

HB

514

MEMORANDUM

Date: April 30, 2004

To: Brian Hove, Senate Judiciary Committee Aide
Senator Seekins, Chair, Senate Judiciary Committee

From: Sue Stancliff, Staff *me*
Representative Pete Kott, Speaker of the House

RE: Blank Senate CS for CSHB 514 ()

Blank Senate CS for CSHB 514 ()
Work Draft
23-LS1639\C
Mischel
4/29/04

Includes amendments adopted by Senate Judiciary and incorporates language from
HB 176 (Rep. Coghill). HB 176 language can be found on Pg. 5 - 6, Section 12.

Amendment #1
Page 6 - 7, Sec. 14
Page 9 - 10, Sec. 23

Amendment #2
Page 3 - 4, Sec. 5 & 6

Amendment #3
Page 2, Sec. 4

23-LS1639\C
Mischel
4/29/04

SENATE CS FOR CS FOR HOUSE BILL NO. 514()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Harris, Hawker, McGuire, Rokeberg, Anderson, Lynn, Dahlstrom, Gruenberg

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to child support modification and enforcement, to the establishment of
2 paternity by the child support enforcement agency, and to the crimes of criminal
3 nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska
4 Rules of Civil Procedure; and providing for an effective date."

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

6 * Section 1. AS 11.51.120(a) is amended to read:

7 (a) A person commits the crime of criminal nonsupport if, being a person
8 legally charged with the support of a child [UNDER 18 YEARS OF AGE,] the person
9 knowingly fails, without lawful excuse, to provide support for the child.

10 * Sec. 2. AS 11.51.120(c) is repealed and reenacted to read:

11 (c) Except as provided in (d) of this section, criminal nonsupport is a class A
12 misdemeanor.

13 * Sec. 3. AS 11.51.120 is amended by adding new subsections to read:

14 (d) Criminal nonsupport is a class C felony if the support the person failed to

1 provide is monetary support required by a court or administrative order from this or
2 another jurisdiction and, at the time the person failed, without lawful excuse, to
3 provide the support,

4 (1) the aggregate amount of accrued monetary child support arrearage
5 is \$10,000 or more;

6 (2) no child support payment has been made for a period of 24 months
7 or more; or

8 (3) the person had been previously convicted under this section or a
9 similar provision in another jurisdiction and

10 (A) the aggregate amount of accrued monetary child support
11 arrearage is \$5,000 or more; or

12 (B) no child support payment has been made for a period of six
13 months or more.

14 (e) In addition to the provisions of (c) and (d) of this section, criminal
15 nonsupport is punishable by loss or restriction of a recreational license as provided in
16 AS 12.55.139.

17 (f) In this section,

18 (1) "child" means a person

19 (A) under 18 years of age; or

20 (B) 18 years of age or older for whom a person is ordered to
21 pay support under a valid court or administrative order;

22 (2) "child support" means support for a child;

23 (3) "without lawful excuse" means having the financial ability to
24 provide support or having the capacity to acquire that ability through the exercise of
25 reasonable efforts.

26 * **Sec. 4.** AS 11.51 is amended by adding a new section to read:

27 **Sec. 11.51.121. Aiding the nonpayment of child support in the first**
28 **degree.** (a) A person commits the crime of aiding the nonpayment of child support in
29 the first degree if the person violates AS 11.51.122 and the person knows the obligor

30 (1) has an aggregate amount of accrued monetary child support
31 arrearage of \$20,000 or more;

1 (2) has not made a child support payment for a period of 24 months or
2 more; or

3 (3) had been previously convicted under AS 11.51.120 or a similar
4 provision in another jurisdiction and

5 (A) has an aggregate amount of accrued monetary child support
6 arrearage of \$5,000 or more; or

7 (B) has not made a child support payment for a period of 24
8 months or more.

9 (b) Aiding the nonpayment of child support in the first degree is a class C
10 felony.

11 (c) In addition to the penalties under (b) of this section, aiding the nonpayment
12 of child support in the first degree is punishable by loss or restriction of a recreational
13 license as provided in AS 12.55.139.

14 * Sec. 5. AS 11.51.122(a) is amended to read:

15 (a) A person commits the crime of aiding the nonpayment of child support in
16 the second degree if the person [(1)] knows that an obligor has a duty under an
17 administrative or judicial order for periodic payment of child support or for the
18 provision of health care coverage for a child under a medical support order [;] and

19 (1) being a person with a statutory duty to disclose information to
20 a child support enforcement agency [(2)] intentionally [(A)] withholds the
21 information [ABOUT THE RESIDENCE OR EMPLOYMENT OF THE OBLIGOR]
22 when it [THAT INFORMATION] is requested by a child support enforcement
23 agency;

24 (2) [(B)] being an employer of the obligor, intentionally withholds
25 information about the residence or employment of the obligor, the eligibility of the
26 obligor's children for coverage under the employer's health insurance plan, or
27 [ABOUT] the cost of the coverage of the children under the plan, when that
28 information is requested by a child support enforcement agency or when the
29 employer is required by state or federal law to report the information without a
30 request by a child support enforcement agency; or

31 (3) intentionally [(C)] participates in a commercial, business, [OR]

1 employment, or other arrangement with the obligor, knowing at the time that the
2 arrangement is made that it will allow the obligor to avoid paying all or some of the
3 support when it is due or to avoid having a lien placed on assets for the payment of
4 delinquent support; receipt of a substantial asset for less than fair market value from
5 an obligor after the obligor's support order has been established constitutes a
6 rebuttable presumption that the person receiving the asset knew that the transfer would
7 allow the obligor to avoid paying all or some of the support or to avoid having a lien
8 placed on the asset.

9 * Sec. 6. AS 11.51.122(b) is amended to read:

10 (b) In a prosecution under (a)(2) and (3) [(a)(2)(B) AND (C)] of this section,
11 it is a defense that the

12 (1) defendant did not intend to assist the obligor in the nonpayment of
13 child support or in the avoidance of a duty to provide health care coverage of a child;
14 or

15 (2) obligor did not intend to avoid paying child support or to avoid
16 providing health care coverage of a child.

17 * Sec. 7. AS 11.51.122(d) is amended to read:

18 (d) Aiding the nonpayment of child support in the second degree is a class A
19 misdemeanor.

20 * Sec. 8. AS 11.51.122 is amended by adding new subsections to read:

21 (e) In addition to the penalties under (d) of this section, aiding the nonpayment
22 of child support in the second degree is punishable by loss or restriction of a
23 recreational license as provided in AS 12.55.139.

24 (f) In this section, "child" and "child support" have the meaning given in
25 AS 11.51.120.

26 * Sec. 9. AS 12.55.139 is amended to read:

27 **Sec. 12.55.139. Penalties for criminal nonsupport.** In addition to other
28 penalties imposed for the offense of criminal nonsupport under AS 11.51.120, the
29 court may suspend, restrict, or revoke, for the period during which the arrearage
30 continues to exist [FOR A PERIOD NOT TO EXCEED SIX MONTHS], a
31 recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

1 * Sec. 10. AS 12.55.139 is amended by adding a new subsection to read:

2 (b) In addition to other penalties imposed for the offense of aiding the
3 nonpayment of child support in the first degree under AS 11.51.121 and for the
4 offense of aiding the nonpayment of child support in the second degree under
5 AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed
6 one year, a recreational license as defined in AS 09.50.020(c), if the defendant is a
7 natural person.

8 * Sec. 11. AS 22.10.020 is amended by adding a new subsection to read:

9 (j) The superior court, in an action for divorce, separation, or child support,
10 may issue orders to aid in the enforcement of child support, including orders requiring
11 an individual who owes support under an order of support to

12 (1) make payments according to an approved payment plan;

13 (2) participate in appropriate work activities if the individual is not
14 incapacitated; or

15 (3) complete and submit an application for a permanent fund dividend
16 under AS 43.23.015 or provide proof to the agency or the court that the individual is
17 not eligible for a dividend in a given year.

18 * Sec. 12. AS 25.27.020(b) is amended to read:

19 (b) In determining the amount of money an obligor must pay to satisfy the
20 obligor's immediate duty of support, the agency shall consider all payments of money
21 made by the obligor directly to the child [OBLIGEE] or to the child's [OBLIGEE'S]
22 custodian before the time the obligor is ordered to make payments through the agency.
23 After the obligor is ordered to make payments through the agency, the agency may not
24 consider direct payments of money made to the child [OBLIGEE] or the child's
25 [OBLIGEE'S] custodian unless the obligor provides clear and convincing evidence of
26 the payment. Notwithstanding the definition of "support order" in AS 25.27.900,
27 the agency shall reduce the amount of money an obligor must pay to satisfy the
28 obligor's duty of support for a child by the fair market value, as determined by
29 agreement between the child's custodian and the obligor, of a noncash
30 contribution made by the obligor under the following circumstances:

31 (1) the child's custodian has agreed to allow the agency to give the

1 obligor credit for noncash support and has not withdrawn that agreement;

2 (2) the noncash contribution is for basic food, housing, or heat; the
3 agency, by regulation, may also give credit for other types of noncash
4 contributions that help to satisfy the basic material needs of the child;

5 (3) the noncash contribution is made directly to the child's
6 custodian or to a creditor of the child's custodian;

7 (4) the obligor presents clear and convincing evidence of the
8 noncash contribution; and

9 (5) the child's custodian is not receiving assistance for the benefit
10 of the child under AS 47.27 or under 42 U.S.C. 612.

11 * Sec. 13. AS 25.27.020(d) is amended to read:

12 (d) The agency may issue an administrative order or request a court order that
13 requires an individual in arrears under an order of support for a child who is receiving
14 assistance under AS 47.07, or under AS 47.25.310 - 47.25.420 or a successor program,
15 or for a child whose parent, guardian, or designee of the parent or guardian has
16 applied for aid from the agency under AS 25.27.100, to make payments according
17 to an approved payment plan or, if the individual is not incapacitated, to participate in
18 appropriate work activities.

19 * Sec. 14. AS 25.27.020 is amended by adding new subsections to read:

20 (f) The agency shall, by regulation, establish procedures and standards for the
21 forgiveness of an arrearage owed to the state under AS 25.27.120. The agency may
22 forgive arrears under this section, with the approval of the commissioner and without
23 the approval of the Department of Law, if

24 (1) the obligor

25 (A) has or obtains employment for which income withholding
26 is initiated under AS 25.27.250 within 60 days after the date the obligor is
27 approved for the forgiveness program;

28 (B) enrolls in and successfully completes an employment
29 training program approved by the agency and obtains employment for which
30 income withholding is initiated under AS 25.27.250 within 30 days after
31 completion of the employment training program; or

1 (C) enters into an agreement with the agency for alternative
2 payment procedures if the agency determines that there are unusual
3 circumstances justifying a waiver of income withholding; and

4 (2) the obligor is in compliance with additional requirements and
5 limitations imposed by the agency by regulation to assure that forgiveness of the
6 arrearage is in the best interest of the child and of the state; and

7 (3) the obligor makes monthly payments pursuant to a payment
8 agreement approved by the agency; if the obligor misses more than two monthly
9 payments in a calendar year or more than two consecutive payments without approval
10 of the agency for good cause, the obligor is not eligible to continue in the arrears
11 forgiveness program under this section.

12 (g) During each year in which an obligor complies with the requirements for
13 the forgiveness of an arrearage under (f) of this section and any regulations adopted by
14 the agency under that subsection, the agency may forgive up to 20 percent of the total
15 arrearage owed to the state under AS 25.27.120, including any interest owed on that
16 debt. For purposes of determining the amount of the forgiveness, the arrears shall be
17 calculated as of the date the obligor is approved for participation in the forgiveness
18 program.

19 (h) The agency may establish by regulation requirements and limitations on
20 eligibility for the forgiveness program in addition to those stated in (f) and (g) of this
21 section.

22 * Sec. 15. AS 25.27.040(b) is amended to read:

23 (b) The agency may not attempt to establish paternity in any case

24 (1) involving incest or forcible rape, unless the mother of the child is
25 legally competent and requests the establishment of paternity; in this paragraph,
26 "forcible rape" means sexual assault in the first degree under AS 11.41.410 or a
27 conviction under a law or ordinance from another jurisdiction with similar
28 elements; "forcible rape" includes adjudications of delinquency for acts with
29 elements similar to AS 11.41.410;

30 (2) when legal proceedings for adoption are pending; [,] or

31 (3) when it would not be in the best interests of the children or the

1 state.

2 * **Sec. 16.** AS 25.27.060 is amended by adding a new subsection to read:

3 (e) Notwithstanding the requirements in (a) - (d) of this section and the
4 definition of "support order" in AS 25.27.900, in a court or administrative proceeding
5 where the support of a minor child is at issue, the court or agency, as applicable, shall
6 reduce the amount of money an obligor must pay to satisfy the obligor's duty of
7 support for a child by the fair market value, as determined by the court or by
8 agreement between the child's custodian and the obligor, of a noncash contribution
9 made by the obligor under the circumstances described under AS 25.27.020(b)(1) -
10 (5).

11 * **Sec. 17.** AS 25.27.080(b) is amended to read:

12 (b) The agency on behalf of the custodian or the state shall take all necessary
13 action permitted by law to enforce child support orders [SO ENTERED], including
14 petitioning the court for orders to aid in the enforcement of child support.

15 * **Sec. 18.** AS 25.27.190(e) is amended to read:

16 (e) Modification or termination of future periodic support payments may be
17 ordered upon a showing of good cause and material change in circumstances. The
18 adoption or enactment of guidelines or a significant amendment to guidelines for
19 determining child support is a material change in circumstances, if the guidelines are
20 relevant to the petition. As necessary to comply with 42 U.S.C. 666, a periodic
21 modification of child support may be made without a showing of a material
22 change in circumstances if the child support order being modified on the periodic
23 basis has not been modified or adjusted during the three years preceding the
24 periodic modification.

25 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **INDIRECT COURT RULE AMENDMENT.** Sections 12 and 16 of this Act have the
28 effect of amending Rule 90.3(b)(4), Alaska Rules of Civil Procedure, by changing the
29 requirement that a child support order award is to be paid in equal installments.

30 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 INDIRECT COURT RULE AMENDMENT. Section 18 of this Act has the effect of
2 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying
3 a support order.

4 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil
7 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised
8 under art. IV, sec. 1, Constitution of the State of Alaska, secs. 12, 16, and 18 of this Act take
9 effect for purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet
10 the two-thirds vote requirement normally applicable to changing court rules under art. IV, sec.
11 15, Constitution of the State of Alaska.

12 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 APPLICABILITY. (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted
15 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.
16 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this
17 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as
18 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person
19 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by
20 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

21 (b) The provisions of AS 11.51.120(d)(2) and (d)(3)(B), enacted by sec. 3 of this Act,
22 and the provisions of AS 11.51.121(a)(2) and (a)(3)(B), enacted by sec. 4 of this Act, apply to
23 nonpayment of child support in violation of AS 11.51.120, as amended by secs. 1, 2, and 3 of
24 this Act, on or after the effective date of this Act or to aiding the nonpayment of child support
25 in the first degree under AS 11.51.121, as enacted by sec. 4 of this Act, on or after the
26 effective date of this Act, as applicable.

27 (c) AS 25.27.020(b), as amended by sec. 12 of this Act, and AS 25.27.060(e), added
28 by sec. 16 of this Act, apply to noncash contributions made on or after the effective date of
29 secs. 12 and 16 of this Act.

30 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 TRANSITION. The forgiveness program authorized under AS 25.27.020 (f) and (g),
2 as enacted in sec. 14 of this Act, may not be implemented until the agency has adopted
3 regulations setting standards and procedures for the program. Regulations under this section
4 must be adopted within nine months after the effective date of this section.

5 * Sec. 24. Sections 12 and 16 of this Act take effect immediately under AS 01.10.070(c).

6 * Sec. 25. Except as provided in sec. 24 of this Act, this Act takes effect July 1, 2004.

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

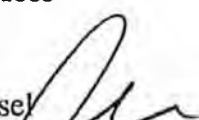
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 28, 2004

SUBJECT: Child Support Modification and Enforcement (SCS CSHB 514()
(Work Order No. 23-LS1639\B))

TO: Representative John Coghill
Attn: Rynniva Moss

FROM: Jean M. Mischel
Legislative Counsel 

Enclosed is the blank CS you requested for this bill incorporating CSHB 176(), version M, with a change in what was sec. 1 in that bill from "obligee" to "child." Although we changed "obligee" to "child" as you requested, "obligee" still appears in other statutes in AS 25.27.

Since the subject matter of HB 176 pertains to noncash contributions to child support obligations, this CS may require a title change in the Senate. The current title of HB 514 relates to "modification" of child support orders, while HB 176 also affects the amount in original child support orders. Normally, a modification of child support, as the title provides, involves a change to existing awards, not a change before an initial award. On the other hand, if "modification" is read broadly to mean that the usual child support cash award under Court Rule 90.3 may be "modified" to include noncash contributions even on initial awards then the bill title is acceptable.

If you would like me to prepare a title change resolution to avoid any risk associated with the title interpretation, let me know.

JMM:mdr:med
04-199.mdr

Enclosure

23-LS1639B
Mischel
4/28/04

SENATE CS FOR CS FOR HOUSE BILL NO. 514()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Harris, Hawker, McGuire, Rokeberg, Anderson, Lynn, Dahlstrom, Gruenberg

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2 paternity by the child support enforcement agency, and to the crimes of criminal
3 nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska
4 Rules of Civil Procedure; and providing for an effective date."

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

6 * Section 1. AS 11.51.120(a) is amended to read:

7 (a) A person commits the crime of criminal nonsupport if, being a person
8 legally charged with the support of a child [UNDER 18 YEARS OF AGE,] the person
9 knowingly fails, without lawful excuse, to provide support for the child.

10 * Sec. 2. AS 11.51.120(c) is repealed and reenacted to read:

11 (c) Except as provided in (d) of this section, criminal nonsupport is a class A
12 misdemeanor.

13 * Sec. 3. AS 11.51.120 is amended by adding new subsections to read:

14 (d) Criminal nonsupport is a class C felony if the support the person failed to

1 provide is monetary support required by a court or administrative order from this or
2 another jurisdiction and, at the time the person failed, without lawful excuse, to
3 provide the support,

4 (1) the aggregate amount of accrued monetary child support arrearage
5 is \$10,000 or more;

6 (2) no child support payment has been made for a period of 24 months
7 or more; or

8 (3) the person had been previously convicted under this section or a
9 similar provision in another jurisdiction and

10 (A) the aggregate amount of accrued monetary child support
11 arrearage is \$5,000 or more; or

12 (B) no child support payment has been made for a period of six
13 months or more.

14 (e) In addition to the provisions of (c) and (d) of this section, criminal
15 nonsupport is punishable by loss or restriction of a recreational license as provided in
16 AS 12.55.139.

17 (f) In this section,

18 (1) "child" means a person

19 (A) under 18 years of age; or

20 (B) 18 years of age or older for whom a person is ordered to
21 pay support under a valid court or administrative order;

22 (2) "child support" means support for a child;

23 (3) "without lawful excuse" means having the financial ability to
24 provide support or having the capacity to acquire that ability through the exercise of
25 reasonable efforts.

26 * **Sec. 4.** AS 11.51 is amended by adding a new section to read:

27 **Sec. 11.51.121. Aiding the nonpayment of child support in the first**
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29 the first degree if the person violates AS 11.51.122 and the person knows the obligor

30 (1) has an aggregate amount of accrued monetary child support
31 arrearage of \$10,000 or more;

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2 more; or

3 (3) had been previously convicted under AS 11.51.120 or a similar
4 provision in another jurisdiction and

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6 arrearage of \$5,000 or more; or

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18 order for periodic payment of child support or for the provision of health care
19 coverage for a child under a medical support order; and

20 (2) intentionally

21 (A) being a person with a statutory duty to disclose
22 information to a child support enforcement agency, withholds the
23 information [ABOUT THE RESIDENCE OR EMPLOYMENT OF THE
24 OBLIGOR] when it [THAT INFORMATION] is requested by a child support
25 enforcement agency;

26 (B) being an employer of the obligor, withholds information
27 about the residence or employment of the obligor, the eligibility of the
28 obligor's children for coverage under the employer's health insurance plan, or
29 [ABOUT] the cost of the coverage of the children under the plan, when that
30 information is requested by a child support enforcement agency or when the
31 employer is required by state or federal law to report the information

1 without a request by a child support enforcement agency; or

2 (C) participates in a commercial, business, [OR] employment,
3 or other arrangement with the obligor, knowing at the time that the
4 arrangement is made that it will allow the obligor to avoid paying all or some
5 of the support when it is due or to avoid having a lien placed on assets for the
6 payment of delinquent support; receipt of a substantial asset for less than fair
7 market value from an obligor after the obligor's support order has been
8 established constitutes a rebuttable presumption that the person receiving the
9 asset knew that the transfer would allow the obligor to avoid paying all or
10 some of the support or to avoid having a lien placed on the asset.

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12 (d) Aiding the nonpayment of child support in the second degree is a class A
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19 AS 11.51.120.

20 * Sec. 8. AS 12.55.139 is amended to read:

21 **Sec. 12.55.139. Penalties for criminal nonsupport.** In addition to other
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24 continues to exist [FOR A PERIOD NOT TO EXCEED SIX MONTHS], a
25 recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

26 * Sec. 9. AS 12.55.139 is amended by adding a new subsection to read:

27 (b) In addition to other penalties imposed for the offense of aiding the
28 nonpayment of child support in the first degree under AS 11.51.121 and for the
29 offense of aiding the nonpayment of child support in the second degree under
30 AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed
31 one year, a recreational license as defined in AS 09.50.020(c), if the defendant is a

1 natural person.

2 * Sec. 10. AS 22.10.020 is amended by adding a new subsection to read:

3 (j) The superior court, in an action for divorce, separation, or child support,
4 may issue orders to aid in the enforcement of child support, including orders requiring
5 an individual who owes support under an order of support to

6 (1) make payments according to an approved payment plan;

7 (2) participate in appropriate work activities if the individual is not
8 incapacitated; or

9 (3) complete and submit an application for a permanent fund dividend
10 under AS 43.23.015 or provide proof to the agency or the court that the individual is
11 not eligible for a dividend in a given year.

12 * Sec. 11. AS 25.27.020(b) is amended to read:

13 (b) In determining the amount of money an obligor must pay to satisfy the
14 obligor's immediate duty of support, the agency shall consider all payments of money
15 made by the obligor directly to the child [OBLIGEE] or to the child's [OBLIGEE'S]
16 custodian before the time the obligor is ordered to make payments through the agency.
17 After the obligor is ordered to make payments through the agency, the agency may not
18 consider direct payments of money made to the child [OBLIGEE] or the child's
19 [OBLIGEE'S] custodian unless the obligor provides clear and convincing evidence of
20 the payment. Notwithstanding the definition of "support order" in AS 25.27.900,
21 the agency shall reduce the amount of money an obligor must pay to satisfy the
22 obligor's duty of support for a child by the fair market value, as determined by
23 agreement between the child's custodian and the obligor, of a noncash
24 contribution made by the obligor under the following circumstances:

25 (1) the child's custodian has agreed to allow the agency to give the
26 obligor credit for noncash support and has not withdrawn that agreement;

27 (2) the noncash contribution is for basic food, housing, or heat; the
28 agency, by regulation, may also give credit for other types of noncash
29 contributions that help to satisfy the basic material needs of the child;

30 (3) the noncash contribution is made directly to the child's
31 custodian or to a creditor of the child's custodian;

1 (4) the obligor presents clear and convincing evidence of the
2 noncash contribution; and

3 (5) the child's custodian is not receiving assistance for the benefit
4 of the child under AS 47.27 or under 42 U.S.C. 612.

5 * Sec. 12. AS 25.27.020(d) is amended to read:

6 (d) The agency may issue an administrative order or request a court order that
7 requires an individual in arrears under an order of support for a child who is receiving
8 assistance under AS 47.07, or under AS 47.25.310 - 47.25.420 or a successor program,
9 or for a child whose parent, guardian, or designee of the parent or guardian has
10 applied for aid from the agency under AS 25.27.100, to make payments according
11 to an approved payment plan or, if the individual is not incapacitated, to participate in
12 appropriate work activities.

13 * Sec. 13. AS 25.27.020 is amended by adding new subsections to read:

14 (f) The agency may forgive all or part of an arrearage owed to the state under
15 AS 25.27.120 as provided under this subsection and under (h) of this section. The
16 agency shall adopt regulations establishing procedures and standards for the
17 forgiveness of all or part of an arrearage providing, at a minimum, that the forgiveness
18 is based on satisfactory proof that the obligor

19 (1) has or obtains employment for which income withholding can be
20 initiated under AS 25.27.250 within 60 days after the date the agency approves the
21 obligor for forgiveness;

22 (2) has enrolled in an employment training program approved by the
23 agency, has completed the training program on a date set by the agency, and has or
24 obtains employment for which income withholding can be initiated under
25 AS 25.27.250 within 30 days after completion of the employment training program; or

26 (3) enters into an agreement with the agency providing for alternative
27 payment procedures if the agency determines that there are unusual circumstances
28 justifying a waiver of income withholding and the terms of the agreement with the
29 agency are met under (g) of this section.

30 (g) An agreement providing for alternative payment procedures under (f)(3) of
31 this section must require minimum monthly payments. If an obligor fails to pay the

1 minimum monthly payment required by the agency for more than two months in a
 2 calendar year without approval of the agency for good cause shown, the obligor is no
 3 longer eligible for forgiveness under (f) of this section and the agency shall take all
 4 necessary steps to enforce the original obligation.

5 (h) During each year in which an obligor complies with the requirements for
 6 forgiveness of an arrearage under (f) of this section and any regulations adopted by the
 7 agency, the agency may forgive 20 percent of the total arrearage owed to the state
 8 under AS 25.27.120, including any interest owed on that part of the debt. For
 9 purposes of determining the amount of the forgiveness under this section, the
 10 arrearage amount is calculated as of the date the obligor is approved for participation
 11 in the forgiveness program.

12 * Sec. 14. AS 25.27.040(b) is amended to read:

13 (b) The agency may not attempt to establish paternity in any case

14 (1) involving incest or forcible rape, unless the mother of the child is
 15 legally competent and requests the establishment of paternity; in this paragraph,
 16 "forcible rape" means sexual assault in the first degree under AS 11.41.410 or a
 17 conviction under a law or ordinance from another jurisdiction with similar
 18 elements; "forcible rape" includes adjudications of delinquency for acts with
 19 elements similar to AS 11.41.410;

20 (2) when legal proceedings for adoption are pending; [,] or

21 (3) when it would not be in the best interests of the children or the
 22 state.

23 * Sec. 15. AS 25.27.060 is amended by adding a new subsection to read:

24 (e) Notwithstanding the requirements in (a) - (d) of this section and the
 25 definition of "support order" in AS 25.27.900, in a court or administrative proceeding
 26 where the support of a minor child is at issue, the court or agency, as applicable, shall
 27 reduce the amount of money an obligor must pay to satisfy the obligor's duty of
 28 support for a child by the fair market value, as determined by the court or by
 29 agreement between the child's custodian and the obligor, of a noncash contribution
 30 made by the obligor under the circumstances described under AS 25.27.020(b)(1) -
 31 (5).

1 * Sec. 16. AS 25.27.080(b) is amended to read:

2 (b) The agency on behalf of the custodian or the state shall take all necessary
3 action permitted by law to enforce child support orders [SO ENTERED], including
4 petitioning the court for orders to aid in the enforcement of child support.

5 * Sec. 17. AS 25.27.190(e) is amended to read:

6 (e) Modification or termination of future periodic support payments may be
7 ordered upon a showing of good cause and material change in circumstances. The
8 adoption or enactment of guidelines or a significant amendment to guidelines for
9 determining child support is a material change in circumstances, if the guidelines are
10 relevant to the petition. As necessary to comply with 42 U.S.C. 666, a periodic
11 modification of child support may be made without a showing of a material
12 change in circumstances if the child support order being modified on the periodic
13 basis has not been modified or adjusted during the three years preceding the
14 periodic modification.

15 * Sec. 18. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 INDIRECT COURT RULE AMENDMENT. Sections 11 and 15 of this Act have the
18 effect of amending Rule 90.3(b)(4), Alaska Rules of Civil Procedure, by changing the
19 requirement that a child support order award is to be paid in equal installments.

20 * Sec. 19. The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 INDIRECT COURT RULE AMENDMENT. Section 17 of this Act has the effect of
23 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying
24 a support order.

25 * Sec. 20. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil
28 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised
29 under art. IV, sec. 1, Constitution of the State of Alaska, secs. 11, 15, and 17 of this Act take
30 effect for purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet
31 the two-thirds vote requirement normally applicable to changing court rules under art. IV, sec.

1 15, Constitution of the State of Alaska.

2 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **APPLICABILITY.** (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted
5 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.
6 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this
7 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as
8 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person
9 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by
10 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

11 (b) The provisions of AS 11.51.120(d)(2) and (d)(3)(B), enacted by sec. 3 of this Act,
12 and the provisions of AS 11.51.121(a)(2) and (a)(3)(B), enacted by sec. 4 of this Act, apply to
13 nonpayment of child support in violation of AS 11.51.120, as amended by secs. 1, 2, and 3 of
14 this Act, on or after the effective date of this Act or to aiding the nonpayment of child support
15 in the first degree under AS 11.51.121, as enacted by sec. 4 of this Act, on or after the
16 effective date of this Act, as applicable.

17 (c) AS 25.27.020(b), as amended by sec. 11 of this Act, and AS 25.27.060(e), added
18 by sec. 15 of this Act, apply to noncash contributions made on or after the effective date of
19 secs. 11 and 15 of this Act.

20 * **Sec. 22.** Sections 11 and 15 of this Act take effect immediately under AS 01.10.070(c).

21 * **Sec. 23.** Except as provided in sec. 22 of this Act, this Act takes effect July 1, 2004.

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-3777
Fax (907) 465-2819

Interim: (June-Dec)
716 West 4th Avenue, Suite 600
Anchorage, AK 99501-2133
(907) 269-0155
(907) 269-0154 Fax

Pete Kott Speaker of the House

Date: April 1, 2004

From: Representative  Kott

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

Re: CSHB 514 (FIN) am. "Child Support Enforcement/Crimes"

I respectfully request that CS House Bill 514 (FIN) am be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience. Attached to this memo are the following:

1. CSHB 514 (FIN) am
2. Sponsor Statement
3. Sectional Analysis (To Follow)
4. Fiscal Notes

If you have any questions please feel free to contact me personally, or my staff, John Main, at ext. #3777.

Alaska State Legislature

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Pete Kott
Speaker of the House

SPONSOR STATEMENT

CS House Bill 514 (FIN) am

“An Act relating to child support modification and enforcement, to the establishment of paternity by the child support enforcement agency, and to the crimes of criminal nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date.”

House Bill 514 has been introduced as an omnibus bill to help the Child Support Enforcement Division better serve the parents and children of Alaska. There are six changes to the child support statutes. Each piece of this legislation attempts to remedy problems the agency has encountered over many years.

Making Criminal Nonsupport a felony

Thirty-three states have a felony criminal nonsupport law. Currently in Alaska, the crime of criminal nonsupport is a Class A Misdemeanor.

The total outstanding arrearages for child support cases in the Alaska Child Support Enforcement Division totals \$583,434,030. Currently, there are 14,946 cases having either arrearages greater than \$10,000 or no payments for 24 months or more. Not all these cases would qualify for criminal nonsupport charges. Owing a large amount of child support doesn't make an individual a criminal. The arrears owed are only one factor of many taken into consideration when charging a nonpaying parent with criminal nonsupport.

This legislation would follow the lead of the 33 other states and federal government and make criminal nonsupport a felony, giving the agency another tool to deal with the most egregious cases.

Making Aiding and Abetting nonpayment of child support a felony

Normally, misdemeanor crimes don't have conspiracy laws as companions to the actual crime. This law was created because there was a need for the public to know that helping a noncustodial parent to avoid their obligation was not in the best interest of the children or society as a whole.

There are individuals, whether relatives or friends, who believe they are helping the individual (through their sense of fairness) by providing "under the table" employment opportunities or the ability to hide assets when instead they are harming the children most of all.

If the crime of criminal nonsupport is raised to the level of a Class C felony, it is reasonable that the crime of aiding and abetting the nonpayment of child support should be raised as well. Raising this crime to a felony sends a clear and convincing message to those individuals who have their own sense of justice and help people skirt the law.

Giving the courts statutory authority

This legislation gives the courts statutory authority to issue orders pertaining to requiring non-custodial parents to pay child support payments according to an approved payment plan; ordering them to seek work unless incapacitated; and/or requiring them to complete and submit applications for Permanent Fund Dividend.

Because there is not yet a clear defined authority to do so, there is one judicial jurisdiction within the State of Alaska that will not issue these orders. This legislation corrects that situation.

Giving CHILD SUPPORT ENFORCEMENT DIVISION authority to compromise state debt through settlements or approved payment plans

Federal government is concerned with the ever-increasing child support debt owed. The debt accumulated is to (1) the custodial parent, (2) to the state, and (3) the Federal government. Currently, there is \$90 billion owed throughout the nation. Alaska's share of this debt is approximately \$600 million. Of the \$600 million, \$300 million is owed to custodial parents, and \$300 million is owed to the State of Alaska and the Federal government.

In 2002, the Office of Child Support Enforcement (OCSE) in Washington, DC commissioned a study of the \$90 billion owed in child support throughout the nation. The study completed found that approximately 70% of the child support owed is by persons making less than \$10,000 a year, and that if the income was raised to \$20,000 the percentile is raised to 84%

There are many nonpaying non-custodial parents who want to pay, but because the debt owed is so overwhelming they give up and make no payments at all. This legislation does not create a giveaway program, but rather provides a way to bring those needing a helping hand an opportunity to be responsible for their children again. The consistency of payments they make over a period of time would earn them the ability or allow them to seek a reduction in their child support arrearages.

"It is not the one payment a year that will help those parents stay off welfare, but the consistent monthly child support on which the custodial parent can rely," said Commissioner Cherie Heller, Office of Children Support Enforcement, Washington, DC

Allowing Paternity and child support establishment for rape and incest victims if they want to pursue it

Under current statute, if a victim of rape or incest requests the Child Support Enforcement Division to establish paternity and a monthly child support order, the Child Support Enforcement Division is prohibited. In this, the State of Alaska penalizes the victim again. This legislation would allow the Child Support Enforcement Division to establish paternity and seek a child support order only if the victim requests it.

Adopting Federal changes to modification of child support orders

This legislation provides necessary changes in Alaska statutes to ensure state law is consistent with federal funding laws. This Alaska statute revision ensures the Child Support Enforcement Division's compliance with state plan requirements and ensures federal funds to Alaska. Federal law (42 USC 666) requires support orders be modified whether or not there has been a material change in circumstances if more than three years have passed since the order was issued or modified.

Failure of this legislation to pass this year potentially places the State of Alaska in jeopardy of significant losses (\$14 - 75 million) in federal funding for the Child Support Enforcement Division and the Temporary Aid to Needy Family (TANF) block grants.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 514(JUD)
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child support enforcement RDU Risk Management
 Component Risk Management
 Sponsor Rep. Kott, Coghill, et al
 Requester _____ Component No. 71

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

State civil liability exposure and the amount Risk Management might ultimately pay in future liability claims could be significantly impacted by the proposed AS 25.27.020(f) enabling CSED investigators to exercise powers of peace officers including carrying firearms.

The authority to carry firearms in the performance of duty is one of, if not the highest, liability risk activity of all state agency operations. The use of deadly force with its inherent ability to inflict catastrophic injury has the potential to generate enormous tort liability exposure. The state paid its largest individual personal injury claim of \$7.3 million (not including significant defense costs) for settlement of neck down paralysis of an individual (later discovered to be unarmed) shot after apparently failing to respond to a trooper's command.

Prepared by: Brad Thompson, Director Phone 465-5723
 Division Risk Management Date/Time 2/23/04 8:16 AM
 Approved by: Mike Miller, Commissioner Date 2/23/2004
 Agency Department of Administration

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 514(JUD)

ANALYSIS CONTINUATION

It is arguably less likely that any action by an individual child support enforcement agency investigator should evolve into such a serious incident, yet the state has paid less significant damages for alleged improper use of a weapons arising from confrontations escalating from routine traffic stops.

Should this statutory change be implemented, it is strongly urged the required minimum level of experience be the same required of all other state police professionals (Alaska Police Standards Council) and that significant effort be first committed to the development of policies and procedures for the training, monitoring and supervision of all investigators before permission is actually granted under this new authority to carry firearms.

No actual cost is explicitly presented but, in future fiscal years, Risk Management's liability premium assessments to the Department of Revenue will reflect any costs actually realized by this new exposure as premiums charged each agency are developed from actual claims expenses incurred.

The extent of such cost is difficult to forecast due to the uncertainty of claim that may be filed, the severity of damages that could be awarded, or the amount of litigation costs incurred defending future liability claims related to this new activity. The fiscal impact is indeterminate for a low frequency yet potentially high severity risk.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 514(JUD)
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Child Support Enforcement/Crimes BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Kott
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 House Bill 514, in part, raises from a misdemeanor to a felony the crime of criminal nonsupport in cases where the obligor is \$10,000 or more in arrears in child support payments or has made no payments for a period of 24 months or more. According to the Child Support Enforcement Division (division), approximately 15,000 Alaskans fall into that category. If felony proceedings were to be brought against even a small percentage of these persons then the impact on the court would be significant. However, the existing crime of criminal nonsupport has been charged very infrequently. The division testified that it plans to continue that tradition and estimates that it would file 6 to 12 felony cases a year under this bill. Given this history and the divisions plans for the future, the court would not anticipate a significant fiscal impact from the passage of this bill. However, if this crime is charged more regularly then the court system may return to the legislature for additional funding.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 2/25/04 3:52 PM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/25/2004
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 514(JUD)
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to child support modification and enforcement, to the establishment of paternity by the child support..." RDU: CRIMINAL & CIVIL
 Sponsor: Representative Kott Component: Criminal Justice Litigation, Torts & Workers' Comp, Collections & Supp
 Requester: House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
1007 Interagency Receipts						
1141 RCA Receipts						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 Sections 1-6 amend the statutes relating to criminal nonsupport and aiding and abetting nonsupport. The bill increases each offense to a felony if certain conditions are met. Also, the bill eliminates the requirement that the children be under the age of 18, thus allowing CSED to pursue criminal non support for children who have turned 18 but are still subject to a support order for adult disabled children.
 Section 9 permits CSED investigators to be peace officers and carry firearms. Section 12 amends the statute relating to the modification of administrative support orders to eliminate the requirement that there be a material change in circumstances before a modification is granted if more than three years have passed since the order was last issued or modified.
 Passage of this legislation will have an indeterminate fiscal impact on law. Any time a penalty is raised

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division: Administrative Services Date/Time 2/22/04 12:32 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/22/2004
 Agency: Department of Law

FISCAL NOTE #3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 514(JUD)

ANALYSIS CONTINUATION

from a misdemeanor to a felony, it is more time and resource intensive to prosecute. Additionally, CSED investigators acting as "peace officers" and carrying firearms increases tort liability exposure for the State which raises fiscal implications that we are similarly unable to quantify.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 514(FIN)
 (H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child support modification and BRU Centralized Administrative Services
enforcement... Component Retirement and Benefits
 Sponsor Rep. Kott, et al
 Requester House Finance Component No. 64

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 AS 24.08.036 FISCAL NOTES ON BILLS AFFECTING STATE RETIREMENT SYSTEMS requires an analysis of the long term and short term costs to the state if a bill is adopted, as well as the impact of the bill on the actuarial soundness of the funds.

Removal of section 12 of version U of this bill results in no change in PERS classification of the four investigators affected and no change in employer contribution rates or the unfunded accrued liability of the System.

Prepared by: Melanie Millhorn, Director Phone 465-4408
 Division Retirement and Benefits Date/Time 3/12/04 2:30 PM
 Approved by: Mike Miller, Commissioner Date 3/12/2004
 Agency Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSHB 514(FIN)
 (H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child support enforcement RDU Risk Management
 Component Risk Management
 Sponsor Rep. Kott, Coghill, et al
 Requester _____ Component No. 71

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The proposed AS 25.27.020(f) enabling CSED investigators to exercise powers of peace officers including carrying firearms was deleted in this committee substitute, therefore Risk Management concerns regarding increased tort liability exposure have been eliminated.

Prepared by: Brad Thompson, Director Phone 465-5723
 Division Risk Management Date/Time 3/9/04 9:42 AM
 Approved by: Mike Miller, Commissioner Date 3/9/2004
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSHB 514(FIN)
 (H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Act Relating to Child Support Enforcement . . . RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Rep. Kott
 Requester H.Finance Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill addresses and amends several provisions of the statutes relating to child support enforcement.

This bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Lt. Al Storey Phone 269-4532
 Division: Alaska State Troopers Date/Time 3/12/04 11:14 AM
 Approved by: Commissioner William Tandeske Date 3/12/2004
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 7
Bill Version: CSHB 514(FIN)
(H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Child Support Enforcement/Crimes RDU Revenue Programs & Services
Component Child Support Enforcement Division
Sponsor Representative Kott
Requester _____ Component No. 111

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	31.2	2.0	2.0	2.0	2.0	2.0
Supplies						
Equipment	28.4					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	59.6	2.0	2.0	2.0	2.0	2.0

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

1002 Federal Receipts	39.3	1.3	1.3	1.3	1.3	1.3
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	20.3	0.7	0.7	0.7	0.7	0.7
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	59.6	2.0	2.0	2.0	2.0	2.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
The expenditures would occur to provide training and equipment for the child support investigators. The compromising of arrears section will result in the elimination of arrears owed to the state in favor of receiving ongoing monthly support. This program will provide increased revenues to the state and reduce the amount of child support debt owed. Since CSED can not determine which individuals will use this program, we can not project what this increase in revenue will be.

Prepared by: John Mallonee Phone 269-6802
Division: Child Support Enforcement Date/Time 3/9/04 2:50 PM
Approved by: Steve Porter, Deputy Commissioner Date 3/9/2004
Agency: Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 514(FIN)am
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child support BRU Legal and Advocacy Services
and the crimes of criminal nonsupport Component Public Defender Agency
 Sponsor Reps. Kolt, Harris, Hawker...
 Requester (S) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill would likely have a fiscal impact on the operations of the Public Defender Agency, because in Sections 1-6 it creates a new level of offenses for nonpayment of child support and aiding the nonpayment of child support and makes the offenses C felonies. Currently criminal nonsupport and aiding the nonpayment of support are both class A misdemeanors. While those offenses will continue to exist, the newly created higher offenses will result in more cases handled by the Agency. At this point it is not possible to determine the extent of the increase in caseload and workload (felonies require more work than misdemeanors to defend) since the Agency does not have current figures on the number of cases meeting the criteria for the new offenses, therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division: Public Defender Agency Date/Time 4/5/04 12:00 AM
 Approved by: Kevin Jardell, Assistant Commissioner Date 4/6/2004
 Agency: Administration

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

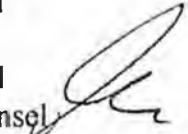
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 1, 2004

SUBJECT: Child Support Enforcement
(CSHB 514(FIN) am; (Work Order No. 25-LS1639\X.A))

TO: Representative Pete Kott
Attn: John Main

FROM: Jean M. Mischel
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 and the bill itself is the best statement of its contents.

Section 1. Clarifies elements for criminal nonsupport and deletes the reference to the age of the child owed the support. Sec. 3 adds a definition of "child" which reinserts age considerations.

Section 2. Adds a reference in the misdemeanor penalty section for criminal nonsupport to the new felony crime added in this bill.

Section 3. Establishes a class C felony for certain circumstances involving criminal nonsupport. Replaces a cross-reference to a loss or restriction of a recreational license as an additional criminal penalty. Adds definitions of "child," including a person who is over age 18 when there is a valid support order; a definition of "child support"; and a definition of "without lawful excuse" to incorporate the judicial holding pertaining to the ability to pay in Taylor v. State 710 P.2d 1019 (1985).

Section 4. Establishes a felony of aiding the nonpayment of child support in the first degree for circumstances related to felony nonsupport in section 3. Adds cross-reference to a loss or restriction of a recreational license as an additional penalty.

Section 5. Makes previous crime of aiding the nonpayment of child support a second degree crime. Modifies some elements related to knowledge and a duty to disclose certain information.

Section 6. Adds "second degree" to the existing misdemeanor penalty provision for aiding the nonpayment of child support.

Section 7. Adds cross-reference to a loss or restriction of a recreational license as an additional penalty for aiding the nonpayment of child support. Adds cross-reference to definitions of "child" and "child support."

Section 8. Changes the time period for loss or restriction of a recreational license as a penalty for criminal nonsupport.

Section 9. Adds to the penalty for aiding criminal nonsupport in the first and second degree the loss or restriction of a recreational license for up to one year. (This is the material cross-referenced in secs. 4 and 7).

Section 10. Adds a new subsection to the jurisdiction of the superior court pertaining to enforcement of child support orders.

Section 11. Adds to the authority for the agency to issue an order or request a court order in arrearage cases to require a payment plan or work activities for an obligor whose child is the subject of an application for agency aid in collecting the arrearage.

Section 12. Adds new subsections authorizing the agency to 1) adopt regulations and to forgive a child support obligation through various mechanisms including an agreement; 2) enter into agreements under specific minimum requirements; and 3) set the amount of forgiveness of a child support arrearage as specified.

Section 13. Adds a circumstance in which the agency may attempt to establish paternity in cases involving incest or rape.

Section 14. Deletes "so entered" for support orders subject to enforcement by the agency. This change has the effect of avoiding a limitation on enforcement in this section to only court orders.

Section 15. Adds cross-reference to 42 U.S.C. 666 for periodic modification of child support orders without showing of changed circumstances.

Section 16. Describes indirect court rule amendment to Rule 90.3, Alaska Rules of Civil Procedure necessitated by sec. 15 of the bill.

Section 17. States that a 2/3 vote is not required for amendment to Rule 90.3.

Section 18. Describes the applicability of the class C felonies established in this bill as pertaining to violations occurring on or after the effective date of the Act for certain long-term and high-dollar amount arrearages.

Section 19. Provides an effective date for the bill.

Representative Pete Kott
April 1, 2004
Page 3

If I may be of further assistance, please advise.

JMM:med
04-362.med

TO: Senate Judiciary
FROM: Linda K. Wilson, Deputy Public Defender
RE: CS for HB 514(FIN) am
DATE: 4/16/04

WRITTEN TESTIMONY:

Chairman Seekins, and members of the Committee:

Thank you for allowing me to submit this written testimony on CS HB 514(FIN) am.

The Public Defender Agency has submitted an indeterminate fiscal note on this bill that you should have in your packet, but I also wanted to submit written testimony on the legal aspects of this bill.

Most of the bill will not significantly affect the operations of the Agency or its clients, except for section 3. The Agency has some concerns about increasing the penalty for criminal nonsupport from an A misdemeanor to a class C felony when the arrearages are \$10,000 or more. In the sponsor statement it notes that there are over 14,000 cases in Alaska where more than \$10,000 is owed in child support. As evidenced by the number of people with high arrearages, this sum is not difficult to reach. In previous hearings the testimony has been that the state CSED does not intend to prosecute all 14,000 of these people, but only the ones who choose not to pay. The Department of Revenue representative stated in prior testimony that it would only go after those people " where it is important for the department to make a statement and to identify those people who should be prosecuted." Testimony of STEVEN B. PORTER, Deputy Commissioner, Office of the Commissioner, Department of Revenue (DOR), taken before the House Judiciary Committee 2/23/04.

The problem with leaving the language in the bill so broadly written is that it leaves the possibility open for a large number of these 14,000 people to be prosecuted. The bill gives too much charging discretion to CSED and/or prosecutors. Wouldn't it be better to narrow the language of the bill to reach the targeted worst offenders and not leave it to the discretion of a particular division worker or prosecutor on whether or not to prosecute a person for a felony offense?

Thanks again, Linda Wilson, Deputy Director, Public Defender Agency

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

April 18, 2004

The Honorable Ralph Seekins,
Chair – Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: HB 514, Child Support Enforcement and Crimes.

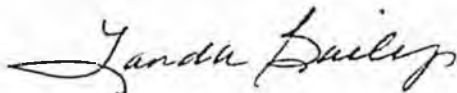
Dear Mr. Chair:

In a letter to you from Commissioner Corbus dated April 2, 2004, he addressed fiscal and legal concerns pertaining to CSHB 514 (FIN) am, Section 12.

I am attaching a proposed amendment to CSHB 514(FIN) am, which deletes all of the present language in Section 12, and inserts all of the language as set forth in the attached amendment. The specific language in the attached amendment has been agreed upon by Commissioner Corbus and the bill's sponsor. The committee's adoption of the language, as set forth in the attached amendment, will resolve the concerns the Commissioner outlined in his April 2, 2004 letter.

Thank you for your assistance.

Very truly yours,



Landa Baily,
Special Assistant to
Commissioner Corbus

Attachment

AMENDMENT Number _____

OFFERED IN THE SENATE JUDICIARY COMMITTEE

BY: _____

TO: CSHB 514(FIN) am

Page 5, Section 12, beginning on line 20, and ending on page 6, line 18:

Delete all material and insert:

AS 25.27.020(d) is amended by adding new subsections to read:

(f) The agency shall, by regulation, establish procedures and standards for the forgiveness of an arrearage owed to the state under AS 25.27.120. The agency may forgive arrears under this section, with the approval of the commissioner and without the approval of the Department of Law, if

(1) the obligor

(A) has or obtains employment for which income withholding is initiated under AS 25.27.250 within 60 days of the date the obligor is approved for the forgiveness program;

(B) enrolls in and successfully completes an employment training program approved by the agency and obtains employment for which income withholding is initiated under AS 25.27.250 within 30 days after completion of the employment training program; or

(C) enters into an agreement with the agency for alternative payment procedures, if the agency determines that there are unusual circumstances justifying a waiver of income withholding; and

(2) is in compliance with additional requirements and limitations imposed by the agency by regulation to assure that a forgiveness is in the best interest of the child and of the state; and

(3) the obligor makes monthly payments pursuant to a payment agreement approved by the agency; if the obligor misses more than two monthly payments in a calendar year, or more than two consecutive payments without approval of the agency for good cause, the obligor will not be eligible to continue in the arrears forgiveness program under this section.

(g) During each year in which an obligor complies with the requirements for the forgiveness of an arrearage under (f) of this section and any regulations adopted by the agency under that subsection, the agency may forgive up to 20 percent of the total arrearage owed to the state under AS 25.27.120, including any interest owed on that debt. For purposes of determining the amount of the forgiveness, the arrears will be calculated as of the date the obligor is approved for participation in the forgiveness program.

(h) The forgiveness program authorized under (f) and (g) of this section may not be implemented until the agency has adopted regulations settings standards and procedures. Regulations under this section must be adopted within nine months after the effective date of this section. The agency may establish by regulation requirements and limitations on eligibility in addition to those stated in (f) and (g) of this section.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 514(FIN) am
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Child Support Enforcement/Crimes RDU Revenue Programs & Services
Component Child Support Enforcement
Sponsor Representative Kott
Requester Senate Judiciary Component No. 111

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* The compromising of arrears section will result in the elimination of receivables owed to the state in favor of receiving payments against the debt. This program may provide increased revenues to the state and reduce the amount of child support debt owed. Since CSED cannot determine which individuals will use this program, we cannot project what this increase in revenue will be. The following is illustrative of the potential arrears that could be forgiven under this legislation. There are approximately 18,000 cases with a total of \$250 million owed to the State of Alaska and the federal government. There are approximately 3,000 cases totalling \$31 million of presently collectible debt owed to the state; these 3,000 cases have current withholding order payments each month. As written, these collectible cases are included in the forgiveness program, and the state will be giving up approximately \$15.5 million of state revenues, and \$15.5 million of federal revenues.

Prepared by: John Mallonee Phone 269-6802
Division Child Support Enforcement Date/Time 4/15/04 4:08 PM
Approved by: Steve Porter, Deputy Commissioner Date 4/15/2004
Agency Department of Revenue

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 514(FIN) am

1 Page 3, line 15, through page 4, line 10:

2 Delete all material and insert:

3 "(a) A person commits the crime of aiding the nonpayment of child support in
4 the second degree if the person [(1)] knows that an obligor has a duty under an
5 administrative or judicial order for periodic payment of child support or for the
6 provision of health care coverage for a child under a medical support order [;] and

7 (1) being a person with a statutory duty to disclose information to
8 a child support enforcement agency [(2)] intentionally [(A)] withholds the
9 information [ABOUT THE RESIDENCE OR EMPLOYMENT OF THE OBLIGOR]
10 when it [THAT INFORMATION] is requested by a child support enforcement
11 agency;

12 (2) [(B)] being an employer of the obligor, intentionally withholds
13 information about the residence or employment of the obligor, the eligibility of the
14 obligor's children for coverage under the employer's health insurance plan, or
15 [ABOUT] the cost of the coverage of the children under the plan, when that
16 information is requested by a child support enforcement agency or when the
17 employer is required by state or federal law to report the information without a
18 request by a child support enforcement agency; or

19 (3) intentionally [(C)] participates in a commercial, business, [OR]
20 employment, or other arrangement with the obligor, knowing at the time that the
21 arrangement is made that it will allow the obligor to avoid paying all or some of the
22 support when it is due or to avoid having a lien placed on assets for the payment of
23 delinquent support; receipt of a substantial asset for less than fair market value from

1 an obligor after the obligor's support order has been established constitutes a
2 rebuttable presumption that the person receiving the asset knew that the transfer would
3 allow the obligor to avoid paying all or some of the support or to avoid having a lien
4 placed on the asset."

5

6 Page 4, following line 10:

7 Insert a new bill section to read:

8 ** Sec. 6. AS 11.51.122(b) is amended to read:

9 (b) In a prosecution under (a)(2) and (3) [(a)(2)(B) AND (C)] of this section,
10 it is a defense that the

11 (1) defendant did not intend to assist the obligor in the nonpayment of
12 child support or in the avoidance of a duty to provide health care coverage of a child;
13 or

14 (2) obligor did not intend to avoid paying child support or to avoid
15 providing health care coverage of a child."

16

17 Renumber the following bill sections accordingly.

18

19 Page 7, line 15:

20 Delete "Section 15"

21 Insert "Section 16"

22

23 Page 7, line 22:

24 Delete "sec. 15"

25 Insert "sec. 16"