

PALMACH LEGISLATURE COMMITTEE FILES 1985-1986 86/2
8239 HESS SB 21 - SB 29 15

- the Department of Public Safety has stated that the rejection of unacceptable fingerprints runs as high as 40% causing extensive delays in the process;
- even if the fingerprints are acceptably rolled, up to ten weeks is required for processing for results;
- results may be as long as three months out-of-date depending on FBI processing timeframes;
- some professionals have raised civil liberties questions regarding fingerprinting.

With regard to criminal history clearance on adoptive homes, there are an estimated 800 non-stepparent adoptions each year. Most of those adoptions are private adoptions handled by attorneys. Only one quarter of all adoptions involve studies by the Department of Health and Social Services or licensed private adoption agencies. Currently the department is not involved in the other 600 private adoptions per year, other than to receive notice from the petitioners under AS 25.23.100 at least 20 days before the hearing. At this point, DHSS has no tracking system on the notices for private adoptions. The department would need to notify attorneys of this new requirement and establish a tracking system to allow time for processing the criminal history background clearances. The proposed statute does not require the court to delay the adoption pending the criminal history background check, consequently many adoptions would be final before receipt of the check results. The 20 day notice period coupled with a ten week processing period should a court desire the results of the FBI records check would delay the adoption proceedings. Finally, the department is not certain that the state can legally release FBI records to the court or adoptive parties under federal regulations. The Department of Public Safety should be consulted on confidentiality provisions.

Presently, the Division of Family and Youth Services within the department requires a criminal history background check to be completed by all applicants for a foster home license and all adult members of a foster home household. This is a state, not an FBI, criminal history records clearance. The authority for the department is contained in AS 12.62.010, AS 12.62.030, and 6 AAC 60.070(c). Under this authority the Division of Family and Youth Services has a users agreement to access state criminal history background checks based on name, social security number and birthdate rather than fingerprinting. Sec. 5 of this bill would not withdraw the department's current ability to do state criminal history background checks, but would require that a new system of fingerprinting and obtaining FBI record checks be utilized prior to licensure issuance. Presently the department is receiving criminal history hits on approximately 6% of all the applicants and adults residing in foster home. Most criminal history information obtained on applicants does not pose a substantial risk to children.

The criminal histories give department personnel an opportunity to discuss the circumstances and rehabilitation following a violation. For example, there may be an adult son in the home with substantial numbers of violations. In these cases the criminal history background checks allow the department an opportunity to counsel those persons out of applying for foster care until the son is no longer residing in the home. In only two cases has a license been denied based on criminal history background findings. Current processing under the state system runs up to 30 days.

At Senate HESS request the department has drafted a criminal records background clearance section under AS 47.35 to include child care facilities. The new draft would continue the department's practice of doing state criminal background checks on administrators in residential child care facilities and adult residential care facilities. However the new draft would expand the criminal history to include national criminal background checks on the administrators. Additionally it would also include state and national checks on all facility staff and adult occupants of the facilities (defined by the department as residential child and adult care facilities, family child care homes [formerly called day care homes], child care centers [formerly called day care centers], as well as child and adult foster homes). The department will do the criminal history clearance on home size facilities. The other facilities, under the authority in AS 12.62, will do the criminal history search on their staff. The cost for the criminal history search will be paid by the facility or applicant. However the department will pay the costs for foster homes that care for children in state custody.

The department currently issues provisional licenses prior to obtaining criminal history background checks because of emergency situations where a child must be placed before the licensing study can be completed. In these cases, DFYS obtains references, visits the home and gets a signed application, but there is no time for a criminal history clearance. When a child has been removed from an unsafe home and there is no licensed foster home available to take that child, issuance of a license under an emergency condition is appropriate. The department would need to continue that practice pending FBI criminal history clearances. Under the new language in the DFYS draft, licenses and employment would be provisional until it was determined that an individual did not pose a risk of harm to a child.

Under sections (b) and (c) of the DFYS proposed bill a determination would have to be made by the department or facility concerning an individual's potential risk of harm to a child. Consequently the bill would authorize the department or the facility to investigate law enforcement records and to deny licensing or employment unless the licensee or employee can demonstrate that past danger of a risk of harm to a child does not continue to the present. This will, hopefully, avoid the constitutional issue of denial of a license or employment solely because of the badge of a "scarlet letter".

Position Paper
CS SB 21
Page 4

Although some child abusers will lie regardless of the application form, the penalty, class A misdemeanor with a penalty up to one year in jail, for unsworn falsifications (AS 11.56.210) should be a strong inducement to care providers to be truthful.

Recommendations

The department urges passage of Secs. 1, 2 and 3 of this bill to provide ability of employers supervising children to obtain criminal history background checks on their employees. The department appreciates being given the opportunity to draft criminal history provisions that will respond to litigation experienced in the last year and to the complexities of implementing criminal history clearances in licensed facilities. Attached is a fiscal note for the bill including section 4 (adoptions) and the department's proposal for a revised section 5 (expanded criminal history background checks). It should be noted that the costs on Secs. 4 and 5 of the bill are not in the Governor's proposed FY 86 budget.

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

DATE: March 29, 1985

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

DATE: 4-2-85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: Proposed CS SB NO. 21
 Title: An Act relating to
background checks
 Sponsor: HESS
 Requestor: _____
 Date of Request: 3/26/85

FISCAL DETAIL
 Agency Affected: Health and Social Services
 Program Category Affected: Social Services
 BRU, Program or Subprogram(s) Affected: Social Services BRU, Southcentral, Northern and Central Office Components

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FI 85	FI 86	FI 87	FI 88	FI 89	FI 90
OPERATING						
100 PERSONAL SERVICES		76.1	79.1	82.3	85.6	89.0
200 TRAVEL		6.6	6.9	7.1	7.4	7.7
300 CONTRACTUAL		37.4	39.1	30.3	31.5	32.7
400 SUPPLIES		1.2	1.3	1.3	1.4	1.4
500 EQUIPMENT		6.7				
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		128.0	116.4	121.0	125.9	130.8
CAPITAL		-0-				
REVENUE		-0-				

FUNDING: (Thousands of Dollars)

GENERAL FUNDS		128.0	116.4	121.0	125.9	130.8
FEDERAL FUNDS						
OTHER						
TOTAL		128.0	116.4	121.0	125.9	130.8

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME		2	2	2	2	2
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Michael L. Friedman Phone: 465-3170
 Division: Family and Youth Services Date: 3/26/85

Approved by Commissioner: [Signature] Date: 4-2-85
 Agency: Health & Social Services jcc

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Bureau

IV. ANALYSIS

A. Assumptions

This legislation would require the department to implement state and FBI criminal record checks, which include fingerprinting, for adoptive parents and all facility staff and adult occupants who work or reside within a facility. Because no system exists for this process and because there are numerous legal and logistics problems in implementing it, a full time professional position, Social Worker IV, will be required in the Central Office to work closely with the Department of Public Safety, division field offices, private adoption agencies and the Alaska Bar Association to secure implementation. In addition there will need to be extensive work with the Department of Law regarding confidentiality provisions and potential litigation. There will be a handling burden on offices in Fairbanks and Anchorage, requiring two permanent part-time positions, Clerk Typist III's, in those offices. Until the actual workload is examined it is difficult to measure and predict the actual fiscal impact of this legislation. There are currently 1,016 child and adult foster homes with an average of 2.3 adults in each home. Public Safety has advised that we process clearances at each biennial licensure evaluation. With a 15% turnover this will result in approximately 1,725 clearances in foster homes per year at \$20 per clearance. (\$12.00 FBI processing) (\$8.00 for contracted state processing). This fiscal note assumes that the \$20 background clearance processing cost in adoptions for the 800 new adoptions per year (x 2 adults) will be the responsibility of the adopting applicants.

B. Program Summary

New positions required by this legislation will be as follow:

Social Worker IV in Juneau;
 Clerk Typist III, permanent part-time, one each in Anchorage and Fairbanks

C. Computations

Personal Services - Social Worker IV	\$ 48.8
Clerk Typist III	27.3
Travel	6.6
Contractual	37.4

1,016 x 15% divided by 2 x 2.3	= 1344 x 20.00	= \$26,880
Space Expense for S.W.		4,950
Space Expense for CT	2,250 x 2	= 4,500
General Contractual		1,100
		\$37,430

Supplies	1.2
Equipment - first year only	6.7
	\$128.0

Note: For successive fiscal years, space would be budgeted by Department of Administration. Computations for successive fiscal years at 4%.

D. Economic Impact

There will be no impact on the State economy.

E. Impact On Local Governments

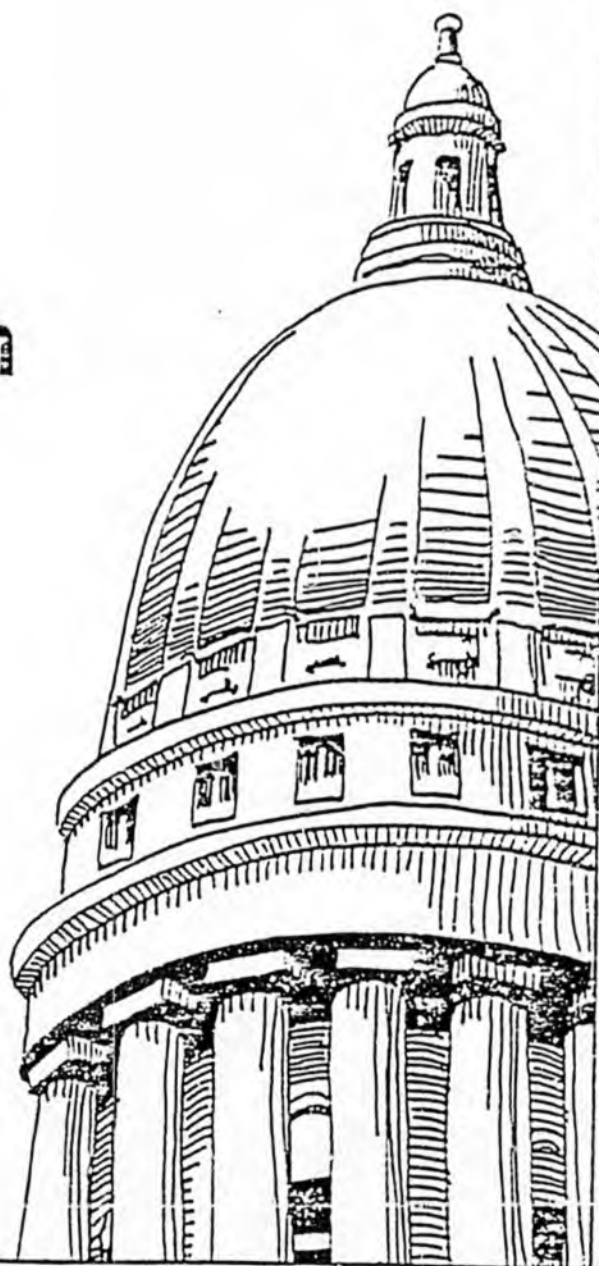
There will be an economic impact on some local police departments.



NATIONAL
CENTER FOR
**MISSING
& EXPLOITED**
CHILDREN

Selected State Legislation

A
Guide for
Effective
State Laws
to
Protect
Children



8. Licensing and Criminal History Information

Unfortunately, many child sexual assault victims are molested by those in a position of trust and authority over them. And, it is a sad fact that many dedicated and sincere professionals who are deeply concerned about the welfare of children are working in organizations and institutions with those who would seek to harm or exploit children. The vast majority of those who work with children, however, are dedicated people who would *never* seek to harm a child in any way.

It is important to note that criminal history checks will *not* be a complete or thorough solution to the problem of child exploitation in specific institutions and child activities. It is one important step that many states have undertaken to protect children from criminal and sexual exploitation.

Criminal History Information

One step that many states have undertaken to protect children from criminal and sexual exploitation is a check on an individual's criminal record. While some states have focused their attention on particular professions, such as school employees or day care personnel, it is more appropriate to consider all individuals who work with or volunteer to assist children in a variety of occupations and activities. The scope of the problem goes far beyond one or two institutions and activities.

A *criminal history check* is a two-part process:

1. A check through the state law-enforcement system to determine if there have been any particular kinds of offenses committed by that individual in the state.
2. A check through the federal law-enforcement information system to determine if other states have records of the criminal history of the individual. A record check through both systems will cost between \$20 and \$25.

Some of the state statutes providing for a criminal history authorize access by prospective employers; other statutes allow access to the information by authorizing or licensing an agency of the state government. Also, some states authorize a check by the individual's name and Social Security number, while others use fingerprints as well.

Federal Law Requiring Background Information and Criminal Histories In 1984 a federal law was passed that requires that any state wishing to receive certain specific funds under Title XX of the Social Security Act to enact, by September 1985, the following:

A state law or regulation to provide for employment history, background checks, and nationwide criminal record checks for all "existing and prospective operators, staff, or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction, or treatment facilities." (P.L. 98-473)

State Laws Requiring a Criminal History Inquiry Checking criminal histories is not an unusual procedure in some states. For example, one state allows such checks for a total of over 65 occupations or professional licenses, including licenses for acupuncture, automobile dealerships, barber shops, bingo operators, funeral directors, engineers, nurses, plumbers, public accountants, school bus drivers, and many others. Another source for background information is the state child abuse and neglect registry, which identifies abusers. Care must be taken to exclude those individuals who were referred to the registry but who were never proved to be abusers.

Criminal History Information on Those Supervising Children At least three states have enacted legislation to allow an employer to request information about convictions of sex crimes for any person who would have supervisory or disciplinary power over a minor. Kentucky (1984, H.B. 486) recently enacted such a law, an excerpt of which is reproduced below:

SECTION 10.

(1) Notwithstanding any other provisions of law, an employer may request from justice cabinet records of all available convictions involving any sex crimes of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The cabinet shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(2) Any request for records under subsection (1) of this section shall be on a form approved by the cabinet, and the cabinet may charge a fee to be paid by the employer for the actual cost of processing the request.

(3) The cabinet shall adopt regulations to implement the provisions of this section.

(4) As used in this section "employer" means any organization specified by the attorney general which employs or uses the services of volunteers or paid employees in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(5) As used in this section "sex crimes" means a conviction for a violation or attempted violation of KRS 510.040 to 510.150, 529.020 to 529.050, 529.070, 539.020, 530.020, 531.110, 531.120, 531.140, to 531.170, and the criminal offense of unlawful transaction with a minor. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky.

Alaska (§ 12.62.035) and California (Penal Code, §11105.2) have enacted legislation similar to Kentucky's. An excerpt from the California statute follows:

§11105.2. Record of conviction involving sex crimes: availability to employer for applicant for position with supervisory or disciplinary power over minor.

(a) Notwithstanding any other provisions of law, an employer may request from the Department of Justice records of all convictions involving any sex crimes of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

New York law (§ 378-a) also provides an authorized agency access to records in the Criminal Justice Division to determine the qualifications of persons who will care for and supervise children. An excerpt from the New York statute follows:

§378-a. Access to conviction records by authorized agencies.

Subject to rules and regulations of the division of criminal justice services, an authorized agency shall have access to conviction records maintained by state law enforcement agencies pertaining to persons who have applied for and are under active consideration for employment by such authorized

agency in positions where such persons will be engaged directly in the care and supervision of children.

Criminal History Information on Foster and Adoptive Parents Connecticut legislation (§ 54-142K) provides for criminal conviction checks on prospective foster or adoptive parents. This statute, a portion of which is reproduced below, also provides for the Department of Children and Youth Services to obtain criminal conviction records for those working with children:

(c) Notwithstanding any other provisions of law to the contrary, upon request to a criminal justice agency by the department of children and youth services or by any other youth service agency approved by the department such criminal justice agency shall provide information to the department or youth service agency concerning the criminal conviction record of an applicant for a paid or voluntary position, including one established by contract, whose primary duty is the care or treatment of children, including applicants for adoption or foster parents. All information, including any criminal conviction record, procured by the department of children and youth services or any other youth service agency shall be confidential and shall not be further disclosed by such agencies or their representatives. Any violation of the provisions of this subsection relative to the confidentiality of information received by the department of children and youth services or other youth service agencies shall be punished by a fine of not more than one thousand dollars.

Criminal History Information on School Employees Three states have enacted legislation that would require criminal history inquiries for anyone connected with the school system. California (Education Code, 45123) has mandated that no person who has been convicted of a sex offense may be employed by a school district. Following is an excerpt from the California statute:

45123. Employment after conviction of sex offense or narcotics offense.
No person shall be employed or retained in employment by a school district who has been convicted of any sex offense.

Florida (1984, H.B. 969) has also recently mandated that applicants for teacher certification be subject to both state and federal criminal history checks to determine if the applicant had been convicted of a misdemeanor, felony, or other criminal charge.

The State of Nevada (391.020) requires that an applicant for teacher certification submit fingerprints and written permission authorizing a criminal history check:

391.020 Certificates granted by superintendent of public instruction; fingerprinting of applicants.

1. All certificates for teachers and other educational personnel are granted by the superintendent of public instruction. He may issue certificates to all qualified persons under the regulations of the state board of education.

2. Every applicant for a certificate shall submit with his application a complete set of his fingerprints and written permission authorizing the superintendent to forward such fingerprints to the Federal Bureau of Investigation for its report. The superintendent may issue a provisional certificate pending receipt of such report if he determines that the applicant is otherwise qualified.

3. Upon receipt of the report referred to in subsection 2 and a determination by the superintendent that the applicant is qualified, a certificate must be issued to the applicant.

Licensing Child Care Institutions

Several states have enacted legislation requiring criminal record information on those connected specifically with *child care institutions*. New Hampshire (§170-E:4) requires investigations of all those dealing with children at particular child care facilities. An excerpt from the New Hampshire statute is reproduced below:

170-E:4 Applications.

I. Any person who intends to receive children, or arranges for care or placement of one or more children unrelated to the operator, shall apply for a license to operate one or more of the types of facilities for child care. Application for a license to operate a child care facility shall be made to the department in the manner and on forms prescribed by rule by the commissioner under RSA 541-A. In cooperation with the operator, there shall be an examination of the facility, an investigation of the program and person responsible for the care of children.

II. Upon receipt of any application, the department shall in every case examine the child abuse records of the division of welfare and the criminal conviction records of the state police to determine whether the applicant is of proper character. If the applicant is found to have any record in either the child abuse or the state police files, the department shall indicate that the record exists in its files on the applicant. If the applicant is found to have been convicted of child abuse, he shall not be issued a license.

Colorado (§2b-6-104) has enacted legislation for screening the administrator, the applicant, an employee, or applicant for a license of a child care facility. The Colorado legislation, which follows, includes the stipulation that no license to operate a family care home or child care center will be issued to anyone convicted of child abuse or an unlawful sexual offense:

2b-6-104. Licenses, out-of-state notices, and consent.

No license or certificate to operate a family care home or child care center shall be issued by the department, a county department, or a child placement agency licensed under the provisions of this article if:

(a) The person applying for such a license or certificate has been convicted of an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S. 1973, according to the records of the Colorado bureau of investigation; or

(b) The person applying for a license or certificate has not consulted with the Colorado bureau of investigation, as defined in section 13-21-115 (1)(c), C.R.S. 1973, to determine whether any employee of the family care home or child care center has, according to the bureau's records, been convicted of an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S. 1973.

Gruenberg. Those opposed are Representatives Sund, Clocksin, Phillips, and Taylor.

Number 323

Representative Phillips moves that the bill be moved out of committee with individual recommendations. There are no objections.

Number 402

The Chairman announces that the committee will now take up HB 308. Representative Clocksin has problems because many of the sections being amended are the same sections that are being amended by HB 183. It raises the same issues. Asks to take them both up during the interim.

Number 424

Representative Phillips is concerned with daycare centers.

There are no objections so it is put off till the interim. At 10:32 an at ease is called.

At 10:50 the meeting is called back to order. The Chairman talks about HB 88. There is a proposed Judiciary Committee Substitute in front of everyone in which there have been a number of deletions. Most of the controversial portions of the bill have been deleted.

Number 472

On page 1 of the HESS Cs delete everything below line 9. On page 2 section 3 is deleted, sections 4, 5, and 6 are left in. On page 3 sections 7, 8, and 9 are left in. On page 4 everything is left in. On page 5, line 11, have added the phrase "reasonable perceptions of the child that the touching is sexual in nature are relevant to the determination of whether the touching is sexual abuse". Section 12 is left in. Section 13, lines 6 through 19 are left in but changed. "Court investigators" is used and "employees or volunteers" are used. From Lines 20 through 29 on page 6 is deleted. Subsection (c) is deleted on page 7. Section 14 remains. Section 15 is deleted. Section 16 is deleted. Section 17 is deleted. Section 18 is deleted. Section 19 remains. Section 20 remains. Section 21 remains. Section 22 is deleted. Everything else remains except 28, which is deleted.

Number 538

Representative Peter Goll asks the impact of

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

February 12, 1985

The Honorable Bettye Fahrenkamp
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Fahrenkamp:

This is in response to your letter of January 29, 1985, containing five follow-up questions related to this Department's testimony on SB21. The responses are in the same order as the questions asked.

1. Since the enactment of AS 12.62.035 in 1983, there have been 1015 background checks. The procedure is:
 - A. The applicant presents a completed application to a State Trooper detachment or post, along with a check for \$12.00 payable to the FBI if a record check is to be made by that agency also, and is fingerprinted.
 - B. The detachment or post sends the application, check if any, and fingerprints to the Crime Detection Laboratory in Anchorage.
 - C. The Fingerprint examiners process one fingerprint card through the Alaska Automated Fingerprint System (AAFIS). If there is a FBI records search request also, then a second fingerprint card, and the check for \$12.00, are sent to that agency for processing.
 - D. If the fingerprint card processed through AAFIS results in no record, such is noted on the card and it is returned to the requesting agency. If the search reflects a prior entry into the fingerprint system, it will indicate an AST number. Those having such a number are forwarded to Records and Identification for records checks.

The Honorable
Bettye Fahrenkamp


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February 12, 1985

- E. If the records check reveals violations outlined in 12.62.035, that information is sent to the requesting agency, with a copy to the subject applicant.
2. Due to the poor quality of submitted applicant cards as well incorrect information typed on the cards, many must be returned to the submitter. Those that are correctly submitted are input after the criminal cards, which have priority. Normal turn around time, including checks through Records & Identification in Juneau, is ten days.
3. Up to this time, there have been no persons processed that have records identified under 12.62.035.
4. The procedure for notifying employers of the results of the records check is by form letter accompanied by the fingerprint card.
5. As of this writing, there have been 850 requests for FBI records searches. It takes an average of eight to ten weeks to receive their response.

If this office can be of further assistance on this matter, please do not hesitate to call upon us.

Sincerely,


Robert J. Sundberg
Commissioner

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH 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

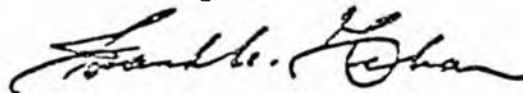
-2-

September 13, 1934

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 appropriated 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.

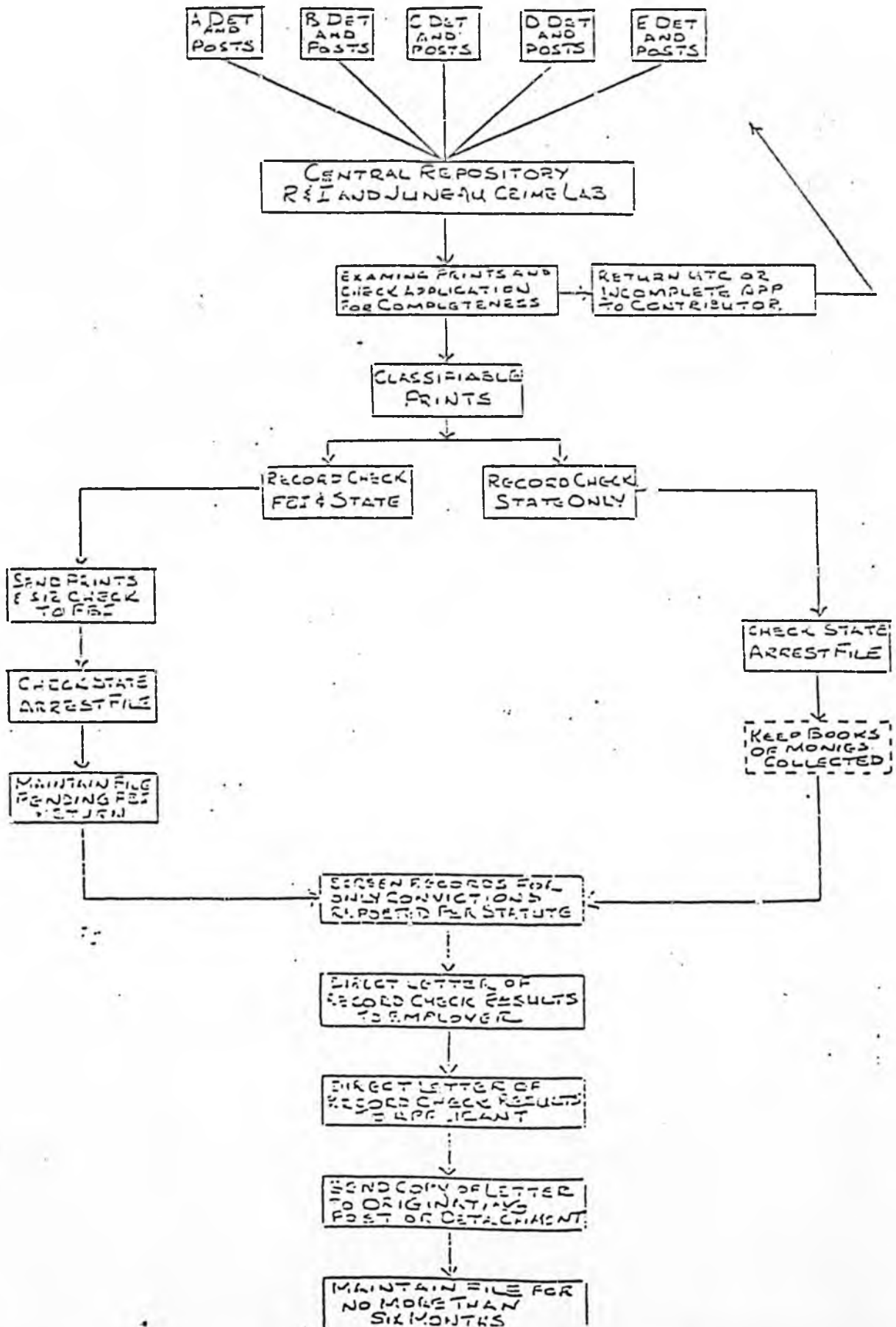
Sincerely,


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(e)(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 F) local, state or federal government agency
 - B) private school G) private business
 - C) nursery/day care center H) individual
 - D) church/religious organization I) other
 - E) youth organization
- 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: _____

13) Phone Number: _____ Social Security No. _____

14) DOB: _____ Driver's License No. _____

15) Sex: _____ Hgt: _____, Wt: _____, Eye Color: _____ Hair Color: _____

16) Aliases or prior names: _____

17) Position subject now occupies or is being considered for: _____

PART II. AGREEMENT FOR THE DISSEMINATION OF CRIMINAL HISTORY INFORMATION

I hereby certify that I have read the information contained on the first page of this form, and that (check one:) I am _____ or I represent _____ an "interested person" as defined in AS 12.62.035. I hereby request a record of any convictions of the above-named subject for contributing to the delinquency of a minor or a sex crime as defined in AS 12.62.035(e).

I certify that the subject of this request (check one): is employed _____ or is being considered for employment _____ (with or without compensation) in a position involving supervisory or disciplinary power over a child or children under the age of 18. I certify that employment considerations are the sole reason for this request for information.

In exchange for the release of the requested information, I agree that any information released to me will remain confidential, and will be used only to make lawful employment decisions. I agree to take all possible precautions to prevent the disclosure of this information to unauthorized persons, and agree to immediately report to the Alaska State Troopers any intentional or accidental disclosure of this information by anyone to unauthorized persons.

I understand that unauthorized dissemination or other misuse of this information will result in the denial of future requests for information and may subject me to criminal penalties, including a fine of up to \$1,000, a jail sentence of up to one year, or both.

Signature of Applicant

Date

.....

To be filled out by D.P.S. employee receiving this request:

Form of identification shown by applicant:

____ Driver's License No. _____ Name of D.P.S. employee _____

____ State I.D. Card No. _____ Title _____

____ Other. Describe: _____ Date _____

This request is for information contained in (check only one):

____ Alaska Justice Information System - subject's fingerprint card attached.

____ FBI criminal records - subject's fingerprint card and a check for \$12.00 made out to "Federal Bureau of Investigation" are attached.

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.

- threat". Co-Chairman Koponen asked Ms. Nelson her opinion. She said she needed further study.
- Number 220 Co-Chairman Gruenberg moved to pass CS 67. There were no objections. Co-Chairman Gruenberg, Co-Chairman Koponen, Rep. Hurley, Rep. Pettyjohn, and Rep. Hanley signed do pass. Rep. Thompson and Rep. Taylor who were not present.
- Number 221 Co-Chairman Koponen announced the committee would hear HB 308. Co-Chairman Gruenberg said for the purpose of discussion, he moved the CS for HB 308. There was not objection.
- Number 230 Pat O'Brien, Dept. of Health and Social Services, Division of Family and Youth Services, testified. She said they had put together a tentative position paper, but they would like to talk to Public Safety. She said H&SS supported passage of the first 4 sections so that persons who employ individuals who supervise children may have access to more than just the sexual criminal abuse history.
- Number 270 Ms. O'Brien said regarding the last two sections dealing with the criminal background checks for persons who will adopt children and applicants for licenses for foster homes. H&SS had considered such a statute in the Governor's package and it was rejected by the Criminal Justice Working Group, an organization consisting of Public Safety, Law, Court System, Corrections, etc., because there are so many problems with fingerprinting and background history.
- Number 290 She discussed the cost of fingerprinting, and the difficulty of getting fingerprinting in a remote setting.
- Number 302 Ms. O'Brien then discussed foster care. She said the agency was very concerned about some of the backgrounds they were finding in their foster homes but the 6% "hit" (discoveries of arrest) were not serious, but that they were running the criminal background checks.
- Number 340 She discussed the need to include family child care homes, and the administrators of day care centers. Rep. Pettyjohn said the

child care is covered to the extent that a parent is allowed, if they are sending a child to a facility where they're being cared for, to inquire into the person who is supervising their child. Ms. O'Brien registered concerns about licenses for foster homes.

Number 374

Co-Chairman Gruenberg said he thought the language was very clear that all you have to do before the home is licensed, is you must make the request and pay the cost. He suggested Ms. O'Brien to prepare a statement to be read on the floor or a Letter of Intent. She said they were uncomfortable with the lawsuits they were getting on, licensure of some foster homes.

Number 386

Ms. O'Brien further discussed her concerns about the costs and staffing problems.

Number 441

Rep. Pettyjohn moved to pass CSHB 308. There was no objection. Co-Chairman Koponen, Co-Chairman Gruenberg, Rep. Hurlev, Rep. Pettyjohn, and Rep. Hanlev signed do pass. Rep. Taylor and Rep. Thompson who were not present.

Number 445

The meeting was adjourned at 5:45 p.m.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST DRAFT

Bill/Resolution No. : HCS CSSB 21 (HESS)
 Title : "An Act relating to criminal background checks; and providing for an effective date."
 Sponsor : Senator Ferguson
 Requestor : House HESS
 Date of Request : 4/17/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : DPS Administration

 Components : Laboratory

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		71.3	74.9	78.6	82.5	86.7
TRAVEL		1.6	1.7	1.8	1.9	2.0
CONTRACTUAL		6.7	7.0	7.4	7.9	8.2
SUPPLIES		3.7	3.9	4.1	4.3	4.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		83.3	87.5	91.9	96.5	101.4

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		83.3	87.5	91.9	96.5	101.4
FEDERAL FUNDS						
OTHER						
TOTAL		83.3	87.5	91.9	96.5	101.4

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: K Niles
 Kathy Niles, Admin Assistant
 Division : Commissioner's Office

Phone : 465-4336
 Date : 4/17/86

Approved by Commissioner : [Signature]
 Agency : Public Safety

Date : 4/17/86

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. DRAFT HCS CSSB 21 (HESS)

<u>100</u>	<u>Personal Services</u> --		\$71.3
	Both positions to work swing shift		
	Latent Fingerprint Examiner I (Range 15A)	\$42.2	
	Clerk-Typist III (Range 8B)	29.1	
<u>200</u>	<u>Travel</u>		1.6
	Travel for training to keep current in fingerprint technique		
<u>300</u>	<u>Contractual Services</u>		<u>6.7</u>
	Postage, telephone	3.6	
	Printing of fingerprint cards	2.6	
	Training fees	.5	
<u>400</u>	<u>Supplies and Materials</u>		<u>3.7</u>
	Supplies for computerized fingerprint system	2.1	
	Office & library supplies	1.6	
	TOTAL		<u>\$83.3</u>

An effective date of July 1, 1986 is assumed.

A 5% annual inflation factor is included beginning in FY 88.

Position Title Latent Fingerprint Examiner			No. of Positions 1	Range/Step 15/A	Barg. Unit G	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.		
Type of Expenditure			Justification					
		Amount	<p>An additional fingerprint examiner will be necessary to run print comparisons required under the proposed legislation. The individual will load the cards into the fingerprint system, edit computerized print minutiae and run comparison checks against possible aliases, etc.</p> <p>This additional workload cannot be absorbed by current staffing and, in fact, this position is budgeted to work swing shift. We originally anticipated running 75 ten-print cards and 35 latent prints through the system daily. Currently, more than 100 ten-print cards and over 35 latent prints are being processed each day.</p>					
1	2	3						
Salary \$2518/mo	30,216							
Benefits	10,865							
Premium Pay + 3.75%	1,133							
Other								
Total Personal Services		42,214						
Travel		1,600						
Contractual		4,400						
Commodities		2,700						
Equipment								
Other								
Total Cost		50,914						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	50,914					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency Department of Public Safety
 BRU DPS Administration
 Component Laboratory

Page 3 of 4
 Revised Date

FY 87

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8/B	Barg. Unit G	Gov.	Approv.	Disapp.
Time Status	Staff Months 12	RP Number	Location Anchorage	Election District		Leg.		
Type of Expenditure			Justification					
Amount			<p>This position would provide clerical support for background checks. Duties would include correspondence with employers or individuals concerned, accessing of original fingerprint cards on file and refileing, return of cards to applicants, maintaining tickler files and preliminary checks on the Alaska Public Safety Information Network.</p> <p>The additional clerical workload which would result from passage of SCR 3 cannot be absorbed by the two existing clerical positions in the Lab.</p> <p>This position will work closely with a requested Latent Fingerprint Examiner and is budgeted at the swing shift rate.</p>					
1	2	3						
Salary \$1678/mo	20,136							
Benefits	8,250							
Premium Pay +3 75%	755							
Other								
Total Personal Services		20,141						
Travel								
Contractual		2,300						
Commodities		1,000						
Equipment								
Other								
Total Cost		32,441						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003		32,4					
	General Funds 1004							
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only								
Key Number _____								

**Request For
New Position**

Agency Department of Public Safety
 BRU DPS Administration
 Component Laboratory

Page 4 of 4
 Revised Date _____

FY 87

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER -- DRAFT HCS CSSB 21 (HESS)

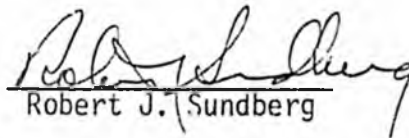
SUPPORT

April 17, 1986

HCSCSSB 21 (HESS) - An Act relating to criminal background checks; and providing for an effective date.

The main intent of this bill is for the Commission of Criminal Justice to be the agency where persons may request records. The Commission is presently non-existent and therefore, inactive. There would be no office that a person could correspond with if a request was made for records of an individual applying for a position.

Presently, all state criminal records are contained in the Department of Public Safety and the Department would be the originating agent in requesting federal checks to comply with the intent of the proposed legislation. Probably this arrangement should continue.


Robert J. Sundberg



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

S B

2 8

Offered: 2/1/85
Referred: Finance

Original sponsors: Faiks, Sturgulewski,
Halford, et al

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2

CS FOR SENATE BILL NO. 28 (HESS) am

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 training state employees, and
7 certain employees of the districts of the state
8 public school system on the recognition and reporting
9 of child abuse and neglect."

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

11 * Section 1. AS 47.17 is amended by adding a new section to read:

12

Sec. 47.17.022. TRAINING. (a) A person employed by the state
13 who is required under AS 47.17 to report abuse or neglect of children
14 shall receive training on the recognition and reporting of child abuse
15 and neglect.

16

(b) Each department of the state that employs persons required
17 to report abuse or neglect of children shall provide

18

(1) initial training required by this section to each new
19 employee during the employee's first six months of employment, and to
20 any existing employee who has not received equivalent training; and

21

(2) appropriate in-service training required by this sec-
22 tion as determined by the department.

23

(c) Each department that must comply with (b) of this section
24 shall develop a training curriculum that acquaints its employees with

25

(1) laws relating to child abuse and neglect;

26

(2) techniques for recognition and detection of child abuse
27 and neglect;

28

(3) agencies and organizations within the state that offer
29 aid or shelter to victims and the families of victims of child abuse

1 or neglect; and

2 (4) procedures for required notification of suspected abuse
3 or neglect.

4 (d) Each department that must comply with (b) of this section
5 shall file a current copy of its training curriculum and materials,
6 with the Council on Domestic Violence and Sexual Assault. Any depart-
7 ment may seek the technical assistance of the council or the Depart-
8 ment of Health and Social Services in the development of its training
9 program.

10 (e) The districts of the state public school system shall devote
11 at least one-half day of existing in-service training time to train
12 school teachers and school administrative staff members on the recog-
13 nition and reporting of child abuse and neglect.

COMMITTEE REPORT

HOUSE

JUDICIARY

(7)

FURTHER: FINANCE

2/27/85

Date: _____

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had CSSB 28 (HESS) am

"An Act relating to training state employees, and certain employees of the districts of the state public school system on the recognition and reporting of child abuse and neglect."

under consideration and report it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with (CS for CSSB 28 (HESS) same title new title
- and recommends do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

Karen Hurley
(Vice Chair) Adrien T. Taylor
Walter ...
Walter ...
Carol ...

Walter ...
 CHAIRMAN
... co chair

Ford
3/6/85

Original sponsors: Faiks, Sturgulewski,
Halford, et al

Special version
M/S

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 28 (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 training state employees, and
7 certain employees of the districts of the state
8 public school system on the recognition and reporting
9 of child abuse and neglect."

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

11 * Section 1. AS 47.17 is amended by adding a new section to read:

12 Sec. 47.17.022. TRAINING. (a) A person employed by the state
13 who is required under AS 47.17 to report abuse or neglect of children
14 shall receive training on the recognition and reporting of child abuse
15 and neglect.

16 (b) Each department of the state that employs persons required
17 to report abuse or neglect of children shall provide

18 (1) initial training required by this section to each new
19 employee during the employee's first six months of employment, and to
20 any existing employee who has not received equivalent training; and

21 (2) appropriate in-service training required by this sec-
22 tion as determined by the department.

23 (c) Each department that must comply with (b) of this section
24 shall develop a training curriculum that acquaints its employees with

25 (1) laws relating to child abuse and neglect;

26 (2) techniques for recognition and detection of child abuse
27 and neglect;

28 (3) agencies and organizations within the state that offer
29 aid or shelter to victims and the families of victims of child abuse

1 or neglect; and

2 (4) procedures for required notification of suspected abuse
3 or neglect.

4 (d) Each department that must comply with (b) of this section
5 shall file a current copy of its training curriculum and materials,
6 with the Council on Domestic Violence and Sexual Assault. Any depart-
7 ment may seek the technical assistance of the council or the Depart-
8 ment of Health and Social Services in the development of its training
9 program.

10 * Sec. 2. AS 14.08.111 is amended by adding a new paragraph to read:

11 (11) train those persons required to report under AS 47.17.-
12 020, in the recognition and reporting of child abuse, neglect, and
13 sexual abuse of a minor.

14 * Sec. 3. AS 14.14.090 is amended by adding a new paragraph to read:

15 (9) train those persons required to report under AS 47.17.-
16 020, in the recognition and reporting of child abuse, neglect, and
17 sexual abuse of a minor.

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740



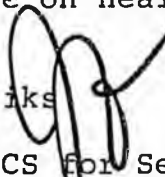
JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

February 27, 1985

MEMORANDUM

TO: Representatives Niilo Koponen and Max Gruenberg,
Co-Chairmen
House Committee on Health, Education, and Social
Services

FROM: Senator Jan Faiks 

SUBJECT: Background on CS for Senate Bill 28 (HESS) am, an
Act relating to training state employees, and
certain employees of the districts of the state
public school system on the recognition and
reporting of child abuse and neglect.

Alaska Statute 47.17.020 requires that certain state employees and employees of school districts report instances of child abuse and neglect to the Department of Health and Social Services.

Although reporting is mandated, employee training in this area is often limited or nonexistent. Not only do the children suffer from this lack of training, but the State and school districts may be legally liable for the failure of their employees to act properly.

Consequently, Senate Bill 28 was introduced to require appropriate training for these employees.

The original version of SB 28 required training in not only the recognition, but also in the prevention, intervention, and treatment of child abuse and neglect. It assigned the Council on Domestic Violence and Sexual Assault with the task of coordinating training of all departments, establishing standards of training, and preparing and distributing training materials.

The original bill also included a letter of intent which urged school districts to conduct similar training.

In the Health, Education and Social Services Committee, the bill underwent several changes. At the suggestion of Alaska Network on Domestic Violence and Sexual Assault, the training was limited to only the recognition and reporting of abuse and neglect. Training in intervention, prevention, and treatment was deleted because, except for social workers, no other reporting employees are involved with these functions

The Council and the Department of Health and Social Services resolved an issue by agreeing that each individual department would develop and conduct training of its own employees. The Council was left with the task of collecting training materials and curricula. It also was tasked, along with the Department of Health and Social Services, to provide technical assistance to the agencies.

Throughout committee hearings, the bill received fiscal notes which showed that no additional funds would be needed to implement the program. This is because the departments were encouraged to apply existing funds toward this training. The bill passed from the Senate Judiciary Committee with no changes.

When it reached the Senate Floor, the HESS Committee substitute received another amendment. This amendment required that school districts devote at least one-half day of equivalent training to their employees. Since the letter of intent was no longer needed, it was removed from the bill. In this amended form, the bill passed the Senate unanimously.

1 IN THE SENATE

BY FAIKS

2 SENATE BILL NO. 28

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 training state employees on the
7 prevention, recognition, intervention, and treatment
8 of child abuse and neglect."

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

10 * Section 1. AS 47.17 is amended by adding a new section to read:

11 Sec. 47.17.022. TRAINING. A person employed by the state who is
12 required to report under AS 47.17.020 shall receive training on the
13 prevention, recognition, intervention, and treatment of child abuse
14 and neglect. The Council on Domestic Violence and Sexual Assault
15 shall coordinate the training, prepare and disseminate educational
16 programs and materials, and establish standards of training under
17 AS 18.66.050.

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27
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29
*Original Bill
and
Letter of
Intent*

PROPOSED LETTER OF INTENT
TO
SENATE BILL 28 - An Act relating to training state
employees on the prevention, recognition,
intervention, and treatment of child abuse and
neglect

Passage of Senate Bill 28 reflects the Legislature's recognition that persons who come into contact with abused or neglected children are often unprepared to recognize symptoms, to report properly, or to otherwise respond in an appropriate manner.

Underlying the provisions of Senate Bill 28 is the requirement in Alaska Statute 47.27.020 that certain persons report instances of child abuse and child neglect to public authorities. Not only are state employees covered by this law, but school teachers and school administrative staff are also required to report. Such persons who willfully fail to report may be guilty of a misdemeanor and their school district may incur civil liability.

Although the new law does not require training of school district employees in this critical area, the Legislature recognizes that teachers and school administrators are often the first line of detection of child abuse and neglect.

Consequently, the Legislature urges each school district to provide corresponding training to its employees. In addition, school districts are encouraged to work with the Council on Domestic Violence and Sexual Assault concerning the features of the state training program. Not only will such training better prepare school district employees to comply with the reporting requirements of AS 47.17.010, but the Legislature believes that it will also contribute to the prevention of child abuse in Alaska.



Official Business

Alaska State Legislature

Senate

Committee on Finance

JAN FAIKS
Co-Chairman

Pouch V
State Capitol
Juneau, Alaska 99811

January 14, 1985

MEMORANDUM

TO: Senator Bettye Fahrenkamp, Chairman
Senate Health, Education and Social Services
Committee

FROM: Senator Jan Faiks

SUBJECT: Senate Bill 28 - An Act relating to training state
employees on the prevention, recognition,
intervention and treatment of child abuse and
neglect

Senate Bill 28 mandates training on the prevention, recognition, intervention, and treatment of child abuse and neglect for state employees who are required by law to report instances of harm under AS 47.17.020. While reporting instances of harm is mandated by state statute, associated training is discretionary, and often limited or nonexistent.

State employees, required to report cases of harm, do not always obtain training that is essential to the performance of their legal responsibilities, and thus are ill prepared to effectively comply with the law. Not only does the public, particularly children, suffer from lack of trained service providers, but the state faces potential liability for negligent acts of its employees.

REPORTING MANDATED

In 1971, the Alaska legislature enacted AS 47.17.010 which mandates the reporting of the instances of child abuse and neglect to appropriate public authorities. The purpose of mandatory reporting is to prevent future harm to the child and safeguard and enhance the general well-being of children in Alaska.

Under AS 47.27.020 the following persons must report cases of suspected harm to the Department of Health and Social Services:

practitioners of the healing arts;

members; school teachers and school administrative staff

social workers;

peace officers, and officers of the Department of Corrections;

administrative officers of institutions;

licensed day care providers and paid staff; and

licensed foster care providers.

These people are often the first individuals who come in contact with abused or neglected children. Early detection of harm can result in the prevention of further abuse or neglect.

TRAINING

Without proper training, cases of abuse or neglect may not be recognized and reported and thus the safety of children is jeopardized. Implicit in the mandate to report suspected child abuse and neglect, is the ability to recognize what it is that must be reported.¹

Following nationwide hearings, the U. S. Attorney's Task Force on Domestic Violence recommended that federal, state and local government agencies train relevant personnel to diagnose and appropriately intervene in family violence cases. Initial and inservice training for social service providers (child protection workers, mental health professionals, alcohol and drug abuse counselors and shelter workers), criminal justice professionals (law enforcement officers, probation and parole officers), prosecutors, judges, medical professionals (physicians, nurses, paramedics, psychologists, emergency room personnel), and teachers was recommended. When these individuals are obligated by law to report child abuse it is very important that they are given proper training to identify it.²

IMMUNITY AND LIABILITY

Immunity from civil liability and criminal penalty exists under AS 47.17.050 for those who report cases of suspected child abuse or neglect in good faith. However, if those persons required to report cases of abuse or neglect willfully or knowingly fail or refuse to report the harm, they are guilty of a Class B misdemeanor under AS 47.17.068. Ignorance of the law is no excuse. If a state employee, required to report under AS 47.17.020, willfully or knowingly fails or refuses to report harm, that person is subject to prosecution under AS 47.17.068 and possible civil liability. The state may also be subject to

civil liability under AS 9.50.250 for the negligent actions or omissions of its employees.

RECENT FINDINGS IN ALASKA

In recent investigations conducted by both the State Ombudsman and Legislative Audit, it was determined that one group of state employees, who are in constant contact with abused or neglected children, lack sufficient training.

On July 12, 1984, the State Ombudsman concluded in Complaint F83-1576 that the Division of Family and Youth Services failed to act effectively to protect a child who had been reported to the Division as an abused child. (This child died from injuries inflicted by his live-in babysitter.) This finding was based on two factors.

The record of the agency's involvement in the matter suggested uncertainty and handling inconsistent with standard agency practices.

Despite the directive of the agency's program manual, staff assigned to this case provided no follow-up.

The Ombudsman concluded that understaffing was at a crisis level and contributed to the ineffective actions of the agency in this matter. Throughout the report, however, lack of proper training on child abuse and neglect for social workers, as well as medical personnel, was highlighted.³

On August 10, 1984, the Division of Legislative Audit reported that the Division of Family and Youth Services's ability to adequately investigate reports of child abuse and neglect is hampered by understaffing and insufficient management direction. Following interviews with parents, Department of Law personnel, Court System personnel, attorneys, and DFYS social workers, Legislative Audit concluded:

In some instances, adequate policies and procedures may exist in the policy and procedures manual, but management has not provided the training and/or the review to ensure that social workers are following the manual. In either case, DFYS management needs to provide better direction to social workers for consistently interpreting their responsibilities and enacting legislative intent for child protection.

A survey of guardians ad litem, which accompanied the report, indicated that better training and supervision of social workers and supervisors was needed.⁴

CONCLUSION

Social workers are not the only persons in this state that need training, and training alone will not lessen the crisis situation that has been created by understaffing. However, the documented investigations indicate that there is a problem with a state agency providing protective services to children that have been abused or neglected. Since the state has undertaken the responsibility to provide protective services to children, intervene in appropriate cases, and require reporting of suspected cases of harm, it is imperative that those employed by the state receive adequate training to address this problem.

Non-state employees, primarily teachers and medical personnel should also receive adequate training. Local governments should be strongly encouraged to provide training for teachers employed by the district.

To date, the Council on Domestic Violence and Sexual Assault, the Department of Health and Social Services, the Public Defender Agency, and the Department of Education support this bill. The Alaska Network on Domestic Violence and Sexual Assault supported similar legislation last session.

FOOTNOTES

¹U.S., Department of Health and Human Services. Office of Human Development Services, Administration for Children, Youth and Families, Children's Bureau, National Center on Child Abuse and Neglect, Training In the Prevention and Treatment of Child Abuse and Neglect. (Washington D. C.: DHHS Pub. No. (OHDS) 79-30201, 1979) p.1.

²U.S., Department of Justice, Attorney General's Task Force on Family Violence, Final Report, September 1984, p. 76.

³Letter from John B. Chenoweth, State Ombudsman, to Walt Lacy (July 12, 1984).

⁴Division of Legislative Audit, A Special Report on the Department of Health and Social Services Division of Family and Youth Services Intake and Emergency Custody Procedures, Audit Control Number 06-4203-84-S (August 10, 1984).

HESS
Committee
CS

IN THE SENATE

CS SENATE BILL
IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION
A BILL

For an Act entitled: "An Act relating to training state employees on the [PREVENTION,] recognition and reporting [INTERVENTION, AND TREATMENT] of child abuse and neglect."

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

*Section 1. AS 47.17 is amended by adding a new section to read:

Sec. 47.17.022. TRAINING.(a) A person employed by the state who is required [TO REPORT] under AS 47.17 [.020] to report abuse or neglect of children shall receive training on the [PREVENTION] recognition and reporting [INTERVENTION, AND TREATMENT] of child abuse and neglect.

(b) Each department of the state which employs persons required to report shall provide:

(1) initial training to each new employee during the employee's first six months of employment, and to any existing employee who has not received equivalent training, and

(2) inservice training as determined appropriate by the department.

(c) Each department shall develop a training curriculum which acquaints the employee with:

(1) laws relating to child abuse and neglect;

(2) techniques for recognition and detection of child

abuse and neglect;

(3) agencies and organizations within the state that offer aid or shelter to victims and the families of victims of child abuse or neglect; and

(4) procedures for required notification of suspected abuse or neglect.

(d) Each department shall file a copy of its training curriculum and materials, as from time to time amended, with the Council on Domestic Violence and Sexual Assault. Any department may seek the technical assistance of the Council or the Department of Health and Social Services in the development of its training program. [THE COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT SHALL COORDINATE THE TRAINING, PREPARE AND DISSEMINATE EDUCATIONAL PROGRAMS AND MATERIALS, AND ESTABLISH STANDARDS OF TRAINING UNDER AS 18.66.050.]

SB 28

§ 47.17.020 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.17.020

other than accidental means, of harm through physical abuse or neglect or sexual abuse or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of the children in this state, and to preserve family life whenever possible. (§ 1 ch 100 SLA 1971; am § 3 ch 104 SLA 1982)

Rep
S

Effect of amendments. — The 1982 amendment, in the first sentence, substituted "neglect or sexual abuse or sexual exploitation" for "neglect requiring the attention of a practitioner of the healing arts" and inserted "of the healing arts."

NOTES TO DECISIONS

Use of reports. — The reports of child abuse and neglect required by this section are intended for use in child protection proceedings and are not intended for use in criminal proceedings. *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984). See also notes to AS 47.17.060, under catchline "Judicial proceeding."

Collateral references. — 42 Am. Jur. 2d, Infants, §§ 16, 17.
43 C.J.S., Infants, §§ 36 to 39, 70 to 75, 94.
Medical attention, criminal neglect by failure to provide, 12 ALR2d 1047.
Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR3d 904.
Validity and construction of penal statute prohibiting child abuse, 1 ALR4th 38.

Sec. 47.17.020. Persons required to report. (a) The following persons who, in the performance of their professional duties, have cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the department:

- (1) practitioners of the healing arts;
- (2) school teachers and school administrative staff members;
- (3) social workers;
- (4) peace officers, and officers of the Department of Corrections;
- (5) administrative officers of institutions;
- (6) licensed day care providers and paid staff;
- (7) licensed foster care providers.

(b) This section does not prohibit the named persons from reporting cases which have come to their attention in their nonprofessional capacities nor does it prohibit any other person from reporting a child's harm which the person has cause to believe is a result of abuse or neglect. These reports shall be made to the nearest office of the department.

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

POSITION PAPER

SB 23

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation representing 20 domestic violence and sexual assault programs state wide, supports SB23 to provide training to certain state employees in the area of child abuse and neglect.

This bill would require that those state employees required to report incidences of child abuse and neglect receive training in that field. Employees required to report under the law include: practitioners of the healing arts, school teachers and administrative staff, social workers, peace officers and officers of the Department of Corrections, administrative officers of institutions, licensed day care providers and staff, and licensed foster care providers. The state employees included in those job classes are most often employed by the Departments of Health and Social Services, Education, Public Safety, and Corrections.

It is the Network's position that those persons required to report should receive training in the recognition of child abuse and neglect, and training on the reporting law. However, since those required to report, with the exception of social workers, are not involved in the intervention, prevention, or treatment of child abuse and neglect, we do not feel it is necessary to provide training in those areas. Training in the intervention, prevention, and treatment of child abuse and neglect is provided to those involved in those areas by domestic violence and sexual assault programs and by the Division of Family and Youth Services.

Because of those distinctions, and the very real need to insure that those required to report are aware of their duty to do so, the Network suggests that SB23 be amended to read as follows:

"A person employed by the state who is required to report under AS 47.17.020 shall receive training on the recognition and reporting of child abuse and neglect. The Council on Domestic Violence and Sexual Assault shall coordinate the training, prepare and disseminate educational programs and materials, and establish standards of training under AS 18.66.050."

The bill would insure that those required to report would receive training in recognizing the signs of a child victim of abuse or neglect, knowledge of the reporting law and their duty to report, and information on the penalties for failure to report and the protections provided to those making reports.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

SB 28

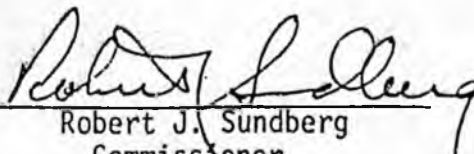
"An Act relating to training state employees on the prevention, recognition, intervention, and treatment of child abuse and neglect."

The Council on Domestic Violence and Sexual Assault supports the general concept of SB 28. There is a need for state employees who are required by AS 47.17.020 to immediately report when they believe a child has suffered harm as a result of abuse or neglect to have training on how to identify and intervene in situations of this nature. If state employees are not trained, it is possible that the state could be held accountable should AS 47.17.020 be violated by an employee. State employees covered by the mandated reporting law are primarily in the Departments of Health & Social Services, Public Safety, Corrections and Education.

Since not all the employees required to report under AS 47.17.020 are involved in child abuse prevention and treatment, the Council suggests rewording the first sentence of SB 28 as follows: A person employed by the state who is required to report under AS 47.17.020 shall receive training on the recognition and reporting of child abuse and neglect. This change deletes training on the "prevention and treatment" and replaces the word "intervention" with reporting. Those employees who are involved in the prevention and treatment of child abuse and neglect are or should be receiving training in their specific fields through other means.

The growing awareness about the need for identifying and reporting suspected cases of child abuse and neglect has not been accompanied by informing the public of accurate and sensitive ways to handle such concerns. This information has also not always been provided to state employees. In order to better ensure that appropriate cases are reported and inappropriate ones are not and that the reporting is done in the best manner for all concerned, quality training materials need to be developed, produced and used.

The Council on Domestic Violence and Sexual Assault which includes representatives from the Department of Public Safety, Health and Social Services, Education and Law plus three public members, is established to provide for planning and coordination of services to victims of domestic violence and sexual assault (AS 18.66.010). The broader responsibility for child abuse and neglect lies within the Department of Health and Social Services, Division of Family and Youth Services. The Council and the programs it funds would work closely with the Division of Family and Youth Services and other appropriate state agencies in developing the training materials.


Robert J. Sundberg
Commissioner
Department of Public Safety

POSITION PAPER

SENATE BILL NO. 28

"An act related to training state employees on the prevention, recognition, intervention and treatment of child abuse and neglect."

This bill would require that state employees who, in their job capacity, are required by statute to report child abuse be trained in the prevention, recognition, intervention and treatment of child abuse and neglect. The bill assigns to the Council on Domestic Violence and Sexual Assault the authority and responsibility for establishing standards for this training, coordinating the training, and preparing and disseminating educational programs and materials.

The department supports the concept of required training for state employees but opposes the mechanism proposed in this bill to accomplish that training. The department proposes that the development of basic educational program materials should be developed and disseminated by the agency with the primary responsibility for preventing, identifying, intervening and treating child abuse and neglect and that these materials be incorporated in the regular training curriculum of the agencies employing persons required to report suspected cases of abuse and neglect. Because of the very distinct and different roles and responsibilities of those state employees required to report child abuse each requires specific training in carrying out those responsibilities which can best and most efficiently be developed and implemented by the agency employing the individual. The mechanism proposed in this bill to carry out training could impede staff training responsibilities of individual agencies and would be administratively inefficient.

The department supports cooperative agreements for coordinated multi-disciplinary efforts in training such as a state-wide child sexual abuse agreement as a more effective means of carrying out the training goals of this bill. Such agreements allow for clear definition of roles and responsibilities of each agency or organization and avoid unnecessary duplication of effort both in intervention and training.

Position Paper
SB 28
Page 2

Preparation and distribution of training materials concerning child abuse and neglect is appropriately a function of the Department of Health and Social Services given the primary responsibility of the department for intervening in such cases and in developing prevention and treatment programs. In addition, since the department already undertakes much of what is envisioned in SB 28 on a discretionary basis it would be most efficient and effective from an administrative standpoint for mandated efforts to be performed by the same agency. The department through its Division of Family and Youth Services already implements formal training program for its own staff members of the recognition, intervention, and treatment of child abuse and neglect and discretionarily provides training to other state agencies and private human service providers as is indicated in the attached DFYS training report for FY 84. The division has also undertaken significant public awareness efforts aimed at a variety of professionals statutorily required to report child abuse and neglect as well as the general public.

In contrast the Council on Domestic Violence and Sexual Assault has particular expertise in the area of sexual assault. Community domestic violence program personnel have provided, at the invitation of the Division of Family and Youth Services, training to community and division personnel in the specific areas of intervention and child sexual assault. A broad expertise, experience and responsibility that the Division of Family and Youth Services has in dealing with all aspects of child abuse and neglect would be critical to the development of appropriate basic educational materials. In Alaska the largest percentage of child maltreatment cases consist of neglect (63%) and physical abuse (25%). Child sexual abuse in contrast comprises only 6% of nationally reported child maltreatment cases and 11% of child maltreatment reports in Alaska. Expertise must focus on all categories of maltreatment in order to develop adequate training materials. This is particularly true when it is understood that profile of characteristics of child sexual abuse victims is significantly different than that for child victims of other types of abuse and neglect and that intervention and treatment approaches differ significantly also.

Position Paper
SB 28
Page 3

In summary the department supports the concept of training state employees on the various aspects of child abuse and neglect but proposes that this training occur through existing and appropriate state agency training mechanisms with the support of the department of Health and Social Services. As the bill reads now, it has no fiscal impact on the department. If amended to designate the department as the coordinating agency, a fiscal note will be prepared.

RECOMMENDED: Michael L. Price

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

DATE: _____

APPROVED: John R. Pugh

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

DATE: 1/17/85

DIVISION OF FAMILY AND YOUTH SERVICES

TRAINING SUMMARY - July 1, 1983 -- September 30, 1984

Total Trained	1,156 +
Staff	468 +
Community	688 +
Training Hours (time x participants)	25,025

SEXUAL ABUSE TRAINING - July 1, 1983 -- September 30, 1984

Total Trained	996
Staff	351
Community	635
Training Hours	14,502

DIVISION OF FAMILY AND YOUTH SERVICES
TRAINING SUMMARY 7/1/83 - 9/30/84

<u>Date</u>	<u>Topic and Location</u>	<u># Participants</u>	<u># Staff</u>	<u>Community</u>	<u>Hours</u>	<u>Leaders</u>
CHILD ABUSE/NECLECT REPORTING						
8/30/83	Day Care Centers Anchorage	19	1	16	(3) 57	M. Munson
8/30/83	Placement Agencies Anchorage	13	1	12	(3) 39	M. Munson
8/30/83	Awareness in School Romig Junior High School Anchorage	96	0	96	(6) 576	B. Garberding
8/29/83	Inservice - Snowbank School Wasilla	45	0	6	(1) 45	B. Garberding
CHILD SEXUAL ABUSE						
8/31/83	Parents United Facilitating Sexual Abuse Treatment Groups Anchorage	12	0	12	(2) 24	B. Garberding
3/21-23/84	Identification/Treatment Victims - NRO YS Fairbanks	20	20		(13) 260	Glen Lambert
6/1/84	Evaluation and Treatment of Adolescent Sexual Abuse Offenders McLaughlin YS, Anchorage	20	20		(7) 140	Gary Winet
8/30/84	Treatment Adolescent Victim Sexual Abuse McLaughlin YS, Anchorage	17	17		(8) 136	Glen Lambert

DIVISION OF FAMILY AND YOUTH SERVICES
TRAINING SUMMARY 7/1/83 - 9/30/84

<u>Date</u>	<u>Topic and Location</u>	<u># Participants</u>	<u># Staff</u>	<u>Community</u>	<u>Hours</u>	<u>Leaders</u>
5/31/84 6/1/84	Sexual Abuse Adolescent Victim and Offender SCRO YS, Anchorage	14	14		(14)196	Glen Lambert
6/7-8/84	Assessment and Treatment Youthful Sex Offender SERO, Juneau	26	12	14	(14)364	Nick Nichols and Irene Melinden
6/18/84	Treatment of Male Sexual Offender McLaughlin YS, Anchorage	10	10		(13)130	Jim Harper
6/25-2. '84 9/10-14,84	Child Sexual Abuse (2 Sec) NRO, Fairbanks	60	25	35		
	- Intervention NRO				(7)420	D & J Ramon
	- Interviewing and Investigation				(4)240	Marsha Morgan
	- Using the Dolls for Inter- viewing				(4)240	Howard Anderson
	- Pre-trial Preparation				(7)420	Ellie Breslan
	- Assessment of Treatment Sexually Abused Child				(7)420	Steven Wolf
	- Classified Offender Treatment					
7/27-31/84	Child Sexual Abuse Social Services Agencies Barrow	49	2	47	(35)1715	Mary Bruska, Ginny McCarthy, Clara Kelly, Ken Riosa
9/18-20/84	Child Sexual Abuse Social Services Agencies Kotzebue	60	3	57	(21)7260	Rosemary Murry, Ken Duff, Jill Baker
5/16-18/84	Governor's Conference on Child Abuse and Neglect Sitka	153	29	124	(21)3212	National Leaders

DIVISION OF FAMILY AND YOUTH SERVICES
TRAINING SUMMARY 7/1/83 - 9/30/84

<u>Date</u>	<u>Topic and Location</u>	<u># Participants</u>	<u># Staff</u>	<u>Community</u>	<u>Hours</u>	<u>Leaders</u>
May, Aug. Sept. 84	Child Sexual Abuse and Legal Training WRO FS, Bethel					Pam Kirk, Dolly Coke Don Edwards
9/6-7/84	Sexual Abuse					Lucy Berliner
FIELD STAFF TRAINING						
10/4-22/84	Orientation, Anchorage	14	14		(70)980	B. Garberding and M. Munson
9/25-28/84	Comprehensive Training NRO YS, Fairbanks	23	23		(30)690	Gene Shafer and Other Staff
4/24-27/84	Field Staff Training SCRO FS, Anchorage	23	23		(28)392	
	- Child Sexual Abuse				7	Pam Kirk
	- Cross Cultural				7	Phil Kaufman
	- Licensing				7	Fr. Oleksa
	- Family Systems				7	Pat O'Brien Paul Shanely
8/6-10/84	Individual and Family Assessment SCRO FS, Anchorage	25	25			
	- Working with Resistant Clients				(8)200	Pamela Moyer C. Wickersham
	- Working with and Under- standing Adolescents				(4)100	C. Wickersham
	- Separation and Loss				(4)100	C. Wickersham
	- Taking Care of Yourself				(4)100	C. Wickersham
	- Family Dynamics of Sexual and Physical Abuse				(4)100	C. Wickersham
8/15-17/84	Caseload Management YS Statewide, Juneau	31	31		(21)651	Todd Clear Brian Beamus

DIVISION OF FAMILY AND YOUTH SERVICES
TRAINING SUMMARY 7/1/83 - 9/30/84

<u>Date</u>	<u>Topic and Location</u>	<u># Participants</u>	<u># Staff</u>	<u>Community</u>	<u>Hours</u>	<u>Leaders</u>
3/9/84	SCRO FS Registration, Anchorage					
ELDER ABUSE						
7/13/83	Adult Protection Senior Citizen Project Anchorage	50	2	48	(3)150	B. Garberding
9/13-14/84	Statewide FS Anchorage					Susan Tomita
CROSS CULTURAL TRAINING						
7/7/84	Indian Child Welfare Act Kotzebue	20		20	(5)100	M. Munson
4/10/84	Cross Cultural Awareness McLaughlin YS, Anchorage	14	0	14	(75)616	Nova University
FOSTER CARE						
4/26-28/84	Consensus Seeking and Mutual Selection SCRO FS, Anchorage	44	31	13	(74)616	Nova University
9/24-28/84	Discipline and Control and Nurture SERO FS, Ketchikan, Juneau	26	9	17	(14)364	Ray Curtis
5/18-20/84	Fairhanks Foster Parent Conference NRO FS, Fairbanks					M. J. Amundsen

DIVISION OF FAMILY AND YOUTH SERVICES
TRAINING SUMMARY 7/1/83 - 9/30/84

<u>Date</u>	<u>Topic and Location</u>	<u># Participants</u>	<u># Staff</u>	<u>Community</u>	<u>Hours</u>	<u>Leaders</u>
3/21-23/84	Alaska State Foster Parent Conference NRO FS, Fairbanks					Sally Brown
WORKING WITH RESISTANT CLIENTS						
5/15-16/84	Working with Difficult Clients NRO FS, Fairbanks	17	10	7	(14)238	Barbara Niko and Mary J. Demond
7/12-13/84 9/27-28/84	Forming Relationships with Hard to Reach Youths SEPD YS, Juneau SCRO YS, Anchorage	45	23	22	(14)630	Henry Maier
COURT WORK						
7/12/83	Prepare to be a Witness Department of Revenue Anchorage	20	0	20	(2) 40	M. Munson
7/24/84	Court Report Writing YS Statewide, Anchorage	11	11		(7) 77	Paul Kim
ADOPTION						
9/28/83	Special Needs Adoption Anchorage	20	0	20	(3) 60	B. Garberding
6/6-7/84	Adoption Disruption Statewide FS, Anchorage	13	7	6	(27)273	Jill Jasper

DIVISION OF FAMILY AND YOUTH SERVICES
TRAINING SUMMARY 7/1/83 - 9/30/84

<u>Date</u>	<u>Topic and Location</u>	<u># Participants</u>	<u># Staff</u>	<u>Community</u>	<u>Hours</u>	<u>Leaders</u>
MANAGEMENT TRAINING						
9/5-7/84	Advanced Management Skills	41	41		(21)861	Mike Austin
9/10-12/84	FS YS Statewide Juneau and Anchorage					
9/27-28/84	Team Building CO Staff and RSSMs and RAs Juneau	23	23		(21)483	Michael Groh
3/14-15/84	Data Training FS YS Statewide Juneau					M. A. Arseneau
CLERICAL TRAINING						
9/11-14/84	SCRO FS/YS Anchorage	16	16		(21)336	Lisa O'Brien
7/11 to 11/1/84	DFYS CO Clerical Training, Juneau					Judy Crondahl
OTHER						
9/9/83	Men in Early Child Education, Anchorage	10	0	10	(3) 30	B. Garberding
8/15-17/84	Family Systems Therapy NRO FS, Fairbanks	15	11	4	(21)315	Mortimer, Perimutter
8/27-31/84	Preventing Adolescent Suicide, SERO FS Juneau and Ketchikan	28	5	23	(14)392	Dan Capuzzi
5/19-20/84	Building New Traditions Statewide, Anchorage					

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 28
 Title: An Act.....training of
state employees
 Sponsor: Sen. Faiks
 Requestor: _____
 Date of Request: 1/16/85

FISCAL DETAIL

Agency Affected: Health and Social Services
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected:
Social Services, Youth Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

N/A

Prepared By: Michael L. Price *Michael L. Price* Phone: 465-3170
 Division: Family and Youth Services Date: 1/16/85

Approved by Commissioner: *John R. P.* Date: 1/17/85
 Agency: _____

Distribution (by Agency preparing fiscal note):

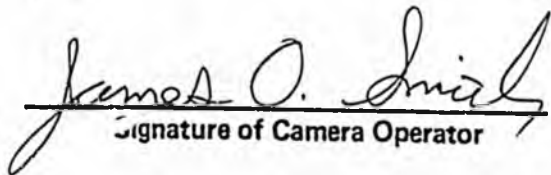
Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget

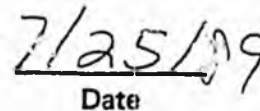


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Date

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Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740



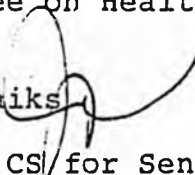
IAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

March 18, 1985

MEMORANDUM

TO: Committee Members,
House Committee on Health, Education & Social
Services

FROM: Senator Jan Faiks 

SUBJECT: Background of CS for Senate Bill No. 29 am, an Act
relating to domestic violence and domestic sexual
offenses.

Chapter 35, Title 25 of the Alaska Statutes provides a powerful tool for victims of domestic violence.

Under this chapter, abused persons may petition the courts for an order which, among other things, can prohibit the abuser from entering the victim's home, can prohibit communication with the victim, and can require the abuser to pay the victim's medical costs. In an emergency situation, this restraining order can be obtained almost immediately, even before the abuser is given an opportunity to appear at a court hearing.

Under current law, however, this remedy is available only to victims who lives in a spousal relationship or who lives in the same "social unit" as the abuser.

Section 6 of this bill will extend this protection to child, parent, and grandparent victims of abuse. By expanding the definition of victims to include these persons, this section will allow children, parents, and grandparents to seek restraining orders against their abusers.

Section 5 of the bill qualifies those persons who can request restraining orders on behalf of minor children. Since only a parent, guardian, or legal custodian can seek protection under this chapter for a youngster under eighteen years of age, this provision will prevent nosy neighbors and adolescents who are upset with home discipline from filing petitions. (Children who are truly abused by their parents will still be protected by remedies available to the Division of Family and Youth Services-including removing the children from their home.)

Sections 3 and 4 will make this expanded definition consistent in other statutes which deal with domestic violence. AS 12.25.030(b) allows a police officer without a warrant to arrest an abuser even if he did not witness the abuse. AS 18.66.900(3) defines domestic violence in the chapter which spells out the responsibilities of the Council on Domestic Violence and Sexual Assault.



RECEIVED
FEB 25 1985

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA
99901

Office of Administrative Director
Alaska Court System

Chambers of
THOMAS E. SCHULZ, Presiding Judge

February 20, 1985

Karla L. Forsythe
General Counsel
Office of the Administrative Director
303 K Street
Anchorage, Alaska 99501

Re: CS for Sentate Bill 29
Your Memo of February 11

Dear Ms. Forsythe:

I have reviewed the above referenced senate bill and I don't have any particular problems with it. I was one of those folks who wondered what the hell they'd done to us now when the domestic violence legislation first appeared, but it seems to work very well.

I am particularly interested in the addition of the language covering children. I recently dismissed a couple of domestic violence petitions because they involved conduct allegedly directed toward children who were no longer a member of the respondent's household and I had substantial questions about the jurisdiction of the court to proceed in such a case. Senate Bill 29 would appear to clear that matter up and I think it is a necessary addition to the domestic violence statute.

Very truly yours

Thomas E. Schulz
Presiding Judge

TES:ju

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 18, 1985

SUBJECT: Amendment to CSSB 29 (Jud)
TO: Senator Rick Halford
FROM: George W. Edwards *GWE*
Legislative Counsel

The accompanying amendment to CSSB 29 (Jud) has been drafted as you requested. As explained in a separate memorandum, the amendment appears to conform to constitutional and legislative rule requirements. One subject we discussed only briefly should be further considered now that you have the bill.

As drafted section 2 provides an affirmative defense of marriage in sexual abuse of a minor cases-e.g. statutory rape situations. The language specifies that the defense does not apply if the offense was committed without the consent of the victim. The language appears to me to be redundant in that consent is not an element of proof in sexual abuse of a minor cases. They only concern consensual sexual relations by definition. Nonconsensual sexual relations, involving a minor or adult victim are under the sexual assault statutes, AS 11.41.410 and 420.

I can't think of a situation where nonconsensual sexual relations between spouses would be charged as sexual abuse of a minor rather than the more serious sexual assault. If the language is in fact redundant and unnecessary, it is best not to encourage the courts to try to figure out some subtle intent.

GWE:lmb
L4/057

National
Center
on Women
& Family Law

799 Broadway, Room 402 • New York, New York 10003 • (212) 674-8200

MARITAL RAPE LITIGATION

The following pleadings and materials are available from NCOWFL unless asterisked. If asterisked, they are available from Clearinghouse for Legal Services, 500 North Michigan Avenue, Suite 1940, Chicago, Illinois 60611.

1. State of New Jersey v. Albert Smith, 426 A.2d 38 (1981), appeal of defendant-husband's motion to dismiss charges of rape of his wife on the grounds that the criminal rape statute codifies the alleged common law marital rape exemption. Defendant's trial motion was granted, 148 N.J. Super 219 (Law Div. 1977). The Appellate Division affirmed the dismissal, 169 N.J. Super 98 (App. Div. 1979). The Supreme Court of New Jersey unanimously reversed the dismissal and reinstated the indictment for rape.
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4. Commonwealth v. James K. Chretien, 417 N.E.2d 1203 (Mass. 1981), appeal of defendant-husband's conviction of rape of his wife. At trial, defendant's motion to dismiss the rape indictment based on the "common law" spousal exemption was denied. On September 21, 1979, defendant was convicted by a jury of rape and breaking and entering, and was sentenced to 3-5 years in prison and three years probation after release. On March 9, 1981, the Massachusetts Supreme Court, in an unanimous opinion, affirmed the conviction, holding that a person may be prosecuted for and convicted of rape even if the rape victim is defendant's spouse.

- (a) Massachusetts Supreme Court unanimous opinion, 417 N.E.2d 1203 (1981), holding that the legislature's revision of the rape statutes in 1974 eliminated any "common law" spousal exemption. The court analyzes the history and bases for the alleged common law doctrine. The court finds that the legislative intent to criminalize marital rape is evidenced in the state's "Domestic Violence Act" (G.L. ch. 209A) which expressly defines "abuse" to cover and include sexual abuse. The court does not limit its holding to separated or estranged spouses; the terms of Massachusetts' revised rape statute clearly applies to married couples who are living together. Clearinghouse No. 31,712.

5. People v. John De Stefano, 121 Misc.2d 113 (Suffolk County, New York 1983), defendant-husband's motion to dismiss rape indictment denied, and New York's express statutory marital rape exemption, Penal Law Section 130.00(4), held violative of equal protection clauses of the State and Federal Constitutions.

- (a) Suffolk County Court Decision (Judge Rohl), beginning the opinion with a quote from John Stuart Mill's The Subjection of Women, the court holds that the section of New York's rape law which provides a partial spousal rape exemption violates the equal protection clauses of the State and Federal

(b) Brief of Appellant, State of Florida, arguing that the repeal of Florida's rape statute and enactment of the sexual battery statute indicate the legislature's intent to abolish any marital rape exemption. Reiterates the arguments in State v. Smith, 401 So.2d 1126 (1981). Addresses the argument that, absent a marital rape exemption, droves of "vengeful wives" would threaten or bring unfounded rape charges against their husbands in order to get better divorce settlements. The state points out that this "floodgate argument" is highly unrealistic given the emotional and societal pressure on rape victims which discourage disclosure of sexual violence, the traumatic nature of rape trials, the special difficulty interspousal rape victims would have in proving the absence of consent and the reluctance of police and prosecutors to interfere in "family matters" which discourages victims of spouse abuse from seeking legal remedies. State argues that Griswold v. Connecticut, 381 U.S. 749 (1965), recognized the right of married persons to freely make choices concerning their home lives, and that there is no analogous "freedom" to sexually batter one's spouse. Griswold concerns both spouses' interest in privacy, whereas the marital rape exemption involves recognizing one spouse's right to privacy as superior to the other's right to protection and bodily integrity. Furthermore, the right to marital privacy recognized in Griswold promotes marital harmony, whereas the marital rape exemption perpetrates family violence. Clearinghouse No. 36.890.

7. Ronald E. Weishaupt v. Commonwealth of Virginia, 315 S.E.2d 847 (1984). Defendant-husband's appeal of denial of his motion to dismiss, and of his conviction of rape of his estranged wife, on the grounds that an English "common law" marital rape exemption applies in Virginia. The Virginia rape statute is "silent" (contains no express exemption). Trial court denied defendant's motion to dismiss; he was tried before a jury and convicted and sentenced to two years in prison. Virginia Supreme Court affirmed.

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CORRECTION

**THIS DOCUMENT
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National
Center
on Women
& Family Law

799 Broadway, Room 402 • New York, New York 10003 • (212) 674-8200

MARITAL RAPE LITIGATION

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curiam decision, summarily reversed

defendant's conviction for rape (Docket No. A-271-78, decided Jan. 18, 1980; unpublished). Supreme Court of New Jersey reversed Appellate decision, reinstating the rape conviction based on their decision in State v. Albert Smith, supra.

(a) Petition for Certification and Appendix on behalf of the State of New Jersey (dated February 19, 1980), which includes a copy of Appellate Division's per curiam decision reversing rape conviction. The State argues that the alleged "common law" marital rape exemption does not extend to estranged marriages.

(b) Brief and Appendix for the State of New Jersey on appeal to Appellate Division of Superior Court.

3. State of Florida v. Larry Smith, Fla. App. 401 So.2d 1126 (1981), appeal of defendant-husband's pretrial motion to dismiss the charge of sexual battery on the grounds that the criminal statute codifies a pre-existing "common law" marital exemption. Defendant's motion was granted (order dated July 30, 1980). The State appealed the lower court's dismissal of the sexual battery charge. The Florida District Court of Appeal, Fifth District, held that no exemption existed in Florida, and reversed the trial court's order; Husband must stand trial for rape of his wife.

* (a) Florida Court of Appeal, Fifth District Decision, holding that Florida's sexual battery statute does not incorporate a marital exemption. The court reviewed at length the New Jersey Supreme Court's decision in State v. Smith, 426 A.2d 38 (1981), and relied heavily on the New Jersey court's reasoning. The Florida court noted that sexual battery is a crime of violence, not sex. Additionally, the court pointed out the absurdity of defendant-husband's claim under the current sexual battery statute, which prohibits nonconsensual sexual conduct between persons of the same or different sex. "In Hale's time, a man could not be the victim of rape, but under section 794.011, Florida Statutes, he can be. It is inconceivable that a husband would accept the argument that by marriage he consented to the conduct defined in the statute if inflicted upon him by force or violence." 401 So.2d 1129. [Clearinghouse No. 31,552.]

(b) Amicus Brief of the National Center on Women and Family Law, Inc., and Central Florida Legal Services, Inc., arguing that the exclusion of married women from the protection of the criminal law when they are raped or sexually battered by their husbands is a denial of equal protection.

- (c) Initial Brief of Appellant, State of Florida, arguing that Florida's sexual battery statute, which codifies the crime of rape, makes no mention of and does not include a marital exemption. The legislature in repealing the rape statute and enacting the sexual battery statute did not preclude charging a husband for the forcible sexual battery of his wife.

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Constitutions. The court discusses U.S. Supreme Court decisions which recognize a woman's autonomy within the marital relationship, and finds that permitting "any type of exemption amounts to the state impermissibly interfering in the marital relationship by granting to a husband the right to control their wives bodily integrity." The court notes that false reports and evidentiary problems are not unique to marital rape cases and do not justify removing an entire class of potential victims from the protection of the law. The court demonstrates that other "remedies" are not necessarily sufficient to protect wives, by pointing out that in this case the woman had already obtained an order of protection before her husband raped her at knifepoint. Clearinghouse No. 36,888.

6. State of Florida v. William Rider, 449 So.2d 903 (C.A.3d Dist., 1984). Appeal by the State of Florida from trial court's dismissal of sexual battery charge against husband. Trial court's dismissal based upon husband and wife living together at the time of the rape. District court finds that no marital rape exemption exists in Florida, and reverses trial court's dismissal, with directions to reinstate the prosecution.

- (a) Florida Court of Appeal. Third District Decision, 449 So.2d 903 (1984) holding that Florida's sexual battery statute does not incorporate a common law marital rape exemption even when the spouses are living together at the time of the assault and neither party has initiated a divorce action, obtained a protective order or entered into a separation agreement. The court criticizes the Hale doctrine and expressly finds that no common law exemption to rape ever existed in Florida. The court relies on State v. Smith, 401 So.2d 1126 (5th DCA 1981), and rejects any distinction based upon the fact that the parties were living together at the time of the assault. The court goes on to find even assuming a common law exemption existed in Florida at one time, the legislature's repeal and replacement of the Florida rape statute with a gender-neutral sexual battery statute was "more than sufficient to abrogate any implied consent' upon which a common law interspousal exception may be based." Clearinghouse No. 36,390.

(b) Brief of Appellant, State of Florida, arguing that the repeal of Florida's rape statute and enactment of the sexual battery statute indicate the legislature's intent to abolish any marital rape exemption. Reiterates the arguments in State v. Smith, 401 So.2d 1126 (1981). Addresses the argument that, absent a marital rape exemption, droves of "vengeful wives" would threaten or bring unfounded rape charges against their husbands in order to get better divorce settlements. The state points out that this "floodgate argument" is highly unrealistic given the emotional and societal pressure on rape victims which discourage disclosure of sexual violence, the traumatic nature of rape trials, the special difficulty interspousal rape victims would have in proving the absence of consent and the reluctance of police and prosecutors to interfere in "family matters" which discourages victims of spouse abuse from seeking legal remedies. State argues that Griswold v. Connecticut, 381 U.S. 749 (1965), recognized the right of married persons to freely make choices concerning their home lives, and that there is no analogous "freedom" to sexually batter one's spouse. Griswold concerns both spouses' interest in privacy, whereas the marital rape exemption involves recognizing one spouse's right to privacy as superior to the other's right to protection and bodily integrity. Furthermore, the right to marital privacy recognized in Griswold promotes marital harmony, whereas the marital rape exemption perpetrates family violence. Clearinghouse No. 36.890.

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(a) Virginia Supreme Court Decision, 315 S.E.2d 847 (1984) holding that a wife can unilaterally revoke her implied consent to marital sex where she has made manifest her intent to terminate the marital relationship by living apart from her husband, refraining from voluntary intercourse with him, and in general conducting herself in a way which establishes a de facto end to the marriage. Here, wife had established her own residence, although no divorce or other legal action had been initiated at the time of

- the rape. The court refers to Virginia's no-fault divorce law as evidence that either spouse can voluntarily terminate the marriage, and cites cases demonstrating the separateness and independence accorded women in Virginia's property law and other areas of criminal law. The court finds the application of an English common law exemption inappropriate in the instant case, but refuses to expand its holding beyond the facts presented, i.e., to cases where the spouses are living together and there has been no manifestation of an intent to terminate the marital relationship. Clearinghouse No. 36,889.

- (b) Brief of Appelle State of Virginia, arguing that the English common law exemption should not be applied since it is repugnant to the principles of the Bill of Rights, and that the exclusion of the word "unlawful" from newly-amended Virginia rape statute indicates a legislative intent to abandon the exemption. Clearinghouse No. 36.889.

CASE CHARTS

Case-by-case chart of marital rape prosecutions, including legal and sociological data, and brief narration of facts and outcome of each case. California Cases Chart, \$6.00 (Note: California averages a 75% conviction rate); National Cases Chart, \$20.00. Available from the National Clearinghouse on Marital Rape, 2325 oak Street, Berkeley, CA 94708. (NOT AVAILABLE FROM NCOWFL).

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APPENDIX II

State-by-State
Information on Marital Rape
Exemption Laws

by Joanne Schulman

Staff Attorney with the National Center
on Women and Family Law, Inc.

A husband's rape of his wife is not a crime in most states. This legal right of wife rape is known as the "marital rape exemption," and is included in most states' rape statutes.

There are many types of marital rape exemptions. The state-by-state summary divides the exemptions into the following categories.

CATEGORY

- 1 *Absolute Exemption.* A husband can never be prosecuted for rape of his wife so long as the parties are married. The exemption still applies even if the parties are separated by court order. The exemption only ends when the parties are divorced; when the man is no longer *legally* the victim's husband.
- 2 *Partial Exemption.* A husband can be prosecuted for rape of his wife in some circumstances. Some states allow prosecution if the rape occurred after one spouse filed papers in court to end the marriage, or when the parties were not living together. The event or circumstance that ends the exemption differs from state to state.
- 3 *Cohabitant Exemption.* A man who is living with a woman that he is not legally married to cannot be prosecuted for raping her. Often this exemption is stated as a "defense," rather than a bar to prosecution. Thus, the district attorney may institute rape charges against the man, but he cannot be convicted of rape if he can prove he was living with the victim.
- 4 *Voluntary Social Companion Exemption.* This exemption may apply to husbands, cohabitants and social companions (i.e., dates). There is no requirement that the rapist live or have lived with the victim. Most states that have this type of exemption require that there have been past voluntary sexual relations between the defendant and victim in order for the exemption to apply. However, West Virginia does not require any past sexual activity.

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5	<i>Silent Statute.</i> The law does not mention whether husbands may or may not be prosecuted for rape of their wives. It has been assumed, until recently, that husbands could <i>not</i> be prosecuted because of Hale's alleged "common law" marital rape exemption. However, recent lawsuits in New Jersey, Massachusetts and Florida have held that no "common law" exemption exists. Thus, it is not clear if husbands can be prosecuted for marital rape in these "silent" states. Whether marital rape is a crime in these states will depend on future judicial decision, or legislative interpretation of the statutes.
<i>No Exemption</i>	The marital rape exemption has been abolished; husbands can be charged with rape of their wives in all or most cases.
<i>Rape Degrees</i>	In some states, there are different "types" of rape, murder, assault, etc. In most states, the criminal laws punish rape more or less severely depending on the circumstances of the rape (e.g., whether a weapon was used; age, mental and/or physical condition of the victim; whether the assault involved illegal sexual penetration, conduct, contact or use of a foreign object). These differences in the law are called "degrees." It is not possible to give a uniform definition for each "degree" as each state bases its rape degrees on different factors. (The fact that the marital rape exemption may apply in some rape degrees and not others has political and practical significance. The law is saying that it will tolerate certain violence by husbands against their wives that it will not tolerate between strangers. Practically, the different application of the exemption, based on the degree of rape charged, may decide whether marital rape cases will ever be prosecuted or what, if any, penalty will be imposed.)
<i>Gender-Neutral Statutes</i>	Traditionally, the law defined rape as a crime only men could commit. Thus, only husbands were granted the "immunity" or protection of the marital rape exemption. Today, many states have rewritten their laws in gender-neutral terms. Under these new rape laws, women can also be prosecuted for rape and the immunity granted under the marital rape exemption is extended to both spouses. The following chart does not incorporate these gender-neutral changes since it is intended to reflect reality rather than pure "legalese."

These categories are general, and states may fall into more than one category. In addition, considerable legislation and litigation has been occurring over the last two years, and therefore the following chart only reflects the law as of July 1, 1981.

STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
Alabama	1, 3	Husbands and cohabitators can <i>never</i> be charged with rape of mate.	Title 13A-6-60(4), 13A-6-61
Alaska	2	Husband can only be charged with rape of wife if parties were living apart or he caused	Stat § 11.41.445(a)

*The citations are included so interested readers can more easily obtain full details of these laws.

STATE	CATEGORY	STATUS OF MARITAL RAPE LAW severe physical injury (besides the rape).	CITATIONS*
Arizona	2	Husband cannot be charged with wife rape while parties are living together.	R.S. § 13-1404-06
Arkansas	5	Statute only exempts husbands in statutory rape cases. Whether marital rape is a crime will depend on judicial decision or legislative interpretation of "common law" exemption.	Stat. § 41-1803, et seq.
California	No Exemption	Husband can be charged with crime of "spousal rape." Thirty-day reporting requirement.	Pen. C. § 262
Colorado	2	Husband cannot be charged with rape of wife while parties live together.	R.S. § 18-3-409
Connecticut	No Exemption to First-Degree Rape; 1, 3	Spouse/cohabitants can be charged with first degree rape; marital and cohabitor exemption for all other sexual assaults.	Pen. Code § 53a-67(b), as amended by H.B. 5247
Delaware	3, 4	"Voluntary social companion" of victim cannot be charged with first degree rape; this may exempt husbands, cohabitants and "dates." Cohabitants (and spouses living together) cannot be charged with rape of mate.	D.C.A. §§ 761-764, 772(b)
District of Columbia	5	Not known if "common law" exemption applies, making marital rape legal.	R.S.D.C. § 22-2801
Florida	No Exemption	Husbands can be charged with rape of wife, the same as a stranger. (<i>State v. Larry Smith</i>)	S.A. § 794.011
Georgia	5	Statute only exempts husbands in statutory rape cases. Marital rape may be legal under "common law" exemption; will	C.A. § 26.2001, 2018

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STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
		depend on judicial decision or legislative interpretation of statute.	
Hawaii	4, 2	"Voluntary social companion" of victim cannot be charged with forcible (first degree) rape; this may exempt husbands, cohabitators and "dates." Husbands cannot be charged with "lesser" sexual assaults of wife while parties are living together.	R.S. § 707-730 to 732
Idaho	2	Husband cannot be charged with rape of wife <i>unless</i> parties have been living apart at least 180 days or legal action for divorce or separation started (petition filed).	C. § 18-6107
Illinois	1	Husband can <i>never</i> be charged with rape of wife.	A.S. Ch. 38 § 11-1
Indiana	2	Husbands cannot be charged with rape of wife <i>unless</i> parties live apart and court action for separation or divorce started (petition filed).	S.A. § 35-42-4-1(b)
Iowa ⁽²⁻⁴⁾	<i>No Exemption to First- and Second-Degree Rape; 3</i>	Husbands <i>can</i> be charged with first and second degree rape of wife. Husbands and cohabitators <i>cannot</i> be charged with third degree sexual abuse of mate.	C.A. § 709.2 to 709.4
Kansas	1	Husband can <i>never</i> be charged with rape of wife.	S.A. § 21-3502
Kentucky	2	Husbands and cohabitators cannot be charged with rape of spouse <i>unless</i> court order of separation.	R.S. § 510.010 (3)
Louisiana	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	R.S.A. § 14.21

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TONE*	STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
730 to 732	Maine	2, 3	Husbands and cohabitants cannot be charged with rape of mate while parties living together.	R.S.A. Title 17A § 251, 252
7	Maryland	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	A.C. § 27-464D
§ 11-1	Massachusetts ^W	No Exemptions	Husbands can be charged with rape of wife same as a stranger (no exemption). (<i>Commonwealth v. Chretien</i>)	A.L. Ch. 265 § 22; Ch. 277 § 39
-4-1(b)	Michigan	2	Husbands cannot be charged with rape of wife <i>unless</i> parties live apart and court action for separation or divorce started (petition filed).	M.S.R.C.C. Ch. 23 § 2340
10 709-4	Minnesota	No Exemption	Husbands can be charged with rape of wife under most circumstances.	S.A. § 609.349
12	Mississippi	2, 5	Husband cannot be charged with "sexual battery" of wife <i>unless</i> parties living apart. Separate "rape" statute does <i>not</i> exempt husbands; unknown if marital rape is a crime.	MCA § 97-3-95 to 103, (Supp. 1980)
13 (3)	Missouri	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	A.S. § 566.010:2
:	Montana	2, 3	Husbands/cohabitants cannot be charged with rape of mate while parties are living together.	R.C. § 45-5-506
f these	Nebraska ^W	No Exemption	Husband can be charged with rape of wife the same as a stranger.	R.S. § 28-319, 320
	Nevada	2	Husbands cannot be charged with rape of wife <i>unless</i> parties live apart and court action for separation or divorce started (petition filed).	R.S. § 200.373

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STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
New Hampshire	No Exemption	Husband <i>can</i> be charged with rape of wife under most circumstances.	RSA 632-A:5 (H.B. 516, effective 8/81)
New Jersey	No Exemption	Husbands <i>can</i> be charged with rape of wife, same as a stranger (no exemption).	S.A. § 2C:14-5(b)
New Mexico	2, 3	Husbands/cohabitants cannot be charged with rape of their mates <i>unless</i> parties living apart or legal action for divorce or separation started (petition filed).	Stat. § 30-9-10, 11
New York	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	Pen. L § 130.00
North Carolina	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation or spouses living apart pursuant to written agreement.	G.S. § 14-27.8
North Dakota	2	Husbands cannot be charged with rape of wife <i>unless</i> court order of separation.	C.A. § 12.1-20-01, 02, 03
Ohio	2	Husband cannot be charged with rape of wife <i>unless</i> parties live apart and court action started (petition filed) or written separation agreement entered into.	ORC § 2907.01, 02
Oklahoma	1	Husband can <i>never</i> be charged with rape of wife.	S.A. Title 21 § 1111
Oregon	No Exemption	Husbands can be charged with rape of wife same as a stranger.	R.S. § 163.305
Pennsylvania	2, 3	Husbands/cohabitants cannot be charged with rape of mates <i>unless</i> parties living apart or written separation agreement entered into.	S.A. Title 18 § 3103

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