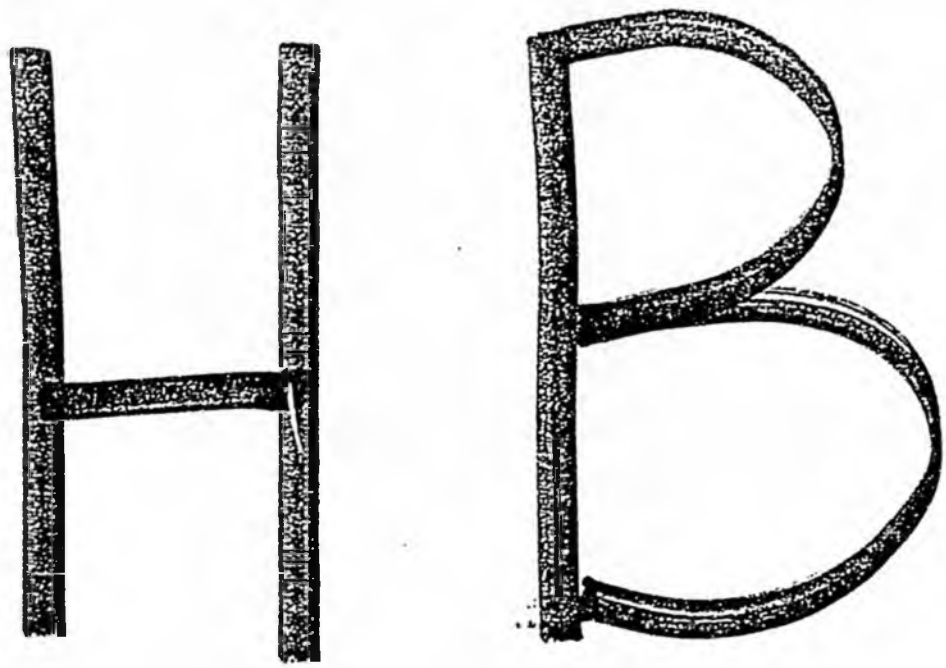

372

Official Business

COMMITTEE: HOUSE HESS

DATE: 2-9-88

SIGN-IN

Subject of meeting:
CSSB 330 - Approp: DOE for K-12
HB 372 - Suspended Imposition of Sentence
CSSB 67 - Health ins. for Mental Conditions

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY? if yes, whichone?	
Sharon Young	316 W 11th St	6-1083	AASB	No	
Guy Gilly	"	"	"	"	
BB Manners	705 Municipal Way #302	586-3090	NEA	Yes 330	
Joanne Clark	Div. of Mental Health + D.D.	465-3370	Div. of Mental Health + D.D	yes	
DAVE Williams	Div. of Budget & Finance	465-3015	PHS	No	
Nina Keeler Kinney	Dept of Public Safety PO Box N, 99811	465-4356	Council on Domestic Violence & Sexual Assault	HB 372	
Gordon Evans	318 4th St.	586-3210	HIAA	CSSB 67 YES	1
Mike Miller				CSSB 67	2
Clark Gruening	328 Coleman St	586-5110	AFT	CSSB 67	3
Karen Rehfeld		3795	Leg Finance	NO	
Stephanie Joannides	P.O Box KC JUN 99811	5-3428	Dept of Law	only if there are questions - HB372	

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

HHESS	1-27-88	8:30 a.m.
HHESS	2-9-88	8:30 a.m.

(7)

HOUSE COMMITTEE REPORT

Date referred: 1/18/88 FURTHER REFERRALS: Judiciary

DATE: 2-9-88

The Health, Education and Social Services Committee has considered HB 372

"An Act prohibiting suspended imposition of the sentence of a person convicted of a sexual offense."

RECOMMENDS:

[ ] replace with _____ [ ] the same title

[ ] attached amendment(s) [ ] a new title

[ ] 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 [ ] same as previous fiscal note published _____

[X] zero fiscal note

[X] zero with analysis [ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

Bill Bell

Bruce Simpson

Mike Greenberg

Dave Donley

SIGNING OTHER RECOMMENDATIONS:

Mike Kopp no rec.

Bill Hudson - no rec

John Ellis - no rec.

John Ellis

Co-Chairman's signature

Mike Kopp

Alaska State Legislature

House, Health

Please enter into the record my testimony to the Education and Social Services committee name

committee on HB 372 bill/subject, dated January 27, 1988.

On behalf of the NANA Region and Manilaq Association, I would like to testify on HB372. We have a high rate of sexual abused children from the "CINA" cases (Children In Need of Aid) that is handled by our ICWA (Indian Child Welfare Act) Coordinators within Kotzebue and few other villages. Some offenders are first time offenders, some are repeaters.

I feel that if something is done about these offenders, that we can help our children live a better and safer life and they do not have to be afraid of the person(s) that abuse them. Please take my testimony in to consideration.

Thank you,

Signed: Emma Snyder, Tribal Affairs Assistant
Testifier

Manilaq Association, Tribal Govt Program
Representing (Optional)

PO Box 256 Kotzebue
Address

(907) 442-2911
Phone No.

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

OFFICIAL BUSINESS

POUCH V
JUNEAU, AK 99811
465-3759

January 28, 1988

Mr. Floyd H. Richmond, Executive Director
Women in Safe Homes
P. O. Box 6552
Ketchikan, Alaska 99901

Dear Mr. Richmond:

Thank you for your letter of January 27. Since you were on teleconference you did not have the complete committee file available. You did have the bill and Rep. Ulmer's statement. I do not believe anyone on the committee, least of all myself, disagree with Rep. Ulmer's stated purpose: i.e. to prevent the expunging of a record of an individual convicted of sexual assault, but for whom the imposition of sentence was suspended. The questions that arise are: 1) does the language of the bill achieve the stated purpose of the bill? 2) what other effects flow from the language of the bill? 3) in this case does it mean automatic imprisonment?

These questions were raised with the bill sponsor when she requested an expedited hearing, jumping the bill ahead of the normal order of scheduling. It was expected that written responses plus adequate fiscal information would be provided as "back-up", as required by the rules and as needed by the courts for interpretation of legislative intent. Justice is served to the extent we observe due public process.

We have no record of successive suspended imposition of sentence. I do not doubt it has happened. Under current law an offender is given a presumptive eight year jail sentence, generally interpreted to mean without possibility of parole (which also means no treatment, training, or subsequent supervision after release).

The other alternatives appear to be: a) charge bargaining (where the prosecutor reduces the charge to a lesser offense - this has been happening all over since we put in presumptive sentencing); b) suspended sentence; c) acquittal or release on a technicality. Suspended imposition of sentence is intended to mean that the offender is convicted and is sentenced, but the sentence is not imposed for a given period (usually the period of the sentence plus a probationary period) during which time the offender remains on some form of supervised probation. I do not feel that we have enough probation/parole officers to provide an adequate level of supervision currently, but that is a budgetary, not a statutory, problem and will not be solved until legislators and their constituents are willing to pay for such services. If the offender repeats his offense or otherwise breaks the conditions of probation, the sentence automatically goes into effect: the offender goes directly to jail. Properly supervised and adequately staffed, a probation system can employ the suspended imposition of sentence most effectively. It can be a very heavy

hammer, indeed. Going to jail immediately can be a greater deterrent than the thought of a possible trial.

The Russell case, which you cite, would have been totally unaffected had this bill been law at the time, in as much as it was his wife that applied for the license and, in your statement, you tell us the DFYS found an SIS in his record, which appears to show that his record was not expunged.

In the past several years we have dealt with this problem in a variety of ways, including legitimizing the use of television tapes of the testimony of young children in grand jury indictments. But some of the panaceas proposed have had a reverse effect, making uniform application of the law throughout Alaska difficult resulting in excessive sentences for some and freedom for others guilty of the same offense.

I have talked with John Hartle and obtained the material you sent him. It is a useful addition to our file.

Thanks again for your comments.

Sincerely,

Niilo Koponen

Representative Niilo Koponen, Co-Chair
House Health, Education and Social Services Committee

cc: Rep. Fran Ulmer
House HESS Committee members
John Hartle

NK/dm

Women In Safe Homes
A Safe Alternative to Family Violence
WISH
P.O. Box 6552
Ketchikan, Alaska 99901
(907) 225-9474

January 27, 1988

Nilo Koponen, Chair
House Health & Education and Social Services Committee
P.O.Box V
Juneau, AK 99811

Attention: All Committee Members
Re: House Bill 372

Dear Mr. Koponen:

I was very disturbed by the extraneous number of issues that were brought into the discussion of 372 on 1/27/88. I would like to respectfully request that the committee deal with only what is before them;

1) That the expunging of a sexual assault offenders record is not in the best interest of all the children of our state because:

a) We know these offenders repeat, we know they seek ways to access children. Therefore, an employer who hires people to care for children must know of these offenses.

b) That children do not have the power to protect themselves as we would if our home was burglarized. Therefore, we must tighten up our ability to protect children from the power of these offenders.

2) There would be an insignificant fiscal impact to corrections.

a) SIS's are used very rarely in S.E. Alaska on sexual offenders.

b) If its a second offense the person would be sentenced to jail time, but don't we want to incarcerate those kinds of offenders? I think we all do as we are currently on other crimes.

We are in the early stages of recognizing and dealing with the issue of child sexual abuse. As an example of how far we have come in less than ten years let me site a Ketchikan case. George Russell came to this area and applied for a day care license. In checking they found an SIS for sexual abuse of a minor in his background in

Washington state. The Division of Family and Youth Services declined his license, but they licensed his wife. He then over the next year proceeded to molest children under the care of his wife. He was convicted and sentenced. The point of this is, DFYS would not license his wife today because I hope they understand better today the nature of these offenders. They were sued and settled out of court so I know that has helped their approach to these issues as well.

We have today greater levels of knowledge about these offenders. John Hartle of Representative Sund's office has such information for your request and review.

Recently the FBI has told us that preferential offenders (child molesters) are now seeking four and five year olds as they have learned the judicial system has trouble gaining convictions because it often boils down to the offenders word against a four or five year old.

Please consider the uniqueness of this issue, the offender, the victim and our responsibility to protect all citizens. Pass 372.

Sincerely,

Floyd H. Richmond
Executive Director

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 372
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: "An Act prohibiting suspended imposition of sentence."
Sponsor: Representative Ulmer
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	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)

This legislation will have minimal impact on the Department of Corrections. We estimate that it will affect approximately 45 sex offenders per year, and they will receive jail sentences no greater than 6 months. This is

Susan E. Knighton

Prepared by: Susan E. Knighton, Director — Phone: 465-3376
Division: Administrative Services — Date: 1-28-88

Approved by Commissioner: Susan Humphrey-Barnett — Date: 1-28-88
Agency: Department of Corrections

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

Analysis:

based upon current practice of only giving an SIS to persons with the least risk of recidivating. These people will now be required to serve some jail time, but it will be minimal.

Juvenile Diversion: 17

Programs to divert juvenile offenders from the formal justice system have been successful and cost effective. These youth are often at risk of running away, are experiencing family problems and are potential substance abusers. Early help that does not label them as offenders could prevent future problems. The state's previous program funding has been significantly reduced.

The Division of Family and Youth Services together with the judicial system should again fund and expand a juvenile diversion program as an alternative to the traditional, punitive juvenile justice system. The program would allow youths charged with first-time, less serious crimes to do community service, pay restitution and receive intensive family support services.

Background Checks: 18

Our children are potentially at risk of abuse because pre-employment investigations for prior history of abuse are not required. Several obstacles prevent reducing this risk including the following:

- Abusers often have no formal conviction record.
- Criminal background checks are currently authorized but not required.
- Child caregivers are frequently hired on short notice and work briefly before moving to a better paying job.
- Agencies that investigate criminal histories and licensing actions have insufficient personnel.
- Convicted offenders of sexual assault may now have their record cleared through a suspended imposition of sentence regardless of whether they spend any time in jail.
- No system keeps track of reports of abuse on the same alleged abuser or allows disclosure to appropriate persons.

A statewide system that provides employers with the criminal history of all personnel working directly with or supervising children should be developed. This system should provide the information in a timely way at little cost to employee or employer. To assure that all sexual assault convictions remain on the record, criminal sentencing laws should be amended to prohibit suspended imposition of sentences for individuals convicted of sexual assault. Additionally, the child protection laws should allow for appropriate disclosure of instances of abuse by a person who works directly with or supervises children to authorized persons or agencies that employ people or use volunteers who work with children. Due process requires that the alleged abuser be given the opportunity to have a fair hearing before a determination that the report of abuse is founded is disclosed.

Child Protection System: 57

Alaska's rates of child sexual and physical abuse are shocking, as noted above. Because the state does not keep records of assaults and murders by age of victim, we do not know how many of these incidents resulted in criminal charges and convictions. Anchorage alone had 618 child sexual abuse cases in 1986, a rate of 1,042 per 100,000 minor inhabitants, or 6.6 times the national rate of 158 per 100,000. Most professionals in child sexual abuse estimate that the hidden rate of child sexual abuse between five and 10 times greater than the reported rate.

Increased education and public awareness have led to increased reporting and expectations for protection of children and prosecution of offenders. Most reports, even those that are substantiated, do not result in the offender being prosecuted or treatment being made available to the victim. The resulting lack of confidence in the system means that children are victimized twice. They believe no one can or will rescue them or hold their abuser accountable.

Most professionals in child sexual abuse estimate that the hidden rate of child sexual abuse between five and 10 times greater than the reported rate.

The Governor should charge this or a new Commission with an in-depth analysis of how the existing child protection system can be improved. To assist that analysis, law enforcement officials should keep data on reported incidents of assault and abuse, and the court system and the Alaska Judicial Council should keep statistics on sentencing of individuals found guilty of child sexual assault and physical abuse.

January 20, 1988

Fran Ulmer
Alaska State Representative
1700 Angus Way
Juneau, Alaska 99801

Re: Proposed legislation prohibiting suspended imposition of sentence for sex offenders

Dear Representative Ulmer:

On behalf of all concerned citizens in Alaska, thank you for your support of the pending legislation prohibiting suspended impositions of sentence for sex offenses.

You have asked me to clarify the mechanism for the expungement of a conviction when an individual receives a suspended imposition sentence "SIS." AS 12.55.085(e) provides, "Upon the discharge by the court without imposition of sentence, the court may set aside the conviction and issue to the person a certificate to that effect." In Mekiana vs. State 707 P.2d 918 (Alaska Ct. App. 1985), the Alaska Court of Appeals interpreted this legislation and held that any individual who receives a suspended imposition of sentence has the right to a hearing and ultimately have their conviction set aside if they have not committed any subsequent violations in their probationary period.

While an individual may still have an arrest record and notation in the APSIN criminal information system for the charged offense, the net effect of a suspended imposition of sentence is to remove the conviction from the individual's record at the end of the probationary period. In my previous practice as an assistant district attorney, I have noted several cases in which not only has the conviction been expunged, but in fact, there has been no notation on the APSIN System that an individual has been previously convicted of a sex offense after the conviction has been set aside. I distinctly remember a Washington case in which Anchorage District Attorney's Office was unaware of the individual's previous sex offense because he had received a suspended imposition of sentence. While Alaska does not have the same precise criminal laws as Washington, I've attached a copy of Washington, Section 9.948 230, which explains the effect of a vacation of defendant's record of conviction.

A second example of the unfortunate effect of a suspended imposition in a sex case, is the case involving defendant Douglas Arnet Moerlein. The attached documents show that Mr. Moerlein received a suspended imposition of sentence in Washington state on July 20, 1981 and was reindicted for a subsequent sex offense in Alaska on July 28, 1987. From my review of the court records and speaking with prosecutors in the District Attorney's Office, I learned that the only way the court became aware that the defendant had been previously convicted of a sex offenses was because he informed the victim of this at the time the offense was committed.

Clearly, it is not in the public interest for a second time sex offender to be sentenced as a first time sex offender without any knowledge of his previous conviction by the sentencing court. By abolishing the suspended imposition of sentence for sex offenses, this unfair and unsafe result should be prevented.

A more important byproduct of the suspended imposition of sentence is that it allows a defendant to lawfully withhold information regarding his previous sex conviction from prospective employers. When an individual applies for a job, such as a day care worker or a school teacher, and he is requested on the application form to indicate whether or not he's previously been convicted of a felony offense, he can lawfully answer that he has not, even though he had previously been convicted of a serious sexual offense and received a suspended imposition of sentence. This poses a grave danger to the community because employers in sensitive areas may not become aware of the defendant's previous sexual misconduct.

In addition, the passage of the proposed legislation will send a much needed message to the community that sex offenses are among our most serious violations of law. There is no reason that sex offenses should not be treated at least as seriously as drunk driving offenses, which already have a penalty provision prohibiting suspended impositions of sentence (See AS 28.35.30.)

If I may provide you with any other information in

support of this legislation, please do not hesitate to contact me.

Sincerely,

Russell S. Babcock

Russell S. Babcock
Attorney
P.O. Box 101101
Anchorage, Alaska 99510
(907) 337-3553

Enclosures
cc: Dwayne W. McConnell, District Attorney Anchorage
Carrie Longoria, STAR

RSB:krn

In the Superior Court of the State of Washington

For the County of King

THE STATE OF WASHINGTON, *Plaintiff,*

v.

DOUGLAS ARNETT MOERREIN, *Defendant.*

'81 SEP 11 PM 3:14

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WASH.

No. 81-1-02180-4

Order Deferring Imposition of Sentence (PROBATION)

The Prosecuting Attorney, the above-named defendant and counsel Adam Kline came into Court, the defendant having been charged by information with the crime(s) of INDECENT LIBERTIES

To this information the defendant entered a plea of "Guilty" on the 20th day of July, 1981,

The Court having determined that no legal cause exists to show why judgment should not be pronounced, it is therefore ORDERED, ADJUDGED and DECREED that the said Defendant is guilty of the crime(s) of INDECENT LIBERTIES, Class "B" Felony, RCW 9A.44.100

CERTIFIED COPY TO COUNTY JAIL SEP 1 1 1981

The Defendant having made application to the Court for probation and the Court having found Defendant eligible under the law to be granted probation, and the Court being fully advised in the premises, it is therefore,

ORDERED that the imposition of sentence against the Defendant herein be, and the same is hereby deferred pursuant to RCW 9.95.200 for a period of five years from date upon the following terms and conditions, to-wit:

1) That the Defendant shall be under the charge of a Probation and Parole Officer employed by the Department of Corrections and follow implicitly the instructions of said Department, and the rules and regulations promulgated by said Department for the conduct of the Defendant during the term of his probation hereunder.

2) The Defendant shall not commit any law violations. Defendant has served pre-sentence (6) months.

~~3) The Defendant shall pay all costs, within _____ from date of this order.~~

4) The Defendant shall serve a term of _____ in King County Jail, (with) ~~(without)~~ credit to be given for time already served, to commence

3) The defendant shall remain in treatment with an approved sexual deviancy treatment agency approved by probation officer.

4) The defendant shall not change residence without the approval of the probation officer.

DONE IN OPEN COURT this 9th day of September 1981

Judge

Presented by:

Deputy Prosecuting Attorney

Adam Kline

Atty. for Def.

POSTED

THE STATE OF WASHINGTON

vs.

DOUGLAS ARNETT MOERLEIN

ADDITIONAL CONDITIONS

CAUSE NO. 81-1-02190-4

5) The defendant shall not have contact with minor children without proper adult supervision.

6) The defendant shall not go to parks, elementary schools or other such places where children are present.

7) The defendant shall follow the recommendations of Dr. Leslie Rawlins concerning control of his behavior including:

a) When children visit the group home or other residences, the defendant will leave the home with proper supervision.

b) The defendant shall call the group home when he arrives at work and to notify the group home when he leaves work travelling to the group home. This includes all trips outside the group home.

c) The defendant shall not watch television programs involving children or child-oriented themes.

d) When the defendant engages in recreational activities where children are present he should be supervised by a responsible adult.

DONE IN OPEN COURT this 9th day of September, 1981

Jerome M. Johnson
JUDGE

Presented by:

[signature]

Deputy Prosecuting Attorney

[signature]

Atty. for Def.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

DOUGLAS A. MOERLEIN
DOB: 01/21/59
AK ID/OL: 6009688
SSN: 574-52-8735

Defendant.

Court No. 3AN-~~S87-6758~~ 88-212 Cr.

REINDICTMENT

SEXUAL ABUSE OF A MINOR IN THE SECOND DEGREE
AS 11.41.436(a)(2)

THE GRAND JURY CHARGES:

That on or about the 28th day of July, 1987, at or near Anchorage, in the Third Judicial District, State of Alaska, Douglas A. Moerlein, being 16 years of age or older, did knowingly engage in sexual contact with C.T., age 11.

All of which is a class B felony offense being contrary to and in violation of AS 11.41.436(a)(2) and against the peace and dignity of the State of Alaska.

DISTRICT ATTORNEY, STATE OF ALASKA
1031 WEST FOURTH AVENUE, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 277-8622

DATED this 5 day of January, 1988.

A true bill

Elizabeth H Sheley

ELIZABETH H. SHELEY
ASSISTANT DISTRICT ATTORNEY

Barbara Burg

GRAND JURY FOREMAN

WITNESSES EXAMINED BEFORE THE GRAND JURY:
C.T.
Arlene D. Vollema
Frank Feichtinger
Preston Chapman

EHSce
i18

BAIL SET AT _____

DATED _____

_____
JUDGE

ACCEPTED FOR FILING _____

_____
DEPUTY CLERK

DISTRICT ATTORNEY, STATE OF ALASKA
1031 WEST FOURTH AVENUE, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 277-8622

9.94A.210 Sentence within standard range for offense not appealable——Sentence outside sentence range subject to appeal and review——Procedure——Grounds for reversal——Written opinions. (1) A sentence within the standard range for the offense shall not be appealed. For purposes of this section, a sentence imposed on a first offender under RCW 9.94A.120(5) shall also be deemed to be within the standard range for the offense and shall not be appealed.

(2) A sentence outside the sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing judge are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing judges and others in implementing this chapter and in developing a common law of sentencing within the state. [1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21.]

Effective dates——1984 c 209: See note following RCW 9.92.150.
Effective date——1981 c 137: See RCW 9.94A.905.

9.94A.220 Discharge upon completion of sentence——Certificate of discharge——Counseling after discharge. When an offender has completed the requirements of the sentence, the secretary of the department or his designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge. The discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody. [1984 c 209 § 14; 1981 c 137 § 22.]

Effective dates——1984 c 209: See note following RCW 9.92.150.
Effective date——1981 c 137: See RCW 9.94A.905.

9.94A.230 Vacation of offender's record of conviction. (1) Every offender who has been discharged under RCW 9.94A.220 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.220; (d) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.220; and (e) the offense was a class C felony and less than five years have passed since the date the applicant was discharged under RCW 9.94A.220.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. [1981 c 137 § 23.]

Effective date——1981 c 137: See RCW 9.94A.905.

9.94A.250 Clemency and pardons board——Established——Membership——Terms of office——Chairman——Bylaws——Travel expenses——Staff. (1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chairman from among its members and shall adopt bylaws governing the operation of the board.

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Bill Version: HB 372
Publish Date:

Revision Date: 1-26-88
Title: An act prohibiting suspended imposition of sentence...sexual offense
Sponsor: Ulmer
Requestor: House hESS

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)

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:

Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Dan Strandberg, General Counsel — Phone: 264-8215
Division: Alaska Court System — Date: 1-26-88

Approved by: Arthur H. Snowden, II, Administrative Director — Date: 1-26-88
Agency: Alaska Court System

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

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January 20, 1988

Fran Ulmer
Alaska State Representative
Pouch V
Juneau, Alaska 99801

Re: Proposed legislation prohibiting suspended imposition of sentence for sex offenders

Dear Representative Ulmer:

On behalf of all concerned citizens in Alaska, thank you for your support of the pending legislation prohibiting suspended impositions of sentence for sex offenses.

You have asked me to clarify the mechanism for the expungement of a conviction when an individual receives a suspended imposition sentence "SIS." AS 12.55.085(e) provides, "Upon the discharge by the court without imposition of sentence, the court may set aside the conviction and issue to the person a certificate to that effect." In Mekiana vs. State 707 P.2d 918 (Alaska Ct. App. 1985), the Alaska Court of Appeals interpreted this legislation and held that any individual who receives a suspended imposition of sentence has the right to a hearing and ultimately have their conviction set aside if they have not committed any subsequent violations in their probationary period.

While an individual may still have an arrest record and notation in the APSIN criminal information system for the charged offense, the net effect of a suspended imposition of sentence is to remove the conviction from the individual's record at the end of the probationary period. In my previous practice as an assistant district attorney, I have noted several cases in which not only has the conviction been expunged, but in fact, there has been no notation on the APSIN System that an individual has been previously convicted of a sex offense after the conviction has been set aside. I distinctly remember a Washington case in which Anchorage District Attorney's Office was unaware of the individual's previous sex offense because he had received a suspended imposition of sentence. While Alaska does not have the same precise criminal laws as Washington, I've attached a copy of Washington, Section 9.948 230, which explains the effect of a vacation of defendant's record of conviction.

A second example of the unfortunate effect of a suspended imposition in a sex case, is the case involving defendant Douglas Arnet Moerlein. The attached documents show that Mr. Moerlein received a suspended imposition of sentence in Washington state on July 20, 1981 and was reindicted for a subsequent sex offense in Alaska on July 28, 1987. From my review of the court records and speaking with prosecutors in the District Attorney's Office, I learned that the only way the court became aware that the defendant had been previously convicted of a sex offenses was because he informed the victim of this at the time the offense was committed.

Clearly, it is not in the public interest for a second time sex offender to be sentenced as a first time sex offender without any knowledge of his previous conviction by the sentencing court. By abolishing the suspended imposition of sentence for sex offenses, this unfair and unsafe result should be prevented.

A more important byproduct of the suspended imposition of sentence is that it allows a defendant to lawfully withhold information regarding his previous sex conviction from prospective employers. When an individual applies for a job, such as a day care worker or a school teacher, and he is requested on the application form to indicate whether or not he's previously been convicted of a felony offense, he can lawfully answer that he has not, even though he had previously been convicted of a serious sexual offense and received a suspended imposition of sentence. This poses a grave danger to the community because employers in sensitive areas may not become aware of the defendant's previous sexual misconduct.

In addition, the passage of the proposed legislation will send a much needed message to the community that sex offenses are among our most serious violations of law. There is no reason that sex offenses should not be treated at least as seriously as drunk driving offenses, which already have a penalty provision prohibiting suspended impositions of sentence (See AS 28.35.30.)

If I may provide you with any other information in

support of this legislation, please do not hesitate to contact me.

Sincerely,

Russell S. Babcock
Attorney
P.O. Box 101101
Anchorage, Alaska 99510
(907) 337-3553

Enclosures
cc: Dwayne W. McConnell, District Attorney Anchorage
Carrie Longoria, STAR

RSB:krn

Alaska State Legislature
House

Official Business

P.O. BOX V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

February 1, 1988

TO: House Health, Education and Social Services Committee

FROM: Representative Fran Ulmer

SUBJECT: Recidivism

I'd like to share with you a statement I received from Patty Barnes, a Children's Counselor at Women in Safe Homes, pertaining to the subject of recidivism.

Attachment

Prepared by Patty Barnes
Children's Counselor
Women In Safe Homes
January 29, 1988

Recidivism

When we combine the data from offender/victim studies, clinical observations, treatment/program evaluations and criminal justice statistics it is apparent that there is a serious short coming in the sex-offender literature given to the study of sex-offender recidivism. Only a few efforts have been made to follow up identified child molesters over a period of time to find out under what conditions they continue to reoffend. With incarcerated offenders investigators routinely use as their criterion of recidivism subsequent offenses that came to the attention of the authorities or in many cases only if a conviction occurred. The serious flaw in these studies is that it only measures the types of offenders most likely to reoffend in the first place. The vast majority of sexual offenders are never reported and never come to the attention of the authorities (Russell study). Because very few offenders ever get caught and sent to prison, those men that do are men who have patterns of repetitive offending. The mean for 10 of these incarceration studies was about 20% recidivism rate.

Two recent studies have been conducted on nonincarcerated individuals, one at Northwest Treatment Associates (1985) and the other by Gene Abel et al (1984). The Northwest Treatment Associates study reported reoffense at 3% for a group of 126 child molesters who had been ordered to treatment and followed up for an average of 24 months. Knowledge of new offenses was not based on a systematic record check, but rather on self-reports or reports from family members. Experts in this field know from the evidence that offenders do not self-report, especially when they are in the criminal justice system. Abel et al. reported a 21% recidivism rate for his group (a mixture of convicted, nonconvicted and publicly undetected offenders) of 24 followed for 12 months after treatment. Abel relied on self-reports, but unlike N.T.A. promised offenders complete confidentiality for their admission. Both of these groups were receiving intensive treatment and up to date therapeutic assistance unlike those offenders who are not caught or who are treated in less sophisticated settings.(Finkelhor, 1986)

Another serious problem with recidivism studies is the short time span which offenders are followed. It is widely accepted in this field today that child molesting is an addictive behavior that is reinforced over long periods of time and cannot be cured, but only controlled by the offender. A child molester may appear reformed while he is under observation, but later will rivert to the original pattern. This is supported by one of the longest follow up studies (22) years that found the longer period dramatically increased their rates of recidivism (Soothill and Gibbons, 1978). (Finkelhor, 1986)

In summary, based on the most recent studies of offender behavior and dynamics and on retrospective surveys conducted with adult women and men, recidivism rates are almost impossible to determine. The only two realistic and valid methods to measure recidivism is the offenders decision to self-report an offense and the victims willingness to report the abuse. As offenders rarely self-report on a voluntary basis and victims do not report a large majority of assaults, little reliance can be placed on recidivism rates. As most child sexual assault offenders are never caught, let alone prosecuted, we are left with the national statistics that 25% to 38% of females are victims of sexual abuse by the time they are 18 years old. Either 1 out of every 3 males (and a small minority of females) in this country are sexual assault offenders or a small minority of males are molesting hundreds and hundreds of children during their lifetime.

Exerts From The Experts

1. Faye Knopp, The Rational and Goals of Early Intervention

Offenders begin deviant sexual interests at an early age, through fantasy and reinforcement by orgasm. The deviant themes continue over and over again. This is the key to persistent deviant arousal. When the problem becomes chronic it takes on life of its own. Specialists who are veterans of treating sex offenders never mention "cure" only control and reduction. These compulsive behaviors are compared to addictive, habitual behaviors such as alcohol, gambling and eating.

Offenders learn through observation and direct experience (molestation), cultural influences, socialization process, chaotic, enmeshed or rigid families and sexual trauma as a child. These all contribute to the dynamics that are used to rationalize abusive behaviors.

2. Gene Abel, Judith Becker, Characteristics of Men Who Molest Young Children, 1983 presentation to World Congress of Behavior and Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs, Journal of Interpersonal Violence, March 1987.

Most unique study and data gathered because 561 paraphiliacs were interviewed who were voluntary subjects not under court order to receive evaluations or treatment (nonincarcerated).

Results show that nonincarcerated sex offenders are:

- Well-educated and socioeconomically diverse.
- Report an average number of crimes and victims that is substantially higher than represented in current literature.
- Sexually molest young boys with an incidence that is 5 times greater than the molestation of girls.
- *- 44% of incest fathers admitted to offending outside the home.
- 50% of men had multiple deviations.
- 232 molesters were responsible for a total of 17,585 victims. (Knopp)
- According to a study of adolescent males they may be expected to have contact with 380 victims during lifetime. (Knopp)
- Offender does not outgrow sexually exploitive preferences. Begin deviant fantasies as early as 12 years old. (Knopp)

3. Nicholas Groth, responsible for fixated-regressed typology, author of Men Who Rape and numerous publications on offenders.

- In study of incarcerated rapists and child molesters, (1982), offenders admitted committing up to 5 times as many sexual offenses for which they were apprehended. Child molesters committed first offense as early as eight years, rapists at nine.

- A similar population, 1982 study reflects potential for escalation. Of incarcerated sex offenders interviewed, 35% reported progression from compulsive masturbatory activity, repetitive exhibition to the more serious crimes for which they were convicted as an adult.

- Groth reports in Psychology Today, The Unspeakable Family Secret, 1984 that "sexual abuse is a chronic problem like alcoholism. Offenders shouldn't think of themselves as cured. It's something they have to work on every day of their lives." In evaluating current data on offenders, it appears dangerous to identify intrafamilial offenders as regressed offenders and therefore unlikely to offend outside the home. According to Abel and others almost half of incest fathers admit to pedophilia. Also of interesting note is David Finkelhors data that reveals girls with a step-father are 6 times more likely to be abused than those without. Pedophiles can enter families with ease.

4. Robert Freeman-Longo, director of Sex Offender Unit, Oregon State Hospital, lecturer, researcher, administrator, therapist, Changing a Lifetime of Sexual Crime, Psychology Today, 1986 and Life Magazine, Special Report, The Offenders, 1984.

- Sexually deviant behavior is usually deeply engrained and most sex offenders need extensive psychological help to change deviant thought and behavior patterns.

- No responsible professional in our field would claim that sexual deviancy can now be cured. We can give sex offenders skills and methods for controlling their deviant behavior, but it seldom can be eliminated.

- Sex offenders may adapt their behavior superficially, but unless they develop noncriminal, even empathetic thinking patterns they are likely to revert to their deviant patterns.

- There are no cures in this business. We tell these men they will need to work on their problem everyday for the rest of their lives.

- Estimates of the recidivism rate among untreated sex offenders range between 35 and 80%. These offenders not only commit more sex crimes, but their behavior may help to create a future generation of sex offenders.

- A total of 53 offenders treated at Oregon State Hospital reportedly committed 25,757 sexual crimes.

5. Dr. Irwin Dreiblatt, Ph.D, Pacific Psychological Services, WA, Issues in the Evaluation of Sex Offenders, 1982.

- Sexual Assault is often a chronic behavior problem. Even with only 1 victim. We are unable to predict what his future sexual behavior will be or how it will be managed.

- Strongest predictor of future sexual offense is past offenses.

- Sexual deviant behavior must be viewed as a highly, habitual sexual preference, a habit not very dissimilar than alcohol abuse. One must view the offender as vulnerable to his deviant sexual preference indefinitely. He will fall prey to reoffense if he does not respect his vulnerability and cease to manage his life in ways necessary to prevent reoffense. Such a vulnerability model emphasis that there is no cure, but rather mastery of a serious behavioral problem.

6. Stephen Wolf, director, Northwest Treatment Associates, Seattle; editor of Sexual Violence Quarterly, Fall 1985, Evaluation and Treatment: Characteristics of Adult Sexual Offenders.

Sexual offenders act out their deviances at high rates. Behavior does not show the pattern of decline in frequency with age as found in property offenders. It appears they do not outgrow their sexually exploitive preferences. Recidivism rates are high and increase in relation to the number of previous sex offenses and with attraction to male (non-incest child victim). Sexual offenders are motivated to act out their deviances as a sexual preference. In simple terms, they like what they do. They are not in any large numbers psychotic or schizophrenic. Once their sexual preference is established they tend to continue to pursue it. They will most often at the time of discovery have more than one victim and probably more than one deviant sexual focus. In incest cases they molest children outside the home almost half the time.

Offenders tend to return to deviance shortly after they feel safe from criminal justice sanctions. In their histories.

7. Diana Russell, researcher and author, The Secret Trauma, in widely utilized study of 930 women in San Francisco survey found that only 2% of intrafamilial abuse and only 6% of extrafamilial abuse was reported. 38% of women admitted to having been sexually abused, 152 abused by family member.

Women In Safe Homes
Ketchikan, Alaska

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January 28, 1988

Representative Fran Ullmer
Alaska State Legislature
Box V
Juneau, AK 99811

Re: House Bill 372

Dear Representative Ullmer:

I had the opportunity to listen to the House's consideration of H.B. 372 on January 27, 1988, and have the following comments to offer. These comments are made on the basis of my experiences in the criminal justice system, having been the district attorney for Bethel, the district attorney for Ketchikan, the first Department of Law Sexual Assault Project Coordinator, and the district attorney of Anchorage. I ask that these comments be disseminated to House HESS.

Initially, it is necessary to address two misconceptions of the committee. The first relates to eligibility for SIS under the present system. Present statutes prohibit the suspended imposition of sentence for crimes involving mandatory terms of imprisonment: murder, kidnapping, misconduct involving controlled substances in the first degree, and driving while intoxicated. Additionally, SIS may not be granted to any individual convicted of a crime for which a presumptive sentence must be imposed. These crimes presently involve all catagories of first degree felony violent offenses and all second-time convicted felons.

However, under present law, a suspended imposition of sentence may be imposed for any misdemeanor crime other than driving while intoxicated (and driving while license is suspended), and for all felony crimes other than those described above. This means, for example, that anyone convicted of felony burglary, theft, second-degree robbery, second-degree sexual assault, second-degree assault, and a whole panoply of other felony crimes is presently eligible for an SIS unless presumptive or mandatory sentencing has already kicked in.

The suspended imposition of sentence statute is a part of a social/legal policy adopted well before the present recodification of our criminal statutes and is, in my judgment, a

policy that in some measure has outlived whatever usefulness that it may have had.

I support House Bill 372, but I do not believe that it goes nearly far enough. I agree with the comments of Representative Hanley and Representative Phillips that people who commit serious crimes should be identified for a whole variety of reasons besides those present in sexual offense situations. Whether or not the House or either legislative body wishes to go beyond H.B. 372, however, your bill, at minimum, should be passed.

As you pointed out so well, the SIS creates a legal fiction that flies in the face of actual experience. As I understand it, the original purpose for the suspended imposition of sentence was to act as a carrot for youthful, nonviolent offenders. The belief was that young people who are sowing wild oats should be given a second opportunity.

The problem is not the theory; the problem is the application to real-life situations. Presently, there is a substantial dichotomy of sentencing, especially notable in child-molestation cases but also prevalent as to other categories of specific offenses as well. The sexual abuse statutes are a good example of the real situation. A person who is convicted of first-degree sexual abuse of a minor is subject to an eight-year presumptive term of imprisonment that may be mitigated to no less than four years unless referral is made to the three-judge panel. However, a person who is convicted of second-degree sexual abuse of a minor or, for that matter, attempted first-degree sexual abuse of a minor, has a substantial likelihood of receiving a suspended imposition of sentence. If I recall the testimony correctly, the Department of Correction witness said that one out of five sex offenders are given SISs. I may not have understood that correctly, but I think that number is probably a reasonable figure. Representative Hudson wanted to know how many of those offenses involved children. I believe he will find that a vast majority of those cases involve sex offenses with children.

We know an awful lot more about criminals now than we knew about them 25 years ago when the SIS bill first made its way into our statutes. We know, for example, that sex offenders are highly repetitive. We know that offenders who molest children are highly secretive, that children report only a fraction of the abuse that they are receiving, that child sex offenders appear not to be curable, and that in contrast to a number of other offender groups, child sex offenders do not seem to grow out of their obsessions. We also know that the harm to children is

long-standing and that the costs--economic and social--of child sexual abuse are quite high.

Also, in contrast to an adult-victim rapist, who may attack his victim but one time, a child molester may attack a victim over the course of many years. We also know that many child sex offenders gravitate to certain jobs and avocations because of the presence of children. This should not surprise us: predators need prey for sustenance.

As a long-time, now-former prosecutor, I can assure you that SISs do not travel very well with offenders. Record keeping in this state is, contrary to popular belief, terribly inadequate. Only in the last two years has a reasonably sophisticated system been in place within the Department of Public Safety. If one were to go into the bowels of the Public Safety records in Juneau, I believe one would find literally thousands of judgments that have not made their way into the APSIN computer. Additionally, court system records are virtually not retrievable by any human being that I have ever met. There is not a prosecutor in this state who has not learned of frequently unreported SISs.

As I noted above, the SIS creates a legal fiction that somebody has a clean record. But it is more than that. An SIS actually does result in a conviction being set aside. This means that anyone who has received an SIS and who has had a conviction set aside may truthfully say to an employer that the person has no convictions.

It should be borne in mind that we are talking about two different things. The first is the legal fiction. As far as a sentencing judge is concerned, a person who has received an SIS that has been set aside is viewed for sentencing purposes as though that person has no prior convictions. That is the fiction. In effect, we sometimes pretend that a person is not as bad as he is.

The second point is that by statute, an SIS that is set aside means that by law a person is not deemed convicted of the crime. Consequently, employers who have a legitimate reason to inquire into a person's background find themselves unable to get accurate information. Applicants for daycare, child care, teaching, Boy Scouts, counselors, ministers, attorneys and many others who are required to be licensed or who can reasonably be expected to work around children can, under present law, truthfully aver that they have been convicted of no crime, even if in fact a jury found them guilty and a judge imposed an SIS that has been set aside.

There is a vast difference between having a computer entry in the depths of a Public Safety machine in Juneau and having information that somebody can actually use.

Additionally, while there may be no statute presently authorizing expungement of a record, it is not uncommon for courts to order expungement. It is reasonable to assume that somewhere down the line, someone is going to sue on the basis that their privacy rights are being infringed by the failure of the Department of Public Safety to expunge an SIS.

I guarantee that some state agencies believe that a set-aside SIS requires expunging their record. In a document from former DFYS Director Mike Price, in which he defended that agency's daycare licensing of an SIS sex offender, he argued, I think, that the SIS gave DFYS no options. The document is attached.

I was surprised to hear the Department of Corrections' off-the-hip comments about a fiscal note. There should be no initial fiscal note for this bill. If the bill passes, the only effect is that courts who are now free to impose suspended imposition of sentences may not do so in the future. Judges may still impose, unless prohibited by other statutes, suspended sentences. Presumably, probation officers are already tracking SIS probationers as well as probationers who are receiving straight suspended sentences, so there will be no more probation office expense. Additionally, unless the individual who receives a suspended sentence commits another felony crime, there will be no impact on our jails. But, upon reoffense, presumptive sentencing will automatically kick in for people who have been convicted of prior felonies who have not received SISs. Only in this situation will there be a fiscal note for the Department of Corrections, and under this situation, the Department of Corrections ought to be incarcerating this individual. After all, anybody who has been given one bite of the apple on a suspended sentence who takes a second bite is surely too incorrigible to ignore.

There is one other point that I wish to make about costs. There are two kinds of fiscal notes. The first is the fiscal note that the Department of Corrections may put onto a bill such as this. The second is an undifferentiated fiscal note that is hidden in virtually every agency's budget. The second can be larger than the first, but it is more difficult to see. When a person receives an inappropriate sentence, perhaps because of considerations for the Department of Corrections' budget, and is released back into society, if that person commits another felony offense, the local police agency or Department of Public

Safety is required to investigate, often at substantial expense; the Criminal Division of the Department of Law is required to convene a grand jury, pay for witnesses at the grand jury and then again at trial; the court system often convenes a trial jury; and the public defender agency has substantial expense as well. The costs of investigation, prosecution, and resentencing run into the tens of thousands of dollars but are often diffused in agencies' particular budgets. Additionally, of course, there are dramatic social and economic costs to the victim, social service agencies, the violent crimes compensation board, and others. In a global sense, incarceration is often substantially more economical than release onto a community.

The only problem I have with your bill is that it does not go far enough. Eliminating the suspended imposition of sentence for all Title 11, or perhaps for only Title 11, Chapter 41 and 71 crimes will have no economic impact on the state of Alaska for individuals who do not commit a subsequent felony. To the extent that there is an impact, it will all be occasioned by people who do commit subsequent felony offenses. They deserve jail anyway.

Finally, one of the primary justifications for the adoption of presumptive sentencing in 1980 was parity of sentencing. The SIS statute is a remnant, a vestige of an old system that is, in a large part, no longer in existence. Unequal application of SISs is occurring statewide, with the consequence that felony sentencing--much of it based upon presumptive terms--is increasingly disparate.

Your present H.B. 372 will receive widespread support among prosecutors, police agencies, and victims groups around the state. It is legislation whose time has come.

Very truly yours,

KEMPPEL, HUFFMAN AND GINDER, P.C.

Victor C. Krumm

VCK:kj
Enclosure

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

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DIVISION OF FAMILY AND YOUTH SERVICES

October 31, 1985

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

Dear Representative Miller:

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

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

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

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

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

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

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

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

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

Sincerely,

Michael L. Price
Director

MLP/FB/sa

Enclosures

cc: Hayden Kaden

Connie J. Sipe
Deputy Commissioner

Norma Lang
Special Assistant to the Commissioner

Pat O'Brien
SS Program Officer

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

SS [ ] or YS [ ]
REGION_____
Worker_____
Field Office or
Private Agency_____

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

APPLICANT/LICENSEE/ADULT HOUSEHOLD MEMBER INFORMATION:

LAST NAME | FIRST NAME | MIDDLE NAME | JR., III, ETC.

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

DATE OF BIRTH | SEX | SOCIAL SECURITY NUMBER

ADDRESS | CITY | STATE | ZIP CODE

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

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

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

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

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

SIGNATURE OF APPLICANT/ADULT HOUSEHOLD MEMBER | DATE

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

PROTECTIVE SERVICES: [ ] NO [ ] YES (DETERMINATION ATTACHED)

PREVIOUS LICENSE: [ ] NO [ ] YES (LIST NUMBER AND LOCATION)_____

****

LAW ENFORCEMENT CLEARANCE:

LICENSING RECORD CLEARANCE REQUEST

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

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

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

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

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

January 29, 1988

Fran Ulmer
Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

I just wanted to clarify a few matters on the proposed legislation prohibiting a "Suspended Imposition of Sentence" (SIS) for sex offenders.

I must say quite candidly that I was very surprised by some of the questions and issues raised during the HESS hearing on the proposed bill. In spite of your eloquent plea for the legislation and concise explanation of its effects, several of individuals on the committee seemed to completely misunderstand the effect of this bill.

First, I am very perplexed by the testimony from the individual in the Department of Corrections that this bill could potentially cost the State as much as one million dollars a year. AS 12.55.125 (§g) already prohibits an SIS for several serious offenses including "sexual assault in the first degree." The impact of the proposal bill would be to prohibit a suspended imposition for second degree, third degree and fourth degree offenders, all sexual offenders.

As you are well aware, this bill is not a sentencing provision. Whether or not an individual receives a suspended imposition of sentence has virtually no effect upon whether jail time is imposed, except in the very limited number of cases in which an individual is a second sex offender. Therefore, the only individuals who would receive any kind of sentencing enhancement as a result of this legislation are individuals who commit second sexual offense in Alaska. The clear purpose of this legislation is not to enhance the penalties for sexual offenders, but simply to identify the population of sexual offenders to potential employers and other interested parties in our society. Conversely, this bill should actually save the time and resources needed to have court hearings to expunge sex convictions.

I hope that the committee is able to see past some of the spurious issues raised by the debate on this legislation and focus in on the dual purpose of this bill: 1) to identify the population of sexual offenders; and 2) send a message to the community that sexual assault is at least as serious a crime as drunk driving. The legislation, in AS 28.35.030, (driving while intoxicated) upon which this legislation is based, has already withstood several court challenges and been effectively enforced for several years.

Thank you again for your support of this legislation and your unwavering commitment to the safety of Alaskans. I look forward to the day that we can live in a state in which we are able to readily identify those individuals who pose the greatest risks to their fellow citizens.

Sincerely,

Russell S. Babcock
Attorney

RSB:krn

MEMORANDUM State of Alaska

TO: Representative Fran Ulmer
House of Representatives

DATE: February 3, 1988

FILE NO:

TELEPHONE NO: 465-3428

THRU:

SUBJECT: HB 372, Suspended Imposition of Sentence

FROM: Stephanie E. Joannides
Assistant Attorney General
Department of Law

When a defendant is convicted for an offense and appears before a judge for sentencing, a sentence may be fashioned in a number of ways. One option is the actual imposition of a sentence for a specific time with a portion of that time suspended. Or a judge may decide to withhold the imposition of the sentence and place the defendant on probation for a certain period of time with certain conditions that the defendant must abide by. These two options are discussed below.

AS 12.55.080 authorizes a court, when a sentence is actually imposed, to suspend a portion of that sentence "and place the defendant on probation for a period and upon the terms and conditions as the court considers best". For example, if a defendant is convicted of assault in the third degree (a Class C felony punishable by a maximum term of five years) a court may sentence the defendant to four years with two suspended and place the defendant on probation for three years. What that sentence means to the defendant is that the defendant has been sentenced to a potential maximum term of four years to serve but by suspending two of those years the court is only requiring that defendant to serve two years in jail at that time. The suspended two years will be "hanging over the defendant's head" during the probationary term. If a defendant violates a condition of probation at any time during the three year probation then a petition to revoke probation may be filed and a defendant may be brought back into court for a hearing. If it is then determined that in fact the defendant did violate a condition of probation, a part or all of the two years that were suspended may be reimposed and the probationary period may be adjusted appropriately.

A suspended imposition of sentence under AS 12.55.085 allows for a defendant to never actually be sentenced. After a defendant is convicted of an offense, the court has the power to

withhold or suspend the imposition of sentence and impose probation for a period up to the maximum allowable sentence. If a defendant does not violate the conditions of probation, the court may set aside the conviction at the end of the probationary term. The court, when it suspends the imposition of sentence, may impose a period of jail time as a special condition of that probation. The practical effect of this legal mechanism is illustrated in the following example. A defendant convicted of assault in the third degree may receive a maximum sentence of five years to serve. If at the time of sentencing the court suspends the imposition of the defendant's sentence, the court may do so for a period not to exceed five years which is the maximum sentence which may be imposed. The person is then placed on probation for the time period set by the court. A special condition of probation may be imposed that could require the person to serve one year in jail. After the defendant serves the required time in jail, if he or she violates a condition of probation, the court then has the power to revoke the probation and to impose sentence. Before the court may exercise the power to revoke, the defendant is entitled to a hearing. At the hearing, if the court finds that the defendant violated a condition of probation, the court then has a number of alternatives. Imprisonment is not automatic, nor does the defendant receive the maximum allowable term under the suspended imposition of sentence. Under our example, the defendant could be sentenced to three years with one year suspended. The practical effect of that sentence would be to require the defendant to go to jail only for one additional year, as he or she would receive credit for the one year already served as a special condition of probation. Another alternative would be a sentence of three years with two years suspended. In that situation, the defendant would be given credit for the one year he or she already served so no additional jail time would actually be required. A period of probation would be imposed and the conviction would not be set aside. Another alternative that is unfortunately not uncommon is that even after the court makes a finding that a defendant has in fact violated a condition of probation, the court revokes the defendant's probation but then just reimposes the SIS with an additional one or two months incarceration.

Under present law, convicted felons that are subject to presumptive terms may not receive a suspended imposition of sentence. See, AS 12.55.125 (g). In other words, a defendant convicted as a "first-time felony offender" of sexual abuse of a minor in the first degree, under AS.11.41.434, who must receive an eight year presumptive term, may not receive a suspended imposition of sentence. Individuals convicted of sexual abuse of a minor in the second or third degrees, non-presumptive offenses, may receive a suspended imposition of sentence. Other than presumptive offenders, persons convicted of Driving While

Intoxicated also may not receive a suspended imposition of sentence.

It is important to expand the list of sex offenses which cannot receive an SIS. Many experts agree that a very large percentage of child molesters do not fit into the stereotype of a criminal defendant. They are usually employed, have ties to the community and no prior convictions. As such, they are more apt to receive suspended impositions of sentence since the courts feel that their potential for rehabilitation is great due to their background. Unfortunately, sex crimes, unlike some other offenses, are repeated. Sex offenders are not usually caught the "first time." They continue to reoffend. There is no known cure and unless an offender participates in a very structured long-term sex offender program, the recidivism rates are high. As a result, it is very important to have such convictions as part of a permanent criminal record so that the people of Alaska as well as law enforcement and other interested agencies in other states are informed of the defendant's prior criminal history should he or she choose to move and look for different parts of the country in which to reoffend. By continuing to allow certain sex offenders to receive a suspended imposition of sentence, the efficacy of AS 12.62.035, which provides access to criminal histories of this high risk group, is weakened.

It is not unheard of to single out certain types of crimes for special treatment. In the past, the legislature has determined that there is an overriding state interest in not suspending the imposition of sentence of people convicted of Driving While Intoxicated. In addition, presumptive "first time" offenses have been determined to warrant permanent placement on an individual's record. The consideration of a defendant's history is also exemplified in the rules of evidence. ER 609 allows the for the impeachment of a defendant convicted of a crime involving dishonesty if he or she chooses to take the stand in subsequent criminal proceedings for five years after conviction. Evidence or reference to other convictions is not allowed.

HB 372 will impact the public by providing a clear message that sex offenses are very serious offenses in the eyes of the law and that no matter who a person is that commits the offense, he or she will receive a permanent criminal history. The public in Alaska and in other states will be protected by HB 372. Offenders who are reported to the authorities but who cannot be prosecuted because a victim is too young to go through a trial or as a result of technical legal issues often will leave this state to settle in another area. We have heard of situations where the offender reoffends again in his new home soon after the move.

Sharon Brogan of Men, Inc. (586-3585) may be able to provide you with expert testimony in support of the permanent placement of a conviction on a sex offender's criminal history. She will also be able to provide you with information to show that sex offenses are "progressive", in other words, an offender might start by exposing him or herself or harrassing or "grooming" his or her victims, and then gradually go from touching to penetration. It is unfortunate, but sex offenders are usually not caught the first time they offend. As a result, the inappropriate behavior is ingrained and not amenable to a quick and easy cure.

Should you require any additional names of experts to provide you with testimony regarding the importance of a permanent record on sex offenders, please contact me and I will provide you with additional names and phone numbers.

SEJ:jf-75

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 1, 1988

Representative Ulmer
Chairman, State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

This letter is in response to your request for information about the court system's record-keeping procedures, particularly in respect to the handling of suspended impositions of sentence. The court system records an SIS as a conviction. The operative statute, AS 12.55.085(e), provides that the court may set aside this type of conviction upon the court's discharge of the offender. However, the record of conviction remains if no one requests that the conviction be set aside. Even if the conviction is set aside by the court, this does not mean that the offender's record in APSIN is also expunged.

If I can provide further information, please let me know.

Sincerely,

Janalee R. Strandberg
Staff Counsel

JRS:hr

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 2, 1988

Representative Fran Ulmer
Chair, House State Affairs
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

After rereading your memo and talking with Linda today, I thought I should follow-up my February 1 letter to you with more detail about the court system's record-keeping procedures.

The court system sends records of offender sentences to the Department of Public Safety for input into APSIN. The technical services department has an APSIN terminal. Those people within the court system with a legitimate need for APSIN information may request it from technical services.

Twelve courts have their own computers. These contain case files which include sentences and are available to anyone.

I hope this additional information is of assistance.

Very truly yours,

Janalee R. Strandberg
Staff Counsel

JRS:hr

Alaska State Legislature
House

Official Business

P.O. BOX V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

January 29, 1988

TO: Committee on Health, Education and Social Services

FROM: Representative Fran Ulmer

SUBJECT: House Bill 372, Suspended Imposition of Sentence

During the HESS Committee hearing on HB 372, prohibiting suspended imposition of sentences for sex offenders, some questions were asked regarding the potential for treatment and rehabilitation of these offenders.

In partial answer to those questions, I would like to share with you some testimony on this subject which was offered to the House Judiciary Committee by Dr. Bruce Smith of Langdon Clinic.

Attachment

TESTIMONY OF DR. SMITH
LANGDON CLINIC
JUDICIARY COMMITTEE
JANUARY 22, 1988

My name is Dr. Bruce Smith. I'm a clinical psychologist in private group practice at Langdon Clinic in Anchorage, Alaska.

- - - - - -

I am currently the program director for the sex offender treatment program at Highland Mountain, which is a treatment program jointly run by the Department of Corrections and Langdon Clinic. Langdon oversees, administers and supervises the program. We have 90 men in an incarcerated setting in an intensive two-year treatment program at Highland and we also follow them on a one to two-year follow-up after care basis upon release. In addition to that in the outpatient sector at Langdon, we have programs for adults, out-patient treatment programs for adult sex offenders who are not incarcerated and I also run an outpatient program for juvenile sexual offenders ages 12 to 18. In addition to that, I am director of programs over which we have a continuum of treatment for juvenile sex offenders which includes consultation to various incarcerated settings, residential treatment homes such as Jessie Lee and the McLaughlin Youth Center programs.

In addition to that, I have been doing forensic evaluations and expert testimony for approximately six years in Anchorage. That's including sexual offenders as well as misdemeanants and other non-sexual offenders through the courts.

As I understand it, I've been asked here today to comment on some fundamental differences between sex offenders and other criminals and other criminals in the criminal justice system, with respect to the question of admissibility of prior acts. With respect to that, I would like to address my comments to three different areas.

The first is that there's a criminal justice system which in many ways facilitates a man entering into denial, with respect to the extent to which he might have prior acts. A man is certainly not wanting to give, voluntarily, information which is going to increase the length of his sentence when he is being asked by a police investigator about the nature of his activity with a victim or the number of victims in the past. So there's a kind of a system set up in the adversarial judicial system we have whereby an offender's simply not going to admit, out of common sense, except he knows he must. That's continued within the prison setting because sexual offenders are at risk, physically and psychologically. Within most jails they're low man on the totem pole, so to speak, and so they often fabricate stories with

respect to what their offenses are and that denial trend is continued.

When we see them in treatment, we almost always have to spend between two and six months working on breaking down the denial patterns, whether that's a blanket denial that I was drunk at the time and I don't remember anything about it, or whether it's denial for a specific act or extent of activity.

Recently, we've also come to the suspicion with most sexual offenders that there are also prior acts and prior victims. This suspicion comes from two basic places. The first is our clinical experience with men who do admit, without generally talking about specific dates, names or places, but admit to prior victims. They also admit to activity that generally begins around the age of 16, by dreaming sexual fantasies that lead to, if not deviant sexual activity, that then progresses over the course of their adult life.

In addition, there are statistics from a group on the east coast, Ginabel, Middleman and Becker, who have an article in 1985 called "The Assessment and Treatment of Criminal Behavior," which talks about statistics that they gathered with a certificate of confidentiality issued by the federal government, in which they looked at 411 paraphiliacs, is the term, meaning sexual deviants. Out of that 411, when they had absolutely no sanctions, no recriminations that would come about from their talking very explicitly about all the sexually deviant acts and victims that there had been in their lives, they had a total of attempted, out of this 411, there had been attempted 238,711 sexually deviant acts. They had completed 218,900 with a total victim number of 138,137. The average course of this activity was over 12 years. Now if you break that down into rape versus child molesting, and the Kinsey Report which came out in the '40's which was the first basic report of American sexual behavior which talked about the average number of rape victims for rapists, the admission was 1.4 in statistical average terms. In this data, the rapists had an average of 7.5 victims. Our experience, incidentally, at Highland, is that a rapist has one victim. They only admit to the one that they had as an instant offense.

With respect to the child molesters, the numbers are even higher. Each offender had attempted 238 molestations, had completed 166 and had an average of 76 victims. In addition, 50% across the board, both rapists and child molesters, had multiple deviations, meaning that molesters, for example, 30% of them had accounts of exposure to children and adults. Seventeen percent of the molesters had also raped; 14% had been involved in voyeuristic activities, and on and on. With the rapists, the percentage were, interestingly, at 51% that had also been indications of child molestation of some kind; 29% had engaged in exhibitionistic acts; 20% in voyeuristic acts, etc. etc.

This is a lot of data and a lot of statistical information but to summarize, what it tells us as treatment professionals is that sexual offending is a process, an on-going process that is cyclical in an offender's life, it generally begins at the age of 15 or 16, and will continue through an adult life span unless it is treated, unless it is brought to attention and confronted in the individual and very effective treatment provided. With that kind of statistic, for us as a treatment team, it develops, as I mentioned before, the suspicion with respect with admission of only one act.

That's kind of a background with respect to statistics which leads me to my third point, which is, in addition to the lying and denial pattern that you see, and the number of deviant sexual acts that are admitted by this particular population which we don't have any reason to believe is all that atypical for a sexually deviant population, we therefore look at the sex offender when we're trying to make decisions about amenability to treatment, dangerousness, etc., with only one real good hammer: That is, the best predictor of future behavior is past behavior. Personality testing with a sexual offender, there's 44 different MMPI, personality profiles, that typify sexual offenders. That means that you can't simply by using personality testing come up with any diagnostic surety that you have someone who's a sexual offender. Again, it places us back in that issue of needing to have past behavior in order to understand future behavior. In other words, in order to make the best predictions we can with respect to both future offenses and amenability to treatment, and the place that a person is in in their particular, what we term "assault cycle." We look at that as a pattern of behavior that a sexual offender will go through periodically where he will culminate in revictimizing or in choosing a new victim. It's a means of expressing both deviant sexual fantasy and/or arousal, as well as emotional needs, as well as an ingrained pattern of compulsive behavior.

Let me stop there and entertain questions or comments.

Sund: I just want to let people know, I have quite a few people on the teleconference network that have been asked to testify on this piece of legislation, and I want to make sure they get in and I have some here in Juneau here, too, just so the committee keeps that in mind that we have quite a bit to get through. One of the reasons I asked this question yesterday, Dr. Smith, is that the proposal to amend Alaska Rule of Evidence 404, to allow evidence of physical assault on a child or evidence of other acts by the defendant toward the same or another child, as admissible evidence to prove an act, and the issue that has come up: Is it relevant or should acts by the defendant toward another child that are not charged in the crime that's being prosecuted, should they be admissible to help prove the crime at that time? The issue here is obviously propensity to commit that

type of a crime and I appreciate your comments on that. Representative Taylor.

Taylor: Yes. My question is very brief, Doctor. Could you, in summary fashion, explain the program that you're currently running with those incarcerated inmates?

Smith: Very briefly, the two year incarcerated program, two to three year, actually, depending on the self-motivation of the inmates, it is appropriate milieu style. That means that the men live in functional units of ten and are involved in group therapy and individual therapy in those group units. In addition to that, we do behaviorial reconditioning work with their sexual arousal and sexual fantasies in a laboratory setting. In addition to that, we involve them in education, didactic education, on victimology, on thinking errors, on sexual education, and relapse prevention in a lot of these other areas. So it's a fairly comprehensive program. It's been evaluated as a model program last year by an outside, independent evaluator.

Sund: Dr. Smith, do you feel that people who are convicted of sexual offenses, or sexual assaults in this case, are treatable?

Smith: Absolutely.

Sund: That's an issue that's come up before this committee that feel that some of those cases, they just are not treatable at all and I just appreciate your comment on it. Representative Ulmer, you had a comment.

Ulmer: Just one clarification on the last question. I think there's a difference between whether someone is curable versus if someone is controllable, versus if someone is treatable. I think the question which has arisen, and it's slightly off-target on House Bill 237, is that there's a suggestion that some people can learn to control their behavior but that that may be differentiated from being cured.

Smith: That's a very good clarification. It's analogous to an alcoholic. Once a person has become alcoholic, they always have a propensity of that substance and therefore they can control that urge and actively not drink, but there remains a much higher risk of being alcoholic in their behavior. Similarly with sex offenders. No one is saying that we cure sexual offending. We are simply providing these inmates with a new set of tools for thinking and for behavioral control which they, hopefully, will use. Our recidivism statistics to date show that they, in fact, are if they make it all the way through our program.

Sund: Thank you very much, Dr. Smith. I appreciate it.

TESTIMONY OF DR. SMITH
LANGDON CLINIC
JUDICIARY COMMITTEE
JANUARY 26, 1988

I testified last week just with some facts and figures with respect to sexual offenders and what you can expect in terms of past sexual offenses when there was a certificate of total confidentiality. And then I had to leave the proceedings and I understand that there has been a question with respect to the issue of treatment and how treatment might be affected by something like consecutive sentencing. So I wanted to be available to this committee for that, also to any questions you might have in more depth or detail with respect to the nature of the sexual offendent.

So I think that maybe to provide a stimulus for that, if I could just speak to the issue of how the sexual offender presents themselves. It's always a question of whether it's a difference between someone who would be "a common criminal" in the criminal justice system, and a sexual offender. In some cases, obviously, none at all, in terms of appearance or method of operation, but in some other cases there are very, very wide differences. We've seen that overall in the facility at Highland Mountain where our predominant treatment program, that is the largest number of offenders is located in the state. The complexion of that institution has changed in the five years that we moved from a treatment base of 20 to a treatment base of 90, because of the fact that the predominant sexual offender in the system is sexual assault of a minor charge, a pedophile by diagnosis, as opposed to rapists. Rapists get longer sentences and are either in more maximum security institutions here in Alaska or else in the FBP, Federal Bureau of Prisons.

But, in addition to that, the method of operation, the method of presentation of someone who has been generally convicted of a child sexual assault is such that they will seem very much like you and me, from the perspective that they will hold the same values in terms of the Protestant work ethic. They will work very hard in the institution; they work very hard, in fact, out of the institution. They don't have an itinerant history, either in relationships or in vocational, in terms of their job history, as you often find with a criminal background where they move geographically every one or two years, they engage in short-term relationships, they are unable to hold down a job. The sexual abuser that we see is someone who establishes himself in a job, establishes himself in the community, establishes himself, often, in a family; who, in fact, uses his ability to work his way into those situations, those groupings, for their own reasons. So, in a way, he has the same value structure as you or I, but it's for the wrong reasons. His reasons have to do with gaining access, first of all gaining trust, gaining the trust of his family or of the neighborhood or

of the community and, second of all, using that trust for his own purposes which have to do with an underlying deviant sexual arousal. I don't have to but allude to the kind of cases that get a lot of notice in certain geographic areas in the state, the man of the year, in a particular state. We have physicians, we have psychologists, we have ministers, we have police officers. They cut across a wide swath of vocational and job strata or social strata, in terms of who it is who is charged and ultimately convicted and comes through the program. That's one major difference that we do see is that on the surface you can't necessarily tell.

Certainly the other point I was trying to make was that in terms of personality profiles, you also can't necessarily tell. What is uncontrovertable evidence for any sexual abuser is their past history of sexual abuse and behavior. That, and really nothing else.

The only other thing I might add with respect to sexual abuse is the difference in the impact of the crime. If someone enters your home and steals from your property, takes property from you, we all feel a sense of intrusion when that has happened. There's a sense of a personal investment in our objects and so there's a sense of intrusion in having someone come into our castle, so to speak, in your home. But that is external to us physically. We can get over that by replacing those articles, by buying into a sophisticated security system or just changing the locks. When your body's invaded, as occurs in a sexual abuse case, you can't change the body that you live in. The impact on the victim is so much different that that's where the crime really does become something that is qualitatively quite different on the impact on those that are the victims of it.

I think at that point, I'll stop, with respect to that, and ask if there's any questions the committee might have about the characteristics of the sexual offender.

Ulmer: Thank you, Dr. Smith. Are there any questions? Representative Barnes.

Barnes: Thank you, Madam Chairman. I'm not sure that I heard you correctly so I'd like to have you repeat it, if you would, please. The population that you have at Highland Mountain, would you state again exactly what that's made up of? Did I understand you to say that those that have committed sexual abuse are more likely to be in a more long-term prison than the ones that are at Highland Mountain, and those that have gotten lesser sentences are the ones that have abused children?

Smith: Thank you. That needs clarification. What I was saying there was that generally with an offense that involves rape, that there's the use of a weapon and/or use of enough force

where the sentencing reflects that. The longer the sentence, the higher the security level within the Department of Corrections, and therefore, the higher the security level, the more that they're going to be incarcerated in a maximum security setting. Highland Mountain is a minimum to moderate security institution; therefore, the prisoners that we get are prisoners that are the end of their sentences who are a much lower risk on that matrix.

The other part of that is that the complexion of the sexual offender in the state is that we have more sexual abusers of children than we do rapists, in terms of relative numbers, even though, statistically, we're in the top five in the country for both rape and sexual abuse of minors.

So it's two-fold. It's the complexion issue in terms of who is, in fact, in the system, and then it's also, to a lesser extent, the fact that a man is not going to be long-term, is not going to housed, if he has an extremely long sentence. But, with the presumptive eight year sentence, we certainly have a majority, at this point I think, of the offenders in the system have the presumptive eight.

Ulmer: Any other questions for Dr. Smith? Thank you very much for joining us. We appreciate it. Representative Taylor.

Taylor: Dr. Smith, do you have any figures that would give us some idea of recidivism rates, rehabilitative effects of the program that you're running?

Smith: Yes, I do. They're preliminary. First of all, you need to have about five years worth of treatment program in order to have recidivism statistics that are valid, for the very fact that again, there's a difference between rapists and child molesters in that rapists will generally re-offend, if he's going to, in the first year post-incarceration; whereas, a child molester will re-offend up to five years, post-incarceration. So he's much slower in his method of operation. So you need to have that kind of data. In addition, you simply need to have people that have cycled out of the system. So having said that, we have the three-and-one-half-year recidivism rate, to date, which shows that for the people that complete the program, not one of them has re-offended to date. I'm quoting only sexual re-offenses, actually, for the people that have concluded the program. Out of that total number that have gone through our program since September 1983, we've had 231 people. Out of that 231, 23 have successfully completed the incarcerated component, meaning they have gone through the complete two years and they are now in the follow-up after-care setting. That comprises 10%. In addition to that, there's also another 76 who have been released who were still in the program, so we consider them to be a group that was continuing to work. So, in other words, 43% of the men who have come to the program continue with us in after-care follow-up, and 57% of the men who come to the program drop out. They fail or

they're asked to leave, for one reason or another, which may sound high but across the nation, it's relatively low compared to other programs of equal rigor or intensity. So you have to break it down into three categories to answer that question of recidivism.

In the first category, Group A, which is the people that completed, we have had two re-offenses which were alcohol-related probation violations, but no sexual re-offenses. So that's a statistic of either zero or nine percent of the total, depending on whether you include the two alcohol related offenses or not. Out of that group of 57% that have dropped out, they have an overall recidivism rate of 25%. In relative terms, we're talking about, at this point, 9% versus 25%. But, again, out of that Group C, of the 132 that dropped out so far, only 64 have actually been released. So you see you have 68 men still in jail who we can't necessarily say anything about. Because they're still incarcerated, we don't have any idea what their overall recidivism is going to be. So it's a preliminary kind of recidivism statistic. All we can say is that at this point for the men that complete the program, none of them are re-offending. So that's a very heartening statistic and one that we hope will continue. But it will take another year-and-one-half before we'll have the kind of statistic where I sit and answer that question completely.

Ulmer: Thank you very much. Any other questions? Thank you for joining us.