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SENATE FINANCE COMMITTEE REPORT

DATE: 4/24/90

DATE TURNED INTO OFFICE: 7/28/90

The Finance Committee considered

SB 414

"An Act relating to commitment to treatment programs for pregnant women who are alcoholics."

and recommended:

- replace with _____ CS _____
 - or adopt _____ CS _____
 - attached amendment(s)
 - _____ letter of intent adopted
- same title
 - new title
 - technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

Fiscal note(s) SFC/DCR 4/28/90
25.0

zero fiscal note(s) _____

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) DCR 25.0 4/27/90

zero fiscal note(s) Courts 2/21/90
DHSS 2/21/90

appropriation-no fiscal note

SIGNING DO PASS:

Paul Frank

OTHER RECOMMENDATIONS:

None No Rec

Paul V. Stauff No Rec

James W. ... - No!!

James W. ... - do not pass

1. John B. ... 2. Rich ... (No Rec)

Co-Chairs: signatures and recommendations

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to commitment to treatment for pregnant women who are alcoholics..."
 Sponsor: Senator Binklev
 Requestor: Senate HESS
 Agency Affected: Department of Law
 BRU: Legal Services
 Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	25.0	50.0				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.0	50.0	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	25.0	50.0	-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 the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 27, 1990
 Approved by Commissioner: Richard I. Pegues /FOR/ Douglas B. Bailly, Attorney General Date: February 27, 1990
 Agency: Department of Law

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept of Administration
 Title: Commitment to alcoholic treatment pograms for pregnant women BRU: Public Defender Agency
 Sponsor: Senator Binkley Components: Third Judicial District
 Requestor: Senate Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	25.0	50.0	7.5	7.7	7.9	8.1
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.0	50.0	7.5	7.7	7.9	8.1

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	25.0	50.0	7.5	7.7	7.9	8.1
FEDERAL FUNDS						
OTHER						
TOTAL	25.0	50.0	7.5	7.7	7.9	8.1

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Senator Rick Uehling, Co-chairman Phone: 465-4821
 Division: Senate Finance Committee Date: April 28, 1990

Approved by Commissioner: _____ Date: _____

Agency: _____

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. SB 414

This bill amends AS 47.37, the state's Uniform Alcoholism and Intoxication Treatment Act, to provide for the involuntary commitment of women who are pregnant, and unless committed, are likely to harm a fetus by the continued use of alcohol.

The Act currently provides for an initial commitment period of 30 days, but also provides for up to two 90 day recommitment periods if an alcoholic is still likely to inflict physical harm on another person. The bill extends the recommitment period to a pregnant women if the likelihood of physical harm to another or continued harm to the fetus still exists. The bill goes even further; however, by providing that the Department of Health and Social Services shall seek a court order for commitment to continue until the woman is no longer pregnant if after examination it is determined that the likelihood still exists that, without further commitment, the women will continue using alcohol in a way that is likely to inflict harm on the fetus.

There has been and there is a growing awareness throughout the state of the terrible injuries to fetuses known as Fetal Alcohol Syndrome. This bill seeks to prevent or reduce FAS injuries. In doing so, it appears the bill would have the effect of establishing certain rights for unborn children as a matter of government policy, which have not, heretofore, been recognized under state law.

A major policy change of this magnitude will unquestionably be challenged in the courts, as an unlawful infringement on women's rights. And the issue will likely be joined by pro choice and anti-abortion groups. It is expected that the bill, if enacted, will be attacked on equal protection grounds because only women could be committed under the bill's provisions. The Department of Law therefore expects that it would have to prepare for a constitutional challenge, which would require the services of outside counsel legal scholars in order to defend against such a challenge. The department estimates that about 500 hours of outside assistance would be required, at an approximate cost of \$150 dollars per hour. The cost has been spread between FY91 and FY92, although the timing of a challenge is in the hands of a challenger and not the state.

The department also has three areas of concern, which are discussed briefly below. One, involuntary commitment, except for protective custody for incapacitation, requires a court order. Due to budget restrictions, the Department of Law is not able to handle any substantial number of new commitments that might result if the bill is approved. In some areas, municipal attorneys already handle these proceedings due to the department's existing caseload and its limited staff. Because data is not available that would indicate expected caseloads, fiscal impact costs for commitment proceedings cannot be estimated at this time. To the extent that the bill causes a measurable workload increase, the increase could not be handled unless additional resources are made available to the department. In view of the equal protection issue, proceedings could be extensive.

Two, because commitment would be authorized under the bill on the basis of the harm likely to be caused to the fetus by the continued use of alcohol, some increase in expert medical examinations and testimony will be required. Currently, this cost is primarily borne by the Department of Health and Social Services or the local grantee agencies that operate treatment facilities. Although the cost of such an increase cannot now be measured, it could here again be substantial because of the equal protection issue and a resulting requirement for convincing medical evidence.

Three, most of the facilities to which alcoholic and committed for treatment are already filled to capacity. The bill would not only establish a whole new class of persons who would be subject to commitment, but it could also substantially increase the period of commitment and effectively reduce the space available in treatment facilities. As a practical matter, commitment cannot take place without such facilities.

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	<u>Alaska Court System</u>
Title: <u>An Act relating to commitment to treatment programs for pregnant women...</u>	BRU:	<u>Trial Courts</u>
Sponsor: <u>Binkley, Zharoff, Coghill, Pourchot...</u>	Components:	
Requestor: <u>HESS</u>		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
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, General Counsel
Division: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Phone: 264-8228
Date: 02/21/90

Date: 02/21/90

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health & Social Services
 Title: Relating to commitment to BRU: _____
treatment programs for pregnant women . . .
 Sponsor: Binkley Components: _____
 Requestor: _____

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						
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)

Fiscal impact for FY90 is "0".

Prepared by: Katherine Kelly, Director Phone: 465-3090
 Division: Division of Public Health Date: _____
 Approved by Commissioner: Myra M. Munson Date: 2/21/90
 Agency: Department of Health & Social Services

Distribution (by preparer):

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

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Although the Department has submitted a "0" fiscal note on this legislation, we believe that this fiscal note deserves additional explanation.

Few individuals are involuntarily committed to alcohol programs under the current commitment law. This occurs for two reasons. First, there are few available beds in treatment programs into which the individual can be committed. In the absence of a bed, the commitment does not take place. Secondly, the commitment law has been criticized by some as very difficult to use. These individuals claim that, regardless of the availability of space in treatment programs, few individuals are able to be committed.

The Department's "0" fiscal note assumes that if a pregnant woman is committed, she will either fill a bed that is already being paid for through State funds or bump an individual off an existing waiting list for the treatment slot. If no bed is available, we assume that the commitment will either not be sought or will not be granted. To the extent that the existing commitment law is changed or that sufficient additional treatment capacity becomes available, additional state funds to pay for this treatment may be necessary.

The Department wishes to emphasize that our "0" fiscal note does not imply that additional resources are not needed to provide appropriate programs for pregnant women who abuse alcohol. The peculiarities of the commitment law, rather than our assessment of available resources, have dictated the submission of this fiscal note. The Department recognizes that additional resources are needed to develop appropriate alcohol treatment services for pregnant women and we have included an increment in the FY 91 budget to expand these services.

BY SEN. BINKLEY, Zharoff, Coghill, Pourchot, Eliason, Faiks, Adams, Kelly

1 IN THE SENATE

2

SENATE BILL NO. 414

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 commitment to treatment programs

7

for pregnant women who are alcoholics."

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

9

* Section 1. AS 47.37.190(a) is amended to read:

10

(a) After a hearing initiated by petition of a spouse or guard-

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ian, a relative, the certifying physician, or the administrator in

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charge of an approved public treatment facility, a person may be

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committed to the custody of a private or public facility by the

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superior court. The petition shall allege that the person is an

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alcoholic who habitually lacks self-control in using alcoholic bever-

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ages and that the person (1) is pregnant and, unless committed, is

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likely to harm the fetus by continued use of alcohol; (2) has

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threatened, attempted to inflict, or inflicted physical harm on an-

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other and that unless committed is likely to inflict physical harm on

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another; or (3) [(2)] is incapacitated by alcohol. A refusal to

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undergo treatment does not constitute evidence of lack of judgment as

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to the need for treatment. The petition shall be accompanied by a

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certificate of a licensed physician who has examined the person within

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two days before submission of the petition, unless the person whose

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commitment is sought has refused to submit to a medical examination,

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in which case the fact of refusal shall be alleged in the petition.

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The certificate shall set out the physician's findings in support of

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the allegations of the petition.

29

* Sec. 2. AS 47.37.200(c) is amended to read:

1 (c) A person committed under AS 47.37.190 - 47.37.200 shall
2 remain in the custody of a private or public facility for treatment
3 for a period of up to 30 days. At the end of the 30- day period, the
4 person shall be discharged automatically unless the office, before the
5 expiration of the period, obtains a court order for recommitment upon
6 the grounds set out in AS 47.37.190(a) for a further period of up to
7 90 days. If a person has been committed because the person is an
8 alcoholic likely to inflict physical harm on another or is an alco-
9 holic pregnant woman whose continued alcohol use is likely to harm her
10 fetus, the office shall apply for recommitment if after examination it
11 is determined that the likelihood of physical harm on another or
12 continued harm to the fetus still exists.

13 * Sec. 3. AS 47.37.200(d) is amended to read:

14 (d) A person recommitted under (c) of this section who has not
15 been discharged by the private or public facility before the end of
16 the 90-day period shall be discharged at the expiration of that period
17 unless the office, before expiration of the period, obtains a court
18 order on the grounds set out in AS 47.37.190(a) for recommitment for a
19 further period not to exceed 90 days. If a person has been committed
20 because the person is an alcoholic likely to inflict physical harm on
21 another or is an alcoholic pregnant woman whose continued alcohol use
22 is likely to harm her fetus, the office shall apply for recommitment
23 if after examination it is determined that the likelihood of physical
24 harm on another or continued harm to the fetus still exists. No more
25 than two recommitment orders may be permitted under (c) and (d) of
26 this section unless the person is pregnant. If the person is pregnant
27 and has been recommitted for two 90-day periods under (c) and (d) of
28 this section, the department shall seek a court order for commitment
29 to continue until the woman is no longer pregnant if after examination

1 it is determined that the likelihood still exists that, without fur-
2 ther commitment, the woman will continue using alcohol in a way that
3 is likely to inflict harm on the fetus.

4 * Sec. 4. AS 47.37.200(g) is amended to read:

5 (g) A person committed to the custody of the office for treat-
6 ment shall be discharged at any time before the end of the period for
7 which the person has been committed if one or more [EITHER] of the
8 following conditions is met:

9 (1) when a pregnant woman committed on the grounds of
10 likelihood of infliction of harm to the fetus is no longer considered
11 an alcoholic or is no longer pregnant;

12 (2) when an alcoholic committed on the grounds of likeli-
13 hood of infliction of physical harm on another is no longer considered
14 an alcoholic or the likelihood of the person inflicting physical harm
15 no longer exists; or

16 (3) [(2)] when, in the case of an alcoholic committed on
17 the grounds of the likelihood of infliction of physical harm on an-
18 other, either

19 (A) further treatment will not be likely to bring
20 about significant improvement in the person's condition, or

21 (B) treatment is no longer adequate or appropriate.

22 * Sec. 5. AS 47.37.220(a) is amended to read:

23 (a) Patients in any approved treatment facility under this
24 chapter shall be granted reasonable opportunities for adequate consul-
25 tation with counsel [,] and for continuing contact with family and
26 friends, including the use of telephone facilities, consistent with an
27 effective treatment program. A pregnant patient shall be granted
28 reasonable opportunities for adequate consultation with a physician or
29 other health care practitioner of the patient's choice; this consul-

1 tation may occur either inside or outside the treatment facility, at
2 the patient's discretion.



Official Business

Alaska State Legislature

SENATE

Committee on Finance

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

MEMORANDUM

April 25, 1990

TO: Senate Finance Committee

FROM: Senator John Binkley *John*

RE: SB 414 - Relating to commitment to treatment programs for pregnant women who are alcoholics

SB 414 is one of a package of bills which target the problems of Fetal Alcohol Syndrome. It would provide for petition for commitment to a treatment center of an alcoholic pregnant person whose continued use of alcohol will likely harm the fetus.

There is no obvious right or wrong as we consider the rights of the mother and the rights of the child under our laws, but the consequences for the child of continued alcoholic drinking during the critical months of his or her development are staggering. A child born with Fetal Alcohol Syndrome has been damaged for life, with enormous medical problems, irreversable educational consequences, and social and daily living skills far below other children and adults. There are women in Alaska who have produced three, four, even as many as seven Fetal Alcohol Syndrome Child. When this happens I believe it is the appropriate and responsible action for society to intervene.

Alaska's alcohol commitment statutes are difficult under any circumstances, and would not be used to commit women who are casual or social drinkers. The commitment statutes provide a civil remedy, they would not put pregnant women in jail. SB 414 would provide an important tool where all other means of intervention had failed.

The average cost to society for each FAS child born in Alaska is more than \$1.4 million, although with the miracles of modern science the medical bills of a severely damaged infant can easily top that figure in a matter of months. Estimating 29 FAS children born each year, we are looking at an encumbered societal cost of nearly \$40 million. If we add Fetal Alcohol Effect children that cost skyrockets to \$104 million.

RE: Senate Bill 414 - Relating to commitment to treating programs for pregnant women who are alcoholics

Sectional Analysis

Section 1. Amends AS 47.37.190(a).

Adds a new provision under commitment statutes for alcoholism to allow for the petition for commitment to the custody of a private or public facility of a person who is alcoholic and is pregnant, and unless committed, is likely to harm the fetus by continued use of alcohol.

All protections under the current system remain in place. A physician who has examined the person within two days before submission must certify to the advisability of commitment.

Section 2. Amends AS 47.37.200(c).

Adds language to recommitment statute "an alcoholic pregnant woman whose continued use is likely to harm her fetus" and requires a finding of the likelihood of physical harm on another or continued harm on the fetus still exists.

Section 3. Amends 47.37.200(d).

Includes "an alcoholic pregnant woman whose continued alcohol use is likely to harm her fetus" in second recommitment. Provides for an exception to existing prohibition against more than two recommitments in the case of a person who is pregnant.

Section 4. Amends AS 47.37.200(g).

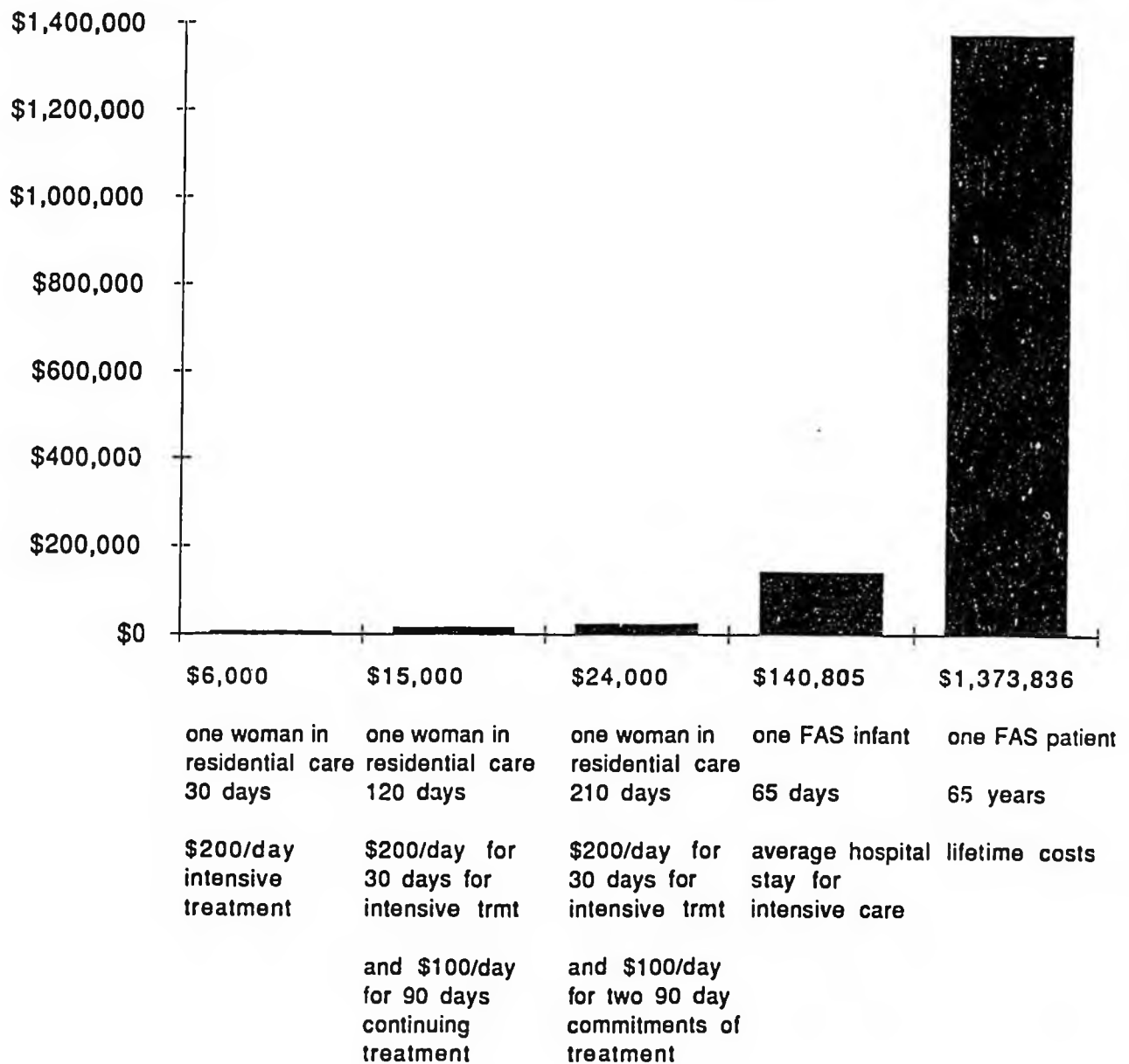
Adds a new paragraph (1) to provide for discharge of a person committed "on the grounds of likelihood of infliction of harm to the fetus" is no longer considered an alcoholic or is no longer pregnant.

Following sections have been renumbered accordingly.

Section 5. Amends AS 47.37.220(a).

Provides that a pregnant patient committed under this chapter shall be granted reasonable access to a doctor or other health care provider of the patient's choice, either inside or outside the treatment facility.

Costs of Treatment as Compared with Costs of FAS



Bill would reduce birth of FAS babies

OPINION

by Sen. John Binkley
for the Tundra Times

JUNEAU — We can take an important step to reduce the number of Fetal Alcohol Syndrome babies born in Alaska if my bill providing for involuntary commitment of pregnant alcoholic women passes the Legislature. But one thing we won't be doing is putting drinking moms in jail.

It's understandable that people unfamiliar with this legislation might think the police will be prowling the bars, looking for pregnant women to haul off to jail if this bill passes. That's not true.

And even if an alcoholic woman did find herself in court under this law, she wouldn't be sent to jail. The judge would be able to order her to check into a residential alcohol treatment program.

Here's exactly what the bill — Senate Bill 414 — would do as it is currently written:

If a pregnant woman is showing signs of serious alcoholism, the bill allows the court to be petitioned to determine whether she needs professional help to avoid harming the baby she is carrying. And, while there is plenty of evidence to show that even a couple of drinks a day during pregnancy can cause some damage to the baby's health, this bill is aimed only at the hard core alcoholic, not the casual drinker.

The only people who could make a complaint in court against the woman would be her spouse, guardian, relative, a doctor or the administrator of a treatment facility. Because the bill also requires a doctor to file a certificate supporting the court petition, we've tried to protect against a situa-

tion where an angry husband or relative files an unjustified complaint.

The doctor must have examined the woman sometime within the two days prior to the petition being submitted to the court, or must have at least given her the opportunity to reject a physical examination.

If, after reviewing the evidence and the physician's certificate, the court decides that only intervention can prevent damage to the baby, the judge can then order the woman committed to a private or public facility for treatment of alcoholism.

The commitment period would be 30 days, with provisions for extension until the baby is born if the court is convinced during a second hearing that there is a need for continuing treatment.

As the treatment goes on, the patient would be provided reasonable opportunities to see the doctor of her choice.

And even if an alcoholic woman did find herself in court under this law, she wouldn't be sent to jail. The judge would be able to order her to check into a residential alcohol treatment program.

probably is true, but medical research has documented the fact that the brain is developing through the whole term of the pregnancy.

So even if the mother didn't stop drinking until the latter stages of her pregnancy, the child would still have a chance of having fewer defects than if the alcohol abuse were allowed to continue right up until birth.



And, at any point during the treatment period, if the woman either is determined to be no longer alcoholic or she is no longer pregnant, she would be released.

Most mothers obviously want to take good care of their babies from the moment they find out they're pregnant, and they don't need or deserve anybody from the state telling them how to do it. But alcohol and drug addiction can override that natural protective instinct, and helping those mothers addicted to alcohol protect their babies is the aim of this bill.

Some would say we have no right to intervene in a pregnant woman's life. I'd point out that we already have laws on the books making it illegal to provide alcohol or drugs to children from the moment they are born. Shouldn't we provide that same protection — if only in the most serious cases of alcohol abuse by the mother — in the months before the child is born?

Others might argue that by the time a woman is obviously pregnant and her alcohol abuse is documented well enough to go to court, the fetus has already been damaged. That some damage already would have occurred

Finally, some opponents of this bill would argue that it would discourage women from seeking medical care during pregnancy, out of fear that the doctor might file a complaint to get her committed to an alcohol program. But again, this bill is aimed only at the most serious abusers, and we've found that many pregnant women who are seriously alcoholics don't get proper medical care during their pregnancy anyway.

Fetal Alcohol Syndrome saddles a child with lifelong defects that are directly attributable to the mother's behavior. And since most these mothers have no financial resources, they create expensive financial problems we end up paying for. It costs an average of \$1140,000 just to get a newborn FAS child through the period of intensive care it requires at birth and \$1.4 million to care for it over a lifetime.

When I filed this bill, I thought a lot about a woman in Southcentral Alaska who has had seven FAS babies. All of those children are in foster families now, and the last we heard, this woman is pregnant again.

If we had had this law on the books, we might have been able to save not only her first FAS baby from some degree of damage, but the other six as well. Being committed to a treatment program might have brought an end to her alcohol abuse for good, and those other six babies could have been born healthy.

I don't claim to have written the perfect bill in this or any other case, but it will be debated and people surely will offer changes as it makes its way through the Legislature's committee process. An important part of that process is public input, and if you've got ideas on this subject, I encourage you to contact us.

Right now there are about 30 FAS babies being born every year in Alaska. This bill won't save them all, but it would at least give us the hope of saving some of them.

The people who advocate forcing pregnant women to abstain from drinking come from within the communities dealing with a problem of nightmarish proportions. Still, this is very shaky ground. Once a woman decides to carry a child to term, to produce another human being, has she also the right to inflict on that person Adam's life? Because his mother drank, Adam is one of the earth's damaged. Did she have the right to take away Adam's curiosity, the right to take away the joy he could have felt at receiving a high math score, in reading a book, in wondering at the complexity and quirks of nature? Did she have the right to make him an outcast among children, to make him friendless, to make of his sexuality a problem more than a pleasure, to slit his brain, to give him violent seizures?

It seems to me, in the end, that she had no right to inflict such harm, even from the depth of her own ignorance. . .

And for those still outraged at this position, to those so sure, so secure, I say the same thing I say to those who would not allow a poor woman a safe abortion and yet have not themselves gone to adoption agencies and taken in the unplaceable children, the troubled, the unwanted:

If you don't agree with me, then please, go and sit beside the alcohol-affected while they try to learn how to add. My mother . . . who works with disabled children . . . does this every day. Dry their frustrated tears. Fight for them in the society they don't understand. Tell them every simple thing they must know for survival, one million, two million, three million times. Hold their heads when they have unnecessary seizures and wipe the blood from their bitten lips. Force them to take medicine. Keep the damaged of the earth safe. Love them. Watch them grow up to sink into the easy mud of alcoholism. Suffer a crime they won't understand committing. Try to understand lack of remorse. As taxpayers, you are already paying for their jail terms, and footing the bills for expensive treatment and education. Be a victim yourself, beat your head against a world of brick, fail constantly. Then go back to the mother, face to face, and say again: *"It was your right."*

Louise Erdrick
from the Foreword to
The Broken Cord
by Michael Dorris

5/1/90 2(15)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to commitment to treatment programs for pregnant women ..."
Sponsor: Senator Binklev
Requestor: Senate HESS

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	66.2	68.2	70.2	72.3	74.5	76.7
TRAVEL						
CONTRACTUAL	25.0	50.0	7.5	7.7	7.9	8.1
SUPPLIES						
EQUIPMENT	3.0	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	94.2	118.2	77.7	80.0	82.4	84.8

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	94.2	118.2	77.7	80.0	82.4	84.8
FEDERAL FUNDS						
OTHER						
TOTAL	94.2	118.2	77.7	80.0	82.4	84.8

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) FY 90 impact is zero.

The obvious intent of SB 414 is to provide protection for the unborn fetus in situations where a pregnant woman is abusing alcohol. While this is a laudable objective, implementation of such legislation would raise serious constitutional questions regarding the rights of women.

(continued)

Prepared by: John B. Salemi, Public Defender Phone: 279-7541

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Agency: Department of Administration

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**SFC revised.
Allowed only
Contractual Funding.**

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 414

While facially a noncriminal piece of legislation, the effect of SB 414 is to criminalize the use of alcohol among pregnant women. This bill imposes a significant restriction of liberty based on the individual's status as an abuser of alcohol. "Status offenses" have previously been deemed unconstitutional by the United States Supreme Court. For example, one cannot be punished for the mere fact that he or she is a narcotics addict. Additionally, the philosophical and political debate concerning the rights of a fetus, when life begins, etc. will play itself out in the courts if this legislation is enacted. If implemented, the Public Defender Agency will undoubtedly carry the burden of constitutional litigation in these cases. Incidences of fetal alcohol syndrome are on the rise. These cases present themselves disproportionately in the lower socio-economic strata. As such the vast majority of individuals who might be committed under this law would be entitled to Public Defender representation.

In that a strong constitutional attack will be necessary there will be a noticeable fiscal impact on the Public Defender Agency. Such an attack will include extensive evidentiary hearings at the trial court level and appellate court briefing and argument. Considerable expense will be involved in that experts in the medical field will be required both as consultants and as expert witnesses.

Even if the bill were to be found constitutional, the procedural mechanism which provides for this type of commitment will involve considerable time and expense on the part of the attorney charged with representing the woman who is the subject of each potential commitment. Over the period of the pregnancy, the statute allows the state to request three separate 90-day periods of commitment. There will be hearings on each of these three occasions to determine the appropriateness of continued commitment. Prior to the hearings the defense will need to contract with an independent medical expert to evaluate the client to determine the potential for continued alcohol abuse, efforts at rehabilitation, indicators of any damage to the fetus and so on. Evaluations of this nature are expensive. The hearings themselves will be lengthy. Because the client is subject to the equivalent of incarceration these matters will take on the aura of a trial. It is doubtful the litigation will be conciliatory. If this legislation is enacted, the Public Defender Agency will require additional contractual money to advance the constitutional concerns at the trial court and appellate levels. Assuming the statute passes constitutional muster the state will then begin "prosecuting" these cases on what is expected to be a fairly regular basis. Although it is

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 414

difficult to determine an accurate estimate of these kinds of cases, as mentioned previously fetal alcohol syndrome is a growing problem in Alaska. This very well could be a commonly used vehicle for committing pregnant women who have an alcohol problem. It appears that at least one additional attorney position will be required to handle the increased load created by such legislation. This is especially true in light of the fact that many of these cases will be sent to the one attorney who now does all mental health commitment hearings in Anchorage. As mental health commitment cases have risen dramatically in recent years, this additional burden could not be absorbed without further resources being placed within the agency.

BUDGET ANALYSIS

(The constitutional challenge to this bill will require 25.0 in FY 91 and 50.0 in FY 92.)

Personal Services	-	66.2
Contractual	-	25.0
Equipment (one time)	-	<u>3.0</u>
TOTAL		94.2