3272 HJUD HB 88 (FILE 1)

as used in Title 47 would apply to all incidents of harm against children regardless of who the perpetrator is unless it is specifically stated that the perpetrator must be a person responsible for the child's welfare. This destinction is necessary, as DFYS's scope does not extend beyond intra-family abuses.

The Department recommends removal of the term nonaccidental, as the person reporting should not have to make that determination.

Section 23

Existing law requires "practitioners of the healing arts" to report suspected child abuse or neglect. This section expands the definition of this term to include dental hygienists, nurse practitioners, and physician's assistants. Although these health care professionals are considered included in the current definition, this amendment clears up any possible uncertainty by specifically referring to persons who hold these positions.

Section 24

This section clarifies the definition of sexual exploitation in AS 47.17 (reporting statute).

Section 25

This section adds new definitions related to the expanded classes of persons who must report child abuse. All references to "volunteers" was removed by the subcommittee.

Sections 26 and 27

Section 26 amends AS 47.35.070(a) to bring this statute into conformity with the criminal code by making violations of child care licensing statutes and regulations a class B misdemeanor. Section 27 adds language that gives statutory authority to the Department of Health and Social Services to establish a system of civil enforcement (including the levy of up to $200 daily in civil penalties) for violations of its licensing statutes and regulations.

This authority will provide the department with a valuable regulatory tool. Presently, the department has only two choices with respect to licensees who violate statutes and regulations. The department can either revoke the license or do nothing. While the department can require the licensee to establish a plan of correction for violations, its only lever to enforce this requirement is the authority to revoke the license. If a system of civil penalties existed, the department would have the additional tool of fining licensees for minor violations of regulations and statutes. The new language makes it clear that imposition of a civil penalty would not preclude criminal prosecution in appropriate circumstances.

Section 28

This section is new, based on LAA legal opinion, to reference Section 18 as changing the Alaska Rules of Evidence.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M March 28, 1985

SUBJECT: Sections 13 and 17 of CSHB 88 (HESS) (3/27/85 draft)

TO: Representative Max Gruenberg
Co-Chairman, House Health, Education and Social Services Committee

FROM: Edward H. Hein EH
Legislative Counsel

You have asked two questions about CSHB 88 (HESS). I address them in the order asked.

1. Is section 13 unconstitutional in that it allows seizure of property without a search warrant?

Section 13 requires photo processors who come across pornographic pictures of children to report that fact to the police and to provide police with copies of the pictures and any information they have about the origin of the pictures.

Article I, section 14 of the Alaska Constitution prohibits unreasonable searches and seizures of property by law enforcement agents. This protection extends only to situations in which the property owner has an actual, subjective expectation of privacy and one that society is prepared to recognize as reasonable. Smith v. State, 510 P.2d 793, 797 (Alaska, 1973). There is no reasonable expectation of privacy in an object if the owner knowingly exposes the object to strangers. By providing in the statutes that photo processors must report and turnover to police evidence of child pornography, the public is put on notice that they cannot expect such photos to remain private. In addition, section 13 expresses society's view that such an expectation is unreasonable.

Without a reasonable expectation of privacy, a search is not unreasonable and the constitutional provision does not

protect the property from search by law enforcement agents. Once police lawfully view evidence of a crime they are entitled to seize it without a warrant. Thus, the search and seizure provided for in section 13 is not unreasonable and does not violate the search and seizure provisions of the constitution.

I note that the second sentence of section 13 is somewhat ambiguous and may present some problems of interpretation. The sentence requires processors to provide police with "copies" of the pornography. It is not clear whether this means the processor must make duplicates prints for the police or whether the processor is to send negatives and prints to police and refuse to return any of it to the customer. It may avoid legal and practical problems to rephrase this sentence to require the processor to allow the police access to the photos and let the police decide whether they constitute evidence of a crime and whether they should be seized. The police presumably are better trained than processors to make this initial legal determination.

2. Does section 17 change Rules of Evidence 504 and 505? (It states "a child's harm", not necessarily a child in the family of a husband/wife). Do we need a title change?

Section 17 amends AS 47.17.060 by changing the phrase "judicial proceeding" to "civil or criminal proceeding". The Alaska Court of Appeals in State v. R. H. and Mitchell Wetherhorn, 683 P.2d 269 (1984), held that the phrase "judicial proceeding" in that statute refers only to child protection proceedings under AS 47.10.010. Therefore, the amendment in section 17 extends the applicability of AS 47.17.060 to additional proceedings, such as criminal prosecutions of sexual abusers that arise from reports submitted under the child abuse reporting statutes. Extending the applicability of AS 47.17.060 would change Evidence Rules 504 and 505 only if it changed the applicability of the physician- patient privilege or the husband-wife privileges as they are currently provided for in those court rules. I conclude that the amendment does change both Evidence Rules by further restricting the applicability of the privileges. Therefore, both a title change and the insertion of a new section in the bill explaining the changes is required.

The physician-patient privilege of Evidence Rule 504 is changed by section 17 because it would make the privilege

inapplicable not only in child protection proceedings under AS 47.10.010, but also in other proceedings that might arise from those reports, such as a tort action brought by an abuse victim. The amendment of section 17 has no effect on the physician-patient privilege in criminal proceedings, since the privilege is already excluded in all criminal proceedings by subsection (d)(7) of Evidence Rule 504.

Evidence Rule 505 contains two husband-wife privileges, both of which are changed by the amendment of section 17. The amendment would further restrict the applicability of both the spousal immunity and the confidential marital communications privilege by expanding the coverage of AS 47.17.060 to criminal and civil proceedings other than child protection proceedings under
AS 47.10.010. Both husband-wife privileges may not be invoked in certain civil and criminal proceedings specified in subsection (a)(2) and (b)(2) of Evidence Rule 505. But section 17 would make the privileges inapplicable in civil and criminal cases not specified in the exceptions to the rule. Therefore, the amendment changes the evidence rule.

If you have any questions or comments, feel free to contact me at your convenience.

MH:ojb
J13/039

AS 47.35

Enforcement Activities

This is a summary of enforcement activities under the licensing statute for community care facilities. The enforcement activities of monitoring, consultation, standard-by-standard evaluations, and plans of correction are not included. The listing is limited to enforcement that has prevented operation of new facilities or resulted in closure of existing facilities.

Explanation of Terms

Voluntary - A voluntary application withdrawal or cessation of operation is a decision of the applicant or operator. A voluntary application withdrawal or closure relieves the Division of the necessity to revoke, suspend, or deny a license or to seek injunctive relief. Voluntary actions are usually obtained through the persuasion of the licensing representative. The Department of Law advises that voluntary action is a right of the applicant, licensee, or person operating without a license. Those making a voluntary decision should be informed that they are forfeiting their right to appeal.

Suspension - A suspension of operation is time limited, usually to a month or two.

Denial - A license denial is initiated by serving a statement of issues (listing of non-compliances) to an applicant for a license or renewal of a license.

Revocation - A license revocation is initiated by serving an accusation (listing of non-compliances) to the operator of a facility.

Injunctive Relief - Court ordered injunctive relief is obtained to require closure of a facility.

Other Closures - Other closures have been obtained through monitoring following court ordered action regarding the safety of persons in care and persuasion by the licensing representative to sell or close the facility.

NOTE:

This record is not complete. There is no centralized record on new applicants who are persuaded to withdraw their application. Several voluntary closures of foster homes for serious abuse of foster children have not been submitted to the central office licensing record. Finally, there have been numerous voluntary and required suspensions of operation in family day care homes operating without a license and several day care centers that have not been submitted to the central office licensing record.

I. DAY CARE CENTERS

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Charile Brown	Anchorage	1976	Monitored court removal from facility, facility sold	Sexual Misconduct of the owner
Valley Christian Schools	Palmer	1977	immediate revocation, facility closed	life/safety risks
A.B.C.	Anchorage	1978	immediate revocation, administrative hearing, permanent closure	life/safety risks, substantia non-compliance
Rainbow Center	Juneau	1979	Denial of renewal application, closure	Too many chilren in care consistently
Plaza Bingo	Anchorage	1980	court ordered injunctive relief, permanent closure	life/safety risks
XXXXX	Anchorage	1980	license renewal denial, facility sold	abuse reports, substantial non-compliance
New Life	Fairbanks	1982	monitored court prohibited facility contact; facility eventually closed	commune member sexual abuse of children
Powell	Palmer	1982	vol. closure	reports and compaints of inadequate supervision and to many children in care
House of Little People	Fairbanks	1982	immediate revocation, facility sold	director, sexual abuse of children
St. Annes Nursery	Juneau	1982	voluntary suspension for one month	outbreak of contagious disease
Salisbury, Pat	Palmer	1982	withdrawn application	past C.P. case- Pat family instability

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Sitka Day Care Center	Sitka	1982	required supension for one month until licensed	operating without a license
Fellowship Center	Kenai	1983	voluntary closure	life/safety risks, operating without a license
Anderson, Betty	Anchorage	1984	license revocation	child abuse
II. FAMILY DAY CARE HOMES				
Johnson, Melody	Sitka	1979	license revocation	children seriously injured in care
Caselegno, Norma	Fairbanks	1979	denial of application	health and social risks, accidents
Gnath, Jean	Fairbanks	1980	license revocation	University wouldn't allow day care in their housing
McRae, Sarah	Juneau	1982	denial of reapplication of licensure; hearing request was withdrawn	reports regarding substantial risk and too many children in care
Wang, Louella	Anchorage	1982	immediate revocation	children in jeopardy, serious life safety risks
XXXXX	Anchorage	1982	voluntary withdrawal of application for license	unwilling to suspend spaking of babies causing bruising
Metcalf, Shirlyann	Anchorage	1982	license revocation search warrant necessary to censure compliance	substantiated complaints of too many children in care and life safety risks
Rowland, Bonnie	Anchorage	1982	immediate license revocation	too many children in care, children hidden in tent, serious risks

II. FAMILY DAY CARE HOMES (CONTINUED)

NAME	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Bida, Le 'a	Fairbanks	1982	license revocation	operator no at facility, substitute not cleared
Weis, Maria	Fairbanks	1982	license revocation	operator not at facility, subustitute not cleared
Lenear, Theresa	Fairbanks	1982	license revocation	child was providing care
Quarterman, Vermont	Anchora	1983	license revocation	unsafe and unsanitary conditions verified
Papano, Christina	Fairbanks	1983	denial of application	fire exiting not adequate
Kim, Jeanne	Fairbanks	1983	voluntary closure	serious depression and instability of operator
XXXXX	Sitka	1984	denial	violence, drinking

III. RESIDENTIAL CHILD CARE

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Hills, Cookson	Homer	1980	voluntary closure	director-sexual abuse of children
Turning Point	Rainy Pass	1980	voluntary suspension for three months until licensed	child's finger shot off by a staff member, operating without a license
Holland House		1982	license denial, administrative hearing, denial decision upheld	non-compliance with regulations

IV. CHILD FOSTER HOMES

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
XXXXX	Anchorage	1980	denial of re-licensing	accusation by foster child of sexual abuse
XXXXX	Anchorage	1981	vol. closure pending denial of re-licensing	accusation by foster child of sexual abuse
XXXXX	Wasilla	1981	vol. closure pending Mrs. XXXXX contacted office regarding matter	sexual abuse of daughter
XXXXX	Anchorage	1981	voluntary closure	a convicted pedophile
XXXXX	Anderson	1981	voluntary closure	sexual misconduct with a minor
XXXXX	Anchorage	1982	license revocation	unwilling to suspend spanking of babies causing bruising
XXXXX	Fairbanks	1982	voluntary closure	sexual abuse with own child
Cortez, Jeaniie Cortez	Anchorage	1982	denial of reapplication for licensure Administrative hearing upheld contuned licensure	reports o inadequate supervision and risk to children in care
McFarland, Danny and Barbara	Anchorage	1982	vol. closure pending revocation	conviction for sexual abuse of minor (foster child)
Nelson, Shari	Fairbanks	1982	voluntary closure	alcohol/drug problems
[illegible]rland, Larry S.	Anchorage	1983	application withdrawn	evidence of poor judgement in home
Miller, Yvonne A.	Anchorage	1983	denial of license	conviction record of adult male in home

IV. CHILD FOSTER HOMES

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Sherbahn, Ben and	Anchorage	1983	voluntary closure pending revocation	conviction of sexual abuse of minor (foster child)
Brower, John	Barrow	1984	denial, no appeal pursued	1981 Michigan conviction for sexual misconduct with a minor

V. ADULT RESIDENTIAL CARE FACILITIES

FACILITY	WHERE	WHEN	ENFORCEMENT ACTION	REASON
Turnagain	Achorage	1982	license revocation, hearing initiated, voluntary closure	serious physical plant risks, inadequate supervision, operator unable to provide adequate care/safety

1983-1984 Revocation/Denial
(3) (5)

We have not listed voluntary closure (4), those whose license the division would have sought rebocation or denials have vountary closure not occurred. Nor have we listed or pending voluntary closure (8) cases. Nor have we listed denials of initial applications.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSHB 308 (HESS)

SUPPORT

CSHB 308 (HESS) - "An act relating to criminal background checks..."

The Department of Public Safety supports background checks as specified in this bill.

At present, we are exceeding our projected workload for personnel in our fingerprint identification center. Our projections from four years ago indicated a maximum input level of 35 latents and 75 ten print cards per day. We are presently receiving more than 75 criminal cards daily.

With our present backgrounds which are required, plus the applicant cards for school teachers and others supervising children, we are unable to keep up with the workload in a timely manner. This unit must be able to provide timely service to Health and Social Services as well as other employees. Criminal cases take priority over the applicant and background checks.

We propose hiring a clerk and an AAFIS operator to work swing shift. Their primary responsibility will be checks required by this bill.

Each request must be handled several times. We would first complete a background check based on name and demographics. The requester would be notified at our preliminary findings.

After receiving the cards, we would: 1. Acknowledge receipt; 2. Send one card to the FBI with the required funds. The card would be run through AAFIS to verify the persons identity. If different than on the card, a second computer check would have to be accomplished.

After the information is received from the FBI, correspondence would have to be sent to the requesting person or agency.Tickler files would have to be established and maintained to insure backgrounds are done and to avoid duplication.

This bill does not address who is responsible for rolling the prints. We assume it is the applicants responsibility.

Private firms are presently available in Anchorage and Juneau to perform this service. I'm certain that other security firms in other cities would also be interested in providing this service.

The cost in Anchorage is $5.50 and in Juneau $7.50 for this service.

Robert J. Sundberg
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 308(HESS)
Title: "... background checks... contact with children"
Sponsor: House HESS
Requestor: House Judiciary
Date of Request: 04/03/85

FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: AST Support & Service - Laboratory Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		70.2	70.2	70.2	70.2	70.2
200 TRAVEL		1.5	1.6	1.7	1.8	1.9
300 CONTRACTUAL		6.0	6.3	6.6	6.9	7.2
400 SUPPLIES		3.5	3.7	3.9	4.1	4.3
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		81.2	81.8	82.4	83.0	83.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		81.2	81.8	82.4	83.0	83.6
FEDERAL FUNDS						
OTHER						
TOTAL		81.2	81.8	82.4	83.0	83.6

POSITIONS:

FULL-TIME		2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie
Phone: 465-4349
Division: Administrative Services
Date: 4-3-85

Approved by Commissioner:
Date: 4/16/85
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

COST ANALYSIS

CSHB 308 (HESS)

100 Personal Services			
Both positions to work swing shift			$70.2
Latent Fingerprint Examiner I (Range 15A)		$41.6	
Clerk-Typist III (Range 8B)		28.6	
200 Travel			1.5
Travel for training to keep current in fingerprint technique			
300 Contractual Services			6.0
Postage, telephone	3.5		
Printing of fingerprint cards	2.5		
Training fees	.5		
400 Supplies & Materials			3.5
Supplies for computerized fingerprint system	2.0		
Office & library supplies	1.5		
		TOTAL	$81.2

An effective date of July 1, 1985 is assumed.

A 5% annual inflation factor on line items 200-400 is included beginning in FY 87.

	POSITION TITLE				RANGE/STEP	BARG. UNIT	PAGE/LINE	COV.	APPROV.	DISAPP.
1.	Latent Fingerprint Examiner I				15/A	G				
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL	ADDITION								

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	31,349	
6.	Benefits	5,661	
7.	Supplemental Benefits	1,922	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	41,562
10.	Travel	02	1,500
11.	Contractual	03	1,000
12.	Commodities	04	500
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		44,562

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	44.6
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

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.

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.

REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID and Apprehension

BRU AST Support & Service

COMPONENT Laboratory Services

Page of

Revised Date

FY 86

01-113617/821-11

1.	POSITION TITLE: Clerk-Typist III			RANGE/STEP: 8/B	BARG. UNIT: G	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4. TYPE OF EXPENDITURE	1	2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary 1678/mo + 3.75%	20,891	
6.	Benefits	3,772	
7.	Supplemental Benefits	1,281	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	28,574
10.	Travel	02	
11.	Contractual	03	500
12.	Commodities	04	1,000
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		30,074

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	30.1
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR BSM USE ONLY
KEY NUMBER ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

JUSTIFICATION

This position would provide clerical support for background checks under proposed AS 47.35.065. Duties would include correspondence with employers or individuals concerned, accessing of original fingerprint cards on file and refiling, return of cards to applicants, maintaining tickler files and preliminary checks on the Alaska Public Safety Information Network.

The additional clerical workload which would result from passage of SB 21 cannot be absorbed by the two existing clerical positions in the Lab.

This position will work closely with a requested Latent Fingerprint Examiner and is budgeted at the swing sh ft rate.

REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime ID and Apprehension

BRU AST Support & Service

COMPONENT Laboratory Services

Page of

Revised Date

FY 86

01-1136 (7/82)-13

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

January 25, 1985

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

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

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

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

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

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

110 SEWARD #13 JUNEAU ALASKA 99801 (907) 586-3650

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

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

Prepared by:

Child Sexual Assault Task Force
Ruth Lister, WICCA, Inc.
Rosemary Murray, Alaska Women's Resource Center
Co-chairs

110 SEWARD #13 JUNEAU ALASKA 99801 (907) 586-3650

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

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

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

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
3. SAFETY	the priority issue is insuring the victim's safety so s/he is not placed in a position to be re-victimized	support given to non-offending parent in protecting the victim and other siblings; provide counseling, shelter, and support when domestic violence has also occurred	strict controls over access to victim and other potential victims are to be applied in setting bail conditions, incarceration, treatment, work release, and probation; safety issues are to be adequately addressed throughout the criminal justice process; regular monitoring and safety checks should occur while offender is on probation and should be conducted by Probation Officer; probation for no less than 10 years is recommended because of the possibility of suicide and violence to family, arrest should occur immediately
	Victim and family members must receive full protection from time of report. Monitoring and treatment services should be available for at least two (2) years		
4. IMPRISONMENT	victim is reassured that s/he is not responsible for the incarceration ; victim is encouraged to understand that the offender is being punished for wrong-doing	provided support in assuming role as single parent while offender is in prison and/or treatment and out of the home; non-offending parent should not be required to comply with unreasonable and/or non-therapeutic court ordered obligations, such as vistitation, etc.	punishment for crime through imprisonment; treatment and rehabilitation will be provided in a secure facility; treatment will continue if offender is in a work release program or halfway house

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER
5. Treatment	receives therapy and information necessary to work through difficulties arising from assault and subsequent disruption in family after disclosure; individual/group treatment is made available victim is given choice, in her/his own time, whether or not to have contact with the offender; all contact between victim and offender must be supervised	receives support to work through any problems arising from single parenthood and any emotional/financial barriers faced in supporting child; individual/group treatment is made available	1) gets treatment with focus on sexual deviancy as first stage; 2) treatment provided in a secure facility and continuing treatment through community-based programs; 3) with continuation of treatment for sexual deviancy and at the request of the victim, later stages of treatment may focus on healing the relationship with the victim and other family members
	All treatment staff must have adequate training in treatment model, and all treatment must be predicated on the basis that the responsibility for the assault always rests with the offender. The well-being of the child victim must be the primary concern for all family members and treatment providers. All decisions regarding the potential, possible, and/or actual reuniting of the family should be made only when the child victim agrees and only when treatment focusing on sexual deviancy will be continuing. Contact between the child victim and the offender or any other person who is not supportive of the child should be restricted and should only occur under circumstances that are theraputic for and agreed upon by the child		
6. Rural Issues	Local safe homes and support and advocacy must be immediately available to victims and non-offending parents. Community education and organizing, and prevention and education for children and adults, are high priorities. All personnel who are a part of prevention, intervention, and/or treatment in child sexual assault cases must be specifically trained in the dynamics of child sexual assault		
7. Community Safety	Through media, education, and community organizing, the harmful effects of child sexual assault and the need for protection are made clear. Age appropriate prevention information should be made available to all children There is no known "cure" for sex offenders except their control over their own behavior. Provision and/or "completion" of a treatment or rehabilitation program should not be assumed to guarantee the safety of the child victim or potential victims		
8. Adult Survivors	Treatment should be made available, either free of charge or at reasonable sliding scale fees, for adult survivors of child sexual assault by qualified treatment staff		

ISSUES	VICTIM	NON-OFFENDING PARENT	OFFENDER

9. Training

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

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

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

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

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

BILL SHEFFIELD, GOVERNOR

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

OFFICE ADDRESS: 450 WHITTIER STREET

October 31, 1985

The Honorable Mike Miller, Chair
House Judiciary Committee
Alaska State Legislature
Capitol Building
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

I've learned about your interim hearings to address legislation to further protect children. Thank you for the attention your committee has and continues to pay to these issues. I cannot attend the hearings on November 21-23, so I am writing this letter to provide input to your process.

The Council on Domestic Violence and Sexual Assault is grateful for the legislation regarding child protection that passed last session. It clarified and closed gaps in existing legislation. One section of HB88 that did not pass, which we feel is important, required reporting of child abuse committed by an individual who is not responsible for the child's welfare. Section 18 of the original HB88 amended AS 47.17 to address what we consider a major gap in the existing system.

AS 47.17.02 requires reporting to the Department of Health and Social Services if "in the performance of their professional duties", a person listed in statute has "cause to believe that a child has suffered harm as a result of abuse or neglect". Section 47.17.070(i) defines child abuse or neglect as "the physical injury or neglect, sexual abuse, sexual exploitation or maltreatment of a child....by a person who is responsible for the child's welfare..." Therefore, there is no existing mandate for a professional to report abuse by a non-caretaker. For instance, a teacher who has reason to believe that another teacher is harming a child is not mandated to report.

Although, national statistics show that most abuse occurs in the home, it is obvious from talking to Alaskan professionals and reading the newspaper and police reports that there are many non-family incidences in our state. Often parents can and do take action if a non-family member is abusing the child. However, they may not know that abuse is occurring or where to turn if it does. Reporting these crimes will further protect children.

We also feel it is necessary for the system to address the emotional needs of the child victims and families when abuse is by a person who is not responsible for the child's welfare. Presently, in Alaska, there are insufficient support and treatment resources for these cases. Domestic violence and sexual assault programs provide support, assistance and, in some cases, counseling to victims and their families. However, these services are severely limited due to insufficient funding. In order to address the needs of all victims and their families, legislation must address child protection adequately and resources must be provided so children throughout the state are given the services they need to grow up to be healthy adults.

Sincerely,

Barbara J Miklos

Barbara Miklos
Executive Director

cc: Members, Council on Domestic
Violence & Sexual Assault

Council funded programs

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

Document No. 85-119

April 8, 1985

The Honorable Max Gruenberg
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Gruenberg:

This letter is to provide you information regarding the impacts of inclusion of "mental injury" in HB 88.

While the per capita reporting of physical abuse and neglect in Alaska is twice the national average, the percentage breakdowns for physical abuse, child sexual abuse, and neglect are comparable ("Trends in Child Abuse and Neglect: A National Perspective"). That is to say, the proportions of abuse and neglect in Alaska parallel the national occurrence for these categories. Hence, it may be assumed that should the State implement mental injury reporting requirements, the impact would be comparable to the national experience. Nationally, emotional maltreatment was reported as a type of harm suffered in 17% of all reported cases of child abuse or neglect from 1976 - 1982. I estimate the ultimate number of mental injury reports in Alaska to be somewhat lower - approximately 10% of abuse/neglect reports - since some mental injury cases are already being dealt with under existing law, AS 47.10.010 (a)(2)(B), and because some overlap occurs. Reports of harm may include more than one type of maltreatment, e.g., physical abuse and mental injury so that the expected number of reports which involved only mental injury would be lower than 17% of the total, more likely about 10%. I would also expect that the full impact of implementing mental injury reporting requirements would not be experienced immediately. Rather, it would occur over a period of time as public awareness increased and reporters became more familiar with both the requirement to report and indicators of emotional maltreatment. As explained, I would estimate a 10% increase in total child protection reports to ultimately occur. However, I project only a 5% increase during the first year of implementation, with additional increases in succeeding years. Based on FY 84 caseloads, this would mean an additional 527 reports in FY 86, increasing to over 1,000 additional reports by FY 88.

Because of the nature and complexity of these cases, mental injury investigations are expected to require approximately twice the staff time needed to investigate reports of other types of harm. It is much easier to assess observable, physical evidence such as bruises, than it is to confirm a child's aberrant behavior as being the result of the parents' actions. A very conservative estimate of time needed would

indicate two full work days per mental injury investigation. At a minimum, five additional investigative staff would be required statewide in FY 86 to respond to these additional reports.

Of the 527 intakes, it is estimated that 150, or approximately 30%, would become ongoing cases. This percentage is significantly less than the 50 - 55% of all abuse and neglect reports that become open cases, according to our Anchorage line staff estimate. The difference again reflects the complexity of substantiating mental injury. Using the State's caseload standard of 50 cases per worker, 3 additional line workers would be required to provide ongoing services. Total investigative, ongoing services, and clerical staff need in FY 86 would be 10.

Because of the nature of the presenting problems, considerable treatment resources would need to be provided to children who are diagnosed as being mentally abused. These costs for FY 86 would be as follows:

1.	Psychological evaluations (60% of all reports @ $150/evaluation - evaluation necessary to assess mental injury)	$ 47,000
2.	Psychological counseling (50% of ongoing cases will require psychological sessions for 3 months, twice monthly for 9 months @ $80/session)	$180,000
3.	Substitute Care	
	A. Foster care (38 FTE's @ $ 19.24/day)	$310,000
	B. Institutional care (11 FTE's @ $121.00/day)	$473,580

The number of psychological evaluations and the level of ongoing psychological counseling is expected to be higher than what is being provided to other abuse and neglect clients as a result of behavioral impairment. Substitute care estimates are based on the level of out-of- home care now being provided to children in custody.

The total estimated cost for FY 86 is as follows:

1.	Staff/support costs	$ 570.8
2.	Psychological services	227.0
3.	Institutional care	473.6
4.	Foster care	310.8
		$ 1,582.2

Costs for succeeding years would, of course, reflect increases based on projections from actual cases in FY 86.

I hope this information is helpful when assessing the inclusion of mental injury in proposed legislation.

Sincerely,

John R. Pugh
Commissioner

cc: The Honorable Peter Goll
Alaska State House

Christian Science suggested amendment:

47.17.020 add.

(e) This section does not require a religious healing practitioner to report as neglect of a child the failure to provide medical attention to the child if the child is provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

(Received by Connie J. Sipe from Richard Block)

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1984

The Honorable Peter Goll
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Goll:

Thank you for your letter of February 13, 1984, regarding amending AS 47.17 to include language regarding psychological injury as a form of child abuse. Currently Alaska law does not provide explicit protection of children from harm to their mental or emotional well-being. Existing statutes focus on physical harm to children and neglect the equally handicapping and often more far-reaching effects of mental or emotional maltreatment. While physically abused children are almost always emotionally maltreated as well, emotional maltreatment may occur alone. Children suffering only mental maltreatment are presently unprotected under Alaska law. This gap in protection of children can generally be attributed to dissatisfaction with criteria for defining and identifying mental or emotional maltreatment and a fear that an insufficient definition would provide too great an opportunity for unwarranted governmental intrusion into Alaskan family life. It is this Administration's position that these issues can be adequately addressed.

We recommend the following amendments to AS 47.17:

1) That the term "mental injury" be used.

2) That a section be added to the Bill to amend AS 47.17 as follows:

AS 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical or mental 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 children in this state, and to preserve family life whenever possible.

3) That a section be added to amend AS 47.17.[illegible](1) to read as follows:

(1) "Child abuse or neglect" means the physical or mental injury or neglect, sexual abuse, sexual exploitation or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

4) That a section be added amending AS 47.17.070 by adding a new paragraph to read:

(9) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance and behavior, with due regard to his culture.

These changes would remove any ambiguity about the intent of the Legislature and would require that harm to the mental health of a child be reported and investigated where such harm appears to have arisen by intent of the person responsible for the child's welfare.

The Department of Health and Social Services has concluded that the suggested amendments to AS 47.17 would require no additional fiscal resources. It is expected that instances of reported emotional injury to children will be relatively small in number and can be investigated satisfactorily with existing staff.

Finally, we believe that this legislation should be changed for the above stated policy reasons. The benefits which would accrue to the State by becoming eligible for funding under PL 95-266 are a secondary gain.

Sincerely,

Bill Sheffield
Governor

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

Document No. 84-35

February 15, 1984

The Honorable Peter Goll
Representative
Alaska State Legislative
Pouch V
Juneau, AK 99811

Dear Representative Goll:

This letter is in response to your letter of January 24, 1984, in which you asked whether the $44,450 we could receive in federal funds would be comparable to the expenses of implementing a change in AS 47.17. This Department has not done a cost benefit analysis of the impact of this change. However, we would like to point out that funds available to states under P.L. 95-266 are allocated on the basis of population. Thus, for states with larger populations, there is more incentive than there is to Alaska. The Federal Government specifies that these funds are to be used for grants to community agencies in the area of child abuse and neglect (CAN) and also requires that a state CAN liason attend yearly national meetings which are generally held on the east coast. Thus, the travel costs must come out of the state's allocation.

If Alaska were to receive these funds, they would be added to the Division of Family and Youth Services' Preventative Services grant program, which is currently funded at the level of $1.9 million. We would, of course, be pleased to have this additional funding added to the grant program, as it could fund another small program somewhere in the State, or help to fund a larger program.

We hope this information clarifies the situation.

Sincerely,

Robert London Smith

Robert London Smith, Ph.D.
Commissioner

06-F38LH

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 16, 1983

MEMORANDUM

TO: Representative Peter Goll

FROM: Heidi Borson HB
Legislative Analyst

RE: Child Abu[illegible]
Research [illegible]est 83-202

After sending you our report on child abuse and neglect, I received some materials which may interest you. Attached is a letter from Bruce Berglund, Child Abuse and Neglect Specialist for Region X of the Department of Health and Human Services. His letter outlines the materials he enclosed, and also provides a description of steps Alaska needs to take in order to meet National Center on Child Abuse and Neglect (NCCAN) state grant eligibility requirements, and a history of previous attempts to bring Alaska statutes into conformance with NCCAN standards.

I also received a fact sheet on Michigan's Children's Trust Fund and copies of the bills which established the fund from Sharon Shay, Council for the Prevention of Child Abuse and Neglect. If you would like to review any of the materials Ms. Shay and/or Mr. Berglund sent me, please let me know. I will glady forward copies to you.

Attachments

HB

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Human
Development Services

Region X
M/S 413
2901 Third Avenue
Seattle, WA 98121

November 3, 1983

Heidi Borson
40 House Research Agency
Pouch Y
Juneau, Alaska 99811

Dear Ms. Borson:

As a supplement to our October 31st telephone conversation, I am sending you some material that relates to child abuse and neglect, Alaska and Federal standards to help Alaskan children.

(1) Please refer to the enclosed "Study Findings" that gives a picture of the extent of the problem.

(2) Also enclosed is relevant information on the National Center of Child Abuse and Neglect (NCCAN).

a) The Federal Law on NCCAN
b) The NCCAN Code of Federal Register (CFR)
c) Statement of Assurance for Eligibility
d) Instructions for Making Application
e) Funding

(3) The proposed CFR on FY'84 Demonstrations.

Federal eligibility determination includes a review of Alaska's application, current laws and interpretation of those laws. Until Alaska makes formal application there will be some doubt where the state stands. Based on what we have, Alaska needs to:

(1) Pass an amendment to their CA/N reporting law to include the words, "mental injury". For an example of a total reporting law that meets federal eligibility please refer to PL95-266, Section 3.

(2) Either an amendment or a formal opinion by the Alaska Attorney General indicating that persons responsible for the child includes public and private institutions.

(3) Either an amendment or a formal opinion by the Attorney General stating that, " having cause to believe" is synonymous with, "suspect" in child abuse and neglect reporting.

(4) Review the Alaska inclusion of sexual abuse and sexual exploitation of children in your reporting law. Alaska statutes do not need to use the same words as long as the

state covers the conditions and situations described in CFR Part 1340.2(d). The last General Council review of Alaska statutes was before the issuance of the January 26, 1983 CA/N CFR which details eligibility in this area for the first time.

The DHHS, Regional and Central Offices have encouraged Alaskans to meet NCCAN state grant eligibility (standards) since 1974.

Alaska has declined every year but one to apply for their allocation under Subsection 4(b) (2). The most serious ineligibility factor in Alaska is the failure of the legislators to pass legislation including mental injury as a part of the state's definition of CAN.

In 1976, legislation was introduced to specifically include mental injury in the state's definition of CAN. After considerable debate the legislators did make the decision not to expand on the present definition.

In 1978, an attempt was made to secure an Attorney General's opinion that existing statutes could be interpreted to include mental injury. This approach turned out not to be feasible.

In 1979, some Alaska legislators made an unsuccessful attempt to remove neglect from the existing CAN statutes. As a result of these limited efforts the Department chose not to attempt to broaden the definition of CAN.

In 1980, legislation was reintroduced to include mental injury in the state's definition of CAN. (H.B. 545). The CAN Regional Resource Centers (RRC) efforts to educate legislators about CAN was apparently responsible for the introduction of H.B. 545.

Also in 1980 the Director of the Anchorage Child Abuse Board with urging from the Regional CA/N Specialist offered to continue working with Alaska legislators in reintroducing legislation including mental injury in the Alaska statute defining CAN.

When the Regional CAN Specialist met with Commissioner Beirne in 1981, she felt that mental injury should by all means be included in Alaska's statute definition. She said that such a proposal to legislators would however need to come from outside the Department.

Regional Office efforts continued in 1982.

In 1983 due to OHDS reorganization the Regional CA/N Specialist worked with the Alaska HHS Representative rather than with Alaska's directly.

As I said over the phone Ms. Borson, we are very interested in Alaska

children being helped thru these NCCAN standards and would welcome an opportunity to pursue eligibility issues with you and other Alaska citizens.

Please let us know the response to this material and where we might help.

You may reach me at (206) 442-8109.

Sincerely,

Bruce Berglund
CA/N Specialist

Enclosures

March 18, 1985

The Honorable Peter Goll
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Peter Goll:

I am asking you to support and enact HB 88 relating to the protection of children.

In Sections 47.17.069(4) and .070(1) of the bill, the terms "mental injury" and "emotional injury" are vague and need to be clarified.

In Section 11.51.100(1), what is and who determines "substantial risk"?

A provision stating that if the State assumes custody of 1 child in a family-all other children in the family need to be protected in the same way.

Also a provision protecting the rights of a preverbal child needs to be included.

I am currently involved in a case with the Division of Family and Youth Services and a preverbal child. The information on the case is attached.

If you can use my testemony or have any questions, please contact me at the numbers or address listed below.

Thank you.

Peggy Patten

Peggy Patten
Wk. 465-2570
Hm. 789-2825
P. O. Box 3053
Juneau, AK 99803

The case with the Division of Family and Youth Services involves 1 child (4 years old) in a family who was determined by the State to be a child in need of aid (CINA) and removed from the mother's home. After this action was taken by the State, this same mother took custody of her other 18 month old child who had been living with an aunt for 14 months as a foster child. This same mother lived 2 streets over from where her 18 month old child had lived but only visited her child 5 times in the 14 months and for no longer than 30 minutes per visit.

The case was brought to court to get a temporary restraining order preventing the mother from having custody of this child during the mother's probationary period, (the same time period the other child was in custody of the state). The judge ruled that due to the vagueness of the law he had to award custody of the daughter to the natural mother even though:

1. Her other 4 year old child was determined by the State to be a Child in Need of Aid and removed from her home;

2. She failed the first 3 months of her probation/rehabilitation program with the State and was not making progress with her second 3 months (second chance);

3. She is living with a man who has a record of woman/child abuse.

4. This 19 month old, preverbal child is left alone in the care of this known abuser while the mother goes to her required classes during the days and evening.

5. The judge also ruled that the child was in a potential abusive situation and appointed a guardian at litem who was not named until 4 weeks after the hearing in court.

(The mother was abused as a child. Her State programs include parent aide, homemakers program, and alcoholic counseling.)

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 17, 1984

Dr. Robert London Smith
Commissioner
Department of Health and Social Services
Pouch H 01
Juneau, AK 99811

Dear Commissioner Smith:

Thank you for your letter of March 9, concerning the issue of psychological abuse to minors.

I am pleased to have the support of the Department on this critical issue.

Should I decide to introduce this legislation next Session, I will contact you in a timely fashion.

Best Regards,

Peter Goll

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE:

DOCUMENT NO. 84-78

March 9, 1984

The Honorable Peter Goll
Representative
The Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Goll:

Thank you for your letter of February 21, 1984, regarding psychological abuse. The Department continues to be in support of legislative changes to AS 47.17 which would add emotional injury to the problem areas which must be reported to the Department. We do believe that such a change would provide additional legal protection to an unknown number of children. Should you be willing to introduce such legislation, the Department would certainly be in support, and would be happy to provide any available information which would be helpful.

Sincerely,

for Robert London Smith, Ph.D.
Commissioner

06-F38LH

REPRESENTATIVE
PETER GOLL

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

February 28, 1984

Mr. Bernard E. Kelly
Regional Director
Department of Health and Human Services
Region X
2901 Third Avenue
Seattle, Washington 98121

Dear Mr. Kelly:

Thank you very much for your letter of February 24. I will contact the Department of Health and Social Services and make every effort to resolve this issue in a productive manner.

I appreciate your time and interest in this matter.

Sincerely,

Peter Goll

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the
Regional Director

Region X
M/S 504
2901 Third Avenue
Seattle, WA 98121

February 24, 1984

The Honorable Peter Goll
State of Alaska
House of Representatives
Juneau, Alaska 99811

Dear Mr. Goll:

This is in response to your December 28 letter to Mr. Bruce Berglund of the Department of Health and Human Services Administration for Children, Youth and Families (ACYF). You had requested our office to review with the Department of Health and Social Services (DHSS) the necessary steps to comply with Federal standards to be eligible for NCCAN funds and further to advise you of specific language to be included in Alaska statutes.

DHSS recently contacted our ACYF staff which provided them with the information on specific steps necessary for Alaska to now meet eligibility standards for NCCAN grants. In addition, Edward Singler, Regional Administrator for Human Development Services which oversees the ACYF, wrote to Commissioner Smith and provided him with information and program guidelines to assist Alaska's efforts toward eligibility for funding.

One of the guidelines which DHSS personnel may have difficulty meeting is the March 31, 1984 deadline to apply for NCCAN funds. If this is the case, the recent program instruction which DHSS has received as a part of Mr. Singler's letter included a statement on a waiver of this deadline. The waiver reads:

> States which are presently ineligible but have legislation in progress which might affect their eligibility should request, from the Regional Program Director, a waiver of the March 31, 1984 deadline for the submission of their Statements of Assurance. However, the deadline cannot be extended beyond June 30, 1984, as State allocations must be made by that date in order that awards can be made before the end of FY 1984. Finally, the waiver of the deadline and extension of time applies only to the Statement of Assurance. The application for Federal Assistance (Form 424) must be made by all applicants no later than March 31, 1984.

In addition to the specific steps needed for eligibility mentioned in our letter to Ms. Heidi Borson, in Mr. Singler's letter and enclosures, and in our telephone discussion with DHSS personnel, following are several other considerations:

- Senate Bill 327, Senator Slurgulewski's bill on emotional injury, changes both the Alaska criminal code (11.51.100(a)) as well as the Child Protection Definition or Reporting Statute (Sec.47.17.070). If there is a possibility of the "under 10 years of age" restriction in the criminal code being construed to apply to the reporting statute, it would not be an acceptable standard to protect children or meet NCCAN eligibility.

- Generally we agree with the DHSS position paper on Senate Bill 327. Many of the comments reflect information that we have sent to DHSS. It appears DHSS does not feel that the "under 10 years" in the criminal code would affect the Reporting Statute and indeed the wording they suggest is satisfactory.

- In discussing a definition of "mental injury," the DHSS staff, on page 3, item 4(9) of the position paper, state that "Mental injury means . . . substantial impairment in the child's ability to function within a normal range of performance . . . ." The Federal intent is to evaluate a child on what is normal for his maturation and circumstances rather than attempting to compare him with others. Our preference would be to change the phrase to ". . . function within that child's normal range of performance . . . ."

A copy of Senator Slurgulewski's bill is enclosed as well as a copy of the DHSS position paper on the bill. We have also enclosed a comment regarding the definition of mental injury.

Our recommendation for the inclusion of mental injury in your Reporting Statute is to keep the definition simple because of the necessity of a broad definition to meet the legislature's intent which is maximum protection of children; of the impossibility of the legislature to predict every instance of mental injury; reasonable parents receive enough guidance by the statute to behave accordingly; and definitions do not cede to the agencies' blanket authority to exercise their discretion.

We urge passage of Alaska Senate Bill 327 since this could very possibly eliminate a major barrier to Alaska's eligibility for program funding, unless earlier comments about the criminal code and "under 10" apply. If this bill does not pass the present legislative session, pending Federal legislation may still provide Alaska an opportunity to be elibile for NCCAN funds. As you may be aware, the United States House of Representatives recently passed H.R. 1904 which contains a different waiver for States. The waiver reads:

> States that do not qualify may be granted a waiver for two years if the Secretary determines the State is making a good faith effort to comply.

It appears the Senate also will include this waiver, though it is not presently in the companion bill, S.1003. In addition, the Department of Health and Human Services will need to publish Federal regulations to accommodate this provision which would delay Alaska's receiving funds for another year. Therefore, even if this waiver is eventually passed by both Houses, there may not be enough time for Alaska to apply for fiscal year 1984 funds.

I am enclosing another copy of the Statement of Assurance that Governor Sheffield needs to sign for eligibility. I suggest your legal services and Attorney General review all 15 assurances.

I appreciate the important efforts you are making on behalf of Alaska's children. If you need additional assistance or further information, please contact me.

Sincerely,

Bernard E. Kelly
Regional Director

Enclosures

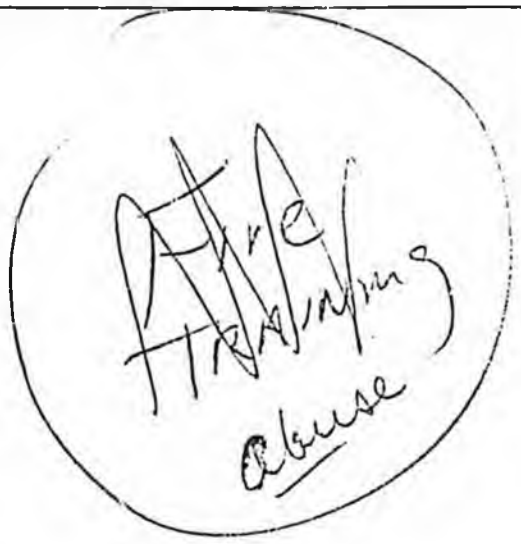
cc:
Governor William Sheffield
Commissioner Robert L. Smith

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the
Regional Director

Region X
M/S 504
2901 Third Avenue
Seattle, WA 98121

February 24, 1984



The Honorable Peter Goll
State of Alaska
House of Representatives
Juneau, Alaska 99811

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- o Senate Bill 327, Senator Slurgulewski's bill on emotional injury, changes both the Alaska criminal code (11.51.100(a)) as well as the Child Protection Definition or Reporting Statute (Sec.47.17.070). If there is a possibility of the "under 10 years of age" restriction in the criminal code being construed to apply to the reporting statute, it would not be an acceptable standard to protect children or meet NCCAN eligibility.

- o Generally we agree with the DHSS position paper on Senate Bill 327. Many of the comments reflect information that we have sent to DHSS. It appears DHSS does not feel that the "under 10 years" in the criminal code would affect the Reporting Statute and indeed the wording they suggest is satisfactory.

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> States that do not qualify may be granted a waiver for two years if the Secretary determines the State is making a good faith effort to comply.

It appears the Senate also will include this waiver, though it is not presently in the companion bill, S.1003. In addition, the Department of Health and Human Services will need to publish Federal regulations to accommodate this provision which would delay Alaska's receiving funds for another year. Therefore, even if this waiver is eventually passed by both Houses, there may not be enough time for Alaska to apply for fiscal year 1984 funds.

I am enclosing another copy of the Statement of Assurance that Governor Sheffield needs to sign for eligibility. I suggest your legal services and Attorney General review all 15 assurances.

I appreciate the important efforts you are making on behalf of Alaska's children. If you need additional assistance or further information, please contact me.

Sincerely,

acting for Bernard E. Kelly
Regional Director

Enclosures

cc:
Governor William Sheffield
Commissioner Robert L. Smith

IN THE SENATE BY STURGULEWSKI

SENATE BILL NO. 327

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to child abuse."

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

* Section 1. AS 11.51.100(a) is amended to read:

(a) A person commits the crime of endangering the welfare of a minor if, being a parent, guardian, or other person legally charged with the care of a child under 10 years of age, the person intentionally deserts the child in any place under circumstances creating a substantial risk of physical or emotional injury to the child.

* Sec. 2. AS 47.17.070 is amended by adding a new paragraph to read:

(8) "harm" means physical or emotional injury to a child which threatens a child's health or welfare.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
SENATE BILL 327

"An act relating to child abuse."

Senate Bill 327 would amend Alaska's criminal code to include placing a child in circumstances creating substantial risk of emotional injury to the child in the definition of the crime of endangering the welfare of a minor. It would also amend Alaska's child protection statute to define harm to a child as both physical and emotional injury which threatens the child's health or welfare.

By defining harm to include emotional injury SB 327 would also have the effect of requiring professional persons who must report harm from physical abuse to also report instances of emotional injury. The Department would in turn be required to investigate such reports and act appropriately to protect children.

The Department supports SB 327 as an appropriate and needed expansion of the range of protection provided for Alaskan children. As presently constructed, Alaska law does not provide explicit protection of children from harm to their mental or emotional well-being. Existing statutes focus on physical harm to children and neglect the equally handicapping and often more far-reaching effects of mental or emotional maltreatment. While physically abused children are almost always emotionally maltreated as well, emotional maltreatment may occur alone. Children suffering only mental maltreatment are presently unprotected under Alaska law.

This gap in protection of children can generally be attributed to dissatisfaction with criteria for defining and identifying mental or emotional maltreatment and a fear that an insufficient definition would provide too great an opportunity for unwarranted governmental intrusion into Alaskan family life. It is the Department's position that these issues can be adequately addressed.

Emotional maltreatment can be differentiated as a category of child abuse and neglect apart from ineffective or even occasionally harmful parenting through four criteria which can be made implicit in the definition of emotional or mental maltreatment. These criteria are:

1. Emotional maltreatment is generally a chronic pattern of parental behavior rather than an occasional lapse; and it has an adverse effect on the child. It causes an emotional or mental injury.

2. The effect of emotional maltreatment is observable in the child's abnormal performance or behavior.

3. The effect of such maltreatment is long-lasting. The maltreatment brings about an erosion of the child's capacity to think and feel.

4. The effect of emotional or mental maltreatment constitutes a handicap to the child. It causes substantial impairment of the child's ability to think, to learn, and to enter into relationships with others and to find satisfaction in his/her endeavors.

Although emotional or mental maltreatment is rarely manifested in physical signs, there are a few physical indicators: speech disorders, lags in physical development, and failure to thrive syndrome (which is a progressive wasting away usually associated with the lack of mothering). More often emotional harm is indicated through behavior which is often similar to that of emotionally disturbed children. Emotionally injured children are impaired in their ability to function and often exhibit poor self concepts and impaired overall thought processes. They often have low impulse control and high levels of aggression, anxiety, and self-destructiveness. Such children often display high levels of anti-social behavior as they grow older. These anti-social behaviors such as truancy, extreme aggressiveness, delinquency, and attempted suicide often require the intervention of State or local government agencies and the provision of special services which are often far more expensive and certainly less protective of the child than prevention or intervention at an earlier time would have been.

The Department recommends four amendments to SB 327 to clarify the intent to provide protection of children from emotional harm and to provide a clearer, more legally practicable definition of mental injury. Suggested amendments are as follows:

1. That the term "mental injury" be substituted for emotional injury in Sections 1 and 2 of the Bill.

2. That a section be added to the Bill to amend AS 47.17.010 as follows:

   AS 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical or mental 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 children in this State, and to preserve family life whenever possible.

3. That a section be added to amend AS 47.17.010(1) to read as follows:

   (1) "Child abuse or neglect" means the physcial or mental injury or neglect, sexual abuse, sexual exploitation or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

4. That a section be added amending AS 47.17.070 by adding a new paragraph to read:

   (9) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance and behavior, with due regard to his culture.

These changes would remove any ambiguity about the intent of the legislature and would requir that harm to the mental health of a child be reported and investigated where such harm appears to have arisen by intent of the person responsible for the child's welfare.

The vast majority, 47 of the 50 states, have statutory provisions protecting children from mental abuse or neglect similar to those recommended by the Department. Such provisions are encouraged by the Federal Department of Health and Human Services and the inclusion of such provisions in State law makes states eligible to receive federal grant funds under Public Law 93-247. Passage of SB 327 would make Alaska eligible to receive $45,379 which could in turn be granted for the provision of child abuse prevention and treatment programs and services.

The Department has concluded that passage of SB 327 as it is presently constructed or with the suggested changes would require no additional fiscal resources. It is expected that instances of reported emotional injury to children will be relatively small in number and can be investigated satisfactorily with existing staff.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL 327
PAGE 4

RECOMMENDED: Michael L Price

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

DATE: 1/25/84

APPROVED BY: _____

Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

DATE: _____

"Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in his ability to function within his normal range of performance and behavior, with due regard to his culture.

Comment

This subsection defines the term "mental injury" which appears in subsection 4(c)(i), supra. However, since that section requires that the parent or other person responsible for the child's welfare "inflict" or "allow to be inflicted" the "mental injury," the mental injury must be clearly attributable to the acts or omissions of the parents and the mental injury to the child must be established clearly before the child can be considered abused or neglected. The causes of mental injury or emotional illness are complex; it would be unfair to automatically blame the parents for a child's mental or emotional condition, and yet, this is an all too common consequence of abuse and neglect. It is important to note that the Model Act requires that the mental injury be "evidenced" by an "observable and substantial impairment." This might include failure to thrive; inability to think and reason; inability to control aggressive or self-destructive impulses; acting-out or misbehavior, including incorrigibility, ungovernability, or habitual truancy. Expert psychiatric or psychological examination often can demonstrate the relationship between a child's mental condition and the acts or omissions of the persons responsible for his welfare, especially if the child improves during the time he is in agency care or his family is under an agency's supervision. Finally, the Model Act is careful to acknowledge the need to make all such judgments about mental injury "with due regard" to the child's culture. Thus, a low IQ score should be evaluated within the context of the cultural distortion inherent in most measures of intelligence.

STATEMENT OF ASSURANCE

NOTE: Please do not attempt to complete this form without first reviewing the Program Instructions for making application for a State Child Abuse and Neglect Grant.

Applicable Section of CFR 1340	Statement

Statement No. 1

1340.1-2(b) The State definition of "child abuse and neglect," is in accordance with all aspects of the following:

"Child abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare.

"Harm or threatened harm to a child's health or welfare" can occur through: Nonaccidental physical(1) or mental injury(2); sexual abuse, as defined by State law(3); or negligent treatment or maltreatment, including the failure to provide adequate food, clothing or shelter(4). Provided, however, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent(5).

"Child" means a person under the age of eighteen(6).

"A person responsible for a child's health or welfare" includes the child's parent(7), guardian (8) or other person responsible for the child's health or welfare(9), whether in the same home as the child(10), a relative's home(11), a foster care home(12) or a residential institution (13).

NOTE: Items numbered (1) through (13) indicate different aspects of the requirements for the definition.

State Statutory Provision

Applicable Section of CFR 1340	Statement
	Statement No. 2
1340.3-3(d)(1)	The State has in effect a State child abuse and neglect reporting law.
	State Statutory Provision
	Statement No. 3
1340.3-3(d)(1)	The State provides all persons reporting known or reasonably (good faith) suspected instances of child abuse and neglect with immunity from civil and crimin- prosecution under any State or local law, arising out of such reporting.
	State Statutory Provision
	Statement No. 4
1340.3-3(d)(2)	The State provides for mandatory reporting by some persons(1) and permissive reporting by all persons(2) of known or suspected instances(3) of child abuse and neglect(4) to a properly constituted authority with the power and responsibility to perform an investigation (5) and take necessary ameliorative and protective steps as required in paragraph (d)(3) of section 1340.3-3(6).
NOTE:	(1)-(6): These include the various aspects which must be satisfied in order to meet this requirement. Only the mandatory reporting provision (1) requires documentation from State law.
	State Statutory Provision
	Statement No. 5
1340.3-3(d)(2)	The State provides that the reporting referred to in paragraph (d)(2)(i) must be to an agency other than the agency, institution or other facility involved in the acts or omissions, if the report of child abuse and neglect involves the acts or omissions of a public or private agency or other institutiton or facility.

Applicable Section of CFR 1340	Statement
	Statement No. 6
1340.3-3(d)(3)	The State provides that upon receipt of a known or suspected instance of child abuse or neglect an appropriate investigation is initiated promptly by a properly constituted authority to substantiate the accuracy of the report.
	Statement of No. 7
1340.3-3(d)(3)	The State provides that, upon a finding of abuse or neglect, immediate steps are taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.
	Statement No. 8
1340.3-3(d)(4)	The State has in effect throughout the State such administrative procedures, such trained personnel, such training procedures, such institutional and other facilities (public and private) and such related multidisciplinary programs and services as may be necessary to assure effective enforcement of the child abuse and neglect laws, specifically including: provision for the receipt, investigation and verification of reports; provision for the determination of treatment or ameliorative social service needs; provision of such services; and, when necessary, resort to criminal or juvenile court.
	Statement No. 9
1340.3-3(d)(5)	(a) The State provides by law for the preservation of the confidentiality of all records concerning reports of child abuse and neglect in order to protect the rights of the child, his parents or guardians.
	State Statutory Provision
	(b) Unauthorized dissemination of the contents of the records concerning reports of child abuse and neglect is a crime.
	State Statutory Provision

Applicable Section of CFR 1340	Statement
	Statement No. 10
1340.3-3(d)(6)	The State provides for the cooperation of law enforcement officials, courts of competent jurisdiction and all appropriate State agencies providing human services in relation to preventing, identifying and treating child abuse and neglect.
	Statement No. 11
1340.3-3(d)(7)	The State provides that in <u>every</u> case involving an abused or neglected child which results in a <u>judicial proceeding</u>, a guardian <u>ad litem</u> is appointed to represent the child in such proceeding.
Note:	Please check one of the following and attach documentation.
	____A State law that such appointments <u>must</u> be made in all cases. ____A State law which permits appointments and a Governor's statement that appointments are made in all cases. ____A State Attorney General's opinion that required appointments can be made and a Governor's statement that such appointments are made in all cases. ____A State Attorney General's opinion that the attorney charged with the presentation in a judicial proceeding is also required to represent the rights of the child where such responsibility is not indicated in law.
	Statement No. 12
1340.3-3(d)(8)	The State provides that the aggregate of support for programs or projects related to child abuse and neglect <u>assisted</u> by State funds has not been reduced below the level provided during Federal fiscal year 1973.
	Statement No. 13
1340.3-3(d)(8)	The State has policies and procedures designed to assure that Federal funds made available under this Act, for any fiscal year, will be used to supplement, and, to the extent practicable, increase the level of State funds which would, in the absence of Federal funds, be available for such programs and projects.

Applicable Section of CFR 1340	Statement
	Statement No. 14
1340.3-3(d)(9)	The State provides for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat instances of child abuse and neglect.
	Statement No. 15
1340.3-3(d)(10)	The State insures, to the extent feasible, that parental organizations combating child abuse and neglect, as recognized by the State, receive preferential treatment.

I HEREBY STATE AND ATTEST THAT the information supplied in this form is true, to the best of my information and belief, and that should any facts or circumstances leading to such information be modified, I shall, within 30 days, so inform the Department of Health and Human Services.

Dated_____ BY_____

Governor

Federal Register

Wednesday
January 26, 1983

Part II

Department of Health and Human Services

Office of Human Development Services

Child Abuse and Neglect Prevention and Treatment Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1340

Child Abuse and Neglect Prevention and Treatment Program

AGENCY: Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is issuing final regulations to implement the amendments to the Child Abuse Prevention and Treatment Act contained in Title 1 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. 95–266, as amended. The regulations also clarify, simplify and eliminate where repetitive of the statute, the rules governing the Child Abuse and Neglect Prevention and Treatment Program and those related to the coordination of Federal activities related to child abuse and neglect.

EFFECTIVE DATE: February 25, 1983.

FOR FURTHER INFORMATION CONTACT: Jay Olson, Special Assistant to the Director, National Center on Child Abuse and Neglect, Room 2008D, Donohoe Building, 400 6th Street SW., P.O. Box 1182, Washington, D.C. 20013, (202) 245-2859.

SUPPLEMENTARY INFORMATION

Background

The Child Abuse Prevention and Treatment Act (Pub. L. 93–247) (the Act) (42 U.S.C. 5101 et seq.) was enacted in 1974. It established within the Department of Health, Education and Welfare (now the Department of Health and Human Services) the National Center on Child Abuse and Neglect. The National Center is organizationally located within the Children's Bureau of the Administration for Children, Youth and Families, Office of Human Development Services.

The National Center on Child Abuse and Neglect, through the Act, was given responsibility for:

- Compiling and disseminating an annual summary of recent and ongoing research on child abuse and neglect,
- Developing and maintaining an information clearinghouse,
- Compiling, publishing and disseminating training materials,
- Providing technical assistance to public and nonprofit private agencies and organizations,
- Conducting research, and
- Making a complete and full study of the national incidence of child abuse and neglect.

The Act also authorized the Center to make grants or enter into contracts with public agencies or nonprofit private organizations for demonstration programs and projects designed to prevent, identify, and treat child abuse and neglect, as well as make grants to States to assist States in developing, strengthening and carrying out child abuse and neglect prevention and treatment programs.

Finally, the Act provided that the Secretary appoint an Advisory Board to assist in coordinating Federal programs and activities related to child abuse and neglect and develop Federal standards for child abuse and neglect prevention and treatment programs and projects.

Pub. L. 95–266, enacted on April 24, 1978, extended the Child Abuse Prevention and Treatment Act through September 30, 1981. It also amended the Act by adding, in Section 3, sexual exploitation to the definition of child abuse and neglect. As a result, States applying for a State child abuse and neglect grant under Section 4(b)(1) of the Act are required to include sexual exploitation in their definition of child abuse and neglect.

The Department published a Notice of Proposed Rulemaking (NPRM) on May 27, 1980 (45 FR 35794) to implement these amendments.

Subsequently, Title VI, Chapter 7, of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, extended the programs authorized by the Child Abuse Prevention and Treatment Act, Pub. L. 93–247, as amended, through Fiscal Years 1982 and 1983.

In addition to the changes in the regulation required by Pub. L. 95–266, the Department of Health and Human Services is taking this opportunity to clarify and simplify the existing regulation in accordance with the Secretary's regulatory reform principles. In this context, we have omitted from these final rules those provisions contained in the NPRM which merely repeat the statute.

Discussion of Major Comments and Changes

The Department received approximately 60 comments from 24 agencies, organizations and individuals in response to the NPRM published on May 27, 1980 (45 FR 35794). Included below is a summary of the major comments from respondents, our response to those comments, and a discussion of the changes that we have made in the regulations.

Subpart A—General Provisions

Section 1340.1 Purpose and Scope

Section 1340.1(b)(3) authorizes the National Center on Child Abuse and Neglect to make grants or contracts for research, demonstration, and service improvement programs and projects. Eligibility for an award of a grant or contract in these specific areas is governed by the Act and is different for research applicants and demonstration and service improvement applicants. Therefore, the phrase "with public or private agencies and organizations" has been deleted as it pertained to only one category of eligible applicant; also there is no need to repeat the Statute.

Section 1340.2 Definitions

There were a number of supportive comments for many provisions of the proposed regulation. This included support for the definition of child abuse and neglect contained in § 1340.2.

Definition of Sexual Abuse and Sexual Exploitation (§ 1340.2(d) (1) and (2))

Comment.—Some respondents were particularly concerned about the possibility that States may need a legislative change to include sexual exploitation in their definition of child abuse and neglect. (The definition of child abuse and neglect specifies the reportable conditions or situations of child maltreatment.)

Response.—The 1978 amendments to the Child Abuse Prevention and Treatment Act added "sexual exploitation" to the definition of child abuse and neglect in the Act (42 U.S.C. 5102). The current regulations include within the definition of "child abuse and neglect" the phrase "sexual abuse as defined by State law." In order to avoid confusion in the meaning of the terms "sexual abuse" and "sexual exploitation" we added definitions for each of these terms in the Notice of Proposed Rulemaking (see § 1340.2(d) (1) and (2)).

A State is not required to have the words "sexual abuse" and "sexual exploitation" in its State statute as long as the State statute covers the conditions and situations described in the definition of these terms in these regulations. If a State needs to amend its statute to include sexual exploitation as a reportable condition, it has until the close of the second general legislative session of the State legislature that convenes after the effective date of these regulations to do so (see § 1340.13(a)(1)). We believe that the definitions of "sexual abuse" and "sexual exploitation" in these

regulations implement the intent of Congress, to assure that the various forms of sexual mistreatment of children are reported. In addition, we believe the provision that allows States that do not now provide for the reporting of sexual exploitation a reasonable period of time to amend their statutes is a fair and reasonable method of enabling them to comply with the requirements of the Act.

Comment.—Concern was also expressed that the phrase "for commercial purposes" limited the definition of sexual exploitation. Commentors asserted that sexual exploitation for commercial purposes omits sexually exploitive acts by those persons using children for non-commercial purposes, e.g., out of a deviant interest and desire for personal gratification.

Response.—We agree. Therefore, in § 1340.2(d)(2), we have dropped the words "for commercial purposes" from the definition as proposed in the NPRM. It is our intent to include within this new definition all sexual exploitation of children.

Definition of Negligent Treatment (§ 1340.2(d)(3))

Comments.—We received strong recommendations that the definition of "negligent treatment or maltreatment" be expanded to include failure to provide medical care.

Response.—We have reviewed this matter and agree with the recommendation. The definition of negligent treatment or maltreatment in a majority of State reporting laws now includes the failure of parents or caretakers to provide adequate food, clothing, shelter and medical care. Thus, the basic needs of children are identified in most State statutes: failure to supply these necessities of life are cause to make a report to the agency mandated by statute to investigate reported cases of child abuse and neglect.

Also, recent events in which parents or guardians failed to provide needed medical care or treatment to handicapped infant children who later died suggest that legal protections are needed for these infants.

In addition, the language of the Child Abuse Prevention and Treatment Act, as amended, supports the inclusion of failure to provide adequate medical care as a reportable condition. Section 3 of the Act (42 U.S.C. 5102) defines "child abuse and neglect" to cover acts or situations constituting abuse or neglect which occurs "under circumstances which indicates that the child's *health* or welfare is harmed or threatened thereby * * *." Section 4(b)(2)(C) of the Act (42 U.S.C. 5103(b)(2)(C)) provides that "upon a finding of abuse or neglect, immediate steps shall be taken to protect the *health* and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect; * * *"

Legislative history also reflects Congressional concern about the failure to provide specific medical treatment for a child, unless it is not provided for religious reasons, by persons responsible for the child's health or welfare. The Report of the House Education and Labor Committee contains the following:

> The Committee recognized that "negligent treatment" is difficult to define, but it is not the intent of the Committee that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specific medical treatment for a child is *for that reason alone* considered to be a negligent parent. To clarify further, no parent or guardian who in good faith is providing to a child treatment solely by spiritual means such as prayer according to the tenets and practices of a recognized church through a duly accredited practitioner shall *for that reason alone* be considered to have neglected the child. (H. Rep. 93–685, 93*rd* Cong., 1*st* Sess. (1973), pp. 4–5). (Emphasis in original)

In light of these factors and the need to insure the protection of children's health, we have included the failure to provide adequate medical care as a part of the definition of negligent treatment in § 1340.2(d)(3). If a State needs to amend its statute to include the "failure to provide adequate medical care" as a reportable condition, it has until the close of the second general legislative session of the State legislature following the effective date of these regulations to do so.

The definition of "harm or threatened harm to a child's health or welfare" in the existing regulations, 45 CFR 1340.1–2(b)(1), contains a religious exception which was interpreted by the Department to be an eligibility requirement for a State grant under Section 4(b)(2) of the Act (42 U.S.C. 5103(b)(2)). This is an exception which provides that a parent or guardian who does not provide medical treatment for a child because of the parent's religious beliefs is not considered, for that reason alone, to be a negligent parent or guardian.

The religious exception in the proposed regulations appeared as a "Note" to the definition of 'negligent treatment or maltreatment' in § 1340.2(3) and was intended to be retained as an eligibility requirement for a State grant. That "Note" exempted a parent or guardian from being considered to have neglected his/her child if medical treatment is not provided because the parent or guardian is legitimately practicing his/her religious beliefs.

Eight respondents commented on this "Note" to the definition of "negligent treatment or maltreatment". Two respondents agreed with the deletion of the clause included in the current regulations, which recognizes the power of a court to require medical treatment over the religiously-based objections of the parent or guardian. These respondents also conveyed the satisfaction that had been expressed to them by the Christian Science Church with this part of the proposed regulation. One respondent requested that the substance of the "Note" be clearly stated as a regulation or be deleted.

Five of the respondents objected to this exemption and urged its removal from the proposed regulations. They presented several reasons for removing the proposed religious exemption from final regulations. Four respondents claimed that some children suffer and die as a result of their parents relying on spiritual healing under circumstances in which medical treatment could have prevented such results. Two respondents added that the religious exception impedes discovery of cases so that even if courts retain their power to order medical treatment, the exercise of that power often comes too late. Three respondents argued that all children deserve the protection of the law, with two of them observing that the religious exception served to deny children their constitutional right to life and to equal protection of the law. One respondent was also of the opinion that the religious exception inhibited criminal prosecution of parents, even if their child had died as a result of the failure to provide medical treatment. Another suggested that there should be a religious exception from criminal prosecution, but not one that impedes protective action under civil law. Finally, one respondent called attention to the fact that objections had been raised to the inclusion of the religious exception in the current regulations and that objections continue to be presented.

Response.—All of these responses were considered in the context of the Act, the regulation and the legislative history of the Act [H.R. Report No. 93–685, November 30, 1973, 93rd Congress, 1st Session (1973)]. The latter reported to the House of Representatives the bill that became the Child Abuse Prevention and Treatment Act, and contained a statement supporting a religious exception. As enacted, however, the Act

contained eligibility requirements for grants under Section 4(b)(2) (42 U.S.C. 5103(b)(2)); but did not include among them a religious exception. The Notice of Proposed Rulemaking of August 28, 1974 (39 FR 31507) to implement the Act included a religious exception as part of the definition of "child abuse and neglect." Although the Department received objections to this exception it concluded that the exception was intended by Congress. Consequently, in order to receive grants under Section 4(b)(1) of the Act (42 U.S.C. 5103(b)(1)), States were required to have a religious exception in their statutes or to certify their recognition of an exception by a State Attorney General's opinion. In 1978, when the Congress reauthorized the Act, it passed several amendments, including one that modified the definition of "child abuse and neglect." Again, however, the legislation failed to include mention of a religious exception. It was nonetheless included in the proposed regulations and elicited the comments noted above.

In light of this history and the objections of respondents, we have reexamined the legal support for a religious exception as an eligibility requirement under Section 4(b)(2) of the Act (42 U.S.C. 5103(b)(2)). We have concluded that such an eligibility provision is not required by the Act. Therefore, § 1340.2(d)(3)(ii) of the final regulation states that the regulations are not to be construed as prohibiting or requiring a finding of negligent treatment or maltreatment when a parent practicing his/her religious beliefs does not, for that reason alone, provide medical treatment for a child. Thus, States are free to recognize or not recognize a religious exception without that choice having any effect on eligibility for a State child abuse grant. The regulation provides at § 1340.2(d)(3)(ii) that if under State law a finding of negligent treatment is prohibited when medical treatment is withheld for religious reasons, that prohibition does not limit the authority of the State to insure that needed medical treatment is provided.

Definition of Threatened Harm (§ 1340.2(d)(4))

Comments.—One respondent requested that the regulation clarify the definition of "threatened harm to a child's health or welfare," which the proposed regulation defined as "a substantial risk of harm to the child's health or welfare." It was suggested that some less ambiguous term be used.

Response.—As there were no additional suggestions for changing or clarifying this definitional term and because we could find no substitute language which seemed to be clearer, it was decided that no change would be made.

"Threatened harm" is a part of the definition of child abuse and neglect in both the Act and regulations. The NPRM defined threatened harm to mean a substantial risk of harm to the child's health or welfare. The Act defines child abuse and neglect so as to include acts or omissions including child abuse, sexual abuse and child neglect by persons responsible for a child's welfare under circumstances which indicate harm or threatened harm to the health or welfare of the child. (42 U.S.C. 5102.) The reasons for the inclusion of "threatened harm" is based on the premise that society should not have to wait until a child is actually injured before protective action is taken. At the same time we recognize that, in some instances the harm that is threatened is not of a sufficient degree to necessitate State intervention. The term "substantial risk" is used to clarify that a State need not intervene until, in its judgment, the threat of harm to the child is real and significant.

Definition of a Person Responsible for a Child's Welfare (§ 1340.2(d)(6))

Comments.—The proposed regulation defined "a person responsible for a child's welfare" to include those persons responsible for around the clock care of children (§ 1340.2(5), now § 1340.2(d)(6)). A suggestion was made to add others to this definition such as teachers and employees of public or private institutions.

Response.—For children in settings which provide less than 24-hour care such as day care centers and schools, we believe that primary reliance should be placed on parents to protect their own children by voicing their concerns to school officials or seeking criminal action. Therefore, we do not believe a change in the language of the regulation to include personnel of day care centers and schools is necessary or desirable.

Coordination Requirements (§ 1340.4)

We have added a new § 1340.4 to the final rules which requires that all Federal agencies responsible for programs related to child abuse and neglect must provide information as required by the Commissioner to insure effective coordination of effort.

This is not a new requirement but is derived from Subpart D as proposed in the NPRM.

Subpart B—Grants to States

Section 1340.11 Allocation of Funds Available

Comment.—One comment suggested that the amount of State grant funds available for States that do not apply or are found ineligible should be allocated among the eligible States, deleting the second option in the proposed regulation that would permit the Commissioner of ACYF to authorize the use of funds "for such other purposes under the Act."

Response.—The suggestion is consistent with our current practices. Therefore, we have revised the regulation to limit reallocation of State grant funds to eligible States.

Section 1340.12 Application Process

We have deleted § 1340.12(b) of the NPRM which provided for the solicitation of State grant applications each Federal fiscal year by a publication in the Federal Register of a "Notice of Availability of funds for State grants." Since the only eligible applicants for State grants are the State agencies designated by the Governor to apply for such funds (§ 1340.12(a)), we have eliminated the annual Federal Register Notice effective in fiscal year 1982. Instead, we have substituted a specific program instruction, mailed directly to the appropriate State agencies, which includes necessary application forms, allocations and deadline for submission of the State grant application.

Comment.—A suggestion was made that eligible applicants for State grants include local public housing authorities.

Response.—State grants are made only to States. However, local public housing authorities may apply for a demonstration, research or service improvement grant under Section 2(b)(5) or Section 4 of the Act (42 U.S.C. 5101(b)(5) or 42 U.S.C. 5103).

Section 1340.14 Eligibility Requirements

Comments.—Some commentors objected to the deletion of the language found in the current regulation at 45 CFR 1340.3-3(b) pertaining to the definition of child abuse and neglect. That section explains that definitions of child abuse and neglect used by States which are the "same in substance" as the ones set forth in the regulation will be sufficient to meet Federal definitional requirements.

Response.—The language was deleted from the proposed regulations as unnecessary. However, respondents correctly pointed out that States have never been required to have language identical to the Act or regulation in

order to qualify for a grant. Therefore, we will retain the language of the current regulation in § 1340.14, to provide that a State's definition of child abuse and neglect which is the same in substance as the one set forth in the regulation will be acceptable.

Section 1340.14 of the proposed regulation also contained an elaboration of the ten eligibility requirements which a State must satisfy to qualify for a State grant. However, after more careful review of Section 4 (b) (2) of the Act, it was our decision not to repeat the provisions of the Act in regulations. Therefore, those requirements in the NPRM which duplicate the language of the Act have been eliminated. Of course, the requirements of the Act in Section 4 (b) (2) remain fully applicable.

Section 1340.14(c) of the NPRM providing immunity for persons reporting instances of child abuse and neglect from prosecution has been deleted because it duplicates the language of the Act in Section 4(b) (2) (A).

Comment.—One respondent requested further clarification of what was meant by a "different properly constituted authority" in § 1340.14(e).

Response.—In instances of child abuse and neglect that occur in an institutional setting, the investigating agency must be separate enough from the agency alleged to have abused or neglected a child to ensure an adequate impartial and objective investigation. This means that the State agency having responsibility for the investigation of reports of abuse or neglect may not investigate reported instances of child abuse or neglect made against institutions operated by that agency.

The same respondent also asked whether the State agency responsible for investigating allegations of institutional child abuse can investigate a reported instance of child abuse and neglect if the alleged abuse or neglect was by a contract vendor or purchase of service provider.

It is acceptable for the State mandated agency responsible for investigating reports of known and suspected instances of child abuse or neglect to investigate reports from residential facilities as long as such facilities do not have on their staff employees from the mandated agency and are not directly operated by the mandated agency. As these comments were related to the respondent's request for clarification of the meaning of the regulation we believe that no change in the regulation is necessary.

Section 1340.14(h) was revised by omitting that language which was duplicative of the Act. Sections 1340.14(i), (j), (k) and (l) were omitted as they were duplicative of provisions in the Act.

Comment.—Comments on § 1340.14(g) which mandates the appointment of a guardian *ad litem* in all judicial proceedings, involving an abused or neglected child, were concerned about: (1) The appropriateness of the person presenting the evidence in a judicial proceeding also serving as the guardian *ad item;* and (2) the absence of a provision which would permit a State to satisfy the guardian *ad litem* requirement by court rule.

Response.—On the basis of the comments received we are making two changes in § 1340.14(g). First, we are eliminating as a person who may serve as a guardian *ad litem* the attorney who presents the evidence in a judicial proceeding alleging child abuse or neglect. This was done to eliminate the possibility of conflicting roles as there is serious question about having a presenter of the evidence also serve as a child's guardian *ad litem.*

Secondly, a State may elect to promulgate Court Rules mandating the appointment of a guardian *ad litem* in judicial proceedings. This will now be an added option for the State in satisfying the guardian *ad litem* requirement.

Subpart C—Discretionary Grants and Contracts

There were no comments from respondents on Subpart C of the NPRM. Two of the three sections in this Subpart proposed in the NPRM have been eliminated from the final rule because they duplicate the language of the Act in Sections 2(b) and 4(b)(1) (discretionary grants and contracts). Only the provision regarding confidentiality (§ 1340.20) has been retained in Subpart C to afford the same protection of personal facts or circumstances about individuals involved in discretionary projects or programs as is provided to individuals under the State grant program.

Subpart D—Coordination of Federal Activities

Except for the coordination requirements for Federal agencies which now appears in new § 1340.4, we have eliminated Subpart D. We do not believe it is necessary to publish the administrative and procedural requirements for the Advisory Board in regulations.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concludes that this final rule is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Pub. L. 96-354, requires that an agency prepare a regulatory flexibility analysis for a proposed rule, or a final rule issued after a proposal, if a rule would have a significant economic impact on a substantial number of small businesses, small nonprofit organizations, or small governmental jurisdictions. However, this requirement does not apply to final rules for which a proposed rule was published before January 1, 1981 (section 4 of the Regulatory Flexibility Act). Because the proposed rule that preceded this final rule was published earlier, an analysis is not required under the Regulatory Flexibility Act.

Recordkeeping and Reporting Requirements

Under the Paperwork Reduction Act of 1980 the Department is required to submit to the Office of Management and Budget, for review and approval, any information collection or reporting requirement. Reporting requirements within § 1340.3(a) and 1340.12 requiring OMB approval, which was granted, are:

Section	Reporting requirements	Form/OMB Nos	Expiration date
1340.3(a)—Application of department-wide regulations	45 CFR 74.73, Financial Status Report	SF-269, 0960-0122	10/31/83
1340.12—Application process	State grant application	SF-424, 0960-0016	2/28/84

List of Subjects in 45 CFR Part 1340

Child welfare, Family violence, Grant programs—health, Grant programs—social programs, Reporting requirements, Research, Technical assistance, Youth.

(Catalog of Federal Domestic Assistance Program No. 13.628, Child Abuse and Neglect Prevention and Treatment)

Dated: July 20, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: January 4, 1983.

Richard S. Schweiker,

Secretary.

For the reasons set forth in the preamble, Part 1340 of 45 CFR is revised to read as follows:

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

Subpart A—General Provisions

Sec.

Subpart B—Grants to States

Subpart C—Discretionary Grants and Contracts

Authority: The Child Abuse Prevention and Treatment Act Pub. L. 93-247, 88 Stat. 4; Pub. L. 95-266, 92 Stat. 205; Secs. 609-610, Pub. L. 97-35, 95 Stat. 488 (42 U.S.C. 5101 et seq.)

Subpart A—General Provisions

§1340.1 Purpose and scope.

(a) This part implements the Child Abuse Prevention and Treatment Act of 1974, as amended. As authorized by the Act, the National Center on Child Abuse and Neglect seeks to assist agencies and organizations at the national, State and community levels in their efforts to improve and expand child abuse and neglect prevention and treatment activities.

(b) The National Center on Child Abuse and Neglect seeks to meet these goals through:

(1) Conducting activities directly (by the Center);

(2) Making grants to States to improve and expand their child abuse and neglect prevention and treatment programs;

(3) Making grants to and entering into contracts for: Research, demonstration and service improvement programs and projects, and training, technical assistance and information dissemination activities; and

(4) Coordinating Federal activities related to child abuse and neglect. This part establishes the standards and procedures for conducting the grant funded activities and contract and coordination activities.

(c) Requirements related to child abuse and neglect applicable to programs assisted under titles IV-A and IV-B of the Social Security Act are implemented by regulation at 45 CFR Part 1392, Subpart E.

(d) Federal financial assistance is not available under the Act for the construction of facilities.

§ 1340.2 Definitions

For the purposes of this part:

(a) "A properly constituted authority" is an agency with the legal power and responsibility to perform an investigation and take necessary steps to prevent and treat child abuse and neglect. A properly constituted authority may include a legally mandated, public or private child protective agency, or the police, the juvenile court or any agency thereof.

(b) "Act" means the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101, et seq.

(c) "Center" means the National Center on Child Abuse and Neglect established by the Secretary under the Act to administer this program.

(d) "Child abuse and neglect" means the physical or mental injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term encompasses both acts and omissions on the part of a responsible person.

(1) "Sexual abuse" includes rape, incest, and sexual molestation as those acts are defined by State law, by a person responsible for the child's welfare.

(2) "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, as defined by State law, by a person responsible for the child's welfare; and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child as those acts are defined by State law, by a person responsible for the child's welfare.

(3)(i) "Negligent treatment or maltreatment" includes failure to provide adequate food, clothing, shelter, or medical care.

(ii) Nothing in this Part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child: provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to insure that medical services are provided to the child when his health requires it.

(4) "Threatened harm to a child's health or welfare" means a substantial risk of harm to the child's health or welfare.

(5) "A person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an employee of a public or private residential home or facility or other person legally responsible under State law for the child's welfare in a residential setting.

(e) "Commissioner" means the Commissioner of the Administration for Children, Youth and Families of the Department of Health and Human Services.

(f) "Grants" includes grants and cooperative agreements.

(g) "Secretary" means the Secretary of Health and Human Services, or other HHS official or employee to whom the Secretary has delegated the authority specified in this part.

(h) "State" means each of the several States, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific.

§ 1340.3 Applicability of Department-wide regulations.

(a) The following HHS regulations are applicable to all grants made under this part:

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

(b) The following regulations are applicable to all contracts awarded under this part:

47 CFR Chapter 1—Federal procurement regulations.
41 CFR Chapter 3—Federal procurement regulations—Department of Health and Human Services.

§ 1340.4 Coordination requirements.

All Federal agencies responsible for programs related to child abuse and neglect shall provide information as required by the Commissioner to insure effective coordination of efforts.

Subpart B—Grants to States

§ 1340.10 Purpose of this subpart.

This subpart sets forth the requirements and procedures States must meet in order to receive discretionary grants to improve or expand State child abuse and neglect prevention and treatment programs under sections 4(b) (1) and (2) of the Act (42 U.S.C. 5103(b) (1) and (2)).

§ 1340.11 Allocation of funds available.

(a) The Commissioner shall allocate the funds available for grants to States for each fiscal year among the States on the basis of the following formula:

(1) An amount of $25,000 or such other amount as the Commissioner may determine; plus

(2) An additional amount bearing the same ratio to the total amount made available for this purpose (reduced by the minimum amounts allocated to the States under paragraph (a)(1) of this section) as the number of children under the age of eighteen in each State bears to the total number of children under eighteen in all the States. Annual estimates of the number of children under the age of eighteen, provided by the Bureau of the Census of the Department of Commerce, are used in making this determination.

(b) If a State has not qualified for assistance under the Act and this subpart prior to a date designated by the Commissioner in each fiscal year, the amount previously allocated to the State shall be allocated among the eligible States.

§ 1340.12 Application process.

(a) The Governor of the State may submit an application or designate the State office, agency, or organization which may apply for assistance under this subpart. The State office, agency, or organization need not be limited in its mandate or activities to child abuse and neglect.

(b) Grant applications must include a description of the activities presently conducted by the State and its political subdivisions in preventing and treating child abuse and neglect, the activities to be assisted under the grant, a statement of how the proposed activities are expected to improve or expand child abuse prevention and treatment programs in the State, and other information required by the Commissioner in compliance with the paperwork reduction requirements of 44 U.S.C. Chapter 35 and any applicable directives issued by the Office of Management and Budget.

(c) States shall provide with the grant application a statement signed by the Governor that the State meets the requirements of the Act and of this subpart. This statement shall be in the form and include the documentation required by the Commissioner.

§ 1340.13 Approval of applications.

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

(1) The State is qualified and has met all requirements of the Act and § 1340.14 of this Part, except for the definitional requirement of § 1340.14(a) with regard to the definition of "sexual exploitation" (see § 1340.2(2)) and the definitional requirement of negligent treatment as it relates to the failure to provide adequate health care (see 1340.2(d)(3)). The State must include these two definitional requirements in its definition of child abuse and neglect no later than the close of the second general legislative session of the State legislature following February 15, 1983;

(2) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(3) The State is otherwise in compliance with these regulations.

(b) At the time of an award under this subpart, the amount of funds not obligated from an award made eighteen or more months previously shall be subtracted from the amount of funds under the award, unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

§ 1340.14 Eligibility requirements.

In order for a State to qualify for an award under this subpart, the State must satisfy each of the following requirements:

(a) The State must satisfy each of the requirements provided in Section 4(b)(2) of the Act.

(b) *Definition of Child Abuse and Neglect.* Wherever the requirements below use the term "Child Abuse and Neglect" the State must define that term in accordance with § 1340.2. However, it is not necessary to adopt language identical to that used in § 1340.2, as long as the definition used in the State is the same in substance.

(c) *Reporting.* The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.

(d) *Investigations.* The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect. This investigation may include the use of reporting hotlines, contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, psychological and social evaluations, and reviews by multidisciplinary teams.

(e) *Institutional child abuse and neglect.* The State must have a statute or administrative procedure requiring that when a report of known or suspected child abuse or neglect involves the acts or omissions of the agency, institution, or facility to which the report would ordinarily be made, a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action.

(f) *Emergency services.* If an investigation of a report reveals that the reported child or any other child under the same care is in need of immediate protection, the State must provide emergency services to protect the child's health and welfare. These services may include emergency caretaker or homemaker services; emergency shelter care or medical services; review by a multidisciplinary team; and, if appropriate, criminal or civil court action to protect the child, to help the parents or guardians in their responsibilities and, if necessary, to remove the child from a dangerous situation.

(g) *Guardian ad litem:* In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's

Uniform Court Rule mandating appointments in every case. However, the guardian *ad litem* shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.

(h) *Prevention and treatment services:* The State must demonstrate that it has throughout the State procedures and services deal with child abuse and neglect cases. These procedures and services include the determination of social service and medical needs and the provision of needed social and medical services.

(i) *Confidentiality.* (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

(i) The agency (agencies) or organizations (including its designated multidisciplinary case consultation team) legally mandated by any Federal or State law to receive and investigate reports of known and suspected child abuse and neglect;

(ii) A court, under terms identified in State statute;

(iii) A grand jury;

(iv) A properly constituted authority (including its designated multidisciplinary case consultation team) investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of a report;

(v) A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

(vi) A person legally authorized to place a child in protective custody when the person has before him or her a child whom he or she reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

(vii) An agency authorized by a properly constituted authority to diagnose, care for, treat, or supervise a child who is the subject of a report or record of child abuse or neglect;

(viii) A person who is responsible for the child's welfare, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person;

(ix) A child named in the report or record alleged to have been abused or neglected or (as his/her representative) his/her guardian or guardian ad litem;

(x) An appropriate State or local official responsible for administration of the child protective service or for oversight of the enabling or appropriating legislation, carrying out his or her official functions; and

(xi) A person, agency, or organization engaged in a bonafide research or evaluation project, but without information identifying individuals named in a report or record unless having that information open for review is essential to the research or evaluation, the appropriate State official gives prior written approval, and the child, through his/her representative as cited in paragraph (i), gives permission to release the information.

(3) Nothing in this section shall be interpreted to prevent the properly constituted authority from summarizing the outcome of an investigation to the person or official who reported the known or suspected instances of child abuse or neglect or to affect a State's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

(4) HHS and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

Subpart C—Discretionary Grants and Contracts

§ 1340.20 Confidentiality.

All projects and programs supported under the Act must hold all information related to personal facts or circumstances about individuals involved in those projects or programs confidential and shall not disclose any of the information in other than summary, statistical, or other form which does not identify specific individuals, except in accordance with § 1340.14(i).

[FR Doc. 83-2149 Filed 1-25-83; 8:45 am]
BILLING CODE 4130-01-M

State Action on Child Protection

Attachment C

	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska
What Elements of Child Abuse Must Be Reported																											
nonaccidental	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
neglect	X	X	X	X	X	X	X	X	X	X	X	1	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
sexual abuse	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
emotional abuse	X			X	X		X	X	X		X		X			X	X	X	X	X	X	X		X	X	X	X
Who Must Report																											
doctors	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X
social workers	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X
teachers	X	X	X	X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	X	X	X	X	X	X	X	X
law enforcement	X	X	X	X	X	X	X			X			X	2	X	X	X		X	X	X	X	X	X	X	X	
When Must Report Be Made *(I = Immediately, P = Promptly, S = Soon, L = Longer)*	I	I	I	I	L	I	I	I	I	I	P	L	I	I	L	P	I	I	I	S	I	I	I	I	I	P	2
To Whom Must Report Be Made *(SS = Social Services, C = Court, PO = Law Enforcement)*	SS PO	SS	SS PO	SS	SS PO	SS/ PO	SS PO	SS	SS	SS	SS	PO	SS	SS/ PO	SS	SS/ C	SS	SS/ PO	SS	SS/ SS	SS	SS	SS/ PO	SS	SS	SS	PO
Immunity for Good Faith Report	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Penalty for Not Making Report *(CR = Criminal, CI = Civil)*	CR		CR	CR/ CI	CR	CR/ CI	CR	CR	CR	CR				CR	CR/ CI	CR	CR	CR	CI		CR	CI	CR	CR	CR		CI
Abrogation of Privileged Communication																											
husband		X				X	X				X		X	X	X					X	X		X			X	X
doctor		X				X					X			X	X						X		X			X	X
all but attorney/client	X		X	X				X	X			X				X	X	X	X			X			X		
Photographs and X-rays			PX	PX	PX	PX			PX				PX	PX	PX		PX		PX			PX			PX		
Temporary Protective Custody – Emergency Removal	X	X	X	X	X	X	X		X			X	X	X		X	X	X		X	X	X	X	X	X	X	
Central Registry	X	X	X	X	X	X	X	X	X	5	X	X	X	5	X		5	X		X	X	X	5	X	X	X	2
Child Protection Team					6	X								X							6	6			6		
Guardian ad Litem/Counsel	X	X	X	X	X	X	X		X	X		X	X	X	X	X		X	X		X	X	X	X	X	X	2
Public Education					X				X						X	X		X				X			X		

	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming	Washington, D.C.	Total
What Elements of Child Abuse Must Be Reported																									
nonaccidental	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	51
neglect	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	50
sexual abuse	X	X	X		X	X		X	X	X	X	X	X				X	X	X	X	X	X	X	X	46
emotional abuse	X	X	X	X	X		X	X	X		X	X	X		X	X	X		X		X		X	X	37
Who Must Report																									
doctors	X	X	2	X	X	X	X	X	2 X	X	X	2	X	X	2	2	2 X	X	X	X	X	X	2	X	51
social workers	X	X	2	X	X	X	X	X	X	X	X	2	X	X	2	2	2	X	X	X	X	X	2	X	51
teachers	X	X	2	X	X	X	X	X	X	X	X	2	X	X	2	2	2	X	X	X	X	X	2	X	51
law enforcement		X	2	X	X	X	X		X	X	X	2	X	X	2	2	2	X	X		X	X	2	X	42
When Must Report Be Made *(I = Immediately, P = Promptly, S = Soon, L = Longer)*	P	I	P	I	I	3	I	I	P	I	I	L	3	I	I	I	I	3	I	I	I	I	I	I	I=36, P=6, L=4, S=1
To Whom Must Report Be Made *(SS = Social Services, C = Court, PO = Law Enforcement)*	SS/ PO	SS	SS	4/ SS	SS	SS		SS/ PO	SS	SS/ PO	SS	SS	SS/ PO	4/ SS	all	SS/ PO	SS/ PO	SS	SS	SS/ PO	SS	SS/ PO	SS/ PO	SS/ PO	SS=28, SS/PO=19, PO=2, SS/C=1, all=1
Immunity for Good Faith Report	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	51
Penalty for Not Making Report *(CR = Criminal, CI = Civil)*	CR	CR	CR	CR	CR/ CI		CR		CR	CR	CR		CR/ CI	CR	CR	CR	CR	CR	CR	CR	CR	CR		CR	CR=33,CI=2, CR/CI=5
Abrogation of Privileged Communication																									
husband					X	X				X	X				X				X					X	19
doctor				X	X	X		X	X	X	X			X			X		X	X		X		X	22
all but attorney/client	X	X					X					X	X			X					X		X		20
Photographs and X-rays			PX		PX			PX		P	PX		PX			X	PX		PX	P	PX		PX		PX=21, P=2, X=1
Temporary Protective Custody -- Emergency Removal			X	X	X	X	X	X			X	X	X	X	X	X	X		X	X		X	X		38
Central Registry	X	X	X		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	5	X	X	5	41
Child Protection Team											6				X		X		X				X		6
Guardian ad Litem/Counsel		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	46
Public Education					X						X		X						X		X	X			13

[1] "Neglected child" is defined but not included in the required reporting statute.

[2] Require reporting by "any person."

Trends in Child Protection Laws - 1979

House Rules Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

A group called NCAL (National Center on Child Abuse Laws) is trying to form a chapter in this state. The group originated in Minnesota. We want to see children protected from all forms of abuse including what the State does not to inflict upon them. We are enclosing a petition which we wish to see made into law: Separate incest from sexual assault (paragraphs 1, 2, 3) and solve jail overcrowding by establishing specific programs to help and preserve the family, instead of tearing it apart. (see paragraph 5) NCAL has only met twice; you will be receiving many more petitions as the one enclosed until we hear that you are drafting legislation to protect and bless the family instead of destroying it. Please separate incest from sexual assault so that families can be preserved.

A would also like to remind you that because you have limited Commissioner Enderle's request for funds to expand correctional facilities for increased jail needs you must consider some alternatives. We are presenting you a cost effective, safe alternative & Mr. Sharp has already sent you statistical information to prove that

unless Glenn responds to counseling. Implement the ideas in this petition. If you would like to respond to us our address is VOCAL, General Delivery, Wasilla, Alaska 99687.

thank you.

To Mat Sturmberg

LEGISLATE FREEDOM

We the undersigned citizens and voters want to see incest and sexual assualt separated from each other. In cases of sexual assualt there is usually one victim and that victim is harmed once but in cases of incest the whole family becomes the victim of the state and the victim is harmed twice: once by the molester and then again by the state. In cases of sexual assualt, not of incest, the victim's and the family's rights are not taken away and they are not forced to testify. In cases of incest it is most common that the victim's rights and that of the family are taken away and it is common also that the victim is forced to testify against a family member, and any other family member also, to the state's satisfaction, are forced to testify than are separated.

We further believe that incest should be regarded as an illness such as alcoholism or drug abuse. In cases of incest there should be a maximum two year sentence and mandatory counseling, and that repeat offenders of incest may then be considered to fall under the presumptive sentence. And considering the severity of individual cases, that probation with the appropriate counseling should be considered before a jail sentence. A courtroom should be considered a last resort in many cases.

Additionally, the family's rights or freedoms should never be violated. Family members should have the right to press charges and testify if they so desire, and to be protected when they request it. However those who don't want to press charges should not be forced to. Contrary to the opinion of the existing laws, individuals are intelligent enough to make wise decisions by themselves concerning their family. Families that seek counseling should be able to receive such without the threat of jail.

Sexual assualt, child abuse or molestation are not being condoned here; it is the family unit that is condoned. The family unit is the most important part of society but the most vulnerable and abused. The family unit must not be forced to destroy itself by the state forcing the family members to testify against each other. The seriousness of incest should not be overlooked, but neither should the family unit in such cases, and their vulnerability to actions taken by the state.

We would also request that all those presently serving sentences for incest have their cases reviewed, that family members be interviewed, the the victim's statements be more seriously considered; the molesters afterwards to be interviewed to decide whether a release should be considered or denied. Qualified counselors should have the deciding factor in whether the sentence is reduced or if release on probation is appropriate.

There are equal rights for blacks, women, and even dogs; victims have equal rights and so do their families except in cases of incest. Should not the family unit have equal rights in this society or is it all going to the dogs?

NAME	ADDRESS AND PHONE	OCCUPATION	AGE
Gloria Gonzales	803 W. 23rd # 4	Janitorial	28
Joan Kennedy	SRA Box 6223 H Palmer, AK	Resp. Therapy	25
Signature & address illegible	SR 5385 Wasilla, AK 99687	Computer	33
Thomas D. Gilmore	Box 771522 694-3180 Eagle River, AK 99577	Aircraft Mech	36
Patricia J. Brown	8429 E. 6½ Ave Apt. 1 Anch. AK. 99504 333-5045	housewife	28
Carol L. Stein	2621 N. Idlewild Ap. 23A Anch. AK. 99507	Home Maker	37
C E Wirth	Box 3583 Palmer	CONTRACTOR	40
L Buck	Box 17-064 Big Lake	CONSTRUCTION	30
J P Russell	PO Box 91 Houston Ak.	construction	43

To: Mike Isenberg

LEGISLATIVE FREEDOM

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NAME	ADDRESS AND PHONE	OCCUPATION	AGE
Stephen K Beals STEPHEN K. BEALS	P.O. Box 770769, EAGLE RIVER 99577	ORDAINED MINISTER	51
Carole Beals CAROLE BEALS	PO Box 770769 Eagle River 99577	Housewife	51
Jeannette Lenhart	2610 TOROSITNA DR E.R 99577	Homemaker	42
Robert Franklin	Cross Over Min. P.O. Box 770769 E.R. 99577	Chaplain/Pastor	29
Rosemary Knapper Rosemary Knapper	P.O. Box 770157 Chugiak AK 99567	Housewife	41
Eleanor Coren	SR1 Box 1013 Chugiak, ak 99567	Homemaker	36
Patricia M Swenson Patricia M. Swenson	P.O. Box 771643 Eagle River AK 99577	Real Estate Agent Rep House	32
Carol J Hedrick	1011 Friendly Cove #B Anch AK 99504	College Student Homemaker	38
Marlene Hamilton	P.O. Box 770767 Eagle River Ak 99577		39

INTRA-FAMILIAL CHILD SEXUAL ABUSE

with reference to Community Based Treatment programs
(San Jose, Ca. and Anchorage, Ak.) and the
Incarceration of Incest Offenders

Prepared by Ray Clements, Ph.D.

First draft April 21, 1983
Revised draft April 27, 1983
Second revision, May 7, 1983

We should

I presume the writer sent it — show to Nancy
- the program is in Anchorage

PREFACE

The following material is a limited stuoy of the subject presented. Considerable more research time should be given to this topic, as well as various aspects of it. For instance, an enitre research paper, if not an entire book, could be devoted to the similarities and differences of incest and rape. It is the intention of this writer to continue to collect information and data on this area of concern and to refine and "polish" it.

TABLE OF CONTENTS

What Is Incest?

Incest may be defined as any contact of a sexual nature - from propositioning to sexual intercourse between an adult and a child; when the adult holds a position of authority over the child, e.g. such as between a parent, step-parent, older sibling, or other older relative and a child.

Extent of the Problem

Sexual exploitation of children by adults is a serious and widespread problem. It is generally accepted today that one out of four families will experience some form of intra-familial child sexual abuse.

For many years incest was a taboo subject. It was an embarrassing topic. People did not want to talk about it. However, gradually during the past ten years it has broken through the threshold of the "locked closet" where family secrets are kept. Therapy, counseling, self-help support groups, and other forms of treatment have become available. Victims, non-offending adults, and offenders are stepping forward in larger numbers and are beginning to talk about incest.

Similarities and Differences Between Rape and Incest

1. In most cases incest is not a violent act. Whereas, in many cases, rape involves a physical attack.

2. In most cases incest occurs between two relatives who have known each other for an extended period of time. There is often a strong "bonding" relationship which exists between the offender and the victim in an incestuous relationship. Whereas, while the act of rape does not always occur between two complete strangers (this is a sterotype), the offender and the victim are acquainted with each other prior to the sexual assault. However, the type of "bonding" relationship which exists in most incest cases, is not found to the same degree in rape.

3. Frequently, incest has occurred between relatives over an extended period of time. Whereas, the act of rape is most often a one time event with a particular victim.

4. Frequently, incest victims and members of their families are reluctant to reveal their incestuous relationships. This is due, in part, to the bonding relationship which exists between the victim and the offender. While incest is no longer the "taboo" it once was, there is still a hesitation to disclose the secrets of this relationship. Whereas, the subject of rape, while still a very sensitive subject to discuss, is not bound by the hesitation

of disclosure due to a bonding influence.

5. It appears that most incest victims and their families, while in favor of some form of punishment for offenders which may include incarceration, have a strong desire to seek help and that all family members receive treatment in form of therapy, counseling, and participation in self-help support groups. Whereas, it appears that most rape victims are primarily concerned that rape offenders receive stiff (long) jail sentences.

Family Dynamics and Incest

Unlike most rape cases, incest, by it's very nature, has extreme complex involvement with family dynamics. A "typical" situation is the father/daughter/mother triangle. In these cases there is often a reversal of roles between the mother and the daughter. The "agape" love which exists between a father and a daughter is extended to include a sexual relationship as well.

In most cases, the offender places pressure on the victim to "keep our secret." Frequently, an offending father urges his daughter not to tell because if she did it would break up the family, disolve the marriage, he would be sent to jail, and he would no longer be able to financially support the family. These and other reasons why the daughter should not tell are a heavy burden for a minor to carry on her shoulders.

When the breaking point comes and the story is told - many of the "warning threats" made by the offending father occur. The marriage falters. The father is removed from the home by court order. In most cases, the offender faces a presumptive jail sentence. The family is confronted with financial hardships. When the offending "father" is removed from his home he has to set up separate living accommodations. In most cases, this puts a severe strain on the family finances. When the offender is found guilty and is sentenced to serve time in jail, his income is reduced to almost zero. The family is no longer able to depend on him for financial support.

All members of the family, but especially the victim, have emotional, mental, social and personal scars that they have to try to heal. All members of the family are harmed by inter-familial sexual abuse. This includes the siblings who were not molested, but are part of the family.

When the incest offender is sent to jail for an extended period of time it reduces the chance that the family will remain together as a complete family unit. An extended period of incarceration puts a severe strain on a marriage.

For many weeks, months, and years, family members will search for an answer to such questions as: Why did it happen to us?, What caused it?, Why couldn't it have been prevented?, Why did my "father" do it to me?, and What did I do wrong, that this occurred in my family?

Heavy issues of guilt, anger, and frustration will need to be worked out by each member of the family (victim, non-offending adult, siblings, and offender) over an extended period of time, before even some of the major questions will even be partially answered and understood.

Community Based Treatment of Incest Victims and their Families

The community based treatment model for incest victims and their families was started by Henry and Anna Giarretto in 1970 - 1971 in San Jose, California.

As Henry Giarretto, a family counselor, discovered an increasing number of families involved in intra-familial child sexual abuse, he began to specialize in the treatment of these cases. The treatment model which he developed takes into account the viewpoint and insights provided by various professionals who have significant contact with incest victims and their families. These persons include: social workers, District Attorneys, Public Defenders, police investigators, individual and family therapists, physicians, public health workers, and others.

In large measure, the integrated treatment of child sexual abuse, as set forth by Henry and Anna Giarretto, has gained success because it has not isolated individuals within the family, but rather tries to understand their behavior based on the matrix of interwoven personal relationships and the social, economic, political, religious, and cultural conditions which effect the family.

It is both wholistic and interdisciplinary in its approach to help understand family dynamics and individual behavior. It places stong emphasis on working in cooperation with child protective agencies (Division of Family and Youth Services), the police (Anchorage Police Department), and the civil and criminal court system.

Some of the major components of the Giarretto model include:

1. Weekly "one -on-one" individual therapy/counseling sessions.

2. Weekly participation in self help support groups.

3. Participation in a Sponsors Program. Newcomers are matched with "older" "seasoned" members. They provide a "listening" ear for newcomers and are available on a 24 hour basis to respond to crisis calls from them.

4. A Speakers Bureau which enables "seasoned" trained members to relate to other members of the public what it means to be a part of the integrated treatment program.

5. Use of interns and volunteer professionals who co-facilitate self-help support groups. They co-lead groups with "peer" co-facilitators who are "seasoned" members of the integrated treatment program. Interns, professionals and peer facilitators receive specialized training prior to assuming the responsibility of leading groups.

6. Formation of Parents United chapters to help administer and implement the intergrated treatment of child sexual abuse model. Each Parents United chapter may hire staff, secure office accommodations, adopt By-Laws, and is administered by a Board of Directors and and Advisory Board.

7. Under the Parents United "umbrella" there are also Daughters and Sons United and Adults Molested as Children United components. Adults molested as children are an important part of the integrated treatment of child sexual abuse. Many adults have never had a chance to adequately deal with the issues of sexual abuse which took place in their younger years. This group enables such persons a chance to begin to deal with sexual abuse issues which have been held back for a long period of time.

The community based integrated treatment of child sexual abuse developed by Henry and Anna Giarretto in the early 1970's in San Jose, California has spread to more than 90 cities across the country. One of the local chapters is located in Anchorage, Alaska.

Parents United Chapter, Anchorage, Alaska

Began in 1980, under the primary leadership of Ken Duff, a family counselor, once again an increasing number of incest cases was the factor which led to the establishment of a special treatment program for incest victims and their families.

Started and maintained as a non-profit self-help support program, people who enter - whether they are victims, non-offending adults, adults molested as children, siblings or offenders - discover they are not alone. A network of individual and group support is built up and carried on by participants in the Sponsor Program and the weekly Self-Help Support Group meetings.

Following on site training in San Jose, Ca. at the Parents United headquarters (which has become a national training center for the integrated treatment of child sexual abuse), Ken Duff and others began the first eight week self-help support group sessions.

The Parents United program is limited to individual and group self-help support, community education, and early intervention and prevention of child sexual abuse. While, one-on-one individual and group therapy and counseling is conducted by

such centers as the Humans Relations Center and the Langdon Clinic.

The primary goals and objectives of Parents United are:

1. To help break the cycle of child sexual abuse.
2. To help heal the wounds that have been caused by incest.
3. To promote early intervention and prevention of child sexual abuse.
4. To let individuals and families decide for themselves if they wish to remain as married families.
5. To enable adults molested as children, who have never had an opportunity to deal with their past, to do so as adults.

The Parents United Chapter of Anchorage is funded by the Division of Family and Youth Services, Department of Health and Social Services, State of Alaska and the Municipality of Anchorage, Department of Health and Environmental Protection.

It's components include: Parents United, Daughter and Sons United, and Adults Molested as Children United. Main programs include: Self-Help Support Groups, Individual Sponsorship, and a Speakers Bureau. It is administered by a Board of Directors and an Advisory Board.

Parents United records reveal that in March of 1982 there were between 25 - 30 persons attending 4 self-help support groups, while in March of 1983 there were more than 125 participants attending 13 self-help support groups. These groups included the following:

1. Orientation I
2. Orientation II
3. Fathers
4. Mothers
5. Couples
6. Adults Molested as Children, "Survivors"
7. Spouse/Special Friend of Survivors
8. Female Teens I
9. Female Teens II
10. Female Pre-Teens
11. Male Pre-Teens/Teens
12. Siblings
13. Hiland Mountain Correctional Center, Fathers

Some generalizations can be made about each of these groups:

1. Orientation: this self-help support group consists of both non-offending adults (in most cases wives), offenders (in most cases husbands) and sometimes adults who were molested as children. The focus of this group is to confront the offender and to help the offender recognize that he is responsible for the incest which

has occurred in the family. At first, fathers frequently deny their guilt. Upon the completion of a full eight weeks of Orientation, fathers move on to the Fathers self-help support group and the mothers advance to a Mothers support group.

2. Fathers are frequently concerned about the eight year presumtive sentence and other legal issues. Parents United, however, does not offer legal advice. Instead, it provides individual and group self-help support with a focus on working out frustrations, anger and guilt.

3. Mothers are seeking to reestablish their role as "mother" and "wife" within the family. Often these roles have been distorted and changed when the daughter has assumed some of them. It is also difficult for the mother to actually reclaim her role as wife, since her husband has been court ordered from the home. They are also often faced with a difficult financial situation; trying to adequately feed and clothe their families, without their husband's full financial support. Some wives come to the defense of their husbands. This deepens the split between the mother and the daughter. Mothers are frequently frightened by the disolutionment of their marriage, family and home if their spouse is sent to jail for eight years.

4. Couples come together to form a Couples group after first completing 8 weeks of Orientation, followed by two 8 week sessions in the Fathers and Mothers groups. At this stage in their relationship they are dealing with such questions as: Shall we remain married?, What does the future hold?, How might I prepare myself to be a better parent? Couples frequently want to spend as much time together as possible, if there is a desire to continue their marriage, since the husband is likely to be incarcerated in the near future.

5. The majority of female victims participating at present in the self-help support groups are between 13 to 16 years of age. There are two Teen support groups. One is for newcomers. The other is for those who have completed at least 8 weeks in a Teen I group. They are trying to cope with a lot of anger. They frequently face the loss of friends when they find out what has happened to them. This is reflected in the Daughters and Sons United (DSU) motto in Anchorage, "a friend to the end." One of their most burning questions is: Why did he do it to me?

6. At present, there are just a few male youth victims in their self-help support group. However, it is believed that this is just the tip of the iceberg. It is difficult for young boys to admit that they have been sexually abused. Gradually, this taboo is also coming out of the closet.

7. Frequently, a neglected and overlooked member of an incest family are siblings who are not molested, but are part of the family. They have questions and concerns as well as those who were molested. Such as: Why did this happen to our family?, Why did my father do it to my sister? and What's going to happen to us if he has to go to jail?

8. In response to the need to follow up on offenders when they are incarcerated, a self-help support group has been formed at the Hiland Mountain Correctional Center, Eagle River, Ak. Some of the questions men in this group ask: How can I expalin to my son what I am doing in this place and why I can't come home?, How can I communicate my true feelings to my daughter and wife? and How can I become a contributing member of society again?

Incarceration of Incest Offenders

Effective October 1, 1982, the new Alaska Criminal Code includes an eight year presumptive sentence for first time first degree incest offenders. Prior to Oct. 1, 1982, the Criminal Code permitted Judges the option of imposing an alternative sentence, rather than a long jail sentence, for incest offenders. An example was an extended period of probation, such as five years, plus an appropriate length of time spent in therapy or counseling and participation in self-help support group meetings.

The initial response to the new eight year presumptive sentence for first time first degree incest offenders and related parts of the new code have been mixed.

The following are some of the reactions to the new 8 year presumptive sentence which effects incest offenders:

1. According to Pam Kirk, Counselor, Human Relations Center, Anchorage, 30 female victims have said they would not have reported their fathers had they know he would face an eight year jail sentence for what he has done.

2. Others have said that an eight year sentence will help deter this crime.

3. It is the only way of assuring that an offender does not remolest.

4. Preliminary reports indicate there is a higher rate of denial on the part of incest offenders, than prior to the new criminal code. It also appears that more cases are going to trial.

5. Those that turn in incest offenders, without knowledge of the eight year presumptive sentence, will now have to deal with this issue in counseling and self-help support groups.

6. The chance to provide an effective integrated treatment of of child sexual abuse is greatly reduced when the offender is separated from his family and sent to jail for an extended period of time.

7. It is questionable, in fact, sending an offender to jail will actually break the cycle of child sexual abuse. What a man experiences and learns and jail will influence his behavior upon release from incarceration. Periods of long incarceration may have a negative effect on offender. What are the chances that his rate of remolest may be higher having been sent to prison for 8 years?

8. Sending an offender to jail for an 8 year sentence will place an added hardship on the offender's family. Incarceration causes both psychological and economic stress and burden on the family left behind. Incarceration of the abuser may leave the family destitute. When the "bread winner" is in jail members of his family may be forced to go on welfare.

9. Incest offenders, who are going to jail for extended periods of time, will help to compound the present overcrowded Alaska Correctional system. In addition to the lack of appropriate inmate bed space, there's a cost factor of at least $20,000 per inmate per year, according to Frank Sauser, Superintendent, Hiland Mountain Correctional Center.*

10. An 8 year presumptive sentence for incest offenders overlooks a crucial factor which is pointed out by Dr. James Harper, Psychologist, Langdon Clinic, Anchorage, Ak. It has not taken into account the fact that there are different rates of "rehabilitation" for each offender. Some offenders may satisfactorily complete their sex therapy program within two years, andthen have an additional 6 years of "flat" time to serve.

11. It appears that Alaska State legislators, a year ago, in an attempt to enforce stricter penalties for sexual assualt perpetrators inadvertently placed rape and incest within the same criminal code without giving due consideration to the significant difference in treatability of these distinctly different sexual offenses.

12. The author of this paper, in concluding this section, would like to quote from Guides to Sentencing the Dangerous Offender, Council of Judges of the National Council on Crime and Deliquency, National Council on Crime and Delinquency, N.Y., N.Y. 1969, pp. 14 - 15.

"If the defendant is not dangerous but is mentally disturbed, the judge should be cautious about committing him to prison. Penal commitment of a nonassaultive sex offender may worsen his aberration. In such a case, probation with psychiatric treatment

*Roger Lang, assistant corrections director for administration, reports the current amount spent on each prisoner is $36,800 annually. See article, Anchorage Daily [illegible] April 28, 1983.

or with out-patient service at a psychiatric clinic should be used. If no psychiatric service is available, then probation supervision alone, by knowledgeable officers competent to deal with disturbed offenders, should be the preferred disposition. The Model Sentencing Act provides that no commitment shall have a minimum term of parole eligibility; and, where possible under the statute, the sentence should not state a minimum. A minimum term might conceivably be justified if precise prediction were a reality; since it is not, the time of release is best left to the releasing authority without the restriction of a minimum term. The severe sentence imposed on the dangerous offender assures protection of the public against the violent repeator, but security does not rule out the penal system's need for therapeutic resources. It is the obligation of both the psychiatrist who is working in a penal institution and the judge who is committing offenders to it to exercise leadership so that the necessary treatment resources be provided."

13. Another quote from the above mentioned source is also worthy of mention. The page references are the same.

"Many sexually psychopath statues fail to differentiate between violent and nonviolent acts, and they are usually applied to persons who have committed a nonviolent act such as exhibitionism or sodomy with a consenting adult partner. At best, these statutes are ineffectual and give the public only the illusion of protection. The Model Sentencing Act (MSA) would repeal the sexual psychopath statutes; by emphasizing instead the dangerousness of any offender whose crime is seriously assaultive, it would provide broader protection to the community. The key to the MSA definition of dangerousness is not exclusively a finding of "mental or emotional disorder" but rather the finding of a "mental or emotional disorder indicating a propensity toward continuing criminal activity of a dangerous nature." The objective is prevention of future serious crimes, carefully avoiding use of the criminal process to commit to penal institutions those mentally ill offenders whose aberrations are not of the assaultive type."

Recidivism Rates of the Child Sexual Abuse Treatment Program

The Child Sexual Abuse Treatment Program(CSATP) begun by Henry Giarretto in 1971 has treated more clients than any other single agency in its field. More than 3,500 sexually abused children and their families - in all, more than 12,000 individuals - have received help from this program. These clients include children recently molested by family members or other individuals, the offending and non-offending parents, adolescent offenders, and adults who were molested as children.

As noted by Henry Giarretto in his book, Integrated Treatment of Child Sexual Abuse, A Treatment and Training Manual, Science and Behavior Books, Palo Alto, Ca., 1982, p. 54 "recidivism rates are an indication of the

Child Sexual Abuse Treatment Program's (Parents United, San Jose, Ca.) success in preventing remolestation. Despite the fact that 4 out of 5 fathers return to live with families and their daughters (of those served by Parents United, San Jose, Ca.) only three (3) repeats have been reported among the more than 1,500 families who have received treatment to formal termination. The recidivism rate to date for all client families (Parents United, San Jose, Ca.) is less than one percent. While recidivism rates in other child sexual abuse treatment programs have ranged from two to twenty percent."

It must be pointed out that recidivism statistics are limited to the available facts. Reporting can be misleading. The number of unreported remolests is an unknown figure. Considering these limitations, the CSATP of Parents United, San Jose, Ca. is very impressive.

The Child Sexual Abuse Treatment Program of the Parents United Chapter, Anchorage, Ak. has also produced significant positive results. In the past 18 months approximately 40 offenders have progressed through a major portion of the self-help support groups, or have received these services through formal termination. Of this number there have not been any known repeat molests.

Some Factors Contributing to the Low Recidivism Rates for CSATP

The following are some of the factors which help an incest offender keep from remolesting when he successfully participates in the Parents United Child Sexual Abuse Treatment Program.

1. Knowledge that the offender is not alone. There are others with similar problems.

2. Help from Self-Help Support Groups.

3. Help from his Sponsor, who is on call 24 hours a day.

4. Gaining some answers to why he committed the incest and how he can prevent it from happening again.

5. Being court ordered to leave his home and abiding by the no contact order with the victim.

6. Confrontation with his non-offending spouse, adults molested as children, facilitators, other group members, and eventually with the victim and other siblings in the family.

7. Recognition of the seriousness of the offense.

8. Gaining information on parenting skills and marriage relationships.

9. Participation in all phases of the Parents United self-help group program.

10. Involvement not only in the Parents United program, but also in individual counseling/therapy provided by the Human Relations Center, Langdon Clinic or other counseling centers.

11. Help is not limited to incest offenders. All members of the family in which incest has occurred are participants in the sexual abuse treatment program.

12. Offenders, after they have successfully completed at least three 6 week self-help support group sessions, may be trained to serve as Co-facilitators for support groups. They may also serve as "sponsors" for new offenders entering the Parents United program. In addition, they volunteer to be part of the Speaker's Bureau. This self-help volunteer aspect of the on-going Parents United program enables offenders provide a helping hand for self-help.

13. Parents United maintains follow up on offenders when they have satisfactorily completed the entire CSATP and are no longer court ordered to attend. Frequently, they continue their involvement in Parents United as a volunteer.

Concluding Observations

This paper has sought to briefly examine what is incest, the extent of the problem, similarities and differences between rape and incest, family dynamics and incest, community based treatment of incest victims and their families (Giarretto model), Parents United Chapter, Anchorage, incarceration of incest offenders, recidivism rates of the Child Sexual Abuse Treatment Program, and some factors contributing to the low recidivism rates for CSATP. This beginning effort needs to be followed up by further research on these and related subjects.

The writer welcomes the review and crique of this material.

A few concluding obervations are focused on incarcerated incest offenders.

1. It is important that the child sexual abuse treatment program does not end when an offender is sent to prison. This is a vital part of the total CSATP.

2. Incest offenders are often the lowest on the inmate scale of type of offenses committed by men in incarceration. Consequently, many incest offenders relate in a positive way to their own self-help support group.

3. Few correctional center have adequate child sexual abuse treatment programs. There are only two CSATP's in Alaska. One is at the Lemon Creek Correctional Center, Juneau and the other at the Hiland Mountain Correctional Center, Eagel River. Both of these programs are limited in scope and size. For instance, as of April 15, 1983 there were 64 inmates at Hiland Mt. in need of the CSATP and only

17 enrolled in the program.

Concluding Recommendations

1. Incest and rape are not the same. They should be treated differently by the Alaska Criminal Code.

2. The code should take into account the different rates of progress incest offenders make in their Child Sexual Abuse Treatment Program.

3. A well structured and administered CSATP can help reduce the rate of recidivism. It needs to be expanded within the major correctional centers within the State of Alaska. Funding for these programs needs to be increased.

4. The CSATP for inmate offenders should not be limited to just incest perpetrators, but also should involve all of the members of the family.

5. An important component which needs to be established is the self-help support group for adults molested as children within major correctional centers.

6. An approved escort program needs to be established which would enable inmate incest offenders a chance to periodically visit and participate in self-help support groups outside of incarceration when they have earned the privilege for such visits.

7. The current 8 year presumptive sentence for first degree incest offenders should be reconsidered and changed. If jail time is appropriate for first degree incest offenders, the question remains how long of a jail sentence? As mentioned above in #2, the code should take into account the different rates of progress incest offenders make in their CSAP. A sentence based on an offenders CSATP, rather than on a predetermined presumptive sentence, should be considered. The Santa Clara Country, California criminal code for incest offenders could serve as a model. It combines an initial short period of incarceration for first time incest offenders followed by a work release program for an extended period of time during which the offender participates in the CSATP.

Incest as included within charge of rape, 56 ALR2d 481.

Criminal responsibility of husband for rape, or assault for commit rape, on wife, 84 ALR2d 1017.

Fraud or impersonation, rape by, 91 ALR2d 591.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape, 23 ALR3d 1351.

Rape or similar offense based on intercourse with woman who is allegedly mentally deficient, 31 ALR3d 1227.

Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR3d 901.

Seizure or detention for purpose of committing rape, robbery or similar offense as constituting separate crime of kidnaping, 45 ALR3d 699.

Consent as defense in prosecution for sodomy, 58 ALR3d 636.

Multiple instances of forcible intercourse involving same defendant and same victim as constituting multiple crimes of rape, 81 ALR3d 1228.

What constitutes offense of "sexual battery," 87 ALR3d 1250.

Constitutionality of rape laws limited to protection of females only, 99 ALR3d 129.

Validity and construction of statute defining crime of rape to include activity traditionally punishable as sodomy or the like, 3 ALR4th 1009.

Sec. 11.41.410. Sexual assault in the first degree. (a) A person commits the crime of sexual assault in the first degree if,

(1) being any age, the defendant engages in sexual penetration with another person without consent of that person;

(2) being any age, the defendant attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) *[Repealed. § 10 ch 78 SLA 1983.]*

(4) *[Repealed. § 10 ch 78 SLA 1983.]*

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 3 ch 166 SLA 1978; am § 8 ch 102 SLA 1980; am § 6 ch 143 SLA 1982; am § 10 ch 78 SLA 1983)

Cross references. — For evidence of past sexual conduct in trials of sexual assault in any degree or attempt to commit sexual assault in any degree, see AS 12.45.045.

Effect of amendments. — The 1980 amendment inserted "or aids, induces, causes or encourages a person under 13 years of age to engage in sexual penetration with another person" near the end of paragraph (3) in subsection (a).

The 1982 amendment substituted "an unclassified felony and is punishable as provided in AS 12.55" for "a class A felony" at the end of subsection (b).

The 1983 amendment repealed paragraphs (3) and (4) of subsection (a).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 14, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

I. General Consideration.
II. Construction.
A. Generally.
B. Actus Reus.
C. Penalties.

I. GENERAL CONSIDERATION.

History of first degree sexual assault section. — [illegible]

Op. No. 262 (File No. 68900, 664 P.2d 621 (1983).

Constitutionality. — In order to prove [illegible] must prove that the [illegible] knowingly engaged in sexual intercourse and recklessly disregarded the victim's lack of consent. Construed in this way, the statute does not punish harmless conduct and is neither vague nor overbroad. Reynolds v. State, Ct. App. Op. No. 262 (File No. 68900, 664 P.2d 621 (1983).

Construing the Revised Code and the concurrent amendments governing sentences together indicates that the legislature has not irrationally failed to distinguish between degrees of culpability, and the penalty provisions of the sexual offenses provisions of the Revised Code did not subject defendant to cruel and unusual punishment or deny him substantive due process or the equal protection of the laws. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Categories constitute same offense. — All of the categories contained within the definition of sexual assault in the first degree under subsection (a)(1) through (a)(4) of this section, constitute the same offense for legal purposes. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

And none is more serious than others. — Nothing contained in the statutory language of this section or the legislative history of the provision suggests that the type of conduct listed in any one of subsection (a)'s four paragraphs was meant to be inherently more serious than any of the others. To the contrary, the grouping of these four separate sets of conduct together under the same criminal heading, with identical classifications as class A felonies, is a forceful indication of the legislature's conclusion that all four paragraphs were meant to be viewed as involving equally serious conduct. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Subsection (a)(1) is akin to the common law definition of rape. Juneby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Mental state required under (a)(1). — Lack of consent as a "surrounding circumstance" which requires a complementary mental state as well as conduct to constitute a crime. Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

No specific mental state is mentioned in subsection (a)(1) of this section governing the surrounding circumstance of "consent"; therefore, the state must prove that the defendant acted "recklessly" regarding his putative victim's lack of consent. Reynolds v. State, Ct. App. Op. No. 262 (File No. 68900, 664 P.2d 621 (1983).

Attempted sexual assault in the first degree and sexual assault in the second degree are closely related, since sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent. Nicholson v. State, Ct. App. Op. No. 193 (File No. 61920), 656 P.2d 1209 (1982).

Constitutionality of conviction for similar offense. — Where defendant was charged with attempted sexual assault in the first degree, he was thereby assumed to have notice that he might be convicted of second-degree sexual assault because of the similarities in the elements of the two offenses, and his conviction for the latter offense did not violate due process. Nicholson v. State, Ct. App. Op. No. 193 (File No. 61920), 656 P.2d 1209 (1982).

Sufficient evidence of attempted assault. — A jury could reasonably infer that defendant's entering of victim's bed naked and uninvited and fondling her breasts were "substantial steps" toward the commission of sexual assault in the first degree so as to provide sufficient evidence of attempted assault. Nicholson v. State, Ct. App. Op. No. 193 (File No. 61920), 656 P.2d 1209 (1982).

Instructions. — The trial court did not commit plain error in failing to specifically instruct the jury that defendant had to recklessly disregard a substantial risk that the victim did not consent to intercourse before he could be convicted of first-degree sexual assault. Reynolds v. State, Ct. App. Op. No. 262 (File No. 68900, 664 P.2d 621 (1983).

Instructions on lesser included offenses. — In a prosecution of first-degree sexual assault where the undisputed evidence, including defendant's testimony, established sexual penetration, there was no duty to instruct on attempted sexual penetration or forcible sexual contact.

Hartley v. State, Ct. App. Op. No. 153 (File No. 5737), 653 P.2d 1052 (1982).

The 10-year presumptive term for first-degree sexual assault under the provisions of AS 12.55.125(c) was meant by the legislature to be appropriate in the majority of cases, which are those cases involving conduct that is characteristic of the offense of rape and that fall into the middle-ground between the most serious and least serious extremes for the offense, and it must be recognized that this presumptive term takes into account the high potential for the use of violence and the likelihood of some physical injury in the first-degree sexual assaults falling within the definition of subsection (a)(1) of this section. Jungeby v. State, Ct. App. Op. No. 72 (File No. 5606), 641 P.2d 823 (1982), modified on other grounds and aff'd on rehearing, Ct. App. Op. No. 259 (File No. 5606), 665 P.2d 30 (1983).

Sentence upheld. — See Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Where record supported finding that defendant was the leader of a group of three or more persons who participated in offense of sexual assault in the first degree, such evidence, combined with consideration of prior, similar actions and of defendant's apparent lack of remorse, warranted imposition of eight-year sentence. Willard v. State, Ct. App. Op. No. 240 (File No. 6285), 662 P.2d 971 (1983).

Sentence of 10 years imprisonment, with eight suspended, was not excessive for conviction of attempted sexual assault in first degree. Van Hatten v. State, Ct. App. Op. No. 269 (File No. 5877), P.2d (1983).

Sentence for attempted sexual assault and burglary held excessive. — See Hansen v. State, Ct. App. Op. No. 218 (File No. 6965), 657 P.2d 862 (1983).

Applied in Nukapigak v. State, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 215 (1982); Seymore v. State, Ct. App. Op. No. 196 (File No. 6995), 655 P.2d 786 (1982); Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 661 P.2d 603 (1983).

Stated in Born v. State, Ct. App. Op. No. 41 (File No. 5095), 633 P.2d 1021 (1981); Peetook v. State, Ct. App. Op. No. 178 (File No. 6630), 655 P.2d 1308 (1982); Tazruk v. State, Ct. App. Op. No. 195 (File No. 6954), 655 P.2d 788 (1982).

Cited in Stores v. State, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980); State v. Jane Doe, Ct. App. Op. No. 104 [illegible]

Koganaluk v. State, Ct. App. Op. No. 176 (File No. 6531), 655 P.2d 339 (1982); Erhart v. State, Ct. App. Op. No. 185 (File No. 6244), 656 P.2d 1199 (1982); Ecker v. State, Ct. App. Op. No. 190 (File No. 6726), 656 P.2d 577 (1982); Nukapigak v. State, Sup. Ct. Op. No. 2667 (File No. 5820), P.2d (1983).

II. FORMER LAW.

A. Generally.

Editor's notes. — The cases cited in the note below were decided under former AS 11.15.120 and 11.15.130.

Forcible rape ranks among the most serious crimes. Newson v. State, Sup. Ct. Op. No. 1136 (File No. 2189), 533 P.2d 904 (1975); State v. Lancaster, Sup. Ct. Op. No. 1247 (File No. 2571), 550 P.2d 1257 (1976); State v. Wassilie, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978); Ahvik v. State, Sup. Ct. Op. No. 2123 (File No. 4556), 613 P.2d 1252 (1980).

The reason such a crime as forcible rape is most serious is because it amounts to a desecration of the victim's person which is a vital part of her sanctity and dignity as a human being. Gordon v. State, Sup. Ct. Op. No. 831 (File No. 1535), 501 P.2d 772 (1972); Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974); Ames v. State, Sup. Ct. Op. No. 1137 (File No. 2145), 533 P.2d 246, modified on rehearing on other grounds, 537 P.2d 1116 (1975); Newsom v. State, Sup. Ct. Op. No. 1135 (File No. 2189), 533 P.2d 904 (1975); State v. Lancaster, Sup. Ct. Op. No. 1247 (File No. 2571), 550 P.2d 1257 (1976); Bordewick v. State, Sup. Ct. Op. No. 1500 (File No. 3341), 569 P.2d 184 (1977); State v. Wassilie, Sup. Ct. Op. No. 1630 (File No. 3691), 578 P.2d 971 (1978).

Definition of rape under former law. — Sekinoff v. United States, 283 F. 38 (9th Cir. 1922).

Criminal intent was required for conviction of statutory rape. — See State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

Although former AS 11.15.120 was silent as to any requirement of intent, the requirement of criminal intent was inferred. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

Rape is a general intent crime, and all that is required for a conviction is proof of the voluntary commission of the prohibited act. Walker v. State, Sup. Ct. Op. No. 2570 (File No. 4921), 657 P.2d 88 [illegible]

Lesser included offense. — The Alaska statutes do not proscribe fornication, and therefore, it could not be considered an offense of a lesser degree to statutory rape. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978); Tookak v. State, Ct. App. Op. No. 108 (File No. 4656), 648 P.2d 1018 (1982).

The offense of assault with intent to commit rape is a lesser included offense to rape. Tuckfield v. State, Sup. Ct. Op. No. 2266 (File No. 4569), 621 P.2d 1350 (1981).

Attempt. — Every element of an attempt is comprised in an assault with intent to commit the offense of rape. Sekinoff v. United States, 283 F. 38 (9th Cir. 1922).

Separate crimes. — Rape, assault with a dangerous weapon, and kidnapping were separate crimes with separate elements. Lacy v. State, Sup. Ct. Op. No. 2039 (File No. 3741), 608 P.2d 19 (1980).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. State v. Occhipinti, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

B. Age of Consent.

Female under age of consent is in law incapable of consent. — The crime of rape is commited upon a female under the age of consent with or without her consent since she is in law incapable of consent. Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974).

Thus, it is not necessary to establish her consent as an essential element of the crime. Torres v. State, Sup. Ct. Op. No. 1031 (File No. 1951), 521 P.2d 386 (1974).

Indictment need not allege consent of female under age of consent. — An indictment for rape of a girl under the age of consent is not insufficient because it fails to allege that the act was done with her consent. Callahan v. United States, 240 F. 683 (9th Cir. 1917); Rose v. United States, 240 F. 685 (9th Cir. 1917).

Defense of reasonable mistake of age. — A charge of statutory rape was defensible where an honest and reasonable mistake of fact as to the victim's age was shown. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

The charge of statutory rape was legally unsupportable unless a defense of reasonable mistake of age was allowed. To refuse [illegible]

criminal liability without any criminal mental element. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

While, where an offender was aware he was committing an act of fornication, a mistake of fact did not serve as a complete defense, it should have served to reduce the offense to that which the offender would have been guilty of had he not been mistaken. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

Under former AS 11.15.120, if an accused had a reasonable belief that the person with whom he had sexual intercourse was 16 years of age or older, he could not have been convicted of statutory rape. If, however, he did not have a reasonable belief that the victim was 18 years of age or older, he could still have been criminally liable for contribution to the delinquency of a minor. State v. Guest, Sup. Ct. Op. No. 1709 (File No. 3533), 583 P.2d 836 (1978).

For approved instruction on consent of female under age of consent, see Rose v. United States, 240 F. 685 (9th Cir. 1917).

C. Procedure.

Indictment charging attempted rape and citing only the rape statute held sufficient. — See State v. Thomas, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Charging defendant with the crime of murder committed "in the attempt to perpetrate a rape" fails to allege the separate crime of rape with sufficient clarity to support a conviction. Alto v. State, Sup. Ct. Op. No. 1443 (File No. 2339), 565 P.2d 492 (1977).

Severance of counts involving various victims. — Where defendant was prosecuted on multiple counts of unlawful entry with intent to rape, rape, assault, and burglary, involving various victims, the trial court did not err in denying severance of the counts since evidence regarding the attack on each of the alleged victims would have been admissible in the trial of each of the other charges if the charges had been separately tried. Nix v. State, Ct. App. Op. No. 157 (File No. 5841), 653 P.2d 1093 (1982).

Character evidence. — See Freeman v. State, Sup. Ct. Op. No. 703 (File No. 1046), 486 P.2d 967 (1971).

Questioning victim's credibility. — While a defendant could properly seek to question the victim's credibility, the estab[illegible]