

ALBANY LEGAL DEPARTMENT
1907-1908

3398 HJUD - SB 21 - SB 29
7/00

Position Paper
CS SB 21
Page 2

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- results may be as long as three months out-of-date depending on FBI processing timeframes;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

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

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

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

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

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

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

Position Paper
CS SB 21
Page 4

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

Recommendations

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

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

DATE: March 29, 1985

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

DATE: 4 - 2 - 85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FI 85	FI 86	FI 87	FI 88	FI 89	FI 90
OPERATING						
100 PERSONAL SERVICES		77.1	79.1	82.3	85.6	89.0
200 TRAVEL		6.6	6.9	7.1	7.4	7.7
300 CONTRACTUAL		37.3	29.1	30.3	31.5	32.7
400 SUPPLIES		1.2	1.3	1.3	1.4	1.4
500 EQUIPMENT		6.7				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		128.0	116.4	121.0	125.9	130.8
CAPITAL		-0-				
REVENUE		-0-				

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Michael L. Price Phone: 465-3170
Division: Family and Youth Services Date: 3/28/85

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

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

IV. ANALYSIS

A. Assumptions

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

B. Program Summary

New positions required by this legislation will be as follow:

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

C. Computations

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

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

Supplies	1.2
Equipment - first year only	6.7
	\$128.0

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

D. Economic Impact

There will be no impact on the State economy.

E. Impact On Local Governments

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

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

OFFICE OF THE COMMISSIONER

February 12, 1985

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

Dear Senator Fahrenkamp:

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

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

The Honorable
Bettye Fahrenkamp

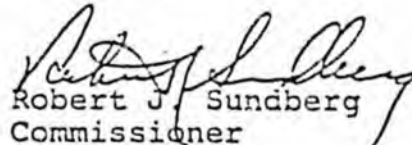
-2-

February 12, 1985

- E. If the records check reveals violations outlined in 12.62.035, that information is sent to the requesting agency, with a copy to the subject applicant.
2. Due to the poor quality of submitted applicant cards as well incorrect information typed on the cards, many must be returned to the submitter. Those that are correctly submitted are input after the criminal cards, which have priority. Normal turn around time, including checks through Records & Identification in Juneau, is ten days.
3. Up to this time, there have been no persons processed that have records identified under 12.62. 5.
4. The procedure for notifying employers of the results of the records check is by form letter accompanied by the fingerprint card.
5. As of this writing, there have been 850 requests for FBI records searches. It takes an average of eight to ten weeks to receive their response.

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

Sincerely,


Robert J. Sundberg
Commissioner

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99911
PHONE: 465-4322

September 13, 1964 RECEIVED

SEP 17 1964

Josephson.

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

Dear Senator Josephson:

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

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

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

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

The Honorable
Senator Josephson

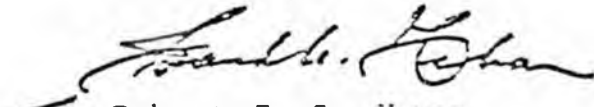
-2-

September 13, 1984

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

It is hoped this answers your questions on the subject.

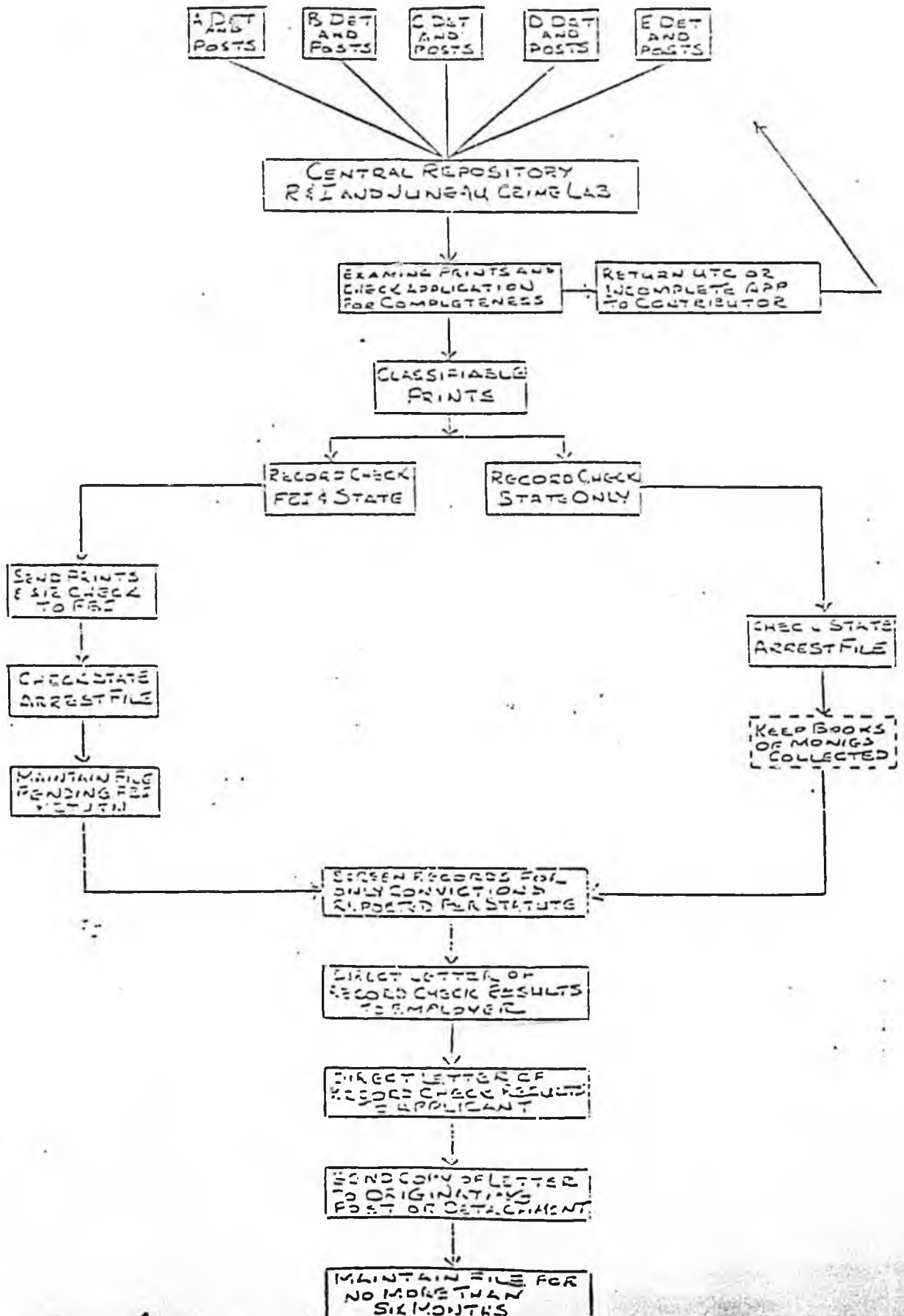
Sincerely,


For Robert J. Sundberg
Commissioner

Enclosures: a/s

FINGERPRINTS GENERATED BY AS 12.62.035

FLOW THRU CENTRAL REPOSITORY



STATE OF ALASKA
DEPARTMENT OF PUBLIC SAFETY

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

PART I. REQUEST FOR CRIMINAL HISTORY INFORMATION

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

- 1) Name of Applicant: _____
- 2) Position or Title: _____
- 3) Organization (if any): _____
- 4) Address: _____
- 5) Mailing Address: _____
- 6) Phone Number: _____ IRS No. (if any): _____
- 7) Description of applicant. Check the box which best describes the applicant:
 - A) public school/school district F) local, state or federal government agency
 - B) private school G) private business
 - C) nursery/day care center H) individual
 - D) church/religious organization I) other
 - E) youth organization
- 8) If box F, G, H, or I is checked above, describe the applicant. If an organization, explain its purpose and what it does. Explain specifically the duties the subject has, or will have, which involve supervisory power over children.

- 9) List two people who are familiar with the organization (or individual applicant) and can serve as a reference:
NAME: _____ PHONE NO: _____
NAME: _____ PHONE NO: _____
- 10) Name of Subject: _____
- 11) Residence Address: _____
- 12) Mailing Address: _____

(1) Phone Number: _____ Social Security No. _____
 (2) DOB: _____ Driver's License No. _____
 (3) Sex: _____ Hgt: _____, Wt: _____, Eye Color: _____ Hair Color: _____
 (4) Aliases or prior names: _____
 (5) Position subject now occupies or is being considered for: _____

PART II. AGREEMENT FOR THE DISSEMINATION OF CRIMINAL HISTORY INFORMATION

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

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

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

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

 Signature of Applicant
 Date _____

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

Form of identification shown by applicant: _____
 _____ Driver's License No. _____ Name of D.P.S. employee _____
 _____ State I.D. Card No. _____ Title _____
 _____ Other. Describe: _____ Date _____

This request is for information contained in (check only one):
 _____ Alaska Justice Information System - subject's fingerprint card attached.
 _____ FBI criminal records - subject's fingerprint card and a check for \$12.00 made out to "Federal Bureau of Investigation" are attached.

CRIMES FOR WHICH CONVICTION RECORDS

MAY BE RELEASED UNDER AS 12.62.035

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

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

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

There are points in our lives when we all must do something that is not easy for us, mine being, public speaking, There are things that we don't like to think about or believe that can happen to us. But, no one is safe from the damage a sex offender can do when they are taking advantage of the trust of a child, or the trust an adult puts in a person giving care to their child. No one is safe from this "LAST TABOO", the FBI estimates that one in every four females and one in every eight males will be sexually assaulted before they graduate from high school. 85 percent of the victims will be abused by someone they know and trust. These children need our protection. They need their surroundings made safe, and their parents need to know that they are safe. Even though back ground checks will not cure the problem it is a start and we must start somewhere. The postal service does back ground checks to protect our mail and the banks do the same to protect our money, aren't our children more important?

I felt I had provided my children with some security. I have Spoke to them about sexual abuse. I have let them know that I would always be there and believe them, reassure them, and help protect them. I have told them that their bodies are their own, that they do not have to let anyone touch them in away that they do not like. But, this is not enough protection, this will not keep them from the horrible crimes against children that sexual offenders are getting away with.

My two year old daughter was "allegedly" sexually abused at her STATE licensed day care facility, I use the term alleged because she can not or is to terrified to identifu her offender and nothing can be

done to stop it from happening to other children still in the facility. A back-ground check may have kept it from happening or happening again to another child. There is nothing more frightening, more depressing, more infuriating than watching your small child go through the pain an experience like this does cause and to be helpless and not be able to tell her with assurance that it will never happen again. She may never feel safe again. We must stop this from happening and do everything in our power, as adults, parents, and law makers to keep our children safe.

12.61.020

ance and
by a law
inistered:
necessary,
son about
ministra-

itors, and
victims of
a failure
of action
agencies
154 SLA

mission
h respect
ie, book,
tainment
feelings,
state any

on under
ender for
ney that
1.
tion by a
nmission
te of the
me if the
: crime.
not been
hed by a

e in this
s. or that

154 SLA

§ 12.62.010

CODE OF CRIMINAL PROCEDURE

§ 12.62.015

Revisor's notes. — Section 11, ch. 154, SLA 1984 provides that if this section is held invalid by a final decision of an appellate court, AS 19.67.165, repealed by sec. 11, ch. 154, SLA 1984, is revived.

Chapter 62. Criminal Justice Information Systems Security and Privacy.

Section

- 10. Regulations
- 15. Collection and security of intelligence information
- 17. Annual report to commission
- 20. Collection and storage
- 30. Access and use

Section

- 35. Access to certain crime information
- 40. Security, updating, and purging
- 50. Interstate systems for the exchange of criminal justice information
- 60. Civil and criminal remedies
- 70. Definitions

Sec. 12.62.010. Regulations. (a) The Governor's Commission on the Administration of Justice established under AS 44.19.110 — 44.19.122 is authorized, after appropriate consultation with representatives of state and local law enforcement agencies participating in information systems covered by this chapter, to adopt regulations and procedures considered necessary to facilitate and regulate the exchange of criminal justice information and to insure the security and privacy of criminal justice information systems. The notice and hearing requirements of the Administrative Procedure Act (AS 44.62), relating to the adoption of regulations, apply to regulations adopted under this chapter

(b) In addition to regulations adopted under (a) of this section, the commission shall, after appropriate consultation with representatives of state and local law enforcement agencies, adopt regulations and procedures governing the gathering of intelligence information and the storage, security, and privacy of the intelligence information collected and maintained by law enforcement agencies in the state. The notice and hearing requirements of the Administrative Procedure Act (AS 44.62), relating to the adoption of regulations, apply to regulations adopted under this subsection. In adopting these regulations, the commission shall take into account both the interest of law enforcement agencies in maintaining the ability to conduct intelligence operations and each individual's right to privacy. (§ 1 ch 161 SLA 1972; am § 1 ch 38 SLA 1976)

Sec. 12.62.015. Collection and security of intelligence information. (a) Regulations of the commission adopted under AS 12.62.010(b) shall include requirements and guidelines concerning the categories of intelligence information which may be gathered by law enforcement agencies in the state, the purposes for which intelligence information may be collected, and the methods and procedures which may be used in collecting intelligence information.

(b) The commission's regulations adopted under AS 12.62.010(b) shall establish standards for the confidentiality and security of intelli-

gence information and provide for controls, access to and dissemination of intelligence information, and methods for updating, correcting and purging intelligence information while maintaining the security and confidentiality of the information. (§ 2 ch 33 SLA 1976)

Sec. 12.62.017. Annual report to commission. The chief officer of each state or municipal law enforcement agency shall submit an annual report to the commission, in the form required by the commission, certifying compliance by the agency with the regulations adopted by the commission under AS 12.62.010(b). (§ 2 ch 38 SLA 1976)

Sec. 12.62.020. Collection and storage. (a) The commission shall adopt regulations concerning the specific classes of criminal justice information which may be collected and stored in criminal justice information systems.

(b) Information collected under the provisions of any of the following titles of the Alaska Statutes, except for information related to criminal offenses under those titles, may not be collected or stored in criminal justice information systems:

- (1) AS 02, except chs. 20, 30, and 35;
- (2) AS 03 — AS 04;
- (3) AS 05, except chs. 20, 25, 30, and 90;
- (4) AS 06 — AS 10;
- (5) AS 13 — AS 15;
- (6) AS 17;
- (7) AS 18, except AS 18.60.120 — 18.60.175 and ch. 65;
- (8) AS 19 — AS 24;
- (9) AS 25, except ch. 25;
- (10) AS 26 — AS 27;
- (11) AS 29 — AS 32;
- (12) AS 34 — AS 46; and
- (13) AS 47, except chs. 10 and 23.

(§ 1 ch 161 SLA 1972; am § 30 ch 126 SLA 1977)

Sec. 12.62.030. Access and use. (a) Except as provided in (b) and (c) of this section and in AS 12.62.035, access to specified classes of criminal justice information in criminal justice information systems is available only to individual law enforcement agencies according to the specific needs of the agency under regulations adopted by the commission under AS 12.62.010. Criminal justice information may be used only for law enforcement purposes or for those additional lawful purposes necessary to the proper enforcement or administration of other provisions of law as the commission may prescribe by regulations adopted under AS 12.62.010. Criminal justice information may not be disseminated to an agency before the commission determines the agency's eligibility to receive that information.

(b) Criminal justice information may be made available to qualified persons for research related to law enforcement under regulations

12.62.030

mination
cting and
urity and

officer of
submit an
e commis-
s adopted
.976)

sion shall
al justice
ice infor-

following
criminal
criminal

in (b) and
classes of
systems is
ling to the
e commis-
y be used
al lawful
tration of
gulations
ay not be
nines the

qualified
gulations

§ 12.62.030

CODE OF CRIMINAL PROCEDURE

§ 12.62.030

adopted by the commission. These regulations must include procedures to assure the security of information and the privacy of individuals about whom information is released.

(c) A person shall have the right to inspect criminal justice information that refers to the person. If a person believes the information to be inaccurate, incomplete or misleading, the person may request the criminal justice agency having custody or control of the records to purge, modify or supplement them. If the agency declines to do so, or if the person believes the agency's decision to be otherwise unsatisfactory, the person may in writing request review by the commission within 60 days of the decision of the agency. The commission, its representative or agent shall, in a case in which it finds a basis for complaint, conduct a hearing at which the person may appear with counsel, present evidence, and examine and cross-examine witnesses. Written findings and conclusions shall be issued. If the record in question is found to be inaccurate, incomplete or misleading, the commission shall order it to be appropriately purged, modified or supplemented by an explanatory notation. An agency or person in the state with custody, possession or control of the record shall promptly have every copy of the record altered in accordance with the commission's order. Notification of a deletion, amendment and supplementary notation shall be promptly disseminated by the commission to persons or agencies to which records in question have been communicated, as well as to the person whose records have been altered.

(d) An agency holding or receiving criminal justice information shall maintain, for a period determined by the commission to be appropriate, a listing of the agencies to which it has released or communicated the information. These listings shall be reviewed from time to time by the commission or staff members of the commission to determine whether the provisions of this chapter or any applicable regulations have been violated.

(e) Reasonable hours and places of inspection, and any additional restrictions, including fingerprinting, that are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them may be prescribed by published rules. Fingerprints taken under this subsection may not be transferred to another agency or used for any other purpose.

(f) A person or agency aggrieved by an order or decision of the commission under (c) of this section may appeal the order or decision to the superior court. The court shall in each case conduct a de novo hearing and may order the relief it determines to be necessary. If a person about whom information is maintained by an agency challenges that information in an action under this subsection as being inaccurate, incomplete or misleading, the burden is on the agency to prove that the information is not inaccurate, incomplete or misleading. (§ 1 ch 161 SLA 1972; am § 1 ch 66 SLA 1983)

Effect of amendments. — The 1983 "12.62.035" near the beginning of subsection (a) inserted "and in AS 12.62.035(a)".

Sec. 12.62.035. Access to certain crime information. (a) Notwithstanding any other provision of law, an interested person as defined in (e) of this section may request from the commission records of all convictions involving contributing to the delinquency of a minor and any sex crimes of a person who holds or applies for a position in which the person has or would have supervisory or disciplinary power over a minor. The commission shall authorize the disclosure of the information to the requesting interested person and shall provide a copy of the information to the person who is the subject of the request.

(b) A request for records under (a) of this section shall include within it the fingerprints of the person who is the subject of the request and any other data specified in regulations adopted by the commission. The request shall be on a form approved by the commission, and the commission may charge a fee to be paid by the requesting interested person for the actual cost of processing the request. The commission shall destroy an application within six months after the requested information is sent to the requesting interested person and the person who is the subject of the request.

(c) The commission shall adopt regulations to implement the provisions of this section.

(d) If an individual is denied employment as a result of the disclosure of inaccurate or incomplete records under this section, an action may be brought against the state. No other action may be brought against the state, or an agency or employee of the state, as a result of disclosing or failing to disclose criminal justice information.

(e) As used in this section

(1) "contributing to the delinquency of a minor" means a conviction for a violation or attempted violations of AS 11.51.130(a)(1), (3), or (5); former AS 11.40.130; or the laws of another jurisdiction if the offense would have been a crime in this state under AS 11.51.130(a)(1), (3), or (5) or former AS 11.40.130 if committed in the state;

(2) "interested person" means a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person, that employs or solicits the employment of a person to serve with or without compensation in a position in which the person has or would have supervisory or disciplinary power over a minor;

(3) "sex crime" means a conviction for a violation or attempted violation of AS 11.41.410 — 11.41.470, AS 11.61.110(a)(7), or AS 11.66.100 — 11.66.130; former AS 11.15.120, 11.15.134, or 11.15.160; former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420; or the laws of another jurisdiction if the offense would have been a crime in this state under one of the sections listed in this paragraph if committed in the state. (§ 2 ch 66 SLA 1983; am § 44 ch 6 SLA 1984)

12.62.035

of subsection

on. (a) person as records a minor sition in ry power re of the provide a request. e within ques and sion. The the com ed person ion shall informa- on who is

he provi-

he dislo- an action e brought e result of

onviction (3), or (5); e offense (1), (3), or

tnership, well as a person to he person a minor: ed viola- 1.66.100 rmer AS e the laws e in this mitted in

§ 12.62.040

CODE OF CRIMINAL PROCEDURE

§ 12.62.050

Effect of amendments. — The 1984 amendment, in subsection (e), in paragraph (1), substituted "former AS 11.40.130; or the laws of another jurisdiction" for "or for a violation or attempted violation of an offense committed outside the state" and inserted "or former AS 11.40.130," and in paragraph (3) substi-

tuted "former AS 11.15.120, 11.15.134, or 11.15.160; former 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420; or the laws of another jurisdiction" for "or for a violation or attempted violation of an offense committed outside the state" and "sections listed in this paragraph" for "above sections."

Sec. 12.62.040. Security, updating, and purging. (a) Criminal justice information systems shall

(1) be dedicated to law enforcement purposes and be under the management and control of law enforcement agencies unless exempted under regulations adopted under AS 12.62.010;

(2) include operating procedures approved by the commission which are reasonably designed to assure the security of the information contained in the system from unauthorized disclosure, and reasonably designed to assure that criminal offender record information in the system is regularly and accurately revised to include subsequently furnished information;

(3) include operating procedures approved by the commission which are designed to assure that information concerning an individual shall be removed from the records, based on considerations of age, nature of record, and reasonable interval following the last entry of information indicating that the individual is still under the jurisdiction of a law enforcement agency.

(b) Notwithstanding any provision of this section, any criminal justice information relating to minors which is maintained as part of a criminal justice information system must be afforded at least the same protection and is subject to the same procedural safeguards for the benefit of the individual with respect to whom the information is maintained, in matters relating to access, use and security as it would be under AS 47.10.090. (§ 1 ch 161 SLA 1972)

Sec. 12.62.050. Interstate systems for the exchange of criminal justice information. (a) The commission shall regulate the participation by all state and local criminal justice agencies in an interstate system for the exchange of criminal justice information, and shall be responsible to assure the consistency of the participation with the provisions and purposes of this chapter. The commission may not compel any criminal justice agency to participate in an interstate system.

(b) Direct access to an interstate system for the exchange of criminal justice information shall be limited to those criminal justice agencies that are expressly designated for that purpose by the commission. When the system employs telecommunications access terminals, the commission shall limit the number and placement of the terminals to those for which adequate security measures may be taken and as to which the commission may impose appropriate supervisory regulations. (§ 1 ch 161 SLA 1972)

Sec. 12.62.060. Civil and criminal remedies. (a) A person with respect to whom criminal justice information has been wilfully maintained, disseminated, or used, or intelligence information has been collected, obtained or used, in violation of this chapter has a civil cause of action against the person responsible for the violation and shall be entitled to recover actual damages and reasonable attorney fees and other reasonable litigation costs.

(b) A person who wilfully disseminates or uses criminal justice information knowing such dissemination or use to be in violation of this chapter, or who knowingly collects, obtains or uses intelligence information in violation of this chapter, upon conviction, is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both.

(c) A good faith reliance upon the provisions of this chapter or of applicable law governing maintenance, dissemination, or use of criminal justice information, or upon rules, regulations, or procedures prescribed under this chapter is a defense to a civil or criminal action brought under this chapter. (§ 1 ch 161 SLA 1972; am § 3 ch 38 SLA 1976)

Sec. 12.62.070. Definitions. In this chapter

(1) "commission" means the Governor's Commission on the Administration of Justice established under AS 44.19.110 — 44.19.122;

(2) "criminal justice information" means information concerning an individual in a criminal justice information system and indexed under the individual's name, or retrievable by reference to the individual by name or otherwise and which is collected or stored in a criminal justice information system;

(3) "criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations related to the system funded in whole or in part by the Law Enforcement Assistance Administration, for the collection, processing, or dissemination of criminal justice information;

(4) "intelligence information" means information concerning the background, activities or associations of the individual or group collected or obtained by a law-enforcement agency for preventive, precautionary or general investigative purposes not directly connected with the investigation of a specific crime which has been committed nor with the apprehension of a specific person in connection with the commission of a particular crime;

(5) "interstate systems" means agreements, arrangements and systems for the interstate transmission and exchange of criminal justice information, but does not include record keeping systems in the state maintained or controlled by a state or local agency, or a group of agencies, even if the agency receives information through, or otherwise participates in, systems for the interstate exchange of criminal justice information;

12.62.070

erson with
ily main-
has been
ivil cause
d shall be
fees and

tice infor-
on of this
nce infor-
shable by
nore than

pter or of
e of crim-
lures pre-
al action
n 38 SLA

e Admin-
1.122;
erning an
ved under
vidual by
al justice

including
nizations
the Law
rocessing,

ning the
or group
ative, pre-
onected
itted nor
the com-

s and sys-
al justice
the state
group of
otherwise
al justice

§ 12.65.010

CODE OF CRIMINAL PROCEDURE

§ 12.65.020

(6) "law enforcement" means any activity relating to crime prevention, control or reduction or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control or reduce crime or to apprehend criminals, activities of criminal prosecution, courts, public defender, corrections, probation or parole authorities:

(7) "law enforcement agency" means a public agency which performs as one of its principal functions activities pertaining to law enforcement and includes the child support enforcement agency created by AS 47.23. (§ 1 ch 161 SLA 1972; am § 4 ch 38 SLA 1976; am § 31 ch 126 SLA 1977)

Chapter 65. Coroner's Inquest.

Section

- 10. Appointment of medical examiner
- 20. Duties
- 25. Post mortem examinations
- 30. Coroners
- 40. Inquiry into cause of death
- 50. Summoning jurors for inquest
- 60. Oath of inquest jurors

Section

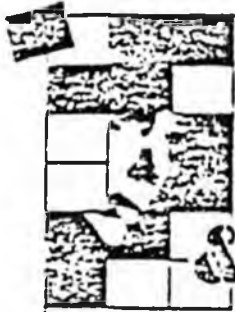
- 70. Subpoena and examination of witnesses
- 80. Verdict of inquest jury
- 90. Notification of prosecuting attorney
- 100. Unclaimed bodies
- 110. Inventory and disposition of property

Collateral references. — 18 Am. Jur. 13 C.J.S., Coroners, § 1 et seq.; 30
2d, Coroners or Medical Examiners, § 1 et C.J.S., Sheriffs and Constables, § 38.
seq.

Sec. 12.65.010. Appointment of medical examiner. The commissioner of health and social services may appoint medical examiners in each of the judicial districts. The commissioner may appoint any number and designate them to serve in those areas as, in the opinion of the commissioner, the administration of justice requires. To be eligible for medical examiner, a person shall be a physician licensed to practice in this state or a physician employed by the state, or by any agency of the United States government within the state if the physician is licensed in a state other than Alaska. Appointments shall be for a term not more than one year. (§ 10.01 ch 34 SLA 1962; am § 6 ch 104 SLA 1971)

Collateral references. — 18 Am. Jur. 13 C.J.S., Coroners, §§ 1, 3-7, 30; 30
2d, Coroners or Medical Examiners, C.J.S., Sheriffs and Constables, § 38.
§§ 1-1b.

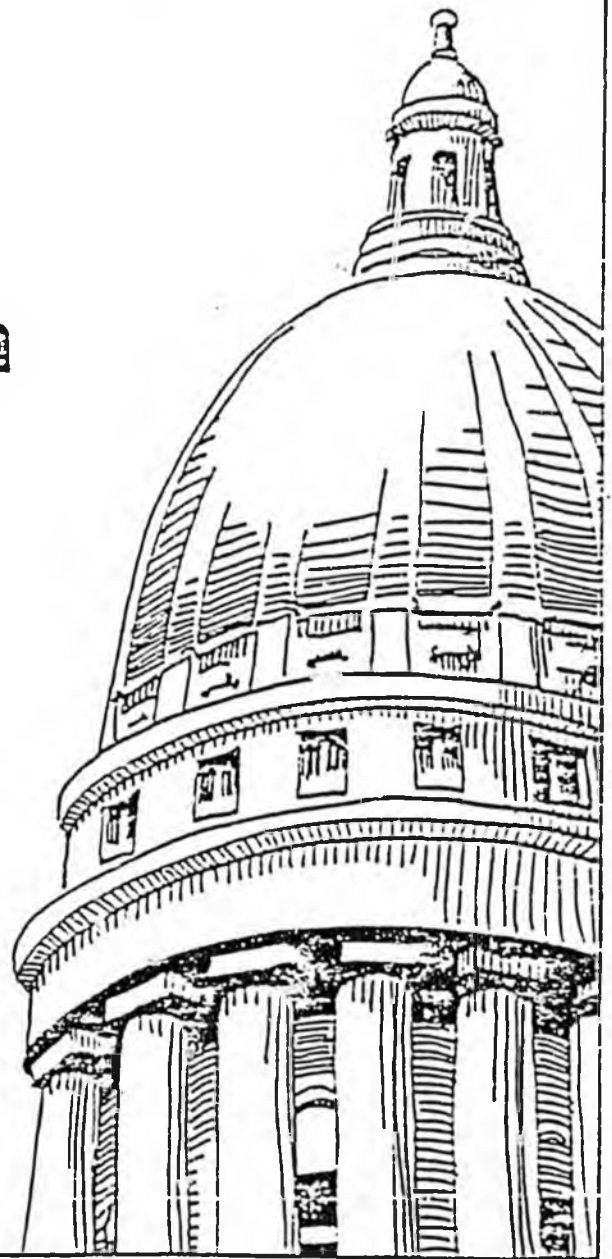
Sec. 12.65.020. Duties. When a person dies unattended by a physician, or when no physician is prepared to execute the certificate of death prescribed by the Vital Statistics Act, the coroner assigned to



NATIONAL
CENTER FOR
**MISSING
& EXPLOITED**
CHILDREN

Selected State Legislation

A
Guide for
Effective
State Laws
to
Protect
Children



8. Licensing and Criminal History Information

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

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

Criminal History Information

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

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

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

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

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

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

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

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

SECTION 10.

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

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

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

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

(5) As used in this section "sex crimes" means a conviction for a violation or attempted violation of KRS 510.040 to 510.150, 529.020 to 529.030, 529.070, 539.020, 530.020, 531.310, 531.320, 531.340, to 531.370, and the criminal offense of unlawful transaction with a minor. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky.

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

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

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

New York law (§ 373-a) also provides an authorized agency access to records in the Criminal Justice Division to determine the qualifications of persons who will care for and supervise children. An excerpt from the New York statute follows:

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

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

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

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

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

Criminal History Information on School Employees Three states have enacted legislation that would require criminal history inquiries for anyone connected with the school system. California (Education Code, §5123) has mandated that no person who has been convicted of a sex offense may be employed by a school district. Following is an excerpt from the California statute:

§5123. Employment after conviction of sex offense or narcotics offense.
No person shall be employed or retained in employment by a school district who has been convicted of any sex offense.

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

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

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

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

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

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

Licensing Child Care Institutions

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

170-E:4 Applications.

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

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

Colorado (§26-b-104) has enacted legislation for screening the administrator, the applicant, an employee, or applicant for a license of a child care facility. The Colorado legislation, which follows, includes the stipulation that no license to operate a family care home or child care center will be issued to anyone convicted of child abuse or an unlawful sexual offense:

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

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

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

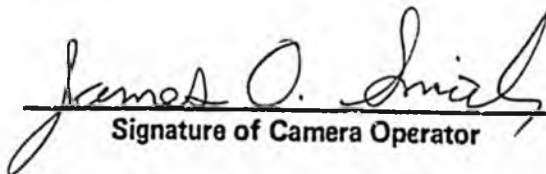
(b) The person applying for a license or certificate has not consulted with the Colorado bureau of investigation, as defined in section 13-21-115 (1)(c), C.R.S. 1973, to determine whether any employee of the family care home or child care center has, according to the bureau's records, been convicted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

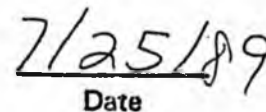


RECORDS CERTIFICATION



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


Signature of Camera Operator


Date

S B

2 8

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

FOUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3300

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary
" " "

4/12/85

1:30 pm

4/13/85

9 AM

COMMITTEE REPORT
HOUSE

4/17

(7)

FURTHER: FINANCE

3/8/85

Date: _____

The Committee on JUDICIARY has had CSSE 28 (HESS) am

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

under consideration and recommends:

do pass [] do not pass

[] do pass with attached amendments(s)

[] replace with CS for _____ [] same title

and recommends _____ [] new title

[] AND attaches a "Letter of Intent" [] New Fiscal Note

[] reports it back without recommendation [2] Zero Fiscal Note Attached

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]
CHAIRMAN

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: HCSCS SB-23
 Title: ...training state... school...employees
 Sponsor: Sen.Faiks
 Requestor: House Judiciary
 Date of Request: 4-16-85

FISCAL DETAIL
 Agency Affected: Education
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

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
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The bill has no fiscal impact on this Department.

Prepared By: Steve Hole Phone: 2800
 Division: Commissioner's Office Date: 4-16-85

Approved by Commissioner: Harold Reynolds, Jr. Date: 4-16-85
 Agency: Education

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

7/1/84

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

Revision Date: _____

REQUEST:

Bill/Resolution No.: HCS SB 28 (HESS)
 Title: "An Act relating to training state employees on the recognition and reporting of child abuse and neglect."
 Sponsor: Senator Faiks
 Requestor: (H) Judiciary
 Date of Request: April 15, 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	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

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						
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: April 15, 1985

Approved by Commissioner: _____
 Agency: DEPARTMENT OF CORRECTIONS

Date: April 15, 1985

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSB 28 (HESS)
 Title: "Training State Employees on child abuse and neglect..."
 Sponsor: Senator Faiks
 Requestor: Sen. Finance
 Date of Request: 2/12/85

FISCAL DETAIL

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

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						
----------------	--	--	--	--	--	--

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The Department's initial fiscal note on this bill was based upon a misinterpretation of the bill's intent (i.e., that specific additional training would be required). In fact, basic recruit training now includes this subject and additional refresher training could be provided by videotape without an increase in appropriation.

Prepared By: Michael J. Clemens Phone: 465-4336
 Division: Administrative Services Date: 2/13/85

Approved by Commissioner: James D. Vaden *J.D. Vaden* Date: 2/13/85
 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

Contents - SB 28
April 12, 1985

1. HCS CSSB 28 (HESS)
2. 3/8/85 memo from Senator Faiks to Representative Miller requesting a hearing
3. 3/7/85 memo from Senator Faiks to Representative Miller re background HCS CSSB 28 (HESS)
4. 2/27/85 memo from Senator Faiks to Representatives Koponen and Gruenberg re background CSSB 28 (HESS)
5. 1/14/85 memo from Senator Faiks to Senator Fahrenkamp re SB 28
6. draft CS for SB 28 (HESS)
7. copy of AS47.17.020
8. Position paper with fiscal note - Alaska Network on Domestic Violence and Sexual Assault
- Health & Social Services -

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSB 28
 Title: AN ACT RELATING TO
REPORTING CHILD ABUSE
 Sponsor: FATKS
 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						
200 TRAVEL		2.5	2.7	2.9	3.1	3.3
300 CONTRACTUAL		.5	.5	.6	.6	.6
400 SUPPLIES		1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		4.0	4.3	4.7	5.0	5.3

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		4.0	4.3	4.7	5.0	5.3
FEDERAL FUNDS						
OTHER						
TOTAL		4.0	4.3	4.7	5.0	5.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: ROBERT G. FISHER, FISCAL OFFICE

Phone: 264-0561

Division: ALASKA COURT SYSTEM

Date: 4/9/85

Approved by Commissioner: Arthur H. Swarden III

Date: 4/9/85

Agency: ALASKA COURT SYSTEM

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

Alaska State Legislature

MAR 5 1985

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740



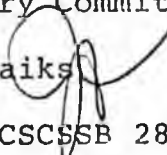
IAN FAIKS
POUCH V
CAPITOL BUILDING
UNEAU, ALASKA 99811

Senate

March 8, 1985

MEMORANDUM

TO: Representative Mike Miller, Chairman
House Judiciary Committee

FROM: Senator Jan Faiks 

SUBJECT: Hearings on HCSCSB 28 (HESS)

I would appreciate the House Judiciary Committee scheduling a hearing on House CS for CS for Senate Bill 28, an Act relating to training state employees, and certain employees of the districts of the state public school system on the recognition and reporting of child abuse and neglect.

I am enclosing a brief summary of the history of this bill. The House HESS Committee will be forwarding additional background materials. I would also appreciate the opportunity to testify at the first hearing of this bill before your committee. Thank you.

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740



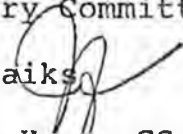
IAN FAIKS
POUCH V
CAPITOL BUILDING
UNEAU, ALASKA 99811

Senate

March 7, 1985

MEMORANDUM

TO: Representative M. Mike Miller, Chairman
House Judiciary Committee

FROM: Senator Jan Faiks 

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

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

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

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

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

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

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

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

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

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

In the House HESS Committee Substitute, the requirements for school district training were reflected in current statutes which specify the duties of regional school boards in unorganized boroughs (AS 14.08.111) and duties of local school boards (AS 14.14.090).

In addition, training in recognizing and reporting "sexual abuse of minors" was added to the school districts' responsibilities. The Committee Substitute, however, omitted the Senate's requirement that the schools devote at least one-half day to this type of training.

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740



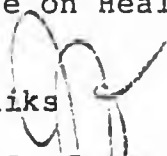
IAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

February 27, 1985

MEMORANDUM

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

FROM: Senator Jan Faiks 

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

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

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

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

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

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

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

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

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

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



Official Business

Alaska State Legislature

Senate

Committee on Finance

JAN FAIKS
Co-Chairman

Pouch V
State Capitol
Juneau, Alaska 99811

January 14, 1985

MEMORANDUM

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

FROM: Senator Jan Faiks

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

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

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

REPORTING MANDATED

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

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

practitioners of the healing arts;

members; school teachers and school administrative staff

social workers;

peace officers, and officers of the Department of Corrections;

administrative officers of institutions;

licensed day care providers and paid staff; and

licensed foster care providers.

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

TRAINING

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

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

IMMUNITY AND LIABILITY

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

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

RECENT FINDINGS IN ALASKA

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

FOOTNOTES

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

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

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

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

SB 28

§ 47.17.020 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.17.020

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

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

NOTES TO DECISIONS

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

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

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

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

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

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

POSITION PAPER

SB 28

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation representing 20 domestic violence and sexual assault programs state wide, supports SB28 to provide training to certain state employees in the area of child abuse and neglect.

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

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

Because of those distinctions, and the very real need to insure that those required to report are aware of their duty to do so, the Network suggests that SB28 be amended to read as follows:

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

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

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

SB 28

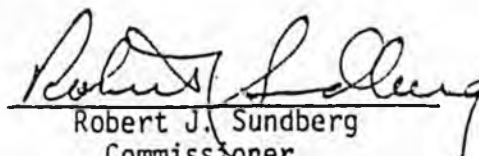
"An Act relating to training state employees on the prevention, recognition, intervention, and treatment of child abuse and neglect."

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

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

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

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


Robert J. Sundberg
Commissioner
Department of Public Safety

POSITION PAPER

SENATE BILL NO. 28

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

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

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

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

Position Paper
SB 28
Page 2

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

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

POSITION PAPER/Department of Health & Social Services

Position Paper
SB 28
Page 3

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

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

DATE: _____

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

DATE: 1/17/85

DIVISION OF FAMILY AND YOUTH SERVICES

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

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

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

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

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

<u>Date</u>	<u>Topic and Location</u>	<u># Participants</u>	<u># Staff</u>	<u>Community</u>	<u>Hours</u>	<u>Leaders</u>
CHILD ABUSE/NEGLECT REPORTING						
8/30/83	Day Care Centers Anchorage	19	1	16	(3) 57	H. Munson
8/30/83	Placement Agencies Anchorage	13	1	12	(3) 39	H. Munson
8/30/83	Awareness in School Romig Junior High School Anchorage	96	0	96	(6) 576	B. Garberding
8/29/83	Inservice - Snowbank School Wasilla	45	0	6	(1) 45	B. Garberding
CHILD SEXUAL ABUSE						
8/31/83	Parents United Facilitating Sexual Abuse Treatment Groups Anchorage	12	0	12	(2) 24	B. Garberding
3/21-23/84	Identification/Treatment Victims - NRO YS Fairbanks	20	20		(13) 260	Glen Lambert
6/1/84	Evaluation and Treatment of Adolescent Sexual Abuse Offenders McLaughlin YS, Anchorage	20	20		(7) 140	Gary Winet
5/30/84	Treatment Adolescent Victim Sexual Abuse McLaughlin YS, Anchorage	17	17		(8) 136	Glen Lambert

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

<u>Date</u>	<u>Topic and Location</u>	<u># Participants</u>	<u># Staff</u>	<u>Community</u>	<u>Hours</u>	<u>Leaders</u>
5/31/84 6/1/84	Sexual Abuse Adolescent Victim and Offender SCRO YS, Anchorage	14	14		(14)196	Glen Lambert
6/7-8/84	Assessment and Treatment Youthful Sex Offender SERO, Juneau	26	12	14	(14)364	Nick Nichols and Irene Melinden
6/18/84	Treatment of Male Sexual Offender McLaughlin YS, Anchorage	10	10		(13)130	Jim Harper
6/25-29/84 9/10-14/84	Child Sexual Abuse (2 Sec) NRO, Fairbanks	60	25	35		
	- Intervention NRO				(7)420	D & J Ramon
	- Interviewing and Investigation				(4)240	Marsha Morgan
	- Using the Dolls for Inter- viewing				(4)240	Howard Anderson
	- Pre-trial Preparation				(7)420	Ellie Breslan
	- Assessment of Treatment Sexually Abused Child				(7)420	Steven Wolf
	- Classified Offender Treatment					
7/27-31/84	Child Sexual Abuse Social Services Agencies Barrow	43	2	47	(35)1715	Mary Abruska, Ginny McCarthy, Clara Kelly, Ken Roosa
9/18-20/84	Child Sexual Abuse Social Services Agencies Kotzebue	60	3	57	(21)7260	Rosemary Murry, Ken Duff, Jill Baker
5/16-18/84	Governor's Conference on Child Abuse and Neglect Sitka	153	29	124	(21)3212	National Leaders

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

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

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

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

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

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

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

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

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

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

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

N/A

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

Approved by Commissioner: *John R. Poff* Date: 1/17/85

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

acc



RECORDS CERTIFICATION



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

James O. Smith
Signature of Camera Operator

7/25/89
Date

S B

2 9

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/12/85	1:30 pm
" " "	4/13/85	9:00 Am

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 16, 1985

SUBJECT: CS SB 29 (Judiciary) am
TO: Hayden Kayden, Counsel
House Judiciary
FROM: Michael F. Ford *m.f.*
Legislative Counsel

You have requested that new language be added to certain sections of the above referenced bill, assuming that the existing bill is enacted into law. The following are the statutes as they would appear after the bill becomes law, with the proposed amendments you requested:

A. AS 12.25.030(b)

(b) In addition to the authority granted under (a) of this section, a peace officer without a warrant may arrest a person when the peace officer has reasonable cause for believing that the person has committed a crime under AS 11.41, AS 11.46.330, or AS 11.61.120 when the victim is a spouse or former spouse of the person who committed the crime; a parent, grandparent, [OR] child, or grandchild of the person who committed the crime; a member of the social unit comprised of those living together in the same dwelling as the person who committed the crime; or another person who is not a spouse or former spouse of the person who committed the crime but who previously lived in a spousal relationship with the person who committed the crime.

B. AS 18.66.900(3)

(3) "domestic violence" means a crime specified in AS 11.41 when the victim is a spouse or a former spouse of the defendant; a parent, grandparent, [OR] child, or grandchild of the defendant; a member of the social unit comprised of those living together in the same dwelling as the defendant; or a person who is not a spouse or former spouse of the

defendant but who previously lived in a spousal relationship with the defendant;

C. AS 25.35.010(a)

(a) A person who is subjected to domestic violence may petition a superior court for injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent. The court may appoint a guardian ad litem or attorney under the terms of AS 25.24.310, for a minor who is subject to this chapter. [A MINOR CHILD SEEKING RELIEF AVAILABLE UNDER THIS CHAPTER MUST PETITION THE COURT BY OR THROUGH A PARENT, GUARDIAN, OR LEGAL CUSTODIAN.]

D. AS 25.35.060

DEFINITIONS. In this chapter, "domestic violence" means a crime under AS 11.41 when the victim is a spouse or a former spouse of the respondent; a parent, grandparent, [OR] child or grandchild of the respondent; a member of the social unit comprised of those living together in the same dwelling as the respondent; or a person who is not a spouse or former spouse of the respondent but who previously lived in a spousal relationship with the respondent.

Please contact me if you have any questions regarding these sections.

MFF:ojb
J13/101

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740

IAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

April 12, 1985

MEMORANDUM

TO: Representative Mike Miller

FROM: Senator Jan Faiks *Jan*

SUBJECT: CS for Senate Bill 29 (Judiciary) am
"An Act relating to domestic violence and
domestic sexual offenses."

I would like to bring to the committee's attention a possible amendment to SB 29 which is before the House Judiciary Committee this afternoon.

It has come to my attention that Section 5 of CSSB 29 (Jud) am restricts the ability of children to petition the court for relief when they have been subject to domestic violence, which was not my original intent. When SB 29 was originally filed, Section 5 was not included. During Senate HESS Committee hearings however, a representative from the Attorney General testified that this provision was necessary. Based on this testimony, and with my concurrence, Section 5 was incorporated in the Senate HESS Committee version of the bill.

Since that time I have had discussions with individuals who are in direct professional contact with children who require protection under our law. They have suggested that Section 5 restricts a child's ability to petition the court for protection. After reviewing Civil Rule 17(c), I agree with their opinion.

Because of these recent developments, I ask the House Judiciary Committee to consider the deletion of Section 5.

Thank you.

Contents - CSSB 20
April 12, 1985

1. CSSB 29 (Judiciary)
2. SB 29
3. 3/18/85 Memo to HESS from Jan Faiks
4. 3/18/85 memo to Senator Rick Halford from George Edwards
5. Marital Rape Litigation from National Center on Women and Family Law
6. State by State Information on Marital Rape Exemption Laws
7. Marital Rape Fact Sheet from National Center on Women and Family Law
8. "Can there be Rape in Marriage"
9. The Prosecution for Marital Rape - the California Experience
10. Newspaper article
11. Court opinions
12. Marital Rape Exemption by National Center on Women & Family Law
13. "When Husband Rapes Wife", Anchorage Daily News 10/3/84
14. Marital Rape - statistics, arguments, alaska law, network position - Alaska Network on Domestic Violence & Sexual Assault
15. "Courts Declare Marital Rape a Crime in New York, Florida and Virginia" by Monica Rickenberg, Legal Intern, NCOWFL and Joanne Schulman, Staff Attorney, NCOWFL
16. "Pennsylvania Governor Vetoes Spousal Rape Bill" from 11/84 Women & the Law
17. "Marital Rape Exemption" A Statutory Update by Joanne Schulman, Staff Attorney, NCOWFL and Monica Rickenberg, Legal Intern, NCOWFL
18. "When a Wife Says No - Beyond the Rideout Case" Ms. Gazette 4/82
19. Marital Rape Litigation - National Center on Women & Family Law
20. Position paper - Council on Domestic Violence & Sexual Assault

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740



IAN FAIKS
POUCH V
CAPITOL BUILDING
UNEAU, ALASKA 99811

Senate

March 18, 1985

MEMORANDUM

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

FROM: Senator Jan Faiks

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

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

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

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

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

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

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



RECEIVED
FEB 25 1985

Superior Court

State of Alaska

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

Office of Administrative Director
Alaska Court System

Chambers of
THOMAS E. SCHULZ, Presiding Judge

February 20, 1985

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

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

Dear Ms. Forsythe:

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

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

Very truly yours

Thomas E. Schulz
Presiding Judge

TES:ju

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3 30

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 18, 1985

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

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

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

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

GWE:lmb
L4/057

National
Center
on Women
& Family Law

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

MARITAL RAPE LITIGATION

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

1. State of New Jersey v. Albert Smith, 426 A.2d 38 (1981), appeal of defendant-husband's motion to dismiss charges of rape of his wife on the grounds that the criminal rape statute codifies the alleged common law marital rape exemption. Defendant's trial motion was granted, 148 N.J. Super 219 (Law Div. 1977). The Appellate Division affirmed the dismissal, 169 N.J. Super 98 (App. Div. 1979). The Supreme Court of New Jersey unanimously reversed the dismissal and reinstated the indictment for rape.
 - * (a) New Jersey Supreme Court 27 page opinion, and concurring opinion (J. Sullivan), 426 A.2d 38 (1981), holding that New Jersey's former rape statute, having no express exemption, did not incorporate or codify a "common law" marital exemption to rape. The Court discusses at length the doubtful origins and authority of the alleged "common law" rule (Hale's doctrine), concluding that "[n]either was the law of this State under the former rape statute as blind to personal liberty and privacy as defendant would have this Court believe. A man separated from his wife - and perhaps one not separated - could not invoke an outdated and doubtful rule to avoid prosecution for rape simply because he was still legally married to his victim." (p. 27) Clearinghouse No. 30,489.
 - * (b) Amicus Brief of the National Center on Women and Family Law, Inc., arguing that the exclusion of married women from the protection of the criminal law when they are raped by their husbands is a denial of equal protection. Clearinghouse No. 30,489.
2. State of New Jersey v. Daniel Morrison, 426 A.2d 47 (N.J., 1981) defendant-husband's pretrial motion to dismiss rape charges was denied; defendant subsequently stood trial and was convicted and sentence for raping his estranged wife. The Appellate Division, by per

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

4. Commonwealth v. James K. Chretien, 417 N.E.2d 1203 (Mass. 1981), appeal of defendant-husband's conviction of rape of his wife. At trial, defendant's motion to dismiss the rape indictment based on the "common law" spousal exemption was denied. On September 21, 1979, defendant was convicted by a jury of rape and breaking and entering, and was sentenced to 3-5 years in prison and three years probation after release. On March 9, 1981, the Massachusetts Supreme Court, in an unanimous opinion, affirmed the conviction, holding that a person may be prosecuted for and convicted of rape even if the rape victim is defendant's spouse.

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

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

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

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

National
Center
on Women
& Family Law

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

MARITAL RAPE LITIGATION

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

1. State of New Jersey v. Albert Smith, 426 A.2d 38 (1981), appeal of defendant-husband's motion to dismiss charges of rape of his wife on the grounds that the criminal rape statute codifies the alleged common law marital rape exemption. Defendant's trial motion was granted, 148 N.J. Super 219 (Law Div. 1977). The Appellate Division affirmed the dismissal, 169 N.J. Super 98 (App. Div. 1979). The Supreme Court of New Jersey unanimously reversed the dismissal and reinstated the indictment for rape.
 - * (a) New Jersey Supreme Court 27 page opinion, and concurring opinion (J. Sullivan), 426 A.2d 38 (1981), holding that New Jersey's former rape statute, having no express exemption, did not incorporate or codify a "common law" marital exemption to rape. The Court discusses at length the doubtful origins and authority of the alleged "common law" rule (Hale's doctrine), concluding that "[n]either was the law of this State under the former rape statute as blind to personal liberty and privacy as defendant would have this Court believe. A man separated from his wife - and perhaps one not separated - could not invoke an outdated and doubtful rule to avoid prosecution for rape simply because he was still legally married to his victim." (p. 27) Clearinghouse No. 30,489.
 - * (b) Amicus Brief of the National Center on Women and Family Law, Inc., arguing that the exclusion of married women from the protection of the criminal law when they are raped by their husbands is a denial of equal protection. Clearinghouse No. 30,489.
2. State of New Jersey v. Daniel Morrison, 426 A.2d 47 (N.J., 1981) defendant-husband's pretrial motion to dismiss rape charges was denied; defendant subsequently stood trial and was convicted and sentence for raping his estranged wife. The Appellate Division, by per

curiam decision, summarily reversed

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

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

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

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

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

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

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

4. Commonwealth v. James K. Chretien, 417 N.E.2d 1203 (Mass. 1981), appeal of defendant-husband's conviction of rape of his wife. At trial, defendant's motion to dismiss the rape indictment based on the "common law" spousal exemption was denied. On September 21, 1979, defendant was convicted by a jury of rape and breaking and entering, and was sentenced to 3-5 years in prison and three years probation after release. On March 9, 1981, the Massachusetts Supreme Court, in an unanimous opinion, affirmed the conviction, holding that a person may be prosecuted for and convicted of rape even if the rape victim is defendant's spouse.

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

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

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

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

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

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

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

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

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

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

- (b) Brief of Appelle State of Virginia, arguing that the English common law exemption should not be applied since it is repugnant to the principles of the Bill of Rights, and that the exclusion of the word "unlawful" from newly-amended Virginia rape statute indicates a legislative intent to abandon the exemption. Clearinghouse No. 36,889.

CASE CHARTS

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

National
Center
on Women
& Family Law

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

MARITAL RAPE FACT SHEET*

1. Fact or Fiction? "MARITAL RAPE ISN'T AS SERIOUS AS RAPE BY A STRANGER--IT'S JUST A WOMAN NOT BEING IN THE MOOD AND HER HUSBAND INSISTING."

As a matter of fact, marital rape is often just as violent, just as degrading, and oftentimes more traumatic than rape by a stranger. It is perpetrated with knives, at gunpoint, repeatedly, brutally, in front of others, and most often is the final violent act culminating a series of physical abuses. One woman has reported being beaten and raped by her husband virtually every day for six months, anally raped 9 or 10 times. He told her that, if she ever tried to leave, he would kill her. In terror she fled to another state, changed her name, and lived there for a year inognito.

2. Fact or Fiction? "MARITAL RAPE ISN'T OFFENSIVE--AFTER ALL, A WIFE HAS HAD SEX WITH HER HUSBAND BEFORE, WHAT'S ONE MORE TIME?"

As a matter of fact, a woman raped by a stranger has to live with the memory of that experience. A woman raped by her husband has to live with her rapist. Many wife victims, trapped in a reign of terror, experience repeated sexual assaults over a number of years. What happens to a capacity for intimacy when the person who has promised to love and protect, and on whom one may be economically dependent, commits such a brutal and violent violation?

* Prepared and distributed by the Pennsylvania Commission on the Status of Women.