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A MODEL STATE SEX-OFFENDER POLICY

2003

We're here because they're out there

INTRODUCTION: THE NEED FOR ACTION

The total federal, state, and local adult correctional population has reached an all-time high of more than 6.5 million.¹ It is estimated that more than 3 percent of the adult population in the United States, or 1 in every 32 adults, is incarcerated or living in the community while on probation or parole.² In state prisons alone, 49 percent of prisoners are serving time for violent offenses³ including rape and other forms of sexual assault.

The National Center for Missing & Exploited Children® (NCMEC) is particularly concerned with the incidence of sex offenses committed against children. In 67 percent of all reported incidents of sexual assault,⁴ the victims are younger than 18, and 34 percent of all victims are younger than 12.⁵ One in seven victims of sexual assault reported to law-enforcement agencies nationwide is a child younger than 6.⁶ For victims younger than 12, 4-year-olds are at the greatest risk of sexual assault.⁷ Of those offenders actually convicted of rape or sexual assault, two-thirds have a victim who is younger than 18, with the vast majority of these victims being 12 or younger.⁸

Even more disconcerting, perhaps, is that juvenile victimizations are likely to include more than one victim. In 19 percent of juvenile sexual assault victimizations, the juvenile is victimized along with another individual.⁹ Thirteen percent of juvenile victimizations involve a second victim, and the remaining 6 percent involve three or more victims, although not necessarily victims of sexual assault.¹⁰

Of further concern to NCMEC is that 40 percent of offenders who victimize children younger than 6 are, themselves, juveniles younger than 18.¹¹ Yet few prosecutor offices handling juvenile cases have a specialized unit dealing with juvenile transfers to criminal court, and even fewer have written guidelines about such transfers.¹²

As policymakers address the issue of sex offenders, they are confronted with several basic, and unfortunate, realities as noted below.

- Sex offenders who are in prison tend to serve limited sentences.¹³
- Most sex offenders are not in prison, but rather live in our own cities, towns, and neighborhoods;¹⁴ however, their presence is largely unknown.¹⁵
- Some sex offenders, particularly those who go without treatment, are at a high risk to reoffend;¹⁶ yet, state-sponsored treatment programs are under attack and disappearing around the country.¹⁷
- While community supervision and oversight is widely recognized as essential, the system for providing such supervision is overwhelmed.¹⁸

Nationwide there are more than 400,000 registered sex offenders.¹⁹ This particular criminal group poses an enormous challenge for policymakers. Sex offenders can evoke unparalleled fear, and their offenses can result in lifelong and damaging consequences for victims.

The most frequent victims of sexual attacks are often the most vulnerable segment of our society, with more than one-third of all sexual assaults involving a child victim younger than 12.²⁰ There is an urgent need for action.

TRIAGE: THE STRATEGY

NCMEC believes that each state must adopt a triage approach to sex offenders. We must develop a range of responses, depending on the severity of the crime, with maximum sentences for those offenders who represent the greatest risk to the community. The criteria for seriousness, however, should not be limited to "violent" offenders. NCMEC believes that many of the most predatory offenders are not violent in the traditional sense. Thus we encourage legislative language that addresses both **violent and predatory** sex offenders.

In order to implement this triage concept, we must develop mechanisms for performing effective evaluation of sex offenders at the earliest possible stage. Since juveniles are perpetrators as well as victims of sexual assault, the strategy must expressly address this group of offenders. We must also create a variety of options and alternatives for early, effective intervention with all sex offenders.

Although the public at-large generally expresses a desire for harsher penalties for sex offenders, in many cases the actual victims often desire that one result of prosecution be supervised treatment either in a prison or community setting. This is particularly true when the offender is related to or an acquaintance of the victim or the victim's family. A criminal-justice response that does not include treatment opportunities for at least some sex offenders may undermine victim cooperation with the prosecution.²¹ In this time of controversy regarding the efficacy of treatment, a general consensus has been reached on several basic points.

- Treatment is effective for some sex offenders.²²
- Treatment is generally more effective for those who participate voluntarily and have the motivation to change.²³
- Treatment may result in a reduction of additional offenses.²⁴
- Treatment goes beyond counseling in a therapist's office.²⁵

On the other hand, however, there are some offenders for whom there is no effective treatment at the current time.²⁶ Consequently our overall standard must be to reduce harm, and we caution against community-based studies with random assignment to treatment and non-treatment control groups, as such studies cannot seem to be conducted without introducing unacceptable risks into the community.²⁷

Finally we must make post-release supervision and follow-up a priority. It is not enough to merely ensure that an offender completes his or her particular program or sentence. Since most sex offenders will eventually return to the community, the community is interested in policies and practices that will ensure the greatest level of safety over the long term.²⁸ This makes it imperative that there be continuing contact, supervision, and resources directed to the largest segment of the sex-offender population – those who are in the community.

COMPREHENSIVE POLICY: THE RESPONSE

A comprehensive criminal-justice response is key to effectively addressing the issue of sex offenders, particularly those living within our communities and not within the confines of a prison cell. The concepts, policies, and laws noted below need not be accomplished strictly through legislation and state statute, but can also be carried out in regulations, administrative practices, codes, policies, and/or prosecutor charging and filing standards. State officials should evaluate their own current approaches to identify possible areas for change.

The eight goals of our recommended sex-offender policy are listed below.

- States should develop a comprehensive policy regarding sex offenders.
- Sex offenders should be correctly identified and charged within the criminal-justice system.
- A systematic decision-making process regarding disposition of cases should be implemented.
- A sentencing structure permitting a range of degrees of confinement and levels of supervision should be available.
- Treatment programs should be part of the criminal-justice-system response.
- Convicted sex offenders should receive community supervision.
- Sex-offender-registration and community-notification programs should be implemented.
- States should involve victims and community members and use individual interest and knowledge to improve laws, education, and prevention mechanisms.

Each element is discussed in greater detail below.

I. STATES SHOULD DEVELOP A COMPREHENSIVE POLICY REGARDING SEX OFFENDERS

A. Evaluate and Assess Available Options

States should start by evaluating and assessing the broad spectrum of laws and policies in place in other jurisdictions as well as their own. Key areas to look at are definitions of various sex offenses, punishment and sentencing requirements, treatment and supervision programs, and successful strategies that have been implemented to address the growing public concern of what to do with sex offenders.

Calculate the cost of sanctions versus the cost of services. Within this framework, decisions can be made about the essential steps needed to create a comprehensive system that responds differently to high-, medium- and low-risk situations and offenders.

B. Prosecute Vigorously

Cases for which there is legal sufficiency should be vigorously prosecuted to the fullest extent of the law. Persons who commit sex offenses, whether adults or juveniles being tried as adults, should, whenever possible, be convicted of crimes that accurately reflect the serious nature of their conduct. Such individuals should also be properly labeled as "sex offenders" so that future protective steps can be taken.

C. Encourage Victim Cooperation

Victims should be encouraged to cooperate with and participate in the criminal-justice system. Unnecessary system-induced trauma should be minimized through the implementation of a thorough crime victims' rights policy including victim-witness support programs, specialized units, and appropriately trained personnel within prosecutor offices and other law-enforcement agencies; "secondary-victim" treatment provisions for victim family members; prosecutions sensitive to child victims; and legislation adopting a comprehensive Victim Bill of Rights.

D. Focus Sentencing on Public Safety

Sentencing practices should be primarily focused on community safety. Victim wishes should be heard and considered, including requests for treatment of the offender; however, where victim requests conflict with community interests, such wishes should not be determinative.

Maximum sentences should be imposed for those offenders who represent the greatest risk to the community.

Probation should not be allowed for the majority of sex offenses committed against children or those deemed particularly violent or predatory.

Among standard probation and parole requirements for sex offenders should be to refrain from contact with the victim(s) and all immediate family members. Those convicted of crimes against children should be ordered to refrain from contact with all children.

States should create child-safety zones around the areas where children normally play. Offenders should be prohibited from entering these zones. This measure will also rule out the possibility that sex offenders will participate in activities or professions involving children such as coaching or working at daycare centers.

E. Treatment Is an Opportunity

Treatment for offenders should be viewed as an opportunity and not a right. States should support offender treatment within realistic means. Treatment programs for offenders should not receive funding disproportionate to that given to treatment programs for crime victims.

F. Make Research a Priority

Research must be a priority focusing on what does and does not work in terms of sentencing practices, treatment programs, and the like. To reiterate, however, we caution against community-based studies with random assignment to treatment and non-treatment control groups as such studies cannot seem to be conducted without introducing unacceptable risks into the community.

II. SEX OFFENDERS SHOULD BE CORRECTLY IDENTIFIED AND CHARGED WITHIN THE CRIMINAL-JUSTICE SYSTEM

A. Identify Sex Offenders Early

Sex offenders should be identified early on in their criminal careers and properly charged with any offenses they commit. Even when incarceration is not possible, prosecutors should, at a minimum, obtain a conviction that conveys the essence and egregious nature of the act(s) committed. Prosecutors should rarely agree to pleas to a nonsexual offense. It is imperative that prosecutors "build a record" from the first moment possible.

B. Disallow *Alford*¹⁹ Pleas

The *Alford* Doctrine allows a defendant to plead guilty to a crime while not admitting that he or she actually committed it. Prosecutors should not allow sex offenders to plead guilty under the *Alford* Doctrine, especially if they are going to seek treatment or registration as conditions of probation.

C. Sex-Offender Registration Is Imperative

Sex offenders should not be allowed to plea bargain out of sex-offender registration.

D. Allow for Special Findings

A special finding of "sexual motivation" should be established for use with sex offenders who are charged with or convicted of a nonsexual offense that was, however, sexually motivated such as burglary or murder.

E. Address Juvenile Offenders

Juvenile offenders who victimize their peers should be identified and addressed at the first offense. When possible, prosecutor offices handling juvenile cases should have a specialized unit dealing with juvenile cases transferred to criminal court. At a minimum all offices should have written guidelines addressing such transfers.

F. Investigate Child Pornography

States should aggressively pursue investigations that involve or uncover child pornography as these materials represent evidence of actual sexual abuse of a child and may signal a proclivity for active sexual exploitation of children.

G. Adopt Child-Enticement Laws

Child-enticement laws should be enacted to help identify would-be sex offenders.

H. Address New Areas of Sexual Exploitation

States should develop the capacity, technology, and expertise for attacking new areas of sexual exploitation including illegal uses of cyberspace. States should establish specialized "cyber" units within law enforcement to combat child sexual exploitation, child pornography, and child enticement.

III. A SYSTEMATIC DECISION-MAKING PROCESS REGARDING DISPOSITION OF CASES SHOULD BE IMPLEMENTED

A. Require Pre-Sentence Reports

Pre-sentence reports (PSR) should be required for all sex offenders. A PSR should be prepared to assist the court in determining the defendant's sentence after conviction. The PSR should include any relevant sentencing guidelines, information on prior arrests or convictions, employment and family background, and an analysis of the impact of the crime on the victim(s). The person preparing the PSR should make a reasonable effort to consult with the victim. If the victim is not available or declines to speak with the individual preparing the report, the report should reflect such information.

B. Develop Uniform Sentencing Standards

Standards identifying which offenders are eligible for different sentencing alternatives should be developed and uniformly followed. Level of risk of the offender and the offense(s) committed should be taken into consideration when developing such standards.

C. Dispositions Should Be Systematic

Dispositions should be systematic and implemented uniformly statewide. An efficient method of statewide communication, such as the Internet, should be developed to keep all prosecutors aware of developments and setbacks in the prosecution and sentencing of sex offenders.

D. Make Training Available

Training on a variety of topics should be made available to law enforcement, prosecutors, judges, and community-corrections officers who handle sex-offender cases. Possible topics include developments in state and federal law and working with child victims and witnesses.

IV. A SENTENCING STRUCTURE PERMITTING A RANGE OF DEGREES OF CONFINEMENT AND LEVELS OF SUPERVISION SHOULD BE AVAILABLE

A. Consider Certain Factors in Sentencing Decisions

Seriousness of the crime, number of victims involved, age of the victim(s), relationship of the victim(s) to the offender, injury to the victim(s), extensiveness and seriousness of the offender's criminal record, and risk to the community should all be considered in making a sentencing decision.

B. Develop Innovative Approaches to Community Supervision

Innovative approaches to community supervision, such as day-reporting and electronic monitoring, should be evaluated and encouraged.

C. Restrict Eligibility for Community-Based Treatment

Eligibility for community-based treatment programs should be restricted to less dangerous offenders. Violent rapists and repeat sex offenders should be excluded.

Eligibility for community-based treatment programs should be denied to those who plead *nolo contendere* or use *Alford* pleas.

Treatment should be available only to those who genuinely accept responsibility for their acts and remorsefully admit their guilt.

D. Back Treatment Alternatives with Suspended Prison Time

Treatment alternatives should be backed by suspended prison time so that the system maintains leverage and offenders are given the strongest possible incentive to participate in a meaningful and serious way.

E. Enact Truth-in-Sentencing Laws and Policies

States should enact truth-in-sentencing laws and policies and study them for efficacy. In addition to reducing "good time" accumulation for violent criminals, truth-in-sentencing laws should require inmates to earn sentence reductions through active participation in work, education, vocational, substance-abuse-prevention, and mental-health programs.

F. Eliminate Flat-Time Release Without Supervision

States should eliminate flat-time release without supervision for sex offenders.

G. Enact Civil-Commitment Laws

Laws should be enacted that would allow the limited and carefully constructed use of civil commitment for sex offenders displaying a mental abnormality of such severity that the offender represents a clear danger to public health and safety.³⁰

H. Construct Provisions for Repeat and Extremely Dangerous Offenders

Special provisions for repeat and/or extremely dangerous sex offenders should be considered, debated, implemented, and evaluated. Such provisions include habitual criminal statutes, civil commitment, and lifetime parole.

V. TREATMENT PROGRAMS SHOULD BE PART OF THE CRIMINAL-JUSTICE RESPONSE

A. Reduce Recidivism

To the extent possible, treatment approaches within prisons and the community should be based on current research and programs with demonstrated effectiveness in reducing recidivism. The primary concern should always be public safety and reducing potential harm to the community.

B. Offenders Should Not Select the Treatment Program

The selection of community-based treatment as a condition of probation or parole should be approved by corrections' officials. Offenders should not be allowed to select their own treatment program or provider.

C. Demand Minimum Standards of Mental-Health Practitioners

Mental-health practitioners who provide treatment services to sex offenders as a result of probation or parole requirements must meet minimum standards for competence and accountability including training in and experience with sex offenders, willingness to report infractions, and limited confidentiality. It is essential that practitioners have specialized knowledge and skill in order to effectively monitor public-safety risks.

D. "One-Size-Fits-All" Treatment Programs Are Not Effective

Treatment programs should be offender-specific and tailored to offender typology and paraphilia. States should further implement programs geared toward the treatment of juvenile sex offenders.

E. Take Culture and Language into Consideration

Culturally relevant and acceptable treatment programs and providers should be made available including ethnically diverse providers and providers with foreign-language abilities.

F. Offenders Should Be Expected to Pay for Community-Based Treatment

A revolving loan fund should be created for otherwise eligible offenders who are truly indigent.

Offenders should also be expected to contribute to a victim-restitution fund.

VI. CONVICTED SEX OFFENDERS SHOULD RECEIVE COMMUNITY SUPERVISION

A. Supervise Release of Sex Offenders

Sex offenders who remain in or are released into the community should be supervised. The level, degree, and intensity of follow-up and supervision should be based on the level of risk assigned to the offender.

States should create long periods of supervision, such as life, for the most serious sex offenders.

In developing a supervised release policy, consider the points listed below.

- Supervision should be meaningful such as face-to-face contact and unannounced visits.
- Supervision should incorporate "relapse prevention," a model for identifying precursors to offending. The supervising officer should have knowledge of and closely monitor individual precursors.
- Those who are supervising sex offenders should have specialized training.
- Polygraphs should be used by probation and parole officers at regular intervals.

B. Include Individual Restrictions

Parole and probation restrictions should be limited to a plausible few, as failure to do so sets offenders up for violation.³¹

Community supervision should include individualized restrictions on high-risk activities such as unsupervised contact with minors and alcohol or drug use. If an individual completes a prison sentence and the probation or parole supervisor feels he or she constitutes a risk to a potential victim, then that individual should not be allowed to live within a certain proximity to that particular victim.

C. Develop "Failure-to-Comply" Guidelines

Guidelines for failure-to-comply with conditions of release should be developed and strictly followed. Options to consider are an increase in the level of supervision and revocation of community-release privileges.

Parole and probation officers should also be given special authority to intervene if they determine that a registered sex offender is improperly interacting with children.

D. Limit Caseloads

Due to the need for more intensive supervision, states should seek to limit probation- and parole-officer caseloads and develop sex-offender specialists.

VII. SEX-OFFENDER REGISTRATION AND COMMUNITY-NOTIFICATION PROGRAMS SHOULD BE IMPLEMENTED

A. Require Sex-Offender Registration

Sex-offender registration with law enforcement should be required for released offenders or those who remain in the community. Convicted child molesters and other sexually violent offenders should be forced to register and provide the appropriate law-enforcement agency with a current address for a minimum of 10 years.³²

States should identify and counter attempts by sex offenders to avoid the registration obligation such as through a legal name change.

Systems must be developed for ensuring the transfer, use, and exchange of registration information between states, addressing the problem of offenders moving and traveling from state-to-state.

B. Verify Addresses

States must ensure they maintain accurate registries. Addresses of registered sex offenders should be verified annually for most offenders and every 90 days for sexually violent predators.³³

C. Obtain Key Scientific Materials

As a part of the sex-offender registration process, key scientific material should be obtained from the offender including Deoxyribonucleic Acid (DNA), Human Immune deficiency Virus (HIV)/ Acquired Immune Deficiency Syndrome (AIDS) status; fingerprints; and handwriting samples. This material can be of value in either identifying or exonerating these individuals in connection with subsequent criminal acts.

Optimally the court should order these tests at sentencing.

D. Build and Maintain Files

Law enforcement should build and maintain files on registered sex offenders including, but not limited to, information on *modus operandi*, patterns, and rituals.

E. Flag Driver-License and Vehicle-Registration Files

States should adopt policies that flag driver-license and vehicle-registration files of registered sex offenders as a means of keeping law-enforcement authorities informed of address changes, vehicle information, and personal data. Reference to an individual's status as a registered sex offender, however, must not appear anywhere on the actual driver's license or vehicle-registration documents. Such information should only be available to law-enforcement authorities so that when, for example, a law-enforcement officer makes a stop and checks an individual's license-plate or driver's license number, the officer will also know whether or not he or she is dealing with a registered sex offender.

F. Develop Risk Assessment Procedures

States should establish an Advisory Board to help create tier designations and determine the level of risk represented by each offender. Those appointed to the Advisory Board should include individuals with knowledge and specialization in the field.

Factors to be considered in assessing an individual offender's risk include prior felony convictions for a sex crime, whether the current offense caused injury or death to the victim, whether the offender's criminal history indicates a high probability of recidivism, whether the offender has been receiving or will receive counseling or therapy, conditions of release or post-release supervision,

physical conditions that may minimize the risk of reoffense such as age or physical incapacitation, psychological or psychiatric profiles, response to treatment, and behavior such as if the offender has made recent threats that he or she will commit another sexual or violent crime, and if the offender has accepted responsibility for the crime(s) committed.

G. Create Victim-Notification Programs

Victim-notification programs should exist to inform victims of relevant release or parole hearings.

H. Enact Community-Notification Laws

Laws permitting law enforcement to notify the community of the release of dangerous offenders into the community should be enacted.

Community notification should be based on levels of risk, with offenders deemed to represent the greatest threat to the community subject to active notification.³⁴ These classifications should be informed by science as well as a multidisciplinary perspective, defined in clinical terms, and determined as a result of objective criteria.

Only a small percentage of juveniles should be subject to community notification. In many states only juveniles who are prosecuted as adults and convicted of very serious offenses are included. When a juvenile sex offender is required to register, the law-enforcement agency responsible for notification should inform school superintendents, who, in turn, should notify school principals. All other community notification of juvenile sex offenders should be limited and discretionary.

The community-notification process should be coordinated with those responsible for supervising the offender in the community.

Case studies on community notification should be developed to help communities implement effective guidelines and decrease vigilantism.

I. Educate Offenders

Offenders who are about to be released and will be subject to community notification should receive education regarding the increased vigilance that will accompany their release. Offenders should also be informed of their rights once they enter the community such as the right to not be harassed.

J. Educate the Community

The community should be educated and prepared for the release of sex offenders through the use of community programs and public-education forums. The community should also be informed of the rights of the offender.

K. Adopt a Zero-Tolerance Policy

States should adopt a zero-tolerance policy regarding acts of harassment or vigilante violence directed at offenders. It must be each state's commitment to ensure that community notification regarding released offenders is handled responsibly and properly by each individual member of the community.

States should enact legislation that prohibits the sale or exchange of sex-offender-registry information for profit, makes the misuse of sex-offender-registry information a misdemeanor, and subjects to criminal prosecution any use of sex-offender-registry information to commit a crime against another person.

Any response by the appropriate law-enforcement agency to an individual's request for a sex-offender-registry list should also include a cautionary statement pertaining to the misuse of information.

VIII. STATES SHOULD INVOLVE VICTIMS AND COMMUNITY MEMBERS AND USE INDIVIDUAL INTEREST AND KNOWLEDGE TO IMPROVE LAWS, EDUCATION, AND PREVENTION MECHANISMS

A. Appoint Task Forces

State officials should appoint Task Forces and Blue Ribbon Panels to evaluate state law and policy. Recommendations should be made on an annual basis.

B. Use the Media

Public-awareness campaigns and media coverage that encourage realistic, rational, and safe responses to sex offenders should be undertaken.

The media must play a key role in educating the community about the problem of sex offenses and offenders. The media should promote public awareness regarding the complexity of the problem and the fact that there is a wide range of offenders representing varying degrees of risk.

C. Mandate Child-Safety Curricula

States should mandate child-safety and protection curricula in schools. Research has demonstrated that positive, comprehensive, and empowering content will not frighten children, but rather better enable them to successfully deal with challenges they may encounter. States have a key role in ensuring that basic messages on safety and self-protection are taught to children.

CONCLUSION

In a time of tight budgets, limited prison space,³⁵ increased awareness of incidents and reporting, and growing public demand to address the sex-offender problem more effectively, policymakers and public officials must develop a comprehensive strategy and response.

A coordinated, interagency approach is key to establishing a comprehensive sex-offender policy. By joining forces across departmental, geographic, and political boundaries, resources can be targeted toward the common goals³⁶ of holding offenders accountable and keeping the public safe from future violent crime.

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The Task Force examined the issues and research, listened to a cross-section of experts, practitioners, and helped NCMEC shape an initial comprehensive, research-based policy outline for decision makers. That policy has been further developed in this updated edition.

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For the 2003 updated *A Model State Sex-Offender Policy*, NCMEC thanks

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*This publication represents the response of the National Center for Missing & Exploited
Children to the enormous challenge sex-offenders pose for policymakers. NCMEC's
recommended strategy for policymakers embodies a common-sense approach that is tough,
aggressive, balanced, sensitive to victims, and most importantly, effective.*

END NOTES

¹ Lauren E. Glaze, *Probation and Parole in the United States, 2001*, U.S. Department of Justice, Bureau of Justice Statistics, August 2002, at 1. Available (NCJ 195669) from the National Criminal Justice Reference Service (NCJRS) at 1-800-851-3420.

² *Id.*

³ Paige M. Harrison and Allen J. Beck, *Prisoners in 2001*, U.S. Department of Justice, Bureau of Justice Statistics, July 2002, at 12. [Hereinafter "*Prisoners in 2001*."] Available (NCJ 195189) from NCJRS at 1-800-851-3420.

⁴ The term "sexual assault" is generally used to refer to forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. For the purposes of this publication, we will be using the definitions provided by the National Incident-Based Reporting System. These definitions can be found in the publication titled *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics* by Howard N. Snyder, sponsored by the U.S. Department of Justice, Bureau of Justice Statistics, July 2000, at 13. [Hereinafter "*Sexual Assault of Young Children*."] Available (NCJ 182990) from NCJRS at 1-800-851-3420.

A **forcible sex offense** is any sex act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity.

Forcible rape is the carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity. If force was used or threatened, the crime should be classified as forcible rape, regardless of the victim's age. If no force was used or threatened and the victim was under the statutory age of consent, the crime should be classified as statutory rape.

Forcible sodomy is oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity.

Sexual assault with an object is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia such as finger, bottle, handgun, and/or stick.

Forcible fondling is the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity.

⁵ *Sexual Assault of Young Children, supra* note 4, at 2, 12.

⁶ *Id.*

⁷ *Id.* at 2.

⁸ Sheila J. Barton, *National Conference on Sex Offender Registries: Proceedings of a BJS/Search Conference*, U.S. Department of Justice, Bureau of Justice Statistics, April 1998, at 9. Available (NCJ 168965) from NCJRS at 1-800-851-3420.

⁹ *Sexual Assault of Young Children, supra* note 4, at 5.

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² Carol J. DeFrances and Kevin J. Strom, *Juveniles Prosecuted in State Criminal Courts*, U.S. Department of Justice, Bureau of Justice Statistics, March 1997, at 3. Available (NCJ 164265) from NCJRS at 1-800-851-3420. Nineteen percent of prosecutor offices handling juvenile cases have a specialized unit dealing with juvenile cases transferred to criminal court, and 16 percent of prosecutor offices handling juvenile cases have written guidelines about the transfer of juveniles to criminal court.

¹³ Lawrence A. Greenfeld, *Sex Offenses and Offenders: Analysis of Data on Rape and Sexual Assault*, U.S. Department of Justice, Bureau of Justice Statistics, February 1997, at 20. [Hereinafter "*Sex Offenses and Offenders*."] Available (NCJ 163392) from NCJRS at 1-800-851-3420. In 1993 the average time served for convicted rapists was approximately five years, which is about 50 percent of their full sentences, and the average time served for convictions of sexual assault was just under three years, which is just over 41 percent of their sentences.

¹⁴ Lita Furby et al., *Sex Offender Recidivism: A Review*, 105 PSYCHOLOGICAL BULLETIN 3-4 (1989). [Hereinafter "Sex Offender Recidivism."] "[T]he overwhelming majority of apprehended sex offenders are not incarcerated or institutionalized at all. For those who are convicted, probation with mandatory treatment (and perhaps some jail time) is the most common disposition." *Sex Offenses and Offenders*, *supra* note 13, at 15. Approximately 234,000 convicted sex offenders are currently under correctional supervision. Nearly 60 percent of these offenders are on parole or probation. These figures do not account for the sex offenders who have not entered the criminal-justice system such as offenders who have avoided detection.

¹⁵ Roxanne Lieb and Scott Matson, *Community Notification in Washington State: 1996 Survey of Law Enforcement*, Washington State Institute for Public Policy, November 1996, at 7. Only a small percent of offenders are subject to active community notification. In Washington State, for example, from 1990 to 1996, it is estimated that only 1,105 out of the 9,912 (11 percent) registered offenders were subject to Level II and III notification. In addition many offenders were able to escape detection. See also Gene Abel et al., *Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs*, 2 JOURNAL OF INTERPERSONAL VIOLENCE 3 (1987) (results from a self-report study).

¹⁶ W.L. Marshall and H.E. Barbaree, *Outcome of Comprehensive Cognitive-Behavioral Treatment Programs*, HANDBOOK OF SEXUAL ASSAULT 371 (1990). Baseline recidivism rates for untreated sex offenders are difficult to calculate, but several studies indicate that recidivism based on law-enforcement records only, for exhibitionists is between 41-71 percent; for rapists 7-35 percent; for opposite-sex child molesters 10-29 percent; and same-sex child molesters 13-40 percent. See also Lucy Berliner and Diana Elliot, *Sexual Abuse of Children*, THE APSAC HANDBOOK ON CHILD MALTREATMENT 53 (John Briere et al. eds., 1996) (discussing family, race, and gender rates of sexual abuse among children). See generally *Sex Offender Recidivism*, *supra* note 14, at 105 (reviewing different empirical studies of sexual offense recidivism rates).

¹⁷ R.F. Longo et al., *1994 Nationwide Survey of Treatment Programs and Models*, The Safer Society Program and Press (1995). Although private treatment programs have been increasing in recent years, there has been a decrease in sex-offender treatment programs in prison.

¹⁸ Carol Poole and Roxanne Lieb, *Community Notification in Washington State: Decision-Making and Costs*, Washington State Institute for Public Policy, July 1995, at 10. The level of community supervision of sex offenders varies. In Clarke County, Washington, for example, offenders deemed highly dangerous are visited monthly by law-enforcement personnel. In King County, Washington, which has a significantly larger population, home visits are replaced by telephone calls and certified mail.

¹⁹ Personal interviews with representatives of sex-offender registries in the 50 states and the District of Columbia conducted by the Legal Resource Division of the National Center for Missing & Exploited Children, December 2002 - April 2003. Total figure is 456,935.

²⁰ *Sexual Assault of Young Children*, *supra* note 4, at 12.

²¹ Lucy Berliner et al., *A Sentencing Alternative for Sex Offenders: A Study of Decision Making and Recidivism*, 10 JOURNAL OF INTERPERSONAL VIOLENCE 487-488 (1995). Especially in cases where the offender is related or known to the victim, the victim may not want to report the incident(s) if there is no other alternative to incarceration. For example the victim may not wish that a father or sibling be incarcerated. This may also hold true if the offender provides financial support. Additionally the victim may be concerned about potential harm to the society caused by the future release of a sex offender who remains untreated. See also William D. Murphy and Timothy A. Smith, *Sex Offenders Against the Children*, THE APSAC HANDBOOK ON CHILD MALTREATMENT 176 (John Briere et al. eds., 1996) (considering whether treatment instead of incarceration for sex offenders would encourage victims to step forward).

²² W.L. Marshall and W.D. Pithers, *Reconsideration of Treatment Outcome with Sex Offenders*, 21 CRIMINAL JUSTICE AND BEHAVIOR 10-27 (1994).

²³ Judith Becker, *Offender Characteristics and Treatment*, 4 THE FUTURE OF CHILDREN 176, 187 (1994) (citing R. McGrath, *Sex Offender Risk Assessment and Disposition Planning: A Review of Empirical and Clinical Findings*, 35 INTERPERSONAL JOURNAL OF OFFENDER TREATMENT AND COMPARATIVE CRIMINOLOGY 328 (1991)). [Hereinafter "Offender Characteristics and Treatment."] A sex offender can be amenable to treatment if he or she acknowledges his or her sexual offense, wants to stop, and is willing to participate fully in treatment.

²⁴ See, for example., W.L. Marshall and H.E. Barbaree, *The Long-Term Evaluation of a Behavioral Treatment Program for Child Molesters*, 26 BEHAVIOR RESEARCH THERAPY 499 (1988). One treatment study for child molesters, comparing a control group (n=58) and an experimental group (n=68), found that recidivism rates between the two groups was statistically significant. The sex reoffense rate, using unofficial statistics, was 13 percent for the treatment group and 35 percent for the nontreatment group. The follow-up period was one to eleven years. See also W.L. Marshall et al.,

Treatment Outcome With Sex Offenders, 11 CLINICAL PSYCHOLOGY REVIEW 465 (1991) (concluding that comprehensive cognitive behavioral programs are the most likely effective treatment for child molesters).

²⁵ *The Sex Offender: Corrections, Treatment and Legal Practice Part IV*, Barbara K. Schwartz and Henry R. Cellini eds., Civic Research Institute, 1995. Aside from treatment, other elements in relapse prevention include behavioral management, aftercare treatment programs, external supervision, and community management of the sex offender.

²⁶ M.E. Rice et al., *Sexual Recidivism Among Child Molesters Released from a Maximum Security Psychiatric Institution*, 59 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 381 (1991). Experts suggest that for a small number of dangerous offenders, treatment is not effective. One treatment study for child molesters, comparing a control group (n=86) to an experimental group (n=50), found no statistically significant difference in recidivism rates. For the offenders who matched on criminal history and sexual preference, the reconviction rate was 38 percent for the treatment group and 31 percent for the nontreatment group. The average follow-up time was 6.3 years.

²⁷ *Offender Characteristics and Treatment*, *supra* note 23, at 184. Community-based controlled studies with random assignment are ethically questionable.

²⁸ Marie A. Bochnewich, *Predictions of Dangerousness and Washington's Sexually Violent Predator Statute*, 29 CAL. W. L. REV. 227 (1992). There is evidence that very few sex offenders are permanently incarcerated. See generally Lin Song and Roxanne Lieb, *Adult Sex Offender Recidivism: A Review of Studies*, Washington State Institute for Public Policy, January 1994, at 2 (observing that most convicted sex offenders eventually return to the community).

²⁹ In *North Carolina v. Alford*, 400 U.S. 25 (1970), the U.S. Supreme Court held that an individual may voluntarily and knowingly consent to the imposition of a prison sentence even if he is unwilling or unable to permit his participation in the acts constituting the crime.

³⁰ The Supreme Court decision of *Kansas v. Hendrick*, 521 U.S. 346 (1997), examines one such statute and provides a framework and context for the creation of such provisions.

³¹ Walter J. Dickey and Michael E. Smith, *Rethinking Probation: Community Supervision, Community Safety*, U.S. Department of Justice, Office of Justice Programs, December 1998, at 10. [Hereinafter "*Rethinking Probation*."] Available (NCJ 178236) from NCJRS at 1-800-851-3420.

³² These requirements are suggested pursuant to the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* (42 U.S.C. § 14071).

³³ *Id.*

³⁴ Leading community notification models include those in Minnesota, New Jersey, and the state of Washington.

³⁵ *Prisoners in 2001*, *supra* note 3, at 10. On December 31, 2001, state prisons were operating between 1 and 16 percent above capacity, while federal prisons were operating at 31 percent above capacity.

³⁶ *Rethinking Probation*, *supra* note 31, at 5.

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*** THIS DOCUMENT IS CURRENT THROUGH THE 2005 REGULAR SESSION

*** ANNOTATIONS CURRENT THROUGH SEPTEMBER 30, 2005 ***

TITLE 47. CRIMINAL PROCEDURE AND CORRECTIONS (Chs. 900-985)
CHAPTER 921. SENTENCE

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 921.141 (2005)

§ 921.141. Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence

(1) *SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.* --Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death.

(2) *ADVISORY SENTENCE BY THE JURY.* --After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) *FINDINGS IN SUPPORT OF SENTENCE OF DEATH.* --Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and

(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

(4) *REVIEW OF JUDGMENT AND SENTENCE.* --The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within 2 years after the filing of a notice of appeal. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.

(5) *AGGRAVATING CIRCUMSTANCES.* --Aggravating circumstances shall be limited to the following:

(a) [As amended by s. 1, ch. 96-302.] The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

(a) [As amended by s. 5, ch. 96-290.] The capital felony was committed by a person under sentence of imprisonment or placed on community control or on probation.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.

(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

(l) The victim of the capital felony was a person less than 12 years of age.

(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

(n) The capital felony was committed by a criminal street gang member, as defined in s. 874.03.

(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

(6) *MITIGATING CIRCUMSTANCES.* --Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

(h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

(7) *VICTIM IMPACT EVIDENCE.* --Once the prosecution has provided evidence of the existence of one or more aggravating circumstances as described in subsection (5), the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.

(8) *APPLICABILITY.* --This section does not apply to a person convicted or adjudicated guilty of a capital drug trafficking felony under s. 893.135.

HISTORY: s. 237a, ch. 19554, 1939; CGL 1940 Supp. 8663(246); s. 119, ch. 70-339; s. 1, ch. 72-72; s. 9, ch. 72-724; s. 1, ch. 74-379; s. 248, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 79-353; s. 177, ch. 83-216; s. 1, ch. 87-368; s. 10, ch. 88-381; s. 3, ch. 90-112; s. 1, ch. 91-270; s. 1, ch. 92-81; s. 1, ch. 95-159; s. 5, ch. 96-290; s. 1, ch. 96-302; s. 7, ch. 2005-28; s. 2, ch. 2005-64.

NOTES:

AMENDMENTS

The 2005 amendment by s. 7, ch. 2005-28, effective September 1, 2005, added (5)(o).
The 2005 amendment by s. 2, ch. 2005-64, effective July 1, 2005, in the first sentence in (7), added "to the jury" following "victim impact evidence."

NOTE.--Former s. 919.23.

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*** ANNOTATIONS CURRENT THROUGH SEPTEMBER 30, 2005 ***

TITLE 47. CRIMINAL PROCEDURE AND CORRECTIONS (Chs. 900-985)
CHAPTER 921. SENTENCE

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 921.0016 (2005)

§ 921.0016. Recommended sentences; departure sentences; aggravating and mitigating
circumstances

(1) (a) The recommended guidelines sentence provided by the total sentence points is
assumed to be appropriate for the offender.

(b) A trial court judge may impose a state prison sentence which varies upward or
downward by up to, and including, 25 percent from the recommended guidelines state
prison sentence without issuing a written statement delineating the reasons for the
variation.

(c) A state prison sentence which varies upward or downward from the
recommended guidelines prison sentence by more than 25 percent is a departure sentence
and must be accompanied by a written statement delineating the reasons for the
departure, filed within 7 days after the date of sentencing. A written transcription of
orally stated reasons for departure from the guidelines at sentencing is permissible if it is
filed by the court within 7 days after the date of sentencing.

(d) The imposition of a split sentence of incarceration followed by community
control or probation does not by itself constitute a departure from sentencing guidelines.
For the purpose of determining the maximum sentence authorized by law, any
community control portion of a split sentence does not constitute a term of imprisonment.

(e) A departure sentence must be within any relevant maximum sentence limitations
provided by s. 775.082.

(2) A departure from the recommended guidelines sentence is discouraged unless
there are circumstances or factors which reasonably justify the departure. Aggravating
and mitigating factors to be considered include, but are not limited to, those listed in
subsections (3) and (4). The failure of a trial court to impose a sentence within the

sentencing guidelines is subject to appellate review under chapter 924, but the extent of departure from a guidelines sentence is not subject to appellate review.

(3) Aggravating circumstances under which a departure from the sentencing guidelines is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The offense was one of violence and was committed in a manner that was especially heinous, atrocious, or cruel.

(c) The offenses before the court for sentencing arose out of separate episodes; the primary offense is scored at offense level 4 or higher; and the defendant has committed five or more offenses within a 180-day period that have resulted in convictions.

(d) The primary offense is scored at offense level 3 and the defendant has committed eight or more offenses within a 180-day period that have resulted in convictions.

(e) The offense before the court for disposition was committed within 6 months after the defendant was discharged from a release program, as defined in s. 921.0011(6), or released from state prison, whichever is later.

(f) The defendant occupied a leadership role in a criminal organization.

(g) The offense was committed by a public official under color of office.

(h) The defendant knew the victim was a law enforcement officer at the time of the offense; the offense was a violent offense; and that status is not an element of the primary offense.

(i) The offense created a substantial risk of death or great bodily harm to many persons or to one or more small children.

(j) The victim was especially vulnerable due to age or physical or mental disability.

(k) The offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, or national origin of the victim.

(l) The victim suffered extraordinary physical or emotional trauma or permanent physical injury, or was treated with particular cruelty.

(m) The victim was physically attacked by the defendant in the presence of one or more members of the victim's family.

(n) The offense resulted in substantial economic hardship to a victim and consisted of an illegal act or acts committed by means of concealment, guile, or fraud to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage, when two or more of the following circumstances were present:

1. The offense involved multiple victims or multiple incidents per victim;

2. The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

3. The defendant used position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationship; or

4. The defendant was in the past involved in other conduct similar to that involved in the current offense.

(o) The offense was committed in order to prevent or avoid arrest, to impede or prevent prosecution for the conduct underlying the offense, or to effect an escape from custody.

(p) The defendant is not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct as described in s. 921.001(8).

(q) The defendant induced a minor to participate in any of the offenses pending before the court for disposition.

(r) The primary offense is scored at offense level 7 or higher and the defendant has been convicted of one more offense that scored, or would have scored, at an offense level 8 or higher.

(s) The defendant has an extensive unscorable juvenile record.

(t) The defendant committed an offense involving sexual contact or sexual penetration and as a direct result of the offense, the victim contracted a sexually transmissible disease.

(4) Mitigating circumstances under which a departure from the sentencing guidelines is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.

(c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.

(d) The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.

(e) The need for payment of restitution to the victim outweighs the need for a prison sentence.

(f) The victim was an initiator, willing participant, aggressor, or provoker of the incident.

(g) The defendant acted under extreme duress or under the domination of another person.

(h) Before the identity of the defendant was determined, the victim was substantially compensated.

(i) The defendant cooperated with the state to resolve the current offense or any other offense.

(j) The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.

(k) At the time of the offense the defendant was too young to appreciate the consequences of the offense.

(l) The defendant is to be sentenced as a youthful offender.

(5) A defendant's substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (4) and does not, under any circumstances, justify a downward departure from the sentence recommended under the sentencing guidelines.

HISTORY: s. 13, ch. 93-406; s. 7, ch. 95-184; s. 5, ch. 96-409; ss. 1, 41, ch. 97-194.

NOTES:

NOTE.--Section 1, ch. 97-194, provides that "[s]ections 921.0001, 921.001, 921.0011, 921.0012, 921.0013, 921.0014, 921.0015, 921.0016, and 921.005, Florida Statutes, as amended by this act, are repealed effective October 1, 1998, except that those sections shall remain in effect with respect to any crime committed before October 1, 1998." Section 43, ch. 97-194, provides that "[t]he Division of Statutory Revision of the Joint Legislative Management Committee shall leave the repealed statutory provisions referenced herein in the Florida Statutes for 10 years from October 1, 1998." Section 4, ch. 95-184, deleted the definition of the term "release program" from s. 921.0011(6), which is referred to in paragraph (3)(e).

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Representative Mark A. Neuman

District 15

House Bill 353

Sentencing For Sexual Offenses

Sponsor Statement

HB 353 will effectively double the present presumptive sentencing of all sexual assault offenses against minors, resulting in a clear message of zero-tolerance to anyone contemplating or involved in this most egregious act against the most vulnerable members of our society. This legislation establishes a minimum sentence of 24 years for those who commit an Unclassified Sexual Offense with a weapon or cause bodily injury, even when it's a first time felony offense. HB 353 introduces periodic polygraph testing for sex offenders on probation, which will give the Department of Corrections an additional tool to identify potential repeat offenders before another child is victimized.

With the amount of sexual assault crimes on the rise in Alaska and increasing numbers of Alaskans speaking out, it is time to toughen our laws. Other states have enacted, or are in the process of enacting, laws with stiffer penalties for those who commit such heinous crimes. Alaska should be first in the nation in protecting our children from sexual predation, not first in the rate of sexual assault.

According to the Federal Bureau of Investigation Uniform Crime Report (UCR), Alaska has the highest per capita rate of reported rapes ("rapes" in this case refer to child sexual abuse as well as adult assaults). Alaska's per capita rape rate is nearly 71% greater than that of the next highest state.

According to the "Kilpatrick Rape in America Report (1992)" reporting of these cases is as low as 16%. Arrest rates are also low, with as few as 27% of reported crimes resulting in arrest (Snyder 2000). Alaska has 4300 registered sex offenders in communities

statewide. These figures lead us to conclude that the number of actual sex offenders in Alaska is no doubt significantly higher.

While there is no record of any treatment or therapy having significant effects on sex offender recidivism rates (SOTEP Report, 1995), there are steps we can take to reduce repeat offenses. Longer sentences will ensure that the most dangerous offenders are kept away from our children. Regular polygraph testing for all sexual offenders has proven to have an effect on sexual behavior. Supervision of offenders with polygraph tests leads to 69% compliance with probation requirements, while supervision without polygraph tests leads to a 26% compliance rate (Abrams and Ogard, 1986). Requiring a probation period as part of a sentence, along with mandating regular polygraph tests will make our State safer, and reduce the numbers of sexual assault over time.

This legislation is imperative to changing our position as the number one state in the nation for sexual assault and sexual abuse and providing a safer place for our residents. I urge your support.

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FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 353(JUD)
(H) Publish Date: 2/21/06

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Sentencing for Sexual Offenses RDU Alaska Court System
Component Trial Courts
Sponsor Representatives Neuman and Lynn
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (Specify Type--Do not abbreviate)						
TOTAL

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
House Bill 353 significantly increases the presumptive sentences for those convicted of sexual offenses. It is likely that the longer sentences will increase a defendant's willingness to go to trial. Although the additional costs associated with those trials will fiscally impact the court system, the extent of the impact is too speculative to support a fiscal note.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750
Division Alaska Court System Date/Time 1/31/06 @ 9:00 am
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 1/31/2006
Agency Alaska Court System

HB

357

HFIN

FILE

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Letter of Intent
House Finance Committee
CSHB 357 (FIN)
Adopted February 13, 2006

The legislature intends to modernize the terminology in statutes in recognition of the ability of individuals with disabilities to contribute to society and to the state.

The legislature does not intend to alter in any manner the substantive provisions of the statutes in which the terminology is changed under this Act, including provisions relating to the Alaska Mental Health Trust, provisions defining who is a trust beneficiary arising under the Alaska Mental Health Enabling Act of 1956, or provisions relating to the mental health trust settlement in *Weiss v. State*, 4FA-82-2208 Civil, under ch. 66, SLA 1991; chs. 5 and 6, FSSLA 1994; and chs. 1 and 2, SSSLA 1994.

The Legislature does not intend for the provisions in this Act to alter the effect of any statute pertaining to compliance with federal law or state law relating to access for individuals with disabilities or rights for individuals with disabilities.

A handwritten signature in cursive script that reads "Kevin Meyer".

Representative Kevin Meyer
Co-Chairman, House Finance Committee

CS FOR HOUSE BILL NO. 357(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 2/1/06

Referred: Finance

Sponsor(s): REPRESENTATIVES WILSON, Hawker

*amended 2-13-06
add letter of intent*

A BILL

FOR AN ACT ENTITLED

1 "An Act updating the terminology in statutes for persons with disabilities; and
2 providing for an effective date."

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

4 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **LEGISLATIVE INTENT.** The legislature intends to modernize the terminology in
7 statutes in recognition of the ability of individuals with disabilities to contribute to society and
8 to the state. The legislature does not intend to alter in any manner the substantive provisions
9 of the statutes in which the terminology is changed under this Act, including provisions
10 relating to the Alaska Mental Health Trust, provisions defining who is a trust beneficiary
11 arising under the Alaska Mental Health Enabling Act of 1956, or provisions relating to the
12 mental health trust settlement in Weiss v. State, 4FA-82-2208 Civil, under ch. 66, SLA 1991;
13 chs. 5 and 6, FSSLA 1994; and chs. 1 and 2, SSSLA 1994.

14 * Sec. 2. AS 14.30.630(b) is amended to read:

delete

1 (b) The agency shall

2 (1) provide special education services including

3 (A) itinerant outreach services to students who are deaf, deaf-
4 blind, mentally retarded, hearing impaired, blind and visually impaired,
5 orthopedically disabled, [HANDICAPPED, OTHER] health-impaired in
6 other ways, and [,] severely emotionally disturbed, and to [MULTI-
7 HANDICAPPED] students with multiple disabilities;

8 (B) special education instructional support and training of local
9 school district special education personnel; and

10 (C) other services appropriate to special education needs;

11 (2) provide for an annual audit of the agency;

12 (3) provide the department with a two-year plan of operation including
13 a description of the services to be offered by the agency, the method by which the
14 services will be evaluated, information on the number of students and school district
15 personnel to be served, a schedule of funds available to the agency from all sources,
16 and other information that may be required by the department by regulation;

17 (4) present an annual budget to the department.

18 * Sec. 3. AS 18.15.210 is amended to read:

19 Sec. 18.15.210. Testing for certain other heritable diseases. The department
20 shall administer and provide services for testing for other heritable diseases that lead
21 to mental retardation and physical disabilities [HANDICAPS] as screening programs
22 accepted by current medical practice and as developed.

23 * Sec. 4. AS 18.55.130(b) is amended to read:

24 (b) Except in the case of leased housing as provided in 42 U.S.C. 1437f, the
25 corporation shall fix the income limits for occupancy of its low-cost housing projects
26 and rents that are approved by the United States Department of Housing and Urban
27 Development after taking into consideration

28 (1) the family size, composition, age, physical disabilities
29 [HANDICAPS], and other factors that might affect the rent-paying ability of the
30 family; and

31 (2) the economic factors that affect the financial stability and solvency

1 of the project.

2 * Sec. 5. AS 23.15.080 is amended to read:

3 Sec. 23.15.080. Eligibility for vocational rehabilitation service. (a)
4 Vocational rehabilitation service shall be provided directly or through a public or
5 private instrumentality to an [A HANDICAPPED] individual with a disability who

6 (1) is a resident of the state at the time of application for the service
7 and whose vocational rehabilitation the agency determines after full investigation can
8 be satisfactorily achieved; or

9 (2) is eligible for the service under an agreement with another state or
10 with the federal government.

11 (b) In determining the types and extent of vocational rehabilitation services to
12 be provided to an [A HANDICAPPED] individual with a disability, the agency shall
13 take into consideration any similar benefits that may be available to the individual
14 under other programs. However, the agency may not take other benefits into
15 consideration when doing so would significantly delay the provision of needed
16 services to the [HANDICAPPED] individual with a disability. The agency need not
17 take other benefits into consideration when they are for

18 (1) diagnostic and related services, including transportation and
19 subsistence in connection with those services;

20 (2) counseling, guidance, and referral;

21 (3) training, including personal and vocational adjustment training, and
22 necessary training materials;

23 (4) services to members of families of [HANDICAPPED] individuals
24 with disabilities;

25 (5) job placement; and

26 (6) services necessary to assist [HANDICAPPED] individuals with
27 disabilities to maintain suitable employment.

28 * Sec. 6. AS 23.15.090 is amended to read:

29 Sec. 23.15.090. Priority as to eligibility. If vocational rehabilitation service
30 cannot be provided for all eligible [HANDICAPPED] individuals with disabilities
31 who apply, the agency shall provide by regulation for determining the order to be

1 followed in selecting those to whom the services will be provided.

2 * Sec. 7. AS 23.15.100 is amended to read:

3 Sec. 23.15.100. Powers and duties; vending facilities. (a) In carrying out
4 AS 23.15.010 - 23.15.210, the agency shall

5 (1) take the action it considers necessary or appropriate to carry out the
6 purposes of AS 23.15.010 - 23.15.210 [,] and adopt regulations in conformity with
7 these purposes;

8 (2) determine the eligibility of applicants for vocational rehabilitation
9 service;

10 (3) submit to the governor annual reports of activities and expenditures
11 and, before each regular session of the legislature, estimates of sums required for
12 carrying out AS 23.15.010 - 23.15.210 and estimates of the amounts to be made
13 available for this purpose from all sources;

14 (4) cooperate with public and private departments, agencies, and
15 institutions in providing for the vocational rehabilitation of [HANDICAPPED]
16 individuals with disabilities, studying the problems involved in providing this
17 rehabilitation, and establishing, developing, and providing, in conformity with the
18 purposes of AS 23.15.010 - 23.15.210, the programs, facilities, and services that may
19 be necessary or desirable;

20 (5) survey the potential for providing vending facilities on public
21 property and, when feasible, establish vending facilities operated by blind persons and
22 [SEVERELY HANDICAPPED] persons with severe disabilities on public property;

23 (6) license blind persons and [SEVERELY HANDICAPPED] persons
24 with severe disabilities in accordance with AS 23.15.133 for the operation of vending
25 facilities on public property, with blind persons having first priority for operation of
26 the vending facilities;

27 (7) provide the training and supervision necessary to enable blind
28 persons and [SEVERELY HANDICAPPED] persons with severe disabilities to
29 operate vending facilities;

30 (8) provide the equipment and initial stock necessary to enable blind
31 persons and [SEVERELY HANDICAPPED] persons with severe disabilities to

1 operate vending facilities.

2 (b) In carrying out AS 23.15.010 - 23.15.210, the agency may

3 (1) enter into agreements with other states to provide for the vocational
4 rehabilitation of residents of the states concerned;

5 (2) establish and operate rehabilitation facilities and workshops and
6 make grants to public and other nonprofit organizations for these purposes;

7 (3) supervise the operation of vending stands and other small
8 businesses established under AS 23.15.010 - 23.15.210 to be conducted by
9 [SEVERELY HANDICAPPED] individuals with severe disabilities;

10 (4) make studies, investigations, demonstrations, and reports, and
11 provide training and instruction, including the establishment and maintenance of the
12 research fellowships and traineeships with the stipends and allowances that are
13 considered necessary, in matters relating to vocational rehabilitation; and

14 (5) adopt regulations necessary for carrying out the provisions of
15 AS 23.15.010 - 23.15.210.

16 * Sec. 8. AS 23.15.125(e)(2) is amended to read:

17 (2) "person with a disability" means [A HANDICAPPED
18 INDIVIDUAL OR] an individual having a physical or mental disability.

19 * Sec. 9. AS 23.15.133(a) is amended to read:

20 (a) The agency shall issue a license for the operation of a vending facility on
21 public property to a blind person or a [SEVERELY HANDICAPPED] person with a
22 severe disability who is a resident of the state at the time of application and who
23 qualifies for a license under

24 (1) 20 U.S.C. 107 - 107f [107(f)] ([THE] Randolph-Sheppard Act); or

25 (2) regulations adopted by the agency providing for licensing of blind
26 persons or [SEVERELY HANDICAPPED] persons with severe disabilities.

27 * Sec. 10. AS 23.15.134 is amended to read:

28 Sec. 23.15.134. Active participation by [SEVERELY HANDICAPPED]
29 licensees with severe disabilities. The agency shall adopt regulations that ensure the
30 opportunity for active participation by a [SEVERELY HANDICAPPED] licensee
31 with severe disabilities in the administration of vending facilities operated by

1 [SEVERELY HANDICAPPED] licensees with severe disabilities. The opportunity
 2 for active participation provided under this section must be at least as extensive as the
 3 opportunity for active participation provided for a blind licensee under AS 23.15.135.

4 * Sec. 11. AS 23.15.170 is amended to read:

5 Sec. 23.15.170. Maintenance not assignable. The right of an [A
 6 HANDICAPPED] individual with a disability to maintenance under AS 23.15.010 -
 7 23.15.210 is not transferable or assignable at law or in equity.

8 * Sec. 12. AS 23.15.180(b) is amended to read:

9 (b) A blind person or a [SEVERELY HANDICAPPED] person with a severe
 10 disability aggrieved by a decision or action of the agency under AS 23.15.133 -
 11 23.15.135 shall receive a hearing on request in accordance with AS 44.62.330 -
 12 44.62.630 (Administrative Procedure Act). A blind person may also file a complaint in
 13 accordance with 20 U.S.C. 107d-1 for arbitration of a grievance.

14 * Sec. 13. AS 23.15.210 is amended to read:

15 Sec. 23.15.210. Definitions. In AS 23.15.010 - 23.15.210,

16 (1) "active participation" means a process through which the
 17 Committee of Blind Vendors or a licensee is provided the opportunity to exert a major
 18 influence in program policies, standards, and procedures affecting the operation of
 19 vending facilities, with the commissioner of education and early development having
 20 final responsibility;

21 (2) "agency" means the division of vocational rehabilitation;

22 (3) "blind person" means a person whose central visual acuity does not
 23 exceed 20/200 in the better eye with correcting lenses, or whose visual acuity, if better
 24 than 20/200, is accompanied by a limit to the field of vision in the better eye to such a
 25 degree that its widest diameter subtends an angle of not [NO] greater than 20 degrees;
 26 an examination by an ophthalmologist or by an optometrist is necessary before a
 27 person is found to be blind;

28 (4) [REPEALED

29 (5)] "director" means the director of the division of vocational
 30 rehabilitation;

31 (5) "individual having a physical or mental disability" means an

1 individual who has a physical or mental condition that materially limits,
 2 contributes to limiting, or, if not corrected, will probably result in limiting the
 3 individual's activities or functioning;

4 (6) "[HANDICAPPED] individual with a disability" means an
 5 individual having a physical or mental disability that [WHICH] for that individual
 6 constitutes or results in a substantial barrier [HANDICAP] to employment and who
 7 can reasonably be expected to benefit in terms of employability from the provision of
 8 vocational rehabilitation services;

9 (7) ["INDIVIDUAL HAVING A PHYSICAL OR MENTAL
 10 DISABILITY" MEANS AN INDIVIDUAL WHO HAS A PHYSICAL OR MENTAL
 11 CONDITION THAT MATERIALLY LIMITS, CONTRIBUTES TO LIMITING, OR,
 12 IF NOT CORRECTED, WILL PROBABLY RESULT IN LIMITING THE
 13 INDIVIDUAL'S ACTIVITIES OR FUNCTIONING;

14 (8) "licensee" means a blind person or a [SEVERELY
 15 HANDICAPPED] person with a severe disability licensed by the division of
 16 vocational rehabilitation under 20 U.S.C. 107 - 107b and 107d - 107f ([THE]
 17 Randolph-Sheppard Act), AS 23.15.133, and regulations adopted under federal or
 18 state law;

19 (8) "person with a severe disability" means a person who has one
 20 or more physical or mental disabilities that seriously limit the person's functional
 21 capacities in terms of regular employment and whose vocational rehabilitation
 22 requires multiple vocational rehabilitation services over an extended period of
 23 time;

24 (9) "public property" means real or personal property owned or leased
 25 by the state or federal government [,] or an agency of the state or federal government;

26 (10) ["SEVERELY HANDICAPPED PERSON " MEANS A
 27 PERSON WHO HAS ONE OR MORE PHYSICAL OR MENTAL DISABILITIES
 28 THAT SERIOUSLY LIMIT THE PERSON'S FUNCTIONAL CAPACITIES IN
 29 TERMS OF REGULAR EMPLOYMENT, AND WHOSE VOCATIONAL
 30 REHABILITATION REQUIRES MULTIPLE VOCATIONAL REHABILITATION
 31 SERVICES OVER AN EXTENDED PERIOD OF TIME;

1 (11) "vending facility" means a vending machine, cafeteria, snack bar,
 2 shelter, cart, or counter where food, tobacco, newspapers, periodicals, and other
 3 articles are offered for sale to the general public and dispensed automatically or
 4 manually whether prepared on or off the premises; and excludes a facility in a
 5 hospital, school, or other institution where food or other articles are offered for sale
 6 only to patients, inmates, and persons enrolled in or employed by the institution;

7 (11) [(12)] "vocational rehabilitation service" means goods and
 8 services, including diagnostic and related services, necessary to enable an [A
 9 HANDICAPPED] individual with a disability to engage in gainful employment;

10 (12) [(13)] "workshop" means a rehabilitation facility engaged in a
 11 production or service operation that is operated for the primary purpose of providing
 12 gainful employment or professional services to persons with disabilities [THE
 13 HANDICAPPED] as an interim step in the rehabilitation process for those who cannot
 14 readily be absorbed in the competitive labor market or during times when employment
 15 opportunities for them in the competitive labor market do not exist.

16 * Sec. 14. AS 29.60.120(f)(1) is amended to read:

17 (1) "health facility"

18 (A) means a facility that is licensed or certified by the state or
 19 approved under regulations adopted by the department and that is owned or
 20 operated or both by a municipality or by a nonprofit corporation or other
 21 nonprofit sponsor;

22 (B) includes a public health center, maternity home,
 23 community mental health center, facility for persons with mental or physical
 24 disabilities [THE MENTALLY OR PHYSICALLY HANDICAPPED],
 25 nursing home, convalescent center, domestic violence or sexual assault shelter
 26 qualified to receive a grant or contract under AS 18.66, or alcohol or drug
 27 abuse facility that meets standards established under AS 47.37;

28 (C) excludes a facility operated or wholly supported by the
 29 state or the federal government;

30 * Sec. 15. AS 35.10.015(a) is amended to read:

31 (a) The department shall prepare, adopt, and enforce regulations governing the

1 construction of public buildings and facilities by or for the state, including the
 2 University of Alaska, and its political subdivisions, whether financed in whole or in
 3 part by federal funds, to ensure that public buildings and facilities are accessible to [,]
 4 and usable by persons with disabilities and by the [, THE PHYSICALLY
 5 HANDICAPPED,] aged [,] or infirm. The regulations of the department must conform
 6 to a standard comparable to applicable provisions of federal law, regulations, and
 7 standards.

8 * Sec. 16. AS 35.10.015(c) is amended to read:

9 (c) All ferries owned or operated by the state shall be equipped with elevators
 10 or other passenger lifting equipment, ramps, or other facilities and devices to ensure
 11 that these vessels are accessible to and usable by persons with disabilities and by
 12 [PHYSICALLY HANDICAPPED,] aged or infirm passengers. In this subsection,
 13 "accessible to and usable by" means that a person with a disability or an [A
 14 PHYSICALLY HANDICAPPED,] aged or infirm passenger can board, disembark and
 15 move between decks and about the public areas aboard a state ferry with personal
 16 comfort and safety [,] and with safety to [,] other passengers and members of the crew.

17 * Sec. 17. AS 35.10.015(d) is amended to read:

18 (d) After June 25, 1976, a ferry may not be constructed, lengthened,
 19 completely renovated, or purchased for use or entered into service by the division of
 20 marine transportation of the department as a part of the Alaska marine highway system
 21 that does not include adequate facilities and devices to ensure that the vessel is
 22 accessible to and usable by persons with disabilities and by [PHYSICALLY
 23 HANDICAPPED,] aged or infirm passengers. Some staterooms and all restrooms,
 24 indoor passageways, outdoor weather decks, and other public areas aboard the vessel
 25 shall be so designed and constructed as to permit access and use by persons with
 26 disabilities and by [PHYSICALLY HANDICAPPED,] aged [,] or infirm passengers,
 27 including [BUT NOT LIMITED TO] those persons occupying a wheelchair.

28 * Sec. 18. AS 35.10.015(e) is amended to read:

29 (e) After June 25, 1976, a [NO] public building or facility in the state may not
 30 be planned, designed, financed, constructed, opened to public use, or otherwise placed
 31 in operation unless it meets the standards established under this section. If the

1 standards for a public building or facility are not provided for in federal statute
 2 [LAW], regulation, or standards, the department shall determine the extent of, and
 3 adopt regulations setting the standards for, access to and use of the public building or
 4 facility by persons with disabilities and by the [PHYSICALLY HANDICAPPED,]
 5 aged [,] or infirm.

6 * Sec. 19. AS 36.30.040(b) is amended to read:

7 (b) The commissioner shall adopt regulations pertaining to

- 8 (1) suspension, debarment, and reinstatement of prospective bidders
 9 and contractors;
- 10 (2) bid protests;
- 11 (3) conditions and procedures for the procurement of perishables and
 12 items for resale;
- 13 (4) conditions and procedures for the use of source selection methods
 14 authorized by this chapter, including single source procurements, emergency
 15 procurements, and small procurements;
- 16 (5) the opening or rejection of bids and offers, and waiver of
 17 informalities in bids and offers;
- 18 (6) confidentiality of technical data and trade secrets submitted by
 19 actual or prospective bidders or offerors;
- 20 (7) partial, progressive, and multiple awards;
- 21 (8) storerooms and inventories, including determination of appropriate
 22 stock levels and the management of agency supplies;
- 23 (9) transfer, sale, or other disposal of supplies;
- 24 (10) definitions and classes of contractual services and procedures for
 25 acquiring them;
- 26 (11) providing for conducting price analysis;
- 27 (12) use of payment and performance bonds in connection with
 28 contracts for supplies, services, and construction;
- 29 (13) guidelines for use of cost principles in negotiations, adjustments,
 30 and settlements;
- 31 (14) conditions under which an agency may use the services of an

1 employment program;

2 (15) a bidder's or offeror's duties under this chapter; and

3 (16) the elimination and prevention of discrimination in state
4 contracting because of race, religion, color, national origin, sex, age, marital status,
5 pregnancy, parenthood, disability [HANDICAP], or political affiliation.

6 * Sec. 20. AS 36.30.990(11) is amended to read:

7 (11) "employment program" means a nonprofit program to increase
8 employment opportunities for individuals with physical or mental disabilities that
9 constitute substantial barriers [HANDICAPS] to employment;

10 * Sec. 21. AS 39.25.160(f) is amended to read:

11 (f) Action affecting the employment status of a state employee or an applicant
12 for state service, including appointment, promotion, demotion, suspension, or removal,
13 may not be taken or withheld on the basis of unlawful discrimination due to race,
14 religion, color, [OR] national origin, age, disability [HANDICAP], sex, marital status,
15 change in marital status, pregnancy, or parenthood. In addition, action affecting the
16 employment status of an employee in the classified service, including appointment,
17 promotion, demotion, suspension, or removal, may not be taken or withheld for a
18 reason not related to merit.

19 * Sec. 22. AS 41.21.027(b) is amended to read:

20 (b) The state may not enter into a concession contract under (a) of this section
21 if the proposed contract involves estimated annual gross receipts of more than
22 \$100,000, construction of facilities, a term longer than four years, or the provision of
23 services other than those normally provided at similar facilities managed by the state,
24 unless the commissioner finds that the proposed concession contract

25 (1) will implement the purposes of the park unit and is authorized by
26 the park management plan, if any, that applies to the park unit;

27 (2) will enhance public use and enjoyment of the park unit while
28 maintaining a high quality environment and the opportunity for high quality
29 recreational experiences;

30 (3) will provide services or facilities that are not feasible or affordable
31 for the state to provide directly;

- 1 (4) will not create unacceptable adverse environmental effects;
- 2 (5) is based on a need and desire of the public;
- 3 (6) recognizes and accommodates, at no cost, ordinary uses in a park
- 4 unit;
- 5 (7) requires the contractor to hire residents of the state, to the extent
- 6 available and qualified, when hiring persons to work in the park under the contract;
- 7 (8) provides the state with a fair and equitable portion, in money or
- 8 services, of the contractor's receipts from the provision of the service or the operation
- 9 of the facility;
- 10 (9) provides that the department retains control over the level of fees
- 11 and the design and appearance of any facility to be constructed;
- 12 (10) encourages the contractor to accommodate visitors with special
- 13 circumstances, including [HANDICAPPED] persons with disabilities, senior citizens,
- 14 and school children; and
- 15 (11) provides that the contract may be terminated if the contractor fails
- 16 to fulfill the requirements of this section or the contract.

17 * Sec. 23. AS 47.14.100(d) is amended to read:

18 (d) In addition to money paid for the maintenance of foster children under (b)

19 of this section, the department

20 (1) shall pay the costs of caring for [PHYSICALLY OR MENTALLY

21 HANDICAPPED] foster children with physical or mental disabilities, including the

22 additional costs of medical care, habilitative and rehabilitative treatment, services and

23 equipment, and special clothing, and the indirect costs of medical care, including child

24 care and transportation expenses;

25 (2) may pay for respite care; in this paragraph, "respite care" means

26 child care for the purpose of providing temporary relief from the stresses of caring for

27 a foster child; and

28 (3) may pay a subsidized guardianship payment under AS 25.23.210

29 when a foster child's foster parents or other persons approved by the department

30 become court-appointed legal guardians of the child.

31 * Sec. 24. AS 47.75.060(2) is amended to read:

1 (2) "social services" means child care services, protective services for
 2 children and adults, services for children and adults in foster care, services related to
 3 the management and maintenance of the home, day care services for adults,
 4 transportation services, training and related services, employment services,
 5 information, referral, and counseling services, the preparation and delivery of meals,
 6 health support services, a full range of legal services, and appropriate combinations of
 7 services designed to meet the special needs of children, the aged, persons with
 8 developmental disabilities, persons who are [THE DEVELOPMENTALLY
 9 DISABLED, THE] blind, persons with mental illness, persons with physical
 10 disabilities [THE MENTALLY ILL, THE PHYSICALLY HANDICAPPED], and
 11 persons with substance abuse disorders [ALCOHOLIC AND DRUG ADDICTS].

12 * Sec. 25. AS 47.80.010 is amended to read:

13 Sec. 47.80.010. Rights of persons with disabilities [HANDICAPS]. Persons
 14 with disabilities [HANDICAPS] have the same legal rights and responsibilities
 15 guaranteed all other persons by the Constitution of the United States and federal laws
 16 and by the constitution and laws of the state. An otherwise qualified person may not
 17 be excluded, by reason of having a disability [HANDICAP], from participation in, be
 18 denied the benefits of, or be subjected to discrimination under, any program or activity
 19 that receives public funds. Some persons with disabilities [HANDICAPS] may be
 20 unable, due to the severity of their disability [HANDICAP], to exercise for
 21 themselves all of their rights in a meaningful way; for others modification of some or
 22 all of their rights is appropriate. The procedure used for modification of rights must
 23 contain proper legal safeguards against every form of abuse, must be based on an
 24 evaluation of the social capability of the person by qualified experts, and must be
 25 subject to periodic reviews and to the right of appeal to higher authorities.

26 * Sec. 26. AS 47.80.020 is amended to read:

27 Sec. 47.80.020. Protection and advocacy of rights. The department shall
 28 establish a system to protect and advocate rights of persons with disabilities
 29 [HANDICAPS]. The system

30 (1) has the authority to pursue legal, administrative, and other
 31 appropriate remedies to assure the protection of the rights of persons with disabilities

1 [HANDICAPS]; and

2 (2) shall be independent of any state agency that provides treatment,
3 services, or habilitation of persons with disabilities [HANDICAPS].

4 * Sec. 27. AS 47.80.040(f) is amended to read:

5 (f) In the appointment of all members other than state agency members, due
6 regard shall be given to geographically balanced representation of areas of the state
7 and to representation of persons with a variety of different mental and physical
8 disabilities [HANDICAPS].

9 * Sec. 28. AS 47.80.100(a) is amended to read:

10 (a) The Department of Health and Social Services, the Department of
11 Education and Early Development, and other departments of the state as appropriate,
12 shall, in coordination, plan, develop, and implement a comprehensive system of
13 services and facilities for persons with disabilities [HANDICAPS,] that is consistent
14 with the state plan adopted under AS 47.80.090(5) and is dispersed geographically
15 within the state.

16 * Sec. 29. AS 47.80.100(b) is amended to read:

17 (b) The services required in (a) of this section are specialized services or
18 special adaptations of services available to the general population and shall be directed
19 toward the social, personal, physical, or economic habilitation or rehabilitation of
20 persons with disabilities [HANDICAPS].

21 * Sec. 30. AS 47.80.110 is amended to read:

22 Sec. 47.80.110. Program principles. The system of services and facilities
23 required under AS 47.80.100 shall accord with the principles that service providers
24 shall

25 (1) make services available at times and locations that enable residents
26 of the provider's service area to obtain services readily;

27 (2) ensure each client's right to confidentiality and treatment with
28 dignity;

29 (3) establish staffing patterns that reflect the cultural, linguistic, and
30 other social characteristics of the community and that incorporate multidisciplinary
31 professional staff to meet client functional levels and diagnostic and treatment needs;

1 (4) promote client and family participation in formulating, delivering,
2 and evaluating treatment and rehabilitation;

3 (5) design treatment and habilitation to maximize individual potential
4 and minimize institutionalization; and

5 (6) provide services in the least restrictive setting, enabling a person to
6 live as normally as possible within the limitations of the disability [HANDICAP].

7 * Sec. 31. AS 47.80.120 is amended to read:

8 **Sec. 47.80.120. Habilitation plans.** A state agency, contractor, or grantee who
9 is directly responsible for providing services to persons with disabilities
10 [HANDICAPS] shall develop an individual habilitation plan for each person whose
11 program of services utilizes state funds. The plan shall be completed in writing and
12 furnished to the department within 30 days of admission of a client to the program of
13 services. The plan, its renewals, and any changes of it [.] shall have the written
14 concurrence of the client, or the client's parent or guardian when appropriate, and the
15 agency or contractor responsible for providing services. The development and content
16 of a plan shall conform to requirements established by the department by regulation.
17 Insofar as practicable, the requirements shall conform to those established for
18 individual habilitation plans under P.L. 91-517 or P.L. 94-103, as amended. Each plan
19 shall be time-limited, evaluated, and renewed at least annually.

20 * Sec. 32. AS 47.80.130(a) is amended to read:

21 (a) The department shall

22 (1) develop budgets and receive and distribute appropriations and
23 funds under this section;

24 (2) adopt regulations regarding standards of services and facilities for
25 persons with disabilities [HANDICAPS] and the quality of services and the process
26 by which services are to be delivered;

27 (3) adopt any other regulations necessary to implement this chapter;

28 (4) provide technical assistance to public and private agencies in
29 planning, developing, and implementing programs to serve [HANDICAPPED]
30 persons with disabilities;

31 (5) operate programs and facilities [.] and enter into agreements,

1 contracts, or grants necessary to provide services required under this chapter;

2 (6) take the actions and undertake the obligations that are necessary to
3 participate in federal grant-in-aid programs and accept federal or other financial aid
4 for the study, examination, care, and treatment of persons with disabilities [THE
5 HANDICAPPED].

6 * Sec. 33. AS 47.80.150(a) is amended to read:

7 (a) A person with a disability [HANDICAP] or the person's legal
8 representative acting in a representative capacity, the person's spouse, or the person's
9 parents if the person is a minor [,] shall pay or contribute to the payment of the
10 charges for the care or treatment in accordance with the fee schedule adopted under
11 AS 44.29.022. The order of the department relating to the payment of charges shall be
12 prospective in effect and may relate only to charges to be incurred, except that, if a
13 person intentionally conceals ability to pay, the person shall be ordered to pay to the
14 extent of the person's ability to pay the charges accruing during the period of the
15 concealment. The order of the department relating to the payment of charges by the
16 person with a disability [HANDICAP] or the person's legal representative, or the
17 person's spouse or parents, shall be issued within six months of the date on which the
18 charge was incurred. The department may make necessary investigations to determine
19 the ability to pay. The order shall remain in full force and effect unless modified by
20 subsequent court or department orders.

21 * Sec. 34. AS 47.80.150(b) is amended to read:

22 (b) As used in (a) of this section, the term "actual cost of the care and
23 treatment" means the lesser of (1) the rate provided for by a contract entered into
24 under this chapter, (2) the fee established under AS 44.29.022 for services provided
25 under this chapter or, (3) if the person is under the age of 18, the cost of care of a
26 person of the same age who is not a person with a disability [HANDICAP] and who
27 resides with a parent or guardian, and includes expenses of transportation incidental to
28 treatment and carrying out the intent of this chapter. In establishing fees for services
29 under this chapter, the commissioner shall consider the income and family size of the
30 responsible party, age of the person receiving the services, and other factors that relate
31 to the ability to pay. Fees may not exceed the actual cost of the care or treatment.

1 * Sec. 35. AS 47.80.150(e) is amended to read:

2 (e) All money paid to the department by the person with a disability
3 [HANDICAP] or on the person's behalf, under this section, shall be deposited in the
4 general fund.

5 * Sec. 36. AS 47.80.150(f) is amended to read:

6 (f) If an order of payment is entered by the department under this section and
7 delinquency in the payment of any amount due the state under the order continues for
8 a period of more than 30 days after the notification by the department to the person,
9 the legal representative, parent, or spouse of the person with a disability
10 [HANDICAP], the state may proceed to collect the amounts due by appropriate
11 proceedings. Actions to enforce the collection of payments may only be brought
12 within three years after the date of notification of a delinquent payment.

13 * Sec. 37. AS 47.80.900(3) is amended to read:

14 (3) "facilities for persons with disabilities [HANDICAPS]" means
15 publicly or privately operated facilities, or specified portions of facilities, designed
16 primarily for the delivery of services to those persons; the term includes [BUT IS
17 NOT LIMITED TO] residential facilities;

18 * Sec. 38. AS 47.80.900(4) is amended to read:

19 (4) "habilitation" means education or training for persons with
20 disabilities [THE HANDICAPPED] to enable them to function better in society;

21 * Sec. 39. AS 47.80.900(5) is amended to read:

22 (5) "least restrictive setting" means a residential or other setting for
23 meeting the needs of a person with a disability that [HANDICAPPED PERSON
24 WHICH] requires the least amount of restriction of personal liberty by enabling the
25 person to function in as normal an environment as possible and to live as normally as
26 possible, within the limitations of the disability [HANDICAP];

27 * Sec. 40. AS 47.80.900(6) is amended to read:

28 (6) "person with a disability [HANDICAP]" means a person with a
29 developmental disability as defined in (7) of this section or a person who is hard of
30 hearing, deaf, speech impaired, visually impaired [HANDICAPPED], seriously
31 emotionally disturbed, orthopedically or otherwise health impaired, or who has a

1 specific learning disability; the term includes a child with a disability as defined in
2 AS 14.30.350;

3 * Sec. 41. AS 47.80.900(8) is amended to read:

4 (8) "residential facility" means a publicly or privately operated facility
5 that provides 24-hour care for four or more persons with disabilities [HANDICAPS],
6 excluding family, foster family, or adoptive homes;

7 * Sec. 42. AS 47.80.900(9) is amended to read:

8 (9) "substantial disability [HANDICAP]" means a disability that
9 prevents or substantially impedes the person's participating in and benefiting from the
10 social, economic, educational, recreational, or other opportunities generally available
11 to peers in the community who are not similarly disabled [HANDICAPPED].

12 * Sec. 43. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 CONFORMING INSTRUCTIONS. (a) The revisor of statutes is instructed to change
15 the catch line of AS 47.80.100 from "Programs for persons with handicaps" to "Programs for
16 persons with disabilities."

17 (b) Throughout the Alaska Administrative Code, the regulations attorney is instructed
18 to change the terms "handicapped," "handicap," and "handicaps," as appropriate, in a manner
19 consistent with the changes made in secs. 2 - 42 of this Act.

20 * Sec. 44. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 357(HES)
(H) Publish Date: 2/1/06

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: Statutory References to Disabilities RDU: Vocational Rehabilitation
Sponsor: Representative Wilson Component: Vocational Rehabilitation
Requester: House HES Component Number: 292
Administration

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: None
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Gale Sinnott, Director Phone: 465-6927
Division: Division of Vocational Rehabilitation Date/Time: 1/17/06 2:55 PM
Approved by: Greg O'Claray, Commissioner Date: 1/17/2006
Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 357(HES)
 (H) Publish Date: 2/1/06
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title UPDATING TERMINOLOGY IN STATUTES FOR PERSONS WITH DISABILITIES RDU Senior and Disabilities Svcs
 Component Community DD Grants

Sponsor WILSON

Requester HOUSE (HES)

Component No. 309

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Division of Senior and Disabilities Services does not anticipate any financial impact as a result of HB 357.

Prepared by: Rod Moline, Director
 Division Senior & Disabilities Services
 Approved by: Karleen Jackson, Commissioner
 Agency Department of Health and Social Services

Phone 465-3372
 Date/Time 01/20/2006
 Date 01/20/2006



Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

SPONSOR STATEMENT

HB 357 "Updating the terminology in statutes for persons with disabilities"

After the Americans with Disabilities Act of 1990, most states modified their statutes to reflect a positive reference- changing the word "handicapped" to "person with a disability". This bill changes all Alaska State Statutes to rid them of this archaic reference that has negative and demoralizing connotations in reference to a person's ability and potential. Using "a person with a disability" reflects language that is in Federal legislation- the Federal Workforce Investment Act, the American's with Disabilities Act, the Civil Rights Act of 1991; The Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act of 1973 as amended in 1992 and 1998.

These changes are being proposed in consultation with the Department of Labor, other state agencies, and along with the Governor's Council on Disabilities and Special Education. There is support for this bill from numerous other organizations such as the South-East Alaska Independent Living Center, which represent people with disabilities. This bill is not designed to modify any existing requirements or exemptions, nor will it be changing any existing requirements or exemptions with the new terminology. This bill is designed to serve the constituents of everyone across the state that are affected by this existing negative and demeaning terminology.

I ask for your support of HB 357 to update and modernize the language that is in our Alaska Statutes.

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

January 11, 2006

SUBJECT: HB 357, a bill updating the terminology in statutes for persons with disabilities (Work Order No. 24-LS1407A)

TO: Representative Peggy Wilson
Attn: Aaron

FROM: *JB*
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Provides legislative intent for the bill. Indicates that the legislature intends to modernize the terminology in the statutes without altering substantive provisions.

Section 2. Amends AS 14.30.630(b) to replace two occurrences of "handicapped" with forms of "disabled."

Section 3. Amends AS 18.15.210 to replace "handicaps" with "disabilities."

Section 4. Amends AS 18.55.130(b) to replace "handicaps" with "disabilities."

Section 5. Amends AS 23.15.080 to replace the occurrences of "handicapped" with a form of "disability."

Section 6. Amends AS 23.15.090 to replace "handicapped" with "with disabilities" and "severely handicapped" with "with severe disabilities."

Section 7. Amends AS 23.15.100 to replace "handicapped" and "severely handicapped" with "with disabilities" and "with severe disabilities."

Section 8. Amends AS 23.15.125(e)(2) to delete a reference to a "handicapped individual."

Section 9. Amends AS 23.15.133(a) to replace "severely handicapped" with forms of "severe disability" and to make a technical correction of a citation to federal law.

Section 10. Amends AS 23.15.134 to replace "severely handicapped" with "with severe disabilities."

Section 11. Amends AS 23.15.170 to replace "handicapped " with "with a disability."

Section 12. Amends AS 23.15.180(b) to replace "severely handicapped" with "with a severe disability."

Section 13. Amends AS 23.15.210(1) and (3) to make technical changes. Amends AS 23.15.210 to move the definition of "individual having a physical or mental disability" from (7) to (5). Amends (6) to replace the defined term, "handicapped individual," with "individual with a disability," makes a technical change, and changes "handicap" to "barrier." Rewrites former (8) to replace the reference to "severely handicapped " with "severe disability" and makes a stylistic change. Moves the definition for "severely handicapped person" at (10) to the definition of "person with a severe disability" at the new (8). In (11) and (12), replaces "handicapped" with forms of "disability."

Section 14. Amends AS 29.60.120(f)(1) to replace a reference to "the mentally or physically handicapped" with "persons with mental or physical disabilities."

Section 15. Amends AS 35.10.015(a) to replace "the physically handicapped" with "persons with disabilities and by the" and to make related stylistic changes.

Section 16. Amends AS 35.10.015(c) to replace "physically handicapped" with "persons with disabilities and by" and "person with a disability or an." Makes some stylistic changes.

Section 17. Amends AS 35.10.015(d) to replace "physically handicapped" with "persons with disabilities and by." Makes some stylistic changes.

Section 18. Amends AS 35.10.015(e) to replace "physically handicapped" with "persons with disabilities and by." Makes some stylistic changes.

Section 19. Amends AS 36.30.040(b)(16) to replace "handicap" with "disability."

Section 20. Amends AS 36.30.990(11) to replace "handicaps" with "barriers."

Section 21. Amends AS 39.25.160(f) to replace "handicap" with "disability" and to make a stylistic change.

Section 22. Amends AS 42.21.027(b)(10) to replace "handicapped" with "with disabilities."

Section 23. Amends AS 47.14.100(d)(1) to replace "physically or mentally handicapped" with "with physical or mental disabilities" and adds "and."

- Section 24. Amends AS 47.75.060(2) to make a stylistic change and to replace "the physically handicapped" with "persons with physical disabilities."
- Section 25. Amends AS 47.80.010 to replace forms of "handicap" with forms of "disability."
- Section 26. Amends AS 47.80.020 to replace "handicaps" with "disabilities."
- Section 27. Amends AS 47.80.040(f) to replace "handicaps" with "disabilities."
- Section 28. Amends AS 47.80.100(a) to replace "handicaps" with "disabilities."
- Section 29. Amends AS 47.80.100(b) to replace "handicaps" with "disabilities."
- Section 30. Amends AS 47.80.110(6) to replace "handicap" with "disability."
- Section 31. Amends AS 47.80.120 to replace "handicap" and "handicapped" with words and phrases using "disabilities."
- Section 32. Amends AS 47.80.130(a) to replace "handicaps" with "disabilities."
- Section 33. Amends AS 47.80.150(a) to replace "handicap" with "disability."
- Section 34. Amends AS 47.80.150(b) to replace "handicap" with "disability."
- Section 35. Amends AS 47.80.150(e) to replace "handicap" with "disability."
- Section 36. Amends AS 47.80.150(f) to replace "handicap" with "disability."
- Section 37. Amends AS 47.80.900(3) to replace "handicaps" with "disabilities" and to make a technical change.
- Section 38. Amends AS 47.80.900(4) to replace "the handicapped" with "persons with disabilities."
- Section 39. Amends AS 47.80.900(5) to replace forms of "handicap" with "disability."
- Section 40. Amends AS 47.80.900(6) to replace forms of "handicap" with "disability" and "disabled."
- Section 41. Amends AS 47.80.900(8) to replace "handicaps" with "disabilities."
- Section 42. Amends AS 47.80.900(9) to replace forms of "handicap" with "disability" and "disabled."

Representative Peggy Wilson

January 11, 2006

Page 4

Section 43. Directs the revisor of statutes to change the heading ("heading" should be changed to "catchline") for AS 47.80.100. Directs the regulations attorney to change versions of the term "handicap" in the Alaska Administration ("Administration" should be changed to "Administrative") Code in a manner consistent with this bill.

Section 44. Gives the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:ljw
06-009.ljw

Taken from: http://www.hofstra.edu/studentserv/advise/adv_phedvac.cfm

STUDENTS WITH DISABILITIES: A VOCABULARY LESSON

Handicap vs. Disability

The language in Section 504 uses the generic term "handicap," referring in later paragraphs to the conditions rendering a person handicapped; those individuals for whom the regulations were written strongly prefer the term "disability," making a clear distinction between the two words. A **disability** is a physical or mental impairment that substantially limits one or more major life activities (functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working). The disability can be caused by a disease, accident or defective gene, but it is a residual effect, not the disease or injury itself. Only when the disability interacts with a particular set of environmental conditions is the person **handicapped**. A flight of stairs preventing a person in wheelchair from reaching his/her destination on an upper floor of a building renders that person handicapped; the presence of a working, accessible elevator removes the handicap. A print exam renders an individual with a visual impairment handicapped; an oral exam removes that barrier and hence, the handicap. Federal and state regulations, and a strong appreciation of the rights of all individuals, disabled or not, serve to eliminate or reduce handicapping situations.

Barriers: Architectural vs. Attitudinal

No environment is barrier-free. Architectural barriers can for the most part be eliminated, by providing ramps, curb cuts, handicapped parking, appropriate lighting, elevators with lowered panels, electric doors, modified and plentiful bathroom facilities, and a host of other physical changes to an environment. Most modifications, while perhaps made specifically to accommodate a person with a disability, also end up benefiting many others, so the cost is justifiable. Attitudinal barriers are much more difficult to eradicate, and can be found in all areas of academic and social life. They can show up with a condescending pat on the head to a person in a wheelchair, with the impatient completing of a sentence for a person with a speech impairment who is trying to ask or state something, with an unwillingness to take seriously a job applicant who has a disability, with the reticence of an instructor to fail a poor student just because that person has a disability or, conversely, the unwillingness to allow an appropriate accommodation that might just allow that student to earn an A. They surface when a nondisabled person uses a handicapped parking space, saying "I'll only be a minute," and an individual with a disability is therefore unable to find a slot wide enough to allow egress from his/her vehicle. The English language demonstrates an array of patronizing and demeaning attitudes, simply by its use of words like: afflicted, courageous, crippled, deaf-and-dumb, deformed, inspiring, victim, wheelchair-bound/confined to a wheelchair. Unless the term "college-bound" is a description of students who are chained to their seats in freshman composition class (nice idea, perhaps!), "wheelchair-bound" is not a description of students strapped into their wheelchairs; rather than being confined by their chairs, these students use the wheelchairs as a vehicle to give them independence and mobility, getting them out of the classroom and into the gym, discos and, yes, the library as well.

Visible vs. Invisible Disabilities

Ironically, individuals with rather obvious physical disabilities are often more easily recognized as having particular needs, and therefore meet with more success in negotiating with faculty, staff and other students. They fit the stereotype. Individuals with invisible disabilities can be handicapped by societal attitudes precisely because others expect them to be "normal" (whatever that term means). A student with a hearing loss who chooses not to wear an obvious hearing aid

may be regarded as aloof or antisocial. A person with arthritis may have trouble convincing a faculty member that the pain in her fingers means she needs more time to complete her exams. Someone with Tourette syndrome may be ostracized by his classmates because of uncontrollable tics and vocalizations. Most learning disabled students have, to the untrained eye, no outward manifestations of their disability, until they attempt to put pen to paper or take an oral exam. The moral of the story: never assume. You can ask that documentation be submitted to the PHED or PALS office (as appropriate) if you have a healthy skepticism, but recognize that different learning styles and physical needs come in widely differing packages.

Accommodation vs. Independence

Section 504 provides guidelines about certain appropriate accommodations to make a disability less of a handicap. Making an accommodation is the crucial first step, but barrier-removal alone is insufficient. It is not enough to say, "Well, we put in a ramp. The door at the top may be heavy, but another student will usually be around to open it." Or push a high elevator button. Or make a call from a too-high pay phone. Or help with a transfer into a narrow toilet. Or go inside to tell the store guard that someone in a wheelchair is waiting outside in the rain to be let into the service entrance or between the pillars that are placed to prevent shopping cart theft. In all of these situations, well-meaning businesses are only removing half of the barrier, because they are assuming that someone nondisabled will always be accompanying the individual with a disability. The person in the wheelchair is not given the choice of when to enter or exit a building, or when to study or take care of human needs, and is, instead, dependent on the charity of others. By contrast, providing the means for a person with a disability to do his/her own writing and eating and moving around campus independently without having to use a separate entrance or push a doorbell is not an issue of convenience. Rather, it is a matter of human dignity.

Fair vs. Same

Evaluations of student progress in a class take many forms. Some faculty members, especially those constrained by heavy course loads and large classes, use multiple-choice/true-false objective tests; others have more subjective and comprehensive essay examination formats. Class participation may possibly be a factor in grading, as is a level of understanding and scholarship demonstrated in term papers. While students with disabilities should never be held to lower standards than those by which their classmates are judged, they may on occasion need different avenues to show what they have learned. As an obvious example, a legally blind student asked to take a written exam without the aid of special equipment, a reader, extended time, enlarged print, or other appropriate accommodation may fail that test, not showing a lack of understanding of the material, but merely proving that (s)he has a visual impairment. A student with a communication disorder should never be discouraged from asking questions in class, but, depending upon the nature and intelligibility of his/her speech, perhaps should have the class participation grade reflect only the quality of the questions, not the frequency. In both of these situations, provision of a substitute testing form or alternate ways of demonstrating daily classroom comprehension and vitality are appropriate. If the instructor keeps in mind that the goal of student evaluation is to give the student an opportunity to demonstrate what (s)he knows, then being fair to all students does not necessarily mean treating all students exactly the same.

http://www.hofstra.edu/studentserv/advise/adv_phedvac.cfm

Defending Your Rights

Disability Rights:

Manual Of Style For Depicting People With Disabilities

This brochure is one response to a need identified by people with disabilities. The way we portray people with disabilities and our attitudes toward them are critical to their future...and to ours.

Disability vs. Handicap

A disability is a condition caused by accident, trauma, genetics or disease which may limit a person's mobility, hearing, vision, speech or mental function. Some people have one or more disabilities.

A handicap is a physical or attitudinal constraint imposed upon a person, regardless of whether that person has a disability. Webster's Ninth New Collegiate Dictionary defines the handicap as "to put at a disadvantage."

People with disabilities prefer to be called just that: people with disabilities. They are not conditions or diseases. For example, an individual is not "an epileptic," but rather "a person with epilepsy."

When writing a story or advertisement, the writer should use the term "people with disabilities" exclusively or, at a minimum, as the initial reference. Subsequent references can use terms like "person with a disability" or "individuals with disabilities."

In certain circumstances, the terms "persons with disabilities" or "individuals with disabilities" may, for grammatical or narrative reasons, be more appropriate than "people with disabilities." Generally, however, "people with disabilities" is the preferred initial reference.

Written Communications

Copywriters should portray people with disabilities as they would anyone else - with all human strengths and weaknesses. In all advertising, writers should depict people with disabilities in an appropriate and non-judgmental manner. Never refer to people with disabilities as "disabled" simply to fill space or to accommodate design layouts.

Interviewing Techniques

When talking with a person with a disability, speak directly to that person rather than through a companion or interpreter. Conduct interviews in a manner that emphasizes abilities, achievements and individual qualities.

Address people who have disabilities by their first names only when calling everyone present by their first name.

If you offer assistance, wait until the offer is accepted before acting. Then listen to or ask for instructions.

Disability: related terms and their meanings

Blind/Visual Impairment. Blind refers to a total loss of vision. Visual impairment indicates partial vision, also referred to as partial sight.

Cerebral Palsy. A group of conditions resulting from damage to the central nervous system. Do not assume that a person with cerebral palsy also has mental retardation; the two do not necessarily or typically occur together.

Congenital Disability. A physical impairment existing since birth.

Deaf/Hard of Hearing. Deaf refers to a total loss of hearing. Hard of hearing refers to partial hearing loss ranging from slight to severe.

Developmental Disability. Any mental or physical disability manifested by the age of 22 that may continue indefinitely and result in substantial limitation in three or more of the following: self-care, receptive and expressive language, learning, mobility, self-direction, independent living or economic sufficiency.

Epilepsy. Term for various disorders marked by electrical disturbances of the central nervous system and typically manifested by seizures, which are involuntary muscular contractions.

Learning Disability. Condition affecting the understanding or use of spoken or written language.

Mental Illness/Mental Impairment. A psychiatric disability caused by numerous factors including a biological, physiological or psychological disorder or a chemical disorder of the brain.

Mental Retardation. Condition causing significantly below-average intellectual functioning.

Paraplegia/Hemiplegia/Quadriplegia. Paraplegia: paralysis of lower half of body. Involves partial or total loss of function of both legs. Hemiplegia: full or partial paralysis of one side of body caused by brain damage due to disease, trauma or stroke. Quadriplegia: paralysis of body involving partial or total loss of function in both arms and legs.

Service Animals. Any guide dog, signal dog or other animal individually trained to provide assistance to a person with a disability.

Speech Impairment. Limited or difficult-to-understand speech patterns.

Specific Terms You Should Avoid Using...

Overused Terms

The following are examples of terms that are frequently used incorrectly as stereotypes to depict people with disabilities:

brave
challenged
courageous
disabled
handi-capable
inspirational

Inappropriate Terms

Never use any of the following terms when referring to people with disabilities:

afflicted by/afflicted with
crip/cripple/crippled/the crippled/crippling
deaf and dumb
deformed
homebound employment (use instead "employed in the home")
invalid
normal (as the opposite of having a disability)
unfortunate, pitiful, poor
victim
wheelchair bound/confined to a wheelchair (use instead "uses a wheelchair")

Disability Rights Bureau:

Springfield

500 South Second Street
(217) 524-2660
TTY: (217) 785-2771

Chicago

100 West Randolph Street
Chicago, Illinois 60601
(312) 814-5684
TTY: (312) 814-3374

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TOP



Powering Independent Living

DISABILITY FACTS

Disability is fundamental in the human experience. People can become disabled at any point in their lives. Disability may be present from birth, or result from an accident, a work-related injury, a disease or medical condition, or the natural aging process.

[more about Disability Facts](#)

GLOSSARY OF TERMINOLOGY

Since the 1960s, people with disabilities in the US have created a civil rights movement to change the country and break down the barriers to their living independently in the community. The physical barriers are coming down but significant attitudinal barriers persist. The way we speak and the words that we use to describe people who have disabilities is a critical element in eliminating prejudice, fear, insensitivity, stereotyping and discrimination.

This glossary serves as a guideline for terminology that best portrays people with disabilities.

[more about Glossary of Terminology](#)

GLOSSARY OF TERMINOLOGY

Since the 1960s, people with disabilities in the US have created a civil rights movement to change the country and break down the barriers to their living independently in the community. The physical barriers are coming down but significant attitudinal barriers persist. The way we speak and the words that we use to describe people who have disabilities is a critical element in eliminating prejudice, fear, insensitivity, stereotyping and discrimination.

This glossary serves as a guideline for terminology that best portrays

people with disabilities.

- **Access and Accessibility**
- **Assistive Services**
- **Disability**
- **Disabled vs Handicapped**
- **Handicapped Parking/Seating**
- **Independent Living**
- **Normal**
- **Person with a Disability**
- **Victim of...Suffers from...**
- **Wheelchair-bound**

Access and Accessibility refer to physical structures, products and equipment, communication systems, services, organizations and other social networks. When something is accessible, it is open or available to all. For example, a building that is accessible may have wide doors with easy-to-operate levers. It may have ramps, non slip floors and good lighting. An accessible film has closed captioning or video description. An accessible school play may offer a sign language interpreter.

Assistive Services assistance with daily living activities such as getting in and out of bed, bathing, dressing and cooking which make it possible for people with disabilities to live independently.

Disability a condition that interferes with a person's ability to do something independently.

Disabled vs Handicapped not synonyms. A disabling condition may or may not be handicapping. This person is handicapped when faced with a set of stairs where there is no ramp available. The word handicapped says The Associated Press Stylebook, "should be avoided in describing a disability".

Handicapped Parking, Handicapped Seating is incorrect wording, if what is meant is parking for people with disabilities, or seating for patrons who use wheelchairs.

Independent Living services focusing on goals including self determination, de-institutionalization and universal access to all opportunities in the community.

Normal is what most people, including people with disabilities,

consider themselves.

Person with a Disability is a more accurate term than "disabled person" because it does not suggest that the person is defined or labeled by the disability. The emphasis is on the "person" first and foremost.

Victim of...Suffers from...inaccurate and inappropriate to describe a person with a disability. These terms should not be used.

Wheelchair-bound should not be used since a person may use a wheelchair only occasionally. Using the wheelchair for independent mobility is liberating for people with disabilities -providing them with mobility and freedom rather than restricting or "binding" them.

MILESTONES

Disability is a significant aspect of our lives and communities. Given the numbers of people with disabilities in the population, it is one of the most significant public health issues. Throughout the second half of the twentieth century, awareness around disability issues has been rapidly growing.

ABOUT THIS WEB SITE

Alpha One's website has been built to give people up to date and accurate information about issues of concern to people with disabilities. We believe that information empowers and that access to this vital information is essential to living independently.

Our goal is to employ the latest technology to provide understandable information easily accessible to everyone. Your ideas and input can help keep this site up to date and useful. Let us know what you think - we welcome your ideas.

Contact the Editorial Staff webmaster@alphaonenow.com

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GUIDE TO DISABILITY ORGANIZATIONS



There have been many responses to the needs of people with disabilities from governments at all levels, as well as from private sources including

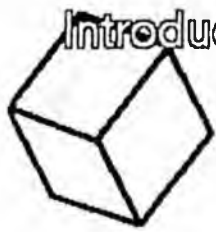


A WAY WITH WORDS

Guidelines and Appropriate Terminology For the Portrayal of Persons With Disabilities

Produced By:
Status of Disabled Persons Secretariat
Department of the Secretary of State of Canada
Ottawa, Ontario K1A 0M5
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Terminology Guide Concerning Persons With Disabilities



Language is a powerful and important tool in shaping ideas, perceptions, and ultimately, public attitudes.

Words are a mirror of society's attitudes and perceptions. Attitudes can be the most difficult barrier persons with disabilities must face in gaining full integration, acceptance and participation in society.

Careful presentation of information about persons with disabilities can help overcome negative attitudes and shape positive ones. The standing Committee on the Status of Disabled Persons found in its report *No News is Bad News* that vocabulary can create perception. Demeaning, belittling or negative words are a barrier to greater understanding and can trivialize genuine support given by a community to persons with disabilities.

Language use is changing as persons with disabilities claim their individual and collective right to participate fully in society.

Dated and disparaging words are being replaced with precise, descriptive terms which have specific meanings that are not interchangeable.

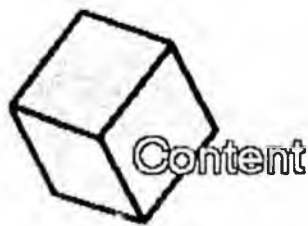
Persons with disabilities are asking, just as women and minority groups are asking, that the media use respectful terms in writing about them or issues that affect their lives.

Individuals with disabilities are working to achieve equality, independence and full participation in our society. The ways in which issues are reported and the use of proper terminology can help persons with disabilities reach the goals.

This booklet suggests current and appropriate terminology to reflect the increased participation by Canadians with disabilities in our society.



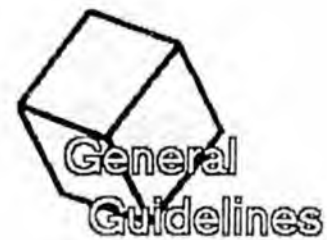
This booklet is intended to encourage and promote fair and accurate portrayal of persons with disabilities. It is primarily designed for print and broadcast media professionals writing and reporting about issues of concern to persons with disabilities.



This booklet has two sections and a removable insert. **GENERAL GUIDELINES** has information on terminology and portrayal of persons with disabilities.

MEDIA COVERAGE OF PERSONS WITH DISABILITIES deals with reporting on issues of concern to persons with disabilities. The removable insert suggests appropriate terminology.

1. **I**t is important to remember that each word in today's terminology has a precise meaning and that the words are not interchangeable.
2. "Disabled" and "handicapped" are not the same thing. A disability is a functional limitation or restriction of an individual's ability to perform an activity. A "handicap" is an environmental or attitudinal barrier that limits the opportunity for a person to participate fully. Negative attitudes or inaccessible entrances to buildings are examples of handicaps.
3. The word "disables" is an adjective, not a noun. People are not conditions. Do not use "the disabled; use"persons with disabilities".
4. Focus on the issue rather than the disability. If the disability is not relevant to the story, it is not necessary to report it.
5. Try to avoid categorizing persons with disabilities as either super-achievers or tragic figures. Choose words that are non-judgemental, non-emotional and are accurate descriptions. Avoid using "brave", "courageous", "inspirational" or other similar words that are routinely used to describe a person with a disability. Remember that the majority of persons with disabilities are average and typical of the rest of the population. Similarly, references which cause discomfort, guilt, pity, or insult, should be avoided. Words like "suffers from", "stricken with", "afflicted by", "patient", "disease", or "sick" suggest constant pain and a sense of hopelessness. While this may be the case for some individuals, a disability is a condition that does not necessarily cause pain or require medical attention.
6. Avoid the use of words such as "burden", "incompetent", "defective", "special", etc. which suggest that persons with disabilities should be treated differently or be excluded from activities generally available in the community.
7. Be particularly careful with terminology used in headlines. Remember that headlines make the first impression.
8. Refer to technical aids in factual, non-emotional terms. Avoid prolonged focus on support equipment.
9. Persons with disabilities are comfortable with the terminology used to describe daily living activities. Persons who use wheelchairs go for "walks", people with visual impairments "see" what you mean, etc. A disability may just mean that some things are done in a different manner; however, that does not mean the words used to describe the activity must be different.
10. Remember that although some disabilities are not visible, it does not mean they are less real. Individuals with invisible disabilities such as epilepsy, hemophilia, mental health, learning,



or developmental disabilities also encounter negative attitudes and barriers.

Media Coverage of Persons with Disabilities

Researching, Writing and Reporting

1. **T**oo often, when a person with a disability is featured in a story that has several possible angles, the human interest story line dominates, e.g. how the individual has overcome great goals.
 2. There are few examples of in-depth coverage of issues of particular importance to persons with disabilities (e.g., lack of physical access to facilities, employment, poverty, etc.).
 3. Persons with disabilities are seldom asked for their views on stories dealing with transportation, the environment, child care, etc.
- The media can help create and reinforce positive attitudes towards persons with disabilities. Progress had been made in recent years and media professionals are asking advice on how to report on, discuss, and write about disability.

Bridging the Communications Gap

Here are some suggestions to improve communications with persons with disabilities.

1. When talking with a person with a disability speak directly to him/her rather than through a companion who may be there.
2. Avoid putting persons with disabilities on a pedestal and using patronizing terms. Interview a person with a disability as you would any other person.
3. Do not unnecessarily emphasize differences. Having a "one of them" versus a "one of us" attitude only serves to reinforce barriers.
4. In visual treatments (e.g., television, photographs), do not dwell on technical aids or adaptive devices unless, of course, the purpose is to introduce or discuss a particular aid or device.

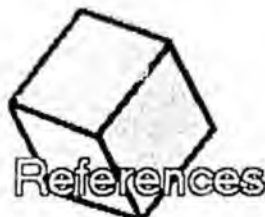
Following an interview, ask yourself:

1. Am I writing this piece because it involves a person with a disability or because the issue and related circumstances are relevant to the general population? If it did not involve a person with a disability, would I still want to write it?
2. Is a reference to a disability necessary to the story? If it is, am I using the correct terminology (e.g., "uses a wheelchair", and not "confined to a wheelchair")?
3. Is this piece accurate and unbiased? Have I avoided sensationalism?

Journalists can contribute to a more positive and accurate image of persons with disabilities. The information provided to the general public,



and the ways in which this information is presented, often create a framework for the attitudes people have and the ways in which they interact with individuals with disabilities. If the coverage of disability-related issues is done in a non-emotional, factual and integrative manner, the public will no doubt begin to question the prejudices and stereotypes that still exist.



- *Editing Canadian English*. Prepared for the Freelance Editors Association of Canada
- *Guidelines for Reporting and Writing About People with Disabilities*. Archalert, Volume 4, No. 7.
- *No News is Bad News*. Standing Committee on the Status of Disabled Persons, House of Commons.
- *Portraying People with Disabilities*. National Easter Seal Society (Chicago, Illinois).
- *"Watch Your Language. Words Shape Attitudes"*. Francis Strong (appeared in the Rehabilitation Digest, winter, 1989).
- *Word Choices. A lexicon of preferred terms for disability issues*. Office for Disabled Persons, Government of Ontario.
- *Words of Dignity*. Ontario March of Dimes.
- *Worthless or Wonderful: The Social Stereotyping of Persons with Disabilities*. Status of Disabled Persons Secretariat, Department of the Secretary of State of Canada.



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Canadian Association of the Deaf (CAD)
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Canadian National Institute for the Blind (CNIB)
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Canadian Council of the Blind (CCB)
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(613) 567-0311

Canadian Mental Health Association (CMHA)
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Canadian Paraplegic Association (CPA)
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Coalition of Provincial Organizations
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National People First
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National Education Association
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Hearing Forum (CDHFF)
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STATE OF ALASKA

Department of Labor and Workforce Development
Division of Vocational Rehabilitation
Governor's Committee on Employment & Rehabilitation
Of People with Disabilities

FRANK H. MURKOWSKI, GOVERNOR

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January 23, 2006

Representative Peggy Wilson
State Capitol Building
Juneau, AK 99801

Dear Representative Wilson:

The Governor's Committee on Employment & Rehabilitation of People with Disabilities strongly supports HB 357. We believe this Bill mirrors the intent and purpose of the Rehabilitation Act, as amended.

Thank you for sponsoring this important Bill.

Sincerely,

Pam Stratton
by CAS

Pam Stratton
Chair, GCERPD

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Joyanna Geisler
Director

Representative Peggy Wilson
State Capitol, Room 108
Juneau, AK 99801-1182

January 23, 2006

Honorable Representative Wilson:

I am writing in support of House Bill 357, "An Act Updating the Terminology in Statutes for Persons with Disabilities; and providing for an Effective Date".

The terms that are used to reference groups of people are always weighted with the stereotypes those terms bring to mind. Whether consciously or not those stereotypes affect the way members of groups are viewed by others.

It is time for the Great State of Alaska to place people first in statutes that reference disability. By removing the stereotypical terms handicapped and handicap, we acknowledge that people with disabilities are first of all people.

Sincerely, Jim Brady

Independent Living Center, Homer, Alaska.
CC: Gale Sinnott



INDEPENDENT LIVING CENTER

P.O. Box 1907 ● Soldotna, Alaska 99669

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SEWARD

HOPE

KODIAK
ISLAND

ALEUTIAN
CHAIN

Representative Peggy Wilson
State Capitol, Room 108
Juneau, Alaska 99801-1182

January 23, 2006

Honorable Representative Wilson:

Please support House Bill 357, "An Act of Updating the Terminology in Statutes for Persons with Disabilities; and providing for an Effective Date".

The present use of the term "handicapped" is a negative stereotype that implies that an individual is somehow "lacking" or "less-than".

By removing stereotypical terms we can begin to change how groups of individuals are viewed. There is a big difference between the statements "This is a handicapped person" and "This is a person with a disability".

Thank you for your attention in this matter.

Sincerely,

Nadine Hatch

Nadine Hatch
Independent Living Specialist
Soldotna, Alaska

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2.21 comply with sections 1 and 2. Language changes made according
2.22 to sections 1 and 2 shall not expand or exclude eligibility to
2.23 services.

Please direct all comments concerning issues or legislation
to your House Member or State Senator.

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