

4048

SJUD

SB

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SB

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924

OUTLAYS
(\$ in millions)

Program	FY 1985*	FY 1986 Admin. Request	Admin. Request Over(+)/Under(-)	
			FY 1985	FY 1986 Current Services
DEFENSE	\$253,240	\$285,669	+\$32,429	-\$8,908**
Defense Department (military programs)	245,859	277,505	+31,646	-8,700**
Atomic Energy Defense Activities	7,000	7,700	+700	-179**
INTERNATIONAL AFFAIRS	19,312	18,349	-963	-658
Foreign Economic and Financial Assistance	5,293	5,278	-15	+147
International Security Assistance	10,177	9,213	-964	-699
Export-Import Bank	1,359	603	-756	-393
GENERAL SCIENCE, SPACE, AND TECHNOLOGY	8,742	9,285	+543	+8
General Science & Basic Research	2,118	2,237	+119	+4
Space Programs	6,623	7,048	+425	+4
ENERGY	8,700	4,671	-4,029	-3,194
Energy Supply	5,476	3,170	-2,306	-1,388
Energy Conservation	546	301	-165	-112
Strategic Petroleum Reserve	1,906	300	-1,521	-1,650
NATURAL RESOURCES & ENVIRONMENT	13,049	11,884	-1,165	-1,299
Water Resources	4,321	3,566	-755	-616
Conservation & Land Management	946	719	-227	-263
Recreational Resources	1,634	1,361	-273	-304
Pollution Control & Abatement	4,392	4,579	+187	+81
AGRICULTURE	20,176	12,629	-7,547	-5,519
Farm Income Stabilization	18,346	10,937	-7,409	-5,268
Agricultural Research & Services	1,830	1,691	-139	-252
COMMERCE & HOUSING CREDIT	6,014	2,206	-3,808	-3,056
Mortgage Purchase Activity (GNMA)	-441	-447	-6	--
FHA Mortgage Credit	-802	-1,330	-528	-241
Housing for the Elderly & Handicapped	572	590	+18	--
Rural Housing	4,564	2,312	-2,252	-2,226
Postal Service Subsidy	1,361	1,217	-144	+212
Small Business Assistance	1,376	689	-687	-712

*excluding newly proposed supplementals and rescissions

**change from previous Administration FY 1986 spending projections

Program	FY 1985*	FY 1986 Admin. Request	Admin. Request	
			Over(+)/Under(-) FY 1985	FY 1986 Current Services
TRANSPORTATION	\$27,025	\$25,860	-\$1,165	-\$2,081
Highway Systems	13,077	13,664	+587	+2
Highway Safety	283	309	+26	-5
Mass Transit	4,217	3,330	-887	-768
Railroads	1,097	411	-686	-604
Air Transportation	4,992	5,175	+183	-249
Water Transportation	3,186	2,792	-394	-454
COMMUNITY & REGIONAL DEVELOPMENT	8,619	7,323	-1,296	-927
Community Development				
Block Grants	3,900	3,520	-380	-7
Urban Development				
Action Grants	500	522	+22	-22
Rural Development	1,950	1,612	-338	-147
Economic Development				
Assistance	262	158	-104	-75
Indian Programs	1,157	1,114	-43	-18
Regional Commissions	200	157	-43	-37
Tennessee Valley Authority	145	40	-105	-85
Disaster Relief & Insurance	326	-84	-410	-461
EDUCATION, TRAINING, EMPLOYMENT & SOCIAL SERVICES	30,621	29,288	-1,333	-2,028
Compensatory Education	3,566	3,787	+221	-14
Education Block Grant & Special Programs	514	646	+132	-69
Impact Aid	747	635	-112	-127
Handicapped Education	1,403	1,241	-162	-6
Vocational & Adult Education	914	858	-56	-1
Guaranteed Student Loans	3,431	2,898	-533	-412
Campus-Based Student Financial Aid	4,506	4,447	-59	-324
Institutional Aid	698	613	-85	-82
Training & Employment	5,327	4,931	-396	-411
Social Services	7,035	6,863	-172	-402
HEALTH	33,905	34,920	+1,015	-1,736
Medicaid	22,985	23,691	+706	-1,051
Federal Employee Health Benefits	1,143	1,460	+317	--
Other Health Care Service	3,118	3,052	-66	-272
Health Research	4,978	5,204	+226	-164
Education and Training of Health Care Workers	478	455	-23	-71
SOCIAL SECURITY & MEDICARE	257,394	269,404	+12,010	-4,196
Social Security	191,116	202,245	+11,129	-95
Medicare	66,278	67,158	+880	-4,102

*excluding newly proposed supplementals and rescissions

Program	FY 1985*	FY 1986 Admin. Request	Admin. Request Over(+)/Under(-)	
			FY 1985	FY 1986 Current Services
INCOME SECURITY	\$128,278	\$115,769	\$12,509	-\$5,047
Railroad Retirement	3,895	4,023	+128	-34
Federal Civilian				
Retirement & Disability	23,293	24,208	+915	-741
Military Retirement	15,809	17,800	+1,991	-491
Unemployment Compensation	16,708	16,294	-486	-3
Subsidized Housing	9,722	9,093	-629	-1,326
Public Housing				
Operating Subsidies	1,381	1,126	-255	-242
Low-Rent Public				
Housing Loans	15,065	1,928	-13,137	-74
Food Stamps	12,607	12,684	+77	-21
Child Nutrition & Related				
Programs	6,066	5,584	-482	-666
Supplemental Security				
Income (SSI)	9,511	9,890	+379	+2
AFDC & Related Assistance	8,970	8,827	-143	-236
Refugee Assistance	450	362	-88	--
Low-Income Energy				
Assistance	2,100	2,100	--	-92
VETERANS' BENEFITS & SERVICES	26,868	26,769	-99	-1,051
Compensation & Pensions	14,754	15,135	+381	--
Hospital & Medical Care	9,634	9,994	+360	-413
Veterans Housing	358	-288	-646	-605
Education, Training, & Rehabilitation	1,295	1,110	-185	--
ADMINISTRATION OF JUSTICE	6,688	6,587	-101	-263
Law Enforcement	3,701	3,610	-91	-5
Courts & Judicial				
Activities	2,169	2,066	-103	-233
GENERAL GOVERNMENT	5,809	4,845	-964	-908
Legislative Branch	1,464	1,417	-47	-171
Internal Revenue Service	3,471	3,441	-30	-124
GENERAL PURPOSE FISCAL ASSISTANCE	6,508	2,797	-3,711	-3,828
General Revenue Sharing	4,574	1,168	-3,406	-3,407
Payments & Loans to D.C.	499	498	-1	-19
NET INTEREST	130,535	142,550	+12,015	-3,256
ALLOWANCES	1,125	399	-726	-1,330
Civilian Pay Raise	--	24	+24	-1,330
UNDISTRIBUTED OFFSETTING RECEIPTS	-32,170	-37,478	-5,308	-1,515

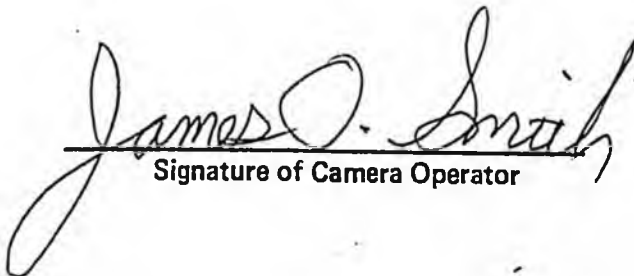
*excluding newly proposed supplementals and rescissions

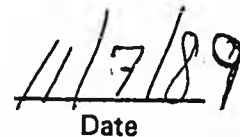


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Date

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SB20 - Relating to implied consent to preliminary breath test by aircraft and watercraft operators.

Under Title 28, all drunk driving laws which apply to motor vehicles apply to aircraft and watercraft as well. Operators of motor vehicles, aircraft and watercraft are required to submit to breath tests for alcohol. However, only motor vehicle operators are required to submit to preliminary breath tests in the field. SB20 would make watercraft and aircraft operators subject to the administration of a preliminary breath test by a law enforcement officer at the scene of an incident.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 20
 Title: An Act relating to implied consent to preliminary breath test...
 Sponsor: Sen. Ray
 Requestor: Sen. HESS
 Date of Request: 2-6-85

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

Prepared By: Paul Conger Phone: 465-4338
 Division: Administrative Services Date: 2-6-85

Approved by: Commissioner Date: 2-6-85
 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

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER _ SB 20

Support

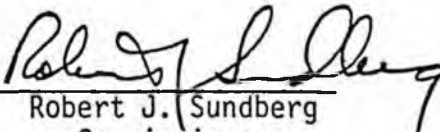
February 1, 1985

SB 20 - "An Act relating to implied consent to preliminary breath test by aircraft and watercraft operators."

The purpose of this legislation is to include aircraft and watercraft operators in the implied consent statute for breath tests.

Passage of this legislation will allow law enforcement officers to administer the preliminary breath test which can provide probable cause to administer an additional test of sufficient validity to stand as court evidence of operating a vehicle, watercraft, or aircraft while intoxicated.

During the past few years numerous instances have taken place where lives have been lost due to watercraft operators and pilots being under the influence of alcohol.


Robert J. Sundberg
Commissioner

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 17, 1984

SUBJECT: Operating watercraft while intoxicated
(Work Order No. 14-0225)

TO: Senator Bill Ray

FROM: George W. Edwards *GWE*
Legislative Counsel

In response to your request concerning legislation in the area of watercraft operation, I researched existing law and made copies of relevant statutes for your review. Existing law addresses the intoxicated watercraft operator situation in Title 5, Amusements and Sports, at AS 5.25.060 and in Title 28, Motor Vehicles. Under Title 28 all of the drunk-driving laws which apply to motor vehicles apply to aircraft and watercraft as well. Thus it would appear that our existing prohibition against intoxicated watercraft operators is at least as strong as that of other states.

There is however a distinction among vehicle operators made in AS 28.35.031 which may warrant elimination. There operators of motor vehicles, aircraft and watercraft are all required by the implied consent law to submit to a breath test for alcohol. Only motor vehicle operators, however, are required to submit to preliminary breath tests in the field under subsection (b). These preliminary test devices are handheld portable units and I can't think of any practical reason they could not be used on aircraft and watercraft operators under essentially the same circumstances as they are now used on drivers of motor vehicles. These circumstances must include either an accident or a moving violation of law before the preliminary test can be required.

If there is any other help I can give you with regard to this inquiry please let me know.

GWE:ojb
J10/034

(23) "veterans organization" means a civic, service or charitable organization in the state, or a branch or lodge or chapter of a national or state organization in the state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States, and which has been in existence for five years before applying for a license under this chapter. (§ 1 ch 27 SLA 1960; am §§ 4, 5 ch 66 SLA 1976; am §§ 6-8 ch 27 SLA 1982; am § 8 ch 59 SLA 1983)

Revisor's notes. — This section was reorganized in 1983 to put the defined words in alphabetical order.

Effect of amendments. — The 1982 amendment inserted "outboard motor association" and "or nonprofit trade" in paragraph (15), inserted a comma

following "rights to participate" and the language beginning "the specified kinds of games" and ending "52 or less and in" in paragraph (16), and added paragraph (22).

The 1983 amendment added paragraph (16).

Chapter 25. Watercraft.

Article

3. General Provisions (§§ 05.25.060, 05.25.090)

Article 3. General Provisions.

Section

60. Prohibited operation
90. Penalties

Sec. 05.25.060. Prohibited operation. (a) A person may not operate a watercraft whether for recreational purposes or any other purpose or manipulate water skis, a surfboard, or a similar device on the waters of the state in a reckless or negligent manner so as to endanger the life or property of another person.

(b) A person may not operate a watercraft whether for recreational purposes or any other purpose in violation of AS 28.35.030 on the waters of the state while under the influence of any intoxicating liquor, narcotic drug, barbiturate or marijuana. (§ 3 ch 63 SLA 1961; am § 1 ch 60 SLA 1976; am § 3 ch 117 SLA 1982)

Effect of amendments. — The 1982 amendment substituted "in violation of AS 28.35.030" for "or manipulate water skis, a surfboard, or a similar device" in subsection (b).

Sec. 05.25.090. Penalties. A person who violates any provision of this chapter is guilty of a misdemeanor and is punishable by a fine of not more than \$500, or by imprisonment of not more than six months, or by both, for each violation unless that person is convicted of a violation of AS 28.35.030, in which case the sentence shall be in accordance with AS 28.35.030. (§ 10 ch 63 SLA 1961; am § 4 ch 117 SLA 1982)

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while intoxicated. (a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of intoxicating liquor, or any controlled substance listed in AS 11.71.140 — 11.71.190;

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person is under the combined influence of intoxicating liquor and another substance.

(b) Driving while intoxicated is a class A misdemeanor.

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than \$1,000 if, within the preceding 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181 and the vehicle used in commission of the offense may be forfeited under AS 28.35.036. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of

alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (c) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (c) of this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under (c) of this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under (c) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(g) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state. (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983)

Revisor's notes. — In 1984, former subsection (f) was redesignated as present subsection (g) and former subsection (g) was redesignated as present subsection (f).

Cross references. — For sentences for class A misdemeanors, see AS 12.55.035(b)(3) and 12.55.135(a).

Effect of amendments. — The first 1980 amendment, in subsection (a) as it existed prior to the second 1980 amendment, deleted "under AS 11.05.150" from

the end of the third sentence and substituted "AS 28.15.181" for "AS 28.15.210(c)" in the fourth sentence.

The second 1980 amendment rewrote the section.

The first 1982 amendment substituted "or any controlled substance listed in AS 11.71.140 — 11.71.190" for "depressant, hallucinogenic, stimulant or narcotic drug as defined in AS 17.10.230(13) and AS 17.12.150(3)" in subsection (a)(1).

purposes of statute or ordinance making it a criminal offense to operate an automobile while in that condition, 142 ALR 555.

What is a "motor vehicle" within statutes making it an offense to drive while intoxicated, 66 ALR2d 1146.

Right to trial by jury in criminal prosecution for driving while intoxicated or similar offense, 16 ALR3d 1373.

Driving under the influence, or when addicted to the use, of drugs as criminal offense, 17 ALR3d 815.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 29 ALR3d 938.

What amounts to violation of drunken driving statute in officer's "presence" or "view" so as to permit warrantless arrest, 74 ALR3d 1138.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute or ordinance, 93 ALR3d 7.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 ALR 1252.

Denial of accused's request for initial contact with attorney — drunk driving cases, 18 ALR4th 705.

Sec. 28.35.031. Implied consent. (a) A person who operates or drives a motor vehicle in this state or who operates an aircraft as defined in AS 28.35.030(g)(1) or who operates a watercraft as defined by AS 28.35.030 (g)(2) shall be considered to have given consent to a chemical test or tests of the person's breath for the purpose of determining the alcoholic content of the person's blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test or tests shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating or driving a motor vehicle or operating an aircraft or a watercraft in this state while intoxicated.

(b) A person who operates or drives a motor vehicle in this state shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has reasonable grounds to believe that a person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages and that the person

- (1) was driving a motor vehicle that is involved in an accident; or
- (2) committed a moving traffic violation.

(c) Before administering a preliminary breath test under (b) of this section, the officer shall advise the person that refusal may be used against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered.

(d) The result of the test under (b) of this section may be used by the law enforcement officer to determine whether the driver should be arrested.

(e) Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.

v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Rule announced generally to have prospective effect but also to have partial retroactive effect. — See *Lauderdale v. State*, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Applied in *Nelson v. State*, Ct. App. Op. No. 129 (File No. 6222), 650 P.2d 426 (1982).

Quoted in *Simpson v. Municipality of*

Anchorage, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981); *Lundquist v. Department of Pub. Safety*, Sup. Ct. Op. No. 2763 (File No. 7075), 674 P.2d 780 (1983); *Jensen v. State*, Ct. App. Op. No. 271 (File No. 7488), 667 P.2d 188 (1983).

Cited in *Coleman v. State*, Ct. App. Op. No. 229 (File No. 7215), 658 P.2d 1364 (1983).

Collateral references. — 60 C.J.S. Motor Vehicles, § 164.16. Duty of law enforcement officer to off r

suspect chemical sobriety test under implied consent law, 95 ALR3d 710.

Sec. 28.35.032. Refusal to submit to chemical test. (a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test under AS 28.35.031(a), after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor, a chemical test shall not be given, except as provided by AS 28.35.035.

(b) *[Repealed, § 25 ch 77 SLA 1983.]*

(c) *[Repealed, § 25 ch 77 SLA 1983.]*

(d) *[Repealed, § 25 ch 77 SLA 1983.]*

(e) The refusal of a person to submit to a chemical test of breath under (a) of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or watercraft while intoxicated.

(f) Refusal to submit to the chemical test of breath authorized by AS 28.35.031(a) is a class A misdemeanor.

(g) Upon conviction of a person under this section, the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding

Duty to public. — This section does not create a duty by the Department of Public Safety toward the public which, if breached, can form the basis of a civil action for negligence against the department. *Lundquist v. Department of Pub. Safety*, Sup. Ct. Op. No. 2763 (File No. 7075), 674 P.2d 780 (1983).

Limitation for purposes other than DWI prosecutions. — AS 28.35.032(a) cannot be restricted to apply solely to driving while intoxicated prosecutions, and to the extent that the statute, by providing that "a chemical test shall not be given" following a breathalyzer refusal,

affirmatively limits the manner in which evidence of intoxication may be obtained, its limitation must apply with equal force in all prosecutions "arising out of acts alleged to have been committed while the defendant was operating or driving a motor vehicle while intoxicated." *Pena v. State*, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Former subsection (b) construed. — See *Graham v. State*, Sup. Ct. Op. No. 2403 (File No. 4092), 633 P.2d 211 (1981).

Cited in *Wilson v. State*, Ct. App. Op. No. 356 (File Nos. 7523, 7526, 7833), P.2d (1984).

Collateral references. — 7A Am. Jur. 2d, *Automobiles and Highway Traffic*, §§ 122 to 132, 141.

60 C.J.S., *Motor Vehicles*, § 164.16; 61A C.J.S., *Motor Vehicles*, § 593(1).

Requiring submission to physical examination or test as violation of constitutional rights, 25 ALR2d 1407.

Admissibility in criminal case of evidence that accused refused to submit to scientific test to determine amount of alcohol in system, 87 ALR2d 370, 26 ALR4th 1112.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 ALR2d 1064.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test, 97 ALR3d 852.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 ALR3d 572.

Sec. 28.35.033. Chemical analysis of blood. (a) Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the person's blood or breath at the time alleged shall give rise to the following presumptions:

(1) If there was 0.05 percent or less by weight of alcohol in the person's blood, or 50 milligrams or less of alcohol per 100 milliliters of the person's blood, or 0.05 grams or less of alcohol per 210 liters of the person's breath, it shall be presumed that the person was not under the influence of intoxicating liquor.

(2) If there was in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, or in excess of 50 but less than 100 milligrams of alcohol per 100 milliliters of the person's blood, or in excess of 0.05 grams but less than 0.10 grams of alcohol per 210 liters of the person's breath, that fact does not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.



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

11/7/89
Date

S B

R I



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

April 18, 1985

TO: Senator Pat Rodey, Chairman
Judiciary Committee

FROM: Senator Frank R. Ferguson *FRF*

SUBJECT: CSSB 21 (HESS)

I wish to request the scheduling of CSSB 21 (HESS) before the Judiciary Committee at your earliest convenience. I believe that this is a very important bill which should be passed this year.

Thank you for your consideration.

FRF/mjs

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

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

DOCUMENT #85-112

April 2, 1985

The Honorable Patrick Rodey
Senate Judiciary
Pouch V
Juneau, AK 99811

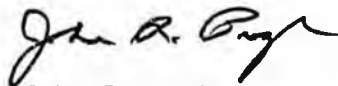
Dear Senator Rodey:

In response to your March 25, 1985 letter, I am most appreciative of your suggestion and interest in protecting the children of the State of Alaska. I agree that one of the tools that can be utilized to reduce risk to children is a criminal history background clearance on employees who supervise minors. I am aware that under AS 12.62 employers have the ability to obtain criminal history checks on employees at this time.

Because of the high interest in mandatory criminal history background checks and the various issues involved, the division is receiving a great deal of information that would be useful to licensees. In particular, the U.S. Department of Health and Human Services published an excellent monograph regarding recruitment and selection of staff, and background checks. The Division of Family and Youth Services will develop a package of these materials, an explanation of current options available to the licensees to be sent at the end of the fiscal year. At that time it will be possible to give each of the licensees a copy of the enclosed brochure, an explanation of AS 12.62 and any new laws regarding child abuse and neglect that may be relevant to their operation. In this manner the licensees then would have more complete information about their options and responsibilities in hiring staff and also the State's responsibilities to them.

Thank you for your suggestion and continuing interest in protecting the children of Alaska.

Sincerely,



John R. Pugh
Commissioner

Enclosure

Recruitment & Selection of Staff:

*A Guide for
Managers of
Preschool &
Child Care
Programs*



Introduction

The staff members of a child care or preschool program are the most important element in the successful operation of the program. It is the staff that is responsible for creating and maintaining a safe and healthy learning environment in which each child's individual needs can be identified and addressed. And it is the staff that is responsible for developing a partnership with parents to promote the well-being of the child.

Because of these key roles, each program should have written personnel policies designed for the protection of both employees and the children. They should provide employees with a clear understanding of the work requirements and responsibilities. Equally important, they should provide program managers with a carefully developed recruitment, screening and selection process for ensuring that staff members can adequately perform the work requirements and handle the accompanying responsibilities.

This brochure provides program managers with a list of the basic components of a clearly defined personnel policy with an emphasis on the importance of staff recruitment, screening and the selection process. It also provides guidance to program managers in the area of policies related to child abuse and neglect. Suggestions are also offered on monitoring new staff performance.

RECRUITMENT, SCREENING AND SELECTION OF PROGRAM STAFF

Every preschool and child-care program should have clearly written personnel policies that are updated periodically and available to all employees. At a minimum, they should include: job descriptions; compensation and leave policies; a performance appraisal system; and resignation and termination policies. Policies on employee recruitment, screening and selection should also be an integral part of an organization's personnel policies.

The goal of any recruitment and selection system should be to hire the best qualified person for the job, whether it be an outside person qualified for a vacancy, or a current staff member qualifying for a higher position. The entire process should allow individuals to be recruited, examined and appointed to positions within the child care or pre-school program on a fair and equitable basis. The elements of a good system include:

- announcing the vacancy;
- examining the qualifications of candidates;
- interviewing candidates who qualify;
- observing finalists in the job for which they are applying;
- checking public records on the individual chosen for the job, and;
- hiring the best qualified person.

Some agencies and programs may find it helpful to form a personnel committee to perform the above functions and make recommendations for final selections to the appropriate program official or governing board. Parents, line supervisors and other staff members can also be very useful in the recruitment and selection of candidates.

Programs should be aware of the following federal and/or state requirements when establishing recruitment and selection procedures:

- Federal policies and regulations regarding equal employment opportunity and non-discrimination.
- Requirements in some states regarding checking prior convictions for child abuse and child sexual abuse (sometimes requiring or allowing fingerprinting).

As this guide was being prepared, Congress passed and the President signed into law a modifica-

tion of the Social Service Block Grant which makes available to States \$25,000,000 for the purpose of training and retraining child care providers, State licensing and enforcement officials, and parents in the prevention of child abuse in child care settings. In addition, Public Law 98-473 provides that:

(2)(A) Any State receiving an allotment under such title from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—

(i) procedures, established by State law or regulation, to provide for employment history and background checks; and

(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92-544 (86 Stat. 115) requiring nationwide criminal record checks for all operators, staff or employees, or 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, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or programs.

For the most current information on how your state is planning to implement this law, you may want to contact the person responsible for the Social Service Block Grant in your state. A list of the appropriate person to contact is included at the end of this brochure.

A. Advertisement of Vacancies

Recruitment and hiring should be a fair and equitable process. Programs should advertise vacancies to staff as well as other known sources of employees. Advertisements should also be used to alert the general public to staff vacancies so that recruitment is not narrowed to only a select few. Advertising serves to ensure that the recruitment of candidates is an open competitive process.

Advertisements should be distributed by various means throughout the community. Announcing vacancies can be accomplished by putting announcements on bulletin boards at centers, advertising the position in local newspapers, posting an announcement in other community agencies, alerting local employment bureaus, and distributing vacancy notices to staff and parents.

To be effective, a vacancy announcement should contain sufficient information to enable a person to decide whether or not to apply. Generally, this information should include:

- Job title and qualification requirements, including a brief description of the work responsibilities, where the position fits within the program, and a concise statement of the criteria (e.g. type and duration of experience, credentials) to be used in hiring.
- Salary or salary range and fringe benefits.
- Career advancement opportunities.
- A non-discrimination policy statement that an equal employment opportunity will be provided to candidates.
- Information on how to apply, including where to apply for the position; the name, address and phone number of the program; the individual to contact; the date by which applications must be received and other details that will help candidates apply for the position.

B. Determining Candidates' Qualifications

It is advisable to establish an applicant file for each qualified individual who applies. This file should contain the application forms, resumes, correspondence, background information, results of interviews and any other information that will serve as a resource to assist in the choice of the best qualified candidate for the position. The application file will also later serve as evidence that the selection was fair, open, competitive and resulted in the hiring of the best person for the position.

Each candidate should complete an application form and provide supplemental information as necessary to demonstrate that he/she is qualified for the position. The application form should, at a minimum, contain the name, address and telephone number of the applicant, applicant's present job and reason for wanting to leave, educational level, employment history, special skills and other accomplishments and references.

The determination of candidates' qualifications should not be confined only to a review of the written information that has been provided. Several other techniques should be used to make certain the candidate is qualified. These should include:

- an interview with the candidates;
- a check of references;
- verification of the accuracy of the information

provided by the candidates;

- a performance test or, if possible, an opportunity to observe the candidates in the job for which they are applying;
- a search for information about the candidates from those who know them;
- a solicitation of opinions from those who have worked with the candidates, especially from parents whose children have been under the candidates' care; and
- a comparison of the qualifications of all applicants with the position requirements.

An analysis of the information generated from all these sources should aid the program in making a fair and objective decision in determining those individuals whose qualifications most closely match the specific position descriptions and whose applications should be considered further.

C. Candidate Interview, Observation and Record Check

Once the field of candidates has been narrowed, a number of additional steps should be taken. These include:

- an interview with each candidate whose qualifications are close to those that are required;
- if possible, an opportunity to observe the candidate in the job for which they are applying; and
- a check of public records related to child abuse and neglect convictions.

The interview process is important because the program manager and other interested individuals have an opportunity to meet the candidates and make decisions about their attitudes, capabilities, temperament and other characteristics that may be pertinent in making the final selection. Interviews may be conducted by a personnel committee composed of such persons as the program manager, representatives of governing boards, and/or the supervisor or staff who will be working directly with the employee. The personnel committee members should have a specific list of questions to be asked of each candidate based on the position description and the personal characteristics and qualifications that are desired.

Responses should be documented and ranked in some manner to justify final selections. This documentation should include established checklists, questionnaires or other formats that can

be referred to later in making objective decisions about a candidate's capabilities.

All job candidates should be required to list references on their application form, and all references should be contacted by the hiring agency to obtain relevant information about the candidate. In addition, it may be useful to contact previous co-workers and parents of children who have been under the care of the applicant. Since most people tend to report only favorable information about others, the inquirer must usually "dig" to get a full story. This may require spending some time describing the job for which the candidate has applied, discussing the candidate's past job responsibilities and performance and talking about potential performance in the new job. Possible questions to be asked as part of a reference check might include:

- How does the applicant relate to children? Does the applicant enjoy working with children and do children enjoy being with the applicant?
- Did the applicant come to work on time? How often was the applicant absent from work?
- How well does the applicant accept responsibility? Is the applicant reliable in terms of being prepared for the job at hand and completing jobs assigned? Does the applicant handle problems well and persevere until the job is completed?
- How well does the applicant get along with supervisors, subordinates, and parents? Is the applicant considered easy to work with? Is the applicant cooperative?
- Is the applicant honest and trustworthy?
- In what areas of the new job would you expect the candidate to do very well? With what areas would the candidate have problems?

Reference checks are best done by phone or through face-to-face contact with the reference to allow for the fullest possible discussion. Regardless of how the reference checks are conducted, careful notes should be taken on the information provided and made an official part of the data to be considered when determining who to select for the job.

When the number of candidates is narrowed to the best qualified, an effort should be made to observe each finalist in the position for which they applied. If the candidate is currently employed in a similar job, permission should be secured for one or two persons to observe this individual. If this is not possible, the candidate should be asked to spend

some time in the new job for the purposes of observation. It is appropriate for the candidate to be paid for this time, if necessary.

Once the final selection has been made, it is extremely important to check all available public records regarding evidence of child abuse, sexual child abuse or child neglect by the candidate. These records should be sought at the State, county and local level. The extent to which such records are available to the public vary greatly from state to state. Any findings of criminal behavior should be examined by the personnel committee in light of the program's personnel policies that deal with the protection of the children from abuse and neglect.

D. Final Selection and Hiring

The final selection should be based on judgments about each candidate's qualifications, reference and record checks and the results of their interview and observation. If the personnel committee is empowered to make the final selection, the appropriate program official should be informed of their final choice. An alternative process would include the submission of the names of the three most qualified candidates to the appropriate program official for final selection. The governing bodies of the child care or preschool program may also be responsible for approving the selection.

The successful candidate should be informed of his/her selection and the unsuccessful candidates should be notified after the chosen candidate has accepted. There should then be an official announcement of the selection. If unsuccessful candidates wish to know why they were not selected, the program should be prepared to justify its decision and refer to the documentation of selection procedures in showing why the candidate who was selected was deemed the best qualified.

E. Probationary or Trial Period

Most programs establish a probationary or trial period for new employees. This is particularly the case when it has not been possible to observe the new employee in working with children. The probationary period should always be of fixed duration, and the employee should always be made aware of it before he or she accepts the job. Usually, the move from probationary employment status to permanent is accompanied by salary increase or the extension of one or more fringe benefits which were not previously provided.

PROTECTING PRESCHOOL AND DAY CARE CHILDREN FROM CHILD ABUSE AND NEGLECT

A major consideration for every program serving children should be to protect those children from abuse and neglect. Every program has a responsibility to inform staff of appropriate Federal, state, local and program regulations regarding child abuse and neglect. Written policies should be provided to each staff regarding:

- a code of conduct for staff relating to their behavior with children,
- policies on reporting suspected child abuse and neglect,

- policies on investigating existing staff or staff candidates in regard to child abuse and neglect, and
- policies on hiring staff previously accused, indicted and/or found guilty of child abuse and neglect.

The most important step program managers can take to guard against child abuse and neglect is to ensure that there is adequate day to day supervision of all staff.

MONITORING NEW STAFF

Each program must have a system for monitoring the performance of all staff in the program and must make an extra effort to monitor new staff members. The responsibility for this monitoring lies formally with the individual's supervisor and informally with parents.

It is the supervisor's responsibility to insure that a new staff member's performance is monitored through observation and discussion during and after the probationary period. Especially during the probationary period, the program manager and supervisor should drop in and visit the new employee on the job during work hours to deter-

mine whether or not the individual is performing in a satisfactory manner.

Monitoring of the employee by parents is also important. Parents should be encouraged to drop in and visit the new employee. Parents should also be encouraged to listen to and talk with their children everyday and to learn about the child's concerns and problems. Information on good child care practices, the program schedule, and activities and information on child abuse should be provided to parents to enable them to understand program operations and to quickly identify problems, and act on them immediately.

SOCIAL SERVICES BLOCK GRANT STATE CONTACTS BY REGION (Regions I - X)

REGION I

Connecticut

Mr. James Harris
Commissioner
Department of Human Resources
1179 Main Street
Hartford, Connecticut 06103
(203) 566-3318

Maine

Mr. Michael R. Petit
Commissioner
Department of Human Services
State House
Augusta, Maine 04333
(207) 868-2736

Massachusetts

Ms. Marie A. Matava
Commissioner
Department of Social Services
150 Causeway Street
Boston, Massachusetts 02114
(617) 727-0900

New Hampshire

Mr. Sylvio L. Dupuis
Commissioner
Department of Health and Welfare
Hazen Drive
Concord, New Hampshire 03301
(603) 271-4334

Rhode Island

Mr. Joseph F. Murray
Director
Department of Social and Rehabilitation
Services
Aime J. Forand State Office Bldg.
600 New London Avenue
Cranston, Rhode Island 02920
(401) 464-2121

Vermont

Dr. Lloyd Novick
Secretary
Agency of Human Services
103 South Main Street
Waterbury, Vermont 05679
(802) 241-2220

REGION II

New York

Mr. Cesar A. Perales
Commissioner
New York State Department of Social Services
40 North Pearl Street
Albany, New York 12243
(518) 474-9475

New Jersey

Mr. George J. Albanese
Commissioner
New Jersey Department of Human Services
P. O. Box CN-700
Trenton, New Jersey 08625
(609) 292-3717

Puerto Rico

Dr. Jenaro Collazo-Collazo
Secretary
Puerto Rico Department of Social Services
P. O. Box 11697
Santurce, Puerto Rico 00910
(809) 725-4511

Virgin Islands

Mr. Norman Johanson
Commissioner
Department of Social Welfare
P. O. Box 539
St. Thomas, Virgin Islands 00801
(809) 774-0930

REGION III

Delaware

Mrs. Patricia C. Schramm
Secretary
Delaware Department of Health and Social
Services
New Castle, Delaware 19720
(302) 421-6705

District of Columbia

Mr. David E. Rivers
Director
D.C. Department of Human Services
801 North Capitol Street, N.E.
Washington, D.C. 20002
(202) 727-0310

Maryland

Ms. Ruth Massinga
Secretary
Maryland Department of Human Resources
1100 North Eppow Street
Baltimore, Maryland 21202
(301) 383-5528

Pennsylvania

Mr. Walter W. Cohen
Secretary
Pennsylvania Department of Public Welfare,
Rm. 333
Health and Welfare Building
Harrisburg, Pennsylvania 17120
(717) 787-2600

Virginia

Mr. William L. Lukhard
Commissioner
Department of Social Services
8007 Discovery Drive
Richmond, Virginia 23288
(804) 281-9236

West Virginia

John Burdette, II
Commissioner
State Department of Human Services
Building B, Room 617
1900 Washington Street, East
Charleston, West Virginia 25305
(304) 885-2400

REGION I**Alabama**

Dr. Leon Frazier
Commissioner
Department of Pensions and Securities
Administrative Building
64 North Union Street
Montgomery, Alabama 36130
(205) 832-6570

and

Mr. W. M. "Bill" Rushton
Director
State Department of Economic and Community
Affairs
Room 101
State Capitol
Montgomery, Alabama 36130
(205) 832-6532

Florida

Mr. David H. Pingree
Secretary
Department of Health and Rehabilitation
Services
1323 Winewood Boulevard
Tallahassee, Florida 32301
(904) 488-7721

Georgia

James G. Ledbetter, Ph.D.
Commissioner
Georgia Department of Human Resources
47 Trinity Avenue, S.W.
Atlanta, Georgia 30334
(404) 656-5680

Kentucky

Mr. Elbert Austin
Secretary
Cabinet for Human Resources
275 E. Main Street
Frankfort, Kentucky 40601
(502) 564-7130

Mississippi

Mrs. Beverly W. Hogan
Executive Director
Governor's Office of Federal-State Program
200 Sillers Building
Jackson, Mississippi 39201
(601) 359-3150

North Carolina

Sarah T. Morrow, M.D., M.P.H.
Secretary
Department of Human Resources
325 N. Salisbury Street
Raleigh, North Carolina 27611
(919) 733-4534

South Carolina

Mr. Dennis Caldwell
Executive Director
State Health & Human Services Finance
Commission
P. O. Box 8206
Columbia, South Carolina 29202
(803) 758-3175

Tennessee

Mrs. Sammie Lynn Puett
Commissioner
Department of Human Services

111-19 7th Avenue, North
Nashville, Tennessee 37203
(615) 741-3241

REGION V

Illinois

Mr. Gregory L. Coler
Director
Illinois Department of Public Aid
316 South Second Street, 3rd Floor
Springfield, Illinois 62763
(217) 782-6716

Indiana

Mrs. Jean Merritt
Director
Social Services Fiscal Office
115 North Pennsylvania
Indianapolis, Indiana 46204
(317) 232-7006

Michigan

Dr. Agnes M. Mansour
Director
Michigan Department of Social Services
300 South Capitol Avenue
Lansing, Michigan 48933
(517) 296-6117

Minnesota

Mr. Leonard Levine
Commissioner
Minnesota Department of Public Welfare
658 Cedar Street
Centennial Building
St. Paul, Minnesota 55101
(612) 776-2701

Ohio

Ms. Patricia K. Barry
Director
Ohio Department of Public Welfare
State Office Tower, 32nd Floor
30 East Broad Street
Columbus, Ohio 43215
(614) 466-6282

Wisconsin

Ms. Linda Reivitz
Secretary
Wisconsin Department of Health and Social
Services
1 West Wilson Street, Room 720

Madison, Wisconsin 53708
(608) 266-3681

REGION VI

Arkansas

Mr. Ray Scott
Director
Arkansas Department of Human Services
1428 Donaghey Building
Little Rock, Arkansas 72201
(501) 371-1001

Louisiana

Sandra L. Robinson, M.D., M.P.H.
Secretary
Department of Health and Human Resources
P. O. Box 3776
Baton Rouge, Louisiana 70821
(504) 342-6712

New Mexico

Mr. Juan R. Vigil
Secretary
Department of Human Services
P. O. Box 2348
Santa Fe, New Mexico 87503
(505) 827-4072

Oklahoma

Mr. Robert Fulton
Director
Department of Human Services
P. O. Box 25352
Oklahoma City, Oklahoma 73125
(405) 521-3076

Texas

Mr. Marlin W. Johnston
Commissioner
Texas Department of Human Resources
706 Banister Lane
P. O. Box 2960
Austin, Texas 78769
(512) 441-3355

REGION VII

Iowa

Dr. Michael V. Reagen
Commissioner
Department of Social Services
Hoover State Office Building
E. 14th and Walnut

Des Moines, Iowa 50319
(515) 281-5452

Kansas

Dr. Robert C. Harder
Secretary
State Department of Social and Rehabilitation
Services
State Office Building
Topeka, Kansas 66612
(913) 296-3271

Missouri

Mr. Barrett A. Toan
Director
Department of Social Services
Broadway State Office Building
P. O. Box 1527
Jefferson City, Missouri 65102
(314) 751-4815

Nebraska

Ms. Gina C. Dunning
Director
State Department of Public Welfare
301 Centennial Mall, South
Lincoln, Nebraska 68509
(402) 471-3121

REGION VIII

Colorado

Mr. George Goldstein
Director
Division of Social Services
Department of Social Services
1575 Sherman Street
Denver, Colorado 80203
(303) 866-2521

Montana

Mr. John D. LaFaver
Director
Title XX Planning Coordinator
Department of Social and Rehabilitation
Services
P. O. Box 4210
Helena, Montana 59604
(406) 587-5622

North Dakota

Ms. Patricia Conrad
North Dakota Department of Social Services
State Capitol

Bismarck, North Dakota 58505
(701) 224-4051

South Dakota

Mr. James Ellenbecker
Secretary
Department of Social Services
Kneip Building
Pierre, South Dakota 57501
(605) 773-3165

Utah

Mr. Andrew Gallegos
Director
Department of Social Services
150 West North Temple
Salt Lake City Utah 84103
(801) 355-9318

Wyoming

Mr. Stanley H. Torvik
Director
Wyoming Department of Health and Social
Services
Hathaway Building
Cheyenne, Wyoming 82002
(307) 328-1111

REGION IX

Arizona

Mr. Douglas X. Patino
Director
Department of Economic Security
1717 West Jefferson
P. O. Box 6123
Phoenix, Arizona 85005
(602) 255-5678

California

Ms. Linda S. McMahon
Director
Department of Social Services
State of California
744 P Street
Sacramento, California 95814
(916) 445-2077

Nevada

Ms. Sharon P. Murphy
Administrator
Welfare Division
Department of Human Resources
251 Jeanell Drive

Carson City, Nevada 89710
(702) 885-4400

Hawaii

Mr. Franklin Y. K. Sunn
Director
Hawaii State Department of Social Services and
Housing
P. O. Box 339
Honolulu, Hawaii 96809
(808) 548-6260

Guam

Mr. Dennis G. Rodriguez
Acting Director
Department of Public Health and Social
Services
P. O. Box 2816
Agana, Guam 96910
734-2947 or 9901

Northern Marianas

Mr. Gilbert C. Ada
Director
Department of Community and Cultural
Affairs
Saipan, Mariana Islands 96950
Tel: 9411 or 9497

REGION X

Alaska

Mr. John Pugh
Acting Commissioner

Department of Health and Social Services
Pouch H-01
Juneau, Alaska 99811
(907) 465-3030

Idaho

Rose Bowman
Director
Idaho Department of Health and Welfare
State Office Building
450 West State Street
Boise, Idaho 83720
(208) 964-2336

Oregon

Mr. Leo Hegstrom
Director
Oregon Department of Human Resources
318 Public Service Building
Salem, Oregon 97310
(503) 378-3033

Washington

Karen Rahm
Secretary
Washington Department of Social and Health
Services
Mail Stop OB 44-F (Legislative)
Olympia, Washington 98504
(206) 753-3395

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Handwritten signature
ALASKA STATE LEGISLATURE
JANUARY 1985

Senate Committee on Health, Education and Social Services

MEMORANDUM

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, April 16, 1985

DATE: April 15, 1985

On Tuesday, April 16, at 1:30 pm in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

SB 21, Relating to background checks on certain employees who come into contact with children.

SB 21, which has been the subject of previous committee hearings, addresses criminal history record checks on persons who supervise and care for children. Attached is a committee substitute which would:

- 1) authorize release of conviction records and outstanding warrants for any crime that might pose a risk of harm to a child,
- 2) require the Department to perform a criminal history check on all petitioners for adoption, and
- 3) require a state and national criminal history check on an applicant for a child care facility license or for facility employment, and on adult occupants of a facility.

The Department would do the check on facility operators and administrators, foster parents, and family care homes; the facilities would do the checks on their staff. The cost of the check would be paid by the facility or applicant, except the state would pay for foster parent checks. The bill provides for provisional licensing and provisional employment pending the national check, and allows for emergency foster care to be provided prior to the state or national check.

SB 21 - BACKGROUND CHECKS

UNDER CURRENT STATUTE, EMPLOYER ALLOWED ACCESS TO CRIMINAL HISTORY OF EMPLOYEES -- SPECIFIC CRIMES ONLY (CONTRIBUTING TO DELINQUENCY OF MINOR, SEX CRIMES). CSSB 21 (HESS):

1. BROADENS CRIMES TO ANY THAT MIGHT POSE A RISK OF HARM TO A CHILD, AS DEFINED IN THE BILL.
2. ALLOWS FOR DISCLOSURE OF OUTSTANDING ARREST WARRANTS FOR THESE CRIMES.
3. MANDATORY STATE AND NATIONAL CHECK ON:
 - PERSONS SEEKING TO ADOPT MINORS
 - STAFF MEMBERS (AND JOB APPLICANTS) OF LICENSED FACILITIES
 - ADULT OCCUPANTS OF FOSTER HOMES AND FAMILY CARE HOMES
 - FACILITY ADMINISTRATORS AND OPERATORS
4. PROVISIONAL LICENSE/EMPLOYMENT ALLOWED AFTER STATE CHECK WHILE PENDING NATIONAL CHECK
5. ALLOWS FOR EMERGENCY PLACEMENT IN FOSTER HOME WITH NO CHECK
6. DEPARTMENT REQUESTS CHECKS ON ADMINISTRATORS AND ADULTS OF FOSTER AND FAMILY CARE HOMES, AND MAKES DETERMINATION OF WHETHER ADULT POSES RISK OF HARM TO CHILD. GRANTS LICENSE ACCORDINGLY.
7. FACILITY OPERATOR REQUESTS CHECKS ON STAFF; MUST REMOVE FROM FACILITY SOMEONE WHO POSES RISK OF HARM TO CHILD.
8. DEPT. PAYS COST OF CHECK FOR FOSTER PARENTS. ALL OTHERS PAID FOR BY APPLICANT OR FACILITY. (\$20)

FISCAL NOTES: H&SS (COST FOR FOSTER PARENTS, PROCESSING)
PUBLIC SAFETY (TO DO FINGERPRINTS)

POSITION PAPER

COMMITTEE SUBSTITUTE for SENATE BILL 21 (HESS)

This bill relates to criminal background checks for persons supervising, caring for or adopting children.

Secs. 1, 2 and 3

Existing AS 12.62.035 authorizes the release of certain criminal conviction records for persons who hold, or are applying for, paid or volunteer positions which would give them supervisory or disciplinary power over a child. Sections 1, 2 and 3 of this bill expand the types of convictions that may be reported to include all crimes that might pose a risk to children. Section 3 allows the state to inform an inquiring employer if there is a pending warrant for the arrest of the employee. These three sections contain the essential elements in the bill introduced by the Governor (HB 88) and so have the continuing support of the administration.

Secs. 4 and 5

Section 4 would require a criminal history background search on all petitioners for adoption.

Section 5 would require a criminal history background search on an applicant for a facility license, as defined in AS 47.35, or for facility employment. Either the Department of Health and Social Services or the facility would request the criminal clearance prior to license issuance or employment on a permanent status.

The department strongly supports reducing risk to adoptive children, foster children, children in child care facilities and dependent adults in foster care. There are problems with criminal background checks through the fingerprinting process. The Governor's Criminal Justice Working Group recommended that criminal history background checks for licensee's not be included in the administration's child protection package until some of those procedural and legal problems could be resolved. Concerns expressed include:

- the high cost of fingerprinting; there is a \$12.00 charge for the FBI clearance and an estimated \$8.00 state processing charge. These costs would impact local police departments and the Department of Public Safety;
- logistics costs associated with obtaining fingerprints particularly in remote locations both for the Department of Public Safety and the Department of Health and Social Services;

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

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

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

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

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

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

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

Position Paper
CS SB 21
Page 4

Although some child abusers will lie regardless of the application form, the penalty, class A misdemeanor with a penalty 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. Pugh
John R. Pugh, Commissioner
Department of Health
and Social Services

DATE: 4-2-85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

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

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		76.1	79.1	82.3	85.6	89.0
200 TRAVEL		6.6	6.9	7.1	7.4	7.7
300 CONTRACTUAL		37.4	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 FUNDS		128.0	116.4	121.0	125.9	130.8
FEDERAL FUNDS						
OTHER						
TOTAL		128.0	116.4	121.0	125.9	130.8

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Michael L. [Signature] 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
Requestor
Office of Management and Budget

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
		<u>\$37,430</u>

Supplies	1.2
Equipment - first year only	6.7
	<u>\$128.0</u>

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.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSSB 21 (HESS)

SUPPORT

CSSB 21 (HESS) - "An act relating to the protection of children..."

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

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

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

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

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

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

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

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

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

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


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSB 21 (HESS)
 Title: "...background checks...
 contact with children"
 Sponsor: Ferguson
 Requestor: Sen. HESS
 Date of Request: 4/03/85

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie

Phone: 465-4349

Division: Administrative Services

Date: 4/03/85

Approved by Commissioner: Robert J. Sundberg

Date: 4/6/85

Agency: Department of Public Safety

Distribution (by Agency preparing fiscal note):

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

7/1/84

COST ANALYSIS
CSSB 21 (HESS)

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

An effective date of July 1, 1985 is assumed.

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

APR 3 1985

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811

PHONE: 465-3030

DOCUMENT #85-112

April 2, 1985

The Honorable Bettye Fahrenkamp
Senate HESS
Pouch V
Juneau, AK 99811

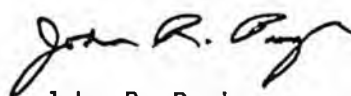
Dear Senator Fahrenkamp:

In response to your March 25, 1985 letter, I am most appreciative of your suggestion and interest in protecting the children of the State of Alaska. I agree that one of the tools that can be utilized to reduce risk to children is a criminal history background clearance on employees who supervise minors. I am aware that under AS 12.62 employers have the ability to obtain criminal history checks on employees at this time.

Because of the high interest in mandatory criminal history background checks and the various issues involved, the division is receiving a great deal of information that would be useful to licensees. In particular, the U.S. Department of Health and Human Services published an excellent monograph regarding recruitment and selection of staff, and background checks. The Division of Family and Youth Services will develop a package of these materials, an explanation of current options available to the licensees to be sent at the end of the fiscal year. At that time it will be possible to give each of the licensees a copy of the enclosed brochure, an explanation of AS 12.62 and any new laws regarding child abuse and neglect that may be relevant to their operation. In this manner the licensees then would have more complete information about their options and responsibilities in hiring staff and also the State's responsibilities to them.

Thank you for your suggestion and continuing interest in protecting the children of Alaska.

Sincerely,



John R. Pugh
Commissioner

Enclosure

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

POSITION PAPER

SB 21

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation representing 20 domestic violence and sexual assault programs statewide, supports SB21, relating to background checks on certain employees who come into contact with children.

Under AS 47.35, facilities that are required to be licensed by the Department of Health and Social Services include:

- boarding homes providing care for less than 6 adults or children not related to the care giver
- foster homes
- group homes providing care for 10 or less adults or children not related to the care giver
- nurseries providing care for children unrelated to the care giver, for any part of a 24-hour day
- institutions providing care for 11 or more adults or children not related to the care giver

Facilities which are not required to be licensed include:

- any of the above which operate for less than 90 days
- a center in which 5 or less children under the age of 14 are provided care, and who are not related to the care giver
- nurseries providing services which are primarily educational in nature (preschools)

In addition to the above, facilities whose employees will not be required to have background checks, SB 21 does not provide for checks on those responsible for securing licenses for facilities required to be licensed, such as the administrative officer or agent,

The Network supports the intent of the bill to provide measurable and attainable safeguards in order to facilitate the prevention of child sexual and physical abuse. Allowing for background checks on employees who will have supervisory or disciplinary power over a child will provide a much needed mechanism for protecting children from harm.

provided for in HESS C.S.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

February 12, 1985

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

Dear Senator Fahrenkamp:

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

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

The Honorable
Bettye Fahrenkamp

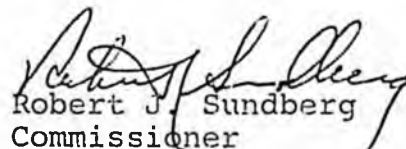
-2-

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 12.62.035.
4. The procedure for notifying employers of the results of the records check is by form letter accompanied by the fingerprint card.
5. As of this writing, there have been 850 requests for FBI records searches. It takes an average of eight to ten weeks to receive their response.

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

Sincerely,


Robert J. Sundberg
Commissioner

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

September 13, 1984 RECEIVED

SEP 17 1984

Josephson,

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

Dear Senator Josephson:

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

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

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

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

The Honorable
Senator Josephson

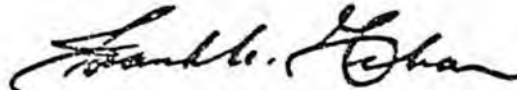
-2-

September 13, 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.

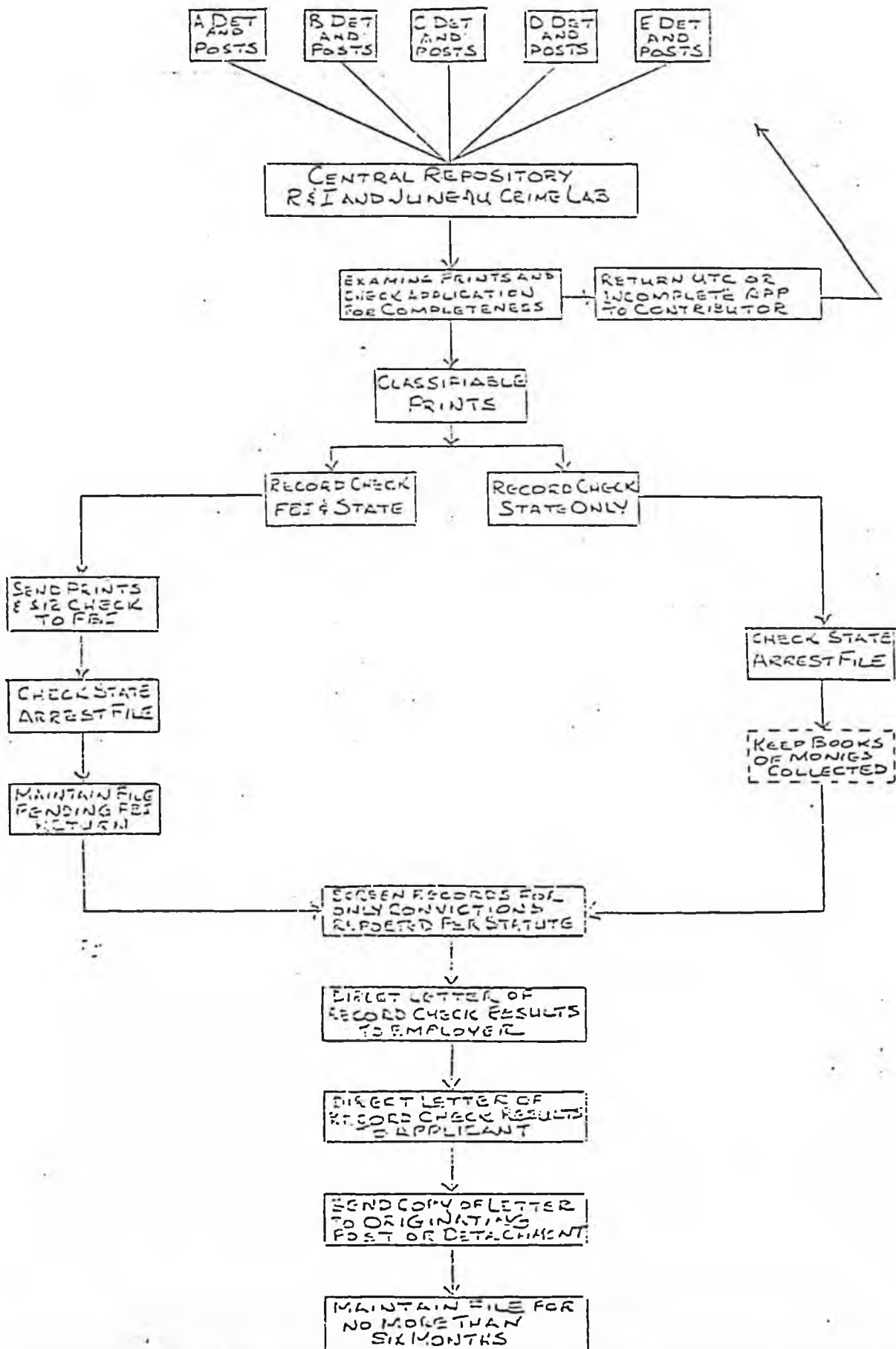
Sincerely,


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: _____

- 13) Phone Number: _____ Social Security No. _____
- 14) DOB: _____ Driver's License No. _____
- 15) Sex: _____ Hgt: _____, Wt: _____, Eye Color: _____ Hair Color: _____
- 16) Aliases or prior names: _____
- 17) Position subject now occupies or is being considered for: _____

PART II. AGREEMENT FOR THE DISSEMINATION OF CRIMINAL HISTORY INFORMATION

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

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

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

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

Signature of Applicant

Date

* * * * *

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

Form of identification shown by applicant: _____

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

State I.D. Card No. _____ Title _____

Other. Describe: _____ Date _____

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

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

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

CRIMES FOR WHICH CONVICTION RECORDS

MAY BE RELEASED UNDER AS 12.62.035

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

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

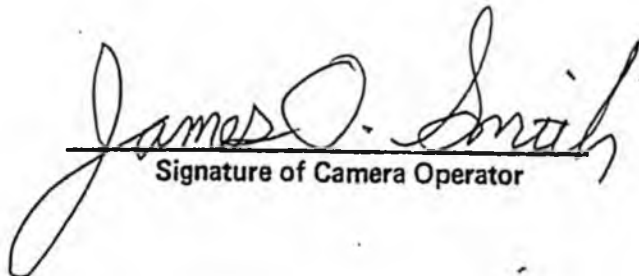
Also included are convictions for an attempt to commit any of the above crimes, and out-of-state convictions which would have been violations of one of these statutes if the offense had been committed in Alaska.

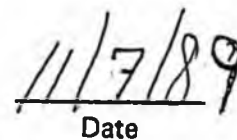


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Signature of Camera Operator


Date

S B

R D

BILL FILE LOG

BILL # 29

3/11 FN for CSSB29 (HESS) Received

- Bill Summary
- Proposed amendment - all tasks

TO Testify - Margo Dick - AK Network
- Lisa Nelson or Gayle
Horetzki

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH Y - 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

Senate Judiciary Committee, 1/17/85
" " " 1/31/85

Original sponsors: Faiks, Sturgulewski,
Halford, et al

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 29 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to domestic violence."

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

8 * Section 1. AS 12.25.030(b) is amended to read:

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

20 * Sec. 2. AS 18.66.900(3) is amended to read:

21 (3) "domestic violence" means a crime specified in AS 11.41
22 when the victim is a spouse or a former spouse of the defendant; a
23 parent, grandparent, or child of the defendant; [, OR] a member of the
24 social unit comprised of those living together in the same dwelling as
25 the defendant; or a person who is not a spouse or former spouse of the
26 defendant but who previously lived in a spousal relationship with the
27 defendant;

28 * Sec. 3. AS 25.35.010(a) is amended to read:

29 (a) A person who is subjected to domestic violence may petition

1 a superior court for injunctive relief restraining the infliction of
2 further domestic violence against the petitioner by the respondent. A
3 minor child seeking relief available under this chapter must petition
4 the court by or through a parent, guardian, or legal custodian.

5 * Sec. 4. AS 25.35.060 is amended to read:

6 Sec. 25.35.060. DEFINITIONS. In this chapter, "domestic vio-
7 lence" means a crime under AS 11.41 when the victim is a spouse or a
8 former spouse of the respondent; a parent, grandparent, or child of
9 the respondent; [,] a member of the social unit comprised of those
10 living together in the same dwelling as the respondent; [,] or a
11 person who is not a spouse or former spouse of the respondent but who
12 previously lived in a spousal relationship with the respondent.
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Official Business

Alaska State Legislature

Senate Finance Committee

Pouch V
State Capitol
Juneau, Alaska 99811

JAN FAIKS
CO-CHAIRMAN

February 22, 1985

MEMORANDUM

TO: Senator Pat Rodey

FROM: Senator Jan Faiks

SUBJECT: Hearings and proposed amendment to SB 29

Please schedule hearings before the Judiciary Committee on Senate Bill 29, an act relating to domestic violence.

Also, I would appreciate your Committee's considering an amendment to this bill which would add the word "minor" before the word "child" in Section 3 of the Committee Substitute from the Health, Education, and Social Services Committee.

This amendment will clarify my intent that the restrictions on who may bring a petition on behalf of a child are limited only to the situation of a minor child needing relief. This oversight in drafting was brought to my attention by a memo from the Legislative Counsel. I am enclosing his memo because it explains the problem with the current wording in Section 3. Thank you.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 1, 1985

SUBJECT: CS Senate Bill 29

TO: Senator Bettye Fahrenkamp
Chair Senate HESS Committee

FROM: Mike F. Ford *M.F.*
Legislative Counsel

In reviewing CSSB 29 a question occurred concerning the use of the term "child" in section three. It appears that the term is meant to refer to those persons who are still under the supervision or control of a parent or guardian, and unable to represent themselves directly in court. Under present law, a person becomes an adult for purposes of bringing or defending a court action when they turn 18, however the relationship of parent/child continues into the adult years. The language used raises the possibility that adults who are seeking relief from domestic violence, as well as children, would be required to pursue court relief through a parent, guardian or legal custodian. The situation could perhaps be remedied by inserting the word "minor" in front of the word "child", as is done in AS 25.35.020(b)(1), concerning emergency injunctive relief.

MFF:ojb
Jil/049



Official Business

Alaska State Legislature

Senate

Committee on Finance

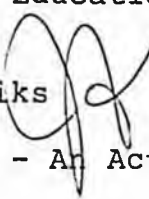
JAN FAIKS
CO-CHAIRMAN

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 29 - An Act Relating to Domestic
Violence

SB 29 enlarges the class of individuals that may seek relief under the domestic violence statutes to include parents, grandparents and children. Presently the domestic violence remedies are limited to spouses, former spouses, members of a social unit living together and persons who previously lived in a spousal relationship.

The importance of expanding this class is to allow persons who are often the victims of domestic violence an opportunity to file petitions for injunctive relief under AS 25.35.010 and emergency injunctive relief under AS 25.35.020. Both remedies greatly aid a victim against further infliction of domestic violence. Under both forms of injunctions, the court may issue any order it determines to be necessary for the protection of the the health, safety or welfare of the petitioner or of a minor child in the care of the petitioner.

An injunction may include such provisions which:

restrain the respondent from subjecting the petitioner to domestic violence;

direct the respondent to vacate the home of the petitioner;

restrain the respondent from communicating directly or indirectly with the petitioner; or
direct the respondent to pay medical expenses incurred by the petitioner as a result of the

domestic violence.

A Model State Act: Remedies for Domestic Violence advocates that the remedies created by law be made available to as broad a group of victims as possible.

In the comments to the Model Act, it is stated that:

Chronic violence occurs in many intimate relationships directed toward spouses, children, parents, lovers, siblings, and others. Often the violence continues and even escalates after a relationship is terminated. Patterns of violence may develop in relationships in which the parties are not and have never been cohabiting. Laws that fail to provide broad coverage might be interpreted as legislative condonation of violence in the excluded relationships.

However, since temporary restraining orders, such as provided under AS 25.35.020, can be obtained on an expedited basis without normal requirements of notice to the perpetrator of the abuse, application should be carefully scrutinized. Because of this, the revisions advanced by SB 29 have been reviewed by those in the field and represent a satisfactory compromise which provides additional protection for victims of violence, primarily elders and children. While others outside of these classes may become victims of violence, the existing criminal assault statutes are available and provide protection through the arrest and prosecution of the perpetrator.

These revisions have been advocated by persons who work with victims of domestic violence. There has been an increase in elder abuse, and it is hoped that by including parents and grandparents that many older victims will be able to seek protection through petitioning the court for injunctions against further violence. Many cases of elder abuse occur between persons not living together and therefore are not presently covered under the statutes.

Last session a similar bill was introduced, SB 477. The following comments were submitted as part of position papers.

Council on Domestic Violence and Sexual Assault:

"Adding this section protects parents and grandparents who do not live with the perpetrator or by allowing . . . a restraining order to be issued for acts of violence committed against them. Incidences of violence have occurred between parents and adult children in which the parents are afraid for their safety and yet have little recourse to protect themselves if they do not live with the perpetrator. This change would allow them to get a domestic violence restraining order to protect themselves. . . . Although statistics on elder abuse in Alaska are not

complete because of the newness of the legislation that requires reporting, people from different communities have indicated there is a need to protect parents and grand parents, particularly when they are elderly. Murders in Bethel and Nome within the last six months substantiate this need."

Alaska Network on Domestic Violence and Sexual Assault:

"Last year, the Legislature gave the Department of Health and Social Services statutory authority to receive and act on reports of abuse of the elderly. Since the law's enactment in September 1983, 17 cases of elderly abuse have been reported to the Department's Division of Adult and Aging Services. The majority of those cases involved the infliction of physical abuse upon the elderly person by a son or other male family member. This information corresponds with information received from domestic violence programs, who report that cases of elderly abuse most often involve the physical abuse of an elderly parent or grandparent by that person's son or grandson, and involves cases in which the victim and perpetrator live separately."

Also, according to workers in the field, courts have questioned whether or not children were intended to come under the protection afforded victims of domestic violence. Children that live within the same dwelling as the perpetrator are covered under the present definition. However, those who are victimized by persons living outside of the home are not. With the inclusion of "child" under AS 25.35.060, there will be no question that children should be able to seek protection under that chapter. This inclusion allows abused children, often through guardians ad litem, to petition the court for a protective restraining order. An example of this type of abusive situation is where a child has been victimized by a parent that does not and never did live in the household and is in need of protection from further abuse.

FOOTNOTES

¹Lerman, A Model State Act: Remedies for Domestic Abuse, 21 Harv. J. on Legis. 61 (1984), p.74.

MEMORANDUM

TO: SENATOR JAN FAIKS

FROM: ELIZABETH J. HICKERSON

SUBJECT: SB 29

DATE: JANUARY 28, 1985

SB 29 expands the class of individuals who may seek relief under the domestic violence statute and Title 12, to include "parent, grandparent, and child of the respondent". Several items need to be reviewed prior to the hearing on January 31.

1. What people does this bill seek to protect? Answer: parents of the respondent, grandparents of the respondent and children of the respondent. Presently, all people living in the same dwelling with the respondent are provided protection under the domestic violence statute and Title 12. However, when elders and children, not living with the respondent, are abused by the respondent they are not technically able to petition the court for a protective order.

In the 3rd Judicial District, as a practical matter, when spouses or former spouses petition the court for a protective order, all members of the petitioners' household who have been subjected to the abuse are included in the order. It is unclear whether or not this is the uniform practice throughout the state. Because of this, it is felt that a uniform law is needed to provide protection for children and certain elders abused by, but living apart from the respondent.

CHILDREN. In addition, the Department of Law and the Court System have asked: Who should be able to petition the court on behalf of children? Answer: parents, guardians and legal custodians of the child. Without these restrictions, two potential abuses of the system exist: a juvenile who is upset with his/her parents may seek a protective order not based on substantial facts or another person, such as a neighbor, who disagrees with a family's discipline practices may seek a protective order. Both the juvenile and the other person may, under present law, report the harm to Family and Youth Services which will investigate the case and take appropriate action.

Therefore, SB 29 should be amended to include a sentence:

A child must petition the court for available relief under this chapter by or through a parent, guardian or legal custodian.

If the inclusion of children remains controversial following this amendment, the Council on Domestic Violence and Sexual Assault and the Network on Domestic Violence and Sexual Assault both suggest eliminating "child" from the bill. Both believe that providing protection for the elderly through court orders is the number one priority that SB 29 addresses. Last session a similar bill passed the Senate, but failed to pass the House.

ELDERS. In 1983, the legislature enacted AS 47.24, Protection of the Elderly. This chapter outlines procedures, including mandatory reporting and protective services, which must be followed for abused elders. Since the enactment of this law, reports of abused elders have increased statewide. Often the elders are abused by family members. If the elder is living in the same dwelling as the abuser, the elder may seek a protective order under the domestic violence statute. If the elder is living apart from the abuser, no such protective order is available.

During the interim the addition of "elder" was discussed with professionals. It was felt that since protective orders are extraordinary measures that the persons able to seek such relief should be limited. Therefore, SB 29 limits the class to "parents and grandparents" of the respondent. These are the most likely persons that need protection. Other abused elders may seek protection through the Department of Health and Social Services, or may report the incident to the local law enforcement agency.

SB 29 needs to specifically state "parents of the respondent and grandparents of the respondent" or should be accompanied by a letter of intent clarifying the fact that only parents and grandparents of the respondent are able to utilize the protective order procedures.

DEPARTMENT OF PUBLIC SAFETY

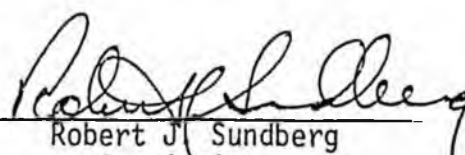
POSITION PAPER

SB 29

"An Act relating to domestic violence."

The Council on Domestic Violence and Sexual Assault supports SB 29 with the revision described below. Adding a parent, grandparent, or child of the respondent to AS 25.35.060 protects parents, grandparents and children who do not live with the perpetrators by allowing them to receive an injunctive relief order to restrain the infliction of further domestic violence against them. In order to be consistent with the statutes, this wording should also be added to AS 12.25.030(b) which permits warrantless arrests when there is reasonable cause for the peace officer to believe domestic violence has been committed.

Incidences of violence have occurred between parents and adult children in which the parents are afraid for their safety and yet have little recourse to protect themselves if they do not live with the perpetrator. Although statistics on elder abuse in Alaska are not complete because of the newness of the legislation that requires reporting, people from different communities have indicated there is a need to protect parents and grandparents, particularly when they are elderly. Adding this section also protects children who are not living with the perpetrator, but need to be protected from domestic violence directed toward them.


Robert J. Sundberg
Commissioner
Department of Public Safety

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 29
Title: Domestic Violence

Sponsor: Senator Faiks
Requestor: SEN. HESS
Date of Request: 1-11-85

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: _____
Administration of Justice

BRU, Program or Subprogram(s) Affected: _____
Council on Domestic Violence and
Sexual Assault

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger Phone: 465-4338
Division: Administrative Services Date: 1-14-85

Approved by Commissioner: *[Signature]* Date: 1-14-85
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

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

POSITION PAPER

SB 29

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation representing 20 domestic violence and sexual assault programs state-wide, supports SB29 to change the definition of "domestic violence" in the existing statute.

Under current law, a person suffering abuse from a spouse or former spouse, a member of the "social unit" comprised of those living together with the abuser, or a person who is or has lived with the abuser in a spousal relationship can seek protection from further harm through means of a relief order.

This bill would provide that same protection to a parent, grandparent, or child of an abuser who is not living with that abusive individual. It is the Network's position that such a provision is necessary in order to protect parents and grandparents from abuse by their adult children or grandchildren, and to protect children who are not living with their parents.

Passage of this bill would enable those currently unprotected to seek and obtain a restraining order against the abusive individual and restrain the abuser from inflicting further harm.

The Network would suggest that, for purposes of consistency, this wording also be included in AS 12.25.030(b), which permits warrantless arrests when there is reasonable cause for a peace officer to believe that domestic violence has been committed.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

February 1, 1985

SUBJECT: CS Senate Bill 29

TO: Senator Bettye Fahrenkamp
Chair Senate HESS Committee

FROM: Mike F. Ford *M. F.*
Legislative Counsel

In reviewing CSSB 29 a question occurred concerning the use of the term "child" in section three. It appears that the term is meant to refer to those persons who are still under the supervision or control of a parent or guardian, and unable to represent themselves directly in court. Under present law, a person becomes an adult for purposes of bringing or defending a court action when they turn 18, however the relationship of parent/child continues into the adult years. The language used raises the possibility that adults who are seeking relief from domestic violence, as well as children, would be required to pursue court relief through a parent, guardian or legal custodian. The situation could perhaps be remedied by inserting the word "minor" in front of the word "child", as is done in AS 25.35.020(b)(1), concerning emergency injunctive relief.

MFF:ojb
J11/049

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSB 29 (HESS)
Title: Domestic Violence

Sponsor: Senate HESS
Requestor: Sen. Judiciary
Date of Request: 3/11/85

FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Administration of Justice

BRU, Program or Subprogram(s) Affected: Council on Domestic Violence & Sexual Assault

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
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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

Prepared By: Paul Conger Phone: 465-4338
Division: Administrative Services Date: 3/11/85

Approved by Commissioner: [Signature] Date: 3-11-85
Agency: Public Safety

- Distribution (by Agency preparing fiscal note):
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