

**SB**

**151**

<TARGET><BILL>SB 151</BILL><SUBJECT>SB  
151</SUBJECT><COMM>HJUD27</COMM></TARGET>

# 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

(3 cmts. on H  
" S  
—)

## **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.

**CS FOR SENATE BILL NO. 151(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/23/12

Referred: Finance

Sponsor(s): SENATORS MEYER, Hoffman, Dyson, Menard, Paskvan, Egan, Davis, Ellis, McGuire

**A BILL**

**FOR AN ACT ENTITLED**

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

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 12.55.155(d) is amended to read:

5 (d) The following factors shall be considered by the sentencing court if proven  
6 in accordance with this section, and may allow imposition of a sentence below the  
7 presumptive range set out in AS 12.55.125:

8 (1) the offense was principally accomplished by another person, and  
9 the defendant manifested extreme caution or sincere concern for the safety or well-  
10 being of the victim;

11 (2) the defendant, although an accomplice, played only a minor role in  
12 the commission of the offense;

13 (3) the defendant committed the offense under some degree of duress,  
14 coercion, threat, or compulsion insufficient to constitute a complete defense, but that

1 significantly affected the defendant's conduct;

2 (4) the conduct of a youthful defendant was substantially influenced by  
3 another person more mature than the defendant;

4 (5) the conduct of an aged defendant was substantially a product of  
5 physical or mental infirmities resulting from the defendant's age;

6 (6) in a conviction for assault under AS 11.41.200 - 11.41.220, the  
7 defendant acted with serious provocation from the victim;

8 (7) except in the case of a crime defined by AS 11.41.410 - 11.41.470,  
9 the victim provoked the crime to a significant degree;

10 (8) before the defendant knew that the criminal conduct had been  
11 discovered, the defendant fully compensated or made a good faith effort to fully  
12 compensate the victim of the defendant's criminal conduct for any damage or injury  
13 sustained;

14 (9) the conduct constituting the offense was among the least serious  
15 conduct included in the definition of the offense;

16 (10) the defendant was motivated to commit the offense solely by an  
17 overwhelming compulsion to provide for emergency necessities for the defendant's  
18 immediate family;

19 (11) after commission of the offense for which the defendant is being  
20 sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other  
21 persons who committed an offense;

22 (12) the facts surrounding the commission of the offense and any  
23 previous offenses by the defendant establish that the harm caused by the defendant's  
24 conduct is consistently minor and inconsistent with the imposition of a substantial  
25 period of imprisonment;

26 (13) the defendant is convicted of an offense specified in AS 11.71 and  
27 the offense involved small quantities of a controlled substance;

28 (14) the defendant is convicted of an offense specified in AS 11.71 and  
29 the offense involved the distribution of a controlled substance, other than a schedule  
30 IA controlled substance, to a personal acquaintance who is 19 years of age or older for  
31 no profit;

1 (15) the defendant is convicted of an offense specified in AS 11.71 and  
2 the offense involved the possession of a small amount of a controlled substance for  
3 personal use in the defendant's home;

4 (16) in a conviction for assault or attempted assault or for homicide or  
5 attempted homicide, the defendant acted in response to domestic violence perpetrated  
6 by the victim against the defendant and the domestic violence consisted of aggravated  
7 or repeated instances of assaultive behavior;

8 (17) except in the case of an offense defined by AS 11.41 or  
9 AS 11.46.400, the defendant has been convicted of a class B or C felony, and, at the  
10 time of sentencing, has successfully completed a court-ordered treatment program as  
11 defined in AS 28.35.028 that was begun after the offense was committed;

12 (18) except in the case of an offense defined under AS 11.41 or  
13 AS 11.46.400 or a defendant who has previously been convicted of a felony, the  
14 defendant committed the offense while suffering from a mental disease or defect as  
15 defined in AS 12.47.130 that was insufficient to constitute a complete defense but that  
16 significantly affected the defendant's conduct;

17 (19) the defendant is convicted of an offense under AS 11.71, and the  
18 defendant sought medical assistance for another person who was experiencing a drug  
19 overdose contemporaneously with the commission of the offense;

*not;  
arson is  
crimes  
against  
a person.*

20 (20) except in the case of an offense defined under AS 11.41 or  
21 AS 11.46.400, the defendant committed the offense while suffering from a  
22 condition diagnosed as a fetal alcohol spectrum disorder, the fetal alcohol  
23 spectrum disorder substantially impaired the defendant's judgment, behavior,  
24 capacity to recognize reality, or ability to cope with the ordinary demands of life,  
25 and the fetal alcohol spectrum disorder, though insufficient to constitute a  
26 complete defense, significantly affected the defendant's conduct; in this  
27 paragraph, "fetal alcohol spectrum disorder" means a condition of impaired  
28 brain function in the range of permanent birth defects caused by maternal  
29 consumption of alcohol during pregnancy.

*on  
the  
record;*

*may -  
in the case ...  
sentencing*

# Alaska State Legislature



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(907) 269-0199

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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.

# 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 realting 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**

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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)**

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.

# 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>

<b>FUND SOURCE</b>		(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>POSITIONS</b>							
Full-time							
Part-time							
Temporary							

<b>CHANGE IN REVENUES</b>							

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

# COMMITTEE COPY

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(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>

**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

# COMMITTEE COPY

**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 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				
			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**

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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)

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

# COMMITTEE COPY

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.



**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 , 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:

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."

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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.

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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.

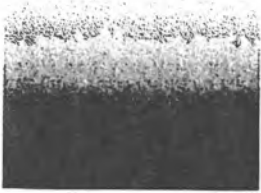
We thank you for your work on behalf of all Alaskans.

Sincerely,

J. Kate Burkhart  
Executive Director

---

<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).



**ANCHORAGE**

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Suite 103  
Anchorage, AK 99503  
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FAX (907) 565-1000  
1-800-478-1234  
www.dlcak.org

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.

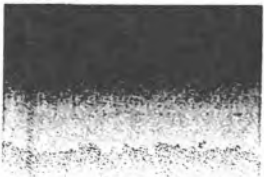
Thank you for your efforts in correcting this manifest injustice.

Sincerely,

DISABILITY LAW CENTER OF ALASKA

David C. Fleurant  
Executive Director

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?*<sup>2</sup> 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.*

## Melanie Lesh

---

**From:** House Judiciary  
**Sent:** Friday, April 06, 2012 10:16 AM  
**To:** Allen, Richard K (DOA); 'Anne Carpeneti'; 'Brandy Cote'; Cori M. Badgley; Crystaline Jones; 'Deb Behr'; 'Douglas Wooliver'; Jackie Schulz; James Waldo; 'Jane Pierson'; 'Jeffrey Mittman'; Jenna Crouse; Jim Pound; Juli Lucky; 'Kelly A. Howell (DPS)'; LIO Juneau Group; Londi Ensor; Mike Coumbe; Mike Sica; Miles Brookes; Nancy Meade; Paulyn Swanson; 'Quinlan Steiner'; Rep. Bob Lynn; Rep. Lance Pruitt; Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Steve Thompson; Rep. Wes Keller; 'Shalon Szymanski-Harrington'; Shannon Ewing; 'Sonia Christensen'; Susan Rael; Thomas Studler  
**Cc:** Christine Marasigan  
**Subject:** House Judiciary Meeting Update for Today

HJUD Update for today:

There are new documents for the Senate companion bill on the meeting documents link of BASIS for today's hearing.

JUDICIARY	STANDING COMMITTEE *	<u>Meeting Documents</u>
Apr 06 Friday 1:00 PM	Confirmation Hearing: <Pending Referral – still no referral> Board of Governors of the Alaska Bar	CAPITOL 120 TELECONFERENCED
<u>HB 367</u>	FETAL ALCOHOL SPEC. DISORDER AS MITIGATOR	TELECONFERENCED
<u>SB 151</u>	FETAL ALCOHOL SPEC. DISORDER AS MITIGATOR <Companion Bill to HB 367>	
	Bills Previously Heard/Scheduled:	TELECONFERENCED
=+ <u>HB 269</u>	COMMON INTEREST COMMUNITIES	TELECONFERENCED

*Melanie*

Melanie Lesh  
House Judiciary Committee Aide  
Rep. Carl Gatto, Chair  
State Capitol, Room 118  
Juneau, Alaska 99801  
(907)465-4990  
[Melanie.Lesh@legis.state.ak.us](mailto:Melanie.Lesh@legis.state.ak.us)

*House Judiciary ~ April 6th, 2012*

(GAVEL IN) Let's call this meeting of the House Judiciary Committee to order.

It is 1:05 p.m. Wednesday April 6<sup>th</sup>, 2012.

Present are:

Representative Lynn

Representative Keller

Representative Pruitt

Representative Gruenberg

Representative Holmes

Representative Hawker (was previously excused)

Representative Gatto (was previously excused)

And Myself Representative Thompson

First things first: Housekeeping: Please disable your electronic devices, if they're left on - even on vibrate - they may interfere with the recording system. Thank you.

We have one new bill plus one previously heard in this order:

HB 269 COMMON INTEREST COMMUNITIES

HB 367's Senate Companion bill:

SB 151 FETAL ALCOHOL SPEC. DISORDER AS MITIGATOR

Our first bill today is: HB 269 COMMON INTEREST COMMUNITIES

"An Act relating to the amendment of a declaration that creates a common interest community."

Here to continue the presentation of the bill is James Waldo staff to Rep. Lindsey Holmes.

Mr. Waldo, please put your name on the record and describe the changes in the draft (JUD) CS for HB 269.

#### DRAFT CS DISCUSSION

---

Thank you Mr. Waldo.

Are there any further questions for Mr. Waldo or the sponsor?

Public comment was closed on Wednesday.

Can I have a motion to adopt the draft CS 27-LS1125/M?

That brings the new draft CS HB 269 (JUD), back before the committee for discussion. Are there any further questions for the sponsor?

Can I have a motion to move HB 269 (27-LS1125/M), with individual recommendations, and with attached fiscal note from committee?

*Rep. Thompson: I move to report HB 269 (27-LS1125/M), with committee recommendations, and with attached fiscal note from committee.*

Any objection, have Susan call the roll. If not, HB 269 moves from committee.

.....

Next up, we will hear the Senate Companion bill, SB 151, in place of our previously scheduled bill:

HB 367 FETAL ALCOHOL SPEC. DISORDER AS MITIGATOR

SB 151 FETAL ALCOHOL SPEC. DISORDER AS MITIGATOR

<Companion Bill to HB 367>

CS FOR SENATE BILL NO. 151(JUD)

"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."

Here to present the bill is Senator Kevin Meyer and/or Christine Maragasin staff to Senator Meyer.

Senator Meyer, please come to the table, put your name on the record and provide us with an overview of SB 151.

**BILL PRESENTATION**

---

Thank you Senator Meyer.

Is there anyone online or in the room who would like to provide public testimony?

Public testimony:

- Judge Michael Jeffery, Superior Court Judge from Barrow
- David Fleurant, Disability Law Center
- Trish Smith, Wellness Court

*movie*  
Nuts

*max*

*Blakely case  
US Supreme Ct.  
for aggravators  
but not mitigat.*

For questions there are:

- Nancy Meade, Court System
- Liaison from Corrections
- Dept. of Law (*Rick Srodney*)

*Burden of proof  
high - clear and  
convincing  
how defend  
do that?*

\_\_\_\_\_ please put your name and affiliation on the record and begin your testimony.

Does the committee have any questions for \_\_\_\_\_.

Is there anyone else who would like to provide public testimony on SB 151?

Public comment is now closed.

*% of cases  
where the  
state/  
HSS  
would testify.*

That brings the bill, CS for SB 151 (JUD) (24-LS 1132/U) back before the committee for discussion. Are there any further questions for the sponsor?

May I have a motion to move CS for SB 151 (JUD) (24-LS 1132/U) ,with individual recommendations, and with attached fiscal note from committee?

*Rep. Thompson: I move to report CS for SB 151 (JUD) (24-LS 1132/U), with committee recommendations, and with attached fiscal note from committee.*

Any objection, have Susan call the roll. If not, SB 151 moves from committee.

**Having concluded our scheduled business for today...** At \_\_\_\_\_ p.m., I adjourn today's meeting of the House Judiciary Committee (GAVEL OUT).