

ALASKA LEGISLATURE

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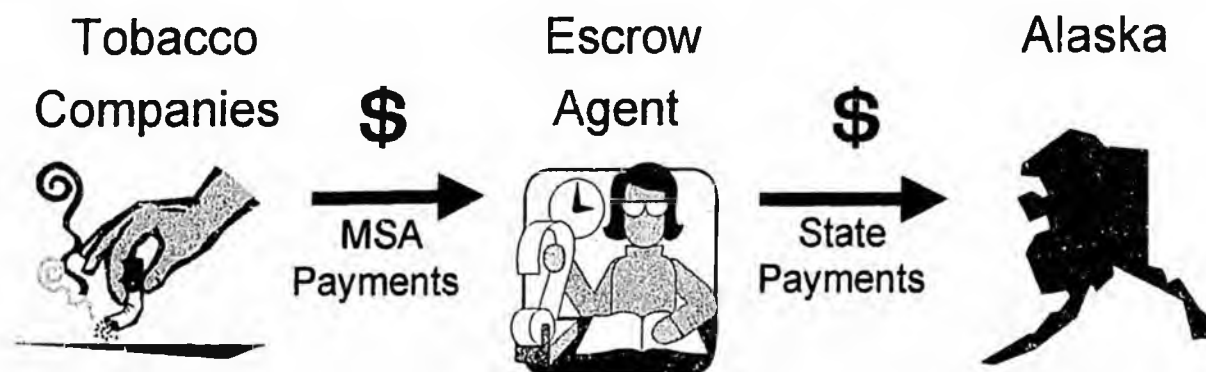
HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

Tobacco Master Settlement Agreement

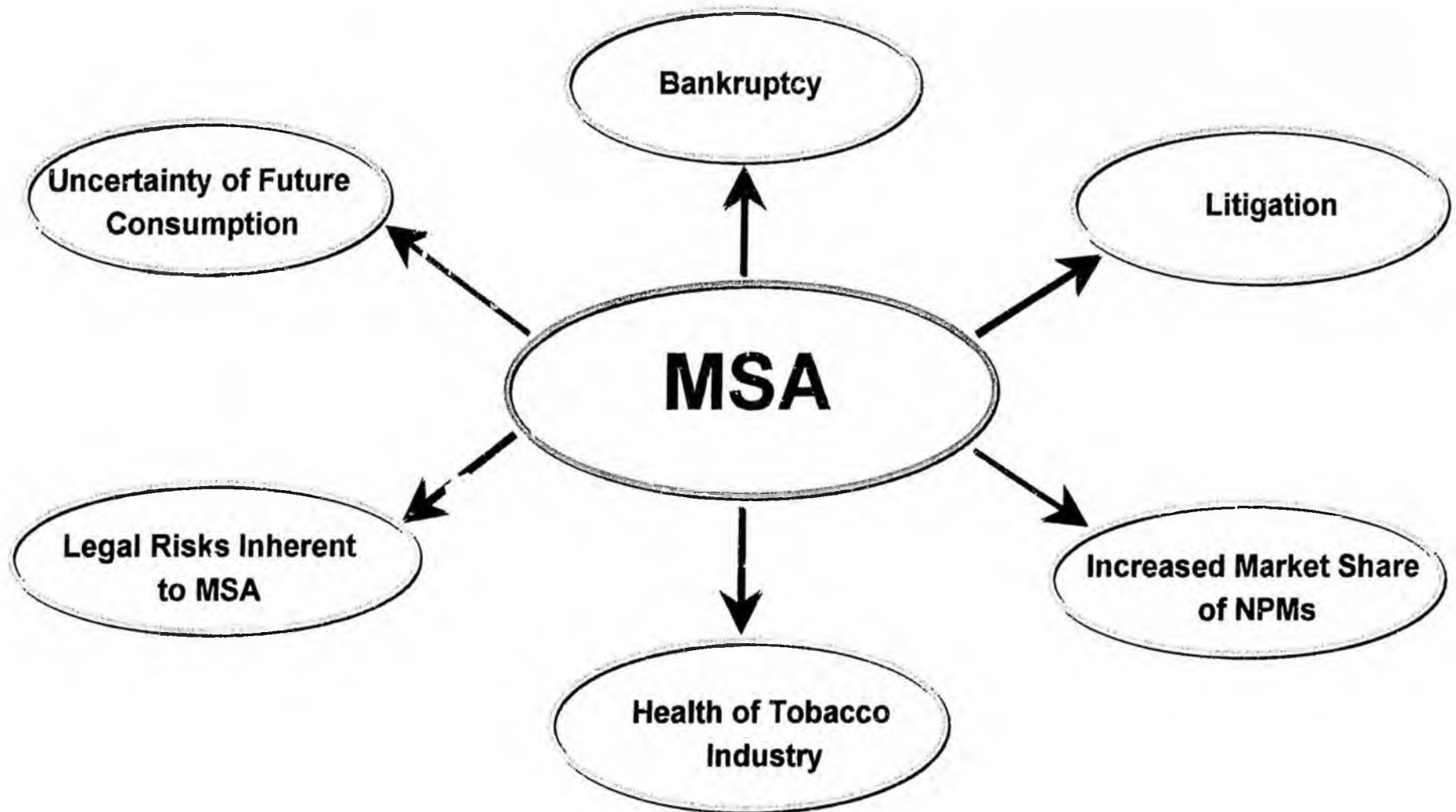
The Master Settlement Agreement ("MSA") is an agreement between settling tobacco companies and 46 states, including Alaska

The tobacco companies have agreed to make payments to the states in perpetuity, based on domestic cigarette consumption

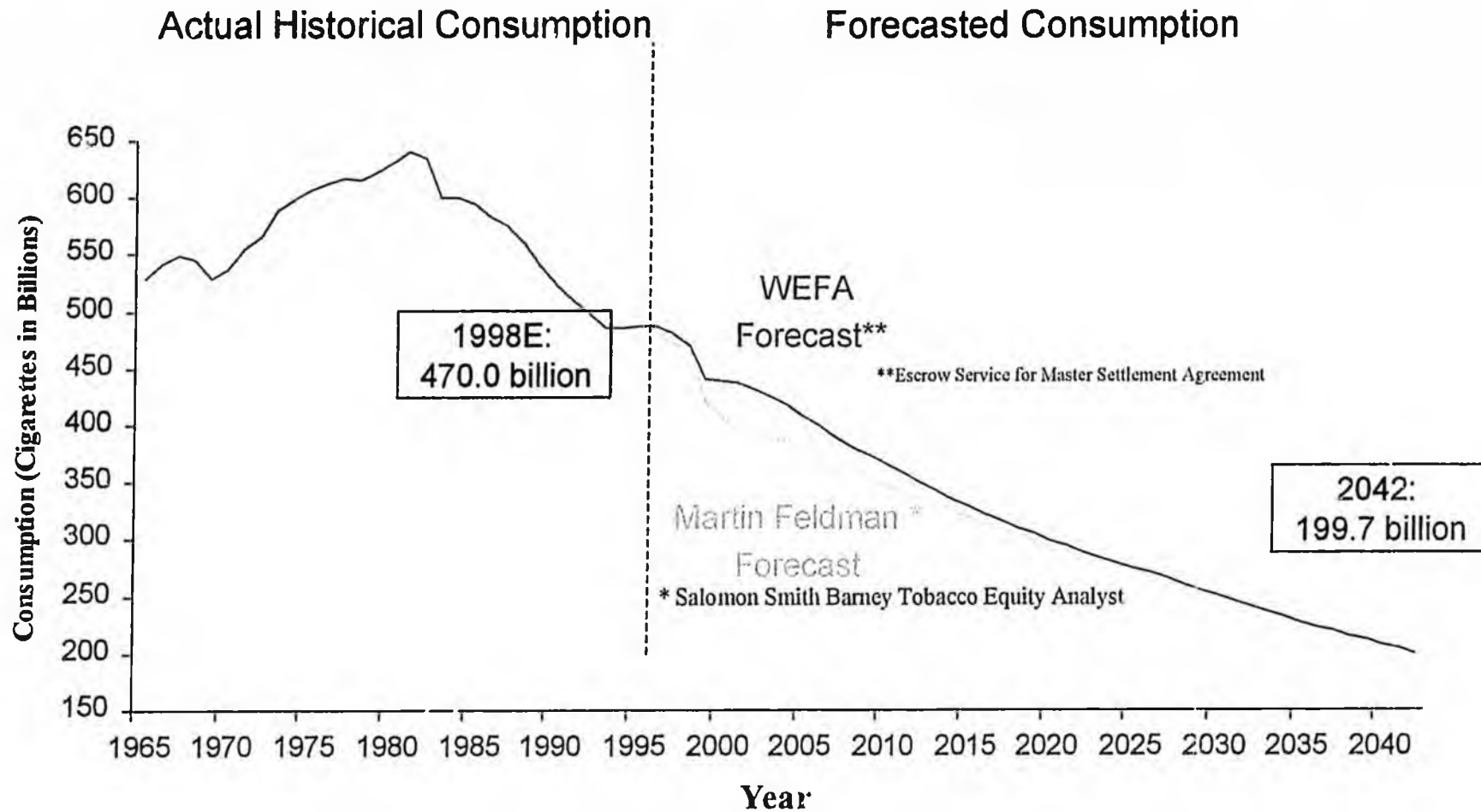
The State of Alaska is entitled to receive 0.3414187% of the base payments under the MSA



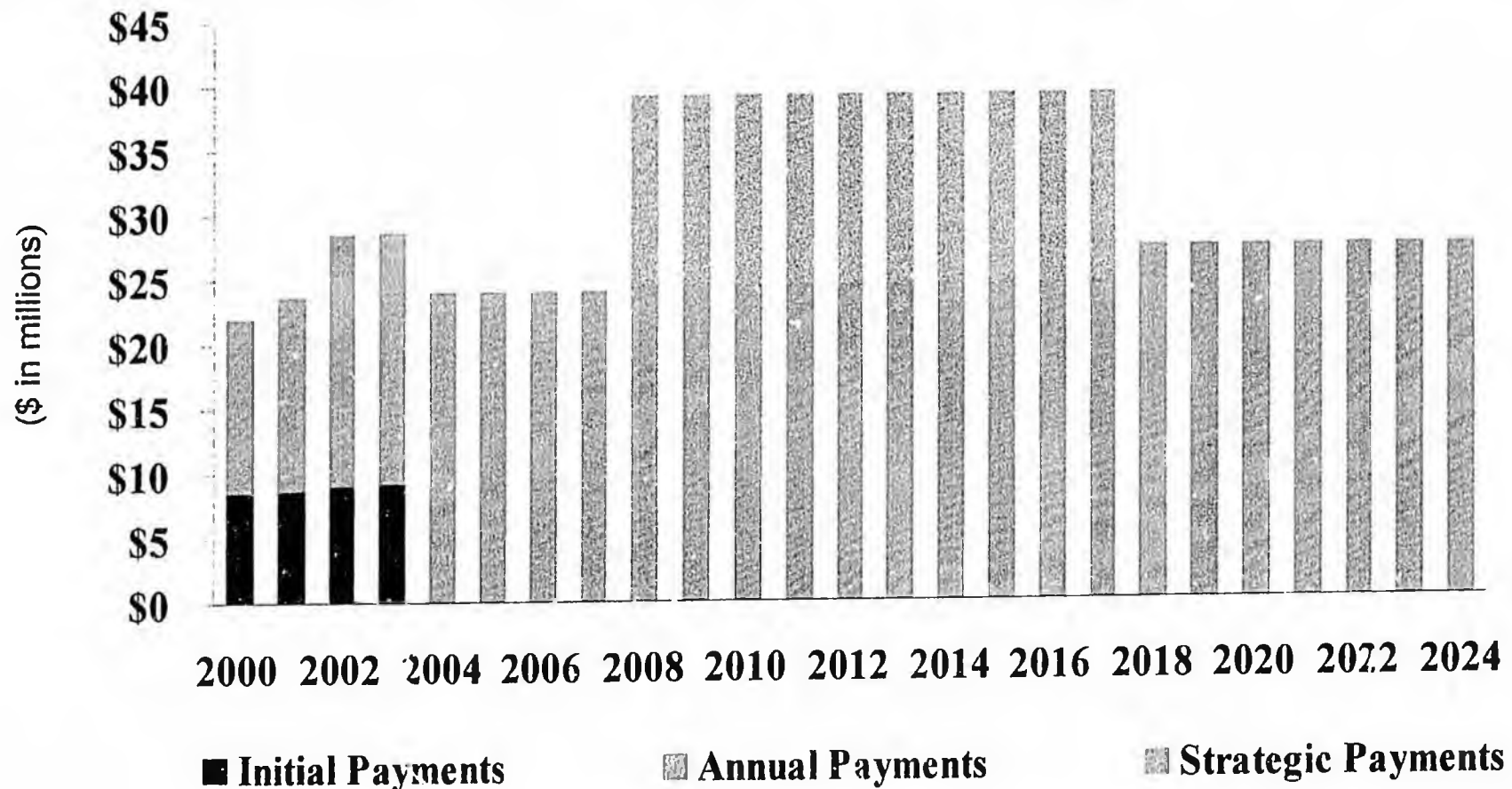
CREDIT CONCERNS REGARDING PAYMENTS UNDER THE MSA



WEFA Forecasts a 58% Decline in Total U.S. Consumption of Cigarettes Over the Next 43 Years



Unadjusted MSA Payments to Alaska



These payments do not include those made to the Previously Settling States

Why Securitize?

Comparative Look at State of Alaska Bond Results

	<u>TOBACCO SECURITIZATION</u>		<u>GENERAL OBLIGATION BOND</u>	
	FUTURE VALUE	PRESENT VALUE	FUTURE VALUE	PRESENT VALUE
A Value over Time	\$ 1,009,029,562	\$ 411,828,528	\$ 725,914,498	\$ 341,825,000
B Gross Proceeds	\$ 339,257,748	\$ 339,257,748	\$ 339,257,748	\$ 339,257,748
C Residual Tobacco Revenues after Debt Service	\$ 174,888,788	\$ 67,404,419	\$ -	\$ -
B+C TOTAL	\$ 514,146,536	\$ 406,662,166	\$ 339,257,748	\$ 339,257,748
A-(B+C) Difference between Revenue and Total Receipts	\$ 494,883,026		\$ 386,656,750	
A-(B+C) Estimated Cost of Issuance		\$ 5,166,362		\$ 2,567,252

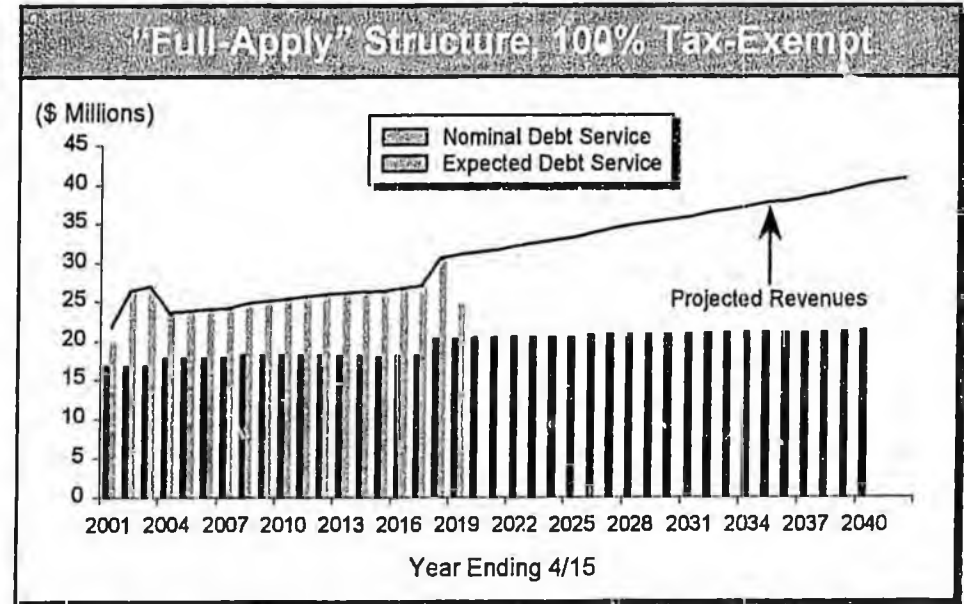
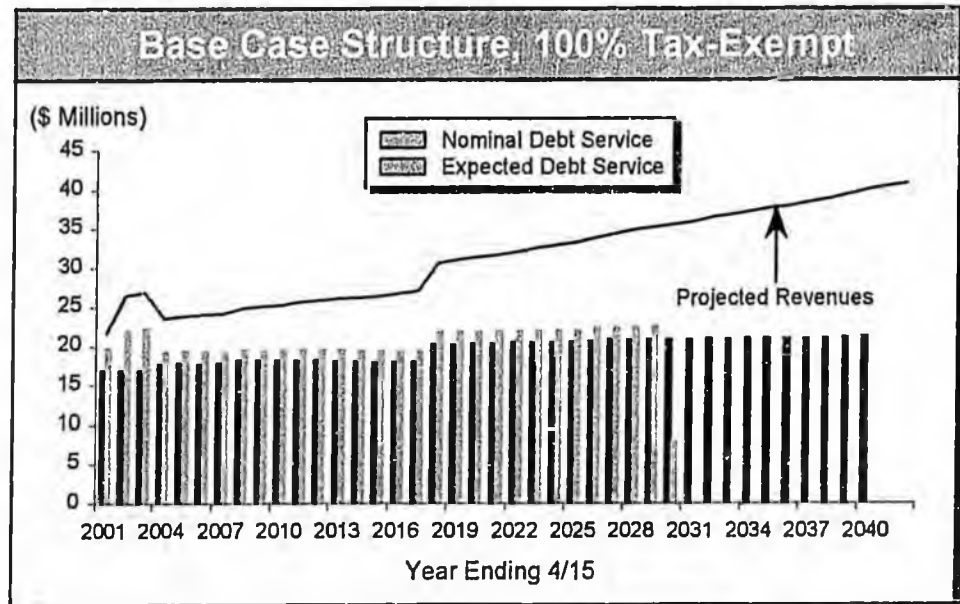
* Discounted at annualized arbitrage yield of 6.865% for the WEFA Base Case Scenario.

** Discounted at annualized arbitrage yield of 5.759% for the General Obligation Scenario.

*** Tax Revenues include only the amount of taxes required to pay debt service for \$339,261,313 of G.O. proceeds.

Comparison of Base Case and "Full Apply" Structures

Using the "Full Apply" structure reduces the cost of capital and average life of the bonds while increasing net proceeds.



Comparison Statistics				
	Net Proceeds	PV of Residual	True Interest Cost	Average Life
Base Case, 100% Tax-Exempt	\$244MM	\$156MM	6.484%	19.6 Years
"Full-Apply", 100% Tax-Exempt	\$260MM	\$168MM	6.097%	11.7 Years

CONS

- ❑ NO STATEWIDE VOTE
10 MIL CAP VOTE ALONGSIDE \$450m GOBond SPENDING PROPOSAL
WHAT HAPPENS IF GOBond PROPOSAL IS VOTED DOWN?
- ❑ HIGHER INTEREST RATES THAN GOBonds
- ❑ COMMITTING FUTURE TOBACCO REVENUES FOR DEBT SERVICE
- ❑ HIGHER COSTS OF ISSUANCE THAN OTHER FINANCING METHODS
- ❑ COMPLEX FINANCING REQUIRES ADDITIONAL STAFF/ HIGHER COSTS
- ❑ LIMITED UNIVERSE OF BUYERS WITH LIMITED APPETITE FOR TOBACCO BONDS
- ❑ POTENTIAL CRITICISM THAT MORE TOBACCO REVENUES ARE NOT SPENT ON HEALTH ISSUES
- ❑ MORE BONDS ARE ISSUED IN ORDER TO FUND CAPITALIZED INTEREST AND RESERVE FUND... NOT REQUIRED FOR GOBonds

PROS

- NO STATEWIDE VOTE
- PRESERVES STATE GOBOND CAPACITY
- FLEXIBLE AMORTIZATION ALLOWS STATE TO PAY DEBT ON AN ACCELERATED BASIS WITH EXCESS TOBACCO REVENUES
- FLEXIBILITY IN CHOICE OF TYPES OF PROJECTS
- FINANCING COMPLETED FAIRLY QUICKLY (2 - 4 MONTHS OF FINAL APPROVAL)
- STATE KEEPS UPSIDE OF RESIDUAL TOBACCO REVENUES
- EARLIER FUNDING OF PROJECTS vs PAY-AS-YOU-GO FUNDING METHOD
- REDUCES RISK OF NONPAYMENT IN BANKRUPTCY
- ALASKA RECEIVES RESIDUAL SETTLEMENT REVENUES AFTER DEBT SERVICE
- INSULATES GF FROM UNCERTAINTY OF TOBACCO REVENUE STREAM
 - REDUCTIONS IN CIGARETTE SALES
 - BANKRUPTCY OF ANY OR ALL OF PARTICIPATING MANUFACTURERS (PMs)
 - INVALIDATION OF MSA
 - INDIVIDUAL LAWSUITS AGAINST INDUSTRY

HOUSE BILL 281
Tobacco Securitization Bond Package + AHFC GOBonds

<u>ED</u>	<u>Project Name</u>	<u>Project Cost State Share</u>	<u>Urban</u>	<u>Rural</u>
	UNIVERSITY			
3-4	University of Alaska - Southeast			
	Def Maint/Ren&Rep/Code Compliance	\$ 1,687,854		
	UAS Classroom Addition	\$ 7,600,000	\$ 9,287,854	
7-9	Avtec - Seward			
	Student Housing	\$ 4,200,000	\$ 4,200,000	
10-25	University of Alaska - Anchorage			
	Consortium Library	\$ 36,000,000		
	Def Maint/Ren&Rep/Code Compliance	\$ 4,220,000	\$ 40,220,000	
26-28	Mat-Su Ortner Building Replacement	\$ 685,000	\$ 685,000	
29-34	University of Alaska - Fairbanks			
	Def Maint/Ren&Rep/Code Compliance	\$ 25,199,054	\$ 25,199,054	
		\$ 79,591,908	\$ 79,591,908	\$ -
	PORTS and HARBORS			
	HARBORS TRANSFER PLAN			
1	Ketchikan	\$ 7,000,000	\$ 7,000,000	
2	Sitka	\$ 4,038,900		\$ 4,038,900
	Petersburg	\$ 3,300,000		\$ 3,300,000
3-4	Juneau Area Harbors			
	Auke Bay Harbor	\$ 492,325		
	Douglas Dock / Harbor	\$ 1,241,421		
	Taku Harbor	\$ 38,566	\$ 1,772,312	
5	Klawock	\$ 860,000		\$ 860,000
7-9	Seldovia	\$ 2,500,000		\$ 2,500,000
35	Whittier	\$ 1,835,600		
	Valdez	\$ 3,013,500		
	Cordova	\$ 4,337,800		\$ 9,186,900
38	Nome	\$ 1,000,000		\$ 1,000,000
	CORPS OF ENGINEERS MATCH			
99	Program Formulation	\$ 100,000		\$ 100,000
1	Ketchikan Harbor Study	\$ 200,000	\$ 200,000	
2	Wrangell	\$ 500,000		\$ 500,000
5	Kake	\$ 404,000		
	Metlakatla - Tamgass	\$ 850,000		\$ 1,254,000
6	Ouzinkie	\$ 1,300,000		\$ 1,300,000
7-9	Seward Harbor Expansion	\$ 2,925,000		\$ 2,925,000
40	Perryville Harbor Feasibility	\$ 102,100		\$ 102,100
		\$ 36,039,212	\$ 8,972,312	\$ 27,066,900
			24.90%	75.10%
	GRAND TOTAL	\$ 300,520,979	\$154,638,304	\$ 145,882,675
			51.46%	48.54%

HOUSE BILL 281
Tobacco Securitization Bond Package + AHFC GOBonds

SCHOOLS					
ED	Project Name	Proj Type	Project Cost State Share	Urban	Rural
2	Petersburg - Fascia/Soffit Repr/Replace	MM	\$ 112,960		\$ 112,960
3-4	Juneau Schools				
	Auke Bay Elem Roof Replacement	MM	\$ 653,842		
	Marie Drake Roof Replacement	MM	\$ 599,501		
	Harborview Elem Gym Roof Replacement	MM	\$ 106,604		
	High School Heating/Ventilation	MM	\$ 65,303		
	High School Aux Gym Floor Replacement	MM	\$ 109,386		
	Floyd Dryden Sch Gym Floor	MM	\$ 108,236		
	Gastineau Elem Heating Coil Replacement	MM	\$ 133,053		
	Floyd Dryden Middle School Renovation	MM	\$ 3,629,683	\$ 5,405,608	
5	Kake City - Kake Elementary School Addition	SC	\$ 2,237,460		\$ 2,237,460
6	Kodiak Island Schools				
	Peters Elem Addition	SC	\$ 756,000		
	Kodiak High School	MM	\$ 1,106,875	\$ 1,862,875	
7-9	Kenai/ Soldotna Schools				
	McNeil Elem Wastewater Plant	MM	\$ 225,300		
	Kenai Central High School Reinsulate Ext Walls	MM	\$ 367,648	\$ 592,948	
10-25	Anchorage Schools				
	Bartlett High School, Phase I	SC	\$ 3,500,000		
	Eagle River/ Chugiak High School	SC	\$ 14,563,500		
	East High School, Phase I	SC	\$ 7,295,400		
	Service High School, Phase I	SC	\$ 4,998,000		
	Wendler Middle School, Phase I	SC	\$ 4,231,500		
	Denali Elementary, Replacement	SC	\$ 8,211,000		
	District Wide Projects/ Major Maintenance	MM	\$ 11,730,600	\$ 54,530,000	
26-28	Mat-Su Schools				
	Mat-Su - Fire Alarm Sys - 5 schools	MM	\$ 620,648		
	Mat-Su - Colony High School Septic Sys	MM	\$ 159,416		
	Mat-Su - Fuel Tank Replace	MM	\$ 126,261		
	Mat-Su Fire Sprinklers & Piping (3)	MM	\$ 1,381,770		
	Mat-Su Boiler/Heater Replace (4 schools)	MM	\$ 221,051		
	Mat-Su Carpet Replace (6 schools)	MM	\$ 423,507	\$ 2,932,653	
29-34	Fairbanks- North Star Borough Schools				
	District Wide Projects/ Major Maintenance	MM	\$ 750,000	\$ 750,000	
36	Lwr Yukon - Pilot Station School Replacement	SC	\$ 17,654,003		\$ 17,654,003
37	Northwest Arctic Schools				
	Noorvik K-12 Improvements	SC	\$ 17,528,378		
	Ambler K-12 Improvements	SC	\$ 924,586		
	Kiana K-12 Improvements	SC	\$ 1,395,000		\$ 19,847,964
38	Kashunarniut - Chevak School Replacement	SC	\$ 28,272,551		
	Lwr Yukon - Kotlik School Replacement	SC	\$ 17,910,901		
	Elim School Phase III	SC	\$ 12,146,788		\$ 58,330,240
	Southwest Region Schools				
39	Manokotak School Replacement	SC	\$ 14,689,464		\$ 14,689,464
40	Pribilof Island - St. George School Remodel	MM	\$ 4,385,970		
	Lake & Penn - Pedro Bay Renov/Reloc/Reconst	MM	\$ 1,557,714		\$ 5,943,684
			\$ 194,889,859	\$ 66,074,084	\$ 118,815,775
				35.74%	64.26%

House FY01 Capital Budget + HB281 Tobacco Bond Package

ED	# of Voters	Cities/Areas	Capital Budget	HB281 Tobacco Bond Projects (C)	Capital + HB281	% by ED less 99	% of \$'s Spent	% of State's Voters	\$ Spent for each Voter
1	10,906	Ketchikan	\$ 16,822,572	\$ 7,200,000	\$ 24,022,572	2.6%	1.7%	2.4%	\$ 2,202.69
2	11,899	Sitka/Petersburg/ Wrangell	\$ 27,453,877	\$ 7,951,860	\$ 35,405,737	3.8%	2.6%	2.6%	\$ 2,975.52
3-4	24,286	Juneau Areawide	\$ 14,394,500	\$ 16,465,774	\$ 30,860,274	3.3%	2.2%	5.3%	\$ 1,270.70
5	10,449	Southeast Islands	\$ 19,250,257	\$ 4,351,460	\$ 23,601,717	2.5%	1.7%	2.3%	\$ 2,258.75
6	10,201	Kodiak	\$ 15,485,527	\$ 3,162,875	\$ 18,648,402	2.0%	1.4%	2.2%	\$ 1,828.10
7-9	35,264	Kenai Areawide	\$ 35,232,656	\$ 10,217,948	\$ 45,450,604	4.8%	3.3%	7.6%	\$ 1,288.87
10-25	194,397	Anchorage Areawide	\$ 164,937,965	\$ 94,750,000	\$ 259,687,965	27.6%	18.8%	42.0%	\$ 1,335.86
26-28	43,108	Mat-Su Areawide	\$ 77,458,533	\$ 3,617,653	\$ 81,076,186	8.6%	5.9%	9.3%	\$ 1,880.77
29-34	70,364	Fairbanks	\$ 70,457,250	\$ 25,949,054	\$ 96,406,304	10.2%	7.0%	15.2%	\$ 1,370.11
35	10,313	Prince William Snd/ Delta	\$ 23,884,285	\$ 9,186,900	\$ 33,071,185	3.5%	2.4%	2.2%	\$ 3,206.75
36	9,041	Rural Interior	\$ 41,229,981	\$ 17,654,003	\$ 58,883,984	6.3%	4.3%	2.0%	\$ 6,512.99
37	8,852	Arctic Slope/ Northwest	\$ 33,402,737	\$ 19,847,964	\$ 53,250,701	5.7%	3.9%	1.9%	\$ 6,015.67
38	8,161	Nome/Norton Sound	\$ 39,657,982	\$ 59,330,240	\$ 98,988,222	10.5%	7.2%	1.8%	\$ 12,129.42
39	9,077	Bristol Bay/Bethel	\$ 28,088,811	\$ 14,689,464	\$ 42,778,275	4.5%	3.1%	2.0%	\$ 4,712.82
40	6,105	Aleutians	\$ 32,529,317	\$ 6,045,784	\$ 38,575,101	4.1%	2.8%	1.3%	\$ 6,318.61
			\$ 640,286,250	\$ 300,420,979	\$ 940,707,229	100%			
99	462,423	Statewide	\$ 440,207,411	\$ 100,000	\$ 440,307,411		31.9%	100%	\$ 952.17
	462,423	Totals	\$ 1,080,493,661	\$ 300,520,979	\$ 1,381,014,640		100%		\$ 2,986.47

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April 27, 2000

Honorable John Torgerson, Co-Chair
Senate Finance Committee
State Capitol
Juneau, Alaska 99801

Dear Senator Torgerson:

You have asked for my opinion as to whether the mechanism contained in CS H.B No. 281 for the financing of public school facilities, facilities for the University of Alaska, and facilities for ports and harbors violates the dedicated funds provisions of Article IX, Section 7 of the Alaska Constitution. I conclude that it does not.

The Act authorizes the Commissioner of Revenue to sell the right to receive a portion of the future proceeds of the Tobacco settlement to Alaska Housing Finance Corporation (AHFC). AHFC would pay for the right to receive these proceeds by the issuance of revenue bonds secured exclusively by revenue of AHFC. The proceeds of the bonds issued by AHFC would then be appropriated to finance public school's construction, facilities for the University of Alaska, and facilities for port and harbor facilities.

Article IX, Section 7, of the Alaska Constitution provides that the proceeds of any state tax or license shall not be dedicated to any special purpose. Although this provision is limited by its express terms to the proceeds of a "state tax or license," and although the proceeds of the Tobacco settlement do not, strictly speaking, derive from the proceeds of any tax or license, in State v. Alex. 646 P.2d 203 (Alaska 1982) the Alaska Supreme Court held that the prohibition encompasses "the sources of any public revenues." Accordingly, upon receipt by the State, but not before, the "proceeds" of the settlement are subject to the Section 7 constitutional restriction.

However, the right to receive future unpaid installments under the settlement is to be distinguished from the proceeds upon their receipt by the State. Once money is received by the State, it is "public revenue" which may not be dedicated for a special purpose. On the other hand, the right to receive future installments is a property right owned by the State, the same as other real and personal property owned by the State. AS 01.10.060 (a) (10) provides that "property" includes real and personal property, and under 060 (a) (9) "personal property" includes money, goods, chattels, things in action, and evidences of debt. (emphasis added). At common law, the right to receive future installments under the settlement is a "thing in action," more commonly referred to as a

chose in action. (See 63A Am.Jur. 2d 25, 26) Therefore under state law the right to receive future proceeds under the Tobacco settlement is state personal property which may be sold as any other state property. Furthermore, the right to receive a future stream of payments under the settlement is personal property which has a present value, similar in value to the right to receive future payments from the sale of other state real and personal property. It is this property right of current value which the proposed legislation contemplates being sold to AHFC, and it is the proceeds of the sale which will be appropriated for a public purpose, not the stream of future payments. These features remove the proposed legislation from the dedicated fund prohibition in Article IX, Section 7.

The fact that the stream of payments will be received by AHFC does not cause them to run afoul of the dedicated funds prohibition. AHFC is a public corporation, independent of and separate from the State and has "a legal existence independent of and separate from the state." A.S. 18.56.020. See also Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966) and De Armond v. Alaska State Development Corp., 376 P.2d 717 (Alaska 1962.) It clearly may issue revenue bonds and, as contemplated, the provisions of article IX, Section 11 would not be violated because the only security for the bonds is AHFC revenues.

The provisions of Article IX, Section 9, will not be violated because no "state debt" would be incurred. Nor would the provisions of Article IX, Section 13, be violated because the proceeds of the sale to AHFC are being appropriated by the legislature.

In addition, I agree with the analysis of Wohlforth, Vassar, Johnson and Brecht contained in their April 19 and 25 opinions to AHFC on this subject.

Very truly yours,



Charles E. Cole

CEC:cvc

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April 26, 2000

Senator John Torgerson, Co-Chairperson
Senate Finance Committee
Alaska State Legislature
State Capitol Building - Room 516
Juneau, Alaska 99811

Dear Senator Torgerson:

You have asked that we give you our opinion as to whether the method set out in HB 281 for financing capital improvements violates the dedicated funds provision of the Alaska Constitution. That provision, contained in Article XI, Section 7, prohibits the dedication of the proceeds of State taxes or licences to "any special purpose."

The plan contemplated by HB 281 involves the sale to AHFC of the State's right to receive future proceeds from the tobacco settlement. AHFC will pay the State the present value of the future payments. AHFC will obtain the money to purchase the settlement proceeds through the issuance of revenue bonds, the sole security for which will be the proceeds to be received by AHFC from the tobacco settlement. The bond holders will bear all risks of default in payments under the tobacco settlement from such things as bankruptcy of the tobacco companies. The full

Senator John Torgerson
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faith and credit of the State will not be pledged to repay the bonds.

As an initial matter, we must advise you that to our knowledge nothing like this has ever come before the courts in Alaska or for that matter any other state. While there are a substantial number of Attorney General opinions that have attempted to interpret the dedicated funds provision, and a few Supreme Court cases, they have all involved very different kinds of situations. E.g., *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992) (restrictions on power of executive branch officials to seek appropriations from Marine Highway System Fund invalid); *State v. Alex*, 646 P.2d 203 (Alaska 1982) (commitment of future assessments authorized by statute to hatchery program violated dedicated funds provision.) The best that can be done here is to review what cases have come before the courts, derive from them the basic principles that will guide any constitutional analysis, and then apply them to the present circumstances. We have attempted to do that. In the course of preparing this opinion and in an effort to save time, we have also discussed the issues with the attorneys previously involved in the issue, including Tam Cook from the Legislative Affairs Legal Division, Jim Baldwin from the Department of Law and Ken Vasser, State bond counsel.

While nothing in this area is completely free of doubt, we are reasonably confident that this somewhat novel way of funding

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capital expenditures does not violate the dedicated funds provision of the Alaska Constitution. The often stated purpose of that provision, repeated in those few cases in which it has been applied, is to insure that the legislature retains full powers of appropriation over State revenues. It has nothing to do with the time at which those revenues are received -- only the legislature's authority to allocate them as it sees fit, free of previously imposed constraints. In this case, the State presently possesses an asset -- the right to receive a certain amount of money from the tobacco companies. As it presently stands, that money will be received over a lengthy period and certain amounts will be available each year for appropriations. What this legislation proposes to do is sell the right to those future proceeds for a fixed sum. The full amount will be deposited in the State Treasury and will be available now for legislative appropriation. In both cases -- whether the money is received from year to year over a long period of time or whether the money is received in a lump sum -- the legislature's power to appropriate the funds is undiminished.

Suppose, purely by way of illustration, that the State had made a different kind of settlement with the tobacco companies, whereby instead of paying the State over 30 years, the companies made a lump sum payment right now and that money was deposited in the general fund, giving the legislature an additional \$300

million in cash for appropriation purposes. There would be no issue about the dedication of those funds because all of the money would be subject to appropriation for any purpose. The situation does not change if the settlement is initially structured for payment over a long term and then the right to receive future settlement payments is sold to a third party for a lump sum payment. Nor is it changed by the fact that the legislature in this case has already decided what to do with the money the State will receive from the sale. The legislature is free to appropriate the money for any purpose, and that is the critical point for purposes of the prohibition against dedicated funds.

There is certainly a political precedent that is being established here and it is one that may raise legitimate issues of public policy. If the right to receive future tobacco settlement payments can be reduced to present value and sold, it may well be that any contract to which the State is a party can also be treated in this manner. Oil and gas leases, for example, are contracts that carry with them the right for the State to receive future royalty and lease payments. The potential exists for reducing oil royalty payments or lease payments to present value and selling the right to receive them for a single sum. But the key factor in any case is that even if the State did reduce these lease contracts to present value, and swell the

Treasury by billions of dollars, the legislature would have unlimited discretion to appropriate the money as it saw fit. The funds would not be dedicated in the constitutional sense.

It is true that by arranging to receive all of the tobacco settlement payments now, rather than over a period of years, the present legislature is diminishing the authority of future legislatures to appropriate money by diminishing their access to those settlement funds which have already been appropriated. However, this is no different from the appropriation of a cash bonus that is received in an oil lease sale. A cash bonus is, in essence, an up-front advance rental payment. The legislature sitting at the time the cash bonus is deposited in the general fund has complete authority to appropriate the entire amount. The same reasoning applies in this situation.

There are, of course, some limits on the State's ability to sell its rights to receive future revenues. We do not believe, for instance, that the State could sell the right to receive future taxes or licences, because in those areas it would be restricting the right of future legislatures to change those taxes and fees and would thereby delegate the taxing power from the legislative body. However, where the obligation to pay the State is purely contractual, there is nothing wrong with the legislature reducing the future contract payments to present

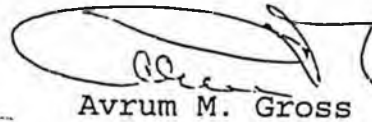
Senator John Torgerson
April 26, 2000
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value, selling by the right to receive the payments, and then appropriating the proceeds from the sale.

We would be more than happy to meet with you for further discussion, if you so desire.

Yours very truly,

GROSS & BURKE



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April 19, 2000

Daniel R. Fauske
Chief Executive Officer/Executive Director
Alaska Housing Finance Corporation
4300 Boniface Parkway
Anchorage, Alaska 99504

Re: Tobacco Settlement Legislation; Our File No. 3598.0001

Dear Mr. Fauske:

At your request, we have reviewed various drafts of legislation (the "Legislation") under consideration at the Second Session of the Twenty-First Alaska Legislature to authorize the Commissioner of Revenue to sell to AHFC the right to receive all or a part of the settlement proceeds (the "Assets") to be derived from a certain settlement among various tobacco companies and the State of Alaska along with other States (the "Settlement"). The Legislation contemplates that AHFC will pay approximately \$269,000,000 for the purchase of the Assets. AHFC will pay for the Assets using proceeds of bonds (the "Bonds") to be issued by AHFC. The proceeds will be made available to pay costs of various State projects; the application of those proceeds to payment of those costs is stated in the Legislation to be subject to appropriation.

You have asked whether we believe that any of the drafts we have reviewed create a dedicated fund problem under Article IX, Section 7, of the Alaska Constitution. We do not.

There is no provision of the Alaska Constitution which prevents the State from selling or otherwise disposing of its assets. The right to receive payments under the terms of the Settlement is an asset. AHFC is a public corporation of the State with a legal existence independent of and separate from the State and with sufficient legal power to acquire the Assets from the State. The sale of the Assets to AHFC separates those assets from the State's assets generally and frees them to be pledged to bondholders by AHFC. The dedicated fund prohibition does not apply to these assets or to the pledge by AHFC of its assets to bondholders.

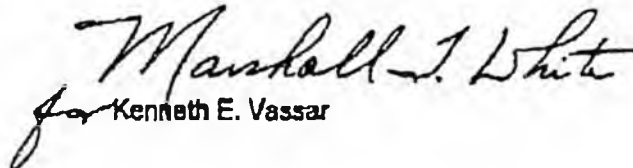
Daniel R. Fauske
Alaska Housing Finance Corporation
Re: Tobacco settlement legislation
April 19, 2000
Page 2

We would come to this conclusion absent any bonding issues. However, the anticipated bonding confirms the conclusion. The Alaska Constitution, at Article IX, Section 11, specifically contemplates that the State and public corporations of the State have the power to issue revenue bonds. Revenue bonds are bonds that are secured by a pledge of a particular flow of revenues. If the revenue flow cannot be pledged to the payment of the revenue bonds (which is the case if the pledge were considered to be a prohibited dedication of funds), then this section of the State constitution would be meaningless.

For these reasons, we conclude that the Legislation will not violate the Alaska Constitution's dedicated fund prohibition.

Sincerely,

WOHLFORTH, VASSAR,
JOHNSON & BRECHT


for Kenneth E. Vassar

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

April 19, 2000

SUBJECT: Revenue bonds secured by the right to receive revenue from the "Tobacco Settlement" (HB 322)

TO: Senator John Torgerson
Co-chair, Senate Finance Committee

FROM: Tamara Brandt Cook *TBC*
Director

As a follow up to my memorandum to you dated April 17, 2000 you have supplied me with a memorandum from Mr. Kenneth E. Vassar in which he outlines the reasons that the mechanism relied upon in HB 322, whereby the right to received state revenue from the "Tobacco Settlement" may be sold to AHFC, does not violate the state constitutional prohibition on dedicating funds. Mr. Vassar cites to no case or other legal authority in support of his position. You ask for my response.

I am glad that the issue has been reviewed and believe that it is quite possible that a court, if faced with the question, will agree with Mr. Vassar's determination. Nevertheless, I continue to be uneasy about the constitutionality of the approach used in the bill and would not be willing to say that a decision that HB 322 is constitutional is a foregone conclusion.

Mr. Vassar's logic, as I understand it is:

- (1) the right to receive payments from the "Tobacco Settlement" is a state asset;
- (2) the commissioner of revenue may be authorized by law to sell a state asset;
- (3) AHFC has an independent legal existence from that of the state;
- (4) the sale of the right to receive state assets to AHFC separates them from state assets before, presumably, they are ever received;
- (5) the prohibition against dedicating revenue only applies to state assets, therefore that prohibition does not apply to the "Tobacco Settlement" money because they will no longer be state assets.

The problem I see with this logic is that it depends upon the proposition that assets of AHFC are not state assets. Surely, that is not true. The state can by law dissolve AHFC at any time and take direct control of all its assets (although the state will also be liable to bondholders if it does). Recall the Supreme Court has specifically noted that unencumbered assets of AHFC may be appropriated as other state assets are. (Hickel v. Cowper, 874 P.2d 922 (Alaska, 1994) footnotes 11 and 23) Also, for purposes of considering the constitutionality of HB 322, revenue from the "Tobacco Settlement" is not legally different from money the

Senator John Torgerson

April 19, 2000

Page 2

state receives from any other source. Could this same approach be applied to permit the state to authorize the commissioner to sell the right to receive, say, state corporate income taxes or state mineral lease rentals? Would that not effectively place large, perhaps all, of the state's revenue altogether outside of the appropriation process? Does this not substantially erode or evade Art. IX, secs. 7, 8, and 13? Will a court actually stand for that?

TBC:lmb

00-032.lmb

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 25, 2000

Honorable John Torgerson, Co-Chair
Senate Finance Committee
State Capitol
Juneau, Alaska 99801

Re: Comments on opinion of legislative counsel
regarding right to receive revenue from the tobacco
settlement (HB 322)

Dear Senator Torgerson:

As requested, this letter responds to your request for comments on several points raised by legislative counsel regarding proposals to raise proceeds for the construction of various kinds of state capital improvements set out in HB 322.

You ask that we comment on the underscored statements attributed either to legislative counsel or bond counsel set out below:

1. Assets of the Alaska Housing Finance Corporation are state assets, to be appropriated as other state assets are appropriated.

We cannot agree with the legal conclusion that assets of AHFC are state assets simply because they can be appropriated by the legislature. AHFC was established by law as "a public corporation and government instrumentality within the Department of Revenue, but having a legal existence independent of and separate from the state." AS 18.56.020. The segregation of AHFC assets is intended to insulate the state treasury from the debts of AHFC.

AHFC is a creature of statute and can be made subject to the legislature's power of appropriation and other means of holding it close to the state. There are certain limits placed on the legislature's appropriation power once contracts are made with bondholders concerning the pledge of assets and revenues of the corporation. See Alaska Const. art. I, sec. 15 (impairment of contracts).

The surplus revenue of a public corporation is considered available for appropriation for purposes of calculations determining access to the Constitutional Budget Reserve Fund (Alaska Const. art XI, sec. 17(b)). However, corporate revenue is considered

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

☐ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

☐ P.O. BOX 110300-DIMOND COURT HOU.
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

available only to the extent that the legislature specifically appropriates it. Hickel v. Cowper, 874 P.2d 922, 931 n. 23.

For the foregoing reasons, we believe that there is a substantial difference between assets of AHFC and assets of the state. To the extent that revenues of AHFC are not appropriated, they remain the assets of AHFC and are not shown on the state's balance sheet.

2. "Tobacco settlement proceeds are not legally different from receipts from other sources."

Once tobacco settlement receipts are received by the state they are unrestricted revenue available for appropriation. For the current fiscal year, revenue from this source has been tagged as being derived from the settlement with tobacco manufacturers. Tagging does not affect the availability of this money for appropriation for any valid public purpose. This does not limit the state's power to convey a property interest in the right to receive future payments under the settlement agreement. According to AS 01.10.060 (a)(10), state law recognizes that personal property includes "things in action and evidences of debt." This means that a property right can be created representing the right to receive tobacco settlement proceeds. This property right has value, may be considered an asset of the general fund of the state, and can be sold to a willing buyer. See AS 37.10.071(b)(4) (commissioner of revenue may sell assets as a precommitment of future cash flows).

3. "Projects in a revenue bond are required by law to have a functional relationship, that is all projects benefiting from a bond issue are capital improvements for education facilities, or transportation facilities, but not both in a single legislative authorization."

We are not certain what is meant by "functional relationship." If this is an attempt to describe the single-subject requirement imposed in art. II, sec. 13 of the Alaska Constitution for all bills enacted into law, then we agree that each bill purporting to authorize the issuance of revenue bonds must be confined to a single theme and all provisions of the bill must be germane to that theme. There is no requirement that revenue bonds be limited to use for the construction of capital improvements.

4. "Revenue used in a revenue bond must be directly or indirectly related to the projects."

We assume the above statement is referring to a situation in which a revenue generating enterprise or activity is being financed through the issuance of revenue bonds. According to the Alaska Constitution, "the restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation." Alaska Const. art. IX, sec. 11. If bond proceeds are to be used to construct or

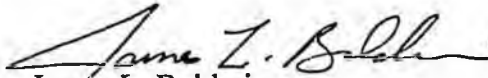
acquire a revenue generating enterprise, there would be some relationship between the improvements financed and the enterprise revenues used to repay bondholders.

In the case of the plan to issue revenue bonds secured by tobacco settlement proceeds, there is not an enterprise involved in the strict sense. The financing is conducted through a subsidiary of a public corporation with the only security being revenues of the corporation. The AHFC subsidiary will purchase sufficient revenue generating assets to provide the necessary security. The corporation will administer this asset as if it were a liquidating trust, in that it will use the tobacco settlement proceeds to which it becomes entitled to pay debt service on bonds and other costs of issuance and administration. It appears that the requirements of art. IX, sec. 11 of the Alaska Constitution are satisfied in that there is not a pledge of revenue other than revenue earned by the AHFC subsidiary which is a public corporation.

We hope that the foregoing comments will assist the committee in its deliberations and we remain available to testify on these matters.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB:jn

cc: Pat Pourchot, Legislative Director
Office of the Governor

Chrystal Smith, Legislative Contact
Deborah Behr, Assistant Attorney General
Department of Law

Hawkins, Delafield & Wood
67 Wall Street, New York 10005

Land Code (212) 820-9300
Fax (212) 820-9354

Hoster's Direct Dial Number

Telephone: 212-820-9362
Facsimile: 212-820-9354
e-mail address: hzucker@udw.com

April 25, 2000

Daniel Fauske
Chief Executive Officer/Executive Director
Alaska Housing Finance Corporation
4300 Boniface Parkway
Anchorage, AK 99504

Re: Proposed Tobacco Settlement Legislation

Dear Mr. Fauske:

We have reviewed certain proposed legislation (the "Legislation") being considered at the Second Session of the Twenty-First Alaska Legislature to authorize the Commissioner of Revenue to sell to Alaska Housing Finance Corporation (or a subsidiary thereof) the right to receive all or a part of the settlement proceeds to be derived from a certain settlement among various tobacco companies and the State of Alaska along with other States.

We have also reviewed a letter addressed to you from Kenneth Vassar of Wohlforth, Vassar, Johnson & Brecht dated April 19, 2000 and a letter addressed to the Honorable Eldon Mulder dated April 15, 2000 from James L. Baldwin, Assistant Attorney General on behalf of Bruce M. Botelho, Attorney General.

Based upon such reviews, I can advise you that we believe that the conclusion reached in such two letters that the proposed transaction does not violate the dedicated fund prohibition of the Alaska Constitution is correct.

Very truly yours,

Howard Zucker

SENATE FINANCE COMMITTEE

SIGN-IN

HB 287-APPROPRIATIONS: SCHOOLS/UNIV/HARBORS

NAME: Carl Rose Subject/Bill No: 281
Co./Dept./Title: AASB Phone: 6-1083
Address: Tunear Zip: 99801
Do you wish to testify? Yes No Respond To Questions

NAME: Bruce Johns Subject/Bill No: 281
Co./Dept./Title: ED Phone: 465-4678
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions



Teleconference Participants

TCN: 10845

Participant Lists

View List for

ALL

Testifiers

Go >>>

Close Window

Participants

Unidentified Testifiers: 0

Unidentified Observers: 0

SEWARD (SEW)

1

Name: Mr. Deven Mitchell
Address: available for questions
City /St /Zip:
Bill: HB 281: REVENUE BONDS: PUBLIC
SCHOOLS/UNIV/HARBORS

Phone:
Affiliation:
Type: Testifier

3

Name: Mr. Scott Janke
Address:
City /St /Zip:
Bill: HB 281: REVENUE BONDS: PUBLIC
SCHOOLS/UNIV/HARBORS

Phone:
Affiliation:
Type: Testifier

4

Name: Mr. Scott Janke
Address:
City /St /Zip:
Bill: HB 287: APPROPRIATIONS: SCHOOLS/UNIV./HARBORS

Phone:
Affiliation:
Type: Testifier

TELECONFERENCE

WE MAY BE JOINED BY:

DAN FAUSKE

STEVE CANTOR



Teleconference Participants

TCN: 10845

Participant Lists

View List for

ALL



Testifiers



Go >>>

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Participants

Unidentified Testifiers: 0

Unidentified Observers: 0

SEWARD (SEW)

1

Name: Mr. Deven Mitchell

Phone:

Address: available for questions

Affiliation:

City /St /Zip:

Type: Testifier

Bill: HB 281: REVENUE BONDS:PUBLIC
SCHOOLS/UNIV/HARBORS

SENATE FINANCE COMMITTEE

SIGN-IN

HB 281-REVENUE BONDS:PUBLIC SCHOOLS/UNIV/HARBORS

NAME: John Bitney Subject/Bill No: HB281
Co./Dept./Title: AHFC Phone: 330.8445
Address: 4300 Boniface Pkwy, Anchorage Zip: 99510
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

HB

288

HFIN

FILE

(11)

HOUSE COMMITTEE RE: HR

Date Referred to Committee: February 11, 2000

FURTHER REFERRALS:

Date of Committee Action: 2/23/00

The FINANCE Committee considered:

HB 288

HOUSE BILL NO. 288

CHILDREN WITNESSING DOMESTIC VIOLENCE

"An Act relating to the creation of an aggravating factor for the commission of domestic violence in the physical presence of a child."

recommends it be replaced with the following committee substitute CS HB 288 (Jud) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) DOC fiscal note(s) DDA

zero fiscal note(s) Court zero fiscal note(s) PS, LAW

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Gene Theriault</u> GENE THERIAULT			X	
<u>Eldon Mulder</u> ELDON MULDER	✓			
<u>Con Bunde</u> CON BUNDE			✓	
<u>Alan Austerman</u> ALAN AUSTERMAN			X	
<u>Ben Grussendorf</u> BEN GRUSSENDORF	X			
<u>Carl E. Moses</u> CARL E. MOSES	✓			
<u>Gary L. Davis</u> GARY L. DAVIS			X	
<u>Bill Williams</u> BILL WILLIAMS			X	
<u>Gail Phillips</u> GAIL PHILLIPS	✓			

CHAIR'S SIGNATURE Gene Theriault Eldon Mulder

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CS HB 288 (HFIN)

Revision Date/Time (Note if correction)	<u>Feb. 19, 2000</u>	Dept. Affected	<u>Department of Corrections</u>
Title	<u>An act relating to the creation of an aggravating factor for the commission of domestic violence</u>	BRU	<u>Administration and Operations</u>
Sponsor	<u>Representative Kott</u>	Component	<u>All</u>
Requester	<u>House Finance Committee</u>	Component No.	<u>#0694</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous		24.0	24.0	24.0	24.0	24.0
TOTAL OPERATING	0.0	24.0	24.0	24.0	24.0	24.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		24.0	24.0	24.0	24.0	24.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	24.0	24.0	24.0	24.0	24.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

See attached analysis.

Prepared by: <u>Candace Brower</u>	Phone: <u>465-3307</u>
Division: <u>Commissioner's Office</u>	Date/Time: <u>2/21/00 11:01 AM</u>
Approved by: <u>Commissioner Margaret M. Pugh</u> <i>Margaret M. Pugh</i>	Date: <u>2-21-00</u>
Agency: <u>Dept. of Corrections</u>	

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FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS**

**BILL NO. CS HB 288 (HFIN)
PAGE 2 of 2
DATE 2/21/00**

Assumptions:

1. The Department of Corrections' data show that in 1999 approximately 2365 prisoners were admitted to correctional facilities on domestic violence charges. Of those admissions, 268 were charged with felony assault and 2097 with misdemeanor assault. The Department of Law reports that they anticipate 75 convictions for felony domestic violence assault in calendar year 1999. This number is based on convictions over the past 3 years.
2. Assuming 65% of those incidents occurred in the physical presence of children, this bill would affect 49 cases.
3. Assuming that perhaps one-half of those 49 would be presumptive cases affected by aggravating factors, that impacts 25 defendants.
4. Assuming 20% of those would result in increased sentences of approximately three months, (60 days to serve) the final number actually being impacted would be approximately 5. Since these cases are felony domestic violence, some may be ineligible to furlough into the community because of their risk factor, so the cost of incarceration for those inmates would be at the institutional rate which is currently \$110.73 per day. Three out of the five will possibly be furloughed to a CRC at a cost of \$59.61 per day. The cost of care for the two inmates, serving 60 days each at a cost of \$110.73/day is \$13,288. The cost of care for the three inmates serving 60 days each at a cost of 59.61/day is \$10,730. The total fiscal impact to the Department of Corrections will be approximately \$24,000 per year beginning in FY 02, since the aggravator would not be served until after FY01.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 288

Revision Date: _____
 Title: "An Act relating to the creation of an aggravating factor for the commission of domestic violence in presence of child"
 Sponsor: Representative Kott
 Requestor: (H) HESS

Department Affected: Administration
 BRU: Legal and Advocacy Services
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2 003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ()	**	**	**	**	**	**

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Robert Poe 
 Agency: Department of Administration

Date: 1/31/00

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FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 288

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill would add another aggravating factor to the list of aggravating factors used in sentencing in felony cases. The aggravating factor would provide for increased sentences if the crime involved domestic violence and was committed in the presence of a child under 16. The child would have to be a member of the household at the time of the offense.

The Public Defender Agency will need to do more work in many of its felony sentencing cases if this aggravating factor is established. The prosecution will have to prove the aggravating factor by clear and convincing evidence. Where the facts are at issue, Public Defender attorneys will have to prepare for and conduct evidentiary hearings. If the aggravating factor is established, the court will need to hear argument concerning the weight to be given to the factor in the case before the court.

However, the amount of additional work is difficult to quantify. Although more work will need to be done, we do not anticipate more criminal cases being brought or sentencings conducted as a result of this bill. In addition, it is not possible to say how many felony sentencings this aggravating factor would affect. Because of these uncertainties, we are submitting an indeterminate fiscal note.

FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. HB 288

Revision Date 1/27/00 Dept. Affected Public Safety
 Title Children Witnessing Domestic Violence BRU CDVSA
 Component: CDVSA
 Sponsor Representative Kott
 Requester H. HES Component No. 521

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	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/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

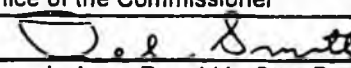
Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not impact our budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
 Division Office of the Commissioner Date/Time 1/28/00 12:00 PM
 Approved by:  Date 1-31-00
 Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. HB 288

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Law</u>	_____
Title <u>*... to the creation of an aggravating factor for ...</u>	BRU	<u>Criminal Division</u>
<u>... domestic violence in the physical presence of a child.*</u>	Component	<u>1st-4th Judicial Districts; Criminal Appeals/Special Litigation</u>
Sponsor <u>Representative Kott</u>		
Requester <u>House HESS Committee</u>	Component No.	<u>2198-99;2201;03;61;79</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 288 creates an aggravating factor for the commission of domestic violence in the physical presence of a child.

This new aggravator would apply to felony domestic violence cases. Felony domestic violence cases are already taken very seriously by the Department of Law's prosecutors, and many have other aggravating factors. While a new aggravating factor will require putting forward additional evidence to prove it, the department anticipates any fiscal impact from passage of this bill to be minimal.

Prepared by: <u>Joan M. Kasson</u>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date/Time <u>1/31/00, 10:32 AM</u>
Approved by Commissioner <u>Bruce M. Botelho</u>	Date <u>1/31/00</u>
Agency <u>Department of Law</u>	

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SPONSOR STATEMENT

HB 288

"An Act relating to the creation of an aggravating factor for the commission of domestic violence in the physical presence of a child."

This bill lets the courts to be tougher on those having been convicted of domestic violence if they committed that crime with their children present. If passed, the criminal justice system would have a new tool to further Alaska's fight against domestic violence and child abuse.

HB 288 creates an aggravated factor when domestic violence is committed in the presence of children who are also household members of the perpetrator. Under current law, a person convicted on domestic violence charges is subject to Alaska's presumptive sentencing rules found in AS 12.55.125. Although the court is given guidelines, under AS 12.55.155, it may also consider factors that can mitigate or aggravate the severity of the crime and resulting sentence. Considering the totality of the factors, the court may adjust the sentence up to the maximum or down to the minimum term of imprisonment prescribed by presumptive sentencing laws.

What is an aggravating factor? It is an act or circumstance characterized by some unique feature that enhances the severity of crime. For example that may be what the intentions of the criminal were or it may be the special vulnerability of the victim. This bill would expand the list of aggravating circumstances to include the special vulnerability of children.

Domestic violence is a scourge all over our state and Alaskans are fighting back to protect the lives of the victims and the children involved. HB 288 takes us a step further by recognizing that even if a child is not on the receiving end of the violence, they are profoundly damaged when they become witnesses to parents and caregivers engaging in this abhorrent behavior.

The Facts: Statistics on Family Violence

Domestic violence touches four million homes (1 in 3) in this country. More than 1.8 million women are battered by their partners.

Domestic violence is the single largest cause of injury to women in the U.S.--more common than injuries sustained from car accidents, muggings, and rapes combined.

More than 15% of pregnant women were abused by their partners.

100,000 children in the U.S. annually face a brother or sister with a gun or knife.

Child homicide is now among the five leading causes of death in childhood, with the majority of infant victims killed by parents, relatives, and older children.

More than one million of older Americans are physically and emotionally abused by their relatives.

As many as 35% of women who visit hospital emergency rooms are there for symptoms related to ongoing abuse, but as few as 5% of the victims identified it as such.

Domestic violence annually causes approximately 21,000 hospitalizations, 99,800 hospitalization days, 28,700 emergency department visits, and 39,900 physician visits. Annual health care costs from family violence are from \$5 billion to \$10 billion.

Between two to four million children in the U.S. are abused or neglected; at least three a day die from abuse.

An estimated 40% of all violent crimes occur among people who are related or are friends or are acquaintances.

About 30% of children from violent homes become abusive parents themselves.

The nation's police spend one-third of their time responding to domestic violence calls.

The cost of providing foster care for children from abusive homes is \$5 billion to \$10 billion a year.

Children who see others being abused, or who have been abused themselves, are six times more likely to abuse a spouse or child when they become adults.

Nearly 70% of children of battered women find themselves victims of abuse.

One in three girls and one in seven boys are sexually abused by the time they reach the age of 18; at least 90% of sexual abusers are known by the children they victimize.

Domestic violence costs American business an estimated \$3 billion to \$5 billion annually in lost time and \$100 million in medical costs.

A woman is beaten somewhere in America every 18 seconds.

Domestic violence is the most common but least reported crime in the U.S.

At least 40% of murdered women and 10% of murdered men were killed by their partners.

FISCAL NOTE

STATE OF ALASKA
2000 Legislative Session

BILL NO. CSHB 288 (JUD)

Revision Date		Dept. Affected	<u>Alaska Court System</u>
Title	<u>Aggravating Factor for Domestic Violence Committed in the Presence of a Child</u>	BRU	<u>Alaska Court System</u>
Sponsor	<u>Representative Kott</u>	Component	<u>Trial Courts</u>
Requester	<u>House Judiciary</u>	Component Serial No.	<u>769</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 House Bill 288 adds an aggravating factor to a felony domestic violence crime if the crime was committed in the physical presence or hearing of a child. Although this bill may result in more lengthy sentencing hearings in some cases, the number of cases is too speculative to support a fiscal note.

Prepared by:	<u>Doug Wooliver, Administrative Attorney</u>	Phone:	<u>264-8265</u>
Agency:	<u>Alaska Court System</u>	Date/Time:	<u>2/16/00 11:40 AM</u>
Approved by:	<u>Stephanie J. Cole, Administrative Director</u>	Date:	<u>2/16/00</u>
Agency:	<u>Alaska Court System</u>		

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IT BEGINS AT HOME: STOP DOMESTIC VIOLENCE

Domestic Violence Statistics

Violence against women in the home causes more injuries to women than car accidents, muggings and rape combined.

(Stark, E., Flitcraft A: Spouse abuse, in *Surgeon General's Workshop on Violence and Public Health: Source Book*. Leesburg, VA: October 27-29, 1985. Atlanta, Centers for Disease Control, p. SA1-SA43.)

Every 12 seconds a woman is beaten in this country. A woman is killed every six hours.

(Council on Scientific Affairs, American Medical Association. (1992). "Violence Against Women: Relevance for Medical Practitioners," *Journal of the American Medical Association*, June 17, 1992 - Volume 267, No. 23, pp.3184-3189.)

Two to four million women are battered every year.

(Federal Bureau of Investigation)

Domestic violence is the number one cause of emergency room visits by women.

(Stark, E., Flitcraft A: Spouse abuse, in *Surgeon General's Workshop on Violence and Public Health: Source Book*. Leesburg, VA: October 27-29, 1985. Atlanta, Centers for Disease Control, p. SA1-SA43.)

25% of all U.S. women will be victims of domestic violence at some time in their lives.

(Federal Bureau of Investigation)

25% of the violent crime in America is wife assault.

(Wolf, Naomi. *The Beauty Myth*. New York, NY, William Morrow & Co., 1991.)

52% of female murder victims are killed by their partners.

(Browne and Williams, Op cit. "Facts About Domestic Violence" National Woman Abuse Prevention Project brochure)

81% of men who batter had fathers who abused their mothers.

("The Effects of Domestic Violence on Children: A Workshop for New Jersey Educators" New Jersey Department of Community Affairs, Division on Women)

Four women are killed every day by their husbands or partners.

(Women's Action Coalition Statistics, "The Facts About Women," 1992.)

60% of battered women are beaten while they are pregnant.

(U.S. Senate Committee on the Judiciary. (August 29 and December 11, 1990). Hearings on Women and Violence, "Ten Facts about Violence against Women," p. 78)

Over....

An estimated 25% to 50% of all women in an intimate relationship will be physically assaulted.

(Feld, L. S. and M. A. Straus. (1989). "Escalation and Desistance of Wife Assault in Marriage." *Criminology*, XXVII (1). pp. 141-161.)

In one of the largest in-depth studies of American attitudes, a national survey of 5,700 adults found that almost 30% of divorced adults cite physical abuse as the reason for their divorce.

(Walker, Lenore. *The Battered Woman Syndrome*. New York, NY. Springer, 1984, p. 59.)

89% of U.S. children witness abuse at home.

(Family Violence Prevention Fund, 1991 "The Invisible Victims: Children of the War at Home." Quote from *The Family Secret: Domestic Violence In America*. William A. Stacey and Anson Shupe, authors.)

79% of violent children have witnessed violence between their parents.

(Family Violence Prevention Fund, 1991 "The Invisible Victim: Children of the War At Home." Source quoted as Lewis, et al. 1983).

Children who grow up in violent homes have a 74% higher likelihood of committing criminal assaults.

(A quote from the "Survey of Massachusetts Department of Youth Services" in *Self Magazine*, May 1992.)

Violent juvenile delinquents are four times more likely than are nonviolent juveniles to come from homes in which their fathers beat their mothers.

(Miller, J. (1989). "Violence By and Against America's Children." *Bureau of Juvenile Justice Digest*. XVII (12), p.6.)

In over half the homes where women are being battered, their children are being abused as well.

(Walker, Lenore. *The Battered Woman Syndrome*. New York, NY. Springer, 1984, p. 59.)

Each year, medical expenses from domestic violence total at least \$3 to \$5 billion. Businesses forfeit another \$1.00 billion in lost wages, sick leave, absenteeism and non-productivity.

(*Domestic Violence for Health Care Providers*, 3rd Edition, Colorado Domestic Violence Coalition, 1991.)

September 1995

#

Prevent Child Abuse America
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The Relationship between Domestic Violence and Child Abuse

Number: 20

Date: September 1996

Acknowledgment

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The Relationship between Domestic Violence and Child Abuse

Researchers have long been aware of the link between domestic violence and child abuse. Even if children are witnesses to acts of violence and not the intended targets, they can be affected in the same way as children who are physically and sexually abused.¹ Since domestic violence is a pattern of behavior, not a single event, episodes may become more severe and more frequent over time, resulting in an increased likelihood that the children eventually become victims.

What is domestic violence?

Domestic violence is a pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks, as well as economic coercion, that adults or adolescents use against their intimate partners. The U.S. Department of Justice estimates that 95% of reported assaults on spouses or ex-spouses are committed by men against women.²

What is child abuse?

Prevent Child Abuse America defines child abuse as a nonaccidental injury or pattern of injuries to a child. Child abuse is damage to a child for which there is no "reasonable" explanation. Child abuse includes nonaccidental physical injury, neglect, sexual molestation, and emotional abuse.

How common are these problems?

Domestic violence is a widespread problem with long-term consequences to the victim and all family members as well as to the abuser. Recent surveys indicate that increased public awareness about domestic violence, along with a more understanding attitude toward victims, has encouraged women to come forward.³ In a survey conducted in early 1995, 31 percent of women said they had personally faced abuse, while in a similar survey conducted in July 1994 only 24 percent they had been abused.³

Child abuse has become a national epidemic. More than one million children are confirmed each year as victims of child abuse and neglect by state departments of child protective services.⁴ And every day a minimum of three children die as a result.⁴ Violence in the home has been listed as a major factor contributing to the growth of reports of child abuse and neglect.⁴

How does domestic violence affect children?

Domestic violence often includes child abuse. Children may be victimized and threatened as a way of punishing and controlling the adult victim of domestic violence. Or they may be injured unintentionally when acts of violence occur in their presence. Often episodes of domestic violence expand to include attacks on children.

However, even when children are not directly attacked, they can experience serious emotional damage as a result of living in a violent household. Children living in this environment come to believe that this behavior is acceptable.

The estimated overlap between domestic violence and child physical or sexual abuse ranges from 30 to 50 percent.^{5,6} Some shelters report that the first reason many battered women give for fleeing the home is that the perpetrator was also attacking the children.⁷ Victims report multiple concerns about the effects of spousal abuse on children.⁸

Are there similarities between families involved in domestic violence and families involved in child abuse?

The two populations share several similarities as well as some important differences. Both forms of abuse cross all boundaries of economic level, race, ethnic heritage, and religious faith. Neither child abuse nor domestic violence is a phenomenon of the Twentieth Century. Children have been physically traumatized, deprived of the necessities of life, and molested sexually by adults since the dawn of human history.⁹ Traditionally, parents claimed ownership of their children and society hesitated to interfere with the family unit. Similarly, society in the past, has sanctioned the belief that men have the right to use whatever force is necessary to control the behavior of women. Those in intimate relationships as well as those who abuse children often are repeating learned behaviors transmitted intergenerationally. Both forms of abuse are identified by patterns. Neither domestic violence nor child abuse is an isolated event. Both occur with some regularity, often increasing and becoming more serious. Adults who were abused as children have an increased risk of abusing their children, and adults who grew up in a violent home are more likely to become perpetrators or victims of domestic violence. For a number of reasons including shame, secrecy, and isolation, both types of abuse are underreported.

Domestic violence and child abuse also differ in some significant ways. Parental stress is an important factor in instances of child abuse, but this link has not been established in cases of domestic violence. Reported perpetrators of child maltreatment, are equally men and women, but the majority of perpetrators of domestic violence are men.

How can we prevent these problems?

Domestic violence and child abuse proliferate in an environment that accepts the lesser status of women and children. Shrouding the violence in secrecy allows this behavior to continue. Educating the public about the extent of the problem establishes a foundation that permits victims to come forward.

Prevention efforts that reach parents before or soon after the birth of their baby, and provide intensive services on a moderately long-term basis can greatly reduce the incidence of child abuse as well as identify other problems such as domestic violence. Home visitors using a comprehensive approach can tailor their services to match a family's needs. After establishing a trusting relationship with the family, the home visitor will be able to identify problems. While the home visitor may not be able to offer intervention services, he or she can provide resources and ensure the safety of the children.

Other prevention efforts include the following:

- Educate health and child welfare agencies about the prevalence of domestic violence and its effect on children.
- Involve the community in a multidisciplinary approach to provide intervention and prevention services to those families in need.
- Educate the public about domestic violence and child abuse and the long-term costs to society.
- Provide access to self-help groups and other supportive services for all perpetrators, victims, and survivors of abuse.
- Educate all who work with children and families, including teachers, service providers, and health care professionals about the interplay between domestic violence and child abuse.

INTRODUCTION

During the latter part of the twentieth century, communities have begun to establish norms that make violence against women and the maltreatment of children unacceptable. This development of new and, in some cases, reinvigorated norms creates altered visions of responsibilities. Public and private institutions—the police, courts, and social service agencies—and communities are declaring that adults and children have a right to the resources and responses that bring safety and stability to their lives. The National Council of Juvenile and Family Court Judges (National Council) affirms this right to safety and stability for every maltreated child and adult in the United States and calls on communities and institutions to join in creating necessary changes.

Domestic Violence and Child Maltreatment

Although two decades of research have confirmed that adults and children often are victimized in the same family, little was made of this finding until recently. For years, in fact, most communities treated the abuse of a woman and the maltreatment of a child in the same family as separate phenomena having little to do with each other. Only recently have the profound and interacting impacts of multiple forms of violence within a family come to the attention of communities.

Definitions of domestic violence and child maltreatment are wide ranging and often debated. Domestic violence is defined here as a pattern of assaultive and coercive behaviors, often including physical, sexual, and psychological attacks, as well as economic coercion, that adults and adolescents use against their intimate partners. Similarly, definitions of child maltreatment encompass a wide range of behaviors, including physical and sexual assaults, neglect, and emotional injuries inflicted on children.¹ Historically, two distinct intervention systems were created—one to offer domestic violence services and legal protections and another to provide assistance and protections for abused children and their families—each with its own law enforcement and judicial mandates, institutions, and funding.

Now, however, communities are asked to confront a new and compelling set of facts:

- (1) adult domestic violence and child maltreatment often occur together and
- (2) new responses are required of *everyone*, if violence within families is to stop.

Domestic violence perpetrators do not victimize only adults. Recent reviews of more than two decades of studies have revealed that in families where women are abused, many of their children also are maltreated. Varying by samples selected and types of data gathered, the majority of these studies have found that a substantial proportion, ranging from 30 to 60 percent, of battered mothers' children also are maltreated.²

Children who are abused physically or sexually tend to exhibit more developmental, cognitive, emotional, and social behavior problems, including depression and increased aggression, than other children.³ Each year, the reported number of neglected children far exceeds the number of physically or sexually abused children. Those who are neglected physically or emotionally or denied necessary services also may exhibit a host of social and behavioral problems.⁴ Evidence clearly points to the fact that these experiences may influence victims' lives well into their teen and adult years.

Children who are not themselves maltreated often suffer from the effects of observing and hearing their mothers being abused. Peled's study of pre-adolescent children who witnessed violence provides compelling testimony.⁵ One 12-year-old girl recalled the experience in the following way:

"He picked her up off the bed, they were fighting, and then he picked her up off the bed and threw her against the wall."⁶

A ten-year-old boy in the same study described hearing but not seeing a violent event:

"He went downstairs, so did Mom. And on the steps he turned back and said something to Mom but I don't know. And he went downstairs and they, I heard all this banging and the floor, the floor was, just kept on, there's so much, there's like bangs in the floor and on the walls and stuff like that. But, and then there was all this yelling."⁷

A wide range of studies has shown that some children who witness adult domestic violence suffer considerably. These studies indicate that, on average, children who experience domestic violence exhibit higher levels of childhood behavior, social, and emotional problems than children who have not witnessed such violence.⁸

These documented harmful effects to child development have led many to conclude that if a child resides in a home where domestic violence is occurring, the child is in immediate danger and requires child protection services. Research in this area is still in its infancy, however, and a large percentage of child witnesses in these studies did not show elevated levels of developmental problems. The impact of witnessing violence on children is moderated by a number of factors, with some children showing great resilience in the face of adversity.⁹ Each child's response to domestic violence, therefore, should be assessed carefully, and harm established clearly, before agencies and courts determine which interventions are required.

Like their children, many battered women experience multiple physical and emotional injuries.¹⁰ Men who batter often carry out repeated physical and sexual attacks; they may harass and stalk their partners, following them to work and school. Tjaden and Thoennes' national study of violence against women found that 81 percent of the women who were stalked by a current or former husband or cohabiting partner also were assaulted physically by the same partner.¹¹ Often perpetrators threaten to kill themselves, their wives, or their children, or to kidnap and disappear with the children, if the women ever should leave them. Living with a batterer is described by many victims as an experience that ranges from "walking on eggshells" to "living in a war zone."



Problems Associated with Children's Witnessing of Domestic Violence

Children who witness violence between adults in their homes have become more visible in the spotlight of public attention. The purpose of this document is to further an understanding of the current literature on the effects of witnessing adult domestic violence on the social and physical development of children. Out of 84 studies reporting on children's witnessing of domestic violence originally identified, 31 studies met criteria of rigorous research (see Edleson, 1999), with 18 of them comparing children who witnessed adult domestic violence to other groups of children, 12 others using multiple regression procedures to compare subjects along a continuum of violence exposure or by demographic characteristics, and one study applying qualitative research methods. The findings of these 31 studies can be divided into three major themes: (1) the childhood problems associated with witnessing domestic violence; (2) the moderating factors present in a child's life that appear to increase or decrease these problems; and (3) an evaluation of the research methods used in the studies reviewed.

Children's Problems Associated with Witnessing Violence

Reviewed studies report a series of childhood problems statistically associated with a child's witnessing domestic violence. These problems can be grouped into the three main categories presented in more detail below: (1) behavioral and emotional; (2) cognitive functioning and attitudes; and (3) longer-term.

Behavioral and emotional problems

The area in which there is probably the greatest amount of information on problems associated with witnessing violence is in the area of children's behavioral and emotional functioning. Generally, studies using the Child Behavior Checklist (CBCL; Achenbach & Edelbrock, 1983) and similar measures have found child witnesses of domestic violence to exhibit more aggressive and antisocial (often called "externalized" behaviors) as well as fearful and inhibited behaviors ("internalized" behaviors), and to show lower social competence than other children. Children who witnessed violence were also found to show more anxiety, self-esteem, depression, anger, and temperament problems than children who did not witness violence at home. Children from homes where their mothers were being abused have shown less skill in understanding how others feel and examining situations from others' perspectives when compared to children from non-violent households. Peer relationships, autonomy, self-control, and overall competence were also reported significantly lower among boys who had experienced serious physical violence and been exposed to the use of weapons between adults living in their homes.

Overall, these studies indicate a consistent finding that child witnesses of domestic violence exhibit a host

of behavioral and emotional problems. A few studies have reported finding no differences on some of these measures but these same studies found significant differences on other measures.

Another aspect of the effects on children is their own use of violence. Social learning theory would suggest that children who witness violence may also learn to use it. Several researchers have attempted to look at this link between exposure to violence and subsequent use of it. Some support for this hypothesis has been found. For example, Singer et al. (1998) studied 2,245 children and teenagers and found that recent exposure to violence in the home was a significant factor in predicting a child's violent behavior.

Cognitive functioning and attitudes

A number of studies have measured the association between cognitive development problems and witnessing domestic violence. While academic abilities were not found to differ between witnesses and other children (Mathias et al., 1995), another study found increased violence exposure associated with lower cognitive functioning (Rossman, 1998). One of the most direct consequences of witnessing violence may be the attitudes a child develops concerning the use of violence and conflict resolution. Jaffe, Wilson and Wolfe (1986) suggest that children's exposure to adult domestic violence may generate attitudes justifying their own use of violence. Spaccarelli, Coatsworth and Bowden's (1995) findings support this association by showing that adolescent boys incarcerated for violent crimes who had been exposed to family violence believed more than others that "acting aggressively enhances one's reputation or self-image" (p. 173). Believing that aggression would enhance their self-image significantly predicted violent offending. Boys and girls appear to differ in what they learn from these experiences. Carlson (1991) found that boys who witnessed domestic abuse were significantly more likely to approve of violence than were girls who had also witnessed it.

Longer-term problems

Most studies reviewed above have examined child problems associated with recent witnessing of domestic violence. A number of studies have mentioned much longer-term problems reported retrospectively by adults or indicated in archival records. For example, Silvern et al.'s (1995) study of 550 undergraduate students found that witnessing violence as a child was associated with adult reports of depression, trauma-related symptoms and low self-esteem among women and trauma-related symptoms alone among men. Witnessing violence appeared to be independent of the variance accounted for by the existence of parental alcohol abuse and divorce. In the same vein, Henning et al. (1996) found that among 123 adult women who had witnessed domestic violence as a child greater distress and lower social adjustment existed when compared to 494 non-witnesses. These findings persisted even after accounting for the effects of witnessing parental verbal conflict, being abused as a child, and level of reported parental caring.

Factors Influencing the Degree of Problems Associated with Witnessing Violence

Several factors appear to moderate the degree to which a child is affected by witnessing violence. As will be seen below, a number of these factors also seem to interact with each other creating unique outcomes for different children.

Abused and witnessing children

Hughes, Parkinson and Vargo (1989) have suggested that both witnessing abuse and also being abused is a "double whammy" for children. Their study compared children who were both abused and had witnessed violence to children who had only witnessed violence and to others who had been exposed to neither type of violence. They found that children who were both abused and witnesses exhibited the most problem behaviors, the witness-only group showed moderate problem symptoms and the comparison group the least. This same pattern appears in series of other studies. Children seem to agree. In one study they

A final weakness in this area of study is that most studies are correlational. As Holtzworth-Munro, Smutzler and Sandin (1997) point out, these studies only show associations between being a witness and some other variable such as a behavior problem. We generally speak of the effects of witnessing violence on children's development. In reality, however, these studies reveal only an association between the variables without predicting that one variable caused the other to occur or vice versa. Many people make the assumption that finding an association is the same as finding that a particular event such as witnessing violence caused a child's problems.

Implications

The studies reviewed for this document provide strong evidence that children who witness domestic violence at home also exhibit a variety of behavioral, emotional, cognitive and longer-term developmental problems. Each child will experience adult domestic violence in unique ways depending on a variety of factors that include direct physical abuse of the child, his or her gender and age, the time since exposure to violence, and his or her relationship with adults in the home. Significant percentages of children in the studies reviewed showed no negative developmental problems despite witnessing repeated violence. We must be careful to not assume that witnessing violence automatically leads to negative outcomes for children.

These data are primarily based on samples of children living in shelters for battered women. This has been used as a criticism of these studies on the grounds that shelter residence is a time of crisis and not representative of a child's on-going life. These data do, however, provide shelters with a much better understanding of the problems many of their resident children may be experiencing. And despite the limitations of some individual studies cited, the number and variety of studies so far reported provide a strong basis for accepting the overall findings.

There is a danger that these data may lead some child protection agencies to more frequently define child witnessing of violence as a form of child abuse or neglect. It is not uncommon to see battered women charged with "failure to protect" their children from a batterer. Many child protection agencies continue to hold battered mothers solely responsible for their children's safety. These actions are often based on the belief that separating from a batterer will always be the safest path for the battered woman and her child.

Yet these actions on the part of the child protection system ignore the reality that the majority of assaults and murders of battered women occur after they have been separated or divorced from their perpetrator. Such actions also ignore the reality that battered mothers often make decisions about their relationships with male partners based on their judgments of what will be best for their children.

The responsibility for creating a dangerous environment should be laid squarely on the shoulders of the adult who is using violent behavior, whether or not that adult is the legal guardian of the child. Responsibility and blame should not be placed on adult survivors in the home. Holding the violent abuser responsible for ending the use of violence is the path that leads to safety for these children and their abused mothers.

It is likely that the outcomes of additional studies on this topic will be reported in the immediate future. The responses to existing and future studies should be to identify ways to provide safety to both children and any abused adults who also reside in their homes.

Author of this document:
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University of Minnesota

Bibliography from the Project to Address Violence through Education (PAVE) at the University of Minnesota on "Young children and violence".

Mothers & Children: Understanding the Links Between Woman Battering and Child Abuse is a briefing paper by Jeffrey L. Edleson for a recent strategic planning meeting on the Violence Against Women Act.

In the Best Interest of Women and Children: A Call for Collaboration Between Child Welfare and Domestic Violence Constituencies is a briefing paper by Susan Schechter and Jeffrey L. Edleson prepared for a Wingspread Conference of a similar title.

Child Witness to Domestic Violence is a brief paper written by Kathryn Conroy, DSW, on the effect on children of witnessing their mothers being battered.

Children and Family Violence: The Unnoticed Victims is a May 1994 report by Gabrielle M. Maxwell of New Zealand's Office of the Commissioner for Children.

An art gallery from the Domestic Abuse Project in Minneapolis of 13 images drawn by children who have witnessed violence.

(Rev. 4/99)

VAWnet is a project of the National Resource Center on Domestic Violence
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In Brief: Problems Associated with Children's Witnessing of Domestic Violence

Children frequently witness violence in their homes. Eighty-four studies of the problems associated with children's witnessing have been reported in the literature but only 31 were found to have met rigorous research design criteria and included in the review. These studies have documented multiple problems among children that are significantly associated with a child's witnessing assaults of one parent by another in the home. These problems include:

- *Psychological and emotional problems* such as aggression, hostility, anxiety, social withdrawal, and depression.
- *Cognitive functioning problems* such as lower verbal and quantitative skills and the development of attitudes supporting the use of violence.
- *Longer-term development problems* such as depression, trauma-related symptoms and low self-esteem among women and trauma-related symptoms alone among men.

These problems appear to be magnified or decreased by a number of *moderating factors* including:

- Whether or not the child has also been a victim of physical abuse
- A child's age and gender
- The amount of time that has passed since witnessing violence
- Where the child is living
- How a child perceives his or her relationship to adults in the home and the degree of perceived

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

HB 259 PUBLIC DEFENDERS FOR 48 HOUR HEARING SPONSOR STATEMENT

Pursuant to AS 47.10.142 (4)(d) after DFYS takes physical custody of a child, the court must immediately hold a hearing at which the court shall determine whether probable cause exists to deem the child a "Child In Need of Assistance" (CINA). The public defender's office would welcome the statutory change to allow them to legally provide assistance in an area they feel is necessary.

When a child is removed from the family home, the effects can be traumatic; so much so that the parents are unaware of what has just happened, why it has happened, and what should be done next. The common situation is that the parents are distraught because their child has been removed by the state and feel intimidated by the judicial process for CINA determinations. They don't even know they can ask the judge for a continuance to seek legal advice.

Under current law a person does not qualify for assistance from the public defender's office until indigence is determined. Many parents go to court not knowing their rights or the process because they can not find legal assistance in time for the 48 hour hearing. This legislation allows any parent to get legal assistance from the Public Defender's office for the 48-hour CINA hearing regardless of whether or not they are indigent. The best case scenario in many cases will mean an end to the case and the child is returned to the parents. In other cases, a continuance would be issued to allow the parents to provide additional information to the court that the caseworker and the AG's office have not provided.

If, after the court has reviewed the evidence, it rules the child is a CINA during the 48 hour hearing, the parents would then apply for further assistance from the public defender's office and their qualification would be determined by whether or not they were indigent.

While some may argue this legislation will result in added expenses to the State, this legislation could actually reduce the cost of CINA cases in Alaska. By providing all the information in a professional manner at the first hearing of determination, the number of children in state custody for 90 days to six months then returned to their family will be reduced. This means a reduction in foster care, case worker, and health care costs, as well as, long-term public defender, guardian ad litem, and AG expenses.

Bill History/Action Display



BILL: HB 259 SHORT TITLE: PUBLIC DEFENDER CHILDREN'S PROCEEDINGS
 BILL VERSION:
 SPONSOR(S): REPRESENTATIVES(S) COGHILL, Croft

CURRENT STATUS: (H) FIN STATUS DATE: 2/11/00

TITLE: "An Act relating to a parent's eligibility to be represented by the public defender before and during the probable cause and temporary placement hearing that is held after the state takes emergency custody of a child."

Full Text Bill/Resolution has Zero Fiscal Note(s).

Committee Action With Bill History

Jrn-Date	Jrn-Page	Action
1/10/00	<u>1887</u>	(H) PREFILE RELEASED 12/30/99
1/10/00	<u>1887</u>	(H) READ THE FIRST TIME - REFERRALS
1/10/00	<u>1887</u>	(H) STA, JUD, FIN
1/28/00	<u>2026</u>	(H) STA RPT CS(STA) 5DP 1NR 1AM
1/28/00	<u>2027</u>	(H) DP: JAMES, GREEN, HUDSON, WHITAKER,
1/28/00	<u>2027</u>	(H) OGAN; NR: KERTTULA; AM: SMALLEY
1/28/00	<u>2027</u>	(H) ZERO FISCAL NOTE (ADM)
2/11/00	<u>2171</u>	(H) JUD RPT CS(STA) 4DP
2/11/00	<u>2171</u>	(H) DP: GREEN, CROFT, KERTTULA, KOTT
2/11/00	<u>2171</u>	(H) ZERO FISCAL NOTE (ADM) 1/28/00
2/11/00	<u>2171</u>	(H) REFERRED TO FINANCE
2/11/00	<u>2189</u>	(H) COSPONSOR(S): CROFT

Similar Subject Match or Exact Subject Match

- ATTORNEYS
- CHILD ABUSE
- CIVIL PROCEDURE
- COURTS
- MINORS
- PUBLIC ASSISTANCE
- PUBLIC DEFENDER

Bill Root: Display History/Action Clear Bill Root

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 288 (HESS)

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Department of Corrections</u>
Title <u>An act relating to the creation of an aggravating factor for the commission of domestic violence</u>	BRU <u>Administration and Operations</u>
Sponsor <u>Representative Kott</u>	Component <u>All</u>
Requester <u>House HESS Committee</u>	Component No. <u>#0694</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous		99.7	99.7	99.7	99.7	99.7
TOTAL OPERATING	0.0	99.7	99.7	99.7	99.7	99.7

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		99.7	99.7	99.7	99.7	99.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	99.7	99.7	99.7	99.7	99.7

Estimate of any current year (FY 2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: <u>Candace Brower</u>	Phone <u>465-3307</u>
Division <u>Commissioner's Office</u>	Date/Time <u>1/31/00 11:52 AM</u>
Approved by <u>Commissioner Margaret M. Pugh</u>	Date <u>1-31-00</u>
Agency <u>Dept. of Corrections</u>	

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

BILL NO. HB 288 (HESS)
PAGE 2 of 2
DATE 1/31/00

Assumptions:

1. The Department of Corrections data show that in 1999 approximately 2365 prisoners were admitted to correctional facilities on domestic violence charges. Of those admissions, 268 were charged with felony assault and 2097 with misdemeanor assault. The Department of Law reports that they anticipate 75 convictions for felony domestic violence assault in calendar year 1999. This number is based on convictions of the past 3 years and the current convictions plus cases pending.
2. Assuming 65% of those incidents occurred in the physical presence of children, this bill would affect 49 cases.
3. Assuming that perhaps one half of those 49 would be presumptive cases affected by aggravating factors, that impacts 25 defendants.
4. Assuming 60% of those would result in increased sentences of approximately three months, (60 days to serve) the final number actually being impacted would be approximately 15. Since these cases are felony domestic violence, they are not likely to be eligible to furlough into the community because of their risk factor, so the additional cost of incarceration would be at the institutional rate which is currently \$110.73 per day. Fifteen individuals serving an additional 60 days each at a rate of \$110.73 per day makes a fiscal impact of \$99,657.00 per year.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 288

Revision Date: _____
 Title: "An Act relating to the creation of an aggravating factor for the commission of domestic violence in presence of child"
 Sponsor: Representative Kott
 Requestor: (H) HESS

Department Affected: Administration
 BRU: Legal and Advocacy Services
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL-						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ()	**	**	**	**	**	**

FUND SOURCE:

(Thousands of Dollars)

1002 F - Jeral Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
 See attached.

Prepared by: Barbara Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Robert Poe, Jr.
 Agency: Department of Administration

Date: 1/31/00

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FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 288

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill would add another aggravating factor to the list of aggravating factors used in sentencing in felony cases. The aggravating factor would provide for increased sentences if the crime involved domestic violence and was committed in the presence of a child under 16. The child would have to be a member of the household at the time of the offense.

The Public Defender Agency will need to do more work in many of its felony sentencing cases if this aggravating factor is established. The prosecution will have to prove the aggravating factor by clear and convincing evidence. Where the facts are at issue, Public Defender attorneys will have to prepare for and conduct evidentiary hearings. If the aggravating factor is established, the court will need to hear argument concerning the weight to be given to the factor in the case before the court.

However, the amount of additional work is difficult to quantify. Although more work will need to be done, we do not anticipate more criminal cases being brought or sentencings conducted as a result of this bill. In addition, it is not possible to say how many felony sentencings this aggravating factor would affect. Because of these uncertainties, we are submitting an indeterminate fiscal note.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 288

Revision Date <u>1/27/00</u>	Dept. Affected <u>Public Safety</u>
Title <u>Children Witnessing Domestic Violence</u>	BRU <u>CDVSA</u>
	Component: <u>CDVSA</u>
Sponsor <u>Representative Kott</u>	
Requester <u>H. HES</u>	Component No. <u>521</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

POSITIONS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not impact our budget.

Prepared by: <u>Royce Weller, Special Assistant</u>	Phone <u>465-4322</u>
Division <u>Office of the Commissioner</u>	Date/Time <u>1/28/00 12:00 PM</u>
Approved by:	Date <u>1-30-00</u>
Agency <u>Commissioner Ronald L. Otte, Dept. of Public Safety</u>	

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 288

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title	BRU	Criminal Division
... domestic violence in the physical presence of a child."	Component	1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Sponsor	Representative Kott	
Requester	House HESS Committee	Component No. 2198-99;2201;03;61;79

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 288 creates an aggravating factor for the commission of domestic violence in the physical presence of a child.

This new aggravator would apply to felony domestic violence cases. Felony domestic violence cases are already taken very seriously by the Department of Law's prosecutors, and many have other aggravating factors. While a new aggravating factor will require putting forward additional evidence to prove it, the department anticipates any fiscal impact from passage of this bill to be minimal.

Prepared by: <u>Joan M. Kasson</u>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date/Time <u>1/31/00, 10:32 AM</u>
Approved by <u>Commissioner Kott</u> <u>Bruce M. Botelho, Attorney General</u>	Date <u>1/31/00</u>
Agency <u>Department of Law</u>	

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HB

288

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/30/00

FURTHER: REPORTED OUT OF SFC 4/13/00

DATE TURNED IN TO OFFICE: 13 April 00

Finance Committee considered CS FOR HOUSE BILL NO. 288(JUD)

"An Act relating to the creation of an aggravating factor for the commission of domestic violence in the physical presence or hearing of a child."

and recommends:

- be replaced with S CS 3 HB 288 (FIN)
- adopt previous _____ CS _____
- attached amendment(s) _____
- adopt Letter of Intent by _____
- further referral to the _____ Committee

Senate Bill:

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

CS
Forthcoming

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓				
Co-Chair:					

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Cart	2/16/00	✓	
Corrections	2/21/00	✓	
Law	1/31/00	✓	
Public Safety	1/31/00	✓	
Admin-PDA	1/31/00		*

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

Bill Version: CSHB 288 (JUD)
 (H) Publish Date: 2/25/00

STATE OF ALASKA REPORTED OUT OF
 2000 LEGISLATIVE SESSIONSFC 4/13/00

Revision Date/Time (Note if correction) <u>Feb. 19, 2000</u>	Dept. Affected <u>Department of Corrections</u>
Title <u>An act relating to the creation of an aggravating factor for the commission of domestic violence</u>	BRU <u>Administration and Operations</u>
Sponsor <u>Representative Kott</u>	Component <u>All</u>
Requester <u>House Finance Committee</u>	Component No. <u>#0694</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous		24.0	24.0	24.0	24.0	24.0
TOTAL OPERATING	0.0	24.0	24.0	24.0	24.0	24.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		24.0	24.0	24.0	24.0	24.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	24.0	24.0	24.0	24.0	24.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: <u>Candace Brower</u>	Phone <u>465-3307</u>
Division <u>Commissioner's Office</u>	Date/Time <u>2/21/00 11:01 AM</u>
Approved by Commissioner <u>Margaret M. Pugh</u>	Date <u>2-21-00</u>
Agency <u>Dept. of Corrections</u>	

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FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS**

**BILL NO. CS HB 288 (HFIN)
PAGE 2 of 2
DATE 2/21/00**

Assumptions:

1. The Department of Corrections' data show that in 1999 approximately 2365 prisoners were admitted to correctional facilities on domestic violence charges. Of those admissions, 268 were charged with felony assault and 2097 with misdemeanor assault. The Department of Law reports that they anticipate 75 convictions for felony domestic violence assault in calendar year 1999. This number is based on convictions over the past 3 years.
2. Assuming 65% of those incidents occurred in the physical presence of children, this bill would affect 49 cases.
3. Assuming that perhaps one-half of those 49 would be presumptive cases affected by aggravating factors, that impacts 25 defendants.
4. Assuming 20% of those would result in increased sentences of approximately three months, (60 days to serve) the final number actually being impacted would be approximately 5. Since these cases are felony domestic violence, some may be ineligible to furlough into the community because of their risk factor, so the cost of incarceration for those inmates would be at the institutional rate which is currently \$110.73 per day. Three out of the five will possibly be furloughed to a CRC at a cost of \$59.61 per day. The cost of care for the two inmates, serving 60 days each at a cost of \$110.73/day is \$13,288. The cost of care for the three inmates serving 60 days each at a cost of 59.61/day is \$10,730. The total fiscal impact to the Department of Corrections will be approximately \$24,000 per year beginning in FY 02, since the aggravator would not be served until after FY01.

FISCAL NOTE

Bill Version: HB 288

(H) Publish Date: 2/4/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

REPORTED OUT OF
SFC 4.13/00

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "... to the creation of an aggravating factor for ... BRU Criminal Division
... domestic violence in the physical presence of a child." Component 1st-4th Judicial Districts; Criminal
 Sponsor Representative Kott Appeals/Special Litigation
 Requester House HESS Committee Component No. 2198-99;2201;03;61;79

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 288 creates an aggravating factor for the commission of domestic violence in the physical presence of a child.

This new aggravator would apply to felony domestic violence cases. Felony domestic violence cases are already taken very seriously by the Department of Law's prosecutors, and many have other aggravating factors. While a new aggravating factor will require putting forward additional evidence to prove it, the department anticipates any fiscal impact from passage of this bill to be minimal.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date/Time 1/31/00, 10:32 AM
 Approved by Commissioner *K. Botelho* Bruce M. Botelho, Attorney General Date 1/31/00
 Agency Department of Law

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FISCAL NOTE

Bill Version: HB 288

(H) Publish Date: 2/4/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

REPORTED OUT OF
SFG 4/13/00

Revision Date 1/27/00 Dept. Affected Public Safety
 Title Children Witnessing Domestic Violence BRU CDVSA
 Component: CDVSA
 Sponsor Representative Kott
 Requester H. HES Component No. 521

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	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/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not impact our budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
 Division Office of the Commissioner Date/Time 1/28/00 12:00 PM
 Approved by: [Signature] Date 1-31-00
 Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

Bill Version: HB 288

(H) Publish Date: 2/4/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

REPORTED OUT OF
SFC 4/13/00

Revision Date: _____
Title: "An Act relating to the creation of an aggravating factor
for the commission of domestic violence in presence of child"
Sponsor: Representative Kott
Requestor: (H) HESS

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2 003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ()	**	**	**	**	**	**

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 00) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Robert Poe, Jr.
Agency: Department of Administration

Date: 1/31/00

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FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 288

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill would add another aggravating factor to the list of aggravating factors used in sentencing in felony cases. The aggravating factor would provide for increased sentences if the crime involved domestic violence and was committed in the presence of a child under 16. The child would have to be a member of the household at the time of the offense.

The Public Defender Agency will need to do more work in many of its felony sentencing cases if this aggravating factor is established. The prosecution will have to prove the aggravating factor by clear and convincing evidence. Where the facts are at issue, Public Defender attorneys will have to prepare for and conduct evidentiary hearings. If the aggravating factor is established, the court will need to hear argument concerning the weight to be given to the factor in the case before the court.

However, the amount of additional work is difficult to quantify. Although more work will need to be done, we do not anticipate more criminal cases being brought or sentencings conducted as a result of this bill. In addition, it is not possible to say how many felony sentencings this aggravating factor would affect. Because of these uncertainties, we are submitting an indeterminate fiscal note.

SENATE FINANCE
COMMITTEE #1
Amendment Number: #1
Bill Number: HB 288
Sponsor: Phillips Date: 4/13/00
Logged In By: Mindy

AMENDMENT

OFFERED IN THE SENATE

TO: SCS FOR CSHB 288(JUD)

Sponsor: Senator Phillips

Page 1, line 14: after "offense,"

Insert: "living"

Page 2, line 1:

Delete: "household;"

Insert: "residence of the victim, the residence of the perpetrator, or the
residence where the crime involving domestic violence occurred;"

Kelly COMMITTEE
2000 COMMITTEE ACTION

Bill Number	HB 288		
Amendment	#1		
Motion	adpt		
<u>Motion by</u>	Ph		
<u>Objection by</u>	T		
Removed	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Pete Kelly			
Senator Lyda Green			
Senator Randy Phillips			
Senator Dave Donley			
Senator Loren Leman			
Senator Al Adams			
Senator Gary Wilken			
Co-Chair Sean Parnell			
Co-Chair John Torgerson			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u> Pass			



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 4/14/00 TIME: 8:15 AM

TO: Peggy

NUMBER OF PAGES, INCLUDING COVER SHEET: _____

FROM: JAMIE FOLEY
SENATE FINANCE CMTE. ASST. SECRETARY
PHONE: 465-2618
FAX: 465-2187

NOTES: Amend #1 -> HB 288

SPONSOR STATEMENT

HB 288

"An Act relating to the creation of an aggravating factor for the commission of domestic violence in the physical presence of a child."

This bill lets the courts to be tougher on those having been convicted of domestic violence if they committed that crime with their children present. If passed, the criminal justice system would have a new tool to further Alaska's fight against domestic violence and child abuse.

HB 288 creates an aggravated factor when domestic violence is committed in the presence of children who are also household members of the perpetrator. Under current law, a person convicted on domestic violence charges is subject to Alaska's presumptive sentencing rules found in AS 12.55.125. Although the court is given guidelines, under AS 12.55.155, it may also consider factors that can mitigate or aggravate the severity of the crime and resulting sentence. Considering the totality of the factors, the court may adjust the sentence up to the maximum or down to the minimum term of imprisonment prescribed by presumptive sentencing laws.

What is an aggravating factor? It is an act or circumstance characterized by some unique feature that enhances the severity of crime. For example that may be what the intentions of the criminal were or it may be the special vulnerability of the victim. This bill would expand the list of aggravating circumstances to include the special vulnerability of children.

Domestic violence is a scourge all over our state and Alaskans are fighting back to protect the lives of the victims and the children involved. HB 288 takes us a step further by recognizing that even if a child is not on the receiving end of the violence, they are profoundly damaged when they become witnesses to parents and caregivers engaging in this abhorrent behavior.

SENATE FINANCE COMMITTEE

SIGN-IN

HB 288-CHILDREN WITNESSING DOMESTIC VIOLENCE

NAME: Lauree Tiugonin Subject/Bill No: HB 288
Co./Dept./Title: ANVORSA Phone: 586-3650
Address: 130 Seward cm. 209 Juneau Zip: 99801

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Finance
Committee on HB288 Committee Name Dated 4/13/00
Bill / Subject

Attached . . .

apologizes for hand written nature
of the testimony.

Copy faxed 4/13/00

SIGNED:

Testifier

Representing

Address / Phone Number

I'm here to testify in favor of HB 288

Children learn from their environment and if that environment is one of violence and control that is what is learned and patterned in a child's brain. In essence DV in homes - children teaches that violence gets you what you want. It also shows that violence enables you to control someone else. Carried out to it's extreme DV could be the birth place for the need for Jails. It's for sure it has been shown that children in a home where there is DV are much more likely to be abused and/or neglected. This in turn sets up a parenting pattern ~~that~~ ^{where} with more than likely they will in turn be abusers ^{intergenerational} and ^{and} ^{involved in DV} ^{in and of itself} This is the basis of an ^{intergenerational} problem. No law ^{can} correct this pervasive problem but HB 288 ~~may~~ is one step in the right direction and I urge you to pass it on to the full Senate and then pass it ^{on to the Gov. for him to sign} ~~into law~~ ^{into law}. This Bill is long overdue and from all comments I've ~~heard~~ ^{heard} from ~~the~~ ^{the} HSS people I ~~work with~~ ^{work with}, it will help them do their job to protect our most precious resource, our children, from harm.

Thank you

Arthur S. Hansen DDS.

FISCAL NOTE

No: 6

STATE OF ALASKA
2000 Legislative Session

REPORTED OUT OF
SFC 4/13/00

Bill Version: CSHB 288 (JUD)
(H) Publish Date: 2/25/00

Revision Date		Dept. Affected	<u>Alaska Court System</u>
Title	<u>Aggravating Factor for Domestic Violence Committed in the Presence of a Child</u>	BRU	<u>Alaska Court System</u>
Sponsor	<u>Representative Kott</u>	Component	<u>Trial Courts</u>
Requester	<u>House Judiciary</u>	Component Serial No.	<u>769</u>

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: None

POSITIONS

POSITIONS						
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

House Bill 288 adds an aggravating factor to a felony domestic violence crime if the crime was committed in the physical presence or hearing of a child. Although this bill may result in more lengthy sentencing hearings in some cases, the number of cases is too speculative to support a fiscal note.

Prepared by:	<u>Doug Wooliver, Administrative Attorney</u>	Phone:	<u>264-8265</u>
Agency:	<u>Alaska Court System</u>	Date/Time:	<u>2/16/00 11:40 AM</u>
Approved by:	<u>Stephanie J. Cole, Administrative Director</u>	Date:	<u>2/16/00</u>
Agency:	<u>Alaska Court System</u>		