

HB396

SENATE FINANCE COMMITTEE REPORT

DATE: 5/10/92

FURTHER:

DATE TURNED INTO OFFICE:

5/11/92

The Finance Committee considered CS FOR HOUSE BILL NO. 396 (JUDICIARY)
ANTI-VIOLENT CRIME ACT OF 1992

and recommends:

replace with _____ CS _____ (FINANCE)
or adopt previous S CS CS(HS) 396 (JUD)
 attaches amendment(s)

same title
 new title
 technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes DPS 1/21/92

DODW 1/13/92

DOC 1/16/92" Crux 1/23/92

fiscal notes DNA-OPA 102.2 1/21/92

DO PASS:

[Handwritten signatures]

OTHER RECOMMENDATIONS:

[Handwritten: "No Rec" twice]

1. *[Handwritten signature]*

Co-Chair: Signature/Recommendation

Co-Chair: Signature/Recommendation

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE
REPORTED OUT OF
SFC 5-11-92

No. 1
Bill Version: CSHB 396 (JUD)
(H) Publish Date: 1/29/92

Revision Date: _____
Title: An Act relating to violent crimes and criminal law and procedures.
Sponsor: House Judiciary
Requestor: House Judiciary

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO.

4	2		
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	76.7	79.0	81.4	83.8	86.3	88.9
TRAVEL	2.0	2.1	2.2	2.3	2.4	2.5
CONTRACTUAL	20.0	20.6	21.2	21.8	22.5	23.2
SUPPLIES	1.5	1.6	1.7	1.8	1.9	2.0
EQUIPMENT	2.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	102.2	103.3	106.5	109.7	113.1	116.6

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	102.2	103.3	106.5	109.7	113.1	116.6
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	102.2	103.3	106.5	109.7	113.1	116.6

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)
See Attached.

Changes in SCS HB 396 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

5/10/92 Com
date Comte Aide (initial)

Prepared by: John B. Salemi, Director
Division: Public Defender Agency

Phone: 279-7541
Date: January 17, 1992

Approved by Commissioner: Nancy Bear Usery
Agency: Administration

Date: 1/21/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

COMMITTEE COPY

Position Title Attorney III		No. of Positions 1	Range / Step 22A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location EBA		Election District 92
TYPE OF EXPENDITURE		AMOUNT		
Salary	56.0	Justification HB 396 will increase the workload of the Public Defender Agency. Its provisions will 1) elevate certain criminal conduct from misdemeanor level to a felony classification, 2) elevate certain felony conduct to a higher classification of offense, thereby increasing potential penalties, 3) extend significantly the statute of limitations for many criminal acts, including doubling the period for charging crimes against persons and increasing by 15 years the statute of limitations for sex offenses against persons under 16 years of age, 4) create a more severe criminal penalty for certain homicide offenses (99 years without parole), and 5) modify certain sentencing procedures which will restrict the court's ability to reduce sentences. While it is difficult to quantify the extent to which these provisions will increase the Public Defender case/workload, a real increase will occur. The proposed budget increment (one attorney and associated expenses) represents a conservative estimate of the fiscal impact of HB 396.		
Benefits	20.7			
Premium Pay				
Other				
Total Personal Services	76.7			
Total	2.0			
Actual	20.0			
Commodities	1.5			
Equipment	2.0			
Other				
Total Cost	102.2			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	102.2		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

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8/LEG92/02127B.KP/1

Request For New Position

AGENCY ADMINISTRATION
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY 93

Page 2 of 7
 Revised Date: _____

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 396 (JUD)

1-29-92

Title: "An Act relating to violent crimes and criminal law and procedures."

This bill makes a variety of changes in Alaska's Criminal Code, including changes in the definition of some crimes, changes as to the severity of certain offenses and significant revisions in sentencing procedures.

This analysis is not intended as a position paper by the Public Defender. Instead a short description of each of the sections of the bill follows along with the anticipated fiscal impact on the Alaska Public Defender Agency.

Section 1. Title.

Section 2. This section amends AS 11.41.200(a). It elevates repeated misdemeanor assaults to the level of a felony and apparently is a response to a recent court of appeals decision wherein the state initially successfully prosecuted an individual for a felony only to have the conviction reversed. (S.R.D. v. State (citation omitted). As an aside, if the state had initially proceeded on a theory of prosecution based on a "continuous course of conduct" as relates to the repeated assaults, the felony conviction would likely have been left undisturbed by the appellate court. It is not an area which necessarily needs new legislation in that the same result could be achieved adjusting prosecutorial tactics.

It is unlikely this section will have a fiscal impact on the Public Defender Agency in that it will not result in many additional felony cases.

Section 3. This section amends AS 11.41.210(a) with the same result as section 2 except the repeated assaults are only elevated to a class B felony as opposed to the A felony above. No likely fiscal impact.

Section 4. This section amends the assault in the third degree statute [AS 11.41.22(a)] by providing that a misdemeanor assault committed against a victim who is under the age of 10 can be charged with a felony assault. This amendment is based on criminal conduct defined as recklessly causing physical injury to another person, or with criminal negligence causing physical injury to another person by means of a dangerous instrument. The effect will be to considerably broaden felony assault conduct against children. In fact the revision may be overbroad and subject to a constitutional challenge. While any projection as to the number of cases which will be made under this section is speculative, there is a real possibility that such an amendment will have a fiscal impact on the Public Defender Agency.

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 396(JUD)

1-29-92

Section 5. This amendment to AS 11.41.410(a) is in direct response to the Dr. Ake case wherein said health care worker was convicted of having sex with his patients while they were on the examining table. Because of a perceived loophole in the law this amendment has been proposed. In fact Dr. Ake was convicted and sentenced. It is unlikely that this proposed change in the law will have fiscal impact on the Public Defender Agency.

Section 6. Similar to section 5 above. No impact.

Section 7. An amendment to AS 11.41.425(a). It amends the statute to create a felony offense for one who engages in sexual contact with a person who is unaware that a sexual act is being committed. These cases are exceedingly rare and would not likely have a fiscal impact on this agency.

Section 8. This section amends AS 11.41.455(a). The amendment adds sexual masochism or sadism to a list of proscribed sexual activities with children under the age of 18 years. No fiscal impact.

Section 9. Definitions only. No fiscal impact.

Section 10. This amendment to AS 11.61.200(a) modifies the crime of Misconduct Involving Weapons wherein someone discharges a firearm from a moving vehicle. It would change the offense from a class A misdemeanor to a class C felony. Apparently it is in response to "drive-by" shootings, although it would probably more commonly be committed in Alaska by people shooting at road signs from their cars. No fiscal impact.

Section 11. This allows peace officers to fire from their vehicles without violating the law. See section 10 above. No fiscal impact.

Section 12. This provides an affirmative defense for hunting and fishing (?) from a moving vehicle as relates to section 10 above. Apparently it is the snow machine or three wheeler exception to shooting from a moving vehicle. No fiscal impact.

Section 13. An amendment to AS 11.61.210(a). This proposed change in the law precludes someone from selling a firearm or defensive weapon to a person under 18 years of age. Unknown fiscal impact.

Section 14. This section deals with the creation of a new crime wherein an individual who possessed a defensive weapon on a school ground is subject to prosecution. No significant fiscal impact.

Section 15. This section increases the statute of limitations for many of the crimes against persons. For example under present law manslaughter, criminally negligent homicide, felony assaults,

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 396(JLD)

1-29-92

sexual assaults, and other serious crimes against persons must be initiated within 5 years of their commission. The amendment contained in section 15 doubles the amount of time (to 10 years) available to prosecute these and other offenses. Furthermore the amendment extends to 20 years the statute of limitations for felony sexual offenses involving victims under the age of 16. Because this amendment was prompted by law enforcement complaints that many cases were lost because of the present statute of limitations it is expected that this change will have a real fiscal impact on the Public Defender Agency. Obviously the impact will be deferred somewhat in that Section 25 of this bill makes this proposed change prospective only. In other words, the amendment would not apply to offenses which may have occurred before the effective date of the change in the law.

Section 16. This section amends AS 12.55.025(e) and relates to the rules concerning consecutive sentences in the context of murder convictions. No fiscal impact.

Section 17. This is another amendment to Title 12 and concerns sentencing procedure. It is an effort to reverse a Court of Appeals decision concerning the applicable standard of proof in sentencing hearings. If passed it is expected to generate additional litigation related to sentencing hearings as well as additional appeals based on the challenged use of prior bad acts, convictions, etc. It is expected to have an effect on public defender work.

Section 18. This amendment to Title 12 provides that an individual convicted of murder in the first degree, where the victim was a peace officer, fire fighter, or correctional officer engaged in the performance of official duties, will receive a 99 year sentence without parole. This amendment in essence resurrects the sentence of life imprisonment for this character of crime. This mandatory sentence would also apply to an individual convicted of murder in the first or second degree who has a prior murder conviction. In terms of fiscal impact it is anticipated that these cases would put a significant drain on the public defender contractual budget in that they would carry the highest sanction possible under Alaska law and would therefore demand a disproportionate amount of attorney time, investigative time and contractual resources. Fortunately it is not anticipated that there would be many of these cases on a per year basis. Still there would be some fiscal impact, on both attorney resources and the contractual budget.

Section 19. This section modifies the sentencing laws of Alaska through an amendment of AS 12.55.165. This amendment proposes to severely restrict referral of cases to the three judge panel for consideration of rehabilitation potential of a defendant. With reduced hope of getting a referral to the three judge panel, many defendants who are subject to presumptive sentencing may elect to

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 396 (Jud)
1-29-92

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take their case to trial. In effect they will have nothing to lose by exercising their right to a jury trial. Furthermore sentencing hearings themselves will become more adversarial and the calling of witnesses will become more frequent at such hearings in an effort to avoid the finding of certain aggravators which would preclude referral to the three judge panel under the proposed amendment. This translates into some increase in the public defender work, although it is difficult to quantify.

Section 20. This section, to a lesser extent, will have the same fiscal impact on the Public Defender Agency as section 19 in that it restricts the ability of the three judge panel to reduce presumptive sentences. The trial option for a defendant facing presumptive jail time would look more attractive if sections 19 and 20 are passed in to law. As trials are by far the most time consuming and expensive form of litigation for the Public Defender Agency the fiscal impact could be significant.

Section 21. This section amends the parole statute so as to make it consistent with section 18 above.

Section 22 and 23. These sections make amendments to the parole statute consistent with the changes in the three judge panel procedure outlined in section 20.

Section 24. This section repeals AS 12.10.020(c) for purposes of extending the statute of limitation in certain sex cases as discussed in section 15 above.

Section 25. This section contains the prospective application of the expanded statute of limitations amendments contained in section 15 above.

SUMMARY

The discussion above indicates that many of the provisions contained in HB 396 are fiscally insignificant. Others, however, will have a fiscal impact on the Alaska Public Defender Agency. Additional cases, additional trials, more protracted sentencing hearings all add up to an increased work load. It should be noted that the statute of limitations provisions, for example, were introduced in this bill because police were complaining that many cases were going unprosecuted because they fell outside of the applicable statute of limitations. While neither the police nor the Department of Law have provided statistics concerning additional cases which might be prosecuted, suffice it to say the work load is going to go up, not down, if HB 396 passes. No reasonable person would conclude otherwise.

It is difficult to project the amount of additional work which will be generated by HB 396. For that reason a very conservative

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FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

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BILL NO. SHB 396 (Jud)
1-29-92

ANALYSIS: (continued)

Approach is taken by this agency in terms of fiscal impact. It is anticipated that one additional attorney will be needed in Anchorage to absorb the work created through this bill. This lawyer would travel on an "as needed" basis to other office locations.

BUDGET ANALYSIS - HB 396

100 - Attorney III (Anchorage)	76.7
200 - Travel	2.0
300 - Contractual Office Space, Experts	20.0
400 - Supplies	1.5
500 - Equipment (One Time)	<u>2.0</u>
Total	102.2

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 2

Bill Version: CSHB 396 (JUD)

(H) Publish Date: 1/29/92

REPORTED OUT OF

SFC 5-11-92

Revision Date: _____ Department Affected: Alaska Court System

Title: An Act relating to violent crimes and criminal law and procedure BRU: Trial Courts

Sponsor: Judiciary Components: _____

Requestor: Judiciary COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Changes in CSHB 396 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

1/29/92 date CHC Comte Aide (initial)

Prepared by: C. S. Christensen III, Staff Counsel CHC Phone: 264-8228

Division: Alaska Court System Date: 01/23/92

Approved by: Arthur H. Snowden, II, Administrative Director AS CHC

Agency: Alaska Court System Date: 01/23/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

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FISCAL NOTE

No. 3

STATE OF ALASKA
1992 LEGISLATIVE SESSION REPORTED OUT OF
SFC 5-11-92

Bill Version: CSHB 396(JUD)
(H) Publish Date: 1/29/92

Revision Date: _____ Department Affected: Department of Corrections
Title: "An Act relating to violent crimes and criminal law and procedures." BRU: Statewide Operations
Sponsor: House Judiciary Component: Various
Requestor: House Judiciary COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Changes in SLS #239C (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.
9/10/92 [Signature]
date Comte Aide (initial)

Prepared By: Carl Nickel, Director Phone: 465-3376
Division: Administrative Services Date: 1-16-92
Approved by Commissioner: Lloyd Hames, Commissioner
Agency: Department of Corrections Date: 1-16-92

CONTINUATION OF FISCAL NOTE ANALYSIS

HB 396: "An Act relating to violent crimes and criminal law and procedures."

This bill makes numerous changes to Alaska's Criminal Code involving violent crimes. By raising the seriousness of certain crimes from one class to another and by providing for mandatory sentences for certain crimes, the bill will impact the Department by increasing the prisoner population and lengths of sentences of some prisoners. However, most of the offenses addressed are anticipated to occur infrequently and some of the effects will not become apparent for at least five years. Therefore, no significant fiscal impact is expected. A sectional analysis follows:

Section 1: Title.

Sections 2-4: These sections amend the statutes addressing certain forms of assault, such as those which cause serious physical injury as a result of repeated, rather than single assaults, and those committed by an adult against a child under 10 years of age. Because of the infrequency of the offenses, these amendments are unlikely to have significant fiscal impact.

Sections 5-9: These sections amend the sexual offense statutes to include the conduct of engaging in sexual acts or contact with a person who is unaware that the sexual contact or act is being committed, and sexual offenses committed by a health care professional during professional treatment. Section 9 adds sexual sadism or masochism to the list of prohibited behaviors described under unlawful exploitation of a minor. The amendments are unlikely to have fiscal impact because of the infrequency of the offenses.

Sections 10-12: These sections address "drive by shootings" which would become Class C felonies even when no one is injured or placed in fear by the conduct. The amendments are unlikely to have fiscal impact because of the infrequency of the offenses.

Section 13: This section would include knowingly selling a firearm or defensive weapon to a person under 18 years of age within the crime of misconduct involving weapons in the second degree. The amendment is unlikely to have significant fiscal impact because of the anticipated infrequency of the offense.

Section 14: This section prohibits persons under age 21 from possessing defensive weapons on the grounds of or on a parking lot immediately adjacent to a public or private school, without permission of the school administration. This offense would be a misdemeanor. This section is unlikely to have significant fiscal impact because of the infrequency of the offense being committed by adults.

CONTINUATION OF FISCAL NOTE ANALYSIS

HB 396

Sections 15, 24, and 25: These sections extend the statute of limitations from five to ten years for the following felonies: Manslaughter, Criminally Negligent Homicide, Assault in any degree, Kidnapping and Custodial Interference, Arson in the First Degree, Sexual Assault in any degree, Sexual Abuse of a Minor in any degree, Incest, Unlawful Exploitation of a Minor, Robbery, Extortion, or Coercion. The statute of limitations is extended from five to twenty years for felony sexual offenses involving a victim under age 16. The fiscal impact will not be felt for at least five years. No information is available on how many crimes go uncharged because of the current five year limitation, however the fiscal impact is not expected to be significant.

Section 16: This section clarifies that a person convicted of two or more crimes, including murder in the first degree, may be sentenced to consecutive sentences in excess of the term of imprisonment for the murder conviction. There are already a number of prisoners within the Department who are serving such consecutive terms, so this amendment is not expected to have significant impact.

Section 17: This section provides that the preponderance of evidence standard of proof applies to sentencing proceedings, except as provided by AS 12.55.145(d), 12.55.155(f), and 12.55.165. This amendment reverses a recent Court of Appeals ruling and is not expected to have significant fiscal impact.

Sections 18 & 21: These sections provide that a person convicted of Murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years and shall not be eligible for discretionary parole when the conviction is for the murder of a clearly identified peace officer, fire fighter, or correctional officer engaged in official duties, or when the person has been previously convicted of Murder in the first or second degree. Due to the infrequency of the offenses, no significant fiscal impact is anticipated.

Sections 19, 20, 22, and 23: These sections provide that a court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds certain factors in aggravation. If a three-judge panel determines that manifest injustice would result from imposition of a presumptive term and also finds that the defendant has excellent potential for rehabilitation, the panel shall sentence the defendant to the presumptive term and order the defendant to engage in appropriate rehabilitation programs. The panel may then provide that the defendant is eligible for discretionary parole during the second

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CS HB 396 (SUD)
1-29-92

CONTINUATION OF FISCAL NOTE ANALYSIS

HB 396

half of the sentence, if the defendant successfully completes all rehabilitative programs ordered by the panel. There are not significant numbers of prisoners incarcerated at this time who had their sentences reduced by a three-judge panel, based on excellent potential for rehabilitation, therefore the fiscal impact is not expected to be significant.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

REPORTED OUT OF
5-11-92

No. 4

Bill Version: CSHB 396 (JUD)

(H) Publish Date: 1/29/92

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to violent crimes and criminal law and procedure." BRU: Prosecution
 Sponsor: House Judiciary Committee Component: All
 Requestor: House Judiciary Committee COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Changes in CSHB 396 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

5/10/92 GW
date Comte Aide (initial)

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 13, 1992
 Approved by Commissioner: Richard I. Pegues / FOR /
Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 13, 1992

CONTINUATION of FISCAL NOTE ANALYSIS # 4

For Bill/Resolution No. CSHB 96 (JUD) 1-29-92

Title: "An Act relating to violent crimes and criminal law and procedures."

This bill makes numerous changes to Alaska's Criminal Code involving violent crimes. A section-by-section analysis follows below.

Section 1. Title.

Section 2. This section amends AS 11.41.200(a) to include within the crime of assault in the first degree recklessly causing serious physical injury to another by repeated assaults using a dangerous instrument, even if each assault individually does not cause serious physical injury. This amendment is in response to the recent court of appeals decision in S.R.D. v. State, 817 P.2d 484 (Alaska App. 1991). It will not have an impact on the Department of Law because, where it is now necessary to prove several misdemeanors, the amendment will allow the state to prove a single class A felony, instead. This crime usually arises when a child is subjected to repeated physical abuse.

Section 3. This section amends AS 11.41.210(a) to include in the definition of the crime of assault in the second degree recklessly causing serious physical injury to another by repeated assaults, even if each assault individually does not cause serious physical injury. The result of this amendment is the same as Section 2, except that assault in the second degree is a class B felony because of the absence of a dangerous instrument.

Section 4. This section amends AS 11.41.220(a) to provide that a person, who is 18 years of age or older and who violates AS 11.41.230(a)(1) or (a)(2) when the victim of the offense is under the age of 10, commits the crime of assault in the third degree. This conduct, recklessly causing physical injury to another person, or with criminal negligence causing physical injury to another person by means of a dangerous instrument, is usually a class A misdemeanor. Under this amendment, however, the offense is increased to a class C felony when it is committed by an adult against a child under 10 years of age. The amendment is unlikely to have a fiscal impact because of the infrequency of the offense.

Section 5. This section amends AS 11.41.410(a) to include in the crime of sexual assault in the first degree the conduct of engaging in sexual penetration with a person who is unaware that a sexual act is being committed if the offender is a health care worker, and the conduct occurs while the offender is providing professional treatment of the victim. This amendment will have little impact on the department because of the infrequency of the offense.

Section 6. This section amends AS 11.41.420(a) to include in the crime of sexual assault in the second degree the conduct of

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. ^{CS HB} 396 (JUD)

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engaging in sexual contact with a person who is unaware that a sexual act is being committed if the offender is a health care worker, and the conduct occurs while the offender is providing professional treatment to the victim. The amendment also adds to the offense of sexual assault in the second degree the conduct of engaging in sexual penetration with a person who is unaware that a sexual act is being committed (when the offender is not a health care provider). These changes are not expected to have a fiscal impact on the department.

Section 7. This section amends AS 11.41.425(a) to include in the crime of sexual assault in the third degree the conduct of engaging in sexual contact with a person who is unaware that a sexual act is being committed. This section is not expected to have a fiscal impact on the department.

Section 8. This section amends AS 11.41.455(a) to include within the crime of unlawful exploitation of a minor the conduct of knowingly inducing or employing a child under 18 years of age to engage in, or photographing, filming, recording, or televising a child under 18 years of age engaged in sexual masochism or sadism. This change should have no fiscal impact on the department.

Section 9. This section provides definitions for the terms "health care worker" and "sexual act."

Section 10. This section amends AS 11.61.200(a) to include within the crime of misconduct involving weapons in the first degree the act of discharging a firearm from a moving propelled vehicle. Consequently, "drive-by" shootings would become a class C felony even when no one is injured or placed in fear by the conduct. This section is not expected to have a fiscal impact on the department.

Section 11. This section amends AS 11.61.200(d) to provide that as an exception to AS 11.61.200(a)(11), a peace officer acting within the scope and authority of employment may fire a weapon from a moving vehicle. This amendment will have no fiscal impact on the department.

Section 12. This section amends AS 11.61.200 to make it an affirmative defense to a prosecution under AS 11.61.210(a)(11) that the person who discharged the firearm from a moving vehicle was engaged in a lawful hunting or fishing activity at the time. This amendment will have no fiscal impact on the department.

Section 13. This section amends AS 11.61.210(a) to include knowingly selling a firearm or defensive weapon to a person under 18 years of age within the crime of misconduct involving weapons in the second degree. This amendment will not have a fiscal impact.

Section 14. This section amends AS 11.61.220(a) to provide that a

CONTINUATION of FISCAL NOTE ANALYSIS # 4

For Bill/Resolution No. ^{CSHB} HB 396 (JUD) 1-29-92

person commits the crime of misconduct involving weapons in the third degree if the person knowingly possesses a defensive weapon within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high, or secondary school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer. A person 21 years of age or older is exempted from this provision. This amendment will not cause a fiscal impact.

Section 15. This section amends AS 12.10.010, the state's general statute of time limitations for criminal prosecutions, to provide that the current 5-year limitation within which an indictment must be found or an information or complaint must be instituted, shall be extended to 10 years for the following felonies:

- Manslaughter
- Criminally Negligent Homicide
- Assault in any degree
- Kidnapping and Custodial Interference
- Arson in the first degree
- Sexual Assault in any degree
- Sexual Abuse of a Minor in any degree
- Incest
- Unlawful Exploitation of a Minor
- Robbery, Extortion, or Coercion

However, the section also provides that the current 5-year limitation shall be extended to 20 years after the commission of a felony sexual offense, including those listed above, involving a victim under the age of 16. As provided in Section 25 of the bill, the amendment of the statute of limitations will be prospective only. Consequently, there will be no fiscal impact for at least 5 years. Although information that would indicate how many crimes go uncharged under the current 5-year limitation is not available, the department does not anticipate that this amendment will have a significant fiscal impact.

Section 16. This section amends AS 12.55.025(e) to clarify that a person convicted of two or more crimes, including murder in the first degree, may be sentenced to consecutive sentences in excess of the term of imprisonment for the murder conviction. This is a sentencing provision and will not have an impact on the department.

Section 17. This section amends AS 12.55.025 to provide that the preponderance of the evidence standard of proof applies to sentencing proceedings, except as provided by AS 12.55.145(d), 12.55.155(f), and 12.55.165. This amendment has the effect of reversing a recent Court of Appeals ruling. Because the amendment is a sentencing provision, it will not have a fiscal impact on the department.

COMMITTEE COPY

CONTINUATION of FISCAL NOTE ANALYSIS #4

For Bill/Resolution No. ^{CSHB} HB 396 (JUD) 1-29-92

Section 18. This section amends AS 12.55.125(a) to provide that a defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when the conviction is for the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional officer who was engaged in the performance of official duties at the time of the murder. The mandatory term of imprisonment of 99 years would also apply if the person convicted of murder in the first degree has been previously convicted of murder in the first or second degree in Alaska, or homicide under the laws of another jurisdiction when the offense contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110. This sentencing provision is not expected to have a fiscal impact on the department.

Section 19. This section amends AS 12.55.165 to provide that a court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (19), (20), (21), or (28) is present. This sentencing provision will not have a fiscal impact on the department.

Section 20. This section amends AS 12.55.175 to provide that, except as provided in Section 19 above, if a three-judge panel determines that manifest injustice would result from imposition of a presumptive term and the panel also finds that the defendant has excellent potential for rehabilitation and that a sentence of less than the presumptive term should be imposed because of the defendant's exceptional potential for rehabilitation, the panel shall sentence the defendant to the presumptive term under AS 12.55.125 and order the defendant to engage in appropriate rehabilitative programs under AS 12.55.015. The panel may then provide that the defendant is eligible for discretionary parole under AS 33.16.090 during the second half of the sentence, if the defendant successfully completes all rehabilitative programs ordered by the panel. This sentencing provision is not expected to have a fiscal impact on the department.

Section 21. This section amends AS 33.16.090(b) to provide that a prisoner sentenced to a mandatory 99-year term, under the amendment to AS 12.55.125(a) proposed in Section 18, shall not be eligible for discretionary parole during the entire term. This sentencing provision will not have a fiscal impact on the department.

Section 22 and Section 23. These sections amend AS 33.16.090 to provide that a prisoner may be eligible for discretionary parole during the second half of a sentence imposed under the amendment to AS 12.55.175(e) proposed in Section 20, above.

COMMITTEE COPY

CONTINUATION of FISCAL NOTE ANALYSIS # 4

For Bill/Resolution No. ^{CSHB} HB 396 (Jud) 1-29-92

Section 24. This section repeals AS 12.10.020(c), relating to the statute of limitations for certain sex offenses, which are amended in Section 15 above.

Section 25. This section makes the extension of the statute of limitations on criminal prosecutions, set out in Section 15 above, prospective.

COMMITTEE COPY

STATE OF ALASKA
1992 LEGISLATIVE SESSION

REPORTED OUT OF
SFC 5-11-92

No. 5
Version: CSHB 396 (JUD)
(H) Publish Date: 1/29/92

Revision Date: _____ Department Affected: Public Safety
Title: An Act relating to violent crimes and criminal law and procedure BRU: Alaska State Troopers
Sponsor: House Judiciary Component: Detachments
Requestor: House Judiciary COMPONENT SERIAL NO.

7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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-
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Alaska State Troopers is anticipated.

Changes in CSHB 396 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

5/10/92 CLB
date Comte Aide (initial)

Prepared By: Gayle A. Horetski Phone: 465-4322
Division: Commissioner's Office Date: 1/21/92
Approved by Commissioner: Gayle A. Horetski Richard L. Burton
Agency: Department of Public Safety Date: 1/21/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

REPORTED OUT OF

SFC

444
445
99

SENATE CS FOR CS FOR HOUSE BILL NO. 396 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/10/92
Referred: Finance

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crimes of assault, sexual assault, unlawful exploitation of a minor,
2 and misconduct involving weapons; relating to the statute of limitations in criminal offenses;
3 imposing a standard of proof in sentencing proceedings; requiring a 99-year prison term
4 without discretionary parole for first degree murder if the defendant has a prior murder
5 conviction, kills a peace officer, fire fighter, or correctional officer, or commits a torture
6 murder; relating to sentencing of certain first felony offenders; limiting a court's discretion
7 to refer certain criminal cases to a three-judge sentencing panel bas 1 upon the
8 defendant's potential for rehabilitation; relating to sentencing and discretionary parole of
9 offenders found to have an exceptional potential for rehabilitation; and amending Alaska
10 Rule of Criminal Procedure 35."

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

12 * Section 1. SHORT TITLE. This Act shall be known as the Anti-Violent Crime Act of 1992.

1 * Sec. 2. AS 11.41.200(a) is amended to read:

2 (a) A person commits the crime of assault in the first degree if

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

5 (2) with intent to cause serious physical injury to another, the person causes
6 serious physical injury to any person; [OR]

7 (3) the person knowingly engages in conduct that results in serious physical injury
8 to another under circumstances manifesting extreme indifference to the value of human life; or

9 (4) that person recklessly causes serious physical injury to another by
10 repeated assaults using a dangerous instrument, even if each assault individually does not
11 cause serious physical injury.

12 * Sec. 3. AS 11.41.210(a) is amended to read:

13 (a) A person commits the crime of assault in the second degree if

14 (1) with intent to cause physical injury to another person, that person causes
15 physical injury to another person by means of a dangerous instrument; [OR]

16 (2) that person recklessly causes serious physical injury to another person; or

17 (3) that person recklessly causes serious physical injury to another by
18 repeated assaults, even if each assault individually does not cause serious physical injury.

19 * Sec. 4. AS 11.41.220(a) is amended to read:

20 (a) A person commits the crime of assault in the third degree if that person recklessly

21 (1) places another person in fear of imminent serious physical injury by means
22 of a dangerous instrument; [OR]

23 (2) causes physical injury to another person by means of a dangerous instrument;

24 or

25 (3) while being 18 years of age or older

26 (A) causes physical injury to a child under 10 years of age and the
27 injury reasonably requires medical treatment;

28 (B) causes physical injury to a child under 10 years of age on more
29 than one occasion.

30 * Sec. 5. AS 11.41.410(a) is amended to read:

31 (a) An offender [A PERSON] commits the crime of sexual assault in the first degree if

1 (1) the offender [DEFENDANT] engages in sexual penetration with another
2 person without consent of that person;

3 (2) the offender [DEFENDANT] attempts to engage in sexual penetration with
4 another person without consent of that person and causes serious physical injury to that person;
5 or

6 (3) the offender [DEFENDANT] engages in sexual penetration with another
7 person

8 (A) who the offender [DEFENDANT] knows is mentally incapable; and

9 (B) who is entrusted to the offender's [DEFENDANT'S] care

10 (i) by authority of law; or

11 (ii) in a facility or program that is required by law to be licensed
12 by the Department of Health and Social Services; or

13 (4) the offender engages in sexual penetration with a person who the offender
14 knows is unaware that a sexual act is being committed and

15 (A) the offender is a health care worker; and

16 (B) the offense takes place during the course of professional treatment
17 of the victim.

18 * Sec. 6. AS 11.41.420(a) is amended to read:

19 (a) An offender commits the crime of sexual assault in the second degree if

20 (1) the offender engages in sexual contact with another person without consent
21 of that person;

22 (2) the offender engages in sexual contact with a person

23 (A) who the offender knows is mentally incapable; and

24 (B) who is entrusted to the offender's care

25 (i) by authority of law; or

26 (ii) in a facility or program that is required by law to be licensed
27 by the Department of Health and Social Services; [OR]

28 (3) the offender engages in sexual penetration with a person who the offender
29 knows is

30 (A) mentally incapable; [OR]

31 (B) incapacitated; or

1 (C) unaware that a sexual act is being committed; or
2 (4) the offender engages in sexual contact with a person who the offender
3 knows is unaware that a sexual act is being committed and
4 (A) the offender is a health care worker; and
5 (B) the offense takes place during the course of professional treatment
6 of the victim.

7 * Sec. 7. AS 11.41.425(a) is amended to read:

8 (a) An offender commits the crime of sexual assault in the third degree if the offender
9 engages in sexual contact with a person who the offender knows is

10 (1) mentally incapable; [OR]

11 (2) incapacitated; or

12 (3) unaware that a sexual act is being committed.

13 * Sec. 8. AS 11.41.455(a) is amended to read:

14 (a) A person commits the crime of unlawful exploitation of a minor if, in the state and
15 with the intent of producing a live performance, film, audio recording, photograph, negative,
16 slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed
17 in (1) - (7) [(1) - (6)] of this subsection, the person knowingly induces or employs a child under
18 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years
19 of age engaged in, the following actual or simulated conduct:

20 (1) sexual penetration;

21 (2) the lewd touching of another person's genitals, anus, or breast;

22 (3) the lewd touching by another person of the child's genitals, anus, or breast;

23 (4) masturbation;

24 (5) bestiality; [OR]

25 (6) the lewd exhibition of the child's genitals; or

26 (7) sexual masochism or sadism.

27 * Sec. 9. AS 11.41.470 is amended by adding new paragraphs to read:

28 (7) "health care worker" includes a person who is or purports to be an
29 anesthesiologist, acupuncturist, chiropractor, dentist, health aide, hypnotist, massage therapist,
30 mental health counselor, midwife, nurse, nurse practitioner, osteopath, naturopath, physical
31 therapist, physical therapy assistant, physician, physician's assistant, psychiatrist, psychologist,

1 psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or
2 a substantially similar position;

3 (8) "sexual act" means sexual penetration or sexual contact.

4 * Sec. 10. AS 11.61 is amended by adding new sections to article 2 to read:

5 Sec. 11.61.190. MISCONDUCT INVOLVING WEAPONS IN THE FIRST DEGREE.

6 (a) A person commits the crime of misconduct involving weapons in the first degree if the
7 person uses or attempts to use a firearm during the commission of an offense under AS
8 11.71.010 - 11.71.040.

9 (b) Misconduct involving weapons in the first degree is a class A felony.

10 Sec. 11.61.195. MISCONDUCT INVOLVING WEAPONS IN THE SECOND DEGREE.

11 (a) A person commits the crime of misconduct involving weapons in the second degree if the
12 person knowingly

13 (1) possesses a firearm during the commission of an offense under AS 11.71.010 -
14 11.71.040; or

15 (2) violates AS 11.61.200(a)(1) and is within the grounds of or on a parking lot
16 immediately adjacent to

17 (A) a public or private preschool, elementary, junior high, or secondary
18 school without the permission of the chief administrative officer of the school or district
19 or the designee of the chief administrative officer; or

20 (B) a center, other than a private residence, licensed under AS 47.35.010 -
21 47.35.075 or recognized by the federal government for the care of children.

22 (b) Misconduct involving weapons in the second degree is a class B felony.

23 * Sec. 11. AS 11.61.200(a) is amended to read:

24 (a) A person commits the crime of misconduct involving weapons in the third [FIRST]
25 degree if the person

26 (1) knowingly possesses a firearm capable of being concealed on one's person
27 after having been convicted of a felony by a court of this state, a court of the United States, or
28 a court of another state or territory;

29 (2) knowingly sells or transfers a firearm capable of being concealed on one's
30 person to a person who has been convicted of a felony by a court of this state, a court of the
31 United States, or a court of another state or territory;

1 (3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;
2 (4) knowingly sells or transfers a firearm to another whose physical or mental
3 condition is substantially impaired as a result of the introduction of an intoxicating liquor or
4 controlled substance into that other person's body;

5 (5) removes, covers, alters, or destroys the manufacturer's serial number on a
6 firearm with intent to render the firearm untraceable;

7 (6) possesses a firearm on which the manufacturer's serial number has been
8 removed, covered, altered, or destroyed, knowing that the serial number has been removed,
9 covered, altered, or destroyed with the intent of rendering the firearm untraceable;

10 (7) violates AS 11.46.320 and, during the violation, possesses on the person a
11 firearm when the person's physical or mental condition is impaired as a result of the introduction
12 of an intoxicating liquor or controlled substance into the person's body;

13 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on
14 premises or in a propelled vehicle in violation of a provision of an order issued under AS
15 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon
16 or a deadly weapon, other than an ordinary pocketknife;

17 (9) communicates in person with another in violation of AS 11.56.740 and, during
18 the communication, possesses on the person a defensive weapon or a deadly weapon, other than
19 an ordinary pocketknife; [OR]

20 (10) resides in a dwelling knowing that there is a firearm capable of being
21 concealed on one's person or a prohibited weapon in the dwelling if the person has been
22 convicted of a felony by a court of this state, a court of the United States, or a court of another
23 state or territory, unless the person has written authorization to live in a dwelling in which there
24 is a concealable weapon described in this paragraph from a court of competent jurisdiction or
25 from the head of the law enforcement agency of the community in which the dwelling is located;

26 or

27 (11) discharges a firearm from a propelled vehicle while the vehicle is being
28 operated.

29 * Sec. 12. AS 11.61.200(d) is amended to read:

30 (d) The provisions of (a)(3) and (11) of this section do not apply to a peace officer
31 acting within the scope and authority of the officer's employment.

1 * Sec. 13. AS 11.61.200(f) is amended to read:

2 (f) Misconduct involving weapons in the third [FIRST] degree is a class C felony.

3 * Sec. 14. AS 11.61.200 is amended by adding a new subsection to read:

4 (g) It is an affirmative defense to a prosecution under (a)(11) of this section that the
5 person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by
6 statute or regulation.

7 * Sec. 15. AS 11.61.210(a) is amended to read:

8 (a) A person commits the crime of misconduct involving weapons in the fourth
9 [SECOND] degree if the person

10 (1) possesses on the person, or in the interior of a vehicle in which the person is
11 present, a firearm when the person's physical or mental condition is impaired as a result of the
12 introduction of an intoxicating liquor or a controlled substance into the person's body in
13 circumstances other than described in AS 11.61.200(a)(7);

14 (2) discharges a firearm from, on, or across a highway;

15 (3) discharges a firearm with reckless disregard for a risk of damage to property
16 or a risk of physical injury to a person;

17 (4) manufactures, possesses, transports, sells, or transfers metal knuckles; [OR]

18 (5) manufactures, sells, or transfers a switchblade or a gravity knife; or

19 (6) knowingly sells a firearm or a defensive weapon to a person under 18
20 years of age.

21 * Sec. 16. AS 11.61.210(c) is amended to read:

22 (c) Misconduct involving weapons in the fourth [SECOND] degree is a class A
23 misdemeanor.

24 * Sec. 17. AS 11.61.220(a) is amended to read:

25 (a) A person commits the crime of misconduct involving weapons in the fifth [THIRD]
26 degree if the person

27 (1) knowingly possesses a deadly weapon, other than an ordinary pocketknife or
28 a defensive weapon, that is concealed on the person;

29 (2) knowingly possesses a loaded firearm on the person in any place where
30 intoxicating liquor is sold for consumption on the premises;

31 (3) being an unemancipated minor under 16 years of age, possesses a firearm

1 without the consent of a parent or guardian of the minor;

2 (4) knowingly possesses a firearm

3 (A) or a defensive weapon within the grounds of or on a parking lot
4 immediately adjacent to a public or private preschool, elementary, junior high, or
5 secondary school [,] without the permission of the chief administrative officer of the
6 school or district or the designee of the chief administrative officer, except that a person
7 21 years of age or older may possess

8 (i) an unloaded firearm in the trunk of a motor vehicle or encased
9 in a closed container in a motor vehicle;

10 (ii) a defensive weapon; or

11 (B) within the grounds of or on a parking lot immediately adjacent to a
12 center, other than a private residence, licensed under AS 47.35.010 - 47.35.075 or
13 recognized by the federal government for the care of children; or

14 (5) possesses or transports a switchblade or a gravity knife.

15 * Sec. 18. AS 11.61.220(g) is amended to read:

16 (g) Misconduct involving weapons in the fifth [THIRD] degree is a class B
17 misdemeanor.

18 * Sec. 19. AS 12.10.010 is amended to read:

19 Sec. 12.10.010. GENERAL TIME LIMITATIONS. A prosecution for murder may be
20 commenced at any time. Except as otherwise provided by law, a [NO] person may not
21 [SHALL] be prosecuted, tried, or punished for an [ANY] offense other than [, NOT] murder
22 [,] unless the indictment is found or the information or complaint is instituted no later than

23 (1) 10 years after the commission of a felony offense in violation of
24 AS 11.41.120 - 11.41.530 or in violation of AS 11.46.400; or

25 (2) five years after the commission of any other offense [WITHIN FIVE
26 YEARS NEXT AFTER SUCH OFFENSE SHALL HAVE BEEN COMMITTED].

27 * Sec. 20. AS 12.10.020(c) is amended to read:

28 (c) Even if the general time limitation has expired, a prosecution under AS 11.41.410 -
29 11.41.455 [AS 11.41.410 - 11.41.460], AS 11.66.110 - 11.66.130, or former AS 11.41.430, [OR
30 FORMER AS 11.51.130(a)(4),] for an offense committed against a person under the age of 18,
31 [16] may be commenced at any time [WITHIN ONE YEAR AFTER THE CRIME IS

1 REPORTED TO A PEACE OFFICER OR THE PERSON REACHES THE AGE OF 16,
2 WHICHEVER OCCURS FIRST. THIS SUBSECTION DOES NOT EXTEND THE PERIOD
3 OF LIMITATION BY MORE THAN FIVE YFARS].

4 * Sec. 21. AS 12.55.025(c) is amended to read:

5 (e) Except as provided in (g) and (h) of this section, if the defendant has been convicted
6 of two or more crimes, sentences of imprisonment shall run consecutively. If the defendant is
7 imprisoned upon a previous judgment of conviction for a crime, the judgment shall provide that
8 the imprisonment commences at the expiration of the term imposed by the previous judgment.

9 Nothing in AS 12.55.125(a) limits the court's ability to impose consecutive sentences.

10 * Sec. 22. AS 12.55.025 is amended by adding a new subsection to read:

11 (i) Except as provided by AS 12.55.125(a)(3), 12.55.125(k), 12.55.145(d), 12.55.155(f),
12 and 12.55.165, the preponderance of the evidence standard of proof applies to sentencing
13 proceedings.

14 * Sec. 23. AS 12.55.125(a) is amended to read:

15 (a) A defendant convicted of murder in the first degree shall be sentenced to a definite
16 term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted
17 of murder in the first degree shall be sentenced to a mandatory term of imprisonment of
18 99 years when

19 (1) the defendant is convicted of the murder of a uniformed or otherwise
20 clearly identified peace officer, fire fighter, or correctional officer who was engaged in the
21 performance of official duties at the time of the murder;

22 (2) the defendant has been previously convicted of

23 (A) murder in the first degree under AS 11.41.100 or former
24 AS 11.15.010 or 11.15.020;

25 (B) murder in the second degree under AS 11.41.110 or former
26 AS 11.15.030; or

27 (C) homicide under the laws of another jurisdiction when the offense
28 of which the defendant was convicted contains elements similar to first degree
29 murder under AS 11.41.100 or second degree murder under AS 11.41.110; or

30 (3) the court finds by clear and convincing evidence that the defendant
31 subjected the murder victim to substantial physical torture.

1 * Sec. 24. AS 12.55.125(h) is amended to read:

2 (h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge
3 except as specifically provided. Nothing in (a) of this section limits the court's discretion to
4 impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person
5 convicted of murder in the first or second degree in circumstances other than those
6 enumerated in (a).

7 * Sec. 25. AS 12.55.125 is amended by adding new subsections to read:

8 (j) A defendant sentenced to a mandatory term of imprisonment of 99 years under (a)
9 of this section may apply for a modification or reduction of sentence under the Alaska Rules of
10 Criminal Procedure after serving one-half of the mandatory term without consideration of good
11 time earned under AS 33.20.010.

12 (k) A first felony offender convicted of an offense for which a presumptive term of
13 imprisonment is not specified under this section may not be sentenced to a term of unsuspended
14 imprisonment that exceeds the presumptive term for a second felony offender convicted of the
15 same crime unless the court finds by clear and convincing evidence that an aggravating factor
16 under AS 12.55.155(c) is present, or that circumstances exist that would warrant a referral to the
17 three judge panel under AS 12.55.165.

18 * Sec. 26. AS 12.55.155(c)(18) is amended to read:

19 (18) the offense was a crime

20 (A) specified in AS 11.41 and was committed against a spouse, a former
21 spouse, or a member of the social unit comprised of those living together in the same
22 dwelling as the defendant; [OR]

23 (B) specified in AS 11.41.410 - 11.41.460 and was committed against a
24 minor, and the defendant has engaged in the same or similar conduct involving the same
25 or another victim who was a minor; or

26 (C) specified in AS 11.41.410 - 11.41.425 or 11.41.455, and the
27 defendant has previously engaged in conduct covered by one of those sections
28 involving the same or another victim;

29 * Sec. 27. AS 12.55.165 is amended by adding a new subsection to read:

30 (b) In making a determination under (a) of this section, the court may not refer a case to
31 a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a

1 factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (20), (21),
2 or (28) is present.

3 * Sec. 28. AS 12.55.175 is amended by adding a new subsection to read:

4 (c) If the three-judge panel determines under (b) of this section that manifest injustice
5 would result from imposition of the presumptive term and the panel also finds that the defendant
6 has an exceptional potential for rehabilitation and that a sentence of less than the presumptive
7 term should be imposed because of the defendant's exceptional potential for rehabilitation, the
8 panel

9 (1) shall sentence the defendant to the presumptive term required under
10 AS 12.55.125;

11 (2) shall order the defendant under AS 12.55.015 to engage in appropriate
12 programs of rehabilitation; and

13 (3) may provide that the defendant is eligible for discretionary parole under AS
14 33.16.090 during the second half of the sentence imposed under this subsection if the defendant
15 successfully completes all rehabilitation programs ordered under (2) of this subsection.

16 * Sec. 29. AS 12.61.120(b) is amended to read:

17 (b) If the defendant is proceeding without counsel in a case involving a charged violation
18 of AS 11.41, AS 11.46.300 - 11.46.330, AS 11.56.740, AS 11.56.810 or 11.61.190 - 11.61.210
19 [11.61.200 - 11.61.210] and the court finds that the defendant may pose a continuing threat to
20 the victim of or witness to the offense charged, the court shall protect the address and telephone
21 number of the victim or witness by providing the information only to a person specified by the
22 court or by imposing other restrictions that the court considers necessary. When an address or
23 telephone number is released to a person specified by the court under this subsection, that person,
24 who shall be ordered not to disclose the information to the defendant, shall contact the victim
25 or witness on behalf of the defendant, and the defendant shall meet or speak with the victim or
26 witness only in the presence of that person.

27 * Sec. 30. AS 33.16.090(b) is amended to read:

28 (b) Except as provided in (e) of this section, a [A] prisoner is not eligible for
29 discretionary parole during the term of a presumptive sentence; however, a prisoner is eligible
30 for discretionary parole during a term of sentence enhancement imposed under AS 12.55.155(a)
31 or during the term of a consecutive or partially consecutive presumptive sentence imposed under

1 AS 12.55.025(e) or (g). A prisoner sentenced to a mandatory 99-year term under
2 AS 12.55.125(a) is not eligible for discretionary parole during the entire term.

3 * Sec. 31. AS 33.16.090(c) is amended to read:

4 (c) Except as provided in (e) of this section, a [A] prisoner eligible for discretionary
5 parole during a period of sentence enhancement imposed under AS 12.55.155(a) or during a
6 consecutive or partially consecutive presumptive sentence imposed under AS 12.55.025(e) or (g)
7 shall serve the unenhanced portion of the sentence or the initial presumptive sentence before
8 being otherwise eligible for discretionary parole under AS 33.16.100(c) or (d). For purposes of
9 this subsection, the sentence for the most serious offense in the case of consecutive or partially
10 consecutive presumptive sentences shall be considered the initial presumptive sentence. The
11 unenhanced sentence or the initial presumptive sentence is considered served for purposes of
12 discretionary parole on the date the unenhanced or initial presumptive sentence is due to expire
13 less good time earned under AS 33.20.010.

14 * Sec. 32. AS 33.16.090 is amended by adding a new subsection to read:

15 (e) Notwithstanding (b) and (c) of this section, a prisoner may be eligible for
16 discretionary parole during the second half of a sentence imposed under AS 12.55.175(e) if the
17 three-judge panel provides under AS 12.55.175(e)(3) that the defendant is eligible for
18 discretionary parole, and the defendant has successfully completed all rehabilitation programs
19 ordered by the three-judge panel under AS 12.55.175(e)(2) if the programs are made available
20 to the defendant by the department and if the defendant would not constitute a danger to the
21 public if released on parole.

22 * Sec. 33. APPLICABILITY OF SECTIONS 19 AND 20. AS 12.10.010, as amended by sec. 19 of
23 this Act, and AS 12.10.020(c), as amended by sec. 20 of this Act, apply to all offenses committed on
24 or after the effective date of this Act and to all offenses that could have been prosecuted under
25 AS 12.10.010 and 12.10.020 on the day before the effective date of this Act.

26 * Sec. 34. AS 12.55.125(j), added by sec. 25 of this Act, has the effect of amending Alaska Rule of
27 Criminal Procedure 35 by permitting a court to reduce or modify a mandatory sentence of imprisonment
28 of 99 years imposed under AS 12.55.125(a), as amended by sec. 23 of this Act, after the defendant has
29 served one-half of the mandatory term without consideration of good time earned under AS 33.20.010.

BILL NO: CSHB 396(JUD)

DATE: February 18, 1992

TITLE: Anti-Violent Crime Act
of 1992

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

Department of Public Safety

POSITION PAPER

The Department of Public Safety supports CSHB 396(JUD), an Act relating to violent crimes and criminal law and procedure.

Sections 2 and 3 of the bill will allow felony prosecution of an offender who causes serious physical injury to a person as a result of a series of assaults. Sections 5, 6, 7, and 9 would clarify present law to specifically prohibit a person from engaging in sexual assault or penetration with a person whom the offender knows is unaware that a sexual act is occurring. If the offender is a health care worker and the victim a patient the seriousness of the offense is increased. Section 8 amends the current child pornography law to include depiction of acts of sexual masochism or sadism.

Sections 10 through 14 amend the state weapons laws to prohibit possession of a defensive weapon on school grounds and to make "drive-by" shootings at least C felony level conduct. Section 13 would make it a class A misdemeanor for a person to knowingly sell a firearm or defensive weapon to a person under 18 years of age. The Department supports this change, but suggests that the Finance Committee consider the addition of a provision that prohibits knowingly providing a firearm or defensive weapon to an unemancipated minor under 18 without the consent of the minor's parent or guardian. This would cover giving, lending, or trading a weapon to the minor, in addition to selling. Under AS 11.61.220(a)(3) it is a class B misdemeanor offense for an unemancipated minor under 16 to possess a firearm without the consent of a parent or guardian; it seems at least as appropriate to prohibit a person from providing a firearm to a minor as it does to prohibit the minor's possession of it. The Department also suggests that the two different ages contained in proposed AS 11.61.210(a)(6) ("under 18") and existing AS 11.61.220(a)(3) ("under 16") be made consistent.

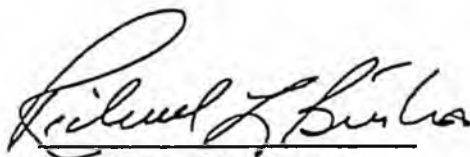
Sections 15, 16, and 27 extend the Statute of Limitations for criminal prosecution of certain serious crimes, including sexual offenses against children. It is often extremely difficult, and sometimes not possible, to gather sufficient evidence to be able to prosecute old offenses, so the Department does not anticipate a large number of additional cases as a result of this change. In those few cases where multiple witnesses, an offender's confession, or other convincing evidence make prosecution of an old offense feasible, however, allowing a jury to consider the evidence and render a verdict is in the best interest of society. This is especially true if the offender continues to reside in the community and have access to young children.

Sections 17, 19, 20, 21, 24, and 28 establish a mandatory sentence of 99 years' imprisonment for an offender convicted of the first-degree murder of a uniformed peace officer or firefighter performing official duties, or for an offender who has been previously convicted of murder. Persons convicted of murder under these circumstances would almost always receive sentences of at least 99 years under existing law.

One of the most important provisions of the bill is contained in section 18, which amends AS 12.55.025 to provide that the standard of proof in sentencing matters is "preponderance of the evidence", rather than "clear and convincing". This change would return the law to what it had been assumed to be before the issuance of a recent Alaska Court of Appeals case, Buoy v. State. Once the offender already has been convicted of the crime, it is appropriate to allow the court to consider the widest array of relevant information about the offender or the crime so that the judge may best tailor the sentence to the particular circumstances of the case.

Sections 22, 23, 25, and 26 change the circumstances under which an offender's sentence can be referred to the three-judge panel. Section 22 lists certain aggravating factors which, if found in a given case, would preclude referral to the three-judge panel.

The changes described above are reasonable ones which will increase the ability of prosecutors and law enforcement officers to protect victims of violent crime, and of the courts to fashion just sentences. The Department of Public Safety supports CSHB 396(JUD).



Richard L. Burton
Commissioner

Alaska Public Defender Agency

900 West Fifth Avenue, Suite 200
Anchorage, Alaska 99501
(907) 279-7541

May 11, 1992

The Honorable Pat Pourchot
Alaska State Senator
State Capitol, Room 119
Juneau, AK 99811

Re: HB 396
"An Act relating to violent crimes and criminal law
and procedure."

Dear Senator Pourchot:

We have carefully reviewed the lengthy and broad sweeping changes this bill contains. Most of the changes proposed are unnecessary, expensive, and potentially unfair, if not unconstitutional. We urge you seriously look at these provisions, both in terms of fiscal impact and the propriety of these substantial changes.

An example illustrates our position. HB 396 restricts the ability of the three-judge sentencing panel to impose less than the presumptive term on an offender who has proven he has unusually good potential for rehabilitation. This change is unnecessary because recent data suggests the panel does its job thoughtfully, consistently and conservatively, and exercises its power to reduce a sentence in only a selected few instances. (1991 Alaska Sentencing Commission Annual Report). This change is expensive because of increased demands for trial, legal challenges in every presumptive sentencing case, and the impact on the civil as well as criminal court calendars. Furthermore, more costs will result with increased incarceration and rehabilitation programs at a time when resources are fully extended.

This change is unfair because of the extreme injustice in allocating all of the power to the prosecutor and mandatory lengthy jail sentences for those offenders who have proven by clear and convincing evidence that they are not dangerous and can be rehabilitated outside of the prison system. This change is unconstitutional because eliminating judicial discretion violates the separation of powers doctrine and the constitutional principle of reformation and removes an important "safety valve" previously recognized in constitutional challenges of the presumptive sentencing scheme. (Nell v. State, 642 P.2d 1361 (Alaska App. 1987)).

The Alaskan Sentencing Commission, a diverse group representing

every aspect of law enforcement, criminal justice and victim's rights is conducting a study regarding future appropriate changes to Alaska's sentencing law. Now is not the time to make piecemeal changes to Alaska's sentencing scheme. We strongly urge you to reject this bill.

Thank you for considering this letter. Please contact me if you require further information.

Very truly yours, .

Barbara K. Brink

Barbara K. Brink
Deputy Public Defender

BKB/le

cc: Eileen Plate
Eric Swanson

Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

M E M O R A N D U M

TO: Members of the Finance Committee
FROM: Representative Dave Donley *DD*
DATE: May 11, 1992
RE: HB 396 (Anti-Violent Crime Act of 1992)

At the eleventh hour, the Public Defender is asking the Senate Finance Committee to reject HB 396, claiming that "most of the changes in the bill are unnecessary." I strongly disagree with this assertion. Most of the provisions of the bill are absolutely necessary to close loopholes in our criminal laws that have been identified in recent trial and appellate court opinions.

Recent events have borne out the need for the bill. A former teacher in the village of Tununak, and an Anchorage police officer, both escaped prosecution for sexually abusing minors because of problems with our existing statute of limitations. The prosecution of an Anchorage gynecologist for sexual assault also made clear that there are gaps in the statutes that need to be addressed through legislation. These problems are cured in HB 396.

In the initial hearings that were held on HB 396, the Public Defender expressed concerns about a number of the provisions of HB 396. With two exceptions, the concerns of the Public Defender were addressed in amendments that were incorporated in the version of HB 396 that is now before the Senate Finance Committee.

The two issues that the House Judiciary Committee, and subsequent committees, could not come to agreement with the Public Defender were: 1) the extension of the statute of limitations; and 2) the amendments to the sentencing statutes that are addressed in their May 11 letter. On these issues, after thoroughly researching the area, the Department of Law and House Judiciary legal counsel concluded that the provisions were constitutional and did not present any other legal problems.

I urge your favorable consideration of HB 396.

TUNDRA WOMEN'S COALITION

P.O. Box 1537, Bethel, AK 99559

(907) 543-3455

January 27, 1992

Dear Senator Hoffman:

TWC unanimously passed a resolution on September 24, 1991 to support the effort of the women of Tununak to change the criminal statute of limitations in child sexual assault cases. The nineteen member staff and ten member board of Tundra Women's Coalition fully support the extension and/or elimination of the criminal statute of limitations for the crime of child sexual abuse.

We believe the perpetrator of this crime must know that he or she will always be held accountable for his/her actions and that criminal prosecution will always be a possibility.

We also believe that it is important for victims to have prosecution available to them as an option for as long as possible.

Please let us know if we can be of any further assistance. Many of us would appreciate the opportunity to give public testimony if any of the committees hearing the bill have a teleconference.

Thank you for working to change the criminal statute of limitations. We believe this to be one of the most critical issues of this legislative session.

Sincerely,

**Lauree Hugonin
Executive Director**

Alaska Association Chiefs of Police



January 21, 1992

Representative Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Donley,

On behalf of the Alaska Association of Chiefs of Police, I want to express our support for House Bill 396. We see this as extremely important legislation and we support your efforts in its passage.

This bill addresses a number of timely subjects that are important to public safety in Alaska. House Bill 396 would correct several deficiencies in current law and we would be willing to assist you in any way that we can to ensure that it becomes law.

Sincerely,

A handwritten signature in cursive script, which appears to read "Duane S. Udland".

Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507

ANCHORAGE TASK FORCE ON SEXUAL ASSAULT

Testimony for HB 396
"An act relating to violent crimes and
criminal law and procedure."
January 22, 1992

Good afternoon Chairman Donley and House Judiciary Committee members.

My name is Carrie Longoria, and I am here this afternoon to testify on HB 396. I am representing the Anchorage Task Force on Sexual Assault (ATFSA), a group of professionals coordinated by the Municipal Department of Health and Human Services, Abuse Prevention Program. The ATFSA includes representatives from various governmental and private agencies, which include the Anchorage Police Department, the Anchorage District Attorney's office, local hospitals (Humana, Providence, ANS), victim-support agencies (STAR, Victim's for Justice, South Central Counseling), private professionals (mental health counselors), the Department of Corrections (Hiland Mt.), and McLaughlin Youth Center.

Members of ^{the Committee's staff} the ATFSA would like to extend their appreciation to the Committee for the effort and serious consideration which has already gone into the development of HB 396. Today, the ATFSA will be providing testimony on a few key provisions of the bill, but will provide testimony on the other important provisions of this bill at a later date.

Section 5 & 6., where an "offender engages in sexual penetration or contact with a person who the offender knows is unaware that a sexual act is being committed, and (A), the offender is a health care worker; and (B) the offense takes place during the course of professional treatment of the victim.

This is a particularly timely provision in lieu of a recent physician/patient case where victims were in a trusting position and subjected to physical examinations, which were in fact, incidents of sexual offenses. These examinations were the doctor's guise to perform unwanted sexual acts on them. This provision would hold certain professionals, such as physicians, accountable for their sexual violations, and allow for efficient prosecution.

Section 9., defines "health care worker" and "sexual act."

ATFSA is particularly pleased with the broad inclusion of various professionals who would have access to "bodies" of individuals.

Section 15., where the "general time limitations for sexual offenses against minors are extended."

The ATFSA commends the bill's twenty-year limitation, but requests that "NO LIMITATION" be enacted so that a victim at any age, whenever recall is possible, may come forward and bring criminal charges against their offender.

Rep. Boyer
HB 370

Section 19., where the court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation.

The ATFSA applauds the special emphasis which this provision provides by prohibiting referrals to a three judge panel based on the defendant's potential for rehabilitation.

Section 20., where "the three-judge panel determines that manifest injustice would result from imposition of the presumptive term..."

The ATFSA supports the concept behind this provision, where the defendant is eligible for discretionary parole during the second half of the sentence imposed, if the defendant successfully completes all rehabilitative programs ordered to do so.

Section 21, which reads, "as provided in this section", a prisoner is not eligible for discretionary parole during the term of presumptive sentence..."

Consistent with sections 19-20, this provision has unanimous support.

Thank you for considering comments presented by the ATFSA, and the ^{House Judiciary} committee members' individual dedication to making our communities violent free.

Prepared by Carrie Longoria, MOA/DHHS/Abuse Prevention Program, P.O. Box 196650, Anchorage, AK 99519-6650, Teleph: 343-4876

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

419 6th Street, No. 116 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC); Advertisers 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 (KWRC);
 Matliq Regional Women's Crisis Program; Parents Aid Family Support Center;
 Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
 Sitka Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
 Standing Together Against Rape (STAR);
 Torgus Community Counseling Center; Tundra Women's Coalition (TWC);
 Unintentional Against Sexual Assault & Family Violence (USAFV);
 Valley Women's Resources Center (VWRC);
 Women in Crisis Counseling & Assistance (WCCA);
 Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

HB396
 CRIME ACT 1992

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit organization with 22 member programs around Alaska which serve victims and their families. The Network would like to testify in favor of HB396, specifically would like to address the following sections:

Sections 2 and 3 of the bill address a problem domestic violence programs have seen when working with both child abuse victims and adult victims of domestic violence. Repeated assaults causing great physical damage cannot be prosecuted as felonies because no one assault can be proven to have caused the injuries. Domestic violence often involves this kind of chronic battering. The Network believes that this provision will aid in providing a better response to such cases by the criminal justice system.

The Network also supports the provisions of Sections 5, 6, 7 and 9, which clarify current statute regarding sexual assault by persons in the health care field. Women should not be forced to choose between caring for their basic health needs and their physical safety. Clearly no consent exists when victims are unaware of the act taking place due to deception. In the wake of the Ake case, the Network believes that these changes are vital to ensure that health care workers understand that rape laws apply to them as well.

Section 15 includes a provision that would increase the statute of limitations for child sexual assault. The Network is very supportive of this provision and, in fact, would advocate that the statute of limitation be extended even further or eliminated.

According to a study by Harborview Sexual Assault Center in Seattle, about 2/3rds of child victims are pre-teens, and almost 1/4 are younger than six years old at the time abuse is disclosed -- though obviously it may have begun at significantly younger ages. Under the proposed 20-year limit in this bill, many victims will only be

HB396
Page Two

in their early to mid-twenties at the time the limit expires. While this is a significant improvement, research indicates that many victims do not begin to deal with their victimization, or actually feel its most debilitating impacts until they are in their twenties and thirties. This is echoed in a survey of Network programs that work with adult survivors. Median age in these groups tends to be about mid-thirties.

For these reasons, the Network recommends that either the 20 year statute be amended to begin tolling when the victim reaches the age of majority, or that it be eliminated. One example of a State with a similar statute is that of New Hampshire which amended its child sexual assault statute in 1990 to 22 years past the victim's 18th birthday.

Since child molesters have many victims per offender, and since they tend to offend against children over very long periods of time, some one who was molesting children twenty years ago is most likely still molesting them now. Offenders rely on the very fact of the age of their victims as protection against the consequences of their actions. The Network believes that by allowing victims to act in their own behalf as adults will only aid in combatting this crime.

The provisions of Section 17 are important in sexual assault cases, where statements from other victims who may not have pressed charges are important in determining appropriate sentence length. It is also important to know the defendant's background in determining appropriate treatment and rehabilitation programs.

Anthony M. Mander, Ph.D., P.C.
Licensed Clinical Psychologist

8800 Glacier Hwy, Suite 216
Juneau, Alaska 99801
(907) 789-5912

Sandra Mander, M.A.
Licensed Psychological Assoc.

January 21, 1992

Representative Mark Boyer
Vice Chairman
House Finance Committee
House of Representatives
Alaska State Legislature
Juneau, Ak. 99811

Dear Representative Boyer,

I would like to voice my support for House Bill No. 370 removing the statute of limitations for prosecution of sexual offenses against children.

As an expert in the field of sexual abuse who has worked with both perpetrators and survivors of abuse I feel strongly that the statute of limitations be removed for these crimes. For a number of reasons children are often unable to report sexual crimes against them. They fear punishment, blame and social criticism from family and peers. They also fear retaliation from the perpetrators themselves who commonly threaten to harm the child should they disclose the abuse. Also, in the case of incest the child is aware of the consequences of reporting not only to the perpetrator but to the family as a whole. If the perpetrator is removed from the home there is a resulting loss of income and additional stress for the non-offending parent.

For all of the above reasons children are not truly free to disclose these serious crimes against them. Furthermore, there are many documented cases of unconscious psychological repression of the memories of sexual abuse. It may be years before these memories once again become conscious. For the child that does recall the trauma but fears reprisal, it may be years before he or she feels safe enough to report.

Perpetrators of sexual abuse against children are typically chronic offenders. They are able to continue their assaultive behavior because only a fraction of sexual abuse crimes are prosecuted. Most of these men will not stop hurting children until they are apprehended.

In my practice I have had cases in which victims have reported past abuse to protect a younger sibling from probable abuse but the statute of limitations had expired limiting the state in their ability to take protective measures. In these cases the current statute of limitations has interfered with the state's ability to protect children from harm.

I believe House Bill No. 370 will help to correct this serious problem.

Sincerely,



Anthony M. Mander
Clinical Pshchologist



SOUTHEAST
ISLAND
SCHOOL
DISTRICT

1621 TONGASS AVENUE SUITE 301
POST OFFICE BOX 8340
KETCHIKAN, ALASKA 99901
(907) 225-9658 OR 225-9659

RECEIVED

NOV 26 1991

Robert Weinstein
SUPERINTENDENT

November 21, 1991

Representative Dave Donley
Chair, House Judiciary Committee
3111 C Street, Suite 450
Anchorage, Alaska 99503

Dear Representative Donley:

Enclosed you will find a copy of a resolution recently passed by the Southeast Island School District Board of Education, requesting that Alaska Statutes be amended to extend the present time limitation provided by AS 12.10.020 for the reporting of crimes involving child sexual abuse.

In my opinion, there is considerable data indicating that victims of such crimes often do not make reports to law enforcement agencies until well after the age of 17, oftentimes because there has not been a conscious recollection of the abuse until many years after it occurred. I would appreciate your support of legislation which assures that persons who commit crimes involving child sexual abuse are not allowed to escape criminal penalties due to inappropriately brief time limitations.

Sincerely,

A handwritten signature in cursive script that reads "Bob Weinstein".

Robert Weinstein
Superintendent

RW:eb

encl: Resolution No. 92-2
cc: Board Members

SOUTHEAST ISLAND SCHOOL DISTRICT

RESOLUTION NO. 92-2

A RESOLUTION URGING THE ALASKA
STATE LEGISLATURE TO EXTEND
THE STATUTE OF LIMITATIONS FOR THE
REPORTING OF CHILD SEXUAL ABUSE.

WHEREAS, child sexual abuse is a serious problem throughout the nation and the State of Alaska; and

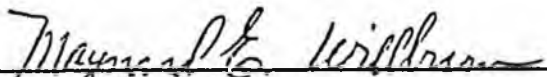
WHEREAS, existing Alaska Statutes require a victim of such abuse to report the abuse within one year after the person reaches the age of 16; and

WHEREAS, reports of child sexual abuse often occur after a victim reaches the age of 17, and

WHEREAS, existing Alaska Statutes allow perpetrators of child sexual abuse to escape criminal prosecution;

NOW, THEREFORE, BE IT RESOLVED that the Southeast Island School District Board of Education urges the Alaska Legislature to significantly extend the time limitation provided by AS 12.10.020 for the reporting of such crimes.

APPROVED AND ADOPTED, Ketchikan, Alaska this 14th day of November, 1991.


Board President


Board Clerk