HB
229

(11)

HOUSE COMMITTEE REPORT

Date referred: 3/14/88 FURTHER REFERRALS:

DATE: 4/12/88

The Finance Committee has considered HB 229

"An Act relating to homicide by abuse."

RECOMMENDS:

[X] replace with CS HB 229 (Jud.) [ ] the same title [X] a new title

[ ] attached amendment(s)

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ________ Committee

ADOPTS: [ ] ________ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[X] zero fiscal note (4) Dept. Law, Public Safety, Court System, Administration

[ ] zero with analysis

[ ] same as previous fiscal note published ________

[X] same as previous zero fiscal note published 3/14/88 (Dept. of Correct.)

SIGNING DO PASS:

ADAMS Al Adams
POURCHOT Pat Pourchot
LARSON Ronald L. Larson
SWACK [signature]
BOYER Mark Boyer
FRANK [signature]
WALLIS Kay Wallis
RIEGER Steve Rieger

SIGNING OTHER RECOMMENDATIONS:

GOLL [signature]
BROWN Fay Brown
DAVIS Mike Davis

Al Adams
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 229(JUD)
PUBLISH DATE: HOUSE 3/14/88

FISCAL NOTE

No. 1

REQUEST:

Revision Date:
Title: "An Act relating to homicide by abuse."
Sponsor: Rep. Hudson, Ulmer, Larson
Requestor:

Agency Affected: Department of Corrections
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This legislation should have minimal impact on the Department of Corrections.

Prepared by: Susan E. Knighton, Director SK
Phone: 465-3376
Division: Administrative Services
Date: March 14, 1988

Approved by Commissioner: Susan Humphrey-Barnett
Date: March 14, 1988
Agency: Department of Corrections

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : HB 229
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date: January 19, 1988
Title : "An Act relating to homicide by abuse."
Sponsor : Representative Hudson
Requestor : House Judiciary

Agency Affected : Department of Law
BRU : Prosecution
Components : ALL

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by : Richard I. Pegues, Director
Phone : 465-3672
Division : Administrative Services
Date : January 19, 1988

Approved by Commissioner : Grace Berg Schaible, Attorney General
Date : January 19, 1988
Agency : Department of Law

Distribution (by prepare. :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 229

This bill would allow prosecution for homicide by abuse where a person engages in a pattern of assault of torture of a child under the age of 16 that results in the death of the child. Many of the cases which would be homicide by abuse under this new law are now being prosecuted as manslaughter or as criminally negligent homicide. Because the majority of these cases are already being prosecuted (although at a lower level), this bill will not have a significant fiscal impact on the department.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 229
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to homicide by abuse
Sponsor: Hudson, Ulmer, et. al.
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

KEB
JMR 11/25/88

Prepared by: Barbara Miklos, Executive Director
Division: Council on Domestic Violence & Sexual Assault
Phone: 465-4356
Date: 1/20/88

Approved by Commissioner: [signature], Dep. Comm
Date: 1-28-88
Agency: Public Safety

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

JAN 3 0 1988

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STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: ______________________ Bill Version: HB 229
Publish Date:

Revision Date: 1-6-88
Title: An act relating to homocide by abuse
Sponsor: Hudson, Ulmer, Larson, ...
Requestor: House Judiciary

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services	....	....	....	....	....	....
Travel	....	....	....	....	....	....
Contractual	....	....	....	....	....	....
Supplies	....	....	....	....	....	....
Equipment	....	....	....	....	....	....
Land & Structures	....	....	....	....	....	....
Grants & Claims	....	....	....	....	....	....
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	....	....	....	....	....	....
REVENUE	....	....	....	....	....	....

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	....	....	....	....	....	....
Other	....	....	....	....	....	....
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Full-time	....	....	....	....	....	....
Part-time	....	....	....	....	....	....
Temporary	....	....	....	....	....	....

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Jan Strandberg

Prepared by: Jan Strandberg, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 1-6-88

Stephanie Cole, for

Approved by: Arthur H. Snowden, II, Administrative Director Date: 1-6-88
Agency: Alaska Court System

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 229
PUBLISH DATE: 3/30/87

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to homicide by abuse."
Sponsor: Hudson, Ulmer, Larson, et al
Requestor: Judiciary, Finance

Agency Affected: Administration
BRU: Office of Public Advocacy
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy
Phone: 274-1684
Date: 1/20/88

Approved by Commissioner: John Andrews
Agency: Department of Administration
Date: 1/27/88

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FEB 1 1988
LEGISLATIVE FINANCE

page ___ of ___

Offered: 3/14/88 5-0977B
Referred: Finance

Original sponsors: Hudson, Ulmer,
Larson, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 229 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act amending the definition of murder in the
7 first degree to include homicide by a pattern or
8 practice of assault or torture of a child under the
9 age of 16."
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
11 * Section 1. AS 11.41.100(a) is amended to read:
12 (a) A person commits the crime of murder in the first degree if
13 (1) [,] with intent to cause the death of another person,
14 the person
15 (A) [(1)] causes the death of any person; or
16 (B) [(2)] compels or induces any person to commit
17 suicide through duress or deception; or
18 (2) the person knowingly engages in a pattern or practice
19 of assault or torture of a child under the age of 16 that results in
20 the death of the child under circumstances manifesting extreme indif-
21 ference to the value of human life; for purposes of this paragraph, a
22 person "engages in a pattern or practice of assault or torture" if the
23 person inflicts serious physical injury to the child in at least two
24 separate instances.
25 * Sec. 2. AS 11.41.115(a) is amended to read:
26 (a) In a prosecution under AS 11.41.100(a)(1)(A) [AS 11.41.-
27 100(a)(1)] or 11.41.110(a)(1), it is a defense that the defendant
28 acted in a heat of passion, before there had been a reasonable oppor-
29 tunity for the passion to cool, when the heat of passion resulted from

1 a serious provocation by the intended victim.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 229(JUD)
PUBLISH DATE: HOUSE 3/14/88

FISCAL NOTE

No. 1

REQUEST:

Revision Date:
Title: "An Act relating to homicide by abuse."
Sponsor: Rep. Hudson, Ulmer, Larson
Requestor:

Agency Affected: Department of Corrections
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This legislation should have minimal impact on the Department of Corrections.

Prepared by: Susan E. Knighton, Director SK
Phone: 465-3376
Division: Administrative Services
Date: March 14, 1988

Approved by Commissioner: Susan Humphrey-Barnett
Date: March 14, 1988
Agency: Department of Corrections

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : CSHB 229
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date:
Title : "An Act relating to homicide by abuse."
Sponsor : Rep. Hudson, Ulmer, Larson
Requestor :

Agency Affected : Department of Corrections
BRU :
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This legislation should have minimal impact on the Department of Corrections.

Susan E. Knighton

Prepared by : Susan E. Knighton, Director
Phone : 465-3376
Division : Administrative Services
Date : 4-11-88
Approved by Commissioner: Susan Humphrey-Barnett
Date : 4-11-88
Agency : Department of Corrections

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

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LEGISLATIVE FINANCE

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 229
PUBLISH DATE: 3/30/87

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to homicide by abuse."
Sponsor: Hudson, Ulmer, Larson, et al
Requestor: Judiciary, Finance

Agency Affected: Administration
BRU: Office of Public Advocacy
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate
Phone: 274-1684
Division: Office of Public Advocacy
Date: 1/20/88

Approved by Commissioner: John Andrews
Date: 1/27/88
Agency: Department of Administration

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

FEB 1 1988
LEGISLATIVE FINANCE

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STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 229
Publish Date:

REQUEST:

Revision Date: 1-6-88
Title: An act relating to homocide by abuse
Sponsor: Hudson, Ulmer, Larson, ...
Requestor: House Judiciary

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services	....	....	....	....	....	....
Travel	....	....	....	....	....	....
Contractual	....	....	....	....	....	....
Supplies	....	....	....	....	....	....
Equipment	....	....	....	....	....	....
Land & Structures	....	....	....	....	....	....
Grants & Claims	....	....	....	....	....	....
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	....	....	....	....	....	....
REVENUE	....	....	....	....	....	....

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	....	....	....	....	....	....
Other	....	....	....	....	....	....
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Full-time	....	....	....	....	....	....
Part-time	....	....	....	....	....	....
Temporary	....	....	....	....	....	....

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel — Phone: 264-8228
Division: Alaska Court System — Date: 1-6-88

Approved by: Arthur H. Snowden, II, Administrative Director — Date: 1-6-88
Agency: Alaska Court System

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

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STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 229
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to homicide by abuse
Sponsor: Hudson, Ulmer, et. al.
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

KEB JAR 1/25/88

Prepared by: Barbara Miklos, Executive Director BB
Phone: 465-4356
Division: Council on Domestic Violence & Sexual Assault
Date: 1/20/88

Approved by Commissioner: [signature], Dep. Comm.
Date: 1-28-88
Agency: Public Safety

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

JAN 30 1988
LEGISLATIVE FINANCE

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HB 229

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 229
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: January 19, 1988
Title: "An Act relating to homicide by abuse."
Sponsor: Representative Hudson
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Components: ALL

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: January 19, 1988
Approved by Commissioner: Grace Berg Schaible, Attorney General
Date: January 19, 1988
Agency: Department of Law

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 229

This bill would allow prosecution for homicide by abuse where a person engages in a pattern of assault of torture of a child under the age of 16 that results in the death of the child. Many of the cases which would be homicide by abuse under this new law are now being prosecuted as manslaughter or as criminally negligent homicide. Because the majority of these cases are already being prosecuted (although at a lower level), this bill will not have a significant fiscal impact on the department.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO

X CRIMINAL DIVISION CENTRAL OFF
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
1031 WEST 4TH AVENUE, SUITE 316
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

April 11, 1988

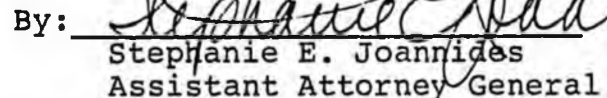
Honorable Albert P. Adams
Chairman, House Finance Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Adams:

At your staff's request, we are enclosing a copy of a letter we provided to the sponsor of CSHB 229. Should the committee have any questions regarding our letter, I will be available.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Stephanie E. Joannides
Assistant Attorney General

SEJ:jf-92

Enclosure

March 24, 1988

Honorable Bill Hudson
Alaska State House
P.O. Box V (MS 3100)
Juneau, Alaska 99811

RE: CS for House Bill 229 (Judiciary)

Dear Representative Hudson:

This is in response to your request that we review and comment upon CSHB 229. From my review of the bill, it appears that the primary objective is to increase the penalty for killing children under circumstances manifesting an extreme indifference to the value of human life. I therefore suggest that the bill be drafted to more directly accomplish that result, by changing the sentencing provisions, rather than changing the definitions of crimes.

Traditionally, murder in the first degree required a premeditated intent to kill. Alaska has abolished the requirement of premeditation but still requires an intent to kill. The crimes of murder in the second degree, manslaughter and criminally negligent homicide encompass all the other acts resulting in the death of another person, but which fall short of a clear intent to kill. Since the situation you are addressing involves unintentional (although extremely indifferent) killings, it is more appropriately classified as murder in the second degree, and no statutory change to the definition of that crime is required.

You have, however, focused on one of the anomalies of Alaska's sentencing laws. Because second-degree murder is an "unclassified" felony, it is not part of the presumptive sentencing system. Therefore, in imposing sentence a judge is not legally required to take into account statutory aggravating factors, which apply only to presumptive sentences. As you know, one of those aggravating factors is that "the defendant knew or reasonably should have know that the victim of the offense was particularly vulnerable or incapable of resistance due to ...extreme youth...." AS 12.55.155(c)(5). It would be quite simple to amend AS 12.55.125(b) to provide for an increased penalty, of perhaps a ten or fifteen-year minimum, for murder in

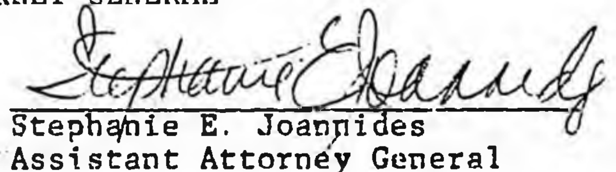
the second degree under those circumstances.

This more direct way of accomplishing your objective has the added advantage of avoiding the extremely difficult task of proving "a pattern or practice of assault or torture", which appears in the current version of the bill. The present wording requires that the two acts of serious physical injury "results" in the death, which may be impossible to prove in most instances. The Paulo/Pinkerton case in Juneau is a good example of the difficulty faced by the prosecution. In that case there was evidence of a broken arm on one occasion and then a month later the death resulted from a hard blow to the infant's abdomen. Even assuming the broken arm is legally "serious physical injury", it could not be proven that it contributed to the death, that is, that the death "resulted" from the combination of the broken arm and the other injury that are used to establish the "pattern or practice".

Should you wish to implement this suggestion, I will be more than happy to assist your staff.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Stephanie E. Joannides
Assistant Attorney General

SEJ/llm

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT
130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC); Advocates for Victims of Violence (AVV); Aiding Women in Abuse and Rape Emergencies (AWARE); Alaska Women's Resource Center (AWRC); Arctic Women In Crisis (AWIC); Bering Sea Women's Group (BSWG); Emmonak Women's Shelter; Kodiak Women's Resource & Crisis Center (KWRCC); Maniilaq Regional Women's Crisis Program; MEN, Inc.; Safe & Fear-Free Environment (SAFE); Sitkans Against Family Violence (SAFV); Southwestern Alaska Council for the Prevention of Child Sexual Assault (SWACPCSA); South Peninsula Women's Services (SPWS); Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC); Valley Women's Resource Center (VWRC); Women in Crisis Counseling & Assistance (WICCA); Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

HB 229
AN ACT AMENDING THE DEFINITION OF MURDER IN THE FIRST DEGREE TO INCLUDE HOMICIDE BY A PATTERN OR PRACTICE OF ASSAULT OR TORTURE OF A CHILD UNDER THE AGE OF 16.

The Alaska Network on Domestic Violence and Sexual Assault supports the concept of House Bill 229. Child abuse is a particularly heinous crime in that the offender exerts tremendous control and power over a child victim who has little or sometimes no ability to protect themself. Child abuse that results in death should be segregated out from other crimes in some manner and recognized within law for what it is: indifference to the value of human life in the utmost extreme. It is not at all the same as an isolated act of assault against an adult that results in death. It is a form of assaultive behavior against a person who is particularly incapable of defending themself that is repetitious and systematic and results in death.

POSITION PAPER

HB 229

The Alaska Public Defender Agency and the Office of Public Advocacy are totally reactive agencies which provide representation to indigent persons when appointed by the court. These agencies do not make policy nor do they initiate litigation. Only proposed legislation with fiscal or program ramifications for these agencies can be said to have a direct agency impact. Thus, the Public Defender Agency and Office of Public Advocacy submit position papers for legislation which will affect these agencies fiscally or programatically or will require these agencies to litigate constitutional issues raised by the legislation.

Fiscal impact: __X__ None   See attached fiscal note _____

Program impact: _____ None   See analysis below __X__

Constitutional impact: _____ None   See analysis below __X__

This bill creates a new crime of homicide by abuse. The apparent motivation for the bill is to increase the ease of conviction and the penalties for people who kill children. It is certainly hard not to sympathize with these purposes. However, a closer look at the bill and at the existing criminal law strongly suggests that the bill is not necessary and that sound policy dictates against making fundamental changes in the existing coherent criminal code.

a. The bill represents a major break with the principles underlying the comprehensive revised criminal code and presumptive sentencing scheme.

The existing criminal code defines four classes of criminal homicide. The distinctions among the classes rest primarily on the different culpable mental states. AS 11.41.100-.130, 11.81.900(a)(1)-(4). Thus, for example, first degree murder is defined as intentional homicide. AS 11.41.100(a). Second degree murder covers conduct which was not an intentional killing but was knowing or extremely reckless. AS 11.41.110(a). The bill creates a new crime which has elements comparable to existing second degree murder, because proof of an intentional killing is not required. However, the penalty provisions are equivalent to first degree murder.

The existing criminal code was the product of exhaustive study by professionals in the field of criminal justice and by the legislature. The purposes of the wholesale revision of the criminal code and sentencing statutes were to establish a coherent code which would distinguish among offenses according to their severity and to establish a penalty scheme which would eliminate unjustified disparity in sentencing. See AS 11.81.100, 12.55.005. The coherence of the code and the uniformity of the sentencing scheme are undermined each time a new crime is defined which does not fit within the existing framework.

b. Creating a new crime with an element of "pattern or practice" of abuse is not necessary to successful prosecution in child homicide cases.

The existing law allows prosecutors to charge and to convict defendants of murder when a death results from a pattern of abuse or torture which demonstrates manifest indifference to the value of the life of a child. AS 11.41.110(a)(2). Ordinarily, the history of abuse will be admissible. E.g., Rhodes v. State, 717 P.2d 422, 424-25 (Alaska App. 1986); Garner v. State, 711 P.2d 1191, 1192-93 (Alaska App. 1986); Jolley v. State, 655 P.2d 784, 785 (Alaska App. 1982). The only reported case where an Alaskan appellate court has held that a prior incident of abuse should have been excluded was Harvey v. State, 604 P.2d 586, 589 (Alaska App. 1979). At trial, Harvey conceded that he had severely spanked the victim, and the only point in dispute was whether or not the spanking, and not another assault by another person, caused the child's death. The state was allowed by the trial judge to present evidence that the defendant had once abused another child. The Supreme Court found that this incident of abuse on a different child was logically irrelevant to the issues disputed at trial. In more recent cases, where the issues at trial were the identity of the assailant or whether the assailant acted with manifest indifference to the value of the child's life, the appellate courts have approved admission of evidence of prior acts of abuse. Garner v. State, 711 P.2d at 1193; Rhodes v. State, 717 P.2d at 425. The holding in Rhodes approved admission of such evidence even where a different child was involved in the earlier incident.

c. Creating a new crime will not necessarily affect charging policies by prosecutors.

Substantial public outcry has been raised over one recent case, where a prosecutor elected to resolve a child homicide case by accepting a plea to negligent homicide. The prosecutor's decision may have reflected poor judgment, or it may have been influenced by a possibly erroneous evidentiary ruling by the trial judge. In either event, creating a new crime cannot compel prosecutors to charge the higher crime. The exercise of charging discretion by a prosecutor's office cannot be dictated by either the legislature or the courts. Norbert v. State, 718 P.2d 160 (Alaska App. 1986). Further, it is by no means clear that prosecutors consistently undercharge in child abuse cases. In two reported cases (Orrison v. State, 655 P.2d 782 (Alaska App. 1982) and Harvey v. State, 604 P.2d at 588), where there were no problems for the prosecutors with excluded evidence, the juries convicted the defendant of a less serious crime than what the prosecutor had charged.

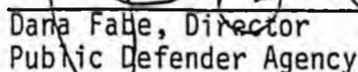
d. The law should not distinguish among human lives on the basis of age.

By creating a special penalty scheme for non-intentional killings of one age group, the law seems to say that that group is valued more highly by our community than other age groups. It is doubtful

anyone could justify such a value judgment, which is why the present criminal code does not distinguish among assaultive crimes on the basis of the age of the victim.

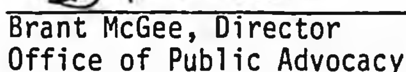
The existing first and second degree murder statutes permit conviction and appropriately harsh punishments for defendants who kill through repeated assault or torture. Where the facts of a particular second degree murder case support a 99-year sentence, such a sentence is authorized, and the appellate courts have approved maximum sentences for second degree murder cases. E.g., Abruska v. State, 705 P.2d 1261, 1273-74 (Alaska App. 1985); Salud v. State, 630 P.2d 1008 (Alaska App. 1981)(99-year sentence reimposed and affirmed in unpublished opinion following remand); Nicholai v. State, MO&J No. 1336 (Alaska App. Feb. 27, 1987). The changes proposed by this bill are thus unnecessary to accomplish the objectives of the bill.

Based on the information above, the Alaska Public Defender Agency and the Office of Public Advocacy oppose this bill.



Dana Fabe, Director
Public Defender Agency

4/30/87
Date



Brant McGee, Director
Office of Public Advocacy

4/30/87
Date

Sec. 11.31.150. Substantive crimes involving attempt or solicitation.

NOTES TO DECISIONS

Cited in Stuart v. State, Ct. App. Op. No. 464 (File No. A-276), 698 P.2d 1218 (1985).

Chapter 41. Offenses Against the Person.

Article
4. Sexual Offenses (§§ 11.41.443, 11.41.445)

Article 1. Homicide.

Sec. 11.41.100. Murder in the first degree.

NOTES TO DECISIONS

Conviction reversed where trial court's finding of voluntary Miranda waiver was in error. — See Hampel v. State, Ct. App. Op. No. 517 (File No. 7398), 706 P.2d 1173 (1985).

Conviction reversed because of admission of improperly seized evidence. — See Lowry v. State, Ct. App. Op. No. 528 (File No. A-249), 707 P.2d 280 (1985).

Sentence upheld. — See Travelstead v. State, Sup. Ct. Op. No. 407 (File No. A-114), 689 P.2d 494 (1984).

Sentence of consecutive 99-year terms for two murders is not clearly mistaken where the defendant presents a risk of continued criminal conduct which would seriously threaten the public safety. Krukoff v. State, Ct. App. Op. No. 487 (File No. A-183), 702 P.2d 664 (1985).

Sentence for attempted first degree murder upheld. — See Staael v. State, Ct. App. Op. No. 454 (File No. A-78), 697 P.2d 1050 (1985).

Cited in Lerchenstein v. State, Ct. App. Op. No. 453 (File No. 7729), 697 P.2d 312 (1985); Hart v. State, Ct. App. Op. No. 482 (File No. A-295), 702 P.2d 651 (1985); Ridgely v. State, Ct. App. Op. No. 503 (File No. A-30, A-43, A-56), 705 P.2d 924 (1985).

Sec. 11.41.110. Murder in the second degree.

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

Substantial certainty to cause death and extreme indifference to value of human life. — Where an eyewitness saw defendant's passengers screaming for him to stop, and the record reflected that defendant's vehicle left the road in the process of attempting to negotiate a turn at 85 m.p.h., that defendant was well aware of the turn's dangerousness, having lived in the area for many years, and having driven the road and negotiated the same curve well over a hundred times, the jury was justified in concluding that the defendant was substantially certain to cause his passengers' deaths and that he manifested an extreme indifference to the value of human life. Stiegele v. State, Ct. App. Op. No. 580 (File No. A-694), 714 P.2d 356 (1986).

Murder committed with automobile. — Where a driver's recklessness manifests an extreme indifference to human life, he can be charged with murder even though the instrument by which he causes death is an automobile. Pears v. State, Ct. App. Op. No. 309 (File No. 6783), 672 P.2d 903 (1983), rev'd on other grounds, Sup. Ct. Op. No. 2931 (File No. S-208), 698 P.2d 1198 (1985).

First conviction of murder for motor vehicle homicide. — See Pears v. State, Ct App Op No 309 (File No 6783), 672 P.2d 903 (1983), rev'd on other grounds, Sup Ct Op No 2931 (File No S-208), 698 P.2d 1198 (1985).

Offense of attempted second-degree murder was an impossibility. Huitt v. State, Ct App Op No 345 (File No 7141), 678 P.2d 415 (1984).

Exclusion of evidence relating to proximate cause not error. — See Kusmider v. State, Ct App Op No 404 (File No 7645), 688 P.2d 957 (1984).

Instructions. — The trial court did not err in declining to instruct the jury concerning imperfect self defense. Balentine v. State, Ct App Op No 538 (File No A-381), 707 P.2d 922 (1985).

In prosecution for extreme indifference murder, a fair reading of the given instructions in their entirety adequately conveyed the idea of defendant's subjective awareness of the risk to the jury. State v. Johnson, Sup Ct Op No. 3064 (File No S-616), P.2d (1986).

Conviction affirmed.

See Kusmider v. State, Ct App Op No 404 (File No 7645), 688 P.2d 957 (1984).

Where a vehicle belonged to a company owned by the defendant's brother, the vehicle was generally treated as the defendant's vehicle and he customarily drove it, and where defendant was seen driving the vehicle shortly before the accident, the jury could reasonably have concluded that the defendant was the driver of the vehicle, and guilty of second degree murder. Stiegele v. State, Ct App Op No 560 (File No A-694), 714 P.2d 356 (1986).

Conviction and sentence affirmed. — See Abruska v. State, Ct App Op No. 502 (File No 7672), 705 P.2d 1261 (1985).

Conviction reversed where trial court erred in instructing jury on self-defense. — See Klumb v. State, Ct App Op No 575 (File No A-659), 712 P.2d 909 (1986).

Conviction reversed because of judicial error in not granting defendant's motion for change of venue. — See Nickolai v. State, Ct App Op No 545 (File No A-610), 708 P.2d 1292 (1985).

Sentence upheld. See Minchow v. State, Ct App Op No 299 (File No A-15), 670 P.2d 719 (1983); Pears v. State, Ct App Op No 309 (File No 6783), 672 P.2d 903 (1983); Jimmy v. State, Sup Ct Op No 409 (File No A-51), 689 P.2d 504 (1984); Komakhuk v. State, Ct App Op No 626 (File No A-1081), P.2d (1986).

Maximum sentence upheld. — See Gregory v. State, Sup Ct Op No 411 (File No A-430), 689 P.2d 508 (1984).

Sentence held excessive. — Concurrent sentences of twenty years for two counts of second degree murder and five years for one count of assault in the second degree held excessive. Pears v. State, Sup Ct Op No 2931 (File No S-208), 698 P.2d 1198 (1985).

Sentence of 50 years in prison for second-degree murder was held excessive. The Page benchmark of from 20 to 30 years for second-degree murder was held ample to satisfy the multiple goals of imprisonment called for in Chaney, in a case in which a defendant whose principal problem was alcohol, which aggravated what might be considered the emotional disorder of jealousy, killed his lover. Road Yu v. State, Ct App Op No 521 (File No A-557), 706 P.2d 345 (1985).

Cited in Walsh v. State, Ct App Op No 338 (File No 7887), 677 P.2d 912 (1984); Stiegele v. State, Ct App Op No 382 (File No A-399), 685 P.2d 1255 (1984); State v. Burdine, Ct App Op No 462 (File No A-678), 698 P.2d 1216 (1985); Ridgely v. State, Ct App Op No. 503 (File No A-30, A-43, A-56), 705 P.2d 924 (1985).

Sec. 11.41.115. Defenses to murder.

NOTES TO DECISIONS

Stated in Walsh v. State, Ct App Op No. 338 (File No 7887), 677 P.2d 912 (1984).

Sec. 11.41.120. Manslaughter.

NOTES TO DECISIONS

Criminally negligent homicide distinguished. — Criminally negligent homicide is not the same as manslaughter based on recklessness under the relevant statute since recklessness requires conscious disregard of a known risk, while in contrast, the essence of criminal negligence is failure to perceive the risk. Edgmon v. State, Ct. App. Op. No. 461 (File No. A-16), 702 P.2d 643 (1985).

The fact that a given defendant did not perceive a risk because he or she was mentally retarded, because he or she had bad eyesight or bad hearing, or because his or her experience had not fitted him or her to appreciate the risk would be irrelevant in proving negligence but highly relevant with regard to recklessness, whether the given individual was intoxicated or not, and consequently, elimination of intoxication as a basis for a finding that a specific individual did not appreciate a specific risk does not totally destroy the distinction between criminal negligence and recklessness. Edgmon v. State, Ct. App. Op. No. 461 (File No. A-16), 702 P.2d 643 (1985).

Statutory presumption concerning intoxication. — A jury considering drunk driving, assault (involving motor vehicles), manslaughter, and negligent homicide cases should be made aware of the statutory presumption concerning intoxication in AS 28.35.033(a). Dresnek v. State, Ct. App. Op. No. 455 (File No. A-19), 697 P.2d 1059 (1985).

Prima facie case. — In most cases when the state shows that an intoxicated person drove a car and caused a death, it has made a prima facie case of manslaughter as defined in this statute. St. John v. State, Ct. App. Op. No. 602 (File No. A-779), 715 P.2d 1205 (1986).

Jury instructions. — The trial court did not err in instructing the jury that it had to unanimously acquit defendant of manslaughter before it could consider a lesser-included offense — negligent homicide. Dresnek v. State, Ct. App. Op. No. 455 (File No. A-19), 697 P.2d 1059 (1985), holding that in the future trial courts instructing juries should make it clear that the juries are free to discuss the evidence and the law in any order they find convenient.

In prosecution for drunk driving manslaughter and second-degree assault, the trial court did not err in instructing the jury that if it found that there was .10% or more alcohol in defendant's blood at the time of the accident, it could infer that he was under the influence of intoxicating liquor. Dresnek v. State, Ct. App. Op. No. 455 (File No. A-19), 697 P.2d 1059 (1985).

The trial court erred in instructing the jury that a person who operates a motor vehicle while under the influence of alcohol is reckless per se, whether he is aware of the risks his conduct poses or not. St. John v. State, Ct. App. Op. No. 602 (File No. A-779), 715 P.2d 1205 (1986).

Jury instruction given on the relationship between intoxication and recklessness, challenged for the first time on appeal was not plain error. Adams v. State, Ct. App. Op. No. 617 (File No. A-860), 718 P.2d 164 (1986).

Evidence held sufficient to convict. — See Gibbs v. State, Ct. App. Op. No. 341 (File No. 7807), 676 P.2d 606 (1984).

Conviction reversed where relevant, highly probative character evidence regarding the victim was not admitted and a hearsay statement by a friend of the defendant was admitted. Williamson v. State, Ct. App. Op. No. 430 (File No. 6950), 692 P.2d 965 (1984).

The error in refusing to admit direct evidence that the other suspect in the death of an eighteen-month-old child had formerly abused her own child was not harmless, so the defendant's conviction was reversed. Garner v. State, Ct. App. Op. No. 569 (File No. A-731), 711 P.2d 1191 (1986).

Multiple sentences for multiple violations of statute. — See Dunlop v. State, Sup. Ct. Op. No. 3065 (File Nos. S-923, S-1163), ___ P.2d ___ (1986). See also AS 11.41.135 and notes thereto.

Sentence for manslaughter while driving under the influence, upheld. — See Clemans v. State, Ct. App. Op. No. 356 (File No. 7584), 680 P.2d 1179 (1984).

Sentence upheld. — See Maloney v. State, Ct. App. Op. No. 273 (File No. 6187), 667 P.2d 1258 (1983); Hughes v. State, Ct. App. Op. No. 263 (File No. 5217), 668 P.2d 842 (1983); Adams v. State, Ct. App. Op. No. 617 (File No. A-860), 718 P.2d 164 (1986).

Sentence of eight years with three years

suspended for drunk driving manslaughter and two concurrent sentences of three years for second-degree assault were not clearly mistaken. Dresnek v. State, Ct. App. Op. No. 455 (File No. A-19), 697 P.2d 1059 (1985).

Applied in Pena v. State, Sup. Ct. Op. No. 2851 (File Nos. 6174, 7052), 684 P.2d 864 (1984).

Quoted in Walsh v. State, Ct. App. Op. No. 338 (File No. 7687), 677 P.2d 912 (1984).

Cited in Walsh v. State, Ct. App. Op. No. 338 (File No. 7687), 677 P.2d 912 (1984); Davis v. State, Ct. App. Op. No. 391 (File No. 7794), 684 P.2d 147 (1984); New v. State, Ct. App. Op. No. 587 (File No. A-815), 714 P.2d 378 (1986).

Sec. 11.41.130. Criminally negligent homicide.

NOTES TO DECISIONS

Manslaughter distinguished. — Criminally negligent homicide is not the same as manslaughter based on recklessness under the relevant statute since recklessness requires conscious disregard of a known risk, while in contrast, the essence of criminal negligence is failure to perceive the risk. Edgmon v. State, Ct. App. Op. No. 481 (File No. A-16), 702 P.2d 643 (1985).

The fact that a given defendant did not perceive a risk because he or she was mentally retarded, because he or she had bad eyesight or bad hearing, or because his or her experience had not fitted him or her to appreciate the risk would be irrelevant in proving negligence but highly relevant with regard to recklessness; whether the given individual was intoxicated or not, and consequently, elimination of intoxication as a basis for a finding that a specific individual did not appreciate a specific risk does not totally destroy the distinction between criminal negligence and recklessness. Edgmon v. State, Ct. App. Op. No. 481 (File No. A-16), 702 P.2d 643 (1985).

Reckless vs. criminally negligent. — To be reckless, a person must be aware of and consciously disregard a risk, while a person is criminally negligent if he or she fails to perceive, and, therefore, disregards the risk in question. When a defendant is intoxicated and, therefore, unaware of a risk, the state is still obligated to prove that the defendant, given his faculties, his education, his experience, and his intelligence, would have perceived that risk but for his intoxication. St. John v. State, Ct. App. Op. No. 602 (File No. A-779), 715 P.2d 1205 (1986).

Statutory presumption concerning intoxication. — A jury considering drunk driving, assault (involving motor vehicles), manslaughter, and negligent homicide cases should be made aware of the statutory presumption concerning intoxication in AS 28.35.033(a). Dresnek v. State, Ct. App. Op. No. 455 (File No. A-19), 697 P.2d 1059 (1985).

Conviction reversed because of inconsistent verdicts. — See Davis v. State, Ct. App. Op. No. 391 (File No. 7794), 684 P.2d 147 (1984).

Sentence excessive. — A sentence of five years with three years suspended for criminally negligent homicide was excessive where defendant was a first offender and the sentencing court did not find any significant aggravating factors or extraordinary circumstances surrounding defendant's offense, and the court of appeals remanded for a reduction of the sentence to three years with two years suspended. Shaishnikoff v. State, Ct. App. Op. No. 418 (File No. A-354), 690 P.2d 25 (1984).

Cited in Stiegele v. State, Ct. App. Op. No. 382 (File No. A-399), 685 P.2d 1255 (1984).

Sec. 11.41.135. Multiple deaths.

NOTES TO DECISIONS

Constitutionality of section. — Alaska's constitutional prohibition against double jeopardy does not bar multiple sentences for multiple victims where one statute has been violated several times. Dunlop v. State, Sup. Ct. Op. No.

3068 (File Nos. S-925, S-1163), [illegible] P.2d [illegible] (1986), overruling Thessen v. State, 508 P.2d 1192 (Alaska 1973) and State v. Souter, 606 P.2d 399 (Alaska 1980) as well as State v. Gibson, [illegible] P.2d [illegible] (Alaska 1975) to the extent it affirmed Thessen.

Article 2. Assault and Reckless Endangerment.

Sec. 11.41.200. Assault in the first degree.

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

Serious physical injury. — In determining whether a victim has sustained a serious physical injury, it is far more appropriate to evaluate the nature of the injuries inflicted rather than the individual victim's physiological response to that injury. James v. State, Ct. App. Op. No. 304 (File No. 6981), 671 P.2d 885 (1983), rev'd on other grounds sub. nom State v. James, Sup. Ct. Op. No. 2925 (File No. S-186), 698 P.2d 1161 (1985).

The trial court properly allowed presentation of evidence concerning the statistical risk of injuries such as those suffered by defendant's victim, and this evidence was sufficient to allow the question of serious physical injury to be submitted to the jury. James v. State, Ct. App. Op. No. 304 (File No. 6981), 671 P.2d 885 (1983), rev'd on other grounds sub. nom State v. James, Sup. Ct. Op. No. 2925 (File No. S-186), 698 P.2d 1161 (1985).

Self-defense. — In an assault case in which the defendant admits the assault, but raises self-defense, specific instances of the victim's prior conduct are considered to be admissible under Evidence Rule 405(b) to show (1) who was the aggressor, in which case defendant's knowledge of the incident is immaterial, and (2) that defendant acted reasonably in using the degree of force he did, in which case defendant must know of the victim's past acts of violence. Amarok v. State, Ct. App. Op. No. 303 (File No. 6873), 671 P.2d 882 (1983).

Lesser included offense. — Third-degree assault, not second-degree assault, is a lesser included offense of first-degree assault. Komakhuk v. State, Ct. App. Op. No. 626 (File No. A-1081), [illegible] P.2d [illegible] (1986).

Constitutional considerations. — The Alaska or federal constitutions did not preclude defendant's conviction of first-degree assault, a class A felony, even though the same conduct under the same circumstances could have resulted in his conviction of second-degree assault, a class B felony. Hart v. State, Ct. App. Op. No. 482 (File No. A-295), 702 P.2d 671 (1985).

General verdict of guilt upheld. — Trial court did not err in permitting a general verdict of guilt where the defendant had been charged with first degree assault, the single offense described in the section, under two theories. State v. James, Sup. Ct. Op. No. 2925 (File No. S-186), 698 P.2d 1161 (1985).

Conviction and sentence upheld. — See Contreras v. State, Ct. App. Op. No. 328 (File Nos. 6797-6798), [illegible] P.2d [illegible] (1984).

Conviction and sentence for kidnapping, assault in the first degree, misconduct involving weapons in the first degree and robbery in the first degree were affirmed. See Wortham v. State, Sup. Ct. Op. No. 414 (File No. 7357), [illegible] P.2d [illegible] (1984).

Sentence upheld. — See Hassler v. State, Ct. App. Op. No. [illegible] (File No. 7552), 667 P.2d 732 (198[illegible]).

Sentence held excessive. — See Rhodes v. State, Ct. App. Op. No. 613 (File No. A-857), 717 P.2d 422 (1986).

Cited in Brown v. State, Ct. App. Op. No. 463 (File No. A-93), 698 P.2d 671 (1985); New v. State, Ct. App. Op. No. 5[illegible] (File No. A-515), 714 P.2d 378 (1986); Chief v. State, Ct. App. Op. No. 615 (File No. A-951), 718 P.2d 475 (1986).

Chapter 41. Offenses Against The Person.

Article

1 Homicide (§§ 11.41.100 — 11.41.140)
2 Assault and Reckless Endangerment (§§ 11.41.200 — 11.41.250)
3 Kidnapping and Custodial Interference (§§ 11.41.300 — 11.41.370)
4 Sexual Offenses (§§ 11.41.410 — 11.41.470)
5 Robbery, Extortion, and Coercion (§§ 11.41.500 — 11.41.530)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this chapter, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in Leuch v. State, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

Article 1. Homicide.

Section
100. Murder in the first degree
110. Murder in the second degree
115. Defenses to murder
120. Manslaughter
130. Criminally negligent homicide
135. Multiple deaths
140. Definition

Collateral references. — 41 Am. Jur. 2d, Homicide, § 1 et seq.

40 C.J.S., Homicide, § 1 et seq.

Homicide by wanton or reckless use of firearm without express intent to inflict injury. 5 ALR 603; 23 ALR 1554.

Homicide or assault in attempting to prevent elopement. 8 ALR 660.

Wife's confession of adultery as affecting degree of homicide in killing her paramour. 10 ALR 470.

What amounts to participation in homicide on part of one not the actual perpetrator, who was present without preconcert or conspiracy. 12 ALR 275.

Intoxication as reducing homicide from murder to manslaughter. 12 ALR 868, 79 ALR 897.

Responsibility of persons participating in jail delivery for homicide committed by one of their number. 15 ALR 456.

Recommendation for mercy. 17 ALR 117; 55 ALR 639.

Homicide by unlawful act aimed at another. 18 ALR 917.

Criminal responsibility of peace officers for killing or wounding one whom they wished to investigate or identify. 18 ALR 1368, 61 ALR 321.

Homicide as affected by time elapsing between wound and death. 20 ALR 1006, 93 ALR 1470.

Humanitarian motives, homicide as affected by. 25 ALR 1007.

Discharge of firearm without intent to inflict injury as proximate cause of homicide resulting therefrom. 55 ALR 921.

Death from arson. 87 ALR 414

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR2d 210

Inference of malice or intent to kill where killing is by blow without weapon. 22 ALR2d 854

Criminal responsibility for injury or death resulting from. 23 ALR2d 1401

Causing one, by threats or fright, to leap or fall to his death. 25 ALR2d 1186

Use of set gun or similar device on defendant's own property. 44 ALR2d 383

Pregnancy as element of abortion or homicide based thereon. 46 ALR2d 1393

Fright or shock, homicide by. 47 ALR2d 1072

Homicide by juvenile as within jurisdiction of juvenile court. 48 ALR2d 663

Corporation's criminal liability for homicide. 83 ALR2d 1117

Presumption of deliberation or premeditation from the fact of killing. 86 ALR2d 656

Criminal liability of parent, teacher, or one in loco parentis for homicide by excessive or improper punishment inflicted on child. 89 ALR2d 417

Medical or surgical attention, failure to provide. 100 ALR2d 483

Liability where death immediately results from treatment or mistreatment of injury inflicted by defendant. 100 ALR2d 769

Insulting words as provocation of homicide or as reducing the degree thereof. 2 ALR3d 1292

Employer's liability to employee or agent for physical injury received as result of assault by third person. 9 ALR3d 517

Criminal liability for death resulting from unlawful furnishing intoxicating liquor or drugs to another. 32 ALR3d 589

Private person's authority, in making arrest for felony, to shoot or kill alleged felon. 32 ALR3d 1078

Homicide based on killing of unborn child. 40 ALR3d 444

Homicide predicated on improper treatment of disease or injury. 45 ALR3d 114

Withholding food, clothing, or shelter, homicide by. 61 ALR3d 1207

What constitutes "imminently dangerous" act within homicide statute. 67 ALR3d 900

Degree of homicide as affected by accused's religious or occult belief in harmlessness of ceremonial ritualistic acts directly causing fatal injury. 78 ALR3d 1132

Power of court to order or authorize discontinuation of extraordinary medical means of sustaining human life. 79 ALR3d 237.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient. 99 ALR3d 854

Pocket or clasp knife as deadly or dangerous weapon for purposes of statute aggravating offenses such as assault, robbery, or homicide. 100 ALR3d 287.

Duty to retreat where assailant is social guest on premises. 100 ALR3d 532

Sec. 11.41.100. Murder in the first degree. (a) A person commits the crime of murder in the first degree if, with intent to cause the death of another person, the person

(1) causes the death of any person; or

(2) compels or induces any person to commit suicide through duress or deception.

(b) Murder in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 3 ch 166 SLA 1978)

Cross references. — For punishment, see AS 12.55.125(a), for provisions on insanity and competency to stand trial, see AS 12.47

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 11.15.010.

The crime of murder protects the greater and distinct interest in the sanctity of life. Ladd v. State, Sup. Ct. Op. No. 1480 (File No. 2475), 568 P.2d 960 (1977), cert. denied, 435 U.S. 928, 98 S. Ct. 1498, 55 L. Ed. 2d 524 (1978).

Under the common law, murder is the unlawful killing of a human being with malice aforethought. That definition of murder was substantially the equivalent of that found in former AS 11.15.010. United States v. Barbeau, 12 Alaska 725, 92 F. Supp. 196 (1950), aff'd, 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied, 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952).

Murder, at common law, was defined as the unlawful killing of a human being with malice aforethought, either express or implied. Express malice could be found in the deliberate intention of the defendant to take the life of the deceased unlawfully, while implied malice could be found either where the evidence showed circumstances indicating that the defendant had a heart regardless of social duty, in that he knowingly did an act which might result in death or grievous bodily harm, or where defendant killed another in the course of perpetrating a felony. In all of these instances it did not matter whether the defendant actually intended to kill the deceased. Once malice could be found, the defendant could be held liable for all results which flowed naturally and probably from his volitional acts. In many cases the killing itself, if unexplained, was enough to support an inference of malice. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

Intent to kill required. — All intentional killings unless legally excused or mitigated to manslaughter are first-degree murder under the new code, and felony murder, which is second-degree murder, does not currently require an intent to kill. Carman v. State, Ct. App. Op. No. 206 (File No. 5503), 658 P.2d 131 (1983).

A specific intent or purpose to kill is an essential element of the crime. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

The purpose to kill is an essential averment in any indictment for the violation of this section. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

Regardless of the means used. — See Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

The purpose to kill is a state of mind which must be proved as a fact before there may be a conviction of first degree murder under this section. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

The element of purpose must be alleged and proved. Marrone v. State, Sup. Ct. Op. No. 5 (File No. 5), 359 P.2d 969 (1961).

But proof of purpose need not be direct. It may be inferred from the circumstances attending the killing. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

Use of a deadly weapon if unexplained is one circumstance which tends to prove intent to kill. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

The use of a deadly weapon without circumstances of explanation or mitigation may justify a jury in inferring an intent to kill. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

The fact of the killing, alone, does not support the finding of purpose or intent to kill. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

Doctrine of diminished capacity. — See Johnson v. State, Sup. Ct. Op. No. 888 (File No. 1477), 511 P.2d 118 (1973).

Distinction between first degree murder, second degree murder, and manslaughter. — The offenses of first degree murder, second degree murder and manslaughter all require the same physical act, the unlawful killing of a human being. The difference is in the mental state of the perpetrator. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976); Eben v. State, Sup. Ct. Op. No. 1920 (File No. 3525), 599 P.2d 700 (1979).

Manslaughter is included in the greater charge of murder. United States v. Barbeau, 12 Alaska 725, 92 F. Supp. 196 (1950), aff'd, 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied, 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952).

Every essential element of manslaughter by negligent homicide is necessarily included in the offense of

murder in the first degree. United States v. Barleau, 12 Alaska 725, 92 F. Supp. 190 (1950), aff'd 13 Alaska 551, 195 F.2d 947 (9th Cir. 1951), cert. denied, 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952).

Both second degree murder and manslaughter could be lesser included offenses to first degree murder. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970); Bendle v. State, Sup. Ct. Op. No. 1710 (File No. 2859), 583 P.2d 840 (1978); Gieffels v. State, Sup. Ct. Op. No. 1787 (File No. 3256), 590 P.2d 55 (1979).

Inciting commission of crime as lesser offense of first-degree murder under former AS 11.15.010. — See Cassell v. State, Ct. App. Op. No. 91 (File No. 5136), 645 P.2d 219 (1982).

One contracting with another to kill a third person was guilty of attempted first-degree murder, not solicitation. — See Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Evidence necessary for conviction in homicide case. — See Armstrong v. State, Sup. Ct. Op. No. 843 (File No. 1337), 502 P.2d 440 (1972).

Questioning wife concerning husband's admission of guilt. — Trial court erred in granting a protective order which prohibited defendant, who was charged with first degree murder, from questioning a wife concerning her husband's statement to her that he had committed the murder. Salazar v. State, Sup. Ct. Op. No. 1347 (File No. 2548), 559 P.2d 66 (1976).

Indictment sufficient. — See Flores v. State, Sup. Ct. Op. No. 491 (File No. 879), 443 P.2d 73 (1968).

Instructions. — Where defendant was charged with first degree murder and the statute of limitations had run on the lesser offense of manslaughter, while the jury should not be instructed that they might find defendant guilty of manslaughter, defendant was entitled to an instruction on the mitigating effects of passion and provocation, requiring the jury to acquit him if he presented such evidence in mitigation and the state did not negate it. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976).

Normally a second-degree murder instruction should be given as a matter of course to juries hearing a first-degree murder case. This will avoid any possibility that such juries might be foreclosed from an alternative verdict which would be justified by certain possible findings of fact. Bendle v. State, Sup. Ct. Op. No. 1710 (File No. 2859), 583 P.2d 840 (1978).

Although the trial court erred in failing to give the jury an instruction of second-degree murder, the error became harmless once the jury found that the intentional killing was in the perpetration of the robbery. Bendle v. State, Sup. Ct. Op. No. 1710 (File No. 2859), 583 P.2d 840 (1978).

In a prosecution for first-degree murder the terms contained in the indictment were sufficiently clear to be understood by the grand jury so that the prosecutor need not define them and the statute involved, and in light of the evidence the prosecutor was not required to instruct as to possible lesser included offenses. Oxereok v. State, Sup. Ct. Op. No. 2076 (File No. 3992), 611 P.2d 913 (1980).

Only one conviction of murder should be allowed for the killing of one man. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

Although there are several ways of committing first degree murder, it is still only one crime, and only one sentence can be imposed. Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

"Purposely" under former AS 11.15.010. — See Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 1003, 1005), 463 P.2d 897 (1970).

Former requirements of deliberation and premeditation construed. — See Jones v. United States, 12 Alaska 470, 175 F.2d 544 (9th Cir. 1949).

Penalties under former AS 11.15.010. — See Daniels v. United States, 17 Alaska 179, 246 F.2d 194 (9th Cir. 1957); Green v. State, Sup. Ct. Op. No. 196 (File No. 404), 390 P.2d 433 (1964).

Maximum sentence for first-degree murder upheld. See Hoover v. State, Ct. App. Op. No. 72 (File No. 6223), 641 P.2d 1263 (1982).

Sentence upheld. — See Hofhiner v. State, Sup. Ct. Op. No. 904 (File No. 1545), 511 P.2d 1292 (1973); Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978); Morgan v. State, Sup. Ct. Op. No. 1663 (File No. 2894), 582 P.2d 1017 (1978); Wilson v. State, Sup. Ct. Op. No. 1692 (File No. 3404), 582 P.2d 154 (1978); Bendle v. State, Sup. Ct. Op. No. 1710 (File No. 2859), 583 P.2d 840 (1978); Vail v. State, Sup. Ct. Op. No. 1922 (File Nos. 3308, 3382), 599 P.2d 1371 (1979); Brown v.

State, Sup Ct Op No 1945 (File No 3252), 601 P.2d 22 (1979); Scoville v. State, Sup Ct Op No 2109 (File No 3906), 612 P.2d 1002 (1980); Gust v. State, Sup Ct Op No 2218 (File No 4834), 619 P.2d 724 (1980); Tuganeaq v. State, Sup Ct Op No 2322 (File No 4432), 620 P.2d 95 (1981); Carman v. State, Ct App Op No 206 (File No 5600), 658 P.2d 131 (1983); Nukapigak v. State, Sup Ct Op No 2667 (File No 5820), ___ P.2d ___ (1983).

Applied in Nukapigak v. State, Ct App Op No 9 (File No [illegible]), [illegible] P.2d 215 (1982); [illegible] v. State, Ct App Op No 90 (File No 5058), 647 P.2d [illegible] (1982).

Stated in Nuttall v. State, Ct App Op No 172 (File No 6213), 657 P.2d 827 (1982).

Cited in Handley v. State, Sup Ct Op No 2155 (File No 3949), [illegible] P.2d 627 (1980); Kirby v. State, Ct App Op No 117 (File No 5738), 649 P.2d 963 (1982); Page v. State, Ct App Op No 207 (File No 6208), 657 P.2d 850 (1983).

Collateral references. — Homicide by companion of defendant while attempting to escape from scene of crime as murder in first degree. 22 ALR 850; 108 ALR 847.

Death resulting from arson as within contemplation of statute which makes homicide in perpetration of felony murder in first degree. 87 ALR 414.

What conduct amounts to an overt act or act done toward commission of murder so as to sustain charge of attempt to murder. 98 ALR 918.

Mental deficiency not amounting to insanity as affecting question of premeditation and deliberation in murder case. 166 ALR 1194.

Inference of malice or intent to kill where killing is by blow without weapon. 22 ALR2d 854.

Felonious killing of one cotenant or tenant by the entireties by the other as affecting latter's rights in the property. [illegible] ALR2d 1099.

What constitutes attempted murder. 54 ALR3d 612.

What constitutes murder by torture. [illegible] ALR3d 1222.

Spouse's confession of adultery as affecting degree of homicide involved in killing spouse or his or her paramour. 93 ALR3d 925.

Sec. 11.41.110. Murder in the second degree. (a) A person commits the crime of murder in the second degree if

(1) with intent to cause serious physical injury to another person or knowing that the conduct is substantially certain to cause death or serious physical injury to another person, the person causes the death of any person;

(2) the person intentionally performs an act that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life; or

(3) acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree under AS 11.41.410(a)(1) or (2), sexual assault in the second degree, burglary in the first degree, escape in the first or second degree, or robbery in any degree and, in the course of or in furtherance of that crime, or in immediate flight from that crime, any person causes the death of a person other than one of the participants.

(b) Murder in the second degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 3 ch 166 SLA 1978)

Cross references. — For [illegible] see AS 12.55.125(b).

NOTES TO DECISIONS

I. General Consideration.
II. Felony Murder.

I. GENERAL CONSIDERATION.

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 11.15.010 and 11.15.040.

Common-law definition of murder. — Murder, at common law, was defined as the unlawful killing of a human being with malice aforethought, either express or implied. Johnson v. State, Sup. Ct. Op. No. 888 (File No. 1477), 511 P.2d 118 (1973).

Second degree murder is a homicide which is unlawful, one that is not excusable under the law. Jennings v. State, Sup. Ct. Op. No. 295 (File No. 581), 404 P.2d 652 (1965).

And includes crime of involuntary manslaughter. — The crime of involuntary manslaughter is necessarily included in the offense of second degree murder. Jennings v. State, Sup. Ct. Op. No. 295 (File No. 581), 404 P.2d 652 (1965); Johnson v. State, Sup. Ct. Op. No. 888 (File No. 1477), 511 P.2d 118 (1973).

Crime sufficiently distinguished from manslaughter. — The requirement of "extreme indifference to the value of human life" contained in the definition of second-degree murder, paragraph (a)(2), sufficiently distinguishes that offense from manslaughter so as to satisfy the requirements of equal protection. Neitzel v. State, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Distinction between first degree murder, second degree murder, and manslaughter. — The offenses of first degree murder, second degree murder, and manslaughter all require the same physical act, the unlawful killing of a human being. The difference is in the mental state of the perpetrator. Pader v. State, Sup. Ct. Op. No. 1359 (File No. 3113), 557 P.2d 1138 (1976).

The term "intentionally" as used in paragraph (a)(2) is not used "with respect to a result" and thus is not governed by the definition of "intentionally" in AS 11.81.900(a)(1), but should be given the meaning assigned to "knowingly" in AS 11.81.900(a)(2), since the mental state contemplated by the legislature in paragraph (a)(2) has respect to conduct, "performance of an act which results in death." Neitzel v. State, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

"Reckless" mental state imputed to factors in paragraph (a)(2). — Since paragraph (a)(2) does not specifically establish a mental element for the result "death" or the surrounding circumstances ("under circumstances manifesting an extreme indifference to the value of human life") involved in second-degree murder, a "reckless" mental state is to be imputed to those two factors based on application of AS 11.81.610(b). Neitzel v. State, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Specific intent to kill is an essential element of second-degree murder. As such it must be proven by the state beyond a reasonable doubt. Gipson v. State, Sup. Ct. Op. No. 2066 (File No. 3594), 609 P.2d 1038 (1980).

The element of purpose must be alleged and proved. Marrone v. State, Sup. Ct. Op. No. 5 (File No. 5), 359 P.2d 969 (1961).

Former element of malice construed. — See Johnson v. State, Sup. Ct. Op. No. 888 (File No. 1477), 511 P.2d 118 (1973).

Doctrine of diminished capacity. — See Johnson v. State, Sup. Ct. Op. No. 888 (File No. 1477), 511 P.2d 118 (1973).

Intoxication is not a defense to second-degree murder, since evidence of intoxication is relevant only in regard to an offense involving intention to cause a result (AS 11.81.630), and second-degree murder is an offense in which the culpable mental state pertaining to the result "death" is imputed to be recklessness. Neitzel v. State, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Evidence necessary for conviction in homicide case. — See Armstrong v. State, Sup. Ct. Op. No. 843 (File No. 1337), 502 P.2d 440 (1972).

Case properly before jury. — See Dorman v. State, Sup. Ct. Op. No. 2272 (File No. 4444), 622 P.2d 448 (1981).

As to entitlement to second-degree murder instruction in first-degree murder case, see note to AS 11.41.100. Bendle v. State, Sup. Ct. Op. No. 1710 (File No. 2859), 583 P.2d 840 (1978).

Instructions. — See [illegible] v. State, Sup. Ct. Op. No. [illegible] (File No. [illegible]), [illegible] P.2d 10[illegible] (1980).

Defendant may not be convicted of murder unless the jury finds that he possessed the culpable mental state specified in either the first or the second degree murder statute. He is entitled to have the jury instructed to this effect, and the fact that he can no longer be convicted of manslaughter because the statute of limitations has run on that offense in no way eases the state's burden of proof to convict him of murder. Padie v. State, Sup. Ct. Op. No. 1359 (File No. 311[illegible]), 55[illegible] P.2d 113[illegible] (1976).

Jury instruction describing the test the jury was to apply in determining whether to return a verdict of guilty or not was not sufficiently misleading to constitute "plain error" which would warrant reversal. Dorman v. State, Sup. Ct. Op. No. 2272 (File No. 4444), 622 P.2d 44[illegible] (1981).

It was not harmless error in prosecution for felony-murder based on underlying crime of burglary to fail to give felony-murder merger instruction. Kirby v. State, Ct. App. Op. No. 117 (File No. 573[illegible]), 649 P.2d 96[illegible] (1982).

Constitutionality of former penalty. — See Green v. State, Sup. Ct. Op. No. 19[illegible] (File No. 4[illegible]), 390 P.2d 43[illegible] (1964).

Conviction affirmed. — See Castillo v. State, Sup. Ct. Op. No. 2124 (File No. 4561), 614 P.2d 756 (1980).

Sentence upheld. — See Cordon v. State, Sup. Ct. Op. No. [illegible] (File No. 1411), 49[illegible] P.2d 27[illegible] (1972); Johnson v. State, Sup. Ct. Op. No. [illegible] (File No. 1477), 5[illegible] P.2d 11[illegible] (197[illegible]); Mills v. State, Sup. Ct. Op. No. 182[illegible] (File No. 39[illegible]4), 592 P.2d 1247 (1979); Ahwinona v. State, Sup. Ct. Op. No. 189[illegible] (File No. 41[illegible]), 59[illegible] P.2d 7[illegible] (1979); Gipson v. State, Sup. Ct. Op. No. [illegible] (File No. [illegible]), [illegible] P.2d [illegible] (1980); [illegible] v. State, Sup. Ct. Op. No. 21[illegible] (File No. 454[illegible]), 611 P.2d 8[illegible] (1980); N[illegible] v. State, Ct. App. Op. No. [illegible] (File No. [illegible]), 619 P.2d 480 (1980); N[illegible] v. State, Sup. Ct. Op. No. 22[illegible] (File No. 45[illegible]), [illegible] P.2d [illegible] (198[illegible]); Bryant v. State, Sup. Ct. Op. No. 22[illegible] (File No. [illegible]), 62[illegible] P.2d [illegible] (1981); Davidson v. State, Ct. App. Op. No. 7[illegible] (File No. 4[illegible]), 642 P.2d [illegible] (1982); Faulkenberry v. State, Ct. App. Op. No. 110 (File No. 6211, 62[illegible]), 64[illegible] P.2d [illegible] (1982); Van Cleve v. State, Ct. App. Op. No. 121 (File No. 5[illegible]), [illegible] P.2d [illegible] (1982) (decided under former [illegible]); Page v. State, Ct. App. Op. No. [illegible] (File No. 620[illegible]), 657 P.2d [illegible] (198[illegible]).

II. FELONY MURDER.

Felony murder does not require intent to kill. — [illegible] which is second-degree murder does not currently require an intent to kill. Carman v. State, Ct. App. Op. No. 2[illegible] (File No. 5503), 65[illegible] P.2d 1[illegible] (198[illegible]).

Former felony murder provisions construed. — See Gray v. State, Sup. Ct. Op. No. 595 (File Nos. 100[illegible], 10[illegible]), 4[illegible] P.2d 8[illegible] (1970); Morgan v. State, Sup. Ct. Op. No. 1603 (File No. 2494), 5[illegible] P.2d 1027 (1978); Thomas v. State, Sup. Ct. Op. No. [illegible] (File No. 100[illegible]), [illegible] P.2d [illegible] (197[illegible]); Beraldi v. State, Sup. Ct. Op. No. 171[illegible] (File No. 2[illegible]), [illegible] P.2d [illegible] (197[illegible]); Gregg v. State, Sup. Ct. Op. No. [illegible] (File No. [illegible]), [illegible] P.2d [illegible] (197[illegible]); Dusha v. State, Ct. App. Op. No. [illegible] (File No. 4369), 652 P.2d 24[illegible] (1982).

Collateral references. — Drunkenness as affecting existence of elements essential to murder in second degree. 8 ALR 1052.

Spouse's confession of adultery as affecting degree of homicide involved in killing spouse or his or her paramour. [illegible] ALR3d 925.

Sec. 11.41.115. Defenses to murder. (a) In a prosecution under AS 11.41.100(a)(1) or 11.41.110(a)(1), it is a defense that the defendant acted in a heat of passion, before there had been a reasonable opportunity for the passion to cool, when the heat of passion resulted from a serious provocation by the intended victim.

(b) In a prosecution under AS 11.41.110(a)(3), it is an affirmative defense that the defendant

(1) did not commit the homicidal act or in any way solicit or aid in its commission;

(2) was not armed with a dangerous instrument;

(3) had no reasonable ground to believe that another participant, if any, was armed with a dangerous instrument; and

(4) had no reasonable ground to believe that another participant, if any, intended to engage in conduct likely to result in death or serious physical injury.

(c) A person may not be convicted of murder in the second degree under AS 11.41.110(a)(3) if the only underlying crime is burglary, the sole purpose of the burglary is a criminal homicide, and the person killed is the intended victim of the defendant. However, if the defendant causes the death of any other person, the defendant may be convicted of murder in the second degree under AS 11.41.110(a)(3). Nothing in this subsection precludes a prosecution for or conviction of murder in the first degree or murder in the second degree under AS 11.41.110(a)(1) or (2) or of any other crime, including manslaughter or burglary.

(d) *[Repealed, § 44 ch 102 SLA 1980.]*

(e) Nothing in (a) or (b) of this section precludes a prosecution for or conviction of manslaughter or any other crime not specifically precluded.

(f) In this section,

(1) "intended victim" means a person whom the defendant was attempting to kill or to whom the defendant was attempting to cause serious physical injury when the defendant caused the death of the person the defendant is charged with killing;

(2) "serious provocation" means conduct which is sufficient to excite an intense passion in a reasonable person in the defendant's situation, other than a person who is intoxicated, under the circumstances as the defendant reasonably believed them to be; insulting words, insulting gestures, or hearsay reports of conduct engaged in by the intended victim do not, alone or in combination with each other, constitute serious provocation. (§ 3 ch 166 SLA 1978; am §§ 3, 44 ch 102 SLA 1980)

Cross references. — For use of deadly force in defense of self as justification of conduct, see AS 11.81.335; for provisions concerning insanity and competency to stand trial, see AS 12.47.

Effect of amendments. — The 1980 amendment substituted "Nothing in (a) or (b)" for "Nothing in (a), (b), or (d)" at the beginning of subsection (e), and repealed subsection (d).

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

NOTES TO DECISIONS

Origin. — This section is based on Illinois Criminal Code, Chapter 38, § 9-2(a). Martin v. State, Ct. App. Op. No. 261 (File No. 6665), 664 P.2d 612 (1983).

Heat of passion. — Finding in felony-murder prosecution that defendant did not act in self defense did not preclude heat of passion defense. Kirby v. State, Ct. App. Op. No. 117 (File No. 5748), 649 P.2d 963 (1982).

Insufficient evidence of "heat of passion" to warrant instruction. Martin v. State, Ct. App. Op. No. 261 (File No. 6665), 664 P.2d 612 (1983).

Extreme emotional disturbance. — The legislature did not intend to make "extreme emotional disturbance" a defense to murder. Martin v. State, Ct. App. Op. No. 261 (File No. 6665), 664 P.2d 612 (1983).

Self-defense. — See Pedersen v. State, Sup. Ct. Op. No. 369 (File No. 621), 420 P.2d 327 (1966), decided under former AS 11.15.010.

Person provoking difficulty thereby forfeits right to self-defense. — See note under this catchline under AS 11.81.335.

Applied in Weston v. State, Ct. App. Op. No. 155 (File No. 5754), 656 P.2d 1184 (1982).

Quoted in Houston v. State, Sup. Ct. Op. No. 1970 (File No. 4339), 602 P.2d 784 (1979).

Cited in Wright v. State, Ct. App. Op. No. 204 (File No. 6569), 679 P.2d 1226 (1983).

Collateral references. — Voluntary intoxication as defense to homicide. 12 ALR 861; 79 ALR 897.

Insulting words as provocation of homicide or as reducing the degree thereof. 2 ALR3d 1292.

Modern status of the rules as to voluntary intoxication as defense to criminal charge. 8 ALR3d 1236.

Relationship with assailant's wife as provocation depriving defendant of right of self-defense. 9 ALR3d 933.

Mental or emotional condition as diminishing responsibility for crime. 22 ALR3d 1228.

Duty to retreat as condition of self-defense when one is attacked at his office, or place of business or employment. 41 ALR3d 584.

Unintentional killing of or injury to third person during attempted self-defense. 55 ALR3d 620.

Withdrawal, after provocation of conflict, as reviving right of self-defense. 55 ALR3d 1000.

Criminal liability where act of killing is done by one resisting felony or other unlawful act committed by defendant. 56 ALR3d 239.

Effect of voluntary drug intoxication upon criminal responsibility. 73 ALR3d 98.

When intoxication deemed involuntary so as to constitute a defense to criminal charge. 73 ALR3d 195.

Sec. 11.41.120. Manslaughter. (a) A person commits the crime of manslaughter if the person

(1) intentionally, knowingly, or recklessly causes the death of another person under circumstances not amounting to murder in the first or second degree; or

(2) intentionally aids another person to commit suicide.

(b) Manslaughter is a class A felony. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 11.15.040.

Alaska's new criminal code totally abandons the unlawful act approach to manslaughter and contains no misdemeanor-manslaughter provisions. Keith v. State, Sup. Ct. Op. No. 2099 (File No. 4003), 612 P.2d 977 (1980).

For case holding that the misdemeanor-manslaughter doctrine was encompassed within former manslaughter statute, see Keith v. State, Sup. Ct. Op. No. 2099 (File No. 4003), 612 P.2d 977 (1980).

Requirements for manslaughter under former law. — See United States v. Barbeau, 12 Alaska 725, 92 F. Supp. 196 (1950), aff'd 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952); United States v. Ahlswede, 15 Alaska 453, 17 F.R.D. 211 (D. Alas. 1955); Jennings v. State, Sup. Ct. Op. No. 295 (File No. 581), 404 P.2d 652 (1965); Johnson v. State, Sup. Ct. Op. No. 888 (File No. 1477), 511 P.2d 118 (1973).

Offense is included in the greater charge of murder. United States v. Barbeau, 12 Alaska 725, 92 F. Supp. 196 (1950), aff'd 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952).

An indictment for first degree murder is sufficient to embrace involuntary manslaughter. United States v. Barbeau, 12 Alaska 725, 92 F. Supp. 196 (1950), aff'd 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952).

Involuntary manslaughter is necessarily included in the offense of second degree murder. Johnson v. State, Sup. Ct. Op. No. 888 (File No. 1477), 511 P.2d 118 (1973).

Depending on the facts of a given case, both second degree murder and manslaughter could be lesser included offenses to first degree felony murder. Gieffels v. State, Sup. Ct. Op. No. 1787 (File No. 3258), 590 P.2d 55 (1979).

Second-degree murder distinguished. — The requirement of "extreme indifference to the value of human life" contained in the definition of second-degree murder (AS 11.41.110(a)(2)) sufficiently distinguishes that offense from manslaughter so as to satisfy the requirements of equal protection. Neitzel v. State, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Distinction between first degree murder, second degree murder, and manslaughter. — The offenses of first degree murder, second degree murder and manslaughter all require the same physical act, the unlawful killing of a human being. The difference is in the mental state of the perpetrator. Padie v. State, Sup. Ct. Op. No. 1370 (File No. 3113), 557 P.2d 1138 (1976).

Involuntary manslaughter is not a lesser crime than voluntary manslaughter. DeJardins v. State, Sup. Ct. Op. No. 1247 (File No. 2280), 551 P.2d 181 (1976).

There is no statutory distinction in Alaska between voluntary and involuntary manslaughter. La Londe v. State, Sup. Ct. Op. No. 2141 (File No. 4541), 614 P.2d 808 (1980).

Second degree arson and manslaughter considered separate offenses. — Since the second degree arson statute protected a property interest while the manslaughter statute protected the paramount personal interest of protection of human life, they should have been considered separate offenses for double jeopardy purposes. Jacinth v. State, Sup. Ct. Op. No. 1829 (File No. 3507), 593 P.2d 263 (1979).

For case decided prior to the enactment of AS 12.55.127 which held that consecutive sentences could not be imposed for convictions on numerous counts of manslaughter under circumstances where the one act of arson involved multiple victims, see Thessen v. State, Sup. Ct. Op. No. 872 (File No. 1607), 508 P.2d 1192 (1973).

There was only one statutory crime of manslaughter in Alaska, although it was defined in two statutes, former AS 11.15.040 (manslaughter) and former AS 11.15.080 (negligent homicide). DeJardins v. State, Sup. Ct. Op. No. 1247 (File No. 2280), 551 P.2d 181 (1976).

For cases construing former culpable negligence statute, see note to AS 11.41.130.

Statute of limitations. — While there is no statute of limitations in Alaska for the offense of murder, the crime of manslaughter is subject to a five-year statute of limitations. Padie v. State, Sup. Ct. Op. No. 1842 (File No. 3564), 594 P.2d 50 (1979).

Where defendant's waiver of the relevant statute of limitations was knowingly, intelligently and voluntarily entered, it was made for defendant's benefit and after consultation with counsel and defendant's waiver did not [illegible] of the policy reasons underlying criminal statutes of limitations, the superior court possessed jurisdiction to accept defendant's plea of nolo contendere to the charge of manslaughter after the statute of limitations had run. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Doctrine of diminished capacity. — See Johnson v. State, Sup. Ct. Op. No. [illegible] (File No. 1477), 511 P.2d [illegible] (1973).

Intoxication constituted no defense to the crime of manslaughter because the crime as defined under former AS 11.15.040 required no specific intent which could possibly have been negated by the intoxication. Kwasnikoff v. State, Sup. Ct. Op. No. 1054 (File No. [illegible]), 521 P.2d 903 (1974).

Self-defense. — See Gregory v. State, Sup. Ct. Op. No. 757 (File No. 1419), 492 P.2d 108 (1971).

Judge entitled to know details of accused's criminal conduct. — The trial judge is entitled to know to the fullest extent possible the details of accused's criminal conduct. Egelak v. State, Sup. Ct. Op. No. 463 (File No. 855), 438 P.2d 712 (1968).

Hence, he may examine photographs of victim's body. — It was not prejudicial error for the trial judge to have examined the photographs of the victim's body prior to imposition of sentence. Egelak v. State, Sup. Ct. Op. No. 463 (File No. 855), 438 P.2d 712 (1968).

View of evidence on motion for judgment of acquittal. — Where defendant was tried for murder and convicted of the included offense of manslaughter, the supreme court stated that the rule adopted for Alaska was that on a motion for judgment of acquittal, the trial court must take the view of the evidence, and the inferences therefrom, which is most favorable to the prosecution. Eaton v. State, Sup. Ct. Op. No. 194 (File No. 223), [illegible] P.2d 21[illegible] (1964).

Evidence held sufficient to establish cause of death. — See West v. State, Sup. Ct. Op. No. 319 (File No. 572), 409 P.2d 847 (1966).

The circumstantial evidence was substantial evidence sufficient, beyond a reasonable doubt, to support the superior court's finding that defendant was guilty of the crime of manslaughter. Kwasnikoff v. State, Sup. Ct. Op. No. 1054 (File No. 19[illegible]), 521 P.2d 90[illegible] (1974).

Evidence necessary for conviction in homicide case. — See Armstrong v. State, Sup. Ct. Op. No. [illegible] (File No. [illegible]), 502 P.2d 44[illegible] (1972).

Evidence held sufficient to convict. — See Jacobs v. State, Sup. Ct. Op. No. 182[illegible] (File No. [illegible]), [illegible] P.2d 26[illegible] (1979).

Instructions. — Where defendant was charged with first degree murder and the statute of limitations had run on the lesser offense of manslaughter, while the jury should not be instructed that they might find defendant guilty of manslaughter, defendant was entitled to an instruction on the mitigating effects of passion and provocation requiring the jury to acquit him if he presented such evidence in mitigation and the state did not negate it. Padie v. State, Sup. Ct. Op. No. 135[illegible] (File No. [illegible]), [illegible] P.2d [illegible] (1976).

On appeal from a conviction of manslaughter, it was held that the trial court erred in including in its instruction on presumption of innocence, that such presumption was not intended to prevent the conviction of any person who is in fact guilty, or to aid the guilty to escape punishment. Reynolds v. United States, 16 Alaska [illegible], [illegible] F.2d [illegible] (9th Cir. 1956).

Homicide, being a most serious crime, normally calls for the imposition of significant sanctions. State v. [illegible], Sup. Ct. Op. No. [illegible] (File No. [illegible]), [illegible] P.2d [illegible] (1977).

Review of evidence on appeal. — In an appeal from a conviction of the crime of manslaughter, the court must consider the evidence in the light most favorable to the government. Reynolds v. United States, 16 Alaska [illegible], [illegible] F.2d [illegible] (9th Cir. 1956).

Reduction of murder conviction. — The standard for reducing a murder conviction to manslaughter is the "reasonable person standard." An intentional killing in the sudden heat of passion is reduced from murder to manslaughter only if there was adequate provocation, such as might naturally induce a reasonable person in the passion of the moment to lose self control and commit the act on impulse and without reflection. [illegible] v. State, Sup. Ct. Op. No. [illegible] (File No. 474[illegible]), 614 P.2d 80[illegible] (198[illegible]).

Sentence upheld. — See Gregory v. State, Sup. Ct. Op. No. 757 (File No. 1419), 492 P.2d 108 (1971); Hastings v. State, Sup. Ct. Op. No. [illegible] (File No. [illegible]), 513 P.2d 111[illegible] (197[illegible]); [illegible] v. State, Sup. Ct. Op. No. [illegible] (File No. [illegible]), [illegible] P.2d 20[illegible]

(1975); Lavked v. State, Sup. Ct. Op. No. 1265 (File No. 2749), 549 P.2d 1182 (1976); Godwin v. State, Sup. Ct. Op. No. 1276 (File No. 2793), 554 P.2d 453 (1976); Bishop v. State, Sup. Ct. Op. No. 1545 (File No. 3351), 573 P.2d 856 (1978); Aipak v. State, Sup. Ct. Op. No. 1671 (File No. 3854), 581 P.2d 664 (1978); Ripley v. State, Sup. Ct. Op. No. 1789 (File No. 3432), 590 P.2d 48 (1979); Jacinth v. State, Sup. Ct. Op. No. 1829 (File No. 3507), 593 P.2d 263 (1979); Labarbera v. State, Sup. Ct. Op. No. 1902 (File No. 3445), 598 P.2d 947 (1979) (decided under former AS 11.15.040); Peterson v. State, Sup. Ct. Op. No. 1977 (File No. 4470), 602 P.2d 1254 (1979); Adkinson v. State, Sup. Ct. Op. No. 2090 (File No. 3506), 611 P.2d 528, cert. denied, 449 U.S. 876, 101 S. Ct. 219, 66 L. Ed. 2d 97 (1980); Rodriguez v. State, Sup. Ct. Op. No. 2131 (File No. 5032), 613 P.2d 1255 (1980); Nygren v. State, Sup. Ct. Op. No. 2154 (File No. 4219), 616 P.2d 20 (1980); Richards v. State, Sup. Ct. Op. No. 2173 (File No. 4620), 616 P.2d 870 (1980); Phillips v. State, Sup. Ct. Op. No. 2229 (File No. 4877), 625 P.2d 816 (1980).

Sentence too lenient. — See State v. Abraham, Sup. Ct. Op. No. 1438 (File No. 3171), 566 P.2d 267 (1977).

A sentence of less than one year's actual incarceration for drunken-driver manslaughter was too lenient. State v. Lamebull, Ct. App. Op. No. 165 (File No. 6005), 653 P.2d 1060 (1982).

Sentence held excessive. — See Sumabat v. State, Sup. Ct. Op. No. 1648 (File No. 3739), 580 P.2d 323 (1978); Husted v. State, Ct. App. Op. No. 25 (File No. 5509), 629 P.2d 985 (1981).

Sentence modified. — See Notaro v. State, Sup. Ct. Op. No. 2055 (File No. 4727), 608 P.2d 769 (1980).

Remand for sentence review. — See Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Quoted in Valentine v. State, Sup. Ct. Op. No. 2100 (File No. 4124), 617 P.2d 752 (1980).

Cited in Sears v. State, Ct. App. Op. No. 151 (File No. 6692), 653 P.2d 349 (1982); Pena v. State, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983); Martin v. State, Ct. App. Op. No. 261 (File No. 6663), 664 P.2d 612 (1983).

Collateral references. — Wanton or reckless use of firearms without expressed intent to inflict injury. 5 ALR 603; 23 ALR 1554.

Aiding and abetting suicide. 13 ALR 1259.

Homicide or assault in connection with negligent operation of automobile or its use for unlawful purpose or in violation of law. 99 ALR 756.

Test or criterion of term "culpable negligence," "criminal negligence," or "gross negligence" appearing in statute defining or governing manslaughter. 161 ALR 10.

Who other than actor is liable for manslaughter. 95 ALR2d 175.

Failure to provide medical or surgical attention. 100 ALR2d 483.

Insulting words as provocation of homicide or as reducing the degree thereof. 2 ALR3d 1292.

Criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another. 32 ALR3d 589.

Woman upon whom abortion is committed or attempted as accomplice for purposes of rule requiring corroboration of accomplice testimony. 34 ALR3d 858.

Homicide predicated on improper treatment of disease or injury. 45 ALR3d 114.

Unintentional killing of or injury to third person during attempted self-defense. 55 ALR3d 620.

Criminal liability where act of killing is done by one resisting felony or other unlawful act committed by defendant. 56 ALR3d 239.

Homicide as affected by lapse of time between injury and death. 60 ALR3d 1323.

Necessity and effect, in homicide prosecution, of expert medical testimony as to cause of death. 65 ALR3d 283.

Proof of live birth in prosecution for killing newborn child. 65 ALR3d 413.

What constitutes "imminently dangerous" within homicide statute. 67 ALR3d 900.

Propriety of predicating manslaughter conviction on violation of local ordinance or regulation not dealing with motor vehicles. 85 ALR3d 1072.

Spouse's confession of adultery as affecting degree of homicide involved in killing spouse or his or her paramour. 93 ALR3d 925.

Criminal liability for injury or death caused by operation of pleasure boat. 8 ALR4th 886.

Propriety of manslaughter conviction in prosecution for murder, absent proof of necessary elements of manslaughter. 19 ALR4th 861.

Sec. 11.41.130. Criminally negligent homicide. (a) A person commits the crime of criminally negligent homicide if, with criminal negligence, the person causes the death of another person.

(b) Criminally negligent homicide is a class C felony. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 11.15.040 and 11.15.080.

Alaska's new criminal code totally abandons the unlawful act approach to manslaughter and contains no misdemeanor-manslaughter provisions. Keith v. State, Sup. Ct. Op. No. 2099 (File No. 4003), 612 P.2d 977 (1980).

For case holding that the misdemeanor-manslaughter doctrine was encompassed within former manslaughter statute, see Keith v. State, Sup. Ct. Op. No. 2099 (File No. 4003), 612 P.2d 977 (1980).

A criminal negligence theory was within the purview of former AS 11.15.040. DeSacia v. State, Sup. Ct. Op. No. 608 (File No. 1071), 469 P.2d 369 (1970).

Meaning of "culpable negligence" under former AS 11.15.080. — See United States v. Barbeau, 12 Alaska 725, 92 F. Supp. 196 (1950), aff'd, 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied, 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952); DeSacia v. State, Sup. Ct. Op. No. 608 (File No. 1071), 469 P.2d 369 (1970); Stork v. State, Sup. Ct. Op. No. 1365 (File No. 2708), 559 P.2d 99 (1977); O'Leary v. State, Sup. Ct. Op. No. 2003 (File No. 3466), 604 P.2d 1099 (1979).

Under the former culpable negligence statute it was assumed that purpose or intent to kill is absent. United States v. Barbeau, 12 Alaska 725, 92 F. Supp. 196 (1950), aff'd, 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied, 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952); Giles v. United States, 10 Alaska 455, 144 F.2d 860 (9th Cir. 1944).

In Alaska, negligent homicide is a form of manslaughter, and intent is not an element of the crime. O'Leary v. State, Sup. Ct. Op. No. 2003 (File No. 3466), 604 P.2d 1099 (1979).

There was only one statutory crime of manslaughter in Alaska, although it was defined in two statutes, former AS 11.15.040 (manslaughter) and former AS 11.15.080 (negligent homicide). DeJardins v. State, Sup. Ct. Op. No. 1245 (File No. 2280), 551 P.2d 181 (1976).

Involuntary manslaughter is not a lesser crime than voluntary manslaughter. DeJardins v. State, Sup. Ct. Op. No. 1245 (File No. 2280), 551 P.2d 181 (1976).

Negligent homicide is included in a charge of murder. Barbeau v. United States, 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied, 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952).

Every essential element of manslaughter by negligent homicide is necessarily included in the offense of murder in the first degree. United States v. Barbeau, 12 Alaska 725, 92 F. Supp. 196 (1950), aff'd, 13 Alaska 551, 193 F.2d 945 (9th Cir. 1951), cert. denied, 343 U.S. 968, 72 S. Ct. 1064, 96 L. Ed. 1364 (1952).

There is no diminished capacity defense to the crime of negligent manslaughter, since manslaughter is a general rather than a specific intent crime. O'Leary v. State, Sup. Ct. Op. No. 2003 (File No. 3466), 604 P.2d 1099 (1979).

Proof required. — The state, in a criminal case under former AS 11.15.080, was not required to prove beyond a reasonable doubt that the defendant's negligence was the sole proximate cause of the death. Wren v. State, Sup. Ct. Op. No. 1599 (File No. 3156), 577 P.2d 235 (1978).

Where a defendant negligently created a risk of death to another person, the fact that the person actually died as a result of the combination of that negligence plus some other contributing factor did not serve to exculpate. Wren v. State, Sup. Ct.

Op. No. 1598 (File No. 3156), 577 P.2d 235 (1978).

A decedent's conduct might be considered under former AS 11.15.080 insofar as it had a bearing on the defendant's alleged negligence. Negligence of the deceased might also be considered with reference to the issue of whether the defendant's culpable negligence had been the proximate cause of death. Otherwise any negligence of the deceased was irrelevant. Wren v. State, Sup. Ct. Op. No. 1598 (File No. 3156), 577 P.2d 235 (1978).

The crime of negligent homicide is established upon proof that the accused was driving while intoxicated and that such act was the proximate cause of death. Lupro v. State, Sup. Ct. Op. No. 1960 (File No. 2987), 603 P.2d 468 (1979).

Where there is sufficient evidence that the driver was intoxicated at the time of the accident, the state need only show beyond a reasonable doubt that the intoxication was the cause of the victim's death. Lupro v. State, Sup. Ct. Op. No. 1960 (File No. 2987), 603 P.2d 468 (1979).

Indictment supported by evidence. — Indictment which in negligent homicide charge stated that defendant did unlawfully, by culpable negligence, kill a child by striking the child with his hands with excessive force and violence, was supported by the evidence although the pathologist who examined the infant told the grand jury that death resulted from a "blunt force injury of some kind" to the head and no evidence showed that defendant ever struck the child on the head, since a "blunt force injury to the head" does not necessarily require a blow to the head itself, the term "striking" as used in the indictment was not limited to a blow or a punch, but might include other forms of violent physical conduct, and the grand jury testimony established that defendant had severely spanked the child and then bounced him against the floor. Harvey v. State, Sup. Ct. Op. No. 1990 (File No. 3921), 604 P.2d 586 (1979).

Sentencing considerations. — In any case involving loss of life, and particularly in an offense involving driving while under the influence of alcohol, major considerations in sentencing are the goals of deterrence of the members of the community and community condemnation of the offender and the offense so as to reaffirm societal norms and to maintain respect for those norms. Rosendahl v. State, Sup. Ct. Op. No. 1807 (File No. 4087), 591 P.2d 538 (1979).

Sentence for negligent homicide upheld. — See Sandvik v. State, Sup. Ct. Op. No. 1419 (File No. 2738), 564 P.2d 20 (1977); Annayoc v. State, Sup. Ct. Op. No. 1808 (File No. 3704), 590 P.2d 904 (1979); Rosendahl v. State, Sup. Ct. Op. No. 1807 (File No. 4087), 591 P.2d 538 (1979); Conners v. State, Ct. App. Op. No. 144 (File No. 6530), 652 P.2d 110 (1982).

Sentence for negligent homicide involving a vehicle disapproved as too lenient. — See State v. Lupro, Ct. App. Op. No. 27 (File No. 5473), 630 P.2d 18 (1981) (decided under former AS 11.15.080).

Sentence excessive. — Sentence of five years with three years suspended was clearly mistaken where defendant was young, had no prior criminal record, the evidence showed that at the time of the accident defendant had been drinking but was not intoxicated, and the major cause of the accident appeared to have been that defendant was operating the car carelessly because she had been out all night with friends and had not had enough sleep. Sears v. State, Ct. App. Op. No. 151 (File No. 6692), 653 P.2d 349 (1982).

Collateral references. — Overturning boat, negligent homicide by, 3 ALR 1104.

Negligent homicide as affected by negligence or other misconduct of the decedent. 67 ALR 922.

Drowsiness of operator of automobile. 160 ALR 515.

Test or criterion of term "culpable negligence," "criminal negligence," or "gross negligence," appearing in statute defining or governing manslaughter. 161 ALR 10.

Druggist's criminal responsibility for death or injury in consequence of mistake. 55 ALR2d 714.

Criminal responsibility of motor vehicle operator for accident arising from physical defect, illness, drowsiness, or falling asleep. 63 ALR2d 983.

What amounts to negligence within meaning of statutes penalizing negligent homicide by operation of a motor vehicle. 20 ALR3d 473.

Criminal [illegible] for [illegible] or death caused by operation of pleasure boat, 8 ALR4th 886.

Sec. 11.41.135. Multiple deaths. If more than one person dies as a result of a person committing conduct constituting a crime specified in AS 11.41.100 — 11.41.130, each death constitutes a separately punishable offense. (§ 1 ch 143 SLA 1982)

Cited in Nukapigak v. State, Sup. Ct. Op. No. 2667 (File No. 5820), ___ P.2d ___ (1983).

Sec. 11.41.140. Definition. In AS 11.41.100 — 11.41.140 "person", when referring to the victim of a crime, means a human being who has been born and was alive at the time of the criminal act. A person is "alive" if there is spontaneous respiratory or cardiac function or, when respiratory and cardiac functions are maintained by artificial means, there is spontaneous brain function. (§ 3 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

Article 2. Assault and Reckless Endangerment.

Section	Section
200. Assault in the first degree	230. Assault in the fourth degree
210. Assault in the second degree	250. Reckless endangerment
220. Assault in the third degree	

Collateral references. — 6 Am. Jur. 2d, Assault and Battery, § 1 et seq.

6A C.J.S., Assault and Battery, § 1 et seq.

Acquittal or [illegible] as to [illegible] offense as bar to charge as to the other offense where one person is killed or assaulted by acts directed at another. 2 ALR 606.

Homicide or assault in attempting to prevent elopement. 8 ALR 660.

Principal in second degree, or aider and abettor in case of felonious assault. 16 ALR 1043.

Intent of aider in case of felonious assault. 16 ALR 1047.

Criminal responsibility of peace officers for killing or wounding one whom they wished to investigate or identify. 18 ALR 1368; 61 ALR 321.

Conviction or acquittal upon charge of murder of or assault upon one person as bar to prosecution for like offense against another person at the same time. 2[illegible] ALR [illegible]; [illegible] ALR 22[illegible].

Homicide or assault in defense of habitation or property. [illegible] ALR 508; [illegible] ALR 1541; [illegible] ALR 1[illegible].

[illegible] assault [illegible] assault with a deadly weapon. [illegible] ALR 1[illegible].

Acquittal or conviction of assault and battery as bar to prosecution for rape or assault with intent to commit rape, based on same transaction. 78 ALR 1[illegible].

Rights and responsibilities, civil or criminal, of police officers in respect of examination of persons under "[illegible] third degree." 7[illegible] ALR 4[illegible].

Assault with intent to ravish, or rape of consenting female under age of consent. [illegible] ALR 50[illegible].

Homicide or assault in connection with negligent operation of automobile [illegible] use for unlawful purpose or in violation of law. [illegible] ALR 75[illegible].

Assault in negligent operation of automobile. [illegible] ALR [illegible]

Danger or apparent danger of death or great bodily harm as condition of self-defense in prosecution for assault as distinguished from prosecution for homicide. 114 ALR 634

Assault to rob with intention to take property in payment of claim or debt. 116 ALR 997

Admissibility on issue of self-defense (or defense of another) on prosecution for homicide or assault, of evidence of specific acts of violence by deceased, or person assaulted, against others than defendant. 121 ALR 380

Indecent proposal to woman as assault. 12 ALR2d 971

Acquittal on homicide charge as bar to subsequent prosecution for assault and battery or vice versa. 37 ALR2d 1068

Effect of failure or refusal of court, in robbery prosecution, to instruct on assault and battery. 58 ALR2d 808

Assault with intent to commit unnatural sex act upon minor as affected by latter's consent. 65 ALR2d 748

Attempt to commit assault as criminal offense. 79 ALR2d 597

Fact that gun was unloaded as affecting criminal responsibility for assault. 79 ALR2d 1412

Criminal responsi[illegible] of husband for rape, or assault to co[illegible] ape, on wife. 84 ALR2d 1017

Admissibility in prosecution for assault or similar offense involving physical violence, of extent or effect of victim's injuries. 87 ALR2d 926

Criminal responsibility for assault and battery by operation of mechanically defective motor vehicle. 88 ALR2d 1165

Criminal liability for excessive or improper punishment inflicted on child by parent, teacher, or one in loco parentis. 89 ALR2d [illegible]

Deadly or dangerous weapon, intent to do physical harm as essential element of crime of assault with. 92 ALR2d 635

Admissibility of evidence of uncommunicated threats on issue of self-defense in prosecution for assault. 98 ALR2d 195

Admissibility of evidence as to other's character or reputation for turbulence on question of self-defense by one charged with assault or homicide. 1 ALR3d 571

Relationship with assailant's wife as provocation depriving defendant of right of self defense. 9 ALR3d 933

Scienter as element of offense of assaulting, resisting, or impeding federal officer. 10 ALR3d 853

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

Kicking as aggravated assault or assault with dangerous or deadly weapon. 33 ALR3d 922

Duty to retreat as condition of self-defense when one is attacked at his office, or place of business or employment. 41 ALR3d 584

Unintentional killing of or injury to third person during attempted self-defense. 55 ALR3d 620

Consent as defense to charge of criminal assault and battery. 58 ALR3d 662

Liability of owner or operator of theatre or other amusement to patron assaulted by another patron. 75 ALR3d 441

Attempted robbery, or assault to commit robbery, as affected by intent to collect or secure debt or claim. 88 ALR3d 1309

Automobile as dangerous or deadly weapon within meaning of assault or battery statute. 89 ALR3d 1026

Liability of owner or operator of shopping center, or business housed therein, for injury to patron on premises from criminal assault by third party. 93 ALR3d 999

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient. 99 ALR3d 854

Pocket or clasp knife as deadly or dangerous weapon for purposes of statute aggravating offenses such as assault, robbery, or homicide. 100 ALR3d 287

Validity and construction of penal statute prohibiting child abuse. 1 ALR4th 38

Constitutionality of assault and battery laws limited to protection of females only or which provide greater penalties for males than for females. 5 ALR4th 708

Dog as deadly or dangerous weapon for purposes of statutes aggravating offenses such as assault and robbery. 7 ALR4th 607

Walking cane as deadly or dangerous weapon for purpose of statutes aggravating offenses such as assault and robbery. 8 ALR4th 842

Single act affecting multiple victims as constituting multiple assaults or homicides. 8 ALR4th 960

Parts of the human body, other than feet, as deadly or dangerous weapons for purposes of statutes aggravating offenses such as assault and robbery. 8 ALR4th 1268

…ment of offense of … or impeding federal …
…ense to charge of rape, … assault with intent to … ALR3d 1351
…gravated assault, or … ous or deadly weapon.

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…lling of or injury to … during attempted … 3d 620
… to charge of criminal … 58 ALR3d 662
… or operator of theatre … to patron assaulted by … ALR3d 441
…, or assault to commit … by intent to collect or … 88 ALR3d 1309
…dangerous or deadly … aning of assault or … ALR3d 1026
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…ibility for physical … in connection with … y disordered patient.

…fe as deadly or dan… purposes of statute … such as assault. … 100 ALR3d 287
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… multiple victims as … assaults or homi…

… body, other than … gerous weapons for … ggravating offenses … robbery. 8 ALR4th

Admissibility of expert or opinion testimony on battered wife or battered woman syndrome. 18 ALR4th 1153.

Sec. 11.41.200. Assault in the first degree. (a) A person commits the crime of assault in the first degree if

(1) that person recklessly causes serious physical injury to another by means of a dangerous instrument;

(2) with intent to cause serious physical injury to another, the person causes serious physical injury to any person; or

(3) the person intentionally performs an act that results in serious physical injury to another under circumstances manifesting extreme indifference to the value of human life.

(b) Assault in the first degree is a class A felony. (§ 3 ch 166 SLA 1978; am § 2 ch 143 SLA 1982)

Effect of amendments. — The 1982 amendment in paragraph (1) of subsection (a), substituted "that person recklessly causes" for "with intent to cause" and deleted "or causes physical injury to any person" following "another person."

NOTES TO DECISIONS

I. General Consideration
II. Subsection (a)(1)
III. Former law

I. GENERAL CONSIDERATION.

Quoted in Smith v. State, Sup. Ct. Op. No. 2121 (File No. 4228), 614 P.2d 300 (1980); Blackburn v. State, Ct. App. Op. No. 243 (File No. 7224), 661 P.2d 1100 (1983).

Stated in State v. Silas, Sup. Ct. Op. No. 1851 (File No. 4237), 595 P.2d 651 (1979); Coleman v. State, Sup. Ct. Op. No. 2190 (File No. 4416), 621 P.2d 869 (1980).

Cited in Handley v. State, Sup. Ct. Op. No. 2155 (File Nos. 3946, 4937), 615 P.2d 627 (1980); Folger v. State, Ct. App. Op. No. 105 (File No. 5585), 648 P.2d 111 (1982).

II. SUBSECTION (a)(1).

Mens rea and result. — Subsection (a)(1) of this section requires intent to cause serious physical injury as the mens rea and physical injury as the result. Wettanen v. State, Ct. App. Op. No. 200 (File No. 6352), 656 P.2d 1213 (1983).

Dangerous instrument. — The requirement of a "dangerous instrument" in subsection (a)(1) of this section serves to define the surrounding circumstances from which intent is normally inferred. Wettanen v. State, Ct. App. Op. No. 200 (File No. 6352), 656 P.2d 1213 (1983).

The requirement of a dangerous instrument in subsection (a)(1) of this section serves to shift the focus of the trier of facts' attention from the result (physical injuries), which in any given case may have been unforeseeable to the defendant at the time the assault was committed, to the manner in which the assault was committed. Thus, the defendant is protected against a finding of first-degree assault in which the jury determines guilt solely by finding serious physical injury and then inferring an intent to cause that serious physical injury from the injuries alone. Wettanen v. State, Ct. App. Op. No. 200 (File No. 6352), 656 P.2d 1213 (1983).

While feet are not dangerous instruments per se, they may become so; however, they are shod, if used in such a way as to be capable of causing death or serious physical injury. Wettanen v. State, Ct. App. Op. No. 200 (File No. 6352), 656 P.2d 1213 (1983).

HOUSE JUDICIARY COMMITTEE
February 16, 1988
1:30 p.m.

MEMBERS PRESENT

Representative John Sund, Chairman
Representative Fran Ulmer, Vice Chairman
Representative Sam Cotten
Representative Max Gruenberg
Representative Robin Taylor
Representative Ramona Barnes

MEMBERS ABSENT

Representative Mike Navarre

COMMITTEE CALENDAR

HB 261: An Act relating to ignition interlock devices; and establishing a class C misdemeanor.

HB 229: An Act relating to homicide by abuse.

WITNESS REGISTER

Representative Bill Hudson
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811
Position: Sponsor of HB 229

Gayle Horetski
Deputy Commissioner
Department of Public Safety
P.O. Box N
Juneau, Alaska 99811
465-4322
Position: Support HB 229

Dana Fabe
Director
Public Defender Agency
900 W. 5th, #200
Anchorage, Alaska 99501
279-7541
Position: Opposed HB 229

Louise Howerter
Justice for Children
P.O. Box 33192
Juneau, Alaska 99803
780-4380
Position: Supports HB 229

Charles Rohrbacher
504 5th Street
Juneau, Alaska 99801
586-9774
Position: Discuss HB 229

Pat Marlin
Justice for Children
4442 Trafalgar
Juneau, Alaska 99801
789-2607
Position: Supports HB 229

PREVIOUS ACTION

HB 261:	Jrn-Date	Jrn-Pg		Action
	04/08/87	777	(H)	Read the first time with referral(s)
	04/08/87	777	(H)	HESS, Judiciary, Finance
	01/22/88	1970	(H)	HES RPT CS(HESS) 6DP 1NR
	01/22/88	1970	(H)	Zero Fiscal Note/ Analysis 1/22/88
	01/22/88	1970	(H)	Referred to Judiciary

Previous Judiciary committee consideration and testimony of HB 261 was held on 2/12/88.

HB 229:	Jrn-Date	Jrn-Pg		Action
	03/30/87	674	(H)	Read the first time with referral(s)
	03/30/87	674	(H)	Judiciary then Finance
	03/30/87	688	(H)	Co-Sponsors added: Ellis, Davidson, and Gruenberg
	04/01/87	712	(H)	Co-Sponsor added: Hanley
	04/03/87	733	(H)	Co-Sponsor added: Collins
	01/18/88	1932	(H)	Co-Sponsor added: Taylor

Previous Judiciary committee consideration and testimony of HB 229 was held on 5/5/87 and 10/23/87.

ACTION NARRATIVE

TAPE 100, SIDE 1
Number 001

Chairman Sund called the meeting to order at 1:35 p.m. Present were Representative Ulmer, Representative Cotten and Representative Gruenberg. Chairman Sund brought HB 261, which was heard on February 12, before the committee for consideration.

Representative Gruenberg moved that the committee adopt a CS, dated 2/15/88, which incorporated an amendment on page 3, lines 4-7, that read, "A condition of probation imposed under this subsection takes effect after any period of license revocation imposed under AS 28.15.165(d) or 28.15.181(c)." The purpose is to insure that it is not in lieu of a license revocation as requested by the Department of Law.

Representative Barnes and Representative Taylor arrived at 1:36 p.m.

There was no objection to adopt the CS and so it was adopted. Representative Gruenberg discussed the previous hearing on HB 261 and the amendment offered by the Department of Law. He explained the bill and the use of the ignition interlock device.

Number 99

Chairman Sund asked if there were any questions on HB 261. Representative Ulmer moved to pass the bill from committee with individual recommendations.

Representative Cotten noted that the bill makes it a crime to loan a car to a person who has an interlock device installed. He asked how a person is supposed to know another has the device. Representative Gruenberg discussed the provision. Representative Cotten asked if he loaned his car if he would commit a crime. Representative Gruenberg replied that "knowingly" on page 2, line 6, provides that a person has to know that the device is a condition of probation.

Chairman Sund brought up the operation of the devices in weather below sixty degrees. Representative Gruenberg noted that the bill allows the commissioner to certify the devices for certain areas and conditions where they will operate.

Representative Cotten referred to his previous question and asked if he would have to know a person was on probation

under AS 12.55.102 before lending his car. Representative Gruenberg affirmed and said there had to be specific knowledge.

Representative Taylor stated that the bill doesn't give leeway to the court with regard to the ten year mandatory. Chairman Sund remarked that the bill doesn't deal with that issue. Representative Taylor expressed his concern with the cost of the devices and suggested there may be less costly alternatives which should be considered. Representative Ulmer noted that the devices were an option to the court. Chairman Sund noted that a person can teach their spouse or family members to use the code on the device.

Representative Gruenberg discussed the HESS Committee amendment on page 3, lines 25-27, which gives the judge discretion to have a defendant pay for the device in lieu of a fine. Representative Taylor remarked that, by putting this into statutes, it lays a scenario without consideration of other options. Representative Gruenberg pointed out that a payment plan for the devices is also available.

Number 270

Representative Cotten asked about the establishment of a class C misdemeanor, where there had never been one before. Representative Gruenberg responded that a bill passed the House last year which already established a class C misdemeanor, although it did not pass the Senate. Chairman Sund asked if it was necessary to have a class C misdemeanor in the bill. Representative Gruenberg replied that it was unless the committee wanted it to be a class B or A and criminalize it more. Representative Cotten wanted to know what offense is being established by a class C misdemeanor. Representative Gruenberg noted it was in Section 2, on page 2, line 4, and that other offenses could be added to that classification later. Chairman Sund restated his question and asked if the bill and the establishment of a new misdemeanor classification were separable ideas. Representative Gruenberg responded, that if separated, the penalty would be heavier and the crime doesn't warrant it. Representative Taylor pointed out that if a violation occurs, the person is already subject to revocation of probation. Representative Gruenberg remarked that the penalty deals with someone other than the person on probation.

Chairman Sund stated that he would hold HB 261 over until tomorrow to work on the class C misdemeanor portion. Representative Ulmer withdrew her motion to pass the bill.

Chairman Sund announced HB 229 would be up next. He noted information in the committee files and invited Representative Hudson to address the committee. He asked him to discuss what is broken and what needs to be fixed with regard to the proposed legislation.

Number 340

Representative Hudson, sponsor of HB 229, testified that he introduced the bill last year after hundreds of calls and a consensus that statutes don't adequately deal with death to children by abuse. He discussed the Paulo case in Juneau and pointed out that if his proposed legislation were law, the evidence of past abuse in that case could have been let in and a conviction could have resulted in a twenty year sentence rather than five. He recalled previous testimony about the purpose of the bill and the support it has received. He stated that people who have a pattern of assault or torture that results in death of a victim should go to jail for at least twenty years. He noted that the only opposition received was from the Office of Public Advocacy and the Public Defender Agency, which he characterized as reactive agencies who defend persons who commit these crimes.

Representative Hudson recalled the major arguments in opposition: 1) the bill represents a major break with principles underlying the comprehensive revised criminal code and presumptive sentencing scheme, 2) by creating a new crime, it will not necessarily affect charging policies by prosecutors, and 3) the law should not distinguish among human lives on the basis of age.

Representative Hudson addressed the arguments. Regarding the first, he placed a higher priority on the loss of a life than on the fact that the criminal code and presumptive sentencing scheme was being revised. Secondly, passage of HB 224 will enable prosecutors to more effectively defend cases brought by the state against those who have killed by engaging in a pattern of abuse/torture. In relation to the third argument, he felt that children do not have the ability to defend themselves against people who abuse them and they are even loyal to their abusers who are oftentimes family. They are a special class of people, but it is not his intent to place a higher value on life because of age. He felt that it was proper public policy to deal harshly with people who kill others by abuse and torture.

Regarding the argument that creating a new crime with an element of pattern or practice of abuse was not necessary for successful prosecution of homicide cases involving child abuse, he referred to AS 11.41.110. It provides that

"a person commits the crime of murder in the second degree if the person intentionally performs an act that results in the death of another person under circumstances manifesting in extreme indifference to the value of human life and upon conviction of murder in the second degree, kidnapping, or misconduct involving a controlled substance in the first degree, a person shall be sentenced to a definite term of imprisonment of at least five years but not more than ninety-nine." Representative Hudson and others who support the legislation do not believe five years is a sufficient penalty to pay where there is repeated terrorism that ultimately ends up in the death of a child. HB 229 provides for a sentence of at least twenty years, because abusing a person until they die should get a punishment higher than that for conviction of murder in the second degree, kidnapping, or misconduct involving a controlled substance. He discussed an infant assault case cited by the Public Defender where evidence was admitted that the defendant had previously killed his five week old infant. The judge concluded that the evidence could establish the fact that the defendant did not have a high regard for human life and was sentenced to fifteen years, which was later reduced to ten years by the Supreme Court. He felt HB 229 would enable prosecutors to present evidence of past practices of abuse or torture leading to death and provide for an appropriate length of imprisonment.

He addressed the definition of restraint as "to hold back from action, to deprive of physical liberty," which is what happens when anyone is abused. He also addressed classified versus unclassified felonies. He cited AS 11.81.250, "For purposes of sentencing under AS 12.55, all offenses defined in this title are classified on the basis of their seriousness according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender, and except for murder in the first and second degree, misconduct involving a controlled substance in the first degree, and kidnapping, the offenses in this title are classified." He believed it was more appropriate that homicide by abuse be an unclassified felony. He urged the committee to support HB 229 and pass it out.

Number 542

Representative Taylor commented on a previous suggestion by Representative Hudson to change age sixteen to eighteen on line 11. Representative Hudson stated he would entertain it as a recommendation. He commented that bill drafters suggested sixteen, but age eighteen appears to be a legitimate concern as it covers the same group.

Chairman Sund commented on the concept that children should be treated differently because they are unable to defend themselves and noted that many elderly and mentally retarded people would also fall within that concept, regardless of age. Representative Hudson remarked that he had considered that, adding that Washington statute includes elderly and incapacitated people. Chairman Sund noted that Washington also has a different structure for criminal offenses as well. Representative Hudson indicated his interest in including persons who, because of physical or mental disability, or because of extreme advanced age, are dependent on another person.

Chairman Sund commented that creating a distinguishing factor or category of victim to determine the kind of crime establishes two classes of people, which is a major philosophical change in the criminal code. It says that one type of life is worth more than another depending on age or physical or mental condition. Representative Hudson believed strongly that it was a valid public policy to address the acceptance of a deviation from traditional policy.

Representative Gruenberg commented that a distinction is already made with HB 237, with sexual assaults of minors and with elder abuse. Chairman Sund commented that the committee dealt with the pattern or practice issue on HB 237 along with an extensive discussion with evidence Rule 404(b).

Representative Ulmer felt it was not a value of life issue, but rather the nature of relationship and the inability to protect oneself that makes this a more heinous crime and justifies a more serious sentence. Representative Cotten asked Representative Hudson to restate his position regarding extending the bill to other persons unable to defend themselves. Representative Hudson said he would support such language and provided a definition of a dependent adult.

Chairman Sund asked for examples of why the existing criminal code is unable to adequately address this type of offense. He referred to the Paulo case and asked if the proposed law change was to deal with that as one specific incident or if it is a broad issue. He also requested a comparison of what issues brought up by HB 229 have been dealt with in HB 237, such as evidentiary issues and aggravators.

Number 685

Louise Howerter, of Justice for Children, testified. She mentioned other homicide by abuse cases in Alaska. She

read testimony which referred to these offenses as the most heinous and merciless crime that can be committed. It goes beyond torture and often covers a period of years. Child victims have no control over their situation. She discussed particular cases of abuse that resulted in death of children, including the Paulo case in Juneau. She brought up the Washington bill, noted it's quick passage, and mentioned that three other states have followed suit. She noted petitions last year that had over 6,000 signatures in support of a more severe sentence for homicide by abuse. She noted that Alaska's abuse rate is five times greater than any other state and that it could be subdued by passage of HB 229, which makes a strong public statement to those who abuse.

Number 750

Gayle Horetski, of the Department of Public Safety, addressed the committee next. She offered to work with the committee on HB 229, based on her past years of experience as a prosecutor. She mentioned that Stephanie Joannides, of the Department of Law, asked her to inform the committee of her willingness to work on the bill also. Ms. Horetski suggested that line 11, which reads "extreme indifference to the life of a child," should be changed to "welfare" of the child, because language for second degree murder already includes extreme indifference to the "life of a person." She felt it was broader language and would be more inclusive. Regarding the "pattern or practice" language, she felt that the focus was on the repeated abuse of a child and asked the committee to consider a single act that is sufficiently dangerous that results in death, similar to the existing second degree murder statute. She mentioned that the committee could deal with it in consideration of a definition for "pattern or practice."

Representative Ulmer stated that if "pattern or practice" were replaced with "engages in assault or torture," it would make sense if HB 237 passes and there is a change in Rule 404 that allows some prior evidence in. She asked if HB 237 doesn't pass, and HB 229 passes without "pattern or practice" language, would there still be an evidentiary problem with getting prior incidents in. Ms. Horetski replied that if the crime is defined as a pattern or practice, then the evidence of repeated acts would come in. On the flip side, there has to be a pattern or practice in order to prove the crime, so one incident may not be enough, two may not either, as it is not defined. If the issue is admissibility of evidence of other acts, then the change of Rule 404 in HB 237 is the clearest way to do it. If HB 237 doesn't pass, then "pattern or practice" fixes it for that element, but it wouldn't apply to single acts.

Representative Gruenberg commented that since, by definition, most murders are some type of assault he would have difficulty limiting this offense to children. Ms. Horetski stated that requiring a pattern or practice narrows the scope of offenses to which it applies. She suggested that if that is the intent, a definition would be needed to clarify so that the prosecutor and judge know how to instruct the jury.

Number 843

Dana Fabe, Public Defender, discussed the difference between second and first degree murder. It used to be based on malice and forethought or premeditation, now it is whether there is intent to kill or engaging in an act with extreme indifference to the value of life. To say that someone has to intend to kill someone unless it's a child, and then there doesn't have to be an intent to kill, basically shakes up the entire system. She noted there are many types of people who can't defend themselves, including sleeping adults. The act itself is what the intent can be drawn from. If someone is ruthlessly beating a child, it is possible that intent to kill can be inferred and first degree murder could be charged. If there is no intent to kill, it is clear that it is second degree murder. Her problem with HB 229 is that it changes the entire code based on a factor of age or mental capacity. She noted that a benchmark had been set regarding sentencing and the five year minimum is rarely applied.

TAPE 100, SIDE 2
Number 001

Ms. Fabe continued. She felt that the judge would take into account the age and helplessness of the victim during sentencing. She believed the Paulo case was an aberration and it was her understanding that it was never charged as a murder, but rather as manslaughter and then charged down to negligent homicide. If convicted on second degree murder, the judge could have sentenced up to ninety-nine years. The framework of the criminal code is based on the mental state and the result it causes, and a new factor shouldn't be added without looking at the whole code. It could be set up as aggravators or a higher offense when certain factors are there, but to take what is basically second degree murder and say it is first degree if the victim is under or over a certain age or has a certain mental state is a concern because it engrafts another way of doing things into the code without a general overview of the entire code.

Number 58

Representative Hudson thought that a statement needed to be made as public policy and that it would do no harm to err on the side of children. He asked if it wasn't good public policy to take a growing crime and address it with a tool that deals with the heinousness of the crime. He made reference to sentencing policy for people who kill police officers and felt that children require extra consideration.

Ms. Fabe pointed out that assaults to police officers get a particular sentence. The assault statute is not changed, but the sentence is higher. She felt a better approach was to change the mandatory minimum sentence for second degree murder or add an aggravator based on the age of the child. She asked if, by making a distinction for child victims of homicide by abuse, should it also apply to assault, so that second degree assault would be moved up to first degree based on the age of a child.

Chairman Sund stated that there were two considerations, one was the reason for the bill and the other was the factual basis behind it. He discussed his involvement in rewriting the criminal code in the 70's and suggested that if changes were going to be made, there should be an overall look at the code.

Representative Taylor asked if there were examples of other cases besides the Paulo case. He said the law can be changed, but reduced charges by the D.A. will produce the same result as without the legislation.

Number 175

Representative Barnes mentioned the rewrite of sexual assault statutes in 1982 and the fact that arguments against changing the code then were the same as she's heard regarding HB 229. She felt that the change has worked well and taken these types of criminals off the street. She didn't believe revising the code upward would necessarily affect the whole code, it could be amended in places and ways that wouldn't harm other areas of the code. She felt abusers deserve a harsher sentence and that it may change the criminal code, but it was good public policy.

Chairman Sund indicated his intention to request an overall look at sentencing by the Judicial Council.

Representative Taylor asked about the benchmark mentioned by Ms. Fabe. Ms. Fabe responded that the benchmark was the Page case, which established a standard second degree murder sentence at twenty to thirty years.

Representative Cotten pointed out the issues with HB 229 that needed improvement were the definition of pattern or practice, whether to require more than one act for the law to take effect, and whether it should apply to elderly, mentally, or otherwise impaired persons. He hoped there was no suggestion that people were indifferent to the situation because it may not conform with the criminal code.

Representative Gruenberg discussed the language "indifference to life" versus "welfare" and supported leaving it the way it is to make it tighter. He asked if Ms. Fabe or Ms. Horetski had any comments. Ms. Fabe responded that an anomaly would be set up if someone committed an act indifferent to a life, which would be more serious and could a get second degree murder conviction, whereas someone could commit an act that was indifferent to the welfare of a child, which was less serious but could get a first degree conviction. Ms. Horetski replied that she was looking at it from the viewpoint of effective prosecution, in which case "welfare" would be broader.

Number 343

Charles Rohrbacher, testified next. He served on the grand jury investigating the death of Richard Johnson (victim in the Paulo case). He focused on the question of what's broken and discussed the grand jury process. There was no proposed indictment by the D.A.'s office when they received the case, rather they conducted an investigation by calling a variety of witnesses and questioning the circumstances of the death of the child. They were to ascertain facts and see how they matched with current statutes to determine how the person could be charged. The indictment they brought against Mr. Paulo was the best they could do in terms of the evidence they had and what the statutes said. They favored a second degree murder charge, but they were frustrated because it didn't match the standard. They couldn't prove there was intent to kill the child or that he was acting with substantial certainty to cause death. The child had a broken arm from having it tied behind his back a few weeks prior and the Division of Family and Youth Services was investigating the treatment of the child. The jury was concerned, because there seemed to be an incentive not to seek medical treatment for the injury that caused his death. He asked the medical witnesses if a reasonable person would have known that there was something seriously wrong with the child during the twelve hours before he died and they affirmed that. There was no way to establish exactly what happened and there didn't seem to be anything in statutes that addressed abusive acts that contributed to death. Second degree murder didn't seem to fit, but the jury felt it was a more serious offense than manslaughter.

Chairman Sund asked if the District Attorney told the jury they couldn't prove second degree murder. Mr. Rohrbacher replied that they had the statutes before them and they compared what had been presented with what the law said. They asked for clarification and explanation about the gradation of responsibility for homicide, but the D.A. did not guide them.

Representative Ulmer restated the problem that it is very difficult to prove a more aggravated second degree murder in these kinds of cases because intent to kill can't be shown because there is often no witness. It is difficult to prove the state of mind for a more serious offense.

Chairman Sund mentioned the change from "intentionally performing an act that results in a death" in the second degree murder statute to "knowingly engages in conduct that results in a death" as proposed by HB 229. He asked Mr. Rohrbacher if the grand jury had discussed that and whether it is an actual representation of what the real law is. Mr. Rohrbacher replied that they were convinced from the testimony and evidence that the perpetrator had struck the child violently one time, yet there were allegations that there were a couple of prior acts, but they could only focus on the one act. The dilemma was that there was no way to ascertain whether there was intent to kill the child at the time he was struck, but there seemed to be strong reluctance by the perpetrator and his partner to take the necessary steps that may have saved the child's life. They even seemed to be deterred from seeking medical attention because of the fear of what would happen. Balanced against the possibility of being prosecuted for child abuse or the possibility the child would die and then nothing would happen, it seemed the perpetrator was prepared to take the chance. He didn't think they wanted the child to die, but it seemed a reckless disregard for the safety and welfare of the child. There didn't seem to be anything in the statute that could address that type of equation.

Number 525

Representative Gruenberg stated that it sounded like the D.A. didn't adequately instruct the jury in the law with regard to looking for the proper charge. Mr. Rohrbacher replied in the negative and said the D.A. gave the jury the range of possible offenses to consider given the testimony. The situation and acts they were presented with didn't seem to fit the statutes presented. Representative Gruenberg asked if the grand jury and the D.A. carefully discussed whether the defendant could be charged higher and whether the D.A. didn't feel he could. Mr. Rohrbacher affirmed that they discussed it.

Representative Hudson asked, if the language proposed in HB 229 were in statute, would it have been helpful to the grand jury. Mr. Rohrbacher said it would but they may have had a problem with establishing a pattern, as the proof didn't seem sufficient to show a pattern, but other than that, it is exactly what they were looking for.

Number 600

Pat Marlin, of Justice for Children, testified next. She mentioned an earlier case of homicide by abuse in Juneau that she remembered. She felt a state policy was needed on how children are treated and high public sentiment supports it. She wanted people to be treated fairly under the law, but didn't want defendants to have more rights than children who can't defend themselves. She felt confident that the law can be changed properly.

Chairman Sund felt it should be clarified that no one was advocating abuse of children. There are laws that provide for offenses, although they may not be as severe as some would like. He felt it was important to listen to both sides, the defense and prosecution, who are the ones that will be interpreting the law and putting it into practice. He wanted the committee to find out what the problems are and work on them in a rational manner so that the code is fair and doesn't "hopscotch."

Number 703

Representative Ulmer thanked Ms. Marlin and Ms. Howerter for raising people's awareness statewide through their organization. She remarked that the only thing she disagreed with was that the bill would save lives. She was a co-sponsor to HB 229 because she believed people should be held responsible for these types of crimes. She felt what would save lives was education, better parenting, and raising the level of awareness about child abuse. Ms. Marlin agreed, adding that HB 229 gives the message that the offenses aren't taken lightly.

Chairman Sund stated that he was considering requesting another state sentencing study and a look at the three judge panel in the form of a proposal to the Alaska Judicial Council. Representative Taylor asked if it would be possible to highlight child abuse cases. Representative Ulmer remarked that abuse/assault cases are not distinguished on the basis of age, so there are no statistics for children. Ms. Marlin commented that she tried to find out how different judges sentence and that it was not public information.

Chairman Sund assigned himself, Representative Ulmer and Representative Barnes to a subcommittee on HB 229 for further work on the bill. He mentioned he wanted to make sure it lined up with HB 237. He adjourned the meeting at 3:06 p.m.

HOUSE JUDICIARY COMMITTEE
October 23, 1987
1:00 p.m.
Ketchikan City Council Chambers
Ketchikan, Alaska

MEMBERS PRESENT

Rep. John Sund, Chair
Rep. Mike Navarre (arrived 2:30 p.m.)
Rep. Robin Taylor

Present Via Teleconference:

Rep. Fran Ulmer, Vice Chair (from Juneau)
Rep. Ramona Barnes (from Anchorage)

MEMBERS ABSENT
Rep. Sam Cotten
Rep. Max Gruenberg

COMMITTEE CALENDAR

HB 237: An Act relating to murder, assault, and the physical and sexual abuse of children; amending Rule 404 of the Alaska Rules of Evidence; ed.

HB 229: An Act relating to homicide by abuse.

SB 117: An Act relating to child support enforcement.

WITNESS REGISTER

Rep. Fran Ulmer
P.O. Box V
Juneau, Alaska 99811
Position: Sponsor of HB 237.

Floyd Richmond
Women In Safe Homes
Box 6552
Ketchikan, Alaska 99901
225-9474
Position: Supports HB 237 and HB 229.

Patricia Francis
815 Brown Deer
Ketchikan, Alaska 99901
225-5827
Position: Supports HB 237.

Constance Griffith
League of Women Voters of Alaska
2509 4th Avenue
Ketchikan, Alaska 99901
225-5069
Position: Supports HB 237.

Virginia Peltier
Box 3024
Ketchikan, Alaska 99901
225-6794
Position: Supports HB 237.

Susan Pickrell
361 Main
Ketchikan, Alaska 99901
225-6631
Position: Supports HB 237.

Rep. Bill Hudson
P.O. Box V
Juneau, Alaska 99811
Position: Sponsor of HB 229.

Jim Ayers
KIDPAC
281 Franklin Street
Juneau, Alaska 99801
463-3445
Position: Supports HB 237 and HB 229.

Holly Ploog
Director
Division of Child Support Enforcement (CSED)
550 W. 7th Street
Anchorage, Alaska 99501-3556
263-6270
Position: Discuss and answer questions regarding CSED.

Nicki Stillman
501 Front Street
Ketchikan, Alaska 99901
225-3157
Position: Discuss problems with CSED.

Colleen Scanlon
Administrator
Ketchikan Daycare Assistance Program
344 Front Street
Ketchikan, Alaska 99901
225-6151
Position: Discuss problems with CSED.

Sandy Armstrong
Box 2131
Wrangell, Alaska 99929
874-2431
Position: Discuss problems with CSED.

Dennis McCarty
320 Bawden #309
Ketchikan, Alaska 99901
225-2108
Position: Discuss problems with CSED.

Robert Armstrong
Box 2132
Wrangell, Alaska 99929
874-2431
Position: Discuss problems with CSED.

Terry Angerman
Box 7
Wrangell, Alaska 99929
874-3053
Position: Discuss problems with CSED.

Helena Dunn
Box 6161
Ketchikan, Alaska 99901
225-3760
Position: Discuss problems with CSED.

Carl Campbell
Box 671
Wrangell, Alaska 99929
874-2033
Position: Discuss problems with CSED.

Shawn Mock
Rt. 2, Box 1342
Ketchikan, Alaska 99901
225-0707
Position: Discuss problems with CSED.

Gary Buethe
Box 1841
Wrangell, Alaska 99929
874-2176
Position: Discuss problems with CSED.

Angelo Martin
P.O. Box 6016
Ketchikan, Alaska 99901
225-6821
Position: Discuss problems with CSED.

Dale Rogers
Ketchikan, Alaska 99901
Position: Discuss problems with CSED.

PREVIOUS ACTION

HB 237:	Jrn-Date	Jrn-Pg		Action
	04/01/87	704	(H)	Read the first time with referral(s)
	04/01/87	704	(H)	HESS, Judiciary, Finance
	04/22/87	1117	(H)	Co-Sponsor removed: Sund
	05/04/87	1117	(H)	HES RPT CS(HESS) new title 7NR
	05/04/87	1117	(H)	Fiscal Note published 5/4/87
	05/04/87	1117	(H)	3 Zero Fiscal Notes published 5/4/87
	05/04/87	1117	(H)	Zero Fiscal Note/ Analysis 5/4/87
	05/04/87	1117	(H)	Referred to Judiciary

Previous Judiciary committee consideration and testimony on HB 237 held on 5/5/87.

HB 229:	Jrn-Date	Jrn-Pg		Action
	03/30/87	674	(H)	Read the first time with referral(s)
	03/30/87	674	(H)	Judiciary then Finance
	03/30/87	688	(H)	Co-Sponsors added: Ellis, Davidson, and Gruenberg
	04/01/87	712	(H)	Co-Sponsor added: Hanley
	04/03/87	733	(H)	Co-Sponsor added: Collins

Previous Judiciary committee consideration and testimony on HB 229 held on 5/5/87.

SB 117:	Jrn-Date	Jrn-Pg		Action
	02/10/87	239	(S)	Read the first time with referral(s)
	02/10/87	239	(S)	Governor's Transmittal letter
	02/10/87	239	(S)	Zero Fiscal Note Published
	02/10/87	239	(S)	Judiciary, Finance
	03/27/87	729	(S)	JUD RPT 4DP
	03/27/87	729	(S)	Letter of Intent with JUD Report
	05/13/87	1369	(S)	FIN RPT 5DP with JUD Letter of Intent
	05/13/87	1397	(S)	Rules to calendar
	05/14/87	1424	(S)	Read the second time
	05/14/87	1424	(S)	Advanced to third reading unan consent
	05/14/87	1424	(S)	Read the third time SB 117
	05/14/87	1425	(S)	(S) Adopted JUD Letter of Intent
	05/14/87	1425	(S)	Passed Y14 N- A6
	05/14/87	1438	(S)	Transmitted to (H)
	05/15/87	1441	(H)	Read the first time with referral(s)
	05/15/87	1441	(H)	Judiciary, Finance

ACTION NARRATIVE

(Note: Two sets of tapes were used to record this meeting. Because of technical difficulties some information was missed on each set of tapes but has been included in this written record. If the tape record is referenced for complete testimony both sets of tapes may be useful.)

TAPE 71, SIDE 1
Number 001

Chairman Sund called the meeting to order at 1:00 p.m. He explained that the meeting was scheduled to begin that morning but was moved to the afternoon because some committee members were unable to get into Ketchikan due to faulty navigational equipment at the airport and would therefore be participating via teleconference. He asked Rep. Ulmer to testify on HB 237.

Number 13

Rep. Ulmer gave a brief description of HB 237 and reviewed statistics regarding increases in child abuse and child sexual assault in Alaska. She said that staff resources are not adequate to effectively protect children. She

reported that child protective services show a 222% increase in the number of reported cases of child abuse from 1978 to 1986 and that national statistics suggest only a small percent of incidents of abuse is reported.

(The remainder of Rep. Ulmer's testimony has been transcribed by request. The first minute or so of Rep. Ulmer's testimony was mistakenly not taped, but is summarized above.)

Number 75

"The other statistic of concern to me is how many child abuse cases which are submitted to the Attorney General's office for prosecution are not prosecuted and I want to share a few of those numbers with you. We get a lot of numbers thrown at us in the context of how many people are serving time in Alaska's correctional institutions because of sexual assault, particularly child sexual assault, and so we tend to think there are lots of people doing time so maybe our system is working and these people are behind bars. But, when you look at the number of cases which are serious enough to be investigated by the Attorney General's office but are never brought to prosecution for a variety of reasons, I think we have to reach the conclusion that there are indeed a lot of people who abuse children that are never being brought to justice. In FY 85 there were 462 cases admitted for prosecution, 40% of which were declined. In FY 86 there were 356 cases submitted for prosecution with 48% of those cases being declined. That, incidentally, compares with approximately 30% decline rate for general felony cases submitted to the criminal division of the Department of Law. As a result of conversations with individuals involved in the prosecution of these cases, there are two principal reasons why many of these cases are never brought to a trial. Number one: the shortage of resources. Number two: recent Court of Appeals rulings in the State of Alaska which significantly reduce the chances of being able to obtain a successful conviction.

The shortage of resources is particularly relevant to child abuse cases because of the additional resources necessary to prepare these cases to go to trial. Child victims, child witnesses, the lack of evidence, the nature of the relationship between the victim and the perpetrators of the violence, are all very difficult to handle in a courtroom situation and in order to have these cases prepared adequately, it requires extra time on the part of prosecutors and the assistants to them to be able to prepare the child victim. When there is a shortage of resources, as there has been because of budget cuts, the first thing that gets reduced in terms of how time is

allocated are these cases that are particularly time intensive. During the last few years, the prosecutors' offices that previously had special witness assistance programs and even special offices where these children could be prepared for the courtroom experience: that's what we have seen get cut out of the budget. So the shortage of resources means they are spending less time to prepare these cases and when you spend less time to prepare them it unfortunately results in fewer of them being prosecuted or appropriately charged.

Number 130

The second reason is the Court of Appeals decisions that have, 1) limited the admissibility of certain types of evidence, 2) imposed caps on the lengths of sentences, and 3) restricted the joinder of cases which should be tried together. All limit the ability of the prosecution to successfully prosecute these cases. I think it's only human nature that the prosecutors tend to put their time into those cases where they think they can get successful prosecutions. That does not necessarily mean that these are unfounded cases or that there shouldn't have been a finding of guilty had these cases gone through the entire process. But they are either getting charge-bargained down (reducing the charge to what they think they might be able to prove) so that somebody actually ends up spending some time in jail (which incidentally is how the Paulo case in Juneau got reduced) or they're simply not bringing them at all. Where they're able to prosecute the cases and obtain a successful conviction, we're finding a rather large number of these convictions being turned back by the Court of Appeals for evidentiary reasons, which brings us to House Bill 237.

House Bill 237 was introduced with an eye toward dealing with those aspects of recent decisions by the judiciary in the State of Alaska which limit the ability of prosecutors to successfully prove these cases and as I believe is outlined on a piece of paper, which either should be in your files from the session or perhaps made available by staff today, there are four issues which are specifically addressed in this bill: 1) changes to evidentiary Rule 404, which makes the offender's prior acts of physical and sexual assault admissible; 2) a change in the definition of the abuse to include "a pattern or practice of abuse," which allows the evidence of a series of assaults against a child to be admitted and brought into one case, one charge, which deals with the joinder issue I mentioned previously. A number of these cases are being required to be severed or brought separately, which limits the ability of the prosecution to show the relationship between the child and the victim and the aggravated nature because of the

compounding nature of multiple abuse. Incidentally, this pattern or practice of abuse is modeled on a recently adopted State of Washington criminal statute on child abuse; 3) a clarification of the use of prior inconsistent statements.

For those of you who are not familiar with this concern, what we're finding is that the Court of Appeals has substituted its judgement for the trial court's decision as to whether or not a prior inconsistent statement by the victim is sufficient (see Brower v. State). This issue is important because of the nature of the relationship between the victim and the abuser. The victim is frequently the child, stepchild, or dependent of the live-in boyfriend; in other words, a person that is frequently in the home and can exercise considerable control over the victim. This frequently results in a recanting of previous testimony or changing his or her story because of pressure which is brought to bear upon the victim to say the abuse never happened. This provision in House Bill 237 at least attempts to deal with that situation by clarifying that it is in the trial court's discretion to determine sufficiency.

Number 213

And finally, 4) the changes to the sentences requiring a higher presumptive sentence for multiple abuse cases. This particular provision of the bill was changed by the HESS Committee as the HESS Committee did not increase the sentences. This is an issue we need to discuss. I would like to briefly explain why I believe higher sentences are appropriate. When you have a relationship occurring over a number of months, years, indeed the lifetime of a child, then there's social justification from the standpoint of public policy and the standpoint of the negative emotional and physical impact upon the child, that this kind of conduct receives a more serious penalty, a higher sentence. This doesn't argue the question of whether presumptive sentencing is correct or not, it assumes that is the system the State of Alaska has and it doesn't try to change that. My original bill would have had a higher sentence for this offense (13 years). There may be other ways of dealing with that if you don't like presumptive sentencing, perhaps additional aggravators that should be put into the sentence, but something to make certain that the person that repeatedly abuses a child, either physical abuse or sexual assault, receives a higher sentence.

I probably have talked longer than I should have, sorry John. That's a brief overview and I would be happy to go back after the testimony that we receive and deal with these issues more completely."

Number 232

Chairman Sund asked if Dana Fabe, of the Public Defender's Office, was available to testify. It was clarified by committee staff that she was originally available during the morning, but had another commitment for the afternoon; however, she would be available to testify at a future date.

Number 270

Floyd Richmond, Executive Director of Women In Safe Homes (W.I.S.H.), testified in support of HB 237 and HB 229 and presented informational packets to the committee including his written testimony. He clarified that child abuse and sexual assault is of a complex nature and a difficult social problem and that HB 237 and HB 229 deals with only one important facet. He hoped the committee would maintain that focus and not let other issues influence their consideration of the legislation, such as false allegations which lead to dismissal of cases of alleged child abuse. It is an important matter, but another issue. He felt that false allegations have little to do with this legislation. It's important to clean up our act on reported abuse, investigation of abuse, and the system charged with that responsibility, but that is not what the bills speak to. The issue boils down to whether children need special attention and protection, if so, then the Rules of Evidence have to be changed to convict an offender of repeated child abuse. The goal should be to protect children who are victims now and future victims, not to continue to protect an individual who has no control over their behavior and there are very limited ways to help them gain control. In 1986, there were between 1,200 to 5,000 deaths resulting from child abuse, depending on the source of reporting. Many of the children were victims of repeated abuse and the average age was 2.6 years.

He verified the accuracy of statistics referred to by Rep. Ulmer. He said experts in the field of sexual offenders never use the word "cure", but talk of some offenders getting control or a reduction in the offenses committed. A study on non-incarcerated sex offenders showed 411 individuals, of which 44% were incest offenders and offended outside the home, 50% were multiple deviants, and 232 of the molesters were responsible for 17,000 victim assaults. A study at the Oregon State Hospital showed 53 incarcerated offenders committed 25,000 sexual crimes. He pointed out that children continue to trust adults even after they've been victimized.

Number 345

Mr. Richmond continued by saying that legislation was

needed to hold adults responsible for their actions. He did not advocate punishment as a deterrent. The rights of offenders who repeatedly offend against a child's rights are a secondary issue. Society, children in particular, must be protected from these individuals. The system presently recognizes the rights of the offender over the rights of the victim. He noted that pedophiles are victimizing younger children because such cases are harder to prosecute. He felt that this legislation will help break the cycle of abuse.

Number 385

Chairman Sund asked what Mr. Richmond's observation was of repeat offenders in Alaska. Mr. Richmond replied that there were no statistics available to him, but the pattern in general is usually very repetitive. He discussed behavior modification as being the only somewhat successful treatment.

Rep. Barnes asked for his comments on the incest situation whereby the offender is removed from the family home. Mr. Richmond replied that there was not much of a family if a man is molesting his children. He needs treatment and incarceration and the whole family needs treatment. Kids especially need to be told that they have been mistreated. Usually when the man remains in the home treatment doesn't occur. If families can change and be reunited after incarceration and treatment, a special system can be developed after; but there is still a great risk, particularly with incest offenders.

Number 437

Rep. Ulmer pointed out Mr. Richmond's comments about the repetitive cycle of abuse and sexual assault. She related the early experiences of child victims to increases of teenage suicide and drug abuse because of the emotional damage it causes. In other words, "as the twig is bent, so grows the tree," and early intervention and treatment is one of the most effective ways society can deal with teenage problems.

Mr. Richmond mentioned a forthcoming study of women diagnosed with manic-depressive problems in the 20-40 year old age bracket in which a high percentage had severe sexual abuse in their background. Once that is brought to the fore and they begin to heal that part of their personality, the manic-depressive diagnosis is lost.

Chairman Sund directed this question to both Rep. Ulmer and Mr. Richmond. What does the state have to offer to families to sustain them economically when the father is in

jail. Rep. Ulmer replied that most are not healthy family units, other economic realities have probably come to bear, and the modern Alaska family woman is usually already working; but there were not statistics available to specifically answer the question. She said the departure of the man will impact the family economically, but not as with the weight of continued physical and emotional abuse. Mr. Richmond replied that W.I.S.H. and a number of other groups across the state have survivor groups available for incest victims; so they provide some services, although not enough. Needed is self-help and support groups to help victims heal, along with child care and child care assistance and further education in schools.

Number 510

Chairman Sund noted that victims may tolerate abuse because the economic choice seems to be overwhelming. State programs need to be available to support a victims' decisions to get out of abusive situations. Mr. Richmond didn't feel the conscious reason for women is economic but rather that shame and guilt are bigger factors. If society says in a big voice that child abuse and sexual assault are intolerable, it makes it easier for women to come forward.

Rep. Ulmer noted that California and Oregon have work programs for guilty offenders in prison where the money they earn goes to their victims for counseling costs.

Chairman Sund announced that Rep. Taylor has a court appointment related to his law practice and will miss a portion of the meeting.

Number 554

Patricia Francis testified in support of HB 237 and HB 229 representing victims and survivors of abuse. She was physically and sexually abused from age 4 to 16 and described her experience of terror, shame, guilt, mistrust, nightmares and death wishes. She felt that victims share a lifelong sentence of emotional holocaust caused by such crimes, if they survive. Passage of such legislation will vindicate the victims of these unspeakable crimes.

Rep. Barnes commented that she was touched by the testimony and says it speaks to the reason why incest fathers should not remain in the home.

Chairman Sund requested a copy of Ms. Francis' written testimony to include in the committee files.

Number 593

Constance Griffith, of the League of Women Voters of

Alaska, supported HB 237 and HB 229 and read written testimony of the League's position on domestic violence. They define it as physical harm or the threat of it among household or family members, including abuse, neglect and sexual assault. All individuals have the right to be safe from physical abuse in their own homes and the right to live in a fear-free environment. Special protection is needed for vulnerable or dependent people regardless of age or geographic location (speaking of the villages in Alaska which often don't receive needed attention). She discussed intervention, coordinated response and special training of agencies, as well as the preference for removing the perpetrator rather than the victim from the home. Special attention should be given to adolescents and people in rural areas as they have been inadequately served in the past. She discussed a special fund into which perpetrators should pay and public services that should be available in the state.

Ms. Griffith continued with discussion about high school education for teenagers and single parents. A copy of the League's position paper was made available to the committee file.

Number 650

Virginia Peltier testified next in support of HB 237 and HB 229. She commented on Patricia Francis' testimony and verified that her's was a life of triumph in that she survived such a debilitating childhood and that it hinged on the fact that the court said that her father was wrong, not her. It was a turning point in her life whereby she was able to reconstruct her life in a positive manner and is living productively now. Ms. Peltier discussed a recent U.S. Customs seizure of child pornography material from a cruise ship employee who was an admitted homosexual in which nothing could be done to the man and he is free to continue to work on the cruise ships.

TAPE 71, SIDE 2
Number 001

Susan Pickrell spoke in favor of HB 237 and HB 229. She has worked for the Ketchikan Police Department for six years and addressed questions regarding repeat offenders. There is not enough data on offenders and recidivism in Alaska and there are inadequate facilities and programs in state. Relative to Ketchikan cases, there are not many convictions and of the cases that are presented there is only one District Attorney to handle all misdemeanors and felonies. She discussed what happens when the child victim is removed from the home rather than the offender. She read from written testimony, a copy of which was provided

to the committee. She discussed agency protocol in dealing with child abuse and sexual assault cases and provided a copy of the protocol agreement among Ketchikan agencies. She also discussed statistics and particular cases where prosecution was not sought because of the difficulty of proving cases under current law. Victims should receive special protection by virtue of their status as children and that of obeying adults and these crimes should receive special recognition. New legislation is needed to underscore the non-acceptability of child abuse and its dynamics which manifest in life threatening patterns and serious physical and psychological damage to the victims.

Number 100

Chairman Sund noted that a copy of testimony by Dana Fabe, Public Defender, had been made available to the committee and is on file.

Rep. Bill Hudson testified next on HB 229, which he sponsored. He gave the reasons for introduction of the bill bringing up a recent Juneau case involving the death of a child which was charge-bargained down and given a lenient sentence. The bill speaks to heinous crimes which are growing in Alaska and nationwide. Statutes don't provide an adequate mechanism for dealing with these types of crimes. HB 229 creates a new crime, "homicide by abuse," by establishing a pattern or practice of assault or abuse which leads to the death of a child under the age of 16 as first degree murder. It also addresses the question of charge-bargaining. It is modeled after State of Washington legislation, although theirs includes dependent adults in the same category as children. He felt the state needs to provide strong penalties for such crimes against children.

Number 200

Jim Ayers, of KIDPAC, testified in support of HB 237 and HB 229. He reiterated previous testimony as to the repetitive cycle and increasing spiral of abused becoming abusers. He felt legislation was only part of a comprehensive approach, which he proceeded to outline in eight points: 1) more child awareness is needed; how children can get help, such as an emergency hot line, a place where they can escape without consequences; 2) family awareness and training services; 3) community support in services and counseling; 4) victim services for children; noting that programs have been reduced the last two fiscal years; 5) judiciary action such as this legislation, although it is not enough without the other guidelines; 6) rehabilitation services for perpetrators; 7) education and information available for kids, including the cycle of abuse; and 8) additional

training for police, teachers, and others involved in the issue of child abuse. Legislation needs to be addressed as a critical element of the total package to bring child abuse under control in the state.

Number 280

Rep. Barnes commented that the state does have some facilities available and they may need to be publicized better, referring to the mental health facilities. She also suggested a statewide crisis line be available.

Chairman Sund asked Rep. Ulmer if the Interim Children's Commission was putting together a compendium of statewide services available to children and families. Rep. Ulmer replied that there was no comprehensive package available and that the Commission's work has been multidimensional, not just focused on abuse issues, but they will be making recommendations. Many existing programs are budget items and need improvement, extra resources and coordination.

Number 344

Rep. Ulmer proceeded to discuss HB 237 by section, giving a brief analysis of what each section does.

Section 1 redefines second degree murder and amends existing statutes in two ways. It changes language in Subsection 2 to "knowingly engages in conduct" to clarify what is already in law by making the statute in conformance to judicial decision. The change has received no objection. Regarding Subsection 4 - the pattern or practice language - Dana Fabe advised that it needs to relate to physical abuse. It deals with the heart of the Covington case regarding the pattern or practice. Rep. Ulmer discussed the Covington case, in that the victim couldn't describe the exact instances or specific dates of abuse, so the conviction was overturned.

Number 422

Chairman Sund asked about page 2, lines 2 & 3, regarding the change to "results in" from "directly causes." Rep. Ulmer replied that it was suggested by Dana Fabe and it is the consensus of use in the Alaska Criminal Code. Chairman Sund asked if the bill addressed whether a jury had to be unanimous about the establishment of pattern or practice. Rep. Ulmer responded that it is a question of what the unanimity of jury constitutional requirements really means to a particular criminal offense. For example, is the charge a specific incident of sexual intercourse or the sexual abuse which may involve intercourse on a number of occasions. RICO statutes have a similar charge of several

incidents becoming the criminal offense itself. She believed it was not an issue that would be resolved through the legislation, but litigated and decided by the Supreme Court. Chairman Sund preferred working on it further instead of having the Supreme Court write this law.

Rep. Ulmer discussed Section 2, which defines the terms "abuse or gross neglect." Chairman Sund asked about proposals by Dana Fabe concerning the definitions of assault and physical abuse. Rep. Ulmer discussed the language regarding the particular definitions. Language was offered in the HESS subcommittee by the Department of Health and Social Services, which was adopted. Further refinement of the definitions have been suggested.

Number 520

Chairman Sund announced that a flight reached Ketchikan and Rep. Navarre had just arrived at the meeting.

Rep. Ulmer discussed Section 3, which makes the same language change as in Section 1 of "knowingly engages in conduct" and uses the pattern or practice language. Section 4 is the definition which was discussed in Section 2. Sections 5 and 6 deal with repeated sexual abuse of a minor where they can be brought together as one charge, dealing with the joinder problem and the Covington case issue. Further discussion included the presumptive sentence increase for the repeated offender. She then discussed the evidentiary issue amending Rule 404 as well as Section 11 regarding the Brower vs. State issue (a response to a Court of Appeals case regarding conviction when the testimony of a victim is recanted, as often results from pressure by the perpetrator on the victim to change their testimony). If the lower court (as the trier of fact) determines enough voracity to the testimony, it should be sufficient to convict. Basically it says it should be the decision of the trier of fact which determines the relevancy of the testimony rather than leaving it to the Court of Appeals to determine or substitute its judgment. She pointed out that a recent decision brought to her attention by Dana Fabe is that the Court of Appeals seems not to be following the Brower decision any longer and that it didn't apply, thereby making this section unnecessary.

Chairman Sund pointed out that Section 11, regarding "prior inconsistent statements" had been removed by the HESS committee. Rep. Ulmer referenced Bodine vs. State, in which a child changed her testimony, but the Court of Appeals concluded it was still sufficient to hold up the conviction.

Number 703

Rep. Ulmer continued her analysis, stating that the change to Rule 404 is extremely important to the bill. It has been judicially altered by the Court of Appeals by increasing restriction of admissibility of the defendant's disposition to commit the offense and the uniqueness of the particular offense and relationship between the offender and victim. It is important to show the offender is predisposed to sexual relations with children or is abusive. It is the prevailing evidentiary rule in other states and federal court, but it's no longer true in Alaska and it greatly limits the ability of the prosecution to prove that the individual is guilty.

TAPE 72, SIDE 1
Number 175

(Note: Two tapes were used to record this meeting. Because testimony was missing on one tape, the second set of tapes is used here. There is an overlap of Rep. Ulmer's testimony on the beginning of this side which explains why the tape counter number begins at 175.)

Rep. Ulmer felt it would be useful to discover how many convictions were reversed by the Court of Appeals because of Rule 404 and how many Courts of Appeals have reduced sentences in the past few years, and perhaps the committee would request an analysis. Chairman Sund replied that House Research or Legal Services could research the request. He asked if the purpose of the legislation was to make a narrow exception to Rule 404. Rep. Ulmer replied that it was narrowly drafted, in that it was restricted to physical and sexual assaults. She noted that justification for the change can be found in other jurisdictions. She referenced a February 11, 1987, submittal by Rick Svobodny regarding stricter interpretation of Rule 404 in abuse cases by the Court of Appeals over other types of cases.

Number 245

Chairman Sund commented that it requires 27 votes to amend a court rule. He announced that the committee would take a short break and reconvene at 3:00 p.m to take testimony on child support enforcement.

Chairman Sund reconvened the meeting at 3:00 p.m.

Number 275

Holly Ploog, Director of the Child Support Enforcement Division (CSED) within the Department of Revenue, described the responsibilities of the division and it's function in

relation to President Reagan's 1984 amendments to federal law regarding child support enforcement. She gave some statistics about the poverty level of children in households and costs of public assistance. She stated that there is much national activity regarding child support enforcement. The division is largely funded by the Federal Government and they are therefore bound by federal regulations and directives in many areas. All states have mandatory guidelines adopted by the federal court system which judges must follow and it will increase the amount of child support being ordered. Alaska is above the national average in collection of welfare and non-welfare child support cases. The caseload has increased 68% in the last two years, whereas the staff positions have not increased at all. There are 23,290 cases presently with 59 staff to handle that volume. The new law (1984) has put some teeth into their ability to collect support and collections have increased as a result.

Ms. Ploog stated that the CSED is currently under a federal sanction in the area of paternity establishment because they were found to be out of compliance in FY 85. The CSED has put together a corrective action plan to be reviewed by auditors in FY 89 and may face a penalty which could equal 5% of the AFDC federal money received by the state if not in compliance. Ms. Ploog provided copies of statistics to the committee. She noted that the last annual Ombudsman's report indicated that the CSED was the most increased effective state program for that year.

Number 375

Rep. Navarre asked if there had been a study of other states for increased effectiveness in Alaska and what the legislature can do to accomplish that. Ms. Ploog replied there had and that Alaska is involved in a five state clearinghouse project to investigate interstate caseload expediency. Interstate cases have increased because of people leaving the state recently. The CSED hopes to increase automation to provide clerical savings and they have had to shut down their telephones from 1:00 to 4:30 p.m. each day to work on cases.

Number 409

Rep. Taylor asked for a statistical breakdown of Alaska parents with out-of-state kids, including percentages of regularly paid child support compared to those who are one or two months late occasionally and those who are deadbeats. He wanted to know if there is a better return out of Alaska parents or payers from other states. Ms. Ploog replied that Alaskans do a better job. She discussed the incentive structure with the Federal Government since

the 1984 amendments. 40% of CSED caseload is interstate and there are 5,000 cases of out-of-state fathers with children in Alaska.

Number 461

Rep. Taylor asked if the state collects its welfare money first, then the arrearage owed in child support to the custodial parent gets paid after that: first the state, then the custodial parent. Ms. Ploog replied in the affirmative and clarified that first, ongoing support is paid, then arrearage owed to the state, and third is arrearage owed to the custodial parent.

Rep. Taylor asked if it was true that the state doesn't help collect arrearages after the child is 18 years old. Ms. Ploog replied that was incorrect. CSED just won't take a new arrearage case if the child is already 18.

Number 508

Nicki Stillman testified next. She supported a child support enforcement system for unpaying fathers and was sympathetic to the caseload. She discussed her and her husband's situation with the CSED and indicated that it resulted in much wasted time. They had been current in payments, the custodial parent signed a statement of arrearage and the CSED did not request any verification of arrearage but assumed the arrearage was true, and that the father was wrong. There is no assumption that the custodial parent is wrong. She suggested using payment booklets or notices to the state for payment by the custodial parent, or having the non-custodial parent make payments directly through the state instead of directly to the custodial parent. She also suggested that child support bookkeeping information could be provided for custodial parents to help keep records straight.

Number 575

Colleen Scanlon, Administrator of the Ketchikan Daycare Assistance Program, testified in support of SB 117 and any other legislation that will help stiffen the child support laws in Alaska. She sees on a daily basis many single parents who don't receive child support payments as they should. She noted that monthly child care costs alone can cost more than support payments. There is a need for more personnel in the CSED. She supported child support enforcement laws that conform with other states.

Number 601

Sandra Armstrong, a former Oregon legislator and sponsor of

child support legislation, testified next regarding the CSED. She felt that the CSED disobeys laws which govern them and has poor record keeping. She felt it was fruitless to obtain administrative remedies to their grievances. She discussed her husband's cases and several problematic issues surrounding them in detail.

TAPE 72, SIDE 2
Number 001

Ms. Armstrong continued her testimony. She provided many documents to Chairman Sund regarding their personal case and discussed the problems they and others have encountered with CSED. Problems include the following: bookkeeping practices, notice of wage garnishment by certified mail, interest on arrearages, notification of credit reporting, 100% garnishment of wages, percentage of garnishment of unemployment compensation, payment delinquency caused by employer sending garnishment late, arbitrary increase of payments, and double collection of money owed.

Number 250

She had a list of recommendations and suggestions which follows: a random audit of child support cases to verify magnitude of accounting errors; certified mail notification of liability and demand for payment; a late payment or interest charge to employers who send in garnished wages; adjustment of unemployment compensation garnishment to 25%; no wage withholding if current in monthly payments; the CSED to provide clear information and definition of federal law; a position of Obligor Complaint Officer be established at the CSED for one year; the ability to negotiate hardship cases; have the CSED forward to the Attorney General's office complaints received about welfare fraud; rewrite of the consumer credit notice; prohibition of 100% garnishment of sole income or contract proceeds; upgrade qualification and pay of caseworkers; and a consumer complaint/public relations training and workshop for caseworkers. Ms. Armstrong also requested that a portion of the next House Judiciary Committee meeting be open for complaints about CSED.

Number 431

Rep. Navarre asked Ms. Ploog how complaints such as those described by Ms. Armstrong were handled by the CSED currently. Ms. Ploog replied that Ms. Armstrong had not personally presented her case to her, but it had been before CSED caseworkers. In general, complaints usually come to her attention through the Commissioner's office, the Ombudsman, or the Attorney General's office and she is the final determinant of policy. She noted that the

Ombudsman has reported that the CSED is efficient in correcting errors when they are brought to their attention.

Chairman Sund noted that there were many others present to testify on child support enforcement and he would be willing to carry over testimony tomorrow. He asked Ms. Ploog to withhold responding to the testimony until it is complete, at which time issues and complaints could be addressed at once.

Number 482

Dennis McCarty, a practicing Ketchikan attorney for 13 years, testified about CSED. He has observed problems with the CSED and discussed particular case histories. Concerns include interstate jurisdiction, interest payments, children not living with the custodial parent, garnishment of wages when the obligor is willing to pay or payment is current, accounting problems, balloon payments with no credit given, cost of living adjustments, split families, problems with visitation, travel costs, use of fixed formulas for irregular income and the guidelines used by the CSED, and transfer of property in lieu of child support.

TAPE 73, SIDE 1
Number 001

Mr. McCarty concluded his testimony by discussing self-employed obligors and the need for specific guidelines and definitions within the CSED.

Number 33

Rep. Taylor clarified that the formula referred to by Mr. McCarty is Supreme Court rule, there was no state legislation concerning what the guidelines should be.

Number 61

Rob Armstrong, of Wrangell, testified about discrimination against divorced, non-custodial fathers who make payments but have no say in their children's upbringing or visitation rights. He related his personal case. He stated that in Michigan, to deny visitation rights constitutes a felony. He discussed an organization which he heads, called Dads Against Discrimination, to advocate for fathers' rights. He discussed complaints about too many caseworkers experienced by many obligors, problems getting through on the toll-free phone number and the telephone hours.

Number 217

Terry Angerman, of Wrangell, testified about her husband's case. When his child support was beyond his means and before they were married, her income was taken into consideration. She discussed her personal case concerning collection between Alaska and Washington, the confusion of paperwork and accounting of payments. They requested an audit of payments to Washington through Alaska, but felt no help was gained and that the CSED needed improvements to its system.

Helena Dunn, of Ketchikan, testified about her husband's case, discussing problems with CSED bookkeeping, garnishment of bank accounts and credit bureau reporting.

Number 370

Carl Campbell, of Wrangell, testified about problems experienced regarding different caseworkers assigned and bad attitudes, as well as garnishment of bank accounts with no notification. He suggested visitation credit be given as well as a written accounting of child support expenditures by the custodial parent.

Number 419

Shawn Mock, of Ketchikan, testified about his experiences with the CSED. He makes regular child support payments, yet his wife does not receive child support from her previous spouse, who moved to Hawaii. He stated an obligor can beat the system through under-the-table employment payments and hidden and liquidated assets. He felt the CSED needed more support people, laws need to be more specific, stiffer and enforceable, arrearages should go to the children first and then the state, a watchdog committee be established to monitor complaints and problems with the CSED, and law should require the CSED to maintain current employment records and accurate addresses of both obligor and obligee.

Number 497

Jerry Buethe, of Wrangell, gave testimony on his personal case. He had complaints about getting a phone call through to the CSED, being assigned different caseworkers and the CSED acceptance of custodial and child support agreements between between obligors and obligees.

Number 570

Angelo Martin, of Ketchikan, testified about problems with the CSED's computer accounting system. He pays ahead and

is accused of being in arrears. He felt the system needs more care taken in cases and there are problems dealing with multiple caseworkers on one case.

Number 616

Dale Rogers, of Ketchikan, testified about problems he experienced with the CSED accounting section, the toll-free telephone, phone handling and personnel.

TAPE 73, SIDE 2
Number 001

Mr. Rogers summarized his testimony. Chairman Sund asked if Ms. Ploog could participate in the meeting tomorrow morning to address the concerns and issues raised. Ms. Ploog indicated she could be available via teleconference from Anchorage. Chairman Sund announced tomorrow's meeting would begin at 8:45 a.m. He adjourned the meeting at 5:00 p.m.

HOUSE JUDICIARY COMMITTEE
May 5, 1987
1:30 p.m.

MEMBERS PRESENT

Representative John Sund
Representative Fran Ulmer
Representative Sam Cotten
Representative Max Gruenberg
Representative Mike Navarre
Representative Robin Taylor
Representative Ramona Barnes

COMMITTEE CALENDAR

HB 229 An Act relating to homicide by abuse.

HB 237 An Act relating to murder, assault, and physical and sexual abuse of children; the admissibility of certain evidence in criminal prosecutions; amending Rule 404 of the Alaska Rules of Evidence; and providing for an effective date.

WITNESS REGISTER

Representative Bill Hudson
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811
Position: Sponsor of HB 229

Representative Fran Ulmer
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811
Position: Sponsor of HB 237

Representative Virginia Collins
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811
Position: Opposes HB 229 and HB 237

Frank Feichtinger
Anchorage Police Department
4501 S. Bragaw
Anchorage, Alaska
Phone: 786-8900
Position: Supports HB 229 and HB 237

Tim Bean
Society to Prevent Exploitation of Children
P.O. Box 3027
Homer, Alaska
Phone: 235-8720
Position: Supports HB 229 and HB 237

Amelia Endorf
P.O. Box 34485
Juneau, Alaska
Phone: 789-1334
Position: Supports HB 229 and HB 237.

Harriet Beleal
Cook Inlet Native Association
2705 Klamath
Anchorage, Alaska
Phone: 243-5830
Position: Supports HB 229 and HB 237

Margot Dick
Alaska Network on Domestic Violence and Sexual Assault
130 Seward Street Room 301
Juneau, Alaska 99801
Phone: 586-3650
Position: Supports HB 229 and HB 237

Janice Leinhart
Victims for Justice
3100 Mt. View Drive
Anchorage, Alaska 99501
Position: Supports HB 229 and HB 237

Marge Hall
Alaska Juvenile Crime Commission
13330 Cove Circle
Anchorage, Alaska
Phone: 279-7401
Position: Supports HB 229 and HB 237

Margaret Howerter
Justice for Children
P.O. Box 33192
Juneau, Alaska 99803
Phone: 780-4767
Position: Supports HB 229 and HB 237

PREVIOUS ACTION

HB 229	DATE		PAGE	ACTION
	03/30/87	(H)	674	Read the first time - referrals Judiciary, Finance
			688	Cosponsor added: Ellis, Davidson Cosponsor added: Gruenberg
	04/01/87	(H)	712	Cosponsor added: Hanley
	04/03/87		733	Cosponsor added: Collins

Committee Action: HB 229 first heard before Judiciary on 5/5/87.

HB 237				
	04/01/87	(H)	704	Read the first time - referrals
			704	HESS, Judiciary, Finance
	04/22/87		937	Cosponsor removed: Sund
	05/04/87		1117	HESS Rpt CS(HESS) New title 7NR Fiscal note published 3 Zero fiscal notes published Zero fiscal note/analysis Referred to Judiciary

Committee Action: HB 237 first heard before Judiciary on 5/5/87.

ACTION NARRATIVE

TAPE 60 SIDE 1
#HB 229
#HB 237
HJUD, 5/5/87
Number 000

Chairman Sund called the meeting to order at 1:35 p.m. He announced that testimony on HB 229 and HB 237 would be taken first and questions would be held to a minimum. He invited Representative Hudson to address the committee.

Representative Cotten arrived at 1:38 p.m.

Number 035

Representative Bill Hudson, sponsor of HB 229, discussed the bill. He explained that Section 1 provides specific language relating to a pattern of assault or torture of a child under sixteen years that leads to the death of the child. The crime would be homicide by abuse. Section 2 provides for a classification of that crime as first class murder with a prison term of 20 to 99 years. HB 229 was modeled after similar legislation in Washington which was recently signed into law. Their legislation included elderly dependents and developmentally disabled individuals. The purpose of HB 229 is to ensure that those who cause the death of a child after a practice of assault or torture serve an appropriate sentence. Defendants often serve five years, as occurred in a recent Juneau case and which created a public outcry. He added

that HB 229 is complimentary to HB 237, sponsored by Representative Ulmer and he is a co-sponsor on that bill. He stated that several individuals from the Victims' Fly-In were present to testify as well as Detective Frank Feichtinger, of the Anchorage Police Department, who is a nationally recognized expert on children abuse cases.

Representative Navarre arrived at 1:43 p.m.

Number 161

Chairman Sund asked that the committee withhold questions to allow time to take testimony on both bills. He asked Representative Ulmer to address the committee on HB 237.

Number 183

Representative Fran Ulmer gave an overview of HB 237. She stated that it is an effort, along with HB 229, to deal with a child abuse epidemic in Alaska, and that it is a complicated problem requiring several different solutions. HB 237 deals with the way criminal conduct is defined regarding child abuse. It also deals with the Rules of Evidence and the procedural way in which a case can be proved. She introduced HB 237 because she was convinced that recent Court of Appeals decisions in Alaska have limited the ability to effectively prosecute child abuse cases.

Number 220

Representative Virginia Collins, testified that she had mixed feelings about both bills. She has worked over the last two years on child abuse issues and it is a complicated matter. She intended to introduce similar bills but held back because of the importance of having a broad view of the problems. She noted the governor has initiated a children's task force. She hoped that the legislation would not pass this session but be considered by the governor's task force for comprehensive legislation. She cautioned the committee as it is a complex issue.

Number 265

Frank Feichtinger, Investigator at the Anchorage Police Department assigned to the exploited child unit, testified in support of HB 229 and HB 237. He commented that in past years the legislature attached stiff penalties such as presumptive and consecutive sentencing, which have since been watered down by Court of Appeals decisions. Many of these crimes are repeated often and perhaps the only solution is long-term incarceration where they do not have to access to children. He had two specific concerns. One was that the age in both bills refers to children under sixteen. First degree sexual abuse of a minor currently on the books and in the criminal code deals with minors entrusted to the care of an individual and covers minors under eighteen. He feels that the proposed legislation should be the same. He referred to foster

care and group home situations which deal with minors under the age of eighteen. Legislation should reflect that, as those children are generally more vulnerable to the persons whose care they are in than persons outside of the family. Children under eighteen can be victimized as easily as those under sixteen, and he has seen that happen repeatedly. In physical and sexual abuse legislation, it is necessary to acknowledge the difference between a one-time offender and a repetitive offender. Studies have shown there are different types. Repeat offenders are the most damaging, and legislation should address that. He also had a concern that the proposed bills attach repetitive abuse only in cases where the minor is entrusted to the care of another individual. He has investigated many cases where the victimized minors were not in the care of the perpetrator yet the offenses were repetitive, not only with single victims, but in cases with multiple victims. He does not distinguish between a child who has been abused by a family member versus a nonfamily member as effects on the child are the same. Legislation that addresses one portion of that should address both portions as well.

It has been difficult in Alaska and elsewhere to address repetitive offenders and do something about them. To his knowledge, no effective treatment has been developed to cure them, they will continue to reoffend in most cases once released from prison or a treatment program. The best thing to do with the current state of knowledge is to provide harsh consequences for repeat offenders. HB 229 is a needed statute as it is difficult for police to prove the degree of intent involved in the death of a child, although it is often clear that repetitive physical abuse is not an unintentional act. This is often the reason that only a five year conviction can be obtained for the death of a child.

Number 403

Representative Barnes discussed second thoughts she had about presumptive sentencing based on complaints against parents and others which have been proven to be untrue. She asked about people having to prove themselves innocent with a great amount of funds extended, and how the state would compensate them.

Mr. Feichtinger replied that he believed he had never charged a person with a crime they did not commit. He hoped that other police, prosecutors and courts would use the same standards of proof as for other types of cases before charges are made. In his department, particular care is taken in child abuse and sexual abuse cases to determine if there is adequate probable cause before the accused is charged. As with any other crime, there is the possibility for false accusation, but if an investigation is conducted propertly, a case won't be presented to the district attorney's office unless there is sufficient corroborative evidence that the person did commit the offense they are charged with.

Representative Barnes asked how long cases are generally investigated before charges are made. Mr. Feichtinger replied there are many variables, but some investigations have gone over a

year, others have only take a few days and it is rare that it takes less than that.

Number 459

Representative Cotten asked Representative Barnes is she knew of lots of people that were falsely charged. Representative Barnes replied that was correct.

Representative Taylor responded that there are rarely false charges through the district attorney's or prosecutor's office, but through Health and Social Services reports which are made that are never prosecuted.

Representative Barnes stated she knew of a family that was brought into the court system and it cost them every dime they had to prove their innocence. She was concerned about this and wanted to look at the whole broad area.

Chairman Sund stated that the children's task force needs to look at the dual criteria faced by social workers regarding the best interests of the child versus keeping the family together. He asked Mr. Feichtinger if he knew of scientific studies regarding the incurability of repeat offenders.

Number 512

Mr. Feichtinger replied he had some which he brought with him. He said it was necessary to distinguish between the two types of offenders, the situational and the preferential. He described the situational offender as one motivated to commit the offense as a result of other stresses occurring in their lives and the availability of a child at the same time, and this type is generally treatable with some success achieved in Alaska and elsewhere. The preferential offender is one whose sexual fantasies and desires center entirely on children and to date there has been no effective treatment anywhere in the state or country. Comprehensive national studies of convicted offenders show that most of them are reoffending, and sometimes while in outpatient treatment. Those are the types that are being addressed by proposed legislation dealing with repeated sexual abuse as opposed to isolated incidents.

He addressed Representative Barnes' concerns about falsely accused people by stating that it is necessary to distinguish between what happens with the Division of Family and Youth Services (DFYS) and with criminal law. Any offense reported to DFYS involving allegations of sexual abuse is reported to the police at which point a criminal investigation is begun separate from the DFYS investigation. Many cases reported by DFYS or other social agencies result in no criminal prosecution or charges filed because they are not able to establish enough probable cause under criminal law to substantiate the charge.

Number 565

Representative Taylor asked Mr. Feichtinger if he that felt plea bargaining should be available as a sentencing alternative in these situations, particularly with homicide. Mr. Feichtinger replied that it was a difficult question. In some cases, plea bargaining was appropriate, in others it was unacceptable. He has been pleased by the district attorney's office in regard to which cases to pursue a plea bargaining arrangement. He said there is no hard and fast rule which could be applied.

Representative Sund commented that the eight-year presumptive has taken the sentencing out of the court and into the D.A.'s office and the police department by charge bargaining and plea bargaining. Once it gets into the court and there is a conviction, the judge has no choice, so all the discretion is out of the judicial system and into the prosecutor's office. He asked if Mr. Feichtinger felt that was the best place for it to be.

Mr. Feichtinger said it was in these kinds of offenses.

Representative Ulmer added that the difference between charge bargaining and plea bargaining is important to consider. It is not because prosecutors are choosing a lesser charge because they feel the defendant should spend less time in jail, but because they don't feel that with the evidentiary restrictions they could prove the more serious charge. That is what was involved in the Juneau case. The evidentiary restrictions made it too difficult to get the relevant evidence that would have proved a more serious charge.

Number 610

Tim Bean, of the Homer Society to Prevent Exploitation of Children (SPEC), testified in support of HB 237. They feel the law should be subserviant to justice, not the reverse, and are concerned about the lack of justice on the part of victims, especially children. Statistics from the National Department of Justice show that over 90% of known child sexual abuse cases do not go forward for prosecution. He stated there were 38 DFYS cases reported in Homer last year, 17 of which were substantiated and only two went forward for prosecution. The average sexual abuser can molest up to eighty victims. SPEC supports making it possible to increase evidence to be entered into the courts which will hopefully result in a greater number of prosecutions.

Mr. Bean addressed the Public Defender's remarks to Section 6 regarding unconstitutionality. He believed that the jury still needs a unanimous decision that the act occurred at least three times, and in fact it may have occurred hundreds of times. The issue is not the jury agreeing to exactly which three acts, it is that they agree that three acts took place. He said the trier of

facts should be allowed to hear all the evidence and make a decision. He also referred to the Covington versus State case regarding inability of young children to differentiate times, days and dates specifically.

He added that there is a difference between incest and other offences to the victim in that statistics have shown incest is more devastating to the victim. He discussed his experience as a nurse working in emergency rooms and pediatric wards regarding suicide attempts, drug overdoses, and teen runaways.

Mr. Bean said the Public Defender cited full prisons as evidence to the fact of successful prosecutions of such offenses. He felt that it was not a reasonable way to document the effective prosecution of sexual offenses against children. In this system, children are treated with mistrust and expected to perform as adults. Homer statistics are worse than the national average in lack of prosecution and frequency of abuse. He believed the two were undeniable linked and needed to be looked at. He added that SPEC also supports HB 229.

Number 760

Amelia Endorf, testified in support of HB 229. She said parents' rights versus rights of a child in the home is difficult because of the question of where to draw the line. Regarding HB 229, there is a body of a child. If a parent or babysitter has lost so much control that they can kill a child, society has to be given the message that that is unacceptable. Children are special and they are not political footballs, they are human beings with rights. The right to live has been held by this country as a basic constitutional right. If a child is killed by abuse, the person should pay for it just the same if an adult had been killed by a gun. HB 229 makes a statement that society does not condone abuse. There is no gray line when there is the dead body of a child.

Number 809

Harriet Beleal, vice president of Cook Inlet Native Association, testified in support of HB 229 and HB 237. She stated that some native are not vocal and will not put their private life on the line and make it public. She stated her retarded daughter was kidnapped in 1982 and the police did not bring the man in when charges were filed. She questioned the leniency and lethargy of the justice system and public servants in protecting children. She referred also to sexual abuse of her four year old granddaughter. She expressed disappointment with agencies and their enforcement response.

TAPE 60 SIDE 2
Number 000

Ms. Beleal continued by stating that too many criminals were running loose and those incarcerated were given undue special

treatment. Children must be believed when they tell about what is happening to them. She discussed budget problems and encouraged keeping social services a priority.

Number 102

Margot Dick, of the Council on Domestic Violence and Sexual Assault, testified that 2,500 of 10,000 clients that have come through their programs have been children. The response to victimization of children is a crisis in and of itself, not only in the legal system but also in families. The programs have seen too many of the "worst case scenarios." Police response is inadequate because of improper training; social worker caseload ratio is approaching 100 to 1; the constitution is inadequate because the legal system does not deal adequately with crimes against small children; treatment is inadequate. The system fails and the child must often go back to an abusive situation, so the child has been wronged by the abuser, the family and the system. It is not an uncommon scenario but must be balanced by protection of defendants rights and wrongful accusation. She said these bills are an attempt to address one part of the child abuse problem, but it is a complex issue and there is still a long way to go. She discussed repeat offenders and a practice of assault. Sexual offenders offend both within and outside of the family and victims range from a dozen to hundreds. She cited a study by Suzanne Fitzroy on treatability of sexual offenders, concluding that 20% are too dangerous to release, 40% may be treatable, and 40% may not be treatable at all. Ms. Dick cited statistics supporting that abusive behavior is repeated and is generational, abused children become the next generation's abusers. She stated that abuse crimes are fundamentally different from simple assault in that they are a violation of trust, an abuse of power created by an adult who is following a pattern of conduct that leads to repeated abuse of a child.

Number 277

Chairman Sund requested a copy of Ms. Dick's testimony and asked what she thought should be done. There is an abuser, a problem, and a crime that is not treatable. Ms. Dick replied first the victim should be protected, then develop a community response that better addresses the support and treatment needs of the victim to enable healing. Offenders need to be punished, need to get treatment, and afterwards a means of controlling and monitoring behavior must be initiated. If an abuser returns to the family, the family with adequate support and treatment are oftentimes the best choice to monitor the behavior. An offender will often move from family to family. There are many facets, including decreasing the social worker case load and increasing penalties.

Chairman Sund asked if she supported first time presumptive sentencing on sexual abuse. Ms. Dick replied that the network had not taken a position on that although there has been much dialogue.

They are unanimous on the need for monitoring and controlling behavior that should be structured into the system.

Chairman Sund asked about balancing the best interest of the child versus keeping the family together versus the need for punishment. Ms. Dick said that is an important question which faces social workers. They not only have to investigate the case, they are supposed to provide treatment for the child and family. There are circumstances which will be unreconcilable. It is difficult to do all at once and she hoped the governor's task force would look at those stuctural problems.

Number 384

Janice Leinhart, of the Victims Fly-in group, testified that there is a need to change the philosophy of the system. A crime is a crime, hurting people is hurting people. There is too much protection for the criminal in our system. The best way to help people get over a problem is providing a punishment severe enough so that they don't want to be punished again. The system isn't working. What people in jail have time to feed on, they become. If they can watch x-rated movies and read sex manuals and see garbage that feeds their sickness, they are not being helped. They should have positive input and see what it feels like, like drug addicts forced to be clean. The people with problems are feeding off garbage which perpetuates what they're doing. She knew of sexual offenders who get visits from their kids and are being groomed to offend when they get out. She discussed the 8-year presumptive sentence for sexual offenders, noting that it has been watered down by court appeals and goodtime. It is time to get more severe and confront people with their problems. Prisoners have too many rights, down to the point that their food has to be the right temperature. The state is supporting a weak bunch of criminals who don't know how to make it or function once they get released.

Number 474

Chairman Sund asked Ms. Leinhart if she felt in some cases there should be a termination of parental rights by the state. Ms. Leinhart replied that she did. She said a person's rights should start being diminished the moment they hurt someone else.

Number 498

Representative Barnes asked about the Court of Appeals cases and automatic lowering of 8-year presumptive sentences. Ms. Leinhart said she did not know the details. Representative Barnes said she had never heard that before. The only way she thought it could happen was on a case-by-case basis rather than automatically. She stated she would personally look into it. Ms. Leinhart responded that she had heard of certain cases.

Number 535

Representative Taylor asked if Ms. Leinhart supported the death penalty. Ms. Leinhart replied that she did.

Representative Ulmer thanked Ms. Leinhart and the other victims who came to testify. She added that oftentimes legislators were in an ivory tower when it came to the impact of violent crimes on people.

Number 578

Representative Gruenberg discussed suggested legislation regarding juvenile offenders who are unrehabilitated and asked Ms. Leinhart to speak to it. Ms. Leinhart responded that it was the Violent Person Act in California, whereby juveniles who can be released at the age of 21 can be reevaluated if the system perceives them as dangerous, and they would automatically be put through adult court. It is a means to protect people, as some criminals can be helped and some can never be helped.

Number 600

Marge Hall, of the Alaska Victims Fly-in and the Alaska Juvenile Crime Commission, testified in support of HB 237 and HB 229. She suggested that HB 229 be titled "homicide by torture." The word "abuse" has been overused and euphemised. It should be called what it is. People are torturing children and people who are less able to defend themselves and it should be dealt with on that level. With regard to HB 237, she commented that often much of the evidence that could help the jury convict in a case has been disallowed. To let people get off on technicalities, recommit and progress in criminal behavior is criminal. She said Alaska is number one in teenage killers because we accept violence. She has spoken to many victims of violence and is convinced that the system is not working. She requested the committee to put politics aside and make Alaska a better place to live.

Number 675

Representative Taylor asked if Ms. Hall supported the death penalty. She replied that there were certain people in the state she would like to pull the plug on.

Number 682

Louise Howerter testified in support of HB 229 and HB 237. She had a pamphlet with photos of victimized children for the committee's perusal. She commented that abuse statistics have increased and gave additional statistics about child abuse. From 1983-1985 over 100,000 children suffered from abuse in Alaska. Children comprise 30% of the population but are 100% of our future and need protection. Only 10% of cases ever make it to the courtroom.

Criminals do not need protection, the public does. She felt that society was not sick, but criminals are. They have alienated themselves from society and are no longer a part of it.

Number 720

Chairman Sund asked if there was anyone else to testify. He announced that the committee planned to be closely involved with the governor's Commission on Children and these bills along with others would be carried through the interim with hearings to be held in the fall throughout the state. He asked if Representative Ulmer wanted a subcommittee.

Representative Ulmer stated that a number of legal issues that had been raised had answers. She requested the opportunity to work through them in a smaller setting.

Chairman Sund stated he would put together a working subcommittee for these bills and others to see what worked.

Representative Taylor stated that rather than take the committee's time to amend HB 229, he wanted to move the bill. Chairman Sund stated he would not accept the motion and the bill would not move today. He adjourned the meeting at 3:00 p.m.
#

Offered: 3/14/88 5-0977B
Referred: Finance

Original sponsors: Hudson, Ulmer, Larson, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 229 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending the definition of murder in the
7 first degree to include homicide by a pattern or
8 practice of assault or torture of a child under the
9 age of 16."

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

11 * Section 1. AS 11.41.100(a) is amended to read:

12 (a) A person commits the crime of murder in the first degree if

13 <u>(1)</u> [,] with intent to cause the death of another person,
14 the person

15 <u>(A)</u> [(1)] causes the death of any person; or

16 <u>(B)</u> [(2)] compels or induces any person to commit
17 suicide through duress or deception<u>; or</u>

18 <u>(2) the person knowingly engages in a pattern or practice</u>
19 <u>of assault or torture of a child under the age of 16 that results in</u>
20 <u>the death of the child under circumstances manifesting extreme indif-</u>
21 <u>ference to the value of human life; for purposes of this paragraph, a</u>
22 <u>person "engages in a pattern or practice of assault or torture" if the</u>
23 <u>person inflicts serious physical injury to the child in at least two</u>
24 <u>separate instances</u>.

25 * Sec. 2. AS 11.41.115(a) is amended to read:

26 (a) In a prosecution under <u>AS 11.41.100(a)(1)(A)</u> [AS 11.41.-
27 100(a)(1)] or 11.41.110(a)(1), it is a defense that the defendant
28 acted in a heat of passion, before there had been a reasonable oppor-
29 tunity for the passion to cool, when the heat of passion resulted from

1 a serious provocation by the intended victim.

Introduced: 3/30/87
Referred: Judiciary and
Finance

5-0977A

1 IN THE HOUSE

BY HUDSON, ULMER, LARSON,
MENARD, HOFFMAN AND GOLL

2 HOUSE BILL NO. 229

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

8 * Section 1. AS 11.41 is amended by adding a new section to read:

9 Sec. 11.41.105. HOMICIDE BY ABUSE. (a) A person commits the
10 crime of homicide by abuse if, under circumstances manifesting an
11 extreme indifference to the life of a child under 16 years of age, the
12 person engages in a pattern or practice of assault or torture of the
13 child that results in the death of the child.

14 (b) Homicide by abuse is an unclassified felony and is punish-
15 able as provided in AS 12.55.

16 * Sec. 2. AS 12.55.125(a) is amended to read:

17 (a) A defendant convicted of murder in the first degree or
18 homicide by abuse shall be sentenced to a definite term of imprison-
19 ment of at least 20 years but not more than 99 years.