

SB

3

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/19/99

FURTHER: Finance

21
Date of 5-Day Notice: 1-21-99
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 1-25-99

Judiciary Committee considered

SENATE BILL NO. 3

"An Act relating to the crimes of murder, solicitation to commit murder in the first degree, manslaughter, and criminally negligent homicide; relating to homicides of children; and relating to the crime of interference with custody of a child or incompetent person."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DO/PASS		DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Rick Halford</i>		X	<i>Johnson</i>	✓		
<i>John Ellis</i>		X	<i>[Signature]</i>			
CHAIR: <i>Michael Taylor</i>		✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>Law-Crim Div</i>	<i>1/22</i>	X	
<i>Corrections</i>	<i>1/21</i>		X
<i>Admin</i>	<i>1/22</i>		<i>Indt</i>

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 3

Revision Date/Time (Note if correction) _____ Dept. Affected Administration _____
 Title "An Act relating to the crimes of murder..." BRU Legal and Advocacy Services
 Component Office of Public Advocacy
 Sponsor Senator Halford
 Requester (S) JUD Component Serial No. 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	**	**	**	**	**	**
Travel	**	**	**	**	**	**
Contractual	**	**	**	**	**	**
Supplies	**	**	**	**	**	**
Equipment	**	**	**	**	**	**
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**	**	**	**	**	**

CAPITAL EXPENDITURES	**	**	**	**	**	**
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CHANGE IN REVENUES ()	**	**	**	**	**	**
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	**	**	**	**	**	**
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY99) cost: \$ _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

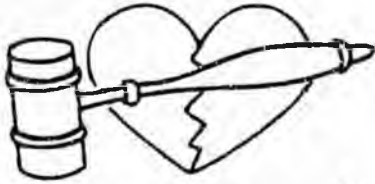
The Office of Public Advocacy is currently unable to provide precise cost data.

Prepared by Brant McGee, Public Advocate Phone 269-3500
 Division Office of Public Advocacy Date/Time #####
 Approved by Commissioner Robert G. Poe *Alison M. Elger* Date 1/22/99
 Agency Administration

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VICTIMS



for Justice 619 East Fifth Avenue • Anchorage, AK 99501
(907) 278-0977 • Fax: (907) 258-0740

January 21, 1999

Senator Robin Taylor, Chair
Members of the Judiciary Committee
State Capitol
Juneau, AK 99801-1182

Re: YES on Senate Bill 3!

Dear Senator Taylor and Members of the Judiciary Committee:

A child is dead! Our minds stagger at the jarring impact. One of the greatest tragedies of all is the death of a child from abuse or neglect. It is not an accident when a child is so severely abused or neglected that it results in death. Parents/legal guardians deliberately murder children every year!

We are shocked and horrified by these senseless deaths of children. What remains equally senseless is that most of the people who murder these children receive very little jail time or no jail time at all.

Victims for Justice strongly supports the proposed Senate Bill 3; "relating to the homicide of children."

Crimes of violence that destroy our children must not be minimized or trivialized. It is time to ensure that those who abuse and kill our children are dealt with in the strongest possible terms. The laws must change so innocent children will be saved.

Please support the passage of Senate Bill 3.

Sincerely,


Cathy Sattelfield
Director



Official Business

Alaska State Legislature

Senate

**RICK
HALFORD**

State Capitol
Juneau, Alaska
99801-1182
Phone (907) 465-4958
Fax (907) 465-4928

P.O. Box 670100
Chugiak, Alaska 99567
Phone (907) 694-4958
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600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-4958

Sponsor Statement SB 3

"An Act relating to the crimes of murder, solicitation to commit murder in the first degree manslaughter, and criminally negligent homicide; to homicides of children and relating to the crime of interference with custody of a child or incompetent person."

All too often, when a child is killed, even when the killer is convicted, they do not receive punishment commensurate with the severity of their actions. Tragically, this has especially been the case when very young children are killed. I believe these children, who are the most vulnerable members of our society, are owed far more than our criminal justice system has afforded them. SB 3 makes the following changes to our criminal statutes:

- *amends current law by adding a new form of first degree murder when the death of a child results from the commission or attempted commission of kidnapping, or of a sexual offense,*
- *expands the list of offenses constituting felony murder to include sexual abuse of a minor in the first and second degrees,*
- *elevates criminally negligent homicide from a class C to a class B felony,*
- *establishes a twenty year mandatory minimum sentence for a person convicted of a murder of a child under the age of sixteen,*
- *increases the mandatory minimum sentence (from five to seven years) for manslaughter, when the victim is a child under the age of sixteen,*
- *establishes a new sentencing provision, which allows for a term of unsuspended imprisonment that exceeds the presumptive term, for certain felony offenses if the victim is a child under the age of 16,*
- *establishes the crime of custodial interference in the first degree if a person violates AS 11.41.330 and causes a child or incompetent person to be removed or kept outside the state,*
- *Makes penalty for solicitation consistent with penalty for conspiracy to commit murder.*

Children deserve a responsible level of care when they are entrusted to an adult. SB 3 will help accomplish both the goals of deterrence and establishing a punishment more fitting the crime.

Identical legislation was considered by the 20th legislature and moved through the committee process in both bodies with unanimous bipartisan support before dying on the House calendar on the final day of session. Passage of this bill will correct serious deficiencies in our legal system. I urge your support.

SPONSOR STATEMENT

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH 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, 1999

SUBJECT: Sectional Summary of SB 3 (Work Order No. 21-LS0028/D)

TO: Senator Rick Halford
Attn: Bill Stoltz

FROM: Gerald P. Luckhaupt *GL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please 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 repeals and reenacts AS 11.31.110(c) to provide that solicitation of first degree murder is an unclassified felony punishable as provided in AS 12.55.125. Under current law this offense is a class A felony. This change conforms the penalty for this inchoate crime (solicitation of first degree murder) to the penalties for the other inchoate crimes that have first degree murder as their objective, i.e. attempt to commit first degree murder (AS 11.31.100(d)), and conspiracy to commit first degree murder (AS 11.31.120(h)).

Section 2 of the bill (1) amends AS 11.41.100(a)(2) by simplifying the language and expanding the range of conduct proscribed by this particular form of first degree murder of children under 16 years of age; and (2) amends AS 11.41.100(a) by adding a new form of first degree murder which consists of making certain felony murders^{1/} of children; these murders are currently, for the most part, proscribed under the felony murder provisions of AS 11.41.110(a)(3) as second degree murder.

Section 3 of the bill amends AS 11.41.110(a)(3) by making a conforming change to AS 11.41.110(a)(3) (p. 2, lines 16 - 17) to the recodification of certain felony murders of children as first degree murder and by expanding the application of the felony murder rule of AS 11.41.110(a)(3) to sexual abuse of a minor in the first and second degrees.

Section 4 of the bill increases the penalty for criminally negligent homicide from a class C felony to a class B felony.

^{1/}When the death of a child results from the commission or attempted commission of a sexual offense or kidnapping of the child.

Senator Rick Halford

January 20, 1999

Page 2

Section 5 of the bill amends AS 11.41.320(a) by providing that a person commits the crime of interference with child custody if the person causes the victim to be kept out of state in addition to removing the victim from the state as provided under existing law.

Section 6 of the bill amends AS 12.55.125(b) by requiring a 20 year mandatory minimum sentence for a person convicted of murder in the second degree of a child under the age of 16 and the court finds by clear and convincing evidence that the person was the legal guardian of the child or occupied a position of authority in relation to the child or caused the death of the child during commission of an offense under AS 11.41.200 - 11.41.530.

Section 7 of the bill established a presumptive sentence of seven years for a first felony offender convicted of manslaughter in the death of a child under 16 years of age.

Section 8 of the bill amends AS 12.55.125(k) by instructing courts that a first felony offender convicted of criminally negligent homicide of a child under 16 years of age may be sentenced to a term of imprisonment that is greater than the presumptive term for a second or third felony offender.

Section 9 of the bill provides that the bill only applies to offenses committed on or after the effective date of the bill.

GPL:glc
99-120.glc

Bill History/Action Display



BILL: SB 218 SHORT TITLE: CRIMES OF MURDER & CHILD MURDERS
 BILL VERSION: HCS CSSB 218 (FIN)
 SPONSOR(S): SENATOR(S) HALFORD, Green, Donley, Taylor, Leman, Duncan,
 Lincoln, Parnell, Kelly, Pearce, Sharp, Miller; REPRESENTATIVE(S) Ogan,
 Croft

CURRENT STATUS: 3RD RDG,5/12 CAL(H) STATUS DATE: 5/12,98

TITLE: "An Act relating to the crimes of murder, manslaughter, and criminally negligent homicide; relating to homicides of children; and relating to the crime of interference with custody of a child or incompetent person."

Full Text

Fiscal Note Info

Committee Action With Bill History

Jrn-Date	Jrn-Page	Action
1/12/98	<u>2167</u>	(S) PREFILE RELEASED 1/9/98
1/12/98	<u>2167</u>	(S) READ THE FIRST TIME - REFERRAL(S)
1/12/98	<u>2167</u>	(S) JUD, FIN
2/12/98	<u>2495</u>	(S) JUD RPT CS 3DP NEW TITLE
2/12/98	<u>2495</u>	(S) DP: TAYLOR, MILLER, PEARCE
2/12/98	<u>2495</u>	(S) INDETERMINATE FN TO SB & CS (ADM)
2/12/98	<u>2495</u>	(S) ZERO FN TO SB & CS (COR, LAW)
4/02/98	<u>3110</u>	(S) FIN RPT CS 7DP NEW TITLE
4/02/98	<u>3110</u>	(S) DP: PEARCE, SHARP, PHILLIPS, PARNELL,
4/02/98	<u>3110</u>	(S) ADAMS, DONLEY, TORGERSO
4/02/98	<u>3110</u>	(S) PREVIOUS INDETERMINATE FN (ADM)
4/02/98	<u>3110</u>	(S) PREVIOUS ZERO FNS (LAW, COR)
4/06/98	<u>3159</u>	(S) RULES TO CALENDAR 4/6/98
4/06/98	<u>3160</u>	(S) READ THE SECOND TIME
4/06/98	<u>3161</u>	(S) FIN CS ADOPTED UNAN CONSENT
4/06/98	<u>3161</u>	(S) COSPONSOR(S): DUNCAN, LINCOLN, PARNELL,
4/06/98	<u>3161</u>	(S) KELLY, PEARCE, SHARP, MILLER
4/06/98	<u>3161</u>	(S) ADVANCED TO THIRD READING UNAN CONSENT
4/06/98	<u>3161</u>	(S) READ THE THIRD TIME CSSB 218 (FIN)
4/06/98	<u>3161</u>	(S) PASSED Y19 N- E1
4/06/98	<u>3166</u>	(S) TRANSMITTED TO (H)
4/07/98	<u>2897</u>	(H) READ THE FIRST TIME - REFERRAL(S)
4/07/98	<u>2898</u>	(H) JUDICIARY, FINANCE
5/01/98	<u>3395</u>	(H) JUD RPT HCS(JUD) 7DP
5/01/98	<u>3396</u>	(H) DP: PORTER, ROKEBERG, CROFT, GREEN,
5/01/98	<u>3396</u>	(H) JAMES, BUNDE, BERKOWITZ
5/01/98	<u>3396</u>	(H) SENATE INDETERMINATE FN (ADM) 2/12/98
5/01/98	<u>3396</u>	(H) 2 SENATE ZERO FNS (COR, LAW) 2/12/98
5/06/98	<u>3558</u>	(H) FIN RPT HCS(FIN) 8DP
5/06/98	<u>3558</u>	(H) DP: THERRIALT, MULDER, KOHRING, MARTIN,
5/06/98	<u>3558</u>	(H) DAVIES, GRUSSENDORF, MOSES, KELLY
5/06/98	<u>3559</u>	(H) SENATE INDETERMINATE FN (ADM) 2/12/98
5/06/98	<u>3559</u>	(H) 2 SENATE ZERO FNS (COR, LAW) 2/12/98
5/11/98	<u>3826</u>	(H) RULES TO 1ST SUPPLEMENTAL CAL 5/11/98
5/11/98	<u>3826</u>	(H) READ THE SECOND TIME
5/11/98	<u>3827</u>	(H) FIN HCS ADOPTED UNAN CONSENT
5/11/98	<u>3827</u>	(H) ADVANCED TO THIRD READING 5/12 CALENDAR
5/12/98	<u>3904</u>	(H) MOVED TO BOTTOM OF CALENDAR
5/12/98	<u>3940</u>	(H) NOT TAKEN UP

Mother decries short sentence

Vows fight to change law so killers punished

By LEE JORDAN
Alaska Star Editor

7-16-98

Linda Tellsworth insists that justice was not served when the woman who killed her baby received a sentence that will make her eligible for parole after serving about 66 months in jail. Tellsworth has mounted a campaign to demand changes in the law.

"People need to know they will be held accountable if they kill a baby," Tellsworth said Monday. She is circulating flyers with her son's

picture and a heading that reads, "Murder this baby and you will only get 5 and ½ years! If you disagree, please contact your local senator."

Eagle River daycare operator Michelle Dague, 29, on Friday was sentenced by Judge Milton Souter to 20 years in prison with an additional 20 years suspended. Souter said, though, that Dague should be eligible for parole after serving as little as 5-1/2 years. If she is paroled, she would be required to be on probation for 10 years. She also was ordered to pay \$1,000 in restitution.

The sentence is the minimum in the range he had recommended, said John Novak, chief assistant district attorney. Novak had asked Souter to require Dague to spend 20 to 30 years in prison.

An Anchorage jury in April convicted Dague of killing 10-month-old Kyle Tellsworth who on Jan. 28, 1977 had been left at the home-based daycare center by his mother, a neighbor of Dague's. Dague initially denied harming the child, saying he had fallen. In
(See MOTHER, Page 2)

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

July 23, 1998

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043

CRIMINAL DIVISION CENTRAL OFFICE
310 K STREET, SUITE 501
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-8379
FAX: (907) 269-6321

OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 269-6270

The Honorable Randy Phillips
Alaska State Senator
P. O. Box 142
Eagle River, AK 99577

Dear Senator Phillips:

This is in response to your request for our comments about the Alaska laws relating to child homicides, and the sentencing in those cases. Let us start by pointing out that we continue to support the ideas in Senate Bill 218, introduced last session by Senator Halford. That bill would have made several important changes in the laws that define homicides when the victim is a child. In general, the bill would have made many homicides more serious offenses, carrying more serious penalties.

In addition, the bill would have made many changes to the sentencing in child homicide cases. For example, under current law a judge has the discretion to give a sentence as low as five years for second degree murder. Indeed, were it not for the powerful and moving testimony and letters of Linda Tellsworth and her family and friends, we might not have gotten the sentence that we did in the recent case of the murder of Kyle Tellsworth. Senate Bill 218 would have changed the law such that 20 years of unsuspended time would be the *minimum* that could be imposed if the victim is under 16 and the death occurred by violent means. Senate Bill 218 would have also made sentences longer than are now being given, even if the defendant is convicted of lesser offenses such as manslaughter and criminally negligent homicide. We believe these are appropriate changes, and we support them.

The Honorable Randy Phillips
Alaska State Senator

July 23, 1998
Page 2

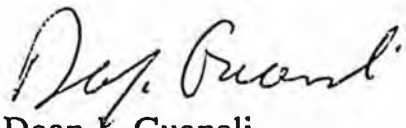
We understand you will be meeting with Linda Tellsworth, and we ask that you convey to her our gratitude for her letters and testimony. We cannot hope to fully appreciate what she is feeling, and we know her testimony must have been painful for her.

Please contact us if we can be of further assistance.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

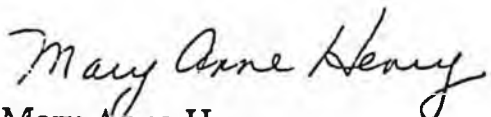
By:


Dean J. Guaneli
Chief Assistant Attorney General

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Mary Anne Henry
Assistant District Attorney

DJG:tg