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

DATE: FEBRUARY 8, 1993

PLACE: Capitol Room 106

SUBJECT OF MEETING:

- *HB 114: DRUG DISPENSING; ADV. NURSE PRACT
- *HB 2: DRUG TESTING FOR SCHOOL BUS DRIVE
- *HB 78: TESTIMONY OF MINORS IN CRIMINAL T
- *HB 97: PARENTAL CARE FOR CHILD IN STATE
- *HB 100: PROSECUTION OF JUVENILE FELONS

BILLS HELD OVER FROM PREVIOUS CALENDERS

| NAME | REPRESENTING | BUSINESS/PERSONAL MAILING ADDRESS | ZIP | (H) PHONE | (W) PHONE | DO YOU WANT TO TESTIFY? | | WHAT SUBJECT/ WHICH BILL? |
|-----------------|--------------------|--|-------|-----------|-----------|-------------------------|-----|---------------------------|
| Eomanne Korice | Dept. of Education | 811 W. 10th St. Juneau | 99801 | | 465-8652 | Y | N | Amille AR 2 |
| Peter Nakamura | Dept. of Health | A D B | | | 4653090 | (Y) | N | HB 114 |
| VINCENT USERA | AGO | | | | 465-2399 | Y | N | if needed HB 79 |
| KARL Luob | DCED | Director Occupational Licensing | | | 5-2538 | Y | (N) | only if needed HB 114 |
| Kathy Wetzlin | sup | 10000 AMERICAN CENTER 10000 AMERICAN CENTER 10014 U.S. Hwy. Juneau, Alaska | | | 463-1854 | Y | N | HB 100 |
| Deborah | DFVS | | | | 465-3191 | (Y) | N | HB 97 |
| | | | | | | Y | N | |
| RENA BUKOVICH | | | | | -6872 | Y | N | |
| JERRY LUCKHAUPT | | GLADWIN ALASKA | | | -2450 | Y | N | |
| | | | | | | Y | N | |
| | | | | | | Y | N | |



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| NAME | REPRESENTING | BUSINESS/PERSONAL MAILING ADDRESS | ZIP | (H) PHONE | (W) PHONE | DO YOU WANT TO TESTIFY? | | WHAT SUBJECT/ WHICH BILL? |
|-----------------|----------------------|-----------------------------------|-------|-----------|-----------|-------------------------|-----|---------------------------|
| Sherrie, Goss | RUSKIN WOMEN'S LOBBY | P.O. Box 22156, Juneau | 99802 | | 463-6744 | (Y) | N | HB 100 |
| Chris Eaddy | DIVERSIFIED SVCS DIV | P.O. Box 20345, JUNEAU | 99802 | | 586-5365 | Y | (N) | HB 700 |
| GARY BADER | DOF | 801 W. 10th Juneau | 99802 | | 465-8650 | (Y) | N | HB 2 |
| | | | | | | Y | N | |
| Deborah Wetzlin | | | | | | Y | N | |
| | | | | | | Y | N | |
| | | | | | | Y | N | |
| | | | | | | Y | N | |
| | | | | | | Y | N | |
| | | | | | | Y | N | |
| | | | | | | Y | N | |

**** ORDER SUMMARY ****

SPONSOR: HHES HOUSE HEALTH, EDUCATION AND SOCIAL SERVI CHAIRS: TOOHEY
PURPOSE: PUB PUBLIC HEARING BUNDE
CONTACT: LYNN SMITH TEL#: (907)465-6825
CHAIRING SITE: JUNEAU CAPITOL CAP106
TOLL FREE: DIAL-UP: LIO: (800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 5 MINUTE LIMIT

SPONSOR REMARKS(LIO): BACKUP MATERIAL:N MEETING IN PROGRESS:N MAX. SITES: 5
FOR HB 97, DIANE OLSEN, DEPT. OF LAW WILL BE IN ANCHORAGE TO TESTIFY BY INVITE
TCN REQUESTED ON 02/03/93 AND HAS 4 UPDATES

**** AGENDA ****

- 1 HB 114 DRUG DISPENSING:ADV. NURSE PRACTITIONERS
- 2 HB 97 PARENTAL CARE FOR CHILD IN STATE CUSTODY
- 3 (BY INVITATION ONLY)

**** PARTICIPATING LIOS ****

| | | |
|---------------|------------------|----------------|
| ANC ANCHORAGE | 3111 C STREET | LOCATION STAFF |
| BAR BARROW | COURTHOUSE #305 | LOCATION STAFF |
| * JNU JUNEAU | CAPITOL CAP106 | LOCATION STAFF |
| MAT MATSU | 165 E PARKS HWY. | LOCATION STAFF |

PARTICIPANTS IN:ANCHORAGE

ANC

- 1 PATRICIA HONG AK NURSE ASSOC TSFY. HB 114
237 E THIRD, NO 3 ANCHORAGE AK 99501 (907)274-0827
- 2 DARYL YOUNG UAA TSFY. HB 114
3211 PROVIDENCE DRIVE ANCHORAGE AK 99508 (907)786-4040
- 3 SUE ANNE JENKENSEN AK NURSE PRACTIT TSFY. HB 114
237 E THIRD ANCHORAGE AK 99501 (907)274-0827
- 4 GAIL MCGUILL TSFY. HB 114
3601 C STREET ANCHORAGE AK 99503 (907)561-2878
- 5 DIANNE OLSEN TSFY. HB 97
1031 W 4TH AVE ANCHORAGE AK 99501 (907)269-5139
- 6 STAN THOMPSON OBSV. HB 114
1018 W 73RD ANCHORAGE AK 99518 (907)344-5149
- 7 KAY LAHDENPERA MOA/DHHS TSFY. HB 114
P.O. BOX 196650 ANCHORAGE AK 99519 (907)343-4624

PARTICIPANTS IN:JUNEAU

JNU

- 1 REP TOOHEY TSFY. HB 114
AK (907)000-0000
- 2 REP BUNDE TSFY. HB 114
AK (907)000-0000
- 3 REP G. DAVIS TSFY. HB 114
AK (907)000-0000
- 4 REP VEZEY TSFY. HB 114
AK (907)000-0000
- 5 REP KOTT TSFY. HB 114
AK (907)000-0000
- 6 REP OLBERG TSFY. HB 114
AK (907)000-0000
- 7 REP B. DAVIS TSFY. HB 114
AK (907)000-0000

PARTICIPANTS IN:MATSU

MAT

- 1 MS DIXIE LIGHT IS FOR THE BILL TSFY. HB 114
POB 382 HOUSTON AK 99694 (907)892-8804

SPONSOR STATEMENT

HB 78

Representative Eileen P. MacLean

Under current law, in a criminal proceeding involving a child victim or witness, at the request of the court or guardian ad litem, the court can order the testimony of the child be taken by closed circuit television or through one-way mirrors if it determines that the child's testimony under normal procedures would result in the child's inability to effectively communicate. This bill would allow the court to extend those privileges to children under the age of 16, up from the current age 13.

The constitution forbids denying the accused face-to-face confrontation with an accuser in a criminal trial without specific evidence and an express finding that the probable effect of the defendant's presence on the witness would significantly impair the substance of the witness's testimony. The U.S. Supreme Court has ruled that the right of a criminal defendant to confront his accuser is not absolute. In certain situations the right of confrontation can be limited where the court makes a case specific finding of necessity that limitations on the right of confrontation are necessary. The U.S. Supreme Court has approved procedures like current AS 12.45.046 as long as the decision to employ the procedure is made on a case specific finding of necessity that determines that requiring the child to testify in the courtroom in the presence of the defendant will result in the child suffering severe emotional distress such that the child cannot reasonably testify.

The attached memorandum from the Legal Services Division examines other states procedural provisions limiting the confrontation clause. There is no single age limit that serves as a benchmark for special treatment. The range is from ages 10 to 16, with the latter being the upper limit that states have set for use of special proceedings to take testimony through videotaped testimony or one-way mirrors.

Section 2 makes the bill retroactive and applicable to criminal offenses occurring before the effective date of the bill. This will make the age limit enacted in HB 78 applicable to offenses that occur before the effective date of the bill but which are prosecuted after the effective date.

Sponsor Statement

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 20, 1993

SUBJECT: Draft bill to amend the procedures applicable to obtaining the testimony of children in certain criminal proceedings (Work Order No. 18-LS0133\A)

TO: Representative Eileen MacLean
ATTN: Rena Bukovich

FROM: Jerry Luckhaupt *JEL*
Legislative Counsel

State law authorizes trial courts to protect children appearing as witnesses in criminal proceedings by allowing their testimony to be taken out of the presence of the defendant, using closed circuit television or one-way mirrors. AS 12.45.046. ^{1/} The statute sets the maximum age of a child-witness or child-victim to whom these procedures may be applied at 13. The attached bill draft would increase the maximum age to 16.

The constitutional provision that bears upon the consideration of this statute is the so-called "confrontation clause," the Sixth Amendment to the United States Constitution ^{2/} and its counterpart, article I, section 11 of the Alaska Constitution. ^{3/}

^{1/} Such a procedure was found to be constitutional by the United States Supreme Court in Maryland v. Craig, 497 U.S. 836, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990), as long as the decision to employ the procedure is made on "a case-specific finding of necessity" that requiring the child to testify in the courtroom in the presence of the defendant would result in the child suffering severe emotional distress such that the child could not reasonably communicate. See also Cov v. Iowa, 487 U.S. 1012, 108 S.Ct. 2798, 101 L.Ed.2d 857 (1988).

^{2/} The provision reads, in relevant part:

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him

^{3/} The confrontation clause of the state constitution reads:

In all criminal prosecutions, the accused . . . is entitled . . . to be confronted with the witnesses against him;

Legislative Legal Memo

At least half the states have similar procedural provisions applicable to child victims or witnesses of crimes similar to those covered by the Alaska statute.^{4/} My review of the applicable statutes indicates that there is no single maximum age that serves as a benchmark. The range generally is from ages 10 (Minnesota) to 16 (five states: Alabama, Florida, Mississippi, Hawaii, and New Jersey). In one state, Pennsylvania, a statute sets the maximum age at 17 but its use for children age 16 or 17 would only occur under exceptional circumstances.

The Pennsylvania statute^{5/} in question is interesting. Under it, a videotaped deposition may be taken of a child victim or witness if the child has not reached the age of 18. The statute then establishes rebuttable presumptions for the taking and use of videotaped testimony of child victims and witnesses who are between 14 and 18:

In the case of an individual from 14 to 15 years of age, there shall be a rebuttable presumption that the individual will benefit from the use of procedures in section 5984 (relating to videotaped depositions) and 5985 (relating to testimony by closed circuit television). In the case of an individual from 16 to 17 years of age, there shall be a rebuttable presumption that the individual will not benefit from [these] procedures.

In other words, while Pennsylvania allows the use of videotaped or closed-circuit television for evidentiary purposes of children up to age 18--and is apparently the only state to do so--the presumption changes as to the ability to use these techniques for children who are older, 16 or 17.^{6/}

From my research, age 16^{7/} seems to have become the upper limit that the states have set for use of special proceedings to take testimony through videotaped testimony or using one-way mirrors. But, as the Pennsylvania statute shows, age 16 is not necessarily an absolute maximum limitation, and I haven't found a decision in

^{4/} In addition, roughly two-thirds of the states also authorize the use of a child's videotaped testimony.

^{5/} Pa. Cons. Stat. Ann. title 42 § 5984.

^{6/} A Pennsylvania trial court has apparently found the Pennsylvania statute unconstitutional insofar as it requires only a "good cause" showing to permit a child to testify outside the presence of a defendant. Instead, the court imposes a requirement of a particularized finding by the trial court that the child witness was in need of special protection. It does not appear that the child's age was a factor in the decision.

^{7/} In the only jurisdiction that I was able to find where the use of the special evidentiary methods may be applied to persons older than 16, Pennsylvania, the deposition or testimony of a child 16 or 17 may be videotaped only if the proponent of taping--the state--satisfies the rebuttable presumption that the individual will not benefit from the use of the special procedure.

Representative Eileen MacLean

January 20, 1993

Page 3

which the courts have set aside a child victim or child witness protection statute due solely to the legislature's choice of a maximum age to which the protection statute may apply. Apparently the courts are willing to leave to the legislature the final decision as to the maximum age level for which these special procedures for the taking of testimony from witnesses may apply.

The courts are, of course, vigorous in assuring that the special procedures are made available, if they are used at all, only in circumstances in which specific evidence and an express finding are entered in the record that the child's personal appearance as a witness would significantly impair the substance of the child's testimony. Blume v. State, 797 P.2d 664, 674 (Ak. App. 1990).

My guess is that you could extend the ceiling under Alaska law from 13 to 16 without raising any real question as to whether the change in age alone would present a problem of constitutional magnitude. Since it is not the child's age but rather the impairment of the child's ability to communicate testimony that is the essence of the exceptional treatment, you might be able to raise the ceiling to 18. However, regardless of what age the ceiling is raised to, the test that the court must follow is the one enunciated in Blume, namely that the court summarize in the record both specific evidence and an express finding that the child's personal appearance as a witness would significantly impair the substance of the child's testimony. For children who have passed their 16th birthday, that would seem to be a tough requirement. Even with this statutory change, most older children should have to expect to confront the criminal defendants in open court.

In any event, in conjunction with the attached draft, you should consider for inclusion in the bill draft findings that set out the reasons why you believe the change should be made.

JPL:pl
93-030.plm

Attachment

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 8, 1993

SUBJECT: Sectional Summary of HB 78 (Work Order No. 8-LS0133\A)

TO: Representative Eileen MacLean
Attn: Rena

FROM: Jerry Luckhaupt *JL*
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 12.45.046(a) by providing that if a child victim or witness, in a criminal proceeding, is under the age of 16, the court may order the testimony of the child be taken by closed circuit television or by way of one-way mirrors. The current age limit is 13 years of age or younger.

Section 2 of the bill provides that the amendment in section 1 of the bill is retroactive and applies to criminal prosecutions, that occur after the effective date of the act, of criminal offenses that occurred prior to the effective date of the act.

Section 3 of the bill provides an effective date.

GPL:lmb
93-036.lmb

Sectional Summary

Chukchi Campus
UNIVERSITY OF ALASKA FAIRBANKS

P.O. Box 297 • Kotzebue, Alaska 99752 • (907) 442-3400

25 January, 1993

Representative Eileen MacLean
State Capitol
Juneau, AK 99801

Dear Rep. MacLean:

I am writing in support of HB 78. I have worked, as a therapist, with numerous adolescent victims of abuse and adults abused as children, who expressed that the disclosure and prosecution of the abuse was more traumatic than the actual abuse itself.

I applaud the State of Alaska's efforts to protect in a healthy manner the physical, emotional, and spiritual rights of our children.

Respectfully:

Barbara R. Wilson ACSW
Barbara R. Wilson ACSW
Asst. Prof. of Social Work
University of Alaska Fairbanks
Chukchi College

Support Letters

Maniilaq Association

P.O. Box 256
Kotzebue, Alaska 99752
(907) 442-3311

December 8, 1992

Representative Eileen Panigeo MacLean
Alaska State Legislature
P.O. Box V, Rm. 128, Capitol
Juneau, Alaska 99811

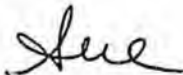
Dear Eileen,

Greetings during this joyous season! I pray that you and your family have a wonderful holiday.

Shirley Goldy brought to my attention a situation that I believe warrants your assistance. It seems that children over the age of 13 must face their abusers in court and cannot be videotaped similar to what is done with younger children. This seems very cruel and unnecessary. Other states have 16 or 18 as age limits for court appearances. I believe that Alaska needs to change the age limit to at least 16 years old, if not 18 years old.

By sponsoring legislation to raise the age limit to 16 or 18, you would ensure that our children are not abused a second time by the system. I look forward to hearing from you.

Most sincerely,



Susan L. Adams,
Deputy Administrator
Social and Regional Services

cc: Shirley Goldy, Group Home
Marge West, Family Services
Ruth Apgar, DFYS

EILE/MAC/TXTIVA

MEMBER VILLAGES

Ivisaappaat, Nunatchiaq, Ipnatchiaq, Katyaak, Kivaliniq, Laugviik, Qikiqtaruk, Nautaaq, Nuurvik, Akuligaaq, Isinnaq

Rep. Eilean MacLean
Alaska Capital Legislature
State Capital Room 507
Juneau, Alaska 99801 -1182

2/5/93

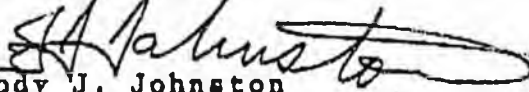
Dear Rep. MacLean,

We are sending this letter in support of House Bill #78
"An act relating to the testimony of children in certain
proceedings; and providing for an effective date"

We in the field of Social Services must support efforts to
protect the children. This bill will expand the ages of
protection for victims, children, who were unfortunately
traumatized by crimes. They do not need multiple interviews
in public court, they have been traumatized enough.

Thank you for your hard work and courage to introduce this
important bill. Vote yes for House Bill #78

Respectfully,


Jody J. Johnston
Maniilaq Alcohol Program
Box 256, Building F.R.F.
Kotzebue, Alaska 99752
1-800-478-3312

Kerrig M. Hunt / DATA INTAKE COORDINATOR
Lori Russell / Youth Prevention Coordinator
Sue Reyes - Aftercare Counselor Coordinator
Shonda Hunter, Placement Coordinator

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: HB 78

Revision Date: _____ Dept. Affected: Public Safety
 Title: " An act relating to the testimony
of children in certain criminal proceedings " BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative MacLean
 Requestor: House HESS COMPONENT SERIAL NO. 799

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

| OPERATING | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|----------------------|-------|-------|-------|-------|-------|-------|
| 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 FUND SOURCE: | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

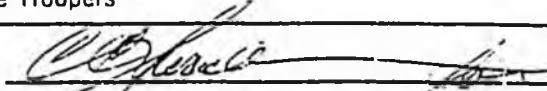
POSITIONS:

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

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

No significant fiscal impact on the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 02/04/93
 Approved by Commissioner:  Date: 2/4/93
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 78

Revision Date: _____ Dept. Affected: Department of Administration
 Title: "An Act relating to the testimony of children in certain criminal proceedings..." BRU: Public Defender Agency
 Sponsor: Representatives MacLean, Toohy Component: Public Defender Agency
 Receptor: _____ COMPONENT SERIAL NO. 1631

Expenditures/Revenues:

(Thousands of Dollars)

| OPERATING | FY94 | FY95 | FY96 | FY97 | FY98 | FY99 |
|------------------------|----------|----------|----------|----------|----------|----------|
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|----------------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|----------------|---|---|---|---|---|---|

| | | | | | | |
|-----------------------------|---|---|---|---|---|---|
| REVENUE FUND SOURCE: | 0 | 0 | 0 | 0 | 0 | 0 |
|-----------------------------|---|---|---|---|---|---|

FUNDING:

(Thousands of Dollars)

| FUNDING | FY94 | FY95 | FY96 | FY97 | FY98 | FY99 |
|--------------------------|----------|----------|----------|----------|----------|----------|
| 1002 Federal Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1003 GF Match | 0 | 0 | 0 | 0 | 0 | 0 |
| 1004 GF | 0 | 0 | 0 | 0 | 0 | 0 |
| 1005 GF/Program Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1006 GF/MHTIA | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| POSITIONS | FY94 | FY95 | FY96 | FY97 | FY98 | FY99 |
|-----------|------|------|------|------|------|------|
| 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 (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency
 Approved by Commissioner: Nancy Bear Usher
 Agency: Administration

Phone: 279-7541
 Date: February 8, 1993
 Date: _____

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 78

This proposal has as its purpose the minimization of emotional trauma to minors at least 13 years of age but less than 16 years old who are called on to testify in criminal proceedings. This proposal expands the right of the state to present the testimony of children in criminal cases by closed circuit television. (There are other provisions in the bill, such as the appointment of a guardian ad litem, which will not be discussed in this fiscal analysis).

The Public Defender Agency recognizes that the state has a legitimate interest in minimizing emotional injury with respect to minor witnesses in criminal cases. But because the use of closed circuit television for this purpose has a significant impact on the constitutional rights of accused individuals in criminal proceedings, any expansion of said use must be based on a compelling state interest. This legal language establishes the test to determine how competing interests are balanced. Absent a showing of a compelling state interest to extend the use of closed circuit television to minor witnesses who are 13, 14, or 15 years old such a law suffers constitutional infirmity.

A defendant in a criminal case has an absolute right to confront the witnesses who are called against him/her. This right of confrontation is explicit in the U.S. and state constitutions. See the Sixth and Fourteenth Amendments to the United States Constitution. See also Article 1, Section 11 of the Alaska Constitution.

A.S. 12.45.046 currently allows closed circuit television testimony for children under the age of 13 (or testimony by one-way mirror). As a prerequisite to use of this procedure the court must determine that the normal court practice of requiring the witness to testify in court would inhibit effective communication.

It must be understood that any testimony by a witness, minor or adult, has the potential to create emotional trauma. Using closed circuit television or one-way mirrors does not reduce the trauma of having to recall significant events of a potentially painful nature and relating them to a judge or jury. The only legitimate issue here is whether having to recall those events in a courtroom, in the presence of the accused, creates substantially more trauma. To make such a finding would in most instances be highly speculative. It must be remembered that courtroom proceedings are very solemn and formal. The defendant does not get to address a witness directly. Questions are asked through attorneys. Security is in place in criminal cases whenever needed. Courtrooms are typically fairly large and the distance between defendant and the witness stand substantial. Therefore defendant-generated trauma is minimized by the very nature of court proceedings.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 78

For this law to pass constitutional muster the state would have to show that any emotional injury or trauma the minor witness might suffer by testifying "live" would be generated solely by the defendant's presence in the same courtroom. Making such a showing will be difficult, highly speculative and could involve such things as psychological evaluations. It is the understanding of the Public Defender Agency that under present law these procedures are rarely used. It is questionable whether such an expansion of this procedure is necessary.

In the final analysis this bill must strike the delicate balance between the constitutional rights of the accused and preventing emotional injury to young witnesses. Because the testimony of a minor witness in a criminal case can often be the pivotal evidence in that case, using unusual procedures to present the evidence can cause problems. A jury will see all of the other testimony live. They very well may draw negative inferences about the defendant when the testimony of a young witness is presented by television or one-way mirrors. This alone cuts against the very important concept of the presumption of innocence.

While there will be no distinct fiscal impact on the Public Defender Agency it is likely an extension of the statute will eventually be subject to a constitutional challenge.