

HB

229

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: ^{HB} ~~SB~~ 229 ^D
Publish Date:

REQUEST:

Revision Date: 05/05/88
Title: An act relating to sexual abuse of children
Sponsor: Duncan
Requestor: Judiciary

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

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL
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REVENUE
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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: *Jan Strandberg*
Jan Strandberg, General Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 05/05/88

Approved by: *Arthur H. Snowden, II*
Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 05/05/88

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

March 24, 1988

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

RE: CS for House Bill 229 (Judiciary)

Dear Representative Hudson:

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

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

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

the second degree under those circumstances.

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

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

Very truly yours,

GRACE BERG SCHUBBLE
ATTORNEY GENERAL

By:



Stephanie E. Joannides
Assistant Attorney General

SEJ/11m

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

P.O. BOX V
Juneau, Alaska
99811
(907)465-3744 or 4991

COMMITTEES:
Transportation
HESS
Telecommunications
Fisheries
International Trade

April 28, 1988

APR 29 1988

The Honorable Jay Kerttula,
Chairman - Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Dear Senator Kerttula:

HB 229, "An Act amending the definition of murder in the first degree to include homicide by a pattern or practice of torture or assault of a child under the age of 16," was passed 38-0 by the House yesterday.

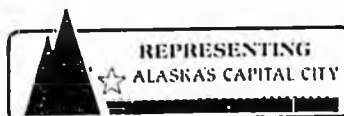
It is anticipated the bill will be read across in the Senate today, and be referred to the Senate Judiciary Committee.

The legislation was closely scrutinized by the House Judiciary Committee, in three formal hearings, and several informal work sessions. A committee substitute was passed out with unanimous "do pass." Additionally, the bill was further examined by the members of the House Finance Committee, and eight members recommended "do pass."

CSHB 229(Jud) is supported by the Alaska Network on Domestic Violence and Sexual Assault, the Anchorage Police Department, the Society to Prevent Exploitation of Children, the Cook Inlet Native Association, the Alaska Juvenile Crime Commission, Victims for Justice, and Justice for Children.

In addition, I have received literally hundreds of public opinion messages from across the state in support of the passage of this bill.

CSHB 229(Jud) seeks to change the definition of murder in the first degree so that people who brutally, systematically and repeatedly abuse a child to the point of death are charged with first degree murder instead of second degree murder or negligent homicide.



Senator Jay Kerttula

Page Two

April 28, 1988

In light of the fact that we are rapidly approaching adjournment, I respectfully request that you schedule CSHB 229(Jud) for a hearing in the Senate Judiciary Committee as soon as possible.

Your favorable consideration, Jay, will be very much appreciated.

Respectfully,

A handwritten signature in cursive script that reads "Bill".

Bill Hudson

Enclosures

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

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

HB 229

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

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

1 IN THE HOUSE

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

2

HOUSE BILL NO. 229

*Ellis, R. Anderson, L. Anderson,
Wardell, Phillips & Tuller*

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

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

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

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

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

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

*amend murder I
practice of assault.*

5-13-87
4

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 229
Publish Date:

REQUEST: _____

Revision Date: _____ Agency Affected: Alaska Court System
Title: An act relating to homicide by BRU: Trial Courts
abuse
Sponsor: Hudson, Ulmer, Larson, ... Components:
Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)							
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	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	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	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: Karla Forsythe, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 5-5-87
Approved by: *Stephanie J. Cole* Date: 5-5-87
Agency: Alaska Court System

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

FISCAL NOTE

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

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

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 229

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

FISCAL NOTE

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
Division: Council on Domestic Violence & Sexual Assault Date: 1/20/88
Approved by Commissioner: Paul A. Hootchi, Dep. Comm. Date: 1-28-88
Agency: Public Safety

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

FISCAL NOTE

REQUEST:

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

Agency Affected: Administration
BRU: Office of Public Advocacy

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

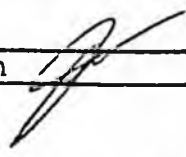
POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate 
Division: Office of Public Advocacy

Phone: 274-1684
Date: 1/20/88

Approved by Commissioner: John Andrews 
Agency: Department of Administration

Date: 1/27/88

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 229
PUBLISH DATE: 4/1/87

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to crimes
against children"
Sponsor: Senator Duncan
Requestor: _____

Agency Affected: Dept. of Administration
BRU: Public Defender Agency
Components: Third Judicial District

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-

CAPITAL	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93

REVENUE	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dana Fabe, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: 1/25/88
 Approved by Commissioner: John Andrews Date: 2/1/88
 Agency: Department of Administration

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

FISCAL NOTE

REQUEST:

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

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

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

Prepared by: Susan E. Knighton, Director SK Phone: 465-3376
Division: Administrative Services Date: March 14, 1988
Approved by Commissioner: Susan Humphrey-Barnett Date: March 14, 1988
Agency: Department of Corrections

Distribution (by preparer):

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

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

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

H. Judiciary	MAY 5, 1987	1:35 PM
H. Judiciary	Feb. 16 1988	?
H. Judiciary	March 10, 1988	?

LEGISLATIVE REPORTING SERVICE (BILL SUMMARY)

Homicide by Abuse

HOUSE BILL NO. 229, by Reps. Hudson, Ulmer, Larson, Menard, Hoffman and Goll. Amends AS 11.41 (Criminal Law. Offenses Against the Person) by adding a new section establishing the crime of homicide by abuse. A person commits the crime of homicide by abuse if, under circumstances manifesting an extreme indifference to the life of a child under 16, the person engages in a pattern or practice of assault or torture of the child that results in the death of the child. A defendant convicted of the crime of homicide by abuse would be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years (the same sentence as murder in the first degree). Does not provide for an effective date (bill becomes law 90 days after being signed by the governor). Note: also see HB 237 and SB 229, similar subject matter.

On March 30 Reps. Ellis, Davidson and Gruenberg added their names as co-sponsors. On April 1 Rep. Hanley added her name as co-sponsor. On April 3 Rep. Collins added her name as co-sponsor.

Introduced March 30 and referred to Judiciary; Finance.

Homicide
(assault or
torture/child)

HOUSE BILL NO. 229, (see pages 462;10061). Reported back the House March 14, 1988 by Judiciary recommending it be re-placed with a Judiciary substitute and that it do pass. Concurring: Sund (Chair), Ulmer, Gruenberg, Taylor, Navarre, Cotten. To Finance.

The Judiciary substitute contains none of the original language. In the Judiciary version:

—A person could commit the crime of murder in the first degree if ". . .(2) the person knowingly engages in a pattern or practice of assault or torture of a child under the age of 16 that results in the death of the child under circumstances manifesting extreme indifference to the value of human life; for purposes of this paragraph, a person 'engages in a pattern or practice of assault or torture' if the person inflicts serious physical injury to the child in at least two separate incidents."

This type of homicide would not qualify for a "crime of passion" defense.