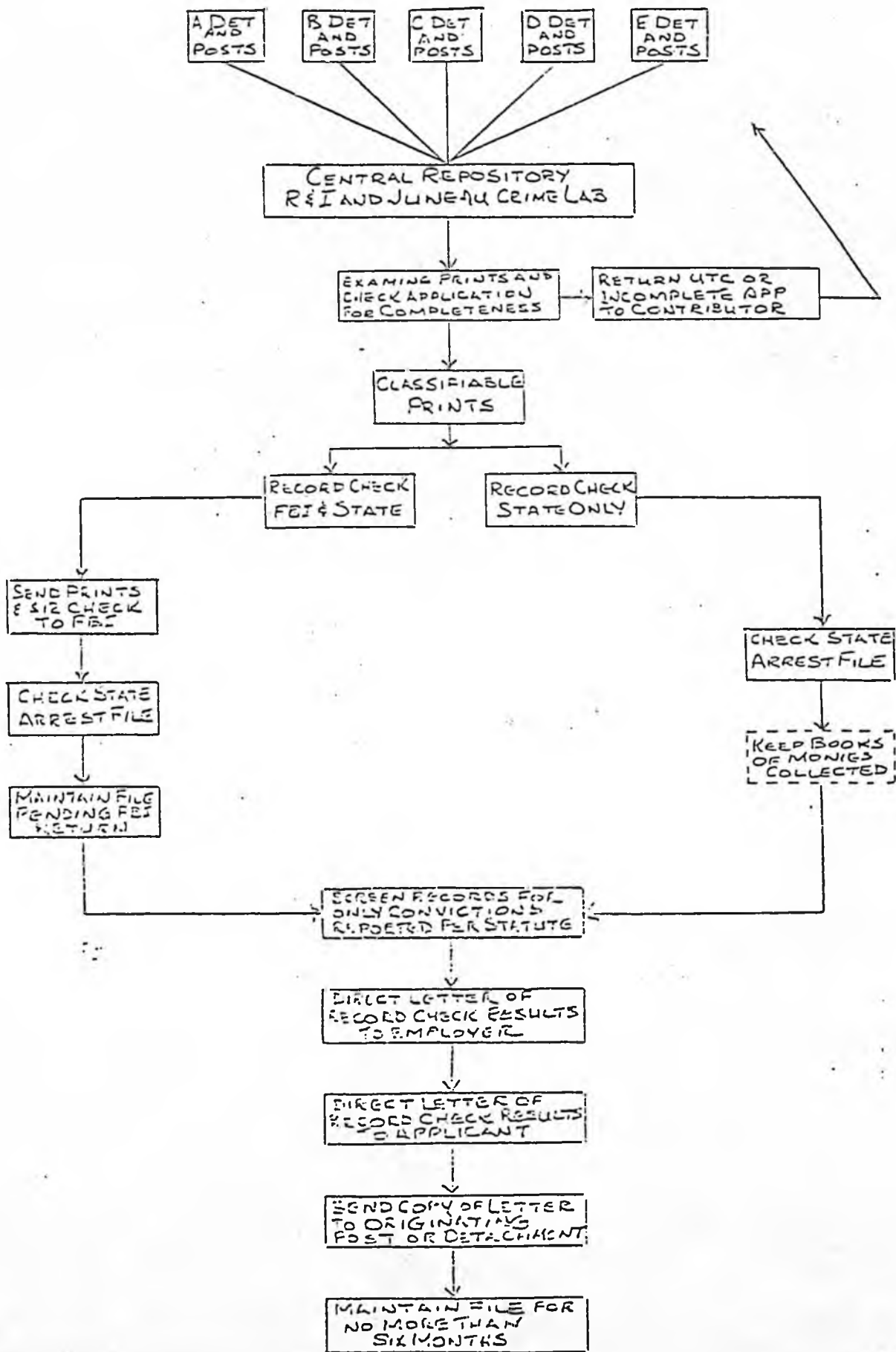
Sincerely,


For Robert J. Sundberg
Commissioner .

Enclosures: a/s

FINGERPRINTS GENERATED BY AS 12.62.035

FLOW THRU CENTRAL REPOSITORY



STATE OF ALASKA
DEPARTMENT OF PUBLIC SAFETY

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

PART I. REQUEST FOR CRIMINAL HISTORY INFORMATION

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

- 1) Name of Applicant: _____
- 2) Position or Title: _____
- 3) Organization (if any): _____
- 4) Address: _____
- 5) Mailing Address: _____
- 6) Phone Number: _____ IRS No. (if any): _____
- 7) Description of applicant. Check the box which best describes the applicant:
 - A) public school/school district F) local, state or federal government agency
 - B) private school
 - C) nursery/day care center G) private business
 - D) church/religious organization H) individual
 - E) youth organization I) other
- 8) If box F, G, H, or I is checked above, describe the applicant. If an organization, explain its purpose and what it does. Explain specifically the duties the subject has, or will have, which involve supervisory power over children.

- 9) List two people who are familiar with the organization (or individual applicant) and can serve as a reference:
NAME: _____ PHONE NO: _____
NAME: _____ PHONE NO: _____
- 10) Name of Subject: _____
- 11) Residence Address: _____
- 12) Mailing Address: _____

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

PART II. AGREEMENT FOR THE DISSEMINATION OF CRIMINAL HISTORY INFORMATION

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

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

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

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

Signature of Applicant

Date

* * * * *

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

Form of identification shown by applicant:

____ Driver's License No. _____	_____ Name of D.P.S. employee
____ State I.D. Card No. _____	_____ Title
____ Other. Describe: _____	_____ Date

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

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

CRIMES FOR WHICH CONVICTION RECORDS

MAY BE RELEASED UNDER AS 12.62.035

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

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

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

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

POSITION PAPER

SB 21

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation representing 20 domestic violence and sexual assault programs statewide, supports SB21, relating to background checks on certain employees who come into contact with children.

Under AS 47.35, facilities that are required to be licensed by the Department of Health and Social Services include:

- boarding homes providing care for less than 6 adults or children not related to the care giver
- foster homes
- group homes providing care for 10 or less adults or children not related to the care giver
- nurseries providing care for children unrelated to the care giver, for any part of a 24-hour day
- institutions providing care for 11 or more adults or children not related to the care giver

Facilities which are not required to be licensed include:

- any of the above which operate for less than 90 days
- a center in which 5 or less children under the age of 14 are provided care, and who are not related to the care giver
- nurseries providing services which are primarily educational in nature (preschools)

In addition to the above facilities whose employees will not be required to have background checks, SB 21 does not provide for checks on those responsible for securing licenses for facilities required to be licensed, such as the administrative officer or agent,

The Network supports the intent of the bill to provide measurable and attainable safeguards in order to facilitate the prevention of child sexual and physical abuse. Allowing for background checks on employees who will have supervisory or disciplinary power over a child will provide a much needed mechanism for protecting children from harm.

provided for in HESS C.S.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

APR 3 1985

BILL SHEFFIELD, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811

PHONE: 465-3030

DOCUMENT #85-112

April 2, 1985

The Honorable Bettye Fahrenkamp
Senate HESS
Pouch V
Juneau, AK 99811

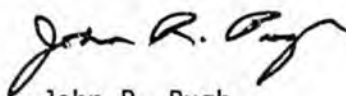
Dear Senator Fahrenkamp:

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

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

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

Sincerely,



John R. Pugh
Commissioner

Enclosure

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. 2391), 542 P.2d 170 (1975).

Sec. 47.35.020. License or permit required. A person may not, without a license or permit to do so,

(1) maintain or conduct, for more than 90 days, a boarding home, foster home, group home, institution, or other place for the regular reception or care of children under 16 years of age, or a foster home, group home, or institution for the care of dependent adults; or

(2) engage in the business of receiving or caring for children under 14 years of age, with or without compensation, in a nursery in which five or more children not related by blood or marriage, or legal adoption, to the owner, operator or manager of the business are lodged. (§ 3 ch 17 SLA 1951; am § 3 ch 42 SLA 1973; am § 3 ch 253 SLA 1976; am § 2 ch 45 SLA 1977; am § 1 ch 97 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "for more than 90 days" near 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 accept-

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4/15/85 /

Original sponsors: Ferguson, Kelly,
Faiks, et al

1
2 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

3 CS FOR SENATE BILL NO. 21 (HESS)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

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

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

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

11 (a) Notwithstanding any other provision of law, an interested
12 person [AS DEFINED IN (e) OF THIS SECTION] may request from the com-
13 mission records of all convictions of an individual for crimes that
14 might pose a risk of harm to a child if the individual [INVOLVING
15 CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND ANY SEX CRIMES OF A
16 PERSON WHO] holds or applies for a position in which the individual
17 [PERSON] has or would have supervisory or disciplinary power over a
18 minor. The commission shall authorize the disclosure of the informa-
19 tion to the requesting interested person and shall provide a copy of
20 the information to the individual [PERSON] who is the subject of the
21 request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alaska State Legislature

file Child Abuse

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate Committee on Health, Education and Social Services

January 29, 1985

Commissioner Robert J. Sundberg
Department of Public Safety
Pouch W
Juneau, AK 99811

Dear Commissioner:

As follow-up to the Department's recent testimony on SB21, relating to background checks on certain employees who come into contact with children, I would appreciate receiving the following information:

1. Number of criminal background checks performed by the Department since enactment of AS 12.62.035 in 1983 and an outline of the Department's procedure for performing such checks;
2. The average length of time for processing a background check, and the extent, if any, of the Department's current backlog;
3. Percentage of checks which have identified pertinent criminal records;
4. Procedure for notifying employers of results of background checks; and
5. Number of requests for FBI record searches, and average length of time for each to be processed.

Further, I understand that federal grants and monies are available to states to institute programs of criminal background checks. I would appreciate information on what criteria must be met to access these grants, and the amount of funding that might be available to Alaska.

Page Two

Commissioner, I appreciate your attention to the Committee's concerns, and look forward to hearing from you soon.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bettye", with a long horizontal flourish extending to the right.

Bettye Fahrenkamp
Alaska State Senate

BF/ss

SB 4, Relating to correctional restitution centers.

SB 4 would establish correctional restitution centers and authorize the courts to recommend that non-violent offenders serve time in such centers. Prisoners would be required to maintain or secure employment in the community and wages earned would be applied to room and board, support of dependents, and restitution to victims.

Offenders are currently housed in 15 prisons throughout the state, and become eligible for partial incarceration in privately run halfway houses within 6 months of their final release date.

SB 21, Relating to background checks on certain employees who come into contact with children.

AS 12.62.035 was enacted in 1982 to allow employers of persons who have supervisory or disciplinary power over minors access to records of convictions involving sex crimes and contributing to the delinquency of a minor. SB 21 would make such background checks mandatory before hiring employees for boarding homes, foster homes, group homes, nurseries, institutions, or other places that provide regular care for children or dependent adults.

Current statute specifies the Governor's Commission on the Administration of Justice as the source of conviction records. Since termination of the federal law enforcement grant program four years ago, the commission has been dormant and the oversight of criminal justice information systems has been assumed by the Attorney General's office, with the actual record checks being performed by the Department of Public Safety. To date, the Department has processed approximately 1500 requests for background checks, and has another 1000 pending. No fee is charged for the state record check, but the \$12.00 F.B.I. fee is passed on to the requester.

A list of those crimes for which the Department can provide conviction information is attached. Separate legislation (HB 88) has been introduced which would 1) broaden the records which may be requested to include convictions of any crime that might pose a risk to a child (including child abuse, kidnapping, manslaughter, and driving while intoxicated), and 2) allow access to outstanding arrest warrants.

TO: BETTYE
FROM: SANDRA

JANUARY 21, 1985

SB 21 RELATING TO BACKGROUND CHECKS ON CERTAIN EMPLOYEES WHO COME INTO CONTACT WITH CHILDREN.

2 months - must have fingerprints

1. WHO WILL BEAR THE COST OF PROVIDING BACKGROUND CHECKS?

Currently State is absorbing cost of State record checks and charging the requestor \$12 for the F.B.I. record check. If background checks are mandatory, number of requests will increase dramatically, with resultant increase in cost.

2. SB 21 REQUIRES THAT BACKGROUND CHECKS BE PERFORMED BEFORE HIRING. WILL THIS CREATE DELAYS?

To date, Dept. of Public Safety (Crime Lab) has received about 1500 requests for background checks and has another 1000 pending. About 25 have had criminal records, but no convictions for sexual abuse. Processing is backlogged now because of sheer numbers. Takes up to a month to do the state check, and 2-4 weeks (concurrently) to do the F.B.I. check.

3. RECORDS OF CONVICTIONS CAN BE RELEASED. WHAT ABOUT RECORDS OF ARRESTS AND CHARGES?

No. Governor's proposed bill (HB 88) would allow for release of outstanding arrest warrants.

4. IS IT LIKELY THAT THE BACKGROUND CHECKS ALLOWED UNDER CURRENT LAW WILL TRULY IDENTIFY CHILD MOLESTERS AND SEXUAL OFFENDERS?

Debatable. Many offenders have never been convicted, and only convictions can be released. In addition, misdemeanor records are only kept for 7 years; felony records for 10 years. Plus, only those crimes on the attached list are covered -- note that child abuse is not one of them.

Governor's legislation would enhance the background checks by expanding on those crimes covered and by allowing release of warrants.

5. ARE WE INCLUDING ALL THOSE EMPLOYEES THAT SHOULD BE CHECKED? WHAT ABOUT SCHOOL TEACHERS?

Ferguson's intent is to reach early childhood programs; purposely excluded school teachers. Rep. Phillips has introduced HCR 2, which would encourage school districts to perform background checks.

SCR 3 - DeVries (same as Phillips)

6. IT IS MY UNDERSTANDING THAT FEDERAL TRAINING FUNDS (TOTAL \$25 MILLION) TO FIGHT CHILD ABUSE WILL BE AVAILABLE TO STATES WHOSE DAY CARE EMPLOYEES UNDERGO CRIMINAL RECORD CHECKS THIS YEAR. SHOULD WE BE PUSHING TO PERFORM THESE CHECKS BY THAT DEADLINE? HAS THE DEPARTMENT INVESTIGATED JUST WHAT FUNDS WOULD BE AVAILABLE?

COMMITTEE REPORT
SENATE

FURTHER:

JUDICIARY
FINANCE

1/14/85

Date 4-16-85

Mr. President

The Committee on HEBS considered SB 21

relating to background checks on certain employees who come into contact with children.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 21
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Edu De Vito

MEMBERS HAVING
OTHER RECOMMENDATIONS

Betty Sabatini
Chairman

De Rosa
Chairman recommendation

A RESOLUTION OF THE ALASKA CONFERENCE OF MAYORS
84-11

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE
TO REQUEST THE LEGISLATURE AND THE GOVERNOR
TO REVISE ALASKA STATUTE, TITLE 12 (CODE OF
CRIMINAL PROCEDURE), CHAPTER 62, (CRIMINAL
JUSTICE INFORMATION SYSTEMS SECURITY AND
PRIVACY)

WHEREAS, the State of Alaska does not have a statutory basis permitting public employers access to criminal justice records for appointed government officials; and

WHEREAS, the above cited Alaska Statute does not provide that any public employee working in conjunction with minor children is subject to a pre-employment review of criminal justice records; and

WHEREAS, appointed public officials are empowered to make, effectuate, and administer policies that substantially effect the public trust; and

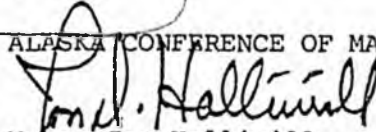
WHEREAS, any public employee whose primary functions place them in close proximity with minor children are being entrusted with the most valuable asset of the State -- our children; and

WHEREAS, the public's right to be protected supersedes the public employees' exclusive right of privacy;

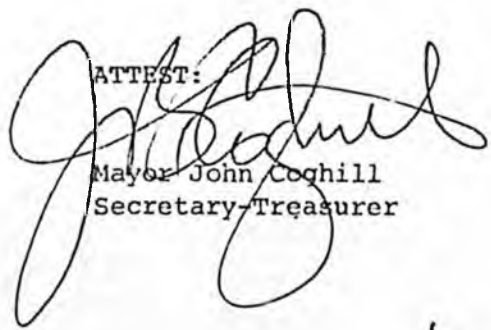
NOW, THEREFORE, BE IT RESOLVED by the Mayors' Conference that the State Legislature and the Governor revise A.S., Title 12, Chapter 62, to permit detailed police records checks of appointed public officials and public employees who work in any capacity in the immediate proximity of minor children.

ADOPTED this 16th day of November, 1984.

ALASKA CONFERENCE OF MAYORS


Mayor Jon Halliwill
President

ATTEST:


Mayor John Coghill
Secretary-Treasurer

Will criminal record checks protect children?

Head Start background checks mandated

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

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

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

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

- Which state agencies will be responsible for the checks?

- Who will pay for the checks, which may cost between \$12 and \$20 each: states, providers or prospective employees?

- What appeal rights do employees and prospective employees have?

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

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

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

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

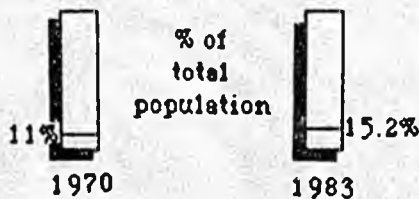
children have no prior convictions. The average molester of girls abuses 62 victims in a lifetime; the average molester of boys abuses 32 victims. Most of them harm many children without ever being accused, much less tried or convicted. If policy-makers believe they've taken major action against sexual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

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

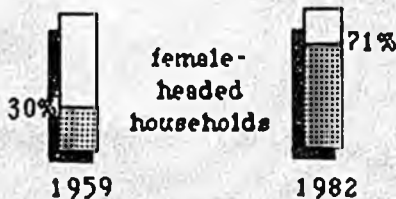
- Since Congress requires states that use SSBG funds to check the records of already-employed care-givers, the initial review is likely to be sweeping and dramatic, possibly a media event. To keep it from becoming a witch-hunt, advocates say records should be kept confidential, only criminal convictions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

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

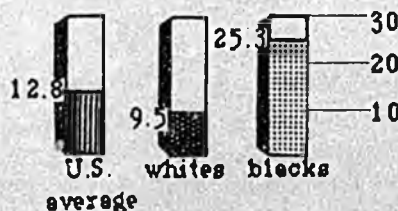
America's poor: increasing inequity



poor blacks



infant mortality per 1000 births



source: T. Berry Brazelton

Church-run facilities can be licensed, courts rule

States can license church-run child care centers, two state supreme courts ruled recently. After the Heritage Baptist Temple turned in its day care license, claiming First Amendment rights, the Kansas Supreme Court upheld the state's right to license the center. The Texas Supreme Court handed down a similar ruling in a residential facility case.

Kansas. The state supreme court confirmed a lower court ruling that licensing wasn't infringing on deeply held religious beliefs because:

- The congregation didn't object to licensing until a new pastor persuaded it to.
- No licensing regulations interfered with religious practice. The church's "religious right" to employ corporal punishment could be met by asking parents to come to the facility to spank kids.

• The center was run for economic as well as religious reasons. Many of the children served weren't congregation members, and their parents were charged for care.

Texas. A residential facility operated by a Baptist church is now subject to licensing. The Texas court stated that licensing isn't an infringement because the state doesn't control religious doctrine and it has a "compelling interest" in protecting children. □

outside

in brief



ALASKA'S SENATOR TED STEVENS has agreed to sleep under a 10' X 13' National Peace Quilt, the design of which is based on children's drawings and messages of peace, hope and goodwill; that's the word from Concerned Educators Allied for a Safe Environment, a national organization with headquarters in Boston. The quilt was constructed by the Boise Peace Quilters of Idaho, who've gotten positive responses from 18 of the senators they asked to join their efforts for world peace. The quilters urge constituents to ask their senators to make a statement about their commitment to peace-making, along with using the quilt.

*

EMPLOYERS AND ORGANIZATIONS INTERESTED IN CHILD CARE BENEFITS can contact the first national computerized child care information service, beginning this summer. Created by the National Association for the Education of Young Children, the clearinghouse is sponsored by a three-year, \$690,000 grant from the Carnegie Corporation. The network will serve parents, child care groups and the media, as well. Call Deborah Phillips, (202) 232-8777, for more information.

*

VOLUNTARY CERTIFICATION OF PRESCHOOL TEACHERS will begin next year in Ohio, under the state Dept. of Education. The credential

will go to graduates of four-year colleges with 30 semester hours of courses related to child development.

*

COMPANIES CAN SAVE MONEY BY OFFERING CHILD CARE BENEFITS, say the preliminary results of a new study by Dr. Deanne Tate of Texas Women's University. While the first report focuses on just three companies, the study shows an employer can profit between \$3 and \$6 on each dollar invested in child care programs. The analysis considered absenteeism, turnover rates, productivity, and hiring and training costs.

THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN'S HOTLINE takes calls relaying sightings of missing children and passes information on to appropriate law enforcement agencies. Funded by the Dept. of Justice, the center received more than 1,000 calls in its first three days of operation last October. The hotline number is (800) 843-5678.

*

STUDENTS AND LOW-INCOME SENIORS CARE FOR SICK KIDS in children's homes, under the Help Undue Germspreeding (HUG) program in Denver. About 70 student nurses and therapists and 30 seniors receive training in child development, infant care, emergency first-aid and respiratory problems. They then care for children for \$4 an hour, paid by parents, who also pay HUG, a project of the Denver YWCA, a \$15 annual fee.

NEWS AND ISSUES

Cont. from page 3.

ment that a "proportionate share" of the assistance be related to the prevention of child abuse and neglect. The actual FY 1985 funding level for the program will be only \$26 million, however, which falls far short of the \$40 million authorized for the program.

Of the funds appropriated, at least \$9 million must be used for grants to states and \$11 million for research, demonstration, and training programs. The remaining funds will be used for the identification, treatment, and prevention of sexual abuse and the implementation of the portions of the Act dealing with withholding medically indicated treatment from disabled infants who have life-threatening conditions, the "Baby Doe" provisions in the Act.

The Act requires states to implement procedures or programs in their child protective service systems within one year for responding to reports of medical neglect. The procedures must provide for coordination between the child protective service agency and individuals designated by and within appropriate health care facilities, and must include appropriate legal authority through state laws for preventing such medical neglect.

The Act also establishes a Family Violence Prevention and Services program. While funding was authorized at \$11 million for FY 1985 and \$26 million a year for FY 1986 and FY 1987, no funds have been appropriated for this program. When funds are appropriated, at least 85 percent of these funds must be used for grants to states, and at least 60 percent of that amount must then be distributed to local public and non-profit private organizations to provide immediate shelter and related assistance to victims of family violence and their dependents.

Congress also established a five-year program, as yet unfunded, to provide 25 percent federal matching grants to states to encourage development of children's trust funds or other direct appropriations for child abuse and neglect prevention activities. When the program is funded, the amount of funds a state can receive will be capped at a level not to exceed 50 cents multiplied by the number of children residing in the state.

CDF is eager to hear how your state agencies are responding to increased reports of abuse and neglect and the increased demand for services. Efforts to increase funding for the Title XX Social Services Block Grant and other child abuse programs, like the Title IV-B Child Welfare Services program, will be a major part of our agenda for the 99th Congress. Please contact Marylee Allen at CDF with statistics and information. □

from Jo Kuykendal, Fox - Discovery

A response to child care abuse Law pushes employee checks

Congress appropriated \$25 million for training child care providers, operators, staff, state licensing enforcement officials, and parents in the FY 1985 Continuing Resolution, P.L. 98-473. The one-year increase is for Title XX of the Social Services Block Grant. States which accept the training monies must establish procedures by state law or regulations to provide for employment history and background checks of employees of child care programs by October 1, 1985.

States must also establish a law requiring a criminal record check for all existing and prospective operators, staff, and employees of all child care programs having "primary custody of a child for at least 20 hours a week;" and all juvenile detention, correction, and treatment facilities. If states take the funds and do not implement the requirements, they will have an amount equal to half their training funds subtracted from their Title XX Social Services Block Grant allotment in FY 1986 or 1987.

Although it is intended to promote quality in child care, the law is vague and provides little direction to states. There are many key issues that must be considered if a state is considering implementing procedures for criminal records checks:

- Which state agencies or combination of agencies will be responsible for the process?
- Who will retain the information sent from the FBI?
- How will employers be notified of employees convictions?
- What crimes will constitute a valid reason for denying employment?
- Who will pay for the background checks, which may cost between \$12 and \$20?
- How will records be updated for current employees?
- What appeal rights are guaranteed to employees when they are denied?
- How will substitute caregivers and volunteers be treated under the law?
- Will programs like nursery schools, which serve children less than 20 hours a week, be covered by the law?
- Will employers also be required to check each state's central child abuse

registry?

• What issues should be considered if child abuse registries are used?

To date, it is not certain that either the Department of Health and Human Services or the Department of Justice will issue regulations to clarify the legislation. Because of the complexity of this issue, the potential expense, and the importance of ensuring adequate civil rights protections, groups are urged to proceed cautiously.

For further information on background checks and on ways to help promote day care quality in general, contact: Abby Cohen at the Child Care Law Center, 625 Market Street, Suite 815, San Francisco, CA; or Howard Davidson at the National Legal Resource Center for Child Advocacy and Protection, 1800 M Street, N.W., Washington, D.C. 20036; or Helen Blank at the Children's Defense Fund. □

Child care funding down in 25 states 1981 cuts in Title XX still felt

Although it has been over three years since a 21 percent cut in the Title XX Social Services Block Grant severely reduced funding for child care at the state level, states have not been able to make up for the cuts. In 1984, despite increased need, higher costs, and an upsurge in interest in child care, 25 states are spending less overall for day care than in 1981, 27 states are serving fewer children, and 15 states are paying 1981 wages to child care workers.

Child Care—The States' Response: A Survey of State Child Care Policies, 1983-1984 reveals that very little progress was made at the state level toward filling the child care gaps in the past year:

- Nine states cut child care expenditures between 1983 and 1984.
- Eleven states increased their child care expenditures by 20 percent or more between 1983 and 1984, but these gains have not been enough to make up for the severe federal cuts made in 1981.
- In 1984, six states reduced their expenditures for staff training. Only three states increased staff training funds between 1981 and 1984. Of the 24 states

Cont. on page 7.

CHILD CARE ACTION NEWS



Volume 1, Number 6

Child Care Action Campaign

November-December

THANK YOU!

C-CAC wishes to express their gratitude to the following: Citibank for its generous support of C-CAC, both financially and for the contribution of furniture and office equipment. Chemical Bank for its contribution of office furniture and files. New York Times Foundation for a generous gift to C-CAC's basic budget.

JUNIOR LEAGUE INVOLVEMENT IN CHILD CARE

(A summary of an article by Sally Orr, Director of Public Policy for the Association of Junior Leagues and a member of the Board of the Child Care Action Campaign.)

Child care is a high priority of the Association of Junior Leagues, an international women's volunteer organization with 249 member Leagues in the United States, representing approximately 150,000 individual members.

As a women's organization, the Association is particularly interested in child care. Junior League members are experiencing the same trends as those reflected in national statistics — that is, many of our members are working; more are having to combine work and family responsibilities. Most Junior League members are married, have children, and a substantial number are employed.

(Continued on Page 3)

SUBSIDIES BY EMPLOYEES

(Submitted by James Strickland, Executive Director of Child Inc. in Houston, Texas and a Board member of Child Care Action Campaign.)

Direct Subsidies	Percent of Centers receiving this type of subsidy	Value of Subsidy
Space	25%	
Equipment	28%	\$ 80,000,000
Volunteers	36%	
Indirect Subsidies		
From Underpaid Staff	99+%	\$648,036,300

Method of calculating subsidy from underpaid staff:

$$280,900^* \times \$2,307^\dagger = \$648,036,300$$

* Teachers in child care (source: Day Care USA Newsletter Sept. 10, 1984, U.S. Govt. printing office "Occupational Projections and Training").

† Difference between average teachers salary of \$10,173 (as extrapolated from 1978 data published in "Day Care in the USA", ABT Associates and supported by estimates published in Day Care Information Exchange 1983) and an average reasonable wage of \$12,480/year (\$6.00/hour).

If Annual Subsidy per teacher was:

	Total Subsidy would be:
\$10	\$2,809,000
\$100	\$28,090,000
\$1,000	\$280,900,000
\$2,000	\$561,800,000
\$2,307	\$648,036,300

We apologize for the lateness of the mailing of this newsletter. The delay was caused by our move in November to new offices at 99 Hudson Street. We expect to publish another newsletter in January.



DO CRIMINAL RECORD CHECKS PROTECT CHILDREN?

(An article by Dr. Gwen Morgan, Co-Director, Work/Family Direction and a member of the Board of Child Care Action Campaign.)

The Congress has just enacted new legislation, Public Law 98-473, requiring that any state receiving the federal Social Services Block Grant funds must have procedures in effect for employment and criminal record history and background checks for all prospective and current operators, staff, or employees of child care and certain other services. The question of whether criminal record checks is a good idea for protecting children or not is a complicated one. There are arguments for and against it.

Two common assumptions need to be dealt with first, before examining the usefulness of the measure. The first assumption is that criminal record checks are insulting to the field of child care, and the second is that criminal record checks are a violation of adult civil rights. Neither of these assumptions is entirely valid.

Criminal record checks are common whenever a high degree of trust is involved. Important Commissions and Advisory Groups, for example, often screen prospective members through checks of relevant criminal records. Taxi drivers, for whom the trust of the passenger is required, are similarly screened. Many public school systems have been conducting criminal record checks of prospective teachers for a number of years. This screening, which usually is done by fingerprinting, does not insult or demean the people checked, but simply affirms the importance of what they do or the need for trust by the public. If a high quality child care program should screen applicants for jobs, this should not mean to the applicant that the board and director have a low opinion of the field, but that they are trying to safeguard children and staff by screening out people who do not belong in the field.

It is true that criminal record checks do intrude upon the rights of criminals who have records. Civil rights are never pure. Rights of one group usually clash with the rights of another group. In this case, the rights of the adults with criminal records are in conflict with the rights of the children for protection. Since children have little voice in our society, their rights are usually traded off against the clashing rights of adults. Should we accept as a necessary evil the fact that a child may be abused by someone who has already abused many other children because the past record of convictions was not available to the center or family day care system director or to the licensor? A field concerned for children should not be so quick to affirm the rights of adults against those of children.

The major reason for worry about the criminal record checks now mandated in federal law is that the procedures used may go beyond what is needed to protect children. Early

(Continued on Page 2)

CRIMINAL RECORD CHECKS

(Continued from Page 1)

childhood workers should be sure that records are kept confidential, that only records of criminal convictions are used, and that false accusations are not part of an open and accessible record. Further, only relevant criminal records should be accessible, and not records of actions that in no way could endanger children. The only relevant crimes are sexual or other abuse of children. In a climate of fear, lives can be ruined by improper broad inclusion of material in criminal records for which no proof exists, and by broad searches of irrelevant records. The assumption that criminal record checks are demeaning is not correct, but there are issues to watch as states decide what records to check, and how to implement these checks.

The present debate about criminal records blurs two separate ways of defining the issue. One question is: To what extent should directors and licensors have access to records of relevant criminal convictions? If someone has harmed children in the past, can these decision-makers find out? If so, how far does their access to knowledge extend? Only to their own city or county? The whole state? Other states? The states that border California, which does check records, are finding that those with California records are starting to provide child care across the state lines.

The second quite different question raised in the debate is the extent to which day care directors and licensors should be mandated to search records, base decisions upon them, and be held accountable if they entrust children to someone with a criminal record.

The first of these issues has been addressed by P.L. 98-473. Presumably states that want to use Social Service Block Grant funds will be setting up systems that permit access to records. Advocates will need to watchdog the procedures.

The second issue has also been addressed in the legislation, but not clearly. It, too, will be part of the procedure the states set up.

Since the Congress requires states that use federal social service funds to check the records of both prospective and current operators and staff, the initial procedure used is likely to be sweeping and dramatic, possibly a media event. Advocates should be sure the limits described above are in place to avoid a witch-hunt.

After this initial procedure, the states will design their ongoing procedures, and it is here that it is important to think through some of the pros and cons of this form of child protection, and to decide how far the state wants to go.

The major concern of most child advocates is the fear that decision-makers will view criminal record checks as a solution. These record checks are not an answer, and cannot protect children against all or even most sexual abuse. They only protect against those who have been convicted of this crime in the past. Most of the adults who abuse children have no prior convictions. The average molester of girls abuses 62 victims in a lifetime, while the average molester of boys offends 39 victims. Most of them harm many children without ever being accused or tried. Some may have been arrested but not convicted because of the difficulty in proving the crime. If legislators and the public believe that they have taken major action against sexual abuse in mandating criminal record checks, they may fail to support more important measures. Criminal record checks can be only a small part of an overall solution.

California has had criminal record checks using fingerprinting for a number of years. Yet the major scandal in Manhattan Beach was not averted in this way because, like most sexual abusers of children, those adults had no criminal records.

However, criminal record checks are far from useless. In California and the states that search records, it is common to

screen out every week a fairly high number of job applicants seeking to work with children, who have been convicted of crimes against children. In those states, child advocates would be reluctant to leave children vulnerable to known criminals.

On the other hand, criminal record checks take money and staff time. Computers make this action possible, but a person must be employed and paid to enter the information, keep it up to date, and get it back and into the hands of those who use it. Unless the government is willing to do criminal record checks in conjunction with other measures, the money might be better spent in other ways. A further issue is the question of who pays for the record check, and whether the day care provider and/or the applicant for a job or a family day care license will be charged high fees for this check.

About ten states passed legislation in their recent sessions adding criminal record checks to their licensing laws. With the Congressional language recently enacted other states will be acting soon. It is not yet clear what policies and procedures they will use for implementing this action.

Public Law 98-473 has some other provisions of importance that might be used to answer some of these questions, and that will be used to address the issue of sexual abuse more broadly than through criminal record checks alone.

\$25 million was authorized for training, including training in the area of child abuse, for child care providers, state licensing and enforcement officials, and parents. If it survives budget battles, it is to be allocated among the states based on a formula. Allocation amounts are already worked out.

In addition, the Secretary of HHS is mandated to develop a model child care standards act, for the guidance of states in their licensing requirements. Further detail on criminal record checking procedures will undoubtedly be included in this model, which is due in three months.

Although the Congressional language is not clear, what is probably intended is a model state child care licensing law, and a model set of standards that the licensing agency could use as the requirements under the law. A model licensing law and standards would spell out the state's procedures for criminal record checks, including the limits on them. It also offers opportunities for some of the broader ways to address the issue of abuse in day care. These ways include required rights for parents to visit programs at any time children are enrolled, involvement of parents in checking that requirements are met, required ongoing training of staff, voluntary credentialing of family day care, greater regulation of field trips, assuring that children can be taken from the program only by adults authorized by parents, and improved complaint procedures.

Criminal record checks, properly safeguarded, do offer some protection for some children, but they are not the answer and should not divert attention and needed public funds from more important policy responses to the issue.

THE USE OF ANATOMICAL DOLLS

Several companies have written to us asking us to publicize the availability of anatomical dolls. *After checking with experts, we've come to the conclusion that the use of such dolls may be too specialized for parents unless they are afforded training by experts. Prof. Gwen Morgan points out that the dolls are useful in legal testimony, for therapists, and even for day care staff. Dr. Vincent Fontana tells us that dolls of this type can be extremely useful.

We hope to have a more detailed article on various aspects of play therapy in a forthcoming issue. In the meantime, we suggest that day care staff might want to consult with therapists in their area as to ways in which anatomical dolls can be used to help children identify the kinds of "touching" that should be avoided.

*(See publications for information on the booklet "Teach-a-Bodies").

LEGISLATIVE UPDATE

(An article by Helen Blank, Director of Child Care and Family Support for the Children's Defense Fund and a member of the Board of the Child Care Action Campaign.)

While the growing deficit may dim prospects for significant expansion of federal support for child care in the coming year, it is still expected that Congress will express its growing interest in child care by introducing legislation which targets resources both to making child care more affordable for lower-income families as well as improving quality.

Families and Child Care: Improving the Options, a bi-partisan report issued by the Select Committee for Children, Youth, and Families sets the stage for a series of House and Senate bills which address various gaps in our current system. The CDF Children's Survival Bill will also include a significant section devoted to child care initiatives. Several of the Select Committee's recommendations are likely to be included in each child care package. These include:

- Increasing the Title XX Social Services Block Grant;
- Providing additional child care assistance to mothers in school or training and adolescent mothers;
- Restoring the second snack and third meal to the Child Care Food Program;
- Establishing a demonstration program to develop models of child care programs for four year olds based in public schools;
- Expanding federal resources for training child care workers and support to family day care providers;
- Providing incentives to states to raise their child care standards and to expand their licensing and monitoring efforts;
- Providing loans or grants for start-up, renovation costs and equipment.

The bills will have to be referred to different committees, i.e., Senate Finance Committee, Labor and Human Resources Banking, Housing and Urban Affairs, so that advocates will need not only to seek Congressional support for the concepts included in the package but also closely follow the progress of each individual bill.

It will be a challenging year. Lobbyists in Washington will be working to simultaneously fend off cuts in existing child care programs and increase support for new efforts. The first task will be to secure funding in a Supplemental Appropriations Bill for the School-Age Resource and Referral Block Grant which was passed at the close of the last session of Congress. This block grant authorizes \$20 million for two years for start-up costs in both areas. However, FY 1985 Appropriations Bills were already passed when Congress approved the child care initiatives so that no new money is available yet for the implementation of the Block Grant.

P.L. 98-473 The FY 1985 Continuing Resolution appropriates \$25 million in additional Title XX funds for one year to be used for training child care providers, operators, staffs, state licensing enforcement officials, and parents. States which accept the training monies must by October 1, 1985, establish procedures by state law or regulations, to provide for employment history and background checks as well as a state law which requires a criminal record check for all child care programs having "primary custody of a child for at least 20 hours a week" in all Juvenile Detention, Correction, and Treatment facilities. If states take the funds and do not implement the requirements, they will in FY 1986 or 1987 have an amount equal to half their training funds subtracted from their Title XX Social Services Block Grant allotment.

The law is very vague providing little direction to states. Key issues that must be considered if a state is considering implementing procedures for criminal records checks include:

- Which state agencies or combination of agencies, i.e., Licensing, Justice, will be responsible for the process?
- Who will retain the information sent from the FBI?
- How will employers be notified of employees' convictions?
- What crimes will constitute a valid reason for denying employment?
- Who pays for the background checks which may cost between \$12 and \$20? Will it be states, providers, prospective employees?
- How will records be updated for current employees?
- What appeal rights are guaranteed to employees and prospective employees?
- How are substitute caregivers and volunteers treated under the law?
- Should programs like nursery schools which serve children less than 20 hours a week be covered by the law?
- Will employers also be required to check each state's central child abuse registry?
- What issues should be considered if child abuse registries are used?

Interest in expanding support for child care is not limited to the federal level. It is critical to monitor state child care developments as many governors have expressed concern about the lack of child care resources and an interest in improving the quality of care. Minnesota has a broad coalition of groups which have launched an effort called *Child Care Works*. Their major agenda items include:

- an increase of \$40 million in the state's sliding fee child care program;
- start-up funds for resource and referral programs; and
- increased funds and authority for day care licensing.

California's Governor Deukmejian vetoed a large school-age child care bill last fall despite a well-organized campaign urging approval. Child care groups will continue to seek passage of the \$35 million school-age initiative. Florida's Governor is seeking a large expansion in state support for child care while Arizona's Governor Babbitt is seeking improvements in that state's child care quality. CDF's Ohio office plans a major push for expanded child care support following the release of a study examining the state of child care in Ohio. New York advocates are asking for an additional \$10 million subsidy for child care for modest income working parents as well as support for the full development of a statewide resource and referral service.

It is obvious that advocates will have to fight for a more rational child care system on many fronts — federal, state, local and private dollars all are necessary, given the task we share.

POSITION PAPER

COMMITTEE SUBSTITUTE for SENATE BILL 21 (HESS)

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

Secs. 1, 2 and 3

Existing AS 12.62.035 authorizes the release of certain criminal conviction records for persons who hold, or are applying for, paid or volunteer positions which would give them supervisory or disciplinary power over a child. Sections 1, 2 and 3 of this bill expand the types of convictions that may be reported to include all crimes that might pose a risk to children. Section 3 allows the state to inform an inquiring employer if there is a pending warrant for the arrest of the employee. These three sections contain the essential elements in the bill introduced by the Governor (HB 88) and so have the continuing support of the administration.

Secs. 4 and 5

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

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

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

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

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

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

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

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

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

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

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

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

Recommendations

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

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

DATE: March 29, 1985

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

DATE: 4-2-85

1.	POSITION TITLE SOCIAL WORKER IV				RANGE/STEP 18A	ORG. UNIT GGU	PAGE/LINE	COV.	APPROV.	DISAJT.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT	LEC.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1	2			3					
	PERSONAL SERVICES									
5.	Salary	37.4								
6.	Benefits	11.4								
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES	01			48.8					
10.	Travel	02			6.6					
11.	Contractual	03			5.4					
12.	Commodities	04			.4					
13.	Equipment	05			1.5					
14.	Other									
15.	TOTAL COST				62.7					

Personal Services based on FY 86 PAC'S.
 Travel based on 2 trips annually to the following:
 From Juneau to Bethel, Nome, Ketchikan, Anchorage
 and Fairbanks.
 Contractual, Supplies and Equipment based on FY 86 Budget
 submission data.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Hatch 1003	
18.		General Funds 1004	62.7
19.		I-A Receipts 1005	
20.		Program Receipts 102B	
21.		Other	

FOR B&M USE ONLY
 KEY NUMBER _____

REQUEST FOR
 NEW POSITION

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

Page 1 of 3
 Revised Date _____

FY 86

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

FOR B&M USE ONLY
KEY NUMBER _____

**REQUEST FOR
NEW POSITION**

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

Page 2 of 3
Revised Date _____

FY 86

1.	POSITION TITLE Clerk Typist III				RANGE/STEP 8A	BARG. UNIT GGU	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PPT	STAFF MONTHS 6	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT	LEC.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES									
5.	Salary		11.0							
6.	Benefits		3.9							
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES	01	14.9							
10.	Travel	02	-0-							
11.	Contractual	03	2.6							
12.	Commodities	04	.4							
13.	Equipment	05	2.6							
14.	Other									
15.	TOTAL COST		20.5							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts	1002							
17.		C.F. Match	1003							
18.		General Funds	1004	20.5						
19.		I-A Receipts	1005							
20.		Program Receipts	1028							
21.		Other								
FOR B&M USE ONLY KEY NUMBER _____										

Personal Services calculation based on PAC'S.
Calculations for Contractual, Supplies and Equipment based on FY 86 Budget submission.

REQUEST FOR
NEW POSITION

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

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Revised Date _____

FY 86

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSSB 21 (HESS)

SUPPORT

CSSB 21 (HESS) - "An act relating to the protection of children..."

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

1.	POSITION TITLE Clerk-Typist III				RAIICE/STEP 8/B	DARG. UNIT G	PAGE/LINE	COV.	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				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE									
	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					
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1003								
19.		General Funds 1004		30,1						
20.		I-A Receipts 1005								
21.		Program Receipts 1028								
		Other								
FOR BSM USE ONLY KEY NUMBER _____										

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 refileing, 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

FY 86

Page of
Revised Date

1.	POSITION TITLE Latent Fingerprint Examiner I				RANGE/STEP 15/A	DARG. UNIT G	PAGE/LINE	COV.	APPROV.	DISAP.		
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				<p>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.</p> <p>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.</p>							
	1		2								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.					C.F. Match 1003							
18.					General Funds 1004		41.6					
19.					I-A Receipts 1005							
20.					Program Receipts 1028							
21.					Other							
FOR BSM USE ONLY												
KEY NUMBER _____												

**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

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

February 12, 1985

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

Dear Senator Fahrenkamp:

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

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

The Honorable
Bettye Fahrenkamp

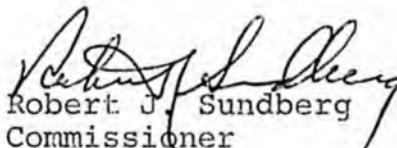
-2-

February 12, 1985

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

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

Sincerely,


Robert J. Sundberg
Commissioner



**National
Conference
of State
Legislatures**

Headquarters
Office
(303) 292-6600

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Seventeenth
Street
Suite 1500
Denver,
Colorado
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4821
President
John T. Bragg
Deputy Speaker
House of Representatives
State of Tennessee
Executive Director
Earl S. Mackey

November 1984

SCREENING CHILD CARE AND EDUCATION EMPLOYEES

Shock waves are reverberating throughout the country with the expose of sex abuse scandals in day care centers in California, Florida, and New York in 1984. Consequently, several states have enacted laws mandating criminal record checks of child care employees. Congress, in turn, has mandated criminal-record checks of all day care employees in states receiving additional Title XX funding for training in child abuse prevention.

To date 15 states have enacted laws on this issue: Alaska, California, Colorado, Connecticut, Florida, Georgia, Indiana, Iowa, Kentucky, Missouri, Nevada, New Hampshire, New York, South Carolina, and Washington. Most of the laws require disclosure (through background checks) of past crimes against children. Washington also requires information on pending charges before granting a day care license.

Florida's law requires fingerprinting at the time of the teaching certification which is submitted to the FBI and state enforcement agencies to process a background check for any criminal convictions including those pled nolo contendere. Colorado, Missouri, and South Carolina require criminal background checks of employees before issuing day care licenses.

Alaska, California, Iowa, and Kentucky allow employers to request and receive from the Office of Public Safety or the Justice Cabinet records of all convictions of sex crimes of all persons applying for employment or volunteer work which would have supervisory or disciplinary power over children.

Attached is a packet with copies of each of these laws.

For more information, contact Joan M. Smith, Research Analyst, Children & Youth Program, NCSL, 1125 Seventeenth Street, Suite 1500, Denver, Colorado 80202, 303/292-6600.

give to Hayden

gently needed to sustain their critical efforts in the development of an IAIMS prototype and in advanced efforts in Medical Informatics. I hope my colleagues will join me in supporting this vital work.

Mr. President, I would be glad to answer any questions.

Mr. WEICKER. Mr. President, I discussed this in detail with the distinguished Senator from South Carolina and the amendment is acceptable.

Mr. PROXMIRE. Mr. President, we have no objection to the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 6961) was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WEICKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 6962

(Purpose: To provide additional funds for training with respect to prevention of child abuse in child care settings and to establish Federal matching grants to encourage State trust funds or appropriations for child abuse and neglect prevention activities)

Mr. DeCONCINI. Mr. President, I send an amendment to the desk and ask for its immediate consideration. The amendment is offered on behalf of myself and Senators LEVIN, MOYNIHAN, HAWKINS, SPECTER, DODD, KENNEDY, and METZENBAUM.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arizona (Mr. DeCONCINI), for himself, Mr. LEVIN, Mr. MOYNIHAN, Mr. HAWKINS, Mr. SPECTER, Mr. DODD, Mr. KENNEDY, and Mr. METZENBAUM, proposes an amendment numbered 6962.

Mr. DeCONCINI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment add the following new section:

Sec. 1. (a)(1) Notwithstanding any provision of title XX of the Social Security Act, the amount applicable under section 203(b)(2) of such Act shall be \$25,000,000 for fiscal year 1985. Of such amount, \$25,000,000 shall be allotted and used in accordance with this section.

(2) In addition to any other amounts appropriated under this resolution or any Act, there are hereby appropriated \$25,000,000 for fiscal year 1985 for carrying out title XX of the Social Security Act, to be used in accordance with the provisions of this section.

(3) Accounts appropriated under this section shall remain available until September 30, 1985, without regard to section 102 of the resolution.

(4) Except as otherwise provided in this resolution, each State's allotment of the additional amounts authorized and appropriated under this section shall be the same proportion of \$25,000,000 as such State's proportion of other title XX funds for

fiscal year 1985, as determined under section 2003 of the Social Security Act.

(b) The additional \$25,000,000 made available to the States for fiscal year 1985 pursuant to subsection (a) shall—

(1) be used only for the purpose of providing training and retraining (including training in the prevention of child abuse in child care settings) to providers of licensed or registered child care services, operators and staffs (including those receiving in-service training) of facilities where licensed or registered child care services are provided, State licensing and enforcement officials, and parents;

(2) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated under this section, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to this section) for the purpose specified in paragraph (1), and shall in no case supplant such funds from other sources or reduce the level thereof; and

(3) be separately accounted for in the reports and audits provided for in section 2008 of the Social Security Act.

(c)(1) In order to provide guidance and assistance to the States in utilizing funds allocated pursuant to title XX of the Social Security Act, not later than 3 months after the date of enactment of this section, the Secretary shall draft and distribute to the States for their consideration, a Model Child Care Standards Act containing—

(A) minimum licensing or registration standards for day care centers, group homes, and family day care homes regarding matters including—

(i) the training, development, supervision and evaluation of staff;

(ii) staff qualification requirements, by job classification;

(iii) staff-child ratios;

(iv) probation periods for new staff;

(v) employment history checks for staff; and

(vi) parent visitation; and

(2)(A) Any State receiving an allotment under such title from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—

(i) procedures, established by State law or regulations, to provide for employment history and background checks; and

(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92-544 (86 Stat. 115) requiring nationwide criminal record checks.

for all operators, staff or employees, or 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, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or programs.

(B) In the case of any State not meeting the requirements of subparagraph (A) by September 30, 1985, such State's allotment for fiscal year 1986 or 1987 shall be reduced in the aggregate by an amount equal to one half of the amount by which such State's allotment under such title was increased for fiscal year 1985 as a result of subsection (a).

(d) The determination and promulgation required by section 2003(b) of the Social Security Act with respect to the fiscal year 1985 (to take into account the preceding provisions of this section) shall be made as soon as possible after the date of the enactment of this Act.

Sec. 2. (a) The Congress finds that—

(1) disturbing increases have occurred in recent years in the numbers of younger Americans who are abused;

(2) many children who run away from home, who fall prey to pornography and prostitution, who suffer from a dependency on alcohol and drugs, and who become juvenile offenders, have been victims of child abuse;

(3) research has shown that abuse tends to repeat itself, and many times parents who abuse their children were once victims themselves;

(4) given the increased demand for treatment and crisis intervention in child abuse and neglect cases, Federal funds distributed to States are most often used for treatment and little is left for prevention efforts;

(5) since 1980 some States have begun to recognize the critical need for prevention efforts, and trust funds (generated by surcharges on marriage licenses, birth certificates or divorce actions, or by special check-offs on income tax returns) are being established to allow such States to pay for child abuse and neglect prevention activities despite depressed State economies and budget cutbacks;

(6) in recognition of the increased cases of child abuse and neglect, other States have established significant funds for child abuse and neglect prevention activities through direct appropriations; and

(7) the Nation cannot afford to ignore the importance of preventing child abuse.

(b) It is the purpose of sections 2-9, by providing for Federal challenge grants, to encourage States to establish and maintain trust funds or other funding mechanisms, including appropriations to support child abuse and neglect prevention activities.

DEFINITIONS

Sec. 3. As used in sections 2-9—

(1) the term "Secretary" means the Secretary of Health and Human Services; and

(2) the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

GRANTS AUTHORIZED

Sec. 4. (a) The Secretary is authorized, in accordance with the provisions of sections 2-9, to make grants to eligible States.

(b) Payments under this sections 2-9 may be made in any fiscal year following the fiscal year in which any State has collected funds for child abuse and neglect prevention activities through a trust fund or other funding mechanism.

(c) There is authorized to be appropriated such sums as are necessary to carry out the provisions of sections 2-9 for the fiscal year 1985 and for each of the four succeeding fiscal years.

STATE ELIGIBILITY

Sec. 5. Any State is eligible for a grant under sections 2-9 for any fiscal year if such State has established or maintained in the previous fiscal year a trust fund or other funding mechanism, including appropriations, which is available only for child abuse and neglect prevention activities, including activities which—

(1) provide statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the problems of child abuse and neglect;

(2) encourage professional persons and groups to recognize and deal with problems of child abuse and neglect;

(3) make information about the problems of child abuse and neglect available to the public and organizations and agencies which deal with problems of child abuse and neglect; and

(4) encourage the development of community prevention programs, including—

(A) community-based educational programs on parenting, prenatal care, prenatal bonding, child development, basic child care, care of children with special needs, coping with family stress, personal safety and sexual abuse prevention training for children, and self-care training for latchkey children; and

(B) community-based programs relating to crisis care, aid to parents, child-abuse counseling, peer support groups for abusive or potentially abusive parents and their children, lay health visitors, respite of crisis child care, and early identification of families where the potential for child abuse and neglect exists.

LIMITATIONS

Sec. 6. (a)(1) Any grant made to any eligible State under sections 2-9 in any fiscal year shall be equal to the lesser of—

(A) 25 percent of the total amount made available by such State for child abuse and neglect prevention activities and collected in the previous fiscal year in a trust fund (excluding any interest income from the principal of such fund) or through any other funding mechanism, including appropriations; or

(B) an amount equal to 52 cents times the number of children residing in such State according to the most current data available to the Secretary.

(2) For purposes of clause (B) of paragraph (1), the term "children" means individuals who have not attained the age of majority, as defined by such State.

(b)(1) No grant may be made to any eligible State unless an application is made to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems essential to carry out the purposes and provisions of sections 2-9. Each application shall—

(A) specify that the trust fund advisory board, or in States without a trust fund mechanism, the State liaison agency, to the National Center on Child Abuse and Neglect, established by section 2 of the Child Abuse Prevention and Treatment Act, will be responsible for administering and awarding of the Federal grants to eligible recipients carrying out activities described in section 5;

(B) provide assurances that any assistance received under sections 2-9 shall not be used as a source for non-Federal funds for the matching requirements of any other provisions of Federal law; and

(C) provide for keeping records and making such reasonable reports as the Secretary deems essential to carry out the purposes and provisions of sections 2-9.

(2) The Secretary shall approve any application that meets the requirements of this subsection, and the Secretary shall not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove and opportunity for a hearing with respect to the disapproval.

WITHHOLDING

Sec. 7. Whenever the Secretary, after reasonable notice to any State and opportunity for hearing within the State, finds that there has been a failure to comply with any provision of this sections 2-9, the Secretary shall notify the State that further payments will not be made under sections 2-9 until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, no further payments shall be made under sections 2-9.

AUDIT

Sec. 8. The Comptroller General of the United States, and any of his duly author-

ized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any applicant and any other entity receiving assistance under sections 2-9 that are pertinent to the sums received and disbursed under sections 2-9.

REPORT

Sec. 9. The Secretary shall prepare and submit to the Congress at the end of each year a compilation and analysis of any reports submitted by eligible States under section 6(b)(1)(C).

Mr. DECONCINI. Mr. President, this amendment deals with child care training and provides for some \$25 million to be appropriated in title XX.

This amendment only begins to address a problem that is of great concern to millions of American families. The problem is the critically inadequate level of training of child care providers.

Recent reports of child abuse in various child care centers have shocked the Nation. Although no one would ever suggest that such abuse is commonplace, press accounts and our own congressional hearings have shown that the potential for such abuse is virtually unlimited due to the lack of precautions.

Furthermore, in addition to the problem of child abuse, child care experts agree that quality child care requires two basic factors that are far from uniformly available in the child care industry today: Adequate salaries and adequate training for child care providers.

Although I wish we could deal with both of these inadequacies today, I believe that we can make an important start on improving the training of child care providers. Regrettably, we must try to regain ground that was lost in 1981 when a separate title XX training program existed. As a result of the loss of this set-aside and the curtailment of title XX funds, 24 States target no title XX funds for training.

The House of Representatives has added \$50 million to the continuing resolution for training providers of licensed or registered child care services. The first part of our amendment, which adds \$25 million to title XX funds, is patterned along the lines of the House amendment. Utilizing the distribution mechanism for title XX funds, our amendment would make available to States \$25 million for the training of licensed or registered child care providers and for the training of State licensing and enforcement officials in the prevention of child abuse in child care settings. One-half of a States' allotment will be contingent on the State adopting and implementing procedures for screening child care providers and related staff in licensed or registered child care facilities. Furthermore, the amendment would call upon HHS to establish model child care standards to assist the States in improving child care programs in their States.

Mr. President, we cannot and should not ignore the growing need for quality child care for America's children. The shortchanging of these children during their formative years will only haunt us later. I urge the adoption of this amendment, and I yield to my colleague from Connecticut for a further explanation of the amendment.

Mr. LEVIN. Mr. President, America is suffering an epidemic of child pornography and molestation. The recent allegations of child abuse in day care programs around the country raise the prospect of a serious and growing threat to our Nation's youth. These tragic incidents are most keenly felt by the children and families involved and by the day care professionals whose dedication to child development is tarnished by the actions of those who obviously do not care about what is and what is not in the best interest of children.

Earlier this week, joint hearings were held by the Select Committee on Children, Youth and Families and the Ways and Means Subcommittee on Oversight to find what emergency actions could be taken to improve the safety and quality of child care. Child abuse and child care experts alike agreed that the lack of training in child abuse prevention is a major shortcoming which demands immediate attention. Dr. Susan Aronson, representing the American Academy of Pediatrics, cited in her own research that monitoring and training clearly improve the quality of care. A five-State study involving California, Michigan, Texas, West Virginia, and Pennsylvania confirmed these results.

Mr. President, the amendment which I and my colleagues Senators DECONCINI and MOYNIHAN offer today is a modest first step that would help States establish and improve child abuse prevention programs.

Our amendment would make \$35 million in targeted title XX funds available to States to establish child abuse prevention training. It is also designed to encourage States to pre-screen day care employees so that persons with previous convictions for child abuse cannot prey upon our children.

Mr. President, I believe we have a mandate from the American people. Child care is a necessity for millions of parents who have to work to provide for the economic well-being of their families. This Senate has an opportunity to respond to their concerns and to help reduce incidents of child abuse. The House has already acted in this area by adding \$50 million to the continuing resolution for such services.

Mr. President, training is one area where we can be most effective. Prior to 1981 a separate title XX training program existed. However, in recent years title XX funds have been reduced and limited resources have been available for training day care workers

In child abuse prevention. In light of the recent revelations, I believe a more intense and targeted effort is necessary.

Specifically, our amendment would: Make \$35 million available to States to:

Train providers of licensed or registered child care services, operators and staff.

Train State licensing and enforcement officials and parents in the prevention of child abuse in child care settings.

No more than one half of the State's allotment will be paid to the State unless procedures for screening and conducting background checks and criminal investigations of all providers, operators, and staff in licensed or registered child care service are in place.

Mr. President, our amendment represents an essential building block to a comprehensive, effective program that will improve the safety and quality of day care.

I urge my colleagues to join us in support of this most vital piece of legislation.

Mrs. HAWKINS. Mr. President, I rise in support of the amendment of the distinguished Senator from Arizona (Mr. DECONCINI). This amendment would provide much needed funding for: the training of child care employees, parents and State child care licensing and enforcement officials in the prevention of child abuse. The amendment would also tie the availability of those extra Federal funds to a State's willingness to enact State laws regarding screening of licensed and regulated child care facilities. This amendment is desperately needed in order to protect our children from abuse in child care centers and homes.

Recent publicity has increased the public's awareness of the problem of sexual abuse and the need for better regulation of child care facilities. The need for additional funding for State licensing and enforcement officials has been stressed by Florida's HRS Secretary David Pingree. Secretary Pingree has stated that he needs to double his staff of 39 workers who investigate licensed day care centers statewide. In his hometown, the director of licensing for the three county areas of Citrus, Seminole, and Osceola has stated that she can only spare three individuals to inspect and license the more than 280 licensed child care centers, 90 foster homes and 22 residential facilities for the handicapped. She stated that she had no exact statistics on how many family based day care homes operate in the area, but estimated that about 10,000 children under age 6 are cared for in these

A recent poll conducted in Florida, as a statewide State survey, showed that 90 percent of those surveyed favored stronger State licensing procedures. I have talked with child care operators and employees and many of them are willing, even eager to sup-

port criminal background checks on their employees. They are anxious to rid their profession of those that would prey on the children entrusted into their care. But many of these child care operators have experienced barriers in State laws which prevent them from reviewing the criminal backgrounds of current or potential employees. For example, while the Department of Justice does supply criminal record information for the purposes of licensing or employment purposes, it only does so if the dissemination is authorized by Federal or State statutes and approved by the Attorney General. Since only six States permit national criminal records checks on schoolteachers, four States on school bus drivers and only three on child care employees, child care operators are severely limited in their ability to screen their employees. Another method for accessing information on a potential employee is the National Crime Information Center's Interstate Identification Index. This experimental computerized program should enable law enforcement officers to access criminal record histories for employment purposes. However, this computerized method of accessing criminal records histories is also limited by State statutes. Instead of cooperating with this program, several States have enacted laws restricting the access to their criminal records material for employment purposes. Both of these methods of reviewing criminal records illustrate the need for reform in State statutes.

Mr. President, these reforms are not a complete solution to the very complex problem of sexual child abuse or regulation of child care centers. Many more Federal, State, and local reforms are needed to protect our children. But this provision is an excellent beginning. I urge my Senate colleagues to support this amendment.

Mr. DODD. Mr. President, the provisions I am introducing today would provide Federal challenge grants for States that set up special funds for child abuse prevention activities. I thank my distinguished colleague from Arizona for agreeing to offer these provisions as a part of his amendment.

Millions of children in this country are growing up at risk of abuse and neglect. Between 1976 and 1982, for example, reports of child abuse across the country soared by 123 percent. My distinguished colleague from Arizona has just proposed a program to deal with abuse in child care settings. But that is only one part of the picture. We know that the bulk of child abuse cases occur at home or close to home. My amendment focuses on this part of the total picture or problem.

Last week, the Senate adopted the conference report on the Child Abuse Amendments of 1984, restoring critical funds for child abuse programs. I have been a principal sponsor of such efforts. Along with my distinguished col-

league from Utah, Senator HATCH; California, Senator CRANSTON; Alabama, Senator DENTON; Oklahoma, Senator NICKLES; and Kansas, Senator KASSIBAUM. Federal funds are distributed to States under this act. But given soaring rates of abuse cases, these funds are most often used for treatment services. Precious little funding is left for prevention efforts.

Starting in 1980, some States began to recognize the need to focus directly on widespread, community-based prevention efforts. To date, 20 States have set up special trust funds for child abuse prevention activities including Alabama, Arizona, California, Delaware, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, North Carolina, New York, Rhode Island, South Carolina, South Dakota, Virginia, Washington, Wisconsin, and West Virginia.

These funds are generated in a variety of ways, including surcharges on marriage license and birth certificates or by special checkoffs on income tax returns. Other States have used direct appropriations to fund child abuse prevention activities, including Connecticut, Florida, and Maine.

These funds support a broad range of community programs, including plays in schools aimed at preventing sexual abuse, self-care courses for latchkey children, parenting classes, and programs for incarcerated parents. Such grants would also help fund statewide educational and training programs for professionals including teachers, mental health workers, police officers, prosecutors, and judges.

Mr. President, these provisions would challenge all States to establish significant funds supporting child abuse prevention projects. For every \$3 that States make available for child abuse and neglect prevention activities, the Federal Government will provide \$1 in matching funds. We want to encourage those States who have not yet acted to act now. We also want States that have already acted to augment their funds. Right now, the 20 trust funds nationwide amount to a total of \$10 million. Under this program, Federal challenge grants would total only \$2.5 million.

This Federal Challenge Grant Program would sunset in 5 years. By 1990, States should be well on the way to generating enough money to support prevention efforts throughout their communities.

At no time will a Federal challenge grant to any State exceed an amount equal to 50 cents times the number of children residing in that State. Mr. President, if this Nation cannot afford to spend 50 cents a child over the next 5 years to prevent possible abuse or neglect, then our priorities are sorely misplaced.

The truth is that prevention is the most effective method we have of combatting child abuse. We know just how

serious the long-term repercussions of child abuse can be. Close to three-quarters of all runaways have been the victims of abuse, often sexual abuse. Prior sexual victimization is also closely linked to teenage prostitution. And two-thirds or more of all juvenile offenders have had histories of physical or sexual victimization.

Mr. President, the time to encourage the States to wage all out child abuse prevention campaigns is now. I urge my colleagues to support these provisions.

MR. SPECTER. Mr. President, I am pleased to join with the Senator from Arizona (Mr. DeCONCINI) for this much-needed boost to the States in the fight against child abuse and sexual molestation. In its present form, the amendment incorporates language which I have previously proposed—

First, to require that criminal record checks be nationwide in scope, through the FBI's fingerprint files, rather than only statewide, so that convicted sex offenders could not simply move from State to State finding child care work;

Second, to include a requirement that in addition to making some provision for criminal records checks for staff who work with children, the States also provide for checks of prior employment;

Third, to extend the criminal records and employment checks to workers at juvenile detention, correction, and treatment facilities; and

Fourth, to require that the Secretary of Health and Human Services, develop a comprehensive model Child Care Standards Act to serve as a guide for the States. This is intended only to be advisory and the receipt of Federal dollars is not upon enactment of the model legislation.

Back on February 17, 1983, nearly 2 years ago, I introduced legislation to require nationwide criminal record checks on people who work with children. This legislation emerged from hearings which I chaired before the Juvenile Justice Committee regarding serious physical abuse of juveniles by guards in juvenile detention facilities in the State of Oklahoma.

Since that time, the subcommittee has held a series of hearings on S. 521 and related legislation, S. 1924, introduced by my good friend from Iowa, Senator GRASSLEY. We have received testimony from law enforcement officials investigating the day care child sexual abuse cases at the McMartin Preschool in California and the Praca Day Care Center in the Bronx, in New York. We heard from child care professionals, the FBI, parents of victims, concerned organizations, a leading physician involved in the treatment of convicted pedophile sex offenders, and from a pedophile himself.

One mother told us of the molestation of her 5-year-old son by a man who had been convicted previously of

child sexual abuse in another State, and who subsequently had no difficulty finding a series of jobs bringing him into close contact with children—first as a residential counselor in a home for delinquent adolescents, then as a county recreation department softball coach, and finally as the director of a county summer day camp.

Another mother told of the molestation of her 5-year-old son by a man with a 10-year record of complaints against him for child abuse.

And the convicted pedophile—an internationally recognized director of church boys' choirs with three children of his own—expressed his amazement at the carelessness of one employer who hired him without even calling a previous employer at a choir job from which the pedophile had been fired for sexually molesting his students. This man stated his support for criminal record checks legislation, and said that, in his own case, "If they would have checked properly, they could have seen that I had molested people." He stated that he had molested more children than he could count.

We heard testimony from Dr. Bettye Caldwell, president of the National Association for the Education of Young Children, who stated her view that criminal record checks are just a part of the solution. She pointed out the need for staff training, development, supervision and evaluation, open parent visitation policies, and a probationary period when hiring new staff. She stated that:

It is time that the federal government join with the on-going efforts of state governments and professional organizations to promote the regulation of child care programs, perhaps in the form of national reference standards for child care.

She emphasized, however, the cost ramifications of the situation, stressing that day care personnel nationwide receive disgracefully low wages, so that increased training and teacher qualification requirements would require additional funds for day care in order to attract and retain qualified personnel. As she noted qualitative improvements are costly.

Dr. Nancy Brown, director of the Senate Employees' Child Care Center, placed particular emphasis on parent visitation, advising that—

Parents should never place their child in a center where parents are not welcome or where their access is limited in any way.

And as the subcommittee has learned, restrictions on parental access was one of the suspicious hallmarks of the McMartin Preschool in Manhattan Beach, CA.

And one of our FBI witnesses, Special Agent Melvin D. Mercer, Jr., advised us of the FBI's procedures for processing fingerprint checks when authorized by State law, calling our attention again to the cost ramifications of legislation in this area. He informed us that the current FBI charge for a criminal record check is \$12.

Thus, two messages came through loud and clear. There is a crying need for improvements, and there is a need for money to pay for those improvements.

This amendment is based upon a recognition that there is an ongoing national debate regarding what types of standards ought to be applied to day care providers, but takes the position that the children of this country should not have to sit idly by in inadequately regulated facilities while Government officials and private professionals argue about it. The amendment would require HHS to develop the model act within 3 months of enactment of this continuing resolution to offer to the States as the best available definitive guidance on appropriate minimum standards.

As for the appropriate form and requirements for State criminal record checks legislation, Congress has already specified these in 1972, in Public Law 92-544. The FBI was authorized in that legislation to exchange identification records, if authorized by a State statute which has been approved by the Attorney General as meeting the requirements of the act, with officials of State and local governments for purposes of licensing and employment. To date, there are some 250 State statutes approving access to FBI fingerprint files. California has 60; some States have none. They cover areas such as casino workers, real estate sales people, racetrack workers, securities brokers, doctors, and lawyers. Four States have such statutes for day care workers: Alaska, California, Illinois, and Minnesota. Six States have statutes for school teachers: New York, California, Florida, Nevada, Alaska, and Texas, and four have statutes for school bus drivers.

The proper standards for day care providers should be determined by the experts at HHS after hearing from concerned experts across the country. I do not believe that it is the role of the Federal Government to dictate standards to the States. This amendment simply seeks to provide recommendations, and to provide financial incentives for their adoption.

As more and more women move out of the home and into the workplace, long-range standards and solutions such as this become an inevitability, to provide parents with some level of confidence and security that their children will be well and competently cared for in their absence.

I urge the adoption of the amendment.

MR. DeCONCINI. Mr. President, I ask unanimous consent that Senator METZENBAUM be added as a cosponsor.

THE PRESIDING OFFICER. Without objection, it is so ordered.

MR. WEICKER. Mr. President, I have no objection to the amendment.

MR. PROXMIRE. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5962) was agreed to.

Mr. DeCONCINI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WEICKER. Mr. President, I move to lay that motion on the table. The motion to lay on the table was agreed to.

AMENDMENT NO. 6963

Mr. HATFIELD. Mr. President, I offer an amendment on behalf of myself, Senator RANDOLPH, and Senator MATSUNAGA to add \$4 million to the continuing resolution for the purpose of running the first year of operation of the U.S. Institute of Peace. This was authorized in the defense authorization bill. It was authorized for \$1 million. It would not be possible to rank it up that soon so the \$4 million is being indicated as sufficient.

This amendment is necessary because the authorization to establish the Institute was pending in the House-Senate conference on the 1985 Department of Defense authorization bill when the Labor-HHS appropriation bill proceeded through this body, and therefore our committee did not include these funds in the Labor-HHS bill at markup. Now that the authorization of the Institute is certain, this appropriation is necessary and urgent. The Institute has only a 2-year authorization and therefore it is necessary to appropriate these start-up funds now and to provide this Institute with all of the necessary resources to carry out its important work. We cannot afford to wait until the spring supplemental comes along to get the important work of the Institute started.

Although the Senate and the House have authorized a funding level of \$6 million for the Institute's first year of operation, I am offering this amendment, along with my colleagues from Virginia and Hawaii, for \$4 million, which represents the funds which will be available after the Institute's board is selected and proceeding.

My friends and colleagues, it would be right or fair to honor our esteemed colleague, Senator JENNINGS RANDOLPH, by authorizing this Institute of Peace in name only and by withholding the very funds necessary to open the Institute of Peace—something he has worked very hard for throughout his years of public service, something this Senate overwhelmingly voted to establish just 3 months

ago. Mr. President, so that the Institute's history is complete and the record of Congress is unmistakably clear, let the record reflect that it is the intent of Congress that future appropriation requests for the U.S. Institute of Peace be within the purview of Labor-HHS Subcommittee. Although I have little doubt that an Institute established to educate and to

advance the cause of peaceful resolution to international conflict would necessarily fall within the jurisdiction of Senator WEICKER's subcommittee, I want to leave little doubt on this matter.

Mr. President, let me close my remarks with an assessment of what was accomplished this year in establishing an Institute of Peace after many years of work by Senators RANDOLPH and MATSUNAGA and Congressman GLICKMAN and others who have labored in the cause of peace. I was very satisfied with the Senate-passed bill and must be frank now in stating my outright surprise that the House amended the Senate bill. One would have thought that if the Peace Academy was going to encounter "rough sledding" in this Congress that it would have experienced difficulty in the Senate, not the House. Unfortunately, the House forced upon the Senate conferees a number of substantive changes and the Senate conferees, led by the courage of Senator NUNN and others did magnificent work in protecting the bill from defeat in conference in the House, where in a position of taking the House offer or coming home with nothing, such is the art of compromise.

It would be a brave omission at this historic moment for me to neglect to commend the efforts made by staff on both sides of the aisle and to recognize the visionary leadership given to the cause of peace by Mike Mapes, the former executive director of the National Peace Academy Campaign who died 10 days before the Senate passed the Peace Academy bill. I am sure his successor, Bob Conlan, will be driven by that same vision. Let me also acknowledge the tireless efforts of Mark Rilling, a congressional liaison with the campaign, who virtually lived in our offices during the Senate's consideration of the Defense bill and who helped shepherd the bill through the conference. Mark Rilling never gave the impression of being a lobbyist, but instead appeared as a brother devoted to seeing the fulfillment of the dream of Mapes and that of many of us, and Mark can be justly proud of his work.

Let me emphasize that my dream of what the Peace Academy, now named the Peace Institute, can be for the cause of peace, will carry on. It will be fueled by a vivid memory of the strenuous efforts of Senator RANDOLPH to generate momentum in this country toward understanding that "waging peace" involves, and it will be pursued as long as I remain a Member of this body.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Oregon (Mr. HATFIELD), for himself, Mr. RANDOLPH, and Mr. MATSUNAGA, proposes an amendment numbered 6963.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further read-

ing of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

Notwithstanding any other provision of this joint resolution, there is appropriated an amount of \$4 million for the United States Institute of Peace as authorized in the United States Institute of Peace Act.

Mr. MATSUNAGA. Mr. President, I rise in support of the amendment offered by the distinguished Senator from Oregon Mr. HATFIELD for himself, Senator RANDOLPH and myself. I wish to thank Senator HATFIELD for his leadership once more in helping to bring to fruition the long sought dream of mine of over two decades to establish a U.S. Academy of Peace.

The \$4 million appropriations will at least enable the commencement of concrete steps for the establishment of the Institute, although not the full authorized amount.

Mr. HATFIELD. Mr. President, I have cleared this amendment with the majority and minority sides of the aisle.

Mr. WEICKER. Mr. President, I have no objection.

Mr. PROXMIRE. Mr. President, this amendment has been enthusiastically endorsed for many years for Senator RANDOLPH and Senator MATSUNAGA. It is a very good amendment. I approve of it wholeheartedly.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 6963) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WEICKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 6964

(Purpose: To maintain current payment methodology for certain hospice programs)

Mr. DODD. Mr. President, I send an amendment to the desk on behalf of myself and Senator WEICKER and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Connecticut (Mr. DODD), for himself and Mr. WEICKER, proposes an amendment numbered 6964.

Mr. DODD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the resolution add the following new section:

SEC. . Notwithstanding section 1814(l) of the Social Security Act and section 102 of this joint resolution, in the case of a hospice which—

(1) commenced operations prior to January 1, 1975;

they don't need to be rechecked often.

• **Set clear rules for denying employment. List specific crimes and use convictions, not arrests.** Specify that crimes committed out of state constitute grounds for denial. **If they include crimes not committed against children, include discretionary review if applicants show they're rehabilitated.**

- Specify who pays the cost of fingerprint checks.
- Consider also denying employment to people who lost parental rights and making applicants swear they haven't been convicted of specified crimes.

For the 17-page "Vigilant in the Protection of Our Children or Vigilantes? Legal Considerations in Drafting Screening Laws and Recommendations for Safeguarding Children in Child Care Settings," write the center, 625 Market St., #815, San Francisco 94105.

HEAD START SEEKS EMPLOYEE CRIMINAL CHECKS

New Head Start employees would have to undergo the same criminal background checks as day care workers under proposed regs. In the April 3 Federal Register, Head Start proposes requiring programs to:

- Screen job applicants with the Federal Bureau of Investigation and state law enforcement agencies to the extent state law allows. **People could be hired temporarily pending outcomes of the checks.**

- Make applicants state before they're hired all pending and prior criminal charges and dispositions related to child abuse and neglect. They'd also have to state any other felony convictions and current charges. Grantees could exclude from the statements offenses (except child abuse) committed by applicants as juveniles.

- Interview applicants and check their personal and employment references before permanent hiring.

- Advise every employee and volunteer that sex with children is illegal.

- Develop plans to respond to suspected or reported abuse of Head Start children, whether abuse occurs in the program or not.

The proposal wouldn't automatically bar anyone from employment; it would merely require that local policy councils and boards become aware of the data, explains Head Start official Terry Lewis. The proposal also doesn't address who's to pay for the checks. "That is going to be a problem," Lewis admits. "We'll have to figure out a way to handle it."

The proposal doesn't mention requiring checks of volunteers or current staff.

Send comments in duplicate by June 3 to Clennie Murphy, Deputy Assoc. Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington DC 20013.

WORLDWIDE FAMILY DAY CARE GROUP PLANNED

A California-based children's organization is leading a drive to form an International Family Day Care Assn. The association would seek to improve family day care wages, image and working conditions by pooling resources and ideas.

So far, provider organizations in the U.S., New Zealand, Australia, Malaysia, England, Sweden, Denmark and Brazil have shown interest, says Jeanne Nelson, director of child resources

Sandra - kind of interesting (SB 21)

DAY CARE U.S.A. NEWSLETTER

DAY CARE
INFORMATION
SERVICE

THE INDEPENDENT BIWEEKLY NEWSLETTER OF DAY CARE INFORMATION SERVICE

Vol. 14 No. 9

April 15, 1985

Dear Subscriber:

Conducting required criminal background checks on day care providers would cost \$37.5 million over three years, the Office of Inspector General (OIG) of the Dept. of Health and Human Services (HHS) estimates. That's 50% more than the \$25 million in child abuse training funds states can keep for enacting the checks. "At least half of this would be wasted on extremely low-yield fingerprint screening," OIG says in a new study. OIG reports:

Presuming a 45% turnover rate, about 1,589,070 workers will need fingerprinting through 1987, not counting repeats, volunteers, family members, technical staff (such as janitors) and an estimated 364,000 unlicensed providers. Fingerprint costs should average \$25. About 5% of checks turn up some criminal activity. About 2% of those include child sexual abuse convictions. So screening could cost \$25,000 per abuser.

Only three states previously enacted fingerprint laws, which aren't evenly enforced. Twenty-four others check employees or directors statewide by name, a less effective method. Though almost all states keep child abuse and neglect registries, only 15 screen applicants against them. Only 10 screen volunteers. At least 20 are considering screen legislation.

Even Federal Bureau of Investigation (FBI) records aren't complete because of gaps in state-provided data. FBI doesn't keep figures on sex crimes against children.

For the 23-page "Preventing Sexual Abuse in Day Care Programs: National Program Inspection," write Norm Zimlich, Regional Inspector General, Office of Program Inspections, HHS, 3rd & Broad Bldg., MS 309, Seattle WA 98121.

"HHS" on HHS

ADVICE ON DRAFTING CRIMINAL CHECK LAWS

Laws mandating criminal background checks of day care workers should phase them in to "avoid an enormous deluge," advises Abby Cohen, Child Care Law Center. One idea: screen new applicants immediately and current workers as licenses come up for renewal, she suggests in a paper.

Some of her other ideas for the laws, which states must enact to keep their share of a \$25 million Social Services Block Grant add-on for training to fight child abuse:

- Specify whether operators need rechecking at license renewal time and how long people can work before being checked.
- Avoid duplication by exempting people screened recently for other jobs, such as people who've applied for public school jobs in states where teachers must be checked.
- If states screen volunteers and substitutes (federal guidelines don't clearly mandate it), maintain files on them so

"Center" on HHS

see p. 21 & 22 - suggestions

file SB 21
Good resource.

PREVENTING SEXUAL ABUSE IN DAY CARE PROGRAMS

National Program Inspection



Office of Inspector General
Department of Health and Human Services
Region X

January 1985

Program inspections are short-term studies of HHS programs. They are not designed to be statistically valid research studies, compliance reviews, audits, program monitoring activities, or traditional program evaluations. Rather, program inspections consist of gathering both qualitative information and quantitative data. Program inspection results are meant to be used internally by Department managers as an additional source of information.

The Office of Inspector General acknowledges the ready assistance of the OHDS Office of Regional Operations and all ten regional staffs in collecting state information. We are particularly grateful for the additional assistance of OHDS Region X staff in other aspects of this study.



Norm Zimlich

REGIONAL INSPECTOR GENERAL
OFFICE OF PROGRAM INSPECTIONS
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INTRODUCTION

A challenging by-product of the changing composition of America's workforce is the increasing need for day care. In 1980, there were 19.6 million children under 6, and 8.7 million of them had mothers who worked outside the home. By 1990, these numbers will increase to 23 million and 12 million respectively.¹ There are more than 11 million employed mothers with children between 6 and 18. It is projected that by 1990, the number of 6 to 9-year-olds alone will total 15 million. Traditionally children's primary caretakers, employed mothers must turn to others for child care.

Day care is needed for children of all ages, but is absolutely necessary the younger the children are. An estimated 2 to 7 million school-aged children are left alone after school each day.² A 1982 study shows that 36% of mothers working full time outside the home had their 3 and 4-year-olds in the care of a relative, 32% placed these preschoolers in day care and nursery schools, and 18% placed their children in nonrelative family home settings.³

Within recent months, the tragedy of child sexual abuse in day care settings has garnered public attention. The problem is being discussed by parents, teachers, physicians, therapists, day care providers, law enforcement officials and lawmakers. Within the public forum, Congress took action by enacting P.L. 98-473, which provides supplementary funding to the Social Services Block Grant program for training, including prevention of child abuse in day care settings. In order to retain all of these training dollars, states must implement by September 30, 1985, procedures to screen specified child care personnel through employment history, background and nationwide criminal record checks. In addition, Congress required the Department of Health and Human Services to draft model licensing and registration standards for day care centers, group homes and family day care homes.

In October 1984, the Under Secretary requested the Inspector General to conduct a national program inspection on the issue of prevention of child sexual abuse in day care programs. Accordingly, staff from the Office of Inspector General and the Office of Human Development Services talked to 300 persons from 49 states and the District of Columbia. Participants in the study included state child protective staff and social workers, state licensing officials, city and county licensing officials, state criminal identification system directors, physicians, sexual assault therapists, child psychologists, district attorneys, police investigators, other experts in the field of child sexual abuse, day care providers, parents of children in day care, and special interest organizations.

¹ Families and Child Care: Improving the Options, A Report by the House Select Committee on Children, Youth and Families, September 1984, p. 12.

² Ibid. p. 23.

³ U.S. Bureau of Census, Current Population Reports, P-23, No. 129, "Child Care Arrangements of Working Mothers," June 1982.

MAJOR FINDINGS

1. Most known sexual abuse of children occurs in the home. There is a clear cycle of abuse begetting abuse: abusers who were abused as children, and mothers allowing their children to be sexually abused because their own fathers did it to them.
2. There is no profile or predictive model of child molesters. A number of professional studies, some funded by the National Institute of Mental Health, are underway on the identification and treatment of sex offenders.
3. Pedophiles can be attracted to day care programs, can abuse hundreds of children without being caught, are often not convicted after being arrested, and may have no criminal records even if they plead guilty to sexually abusing children. Experts estimate only 1% to 15% have any criminal records, and not necessarily for sex crimes.
4. Experts unanimously agree that education of parents, children, teachers, and day care providers to recognize, resist and report sexual abuse is the most effective method of preventing sexual abuse, both in the home and in child care programs. Employment screening techniques, including background and reference checks and criminal record screens, are seen as desirable but no guarantee that child molesters will be identified.
5. Twenty-four states currently screen some day care operators and/or staff against state criminal record files, but only California, Georgia and Minnesota have statutes for national criminal record screening of such employees. Only California and New York City have undertaken extensive fingerprinting of day care employees.
6. The only feasible approach to nationwide criminal record screening is the FBI fingerprint screen authorized under P.L. 92-544, which usually needs to be supplemented with a state criminal record screen. The cost of this dual screen is estimated at \$25 per person screened.
7. To screen all licensed day care providers and employees would require screening half a million persons in each of the next three years. This would exclude about 350,000 unlicensed providers and all volunteers, even though in many of the known abuse cases the perpetrators were not direct program employees, but volunteers, relatives of providers or peripheral employees.
8. Licensing and employment screens typically reveal 5-8% of the applicants with any criminal record whatsoever. For many reasons it is quite likely that only a minuscule number of sex abusers with criminal records would be detected by screening all day care employees.
9. There are substantial timing, technical and due process problems with implementing the screening provisions of P.L. 98-473.

RECOMMENDATIONS

EDUCATION

1. As a first priority in prevention of child sexual abuse, HHS should support education of parents, children, child care providers and staff in how to recognize, resist and report child sexual abuse.
2. HHS should promote more nationwide television educational spots and programs raising adult and child awareness of these methods.
3. HHS should prepare and distribute to appropriate child care grantees and to the public written information on this subject.
4. HHS should prepare and disseminate to appropriate grantees and other child care providers educational materials on how to (a) screen, check on and hire child care employees, (b) arrange facilities and staff, and (c) supervise staff so as to avoid child abuse in child care programs, as well as materials on how to handle reported abuse.

RESEARCH

HHS should continue to fund research into the profiling, detection and treatment of child molesters, and should assure that NIMH research currently underway finds practical application in effective public education materials.

SCREENING

1. HHS should require appropriate grantees to:
 - a. Explicitly advise every employee and volunteer that sexual activity with children is illegal.
 - b. Obtain from every employee and volunteer a signed declaration of prior criminal arrests, charges, and dispositions.
 - c. Conduct background and former employer reference checks for all prospective employees.
 - d. Obey state laws applicable to licensed or registered child care programs for screening or criminal record checks of current or potential employees.
 - e. Have a plan for responding to suspected or reported child abuse whether it occurs inside or outside the program.
2. The Secretary should publicize that criminal record screens of child care employees are desirable but are no guarantee of safety from child molesters (who seldom have criminal records) even in licensed centers; rather, that the best protection of children in child care depends on (a) education and alertness of parents, staff and children, (b) careful listening and observation by parents and staff, (c) child care participation and monitoring by parents, and (d) parent networks within programs.

3. HHS should carefully monitor the states' implementation of PL 98-473 to determine whether the intent of Congress, particularly with respect to education and screening to prevent child sex abuse, is carried out.
4. HHS should rapidly advise the states as to the nature and scope of child care staff screening which must be instituted by September 30, 1985, to retain full funding under P.L. 98-473.

COST IMPLICATIONS

We estimate that some of the \$12.5 million which Congress intended to be spent for preventive education might have to be recouped by HHS for technical state non-compliance with the screening requirements.

If all states were to comply literally with full FBI fingerprinting of all licensed day care employees, an estimated outlay from government or private funds of some \$37.5 million would be made over three years, the authorized funding period. At least half of this would be wasted on extremely low-yield fingerprint screening.

*"We've had only one day care case--a man who molested preschool boys. When asked how many boys he had assaulted during his life, he said, 'You don't have a piece of paper long enough to write down the names.' He is 28 and had no prior record."
An Assistant District Attorney*

BACKGROUND

The extent to which child sexual abuse occurs is unknown. Most of the national experts contacted in this study emphasized that no one really knows because most abusive incidents are not reported. Of those who ventured an estimate, the most common figures were 1 in 4 or 5 girls and 1 in 9 or 10 boys are sexually abused before age 18. Although the age of greatest risk is estimated to be between 8 and 13, children of all ages are assaulted. In one program treating assault victims, one-third of the children treated are under age 6.⁴ Professional research is increasing and offers heightened understanding of the problem's magnitude. Data gathered from the sexual offenders program at the Oregon State Hospital reveal that 35 men admitted responsibility for 20,276 separate sex crimes. Of these, 18 men admitted more than 5,000 assaults of 1,000 children. One offender alone admitted abusing 500 children before being caught.⁵ In an ongoing study of sex offenders, Dr. Judith Becker, Columbia University, found that 659 men admitted committing 280,000 sex crimes, of which the number committed against children is unknown. However, 58% of these offenders began their assaults while still in their teens. These figures are startling, but provide a glimpse at the extent to which a few offenders can abuse so many different persons.

Formal crime reports of abuse and clinical work with convicted abusers reveal that most sexual abusers are known by their victims. According to reported data on known abusers compiled by the American Humane Association (AHA), the federally-funded national reporting system on abuse, 95-98% of known abuse occurs in the home, by close relatives, family friends or neighbors--that is, by someone whom the child knows well and trusts. AHA statistics reveal that 77% of the known abusers were parents (fathers, stepfathers, foster fathers), 16% were other relatives (grandfathers, uncles, cousins, brothers), and 6% were others (including both strangers and persons known by the child). Although most known data indicates that men are the primary perpetrators, researchers and clinical therapists are now learning that there are more female perpetrators than ever realized. Some experts estimate that women may comprise as high as 20-30% of abusers.

Although there are problems about using such statistics, there is common agreement among the experts that much of the abuse goes unreported. In addition, most research done to date tells us more about intrafamilial abuse than it does about extrafamilial abuse.

⁴ Lucy Berliner, Sexual Assault Center, Harborview Hospital, Seattle, WA.

⁵ Unpublished data provided by Robert Freeman-Longo, Director, Sex Offender Unit, Correctional Treatment Programs, Oregon State Hospital.

Nationally recognized experts contacted in this study agree that no applicable profile of sexual abusers exists. Five experts said explicitly:

- "Don't believe anyone who says there is an abuser profile. There simply is no such thing."
- "There is no profile—that's part of the problem."
- "There is no sex abuser predictive model. Most studies of abusers are of incarcerated individuals and statistically invalid."
- "The typical psychologist cannot spot a sex offender. Sex offenders can even pass polygraph tests."
- "A trained psychologist can't identify an abuser easily. Even after treating 300-400 sex offenders, I would pick up a lot of 'false positives.'"

In an effort to develop predictive as well as treatment information, the HHS National Institute of Mental Health, through its Rape Center and its Center for Antisocial and Violent Behaviors, has funded the following recent and/or current studies:

1. Evaluating Sex Offender Treatment Programs, Mark Weinrote, Evaluation Research Center, Eugene, Oregon. (5/79 - 3/81.)
2. The Rapist's Social Background and Criminal Career, James Galvin, National Council on Crime and Delinquency, San Francisco, California. (5/79 - 3/81.)
3. Subtyping of Sex Offenders, Raymond Knight, Brandeis University. (4/80 - 3/87.)
4. Sex Aggression: Constructing a Predictive Equation, Clarke Institute of Psychiatry, Toronto, Canada. (5/81 - 4/82.)
5. Incarcerated Rapists: Exploring a Sociological Model, Diana Scully, Virginia Commonwealth University, Richmond, Virginia. (9/81 - 4/83.)
6. Prevention of Relapse in Pedophiles, Richard Laws, Specific Professional Association, Morrow Bay, California. (1984 - present.)
7. Evaluation and Treatment of Child Molesters, Gene Abel and Judith Becker, Columbia University, New York. (1984 - present.)

Although there is no predictive model or abuser profile to aid in identifying child sex abusers, there are some common descriptors. Sex abusers come from all socio-economic backgrounds. As a police investigator noted, "They are beggars to bankers." There is a victim cycle, both of the abuser himself and the child's mother or guardian who knowingly does nothing to stop the abuse. Study respondents cited that as many as 75% of offenders have been victims themselves. Although female victims are less likely to become abusers, they often become covert perpetrators who fail to protect the child. As an investigator summarized, "An abused girl becomes the mother of an abused child and then the grandmother of an abused child. She rationalizes, 'It's not so bad—my father did it to me. It's expected.'"

Most abusers maintain otherwise responsible lives. They are often considered "real nice guys," whose friends and neighbors are shocked if they are caught and publicly identified. Although some are psychotic or mentally ill, many more have cognitive distortions. They rationalize their behavior as "sex education." "The kids like it." "Kids are consenting." "It doesn't hurt them."

The research of Dr. A. Nicholas Groth was referred to frequently by study respondents, as the state-of-the-art in describing child sex abusers. He describes two types of pedophilic behavior:

FIXATED

- Primary sexual orientation is to children.
- Pedophilic interest begins during adolescence.
- No precipitating stress/no subjective distress prior to the assault.
- Persistent interest--compulsive behavior.
- Preplanned, premeditated offense.
- Equalization: offender identifies closely with the victim and equalizes his behavior to the level of the child; offender is a pseudopeer to the victim.
- Male victims are primary targets.
- Little or no sexual contact with agemates; offender is usually single.
- Usually no history of alcohol or drug abuse.
- Characterological immaturity/poor socio-sexual peer relationships.
- Offense = maladaptive resolution of life issues.

REGRESSED

- Primary sexual orientation is to agemates.
- Pedophilic interest emerges in adulthood.
- Precipitating stress usually evident.
- Involvements may be more episodic.
- Initial offense may be impulsive, not premeditated.
- Substitution: offender replaces conflictual relationship with involvement with the child; victim is a pseudo-adult substitute.
- Female victims are primary targets.
- Sexual contact with child co-exists with sexual contact with agemates; offender is usually married/common-law.
- In more cases the offense may be alcohol related.
- More traditional lifestyle but underdeveloped peer relationships.
- Offense = maladaptive attempt to cope with specific life stresses.⁶

Study respondents also agreed that there is no such thing as an abused child profile. Children frequently do not tell when they are sexually abused because they are afraid that (a) they or someone they love will be punished or killed, (b) no one will believe them or (c) they are responsible in some way for the abuse. Also, children may not be able to tell someone directly, either lacking the language skills or being too young to verbalize. There are, however, signals or "red flags" that may indicate that a child has been assaulted. The following signals may help in detecting sexual abuse in children:

- Inappropriate sexual knowledge or behavior, e.g., preschooler knowledge of sexual intercourse
- Sudden withdrawal, passivity or depression

⁶ Adapted by Robert E. Freeman-Longo from Sexual Assault of Children and Adolescents, by Ann W. Burgess, A. Nicholas Groth, Lynda Lytle Holmstrom and Suzanne M. Sgroi, Lexington: Lexington Books/D.C. Heath, 1978.

- Sudden active or violent behavior
- Fantasy or infantile behavior
- Poor peer relationships
- Self-mutilation
- Suidical actions or discussions
- Reluctance to go certain places, e.g., neighbor's house
- Change in eating habits or gagging around food
- Multiple personalities
- Psychosomatic disorders
- Nightmares, fear of the dark, or sudden bedwetting
- New fears
- Dislike or avoidance of someone previously liked, including a parent
- Bodily bruises
- Irritation or pain in genital/rectal areas
- Venereal disease, especially under age 13
- Difficulty in walking or sitting
- Torn, bloody underwear
- Early pregnancy
- Truancy or runaway behavior

Of all of these, the most telling sign of sexual abuse is unusual sexual behavior beyond the child's age level in both verbal and action cues. "All sexual behavior is learned. Children either observe it or experience it," reminded Lucy Berliner of the Seattle Sexual Assault Center. In sum, any sudden and/or unusual behavior in a child may be caused by sexual assault and should be investigated.

Generally, the best advice offered to detect sexual abuse is to educate parents, teachers and caretakers to watch children carefully, listen to what they have to say and recognize the signals or indicators of possible abuse. Then, the key is to believe the child when abuse is asserted.

There are several reasons why abusers avoid detection. Historically, society collectively has been unwilling to recognize or talk about child sexual abuse, making it easier for abusers to evade discovery. With few exceptions, child sexual abuse is not observed by witnesses. It is performed in isolation, in secrecy, and the victims are reluctant to report it. The child may not know or may be convinced by the abuser that nothing is wrong with the act. Children, especially the very young, are too trusting and are easily manipulated. Some abusers convince their victims to assume the responsibility and/or guilt for the abuse. In other situations, abusers intimidate their victims, coercing them into compliance by threatening to harm them or a loved one, "If you tell, your mother will die." In some cases, they try to target children who are neglected or whose parents are having life adjustment problems, such as death, separation or divorce. Even when detected, they frequently move on and with the absence of an interstate tracking system easily avoid detection.

As little is known about the cause or deterrence of child sexual abuse, little is known also about treatment for abusers. Some believe that incarceration is the only answer, that the pathology of a pedophile is so intractable he must be taken out of circulation. A few respondents suggested self-help programs like Parents United, wherein support groups of former abusers work with current abusers under supervision of trained psychologists. Others suggested use of medication (to lower the level of the male hormone testosterone and reduce the abuser's sexual drive) or aversion therapy. Dr. Vincent Fontana, Chairman of the New York City Mayor's Task Force on Child Abuse and Neglect, summarized the views of most respondents, "We can't determine effective treatment until we know more about the problem."

*"The amendment...is a modest first step that would help states establish and improve child abuse prevention programs."
Senator Levin, Introducing P.L. 98-473*

THE NEW LAW AND THE FBI CRIMINAL RECORD SYSTEM

New legislation enacted as part of P.L. 98-473, continuing appropriations for fiscal year (FY) 1985, (a) requires the Department of Health and Human Services to draft a Model Child Care Standards Act for states' consideration by January 12, 1985, and (b) authorizes (without an appropriation) challenge grants to the states for child abuse prevention activities with federal funds to accrue the year following that in which the states earmark their own funds.

This act also authorizes and appropriates \$25 million under the Title XX Social Services Block Grant, to be distributed to each state proportionate to its other Title XX funding for the purpose of training (including training for child abuse prevention) providers, operators and staffs in licensed or registered child care facilities. To keep from losing one-half of these funds in FY 1986 and FY 1987, however, states are required to have in effect by September 30, 1985, (1) procedures established by state law or regulations to provide for employment history and background checks and (2) provisions of state law consistent with P.L. 92-544 requiring nationwide criminal record checks for all current and prospective operators, staff, or employees of child care facilities and juvenile detention, treatment, or correction facilities. The child care facilities are defined to include any facility or program having primary custody of children for 20 hours or more per week.⁷

The only feasible way for a state to conduct a "nationwide criminal record check" on any person is to access information contained in the computerized criminal history file of the Federal Bureau of Investigation. P.L. 92-544 authorizes the FBI to exchange identification information from this file with duly authorized officials of state government, "if authorized by state statute and approved by the Attorney General."

In fact, the Attorney General, through the FBI Identification Division, has screened and approved over 500 state statutes requiring FBI fingerprint checks for employment or licensing purposes. Last year, out of a total of 6 million fingerprint cards submitted for all criminal and other screening purposes, the Identification Bureau screened 697,000 fingerprints for licensing or employment purposes. Screening is free of charge to authorized law enforcement agencies in return for their cooperation in supplying arrest and disposition information to the FBI. However, the FBI collects a fee of \$12 per screen (i.e., per fingerprint card submitted) for licensing/ employment checks. Fingerprint cards are submitted to the FBI via the single approved state identification bureau, such as the state police, and are returned to that bureau or directly to the state licensing or social service agency authorized in the state statute.

⁷ Congressional Record, October 2, 1984, p. S12710.


A state statute is accepted by the FBI for inclusion in the process so long as it (a) does not violate public policy (e.g., Civil Rights) and (b) clearly shows that the state legislature intended that a nationwide check be conducted. The FBI is prepared to screen any state laws submitted in accordance with P.L. 98-473 and to accept fingerprint cards on child care staff accordingly for the \$12 fee. However, our discussions with the FBI's Identification Bureau indicated that they do not intend to review compliance with P.L. 98-473, i.e., the FBI will not determine whether the scope or coverage of the state statutes with respect to the type of staff or facilities involved is sufficient to qualify the state for continued training funds under Title XX. The FBI considers such determinations to be the responsibility of HHS.

The FBI's National Crime Information Center (NCIC) is currently developing a new criminal record access system decentralizing all record-keeping to the states. Under this new Interstate Identification Index, states will maintain their own statewide records, which will be accessible through a computer query of the FBI file. Only 15 states are now participating in demonstrations of the new system. While this system conceivably might reduce the necessity for fingerprint checks, the NCIC Policy Advisory Board strongly opposes its use for employment/licensing screening because of the wide divergence of state laws concerning the dissemination of criminal history information for such purposes. Some states even deny federal agencies, such as the Office of Personnel Management, access to state criminal record information for federal employment screening. Both the FBI and state identification bureau officials emphasize that name checks or any other screening without fingerprints are subject to error and misapplication when used for licensing/employment screening purposes.⁸

⁸ Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice: Memo of June 11, 1984, to the Honorable Strom Thurmond, Chairman, Senate Judiciary Committee, with reference to S. 1924.

CURRENT SCREENING PRACTICES IN THE STATES

The FBI has approved licensing/employment screening statutes for all but nine of the states in one or more areas of employment. Forty-one states and the District of Columbia require FBI checks for employment in the banking and/or securities industries, and 37 states require FBI screening for federal employees. Over half the states require such screening for private investigators and/or gambling establishments, and many states require such screens in conjunction with gun permits and/or alcohol distribution. In New Jersey, one must have an FBI check to run a bingo or raffle, do acupuncture, be a firefighter, plumber, undertaker or cigarette salesman. In Texas, such a check is required for junk dealers, pest controllers, union business agents and marriage counselors. In the District of Columbia, an FBI screen is required to operate a bowling alley or a massage parlor, or to be a cab driver, pawnbroker, fortune teller, clairvoyant or medium.

In professional occupations, such screening is required less frequently. Only 12 states require FBI screens for teachers, doctors, dentists, nurses and/or lawyers, with California, Minnesota and New Jersey requiring the most screens. Only three states have approved statutes requiring FBI screens for any directors or staff of day care programs: California, Georgia (directors only) and Minnesota. Minnesota's authorized use of FBI screens has not been implemented because of budget limitations. 

States vary considerably on (a) what sorts of child care they license or register, (b) whom they screen: whether operators, teachers, peripheral staff or volunteers, (c) how they screen: whether by fingerprints, name checks or reference checks, and (d) what records they screen against: whether against the FBI file, state criminal record files, or the state's child abuse/neglect registry. A number of recent surveys of day care licensing practices in the states are available.⁹ However, these largely fail to describe the employment screening practices used by the various jurisdictions. Most of the information which follows was collected for this study from discussions with state staff.

All states license at least some child care facilities, usually called day care centers or group homes. Thirty states license family day care homes, 12 states register family day care homes, and 3 states do both. Five states license only subsidized family day care.¹⁰

⁹ - Minimum Standards for Day Care Centers, National Association for Child Care Management, (1983), 1800 M Street N.W., Suite 1030N, Washington, DC 20036.

- Comparative Licensing Study, Administration for Children, Youth and Families, Office of Human Development Services (1981), Washington, DC.

- Day Care Centers in the U.S.--A National Profile 1976-1977, (1978), ABT Associates, Cambridge, MA.

¹⁰ Adams, D., "Family Day Care Registration: Is It Deregulation or More Feasible State Public Policy?" Young Children, 4:75, 1984.

Although only three states use FBI fingerprints to screen day care directors and/or employees, the practice of screening these persons using names, fingerprints or other identifying information against state criminal record files and/or abuse registries is more widespread. Name checks, used alone, miss anyone who has legally changed his name or adopted an alias and generally are far less accurate. Twenty-four states indicated that they currently perform statewide criminal record screens of directors, employees or both. These usually are limited to licensed programs, though not necessarily applied to all licensed day care programs.

While virtually all states maintain child abuse and neglect registries identifying abusers within families, only 15 states use the registry as a screening tool for child care employment or licensing. Because some states have not consistently purged their registries, many contain names of people for whom the allegation of child abuse was never substantiated. Since most of the people listed on these registries have not been prosecuted, any expanded use of the registries as a screening tool for employment could result in due process or legal challenges. Besides the state criminal file and the registry, 24 states require other forms of background checks and/or employee certification of criminal history. Only 14 states use none of these screening tools for child care employment or licensing.

This picture is complicated further by variations in employee coverage: 23 states apply screening to day care program directors, 22 states to day care program employees, but only 18 states to both. Ten states use some type of screen for day care volunteers.

Variations exist also within state boundaries. A few states give cities and counties the option to use certain screens. Probably the most significant of these is New York City, where a new city law, effective October 1, 1984, mandates fingerprinting of all day care center directors and staff as well as of all licensed family day care operators and all adults in these homes. The fingerprints will be screened against the state criminal file (not the FBI file). Meanwhile, the state of New York requires screening of day care staff against the state child abuse registry, but not against the state criminal record file.

Finally, this incredibly complex pattern of screening variations is in flux, with at least 20 states anticipating new legislation to authorize some sort of criminal record screens for day care operators, employees and/or volunteers.

POTENTIAL SCOPE OF SCREENING

Based on a sample of 60,000 home interviews conducted in 1983, the U.S. Bureau of Labor Statistics (BLS) estimates that 1,041,000 child care workers are employed in the U.S., with another 80,000 unemployed. Of those employed, 408,000 work in private homes. This group is 95% female and includes child attendants, mothers' helpers, nursemaids, day care workers, baby sitters and governesses. The other 633,000 work in other-than-private homes. This group is 97% female and includes day care workers, day care aides, attendants, Head Start workers, house parents, playground monitors and bus drivers in day care centers. These numbers are quite comparable to those projected from informal estimates by state officials in 10 states which were subsampled in this study.

Presuming that most of what the BLS described as "child care in other-than-private homes" means day care centers and group homes, these are virtually all licensed by states.¹¹ It is more difficult, however, to estimate what portion of in-home child care or family day care is licensed or registered. The 1981 National Day Care Home Study found that of an estimated 1.3 million day care homes, only 137,865 (10.6%) were regulated.¹²

We estimate, therefore, that 633,000 persons work in licensed day care centers or group homes; and 43,200 (408,000 x 10.6%) work in licensed family day care, for a total of 676,200 employees in licensed day care in the U.S.

Family day care workers, babysitters and nannies have, according to BLS, the highest turnover rate of any group of workers in the country, at 58.8% per year, while workers in day care centers, nursery schools and Head Start rank 9th on the turnover list, at 41.7% per year--right up there with dishwashing, peddling and pumping gasoline.¹³ Assuming a conservative turnover-plus-growth rate of 45% per year, an estimated 980,490 individuals will be employed in licensed day care in this country in calendar year 1985, and 1,589,070 persons will be employed in licensed day care during calendar years 1985-1987.

Therefore, if some form of criminal record screening were applied to all operators and immediate employees of licensed day care programs during the period 1985-1987, the nationwide volume of staff to be screened would exceed half a million persons in each of the three years, assuming no repetitive screening. These estimates do not include family members, volunteers or other employees with access to the children, e.g., janitors. They also exclude an estimated 364,000 workers in unlicensed family day care.

11 ABT Associates, Cambridge, MA, Day Care Centers in the U.S., a National Profile, 1976-1977, p. 10.

12 Fosburg, S. "Family Day Care in the United States: Summary of Findings," Final Report of the National Day Care Home Study (DHHS Publication #OHDS-80-30282).

13 BLS Occupational Projections and Training Data, as quoted in Day Care USA Newsletter, Vol. 13, No. 9, September 10, 1984, p. 3.

POTENTIAL COST OF SCREENING

Costs of a criminal record check depend, of course, on the nature of the check being performed, and particularly upon whether the check involves a fingerprint screen. The FBI charges \$12 for each fingerprint card submitted for nationwide licensing/employment screening.

State identification bureau officials with whom we spoke agreed that any criminal record screen should include checks against both the state criminal file and the FBI file. Those states using fingerprints to screen against their state files unanimously agreed that two separate fingerprint cards would be necessary to do both a state and an FBI screen. State costs associated with screening vary:

California	\$15.50	Kansas	\$ 6.00
Florida (counties)	\$ 5.00	Nebraska	\$ 5.00
Georgia	\$12.00	New York (City)	\$17.00
Illinois	\$10.00	Washington	\$10.00

Some of these represent relatively low-volume operations and may not reflect what fingerprinting would cost if large numbers of day care personnel were to be screened. Also, some represent only the state cost for the screen, excluding the local costs of collecting and forwarding the cards, and processing the returns after the screen.

As an example of costs associated with volume operations, one state identification bureau director told us that he can easily process name-check-only data using mag-cards, but that fingerprint checks would require so much more staff that his facility would have to be moved. The New York City figure of \$17 includes a \$14 fee paid to the state and \$3 to produce the cards. This will allow hiring only eight teams consisting of one fingerprinter and typist to fingerprint the first 60,000 child care workers in the city.

Other hidden costs involve the delays associated with such screenings in the hiring of employees. While the FBI advises that fingerprint checks are completed in less than 10 days, the state identification officials told us that the checks usually take 6-8 weeks to process and sometimes take up to 3-4 months. Moreover, fingerprinting is an exacting process, and large numbers of cards are routinely rejected by the FBI even after the state identification bureaus have approved and forwarded them.

Costs associated with screening against state criminal records files without fingerprinting are considerably lower, ranging from \$2 to \$5 per check. Some states, like Texas, use a two-step process for license/employment screens, involving a name screen first and a fingerprint later if needed to validate the identity of a specific employee. Other jurisdictions, like New York, believe that the two-step process is less efficient than fingerprinting from the start.

We estimate, therefore, that a nationwide criminal record check involving both a state file and the FBI file, requiring two fingerprint cards, would cost about \$25 per employee in a large-volume licensing/employment screening operation. There are precedents for both full government financing of such screening efforts and fee payments by the employing organization or the applicants themselves.

"We want and need so desperately to find a solution to the tragedy of sexual abuse that we seem to be grabbing at the first remedy that comes along without considering its cost or its effectiveness." 14

*Anne H. Cohn, National Committee
for Prevention of Child Abuse*

EFFECTIVENESS OF SCREENING

Even the most avid proponents of background and criminal history checks on day care employees acknowledge that they are not a panacea for preventing sexual abuse in day care. Prosecutors, therapists, police investigators and other experts generally agreed that although none of the screening methods will catch significant numbers of pedophiles, the FBI's national fingerprint screen is more effective than any other screening method. Even the FBI system has significant limitations, however, which FBI officials acknowledged to Congress:¹⁵

- (a) The FBI files are not complete. The information contained in them is furnished voluntarily by state and local law enforcement agencies. (Study participants report that some law enforcement jurisdictions are very lax about sending in fingerprints, which is the only way an arrest or conviction is built into a criminal history. Some states send 90% of their arrests and convictions to the FBI, but other states send in as few as 15%. The director of one state identification bureau indicated that out of 400 substate law enforcement jurisdictions, over 100 hadn't sent in a single fingerprint all year.)
- (b) The records often do not specify whether the sexual assault victim was a child or an adult. (As one prosecutor noted, "We find out the accused has been convicted of battery, but we don't know if it involved a child or if he took part in a barroom brawl.")
- (c) The FBI file contains no records on juvenile offenders unless they were tried as an adult. (Research suggests that 58% of all pedophiles committed their first sexual offense as adolescents.)
- (d) The Identification Bureau does not disclose for licensing/employment screening purposes information on arrests for which there is no reported disposition, except for arrests within the previous 12 months.

¹⁴ Statement presented at Congressional Joint Hearings of the Select Committee on Children, Youth & Families and the Subcommittee on Oversight of the Ways and Means Committee, September 17, 1984.

¹⁵ McConnell, Op. Cit.

There are other reasons why screening of day care centers would have limited effectiveness. First, most known child sexual abuse is committed by family members, not by unrelated child care providers. Statistics from Illinois show, for example, that in 1983 the following perpetrators committed child sexual abuse:¹⁶

Family member, relative	80.7%	Babysitters	6.7%
Adoptive Parent	2.2%	Other Not Related	7.2%
Foster Parent	.8%	Not Identified	1.0%
Institution staff	1.2%		

Based on statistics, day care employees as a group should be expected to have fewer child sexual abusers among their ranks than the general population because 78% to 92% of child sexual abusers are male,¹⁷ while day care workers are 95% to 97% female. The effectiveness of screening, of course, has less to do with who commits child abuse than with who has a record of child abuse (or related crime) which will be discovered in the screening process. For example, the FBI reports that 80-85% of its records are for males, which means the probability of identifying a female child abuser is slim. There are reasons that child sex abusers may be expected to have a very low ratio of criminal records. Dr. Vincent Fontana, a nationally renowned expert on child sexual abuse, maintains that less than 1% of all child sexual abusers have criminal records.¹⁸ Research conducted on sex offenders in Knoxville, Tennessee, found that despite long histories of sexual abuse, only 7% had prior criminal records, usually for offenses other than sexual abuse.¹⁹ Another study involving 659 offenders who had committed a total of 280,000 crimes revealed that fewer than 15% had criminal records, again not necessarily for sex-related crimes.²⁰ Prosecutors cited case after case in which the perpetrator had no prior record.

There are other reasons why there are so few criminal records for child sexual abusers:

- Detection Difficulty: Sexual abuse of children is a crime that is very hard to detect. Other than the victims, there are usually no witnesses. These children are easily manipulated or intimidated into maintaining silence. Some children aren't aware that what is happening to them is wrong or unusual; others are extremely guilty or ashamed. Strong social taboos have kept people from talking about this issue, and even when faced with an abusive situation, many adults deny or ignore the problem.

¹⁶ Illinois Department of Children and Family Services, Child Abuse and Neglect Statistics, Annual Report--FY 1983, p. 22.

¹⁷ - 78% figure cited by Jane Lapp, American Humane Association, Project Director, National Study of Child Abuse and Neglect Reporting.

- 92% figure from Illinois Department of Children and Family Services Report, Op. Cit., p. 22.

¹⁸ New York Times, November 7, 1984.

¹⁹ John Brogden, Director, Institute for Child Sexual Abuse, Ft. Worth, TX.

²⁰ Dr. Judith Becker, Columbia University.

- Low Conviction Rates and Legal Manipulations: The variations which can occur in the course of legal proceedings are endless. The result is that sexual offenders who admit their guilt end up frequently having no record, or the record is for an offense that is not sex-related. When convictions do occur, they are often to lesser charges (e.g., a rape charge is reduced to simple assault). In other cases, prosecution sentencing is deferred if the perpetrator agrees to treatment. If a convicted sex offender with deferred sentencing completes treatment and meets the conditions of probation, a finding of not guilty sometimes is entered on his record.

There are many reasons why the conviction rate among child sex offenders is so low. Many respondents stressed that court proceedings are simply not geared to children. They make poor witnesses (e.g., can't remember dates, number of assaults, etc.) and can be traumatized by normal courtroom procedures. Many parents simply won't allow their children to go through the trauma of testifying. Reportedly, seminars are being held for defense attorneys on how to intimidate children and discredit their testimony in these cases. Furthermore, much of what children tell parents, doctors or therapists is excluded as heresay. Children also find it very difficult to confront the accused, a constitutional guarantee which keeps many courts from allowing the videotaped testimony of young children.

- Misdemeanors: Given the difficulty of producing evidence in such cases or of using children's testimony, felony charges frequently are reduced to misdemeanors via a plea bargaining process. For example, a charge of sexual contact may be exchanged for a guilty plea to indecent exposure or "flashing," usually a misdemeanor, which may result in no criminal record entry in the FBI system. In fact, state criminal records more frequently contain evidence of such sex-related actions even though they would not have been entered into the FBI file. This is one reason state screening officials urged state-level screens before the nationwide FBI screen.

The FBI reports that on licensing/employment screens generally (for everything from cab drivers to bankers) only 8% of all fingerprints submitted will be returned with any criminal history at all--for any kind of offense. This number is fairly consistent with what the state screening bureaus reported about the frequency of returns in general:

<i>Estimated percent of persons screened against state criminal files who have a prior record of arrests for any crime</i>	
<i>California</i>	<i>7.7%</i>
<i>Michigan</i>	<i>3% - 5%</i>
<i>New Hampshire</i>	<i>1%</i>
<i>New York</i>	<i>5% - 10%</i>
<i>Washington</i>	<i>5% - 7%</i>
<i>AVERAGE</i>	<i>5%</i>

Estimated screening "hits" for sexual abuse of children, as opposed to all crimes, of course, are much lower. The FBI Identification Bureau has no statistics on sexual crimes against children. None of the screening systems currently in place has yielded many day care employees with past records of child abuse. For example:

- In 1983, a screen of 20,000 employees in New York against its child abuse registry resulted in 7 "hits" (.04%). Only 2.3% of all reports of child abuse and neglect in New York State in 1983 were for sexual abuse.
- A county in Florida which conducts statewide fingerprint screens of employees identified 2 people with criminal histories out of 3,000 screened (.07%). One was a janitor with previous sex crime convictions, and a second had been convicted of murdering an adult.
- Georgia conducts statewide and national fingerprint checks on day care operators and statewide name checks on other day care employees. Thus far, a check of 570 fingerprints has resulted in one "hit" (.2%) and name checks of 2,400 employees had identified 2 others (.08%).

In the course of this study, discussions were held with prosecutors, police officials and other experts familiar with 45 individuals charged with sexual abuse of children in 37 day care facilities (22 family home day cares and 15 centers). Based on the information available on these cases, a national background check as proposed in the law would have screened out only one of these perpetrators--a male operating a licensed facility who had served time in a military prison and lost his nursing license as a result of previous convictions for abuse. The only other person with a prior record was a male who was on probation for similar acts, but because he was operating an unlicensed facility, he probably would not have been caught.

In addition to the fact that so few of these perpetrators had prior records, many probably would not be subject to the new screening mandate. For example:

- Eighteen were spouses, sons and other male relatives and friends who would not have been caught unless fingerprinting were extended to family members and friends. Furthermore, the nine sons were all juveniles and would not have a permanent record.
- Five were men who had access to children in day care, but were not direct providers of child care. These perpetrators--janitors, the mechanic who worked on the bus, the driver of a delivery van, etc.--would not have been caught unless the required fingerprinting extends to volunteers and other peripheral employees with access to the children.
- Four were in unlicensed family day care homes and probably wouldn't have been screened.

Many people argue that the time and expense of fingerprinting are justified, even if only one or two pedophiles are caught. They also maintain that mandatory fingerprinting will deter sex offenders from seeking day care jobs. There is equal concern, however, that a mandatory fingerprint screen will lull the public into complacency and create a sense of false security. Almost all parents said that they would feel more secure knowing that day care employees had submitted to criminal history checks. Countered a child abuse expert, however, "I am concerned that people will think that because an employee's record is clean, everything is o.k. That's simply not the case and can be as dangerous as doing nothing."

Screening needs to be placed in perspective. "Catching" an abuser through screening will not incarcerate him or place him in treatment. Presumably he has been through that. All screening will do will stop someone from getting that job

that day. This is consistent with experts' views that children won't really be any safer overall because pedophiles will just turn to other child-oriented activities such as youth sports, recreation centers, or the unlicensed day care down the street.

A number of respondents feel strongly that the mandate to fingerprint all day care employees is an over-reaction resulting from publicity over a few very notorious cases of sexual abuse in day care programs. Noted one nationally known expert in the field of child abuse, "Hysteria is not the proper impetus for the formation of solid public policy." Many participants also expressed concern that the current climate will drive dedicated quality employees out of day care, especially males.

SUMMARY: A POSSIBLE SCREENING SCENARIO

- 680,000 current employees in licensed child care + 47% turnover/growth = 1 million employees to screen.
- 1 million state fingerprint checks (@ \$13) and FBI checks (@ \$12) = \$25 million.
- About 50,000 (or 5%) will have some criminal record (e.g., shoplifting).
- Perhaps 1000 (or 2% of those with records) are child sex abusers.
- Firing or not hiring these 1000 would cost \$25,000 per "child sex abuser diversion."
- "Diverted" child sex abusers could still be employed in unlicensed facilities or volunteer in licensed ones.
- Since most child sex abusers don't have any criminal records, they wouldn't have been diverted.
- Probably half of the child sex abusers in child care operations aren't employees and would not even have been screened.

States, cities and counties currently involved with screening day care employees all report having had to struggle with many issues to clarify their laws and ordinances. They uniformly advise that in order to minimize the number of due process questions and other legal challenges which may be anticipated, a number of issues will need to be clarified before the federal mandate is implemented:

1. Which crimes will apply and who will decide whether a person is precluded from employment? Although most of the states currently screening day care employees for child abuse have fairly specific guidelines as to which crimes would make a person unsuitable for day care employment, they still find a lot of "grey" areas. Noted one person currently involved with such a system, "We know not to count bad checks, and we know we do count rape, but what about prostitution, a drug bust (marijuana) at a college party 12 years

ago, or the murder of a cop? We really have to look at each one on a case by case basis. We've had to make lots of judgment calls." The City of New York is currently developing an entire manual on how to treat records of current or potential day care employees. States stress that there needs to be a specific policy on who makes the final decision (e.g., who is liable?), and how much information is released to the provider. There also needs to be an appeals process and careful attention to privacy issues.

2. Who will be screened? Prosecutors and other experts stressed that approximately half the institutional perpetrators of sex crimes are individuals outside the immediate paid staff of the day care facility, but with access to the children. There are many instances of abuse by janitors, bus drivers, volunteers and friends and relatives of day care staff in centers. In home day care settings, the perpetrators are frequently spouses or sons of the operators, and often adolescents. To include everyone with access to the children in a screen will greatly expand the magnitude of what will be a massive undertaking if only the immediate staff are screened.

Also, does a person need a fingerprint check to apply for a job, or as a final condition of employment? Can the person be a probationary employee until the criminal history is verified? Is a new fingerprint check required everytime a person changes jobs? Does someone have to be rechecked from year to year, once they are on file?

3. What is a "background check"? Legal experts advise that without clear, tight definitions as to what will be used, there will be much litigation, especially in privacy-conscious states. Can a check also include arrest records, consulting the civil child abuse registry, etc.?
4. What about differences between state laws and jurisdictions? What happens when a person has been convicted of an act that constitutes a crime in one state but is not considered to be a crime in the requesting state? How do states deal with the fact that various jurisdictions define crimes differently (e.g., an act which would be considered disorderly conduct in one place would be considered lewd conduct elsewhere)?
5. Who will pay? Will the cost of screening be borne by providers, employees and applicants, states, etc.?
6. Penalties for noncompliance? Will HHS penalize Title XX if day care providers comply, but corrections officials refuse?

"Many offenders have explicitly said they wouldn't abuse kids if they knew the children would tell."

Dr. Judith Becker, Columbia University

PREVENTION: EDUCATION

There are no quick, easy or simple answers to the question, "How can child sexual abuse best be prevented?" Study respondents agreed that current licensing practices and fingerprint screens are by no means the whole answer. Many parents, providers and state officials noted that licensing often means only that a provider meets minimal facility and staff ratio standards, which are monitored infrequently.

Although all states regulate day care, there is great variation among states in their licensing and/or registration requirements. Some study respondents cautioned against federal or state action to increase licensing standards severely. Although they fear that overly stringent licensing requirements would drive many more providers underground, they do urge states to monitor licensed providers more regularly to assure that reasonable standards are met. Furthermore, many study respondents raised the concern that heavy governmental emphasis on fingerprint screens may lull parents into a sense of false security, i.e., into assuming that such checks will guarantee their children's safety from sexual abusers, when, in fact, fingerprinting will divert few child sex-abusers. They urge that fingerprint screens be used as a complement to other deterrent or prevention activities.

There is consensus among those who have worked with both victims and abusers regarding some actions besides screening which will help deter child sexual abuse:

- The key recommendation is to educate everyone, but especially children, parents, teachers and caretakers to the existence of abuse, what abusive behavior is, what to do when faced with an abusive situation and how to avoid abuse.
- Next, respondents say we must teach both parents and children to report, and to report promptly, when abuse does occur.

Other suggestions aimed at preventing child sexual abuse include:

- Required reporting of sexual abuse by teachers, caretakers and medical personnel
- Revamping of child protective service programs and retraining of CPS social workers
- Increased and improved counseling programs for families at risk
- Improved and increased treatment programs for victims and abusers
- Judicial reform of the criminal court system to reflect the developmental differences between adults and children
- More vigorous investigation and prosecution plus imposition of tougher penalties for convicted abusers.

Prevention of sexual abuse in day care settings is easier to define than intrafamilial child sexual abuse. The first line of defense still rests with the

parents who must become involved: parents should get to know the staff, make unannounced visits, meet other parents and have a roster of other parents' names and phone numbers and, most important, know and recognize the telltale signs of abuse. (For a brief outline of detection signals, see page 8 of this report.)

Day care providers can prevent sexual abuse by:

- Educating staff to be aware of the signals of abuse
- Asking for and checking all applicants' references before hiring (both teaching and non-teaching positions); asking on the application form whether the individual has ever been arrested, charged or convicted of crimes against children
- Encouraging parents to visit at any time
- Imposing a probationary period for all new staff
- Never allowing teachers or any other staff to be alone with any child
- Never allowing children to leave the premises without parental permission and accompaniment
- Fostering, within the realities of the physical structure, as much open space as possible—leaving doors open, eliminating "hooks and crannies" and other places where children can be separated from others, etc.
- Teaching the children through repetitive training with proven materials and approaches on sexual abuse curricula
- Supervising staff and volunteers carefully.

Since education is the cornerstone of these prevention strategies, study respondents recommended increased federal and state roles in supporting, developing and disseminating information to combat child sex abuse. Education programs must be targeted to each specific audience, e.g., children, parents,

The most commonly mentioned education programs for children are referred to as the "good touch/bad touch" approach. The foundation for many of the available good touch/bad touch materials originated with the Minneapolis Illusion Theater in the 1970s. Essentially this approach tells children (a) what kinds of touching are appropriate and what kinds are wrong, (b) it's o.k. to tell, (c) whom to tell and (d) how to avoid the abuser. Some education programs teach children assertive skills for escaping or resisting sexual abuse, primarily to say "no" to the potential abuser. This emphasis on resistance is, at best, controversial, especially for younger children who are taught to respect and obey the wishes of adults and who would have difficulty sorting the conflicting emotions, needs and expectations during the immediacy of the abusive contact. "The emphasis for children should be on telling rather than on saying 'no.' We'll never prevent sexual abuse by instructing a child to say 'no,'" emphasized Lucy Berliner of the Seattle Sexual Assault Center.

Anti-sex-abuse educational materials and other resources are proliferating. One focal point for cataloguing these resources is the National Committee for Prevention of Child Abuse, based in Chicago. In both government and private efforts to educate the public, it is probably desirable to emphasize the point, as one expert contacted in this study put it, that "this is not to be confused with sex education—it is public health and safety education."

STUDY METHODS

During this program inspection, staff from the Office of Inspector General (OIG) and the Office of Human Development Services interviewed by telephone 300 respondents from 49 states and the District of Columbia (New Mexico is the missing state). All telephone interviews were conducted during November 1984. Individual respondents included:

- state child protective staff and social workers,
- state licensing officials,
- city and county licensing staff,
- state criminal identification system directors,
- Congressional staff,
- Federal Bureau of Investigation staff,
- physicians,
- clinical psychologists,
- sexual assault therapists,
- district attorneys,
- police investigators,
- a judge,
- university researchers,
- other experts in child sexual abuse,
- parents of children in child care,
- providers of child care, including three major proprietary chains which represent more than 1,500 centers, and
- representatives of special interest groups.

OIG Region X staff then analyzed all data gathered from the telephone surveys, plus published data provided by study respondents.

(Ferguson is sponsor.)

UNDER CURRENT STATUTE, EMPLOYER ALLOWED ACCESS TO CRIMINAL HISTORY OF EMPLOYEES -- SPECIFIC CRIMES ONLY (CONTRIBUTING TO DELINQUENCY OF MINOR, SEX CRIMES).

CSBB 21 (H&SS):

WITH TITLE CHANGE

1. BROADENS CRIMES TO ANY THAT MIGHT POSE A RISK OF HARM TO A CHILD, AS DEFINED IN THE BILL.
2. ALLOWS FOR DISCLOSURE OF OUTSTANDING ARREST WARRANTS FOR THESE CRIMES.
3. MANDATORY STATE AND NATIONAL CHECK ON:
 - PERSONS SEEKING TO ADOPT MINORS
 - STAFF MEMBERS (AND JOB APPLICANTS) OF LICENSED FACILITIES
 - ADULT OCCUPANTS OF FOSTER HOMES AND FAMILY CARE HOMES
 - FACILITY ADMINISTRATORS AND OPERATORS
4. PROVISIONAL LICENSE/EMPLOYMENT ALLOWED AFTER STATE CHECK WHILE PENDING NATIONAL CHECK
5. ALLOWS FOR EMERGENCY PLACEMENT IN FOSTER HOME WITH NO CHECK
6. DEPARTMENT REQUESTS CHECKS ON ADMINISTRATORS AND ADULTS OF FOSTER AND FAMILY CARE HOMES, AND MAKES DETERMINATION OF WHETHER ADULT POSES RISK OF HARM TO CHILD. GRANTS LICENSE ACCORDINGLY.
7. FACILITY OPERATOR REQUESTS CHECKS ON STAFF; MUST REMOVE FROM FACILITY SOMEONE WHO POSES RISK OF HARM TO CHILD.
8. DEPT. PAYS COST OF CHECK FOR FOSTER PARENTS. ALL OTHERS PAID FOR BY APPLICANT OR FACILITY. (\$20)

BUDGETAL NOTES: H&SS (COST FOR FOSTER PARENTS, PROCESSING) \$128,000
 PUBLIC SAFETY (TO DO FINGERPRINTS) \$81,200

Rev. 17-0

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		128.0	116.4	121.0	125.9	130.8
FEDERAL FUNDS						
OTHER						
TOTAL		128.0	116.4	121.0	125.9	130.8

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See Attached

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

Approved by Commissioner: John R. Boy Date: 4-2-85 jcc
 Agency: Health & Social Services

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget

IV. ANALYSIS

A. Assumptions

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

B. Program Summary

New positions required by this legislation will be as follow:

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

C. Computations

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

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

Supplies	1.2
Equipment - first year only	6.7
	\$129.0

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

D. Economic Impact

There will be no impact on the State economy.

E. Impact On Local Governments

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

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSB 21 (HESS)
 Title: "...background checks...
 contact with children"
 Sponsor: Ferguson
 Requestor: Sen. HESS
 Date of Request: 4/03/85

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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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

Division: Administrative Services

Phone: 465-4349

Date: 4/03/85

Approved by Commissioner: Robert J. Sundberg

Agency: Department of Public Safety

Date: 4/6/85

Distribution (by Agency preparing fiscal note):

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

7/1/84

file ~~Child Abuse~~
SB. 21

Vigilant in the Protection of Our
Children or Vigilantes?

Legal Considerations in Drafting Screening Laws
and
Recommendations for Safeguarding Children
In Child Care Settings

Prepared by:
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San Francisco Lawyers' Committee for Urban Affairs

I. Introduction

During the past year, allegations of child abuse, particularly child sexual abuse, have garnered widespread media attention. While statistics gathered nationwide indicate that an overwhelming 82% of child abuse is committed by family members and experts acknowledge the importance of child care in the prevention, detection and treatment of child abuse,¹ most of the publicity has focused on allegations of abuse occurring in child care settings. These allegations have prompted legislators, parents, child care givers and licensing officials to seek more effective strategies to protect children in child care. While few would wish to detract from attention which raises the public consciousness about the seriousness and prevalence of child abuse, nor criticize good faith legislative efforts to protect children, thus far the consequences of media and legislative attention are not all salutary.

Too frequently, the media maligns child care generally, never emphasizing its positive aspects. Such coverage usually discounts or ignores the dedication of thousands of child caregivers who provide an essential service to children and their parents in the face of low wages, long hours and little recognition for the importance and difficulty of their work. Additionally, such coverage also tends to shower guilt on parents who already face conflicts because of the lack of accomodation our society has made for working parents.

Similarly, many legislative responses focus only on screening out criminals or stiffening criminal penalties for offenders. In many states, criminal record history screening has been put into place without the thorough consideration such measures require. Additionally, little attention is given to a cost/benefit analysis of screening. Recent statistics from New York City, similar in result to California statistics, reveal that less than 1% of those screened had prior felony convictions.² Most importantly, attention is diverted from measures which are already proven or have the potential to expand and improve child care programs, thereby reducing the risks of improper or inadequate care.

One of the responses to allegations of child abuse in child care settings was the passage of P.L. 98-473. The paper which follows: 1) describes P.L. 98-473, 2) sets out the legal and non-legal aspects which ought to be considered in drafting a national criminal record screening law which complies (and/or goes beyond) the requirements of P.L. 98-473, 3) sets out considerations in developing laws or regulations dealing with employment history and background checks and 4) concludes with a list of recommendations for avenues other than screening to prevent child abuse in child care settings and to provide better regulatory enforcement once child abuse is suspected.

II. P.L. 98-473

As currently written, P.L. 98-473 requires states, in order to obtain their full Title XX appropriation, in FY 1986 or 1987, to have in place by September 30, 1985, procedures, (through law or regulation) to provide for employment history and background checks

and a statute which provides for nationwide criminal record checks. These checks are to be done on current and prospective operators, staff and employees of "child care facilities (including any facility or program having primary custody of children for 20 hours or more per week) and juvenile detention, correction or treatment facilities." No further guidance is given.

III. DEVELOPING A CRIMINAL RECORD SCREENING LAW

A. Why a model statute and regulations are not provided here*

After attempting to construct a model state statute for the national criminal record screening of child caregivers which would be in compliance with P.L. 98-473, it became apparent that this would not be possible for three reasons. The reasons are:

1. DHHS has chosen not to clarify programs and activities to be regulated within the meaning of P.L. 98-473, but has left this to the discretion of the states; (see Federal Register, January 15, 1985 p. 2090).
2. the wide variation among states regarding which child care and juvenile programs are regulated, to what degree and by whom;
3. a desire to distinguish what is required by the law, what is optional but desirable, and what is undesirable.

B. Legal Aspects:

1. Amending existing legislation

P.L. 98-473 requires screening of a variety of child care institutions all of which may not be regulated

* The Child Care Law is available, for a fee, to provide technical assistance in the drafting of screening statutes tailored to the needs of individual states and in compliance with P.L. 98-473. Contact Abby Cohen, Managing Attorney, Child Care Law Center, 625 Market Street, Suite 815, San Francisco, CA 94105. (415) 495-5498.

under the same state law. Consequently, states will either have to pass a law amending all of these regulatory schemes, amend each law individually, or if they are fortunate and all forms of employment covered by P.L. 98-473 appear in one law, amend only that. Additionally, they may have to amend the laws in their states governing the state agency which does criminal history checks to authorize that agency to send fingerprints to the F.B.I. and to share information it has, and information it receives from the F.B.I. with the pertinent regulatory agency which will make the employment decisions. *

2. Definition of those programs and providers of care covered

In order to comply with P.L. 98-473, and P.L. 92-544, all staff, operators and employees of defined programs need to be explicitly identified in the statute. Each state must determine what types of child care facilities exist in its state which have primary custody of children for 20 or more hours per week and which programs operate which can be considered juvenile detention, treatment and correction centers. While monies under P.L. 98-473 are limited to the training of licensed or registered providers of child care, operators and staff of licensed or registered child care, licensing and enforcement officials and parents, the definition given for those programs and providers covered in the screening mandate is not similarly limited. At the very least, in the area of child care, a law should cover any regulated (whether licensed, certified, registered or approved) child care program which operates for 20 hours or more per week. Each state also should address the following concerns:

- a. whether the statute also should include: public/private schools, foster care and forms of regulated child care which operate for less than twenty hours per week. In addition, when care takes place in a home, consider whether adults (other than the provider) residing in the home should also be screened. This is not required under P.L. 98-473.
- b. how it plans to deal with substitutes and volunteers. Depending upon how one defines "employees" under the statute, substitutes and volunteers may be employees or they may not be. Even if they are not considered employees, a state may still choose to screen

* It is the author's contention that the regulatory agency, not an operator should be receiving this information and making employment decisions. For reasons why, see section 4d below.

state explicitly that permanent employment will be contingent upon obtaining clearance. [In the case of state and employees, clearance can either be required at the time of new employment or a clearance could be issued and kept on file at the time of the first job and could last for a specified period].

b. Authority to conduct the criminal records check

The statute should require notification to the applicant that a criminal record check will occur, explicitly authorize the regulatory agency to submit the fingerprints to the state justice agency, and further empower that agency to submit prints to the F.B.I.

c. What will be considered necessary to obtain clearance

Each statute should clearly set forth the grounds upon which employment can be denied. It is unwise to leave this to guesswork or "guidelines".

(1) Convictions, not arrests for specified crimes should be used. Use of arrest data is not advised, for a number of reasons. First, because minorities are arrested at a disproportionately higher rate than whites, automatic disqualification for employment based on arrests without convictions is violative of Title VII. (See George v. Litton Systems, Inc., 472 F. 2d 631 (1972)). Secondly, arrest data is notoriously inaccurate. Misinformation may be compounded, never leading to a conviction, but resulting in a criminal history record a mile long. Just recently, a "Michigan man filed suit charging that he was wrongfully arrested five times in less than 4 months after an arrest warrant for a man using his name was placed in the national computer system of the Federal Bureau of Investigation."⁴ "Conviction" should include a finding, verdict or plea of guilty or a conviction following a plea of nolo contendere. The names of crimes will vary, state to state, but should include:

- (a) sexual abuse, assault, exploitation, (both against a minor and adult)
- (b) incest
- (c) rape
- (d) murder
- (e) kidnapping

- (f) contributing to the delinquency of a minor
- (g) felony offenses involving narcotics
- (h) violent felonies (armed robbery)

(2) The statute should also state that conviction of crimes of the same nature in other states and jurisdictions are also grounds for denial of employment.

(3) States should provide a mechanism for discretionary review if they consider every kind of criminal conviction. A good example of this type of system is California. Because California looks at all convictions other than minor traffic violations, it provides that an exemption from disqualification may be granted to one convicted of crimes other than child abuse if the director [of the state licensing department] has substantial and convincing evidence to support a reasonable belief that the applicant [and the person convicted of the crime, if other than the applicant,] are of such good character as to justify exemption. To make this determination the regulations consider:

1. The nature of the offense committed.
2. Time elapsed since the offense was committed.
3. Number of offenses
4. Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
5. Activities since conviction, such as employment, education or participation in therapy, that would indicate rehabilitation.
6. Character references
7. Certificate of rehabilitation from a court.

However the state should choose to consider convictions, it should balance the risk to children versus the employment rights of persons who have

criminal conviction records. Simply stated, conviction data should only be used if it is relevant and recent.

d. Who makes the decision

The statute should clearly specify who will make the hiring/termination decision. In the author's view, it is essential that the determination be made by the regulatory agency and not by the child care program operator or provider. The reasons are:

- (1) expertise. An agency reviewing numerous criminal history records is in a better position to pass judgment upon whether termination or hiring is warranted.
- (2) liability exposure. The state, not individual programs, is in a better position to absorb the cost of potential lawsuits.
- (3) decision making by the state obviates the need for programs to develop confidentiality procedures for the receipt of criminal history information.
- (4) Keeping irrelevant criminal history record information out of the hands of employers eliminates the potential for bias against those who were wrongfully arrested and ex-offenders who have been rehabilitated.
- (5) provides for greater uniformity throughout a state on what is a minimum standard for employment.
- (6) since the state will have to do the clearance on individual operators who have no "director" above them anyway, it makes little sense to divide the same task between the regulatory agency and child care operators.
- (7) since a model statute should include an opportunity to appeal an adverse employment decision it makes sense that an agency with appeal procedures already in place (the regulatory agency) should handle appeals. It then makes little sense to divide the tasks of making employment decisions and rendering decisions on appeals.

e. Due process- notice and an opportunity to be heard

Once a determination is made, applicants should be advised of the decision in writing, whether

favorable or adverse. (If staff and employees are screened, staff employees and employers should both be notified). If the decision is not favorable, the reasons for termination or unwillingness to hire should be spelled out. Finally, applicants should be informed of how they can appeal the adverse decision-- to what agency, within what time frame, etc. Any hearing should be conducted with the usual array of due process safeguard granted in other administrative hearings.

C. Non-legal aspects

Costs: Costs for doing the national criminal records checks (F.B.I.) are estimated to be \$12; state screening costs must be added to this figure. By statute or regulation, states should specify who will pay these costs. For example, in California, no fee is charged for fingerprinting or obtaining the criminal record of persons who care for six or fewer children. Additionally, as a procedural matter, screening should occur at the state level before prints are sent to the FBI; if the person is found unacceptable at the state level this obviates the need, and resulting expense, of doing the national screening.

D. APPROVAL

Finally, any statute which intends to utilize the F.B.I. for national criminal record checks must be approved, ^{by whom? FBI} Approval should be obtained before your bill goes to the legislature for passage. Contact Mr. William H. Garvie, Identification Division, FBI, Washington, D.C. 20537, (202) 324-5456.

IV. Background Checks and Employment History

In addition to the national criminal record screening law just outlined, states wishing to receive their full Title XX appropriation must also have in place laws or regulations which provide for background checks and employment histories. Again, the DHHS has given no guidance as to what is appropriately within the

scope of a "background check" or "employment history", how these activities are to be undertaken, or by whom. Most of the considerations outlined previously will be equally relevant in drafting a background check or employment history law. Some measures states might wish to consider are:

A. Attestation To "Clean" Criminal History

States can require that those being screened also sign a declaration under penalty of perjury that they have not been convicted previously of crimes specified by the state.

B. Checks of Dependency Determinations and Parental Terminations

States can require that persons who as parents or guardians of a child have had their parental rights terminated or whose children have been adjudicated to be dependents of the state shall not be approved as operators, staff or employees.

C. Checks of Licensing History

States can also require that checks be made of any previous denials, revocations, or refusals to renew which occurred in operating facilities for dependent persons (children, elderly, etc.).

D. Objections To Use of the Child Abuse Registry

Some states have chosen to use their child abuse registries for screening. Without going into an extended discussion,* this author contends that registries should not be used for

* An in-depth examination of this topic is available from the Child Care Law Center. Please request "Use of Statewide Central Child Abuse Registries for Purposes of Screening Child Care Workers."

included in the registry, and if so, at what level or classification. Additionally, they generally have no procedures to correct incorrect findings. The author's comments are limited to use of the registry for screening purposes, and she passes no judgment on the use of registries once a complaint or allegation has been made against a child caregiver. However, there are too many troublesome facts about child abuse registries for them to be appropriately used by persons other than law enforcement or child protection personnel.

E. Employment History

Employment histories should include verification of educational credentials, and verification of previous places of employment.

F. Character/Employment References

References by previous employers ^{are} ~~is~~ critical. Reliance on friends, relatives and the like should be deemed insufficient.

G. Probationary Period

In addition to the measures suggested above, it is wise to institute a probationary period to determine a child caregiver's suitability. Child caregivers should be informed of the existence of the probation and grounds for termination.

V. Safeguarding Children in Child Care Settings: What Can Be Done? Some Recommendations

A. Licensing

1. Increase licensing's role in parent education re: licensing requirements, provider communication, questions to ask, where complaints can be made, indicators of child abuse, community resources for learning about abuse and helping victims of abuse etc. This should include use of the media, as well as other methods and materials.
2. Improve complaint process:
 - institute toll free numbers
 - speed response time and resolution
3. Train licensing personnel re: investigation, gathering and preserving evidence, identifying child abuse.
4. Make reasonable parental access to a facility a licensing requirement.
5. Make availability of parent roster to licensing a licensing requirement. Parents should also have access to a roster, although parents can also request their names be deleted from the list circulated to other parents.
6. Create a separate division or department to deal with child care so its unique nature is understood; within this division separate licensing and enforcement functions; beef-up enforcement division so response time is improved-- which often means more resources for the legal department.
7. Require child abuse reports to be cross-reported to licensing and vice versa.
8. Provide intermediate sanctions (fines) for physical plant and other non-endangering situations so that providers are required to come into compliance or face monetary sanctions.
9. Timely notification of parents and R & R when a license is suspended or revoked; development of policies for notification when administrative action is not as grave as suspension or revocation.
10. Publicize revocations/denials, non-renewals of licenses regularly and locally; publicize injunctions.
11. Add injunctive relief (to close down the facility) to standard revocation orders.
12. Develop method for placing licensing revocations on criminal history records.
13. Provide for provisional licensing status- with a statutory ending period.
14. Develop formal methods of complaint information sharing between:

- (1) child care, residential care, foster care, etc. (be certain to check if they have had a license before which has been revoked, denied, etc.)
- (2) law enforcement, protective services, licensing.
- (3) state, county, local officials

Require all these sources of information to be checked out before issuing license.

Keep records when licensee surrenders license.

15. Requirements for employees in centers- check at least three references thoroughly before hiring; require a probationary period after hire for evaluation.
16. Require protection for workers through non-retaliatory provisions for child care workers who report licensing violations.
17. Require licensing to document and study complaints for purposes of regulatory reform.
18. Interagency agreements between licensing, protective services, police, and district attorneys should be developed so investigatory responsibilities are not duplicated, impeded, or left unperformed. Possible joint investigation by CPS and licensing.

Child Protective Services/Law Enforcement

1. Staff of these agencies should be trained not only in identifying child abuse, but should understand the difference between investigations conducted in the home and those in a child care setting. Preferable use of child protective worker over police, and if police used, may want plain clothes in unmarked car.
2. Notification to licensing if CPS and law enforcement have complaints of child abuse in a child care setting.
3. Development of procedures for investigation of child abuse in child care, i.e. if parents are not targets of investigation, interviews with children should be conducted at home, or at the very least, parents should be notified before a child is interviewed.

II. Government/Private Resources

A. More resources devoted to:

-provider training in the areas of emergency preparedness, child development, licensing requirements, child abuse identification and reporting;

-adequate subsidies for low-income parents so they have choices; -increase provider wages so that high quality staff can be attracted and maintained;

-development and maintenance of R & R

B. Resource and Referral

-establish complaint policies

-develop choosing child care programs, publications

-develop means of training parents to engage in on-going monitoring of care

-help in training providers regarding child abuse and develop directories of community resources they can turn to

-encourage parents to listen to kids- what to expect- normal separation anxiety vs. symptoms of trouble

-promote providers/parents communication on a regular basis about concerns

-promote positive media coverage of child care

C. Parents

-learn about licensing requirements

-learn where complaints are to be made

-obtain roster and talk to other parents of children in care on a regular basis

-listen to kids

-advocate for more resources for child care

-visit programs and see and judge for themselves

-advise R & R and licensing if programs they have been referred to are rejected on the basis of substandard conditions

D. Employees

-learn licensing regulations and work with program to meet; report licensing violations

-advocate for in-service training opportunities, opportunities to learn about child abuse prevention, detection and treatment and provider rights and responsibilities under the child abuse reporting law.

-learn curriculum for teaching children about abuse, learn about community resources available to interested persons and victims.

E. Children

-teach about abuse; how they can respond; should be taught by trained employees.

FOOTNOTES

1. See for example the testimony of June Solnit Sale, Director UCLA Child Care Services (June 18, 1984), Dr. Vivian Weinstein, Associate Professor of Pediatrics, King/Drew Medical Center (June 18, 1984), Anne Cohn, Executive Director, National Committee for Prevention of Child Abuse (March 12, 1984) and Dr. Vincent Fontana, Medical Director and Pediatrician-In-Chief, New York Foundling Hospital Center for Parent and Child Development (March 12, 1984) before the House Select Committee on Children Youth and Families. (1984)
2. New York Times, January 18, 1985
3. Arizona House Bill 2002, introduced January 14, 1985.
4. "Victim Files Suit Over Error that Led To 5 Arrests," New York Times, February 12, 1985.

APR 7 1986 SB 21

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 4/03/86

REQUEST

Bill/Resolution No. : CSSB 21 (HESS)
Title : "An Act relating to criminal background checks; and providing for an effective date."
Sponsor : Sen. Ferguson
Requestor : Senate HESS
Date of Request : 4/03/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : DPS Administration

Components : Laboratory

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		71.3	74.9	78.6	82.5	86.7
TRAVEL		1.6	1.7	1.8	1.9	2.0
CONTRACTUAL		6.7	7.0	7.4	7.8	8.2
SUPPLIES		3.7	3.9	4.1	4.3	4.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		83.3	87.5	91.9	96.5	101.4

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		83.3	87.5	91.9	96.5	101.4
FEDERAL FUNDS						
OTHER						
TOTAL		83.3	87.5	91.9	96.5	101.4

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by: Kathy Niles
Kathy Niles, Admin Assistant
Division : Commissioner's Office Phone : 465-4336
Date : 4/03/86

Approved by Commissioner : [Signature] Date : 4/4/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 21 (HESS)

<u>100 Personal Services</u>		\$71.3
Both positions to work swing shift		
Latent Fingerprint Examiner I (Range 15A)	\$42.2	
Clerk-Typist III (Range 8B)	29.1	
<u>200 Travel</u>		1.6
Travel for training to keep current in fingerprint technique		
<u>300 Contractual Services</u>		6.7
Postage, telephone	3.6	
Printing of fingerprint cards	2.6	
Training fees	.5	
<u>400 Supplies and Materials</u>		3.7
Supplies for computerized fingerprint system	2.1	
Office & library supplies	1.6	
	TOTAL	\$83.3

An effective date of July 1, 1986 is assumed.

A 5% annual inflation factor is included beginning in FY 88.

Position Title Latent Fingerprint Examiner			No. of Positions 1	Range/Step 15/A	Barg. Unit G	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Anchorage	Election District		Leg.		
Type of Expenditure			Justification					
		Amount	<p>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.</p> <p>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.</p>					
1	2	3						
Salary \$2518/mo	30,216							
Benefits	10,865							
Premium Pay + 3.75%	1,133							
Other								
Total Personal Services		42,214						
Travel		1,600						
Contractual		4,400						
Commodities		2,700						
Equipment								
Other								
Total Cost		50,914						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004						
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only Key Number _____								

**Request For
New Position**

Agency Department of Public Safety
 BRU DPS Administration
 Component Laboratory

FY 87

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 Revised Date 4/03/86

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8/B	Barg. Unit G	Gov.	Approv.	Disapp.
Time Status	Staff Months 12	RP Number	Location Anchorage	Election District	Leg.			
Type of Expenditure			Justification					
1		2	3					
Salary	\$1678/mo	20,136	<p>This position would provide clerical support for background checks. 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 of the Alaska Public Safety Information Network.</p> <p>The additional clerical workload which would result from passage of SCR 3 cannot be absorbed by the two existing clerical positions in the Lab.</p> <p>This position will work closely with a requested Latent Fingerprint Examiner and is budgeted at the swing shift rate.</p>					
Benefits		8,250						
Premium Pay	+3.75%	755						
Other								
Total Personal Services		29,141						
Travel								
Contractual			2,300					
Commodities			1,000					
Equipment								
Other								
Total Cost			32,441					
Receipt Code		Funding Source						
		Federal Receipts 1002						
		G. F. Match 1003		32,4				
		General Funds 1004						
		I-A Receipts 1005						
		Program Receipts 1028						
		CIP Receipts 1061						
		Other						
For B&M Use Only Key Number _____								

**Request For
New Position**

Agency Department of Public Safety
 BRU DPS Administration
 Component Laboratory

FY 87

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