ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8072

3277 HJUD HB 88 (FILE 2)

133

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: May 1, 1985

REQUEST

Bill/Resolution No.: CS HB No. 88
Title: An Act relating to the protection of children
Sponsor: Judiciary
Requestor:
Date of Request: 4/24/85

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		1,360.0	1,414.4	1,471.0	1,529.8	1,591.0
200 TRAVEL		122.2	127.1	132.2	137.5	143.0
300 CONTRACTUAL		377.9	244.6	254.4	264.6	275.2
400 SUPPLIES		19.0	19.8	20.6	21.4	22.2
500 EQUIPMENT		87.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		1,966.3	1,805.9	1,878.2	1,953.3	2,031.4
CAPITAL		-0-				
REVENUE		-0-				

FUNDING: (Thousands of Dollars)

GENERAL FUND		1,966.3	1,805.9	1,878.2	1,953.3	2,031.4
FEDERAL FUNDS						
OTHER						
TOTAL		1,966.3	1,805.9	1,878.2	1,953.3	2,031.4

POSITIONS:

FULL-TIME		31	31	31	31	31
PART-TIME		8	8	8	8	8
TEMPORARY		-0-				

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Michael L. Price — Phone: 465-3170
Division: Family and Youth Services — Date: 5/1/85

Approved by Commissioner: John A. Bagg — Date: 5/2/85 JCC
Agency: Health and Social Services

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

7/1/84

C. Computations

Personal Services		
15 Social Worker, 3 Licensing Specialists and 21 Clerical and Administrative		$1,360.0 *
Travel		
New Positions	56.0	
Staff Development	66.2	122.2
Contractual		
New Positions	178.3 **	
Increased Legal	138.9	
Staff Development	30.7	
WATS and Zenith Lines	30.0	377.9
Supplies		
New Positions	14.2	
Staff Development	4.8	19.0
Equipment		
First Year Only		87.2
		$1,966.3

* In original FY 86 budget submission, personal services request for these positions was lower by $118.2 due to internal transfer of money. In the latest versions of the operating budget, this funding has been removed.

** In successive years, space will be budgeted by Department of Administration. Inflation calculated at 4%.

D. Economic Impact

The creation of these new positions will have a positive impact on local communities.

E. Impact on Local Governments

There is no quantifiable impact on local governments.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

APR 30 1985

REQUEST

Bill/Resolution No.: CSHB88 (JUD)
Title: "An Act relating to the protection of children & family members
Sponsor: Rules/Governor
Requestor: House Judiciary
Date of Request: 4/24/85

FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Council on Domestic Violence and Sexual Assault

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		200.0	200.0	200.0	200.0	200.0
800 MISCELLANEOUS						
TOTAL OPERATING		200.0	200.0	200.0	200.0	200.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		200.0	200.0	200.0	200.0	200.0
FEDERAL FUNDS						
OTHER						
TOTAL		200.0	200.0	200.0	200.0	200.0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See attached

Prepared By: Barbara Miklos, Executive Director
Phone: 465-4356
Division: Council on Domestic Violence and Sexual Assault
Date: 4/30/85
Approved by Commissioner: [signature]
Date: 4/30/85
Agency: Department of Public Safety

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

7/1/84

The Council on Domestic Violence and Sexual Assault funds twenty-three community based programs in FY85. Nineteen of these programs provide services for victims of child sexual assault and their families. Services that the programs provide related to child sexual assault include: crisis intervention on a 24-hour basis; information and community education about child sexual assault; referrals and reporting, counseling and support to victims and non-offending parents; advocacy for victims and non-offending parents with the criminal justice, medical and other systems; training for teachers and other community professionals; curricula in the schools and treatment.

Council funded programs have experienced increased requests for services in recent years due in large part to their efforts to educate the public. The Governor's budget for FY86 included an increase of $575,000 for grants to community based programs. Two hundred thousand dollars of these funds can be directly attributed to increased services for child victims.

Grants - Financially stabilize existing programs 75.0

Demands for child sexual assault services have increased dramatically in the past few years. Programs have not been provided with additional funding to provide these services and have simply met these requests by overburdening underpaid staff or volunteers. With no increases in funding for salaries for the past two years, programs will have to reduce services to make up for increased costs. This doesn't not begin to account for the increase in requests that will no doubt result from changes in legislation to increase reporting.

Grants - Provide adequate funding for underfunded programs 75.0

The Council has identifed six programs that do not have sufficient funding to maintain the programs at the basic level of services required by the communities they serve. These programs provide or project to provide needed child sexual assault services in their areas. They are: Cordova Women's Resource Center; Unalaskan's Against Sexual Assault and Family Violence; Southwestern Alaska Council for the Prevention of Child Sexual Abuse; Tanana Chiefs Conference; Kenai/Soldotna Women's Resource and Crisis Center and Valley Women's Resource Center (Wasilla and Palmer).

Grants - Increased Rural Services Delivery 50.0

Victims of domestic violence and sexual assault and their families have fewer resources in rural areas than in larger communites. Police protection may be limited or nonexistent, and there are few trained health and social services professionals. Children who are victims of sexual assault do not have the necessary resources to help them deal with the trauma of the assault, legal process and after effects. Yet most people living in rural areas do not have access to domestic violence and sexual assault services.

The Council on Domestic Violence and Sexual Assault funded two new rural programs for FY85 and provided additional funds to existing programs to enhance rural services. However, it is apparent that these minimal increases will not begin to provide services for the 1/3 of the population in Alaska who do not have access to domestic violence/sexual assault programs. The interior of Alaska (Doyon Region), in particular, is underserved. Existing domestic violence/sexual assault programs provide education/prevention and crisis services to rural areas. They have accomplished a great deal, with insufficient funding, to serve the rural areas . In addition, the following communities have applied to the Council to begin programs that specifically address the needs of child sexual assault victims: Naknek, Nooper Bay and RuralCAP.

The Council has received requests for services from 27 community based programs. This two hundred thousand would be dispersed through the Council's funding process to community based programs to provide needed services to child victims and their families.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

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

Prepared By: William W. Ladwig
Division: Deputy Commissioner - Administration
Phone: 465-3376
Date: January 29, 1985

Approved by Commissioner: [signature]
Agency: DEPARTMENT OF CORRECTIONS
Date: January 30, 1985

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

7/1/84

DEPARTMENT OF CORRECTIONS

POSITION PAPER

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

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

Prepared By:

Cynthia Nelson
Special Assistant

Approved By:

Roger V. Endell
Commissioner

Date: January 30, 1985

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/13/85

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

FISCAL DETAIL
Agency Affected: Alaska Court System
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		123.9	131.3	139.2	147.6	156.5
200 TRAVEL		22.0	23.3	24.7	26.2	27.8
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		145.9	154.6	163.9	173	184.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		145.9	154.6	163.9	173.8	184.3
FEDERAL FUNDS						
OTHER						
TOTAL		145.9	154.6	163.9	173.8	184.3

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561
Division: Alaska Court System Date: 2/13/85

Approved by Commissioner: L Cole for A. Snowden Date: 2/13/85
Agency: Alaska Court System

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

12/1/83

ALASKA COURT SYSTEM

HB 88 - CHILD PROTECTION
FISCAL IMPACT

Judges statewide have indicated that this legislation will require additional judicial resources. It is the administrative director's assessment that assignment of additional judges on a pro tempore basis would provide adequate judicial coverage while minimizing the cost to the state. The original submission of this fiscal note overlooked the need for judges to travel to other superior court locations to hear these cases. Funds for judicial travel have been included in the revised fiscal note.

ALASKA COURT SYSTEM

HB 88 - CHILD PROTECTION
FISCAL IMPACT

PERSONAL SERVICES:	SALARY	BENEFITS	TOTAL COST
Pro Tem Superior Court Judge Ketchikan - 6 months	$9,203	$13,418	$22,621
Pro Tem Superior Court Judge Kenai - 6 months	9,847	13,563	23,410
Pro Tem Superior Court Judge Anchorage - 12 months	18,405	26,836	45,241
In-Court Clerk (Range 12B) Anchorage - 12 months	24,516	8,116	32,632
Total Personal Services			$123,904
TRAVEL			22,000
TOTAL			$145,904

Subsequent fiscal years adjusted to reflect six percent inflation.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 98
Title: An Act relating to the protection of children.
Sponsor:
Requestor: Rules by Governor
Date of Request: January 18, 1985

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Due Process
BRU, Program or Subprogram(s) Affected: Office of Public Advocacy

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	0	155.1	164.4	174.3	184.8	195.9
200 TRAVEL	0	15.0	15.9	16.9	17.9	18.9
300 CONTRACTUAL	0	100.0	106.0	112.4	119.1	126.2
400 SUPPLIES	0	2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT	0	24.0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	296.1	288.4	305.8	324.1	343.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	296.1	288.4	305.8	324.1	343.5
FEDERAL FUNDS						
OTHER						
TOTAL	0	296.1	288.4	305.8	324.1	343.5

POSITIONS:

FULL-TIME	0	4	4	4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Brant McGee
Phone: 274-1684
Division: Public Advocate
Date: January 25, 1985

Approved by Commissioner: Lisa Rudd
Date: 1/30/85
Agency: Department of Administration

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

Rev. 7/1/84

HB 88
Fiscal Note Analysis
Prepared by Division of Public Advocacy
Department of Administration
January 25, 1985

Governor Sheffield has introduced this legislation as part of his child protection package. One purpose of the bill is to increase the number of child sexual abuse investigations and prosecutions. The Governor's operating budget requests new positions in the Department of Law and the Department of Health and Social Services to accomplish this goal.

The addition of new staff in the two departments that generate legal action in child abuse cases will necessitate the creation of four new positions in the Office of Public Advocacy. These positions and the additional contractual funds requested to assure the representation of the nonoffending parent in children's proceedings are the minimum necessary to guarantee fulfillment of the Office's function as children's guardians ad litem.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 88

Title: Child Protection

Sponsor: Rules Committee

Requestor: Governor's Office

Date of Request: 1/17/85

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: Administration of Justice

BRU, Program or Subprogram(s) Affected:
1) Alaska State Troopers and
2) Administration (Records & Identification)

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES		214.8	225.5	236.8	248.6	261.0
200 TRAVEL		6.0	6.3	6.6	7.0	7.3
300 CONTRACTUAL		2.9	3.1	3.2	3.4	3.5
400 SUPPLIES		5.0	5.3	5.5	5.8	6.1
500 EQUIPMENT		0.7	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		229.4	240.2	252.1	264.8	277.9
CAPITAL		0				
REVENUE		0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND		229.4	240.2	252.1	264.8	277.9
FEDERAL FUNDS						
OTHER						
TOTAL		229.4	240.2	252.1	264.8	277.9

POSITIONS:

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME		1.0	1.0	1.0	1.0	1.0
TEMPORARY		0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

The reporting, investigative and follow-up functions will require increase in Staff. It is estimated that 3 Troopers (Statewide) at Range 76 will be needed at a total cost of $72.6 per position in FY86.

Affirmative and detailed reporting requirements by the Records & Identification Section of the Division of Administrative Services is estimated to need one-half

Prepared By: Jos Mapranath Telephone: 465-4336

Division: Administrative Services Date: 1/17/85

Approved by Commissioner: Date: 1/17/85

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

ANALYSIS, con't

of a position at the level of Range 9, Clerk IV.

For subsequent years, an inflation of 5 percent is calculated.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/22/85

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	437.2	453.4	480.6	509.3	539.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis

Dana Fabe

Prepared By: Dana Fabe, Public Defender Phone: 279-7541
Division: Public Defender Agency Date: 1/22/85

Approved by Commissioner: Lisa Rudd Date:
Agency: Department of Administration

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

House Bill 88
Fiscal Note Analysis
Prepared by Division of Public Defender Agency
Department of Administration
January 22, 1981

This legislation has been introduced by the Governor as part of a total child protection package. The various sections of this legislation will increase the number and strength of prosecutions of persons charged with offenses against children, particularly sexual abuse of minors. As part of this child protection package, the Governor's operating budget for the Department of Law requests 19 new positions, including seven attorneys, seven paralegals, and five legal secretaries. Furthermore, the budget of Health and Social Services contains numerous new positions. These increases in the budget of the Department of Law and Health and Social Services will increase both reporting of new offenses and prosecution of those offenses.

The increase of prosecutions in child sexual assault offenses will necessitate six new positions for this agency. These positions are the bare minimum necessary to handle the anticipated increase in workload and avoid inordinate delays in processing these cases through the courts:

Fiscal Analysis

Second Judicial District		
Attorney III (Nome/Kotzebue)		
Personal Services		83.1
Travel		5.0
Contractual (office space, experts, etc.)		10.0
Supplies		2.0
Equipment (one time expenditure)		2.0
	subtotal	102.1
Third Judicial District		
Attorney IV (Anchorage)	70.8	
Paralegal Asst II(Kenai)	45.5	
Paralegal Asst II(Palmer)	44.2	
Personal Services		160.5
Travel		15.0
Contractual (office space, experts, etc.)		17.0
Supplies		3.5
Equipment (one time expenditure)		4.5
	subtotal	200.5

(continued)

House Bill 88
Fiscal Note Analysis
Prepared by Division of Public Defender Agency
Department of Administration
January 22, , 1985

Fourth Judicial District			
Paralegal Asst II(Fairbanks)	48.7		
Paralegal Asst II(Bethel)	55.4		
Personal Services			104.1
Travel			10.0
Contractual (office space, experts, etc.)			16.5
Supplies			1.0
Equipment (one time expenditure)			3.0
		subtotal	134.6
TOTAL ALL DISTRICT			437.2

1.	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP
	Attorney III				22A	PX				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12.0				Kotz/Nome	17			
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $5,540/mo	66,480	
6.	Benefits	11,286	
7.	Supplemental Benefits	2,680	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	83,076
10.	Travel	02	5,000
11.	Contractual	03	10,000
12.	Commodities	04	2,000
13.	Equipment	05	2,000
14.	Other		
15.	TOTAL COST		99,100

	RECEIPT CODE	FUNDING SOURCE		AMOUNT
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	99,100
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This increment requests an attorney for Kotzebue, to handle child in need of aid proceedings and child sexual abuse prosecutions for both the Nome and Kotzebue offices. Currently, there are District Attorneys in Nome and Kotzebue as well as an Assistant Attorney General in Nome who splits her time between child in need of aid proceedings involving abuse of children and criminal prosecutions. Given the fact that in the Nome-Kotzebue area the number of child sexual assaults has increased drastically and may have tripled by the end of 1984, an additional attorney for this area is necessary at this time.

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Second Judicial District

Revised Date 1/22/85

FY 85

01-1136 (7/82) - 13

1.	POSITION TITLE: Attorney IV			RANGE/STEP: 24A	BARG. UNIT: PX	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STATE MONTHS: 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT: 8	LEG.		
3.	CONTINUATION EVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $4663/m0	55,956	
6.	Benefits	9,499	
7.	Supplemental Benefits	2,680	
8.	Fixed Benefits	2,630	
9.	TOTAL PERSONAL SERVICES	01	70,765
10.	Travel	02	5,000
11.	Contractual	03	10,000
12.	Commodities	04	1,500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		88,765

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	88,765
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This increment requests an Attorney IV for Anchorage to handle representation of clients in the additional prosecutions which are anticipated due to the addition of a number of additional positions in the District Attorney's office in Anchorage including two attorneys, a paralegal, and legal secretary. Given the fact that the number of child sexual assault cases in 1984 has increased substantially over those filed in 1983, as well as the need to send an Anchorage Public Defender to handle sexual assault cases in such outlying areas as Dillingham, which is staffed by an on-site prosecution, Unalaska, and the Aleutian Chain, an additional attorney will be necessary to meet the increased caseload.

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Third Judicial District

FY 85

Revised Date 1/22/85

01-1136 (7/82) - 13

1.	POSITION TITLE: Paralegal Assistant II			RANGE/STEP: 16A	BARG. UNIT: GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Kenai	ELECTION DISTRICT: 10	LEG.		
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION				

	TYPE OF EXPENDITURE		AMOUNT
	1	2	
	PERSONAL SERVICES		
5.	Salary $2,895/mo	34,740	
6.	Benefits	5,897	
7.	Supplemental Benefits	2,129	
8.	Fixed Benefits	2,732	
9.	TOTAL PERSONAL SERVICES 01		45,498
10.	Travel 02		5,000
11.	Contractual 03		3,500
12.	Commodities 04		1,000
13.	Equipment 05		1,500
14.	Other		
15.	TOTAL COST		56,498

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	56,498
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR D&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

This increment requests a Paralegal II for the Kenai Office. The District Attorney's figures show that child sexual assault cases for the first half of 1984 are already running well ahead of the total for the entire year of 1983. The Department of Law predicts that there will be an even greater increase in these cases in the next year. The District Attorney's office plans to add an additional attorney and paralegal to its Kenai office to keep up with this increase in child sexual assault cases.

Despite the fact that the Public Defender's office in Kenai has three attorneys who cover child sexual assault cases in Kenai, Homer, Soldotna, Seldovia, Cordova, and Seward, and that office has no paralegal to conduct investigations, interview and coordinate witnesses for trial. The addition of this position will free attorney time and obviate the need to request an additional attorney for Kenai at this time.

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Third Judicial District

Revised Date 1/22/85

FY 85

01-1136 (7/82) - 13

1.	POSITION TITLE: Paralegal Assistant II			RANGE/STEP: 16A	BARG. UNIT: GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Palmer	ELECTION DISTRICT: 7	LEG.		

3.	CONTINUATION LEVEL		ADDITION
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $2,804/mo	33,648	
6.	Benefits	5,712	
7.	Supplemental Benefits	2,0[illegible]2	
8.	Fixed Benefits	2,732	
9.	TOTAL PERSONAL SERVICES	01	44,154
10.	Travel	02	5,000
11.	Contractual	03	3,500
12.	Commodities	04	1,000
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		55,154

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	55,154
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This increment requests a Paralegal Assistant II to perform investigations, interview and coordinate witnesses for trial in child sexual assault cases in the Matanuska Valley. According to the Department of Law's statistics, the child sexual assault cases in Palmer are up substantially over last year. The two Assistant Public Defenders who currently staff our Palmer office are having difficulty at this time covering the ballooning caseload. The trend towards an increase of the child sexual assault cases and the addition of personnel to the District Attorney's office in Palmer necessitates a paralegal for the Palmer office to help prepare for trial in cases in Palmer, Glennallen, and Valdez.

13 REQUEST FOR NEW POSITION

AGENCY: Dept. of Administration
PROGRAM: Due Process
CRU: Public Defender Agency
COMPONENT: Third Judicial District

Revised Date: 1/22/85

FY 85

01-1136 (7/82) - 13

1.	POSITION TITLE: Paralegal Assistant II			RANGE/STEP: 16A	BARG. UNIT: GGU	FORM 12 PAGE/LINE	GOV.	APPROV. / DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Fairbanks	ELECTION DISTRICT: 16	LEG.
3.	CONTINUATION LEVEL		ADDITION					

4. TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES		
5. Salary $3,113/mo	37,356	
6. Benefits	6,342	
7. Supplemental Benefits	2,289	
8. Fixed Benefits	2,732	
9. TOTAL PERSONAL SERVICES	01	48,719
10. Travel	02	5,000
11. Contractual	03	3,500
12. Commodities	04	1,000
13. Equipment	05	1,500
14. Other		
15. TOTAL COST		59,719

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	59,719
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This increment requests a Paralegal II for the Fairbanks office. In Fairbanks, the number of child sexual assault cases is on the rise, and the District Attorney's office plans to add an attorney as well as paralegal and legal secretary help for that office. The Fairbanks Public Defender office has only one investigator who performs investigation for nine staff attorneys, including interviewing and coordinating witnesses for all criminal cases. Any increase in the child sexual assault caseload for that office will make it virtually impossible for one investigator to handle all of these tasks. A Paralegal II is thus requested for the Fairbanks office to handle the anticipated rise in caseload which will result from additional prosecutorial and paralegal personnel in the District Attorney's office. This will avoid a request for an additional lawyer for Fairbanks at this time.

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Fourth Judicial District

Revised Date 1/22/85

FY 85

	POSITION TITLE				RANGE/STEP	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP
1.	Paralegal Assistant II				16A	GGU				
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Bethel	ELECTION DISTRICT: 14	LEG.		
3.	CONTINUATION-LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary $3564/mo	42,768	
6.	Benefits	7,260	
7.	Supplemental Benefits	2,680	
8.	Fixed Benefits	2,732	
9.	TOTAL PERSONAL SERVICES 01		55,440
10.	Travel 02		5,000
11.	Contractual 03		13,000
12.	Commodities 04		-0-
13.	Equipment 05		1,500
14.	Other		
15.	TOTAL COST		74,940

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	74,940
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position, which has already been requested in the Department of Administration's initial budget request, is made acutely more necessary due to the Department of Law's proposed addition of an attorney and paralegal to handle child sexual assault cases in Bethel. There already exists a need for a Yupik speaking paralegal who can perform investigations, coordinate witnesses for trial, and provide a cultural liaison with witnesses and victims in Bethel and outlying villages. The substantial increase in child sexual assault reports in this area and the addition of Department of Law personnel in Bethel will increase our caseload, making this position even more essential.

(13.0 in con. for new office space)

13 REQUEST FOR NEW POSITION

AGENCY Dept. of Administration

PROGRAM Due Process

BRU Public Defender Agency

COMPONENT Fourth Judicial District

Page 9 of 9

Revised Date 1/22/85

FY 85

Memorandum

Alaska Court System

TO: Karla Forsythe
General Counsel

DATE : February 1, 1985

FROM: Victor D. Carlson
Superior Court Judge

SUBJECT: House Bill No. 88,
Protection of Children

In general I find the proposed legislation to be consistent with current practice and will promote the protection of children and the fair determination of cases relating to children. However, I have several specific comments:

1. Section 11 concerning traffic, etc. offenses. The phrase "in a district court" is redundant and serves no purpose, it is possible that a traffic offense would be prosecuted in the superior court and not just before a superior court judge sitting as a judge of the district court. Further, I question if it is the intent of the legislature to have children convicted of traffic, fish and game, and parks and recreation facilities violations sentenced to serve time in jail, e.g., on an operating a motor vehicle while under the influence of alcohol or drug. The current wording of this statute leaves this question and the amendments do not cure it.

2. Section 12 concerning predisposition reports. Two working days for review of a report appears to be reasonable and if more time is needed, the attorney for the child can move for a continuance. Currently, the defense attorneys use the ten-day requirement to create undue strain on the probation officers, it is nearly impossible to prepare a predisposition report and have it typed and distributed within twenty days of disposition, the current rules provide that no more than thirty days are to elapse between adjudication and disposition.

3. Section 14 concerning notification of emergency custody. A note expressing legislative intent that every effort must be made to notify the custodian when a child is taken into custody including the leaving of a note at the place where custody was taken, informing a neighbor or relative and anything else that will help to inform the custodian should be appended. I believe the court should be informed each time a child is taken into custody without a court order and a sworn statement of probable cause made to the court. Requiring a report to the court with a statement of probable cause will tend to police the discretion of the social workers. The only other policing technique is the civil suit for damages which is generally ineffective.

VDC:rw
Adm. F-1
Rev. 2-73

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

PUBLIC DEFENDER AGENCY

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

January 29, 1985

Re: HB 88

Attention: Nancy Bennett

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

Dear Representative Gruenberg:

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

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

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

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

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

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

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

2.) The hearsay exception should only apply to the actual victim of the offense. The provision in HB 88 would cover offenses other than child sexual offenses, including many sexual assaults not involving minors. The statute as now drafted would allow hearsay testimony of any witness under the age of sixteen, even if that witness was not a victim and the offense involved an assault on an adult rather than a child. This may allow a broader erosion of the rule against hearsay at the grand jury than first appears on the surface of the bill.

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

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

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

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

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

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

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

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

Very truly yours,

Dana Fabe

Dana Fabe
Public Defender

Enclosures

DF:cms

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POST OFFICE BOX 309
BARROW, ALASKA 99723
TELEPHONE (907) 852-2311

February 13, 1985

Representative Max Gruenberg
Representative Niilo Koponen
Other Members of the House H.E.S.S. Committee
Pouch V
Juneau, Alaska 99811

Dear Representatives Gruenberg and Koponen:

Many thanks for the opportunity to submit written comments on House Bill 88, the Governor's child abuse bill. The bill addresses many problems, but we would like to focus on the sections which would most directly affect us and our clients. These sections of the bill would amend Title 47, the Social Services statute, to change the legal rules that apply to "child in need of aid" cases. In our view the rules may need changing, but the changes embodied in the bill are not the right changes to make.

We would also like to comment, more or less in passing, on other sections of the bill that caught our attention as we read through it. In light of the problems we see in the provisions which would most directly affect our clients, we are worried that there are still other flaws in the bill that people familiar with different kinds of legal practice -- for example, criminal defense -- might catch. We urge the committee to review the bill carefully and completely to redraft it if that is necessary.

The provisions that concern us most are the provisions which deal with children in need of aid. To take those provisions in the order in which they might affect the people we represent:

Section 13: What justifies emergency custody?

We live in a society which believes that parents are the best people to take care of children, and that state intervention in families should be rare. If children are not in immediate danger, a social services agency should allow them to remain in their parents' custody until a court decides that they should be removed from their homes. With this as its basic principle, Alaska law on emergency custody is relatively straightforward. If a child has been abandoned, if his life is in danger, if he needs immediate medical attention, if he has been sexually abused -- then emergency custody may be warranted. If these things are not true, he stays home until a court decides that an out of home placement is appropriate, weighing those facts which

have been proved against the basic right of the family to remain together. House Bill 88 would change this basic principle. It would also make the meaningless drafting imperfections in the existing law all too important and meaningful. The changes the bill proposes are wrong as a matter of policy and confusing as a matter of practice.

The policy problem is of course a matter for the Legislature. Our experience, and the experience of other Legal Services lawyers in Barrow, is that the existing legal rules rarely keep Social Services from taking emergency custody if a social worker feels emergency custody is needed. If the agency does not intervene and something disastrous does happen, the existing legal rules are not at fault. Rather, these failures to intervene have other obvious causes: lack of knowledge on the part of social workers and lack of resources on the part of the agency. The present rules allow emergency intervention when it is granted and prohibit it when it is not. Changing the rules will not avert the disasters about which Social Services is legitimately worried.

What changing the emergency-custody rules will do, at least if House Bill 88's suggested changes are adopted, is to transform an existing but unimportant drafting problem in the present statutes into a setting for lawsuit after lawsuit. Here is the problem. AS 47.10.142(a)(2) now authorizes "immediate removal from the minor's surroundings" if that is "necessary to protect the minor's life" and there has been gross "neglect." AS 47.10.142(a)(3) authorizes emergency custody if immediate medical attention is necessary and the minor has been "abused." The distinction between "neglect" and "abuse" is not, in practice, particularly important -- which is fortunate, because the statutory definitions do not make this distinction clear. "Neglect" is defined in AS 47.17.070(5). "Abuse," on the other hand, has no separate definition. What AS 47.17.070(1) defines is "child abuse or neglect," which

> means the physical 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.

What "abuse" itself means, as opposed to "child abuse or neglect," is, to say the least, unclear. It could simply mean physical injury under the requisite dangerous circumstances. It might mean "physical injury or maltreatment." It might also mean everything in the passage quoted above -- including "neglect."

Because authority for emergency custody has been limited to four obvious situations -- abandonment, danger to life, needed medical treatment, and sexual abuse -- defining

"abuse" has not been particularly important. If the Legislature enacts House Bill 88, however, it suddenly will be. For the bill authorizes "immediate removal from the minor's home" whenever removal is "necessary" and what has occurred is "abuse." Because the bill does not specify when removal is "necessary," an agency wanting to remove a child from his home will be tempted to treat everything as "abuse." So a court will have to decide what "abuse" means, and the statutory definition will not be at all helpful. The Legislature simply cannot allow Social Services' emergency authority to be this opaque. If it does, there will be lawsuits challenging the definition of "abuse" as impenetrable, vague and unconstitutional, and the courts will end up taking over the Legislature's responsibility to make rules.

(Incidentally, the Governor's transmittal letter does not explain this problem. Nor does it even mention the suggested change in AS 47.10.142(a)(3).)

Section 14: When do parents get a hearing?

When Social Services takes a child into emergency custody, it has 12 hours to get notice to the court, which must then hold a hearing within 48 hours of receiving notice. At least in theory, the time between assumption of custody and court hearing will be no more than two and one-half days. House Bill 88 could easily double that time. Reducing Social Services' paperwork burden is a fine objective, but making parents wait four or five days before a judicial officer can evaluate what has happened to the family is the wrong way to solve the paperwork problem.

Consider a fairly common situation. It is Friday night; parents are drinking and become incapacitated; Social Services arrives and takes emergency custody. Under present law Social Services files court papers on Saturday and the matter can be heard on Monday. Under House Bill 88, the court need not be notified until Monday -- or even Tuesday -- and the hearing will be delayed until Wednesday or Thursday. (If there is a court holiday on Monday, the hearing might not occur until the following Friday, a full week after "emergency custody" was taken.) What is important to recognize is that the court hearing is not, and should not be, an empty formality. Social Services must have compelling reasons to take emergency custody. If the agency's decision was unjustified -- and many of these decisions are -- then the parents have the right to have their children returned to them. Even if the decision was justified, the parents need counsel, and the court does not usually appoint counsel until the hearing. Doubling the time parents may have to wait, either for their child or for appointed counsel, is wrong, unless it is absolutely necessary.

It is not necessary. The transmittal letter says that preparing a petition within 12 hours is a burden. But this is a problem with an obvious and less drastic solution. The transmittal letter is right when it says that notice to a judicial officer, in itself, almost never produces any meaningful screening of cases. The real screening comes at the "48-hour hearing," which the court schedules after it receives notice. So long as the court gets notice within 12 hours and can thus schedule a hearing, we would have no objection to Social Services' filing its papers at some time after it orally notifies the court that custody has been taken. The next business day, provided that that day is before the 48-hour hearing, would be sufficient. Because this solution would reduce Social Services' burdens without depriving parents of a prompt hearing, it is preferable to the solution House Bill 88 offers.

We also see little need to change the rules on how parents must be notified that emergency custody has been taken. Formally, the law requires parents to be notified within 12 hours. As a practical matter, judges routinely excuse the failure to give notice if a social worker has a good explanation. Thus there is no need to change the notice requirement. In fact, explicitly recognizing that only "reasonable efforts" to notify the parents need be made, as the bill proposes to do, would be counterproductive: it might allow social workers to believe that notifying parents is low priority and that any effort social workers make will be considered "reasonable." Notifying parents that their children have been taken should not be low priority and present practice ensures that it is not.

If the Legislature does decide to rewrite the emergency custody statute, we suggest that it add a subsection limiting the time a child can be in Social Services' temporary custody. We have had several cases in which the court ordered a temporary placement under AS 47.10.142 and the child remained in the temporary placement for several months, the court ordering month-to-month extensions of temporary custody. The problem with this is that the state-law standard for temporary custody is very low: all Social Services needs to show is that there is probable cause to believe a child is a child in need of aid. The standard for more permanent legal custody is much stricter, and it is unfair to allow Social Services to avoid having to meet that strict standard by keeping children in temporary custody for extended periods.

Section 12: How much time should parents have to consider Social Services' recommendations?

After a child has been "adjudicated" -- determined to be a "child in need of supervision" or a "child in need of aid" -- the court has to decide where the child is to be placed. To help the court make this decision, Social Services

prepares a "predisposition report." The law, as it stands today, requires this important report to be made available to parents, the guardian ad litem, and the attorneys ten or more days before the "disposition" hearing. House Bill 88 would reduce the required lead time to two working days. This would impose a special handicap on parents, children and attorneys who live in rural areas.

The transmittal letter explains why a ten-day requirement is burdensome in Anchorage quasi-criminal cases. In Anchorage, quasi-criminal dispositions may be relatively routine: periods of detention at places like McLaughlin, periods of release with probation-like conditions. But civil children's cases in the Bush are quite different. In rural areas, the odds are that a "child in need of aid" is a Native child and that the special requirements of the Indian Child Welfare Act apply to his case. This Act, in 25 U.S.C. sec. 1915, establishes that some placements for a child are preferable and others are only acceptable if there is good cause not to place the child in a "preferred" setting. Dispositions can thus be both important and complicated. Social Services makes its first long-term placement recommendation in its predisposition report. Two working days is simply not enough time to evaluate Social Services' recommendations, discuss them with clients, who may need the report to be translated to them, determine why the agency rejected certain alternatives, and prepare testimony opposing the plan, if opposition is necessary.

It is of course possible to ask for a disposition hearing to be postponed. However, last-second postponements have at least three disadvantages:

-- If parents and witnesses live in a remote village, travel plans have to be changed. If the village is, say, Anaktuvuk Pass, and the court is in Barrow, this can be very hard to do -- and, of course, in any event it is a burden on the people who have to travel.

-- Superior courts in the Bush, at least in Barrow, have extensive criminal dockets and have to give priority to criminal cases. Civil postponements can therefore last much longer than anyone expects; delays of more than a month are not uncommon.

-- Hearings of this sort are an emotional strain on the parents and children who have to participate in them. It is easier for all concerned if the date set for the hearing is the date the hearing takes place.

For these reasons, among others, there is often substantial pressure to hold on to a hearing date at all costs. Last-second requests for continuances will generally be honored, but in the Bush, rather more than in Anchorage, asking for a continuance may risk alienating the decision-maker. Ten days is almost always enough time to do the investigative and preparatory work that needs to be done. Two days is never enough time.

Other problems and concerns

The reason "endangering the welfare of a minor" is a specially defined crime is that the law recognizes that young children need care and cannot protect themselves. By making desertion of any minor, even a 17-year-old, a Class C felony, Section 1 would abandon this focus on young children, and we oppose it.

According to the transmittal letter, Section 2 is aimed at child care providers and other people with whom parents and guardians leave their children. The transmittal letter implies that the new law would not be used against parents or guardians, who in a similar situation might be guilty of criminal nonsupport. But the bill itself is not so explicit. It refers to people "entrusted with the care of a child," and one obvious (but wrong) way to read "entrusted" is "entrusted by operation of law," that is, legally responsible for a child's care. That would include, not exclude, parents and guardians -- which is not what the section is designed to do. Guarding against a wrong interpretation might require redrafting or a formal statement in a legislative committee report. The Legislature should also do something to keep "entrusted" from being read to encompass everyone who has contact with a child.

Section 8 goes too far. It would authorize the special criminal record reporting system to release information on criminal convictions for, among other things, assault, reckless endangerment, and DWI, if specified employers ask for them. The apparent rationale is that a person convicted of these crimes poses a special risk to children. We doubt this is true. Assault and reckless endangerment are basically irrelevant unless the victim was a child. DWI convictions are irrelevant unless a prospective job involves driving. When the special criminal record reporting system was established, the Legislature recognized that wide dissemination of the information in it would invade people's constitutional right to privacy. The Legislature carefully designed the balance it struck between disclosure and nondisclosure, and the proposed change does too much to upset it.

In light of the recent "cultural touching" decision out of Kotzebue, Section 15 may be more trouble than it is worth. In practice, unraveling the social-workerese ("normal caretaker interactions") in the draft language may also be difficult.

Counselors and clergymen have raised objections to Section 17, and we see other problems with making more people report child abuse to the police and to Social Services. What are "human services providers"? The definition in Section 25 is remarkably vague. (We think of Alaska Legal Services, for example, as a "human services organization": like legislators and ombudsmen, we try to

help people with problems.) Certainly the Legislature needs to put more understandable boundaries around the concept. It also needs to realize that some "human services providers" have an institutional responsibility not to disclose information. Assume for a moment that Alaska Legal Services is a "human services provider." Under the bill's Section 20, we may not be forced to testify in court about information our clients give us. Under Section 17, however, we may be legally required to report that information to the authorities. If information is privileged there obviously should not be an obligation to report it.

There is a real moral problem with requiring child abuse reports from "child care providers," which Section 25 defines as all unrelated adults providing care and supervision for children. People often leave children with friends and reporting requirements, if anyone pays attention to them, get in the way of friendships. In practice this part of the law would be, and perhaps should be, routinely ignored. It would come into play only after a disaster, where the law, as often happens, tries to find as many people as possible to blame. Legislators should realize that by enacting these provisions they would be enacting rules that would expose thousands of people to civil as well as criminal liability.

Section 25's definition of "mental injury" should be changed to emphasize that "injury," not something like "failure to thrive," is what the Legislature is concerned about. "Failure to thrive" concepts are so subjective and culturally biased that in themselves they should never justify intrusion on a family.

When statutory changes conflict with court rules, the Legislature must explicitly override the court rule if its amendments are to be effective. Sections 27 and 28, which attempt to do this, are incomplete because they fail to include necessary references to the Rules of Children's Procedure. Children's Rule 7(b), for example, requires the State to hold a hearing within 48 hours after it detains a child or takes temporary custody, not excluding weekends and holidays. It is possible that present law is consistent with this Children's Rule, but the changes proposed in Section 14 clearly would not be.

Conclusion

These comments have been lengthy because House Bill 88 attempts to solve so many different problems. In the areas with which we are most familiar, the solutions the bill proposes seem inadvisable. The bill tries to reduce the burdens on social service agencies by limiting procedural and substantive rights which parents and guardians must have if they are to try to keep their families together. The real solution to these problems, we believe, is to devote more of

the State's resources to helping, not dividing, families. Social service agencies need more money and better training for their employees. A quick legal fix will not work.

Again, many thanks for inviting us to comment on this very important legislation.

Sincerely yours,

Linda Wingenbach
Supervising Attorney

Mark Regan
Staff Attorney

WISH

Women In Safe Homes

A Safe Alternative to Family Violence

P.O. Box 6552
Ketchikan, Alaska 99901
(907) 225-9474

February 8, 1985

Representative Max Gruenberg, Co-Chair
Health, Education & Social Services
Alaska State Legislature
Pouch V--M/S 3100
Juneau, AK 99811

Dear Representative Gruenberg:

I have been attending the committees teleconferences' on HB 67-HB 88. I want to first compliment you on the very fair and efficient manner you have conducted these hearings. I hope you will also accept my apology for correcting your mispronunciation of my name, on Wednesday. Being new to this system, I did not realize how difficult it was to keep all the parties straight.

The major reason for my letter is to express a concern that Ms. Dana Fabe's (Public Defender, Anchorage) testimony may have been given undue weight. She spoke very eloquently, and her expertise was obvious. However, her point of view was narrow--that of the offender. Our laws in this country, in theory, are the very best in the world when it comes to providing for due process and protecting the rights of the accused. For too long, however, the rights of children have been only minimally protected. It concerned me that the committee could have been distracted from the purpose of this bill by Ms. Fabe's testimony. If offenders are being treated unjustly, lets propose a bill to correct that issue. This bill purpose is to protect children from the control of adults who exploit and abuse. In short, we must move from a position where children are considered property to an position where they will be given a chance to grow up in a healthy environment.

For those who believe such measures are breaking up the family; cause trauma and pain to adults due to mandatory reportings; I must ask what about the pain of the child--the child who has few choices. Lets not place the burden on a child for the problems of his/her parents or us as adults. Lets not ask a child to make the choice between his/her father going to jail versus stopping the pain and trauma they feel.

Please keep the responsibility for abuse in the hands of the perpretrator not the child. Lets ask them to be accountable for their behavior as we do when someone runs a stop sign.

Finally, I have suggested Ms. Fabe view is narrow. I admit mine is just that. After 30 years in the Child Welfare Field, I

am convienced of one thing, power means change. What power do children have.

Thank you for taking the time to deal with this issue and please know your concern for children is obvious.

Sincerely,

Floyd H. Richmond
Executive Director

FHR:sms

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

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

April 2, 1985

Mr. A. Robert Hahn
Mr. Richard Block
Christian Science Committee
on Publication for Alaska
630 Oceanview Drive
Anchorage, AK 99515

RE: HB 88 Suggested Amendment by
Christian Science Committee

Dear Mr. Hahn and Mr. Block:

I have requested the Division of Family and Youth Services' staff to research and consider the suggested amendments to HB 88 which you had proposed to Representative Uehling, and to the House Health and Social Services Committee. We concur with your position regarding a change to the newly proposed AS 11.15.110, Endangering the Welfare of a Minor. Therefore, the Department will suggest to the Health and Social Services Committees that they add to AS 11.51.110(a)(2) a final sentence which states:

> "There is no failure to provide necessary medical attention to a child if the child is provided treatment solely 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."

However, as to your suggestion that there be a change in the definition of "child abuse or neglect" at AS 47.17.070(1), we believe that such a change would not be good public policy. AS 47.17.070 is a definition section which applies to a very limited portion of the statutes, specifically AS 47.17.010--47.17.070. This chapter requires certain persons to report harm to children to public authorities, and requires the public officials to investigate every report of harm. Nothing in Chapter 17 requires any particular action by the public agency investigating the report, nor do these definitions serve for other parts of Title 47. To include an exemption for religious practitioners from the "child abuse and neglect" standards of Chapter 17 would insert undesirable ambiguity into the reporting statute.

In the interest of protecting all children by encouraging members of the public to report instances of harm, it is better that all reports be made and that a social worker investigate the reports. We believe that the protections provided to religious practitioners under AS 47.10.080(k) and AS 47.10.085 are adequate to protect practitioners in all circumstances of agency custody decisions and court decisions made under Title 47.

Chapter 17 of Title 47 should remain very clear and unambigious, to encourage the reporting of all suspected instances of harm to a child. A lay person, or even one of the professionals required by law to report under this statute, should not be required to make a determination whether the suspected child abuse or neglect is instead somehow associated with a religious choice of the family. It is better that the report be made and that a professional investigate the circumstances.

I hope that upon further consideration you will concur with our viewpoint on this issue, but we remain willing to discuss it further if you wish. Thank you for your participation in the legislative process on this important issue.

Sincerely,

Connie J. Sipe
Deputy Commissioner
for Social Services

cc: Rep. Max Gruenberg, Chair
Health, Education & Social Services Committee
Rep. Rick Uehling
Marsha Hubbard
Ray Gillespie
Gayle Horetski
Frank Barthel

CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION
FOR ALASKA

A. Robert Hahn
630 Oceanview Drive
Anchorage, AK 99515

279-1544

MEMORANDUM

TO: Representative Rick Uehling DATE: January 26, 1985

FROM: A. Robert Hahn
Committee on Publication for Alaska

RE: House Bill 88

New section 11.51.110, ENDANGERING THE WELFARE OF A MINOR, essentially covers the same idea in (a)(2) -- "failing to provide the child with ... medical attention" as is covered in 11.51.120, CRIMINAL NONSUPPORT, which has a specific exemption in subsection (b) which states:

> (b)...There is no failure to provide medical attention to a child if the child is provided treatment solely 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.

This exemption is important to Christian Scientists as it protects their right to provide treatment by prayer for their children in lieu of medical treatment. It is important to recognize that Christian Science treatment through prayer is recognized by the Federal government, the legislatures of the states and the health insurance industry as a viable and effective alternative to treatment by medical means. We feel sure the Alaska legislature will wish to retain the right of individuals to treat their children through prayer as that same protection is accorded elsewhere in the Alaska Statutes. Attached is a suggested addition to the proposed new section 11.51.110 to accomplish this result.

In A.S. 47.17.070(1) it is also our position that in order to be consistent in maintaining the exemption granted in other sections of the code (see for example, A.S. 47.10.080(k) and A.S. 47.10.085) the language contained in the attached amendment should be included in that section.

Your assistance in securing these amendments is deeply appreciated.

A. Robert Hahn
Committee on Publication
for Alaska

A.S.11.51.110(a)(2) shall include the following language in order to make said section consistent with A.S.11.51.120(b):

> There is no failure to provide medical attention to a child if the child is provided treatment solely 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.

A.S.47.17.070 is amended to read:

47.17.070 Definitions. (a) In this chapter

(1) ...etc....

(b) a child is not subjected to neglect or mental injury, solely by reason of a person related to and responsible for the welfare of a child under the age of 18 not providing 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 accredicted practitioner of the church or denomination.

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030
DOCUMENT #85-47

February 20, 1985

The Honorable Niilo Koponen
Co-Chairman
House Health, Education and
Social Services Committee
Pouch V
Juneau, AK 99811

Dear Representative Koponen:

The House HESS Committee has requested that the Division of Family and Youth Services (DFYS) respond to questions raised by individuals testifying to the committee regarding HB 88, Section 12.

DELINQUENCY AND CINA CASES

The committee was asked if the amended version of AS 47.10.081(c) (Sec. 12 HB 88) would apply in child in need of aid cases (CINA). The proposed amended version only changes the time period hence it would, as does the present law, apply both to delinquent cases and CINA cases. Both DFYS Regional Managers of social workers and Regional Administrators of Youth Services have requested that change, in order to give their workers more time to properly evaluate and treat children in their custody.

PREDISPOSITION HEARING REPORT RECOMMENDATION

The committee received several comments stating that the time period of two days as proposed in SEC. 12 does not allow an attorney sufficient time in a CINA case to advise and counsel their client. The Barrow office of Alaska Legal Service Corporation (ALSC) was contacted and they would accept a compromise of five days in the place of two working days, although they would prefer five working days. After discussions with field managers the department agrees to support a "five day rule". Therefore the department requests that the wording of the proposed amended statute be changed to "five days", rather than the "two working days" proposed in HB 88.

HISTORY AND RATIONALE

When Title 47.10 was substantially amended in 1977, a new section was added entitled 47.10.081, Predisposition hearing reports. Paragraph (c) of that section requires that predisposition reports prepared by DFYS workers will be available for distribution to the child, his parents, attorney, and Guardian Ad Litem not less than ten days before the disposition hearing.

AS 47.10.08(c) was introduced at the recommendation of a specifically formed Children's and Family Code Task Force which had been formed by a joint effort of the legislative and executive branches of government to recommend modifications to Title 47. The Task Force recommended reports be available to parties three days prior to hearing. Prior to the statutory change, disposition reports could be submitted by DFYS workers as late as the actual hearing. During the legislative process, ten days was substituted for three days on the recommendation of the Public Defender Agency.

In delinquency dispositions where there are 30 or fewer calendar days between adjudication and disposition, investigating probation officers may have fewer working days to complete their investigation and prepare the disposition report than the parties have to review the document prior to the court hearing. The current ten day requirement also eliminates any possibility of a practical effort to reduce the total time between adjudication and disposition for those children detained during that process.

In practice, the so-called "ten day rule" has resulted in lengthening periods of detention because additional time is necessary to complete predisposition investigations and disposition hearings must be postponed.

In CINA cases the social workers must complete their investigation, assess the child's needs, and institute a treatment plan after taking custody of a child and before a disposition report can be submitted. In those areas of the state where the adjudication and disposition hearings are held together, the current "ten day rule" is a hardship on the social worker. Often the social worker will have 10-12 days to work on the case before the disposition report is due. This is an unrealistic time period to build a case, make a case plan, and provide services. As in delinquent proceedings, the legal community in some cases has as much time to review what the social worker has done and plans to do as the social worker has available to assist the child and prepare the disposition report prior to the disposition hearing.

There is no question that parties to a disposition hearing including a child's attorney must have prior access to our investigative reports. A full five days availability would be a reasonable time for parties to review our reports.

Thank you for the opportunity to respond to these questions.

Sincerely,

John R. Pugh
Commissioner

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.

EHH:ojb
J13/039

AMENDMENT #5

TO: House Bill 88 By: Gruenberg

Page 1, line 28, insert the following sentence, "There is no failure to provide necessary medical attention to a child if the child is provided treatment solely by spiritual means through prayer in acordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination."

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)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H-05
JUNEAU, ALASKA 99811
PHONE: (907) 465-3170

DIVISION OF FAMILY AND YOUTH SERVICES

April 12, 1985

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

Dear Representative Gruenberg:

This letter is to provide you information on the fiscal impact of amending AS 47.10.010(a)(2)(B) to change the standard for assuming custody in cases of mental injury. It is our understanding that you will introduce an amendment removing language that requires the Department to prove that a parent is unwilling to provide medical treatment. Instead, your amendment will require the Department to show that a parent, guardian or custodian has failed to provide treatment for a child suffering from mental injury.

Fiscal impact information provided you in a letter of April 8, 1985 was based on the inclusion of mental injury in AS 47.17 which would require mandatory reporting, investigation and treatment, if warranted. That information remains accurate should mandatory reporting of mental injury be added to HB 88. If, however, only AS 47.10.01(a)(2)(B) is amended, the fiscal impact would be less but would gradually increase over time as awareness increases in the reporting community.

Currently, the Department is rarely able to assume custody in cases of mental injury unless there is accompanying physical harm or neglect because it is extremely difficult to prove the unwillingness of the parent to provide treatment. Once physical harm is proven the Department can assume custody because it does not have to show that the parent will in the future cease their abusive behavior towards the child. The amendment is welcomed, as it will provide the Department the same standard as is used in physical harm cases.

Because there will be no mandatory reporting, we estimate that fiscal impact would be 20 to 25% of the impact provided to you in my letter of April 8, 1985. It is estimated that three additional journeyman level Social Workers will be needed to respond to increased intakes and to provide ongoing services. As has been noted previously, 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	$ 9,400
2.	Psychological counseling	$36,000
3.	Substitute Care	
	A. Foster care (9 FTE's @ $19.24/day)	$62,000
	B. Institutional care (2 FTE's @ $121.00/day)	$94,716

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	$ 165.0
2.	Psychological services	45.4
3.	Institutional care	94.7
4.	Foster care	62.0
		$ 367.0

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

I hope this information is helpful.

Sincerely,

Michael L. Price

Michael L. Price
Director

MLP:lp

cc: The Honorable Peter Goll
Alaska State House

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

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

DOCUMENT #85-132

April 19, 1985

The Honorable M. Mike Miller
Chairman, Judiciary Committee
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Miller:

This letter is in response to the Judiciary Committee's request that the Division of Family and Youth Services provide a definition for "child abuse or neglect" [AS 47.17.070(1)] for Committee Substitute for House Bill 88 and provide information on criminal history background checks for HB 308.

The definition presently in CS HB88 creates the problem that the reporter must determine if the physical harm to a child is nonaccidental. As a result, the reporter, not the division or law enforcement, would have to investigate and make a determination as to the cause of the injury. Frequently child abuse involves a determination as to the nature of the injury, that is, was the injury the result of an accident or was the injury deliberately inflicted. The division and law enforcement have the statutory authority and personnel to do investigative work. The division suggests that the language for the proposed statutory change in AS 47.17.070(1) be:

> "[CHILD]" abuse [OR NEGLECT]" means physical injury [OR NEGLECT], sexual abuse, sexual exploitation, or maltreatment of a child [UNDER THE AGE OF 18] by any person [WHO IS RESPONSIBLE FOR THE CHILD'S WELFARE] under circumstances that [WHICH] indicate that the child's health or welfare is harmed or threatened thereby;

The committee suggested that the statutory language should state, as the present statute does, that the harm was inflicted or caused by "a person who is responsible for the child's welfare". However, because the reporting statute in AS 47.17.020 has been amended in CS HB88 to reflect two causes of injury to children, injury caused by family members and injuries caused by non-family members. Presently the child protection statutes address the issue of abuse and neglect when it occurs within the family. The division becomes involved in family matters only when the family relationships break down. If a stranger or non-family member commits the abusive behavior towards a child, it is a law enforcement

issue. A family can in most cases take care of their own problems. The family does not automatically need the division to intervene. The division could, if asked, offer advice and referral information.

With regard to criminal history background checks for persons in licensed facilities a copy of the Senate version, CS SB21, and the Department's position paper on that bill is enclosed for your information. The Senate bill was drafted with the assistance of the department. Under the provisions of the bill the department would perform a criminal history background check on all adults in home-sized facilities: family child care homes, child foster homes and adult foster homes. The department would also perform criminal history background checks on all administrators and operators of adult residential care facilities, residential child care facilities and child care centers except members of a corporation if those board members do not participate regularly in the program. As explained to the committee, in general there are a number of facilities exempt from the licensing statute including, programs exempt under federal law, programs operating less than 24 hours a day and claiming the primarily educational exemption, care provided by a relative, and care provided for four or fewer children in a child care program that operates less than 24 hours a day.

I hope this information is useful to the committee.

Sincerely,

Connie J. Sipe
Deputy Commissioner

Enclosures

cc: All Members House
Judiciary Committee

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H-05
JUNEAU, ALASKA 99811
PHONE: (907) 465-3170

DIVISION OF FAMILY AND YOUTH SERVICES

January 23, 1985

The Honorable Mike Miller
Alaska State House
House Judiciary
Room 112
P.O. Box V
Juneau, AK 99811

Dear Representative Miller:

Representative Clocksin and other members of the House Judiciary Commitee expressed an interest, at the November 21, 1985 House Judiciary hearing on HB 88 in receiving Division of Family and Youth Services responses to issues raised by Fairbanks citizens, via teleconference.

The following is a summary of issues presented, followed by our response:

A. Issues

1. 60% of reported child abuse and neglect cases are unsubstantiated, therefore investigations needlessly disrupt families.

2. The Department of Health and Social Services through the Division of Family and Youth Services has too much authority and abuses that authority.

3. The emergency custody statute should be amended to shorten the time that the Division has to notify parents after emergency custody has been assumed from twelve hours to six hours.

The group also requested the Division to provide statistics for the the percent of total substantiated reports received each year from persons who are required to report.

B. Response

1. Abuse and neglect of children results in death to approximately 2000 children annually nationwide. In Alaska children have died as a result of abuse and neglect but comprehensive data does not exist.

   Alaska's child protection statutes are written, as are those of all fifty states, to mandate protection for children suspected

to be victims of abuse as defined in the statute. Title 47.10.010 sets out the circumstances under which a child may be considered a victim of abuse or neglect. All reports made to the Division which include elements described in statutes as constituting abuse or neglect must be investigated to ensure the child's safety. An agency bound with the responsibility of investigating reported cases can not predetermine before initiating the investigation which referrals will be substantiated. Failure to protect children and agency liability for failure to respond to complaints are at issue.

By its very nature, the investigation process in child abuse cases is volatile, threatening to parents, and conducive to misunderstanding and ill will towards investigators. The initial investigation, particularly if emergency custody is necessary, is the point of intervention most likely to produce a feeling among parents that their rights are being disregarded, and result in complaints about agency or individual social worker practice or procedure. This is unavoidable, but must be minimumized through effective casework, training, appropriate agency policy, and monitoring of policy implementation.

DFYS policy emphasizes employment of a nonthreatening investigative approach, and stresses an explanation to parents of the reasons for intervention and the investigation and legal processes. While the reduction of parental stress and trauma are important agency goals which may contribute to future success in working with families, these goals must not be allowed to take precedence over the primary mandate of the agency - - protection of children. Reducing parental stress or anger is always important, since it enables the intervening social worker to more readily enlist parental cooperation. However, this is difficult to achieve during investigations and must remain secondary to the goal of protecting the child.

Appendix A provides statistics for the total number of reports received by the Division of Family and Youth Services in FY 83 with a breakout of substantiated cases. This information was gathered manually in response to a request from the then Representative, Mae Tischer. Unfortunately this data is unavailable for FY 84. However, since the Division request for funding of the data system was not approved last session the Division has initiated a manual count of cases substantitated by each region on a monthly basis. As Appendix A indicates, in FY 83 56% of all sexual abuse reports received were substantiated as were 46% of the physical abuse reports. Statistics for neglect cases are not unavailable. It should be noted that in Appendix A the category of unsubstantiated cases refers to "cases where the social worker believes that the incident occurred; however, the

child was too young to have a provable case, there was insufficient evidence, or the child's safety was ensured. Therefore, in only 15% of the reported cases did the social worker believe that the evidence did not warrant the charge. It is also important to note that cases in the unconfirmed status are frequently re-reported.

Appendix B summarizes the intake for the Division of Family and Youth Services office in Fairbanks for the month of October 1985. The report states that 118 of a total of 220 reports of abuse and neglect were substantiated. *

In FY 83 the Ombudsman received seven (7) complaints against the division alleging that the division inappropriately intervened in family affairs. Of the seven complaints filed alleging errors in emergency custody action the ombudsman found six (6) complaints to be unsubstantiated. Only one complaint was found to be justified; in that case the division did not assume custody in a situation which resulted in a child's death.

Appendix C is a report by David Jones entitled "Reliable and Fictitious Accounts of Sexual Aubse in Children".

Action in response to complaints of abuse and neglect cannot be selective. Inaction can be lethal for children even though frequently disconcerting to parents.

2. The complaint that the division has too much authority and abuses that authority is so general that a response is not possible. I would welcome the opportunity to respond to specific situtations of excessive authority and instances in which there is a perception that authority has been abused.

3. With regard to shortening the hours the division has to notify the parents in emergency custody situations the current statute requires that parents be notified immediately, but no later than twelve hours after assumption of custody. Since it is division policy to notify parents as soon as possible, reducing the outside time limit would not significantly affect current practice, since the majority of parents are contacted immediately after custody has been assumed. There will always be

* The definition of unsubstantiated and unconfirmed were changed with the implementation of the manual court system. Unsubstantiated reports in Appendix A are defined as unconfirmed in Appendix B. Unconfirmed on reorts Appendix A were renamed invalid on Appendix B.

isolated instances where this is not possible, but practice is to heed the requirement to notify as soon as possible, not to wait for 12 hours prior to notice.

In regard to the request for aggregate statistics by reporter types, unfortunately our data system does not collect information regarding the reporter. Division plans for a new system would have provided this capability, but funding was not provided in FY 86, and the division will not be able to provide such data without an improved data system. The lack of an adequate automated management information system continues to limit the scope and quantity of division data.

The issues raised by VOCAL are representative of concerns that are being expressed nationally by various groups as child protective services have evolved from virtually no emphasis on child protection prior to the 1970's to the development nationally and in Alaska of effective systems for reporting and responding to child abuse and neglect situations.

It was not until the early 1960's that "the medical diagnosis" of child abuse was recognized and advanced by C. Henry Kempe and his associates, who introduced the "battered child syndrome" as a medical diagnosis for child maltreatment. As a result of this work all fifty states responded to protect children by passing mandatory reporting laws. In 1974 with the passage of the Federal Child Abuse and Neglect Prevention Act, protective services for children were nationally recognized as the primary function of government social services agencies. Previous to the passage of that act the majority of social services caseloads across the nation were comprised of families receiving Aide to Dependant Children. It is now widely recognized that child abuse is not directly related to income.

In more recent years, improvements in services have been due in part to the increased focus on sexual abuse which has enhanced investigative procedures and increased public awareness of children suffering all forms of abuse and neglect. The public has responded to this information with increased reporting, and child protection agencies have responded with improved systems for initial intervention - the point at which the child victim is at greatest risk.

At this point in the evolution of protection services to children we recognize that resources are inadequate to minimize the trauma of intervention to families. Alaska hopes ultimately to follow the course of several states including New York and Oregon where they have been successful in reducing the need for disrupting families by expanding pre-placement preventive services. These services including intensive in- home services to families in crisis, have enabled those states to reduce the numbers and length of time that children are in out of home care and to strengthen families. Reduced caseloads are necessary to implement intensive in-home services.

Failure to provide adequate services to families after intervention is a serious problem; however, this problem will not be resolved by questioning whether or not we should intervene to protect children in the first place.

We need now to commit our resources to improving services to families once they are in the system, rather than to question whether or not protection of children is a defensible goal.

Sincerely,

Michael L Price

Michael L. Price
Director

MLP:DAG:FB:pvp

Enclosures

cc: House Judiciary
Committee Members

APPENDIX A

REPORTED PHYSICAL AND SEXUAL ABUSE CASES
FY 83

Definitions

1. Substantiated: Cases where there was sufficient evidence to support a child in need of aid determination and/or criminal action;
2. Unsubstantiated: Cases where the social worker believes that an incident occurred; however, the child was too young to have a provable case, there was insufficient evidence, or the child's safety was ensured;
3. Unconfirmed: Cases where there was insufficient evidence to determine the incident occurred.

Sexual Abuse

Region	Substantiated		Unsubstantiated		Unconfirmed		Total
	#	%	#	%	#	%	#
Southcentral	146	60%	56	23%	41	17%	243
Northern	42	34%	57	47%	23	19%	122
Northwestern	7	46%	4	27%	4	27%	15
Southeastern	68	72%	19	20%	7	8%	94
Western	29	60%	15	31%	4	9%	48
Grand Total	292	56%*	151	29%*	79	15%	522

* Substantiated and unsubstantiated reports total 85%.

Physical Abuse

Region	Substantiated		Unsubstantiated		Unconfirmed		Total
	#	%	#	%	#	%	#
Southcentral	149	55%	89	33%	33	12%	271
Northern	36	25%	88	61%	21	14%	145
Northwestern	5	42%	7	58%	-0-	-0-	12
Southeastern	63	50%	34	27%	29	23%	126
Western	13	65%	6	30%	1	5%	20
Grand Total	266	46%*	224	39%*	84	15%	574

*Substantiated and unsubstantiated reports total 85%.

SUSP 4 OUT #

465-3030

Document No. 84-45

February 8, 1984

The Honorable Mae Tischer
Alaska State Legislature
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Tischer:

During the review of the Department before the Health, Education and Social Services Committee on January 20, 1984, you requested information regarding the number of reported incidents of sexual abuse. Enclosed is a chart breaking down the number of physical and sexual abuse cases by Division of Family and Youth Services' Regional offices.

Reported physical and sexual abuse cases are further broken down to designate if the cases were substantiated (there was sufficient evidence to support a child in need of aid determination and/or criminal action), unsubstantiated (the social worker believes that an incident occurred; however, the child was too young to have a provable case, there was insufficient evidence, or the child was protected adequately), and unconfirmed (there was insufficient evidence to determine the incident occurred). It should be noted 85% of the reported cases of sexual or physical abuse proved upon investigation to have actually occurred.

Should you wish any additional information, please feel free to contact me.

Sincerely,

Robert London Sm[illegible]h, Ph.D.
Commissioner

Enclosure
RLS/MLP/FH/pjb
1/SUSPEN/Tischer/D#418

APPENDIX B

MONTHLY INTAKE REPORT

Field Office: NORTHERN REGION Month: OCTOBER 1985

I. Total Number of Reports: 1. 220

2. Category	3. Number	4. Open Case	5. STATUS Substantiated	6. Unconfirmed	7. Invalid	8. Case Opened	PENDI
(A) Physical Abuse	21	6	14	4	2	16	2
(A) Neglect	64	16	33	29	5	35	3
(A) Sexual Abuse	18	3	12	5	2	16	1
(B) Runaway	11	1	11	0	0	9	
(C) *Other	106	0	48	2	1	10	
9. TOTALS	220	26	118	40	10	86	6

II. Emergency Custody

1. A. Total number of children requiring emergency custody: 16

2. Number of families involved: 12

3. B. Case Profile of Children taken into Emergency Custody

Age	Number of Children	Sex M	Sex F	Ethnic Cau	Ethnic Blk	Ethnic Nat.Am.	Ethnic Other	Open Case	Physical Abuse	Neglect	Sexual Abuse	Runaway	Other * (Specify)
0 - 2	4	3	1			4		3	2	2			
	1) 2)	3)	4)	5)	6)	7)	8)	9)	10)	11)	12)	13)	14)

4. Example of injuries/neglect: 1-Strangulation

3 - 5	3	2	1	2		1				3			

Examples of injuries/neglect:

6 - 12													

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0 - 2	4	3	1			4		3	2	2			
	1)	2)	3)	4)	5)	6)	7)	8)	9)	10)	11)	12)	13)	14)
3 - 5	3	2	1	2		1				3			
6 - 12	4	4		1		1	2	1	1	3			
13 - 18	5	2	3	1		4		4	1	1	1	2	
5. TOTALS	16	11	5	4		10	2	8	4	9	1	2	

4. Examples of injuries/neglect: 1-Strangulation

Examples of injuries/neglect:

Examples of injuries/neglect:

Examples of injuries/neglect:

6. C. Parental Involvement

1. Number of cases in which parents were interviewed at the time emergency custody was assumed: 8
2. Number of cases in which notice was given after emergency custody was assumed: 6
3. Reasons for not interviewing parents prior to assumption of custody:

   a. Parents could not be located: ____
   b. Parents were incapacitated: 1
   c. Social worker determined inappropriate: 2

      1) Sexual abuse case: ____
      2) Other: 1

      List reasons for each of the "other" cases.

7. D. Legal status after emergency custody hearing:

   1. Custody not requested: ____

APPENDIX C

RELIABLE AND FICTITIOUS ACCOUNTS OF SEXUAL ABUSE IN CHILDREN*

David P.H. Jones, MRC Psych. DCH
Visiting Associate Professor of Child Psychiatry
University of Colorado School of Medicine
Clinical Director, C. Henry Kempe National Center
1205 Oneida Street
Denver, CO 80220

Abstract of Data Presented
at Seventh National Conference
on Child Abuse and Neglect
Chicago, Illinois, November 12, 1985

*This outline is a portion of the paper to be published in the Journal of Inter-personal Violence, June, 1986, Issue #2, where further details, both of the relevant background literature as well as the process of validation, will be detailed. The author requests any who quote from this abstract to give appropriate recognition and to note that these are preliminary findings and not the final version of this work.

This study that I shall describe, originates from my work with the Denver Social Services Sexual Abuse Program, and the Kempe National Center for the Prevention and Treatment of Child Abuse and Neglect in Denver, Colorado.

False reports of child sexual abuse are generally considered to be uncommon and to represent only a small proportion of any areas' cases. There has been recent concern, both within the media and professional literature, that perhaps many of the reports of sexual abuse which are classified as "unfounded" or "unsubstantiated" by local social services departments, may be false. The media has questioned whether there may be a "witch-hunt mentality" among the professionals who investigate these cases and therefore that there may be numerous maligned adults resulting from such allegations. Even if false reports are uncommon, they are a matter of serious concern, not only because of the potential false accusation, but also because of the wider distress that may be caused to other family members and eventually to the child his/herself.

The aim of this study was to find out how often reports are false (or fictitious), what are the characteristics of these fictitious accounts, and what implications can we draw from an examination of these cases?

I think we should move away from a dichotomy between "true" and "false", and attempt a more realistic assessment based upon degrees of probability that an event did or did not occur. After all, sexual abuse is a private crime usually involving two witnesses -- abused and abuser, and for very good reasons, both parties may not recall their behavior or experience.

Two samples were used for the purpose of answering these questions:

Sample 1 - All the cases reported to Denver Department of Social Services Sexual Abuse Team during 1983. Total number 576.

Sample 2 - Fictitious cases of child sexual abuse seen at the Kempe National Center between 1983 and 1985. Total number 21 (out of several hundred cases seen).

Sample 1 - Denver Social Services Cases:

Of the 576 cases, 54% were "founded" and 46% "unfounded".

TABLE 1

SAMPLE 1 - DENVER S.S. REPORTS		
	NUMBER	%
FOUNDED	309	53.65
UNFOUNDED	267	46.35
	576	100

Table 2 provides a more detailed breakdown of the cases seen.

TABLE 2

TYPE OF ACCOUNT	NO.	%
RELIABLE	284	49.31
RECANTATIONS	25	4.34
INSUFFICIENT EVIDENCE	126	21.88
APPROPRIATE CONCERN	96	16.67
FICTITIOUS:		
BY ADULT	36	6.25
BY CHILD	9	1.56
	576	100

Thus, 54% of the reports were reliable ones. Nearly 22% were unable to be explored any further because insufficient evidence was available to the abuse team and no further decision could be made. Nearly 17% of all the reports were made by adults who, either upon their own initiative, or because a counselor or doctor had required them to make a report, wer 'appropriately concerned'about the possibility of sexual abuse but, when the matter was investigated, they were satisfied with the conclusions of the sex abuse team and were not, in any sense, falsely creating an allegation, but merely following up on their feeling of concern. These cases were quite distinct from

the fictitious accounts.

Reports were made by adults and/or their children and were broken down into two groups in this sample. 6.25% of the total number of reports were fictitiously made by an adult, and 1.56% fictitiously generated by a child. Thus, a total of 7.81% of the reports made in Denver in 1983, were fictitiously generated.

Full case detail was not always available on these cases, however, the crude distinction between whether the adult or child was the prime originator of the allegation was not always apparent. In fact, several accounts existed where both parent and child had fused their allegations. Some themes did emerge from an examination of these cases:

Child generated fictitious allegations were made by female teenagers, between ages of 12--17, who all were suffering from symptoms suggestive of a Post-Traumatic Stress Disorder, based upon prior, documented sexual victimization in earlier years.

Two adults involved suffered from major psychoses -- one with hypomania, and the second with a paranoid psychosis.

Some of the adults were involved in bitter custody or visitation disputes with their estranged spouse and the allegations had arisen in this context.

When adults were either behind the allegation, or had fused in their fictitious allegation with their children, they commonly had been victims of sexual abuse themselves, when they were children, and had significant residual psychological after effects of this experience. Some had sufficient symptoms to be considered to have an extended, delayed traumatic neurosis.

Sample 2 - The Kempe Center Series:

This provided an opportunity to examine the characteristics of a series of fictitious accounts of sexual abuse in greater detail.

Sample 2 consisted of 17 female and 4 male children, between the ages of 1.5 and 10 years -- Table 3.

TABLE 3

SAMPLE 2 - KEMPE CENTER		
17	FEMALE	1.5 - 9 YRS.
4	MALE	5 - 10 YRS.

The cases seen were categorized as follows:

Table 4

	NO.
Child	5
Parent	9
Mixed	7
Total	21

The child accounts (5 children) were female children, between the ages of 3 and 9, all of whom delivered their account of sexual abuse with a lack of attendant emotion when they talked about the abusive experience. Furthermore, their accounts lacked a history of any threats or coercive elements. Four of the children had, themselves, been prior victims of sexual abuse (well documented), and were suffering from symptoms of post-traumatic stress disorder (with recollection experiences and significant anxiety symptoms). One of the childrens' parents was involved in a custody dispute.

The adult accounts (9) were brought by women, on behalf of 2 male and 7 female children, between the ages of 1-6 years. Seven of the adults were parents, bringing false allegations on behalf of their children, and 2 of the adults were professionals. In 6 of the 9 cases a custody or visitation dispute was in process. Six of the 9 adults were, themselves, prior victims of sexual abuse with significant residual, psychological symptoms again suggestive of an unresolved post-traumatic neurosis. The majority of the children (7), did not provide any history that they were sexually abused and, in fact, believeably stated that they had not been.

Seven cases consisted of mixed, or fused accounts, and all these were between mother and child involving 2 male and 5 female children, between the ages of 4-10 years. All these cases involved a custody or visitation dispute. An abnormal symbiotic or enmeshed relationship existed between

mother and child, with marked role reversal on the child's part. Similiarly to the fictitious childrens' accounts, the child's allegations lacked emotion and did not have the element of threat or coercion present. Again, 5 of the adults were prior victims of sex abuse in their own childhood with, again, significant residual after-effects.

Implications:

1. Fictitious accounts of child sexual abuse are not common, but do occur and involve children of all ages and both sexes.

2. The ability to spot such cases means that the evaluator has to entertain the possibility that fictitious cases can occur.

3. The diagnosis depends upon the early interviews with the child and parent, and then upon a search for a possible mechanism to explain a fictitious generation for the report. This search should include both the family situation and dynamics, as well as the presence or absence of the post-traumatic stress disorder in children and parents. The presence of any of the features which did occur in the 21 cases described above should not be taken to mean that the report is false, but should be regarded as a red flag to the evaluator. The reason for saying this is that there are many accounts which are known to be reliably made, where some of these features exist.

4. Features of the child's account which proved helpful were the absence of emotion, and of threats or coercive features when the abuse was being described.

5. An enmeshed and symbiotic mother/child relationship was present in all the mixed or fused accounts.

6. Although all the fused accounts were made within the context of custody or visitation disputes, a separate study of custody disputes containing child sex abuse allegations by this author, indicates only in a minority of such cases does the account of sexual abuse appear to be a fictitious one.

7. All those who made fictitious accounts required major psychological help, whether they were adults or children.

8. There are implications for the availability for child developmental specialists (therapists, child psychiatrists, or child psychologists) who need to be involved in the initial investigative procedures, at least in selected cases, at the time of intake to local social services departments in order to be able to help with these

difficult diagnostic decisions. It is probable that there will always be a series of cases about whom insufficient evidence exists; however, the aim should be to reduce the number of cases about whom uncertainty exists.

MEMORANDUM State of Alaska

TO: Representative Don Clocksin DATE: April 12, 1985

FILE NO:

TELEPHONE NO:

FROM: Dana Fabe
Public Defender

SUBJECT: SB 243 HB 58

Thank you for soliciting my comments on SB 243 which addresses a number of different aspects of the important issue of child protection. Following is an analysis of the sections of the bill which could cause some problems.

Section 2, Endangering the Welfare of a Minor in the Second Degree

This section creates a new criminal offense. It will be a Class A misdemeanor, punishable by one year, to expose a child under the age of 13 to circumstances creating a substantial risk of physical injury or sexual abuse. Of particular concern is that the parent or caregiver need act only with criminal negligence in exposing a child to the risk of harm.1/

This section could have broad application to parents and caregivers who accidentally allow their children to be hurt. If a caregiver negligently allows a child to crawl into a cabinet which contains toxic cleaning chemicals or get too close to a wood stove, that behavior may become subject to criminal prosecution. Similarly, if a parent should negligently allow a child to be cared for by an abuser, failing to perceive the risk to the child, that parent will be criminally liable just as the abuser is.

It is my opinion that the current statute is adequate. If, as a policy matter, the House feels that it is necessary to delineate an offense other than the current crime of intentionally exposing a child to the risk of physical injury, I have two suggestions. First, the state of mind required should be recklessness rather than negligence. A person acts recklessly if that person is aware of a risk and consciously disregards it. Second, the statute should apply only to exposing the child to actual injury or abuse rather than a risk of injury. There are many situations where a home accident is narrowly averted. A parent who sees a child about to drink household cleaner and is able to get the bottle of cleaner away from the child in time, may have exposed the child to a "substantial risk of injury" but not actual injury. Clearly, a parent or caregiver should not be punished for accidents which were able to be avoided.

1/ A person is criminally negligent when he or she fails to perceive a substantial risk and such failure is a gross deviation from the standard of care a reasonable person would observe.

The following change in language for this section would incorporate these suggestions.

> Section 11.51.110, Endangering the Welfare of a Minor in the Second Degree
>
> (a) a person commits the crime of endangering the welfare of a minor in the second degree if, being entrusted with the care of a child under 13 years of age, the person recklessly
>
> (1) exposes the child to sexual abuse; or
>
> (2) exposes the child to physical injury by failing to provide the child with necessary food, care, clothing, shelter, or medical attention.

Section 10,

This section expands to 24 hours the time given the Department to file a petition with the court after assuming emergency custody of a child. Given the broadened circumstances under which emergency custody of a child can be assumed under Section 9 the need for the court to quickly decide the propriety of the social worker's action is enhanced. Since the court now has 48 hours within which to schedule a hearing once it receives a petition, the Legislature may wish to look at the possibility of shortening that time. Furthermore, it is our experience in the Anchorage Public Defender office as appointed counsel for the parents that we do not usually receive notice of the initial hearing at which probable cause for the emergency custody is established. Thus, the parent must stand before the court unrepresented during this hearing. Given these concerns, the committee may wish to consider requiring appointed counsel to be called to appear at the initial hearing to establish probable cause.

Section 11,

This section expands the definition of "sexual abuse", permitting the State to remove a child from the home of his or her parents. Conduct which constitutes a criminal sexual offense against a child under AS 11. is appropriately contained within this section. Unfortunately, this section expands the definition of "sexual abuse" to include touching of a child's genitals, thighs, buttocks, or groin, or the child's touching those areas of the parent or another.

Although this section attempts to exclude "reasonable touching" for "normal" caregiver responsibilities, it cannot possibly contemplate every type of beneficial touching which might occur. The criminal statutes on sexual abuse contained in Title 11 would appear to adequately cover harmful touches. Disallowing all touching except for normal touching is like declaring illegal all driving except for safe driving. This overly broad method of prohibiting all conduct except for normal conduct is confusing and will allow social workers who may have only limited training to determine what is normal and reasonable conduct for parents.

If there is some specific type of touching which the Legislature feels that the criminal statutes do not cover but should be grounds for removing a child from a home, that type of touching should be specifically defined. Given the broad scope of the criminal statutes, I am unsure as to what conduct this section is aimed at covering. I would suggest eliminating subsection (3)(B) in its entirety.

These are my chief concerns with the bill. I appreciate your requesting my input. Please feel free to contact me if I can provide any other information.

DF:cms

CSHB 88 (Judiciary), Relating to the protection of children

SECTION-BY-SECTION ANALYSIS

Sections 1 and 2

Under AS 11.61.125, enacted in 1983, it is a class C felony offense to bring child pornography (visual depictions of children engaged in sex acts) into the state for sale or distribution. The law also prohibits possession or publication of such material with intent to sell it. As presently written, however, AS 11.61.125 does not explicitly prohibit the sale of child pornography. Section 1 strengthens existing law, by explicitly prohibiting sale, and further, prohibits sale and distribution whether or not for commercial consideration.

Section 3

AS 12.10.020(c), enacted in 1983, extended the general five-year statute of limitations for sex crimes against children. Under certain circumstances, a crime of this nature can be prosecuted up to 10 years after it was committed. This extension was adopted because, under the prior law, the five-year limitation period often expired before the child victim became old enough to report the assault. This was especially true when the victim was a very young child. Section 3 of this bill amends the language of AS 12.10.020 to include prostitution related offenses among those offenses to which the extension applies. The amended language also includes offenses committed under sections of the criminal code that were repealed when the laws relating to sexual offenses against children were revised in 1983.

Section 4

AS 12.45.045, which limits the introduction in a sexual assault trail of evidence of the victim's previous sexual conduct, was adopted in 1978 as part of the new criminal code. Virtually all states have adopted some version of such a "rape shield" statute. The statute is designed to protect the sexual assault victim from unwarranted invasion into her private life. As originally adopted in the new criminal code, serious sexual offenses against children were included in the general sexual assault statutes. The protections included in AS 12.45.045 thus applied in child abuse cases as well as adult rape cases.

In 1983 the criminal laws regarding sexual offenses against children were revised; most sexual offenses against children are now called "sexual abuse of a minor" in one of four degrees. Unfortunately, the language of AS 12.45.045 was not altered to reflect the new designation for sexual crimes against children. Section 4 of this bill amends the statute to make it clear that the protections accorded to adult victims of a sexual assault apply to child victims as well.

Section 5

Under AS 47.10.081, before a juvenile court may "dispose of" (sentence) a delinquent minor, all parties must receive a predisposition report. This report is prepared by a DFYS worker. Section 5 amends AS 47.10.081(c) to provide that the report must be provided to all parties six (rather than 10) working days before the hearing.

The present 10-day requirement presents considerable practical problems, and often requires a delay in the disposition proceedings. In delinquency dispositions where there are 30 or less calendar days between adjudication and disposition, investigating probation officers may have fewer working days to complete their investigation and prepare the disposition report than the parties have to review the document prior to court. The ten day requirement also eliminates any possibility of a practical effort to reduce the total time between adjudication and disposition for those children detailed during that process. The present "10-day rule" has resulted in lengthening period of detention because additional time is necessary to complete predisposition investigations and disposition hearings must be postponed.

Section 6

This section would change the standard for assuming emergency custody in neglect cases to conform to the same standard used in abuse cases. It would thus allow earlier emergency intervention to protect neglected children. It would also allow assumption of custody of neglected children who need immediate medical attention rather than requiring that their life be endangered before emergency custody can be assumed.

Section 7

Section 7 allows DFYS discretion in filing petitions when emergency custody has been assumed in situations that do not require continued protective custody or DFYS involvement. These instances constitute a small percentage of the emergency custody cases, and involve situations in which a primary or temporary caretaker has allowed the child to wander off and the child is discovered by parties who do not know the family. Under current law, in order to provide temporary shelter for the child until parents are located, DFYS must assume emergency custody. A request to dismiss is often filed with the petition in these situations, and the petition is filed only because the present statute appears to require it. This section eliminates the need for this unnecessary paperwork.

Section 7 also allows DFYS up to 24 hours to file its petition papers with the court. Notice to the parents must still occur within 12 hours, as provided in the current statute. DFYS workers often find it nearly impossible to prepare and file the court papers within the same 12 hour period -- immediately after assuming emergency custody -- when the worker must also find placement for the child, get medical attention for the child if needed, transport the child from a remote village to a location with placement, search for unavailable parents, and, of course, respond to other emergencies affecting other children.

Section 8

Section 8 defines the term "sexual abuse" for purposes of civil child in need of aid (CINA) proceedings under AS 47.

Sexual abuse literature often references the sexualized grooming process by which sexually abusive parents prepare children for their use for sexual purpose. The definition proposed in this legislation allows the child protective system to back up the child when the child says

"no" to the grooming conduct. This allows the child to enlist the aid of the child protective system to stop the sexual abuse before it becomes more serious and more damaging to the child or his or her family.

It is necessary to define the term "sexual abuse" to prevent legal attacks on the child protection statute [AS 47.10.010(a)(2)(d)] as void for vagueness. Because there is room for debate as to exactly what sexual abuse means, a court may not permit CINA cases to be brought under any facts other than conduct which constitutes a crime. While on its face this might seem to be acceptable, the following example is offered to highlight the harm which can arise in narrowing Child in Need of Aid jurisdiction to only "criminal" conduct.

> An intoxicated father strokes the upper inner-thigh of his 10-year-old daughter repeatedly while making highly sexualized comments to her. The child reports that she feels the contact was sexual, that she feels used sexually, demeaned, and expresses all the same fears and emotions of a sexually abused child. The child also reports extreme fear that the next step will be that her father will attempt intercourse with her. The child's father denies any sexual intent.

Under these facts, the State cannot prosecute the father. The child protection system, however, approaches cases solely from the perspective of child protection (i.e., not punishment). The circumstances described above cause harm to the child which is qualitatively the same as if actual intercourse had occurred (qualitatively one might predict that the consequences might be less harmful to the child in this case). The State has and will spend tens of thousands of dollars funding programs to tell children that they have a right to say "no" to adults initiating sexual contact with them. Limiting CINA jurisdiction only to those instances which can be prosecuted as a crime means that if a child says "no" to highly sexualized parent-child conduct which falls short of a crime, the child's protection system will not back him or her up. The child in the above example must wait until the sexual abuse progresses to the level of severity which warrants incarceration of her father. A vote against the inclusive language of this definition is a vote against early detection and prevention.

Reasonable perception of the child should be considered by the court. The reasonable perceptions of the child are critical to the determination of child in need of aid jurisdiction on the grounds of sexual abuse. Because the child protection statutes are designed to protect children from the mental and emotional harm which results from sexual contact between a parent and a child, the child's perception that he or she is being used sexually is highly relevant to determining whether sexual abuse has occurred. In the above example, it really does not matter if the father intended the conduct to be sexual or sexually gratifying. What is important for child protective purposes is that the child is being harmed because she reasonably perceives that her father's contact with her is sexual. Because her perception is reasonable, it should be considered by the court in arriving at its decision. If the child <u>reasonably</u> perceives the contact is sexual, the child

protective system ought to be able to step in to insist that the harmful conduct stop.

Section 9

AS 47.17.010 is a statement of legislative intent that protective services should be provided to child victims of abuse and neglect to prevent further harm to the child, enhance the general well-being of children, and preserve family life. Section 9 clarifies that family life should be preserved whenever it is in the best interests of the child to do so.

Section 10

This section revises and expands existing law requiring persons in certain professions to report to DFYS suspected abuse of a child by a parent or other caretaker. Under existing law, a significant number of persons who regularly have access to information that a child has suffered harm as the result of abuse or neglect by a caretaker are not required to report that information. The revised statute focuses upon those individuals who regularly have contact with a child, or a child's family, and are therefore in a position to gain knowledge of child abuse and neglect. These changes are needed to insure that all children abused or neglected by caretakers come to the attention of DFYS.

Section 11

Section 11 requires film processors to report suspected cases of child pornography to law enforcement authorities for investigation and provide the authorities with copies of the material. Several other states have such a requirement. On at least one occasion in the past, an Alaska man who photographed a young child engaged in sex acts with him was apprehended as a result of a similar reporting requirement in another state. A person who knowingly fails to make a report as required in this section is guilty of a class B misdemeanor under AS 47.17.068 (see sec. 18 below).

Section 12

Section 18 contains a conforming amendment per the clarified definition of abuse in section 6.

Section 13

This section contains a conforming amendment extending existing "B" misdemeanor penalties for failure to report suspected child abuse, as explained above regarding section 11.

Section 14

Section 14 of this bill provides broad authority to the state to enjoin or limit persons who endanger children in the ways specified from having contact with children. While there may be common law authority for this view, statutory confirmation of this authority removes one issue from possible litigation in cases where the attorney general chooses to bring an action to enjoin or limit a person from contact with children. This addresses the problem of no regulation of day care providers who care for less than five children, without burdening the public with regulation of all day care providers.

Section 15

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, physician's assistants, and psychological associates. 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 16

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

Section 17

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

Sections 18 and 19

Section 18 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 19 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.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 88

For an Act entitled: "An Act relating to the protection of children and family members and providing for an effective date".

I. GROWTH IN CHILD ABUSE AND NEGLECT

A September, 1984, report to Governor Sheffield on child abuse and neglect in Alaska stated that reports of child abuse and neglect increased 219% in the six year period, FY 78 to FY 83.

- Physical abuse (26% of the total reports) increased 186%.
- Sexual abuse (11% of the total reports) increased 272%.
- Neglect (63% of the total reports) increased 219%.

A comprehensive approach to enhancing the state's ability to protect children who have been abused and neglected was formulated last fall by the department. Improved laws and resources have been proposed to provide effective state intervention in cases of child abuse or neglect. Proposals address criticisms in legislative audits and Ombudsman's reports. These audits and reports have recommended practical changes to Alaska statutes, additional resources, greater efficiency in use of resources, and the need for a more responsive management information system.

II. IMPROVED LAWS

Committee Substitute for HB 88 was the result of extensive reviews and proposals by the executive and legislative branches of government. Major components of the Bill will:

- strengthen existing pornography laws by prohibiting selling or distribution of child pornography and by requiring film processors to report suspected cases of child pornography;
- improve the law, as it applies to a child sexual assault victim, through a "rape shield" whereby the child is protected from unwarranted invasion into her/his private life;
- allow assumption of emergency custody of grossly neglected children who need immediate medical attention rather than requiring that their life be endangered before emergency custody can be assumed;
- expand the classification of persons required under the law to report suspected child abuse or neglect;
- authorize the state to enjoin dangerous persons from child contact; and
- authorize a system of civil fines to enhance enforcement of the child care licensing law.

The department understands that there will be interim work on the sections deleted from HB 88 and will be pleased to work with the interim committee to improve child protection laws.

III. CHILD PROTECTION RESOURCES

Practical and important improvements to the State's civil and criminal laws are needed but will not alone meet the challenge of ensuring adequate protective services for children in Alaska. Both the child protection staff increments originally contained in the Division of Family and Youth Services FY 86 operating budget and the management information system for the division contained in the capital budget must be fully funded to adequately address the problem.

A. Child Protection Staff Increments

- The division is understaffed to a degree which limits services to a level little greater than crisis response and may be inadequate to achieve minimally accepted child protection.

- In the September, 1984 report on child abuse and neglect during the six year period FY 78 to FY 83, caseloads in child protection increased by 122% and total caseload increased by 173%.

- During the period from January, 1980 to August, 1984, there was a 70% increase in the number of licensed facilities.

- Dramatic growth and demand in the six year period was met with a 6% increase in clerical support, a 23% increase in licensing staff, and a 22% increase in social work staff.

- At the end of FY 83, 35 social workers alone were needed to meet a caseload standard of 50 cases per worker. The report for FY 84, shows the need for an additional 9 social workers.

- The average caseload per social worker for FY 84 was 80 cases per worker. The state standard is 50 cases per worker and the national standard is 25 cases per worker.

- 35 positions were included in the division's operating budget proposal for FY 86: 15 full-time social work positions, 3 full-time licensing positions, and 17 full-time equivalent administrative and clerical support positions, the most cost-effective staffing pattern to provide direct service, supervision, and clerical support.

B. Management Information System

- Positions requested were predicated on having a Management Information System. Only those positions that are fully justified by FY 83 statistics are requested, because the Management Information System (SYSMIS) contained in the FY 86 capital budget will automate some worker responsibilities, improving staff and management efficiency.

POSITION PAPER/Department of Health & Social Services

- SYSMIS will enable the division to maximize federal claims. The additional federal revenues are estimated to result in the system paying for itself within 2.9 years.

- SYSMIS will enable the division to more adequately respond to needs for protective services and to track service outcomes and impacts. It should increase social work efficiency and provide better management information for administrative decisions.

- The division is also undertaking a case management study to provide a classification for prioritizing work. It will make line workers decision making more consistent, as well as more in line with the agency's policies. It will ensure that plans are well thought out to impact positively the outcome of a case. Workload information will enable the division to better assess client need and risk levels and to more efficiently deploy resources.

- The Management Information System (SYSMIS) integrates the case management system. It uses classification, case planning, and workload information to maintain accountability and provide sound data for planning, development, and evaluation.

A serious response to the problems of child abuse and neglect requires not only improvements in the law, but full authorization of adequate staff resources and full funding for the Management Information System to enable the department to more effectively respond to reports of harm and to break the destructive cycle of child abuse and neglect.

RECOMMENDED: Michael L. Price

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

DATE: April 24, 1985

APPROVED: John R. Pugh

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

DATE: 4-30-85

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

FISCAL DETAIL

...tion No.: CS HB No. 88
...Act relating to the ... of children
... Judiciary

...uest: 4/24/85

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

...S/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
...ES						
...RVICES		1,360.0	1,414.4	1,471.0	1,529.8	1,591.0
		122.2	127.1	132.2	137.5	143.0
		404.3	244.6	254.4	264.6	275.2
		19.0	19.8	20.6	21.4	22.2
		87.2				
...UCTURES						
...AIMS						
...OUS						
...TING		1,992.7	1,805.9	1,878.2	1,953.3	2,031.4
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...housands of Dollars)

	1,992.7	1,805.9	1,878.2	1,953.3	2,031.4
	1,992.7	1,805.9	1,878.2	1,953.3	2,031.4

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Michael L Beirne
Family & Youth Services
Phone: 5-3170
Date: April 26, 1985

...ommissioner: John R. Pugh
Health & Social Services
Date: 4-30-85 jc

(by Agency preparing fiscal note):
...e Finance
...e Sponsor

Management and Budget
...ency(ies)

IV. ANALYSIS

A. Assumptions

This legislation results in changes in the civil child protection laws. As a result, there is a potential for increased service demands on division social workers. Presently, the extent and magnitude of these impacts are undefinable because caseload impacts cannot be precisely quantified. This problem will be alleviated when DFYS' Management Information System (MIS) is in place.

The Governor has repeatedly emphasized a top priority of his administration is the need to address child abuse and neglect. First the Governor clearly stated in his budget that the major need, to effectively respond to the existing dramatically growing reports of harm to children, was additional resources. The child protection increments requested in the Governor's FY 86 operating budget and the $850.0 in the capital budget for the needed Management Information System was based on 1983 case statistics which documented need at that time. These increments did not take into consideration any statutory changes. The requested resources were necessary to provide adequate levels of services in order to investigate reports of child abuse and neglect, to provide family supportive services, and to enhance program management. Secondly, the Governor developed a comprehensive bill (HB 88) requesting statutory improvements in order to give children greater protection against abuse and neglect.

Full funding of the Governor's FY 86 increments has been assumed when previously analyzing fiscal impacts of HB 88 and CS HB 88. However, the Department has been informed that both the Senate and House budgets have deleted the Governor's requested increments and that the increments would be addressed as fiscal notes attendant to the child protection bills. Passage of this bill would result in some statutory refinements, however the major need to effectively respond to the increasing reports of harm to children is additional resources. Since the House has chosen to relate the child protection increments requested in the Governor's FY 86 operating budget to this bill, this fiscal note has been prepared.