

ALASKA LEGISLATIVE COMMITTEE FILES 1905-1900

3214.64

HHESS

HB 88

64

Original sponsor: Rules/Governor

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 88 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the protection of children."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 11.51.100 is repealed and reenacted to read:

9 Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST  
10 DEGREE. (a) A person responsible for the welfare of a minor under  
11 the age of 12 commits the crime of endangering the welfare of a minor  
12 in the first degree if, the person intentionally abandons the minor  
13 under circumstances creating a substantial risk of physical injury to  
14 the minor.

15 (b) Endangering the welfare of a minor in the first degree is a  
16 class C felony.

17 \* Sec. 2. AS 11.51 is amended by adding a new section to read:

18 Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND  
19 DEGREE. (a) A person responsible for the welfare of a minor under 12  
20 years of age commits the crime of endangering the welfare of a minor  
21 in the second degree if the person with criminal negligence

22 (1) exposes the minor to circumstances creating a substan-  
23 tial risk of physical injury or sexual abuse; or

24 (2) exposes the minor to physical injury by failing to  
25 provide the minor with necessary food, care, clothing, shelter, or  
26 medical attention.

27 (b) Endangering the welfare of a minor in the second degree is a  
28 class A misdemeanor.

29 \* Sec. 3. AS 11.61.125(a) is amended to read:

1 (a) A person commits the crime of distribution of child pornog-  
2 raphy if the person brings or causes to be brought into the state for  
3 [SALE OR] distribution, or in the state distributes, or in the state  
4 possesses, prepares, publishes, or prints with intent to distribute,  
5 [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any mater-  
6 ial that visually depicts conduct described in [UNDER] AS 11.41.-  
7 455(a), knowing that the production of the material involved the use  
8 of a child under 18 years of age who engaged in the conduct.

9 \* Sec. 4. AS 11.61.125 is amended by adding a new subsection to read:

10 (d) In this section, "distribution" includes delivering, sell-  
11 ing, renting, leasing, lending, giving, circulating, exhibiting,  
12 presenting, providing, and exchanging, whether or not for monetary or  
13 other consideration.

14 \* Sec. 5. AS 12.10.020(c) is amended to read:

15 (c) Even if the general time limitation has expired, a prose-  
16 cution under AS 11.41.410 - 11.41.460, AS 11.66.110 - 11.66.130,  
17 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense  
18 committed against a person under the age of 16 may be commenced within  
19 one year after the crime is reported to a peace officer or the person  
20 reaches the age of 16, whichever occurs first. This subsection does  
21 not extend the period of limitation by more than five years.

22 \* Sec. 6. AS 12.45.045(a), is amended to read:

23 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR  
24 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)  
25 In prosecutions for the crimes [CRIME] of sexual assault in any de-  
26 gree, sexual abuse of a minor in any degree, or unlawful exploitation  
27 of a minor, or an attempt to commit any of these crimes [SEXUAL AS-  
28 SAULT IN ANY DEGREE], evidence of the complaining witness' previous  
29 sexual conduct may [SHALL] not be admitted nor reference made to it in

1 the presence of the jury except as provided in this section. When the  
2 defendart seeks to admit the evidence for any purpose, the defendant  
3 shall [MAY] apply for an order of the court at any time before or  
4 during the trial or preliminary hearing. After the application is  
5 made, the court shall conduct a hearing in camera to determine the  
6 admissibility of the evidence. If the court finds that evidence  
7 offered by the defendant regarding the sexual conduct of the complain-  
8 ing witness is relevant, and that the probative value of the evidence  
9 offered is not outweighed by the probability that its admission will  
10 create undue prejudice, confusion of the issues, or unwarranted inva-  
11 sion of the privacy of the complaining witness, the court shall make  
12 an order stating what evidence may be introduced and the nature of the  
13 questions that may [WHICH SHALL] be permitted. The defendant may then  
14 offer evidence under the order of the court.

15 \* Sec. 7. AS 47.10.081(c) is amended to read:

16 (c) The court shall inform the child, the child's parents, [AND]  
17 the attorneys representing the parties, and the guardian ad litem that  
18 the predisposition report will be available to them not less than six  
19 working [10] days before the disposition hearing.

20 \* Sec. 8. AS 47.10.142(a) is repealed and reenacted to read:

21 (a) The Department of Health and Social Services may take emer-  
22 gency custody of a minor upon discovering any of the following circum-  
23 stances:

24 (1) the minor has been abandoned;

25 (2) the minor has been grossly neglected by the minor's  
26 parents or guardian as "neglect" is defined in AS 47.17.070(5), and  
27 the department determines that immediate removal from the minor's  
28 surroundings is necessary to protect the minor's life or provide  
29 immediate necessary medical attention;

1 (3) the minor has been abused by a person responsible for  
2 the child's welfare, as "abuse" is defined in AS 47.17.070(1), and the  
3 department determines that immediate removal from the minor's  
4 surroundings is necessary to protect the minor's life or that immedi-  
5 ate medical attention is necessary; or

6 (4) the minor has been sexually abused under circumstances  
7 listed in AS 47.10.010(a)(2)(D).

8 \* Sec. 9. AS 47.10.142(c) is amended to read:

9 (c) When a child is taken into custody under (a) or (b) of this  
10 section, the department shall immediately, and in no event more than  
11 12 hours later unless prevented by lack of communication facilities,  
12 notify the parents or the person or persons having custody of the  
13 child. If the department determines that continued custody is neces-  
14 sary to protect the child, the department shall notify the court of  
15 the emergency custody by filing, within 24 hours after custody was  
16 assumed [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-  
17 tion alleging that the child is a child in need of aid.

18 \* Sec. 10. AS 47.10.290 is amended by adding a new paragraph to read:

19 (8) "sexual abuse" means

20 (A) conduct against a child that would constitute a  
21 sexual offense under AS 11;

22 (B) the perpetrator's knowingly touching, directly or  
23 through clothing, the genital area, groin, inner thighs, or  
24 buttocks of a child, or causing a child to touch, directly or  
25 through clothing, the genital area, groin, inner thighs, or  
26 buttocks of the perpetrator or another; sexual abuse does not  
27 include reasonable touching in the exercise of normal caretaker  
28 responsibilities for a child or normal caretaker interactions  
29 with a child or a recognized and lawful form of contact that is

1 reasonably adapted to promoting the physical or mental health of  
2 the child;

3 (C) exposing the genital area, anus, breast, groin, or  
4 buttocks of a child to the perpetrator or another for the sexual  
5 gratification of the child, the perpetrator, or another, or  
6 exposing the genital area, anus, breast, groin or buttocks of the  
7 perpetrator or another to a child for the sexual gratification of  
8 the child, the perpetrator, or another; or

9 (D) statements to a child that express a desire or  
10 intent to have sexual contact or sexual penetration with the  
11 child or encourage the child to have sexual contact or sexual  
12 penetration with the perpetrator or another.

13 \* Sec. 11. AS 47.17.010 is amended to read:

14 Sec. 47.17.010. PURPOSE. In order to protect children whose  
15 health and well-being may be adversely affected through the inflic-  
16 tion, by other than accidental means, of harm through physical injury,  
17 [ABUSE OR] neglect, [OR] sexual abuse, or sexual exploitation, the  
18 legislature requires the reporting of these cases by practitioners of  
19 the healing arts and others to the appropriate public authorities. It  
20 is the intent of the legislature that, as a result of these reports,  
21 protective services will be made available in an effort to prevent  
22 further harm to the child, to safeguard and enhance the general well-  
23 being of the children in this state, and to preserve family life  
24 whenever preserving it is in the best interests of the child [POS-  
25 SIBLE].

26 \* Sec. 12. AS 47.17.020 is repealed and reenacted to read:

27 Sec. 47.17.020. REPORTING OF CHILD ABUSE OR NEGLECT. (a) The  
28 following persons are required to report abuse or neglect of a child  
29 as required in (b) and (c) of this section:

- 1 (1) practitioners of the healing arts;  
2 (2) employees of private and public schools,  
3 (3) human services providers;  
4 (4) peace officers, and officers of the Department of  
5 Corrections;  
6 (5) administrative officers of institutions;  
7 (6) child care providers;  
8 (7) court personnel;  
9 (8) employees of domestic violence programs, sexual assault  
10 programs, or crisis shelters.

11 (b) A person listed in (a) of this section, who in the perfor-  
12 mance of the person's occupational duties has cause to believe that a  
13 child has suffered harm as a result of abuse or neglect by a person  
14 responsible for the child's welfare, shall promptly report the harm to  
15 the nearest office of the department. If the person making a report  
16 of harm under this subsection cannot reasonably contact the nearest  
17 office of the department and immediate action is necessary for the  
18 well-being of the child, the person shall make the report to a peace  
19 officer. The peace officer shall take immediate action to protect the  
20 child and shall, at the earliest opportunity, notify the nearest  
21 office of the department.

22 (c) A person listed in (a) of this section, who in the perfor-  
23 mance of the person's occupational duties has cause to believe that a  
24 child has suffered harm as a result of abuse or neglect, shall prompt-  
25 ly report the harm to the nearest law enforcement agency if the person  
26 making the report (1) has cause to believe that the harm was caused by  
27 a person who is not responsible for the child's welfare; or (2) is  
28 unable to determine (A) who caused the harm to the child; or (B)  
29 whether the person who is believed to have caused the harm has

1 responsibility for the child's welfare. If a person making a report  
2 under this subsection cannot reasonably contact the nearest law  
3 enforcement agency, and immediate action appears necessary for the  
4 well-being of the child, the person shall make the report to the  
5 nearest office of the department. The department shall take immediate  
6 action to protect the child and shall, at the earliest opportunity,  
7 notify the nearest law enforcement agency.

8 (d) This section does not prohibit the named persons from re-  
9 porting cases that have come to their attention in their nonoccupa-  
10 tional capacities, nor does it prohibit any other person from report-  
11 ing a child's harm that the person has cause to believe is a result of  
12 abuse or neglect. These reports shall be made to the nearest office  
13 of the department or to the nearest law enforcement agency in the  
14 manner set out in (b) and (c) of this section.

15 \* Sec. 13. AS 47.17 is amended by adding a new section to read:

16 Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person  
17 who, in the course of processing or producing visual or printed  
18 matter, either privately or commercially, has reason to believe that  
19 the matter visually depicts a minor engaged in conduct described in  
20 AS 11.41.455(a) shall promptly report this to the nearest law enforce-  
21 ment agency. The person shall provide copies of the material to the  
22 law enforcement agency along with all information known about the  
23 origin of the matter.

24 \* Sec. 14. AS 47.17.025 is repealed and reenacted to read:

25 Sec. 47.17.025. DUTIES OF PUBLIC AUTHORITIES. (a) After re-  
26 ceiving a report of harm to a child resulting from abuse or neglect  
27 a person responsible for the child's welfare, a law enforcement agency  
28 shall immediately notify the Department of Health and Social Services  
29 and the Department of Law. The Department of Health and Soc

1 Services shall investigate the report and, within 72 hours after  
2 receiving the report, shall provide a written report of its inves-  
3 tigation to the Department of Law for review. If after a preliminary  
4 investigation the Department of Health and Social Services determines  
5 that the harm was not caused by a member of the child's family, the  
6 department shall so notify the Department of Law.

7 (b) A report of harm to a child from abuse or neglect required  
8 from the department by this section must include:

9 (1) the names and addresses of the child and the child's  
10 parents or other persons responsible for the child's care, if known;

11 (2) the age and sex of the child;

12 (3) the nature and extent of the harm to the child;

13 (4) the name and age and address of the person known or  
14 believed to be responsible for the harm to the child, if known;

15 (5) information that the department believes may be helpful  
16 in establishing the identity of the person believed to have caused the  
17 harm to the child.

18 \* Sec. 15. AS 47.17.040(b) is amended to read:

19 (b) Investigation reports and reports of harm filed under this  
20 chapter are considered confidential and are not subject to public  
21 inspection and copying under AS 09.25.110 and 09.25.120. However, in  
22 accordance with department regulations, investigation reports may be  
23 used by appropriate governmental agencies with child-protection func-  
24 tions, inside and outside the state [ALASKA], in connection with  
25 investigations or civil or criminal [JUDICIAL] proceedings involving  
26 [CHILD] abuse, neglect, or child custody. A person, not acting in  
27 accordance with department regulations, who makes public information  
28 contained in confidential reports is guilty of a class A misdemeanor.

29 \* Sec. 16. AS 47.17.050 is amended to read:

1           Sec. 47.17.050. IMMUNITY. A person who, in good faith, makes a  
2 report under this chapter, or who participates in civil or criminal  
3 [JUDICIAL] proceedings related to the submission of reports under this  
4 chapter, is immune from any civil or criminal liability that [WHICH]  
5 might otherwise be incurred or imposed.

6 \* Sec. 17. AS 47.17.060 is amended to read:

7           Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. Neither the physi-  
8 cian-patient nor the husband-wife privilege is a ground for excluding  
9 evidence regarding a child's harm, or its cause, in a civil or crimi-  
10 nal [JUDICIAL] proceeding related to a report made under this chapter.

11 \* Sec. 18. AS 47.17.064 is repealed and reenacted to read:

12           Sec. 47.17.064. PHOTOGRAPHS AND X-RAYS. The department or a  
13 practitioner of the healing arts may, without the permission of the  
14 parents, guardian, or custodian, take the following actions with  
15 regard to a child believed to have suffered physical harm as a result  
16 of abuse or neglect:

17                   (1) take or have taken photographs of the areas of trauma  
18 visible on the child; and

19                   (2) if medically indicated, have a radiological examination  
20 of the child performed by a person who is licensed to administer  
21 radiological examination.

22 \* Sec. 19. AS 47.17.068 is repealed and reenacted to read:

23           Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person who  
24 knowingly fails or refuses to report as required under AS 47.17.020  
25 47.17.023 is guilty of a class B misdemeanor.

26 \* Sec. 20. AS 47.17 is amended by adding a new section to read:

27           Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney  
28 general may bring an action to enjoin or limit a person from contact  
29 with a child not related to the person if the person

- 1 (1) has sexually abused a child;  
2 (2) has physically abused a child;  
3 (3) has failed without lawful excuse to provide necessary  
4 food, care, clothing, shelter, supervision, or medical attention for a  
5 child entrusted to the care of the person; or  
6 (4) otherwise constitutes a substantial danger to the  
7 mental, emotional, or physical welfare of a child.

8 (b) The court may grant an order in the form that is best suited  
9 to protect a child from harm based upon the facts of the case. This  
10 section does not limit the authority of the attorney general or the  
11 court to act to protect a child.

12 \* Sec. 21. AS 47.17.070(1) is amended to read:

13 (i) "[CHILD] abuse [OR NEGLECT]" means nonaccidental [THE]  
14 physical injury [OR NEGLECT], sexual abuse, sexual exploitation, or  
15 maltreatment of a child [UNDER THE AGE OF 18 BY A PERSON WHO IS RE-  
16 SPONSIBLE FOR THE CHILD'S WELFARE] under circumstances that [WHICH]  
17 indicate that the child's health or welfare is harmed or threatened  
18 thereby;

19 \* Sec. 22. AS 47.17.070(6) is amended to read:

20 (6) "practitioner of the healing arts" includes chiroprac-  
21 tors, dental hygienists, dentists, health aides, nurses, nurse practi-  
22 tioners, optometrists, osteopaths, physical therapists, physicians,  
23 physician's assistants [PSYCHIATRISTS, PSYCHOLOGISTS], religious heal-  
24 ing practitioners, and surgeons;

25 \* Sec. 23. AS 47.17.070(7) is repealed and reenacted to read:

26 (7) "sexual exploitation" means  
27 (A) permitting, encouraging, inducing, or employing a  
28 child to engage in prostitution or in the promotion of prosti-  
29 tution as set out in AS 11.66.100 - 11.66.150; or

1 (B) engaging in conduct described in AS 11.41.455;

2 \* Sec. 24. AS 47.17.070 is amended by adding new paragraphs to read:

3 (8) "child care provider" means an adult individual, or an  
4 employee of an organization, who provides care and supervision to a  
5 child;

6 (9) "human services provider" includes an individual human  
7 services provider, and an employee of a human services organization,  
8 such as a social service, youth service, mental health, or substance  
9 abuse agency, or a shelter for runaway or homeless youth;

10 (10) "organization" means a group or entity that provides  
11 care and supervision to a child not related to the caregiver, and  
12 includes a child care facility, pre-elementary school, head start  
13 center, child foster home, residential child care facility, recreation  
14 program, children's camp, and children's club;

15 (11) "person responsible for the child's welfare" means the  
16 child's parent, guardian, foster parent, a person responsible for the  
17 child's care at the time of the alleged abuse or neglect, or a person  
18 responsible for the child's welfare in a public or private residential  
19 agency or institution.

20 \* Sec. 25. AS 47.35.070 is amended to read:

21 Sec. 47.35.070. VIOLATIONS. A person who violates a provision  
22 of this chapter [AS 47.35.010 - 47.35.100] or a regulation adopted  
23 under this chapter [AS 47.35.010 - 47.35.100] is guilty of a class  
24 misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE  
25 THAN \$200].

26 \* Sec. 26. AS 47.35.070 is amended by adding a new subsection to read:

27 (b) The department may by regulation devise a system of civil  
28 enforcement. The system may employ civil penalties not to exceed \$200  
29 for each day during which one or more violations of a licensure

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statute or licensing regulation occurs. The imposition of a civil penalty does not prevent prosecution and sentence for a criminal offense.

March 28, 1985

To: Representatives Koponen and Gruenberg  
House Health, Education, and Social Services  
Pcuch V  
Juneau, Alaska 99811

From: Pudge Kleinkauf  
4201 McInness  
Anchorage, Ak. 99508  
Phone: 786-1714 wk. 563-6073 hm.

Re: Testimony for H.E.S.S. hearing  
Thursday, March 28, 1985

( Please distribute to all committee members )

I object to removing psycho-therapists' from the list of  
health professionals required to report child abuse.

Present reporting law should not be diluted.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

To: House Hess Committee  
From: Margot Dick, Coordinator  
Re: HB88  
Date: 3/28/85

## Sections 1 and 2

There is a need to define "a person responsible for the welfare of a minor". The definition on page 11, line 15 of the bill refers to AS 47.17. Sections 1 and 2 are changes and additions to AS 11.51, which is a different statute with a different title.

In the Governor's original bill, it was my understanding that Section 1 was meant to apply to parents by the use of the language "person legally charged with the care of the child". And, Section 2 was meant to apply to day care providers and babysitters by the use of the language "entrusted with the care of a child".

Given the assumption that the definition of the new language, "a person responsible for the welfare of a minor," employed in Section 2 of this version would be identical to the definition in the bill under AS 47.17, the Network supports the use of the standard of criminal negligence. Without this, we have a concern that Section 2 could negatively impact low income mothers.

## Sections 12 and 22

For the record, the Network opposes the omission of psychiatrist and psychologist from the definition of "practitioner of the healing arts", and the deletion of "counselors, including church counselors, and therapists whether licensed or not."

It is our position that the welfare of the child supercedes the necessity for confidentiality in the client/therapist, counselor, psychologist, psychiatrist relationship. We feel this is especially true with respect to the reporting in instances of child sexual assault.

The treatment of child sex offenders is a new field and there is much controversy over its effectiveness. It is our opinion that reporting should not be left up to the discretion of the individual mental health professional, as they may not be in a position to adequately evaluate the damage the offender may cause to the child.

The Network requests that the definition of human service providers be expanded to include employees of domestic violence and sexual assault programs or crisis shelters, and that the separate reference to them in lines 9 and 10 be deleted.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: HB 88  
 Title: An Act Relating to Child Protection  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: ALASKA COURT SYSTEM  
 Program Category Affected: \_\_\_\_\_  
Administration of Justice  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Trial Courts

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		123.9	131.3	139.2	147.6	156.5
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		123.9	131.3	139.2	147.6	156.5
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		123.9	131.3	139.2	147.6	156.5
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		123.9	131.3	139.2	147.6	156.5


**POSITIONS:**

FULL-TIME		1	1	1	1	1
PART-TIME		3	3	3	3	3
TEMPORARY						

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

**ANALYSIS:** Attach a separate page for analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561  
 Division: Alaska Court System Date: 2/4/85

Approved by Commissioner:  Date: 2/4/85  
 Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

HOUSE BILL 88

FISCAL NOTE ANALYSIS

Judges statewide have indicated that this legislation will require additional judicial resources. It is the administrative director's assessment that assignment of additional judges on a pro tempore basis would provide adequate judicial coverage while minimizing the cost to the state.

ALASKA COURT SYSTEM  
 HB 88 - CHILD PROTECTION  
 FISCAL IMPACT

PERSONAL SERVICES:	SALARY	BENEFITS	TOTAL COST
Pro Tem Superior Court Judge Ketchikan - 6 months	\$9,203	\$13,418	\$22,621
Pro Tem Superior Court Judge Kenai - 6 months	9,847	13,563	23,410
Pro Tem Superior Court Judge Anchorage - 12 months	18,405	26,836	45,241
In-Court Clerk (Range 12B) Anchorage - 12 months	24,516	8,116	32,632
			-----
Total Personal Services			\$123,904 =====

Subsequent fiscal years adjusted to reflect six percent inflation.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST:**

Bill/Resolution No.: House Bill 88  
 Title: "An Act relating to the protection of children..."  
 Sponsor: Rules/Governor  
 Requestor: (H) H.E.S.S.  
 Date of Request: January 25, 1985

**FISCAL DETAIL:**

Agency Affected: DEPARTMENT OF CORRECTIONS  
 Program Category Affected: \_\_\_\_\_  
Administration of Justice  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Offender Confinement, Reformation and Supervision

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary.

This legislation will have no fiscal impact on the Department of Corrections.

Prepared By: William W. Ladwig  
 Division: Deputy Commissioner - Administration

Phone: 465-3376  
 Date: January 29, 1985

Approved by Commissioner: *[Signature]*  
 Agency: DEPARTMENT OF CORRECTIONS

Date: January 30, 1985

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency (ies)

DEPARTMENT OF COPRECTIONS

POSITION PAPER

HB 88 "An Act relating to the protection of children, and amending Rules 504, 505, and 506, Alaska Rules of Evidence, and Rule 6(r), Alaska Rules of Criminal Procedure."

The Department of Corrections supports this legislation which will enhance the ability of the state to protect children who have or may potentially become victims of child abuse or neglect.

Prepared By:

*Cynthia Nelson*

Cynthia Nelson  
Special Assistant

Approved By:

*R. V. Endell*

Roger V. Endell  
Commissioner

Date:

*January 30, 1985*

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 2-5-85

REQUEST

Bill/Resolution No.: HB 88  
Title: Child Protection

Sponsor: Rules Committee  
Requestor: House HESS  
Date of Request: 1-17-85

FISCAL DETAIL

Agency Affected: Public Safety  
Program Category Affected: Administration of Justice  
BRU, Program or Subprogram(s) Affected:  
1) Alaska State Troopers &  
2) Administration (Records & Identification)

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger Phone: 465-4338  
Division: Administrative Services Date: 2-4-85  
Approved by Commissioner: Robert J. Sundberg Date: 2-4-85  
Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

# STATE OF ALASKA

## DEPARTMENT OF PUBLIC SAFETY

### COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

BILL SHEFFIELD, GOVERNOR

POUCH N  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-4356

OFFICE ADDRESS: 450 WHITTIER STREET

March 28, 1985

The Honorable Niilo Koponen, Co-Chair and  
The Honorable Max Gruenberg, Co-Chair  
House Health, Education & Social Services Committee  
Alaska State Legislature  
Capitol Building  
Pouch V  
Juneau, Alaska 99811

Dear Representatives Koponen and Gruenberg:

I am concerned about the proposed amendments to HB88 that remove requirements for psychologists and psychiatrists to report child abuse under AS 47.17.

The intent of AS 47.17 is to prevent further harm to a child by providing protective services. With the Legislature's and Governor's emphasis on child protection it is not consistent to dilute existing law which requires psychologists and psychiatrists to report child abuse. Psychiatrists and psychologists may, in the course of treating a client, learn that their client or someone else has abused a child. In the safety of the therapist's office, the client may assure the therapist that the abuse will not continue or minimize the extent of the abuse.

Offenders often rationalize or minimize their behavior by saying it's sex education or blaming the behavior on someone else, the child or a spouse. Believing it is wrong and knowing it is illegal and yet feeling it is not that harmful or is someone else's fault, may cause the offender to want to talk about it but not tell the complete truth.

Attached is a paper prepared by Maureen Saylor, Director of the Sex Offender Treatment Program at Western Washington State Hospital. Page five describes the sex offender's cycle of remorse and re-offending. It is possible to imagine an offender seeking help during the remorse phase and stopping therapy when the sexual abuse begins again.

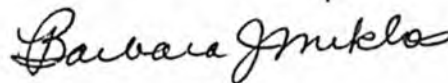
Not all therapists recognize the denial of sex offenders unless they have particular training and expertise in sex crimes. For years, society and its therapists have minimized the harm to children and the extent of the problem. Without investigating each case and talking to the victims, it cannot be known if the child is out of danger. Removing this reporting requirement would make it appear that protecting the child victim is really not one of our State's highest priorities.

Representatives Koponen and Gruenberg  
March 28, 1985  
Page Two

In addition, in order to be consistent with elder abuse reporting requirements, the list of people required to report should include some professionals listed in AS 47.24.010 which are now not covered in AS 47.17.020 or amended HB88:

a member of the clergy  
an emergency medical technician or paramedic in the mobile intensive care program.

Sincerely,



Barbara Miklos  
Executive Director

Enclosure a/s

THE CHILD MOLESTER CHARACTERISTICS

IMPACT AND TREATMENT

TESTIMONY BY

MAUREE SAYLOR, M.A.

DIRECTOR

SEX OFFENDER TREATMENT PROGRAM

WESTERN STATE HOSPITAL

FORT STEILACOOM, WASHINGTON

FOR

THE UNITED STATES ATTORNEY GENERAL'S TASK FORCE

ON

FAMILY VIOLENCE

January 19, 1984  
King County Courthouse  
Seattle, Washington

I am Maureen Saylor and I am the Director of the Sex Offender Treatment Program at Western State Hospital, Fort Steilacoom, Washington, south of Tacoma, Washington. I have over ten years experience with the evaluation, assessment and treatment of the sex offender. I have provided direct treatment services to the sex offender since June, 1973, and I have been the Director of the program since September, 1977. I have been involved, either directly, or as a member of the staff decision making body, in the evaluation, assessment and treatment of over 2,000 sex offenders.

The Sex Offender Program at Western State Hospital is one of the older programs in the country and began functioning in 1965. From the late 1960's to 1977, it was the Sex Offender Program for the entire State of Washington and received commitments through superior courts from all counties in the state. As the population grew and demands for services increased, it was decided to develop a second program east of the mountains in November, 1977, and since that time we have had principle responsibility for the counties west of the Cascade Mountains, but also including three counties east of the mountains, Yakima, Kittitas and Klickitat Counties. The program population has grown significantly over the last ten years. There was a population of approximately 120 in 1973, rising to 212 in 1977, and with the development of the Eastern State Hospital program, population stabilized temporarily, rising again to over 200 in 1980 at which time it became necessary to establish a waiting list for individuals committed to the program.

The individuals committed to the program are convicted felony sex offenders who have been sentenced and the sentence deferred or suspended to send them for evaluation and then subsequent commitment for treatment. Continuing criminal justice control resides in the superior court of initial commitment and is maintained throughout the duration in treatment, including the reentry phases and during the period of time the individual is actively on probation.

There are two methods of commitment. The first is in conjunction with Washington State Law, R.C.W. 71.06, the Sexual Psychopath Law which allows the prosecutor to file a petition to send the individual to the hospital for 90 days

observation to determine "sexual psychopathy". This again follows conviction and sentencing. The second method of commitment is as a condition of probation and the judge orders the individual to enter and successfully complete the treatment program as a condition of probation.

There are three phases of treatment, the inpatient phase which averages 24 to 30 months, but is contingent on individual behavioral change and may be longer if needed. At the end of the inpatient phase, when the offender has accomplished the objectives and treatment goals, he is referred back to the committing superior court for approval before he is allowed to go onto the reentry phases of work release and outpatient. During the work release phase (a minimum of three months) the individual continues to live at the hospital and go out during the day under definite scheduled leaves to work or go to school, whichever his discharge contract calls for. He is required to attend the evening meeting of his particular therapy group. Pleasure leaves are granted on the basis of fulfilling goals and objectives of work release and are given on a graduated basis. If the individual successfully completes work release, he is graduated onto the outpatient phase of treatment which is a minimum of 18 months and begins living in the local community, either reentering the home with a spouse or living with another program member. During both of these phases, the individual is jointly supervised by the program staff and a probation officer who has a specialized case load consisting of only the Sex Offender Program work release and outpatient probationers.

#### PROGRAM POPULATION:

There has been a significant increase in the demand for services and management of the sex offender over the last ten years. As was previously stated, the program population has doubled at times which necessitated the development of a waiting list and the current program census capacity is 198.

We believe the increased demand for services is the direct result of increased victim reporting as the result of good victim agencies; better apprehension of offenders by the police; increased charging and conviction by the special prosecuting units in Western Washington; and the increased credibility of the program as a better alternative for the management of certain kinds of sex offenders.

Currently, 60% of the offenders committed to the program are child molesters, the other 40% are adult rapists. As the result of an increased number of excellent community treatment specialists, the less "at risk" offender is more apt to be treated in the community and as a result, we are receiving the more recalcitrant, chronic, predatory and dangerous offender in the program.

#### THE CHILD MOLESTER

The child molesting population committed to our program consists predominantly of individuals who are either too chronic, too dangerous or present too many problems to be treated in the community, or those individuals who have been tried in community treatment and have been unable to live up to their conditions of probation and have therefore been revoked and sent to us for treatment. The spectrum of child molesting behavior ranges from the individual who has committed in-home offenses with his own daughters to the individual who makes friends of a family and molests their children, to the stranger who takes children off the streets and out of parks and playgrounds. It is important for you to be aware that the stranger is by far in the minority of those offenders committed to us for treatment. The child molester is much more frequently a known individual to the child who may be a father, relative, neighbor, friend, or other individual who has influence over the child's life and has access to them. For example, the school teacher, Boy Scout leader, big brother, etc. The average individual we have seen who has molested a child differs very little from any cross section of any community or the society at large. Perhaps what makes it so difficult for the public to understand is that on the face of things, the individual who commits child sexual abuse looks no different than anyone else. He quite frequently has held down a job for long periods of time, participates in community activities, relates (at least at a superficial level) to neighbors and friends, and in other areas of his life, conducts his life no differently than anyone else. He is not the proverbial "dirty old man" or some "crazed" individual who is readily identified and is the individual most of us grew up being told to stay away from. He is an individual who the child trusts and generally believes will do them no harm.

His manner of operating in the family situation is usually to use his position as father to get the child to participate in behavior he has identified

that they should do for a variety of different reasons. For example, "Daddy would not do anything to you that is not OK". "I am teaching you something you need to know". It may begin with a long, slow process of desensitizing the child through wrestling, tickling, partial undressing, etc. until they are desensitized to the fact that the behavior which is occurring ought not to happen. Most frequently, bribes and seductive kinds of activity on the part of the offender is their mode of operation. They attempt to make it a special relationship or a secret one which no one else should know about or else the child will lose the special privileges or attention the father is bestowing on them. With other relatives, friends, neighbors, etc., there is frequently what we refer to as a "grooming process" where once again the offender begins to slowly desensitize the child to the behavior and gradually works up to it in ever increasing steps. The frequent justification used again is "they haven't really said no", "they really are enjoying it", "I am not really hurting them", "someone should teach them about sex besides a stranger". Again, bribery and seduction are the usual mode of operation. However, sometimes threats of revealing or telling other people are used as well. It is also true that on occasion certain offenders may use threats of physical harm or actually physically coerce their own children or other children into engaging in the behavior. It is also important to be aware that most of these individuals are extremely manipulative in their behavior and activities and will deliberately pick times when their wives or other responsible adults are not in the area or are out of the home or will find opportunities to take children to other places where other adults will not have any control, i.e., a camping trip or other special activities where the offender and the child will be by themselves. It is not at all uncommon for an offender molesting within a family situation to serially molest several daughters as each approaches the particular age of his interest. As undoubtedly you have heard from others giving testimony, victims have been known to range all the way from a month and a half old babies up to adolescence. While the predominant number of victims for our offender population is girls, about 25 to 30% of our offenders have molested minor boys.

At this point in time, none of us actively engaged in providing treatment for the child molester can say ahead of time who will or will not engage in this particular behavior. As I have mentioned previously, there is really no particular

set of characteristics which are readily identifiable that sort this population out from the general public in any significant way prior to the behavior occurring.

What we do know, however, is the pattern of operation which usually exists for individuals engaging in child molesting behavior. There is often a preference for children which begins either pre-pubescent or early adolescence and may even be the result of the child molester having been molested as a child himself. In our particular population, we find that approximately 60% of the offenders who are committed to us for child molesting offenses were molested themselves as children. However, as the particular preference or interest in children begins, the individual begins to fantasize about the behavior, often masturbates to fantasies of the behavior and finds a good deal of pleasure in the thoughts and activity and reinforces his behavior with a very powerful mechanism of pleasurable sexual orgasm. Once the individual has begun to fantasize the behavior, he also begins to develop a thought process which justifies or rationalizes the particular behavior in his head. For example, she needs to know about sex, it is not going to hurt, I am not doing anything bad, etc. This is often coupled with the individual's personal inability to relate to peer appropriate people, to be assertive enough to get his needs met, etc. The important part that fantasy plays in his life is that it really is a preparation or planning for engaging in the particular behavior. It is not uncommon at all for the offender to identify a particular victim ahead of time, fantasize activity with the child ahead of ever committing it. Frequently after the offender has sexually abused the child, he will go through a period of feeling depressed and awful and terrible about what he has done. He will swear to himself that he will never repeat the behavior again. This will eventually be overcome again by the rationalizations he has used to engage in the behavior and once again, the behavior will occur. It is really a cycle pattern or operation that the offender moves from one point to the other. The behavior is an addictive, compulsive behavior similar in its dynamics and operation to other forms of addictive behavior like drugs, alcohol, over-eating and cigarette smoking. In the case of the sex offender, he has found his offending behavior to be extremely

pleasurable and important to him. Despite the fact that his behavior is disgusting, reprehensible and repugnant to society at large, he has rationalized his behavior sufficiently to overcome either the personal or societal prohibitions against it.

Most certainly, the period of time required between the various phases of the pattern development vary from individual to individual but in our experience, they most definitely are there and do exist.

Child molesting behavior is most definitely sexual in nature though certainly deviant and not normal. The sex offender/child molester has developed a deviant sexual arousal system and finds fantasy of sexual behavior and sexual behavior with children stimulating and pleasurable to him. There are certainly other components which may be connected with the offending behavior, but I strongly believe that stating child molesting is not a sexual behavior is to misinterpret the activity and to neglect one of the major areas which must be addressed if interference with the behavior is to occur. This particular bias is based on the program's experience as well as other colleagues and researchers who have clearly demonstrated sexual arousal to deviant themes existing in the child molester.

#### CHILD MOLESTER VERSUS INCEST OFFENDER:

There has periodically been discussion on the part of some individuals that there is a difference between the "child molester" and the "incest offender". In my experience, this does just not bear itself out, at least in terms of the dynamics of the behavior. It is often true that the incest offender may be at less risk than the child molester and therefore may be able to be more appropriately treated in the community if he is removed from the victim. It may also be that he has fewer victims. It may also be that there have been longer spans of time between his initial introduction to interest in the behavior than when he acted it out. However, we have found, and once again research has borne this out, that the pattern of offending behavior which was described earlier does not differ significantly between the incest offender and the child molester. Researchers have clearly found when measuring arousal in the child molester and incest offender that there is no significant difference in the way

that these two groups arouse to child items. The theory which purports that incest behavior is somehow not sexual, just does not bear itself out either in my experience or in the experience of researchers. From my opinion, this is perhaps most important when it comes to actually treating the incest offender the way they need to be treated and also in being conservative in one's estimate of the likelihood of the behavior recurring.

#### TREATMENT VERSUS INCARCERATION:

It is important, given the addictive, repetitive nature of the child molester's behavior, that when possible treatment/intervention to teach the offender to control his behavior occur. If the offender does not learn to significantly alter his pattern of operation, the likelihood is that his behavior will go on indefinitely. Prison terms do not tend to interfere with the behavior but only suspend it. Since generally speaking, as a society we are not prepared to lock offenders up forever, most will eventually get out and child molesting does not seem to be an age related phenomenon like rape. While we do not really know why there are few rapists over the age of 40. However, in the case of the child molester, he does seem to go on forever and we have personally seen individuals in their 60's, 70's and 80's who are still committing child molesting behavior and may have done so either intermitterdly or with regularity for 30, 40 or 50 years of their lives. It is not uncommon for this behavior to have been interrupted on several occasions by prison terms.

I do not believe that all child molesters can be treated. I believe it is the responsibility of the treatment community to conservatively estimate who it is they can treat and who they cannot treat. It is particularly important that we be conservative in our estimation of risk and that first and foremost in our minds, must be the protection of the community and the prevention of future victims. While it is indeed true that a number of incest offenders or perhaps other types of child molesters may be safely treated in the community, it is important that that selection is carefully done and proper controls be exerted if the offender is allowed to be in the community on probation and treated. There must always be a legal hold on sex offenders in order to get them to involve themselves and stay with the appropriate kind of treatment. In my experience,

and in the experience of many of my colleagues who treat individuals in the community, it is a rare sex offender who seeks treatment voluntarily and it is an even rarer individual who stays in treatment given the intensity and demands made on the individual. Over a ten year period of time, I no longer believe everyone can be helped but believe that energies and resources must be directed toward individuals who present less risk and more likelihood of success. Those who are repeat offenders, chronic and long term, usually present little likelihood of modifying a lifelong addictive behavior pattern and most certainly, the interests of the community and future victims would be better served if these individuals were locked up for very long terms.

I hope I have communicated that I do not believe all offenders can be treated, but there certainly are a fair group of child molesting offenders who can be successfully treated provided they are evaluated appropriately, risk is identified conservatively and the treatment agency or institution has the necessary staff and resources to provide the best treatment it can to change the offender's behavior. One of the greatest disservices that we as treatment experts can do is to make broad, sweeping claims and take on offenders who are either beyond our ability to control in the community or too chronic or too dangerous for us to ever be able to say that they are safe to be at large.

#### TREATMENT:

On the positive side, a good deal has been learned over the last ten years about the sex offender and what will work to change his behavior. There has been some excellent research done by a number of individuals which has contributed to our ability to both understand and treat the child molester. While they continue to be a difficult population to treat, we do have a number of means available to us to effect change in these individuals. We have very reasonable success when we evaluate individuals conservatively, select appropriate candidates for treatment and provide them with the kind of treatment which will change their behavior. We have a number of objective means available to evaluate change within the individual which further serves to help us identify whether we are being successful or not.

Treatment for the sex offender must include the existing known techniques which actively attack and decrease the individual's deviant sexual behavior system. If this area is not addressed in treatment, then the individual has not learned to control the major drive which leads to his offending behavior. Likewise, treatment must be aimed at changing the individual's thought process and the ways in which he has learned to justify, rationalize and minimize his behavior. If this area is not addressed as well, he returns to the community with the same reasons available to him which allowed him to reoffend in the first place. Therefore, measures must be taken to interfere with and change his thinking process, the way he views himself and the way he views other individuals. On the other side of the coin, there have been some deficit areas which have been identified in a significant number of individuals who engage in child sexual abuse. It is therefore necessary to assess for these deficits and provide the individual with information and training which will allow him to improve in these areas. These include social skills, communication skills, anger management, sex education, etc. Most definitely, a part of every sex offender's treatment needs to include assisting the individual in developing an appropriate sexual arousal system which will allow him to choose an appropriate partner to meet his sexual needs. Therefore in summary, treatment to be successful must on one hand, assist the sex offender in controlling his deviant sexual impulses and on the other hand, assist him in improving in other areas of life which will allow him to function more appropriately and be successful in peer relationships. At this point in time, and given "the state of the art", we most certainly do not have all the answers as of yet concerning sex offenders. But we do know a good deal about them and we do have means available to us to be reasonably successful in working with a select group of individuals.

#### SUMMARY:

In conclusion then, we have seen a significant increase in the number of offenders coming to our attention over the course of the last year. This is true of sex offenders in general but most particularly, individuals committing child sexual abuse. We have learned a good deal about the child molester and recognize that he is extremely difficult to identify prior to his engaging in

the behavior or being apprehended. We know that as a rule, these individuals are not significantly different from any other cross section of the community. We know that child sexual abuse is a sexual behavior and while there may be other components and reasons for the offender committing the behavior, it is certainly a key component to why he commits the behavior. While there may be degrees of difference in terms of the dangerousness or chronicity between the incest offender and the child molester, the basic components which make up their pattern of operation and their arousal system are not significantly different. This fact is of significant consideration in identifying what kind of treatment is necessary to effect change in either the child molester or incest offender. We have learned a good deal about treating these people in the last ten years and if we are conservative, adequately identify and estimate risk and pick clients who demonstrate a greater likelihood of success, we are able to have a significant impact on a fairly substantial number of individuals who molest children.

I would like to thank you for the opportunity in providing information and testifying before this committee.

AMENDMENTS

FOR DRAFT CS FOR HB 88

BY GRUENBERG

1. Page 1, line 11  
After "12" insert:  
as defined in AS 47.17.070 (11)
2. Page 1, line 20  
After "age" insert:  
as defined in AS 47.17.070 (11)
3. Page 4, line 23  
After "inner thighs," insert:  
breast
4. Page 9, line 29  
After "child", delete "not" and insert:  
, whether or not the child is

POSITION PAPER

HOUSE BILL NO. 88

For an Act entitled: "An Act relating to the protection of children; and amending Rules 504, 505, and 506, Alaska Rules of Evidence, and Rule 6(r), Alaska Rules of Criminal Procedure."

House Bill No. 88 is an important part of a comprehensive approach to enhancing the State's ability to protect children who have been abused or neglected. Both improved laws and resources are needed to provide effective State intervention in cases of child abuse or neglect.

House Bill No. 88 contains numerous improvements to existing civil and criminal law. This Bill is the result of extensive review and proposals by personnel in the Departments of Health and Social Services and Law. A detailed section by section analysis of the Bill was transmitted to Representative Ben Grussendorf and printed in the January 18, 1985 House Journal. Major components of the Bill will:

- facilitate prosecution where appropriate;
- improve the law as it applies to child victims, through hearsay evidence changes and a "rape shield";
- expand the criminal records check of persons employed in positions of authority over children;
- provide municipalities with an effective method of enforcing curfews;
- provide practical procedures for predisposition reports in delinquency proceedings and for assuming emergency custody of an abused or neglected child;
- expand the child abuse reporting law to include "mental injury" and expand the classification of persons required under the law to report suspected child abuse or neglect;
- authorize the State to enjoin dangerous persons from child contact; and
- authorize a system of civil fines to enhance enforcement of the child care licensing law.

Practical and important improvements to the State's civil and criminal laws are needed but will not alone meet the challenge of ensuring adequate protective services for children in Alaska. Both the child protection staff increments contained in the Division of Family and

Youth Services operating budget and the management information system for the division contained in the capital budget must be fully funded to adequately address the problem. Only with improved laws, resources, and an ability to manage will Alaska break the destructive cycle of child abuse and neglect.

RECOMMENDED: Michael L. Price  
Michael L. Price, Director  
Division of Family  
and Youth Services

DATE: Feb 5, 1985

APPROVED: John R. Pugh  
John R. Pugh, Commissioner  
Department of Health  
and Social Services

DATE: 2/5/85



GOVERNOR'S REQUEST  
FISCAL NOTE  
PAGE 2

IV Analysis:

A. Assumptions

This legislation results in significant changes in the civil child protection laws and in the laws relating to criminal prosecution of persons who fail to provide adequate protection for children. As a result, there is a high potential for increased service demands on division social workers. The extent and magnitude of these impacts are undefinable at this time, and caseload impacts cannot be precisely quantified. It is believed that the child protection staff increments requested in the Governor's FY 86 budget will provide staff levels necessary to provide adequate levels of investigation and family protective services. It must be emphasized that this fiscal note does assume full funding of the Governor's FY 86 increments, otherwise an amended fiscal note will be required.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

January 25, 1985

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation, was established in 1977 to facilitate coordination of domestic violence and sexual assault services on a statewide basis. The Network represents 20 domestic violence and sexual assault programs.

Network programs have been involved in the prevention, intervention, and treatment of child sexual assault through community education and public awareness efforts, curriculum development and implementation, therapeutic counseling services, coordination with social service and criminal justice agencies, and legislative advocacy.

In June 1984 the Network formed a Child Sexual Assault Task Force for purposes of reviewing currently applied policies and practices to determine their appropriateness and the consistency of their application. The work product of the Task Force is the attached Summation of Major Issues Arising in Handling Child Sexual Assault Incest Cases and Recommendations for Resolution.

The Summation, which deals exclusively with child sexual assault perpetrated by a family member, outlines "ideal" policies and practices, those which we feel should be implemented in order to achieve the most favorable outcome. Some of these policies and practices have been implemented by some agencies in some communities; others are either inconsistently applied or not applied at all.

It is the Network's intention that the policies and practices detailed in the Summation be adopted by all agencies involved with child sexual assault cases. It is our firm belief that coordinated and comprehensive education, prevention, intervention, and treatment efforts will positively impact the high incidence of child sexual assault in our state.

We welcome your comments on this report, and suggest that you contact Ruth Lister, WICCA, Inc., Fairbanks (452-2293) or Rosemary Murray, Alaska Women's Resource Center, Anchorage (276-0528) to provide input or obtain additional information.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

SUMMATION OF MAJOR ISSUES ARISING IN HANDLING  
CHILD SEXUAL ASSAULT INCEST CASES  
& RECOMMENDATIONS FOR RESOLUTION

Prepared by:

Child Sexual Assault Task Force

Ruth Lister, WICCA, Inc.

Rosemary Murray, Alaska Women's Resource Center  
Co-chairs

Summation of Major Issues Arising in Handling  
Child Sexual Assault Incest Cases  
& Recommendations for Resolution

In all phases of involvement with child sexual assault incest cases, the Network accepts the following as a philosophy: the child victim's disclosure is to be credited, the non-offending parent should be encouraged to be supportive and protective of the child victim, and responsibility for the assault always rests with the offender. All policy statements are predicated on that philosophy.

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
1. <u>Intervention</u>	child reports sexual assault to non-offending parent and/or others; child is protected by DFYS or criminal intervention; if possible, child stays in the home; child receives immediate advocacy and support; number of interviews required of child should be minimized	assessment of non-offending parent's ability to protect & be supportive of child should be made; receives immediate advocacy to understand need to be supportive & protective of child; obtains TRO to protect child if needed	offender is investigated while child is protected; offender should be removed from the home if victim is living at home and non-offending parent is supportive
2. <u>Coordination</u>	DFYS and police/troopers coordinate investigation of victim's report of assault and provide protection of child; child is interviewed in private and is protected from onset of interview; initial and on-going advocacy should be provided by local or closest Network program or other advocacy agency  DFYS coordinates immediate contact with qualified treatment and/or advocacy program/people  Communities should develop protocols for purposes of protection of the child and to facilitate coordination. Community protocols should be reviewed on an annual basis and should include input from DFYS, law enforcement, criminal justice system, Network programs, mental health centers, schools, and other agencies involved in child sexual assault cases	DFYS and police/troopers coordinate investigation of assault, with inclusion of advocate for non-offending parent, if requested; initial and on-going advocacy should be provided by local or closest Network program or other advocacy agency	DFYS and police/troopers coordinate investigation of offender; report of investigation is made to DA

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ISSUES

VICTIM

NON-OFFENDING PARENT

OFFENDER

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3. SAFETY

the priority issue is insuring the victim's safety so s/he is not placed in a position to be re-victimized

support given to non-offending parent in protecting the victim and other siblings; provide counseling, shelter, and support when domestic violence has also occurred

strict controls over access to victim and other potential victims are to be applied in setting bail conditions, incarceration, treatment, work release, and probation; safety issues are to be adequately addressed throughout the criminal justice process; regular monitoring and safety checks should occur while offender is on probation and should be conducted by Probation Officer; probation for no less than 10 years is recommended

because of the possibility of suicide and violence to family, arrest should occur immediately

Victim and family members must receive full protection from time of report. Monitoring and treatment services should be available for at least two (2) years

4. IMPRISONMENT

victim is reassured that s/he is not responsible for the incarceration ; victim is encouraged to understand that the offender is being punished for wrong-doing

provided support in assuming role as single parent while offender is in prison and/or treatment and out of the home; non-offending parent should not be required to comply with unreasonable and/or non-therapeutic court ordered obligations, such as visitation, etc.

punishment for crime through imprisonment; treatment and rehabilitation will be provided in a secure facility; treatment will continue if offender is in a work release program or halfway house

## ISSUES

## VICTIM

## NON-OFFENDING PARENT

## OFFENDER

5. Treatment

receives therapy and information necessary to work through difficulties arising from assault and subsequent disruption in family after disclosure; individual/group treatment is made available

victim is given choice, in her/his own time, whether or not to have contact with the offender; all contact between victim and offender must be supervised

receives support to work through any problems arising from single parenthood and any emotional/financial barriers faced in supporting child; individual/group treatment is made available

1) gets treatment with focus on sexual deviancy as first stage; 2) treatment provided in a secure facility and continuing treatment through community-based programs; 3) with continuation of treatment for sexual deviancy and at the request of the victim, later stages of treatment may focus on healing the relationship with the victim and other family members

All treatment staff must have adequate training in treatment model, and all treatment must be predicated on the basis that the responsibility for the assault always rests with the offender. The well-being of the child victim must be the primary concern for all family members and treatment providers. All decisions regarding the potential, possible, and/or actual reuniting of the family should be made only when the child victim agrees and only when treatment focusing on sexual deviancy will be continuing. Contact between the child victim and the offender or any other person who is not supportive of the child should be restricted and should only occur under circumstances that are therapeutic for and agreed upon by the child

6. Rural Issues

Local safe homes and support and advocacy must be immediately available to victims and non-offending parents. Community education and organizing, and prevention and education for children and adults, are high priorities. All personnel who are a part of prevention, intervention, and/or treatment in child sexual assault cases must be specifically trained in the dynamics of child sexual assault

7. Community Safety

Through media, education, and community organizing, the harmful effects of child sexual assault and the need for protection are made clear. Age appropriate prevention information should be made available to all children

There is no known "cure" for sex offenders except their control over their own behavior. Provision and/or "completion" of a treatment or rehabilitation program should not be assumed to guarantee the safety of the child victim or potential victims

8. Adult Survivors

Treatment should be made available, either free of charge or at reasonable sliding scale fees, for adult survivors of child sexual assault by qualified treatment staff

9. Training

All therapists providing treatment in the areas of child sexual assault must have a minimum of forty (40) hours of specialized training in victim, survivor, or offender treatment

Those working in the field without a master's degree in social work or counseling must, in addition to having received specialized training, be a staff member of a counseling agency or advocacy program and be supervised by a degreed person

Training in the dynamics of child sexual assault and appropriate recognition and intervention techniques should be made available to all who come into contact with victims, non-offending parents, and offenders. This training should, at the minimum, be provided to law enforcement personnel, criminal justice personnel, teachers, day care providers, social workers, and staff members of agencies providing counseling and advocacy

If limited funds are available for training, priority in allocation should be given to those agencies demonstrating a history of effective and broad based training experience and/or provision of service

# STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POLICE N  
JUNEAU, ALASKA 99811  
PHONE: 465-4322

September 13, 1984 RECEIVED

SEP 17 1984

Josephson,

The Honorable Joe P. Josephson  
Chair, Senate Health, Education,  
and Social Services Committee  
1024 W. 6th  
Anchorage, AK 99501

Dear Senator Josephson:

This is in response to the questions you raised regarding limited criminal background checks for all licensed day care employees under the proposed Department of Health & Social Services regulations.

At the outset, enclosed for your committee's perusal is a flow chart depicting the process for limited criminal background checks as related to those persons with supervisory power over children covered under AS 12.62.035. Also provided is the form this Department uses.

Your letter addressed the concern of child abuse in child care settings. At the present time, under AS 12.65.035, there are only certain conviction records that may be released. Enclosed is a list of those crimes. As you will note, child abuse is not among them.

The Department can only provide conviction information on the noted crimes. Arrests and charges cannot be released. The files are purged if there are no arrest entries of a person after seven years for misdemeanor or ten years for felonies. If there is an arrest after purging, the file is reactivated. If only a State record check is requested, only that information contained in the State's files is available. That is, if a person was arrested for crimes outside the State, but never arrested in this State, no records of such arrests would appear on the State criminal history files. If the request for the record check is to include the F.B.I. files, then an additional fingerprint card is required as is \$12.00, which is charged by the F.B.I. for each applicant record check.

The Honorable  
Senator Josephson

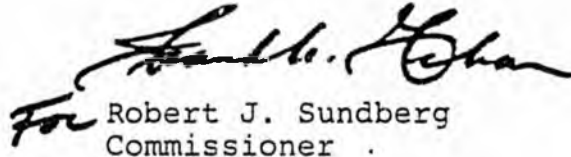
-2-

September 13, 1984

At this point in time, the impact of the criminal records check program has not been felt by the Department. Of the various school districts, only Fairbanks has recently implemented the program. No additional funding or personnel were appropriate to this Department as a result of passage of AS 12.62.035, although one additional person was requested when House Concurrent Resolution 45 was put forth to encourage use of the program. It was felt that once a common use of the criminal records check process under AS 12.65.035 was established, there would be a definite impact upon this Department's resources. If in fact the Department was required to process all licensed child care employees, in addition to other requests, that impact would become insurmountable. To handle the entire program, in light of the proposed child care regulations, would require two (2) additional Records & Identification personnel and a minimum of \$7.5 for postage, mailing material, and printing.

It is hoped this answers your questions on the subject.

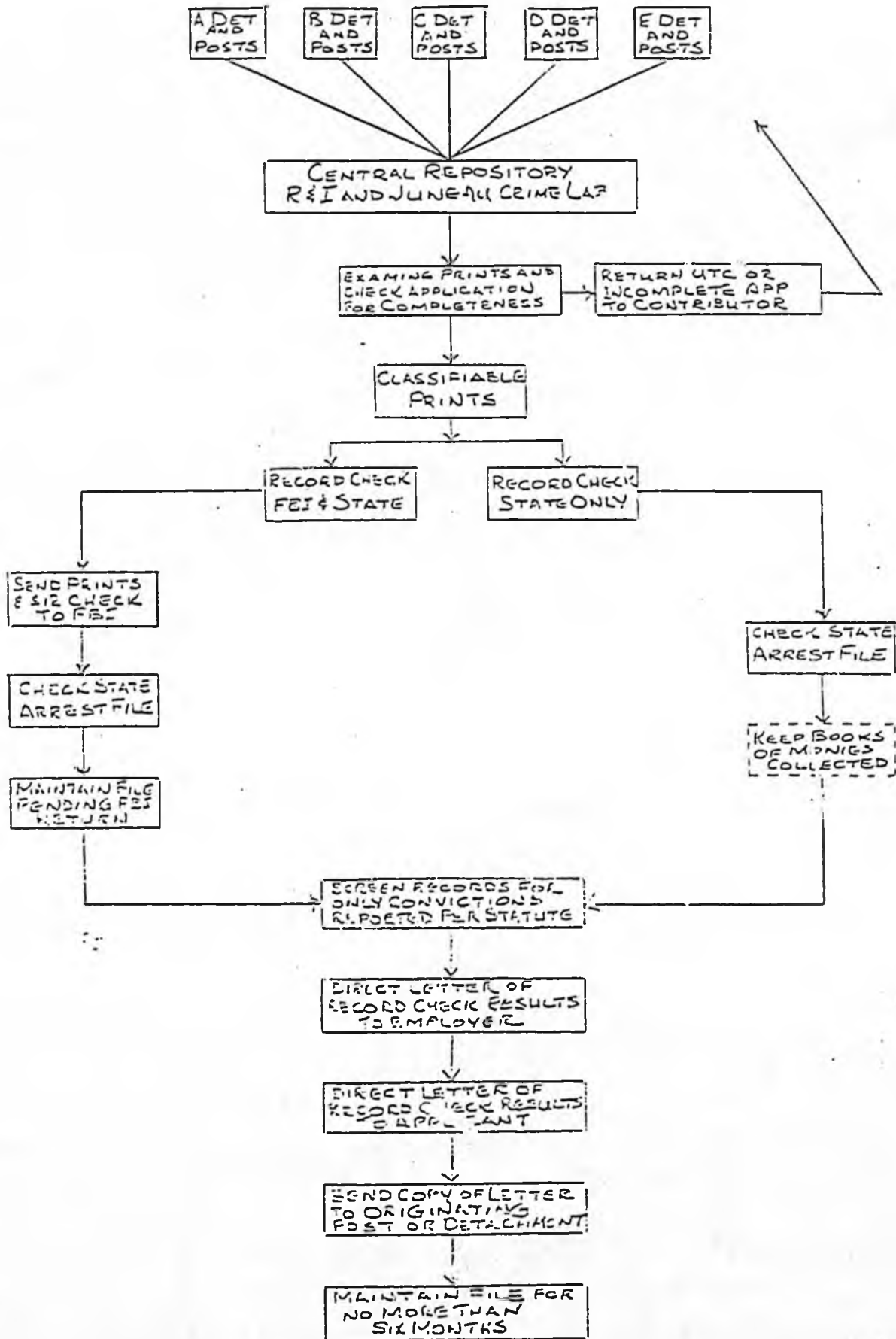
Sincerely,

  
For Robert J. Sundberg  
Commissioner

Enclosures: a/s

FINGERPRINTS GENERATED BY AS 12.62.035

FLOW THRU CENTRAL REPOSITORY



STATE OF ALASKA  
DEPARTMENT OF PUBLIC SAFETY

AS 12.62.035 authorizes the release of certain criminal justice information to an "interested person." "Interested person" is defined in AS 12.62.-035(c)(2) as: "a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person, that employs or solicits the employment of a person to serve with or without compensation in a position in which the person has or would have supervisory or disciplinary power of over a minor." A minor is a child under the age of 18.

PART I. REQUEST FOR CRIMINAL HISTORY INFORMATION

"Applicant" is the person requesting the criminal justice information.  
"Subject" is the person about whom the request is made.

- 1) Name of Applicant: \_\_\_\_\_
- 2) Position or Title: \_\_\_\_\_
- 3) Organization (if any): \_\_\_\_\_
- 4) Address: \_\_\_\_\_
- 5) Mailing Address: \_\_\_\_\_
- 6) Phone Number: \_\_\_\_\_ IRS No. (if any): \_\_\_\_\_
- 7) Description of applicant. Check the box which best describes the applicant:
  - A)  public school/school district
  - B)  private school
  - C)  nursery/day care center
  - D)  church/religious organization
  - E)  youth organization
  - F)  local, state or federal government agency
  - G)  private business
  - H)  individual
  - I)  other
- 8) If box F, G, H, or I is checked above, describe the applicant. If an organization, explain its purpose and what it does. Explain specifically the duties the subject has, or will have, which involve supervisory power over children.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 9) List two people who are familiar with the organization (or individual applicant) and can serve as a reference:  
NAME: \_\_\_\_\_ PHONE NO: \_\_\_\_\_  
NAME: \_\_\_\_\_ PHONE NO: \_\_\_\_\_
- 10) Name of Subject: \_\_\_\_\_
- 11) Residence Address: \_\_\_\_\_
- 12) Mailing Address: \_\_\_\_\_



CRIMES FOR WHICH CONVICTION RECORDS

MAY BE RELEASED UNDER AS 12.62.035

(Ch. 66, SLA 1983 - SCS CSHB 375 (Jud.) am S)

AS 11.41.410	Sexual Assault in the First Degree
AS 11.41.420	Sexual Assault in the Second Degree
AS 11.41.430	Sexual Assault in the Third Degree
AS 11.41.434	Sexual Abuse of a Minor in the First Degree
AS 11.41.436	Sexual Abuse of a Minor in the Second Degree
AS 11.41.438	Sexual Abuse of a Minor in the Third Degree
AS 11.41.440	Sexual Abuse of a Minor in the Fourth Degree
AS 11.41.450	Incest
AS 11.41.455	Unlawful Exploitation of a Minor
AS 11.41.460	Indecent Exposure
AS 11.51.130	Contributing To The Delinquency of A Minor
AS 11.61.110(a)(7)	Disorderly Conduct (exposure)
AS 11.66.100	Prostitution
AS 11.66.110	Promoting Prostitution in the First Degree
AS 11.66.120	Promoting Prostitution in the Second Degree
AS 11.66.130	Promoting Prostitution in the Third Degree

---

Also included are convictions for an attempt to commit any of the above crimes, and out-of-state convictions which would have been violations of one of these statutes if the offense had been committed in Alaska.

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

REPLY TO:

OFFICE OF THE CHIEF PROSECUTOR  
POUCH KC  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

December 27, 1984

Ms. Nancy Bennett  
Staff, Senate HESS Committee  
Pouch V  
Juneau, Alaska 99811

Dear Ms. Bennett:

At long last, I am answering your letter to Mr. Hickey regarding Alaska's child abuse laws. I apologize for the delay in responding to your letter; as you know, some of the questions you raised involve complicated legal and policy issues. I will do my best to answer your questions here, but, as always, we remain available to discuss any of these matters in greater detail with you or Senator Josephson. Addressing the issues in the order in which they were raised in your letter:

1. Videotaping and closed circuit television.

You were quite correct in your assumption that the use of videotaped evidence and closed circuit television at trial may raise significant constitutional problems. The most obvious area of concern is the defendant's right under the sixth amendment to the United States Constitution and Art. I, sec. 11 of the Alaska Constitution to confront and cross-examine the witnesses against him.

In terms of protecting the child victim from further trauma during the legal process, the best situation would be to allow the child to testify in an informal setting, with only the judge, the child, and the prosecutor present. This raises obvious confrontation issues. One solution might be the installation of a two-way closed circuit television system in the courtroom. The child could testify from an adjacent interview room, and her testimony broadcast into the courtroom. This would allow the defendant to observe the child and hear the testimony, but would allow the child to avoid the trauma of testifying in the presence of her assailant.

I don't know how much it would cost to install such a television system in Alaskan courts, but I'm sure the cost would be significant. A two-way television system has been installed on an experimental basis in a courtroom in Fairbanks. This system allows a defendant in a misdemeanor case to be arraigned

or sentenced without being transported from the jail to the courthouse. Deputy Commissioner James Vaden, Department of Public Safety, may be able to provide you with information regarding the cost of this system. Preliminary reports indicate that the system is working well, and it may eventually be expanded to other communities within the state.

There is another, perhaps more feasible, way to improve procedures for the presentation of evidence in child sexual abuse cases. The Criminal Division strongly favors the amendment of the criminal rules to allow the introduction of "hearsay" evidence in grand jury proceedings involving sexual offenses against children. The introduction of hearsay at the grand jury does not present confrontation problems because the sixth amendment right is a trial right -- it does not apply at the grand jury stage.

AS 12.45.047 presently allows the introduction at trial of the videotaped testimony of a child victim in sexual abuse cases. This process works similar to the two-way TV system discussed above, but contemplates the "pre-recording" of testimony which is later shown to the jury. The testimony is still taken in the defendant's presence, and the child is subject to cross-examination. AS 12.45.047 does not allow the introduction of a child's videotaped statement, given, for example, to a police officer or social worker during an initial interview. Such a statement is considered "hearsay," and is ordinarily not admissible at grand jury or trial.

Virtually all other jurisdictions, including the federal courts, allow the introduction of hearsay in grand jury proceedings for all crimes, not just child sexual abuse cases. If you would like to pursue this idea, I would be happy to assist in drafting a bill. Since the bill would require the amendment of a court rule of criminal procedure, a two-thirds vote of each house would be required for passage.

For your general information, I am attaching a recent article which discusses prosecution in child abuse cases, including the use of videotaped evidence.

## 2. Special child abuse units.

"Special crimes" prosecution units have been formed in both the Anchorage and Fairbanks District Attorney Offices to handle child sexual abuse cases. These units include two or three attorneys, a paralegal assistant, and secretarial staff. The members of the unit have been specially trained in the prosecution of child sexual abuse cases, and are sensitive to the needs of young victims and their families.

We have found that these units work very well. The attorneys develop professional contacts with the police investigators and social service workers who also deal with these cases. Because these are generally the only kind of cases the attorneys handle, they gain a great deal of practical experience and expertise. Another advantage of these units is that they allow "vertical prosecution." That means that the attorney who initially screens the case and interviews the victim and witnesses is one who also takes the case to grand jury and trial. This eliminates the need for multiple interviews of the child or family members, and allows the child to build a rapport with the attorney handling the case.

While the specialized unit concept is a good one, the feasibility of expanding its use to smaller offices is doubtful. Many of our district attorney offices in rural areas are staffed by one or two attorneys only. Obviously, those attorneys must handle all types of criminal cases, not just cases of child abuse.

There is a great deal of room for refinement in the present system, even in the specialized units used in the larger communities. The Governor's Criminal Justice Working Group has been studying the possibility of the creation of a pilot "Child Protection Unit" in Anchorage. As envisioned, this unit would be located in a separate office under the Department of Law. The unit would contain a director, several social workers, a therapist (to provide initial crisis counseling and continuing support during the legal proceedings), Anchorage Police Department and Alaska State Trooper investigators, paralegals, secretarial support staff, and several trained trial attorneys.

The attorney assigned to a particular case would handle both the criminal prosecution and the civil "child in need of aid" proceeding for that case. This combination of civil and criminal responsibilities would be one of the major advantages of this unit. Resources would be more effectively used, because the duplication of effort which sometimes occurs in the present system would be eliminated. The goals in both the civil and criminal proceedings would be more compatible, and the potential for conflicting court orders reduced.

In addition to centralizing various professionals now scattered among several state and municipal agencies in the Anchorage area, the Child Protection Unit could act as a training resource for other police departments, social service agencies, and prosecutors' offices statewide. The unit would also be able to offer legal and technical support in complicated cases which might otherwise be difficult to pursue in smaller communities.

A number of the staff positions required for such a unit could be transferred from existing agency positions. Other agency positions authorized in the governor's FY 86 operating budget could also be assigned to the unit. To function as envisioned, however, some additional positions would have to be created. If the creation of this unit is something that you believe Senator Josephson or the HESS committee would be interested in, I would be glad to meet with you to discuss the concept in more detail.

3. Criminal penalties for juvenile sex offenders.

As you note in your letter, the child sexual abuse laws were revised in 1983 (ch. 78, SLA 1983). AS 11.41.440 now provides that an offender under the age of 16 commits sexual abuse of a minor in the fourth degree, a class A misdemeanor, if he engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender.

We see two problems in the existing law. One is that, in some cases, this "A misdemeanor" classification is not sufficient to reflect the seriousness of the crime committed. For example, in the Palmer area about a year ago a group of boys forcibly raped a young child at knife point. The fact that even a forcible rape is a misdemeanor if it is committed by a person under the age of 16 makes it less likely that the district attorney will seek or the court grant a "waiver" of the offender to adult court, even if the offender appears not to be amenable to treatment under the juvenile justice system.

The other problem is that some sexual assault cases involving an offender under the age of 16 may not be pursued vigorously enough in the juvenile justice system. Studies indicate that most adult sex offenders began their assaultive behavior at a very young age. As a general rule, the younger the offender the greater the opportunity for successful treatment. Potential sex offenders should be identified and treated while still teens. By the time these offenders reach adulthood, it will be much more difficult to achieve any effective change in their attitudes and behavior.

4. DFYS confidentiality requirements.

AS 47.17.020 requires specified classes of professional persons to report suspected cases of child abuse. Under AS 47.17.040 these reports, and the results of DFYS investigations, are confidential. The statute allows the information to be used "in connection with investigations or judicial proceedings involving child abuse...." In State v. R.H. and Wetherhorn, 638 P.2d 269 (Alaska App. 1984) the Alaska Court of Appeals ruled that the phrase "judicial proceeding" as

used in the child abuse reporting laws referred only to civil child protection proceedings under AS 47. This has created some uncertainty about whether information contained in reports of harm or DFYS investigative reports may be provided to the Criminal Division for use in a criminal prosecution of the offender.

Prosecution of child molesters is a child protection function. Criminal prosecution, and the ensuing penalties, may sometimes be the only effective way to make sure that the offender does not continue to abuse young children. We suggest that the language in AS 47.17.010, 47.17.025, 47.17.040, and 47.17.060 be amended to establish that the legislature intends that the contents of child abuse reports be made available to law enforcement and prosecution authorities so that serious felony crimes can be detected, investigated, and prosecuted. Although effective treatment for sexual offenders is an important goal, unless and until an effective treatment system can be developed and thoroughly evaluated, criminal prosecution remains an essential facet of Alaska's child protection system.

#### 5. Criminal history background checks.

AS 12.62.035 allows an employer and other specified persons to request a check of the criminal history records of a person who holds or is applying for a position in which the person has or would have supervisory or disciplinary authority over a minor. The employer specifies whether he wishes a check of Alaska's records only, or of national FBI records as well. The FBI will process records check requests for a nominal fee (\$12), but such checks often take up to two months to be returned.

Under the present system, the Department of Public Safety (DPS) may release only that information specifically designated in the statute. Basically, this is convictions for a sex crime or crimes involving contributing to the delinquency of a minor. See AS 12.62.035(a), (e). These narrow restrictions mean that, for example, DPS may not inform an employer that there is an outstanding warrant for the arrest of the prospective employee. It also means that convictions for other serious crimes, such as murder or felony assault, may not be reported, even if the victim of the felony was a young child.

We recommend that the legislature consider amending the existing law to broaden the scope of information which may be released upon receipt of an appropriate request. Your suggestion about reporting arrest data raises some difficult constitutional problems, however. The mere fact that an arrest was made does not mean that the person actually committed the alleged offense and oftentimes criminal history records do not reflect the ultimate disposition of each arrest. A person

denied employment on the basis of arrest data might well be able to claim that he has been unfairly treated. Such a provision might well be struck down on due process grounds, or subject the state to potential civil liability.

6. Penalties for enticement of children.

As you know, there is no state "enticement" statute, although an attempt to commit sexual abuse of a minor in any degree is also a crime. A bill introduced last session, HB 444, would have added an enticement type law to the criminal code.

Generally speaking, existing sexual abuse laws already cover most objectionable conduct. There may be some few instances where the suspect's actions do not constitute sexual abuse or attempted abuse, and where a provision similar to that proposed in HB 444 would be of some value. The statute would have to be narrowly drawn to avoid challenge on overbreadth or vagueness grounds. While such a statute may be of limited value, we would certainly be willing to work with you in an effort to draft a constitutionally defensible provision.

7. Statewide Child Abuse Agreement; Draft Legislation.

Your letter invited us to comment on other issues relating to child abuse. In case you haven't seen it yet, I am enclosing a copy of Alaska's Statewide Child Sexual Abuse Agreement. This agreement, signed by the Governor and the Commissioners of the Departments of Law, Public Safety, Health and Social Services, and Corrections, establishes general guidelines for cooperation and coordination among state agencies in their response to reports of child sexual abuse.

Because of the vast differences in location, size, accessibility and availability of resources among Alaskan communities, it is only at the local level that the details of each agency's role in child sexual abuse cases can be worked out. The agreement therefore does not attempt to establish overly detailed statewide agency procedures. Instead, it represents a commitment to work with other agencies and organizations in local communities to develop more specific agreements among law enforcement, prosecution, social service, and treatment agencies, taking into account the needs of a particular community.

The agreement obligates each of the four state agencies to develop written internal policies and procedures to be used by agency personnel when responding to reports of child sexual abuse. The agencies are required to develop these policies and procedures by January 23, 1985, and to implement them by March 25, 1985. Agency staff are now drafting the internal policies and procedures for the various departments.


The Department of Law is also now in the process of drafting a comprehensive "child protection package" for the governor's consideration and submission to the legislature. We anticipate that this bill will address some of the problems discussed in this letter, including access to reports of harm and the use of hearsay evidence in grand jury proceedings in child abuse cases. The bill will also address day care licensing requirements, and will empower the state to seek civil injunctions against persons who are not qualified to provide child care.

I hope the above information is of assistance to you in considering legislative action during the next session. We appreciate the opportunity to comment on these issues. Once again, please accept my apologies for the delay in responding to your letter.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

DANIEL W. HICKEY  
CHIEF PROSECUTOR

By:   
Gayle A. Horetski  
Assistant Attorney General

November 30, 1984

The Honorable Joe Josephson  
Alaska State Senate  
1526 "F" Street  
Anchorage, AK 99501

Dear Senator Josephson:

These questions were presented for the Division of Family and Youth Services' response at the Department of Health and Social Services (DHSS) hearing. This response was prepared prior to the Policy Conference on Young Children which is being sponsored by your committee. Certainly, additional information and suggestions will come from the conference.

We are also transmitting the text of Michael Price's testimony (Enclosure 1) given at the hearing, as well as answers to the follow-up questions from Nancy Bennett.

I. ADEQUACY OR INADEQUACY OF EXISTING STATUTES:

1. Are existing statutes governing the licensing of child care facilities, child protection, and the prosecution of child sexual abuse cases adequate?

We have identified a number of improvements that could be made, but have not done a comprehensive analysis. Currently statutory improvements are being considered for administrative sponsorship. A child protection legislative package will be proposed.

2. If not, what suggestions are offered by witnesses to improve our statutes, either

- (a) with respect to the substantive definition of criminal offenses, or

DHSS is not proposing substantial changes to the definition of criminal offenses.

- (b) the procedural framework in which prosecutions are undertaken and conducted, or in which child care facilities are inspected and licensed, and the background of caregivers is examined?

You may be aware of the tri-departmental child sexual abuse agreement (Enclosure 2) which was signed by Governor Sheffield on September 25, 1984. The Departments of Public Safety, Law and Health and Social Services, in cooperation with other local

public and private agencies are currently developing a model protocol and local protocols relating to investigation and prosecution to provide assistance for children who have been sexually abused. Implementation of the protocols is scheduled for January 24, 1985.

The Child Protection Legislative Package mentioned in question # 1 addresses:

- enablement to prosecute day care providers and other caretakers who endanger children entrusted to their care through criminally negligent conduct;
- relief of DHSS from the obligation of conducting home studies and reports unless the child is a "hard to place" child;
- filing petitions for emergency custody on the next business day following the emergency assumption of custody;
- definition of the term "sexual abuse" for use in child in need of aid proceedings under AS 47.10;
- permitting prosecutors to use information in prosecuting offenses against children which is obtained from reports of abuse filed pursuant to AS 47.17;
- restriction of contact with children by persons who have neglected, sexually or physically abused children, or who present a danger to children;
- authorization to DHSS to perform criminal history checks on various people who are responsible for the care of children and who come in contact with children in state-licensed facilities
- increasing the criminal penalties for violations of state licensing statutes and regulations and provision of authority to DHSS to promulgate regulations creating a system of civil enforcement of licensing statutes and regulations,
- other provisions are being considered and drafted.

## II. ADEQUACY OR INADEQUACY OF DEPARTMENT OF HEALTH AND SOCIAL SERVICES FUNDING LEVELS.

3. How many child care facilities are now licensed by the Department of Health and Social Services?

At the time of the hearing there were 150 Child Care Centers and 567 Family Child Care Homes. A November 1, 1984 summary of Alaskan day care facilities and their capacity is Enclosure 3.

4. How are these facilities spread out around Alaska, and how many are in Anchorage alone?

Please refer to the same enclosure as for question # 3.

5. Does the Department require additional positions to monitor day care facilities?

Yes. Please see the enclosed 1984 "Child Abuse and Neglect" report (Enclosure 4) to Governor Sheffield. Five additional positions are being requested in the FY 86 budget. Governor Sheffield has gone on public record as supporting additional social workers, licensing staff and clerical staff in next year's budget.

6. If so, how many positions are required? Where would the positions be located, and what personnel qualifications and range levels for these positions are contemplated?

Please refer to Appendix A, "Recommended Staff Augmentation by Location" in the enclosed 1984 report to the Governor, and the enclosed class specifications for a Social Worker III and a Community Care Licensing Specialist I (Enclosure 5).

7. Is the Department making requests for additional positions to the Governor, for inclusion in the executive budget request for FY 1986?

Yes. As stated earlier, Governor Sheffield has gone on public record as supporting additional social work, licensing, and clerical staff. The budget review process is not yet completed.

### III. LICENSING AND STANDARDS FOR CHILD CARE.

8. What criteria are considered in the licensing process?

Please see the enclosed 1977 regulations (Enclosure 6) and the 1984 Child Care Facility Regulation revisions (Enclosure 7). The revisions have been adopted and are currently under review in the Department of Law.

9. Should the criteria be expanded?

Please see the cover for the 1977 Day Care Regulations and compare the contents with the cover page for the 1984 regulations.

10. If so, is a statutory change required?

A statutory change was considered desirable for criminal history clearance authority.

11. How do our licensing provisions compare with trends in other states where day care facilities are licensed?

After a review of comparative research done on the child care regulations of all the states, we have found that our requirements will be in line with requirements of other states. In addition, we have gained extensive experience since 1977. We are aware that cost is a factor. Our belief is that no criteria need be expanded beyond that presently proposed. A possible exception is on the criminal history clearance since we've not yet determined which persons will fall under required clearance.

12. Where are the standards for licensing articulated or promulgated?

The standards for licensing are promulgated in Alaska Administrative Code Title 7 Chapter 50.120 -- 275 under the authority of Alaska Statute Title 47 Chapter 35.010 -- 100.

13. What, if any, new criteria for licensure are under consideration by the Department?

Provisions have been proposed for

- the care of handicapped children upholding the principle that the parents or guardian have primary responsibility in working out a plan of care for the child after choosing a facility that can best care for the child;
- the creation of toddler and kindergarten categories and changes in the staff-to-child ratios;
- development of application wait listing and a processing sequence policy;
- the addition of the complaint investigations;
- implementation of an abbreviated annual monitoring policy;
- requirements for a facility to have at least one caregiver with basic current first aid and CPR training certificates on duty at all times;
- the requirement for orientation and training of caregivers;
- a change from an annual to a biennial licensing process in conformance with statute change;
- provisions for school age children; and
- night time care, and safer more adequate transportation.

Not all of the new areas under consideration have been delineated here, but these are some significant and important ones proposed for change.

14. Assuming that child sexual abuse does not just occur in licensed day care facilities, what ought to be the state's role with respect to the problem in other types of places or facilities, such as in licensed or contracted foster care homes, or other types of child care or pre-school institutions?

There are some persons who endanger children and should not have contact with children as was indicated in the hearing. Child sexual abuse may occur when a baby sitter goes into a child's home, in community service programs such as Boy Scout and Girl Scout programs, recreation programs, Big Brothers/Big Sisters, exempt private schools, pre-elementary schools, public schools, etc. As part of the child protective legislative package detailed in question # 2(b), we are considering legislation that would enjoin certain persons from contact with children. A comprehensive approach should be used by the state to safeguard against child sexual abuse. We support what others are doing too.

The division has embarked on its first public awareness effort through contracting with Alaska Video Productions for \$75,000 for production of a number of brochures, flyers, posters, television and radio spots.

- Five brochures will provide information on the child abuse reporting law for five target groups: early childhood personnel, school system personnel, medical professionals, mental health professionals, and community human service providers. Seven additional brochures will detail specific services available to the general public through the division including: child protective services, adult protective services, foster care and day care licensing, parent information on emergency custody, how to select an early childhood program for parents, youth service facilities, and community based youth probation programs.
- A one page fact sheet will address all division programs and the delinquent minors, child in need of aid, and elder abuse statutes with explanations suitable for the general public.
- Six separate posters with graphics depicting children and the elderly will address delinquency prevention, physical abuse, child neglect, child sexual abuse, elder abuse, and the need for foster homes.
- Five one minute television public services announcements address the following content: reporting child abuse and neglect; reporting elder abuse; healthy parenting techniques; positive family life; and the relationship of neglect and abuse to delinquency.

--- Five radio spots in five languages are being completed regarding child abuse and neglect reporting. Five elder abuse reporting radio spots are being produced and translated into five languages.

In the case of day care, parents are in the facility every day and share the responsibility to monitor the care being provided. This is why public awareness is a critical factor in the prevention of child abuse. Providers and other community agencies share in the responsibility.

The Policy Conference on Young Children initiated by you trains parents and child care providers to deal with child abuse. Child abuse and neglect prevention will be addressed.

The division will publish a guidebook to implement the revised Child Care Facility Regulations which will include employee screening guidelines, which employers may use before they hire an individual.

The Council on Domestic Violence, through contractors, is working with school districts to provide training to children to report "bad touching."

The division's current practice to guard against child sexual abuse in foster homes is to perform a criminal history background search on all adults residing in the home, to require three positive references, and to conduct an extensive interview of foster parent applicants.

The authority of AS 12.62.035 allows any employer to examine the criminal records of employees who supervise children. Finger printing is required under this authority.

The new Spiderman comic book published by the Marvel Comics Group in cooperation with the National Committee for Prevention of Child Abuse is a method of teaching children how to fend for themselves. Such publications should be given the importance of widespread distribution.

We understand limited federal funding has become available for an information and referral service to assist parents in child care selections. We are currently researching the authority statute and possible delivery mechanism.

No one agency or group can solve the problem of child abuse. All of us share the responsibility for protecting children. Achieving better protection of children will require a comprehensive systemic approach involving the public, parents, legislators, several departments of state government, and the court system, as well as the Division of Family and Youth Services. Above all, it will require a commitment to provide the necessary resources!

15. In what facilities can the Department assert jurisdiction, and in what facilities does existing law oust the Department from such an assertion?

The Department can assert jurisdiction in:

- a "child care center" which is a place in which child care is provided for seven or more children;
- a "family child care home" which is a place, usually a residence in which child care is provided for no more than six children who are not related to the operator;
- a "foster home" which is a private residence in which 24-hour care is provided for five or fewer children who are not related by blood, marriage, or adoption to the foster parent;
- an "adult foster home" which is a private residence in which 24-hours care is provided for five or fewer residents, who because of age infirmities or handicap, continuously require accommodations and care, including the immediate availability of the foster caregiver;
- a "residential child care facility" which is a place which provides 24-hour care for one or more children who are not related by blood, marriage, or legal adoption to the owner or operator and includes facilities called group homes, institutions, and maternity homes as defined in AS 47.35;
- an "adult residential care facility" which is any facility providing 24-hour care for one or more adult residents who because of age infirmities, advanced pregnancy, or handicap, continuously require accommodations and care including the immediate availability of care providers.

The Department does not assert jurisdiction over:

- a residence in which child care is regularly provided for four or fewer children, unrelated to the resident caregiver;
- an establishment whose purpose is primarily educational and serves children aged three years and older;
- a facility exempt from state regulations under federal law;
- a facility operated by the federal government, a municipality, or a school district;

--- a foster home or a residential facility for the first 90 days of operation.

16. Are the Department of Education or the Department of Community and Regional Affairs given regulatory jurisdiction over facilities for young children, aside from day care facilities?

The Department of Education regulates special education services and also has jurisdiction over schools for children ages three through five years when the schools primary function is educational. Those programs not approved by the Department of Education are supervised by DHSS unless they do not receive direct state or federal funding and are therefore exempt.

The Department of Community and Regional Affairs (CRA) may assist parents in paying for child care if the child care home or center is licensed either by the state or the city. When revocation or denial of the child care license is being considered, CRA is notified and may cease funding. (AS 44.47.250 -- 310)

17. Does the Department have the power to inspect child care facilities without advance notice to owners and operators?

AS 47.35.010 states that "the department may investigate and supervise licensees" and again in AS 47.35.030 that "the department may inspect and examine an institution, home or place, or the performance of a service." Attorneys have advised us that there are no limitations on this. We are making it clear in revised regulations, ". . . the division will, at its discretion, seek a search warrant".

18. If not, why not?

N/A

19. Are background checks available for day care center employees, and facility owners? If not, what (if any) statutory changes are required to provide for such background checks?

Please refer to question III. 10.

IV. INTERACTION OF ADMINISTRATIVE AND PROSECUTORIAL AUTHORITIES, AND OF STATE AND LOCAL AGENCIES.

20. How do the Department and local police agencies interact, when a facility is under criminal investigation?

The sexual abuse protocols will address interaction between the Department and local police agencies when a facility is under criminal investigation so there is a definite procedure in each location.

21. In this interaction, how are the interests of affected children safeguarded while an investigation is taking place?

If it is a licensed facility, our experience is limited, but includes; immediate license revocation; contact of parent(s) or guardian or placing agency, if any, within hours to bring about the best course of action for the child; obtaining a search warrant to secure child record cards in order to learn of additional children that may be receiving care at the facility; required removal of the alleged perpetrator from the facility until the investigation is complete; assistance to parents in child care facilities in obtaining alternate child care arrangements.

22. Is there a developed and standard protocol governing the rights of children and parents during the course of an ongoing investigation of a facility, and expressing, for example, when the parents are to be notified of a suspected problem under police investigation?

No, this, too, should be addressed in the protocol being developed.

23. Are videotapes used to interview children in cases of suspected child sexual abuse occurring in a day care facility? If not, why not?

AS 12.14.047 allows the videotaping of testimony of a child who has been sexually abused. The testimony is presented by the prosecutor and victim before the trial judge. The defendant has a right to be present and have an attorney present and the right to cross examine the victim. The testimony can then be used at the actual trial.

Video equipment is not always available in all locations, and even in urban areas where equipment is available there are still some logistic and educational/attitudinal problems to be solved. There is an attempt to use it when it is available though, and the division promotes its extensive use or the use of closed circuit TV testimony.

24. If this question is answerable without jeopardy to any ongoing criminal investigation, were videotapes used in the case to which I alluded in my opening statement? (The Committee has received conflicting information in this regard.)

Based upon a conversation which a Department employee had with the police, it is our understanding that the police did videotape the children that they were interviewing.

25. Does a contract exist with the Municipality of Anchorage to license (Enclosure 8) day care facilities within the Municipality? If so, is the state satisfied that the Municipality has enough investigators, with sufficient training, authority, and time to investigate child care providers and their staffs in Anchorage, pursuant to such a contract?

We do not have a contract with the Municipality of Anchorage, though AS 47.35 allows them to assume authority to license child care facilities within their jurisdiction. AS 47.35 (Enclosure 9) would also allow contracting. Pat O'Brien, of my staff, has met with Municipal officials to discuss changing the municipal ordinance to be compatible with state child care regulations. During our most recent meeting with them, municipal staff were informed that "the division views delegation of licensing powers similar to fire safety and police power delegation, meaning that the municipality would be responsible for funding a municipal licensing program. The state is experiencing a critical shortage of licensing workers and could not assist in the funding of a municipal licensing program."

The state has three full time staff who are Community Care Licensing Specialists functioning in the licensing of Child Care Centers and Homes in Anchorage. The municipality has two investigators and a supervisor to review Anchorage centers.

If the Municipality chose to assume licensing authority, training would be necessary. We were disappointed that they did not accept an invitation to attend the statewide licensing training given in September of this year. Please see the enclosed section 7 AAC 50.188, "Delegation and Withdrawal of Licensing Authority" from the Child Care Facility Regulations, which are now in the Department of Law for final approval.

#### V. ISSUES OF PUBLIC LIABILITY.

26. In what present litigation is the state a defendant, arising from alleged sexual abuse of a child in a day care facility?

The case of LM vs. State was settled out of court.

27. What degree of legal liability is borne by the state, or may be asserted against the state,

(a) where victims have been abused in a licensed facility under circumstances wherein the state knew, or ought to have known, of facts suggesting that no license ought to have been issued or renewed, or

In the child protection legislative package currently being considered and detailed in question number 2(b), the state hopes to attain adequate authority to have access to relevant criminal history facts, including expunged records. If the state gains that authority, state liability will certainly be reduced.

(b) in circumstances where no such facts existed?

In cases where no such facts exist, and where licensing staff followed procedures acting in good faith, there should be no liability. How-

ever, in Alaska, lawsuits against the state in social services increased in the last year. In other states, suits have long been more common.

28. What degree of legal liability is borne by the state, or may be asserted against the state, if there is a shortfall in the Municipality's performance under any contract requiring it to inspect day care facilities?

The state has been informed that there may be liability under contract related to inspection of child care facilities. To reduce liability and ensure appropriate use of state expertise, safeguards were included in the regulations. An agency must report any instance of noncompliance with the Child Care Facility Regulations that may cause imminent risk to the life or safety of a child in care, and a coordinated plan for investigation will be developed. An agency may make recommendations regarding licensing action, but actual implementation of these actions is the responsibility of the division. The division then sends verification of that action to the local agency. There may also be liability under delegated powers. Regulations would permit state oversight. A municipality must allow the division to review the municipality's facility records and conduct on-site standard by standard evaluations of facilities licensed by the municipality to determine if the municipality is appropriately exercising its delegated powers. (Please refer to 7 AAC 50.186 -- 7 AAC 50.188 which is enclosed.) Currently there are no contracts with any private agency or municipality for performing licensing investigations. Only the City of Bethel has assumed licensing powers.

#### VI. RESPONSIBILITIES WHEN CHILD ABUSE IS SUSPECTED OR PROVED.

29. When a parent becomes suspicious of a child's caregivers, in a situation of suspected sexual abuse, what steps should a parent take, and who should the parent contact? To what extent, if any, can a parent become liable for asking for investigation of a suspected case of child sexual abuse, if no abuse can be proved? Should the legislature consider any changes to the law of libel or slander, to afford a qualified or absolute privilege to parents acting in such a situation?

A parent who becomes suspicious of a child's caregivers in a situation of suspected sexual abuse should contact DHSS or law enforcement officers. AS 47.17.050, "Immunity", provides: "A person who, in good faith, makes a report under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability which might otherwise be incurred or imposed." To date no reporter has been sued in Alaska. If the report is made in "good faith", the statute provides protection.

30. What counseling or social or health services are provided by the state, or local governments, to assist the child victim and his or her family when such situations have occurred?

Counseling is provided for the child victim and the child's family at the local DFYS office in some situations. It is usually handled by referring the child and family to a Mental Health Clinic, or a women's shelter, or other local counseling agency. When abuse occurs outside the family, services are usually funded by the family if they are financially able to assume the costs.

31. What counseling or social or health services are available in such cases, through non-profit agencies recognized by the state for this purpose?

The state has contracted for counseling or social or health services from many non-profit organizations within the state. Specific services provided from the composite of organizations with which these contracts exist are diagnostic testing, prevention of child sexual abuse, intervention, crises line, volunteer parents, peer group counseling for perpetrators and victims, family/child/group therapy, consultation with other groups that show interest in working in these areas, community education, family therapy workshops, services to break child sexual abuse tendencies in youth, assistance in parenting skills, play therapy with children and follow-up.

32. What additional services are needed and should be provided? Should they be furnished directly by government or others? What estimated costs would accompany such provision of services?

Since 1977 the licensing caseload and the child protective services caseloads have more than doubled.

The minimum number of additional staff positions needed today to increase the agency's ability to provide necessary social services and perform required licensing functions is 35 positions. The cost is estimated to be:

\$1,840,500	Personal services, travel, contractual, equipment
71,900	Legal services
53,900	Staff development
26,400	Office space in Fairbanks
<u>\$1,992,700</u>	<b>Total</b>

Long term solutions to the problems currently being faced by the division will initially require additional resources in prevention and early intervention services and an altering of the configuration for allocation of resources.

Of at least 120 offenders in Alaska's jails who assault children, only 19 are definitely from within the family which is the group that

Family and Youth Services has direct responsibility for, and which includes victims, families -- siblings, the non-offending parent, and the offender. More skilled counselors are needed both in the private non-profit and public sectors to rehabilitate offenders and work with families. These services need not necessarily be provided by government.

33. Is the department recommending for FY 1986 that additional moneys become available to the victims and families of child sexual abuse, in such cases, for counseling, medical or psychological therapy, or other assistance?

The department is requesting more staff, but child physical or sexual services to all families when abuse occurs outside of the family setting has been estimated by some to require doubling of social service resources. The division will be studying fiscal note implications on the "enjoining dangerous persons from contact with children" part of the Child Protection Legislative Package.

In addition to the foregoing question, Nancy Bennett, of your staff, has queried the department on the following recommendations which came out of the child abuse hearing in Anchorage on August 16, 1984.

1. Closed circuit TV for interviewing child victims of sexual abuse.

Some children are being videotaped if it is thought that the trial will be a long time after the abuse. That evidence is used, though it is considered by prosecutors to be more convincing to place the child on the stand.

2. Creating a special unit for civil and criminal child abuse cases.

Presently DHSS does not have enough staff to address all complaints. We advocate creating a special unit for civil and criminal child abuse cases which take place outside of the family only. We further advocate that staff for the special unit be in the Department of Health and Social Services and Law Enforcement -- staff in addition to the current staff who are regular child protection service workers who would refer cases to the special unit. It is envisioned that the services of the special unit extend to any person(s) involved in the child molestation incident such as the home providers. In addition, since there are different prosecutions for different situations, someone must investigate before an individual can be enjoined. We would like the department to be relieved of this.

3. Comprehensive training for educators in child abuse.

The Division of Family and Youth Services is participating in two statewide conferences for educators as a means of providing information on child abuse: reporting laws, investigation, treatment and services. One of these is the Policy Conference on Young Children.

The other is the Conference for Small Schools. The division is also publishing a comprehensive pamphlet for educators which describes reporting laws, indicators of abuse, procedures, and services provided.

4. Admitting hearsay evidence in grand jury proceedings.

On a conceptual level, DHSS has no objection to such a provision, depending, of course, on the effects of a specific proposal. It would only indirectly impact DHSS programs, but may be of benefit to child victims of sexual abuse by allowing them to avoid testifying at such proceedings. This potential benefit must be weighed against other considerations.

5. Criminal penalties for juvenile sex offenders.

The department would not approve a bill which automatically subjects juveniles accused of sex offenses to prosecution under adult criminal jurisdiction. A blanket approach such as this is both unnecessary and ill conceived. A more effective, more just, and less expensive approach is to selectively identify those juveniles for whom adult sanctions are appropriate. The juvenile waiver mechanism (AS 47.10.060) was designed to differentiate between those juveniles who can be controlled and rehabilitated within the juvenile justice system and those who require the more stringent adult sanctions.

6. If DFYS confidentiality requirements inhibit prosecution.

No. DFYS supports prosecution of criminal offenses. Evidence related to prosecution of child abuse is forwarded to the Department of Law.

7. Requiring penalties for operating a day care facility without a license.

There is currently a penalty in the licensing statute, AS 47.35.070 under "violations." An individual operating a day care facility without a license is "guilty of a misdemeanor, and upon conviction is punishable by a fine of more than \$200." The division is considering a system of civil penalties as part of the legislative package.

8. Criminal history background checks on all people working with children.

In 1982 Alaska passed legislation (AS 12.62.035) which allows any employer to examine the criminal records (sexual abuse offenses only) of employees who supervise children. Fingerprinting is required. The statutory authority had not been used by an employer until this year. Many offenders have not been caught and hence will not have a record when they apply to work in a particular child care education or recreation setting. A legislative airing of this issue may be appropriate.

9. Establishing a uniform complaint procedure concerning day care.

A uniform complaint procedure is currently in place. It has recently been revised and is used in day care, foster care, and residential care, and will be adjusted after the child sexual abuse protocols are developed.

10. Voluntary accreditation for child care facilities.

The Department of Education has considered a voluntary accreditation standard. In addition, a voluntary accreditation system has been under development for approximately two years by the National Association for the Education of Young Children.

11. Public notification of day care violations.

This may be appropriate, but the division has not explored it. A Public Research Information Group in Anchorage reviewed all investigation files for child care facilities this year and published the results statewide, though distribution was limited. The publication included a listing of all licensed day care facilities, basic information about their program, and validated complaint investigations.

12. Criminal penalties for enticement of children.

The division could support such penalties if they provided greater protection for children than is provided by existing laws. The specifics of such proposals and their impacts on treatment of the victims and families would be important considerations in determining division support.

13. Establish standards for denial of license, create a provision to enjoin a closed center from re-opening.

The enjoining of a closed center from re-opening is being considered in the Child Protection Legislative Package. The division has enjoined a closed center from re-opening in three instances, but our authority was based on court precedent rather than on statutory authority.

If a facility does not meet standards, the license will be denied. If the facility has not been in the child care business previously, their plan for care must meet all standards for care prior to operation. If the facility is already operating, the program must meet standards for licensing before a license will be issued. For further details on denial of license, please see the enclosed information (Enclosure 10) taken from the "Community Care Licensing Manual" pp. 42 - 44.

November 30, 1984

14. What are resource needs?

Resource needs are extensive. Refer to the enclosed 1984 report to Governor Sheffield on "Child Abuse and Neglect in Alaska."

Thank you for your interest and support of efforts to reduce child abuse and neglect.

Sincerely,

Michael L. Price  
Director

Senate Health, Education and Social Services Committee  
Hearing - August 16, 1984  
3:00 pm to 7:45 pm

Re: Child Abuse in Child Care Centers  
Testimony Michael L. Price

Senator Josephson, you sent a letter to Commissioner Pugh on August 8, 1984, asking the Department of Health and Social Services a number of questions. I'm here today to answer those questions.

The first question you asked is whether our agency has adequate financial resources to protect the children of Alaska from Child Sexual Abuse.

Our system protects children in two ways: The licensing system has a preventive approach to reduce predictable risk to children's health and safety, and ensures an adequate opportunity for child development.

Secondly, we protect a child - if there is a complaint such as sexual or physical abuse or neglect. We investigate each complaint through our Child Protection Services Intake Units.

In answer to your question: No, we do not have the financial resources to provide a higher level of service either in licensing or in child protective services.

As a matter of fact: since 1977 the licensing caseload and the Child Protection Services caseloads have more than doubled.

In 1983, the Division of Family and Youth Services served 5,574 individuals in the following child protection categories: NEGLECT 3,497, PHYSICAL ABUSE 1,458, and SEXUAL ABUSE 619. Alaska's statistics reflect the national trend.

A Division of Family and Youth Services management study completed in January 1984 revealed that our agency needs 35 additional positions to meet a standard of 50 cases per worker.

There has been a dramatic growth in the number of licensed facilities in the recent years. In 1977 there were 895, today there is 1,766, serving 12,617 adults and children.

As public awareness of neglect and abuse of children has increased, the number of complaints received regarding licensed facilities has also increased in recent years. There are currently five sexual abuse allegations being investigated in licensed facilities.

The minimum number of additional licensing staff needed to meet current licensing responsibilities statewide is approximately seven.

Your second question asks what additional financial resources should be made available to the Division of Family and Youth Services.

We need additional staff resources in licensing, child protection services, clerical support, and central office.

Also, funding for an adequate information system and funds for staff training are of equal importance.

We are presently redesigning our Management Information System to ensure that the division has an adequate system to provide needed management information and to document events in individual cases. We want our system to provide us accurate, current intake data, client data, and licensing information. Division of Family and Youth Services has allocated substantial resources to establishing a data processing unit and this extensive Management Information System redesign will be ready for implementation in January, 1986 provided resources for these changes continue to be available.

EXAMPLE:

Additional financial resources are also needed to further professionalize the Division of Family and Youth Services staff. The Division of Family and Youth Services wants to establish classifications of positions that will result in higher entrance qualifications. The provision of funds to train new staff is also essential when professional quality is to be maintained.

Finally there is a critical need to fund a comprehensive public awareness program. Parents and the general public need to recognize that there are people who are dangerous to their children. A survey of sexual offenders conducted in December, 1983 revealed there were 250 sexual offenders in the Department of Correction system; 69 were convicted of RAPE against a CHILD; 42 were convicted of OTHER SEXUAL acts with CHILDREN; 19 INCEST; 14 were convicted for LEWD an LASCIVIOUS acts against adults or children.

Of at least 120 offenders in state jails; who assault children only 19 are definitely from within the family. It is our responsibility to help parents understand how important their role is in protecting their own children. This year the Division of Family and Youth Services has contracted for the preparation of a brochure entitled "A Parents Guide to Choosing Child Care." This is a small step in assisting the parent to select care that is safe and appropriate for their children. The Department of Community and Regional Affairs is attempting to establish funding for an information and referral service to also assist parents in child care selections.

In summary, significant augmentation of staff resources, continued professionalization of staff, development of a Management Information System, and resources to increase parent awareness are areas which if funded, could produce a systemic ability to better respond to the problems of child abuse and neglect in Alaska.

Is existing law adequate to protect children and if not, what changes does Division of Family and Youth Services recommend?

In answer to your third and fourth questions, the existing laws are generally adequate. However, there are some deficiencies: consideration might be given to expanding licensing authority. Currently a person may care for four or fewer children without a license.

Secondly, consideration should be given to requiring criminal history background checks on all persons who regularly supervise children in out of home situations. Two years ago legislation was enacted which allowed employers of persons who supervised children to require finger printing of their employees to obtain sexual abuse background information. To date no employer has utilized the authority of this statute.

Thirdly, the reporting statute 47.17 should be strengthened to include additional persons as required reporters such as pre-school personnel and all social service agencies personnel.

You have asked what steps Division of Family and Youth Services takes in investigating allegations of sexual abuse.

When the division receives an allegation of child sexual abuse, the information is accurately and fully recorded in a log. If the allegation is sexual abuse within the child's own home, a protective service worker is assigned to investigate on a priority basis in coordination with police. If the allegation is sexual abuse in a licensed facility, a joint investigation may occur. Police are contacted and may investigate jointly with a licensing worker or may utilize the expertise of a protection service worker in the investigation.

In either situation a report of child abuse form is completed by the social worker or the licensing worker and given to the Department of Law within 72 hours of receiving the report. Consultation with the attorney general's office occurs to determine the need for removal of the child from the home or to revoke a facility license. The chief prosecutor's portrayal of the Division of Family and Youth Services philosophy regarding child abuse is not accurate. Safety of children is the first consideration.

Do existing statutes and regulations permit the Department to inspect state-licensed facilities, and to perform background investigations of employees and owner-operators, of such facilities?

Existing statutes and regulations "do" permit inspections of state-licensed facilities. Current regulations allow the department to perform criminal background checks on operators of child and adult foster homes and on the administrator of residential facilities. Day care regulations currently in the final revision process, include criminal history checks on all adult members of a family which provides licensed child care. Day center administrators are also included and consideration is being given to including all personnel. Implementation of criminal background checks in day care facilities could result in more than 4,000 additional criminal history searches being required. Staff shortages in the Division of Family and Youth Services and the Department of Public Safety are significant factors for consideration should we adopt this policy. No matter how adequate the regulations are, there must be sufficient personnel to enforce them.

In the prosecution of cases of this nature, through the criminal law, what problems, if any, are presented by existing statutes?

The Department of Law has stated that our Child in Need of Aid Statute has problems of vagueness. Sexual abuse is not defined in AS 47.10. However, under the criminal statute sexual abuse of a minor is defined.

Secondly, the Division of Family and Youth Services would prefer the use of video tape cross examination or use of closed circuit TV testimony by young victims of child sexual assault, which are not practiced in Alaska. Other states have revised rules of evidence to better accommodate child victims, and we should too. More specific testimony should be given by the Department of Law.

What progress has been made by the Criminal Justice Working Group, appointed by Governor Sheffield, towards the development of protocols and procedures for the handling of reported cases of child sexual abuse?

A child sexual abuse agreement draft is now in the Governor's office.

Basically the above agencies will coordinate their efforts in order to provide better protection for children.

Local communities will develop their procedures that are consistent with the agreement and work with other local public and private agencies in providing assistance for children who have been sexually abused. Protocols are already in existence in many communities.

Does Division of Family and Youth Services have authority to prevent a person whose license has been revoked from obtaining employment in a child care facility?

The answer is: Not at the present time unless it is foster care. Revised day care regulations could address this issue, however, increase in staff resources for Division of Family and Youth Services and Public Safety would be needed to implement the regulation.

What is the States liability when a child is harmed in a licensed facility, such as recently occurred in a Ketchikan day care home?

In answer to the liability issue; Licensing is a consumer protection service designed to predictably reduce risk to children in care. It does not guarantee safety. Licensing reviews occur annually and all complaints are investigated. In the case of day care, parents are in the facility every day and share the responsibility to monitor the care being provided. This is why public awareness is a critical factor in the prevention of child abuse. In the field of social services, liability is a constant risk which must be balanced against the need to protect children.

For the second part of your question: I have been advised by the Department of Law that we are not at liberty to discuss the status of the Ketchikan case at this time since it is in litigation.

In answering all your questions, I have attempted to demonstrate that we all share the responsibility for protecting children. Achieving better protection of children will require a comprehensive systemic approach involving the parents, several departments of state government, and the court system, as well as the Division of Family and Youth Services. Above all, it will require a commitment of the legislature to provide the necessary resources!

Senator, thank you for this opportunity to present our views.

Again, Pat O'Brien and Martha Holmberg are available as well as myself to answer any questions you may have.

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## PUBLIC DEFENDER AGENCY

January 29, 1985

900 W. 5th Avenue, Suite 200  
Anchorage, Alaska 99501  
Phone: (907) 279-7541

Re: HB 88

Attention: Nancy Bennett

Max F. Gruenberg, Jr., Co Chair  
House Committee on Health, Education  
and Social Services  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Representative Gruenberg:

Thank you for soliciting my comments on HB 88. This bill addresses a number of different aspects of the important issue of child protection. Many of the provisions will serve to insure that children receive greater protection from our laws. Following is an analysis of the sections of the bill which could cause some problems.

Section 2. This section creates a new crime of Endangering the Welfare of a Minor in the Second Degree. This offense involves exposing a child under 18 to circumstances creating a substantial risk of physical injury as well as sexual abuse. Of particular concern is that the caregiver need act only with criminal negligence, which could theoretically cover any home accident. This section could have broad application to parents and caregivers who accidentally allow children to be hurt, even if there is no intent to do so. Thus, if a caregiver negligently allows a child to crawl into a cabinet which contains toxic cleaning chemicals or allows a child to get too close to a hot wood stove, that caregiver's behavior may expose him or her to criminal prosecution. It should be noted that this would be a Class A misdemeanor, carrying up to one year of jail time.

Section 5. This provision allows the use of hearsay evidence at the grand jury in prosecutions for sexual offenses. A grand jury functions to screen prosecution evidence to determine whether enough

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evidence exists to charge a suspect with a felony. Because being charged with a felony involves a potential for stigma as well as incarceration prior to trial, the constitutional right to a grand jury indictment must be carefully guarded. Taken to its extreme, allowing unlimited hearsay evidence at a grand jury proceeding would reduce that proceeding to a police officer reading the police report to the grand jurors. Since grand jurors currently are able to judge for themselves the weight and credibility of live witnesses, the issue of introduction of hearsay at the grand jury should be evaluated carefully.

Current Alaska case law allows the introduction of hearsay testimony at a grand jury when a compelling justification exists. If the legislature wishes to create a statutory exception to protect young victims of sexual assault, it should be as narrow and as close to a compelling circumstance as possible.

I would suggest the following changes in this provision if a hearsay exception is to be created for these cases:

1.) The exception should apply only to very young victims (under the age of 10) since the ability and motive for such children to fabricate is less than that of older children and the trauma of testimony could be gravest for children of a tender age.

2.) The hearsay exception should only apply to the actual victim of the offense. The provision in HB 28 would cover offenses other than child sexual offenses, including many sexual assaults not involving minors. The statute as now drafted would allow hearsay testimony of any witness under the age of sixteen, even if that witness was not a victim and the offense involved an assault on an adult rather than a child. This may allow a broader erosion of the rule against hearsay at the grand jury than first appears on the surface of the bill.

3.) The provisions of this statute allow hearsay testimony to be admitted when a child is unavailable. The definition of unavailability includes situations where the child does not remember what he or she said earlier or the child has been declared incompetent to testify by a judge. Both of these definitions of unavailability raise concerns since the grand jury should have an opportunity to judge the credibility of a witness. If a witness cannot remember details, the grand jury should be aware of this fact. Furthermore, one of the chief reasons a child may be declared by a judge to be incompetent is that the child is not able to distinguish between truth and falsehood.

Section 12. This section reduces the time required to make a pre-disposition report available to counsel in a juvenile delinquency hearing. This provision will create practical problems. If a pre-disposition report recommends institutionalization of the minor, an attorney who represents the juvenile client will often search for a less restrictive alternative placement for the juvenile. Furthermore, the attorney may wish to consult with the client to determine whether factual discrepancies exist in the report and to correct those discrepancies. Receipt of the report only two working days prior to an important disposition hearing in a juvenile delinquency matter will not allow the juvenile's attorney adequate time to prepare for the disposition hearing or to work to locate alternatives to institutionalization.

Section 14. This section removes the requirement that parents of children who have been removed from the home be notified of that event within 12 hours. The substitution of "make reasonable efforts" to immediately notify parents could be a problem. If a child has been removed from his or her home by the State, parents may become frantic when they learn their child is missing if they do not receive immediate notification. The outside limit of 12 hours is certainly not unreasonable and should not be removed.

This section also allows the Department of Health and Social Services to extend the time of notification of the court of the emergency custody by allowing a filing to be made within 24 hours excluding weekends or holidays. The current time limit is 12 hours with no exclusions. In such a serious matter as removing a child from the custody of his or her parents, the court should be notified as quickly as possible. Allowing 24 hours plus the exclusion of weekends or holidays could result in the following scenario. If a child were picked up on the Friday prior to a three day holiday weekend, the court would not have to be notified until the following Tuesday, four full days after the removal of the child.

Section 15. This section expands the conduct which permits the state to remove a child from the home of his or her parents. Certainly, conduct which constitutes a sexual offense against a child under AS 11, is appropriately contained within this section. Unfortunately, this section expands the definition of "sexual abuse" to include touching of a child's thighs, buttocks, or groin, or the child's touching of those areas of the parent or another. Although this section attempts to exclude "reasonable touching" in the exercise of "normal caretaker responsibilities", it cannot possibly contemplate every type of beneficial touching which might occur. For example, if a caretaker were to place a small child on his shoulders so that the child could better see a parade, that conduct could be classified as "sexual abuse" under this definition if the State felt that this was not a "reasonable touching within normal caretaker responsibility". Declaring a child to be in

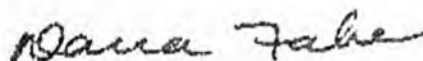
January 29, 1985

need of the state's protection is certainly necessary in many cases, but this expansion of the definition of sexual abuse will cause confusion, problems, and possible abuses of this function.

Section 23. Section 23 adds to the definition of child abuse or neglect the term "mental injury". This greatly broadens the category of children who may be declared in need of aid given the very broad definition of mental injury. Mental injury is defined as any psychological or intellectual injury evidenced by observable and substantial impairment in the child's ability to function within a normal range of performance and behavior. This definition appears to be much too broad, since many basically healthy child/parent relationships may still result in the child having some psychological or behavioral problems.

These are some of the concerns I have with HB 88. The fiscal impact of this legislation, in conjunction with the great increases in staffing requested in the operating budget of the Departments of Law and Health and Social Services as part of the Governor's Child Protection Package will require six new positions for this agency--two attorneys and four paralegals. Our detailed fiscal note and analysis for HB 88 is attached to this letter. Thank you again for asking for my comments on this bill. I also have been requested by your staff to testify on this bill during a teleconference from Anchorage on Wednesday, February 6, 1985 and plan to do so. Please let me know if I can be of any further assistance on this bill or on any other.

Very truly yours,



Dana Fabe  
Public Defender

Enclosures

DF:cms

**STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: 1/22/85

Page 1 of 9

**REQUEST**

Bill/Resolution No.: HB 88  
 Title: "An Act relating to the protection of children"  
 Sponsor: Rules Committee  
 Requestor: House Judiciary  
 Date of Request: 1/18/85

**FISCAL DETAIL**

Agency Affected: Administration  
 Program Category Affected: Due Process  
 BRU, Program or Subprogram(s) Affected: Public Defender Agency

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES		347.7	368.6	390.7	414.1	439.0
200 TRAVEL		30.0	31.8	33.7	35.7	37.8
300 CONTRACTUAL		43.5	46.1	48.9	51.8	54.9
400 SUPPLIES		6.5	6.9	7.3	7.7	8.2
500 EQUIPMENT		9.5	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>437.2</b>	<b>453.4</b>	<b>480.6</b>	<b>509.3</b>	<b>539.9</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	437.2	453.4	480.6	509.3	539.9
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME	-0-	6.0	6.0	6.0	6.0	6.0
PART-TIME						
TEMPORARY						

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

See attached fiscal analysis

*Dana Fabe*

Prepared By: Dana Fabe, Public Defender  
 Division: Public Defender Agency

Phone: 279-7541  
 Date: 1/22/85

Approved by Commissioner: Lisa Rudd  
 Agency: Department of Administration

Date: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

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- Requestor
- Office of Management and Budget
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