

SB

151

<TARGET><BILL>SB 151</BILL><SUBJECT>SB
151</SUBJECT><COMM>SHSS27</COMM></TARGET>

FISCAL NOTE

STATE OF ALASKA cost # codes
 2012 LEGISLATIVE SESSION

Bill Version SB 151
 Fiscal Note Number _____
 Publish Date _____

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
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							
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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

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB 151

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 cost # codes
 2012 LEGISLATIVE SESSION

Bill Version SB151
 Fiscal Note Number _____
 Publish Date _____

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					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

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)

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

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB151

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 SB151-ACS-TRC-3-02-1
 Fiscal Note Number _____
 Publish Date _____

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
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

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

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. SB151-ACS-TRC-3-02-12

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 SB 151
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) SB151-LAW-CRIM-03-02-12 Dept. Affected Law
Title An Act realting to mitigation at sentencing in a criminal case for a defendant found by the court to have been... Appropriation Criminal
Allocation Criminal Justice Litigation
Sponsor Senator Meyer
Requester (S) Health and Social Services 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					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	***	***	***	***	***	***	***	***

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)							
TOTAL		***	***	***	***	***	***	***

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)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager
Division Administrative Services
Approved by Michael C. Geraghty, Attorney General
Department of Law

Phone 465-5427
Date/Time 3/2/12 5:00 PM
Date 3/2/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB 151

Analysis

SB 151 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), arson in the first degree (AS 11.46.400), or if the person being sentenced had previously been convicted of a felony.

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.



Governor's Council on Disabilities & Special Education



1 ROLE

1. Role of the Council

- State Council on Developmental Disabilities
- Special Education Advisory Panel
- Interagency Coordinating Council for Infants and Toddlers with Disabilities
- Governing Board of the Special Education Service Agency
- Beneficiary Board for the Alaska Mental Health Trust Authority

2 MISSION

2. Mission

Creating change that improves the lives of Alaskans with disabilities

3 THE COUNCIL IN ACTION

3. Making Sustainable Change — An Example of the Council in Action

The Council manages the Alaska Works Initiative, a strategic effort funded by the Centers for Medicare & Medicaid Services to improve Medicaid programs and employment infrastructures. The Council works with state agencies, business & industry, service providers and the university to improve employment outcomes for Alaskans with severe disabilities. The Council also receives funding from the Alaska Mental Health Trust Authority to manage the microenterprise grant program, which helps Trust beneficiaries start their own businesses. In addition, the Council received funding from the Department of Education & Early Development to start a Project SEARCH program, which provides internship opportunities to youth with intellectual or developmental disabilities in their last year of school at a host business.

- From 2009 to 2010, there was a **5.6% increase** in the number of Alaskans on social security who worked (Note: nationally, there was an average **4.8% decrease** in the number of people on Social Security who worked).

4 MOVING TOWARDS EMPLOYMENT

5 OUTCOMES

6 PRIORITIES

3. Continued ... Sustainable Change

- In fiscal year 11, the number of people with developmental disabilities who were employed increased by 10.6% (358 to 396).
- In fiscal year 11, 13 Trust beneficiaries started their own businesses.
- Three Project SEARCH sites were established at Mat-Su Regional Medical Center, Providence Hospital and Fairbanks Memorial Hospital; other partners include the Division of Vocational Rehabilitation, local school districts and disability service providers.

4. Moving toward Employment: Stories of people who have benefited from the work of the Council

- Katie, age 21, was the first student to be hired by one of the host hospitals participating in Project SEARCH. Katie was in the program at Mat-su Regional Medical Center (MRMC) only five months before she was hired to work as a technician in Environmental Services. She works 20-25 hours per week, is a union member and makes over \$13 an hour. One of the goals of Project SEARCH is to change the culture of a workplace into one that accepts disability in the workplace. At MRMC, Katie and the other Project SEARCH students have certainly accomplished this.
- Becca is starting Becca's Alpacas in the Mat-Su valley, thanks to start-up funding from the microenterprise grant program. Her business will primarily raise, breed, and sell alpacas. She may also collect and sell alpaca waste as fertilizer for local gardeners, and shear alpaca fleece and have it made into yarn to sell locally and/or online.

5. Other Outcomes for Alaskans with Intellectual or Developmental Disabilities in Fiscal Year 2011

As a result of the Council's work with 119 entities participating in partnerships or coalitions, the following number of people benefited:

- 627 people have needed health services.
- 3,019 people received formal or informal supports.
- 3,297 people have transportation for work, medical and personal needs.
- 81 individuals got and kept employment consistent with their interests and abilities.
- 2,301 students have the education and support they need to reach their educational goals.
- 1,821 infants and young children have services and supports needed to reach developmental goals.
- 384 individuals have homes of their choice.
- 928 people have information, skills, opportunities and supports to live independently, productively and included in all aspects of community life.

6. Fiscal Year 2012-13 Priorities

- Ensuring the continuation of complex behavior collaborative consultation and training services to meet the needs of individuals with cognitive disabilities and challenging behaviors
- Implementing autism insurance reform
- Changing the funding formula for the Special Education Service Agency (SESA) and removing its sunset clause in state statute
- Increasing the employment and self-employment rate of people with disabilities
- Improving services and supports to women with disabilities who are victims of sexual or physical assault
- Increasing access to services for people residing in rural and remote areas of the state

Bill would let judges consider fetal alcohol spectrum disorders

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

By AUSTIN BAIRD
Associated Press

Published: March 3rd, 2012 09:43 PM
Last Modified: March 3rd, 2012 11:54 PM

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.

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Bill would let judges consider fetal alcohol spectrum disorders

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Kevin Meyer

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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.

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"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,¹ 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

¹ *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.

Alaska FASD Partnership

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and individuals
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 - 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 2, 2012

Senator Kevin Meyer
Alaska State Legislature
Juneau, Alaska 99801

Dear Senator Meyer,

It is with great pleasure that the Alaska FASD Partnership supports the proposed committee substitute for SB 151 to include FASD, Traumatic and Acquired Brain Injury, and Intellectual Disability as "impaired brain function" in the definition of "mental disease or defect."

The Partnership also supports the bill's intent to include FASD and traumatic and acquired brain injury as mitigating factors related to sentencing.

Individuals diagnosed with a fetal alcohol spectrum disorder (FASD) or a traumatic or acquired brain injury (T/ABI) are disproportionately represented within Alaska's criminal justice system. However, 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 or T/ABI. 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 or T/ABI 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).

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, T/ABI 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 CSSB 151 further 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" will promote less crime, reduced public costs, and greater rehabilitative effect on offenders. The research behind "Smart Justice" suggests that spending money on rehabilitating offenders is more cost effective than paying the high costs associated incarceration and recidivism, including public safety, courts, prisons, alcoholism and drug abuse programs.

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, All-Alaska Pediatric Partnership, Anchorage Coordinated Resources Project, Anchorage School District (Anchorage), 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, Kineticions, 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, 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.*

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."

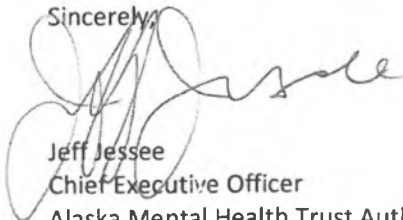
This legislation is an important step in the state's recognition that people with disabilities are better served with supports and services, rather than incarceration without supports.

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."¹

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

¹ Alaska Criminal Justice Assessment Commission (2000). *Final Report*. Retrieved October 12, 2010 from www.hss.ajc.state.ak.us/reports/CJAC_Final_2004.pdf, at p.71.



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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

A handwritten signature in black ink, appearing to read "David C. Fleurant".

David C. Fleurant
Executive Director

MEMBER OF THE
NATIONAL
DISABILITY
RIGHTS
NETWORK



CS FOR SENATE BILL NO. 151(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to inclusion of fetal alcohol spectrum disorders, traumatic and
2 acquired brain injury, and intellectual disability in the definition of 'mental disease or
3 defect'; and relating to mitigation at sentencing in a criminal case for a defendant
4 suffering from a mental disease or defect."

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

6 * **Section 1.** AS 12.47.130(5) is amended to read:

7 (5) "mental disease or defect" means a disorder of thought or mood or
8 a condition of impaired brain function that substantially impairs judgment,
9 behavior, capacity to recognize reality, or ability to cope with the ordinary demands of
10 life; "mental disease or defect" also includes "intellectual disability" [MENTAL
11 RETARDATION], which means a significantly below average general intellectual
12 functioning that impairs a person's ability to adapt to or cope with the ordinary
13 demands of life; in this paragraph, "condition of impaired brain function" means
14 fetal alcohol spectrum disorders or traumatic and acquired brain injury;

1 * **Sec. 2.** AS 12.55.155(d) is amended to read:

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

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

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

10 (3) the defendant committed the offense under some degree of duress,
11 coercion, threat, or compulsion insufficient to constitute a complete defense, but that
12 significantly affected the defendant's conduct;

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

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

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

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

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

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

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

30 (11) after commission of the offense for which the defendant is being
31 sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other

1 persons who committed an offense;

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

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

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

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

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

19 (17) except in the case of an offense defined by AS 11.41 or AS
20 11.46.400, the defendant has been convicted of a class B or C felony, and, at the time
21 of sentencing, has successfully completed a court-ordered treatment program as
22 defined in AS 28.35.028 that was begun after the offense was committed;

23 (18) [EXCEPT IN THE CASE OF AN OFFENSE DEFINED UNDER
24 AS 11.41 OR AS 11.46.400 OR A DEFENDANT WHO HAS PREVIOUSLY BEEN
25 CONVICTED OF A FELONY,] the defendant committed the offense while suffering
26 from a mental disease or defect as defined in AS 12.47.130 that was insufficient to
27 constitute a complete defense but that significantly affected the defendant's conduct;

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