

**SB**

**151**

<TARGET><BILL>SB 151</BILL><SUBJECT>SB  
151</SUBJECT><COMM>HFIN27</COMM></TARGET>



# FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

Bill Version CSSB 151(HSS)  
Fiscal Note Number 2  
(S) Publish Date 3/6/12

Identifier (file name) SB151-ACS-TRC-3-02-2012 Dept. Affected Alaska Court System  
Title Mitigation at sentencing for defendant with FASD Appropriation Trial Courts  
Allocation \_\_\_\_\_  
Sponsor Senator Meyer  
Requester \_\_\_\_\_ OMB Component Number 768

**Expenditures/Revenues** (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								

Estimated SUPPLEMENTAL (FY12) operating costs \_\_\_\_\_ (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs \_\_\_\_\_ (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version

Prepared by Nancy Meade, General Counsel  
Division Alaska Court System  
Approved by Nancy Meade for Christine Johnson, Administrative Director  
Alaska Court System

Phone 907-463-4736  
Date/Time 3/02/2012 4:00 p.m.  
Date 3/2/2012

FISCAL NOTE #2

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. CSSB 151(HSS)

**Analysis**

Senate Bill 151 adds a new factor to the list of mitigating factors in AS 12.55.155(d) that the court shall consider at sentencing; if proven, the court may then impose a sentence below the presumptive range for certain crimes. Specifically, except for defendants convicted of offenses against persons, arson, and criminal mischief, and except if the defendant has any prior felony conviction, the court may consider whether the defendant committed the offense "while affected by a fetal alcohol spectrum disorder that was insufficient to constitute a complete defense . . . but that significantly affected the defendant's conduct."

The court cannot predict the number of cases in which parties will attempt to prove this factor as a mitigator at sentencing, but believes the sentencing hearings will be held and handled in the normal course without a fiscal impact. The Alaska Court System therefore submits a zero fiscal note.

# FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

Bill Version CSSB 151(HSS)  
Fiscal Note Number 3  
(S) Publish Date 3/6/12

Identifier (file name) SB151-DOA-PDA-1-23-12 Dept. Affected Administration  
Title Fetal Alcohol Spec. Disorder as Mitigator Appropriation Legal and Advocacy Services  
Allocation Public Defender Agency  
Sponsor Senators Meyer, Hoffman, Dyson, Menard  
Requester Senate Health and Social Services OMB Component Number 1631

**Expenditures/Revenues** (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
	<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS**

Full-time							
Part-time							
Temporary							

**CHANGE IN REVENUES**

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Estimated SUPPLEMENTAL (FY12) operating costs \_\_\_\_\_ (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs \_\_\_\_\_ (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version

Prepared by Quinlan Steiner, Public Defender  
Division Public Defender Agency  
Approved by John Cramer, Deputy Commissioner  
Department of Administration

Phone 907 334-4414  
Date/Time 1/20/12 12:15 PM  
Date 1/23/2012

FISCAL NOTE #3

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. CSSB 151(HSS)

**Analysis**

AS 12.55.155(d) allows a sentencing court to impose a sentence less than the presumptive range where mitigating factors have been proven. This bill amends AS 12.55.155(d) by adding section 20, which allows the court to find a factor of mitigation where the defendant committed the offense while affected by fetal alcohol spectrum disorder.

The Public Defender Agency does not anticipate a fiscal impact from this change. Accordingly, the Agency submits a zero fiscal note.

# FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

Bill Version CSSB 151(HSS)  
Fiscal Note Number 4  
(S) Publish Date 3/6/12

Identifier (file name) SB151-DOC-OC-03-02-12 Dept. Affected DOC  
Title "An Act relating to mitigation at sentencing in a criminal defendant convicted of certain sex offenses a prohibition..." Appropriation Admin & Support  
Allocation Commissioner's Office  
Sponsor Senator Meyer  
Requester (S)HSS OMB Component Number 694

**Expenditures/Revenues** (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

This is the original version of the bill.

Prepared by Leslie Houston, Director  
Division Department of Corrections - Administrative Services  
Approved by Joseph D. Schmidt, Commissioner  
Department of Corrections

Phone 907-465-3339  
Date/Time 3/2/12 11:05 AM  
Date 3/2/2012

FISCAL NOTE #4

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. CSSB 151(HSS)

**Analysis**

This bill would add fetal alcohol spectrum disorder to the list of mitigating factors at sentencing in a criminal trial. The burden of assessment would be on the courts and therefore would have zero fiscal impact on the Department of Corrections.

# FISCAL NOTE

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

Bill Version CSSB 151(JUD)  
Fiscal Note Number 5  
(S) Publish Date 4/4/12

Identifier (file name) SB151CSSB(JUD)-LAW-CRIM-03-30-12 Dept. Affected Law  
Title An Act realing to mitigation at sentencing in a criminal Appropriation Criminal  
case for a defendant found by the court to have been... Allocation Criminal Justice Litigation  
Sponsor Senator Meyer  
Requester (S) Finance OMB Component Number 2202

**Expenditures/Revenues** (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
<b>TOTAL</b>		<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								

Estimated SUPPLEMENTAL (FY12) operating costs \_\_\_\_\_ (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs \_\_\_\_\_ (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Update to identifier and requester.

Prepared by Sheila Bugbee, Administrative Officer  
Division Administrative Services  
Approved by Michael C. Geraghty, Attorney General  
Department of Law

Phone 465-5427  
Date/Time 3/30/12 12:00 PM  
Date 3/30/2012

FISCAL NOTE #5

STATE OF ALASKA  
2012 LEGISLATIVE SESSION

BILL NO. CSSB 151(JUD)

**Analysis**

SB 151 CSSB(JUD) would add as a mitigating factor at sentencing. It would allow a new mitigator if the defendant was affected by a fetal alcohol spectrum disorder that significantly affected the defendant's behavior. If proven, the court would have discretion to reduce the term of imprisonment to below the presumptive range.

The proposed new factor would not apply to persons convicted of crimes against a person (AS 11.41), or arson in the first degree (AS 11.46.400).

The fiscal impact for the Department of Law is indeterminate because it will require expert testimony on the issue of whether the person suffers from such a disorder and if so, did it significantly affect his or her behavior.

# Alaska State Legislature



*Interim:*  
716 West 4th Ave.  
Anchorage, Alaska 99501  
(907) 269-0199

*Session:*  
State Capitol Building  
Juneau, Alaska 99801-1182  
(907) 465-4945

**Senator Kevin Meyer**  
Senate District O

## **SPONSOR STATEMENT FOR CSSB 151**

*“An Act relating to mitigation at sentencing in a criminal case for a defendant found by the court to have been affected by a fetal alcohol spectrum disorder.”*

SB 151 would include Fetal Alcohol Spectrum Disorders (FASD) as a mitigating factor in sentencing. This would allow some flexibility in sentencing if the defendant is found by the court to be affected by FASD and this condition substantially impaired the defendant's judgment, behavior, and capacity to recognize reality or ability to cope with the ordinary demands of life.

Individuals diagnosed with a fetal alcohol spectrum disorder (FASD) are disproportionately represented within Alaska's criminal justice system. SB 151 does not require a judge to use the mitigating factor and it DOES NOT automatically adjust a presumptive sentence. The defense would have to provide clear and convincing evidence that the defendant's disability *significantly affected the defendant's conduct and substantially impaired judgment, behavior, and capacity to recognize reality* in order to apply the mitigating factor.

Evidence shows that directing people with mental illness and other brain disorders to supported services, both inside and outside of Corrections, significantly reduces the high financial and social costs associated with re-incarceration and recidivism. Felons and repeat offenders with FASD are more likely to stop committing crimes when they are given the same supports that benefit people with mental illness and other disabilities, which can include Therapeutic Court, housing and employment assistance, case management, counseling and rehabilitation.

# Alaska State Legislature



*Interim:*  
716 West 4th Ave.  
Anchorage, Alaska 99501  
(907) 269-0199

*Session:*  
State Capitol Building  
Juneau, Alaska 99801-1182  
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## **Senator Kevin Meyer** Senate District O

### CSSB 151 FASD AS A MITIGATING FACTOR IN SENTENCING Explanation of Changes

#### SHSS

From version X to O

- Removal of Section 1 which set out a definition of mental disease or defect.
- Section (18) there has been some debate over previously convicted felons, and how this can be applied.
- Addition of section (20) which adds FASD as a mitigating factor, defines it and sets out how it can be diagnosed.

#### SJUD

From version O to U

- Section (18), page 3, lines 13-14 has been deleted, which makes this mitigator applicable to felons, however in section (20) crimes against a person and arson are not eligible for a mitigating factor.
- Section (20), page 3, line 20 and 21 the language exempting arson and crimes against a person was added. The intent of this bill is to provide flexibility for non-violent offenders who are affected by FASD. If an assault or arson has occurred, this mitigator would not apply.
- Section (20), page 3, line 30 has been deleted. It is not outlined for other mitigating factors how mental disease or defect is determined. This can be done as it is now; through clear and convincing evidence, the court can find someone to be suffering from a mental disease or defect.

#### SFIN

No changes

#### HHSS

CS to HB 367

The companion bill introduced by the HHSS committee adopted a CS conforming to CSSB 151.



**Alaska Fetal Alcohol Spectrum Disorders (FASD) Partnership**  
431 N. Franklin St. Suite 203, Juneau, Alaska 99801 • (907) 465-8920  
Webpage: [www.hss.state.ak.us/fasd.htm](http://www.hss.state.ak.us/fasd.htm)  
Email: [ak-fasd-partnership@mhtrust.org](mailto:ak-fasd-partnership@mhtrust.org)

## **SB 151 - Inclusion of FASD as a Mitigating Factor**

This legislative session, Senator Kevin Meyer (Anchorage) worked with the Alaska FASD Partnership, the Department of Law, and the Courts to craft a bill that would address the large number of people affected by fetal alcohol spectrum disorders (FASD) in the state's criminal justice system. SB 151 is an "Act relating to mitigation at sentencing in a criminal case for a defendant found by the court to have been affected by a fetal alcohol spectrum disorder."

The Partnership approached Senator Meyer when a workgroup of the Partnership, FASD and the Legal System, determined the mitigating factor to be one of their top priorities. Other priorities of the workgroup include expanding screening in Corrections, training for professionals in the justice system, and improving services for individuals with FASD transitioning from Corrections and juvenile detention, such as case management, assistance with housing, employment, and treatment.

### **The Need for SB 151**

The intent underlying Alaska's sentencing structure – that people will modify their behaviors based on the criminal justice system's response to their crimes – is not met when applied to individuals with FASD. These disabilities manifest as deficits in executive function, resulting in impaired adaptive behavior, memory difficulties, an inability to plan, and a failure to recognize the consequences of actions.

In the interest of justice, it is important to take these deficits into account during sentencing. Neither the offender nor society benefits from holding individuals with FASD to community standards that they cannot possibly attain given their impairments.

SB 151 fulfills a recommendation adopted by the Alaska Criminal Justice Assessment Commission, that "the legislature should create a statutory mitigating factor for use at criminal sentencing, recognizing when the wrongful conduct was substantially affected by an organic brain disorder."<sup>1</sup>

A draft resolution proposed by the American Bar Association (ABA) Commission on Youth At Risk, for consideration at this year's annual ABA meeting, reads: "... the American Bar Association urges lawyers and judges, as well as bar associations and law school clinical programs, to ... work with medical, mental health, and FASD disability experts to promote ... applying FASD as a mitigating factor in the mitigation of juvenile justice and criminal sentencing ... and consideration of alternatives to incarceration that reduce recidivism."

### **Overview of SB 151**

SB 151 proposes to allow FASD as a mitigating factor for sentencing in certain cases where there is *clear and convincing* evidence that a "defendant committed [an] offense while suffering from a condition diagnosed as a fetal alcohol spectrum disorder, the fetal alcohol spectrum disorder substantially impaired the defendant's judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary

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<sup>1</sup> Alaska Criminal Justice Assessment Commission (2000). *Final Report*. Retrieved October 12, 2010 from [www.hss.ak.gov/reports/CIAC/Final%2004.pdf](http://www.hss.ak.gov/reports/CIAC/Final%2004.pdf), at p.71.

demands of life, and the fetal alcohol spectrum disorder, though insufficient to constitute a complete defense, significantly affected the defendant's conduct."

SB 151 defines a fetal alcohol spectrum disorder in the subsection on mitigating factors as "a condition of impaired brain function in the range of permanent birth defects caused by maternal consumption of alcohol during pregnancy."

The legislation:

- 1) does not *require* a judge to use the mitigating factor;
- 2) does not automatically adjust a presumptive sentence; the defendant would have to prove by *clear and convincing evidence* 1) that he or she has a fetal alcohol spectrum disorder and 2) that the condition "significantly affected the defendant's conduct" before the judicial officer can consider the possibility of adjusting the presumptive sentence; and
- 3) is not a "get out of jail free" card, but an attempt to be "smarter" within the justice system to better direct people who have impaired brain function to services both within and after release from the criminal justice system.

#### **What is a mitigating factor?**

A mitigating factor, in law, is any information or evidence presented to the court regarding the defendant or the circumstances of the crime that might result in reduced charges or a lesser sentence.

#### **The economic benefits of SB 151**

A 2009 study by the Institute of Social and Economic Research (ISER) at the University of Alaska Anchorage, *The Cost of Crime: Could the State Reduce Future Crime and Save Money by Expanding Education and Treatment Programs?*, showed that strategically expanding intervention and prevention programs can reduce crime, keep more Alaskans out of prison, and save the state substantial costs.

The cost of incarceration in an Alaskan prison is about \$136 per day. Over the course of five to ten years, an inmate is expected to cost the state close to \$250,000-\$500,000 (not including medical, mental health or other specialized treatment while incarcerated).

The cost of intensive case management (a recommended alternative intervention for people with FASD) is about \$48 per day. If electronic monitoring (\$21 per day) and probation/parole (\$7 per day) are added, the total cost per day is about \$76. Implementing one or all three of these interventions could save the state up to \$21,900 per offender, per year.<sup>2</sup>

SB 151 provides justice for a vulnerable population and represents a better investment of our state's resources. With appropriate supports, people with FASD can live successfully in the community as contributing citizens, while at the same time providing jobs for Alaskan case workers, clinicians, assisted living providers, mental health and substance abuse counselors, psychologists and psychiatrists.

#### **A move toward "Smart Justice"**

Alaska's movement toward "Smart Justice" aims to promote reduced public costs, fewer crimes, and greater rehabilitative results for offenders. While some offenders are clearly dangerous and need long-term incarceration, the research behind "Smart Justice" suggests that for certain non-violent offenders,

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<sup>2</sup> Source for Prison, Community Residential Centers, Electronic Monitoring & Probation and Parole: [http://www.jhfc.us/iceimages/homeless/102211\\_ach\\_doc\\_discharge\\_stats.pdf](http://www.jhfc.us/iceimages/homeless/102211_ach_doc_discharge_stats.pdf). Note: Intensive Case Management estimated costs are based on the most intensive case management with a high level of education and supervision for workers. Actual costs, depending on the case mix, may be lower.

treatment programs inside the prison combined with adequate transition and case management services, will result in lower costs, less recidivism, and a safer general public.

Senator Meyer noted that "studies have repeatedly shown that repeat offenders with FASD and other impaired brain functions are more likely to stop committing crimes when they are given the same support as people with other mental illnesses, which can include therapeutic courts, housing and employment assistance, case management, counseling and rehabilitation. The potential benefits to society, through decreased crime and costs, are tremendous."

In Chief Justice Carpeneti's address to the Alaska State Legislature this year, he suggested that the justice system needs to consider the cost of its actions on the system's resources, on public safety, and on the potential of all citizens. He asked legislators to include the judiciary in tailoring prison or treatment sentences to offenders.

"In practice, it means making criminal justice decisions that reserve our most costly response to crime – prison time – for those cases where less costly alternatives will not effectively protect the public or rehabilitate the perpetrator," Chief Justice Carpeneti said. "There is a better way. We need to move from anger-based sentencing that ignores cost and effectiveness to evidence-based sentencing that focuses on results."

Advisory Board on Alcoholism  
and Drug Abuse



Alaska Mental Health Board

ALASKA MENTAL HEALTH BOARD  
ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE  
431 NORTH FRANKLIN STREET, SUITE 200  
JUNEAU, ALASKA 99801  
(907) 465-8920

March 2, 2012

Senator Kevin Meyer  
Alaska State Capitol, Room 103  
Juneau, Alaska 99801

Re: Letter of Support for CSSB 151 – Mitigation at Sentencing for a Defendant Affected by FASD

Dear Senator Meyer,

The Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse support the committee substitute for SB 151 (CSSB 151). This bill recognizes the special needs presented by Alaskans experiencing fetal alcohol spectrum disorders (FASD) in the justice system.

It is an objective of Alaska's comprehensive mental health program that people with mental and cognitive disabilities are treated with dignity in all aspects of life. Our judges, prosecutors, defenders, and court staff work to ensure that everyone who appears in court is treated fairly and with respect. However, Alaskans experiencing FASD often present with special needs and situations that impede the course of justice. Low cognitive functioning, inability to understand and stay within accepted social norms, limited short term memory, impulsivity, and impaired judgment can all result in a person experiencing FASD not being able to explain his or her actions, understand why they resulted in a criminal charge, or understand the criminal justice process. Usually, these impairments do not rise to the level of legal incompetence – but they often make it hard for judges and juries to make decisions that serve our notions of fairness and justice.

Based on research in other jurisdictions, an estimated 60% of inmates experience an FASD, brain injury, or similar organic cognitive impairment. The cost of incarceration is very high and usually does not result in restoration or rehabilitation. In fact, according to a 2009 ISER Study,<sup>1</sup> the cost of prison far exceeds the cost of services. CSSD 151 allows judges – **at their discretion** – to modify presumptive sentences to take into account the defendant's disabilities and to provide the sort of sentence needed to prevent recidivism and ensure a just outcome for victims, defendants, and our communities.

We thank you for your work on behalf of all Alaskans.

Sincerely,

J. Kate Burkhart  
Executive Director

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<sup>1</sup> *The Cost of Crime: Could The State Reduce Future Crime and Save Money by Expanding Education and Treatment Programs?* published by Institute of Social and Economic Research (ISER), University of Alaska (January 2009). Available online at [www.iser.uaa.alaska.edu](http://www.iser.uaa.alaska.edu).

# The TRUST

## The Alaska Mental Health Trust Authority

March 2, 2012

Senator Kevin Meyer  
State Capitol Building  
Juneau, Alaska 99801

Dear Senator Meyer,

The Alaska Mental Health Trust Authority is pleased to support SB 151, adding fetal alcohol spectrum disorders and traumatic and acquired brain injury as mitigating factors under "mental disease or defect" in state statute. The Trust also supports the bill's intention to use the word "intellectual disability" to describe Alaskans with developmental disabilities, rather than the archaic term "mental retardation."

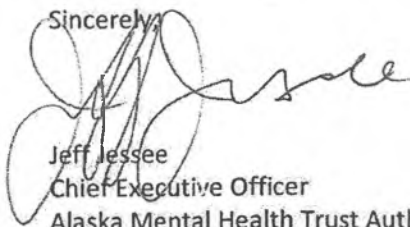
This legislation is an important step in the state's recognition that people with disabilities are better served with supports and services, rather than incarceration without supports.

SB 151 fulfills a recommendation adopted by the Alaska Criminal Justice Assessment Commission that "the legislature should create a statutory mitigating factor for use at criminal sentencing, recognizing when the wrongful conduct was substantially affected by an organic brain disorder."<sup>1</sup>

SB 151 also supports a recommendation currently before the American Bar Association stating that the ABA "... urges lawyers and judges, as well as bar associations and law school clinical programs, to support training that includes law school law enforcement, and legal/judicial education curricula on enhanced awareness of the child and adult disability of Fetal Alcohol Spectrum Disorders (FASD) and its impact on individuals in the child welfare, juvenile justice, and adult criminal justice systems, and that they work with medical, mental health, and FASD disability experts to promote: ... (d) applying FASD as a mitigating factor in the mitigation of juvenile justice and criminal sentencing ... and consideration of alternatives to incarceration that reduce recidivism."

The Trust thanks Senator Meyer's efforts to address issues related to people with disabilities, so that the most appropriate (and cost effective) outcomes are realized.

Sincerely,



Jeff Jessee  
Chief Executive Officer  
Alaska Mental Health Trust Authority

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<sup>1</sup> Alaska Criminal Justice Assessment Commission (2000). *Final Report*. Retrieved October 12, 2010 from [www.hss.aic.state.ak.us/reports/CJAC\\_Final\\_2004.pdf](http://www.hss.aic.state.ak.us/reports/CJAC_Final_2004.pdf), at p.71.



March 2, 2012

Senator Kevin Meyer  
State Capitol Room 103  
Juneau AK, 99801

Re: Support for SB 151

Dear Senator Meyer:

The Disability Law Center of Alaska supports the objective of SB 151, which is to allow the courts to take into consideration during sentencing whether the defendant was diagnosed with a fetal alcohol spectrum disorder, a traumatic brain injury or an acquired brain injury. If these conditions cannot be considered as mitigating factors, then as one jurist observed, these individuals are paying for their disability with their freedom.

Thank you for your efforts in correcting this manifest injustice.

Sincerely,

DISABILITY LAW CENTER OF ALASKA

David C. Fleurant  
Executive Director

**ANCHORAGE**  
3330 Arctic Boulevard  
Suite 103  
Anchorage, AK 99503  
(907) 565-1002  
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1-800-478-1234  
www.dlcak.org

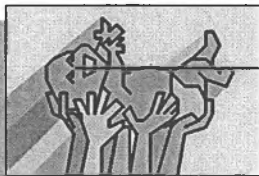
MEMBER OF THE  
NATIONAL  
DISABILITY  
RIGHTS  
NETWORK

# Alaska FASD Partnership

Over 75 organizations  
and individuals  
supporting:

Advocacy ▪ Diagnosis

- Case Management
  - Prevention
- Substance Abuse Treatment for Pregnant Women
- Parent Navigation
- Training for Parents
- Public Awareness
  - Alternatives to Incarceration
- Court Interpreters
  - Peer Support
- Training for Judges, Public Defenders, and Prosecutors
  - Training for Educators and Medical Professionals
- Traditional Healing
- Supported Housing and Employment
  - Family Support



March 30, 2012

Senator Kevin Meyer  
Alaska State Legislature  
Juneau, Alaska 99801

Dear Senator Meyer,

It is with great pleasure that the Alaska FASD Partnership supports SB 151 to include FASD as a mitigating factor in sentencing.

The intent underlying Alaska's sentencing structure – that people will modify their behaviors based on the criminal justice system's response to their crimes – is not met when applied to individuals with FASD. These disabilities manifest as deficits in executive function, resulting in impaired adaptive behavior, memory difficulties, an inability to plan, and a failure to recognize the consequences of actions. In the interest of justice, it is important to take these deficits into account during sentencing. Neither the offender nor society benefits from holding individuals with FASD to community standards that they cannot possibly attain given their impairments.

The cost of incarceration in Alaska's prison is about \$136 per day. Over the course of five to ten years in an Alaskan prison, an inmate is expected to cost the state close to \$250,000-\$500,000 (not including medical, mental health or other specialized treatment while incarcerated).

The cost of intensive case management, including electronic monitoring and probation/parole, is about \$76 per day (\$48 for intensive case management, \$21 for electronic monitoring, \$7 for probation/parole) – for a savings of \$21,900 per person, per year.<sup>1</sup>

According to the 2009 ISER Study, *The Cost of Crime: Could the State Reduce Future Crime and Save Money by Expanding Education and Treatment Programs?* the cost of providing services is less than the cost of incarceration. With appropriate supports, clients with FASD and other brain-based disabilities can live successfully in the community as contributing citizens, and provide jobs for Alaskan case workers, clinicians, assisted living providers, mental health and substance abuse counselors, psychologists and psychiatrists. Not only does SB 151 further

<sup>1</sup> Source for Prison, Community Residential Centers, Electronic Monitoring & Probation and Parole: [http://www.ahfc.us/iceimages/homeless/102211\\_ach\\_doc\\_discharge\\_stats.pdf](http://www.ahfc.us/iceimages/homeless/102211_ach_doc_discharge_stats.pdf). Note: Intensive Case Management estimated costs are based on the most intensive case management with a high level of education and supervision for workers. Actual costs, depending on the case mix, may be lower.

the cause of justice for a vulnerable population, it represents a better investment of our state's resources.

Additionally, the state's movement toward "Smart Justice" aims to promote reduced public costs, fewer crimes, and a greater rehabilitative effect on offenders. While some offenders are clearly dangerous enough and need long-term incarceration, the research behind "Smart Justice" suggests that for certain non-violent offenders, treatment programs inside the prison, combined with adequate transition and case management services, will result in lower costs, less recidivism, and a safer general public.

Thank you for the time and effort you have put into supporting this important effort.

Sincerely,



Monica Charles-Leinberger, Chair  
Alaska FASD Partnership

**Partnership members include:** *Abused Women's Aid in Crisis, Advisory Board on Alcoholism and Drug Abuse, Alaska Behavioral Health Association, Alaska Center for Children & Adults, Alaska Children's Services, Alaska Mental Health Board, Alaska Mental Health Trust Authority, Alaska Peer Support Consortium, Alaska Youth & Family Network, Aleutian Pribilof Islands Association, All-Alaska Pediatric Partnership, Anchorage Coordinated Resources Project, Anchorage School District (Anchorage), Anchorage Tlingit & Haida Indian Tribes of Alaska, Arctic FASD Regional Training Center, Assets Inc., Association for the Education of Young Children-SEAK, Big Brothers Big Sisters of Alaska, Boys & Girls Home of Alaska, Camp Fire USA Alaska Council, Central Council of the Tlingit & Haida Indian Tribes of Alaska, Christian Health Associates, Copper Basin Neurodevelopmental Center, Deltana Community Services Partnership, Dena A Coy/Southcentral Foundation, Diocese of Juneau, Fairbanks Community Behavioral Health Center, Family Centered Services of Alaska, Frontier Community Services, Gastineau Human Services, Governor's Council on Disabilities and Special Education, Hoonah Indian Association, Hope Community Resources, Independent Living Center, Kenai Peninsula FASD Program, Ketchikan Indian Community, Kinetictions, Kobuk Valley Consulting, Kodiak Area Native Association, Juneau Family Health and Birth Center, Juneau FASD Diagnostic Clinic, Juneau Partnerships for Families and Children, Lower Kuskokwim School District, Lynn Canal Counseling Services, Nenana City School District, Ninilchik Traditional Council, Nome Youth Facility, Nondalton Tribe, Regional Wellness Forum, Set Free Alaska, Inc. (Wasilla), Southcentral Foundation FAS Diagnostic Team, Southeast Regional Health Consortium, Southeast Regional Resource Center, Southern Kenai Peninsula Communities Project, Sprout Family Services, Stone Soup Group, Tongass Substance Screening, UAA Department of Health Sciences, UAA Center for Human Development, Volunteers of America-Alaska ...and many individuals.*

PO Box 15  
Kiana, AK 99749  
March 2, 2012

Senator Kevin Meyer  
State Capitol Building, Room 103  
Juneau, Alaska 99801

Dear Senator Meyer,

I am writing in support of CSSB 151. First of all, thank you for sponsoring this important bill.

I am a parent of children with FASDs as well as a trainer in the field. I know the risk of our children coming into contact with the legal system is extraordinarily high. My son recently returned to jail for the fourth time, not for re-offending, but for probation violations. This is a story I hear over and over from parents. We know jail is not what they need, but currently there is no alternative. They want to be successful, and desperately seeks to feel competent, but the need support to deal with the secondary behaviors and the patterns of addiction in his life.

**Cost:** Many people with an FASD remain undiagnosed. An extremely high percentage of prisoners have undiagnosed FASD. The prison system has been called the largest mental health provider in the State. The money consumed by housing people with an FASD in jail would be better spent providing these supports and services in a natural setting which enables them to be successful members of society.

**Generalization:** People with an FASD often do not generalize behaviors well. People who maintain 'well' in prison are released only to fall flat on their faces, and often are stuck in the revolving door of recidivism- because nothing changes for them once they are released. They walk out with no supports and are expected to have 'learned their lesson', something that does not work given the brain damage. With sentencing alternatives, skills learned in society would be applied in real life settings. There would be supports and accountability in place. This would increase the likelihood of success.

**Benefit to Society:** Society is better served when people are successful. Incarceration does not help develop new patterns of behavior. People with an FASD have challenges with cause and effect. This bill provides a mechanism which allows judges to employ strategies that we know are effective for people with an FASD. This benefits society by not only ensuring safety but by developing productive citizens who can be successful, rather than those who serve time until release only to be no further ahead than when they were incarcerated.

**Maintenance:** Many people with an FASD follow an all too familiar path to residential treatment, in and out of state. This often culminates with prison. This is because, each time someone is released, there are no supports available to help them maintain the skills learned in a real life

setting. This bill allows for teaching skills in a real life setting, providing accountability and 'in the moment' support for continued success.

Accountability: Having the services like assisted living, supported employment, counseling, etc. available to be incorporated as part of the probation orders assures that offenders will be held accountable for utilizing these services. This clarifies expectations for people with brain differences. These services which can make the difference between success and re-incarceration, as the supports are built in to the system, and tailored to the individual needs.

My son is a classic example of someone who should never have entered the system, but whose life will be forever hindered by his record. Prior to his offending at 18, he had never before been in trouble with the law.

When I spoke to his Public Defender about his FASD, I was told that making this an issue in his case could work against him rather than be taken into consideration for sentencing; SB 151 shows how far we have come. During his trial, my son could not respond adequately to questions; the judge asked him if he spoke English. He does, however his brain does not process language well, and especially under extremely stressful circumstances. This is another example of the need for this bill. The brain works differently, this needs to be recognized by the court and it cannot be ignored.

For my son, there was no alternative to sentencing. The fact that he committed a felony is not, unfortunately, so unusual. At nearly 25, seven years later, my son has learned to function in prison. What he has not learned is how to be successful in society.

For too many, the perfect storm of circumstances begins before they are born. Prenatal exposure to alcohol leads to (in most cases) a hidden physical disability. This coupled with ongoing failure and frustration leads to the development of secondary characteristics and too often faulty social skill development. In prison our children come into contact with others who have similar issues or those who prey on vulnerable individuals. If alternatives to incarceration are available initially, the outcome can be very different.

Again, what people with brain differences need is access to the right supports, not merely punishment. Incarceration will not lead to learning nor prevent recidivism. Too often, people with an FASD cannot meet probationary orders and are re-incarcerated. With the right supports, people with an FASD can be successful and contributing members of society. Their disability needs to be identified and so do their strengths.

Supported success beats independent failure hands down. Supported success benefits all parties- independent failure benefits no one.

Sincerely,



Jeanne Gerhardt-Cyrus, Parent

**adn.com**

Anchorage Daily News

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## **Bill would let judges consider fetal alcohol spectrum disorders**

**FETAL ALCOHOL: First, its direct role in a crime must be proved.**

By AUSTIN BAIRD

(03/03/12 21:43:50)

JUNEAU -- A proposal before the Alaska Legislature would give judges flexibility when handing down criminal sentences to people who were born with effects caused by their mother drinking during pregnancy.

Judges are not allowed to consider fetal alcohol spectrum disorders -- a catch-all phrase for conditions caused by prenatal exposure to alcohol -- during criminal sentencing. SB151 would change that by adding FASD to the list of mental conditions that judges can consider as a mitigating factor.

Senate Majority Leader Kevin Meyer, R-Anchorage, worked with a statewide coalition from various professions called the Alaska FASD Partnership to craft the bill in response to the large number of people affected by the fetal alcohol disorders in the criminal justice system. Meyer said a mitigating factor is not a "get out of jail free card" and only reduces punishment if it's proved that a condition played a direct role in a crime. The bill calls for proof of documentation of prenatal alcohol use as well as a convincing clinical diagnosis.

The proposal is welcomed by advocates but not touted as a cure-all.

Public understanding of the issue is lacking, according to Teri Tibbett, the partnership's coordinator, and problems are multifaceted and complex.

"Alcohol has been around for a long time and so have women," Tibbett said. "Those two have gone together about that long but we understand the impacts better now than ever."

Modern research has determined that cell death caused by exposure to alcohol in the womb is the root of damage, according to Susan Astley, an epidemiology professor at the University of Washington. The best-known result is a series of distinct facial features -- smaller eye openings, a thin upper lip and the ridges below the nose are smooth -- but other problems are also common, she said.

Morgan Fawcett is a 19-year-old getting ready to study journalism but for now he travels around the U.S. and Canada sharing the story of his struggles with prenatal alcohol exposure with clinicians, lawmakers and others interested groups.

Fawcett recently told a group in Juneau that he made it to his early teens with an array of unexplained problems. He said he couldn't focus or remember things he was just told; that he was often at a loss during class; that his jaw would lock, sometimes tightly enough that he couldn't eat or drink, and that he suffered debilitating migraines.

He was 14 when he realized those problems and others resulted from his mother's drinking during pregnancy.

"I was angry at (my mother) in the beginning but I love her and I know she didn't do this on purpose," Fawcett said. "No mother would do this intentionally. If more people understood this, mothers wouldn't be the focus."

Alaska has been somewhat of a national leader by creating a network of diagnostic clinics and treatment programs, Astley said.

"Damage can take place throughout pregnancy, from very early to the very end," she said. "It's impossible to predict exactly what damage will take place if you drink at a certain time and you can't tell for sure when certain effects were caused."

Seven-term Rep. Beth Kerttula, D-Juneau, remembers when discussion in the Capitol started and ended with how severely mothers should be punished. Kerttula recalls a fellow legislator saying during a committee hearing a few years ago that drinking pregnant women should be taken to the wharf in downtown Juneau, latched into stockades and have tomatoes thrown at them.

Meyer said another bill would have held bartenders in Alaska criminally liable if they served alcohol to pregnant women.

"People have the right heart, even when they put up ideas like this," Meyer said. "You want an easy target and, sure, the mothers are easy targets. But if it was that simple, someone else would have fixed this already."

Judge Michael Jeffery of the Barrow District Court, which serves the North Slope, said a 1990 case that involved an 18-year-old affected by fetal alcohol syndrome brought the problem to his attention. Jeffery sympathized with a request by the young man's lawyer who wanted the condition to count as a mitigating factor but a panel of judges determined he could not add conditions at his discretion.

"Extra jail time didn't help him or anyone else and it's true for many people," Jeffery said.

Jeffery learned the problem is endemic in his community and around the state, especially so in the justice system: An estimated 27 percent of Alaska's inmate population has fetal alcohol syndrome, according to a 2006 state report.

Long before Jeffery's experience in the United States' northernmost court became the basis of SB151, he implemented a few changes of his own.

He uses plain English and large type to account for poor reading comprehension commonly associated with FASD during his court cases. Listening comprehension is another common problem, with only the last few words of sentences heard and remembered, so Jeffery repeats important points often and carefully structures sentences. Another procedure has caused tense moments, he said: He explains common effects of FASD, how it is caused and where to find treatment, often with parents and relatives in attendance.

"If someone doesn't speak the language, you give them a translator in court," Jeffery said. "What I'm doing for people with this disorder is no different. They don't understand things the same way, interpret information the same."

He said he wants to see similar changes elsewhere, and to that end the American Bar Association is working on a resolution that addresses some of the concerns about justice and FASD. Howard Davidson, who runs the ABA's Center on Children and the Law, said the resolution is modeled after a similar step taken by the Canadian Bar Association in 2010; he said the wording is still being refined but could be ready for a vote of approval in time for the group's national convention this

August.

SB151 has attracted eight co-sponsors and the Senate Health and Social Services Committee will start discussion Monday.