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Original sponsor(s): Judiciary Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 450 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to reporting and investigation of
7 child abuse and neglect; relating to training of
8 persons required to report child abuse or neglect;
9 and amending the definition of 'child abuse or ne-
10 glect'."

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

12 * Section 1. AS 47.17.010 is amended to read:

13 Sec. 47.17.010. PURPOSE. In order to protect children whose
14 health and well-being may be adversely affected through the inflic-
15 tion, by other than accidental means, of harm through physical injury
16 [ABUSE] or neglect, mental injury, [OR] sexual abuse, [OR] sexual
17 exploitation, or maltreatment, the legislature requires the reporting
18 of these cases by practitioners of the healing arts and others to the
19 department. It is not the intent of the legislature that persons
20 required to report suspected child abuse or neglect under this chapter
21 investigate the suspected child abuse or neglect before they make the
22 required report to the department. Reports must be made when there is
23 a reasonable cause to suspect child abuse or neglect in order to make
24 state investigative and social services available in a wider range of
25 cases at an earlier point in time, to make sure that investigations
26 regarding child abuse and neglect are conducted by trained investiga-
27 tors, and to avoid subjecting a child to multiple interviews about the
28 abuse or neglect [APPROPRIATE PUBLIC AUTHORITIES]. It is the intent
29 of the legislature that, as a result of these reports, protective

1 services will be made available in an effort to prevent further harm
2 to the child, to safeguard and enhance the general well-being of the
3 children in this state, and to preserve family life whenever possible.

4 * Sec. 2. AS 47.17.020(a) is amended to read:

5 (a) The following persons who, in the performance of their
6 occupational duties, have reasonable cause to suspect [CAUSE TO BE-
7 LIEVE] that a child has suffered harm as a result of child abuse or
8 neglect shall immediately report the harm to the nearest office of the
9 department:

10 (1) practitioners of the healing arts;

11 (2) school teachers and school administrative staff members
12 of public and private schools;

13 (3) social workers;

14 (4) peace officers, and officers of the Department of
15 Corrections;

16 (5) administrative officers of institutions;

17 (6) child care providers;

18 (7) paid employees of domestic violence and sexual assault
19 programs, and crisis intervention and prevention programs as defined
20 in AS 18.66.900;

21 (8) paid employees of an organization that provides coun-
22 seling or treatment to individuals seeking to control their use of
23 drugs or alcohol.

24 * Sec. 3. AS 47.17.020(b) is amended to read:

25 (b) This section does not prohibit the named persons from re-
26 porting cases that have come to their attention in their nonoccupa-
27 tional capacities, nor does it prohibit any other person from report-
28 ing a child's harm that the person has reasonable cause to suspect
29 [CAUSE TO BELIEVE] is a result of child abuse or neglect. These

1 reports shall be made to the nearest office of the department.

2 * Sec. 4. AS 47.17.020(c) is amended to read:

3 (c) If the person making a report of harm under this section
4 cannot reasonably contact the nearest office of the department and
5 immediate action is necessary for the well-being of the child, the
6 person shall make the report to a peace officer. The peace officer
7 shall immediately take [IMMEDIATE] action to protect the child and
8 shall, at the earliest opportunity, notify the nearest office of the
9 department.

10 * Sec. 5. AS 47.17.020(e) is repealed and reenacted to read:

11 (e) The department shall immediately notify the nearest law
12 enforcement agency if the department

13 (1) concludes that the harm was caused by a person who is
14 not responsible for the child's welfare;

15 (2) is unable to determine

16 (A) who caused the harm to the child; or

17 (B) whether the person who is believed to have caused
18 the harm has responsibility for the child's welfare; or

19 (3) concludes that the report involves

20 (A) possible criminal conduct under AS 11.41.410 -
21 11.41.455; or

22 (B) abuse or neglect that results in the need for
23 medical treatment of the child.

24 * Sec. 6. AS 47.17.020 is amended by adding new subsections to read:

25 (f) If a law enforcement agency determines that a child has been
26 abused or neglected and that (1) the harm was caused by a teacher or
27 other person employed by the school or school district in which the
28 child is enrolled as a student, (2) the harm occurred during an activ-
29 ity sponsored by the school or school district in which the child is

1 enrolled as a student, or (3) the harm occurred on the premises of the
2 school in which the child is enrolled as a student or on the premises
3 of a school within the district in which the child is enrolled as a
4 student, the law enforcement agency shall notify the chief administra-
5 tive officer of the school or district in which the child is enrolled
6 immediately after the agency determines that a child has been abused
7 or neglected under the circumstances set out in this section, except
8 that if the person about whom the report has been made is the chief
9 administrative officer or a member of the chief administrative offi-
10 cer's immediate family, the law enforcement agency shall notify the
11 commissioner of education that the child has been abused or neglected
12 under the circumstances set out in this section. The notification
13 must set out the factual basis for the law enforcement agency's deter-
14 mination. If the notification involves a person in the teaching
15 profession, as defined in AS 14.20.370, the law enforcement agency
16 shall send a copy of the notification to the Professional Teaching
17 Practices Commission.

18 (g) A person required to report child abuse or neglect under (a)
19 of this section who makes the report to the person's job supervisor or
20 to another individual working for the entity that employs the person
21 is not relieved of the obligation to make the report to the department
22 as required under (a) of this section.

23 * Sec. 7. AS 47.17.022 is amended to read:

24 Sec. 47.17.022. TRAINING. (a) A person employed by the state
25 or by a school district who is required under this chapter to report
26 abuse or neglect of children shall receive training on the recognition
27 and reporting of child abuse and neglect.

28 (b) Each department of the state and school district that em-
29 ploys persons required to report abuse or neglect of children shall

1 provide

2 (1) initial training required by this section to each new
3 employee during the employee's first six months of employment, and to
4 any existing employee who has not received equivalent training; and

5 (2) at least once every five years, appropriate in-service
6 training required by this section as determined by the department or
7 school district.

8 (c) Each department and school district that must comply with
9 (b) of this section shall develop a training curriculum that acquaints
10 its employees with

11 (1) laws relating to child abuse and neglect;

12 (2) techniques for recognition and detection of child abuse
13 and neglect;

14 (3) agencies and organizations within the state that offer
15 aid or shelter to victims and the families of victims of child abuse
16 or neglect; [AND]

17 (4) procedures for required notification of suspected abuse
18 or neglect;

19 (5) the role of a person required to report child abuse or
20 neglect and the employing agency after the report has been made; and

21 (6) a brief description of the manner in which cases of
22 child abuse or neglect are investigated by the department and law
23 enforcement agencies after a report of suspected abuse or neglect.

24 (d) Each department and school district that must comply with
25 (b) of this section shall file a current copy of its training curricu-
26 lum and materials [,] with the Council on Domestic Violence and Sexual
27 Assault. A department or school district may seek the technical
28 assistance of the council or the Department of Health and Social
29 Services in the development of its training program.

1 * Sec. 8. AS 47.17.023 is amended to read:

2 Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person
3 who, in the course of processing or producing visual or printed mat-
4 ter, either privately or commercially, has reasonable cause to suspect
5 [REASON TO BELIEVE] that the matter visually depicts a child engaged
6 in conduct described in AS 11.41.455(a) shall immediately [PROMPTLY]
7 report this to the nearest law enforcement agency, and provide the law
8 enforcement agency with all information known about the nature and
9 origin of the matter.

10 * Sec. 9. AS 47.17 is amended by adding a new section to read:

11 Sec. 47.17.027. DUTIES OF SCHOOL OFFICIALS. (a) If the depart-
12 ment or a law enforcement agency provides written certification to the
13 child's school officials that (1) there is reasonable cause to suspect
14 that the child has been abused or neglected by a person responsible
15 for the child's welfare or as a result of conditions created by a
16 person responsible for the child's welfare; (2) an interview at school
17 is a necessary part of an investigation to determine whether the child
18 has been abused or neglected; and (3) the interview at school is in
19 the best interests of the child, school officials shall permit the
20 child to be interviewed at school by the department or a law enforce-
21 ment agency before notification of, or receiving permission from, the
22 child's parent, guardian, or custodian. A school official shall be
23 present during an interview at the school unless the child objects or
24 the department or law enforcement agency determines that the presence
25 of the school official will interfere with the investigation. Immedi-
26 ately after conducting an interview authorized under this section, and
27 after informing the child of the intention to notify the child's
28 parent, guardian, or custodian, the department or agency shall make
29 every reasonable effort to notify the child's parent, guardian, or

1 custodian that the interview occurred unless it appears to the depart-
2 ment or agency that notifying the child's parent, guardian, or custo-
3 dian would endanger the child.

4 (b) A school official who, with criminal negligence, discloses
5 information learned during an interview conducted under (a) of this
6 section is guilty of a class B misdemeanor.

7 * Sec. 10. AS 47.17.040(b) is amended to read:

8 (b) Investigation reports and reports of harm filed under this
9 chapter are considered confidential and are not subject to public
10 inspection and copying under AS 09.25.110 and 09.25.120. However, in
11 accordance with department regulations, investigation reports may be
12 used by appropriate governmental agencies with child-protection func-
13 tions, inside and outside the state [ALASKA], in connection with
14 investigations or judicial proceedings involving child abuse, neglect,
15 or custody. A person, not acting in accordance with department regu-
16 lations, who with criminal negligence makes public informatior con-
17 tained in confidential reports is guilty of a class B misdemeanor.

18 * Sec. 11. AS 47.17.050 is amended to read:

19 Sec. 47.17.050. IMMUNITY. Except as provided in (b) of this
20 section, a [A] person who, in good faith, makes a report under this
21 chapter, permits an interview under AS 47.17.027, or [WHO] partici-
22 pates in judicial proceedings related to the submission of reports
23 under this chapter, is immune from [ANY] civil or criminal liability
24 that [WHICH] might otherwise be incurred or imposed for making the
25 report or permitting the interview, except that a person who knowingly
26 makes an untimely report is not immune from civil or criminal liabil-
27 ity based on the delay in making the report.

28 * Sec. 12. AS 47.17.050 is amended by adding a new subsection to read:

29 (b) Notwithstanding (a) of this section, a person accused of

1 committing the child abuse or neglect is not immune from civil or
2 criminal liability for the child abuse or neglect as a result of
3 reporting the child abuse or neglect.

4 * Sec. 13. AS 47.17.064(a) is amended to read:

5 (a) The department or a practitioner of the healing arts may,
6 without the permission of the parents, guardian, or custodian, take
7 the following actions with regard to a child who the department or
8 practitioner has reasonable cause to suspect has [BELIEVED TO HAVE]
9 suffered physical harm as a result of child abuse or neglect:

10 (1) take or have taken photographs of the areas of trauma
11 visible on the child; and

12 (2) if medically indicated, have a medical or radiological
13 examination of the child performed by a person who is licensed to
14 administer the [A RADIOLOGICAL] examination.

15 * Sec. 14. AS 47.17.068 is amended to read:

16 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person who
17 [KNOWINGLY] fails to comply with the provisions of [OR REFUSES TO
18 REPORT AS REQUIRED UNDER] AS 47.17.020 or 47.17.023 and who knew or
19 should have known that the circumstances gave rise to the need for a
20 report, is guilty of a class B misdemeanor.

21 * Sec. 15. AS 47.17.070(2) is amended to read:

22 (2) "child abuse or neglect" means the physical injury or
23 neglect, mental injury, sexual abuse, sexual exploitation, or mal-
24 treatment of a child under the age of 18 by a person [WHO IS RESPONSI-
25 BLE FOR THE CHILD'S WELFARE] under circumstances that [WHICH] indicate
26 that the child's health or welfare is harmed or threatened thereby;

27 * Sec. 16. AS 47.17.070(3) is amended to read:

28 (3) "child care provider" means an adult individual, in-
29 cluding a foster parent or an employee of an organization, who

1 provides care and supervision to a child for compensation or reim-
2 bursement;

3 * Sec. 17. AS 47.17.070(6) is amended to read:

4 (6) "neglect" means the failure by a person responsible for
5 the child's welfare to provide necessary food, care, clothing, shel-
6 ter, or medical attention for a child;

7 * Sec. 18. AS 47.17.070(9) is amended to read:

8 (9) "practitioner of the healing arts" includes chiroprac-
9 tors, mental health counselors, dental hygienists, dentists, health
10 aides, nurses, nurse practitioners, occupational therapists, occupa-
11 tional therapy assistants, optometrists, osteopaths, naturopaths,
12 physical therapists, physical therapy assistants, physicians, physi-
13 cian's assistants, psychiatrists, psychologists, psychological associ-
14 ates, audiologists licensed under AS 08.11, hearing aid dealers li-
15 censed under AS 08.55, religious healing practitioners, acupunc-
16 turists, and surgeons;

17 * Sec. 19. AS 47.17.070 is amended by adding new paragraphs to read:

18 (11) "criminal negligence" has the meaning given in AS 11.-
19 81.900;

20 (12) "immediately" means as soon as is reasonably possible,
21 and no later than 24 hours;

22 (13) "maltreatment" means an act or omission that results in
23 circumstances in which there is reasonable cause to suspect that a
24 child may be a child in need of aid, as described in AS 47.10.-
25 010(a)(2), except that, for purposes of this chapter, the act or
26 omission need not have been committed by the child's parent, custodi-
27 an, or guardian;

28 (14) "mental injury" means an injury to the emotional well-
29 being, or intellectual or psychological capacity of a child, as

1 evidenced by an observ~~e~~ and substantial impairment in the child's
2 ability to function;

3 (15) "reasonable cause to suspect" means cause, based on all
4 the facts and circumstances known to the person, that would lead a
5 reasonable person to believe that something might be the case;

6 (16) "school district" means a city or borough school dis-
7 trict or regional educational attendance area.
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BILL NO: SB 450

DATE: February 12, 1990

TITLE: An Act relating to child
abuse and neglect

CONTACT: Barbara Miklos
465-4356

The Council on Domestic Violence and Sexual Assault supports SB 450, which clarifies and strengthens the child abuse reporting statute. We believe that this legislation will be instrumental in protecting children in Alaska.


Among the provisions which the Council particularly supports is clarification that persons who report are not intended to conduct investigations prior to making reports; rather, reports are required when there is a reasonable suspicion of child abuse or neglect. This is clarified in the purpose section, as well as by changing "reasonable cause to believe" to "reasonable cause to suspect".

The Council supports adding paid employees of substance abuse treatment or prevention programs and mental health counselors to the list of mandatory reporters. There is a high correlation between substance abuse and family violence; therefore, employees of substance abuse programs are likely to have cause to suspect child abuse or neglect. Now that federal confidentiality requirements for substance abuse treatment providers have been changed to allow the reporting of child abuse or neglect, the barrier to adding them to the list of reporters has been removed.

The Council supports making all reports to the Department of Health and Social Services, and requiring the Department to refer to law enforcement agencies cases that do not involve family members, where criminal conduct is involved, or where abuse or neglect results in the need for medical treatment of the child. We know that the previous requirement that some reports be made to law enforcement officials was confusing for some people. This section also clarifies the cases that the Department of Health and Social Services must refer to law enforcement agencies for their investigation.

Another important provision of this bill is the proposed new section, "Duties of School Officials" (proposed AS 47.17.027) which requires school officials to permit the child to be interviewed at school without prior notification of, or permission from, the child's parent, guardian or custodian. We know that the lack of such authority has impeded the investigation of reports, and caused unnecessary friction between school officials and investigators.

In summary, the Council believes the proposed amendments to the Child Abuse Reporting Law strengthen and improve protections for children. We urge the passage of this bill.



Arthur English
Commissioner

DEPARTMENT OF
PUBLIC SAFETY



FISCAL NOTE

REQUEST:

Revision Date: 2/8/90
Title: An Act Relating to Child Abuse
and Neglect
Sponsor: Judiciary
Requestor: _____

Agency Affected: DHSS, DFYS
BRU: Social Service
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) FY 90 fiscal impact is "0".
The Division receives over 10,000 reports of harm to children each year. Many of these reports concern harm caused by persons who are not responsible for the welfare of the child victim. These are forwarded to law enforcement agencies. The precise number of these cannot be estimated nor is it possible to estimate the increased number which will result from passage of SB450. It

Prepared by: Russell Webb *Russell Webb* Phone: 465-3170
Division: Family & Youth Services Date: 2/13/90

Approved by Commissioner: Myra M. Munson, Commissioner *Myra M. Munson* Date: 2/13/90
Agency: Department of Health and Social Services

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

Changes in CS SB 450 (JUC)
have no fiscal impact.
This fiscal note is
appropriate.

FISCAL NOTE

ANALYSIS:

is expected that the increase will be small and can be absorbed with existing resources.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An Act relating to child abuse
and neglect BRU: Council on Domestic Violence
 Sponsor: Senate Judiciary and Sexual Assault
 Requestor: Senate Judiciary Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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 -
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REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

SB 450 requires that school districts file copies of their training curricula with the Council on Domestic Violence and Sexual Assault and may seek technical assistance of the Council. The Council would be pleased to provide assistance but, without additional funding, it will have to be by mail or phone.

Prepared by: Barbara Miklos, Executive Director
 Division: Council on Domestic Violence and Sexual Assault
 Approved by Commissioner: Arthur English
 Agency: Department of Public Safety

Phone: 465-4356
 Date: 2/12/90
 Date: 2-12-90
 Page 1 of 1

changes in CS SB 450 (JW) have no fiscal impact. This fiscal note is appropriate.

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2/12/90