

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4537 HHS HB 224 - HB 237

199



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Health and Social Services	DIVISION Family and Youth Services	BILL NUMBER HB 224	SPONSOR Brown, et al.
DEPARTMENT POSITION  Support in Concept			
PREPARED BY Yvonne M. Chase, Director	DATE 4/8/87	COMMISSIONER'S SIGNATURE <i>Mike M. Minson</i>	DATE 4/15/87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL  State Retirement and Benefits	CONSTITUENT GROUP(S) AFFECTED BY BILL  Employers
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

To provide support to infants and working parents by mandating that employers allow parents reasonable leave from work at the time a child is born or adopted or placed into foster care.

ANALYSIS OF BILL PROGRAM EFFECTS

Maternity leave for working parents is a need for the majority of families in Alaska and the U.S. In 46% of households in Alaska containing two parents, both work outside the home. 11% of Alaska's families are headed by a single parent and 60% of single mothers with children under age six are in the labor force. Research indicates that adjustment or bonding to newborns is seriously impaired if parents are not allowed to spend adequate time with the newborn. Positive adjustment of the family to any new family member is more likely if parents are provided an opportunity to bond with the child immediately after the placement.

AMENDMENTS PROPOSED

Due to the wide range of foster care situations and the number of placements which realistically may be made into a single foster home within a year, it is recommended that leave for placements into foster homes be either restricted in length of time or that leave be restricted to foster placements that are intended to be permanent at the time the placement is made. Generally, the recruitment of foster homes for preschool age children is focused on families in which one parent does not work outside the home since the adjustment of young children who have been removed involuntary from the parental home requires more support and attention than could generally be provided in a home in which both parents work.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.



STATE OF ALASKA

OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION  
3801 C STREET - SUITE 742  
ANCHORAGE, ALASKA 99503

STATEMENT OF SUPPORT  
FOR PARENTAL LEAVE

The demographic forces shaping the Alaskan workforce require new solutions for the care of our children. Since 1950, Alaska women have increased their labor force participation by more than 500 percent. This rate of increase has been faster for Alaska women than for women nationally. More than one-half of all women in Alaska participate in the labor force, narrowing the gap of participation between men and women to only 22 percent.

The pattern of labor force participation for Alaska women has changed radically over the decade. Fewer women drop out of the workforce during their childbearing years, yet they continue to raise families, thus creating an increasing need for a policy on parental leave.

The two income family is no longer an anomaly but a necessity of life. Yet the dilemma exists. How do you balance the competing needs of job security and parenting?

This is a national problem since, unlike most other industrialized nations, the United States does not have a policy on parental leave. Extensive parental benefits are provided in over 80 nations either by the employer or by national insurance plans. In France, women are entitled to 90% of their earnings for a sixteen week period and are guaranteed the same or a comparable job on their return. In Sweden, "parent insurance" allows either parent to leave work for up to nine months after the birth of a child, without loss of pay. In West Germany, women receive about seven months paid leave.

The absence of a national parental leave policy has left the determination of parental leave up to individual employers. Some employers have recognized the important relationship of family to work. However, very often employers do not routinely assure that employees who must be out of work for any period of time can get their jobs back, regardless of whether they were out of work because they were having a child.

Two bills which have been introduced this session represent a positive response to the social and economic reality that the majority of parents - fathers and mothers - work outside the

home. HB224, introduced by Representative Kay Brown, and SB124, introduced by Senator Joe Josephson, provide 18 weeks of unpaid leave for either parent after the birth or adoption of a child. Both bills ease the burden on small businesses by exempting firms with fewer than 15 employees.

These bills represent an important starting place for Alaska employers and families. The details may change as the bills are discussed. Is 18 weeks too long or too short? Is the exemption for small businesses too high or too low?

But discussion of these details should not be allowed to obscure the need for the law. Alaska can no longer view family life as entirely separate from work responsibilities. These bills, and the policy that they will create, will put Alaska in the forefront of states whose employment policies recognize the importance of family life.

*Kris Chatfield*  
Kris Chatfield,  
Chair

# ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

---

April 22, 1987

Representative Niilo Koponen  
Representative Johnny Ellis  
Chairmen  
House Committee on Health, Education and Social Services  
P.O. Box V  
Juneau, Alaska 99811

Mr. Chairman and Members of the Committee:

The Alaska Women's Lobby welcomes the introduction of House Bill 224, which would establish a statewide parental leave policy.

Statistics show that half of all mothers of children under three work outside the home, and that 85 per cent of all women in today's work-force are likely to become pregnant during their working years. The majority of mothers work because of economic necessity.

In January, the U.S. Supreme Court ruled that states may require employers to provide short, unpaid disability leave for new mothers.

We believe this legislation which would guarantee job security for all workers who want unpaid leave to care for newborn or newly adopted children is long overdue. It is time the workplace changed to accommodate the changing work force.

Nine (\*) other states already give some job protection to new parents. Even these protections pale when compared to those in nations such as Sweden, West Germany and France, where workers get from 4.5 to 9.5 months of parental leave with pay of up to 90 per cent of their salary.

---

(\*) Connecticut, Hawaii, Kansas, Montana, New Hampshire, Ohio, Washington, Massachusetts and California.

A recent survey of 400 major U.S. companies found that 65 per cent offered up to three months unpaid leave with the guarantee of a job upon return, and 46 per cent guaranteed a comparable job. Many Alaskan public and private sector employers already provide leave for childbirth.

Family leave is not a radical idea, but is an important step towards ensuring that families can function in today's environment. Society can no longer view the workplace and the family as two completely separate parts of an employee's life.

House Bill 224 will accommodate family life in the workplace, and will result in more productive workers and in healthier families. We urge its speedy passage.

Sincerely,

*Sherrie Goll*

Sherrie Goll  
for the Alaska Women's Lobby

# MATERNITY AND PARENTAL LEAVE POLICIES: A COMPARATIVE VIEW

COUNTRY	DURATION	JOB SECURITY	AMOUNT/DURATION	RECIPIENT
CANADA	17-41 WEEKS	YES	60%/15 WEEKS	MOTHER
ITALY	22-48 WEEKS	YES	80%/22 WEEKS	MOTHER
GERMANY	14-26 WEEKS	YES	100%/14-18 WEEKS	MOTHER
SWEDEN	12-52 WEEKS	YES	90%/38 WEEKS	MOTHER or FATHER
FINLAND	35 WEEKS	YES	100%/35 WEEKS	MOTHER or FATHER
AUSTRIA	16-52 WEEKS	YES	100%/20 WEEKS	MOTHER
CHILE	18 WEEKS	YES	100%/18 WEEKS	UNSPECIFIED
USA*	0	0	0	0

\* No Federal Policy

Sources: Women at Work, ILO Global Survey, 1984;  
Kemperman, Maternity & Parental Benefits & Leave, 1980.

Table 1. Pregnancy Leave Policies of Some Public and Private Sector Employers in Alaska

Employer	Applicable Policy	Number of Weeks Allowed	Compensation During Leave	Return Rights	Comments
<b>PUBLIC SECTOR</b>					
Anchorage School District (NEA represented employees)	disability leave	6 if natural, 8 if Cesarean	use sick leave then LWOP	Yes	
Bristol Bay Borough	maternity leave	9	use sick, then annual then LWOP	Yes	supervisor approval required if more than 9 weeks are required
City and Borough of Juneau	none	---	---	---	no policy for pregnant workers, an employee may use their accumulated personal leave or other employees may donate their leave
Fairbanks North Star Borough (APEA-represented employees)	maternity leave	13	use personal, then LWOP	Yes, with no loss of service time	may be extended an additional 90 days with a physicians statement; covered by medical benefits while on maternity leave
Juneau School District (NEA-represented employees)	maternity leave inc. in parental leave policy	not specified	use sick, then LWOP	Yes	the length of the leave period is determined by the employee and her doctor
Hatanuska-Susitna Borough	maternity leave	8	use sick, then annual, then LWOP	Yes	this policy was just instituted with negotiation of current contract, prior policy was not formal, but generally 6 weeks were allowed
Municipality of Anchorage	medical LWOP or short-term disability	6 varies	no pay some possible	Yes	

file 56124  
parental leave

# **CORRECTION**

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

Table 1. Pregnancy Leave Policies of Some Public and Private Sector Employers in Alaska

Employer	Applicable Policy	Number of Weeks Allowed	Compensation During Leave	Return Rights	Comments
<b>PUBLIC SECTOR</b>					
Anchorage School District (NEA represented employees)	disability leave	6 if natural, 8 if Cesarean	use sick leave then LWOP	Yes	
Bristol Bay Borough	maternity leave	9	use sick, then annual then LWOP	Yes	supervisor approval required if more than 9 weeks are required
City and Borough of Juneau	none	---	---	---	no policy for pregnant workers, an employee may use their accumulated personal leave or other employees may donate their leave
Fairbanks North Star Borough (APEA-represented employees)	maternity leave	13	use personal, then LWOP	Yes, with no loss of service time	may be extended an additional 90 days with a physicians statement; covered by medical benefits while on maternity leave
Juneau School District (NEA-represented employees)	maternity leave inc. in parental leave policy	not specified	use sick, then LWOP	Yes	the length of the leave period is determined by the employee and her doctor
Matanuska-Susitna Borough	maternity leave	8	use sick, then annual, then LWOP	Yes	this policy was just instituted with negotiation of current contract, prior policy was not formal, but generally 6 weeks were allowed
Municipality of Anchorage	medical LWOP or short-term disability	6  varies	no pay  some possible	Yes	

file 56124  
parental leave

Table 1. Pregnancy Leave Policies of Some Public and Private Sector Employers in Alaska

Employer	Applicable Policy	Number of Weeks Allowed	Compensation During Leave	Return Rights	Comments
<b>PUBLIC SECTOR</b>					
North Slope Borough	maternity leave	9	may use personal, then LWOP	Yes	may extend the leave period with doctor's certificate
State of Alaska (APEA-represented employees)	maternity leave	9	use sick, then annual, then LWOP	Yes	extensions may be granted with a doctor's certificate or by the supervisor
<b>PRIVATE SECTOR</b>					
ARCO	anticipated disability leave	25	may or may not be paid, can use sick leave for period actually disabled	yes, if return immediately after disability, otherwise, job not guaranteed	
construction companies (Teamsters)	disability leave	25	use sick, then annual may also be paid time loss benefits (\$100/week)	Yes, with seniority	

Table 1. Pregnancy Leave Policies of Some Public and Private Sector Employers in Alaska

Employer	Applicable Policy	Number of Weeks Allowed	Compensation During Leave	Return Rights	Comments
<b>PRIVATE SECTOR</b>					
Cook Inlet Region, Inc.	medical leave	12	LWOP	Yes	medical LWOP is used for r.l situations where an employee is absent for medical reasons, does not commence until sick and annual leave are used, health insurance is paid during medical leave; may be extended up to an additional 12 weeks
electrical utilities (IBEW-represented workers)	disability leave	8	LWOP	Yes, with seniority	the eight weeks begins after any medical disability ends, policy applies to the mother and father of newborns and adoptions
grocery stores (retail clerks represented by the UFCW)	maternity leave	25	use sick, may be paid \$100/wk for first 6 weeks	Yes, with seniority	
National Bank of Alaska	medical leave of absence	6	use sick, then annual, then LWOP	not guaranteed but will try to place in old or similar position	

Table 1. Pregnancy Leave Policies of Some Public and Private Sector Employers in Alaska

Employer	Applicable Policy	Number of Weeks Allowed	Compensation During Leave	Return Rights	Comments
<b>PRIVATE SECTOR</b>					
SeaAlaska	medical leave	varies	use sick, then annual, then LWOP	yes	medical leave is used for any situation where it is medically prudent for the employee to be absent, the length of leave determined between the employee and the Vice-President of Administration; temporary disability applies to extended illness or pregnancy, and a doctor's certificate is required
	or temporary disability leave	varies	LWOP	yes	
Sohio	disability leave	12-25, but generally 6	may be paid	yes	
	or personal leave of absence	varies	no pay	no	

Data collected by telephone survey conducted during the week of January 19 - 23, 1987.

APEA = Alaska public Employees' Association

IBEW = International Brotherhood of Electrical Workers

LWOP = Leave Without Pay

NEA = National Education Association

UFCW = United Food and Commercial Workers

Prepared by the House Research Agency, January 1987 (87-079.wk1)

# Maternity leaves

## There are pluses, minuses to consider

By JOHN CREED  
Staff Writer

Dentist Dennis Andersen has an all-women work force in his downtown Fairbanks office.

Like many Alaska businesses, most of his six full-time and two part-time employees, including his expectant wife Joan, are in their child-bearing years.

But unlike some American businesses, Andersen acknowledges his workers have babies.

"We give them time off to have their babies without pay," he said. "They have usually stayed out for about four months. And then they come back to work for us at the same job."

The term for this policy is maternity leave. Some call it parental leave, however, to include fathers—amid a radically changed family scene nation-

See related stories on maternity trends and legislation, pages 3 and 15.

wide over the past couple decades.

"The traditional American family model used to work well in the olden days when we had the husband at work and the wife at home," said Mia Oxley of the Anchorage Women's Commission. She is also a board member of Child Care Connection, a referral agency promoting pro-family work policies.

"But since the model of the traditional family is only 10 percent of the nation's families today, it just doesn't work anymore," she said.

Despite that change, Oxley said, less than 40 percent of to-  
(See MATERNITY, Back Page)

# MATERNITY

(Continued from page 1)

day's working women have the benefits of either parental or maternity leave.

Dentist Andersen wouldn't think of letting employees go because they need more time to give birth or to "bond" with their babies during those critical first few months.

"We put so much time and energy into our staff, it's worth it to us to get them back," he said.

Andersen has never considered paid maternity leave and "no one ever asked for it.

"It would be prohibitive for our small business to do that," he said. "Doing what we're doing is about as far as we can go."

Although this local example of an apparently viable parental leave policy might be following a growing trend to assist two-wage-earner households with children, Andersen has an added feature for mothers after they return to work.

Across the hall from the dental office is a "child development center," staffed by a certified primary teacher for the infant children of Andersen and his employees.

Nationally, Andersen may be more of an exception than the rule in private business.

The United States is the world's only industrialized nation without a national policy for parental leave or day-care centers, Oxley said.

"The main difference of the United States with every other country, is that they are not blindly com-

mitted to what's called free enterprise," said Andrea Helms, political science professor at the University of Alaska-Fairbanks.

In Sweden, workers are granted up to 52 weeks of paternity leave, with 38 of those weeks at 90 percent of their weekly salary. In Canada, workers receive up to 17 weeks parental leave at 60 percent salary for 15 weeks, according to the International Labor Office in Geneva.

Nevertheless, last month's U.S. Supreme Court decision, allowing states to order private companies to grant short, unpaid disability leaves to new mothers, promises to again push the issue of parental benefits before Congress and state legislatures.

In Alaska, the parental leave issue has potential political ramifications because much of the population is in its child-bearing years, so many more women with infants and young children are in the workforce, so many mothers in Alaska are single, and because families here are larger than the national average.

For example, the United States has 1.8 children per family while Alaska has 2.4, according to state demographer Greg Williams.

"We have the highest fertility rate in the nation," he said. "There's a mini baby boom going on up here."

Nationally, about 50 percent of women are in the work force, while in Alaska, 60 percent of women

work, Williams said.

Alaska is first per capita nationwide for adults with high school diplomas and No. 3 behind the District of Columbia and Colorado for adults with college degrees.

Higher education levels, Williams said, makes it even more likely for families to have two wage earners. Add to that, he said, the fact that the biggest bulge in Alaska's population chart occurs in the 15-44 age group—or the child-bearing years.

In addition, for the state's non-Native population, Alaskans lack extended family members who often help in child rearing.

Adding that up might point to a need for parental and maternity leave laws in Alaska, but private employers especially might balk at the potentially added costs for doing business in an already battered economy.

"We are small-scale enough at UAF so that we can close relationships to our employees," Helms said. "But training of employees is free at the university. If you are running a store downtown, that training is not free. We've socialized the costs at the university, and the taxpayer pays the price. Not so in private industry."

Nevertheless, having a baby might be postponed indefinitely if it might mean losing your job.

"It can be very devastating to a family if mothers go with the assumption that the job is going to

be there when they get back and it's not," said Penney Sales, coordinator for the Anchorage-based Northern Institute's Working and Family Project.

Clifford Brennen, head of the department of behavioral sciences and human resources at the University of Alaska-Fairbanks, said on-site day care facilities often cost employers less in the long run.

"One of the main reasons for employee absenteeism is for child care," he said. "It makes good dollar sense to provide facilities, when the company is large enough, for women with infants to care for them there. They could extend child care all the way to pre-school. Arrangements with baby sitters and the like causes mothers a lot of stress."

As for the recent Supreme Court decision on maternity leave, however, Brennen said the ruling has put the women's movement in a dilemma.

"You really can't have equality and ask for gender differences," he said.

"I think the ruling was a very good first step," said Ruth Lister, executive director of Women in Crisis Counseling and Adoption, or WICCA, which assists domestic-violence victims.

"Women that we see are very often in low-paying jobs, so they wouldn't be able to take that leave if no other means of support were there."

# Parental leave law overdue?

## Congress reacts to 'baby boomlet'

By JUDI HASSON  
United Press International

WASHINGTON — With half of today's working women the mothers of young children, Congress is considering a controversial bill that would guarantee job security for all workers who want time off to care for their newborns.

The bill is the Parental and Medical Leave Act of 1986 and it would guarantee for the first time 4½ months off — without pay — and job security for parents who want to take time out to care for their newborn, newly adopted or seriously ill children.

With the nation's post-war "baby boom" generation now having a "baby boomlet" and with more mothers remaining in the workforce, experts say a national parental leave policy is long overdue.

The United States, they say, is the only industrialized nation with no guaranteed parental leave, lagging behind Canada, Italy, Finland and Chile, which provide as much as 39 weeks leave, some of it paid.

"When you have a demographic change such as we've witnessed, the country has to do something in order to make it possible for families to function," said Wendy Williams, a Georgetown Law School professor. "This is a very minor but important step to assuring that families can function well."

The bill, however, is facing stiff opposition from the U.S. Chamber of Commerce, the major business lobby, which maintains it is not the government's role to dictate employment policy.

The chamber's position and opposition from some key conservative lawmakers who say it is bad for business might make it hard to get the

But supporters hope to hold hearings and press for a vote on the issue before November when the 135 House seats and one-third of the senators are up for reelection.

"One would think that this being an election year, the people in Congress are going to be attentive to the needs of their constituencies," Williams said. "And this has got to be high on the list of women in the workforce."

The bill, introduced in the House and Senate last week, calls for up to 18 weeks of unpaid leave and returning workers to their previous positions with full benefits and seniority.

"The new reality for most working women today involves remaining in the labor force despite pregnancy and childbirth, as well as child-caring and child-rearing responsibilities," said Sheila Kammerman, a professor of social policy and planning at Columbia University.

Labor Department statistics show that in 1985, half of all mothers of children under 3 were working — up from 34 percent a decade ago. The total number of mothers in the workforce with children under age 18 rose to 20 million last year — an increase of nearly 500,000 in just 12 months.

Statistics also say that 85 percent of the 50 million women in today's workforce are likely to become pregnant during their working years.

The surge of mothers into the labor force in recent years has increased the pressure on Congress and the corporate world for better child care, flexible work hours and other benefits.

"It is no longer 'Leave it to Beaver' time," said Rep. Patricia Schroeder, D-Colo., referring to the classic TV family model of father at work and mother at home.

"The superwoman has collapsed, collapsed of exhaustion," said Schroeder, the mother of two and a sponsor of the bill. She said it is time the workplace changed to accommodate the changing workforce.

Catalyst, a New York research firm on career and family issues, found in a recent survey of 400 major companies that 65 percent offered up to three months unpaid leave with the guarantee of a job and 46 percent guaranteed a comparable job.



# Action Alert

American Association of University Women

2401 Virginia Avenue, N.W., Washington, DC 20037

202/785-7712

February 1987

Volume VII, Issue 1

## SENATE PARENTAL LEAVE BILL INTRODUCED ON FIRST DAY OF 100TH CONGRESS

On January 6, 1987, the historic day the Senate convened for the 100th Congress, Sens. Chris Dodd (D-CT) and Arlen Specter (R-PA) introduced parental leave bill S 249. This is the Senate companion legislation to Representative Patricia Schroeder's (D-CO) Family and Medical Leave Act scheduled to be introduced in the House in early February.

Both bills provide job security to employees who take unpaid leave for serious family or medical reasons. An exemption is provided for employers with less than 15 employees. Pre-existing health benefits must continue to be provided during the leave period, and the employee has the right to the same or an equivalent position upon returning to work. The provisions of S 249 are:

\* Family leave--An employee may take up to 18 weeks of unpaid leave over a 24 month period for the birth, adoption or serious illness of a child. The House bill also includes dependent parents, but the Senate bill only covers children.

\* Medical leave--An employee may take up to 26 weeks of unpaid leave over a 24 month period if the employee is unable to work as a result of a serious health condition.

AAUW has endorsed the Family and Medical Leave Act because mothers and fathers deserve the right to take a period of leave from their jobs to participate in the early care of newborn or newly adopted children, or to care for a child or an elderly dependent with a serious health problem. Support for family leave is part of AAUW's historic commitment to principles and policies that promote the economic well-being of all persons and ensure protection from discrimination.

Changes in the work force and in American families in the last decade have dramatically increased the need for a national family leave policy. More women work outside the home than ever before,

and people are living longer, often requiring the care of their families. The traditional family of two children, working father, and homemaker mother now makes up only 7% of all families. The federal government estimates that by 2025, 40% of the dependent care population will be over 65.

In 1986, there were 52 million women in the paid work force, an increase of 178% since 1950. Also, 80% of working women are likely to become pregnant during their working lives, and over half of these women are back at work within a year after childbirth. More than half of the 45.6 million children in two-parent families have both parents in the work force, and the majority of mothers in these families work because of economic need. Yet current federal labor policies force parents to choose between their families and their jobs.

Despite the increasing number of company-sponsored family leave policies, at least 60% of women employed by large companies (those with more than 500 employees) lack paid maternity-related benefits that would permit a six-week leave. Also, almost a third of all American workers are employed by companies with fewer than 25 employees, with women workers constituting 43% of this segment of the work force. While such small companies create the largest percentage of new jobs, they are the least likely to provide adequate employee benefits.

**ACTION: FIRST, WRITE YOUR REPRESENTATIVE URGING HIM/HER TO BE AN ORIGINAL COSPONSOR OF THE FAMILY AND MEDICAL LEAVE ACT BY SIGNING ON TO THE BILL BEFORE ITS INTRODUCTION. THEN WRITE YOUR SENS. URGING THEM TO SUPPORT AMERICAN FAMILIES BY COSPONSORING S 249. TARGET MCS IN THE SOUTH BY URGING THEM TO SUPPORT FAMILIES AND COSPONSOR THESE BILLS.**

---

Mission Statement The American Association of University Women promotes equity for women, education and self-development over the life span, and positive societal change.

---

RESPONSE TO INTRODUCTION OF PARENTAL LEAVE LEGISLATION  
BY JOHN SLOAN  
PRESIDENT AND CEO  
NATIONAL FEDERATION OF INDEPENDENT BUSINESS

FEB. 3, 1987

As the representative for more than a half-million small- and independent-business owners all across America, the National Federation of Independent Business today re-confirms its opposition to any proposed legislation mandating benefits by employers.

The bill introduced today by Reps. Patricia Schroeder of Colorado and William Clay of Missouri is a measure which has been created in an atmosphere devoid of substantive information and input from the small-business community.

Rep. Schroeder, in a recent interview with a major daily newspaper, said that parental leave is more a "minimum labor standard" than a fringe benefit---not unlike child labor laws or wage and hour laws.

This statement reveals a shocking naivete by Rep. Schroeder concerning the relationship between benefits and jobs in the U.S. economy. Should mandated employee benefits such as parental leave and medical leave become "family rights," they will pre-empt the economic discretion of the employer and supplant bargaining between employee and employer.

The number one problem for American small businesses, according to a survey of NFIB members, is the cost of health insurance. Legislating new benefits will only exacerbate this problem and threaten the survival of smaller firms: For small businesses, health insurance is the most common type of fringe benefit provided to employees and yet, over one third of small employers do not provide coverage largely because of workforce composition or cost. Small businesses expand benefit coverage as their profitability increases; nowhere is this fact recognized in the legislation. Rather, dictating a new benefit is more likely to reduce an employee's total benefits package, eliminate some key benefits such as health insurance or pension coverage or worse, eliminate new jobs.

-more-

Rep. Schroeder also claims that parental leave has not caused problems in countries that have gone much further on the issue. We have only to look at the misbegotten European experience to see how devastating government-imposed benefits can be. Although the U.S. is the only industrialized nation without a policy for job and income-protected medical and family leaves, it continues to create jobs at an overwhelming rate. European countries, with their growing non-wage benefits, have seen no net job creation since 1975.

The major share, 70-80 percent, of all new job creation in this nation today comes from the small-business sector, not the Fortune 500, which lost 3 million jobs between 1980-83. At a time when the President and Congress have widely acknowledged that our nation is teetering on the brink of losing its competitiveness, to place burdens such as mandated parental leave on our most productive and competitive economic resource is unimaginable and most certainly unwise in today's rapidly changing global market.

Attached to this statement are charts which detail the relationships between such policies and economic indicators among the European nations. To highlight:

\*Those nations with the lowest proportion of benefits to wages--Australia, USA and Japan--also have the highest levels of employment growth. (Charts 1 & 2)

\*These same nations exhibit lower levels of unemployment and duration of unemployment. (Charts 3 & 4)

\*Moreover, in looking at female labor participation rates, it would appear that increasing fringe benefits (as a percentage of wages) has no effect. (Chart 5)

\*American companies have been boosting their productivity by adding more capital and more labor, but European companies have been utilizing capital instead of labor. Labor market rigidities, wage and benefit mandates are resulting in excessive substitutions of capital for labor in Europe. (Chart 6)

NFIB members, 82 percent of whom opposed mandated parental and disability leave in a recent survey, have been vocal on this subject. Here are some of their comments:

-Paris, TX: "These bills effectively increase an employer's cost of labor with no commensurate increase in productivity. It can only have an inflationary impact on our economy. It seems obvious that this discourages additional hiring instead of the encouragement that is needed."

-more-

-Pocatello, ID: "We are all sympathetic toward our employee's needs. We want the best for our people and therefore let us take care of our people on an individual basis. We certainly do not need any more paperwork and red-tape from our government. ...you could be doing everyone a disservice if this proposed legislation forces some of us out of business. The jobs for 50 people could be lost for the sake of one or two."

-Albany, GA: "If this bill came about, with 75 percent of my employees being female, I would have to add 10-15 employees to my payroll just to make up for their leave. I do have a voluntary plan with my employees that when they do leave for parental and family sicknesses they have paid days off and some unpaid days off. I do hold jobs open for them. I believe this action is better voluntary rather than mandatory."

-Dallas, TX: "Our company, as policy, has always granted non-paid leave for maternity and injury/health recovery, so this would make no difference to our pattern of employee relationships--what we feel is objectionable is the 'mandatory' nature of the policy. Step One in legislation is usually followed by Step Two, and that would be paid leave time for these extended periods. This, we feel, would be an oppressive burden of a small business."

As you can see from these statements, small-business owners are not anti-family or only pro-profit. They know the value of recruiting and retraining productive employees. An NFIB survey reveals that three-quarters of our members already provide time off to employees without loss of jobs or benefits. But, they are also realists who know that their operations can only sustain a certain level of government intervention.

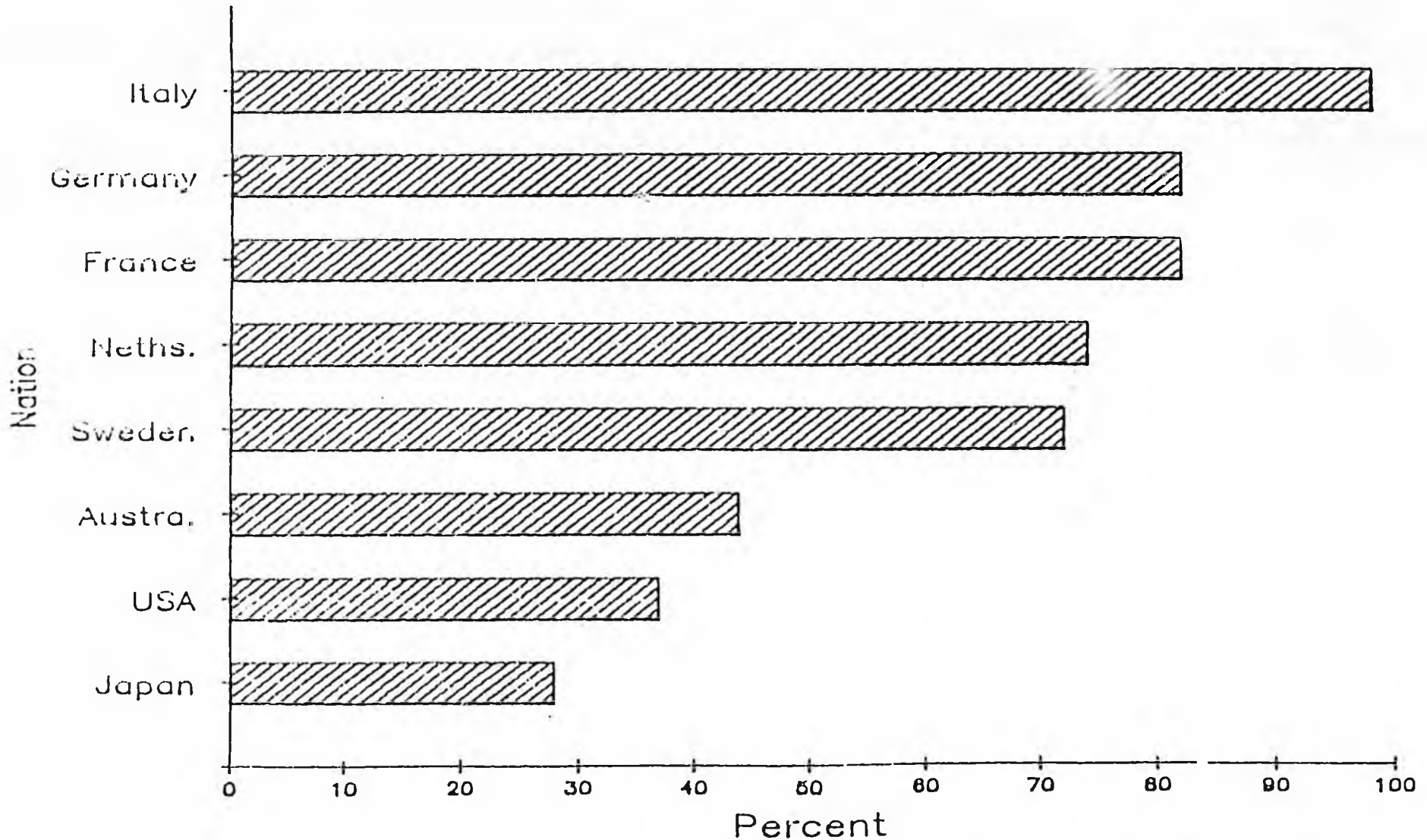
Tomorrow, the National Commission on Jobs and Small Business will release its report: MAKING AMERICA WORK AGAIN: JOBS, SMALL BUSINESS, AND THE INTERNATIONAL CHALLENGE. That report, which for the most part is embargoed, reaches some very important conclusions---not the least of which is that America must work to improve the environment for small business and encourage entrepreneurship, business formation and job creation---or suffer the consequences. The call for mandated employee benefits is contrary to that idea.

Legislation that mandates such benefits as parental leave will devastate small businesses and destroy the very jobs advocates seek to protect. We encourage Congress to weigh the costs of such a measure very carefully before proceeding toward action on this bill. To enact such an ill-conceived law will almost certainly eliminate jobs, bankrupt companies and, in the long run, ensure the continued downhill slide of our national competitiveness.

-end-

CHART 1

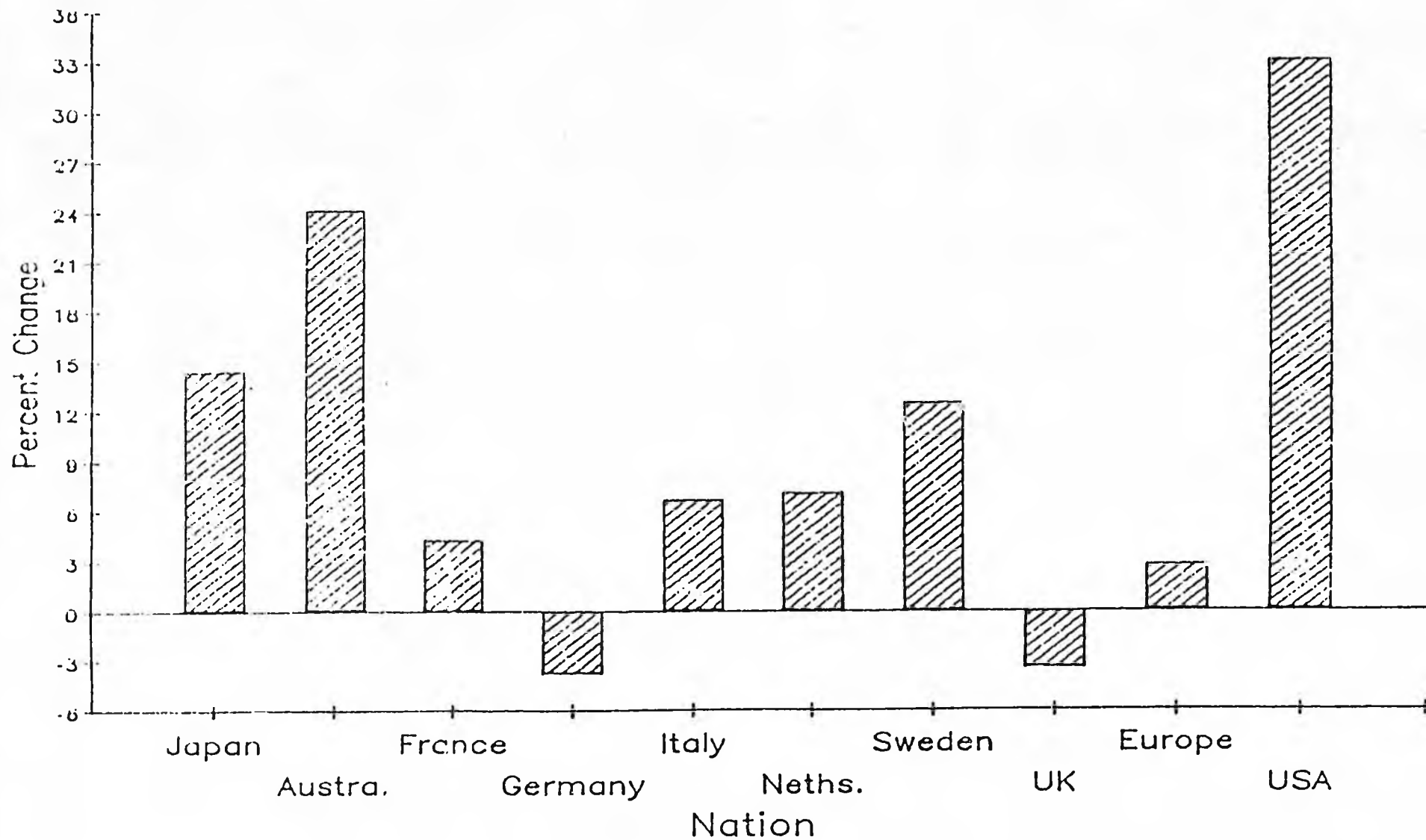
# FRINGE BENEFITS AS A PERCENTAGE OF WAGES IN MANUFACTURING INDUSTRIES BY SELECTED NATION: 1985



Source: Cologne Institute of the German Economy

CHART 2

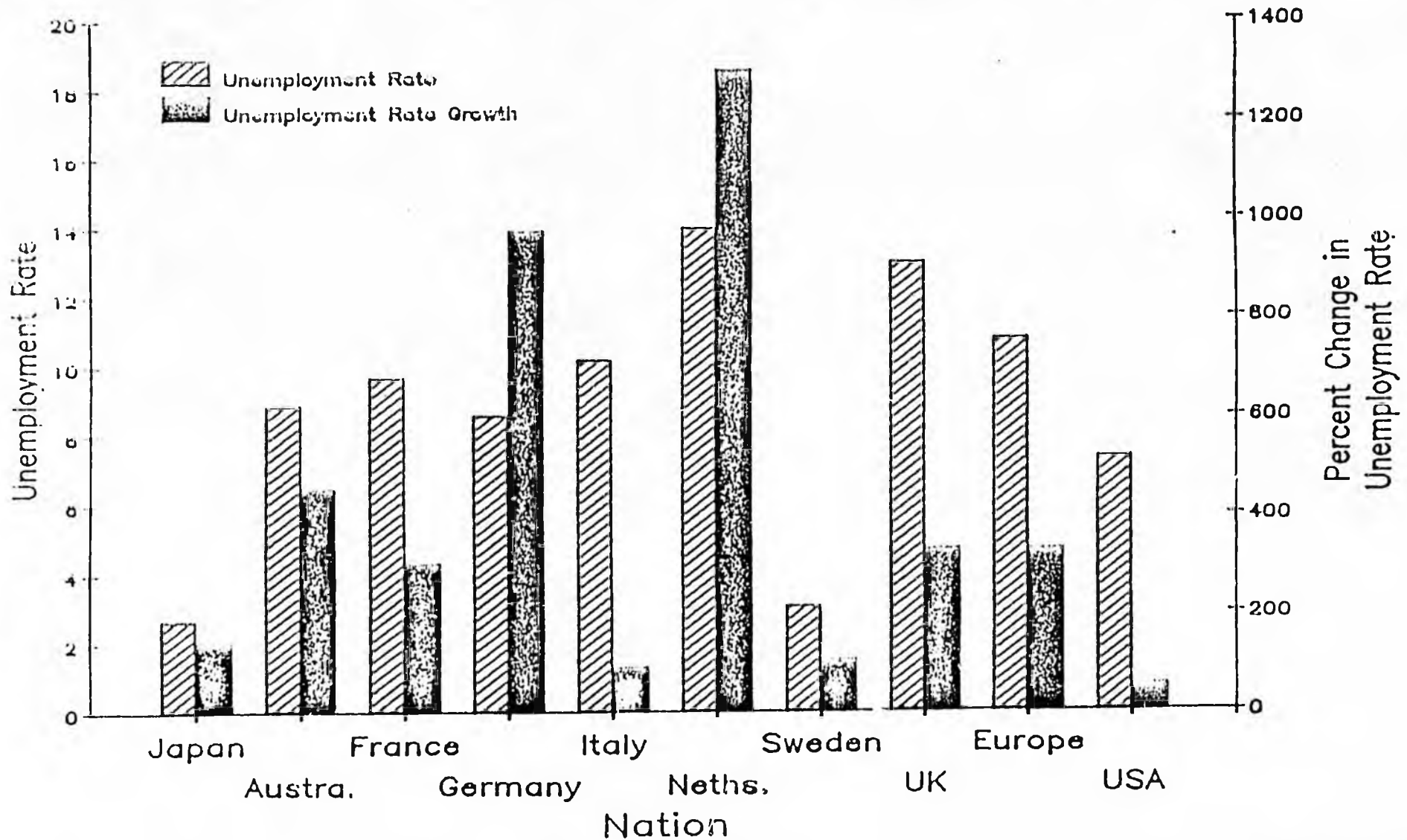
# PERCENT EMPLOYMENT GROWTH IN SELECTED NATIONS: 1969-1984



Source: from OECD data

CHART 3

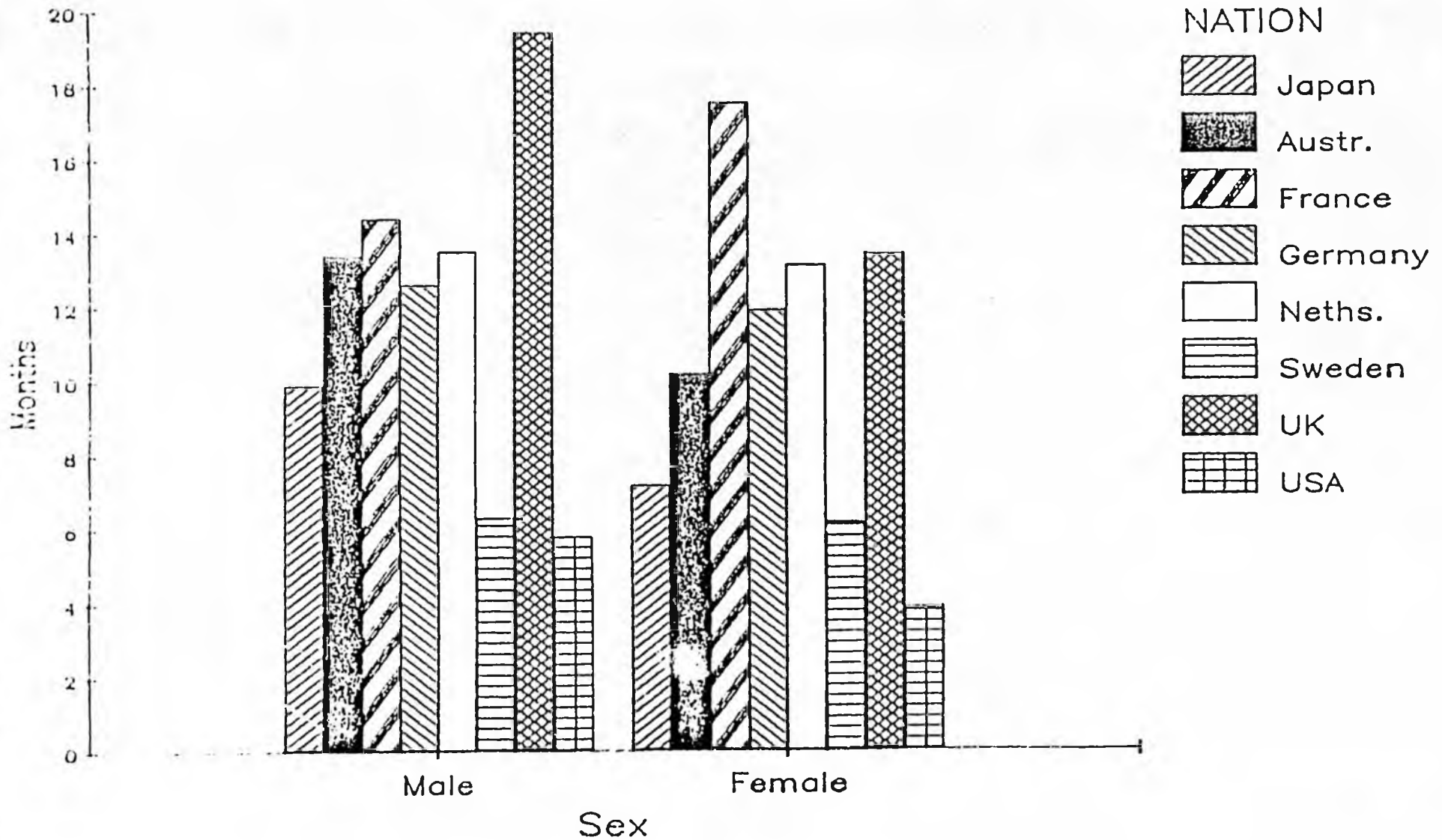
# UNEMPLOYMENT RATE (1984) AND PERCENT GROWTH IN UNEMPLOYMENT RATE (1970 - 1984) BY SELECTED NATION



Source: OECD

CHART 4

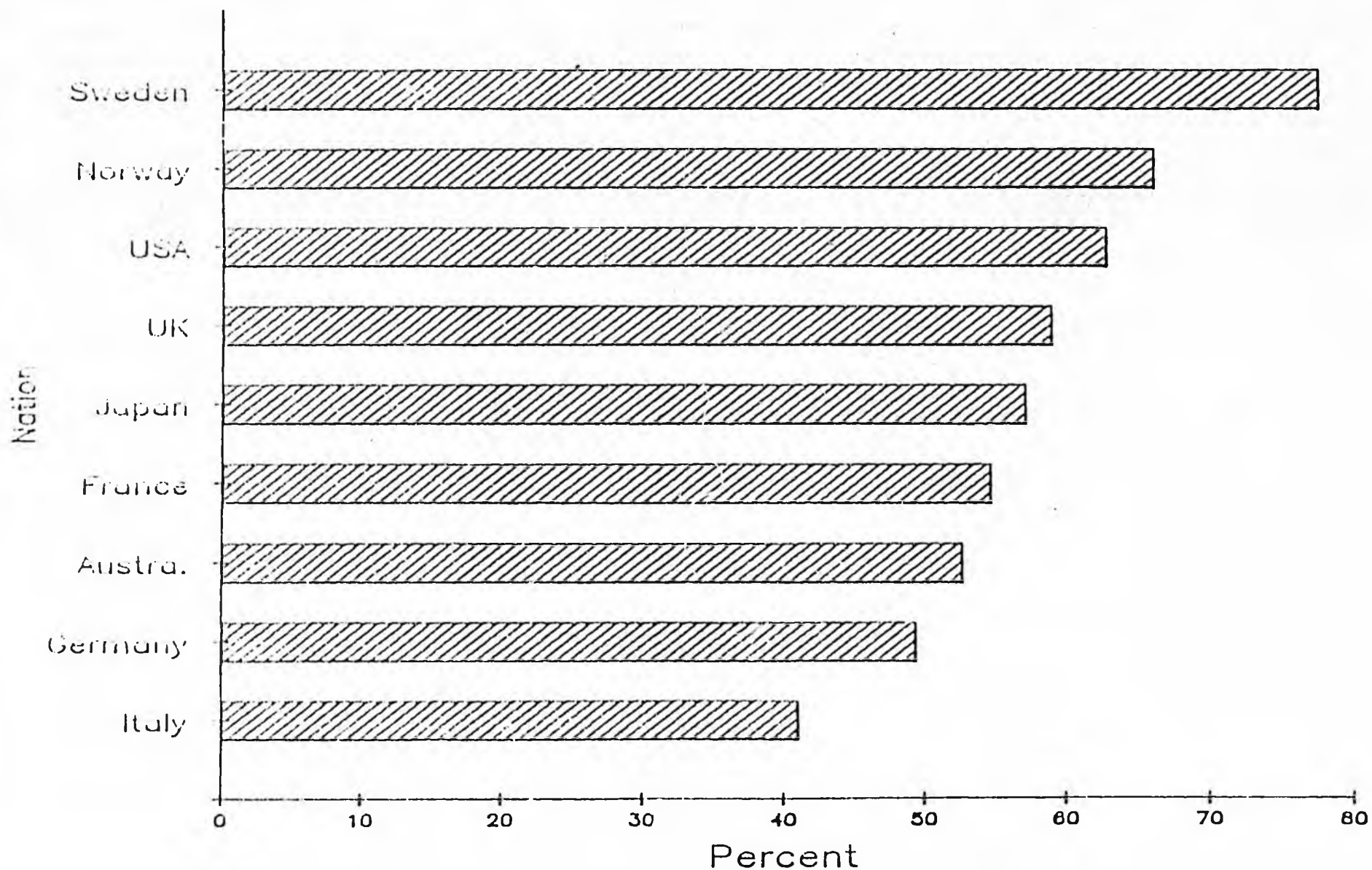
# MEAN AVERAGE DURATION OF UNEMPLOYMENT IN PROGRESS BY SELECTED NATION - 1984



Source: OECD

CHART 5

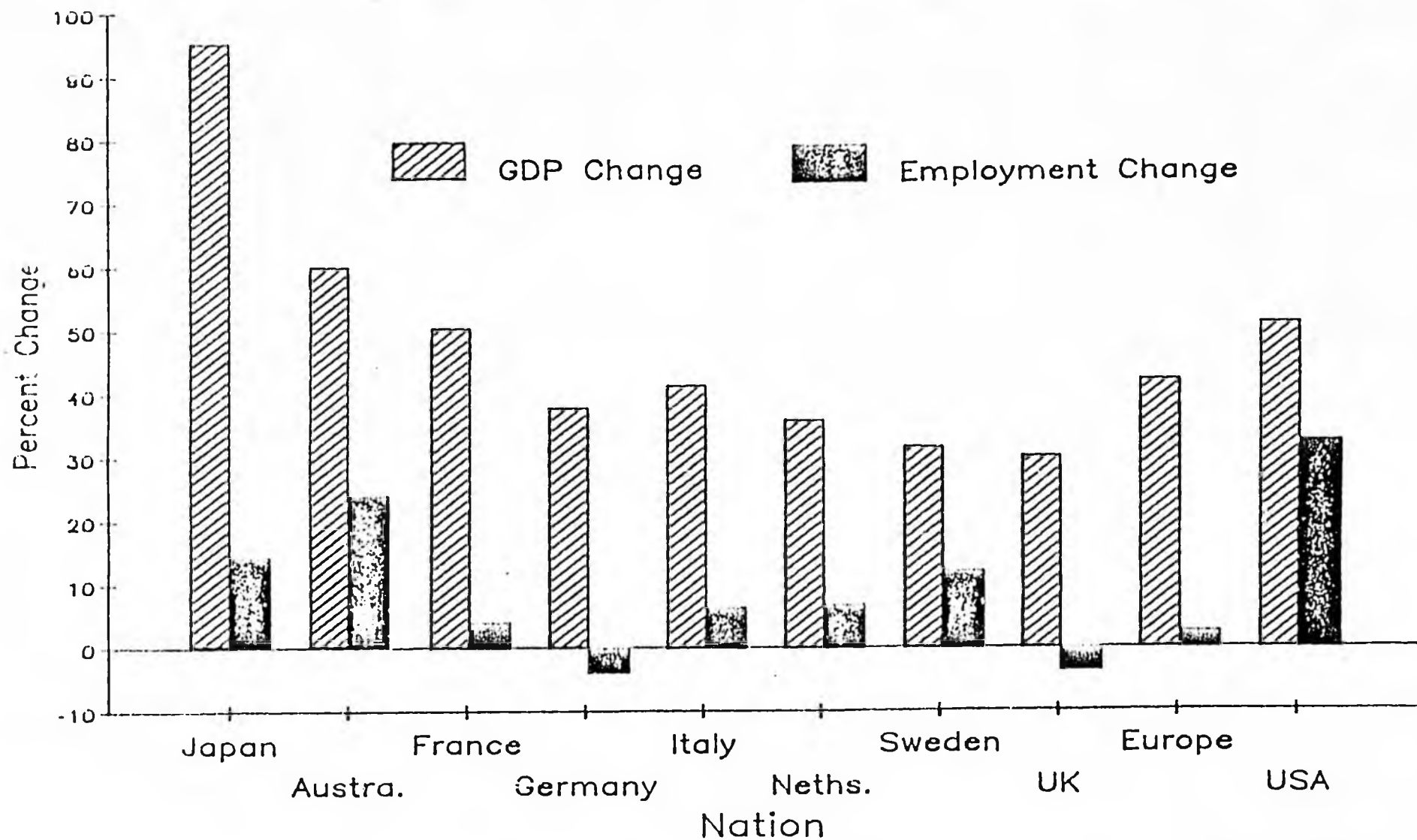
# FEMALE LABOR PARTICIPATION RATES BY SELECTED NATION — 1984



Source: OECD

CHART 6

# GROWTH IN GDP (1970 - 1985) AND EMPLOYMENT (1969 - 1984) BY SELECTED NATIONS



Source: from OECD data

H B

2 3 3

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
FAIRBANKS, ALASKA 99811  
207-465-3800

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

House Hess April 8, 1987



Official Business

**COMMITTEE:**

House HESS Committee

**DATE:** April 7, 1987

**SIGN-IN**

**Subject of meeting:**

HB 233

HB 131

HB 133

HB 135

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY? & Which Bill
MARY HALLORAN	EP	3568	GOVERNOR'S OFFICE	233 HB <del>133</del>
Theresa Maser		x4993	Rep. Druce Pearce	HB 133
Jack Kreinhede			Div. of Policy, Gov's Office	HB 233
KERRY ROMESBURG	POSTSECONDARY Educ.	2854	ACPE	HB 233, 131, 133, 135
Michael Smith	P.O. Box 625 Juneau 99802	586-4376	UAF students	HB 233

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 30, 1987

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the scholarship loan program, more commonly referred to as the "student" loan program. The two main objectives of the bill are to ensure that students with demonstrated financial need will continue to receive financial aid for pursuing their education, and to reduce the cost of the loan program.

The bill would accomplish the first objective by converting the current loan program to a two-tier program, the second tier of which is based on financial need. Under the two-tier program, Alaska students could apply for a loan of up to \$4,000 per year, regardless of financial need. This maximum loan amount compares to the current average loan award of about \$4,470. A supplemental loan of up to \$2,000 would be available to students, based on financial need criteria.

The bill would reduce the long-run cost of the loan program by eliminating "forgiveness" of loans and state payment of certain interest on loans. Surveys of loan recipients have shown that the forgiveness provision has not been a primary factor in most students' decisions on whether to live in Alaska after completing their education.

Legislation has been introduced in both houses of the legislature which would finance the student loan program primarily through the sale of revenue bonds. Although the bond financing proposal offers the attraction of lower general fund requirements for the next several fiscal years, I believe that the partially needs-based approach proposed in this bill would better serve both Alaska students needing financial aid and the long-term fiscal interests of the state.

The fundamental issue is whether Alaska can continue to afford to provide student loans for all applicants without regard to financial need for state aid. The cost of the

loan program has increased more than four-fold since FY 81. Although most other states have student loan programs, Alaska's is the only sizeable program that does not consider financial need in awarding loans. While many Alaska students might be unable to attend college or a vocational institution without state assistance, a significant proportion of loan recipients applies for loans simply because the loan terms are more attractive than using personal or family resources to finance their education.

In addition, under the current Alaska loan program, more than 2,000 applicants are turned away simply because they apply later in the fiscal year. Many of these denied applicants may have a greater need for state assistance than earlier applicants who receive loans. Basing loan awards at least partially on financial need, rather than solely on a first-come-first-serve system, is a more equitable method.

This bill ensures that students with the greatest need for state financial aid would receive loans, and allows general fund appropriations to the loan program to be reduced while continuing the vital role that this program has played in educating Alaskans. Although the number of loans awarded would decrease under my proposed FY 88 budget for the loan program, the persons denied loans would be those who can most afford to pay for their own education through personal or family resources. I believe that this bill offers a fairer and more fiscally sound approach to the student loan program than bond financing.

A section-by-section analysis of the bill follows:

Section 1 of the bill makes amendments needed to conform AS 14.43.100(a) to other changes made to the loan program in the bill. It also amends that subsection to require that a loan applicant submit income and other financial information. This information will be used by the commission in adjusting the criteria to be used for determining financial need under proposed AS 14.43.116 (sec.4 of the bill).

Sections 2 and 3 of the bill amend the student loan program by changing it from a non-need-based program to a two-tier loan program, the second tier of which is based on financial need. Section 2 of the bill amends AS 14.43.110 to authorize the Alaska Commission on Postsecondary Education (PSEC), which serves as the "student financial aid committee," to make scholarship loans to both undergraduate and graduate students not to exceed \$4,000, and not based on financial need. This is the first tier of the two-tier loan program.

Section 3 of the bill amends AS 14.43.115 to authorize the committee (again, PSEC) to make supplemental scholarship loans to undergraduate and graduate students, not to exceed \$2,000, based on financial need. This is the second tier of the two-tier loan program.

Section 4 of the bill adds two new sections to AS 14.43. Proposed AS 14.43.116 describes the requirements for eligibility for the need-based supplemental scholarship loan. The PSEC will establish, by regulation, the criteria and procedures. In general, the regulations must use criteria and procedures for determining financial need which meet the requirements of the U.S. Department of Education for the evaluation of financial need in its federal financial aid programs, with an adjustment for Alaska conditions and the amount of money available for need-based loans. In addition, under proposed AS 14.43.117, one-third of the money estimated to be available for student loans is to be allocated for loans to students who apply for, and qualify for, both a scholarship loan and a supplemental scholarship loan. The intent of this provision is to ensure that money will be available for students who have the greatest financial need.

Section 5 of the bill amends AS 14.43.120(b)(1) to clarify that students who wish to use a student loan to attend a career education institution, which, by definition, would include one that offers a course or program in vocational-technical training, may do so only if the institution is one that has been approved by the PSEC before July 1, 1986 or has been operating in this state for at least two years before the student attends that particular institution.

Section 6 of the bill amends AS 14.43.120(i) to ensure that students are aware that defaulting on a scholarship loan could result in the taking of a student's permanent fund dividend, by the PSEC, in order to satisfy the balance due on the loan.

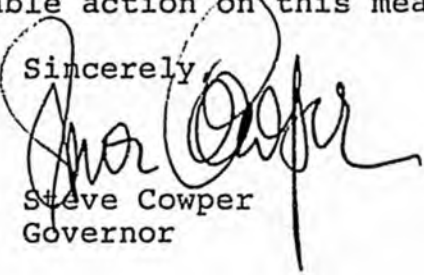
Sections 7 and 8 of the bill decrease the long-run cost of the loan program by providing for increased revenue to the scholarship revolving loan fund (AS 14.43.090). Section 7 amends AS 14.43.120(1)(1) to eliminate the state payment of interest during the period after a student ends full-time enrollment and before the student begins repayment of the loan. As is the case under existing AS 14.43.120(1), the state will pay interest as long as a student is enrolled full-time. Section 8 repeals AS 14.43.120(j), which provides for "forgiveness" of up to 50 percent of a loan.

Hon. Ben Grussendorf

Page 4

I urge your prompt and favorable action on this measure.

Sincerely



Steve Cowper  
Governor

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version: HB 233  
Publish Date: HOUSE 4/1/87

Revision Date: March 20, 1987

Agency Affected: Education

Title: Student Loan Bill

BRU: Commission on Postsecondary  
Education

Sponsor: \_\_\_\_\_

Components: Student Loan Admin.

Requestor: \_\_\_\_\_

Student Loan Program

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		67.6	69.6	71.7	73.9	76.1
TRAVEL		--	--	--	--	--
CONTRACTUAL		70.2	2.0	2.1	2.1	2.2
SUPPLIES		12.0	3.0	3.2	3.3	3.4
EQUIPMENT		10.2	--	--	--	--
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>N.A.</b>	<b>160.0</b>	<b>74.6</b>	<b>77.0</b>	<b>79.3</b>	<b>81.7</b>

<b>CAPITAL</b>	<b>N.A.</b>	<b>-0-</b>	<b>-0-</b>	<b>[44.2]</b>	<b>[153.3]</b>	<b>[366.1]</b>
----------------	-------------	------------	------------	---------------	----------------	----------------

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		160.0	74.6	77.0	79.3	81.7
FEDERAL FUNDS						
OTHER				[44.2]	[153.3]	[366.1]
<b>TOTAL</b>		<b>160.0</b>	<b>74.6</b>	<b>32.8</b>	<b>[174.0]</b>	<b>[284.4]</b>

**POSITIONS:**

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY		2.0	2.0	2.0	2.0	2.0

**ANALYSIS :** (Attach a separate page if necessary)

See Attached

Prepared by: Kerry D. Romesburg, Executive Director  
Division: Commission on Postsecondary Education

Phone: 465-2854  
Date: March 20, 1987

Approved by Commissioner: \_\_\_\_\_  
Agency: \_\_\_\_\_

Date: \_\_\_\_\_

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)
  - Senate Secretary

Fiscal Note Detail

1. Personal Services: Needs analysis of two-tier program. Will require 1.0 additional full-time awards clerk, Range 10-A. Multiple applications will require 2.0 seasonal data entry clerks, Range 9-A.

Cost: 1.0 Awards clerk with benefits	\$29,825
2.0 Data entry clerks	37,752
Total	\$67,577

2. Contractual: One-time expense of modifying data processing system.

- a. Calculate and accumulate interest during the grace year including programming, design, testing, and implementation (765 hours).

Cost: \$39,780

- b. Calculate "need," process supplemental loans in awards and repayment systems including programming, design, testing, and implementation (584 hours).

Cost: \$30,368

3. Supplies: New application forms and new promissory note forms.

Cost: \$12,000

4. Equipment: One-time expense for on-line terminal and work station for awards clerk.

Cost: \$10,200

5. Capital: Loan fund. The impacts on the revolving loan fund and repayment cash flows are shown on the enclosed table. Please note that eliminating forgiveness benefits would have an accounting impact as early as 1989-90, since the outstanding receivables would not be decreased by this forgiveness amount (\$259,759). However, the cash flow impact of increased revenues would not be realized until 1994-95.

Sample Impacts (Increased Revenue)

<u>Year</u>	<u>w/o Forgiveness</u>	<u>w/Grace Interest</u>	<u>w/Grace Interest and w/o Forgiveness</u>
1987-88	None	None	None
1990-91	None	\$ 44,200	\$ 44,200
1993-94	None	\$ 933,707	\$ 933,707
1996-97	\$ 2,152,297	\$1,857,324	\$ 4,087,269
1999-00	\$ 7,905,694	\$2,777,633	\$10,968,539
2010-2011	\$19,013,130	\$3,467,698	\$23,166,761

ADDITIONAL FISCAL ANALYSIS  
PROGRAM RECEIPTS FY88-11

<u>Year</u>	<u>Loan Volume</u>	<u>Current Program Principal</u>	<u>Interest</u>	<u>w/o Forgiveness Principal</u>	<u>Interest</u>	<u>w/Grace Interest</u>	<u>w/Grace and w/o Forgiveness Interest</u>
1987-88	80,000,000	--	--	--	--	--	--
88-89	80,345,504	--	--	--	--	--	--
89-90	80,676,052	821,700	402,875	821,700	402,875	447,054	447,054
90-91	81,024,565	2,852,109	1,398,374	2,852,109	1,398,374	1,551,718	1,551,718
91-92	82,865,042	6,808,418	3,338,132	6,808,418	3,338,132	3,704,187	3,704,187
92-93	85,341,434	11,931,947	5,850,171	11,931,947	5,850,171	6,491,693	6,491,693
93-94	87,298,990	17,366,420	8,514,665	17,366,420	8,514,665	9,448,372	9,448,372
94-95	88,375,670	22,977,903	11,265,946	23,152,203	11,351,404	12,501,355	12,596,185
95-96	88,261,738	28,697,525	14,070,246	29,302,518	14,366,871	15,613,171	15,942,324
96-97	87,007,173	34,545,156	16,937,309	35,989,365	17,645,397	18,794,633	19,580,369
97-98	84,895,801	40,497,140	19,855,536	44,180,924	21,661,675	22,032,869	24,037,067
98-99	88,748,536	46,499,475	22,798,449	50,357,559	24,690,047	25,298,498	27,397,526
99-00	91,166,845	51,662,369	25,329,789	56,967,155	27,930,697	28,107,422	30,993,542
2000-01	92,991,621	55,598,981	27,259,889	62,525,548	30,655,948	30,249,174	34,017,641
01-02	94,155,886	57,625,014	28,253,243	67,197,346	32,946,506	31,351,458	36,559,378
02-03	95,130,963	58,596,524	28,729,569	67,186,823	32,941,347	31,880,017	36,553,654
03-04	96,214,236	59,400,950	29,123,975	69,264,476	33,960,009	32,317,673	37,684,021
04-05	97,349,392	60,144,727	29,488,644	71,103,406	34,861,627	32,722,332	38,684,509
05-06	98,462,230	60,873,880	29,846,145	72,667,598	35,628,542	33,119,037	39,535,523
06-07	99,498,206	61,552,678	30,178,956	73,776,160	36,172,064	33,488,342	40,138,647
07-08	100,489,383	62,202,124	30,497,376	74,425,606	36,490,484	33,841,680	40,491,985
08-09	101,518,364	62,876,347	30,827,943	75,305,907	36,922,091	34,208,496	40,970,921
09-10	102,687,093	63,642,129	31,203,402	76,242,324	37,381,211	34,625,128	41,480,388
10-11	103,992,073	64,497,180	31,622,629	77,255,146	37,877,793	35,090,327	42,031,424

H B

237

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

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

May, 1988

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

Mary Van Nimwegen

House Hess:

April 22, 1987

May 1, 1987

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version : HR237  
Publish Date : \_\_\_\_\_

Revision Date: \_\_\_\_\_

Agency Affected: Department of Corrections

Title: "An Act relating to Murder, assault and physical and sexual abuse of children"

BRU: \_\_\_\_\_

Sponsor: Rep. Ulmer, Hudson

Components: \_\_\_\_\_

Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES				850.0	1,700.0	2,550.0
TRAVEL				3.1	6.2	9.3
CONTRACTUAL				66.6	133.2	199.8
SUPPLIES				89.1	178.2	267.3
EQUIPMENT				5.0	10.0	15.0
LAND & STRUCTURES						
GRANTS, CLAIMS				10.2	20.4	30.6
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,024.0</b>	<b>2,048.0</b>	<b>3,072.0</b>

<b>CAPITAL</b>	<b>0</b>	<b>14,496.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
----------------	----------	-----------------	----------	----------	----------	----------

<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
----------------	----------	----------	----------	----------	----------	----------

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0	14,496.0	0	1,024.0	2,048.0	3,072.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>14,496.0</b>	<b>0</b>	<b>1,024.0</b>	<b>2,048.0</b>	<b>3,072.0</b>

**POSITIONS:**

FULL-TIME	0	0	0	18	36	54
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

See attached analysis for 5 possible scenerios. This fiscal note represents the 10% scererio.

*Susan E. Knight*

Prepared by: Susan E. Knighton, Research Analyst IV

Phone: 4-24-87

Division: Statewide Programs

Date: 465-3376

Approved by Commissioner: Susan Humphrey, Barnett

Date: 11-24-87

Agency: Department of Corrections

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 237

## ANALYSIS

This analysis addresses the effects of sections 5, 6, 8, 9, 10 and 13 on the Department of Corrections. These sections would create three new offenses titled Repeated Sexual Abuse of a Minor (RSAM) in the First, Second and Third Degree and provide penalties for them.

The profile of Alaska's prison population shows that approximately 200 persons are incarcerated at any time for Sexual Abuse of a Minor in the First, Second, Third and Fourth Degree. A large proportion of the offenders have probably committed the crime several times before the victim felt sufficiently endangered and compelled to seek the assistance of others and they would therefore possibly be charged with one of the new offenses.

In order to determine the fiscal impact of this legislation, five scenarios were created based on the profile of sentenced Sexual Abuse of Minor offenders currently being placed in the custody of the department and the length of sentences being served. The scenarios present the effects if 10% of these offenders were sentenced under the proposed statutes, 25%, 50%, 75% and 100%. The scenario which occurs will depend upon the charging policies of the Department of Law.

<u>Scenario</u>	<u>10%</u>	<u>25%</u>	<u>50%</u>	<u>75%</u>	<u>100%</u>
Additional Man Years to be Served	96	239	476	712	951
Additional Operating Costs	\$14,496.0	\$36,089.0	\$71,876.0	\$107,512.0	\$130,500.0
Additional Capital Costs	\$ 1,024.0	\$ 2,549.3	\$ 5,077.3	\$ 7,594.7	\$ 12,097.4

The impact of HB 237 will be to increase the State's inmate population requiring the additional beds to be built and associated operating costs.

Capital construction and operational costs are based on \$31,960.00 per man year inflated by 5% per year and \$151,000 per bed constructed.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to murder, assault and sexual abuse of children"  
Sponsor: Representative Ulmer  
Requestor: Judiciary and Finance

Agency Affected: Dept. of Administration  
BRJ: Public Defender Agency  
Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dana Fabe, Public Defender  
Division: Public Defender Agency

Phone: 279-7541  
Date: January 19, 1988

Approved by Commissioner: John Andrews  
Agency: Department of Administration

Date: 1/21/88

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

POSITION PAPER

CS HB 237 (HESS)

The Alaska Public Defender Agency and the Office of Public Advocacy are totally reactive agencies which provide representation to indigent persons when appointed by the court. These agencies do not make policy nor do they initiate litigation. Only proposed legislation with fiscal or program ramifications for these agencies can be said to have a direct agency impact. Thus, the Public Defender Agency and Office of Public Advocacy submit position papers for legislation which will affect these agencies fiscally or programatically or will require these agencies to litigate constitutional issues raised by the legislation.

Fiscal impact:  X  None                      See attached fiscal note         
Program impact:        None                      See analysis attached  X   
Constitutional impact:        None                      See analysis attached  X

Based on the attached information, the Alaska Public Defender Agency and the Office of Public Advocacy oppose this bill.

Dana Fabe *DF*  
Dana Fabe, Public Defender  
Public Defender Agency

1/20/88  
Date

Brant McGee *BM*  
Brant McGee, Director  
Office of Public Advocacy

1/20/88  
Date

John Andrews  
Commissioner John Andrews  
Department of Administration

1/21/88  
Date

CS HB 237 (HESS)  
POSITION PAPER (Cont.)

This bill is a wide-ranging collection of amendments to the criminal laws and rules of evidence. It appears to be designed to overrule a number of appellate decisions unfavorable to the Department of Law in cases involving child victims. Since some of the decisions are constitutionally based, the corresponding attempted changes appear unconstitutional. The changes do not appear to be necessary to vigorous prosecution and effective enforcement of laws preventing assaults on children. Their primary consequence will be increased costs in processing the cases through the court system and increased populations in the already overcrowded prison system.

A. SECOND DEGREE MURDER AND ASSAULT

This bill proposes two changes to the second degree murder and assault statutes:

1. Neitzel change. The bill would change AS 11.41.110(a)(2) to define second degree murder as "knowingly engag[ing] in conduct [instead of: intentionally performing an act] that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life." We support this change, since it comports with appellate case law. See Neitzel v. State. The parallel change in the first degree assault statute is also unobjectionable.

2. Extreme indifference to the welfare of a child under 16. Under this section, it would be second degree murder if a child died as a result of a "pattern and practice of abuse." We have no problem with this concept, but suggest some tightening of the drafting.

Abuse is defined in section 2 to include bodily impact, restraint, and confinement. This is too broad, since it could encompass many normal disciplinary measures including spanking or placing a child in "time out" in his bedroom. Similar problems exist in the parallel assault provision. We suggest the following definition for abuse:

(c) In this section, "Abuse is defined as:

(1) striking a child with a body part or instrument in a manner likely to cause serious physical injury to the child; or

(2) confining a child in a small enclosed area or container for a prolonged period of time without food or water in a manner likely to cause serious physical injury to the child; or

(3) restraining a child by use of physical restraints in a manner which significantly limits the child's freedom of movement in a manner likely to cause serious physical injury to the child.

These changes to Sections 1 and 2 should eliminate the overbroad application of a second degree murder statute to those persons using reasonable disciplinary techniques which result in the accidental death of a child.

#### B. REPEATED SEXUAL ABUSE OF A MINOR

The bill creates a new set of offenses entitled Repeated Sexual Abuse of a Minor in the First, Second and Third Degrees (RSAM). These offenses, which require a "pattern and practice" of sexual abuse involving three or more incidents, will apply primarily to incest and family sexual abuse cases. As the Court of Appeals has noted in State v. Andrews, virtually all family sexual abuse cases involve repeated abuse.

1. Enhanced presumptive term (deleted by HESS). In the original draft of the bill, a person who is convicted on the first offense of Repeated Sexual Abuse of a Minor in the First Degree, would have been subject to a 13-year presumptive jail term. HESS removed this presumptive term. In the absence of the presumptive term we have no objection to the concept of the bill, although it is not necessary to get a pattern of acts against a victim into evidence.

It should be noted that the current offense of Sexual Abuse of a Minor in the First Degree carries an 8-year presumptive term for a first offender, as does Sexual Assault in the First Degree. Thus, the typical family incest offender will be punished much more harshly than a person charged with a violent rape of an adult due to the repetitive nature of incest behavior. On a second felony offense a defendant would receive a 25-year presumptive term, even if the prior felony were a theft conviction when the defendant was a young adult.

Although there may be some offenders who deserve lengthy periods of incarceration, others who willingly admit their conduct, seek treatment and exhibit remorse may not require such a lengthy presumptive term, particularly on a first offense. The prosecutor would also have unbridled discretion to charge one offender with three separate counts of Sexual Abuse in the First Degree and another offender with RSAM. Thus, two similarly situated offenders could receive vastly disparate sentences. This would certainly raise equal protection problems which would be litigated in virtually every RSAM case.

2. Non-unanimous jury verdicts. As noted above, it is an element of Repeated Sexual Abuse of a Minor that three or more incidents of the prohibited conduct have occurred. Section 8 of the bill provides that the jury need not be unanimous as to any particular incident.

This provision is in direct conflict with Covington v. State, a 1985 decision of the Alaska Court of Appeals. Covington requires that jurors must unanimously agree that the same criminal act has been proved beyond a reasonable doubt. The Covington holding is based upon the defendant's constitutional right to a unanimous verdict. No state or federal court has reached a contrary result, even in the RICO line of cases which involve parallel "pattern and practice" provisions.

3. Definition of "Authority Over Child". The last troublesome portion of the Repeated Sexual Abuse of a Minor provision is the definition of "having authority over a child" found in Section 8. This broad language presumes that all members of a social unit have authority over a child when in fact they may not. Examples of the problematic application of this provision include a romantic relationship between a young teenager and an exchange student or step-sibling who is living in the family unit.

#### C. PRIOR INCONSISTENT STATEMENTS (DELETED BY HESS)

This section, which was drafted to combat perceived problems caused by Brower v. State, was deleted by the HESS committee. This portion of the bill stated that in a prosecution for any offense, evidence of a prior inconsistent statement is sufficient to support a conviction despite a complete dearth of corroborating evidence.

The question whether an uncorroborated prior inconsistent statement is sufficient to support a conviction is a uniquely judicial determination, not one susceptible to legislative fiat. The federal constitution prohibits conviction except upon proof beyond a reasonable doubt. In re Winship, 397 U.S. 358. A court's holding on a question of the sufficiency of certain evidence is an interpretation of the constitutional requirement of proof beyond a reasonable doubt. Thus, the Court of Appeals' decision in Brower took no radical or novel position; the Brower holding is consistent with all other courts which have considered this question. The constitutional minimal standard for the proof required for a conviction cannot be reduced by legislative action.

#### D. CHANGES TO EVIDENCE RULE 404

The bill proposes a new subsection to Evidence Rule 404. The proposed new section states that, notwithstanding A.R.E. 404(b), in a prosecution for physical or sexual assault on a child, evidence of prior acts by the defendant involving the same or another victim is admissible to show the defendant's disposition to commit the offense.

This raises serious constitutional problems. In a very long line of cases, the Alaska appellate courts have held that evidence of prior bad acts by a defendant are not admissible to prove the defendant's propensity to commit crimes. E.g., Eubanks v. State, 516 P.2d 726 (Alaska 1973); Oksoktaruk v. State, 611 P.2d 521 (Alaska 1980); Lerchenstein v. State, 697 P.2d 312 (Alaska App. 1985), aff'd, 726 P.2d 546 (Alaska 1986). The rationale for these cases is rooted in the constitutional guarantee of due process and the requirement of proof beyond a reasonable doubt. U.S. Const., amend. VI; Alaska Const., art. I, subsection 7. When evidence of a defendant's character, as shown through prior bad acts, is admitted to show his propensity to commit a crime, there is a grave likelihood that the jury will convict the defendant because he appears to be a bad person, not because the evidence proves beyond a reasonable doubt that he committed the crime with which he was charged. Michaelson v. United States, 335 U.S. 469 (1948).

Prior bad acts, relevant to show only disposition, are also excluded because admitting such evidence prolongs trials, causing added expense to all parties and the court system. Rather than have a five-day trial focused on the criminal act alleged in the indictment, if prior bad acts were invariably admissible, trials could take two to three times as long, as witnesses are called by both sides to establish and refute incidents entirely collateral to the real issues at trial. Longer trials also mean longer transcripts; increasing the cost of appeals means more defendants would need public defenders.

The existing Rules of Evidence, as interpreted by the Alaska courts, broadly opens the door to evidence of prior bad acts when such evidence is probative of something other than criminal disposition, such as motive, intent, opportunity and common scheme or plan. The Alaska Supreme Court and Court of Appeals have in many instances allowed evidence of a defendant's prior abusive conduct to come in at trial, including abuse of the named victim, abuse of other victims in the family and abuse of victims outside of the family who are similarly situated to the named victim. Following are brief summaries of the cases in this area of the law.

1. Evidence of Other Abuse on Named Victim is Ordinarily Admissible.

In Burke v. State, 624 P.2d 1240 (Alaska 1980), the Alaska Supreme Court established the rule that evidence of earlier assaults on the same victim is admissible. The Supreme Court held that it was proper for a victim to testify to the whole history of assault by her step-father, the defendant.

A recent Court of Appeals decision, Patterson v. State, 732 P.2d 1102, 1103 (Alaska App. 1987), explained the justification for the well-established Burke rule: "First, to establish an ongoing relationship between the victim and the accused; and, second, to place an offense in context and to show the background of the offense." In Patterson, the court approved admitting evidence of a prior sexual assault on the named victim even though that assault occurred nearly two years earlier.

The "same victim" rule is also followed in cases charging physical assaults on children. The Court of Appeals in Garner v. State, 711 P.2d 1191, 1193 (Alaska App. 1986), held that it was proper to admit evidence indicating prior physical abuse by the defendant during the four-month period before the child's death.

2. Evidence of Abuse of Other Victims in the Same Family is Ordinarily Admissible.

In Soper v. State, 731 P.2d 587 (Alaska App. 1987), the Court of Appeals expanded Burke to cover testimony of abuse on other family members. The court in Soper said:

The limited exception for lewd disposition recognized in Burke should be extended to cover the testimony of

the complaining witnesses' sisters who were allegedly seduced under similar circumstances at roughly the same age as the complaining witness.

### 3. Evidence of Abuse Outside the Family Can Be Admissible.

Evidence of abuse of other victims not in the same family but in the same class is admissible if the defendant's plan or pattern of sexual misconduct is relevant. Soper appears to authorize admission of evidence concerning sexual assaults of non-family victims so long as the victims are members of a "limited class [having] highly relevant common characteristics." 731 P.2d at 590. For example, in recent trials where the defendant was charged with sexual abuse of a child in a daycare situation, the state successfully argued that Soper authorized admission of evidence concerning sexual abuse on other children in the daycare.

Other cases upholding admission of evidence concerning abuse on non-family victims include Oswald v. State, 715 P.2d 276 (Alaska App. 1986); Moor v. State, 709 P.2d 498 (Alaska App. 1985).

### 4. Bolden v. State -- Similar in concept to the Rape Shield Law.

The only time a prior bad act is not admissible in this context is when there is no nexus or connection between the prior act and the charged conduct.

Bolden v. State, 720 P.2d 957 (Alaska App. 1986), illustrates the rule that evidence of sexual abuse of uncharged victims not part of the same class as the victim is ordinarily inadmissible. Bolden was charged with sexually abusing two of his daughters. At trial the state presented testimony by other girls that they had been sexually molested by the defendant. The Court of Appeals found that the evidence was inadmissible because neither identity nor intent was an issue at the trial and the acts did not establish a common scheme or plan.

The Bolden rule, which disallows evidence of other sexual assaults where the only purpose for such testimony is to show the defendant's propensity to commit such acts, is comparable to the rape shield law protection for victims. That is, the fact that a victim may have engaged in a certain type of sexual practice on one occasion with one partner is not admissible to prove the victim consented to such practice on another occasion with the defendant.

In summary, in all situations in which prior bad acts by the defendant are relevant and probative of the issues at hand, the Court of Appeals and Supreme Court have upheld their admissibility. If it is not relevant and is admitted only to show that the defendant has done this in the past, there is a great danger that the defendant will be convicted because he is a "bad person" regardless of whether there is sufficient evidence to support the charges at hand.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version: HB 237  
Publish Date:

Revision Date:  
Title: An act relating to sexual  
abuse of children

Agency Affected: Alaska Court System  
BRU: Trial Courts

Sponsor:  
Requestor: Ulmer

Components:

<b>EXPENDITURES/REVENUES:</b>		<b>(Thousands of Dollars)</b>					
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	
<b>OPERATING</b>							
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0	
<b>CAPITAL</b>	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
<b>REVENUE</b>	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	

<b>FUNDING:</b>		<b>(Thousands of Dollars)</b>					
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	
General Funds	0.0	0.0	0.0	0.0	0.0	0.0	
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0	

<b>POSITIONS:</b>							
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	

**ANALYSIS:** (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel  
Division: Alaska Court System

Phone: 264-8228  
Date: 4-24-87

Approved by: *Stephanie J. Cole*  
Stephanie J. Cole, Deputy Director  
Agency: Alaska Court System

Date: 4-24-87

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management & Budget
  - Impacted Agency(ies)
  - Senate Secretary

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

REQUEST: \_\_\_\_\_

Bill Version: HB 237

Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_

Agency Affected: Department of Law

Title: "An Act relating to murder, assault,  
...physical and sexual abuse of children..."

BRU: Prosecution

Sponsor: Representative Ulmer

Components: All

Requestor: House HESS Committee

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

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

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

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

**ANALYSIS : (Attach a separate page if necessary)**

Please see attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: April 23, 1987

Approved by Commissioner: Richard I. Pegues/For  
Grace Berg Schaible, Atty. Gen.

Date: April 23, 1987

Agency: Department of Law

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 237

This bill amends the state's criminal laws relating to murder, assault, and the physical and sexual abuse of children. Additionally, the bill changes rules regarding the admissibility of certain evidence in criminal child abuse prosecutions.

Section 1 allows prosecution for second-degree murder in cases where a person engages in a pattern or practice of abuse of a child under the age of 16 that results in the death of the child. Many of the cases which would be second-degree murder under the new law are now being prosecuted as manslaughter or as criminally negligent homicide. Because the majority of these cases are already being prosecuted (although at a lower level), this section will not have a significant fiscal impact on the department.

Section 3 allows prosecution for first-degree assault, a class A felony, in cases where a person engages in a pattern or practice of abuse of a child under the age of 16 that results in serious physical injury to the child. The department currently prosecutes many of the cases which would fall under this section under lower level assault statutes. Because these are cases which, by and large, are already being handled by the department, this section will not have a significant fiscal impact.

Sections 5 and 6 create a new crime of repeated sexual abuse of a minor, in three degrees. This allows prosecution for a pattern of

sexual abuse of a child if the child (because of youth, the passage of time, or the frequency of the assaults) is not able to particularly identify specific incidences. Although we anticipate that there will be only a few of these cases each year, it is important to effectively prosecute them because they are some of the most egregious offenses committed against children. Because most of the cases involving multiple assaults against children are already being prosecuted as numerous counts alleging specific incidents of abuse, the few new cases that will be prosecuted under the new crime can be handled with existing resources.

Sections 11 and 14 will broaden the kinds of evidence that may be admitted and used to support a conviction in cases of physical and sexual abuse of a minor, thus making it easier to successfully prosecute these cases. This will probably lead to the acceptance of some additional cases which would be considered "marginal" under the existing evidentiary rules. It is our view, however, that the addition of these cases will not have a significant fiscal impact on the department because the availability of additional probative evidence is likely to result in a larger percentage of guilty pleas in these cases, thus offsetting the cost of some additional trials.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version: HB 237  
Publish Date: 4-1-87

Revision Date: \_\_\_\_\_  
Title: "An Act relating to murder, assault and physical and sexual abuse of children"  
Sponsor: Dept. Ulmer, Madson  
Requestor: \_\_\_\_\_

Agency Affected: Dept. of Corrections  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES				10,044.6	21,093.6	23,222.3
TRAVEL				36.8	77.2	121.5
CONTRACTUAL				787.5	1,653.8	2,604.6
SUPPLIES				1,050.0	2,205.0	3,472.8
EQUIPMENT				52.5	110.2	173.7
LAND & STRUCTURES						
GRANTS, CLAIMS				126.0	264.6	416.7
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12,097.4</b>	<b>25,404.4</b>	<b>40,011.6</b>
<b>CAPITAL</b>	<b>0</b>	<b>130,500.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0	130,500.0	0	12,097.4	25,404.4	40,011.6
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>130,500.0</b>	<b>0</b>	<b>12,097.4</b>	<b>25,404.4</b>	<b>40,011.6</b>

**POSITIONS:**

FULL-TIME	0	0	0	219	438	657
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

See Attached Analysis

Prepared by: Susan E. Knighton, Research Analyst IV  
Division: Statewide Programs

Phone: 465-3376  
Date: 4-21-87

Approved by Commissioner: Susan Thompson-Brown  
Agency: Department of Corrections

Date: 4/21/87

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 237

## ANALYSIS

Sections 5-8 of this legislation would create three new offenses titled Repeated Sexual Abuse of a Minor (RSAM) in the First, Second and Third Degree and provide penalties for them.

The profile of Alaska's prison population shows that approximately 200 persons are incarcerated at any time for Sexual Abuse of a Minor in the First, Second, Third and Fourth Degree. The majority of the offenders have probably committed the crime several times before the victim felt sufficiently endangered and compelled to seek the assistance of others.

If this legislation is passed and this population segment is convicted of these new offenses and given the indicated sentences, it would have a large fiscal impact on the Department of Corrections.

### Current Inmates - Serving Time for Sexual Abuse of Minor

Total Number of man-years to be served = 750 years.  
Total Cost of Care = \$23,969,250.

### Future Inmates - Repeated Sexual Abuse of Minor sanctions implemented

Total Number of man-years to be served = 1701 years.  
Total Cost of Care = \$54,362,259.

### Increased Costs - Repeated Sexual Abuse of Minor sanctions implemented

Additional Number of man-years to be served = 951 years.  
Additional Cost of Care = \$30,393,009  
Additional Capital Costs = \$130,500,000.

The impact of HB 237 will be to quickly escalate the State's inmate population requiring the equivalent of 3 more Spring Creek facilities; one needed by FY90, another by FY91 and another by FY92. Additional costs will be incurred to operate the new institutions.

Capital construction and operational costs are based on the original estimates for the Spring Creek Correctional Center in Seward and full year cost of operation of that facility inflated by 5% per year.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: HB 237  
Publish Date: \_\_\_\_\_

Revision Date: 4/8/87  
Title: "An Act relating to crimes against children..."  
Sponsor: Ulmer, Hudson  
Requestor: House Judiciary

Agency Affected: Administration  
BRU: Office of Public Advocacy  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate  
Division: Office of Public Advocacy

Phone: 274-1684  
Date: 4/9/87

Approved by Commissioner: Garrey Peska  
Agency: Department of Administration

Date: 4/10/87

Distribution (by preparer):

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

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

Bill Version : HB 237  
Publish Date : \_\_\_\_\_

REQUEST: \_\_\_\_\_  
Revision Date: April 8, 1987  
Title: "An Act relating to crimes  
against children"  
Sponsor: Rep. Ulmer, Hudson  
Requestor: House Judiciary

Agency Affected: Department of Administration  
BRU: Public Defender Agency  
Components: Third Judicial District

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

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

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

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Dana Fabe, Public Defender  
Division: Public Defender Agency

Phone: 279-7541  
Date: April 8, 1987

Approved by Commissioner: Harold Peltola  
Agency: Department of Administration

Date: 4/10/87

Distribution (by preparer):

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

STEVE COWPER, GOVERNOR

**PUBLIC DEFENDER AGENCY**

APR 13 1987

900 W. 5TH AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 279-7541

April 9, 1987

*Jim - pls read*

✓ Representative John Ellis  
Representative Niilo Koponen  
Co-Chairmen  
Health, Education & Social Services Committee  
P. O. Box V  
Juneau, Alaska 99811

Dear Representatives Ellis and Koponen:

I understand that House Bill 237 has been referred to your committee for consideration. Although I certainly understand the concern of its drafters for the safety and welfare of child victims, the proposed changes contained in the bill do not appear to be necessary to vigorous prosecution and effective enforcement of laws preventing assaults on children. Many of the changes in the bill appear to be designed to overrule a variety of appellate decisions unfavorable to the state in cases involving child victims. Since some of the decisions are constitutionally based, the corresponding attempted changes appear unconstitutional. Furthermore, other provisions would substantially increase the presumptive jail term for a first incest conviction, rendering that term much more severe than the sentence required for a violent rape of an adult which results in serious physical injury.

Following is my analysis of the bill.

A. SECOND DEGREE MURDER

Section 1 proposes two changes to the second degree murder statute (AS 11.41.110(a)):

1. Neitzel change. The bill would change AS 11.41.110(a)(2) to define second degree murder as "knowingly engag[ing] in conduct [instead of: intentionally performing an act] that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life." This change simply brings the language of the statute in accordance with the interpretation of the statute adopted by the Court of Appeals in Neitzel v. State, 655 P.2d 325 (Alaska App. 1982). The change does not present a problem and

could reduce confusion without substantively changing the law. Section 3 proposes a parallel change in the first degree assault statute, AS 11.41.200(a)(3), and is also not a substantive change in the law as it is presently applied.

2. Extreme indifference to the welfare of a child under 16. Proposed AS 11.41.110(a)(4) creates a new subsection of second degree murder, defined as "under circumstances manifesting an extreme indifference to the welfare of a child under 16, the person engages in a pattern or practice of abuse of that child that results in the death of the child." Abuse is defined in section 2 to include bodily impact, restraint, and confinement. "Pattern or practice" is defined in section 8 (proposed AS 11.41.610(2)) to mean "three or more incidents of the prohibited conduct."

It is not clear to me what the purpose of this section is. It appears to be unnecessary since if a person's conduct, even once, displays manifest indifference to the value of a child's life, and the child dies, that is unambiguously included in AS 11.41.110(a)(2). Requiring a "pattern or practice of abuse" might be interpreted to exclude murder prosecutions under AS 11.41.110(a)(2) when the person has only abused the child once or twice.

If the point of the new section is to insure that evidence of any pattern or practice of abuse will always be admissible, the statute is still unnecessary. Existing case law establishes that a history of abuse will ordinarily be admissible. E.g., Garner v. State, 711 P.2d 1191 (Alaska App. 1983); see also Abruska v. State, 705 P.2d 1261, 1264 & n.1 (Alaska App. 1985).

#### B. FIRST DEGREE ASSAULT

Section 3 creates a new category of first degree assault for any person who engages in a pattern of abuse which results in serious physical injury to a child under 16.

The proposed new assault provision is unnecessary. Given the broad definition of "dangerous instrument" adopted in Wettanen v. State, 656 P.2d 1213 (Alaska App. 1983), many assaults on a child would fit under existing AS 11.41.200(a)(1) (recklessly causes serious injury with a dangerous instrument). Many other assaults, particularly those as part of a pattern of abuse, would fit under AS 11.41.200(a)(3) (the Neitzel-type assault statute). Further, a prosecution under AS 11.41.200(a)(3) would be more likely than a charge under the new offense to open the door to evidence of assaults on other victims; evidence of such other assaults would not be relevant under proposed AS 11.41.200(a)(4) and the current rules of evidence, but such evidence could often be relevant to establish extreme indifference to the value of

life by showing that the defendant knew the likely consequences of his actions.

Further, AS 11.41.200(a)(4) could be read dangerously broadly. A parent who three times "confined" his child to his room for reasonable discipline could be liable under this class A felony if, one time, the child hurt himself seriously while in his room.

### C. REPEATED SEXUAL ABUSE OF A MINOR

Sections 5-8 create a new set of offenses titled Repeated Sexual Abuse of a Minor (RSAM) in the First, Second, and Third Degree. "Repeated" is given meaning in section 8 as "pattern or practice," defined as three or more incidents. Section 13 provides penalties for RSAM in the First Degree, an unclassified felony, setting a presumptive term for first offenders of 13 years (and 25 and 35 years, respectively, for second and third offenders), with a maximum of 50 years. RSAM in the Second Degree is an A felony, with a presumptive five-year term for a first offender.

Effectively, the proposed offense of RSAM in the first degree declares that all family sexual abuse cases will be treated far more harshly than violent rape of a stranger. As the Court of Appeals has noted, virtually all family sexual abuse cases involve repeated abuse. State v. Andrews, 707 P.2d 900, 908-09 (Alaska App. 1985), aff'd, 723 P.2d 85 (Alaska 1986); see Benboe v. State, 698 P.2d 1230, 1232 (Alaska App. 1985) (single incident of abuse may make crime among least serious in its class). To penalize the family offender more harshly than the bike-path rapist is an illogical and unfair result. The typical defendant charged under RSAM will be a middle-aged man who has abused his step-daughter on a number of occasions. He will have no criminal record of any sort and will be an upstanding member of the community in all other respects than his sexual offense. Yet, he will face a presumptive term of 13 years. If he had a prior felony conviction as a young adult, perhaps for a property crime such as theft, he would face a presumptive term of 25 years.

By contrast, the bike-path rapist, who is convicted of one sexual assault and has a misdemeanor record, a serious alcohol problem, or a sociopathic personality which makes him predictably dangerous, faces a presumptive term of only 8 years for his first offense and 15 years for his second violent rape.

RSAM in the second degree parallels the first degree offense and covers any pattern of sexual contact with a child under 16 or of sexual penetration with a child aged 13-15 who is at least 3 years younger than the defendant. This is made a class A felony, in contrast to the present statute, which treats basically the same conduct as a class B felony. See AS 11.41.436. The father

who fondles his 12-year-old on a few occasions would now face a presumptive term of 8 years in prison; the bike-path a sailant who grabs and fondles a child once would face no presumptive term.

Increasing the presumptive terms for sexual offenses will undoubtedly increase the number of cases going to trial. While the present 8-year presumptive term for first degree sexual abuse of a minor is certainly long, more defendants will plead guilty to an 8-year term than a 13-year term. Similarly, although the present sanctions for sexual contact with a minor are stiff (0-10 years), there is no presumptive term applicable to first offenders. Clearly more people will plead guilty to class B charges than to the new class A charge. Any increase in the number of trials will mean increased costs for the prosecutors, court system, and Public Defender Agency. Every time the number of trials increases, appeals increase, too, with corresponding extra burdens on the appellate courts, Office of Special Prosecutions & Appeals and the Public Defender appellate case load.

The proposed new statutes are not necessary. If the state can prove three incidents of sexual abuse, the state is presently free to file three charges of sexual abuse of a minor in the first degree. Although the convicted defendant would face a presumptive term of 8 years, rather than 13, Andrews v. State establishes that consecutive terms can be imposed, and the possible maximum term would be 90 years. Thus, the defendant whose pattern of abuse deserves more serious punishment than 8 years can be sentenced more severely by imposition of consecutive terms.

The problems with the proposed RSAM crimes are compounded when considered in the light of other provisions in the bill. All of the repeated sexual abuse of a minor crimes described above include as an element that the defendant "hav[e] authority over a child under the age of 16." "Having authority over a child" is defined in section 8, proposed AS 11.41.610(1), to mean:

(a) the child is entrusted to the defendant's care by authority of law [e.g., foster parents];

(b) the child is the defendant's son or daughter, including adopted children and step-children;

(c) the child resides as a member of a social unit in the same household as the child; or

(d) the child has been temporarily entrusted to the defendant's care [e.g., babysitter, older sibling, day care worker].

These definitions, particularly (c) and (d), are so broad that virtually every sexual abuse of a minor case would involve a person having authority over a child. The definition of "having authority over a child" is so far reaching that a 16-year-old boy who, on several occasions has consensual sexual foreplay involving digital penetration with his new step-sister just prior to her 13th birthday, would be exposed to the 13-year presumptive term should he be waived into adult court. An 18-year-old involved with a 15-year-old step-sister under similar circumstances could be prosecuted for RSAM in the second degree with a presumptive 8-year term on the first offense.

#### D. PRIOR INCONSISTENT STATEMENTS AS SOLE EVIDENCE AT TRIAL

Section 11, proposed AS 12.845.025, is an attempt to overrule Brower v. State, 728 P.2d 645 (Alaska App. 1986). This proposal states that in a prosecution for any offense, evidence of a prior inconsistent statement is sufficient to support a conviction despite a complete dearth of corroborating evidence.

The question whether an uncorroborated prior inconsistent statement is sufficient to support a conviction is a uniquely judicial determination, not one susceptible to legislative fiat. The federal constitution prohibits conviction except upon proof beyond a reasonable doubt. In re Winship, 397 U.S. 358. A court's holding on a question of the sufficiency of certain evidence is an interpretation of the constitutional requirement of proof beyond a reasonable doubt. Thus, the Court of Appeals decision in Brower took no radical or novel position; the Brower holding is consistent with all other courts which have considered this question. The constitutional minimal standard for the proof required for a conviction cannot be reduced by legislative action. Section 11 is, therefore, unconstitutional.

#### E. NONUNANIMOUS JURY VERDICTS

Section 8, proposed AS 11.41.600, provides that in the statutes requiring a "pattern or practice," each juror must be convinced beyond a reasonable doubt that at least three incidents of the prohibited conduct occurred, but the jury need not be unanimous as to any particular incident. This provision is an attempt to overrule Covington v. State, 703 P.2d 436, opin. on reh., 711 P.2d 1183 (Alaska App. 1985).

Covington requires that, where a defendant is charged with one count of criminal conduct, in order to convict the defendant,

jurors must unanimously agree that the same criminal act has been proved beyond a reasonable doubt. The Covington holding is based upon the defendant's constitutional right to a unanimous verdict. Johnson v. Louisiana, 406 U.S. 356, 362 (1972). No state has reached a contrary result. The legislature cannot overrule Covington. Proposed AS 11.41.600(2) is unconstitutional.

#### F. CHANGES TO EVIDENCE RULE 404

Section 14 proposes a new subsection to Evidence Rule 404. The proposed new section states that, notwithstanding A.R.E. 404(b), in a prosecution for physical or sexual assault on a child, evidence of prior acts by the defendant involving the same or another victim is admissible to show the defendant's disposition to commit the offense.

This is arguably not constitutional. In a very long line of cases, the Alaska appellate courts have held that evidence of prior bad acts by a defendant are not admissible to prove the defendant's propensity to commit crimes. E.g., Eubanks v. State, 516 P.2d 726 (Alaska 1973); Oksoktaruk v. State, 611 P.2d 521 (Alaska 1980); Lerchenstein v. State, 697 P.2d 312 (Alaska App. 1985), aff'd, 726 P.2d 546 (Alaska 1986). The rationale for these cases is rooted in the constitutional guarantee of due process and the requirement of proof beyond a reasonable doubt. U.S. Const., amend. VI; Alaska Const., art. I, § 7. When evidence of a defendant's character, as shown through prior bad acts, is admitted to show his propensity to commit a crime, there is a grave likelihood that the jury will convict the defendant because he appears to be a bad person, not because the evidence proves beyond a reasonable doubt that he committed the crime with which he was charged. Michaelson v. United States, 335 U.S. 469 (1948).

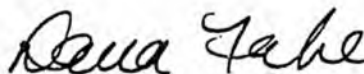
Prior bad acts, relevant to show only disposition, are also excluded because admitting such evidence prolongs trials, causing added expense to all parties and the court system. Rather than have a five-day trial focused on the criminal act alleged in the indictment, if prior bad acts were invariably admissible, trials could take two to three times as long, as witnesses are called by both sides to establish and refute incidents entirely collateral to the real issues at trial. Longer trials also mean longer transcripts; increasing the cost of appeals means more defendants would need public defenders.

The existing Rules of Evidence, as interpreted by the Alaska courts, broadly open the doors to evidence of prior bad acts when such evidence is probative of something other than criminal disposition. E.g., Coleman v. State, 621 P.2d 869 (Alaska 1980); Adkinson v. State, 611 P.2d 528 (Alaska 1980); Oswald v. State, 715 P.2d 276 (Alaska App. 1976). Further, the Alaska courts

already recognize and have recently expanded an exception to Evidence Rule 404(b) for cases where the defendant is charged with sexual misconduct and the state wishes to offer evidence of prior misconduct with the same victim or another victim having highly relevant common characteristics (e.g., another child in the same family), particularly where the evidence of misconduct with the other[s] approaches being evidence of a habit. Burke v. State, 624 P.2d 1240 (Alaska 1980); Soper v. State, Op. No. 675 (Alaska App., Jan. 23, 1987), pet. hearing denied (April 3, 1987). Thus, the state is currently able to introduce evidence of prior bad acts in child sexual assault cases when it is probative.

Please let me know if I can provide you with any further information on this or any other proposed legislation. I appreciate this opportunity for input.

Very truly yours,



Dana Fabe  
Public Defender

DF:rjb

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 1, 1987

SUBJECT: Abuse of children/admissibility of certain  
criminal evidence (Work Order No. 5-0809)

TO: Representative Fran Ulmer  
Chair, State Affairs Committee

FROM: Keith B. Levy *KBL*  
Legislative Counsel

You have requested a sectional analysis of Work Order 5-0809, relating to abuse of children and the admissibility of certain evidence in criminal prosecutions. As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 makes two changes to the offense of murder in the second degree. First, under existing law, one way a person may be guilty of murder in the second degree is if the person "intentionally performs an act" resulting in death under certain circumstances. Section 1 lowers the level of intent required by substituting the language "knowingly engages in conduct" (AS 11.41.110(a)(2)). Section 1 also adds a new provision under which a person may be guilty of murder in the second degree: if "under circumstances manifesting an extreme indifference to the welfare of a child under the age of 16, the person engages in a pattern or practice of abuse of the child that results in the death of the child" (AS 11.41.110(a)(4)). The phrase "pattern or practice" is defined in sec. 8 of the bill to mean three or more incidents of the prohibited conduct (AS 11.41.610(2)).

Section 2 defines the term "abuse", as used in the second degree murder statute, to include bodily impact, restraint, or confinement (AS 11.41.110(c)).

Section 3 makes changes to the offense of assault in the first degree similar to those changes discussed in sec. 1. First, under current law, a person may be guilty of assault in the first degree if that person "intentionally performs an act" that results in serious physical injury under certain circumstances. Section 2 lowers the required level of intent by substituting the words "knowingly engages in conduct" (AS 11.41.200(a)(3)). Section 2 also adds a new provision under which a person may be guilty of assault in the first degree: if "the person engages in a pattern or practice of abuse of a child under the age of 16 that results in serious physical injury to the child" (AS 11.41.200(a)(4)). The phrase "pattern or practice" is defined in sec. 8 of the bill to mean three or more incidents of the prohibited conduct (AS 11.41.610(2)).

Section 4 defines the term "abuse", as used in the first degree assault statute, to include bodily impact, restraint, or confinement (AS 11.41.200(c)).

Sections 5 and 6 create three new offenses: repeated sexual abuse of a minor in the first degree (AS 11.41.441), in the second degree (AS 11.41.442), and in the third degree (AS 11.41.444). Each of these offenses is committed if a person over a certain age having authority over a child under 16 years of age (1) engages in a pattern or practice of sexual penetration or sexual contact with the child, or (2) aids, induces, causes, or encourages the child to engage in a pattern or practice of sexual penetration or sexual contact with another person. The phrase "pattern or practice" is defined in sec. 8 of the bill to mean three or more incidents of the prohibited conduct (AS 11.41.610(2)). The phrase "having authority over a child" is defined in sec. 8 of the bill to mean (1) the child is entrusted to the person's care by authority of law, (2) the child is the person's son, daughter, illegitimate or adopted child or step child, (3) the person resides as a member of a social unit in the same household as the child, or (4) the child has been temporarily entrusted to the person's care (AS 11.41.610(1)).

The degree of the offense of repeated sexual abuse of a minor depends upon the age of the defendant, the age of the victim, and the nature of the sexual conduct. Repeated sexual abuse of a minor in the first degree is an unclassified felony punishable as provided in AS 12.55.125(j) under sec. 13 of the bill. Repeated sexual abuse of a minor in the second

degree is a class A felony and repeated sexual abuse of a minor in the third degree is a class B felony.

Section 7 amends existing law to make two affirmative defenses applicable to the offenses of repeated sexual abuse of a minor in the first, second, and third degree. The first defense is that, at the time of the alleged offense, the victim was the legal spouse of the defendant and the defendant had the consent of the victim (AS 11.41.445(a)). The second defense is that, if the offense required that the victim be under a certain age, the defendant reasonably believed the victim to be that age or older. However, this defense does not apply if the victim is under the age of 13 (AS 11.41.445(b)).

Section 8 adds two new general provisions. AS 11.41.600 applies to the offenses, discussed above, that require a "pattern or practice" of conduct as an element of the offense. First, it provides that a prosecution for an offense requiring a "pattern or practice" of conduct does not preclude a prosecution on charges of separate incidents of the conduct. Second, this section provides that the jury must find that at least three incidents of prohibited conduct occurred, but the jury need not be unanimous as to the specific incidents. Third, if a person is found innocent of a specific incident, that incident may not be used to establish the pattern or practice. Finally, as many as two of the three incidents used to establish a pattern or practice may have occurred before the effective date of the act.

AS 11.41.610 contains the definitions of "pattern or practice" and "having authority over a child" discussed above.

Sections 9 and 10 make technical amendments to existing provisions indicating that repeated sexual abuse of a minor in the first degree is an unclassified felony and is among the most serious of offenses (AS 11.81.250).

Section 11 provides that in a criminal prosecution, evidence of a prior inconsistent statement of a witness is, by itself, sufficient to support a conviction if believed by the trier of fact (AS 12.45.025).

Section 12 amends existing law to provide that a defendant convicted of sexual abuse of a minor in the first degree or repeated sexual abuse of a minor in the first degree may be sentenced to pay a fine of up to \$75,000 (AS 12.55.035(b)).

Section 13 sets out the punishments a defendant convicted of repeated sexual abuse of a minor is subject to. The maximum term is 50 years with presumptive terms of 13 years for a first felony conviction, 15 years for a first felony conviction if the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 years for a second felony conviction, and 35 years for a third felony conviction (AS 12.55.125(j)).

Section 14 amends Rule 404 of the Alaska Rules of Evidence by adding a new subsection to provide that in any prosecution for physical assault upon or sexual misconduct with a child under the age of 16, evidence of prior acts of the defendant involving the same or another victim is admissible to show the defendant's disposition to commit the offense.

Section 15 makes the provisions of sec. 14 retroactive and applicable to offenses and evidence of acts committed before the effective date of the bill.

Section 16 provides for an immediate effective date.

KBL:mkr  
m10/082

Remarks by Representative Fran Ulmer  
On the Floor of the House  
March 27, 1987

The Safety of Our Children

I would ask permission of this body to speak on the safety of our children.

The death in this community of a seven year old boy who was accidentally electrocuted has brought to mind for all of us the need to be particularly concerned about the safety of young children. When a young child dies for what appears to be no good reason, it makes us all very sad. But when young children in our community and in our state die because of abuse, it makes us not only sad but also mad.

April is Child Abuse Prevention Month and on the first of April, next Wednesday, I will be introducing some legislation which will increase penalties for child abuse and which, I believe, will make it easier for the prosecutors in the State of Alaska to successfully obtain convictions of child abusers. I'd like to talk just very briefly this morning about that, because nothing would be greater than to have 40 co-sponsors on this legislation.

Child sexual assault and child abuse in Alaska have reached epidemic proportions. In FY 80 there were 185 cases of child sexual assault. That number has grown to 1,447 in FY 86. And national statistics show that only one out of seven cases actually gets reported, and a much smaller percentage than that actually get successfully prosecuted. Moreover, the number of children who receive protective services due to child abuse has also risen in what I would describe as an astronomical number. One out of nineteen children in Alaska last year received some kind of child protection services. Indeed, 9,222 children had such serious problems that some kind of assistance was requested and received from the State of Alaska due to child abuse or neglect.

The cycle of violence if gone unbroken creates not only undue anguish and injury within the family but also on the streets. Sons who witness their father's violence in the home have a 1,000 percent greater chance of creating that kind of abuse for either their spouses or their children. We don't know what the statistics are on the number of people who commit crimes when they are adults who were abused as children, but experts in the field indicate that a very large percentage of these adults were abused as children.

As a society, how do we break that cycle of violence? What do we here in the Alaska Legislature do about this problem? Well, we first have to recognize it exists. It is a problem that

we cannot hide from and we cannot cover up. It is a problem which needs our resources, not only in terms of intervention and protection of the victim, but prevention and treatment of the abusers and the victims. We have many worthwhile programs in the State of Alaska but they are at risk, both in terms of funding and in terms of support from those of us who choose to ignore the problem as we often do.

We also need to tighten the prosecution of these offenses. Our resources must first and foremost go to the victims to get them out of the abusive situation and to get them treatment and protection. I believe it is also time for us to face up to the fact that we make it incredibly easy for those who commit the abuse to never be punished for the offense. Part of the problem is a fairly recent ruling by Alaska's Court of Appeals which makes it much more difficult to prosecute these cases.

I'd like to explain that this morning because that will be the first of the bills that I introduce and with which I would like your assistance. In Covington vs. State of Alaska, the Court of Appeals made it much more difficult to obtain successful convictions for sexual abusers who abuse more than once. Covington's victim was his natural daughter. He started abusing her at about age 9, continued to do so; he forced her to have sexual intercourse with him at age 16. This conduct continued night after night, week after week, year after year. In this case the Court of Appeals reversed Covington's conviction because his daughter could not be specific with the jury as to any particular instance. Hence, it was possible that some members of the jury were thinking of one instance of sexual intercourse and convicting him for that offense, while others were thinking of a different instance of sexual assault and convicting Covington for that offense. In effect, Covington, because of the frequency and number of occasions that he attacked his daughter, was able to convince the Court of Appeals that the jury could not be unanimous as to any specific act that he engaged in. Therefore his conviction was reversed. This case all but eliminates the prosecution of multiple sexual assaults on young children who cannot readily distinguish between events or remember specific nights. Indeed, the Covington decision rewards multiple sex offenders who offend against young children.

Recently in a Ketchikan case, during the middle of a trial, the State was forced to dismiss a sexual abuse case, although the child's testimony was that he was consistently abused by his father. On cross examination the child gave different dates than the State had elicited in direct examination.

I give these two examples and there are indeed hundreds of other cases just like these in the State of Alaska. Because the child cannot remember the specific event and cannot testify as to these specific events, the abuser gets off scot free or with a significantly reduced charge.

There's another problem regarding admissibility of evidence in child abuse cases that I'd like to bring to your attention and that I hope you will join me in dealing with in this legislation. It is the multiple offense of child abuse. A recent case in Juneau, which you have probably read about in the newspaper because a citizens group has become very involved with it, involves the death of a 20-month-old child. Next Monday will be the one year anniversary of the death of that child. He died as a result of a kick or a punch to the stomach which was so hard as to rupture his intestines. He died in the middle of the night without any medical care. Had that case gone to trial, the prosecution would have tried to admit evidence that this was not the first but a series of abuse which this child received from the live-in boyfriend of his mother. Indeed, a couple of weeks earlier his arm was broken, a month or so earlier his arm had been tied behind his back because he was using the wrong arm to eat with. But because of evidentiary restrictions imposed by prior decisions, that evidence could not be presented.

I force you to deal with these facts so that you can understand prosecution has been made very difficult by Court of Appeals rulings. The prosecutor would not have been allowed to bring into evidence the fact that this child's arm had been broken or any of the other abuse of which there was good evidence, because of a ruling that shows that this kind of previous incidents or previous events are inadmissible as being too prejudicial.

Having reviewed these cases and a recent case in the State of Washington where a young child died as a result, again, of a series of abuse, I have come to the conclusion that we should create a new statutory offense: It is a child abuse offense which recognizes a pattern of conduct. When a child is being abused in his or her home by a parent or authority figure, night after night, day after day, week after week, year after year, it is a very different kind of offense than a simple assault case. If I'm walking down South Franklin Street in front of the Red Dog Saloon and some drunk plugs me, there are likely to be witnesses, it is one event, it is a relatively simple case to prove and would probably be dealt with by our court system. Child abuse cases, by their very nature, take place in the privacy of people's homes where there frequently aren't witnesses, and recent rulings are making it even more difficult for the proof to be presented. I submit to you it is a different kind of offense; it deserves a more serious penalty; and we ought to have different rules of evidence associated with what kind of proof is permissible to be able to get successful convictions in these hideous cases. I speak not only to those which result in death of a child but also serious abuse, of which there are many.

I will be submitting these bills on April 1. I will hold a briefing session Monday at 9:00 a.m. for those of you who are interested in learning more about the bills. I would welcome you

Fran Ulmer (March 27, 1987)

Safety of Our Children

to come to my office at 9:00 on Monday morning to discuss it. I would, again, welcome your participation and your co-sponsorship. I sincerely believe that child abuse, because it is so incredibly painful for us to consider, is an example of a problem that has been long overlooked and inadequately dealt with in our society. I would urge you, during April, Child Abuse Prevention Month, to put as much energy as you can into helping those who want to reduce child abuse in Alaska.

Thank you very much.



**STATE OF ALASKA**  
**OFFICE OF THE GOVERNOR**  
**BILL ANALYSIS**

DEPARTMENT Health and Social Services	DIVISION Family and Youth Services	BILL NUMBER HB 237	SPONSOR Ulmer, et al.
DEPARTMENT POSITION Support concept			
PREPARED BY Yvonne M. Chase, Director	DATE 4/22/87	COMMISSIONER'S SIGNATURE <i>Megha M. Munson</i>	DATE 4/22/87

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL  Department of Law	CONSTITUENT GROUP(S) AFFECTED BY BILL  Victims of child abuse Offenders
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT:     NONE                       FISCAL NOTE ATTACHED

**BACKGROUND/LEGISLATIVE INTENT**

This bill is intended to return the interpretation of affected sections to what it was before recent appeals cases resulted in more narrow applications of those sections.

**ANALYSIS OF BILL/PROGRAM EFFECTS**

In general, this bill would make successful criminal prosecution in certain child abuse cases easier to achieve. This would be accomplished by: 1) changing the mental state required for conviction in certain cases of second degree murder and first degree assault to "knowingly" rather than "intentionally" causing the person's death or serious injury under circumstances of "extreme indifference" to human life, 2) by including within the definition of assault in the first degree a "pattern of practice" of abuse of a child under age 16 which causes serious physical injury to the child; 3) by establishing the crime of repeated sexual abuse of a minor in the first, second and third degrees based on a "pattern or practice" of sexual abuse; 4) by allowing conviction for repeated sexual abuse of a minor or assault in the first degree based on a unanimous agreement among jurors that three or more incidents of a prohibited abusive act occurred, but not requiring unanimous agreement on the three incidents which establish the pattern or practice; and 4) by allowing conviction based on a prior statement by a witness which may be inconsistent with present statements (allowing statements, such as those of child victims, later recanted under pressure to serve as the basis for conviction). This bill would address problems encountered as a result of recent criminal appeals decisions and would not have direct programmatic impact on the Department.

**AMENDMENTS PROPOSED**

(1) Proposed change: Sections 1 (a)(4) and (3)(a)(4) from "age 16" to age 18.

Rationale: The age in this section should be consistent with the age of majority in the children's statutes rather than with the age of consent for sexual activity because physical abuse does not involve the concept of consent.

Amendments Proposed continued:

(2) Proposed change: Section (1)(a)(4) and (3)(a)(4) from "pattern or practice of abuse" to pattern or practice of abuse or neglect.

Rationale: More children die of neglect than abuse. Situations of neglect which manifest extreme indifference for the welfare of a child and are habitual are just as lethal for the child as abusive behavior and affect more children.

(3) Proposed change: Sections 2 and 4 from "bodily impact, restraint, or confinement" to bodily impact, restraint, confinement, administration of lethal chemicals or drugs, exposure to conditions which could result in death or injury due to hypothermia, severe burns or suffocation.

Rationale: The current definition is too narrow and possibly would exclude many common forms of abuse that lead to serious injury and death.

GILMORE & FELDMAN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

310 K STREET, SUITE 308

ANCHORAGE, ALASKA 99501-2095

JAMES D. GILMORE  
JEFFREY M. FELDMAN  
STUART A. OLLANIK  
JANET L. CREPPS

TELEPHONE  
(907) 279-4506

April 9, 1987

Representative Niilo Koponen  
Alaska State Legislature  
P.O. Box V  
Mail Stop 3100  
Juneau, Alaska 99811

Re: House Bill 237

Dear Representative Koponen:

I am writing concerning House Bill 237 which creates the new offense of "Repeated Sexual Abuse of a Minor" and proposes certain changes to Alaska's law on sentencing and the Rules of Evidence. This Bill has serious problems and should not be passed.

In opposing House Bill 237, I do not mean to minimize the seriousness of the problem of sexual abuse of children. No intelligent or reasonable person would quarrel with the notion that children should be protected from abusive adults and that adults who abuse children should be prosecuted. But the existing criminal code provisions provide an ample framework for the prosecution of child abusers. Statistics reflect that the incidence of child abuse prosecution and conviction has risen significantly in recent years and I do not believe that a compelling case can be made in support of the proposition that the existing laws do not provide an opportunity to impose serious and severe criminal punishment on those convicted of sexually abusing children.

The proposed offense of repeated sexual abuse of a minor would provide an enhanced penalty for those individuals found to have engaged "in a pattern or practice" of sexual misconduct. The term "pattern or practice" is defined in the proposed statutes as three or more incidents of misconduct. The fact of the matter is that only rarely is sexual misconduct with children detected upon the first episode. The reality is that nearly all adults prosecuted for one level or another of sexual misconduct misbehaved for a period of time (sometimes long and sometimes short) before being reported and prosecuted.

Representative Niilo Koponen  
April 9, 1987  
Page 2

The existing laws, by mandating a substantial minimum sentence of seven years, already virtually ensure that punishment, rather than rehabilitation, is the focus of sexual abuse prosecutions. Even in families that are relatively "intact" and have a severe and motivated interest in working out their problems, the existing laws governing the prosecution of sexual abuse make it difficult, and often times impossible, to keep a family together, even when it is their strong desire to remain together and professional therapists and counselors are supportive of such plan. The new law will have the effect of taking virtually every person who has engaged in sexual misconduct (since nearly all engaged in more than three instances) and essentially turn them into lifetime prisoners. Many of these individuals are not "hard core criminals", in the classic sense, but fathers and stepfathers who have a real, and often times curable, emotional or psychological problem. To be sure, their conduct is improper and harmful. Careful thought should be given, however, before a policy decision is made to turn all of these people, regardless of their past circumstances, their family settings, their prior criminal records or absence of records, their emotional conditions, their physical conditions, and the circumstances of their offenses, into long-term prisoners. Such a decision inevitably will impose enormous hardship on a large number of individuals and their families without a rational basis and will cost the State literally millions of dollars of funds to warehouse these individuals for decades.

Most ironic is the provision in Section 7 of the Bill which would provide that the prosecution for repeated sexual abuse does not preclude charges for the separate incidents that comprise the sexual abuse. As a result, charges could be stacked upon charges, all arising out of the same conduct. The law on consecutive sentencing in this state is such that it is entirely conceivable that a stepfather who engages in sexual misconduct on three or four occasions with his teenage stepdaughter and who has a sincere interest and good prognosis for rehabilitation, and who enjoys the support of his family, might be prosecuted and never see the light of day.

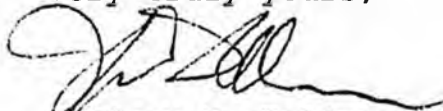
Another portion of the Bill is seemingly aimed at making convictions easier to obtain. Section 12 provides that a prior inconsistent statement of a witness is, alone, sufficient to support a conviction. What this means is that if an individual makes an unsworn statement out of court and then later recants the statement when he or she is placed under oath, the unsworn prior inconsistent statement is, alone, sufficient to support a

Representative Niilo Koponen  
April 9, 1987  
Page 3

conviction. This is quite bizarre. Convictions should be predicated on competent and sworn testimony. I do not think that it is an oversimplification to say that if an individual is not willing to swear that the facts comprising the offense are true, that the individual charged should not be convicted of the offense. I know that the prosecution response to this argument is that there are times when children will make allegations of abuse and then later recant them in court. I, personally, have seen evidence of such occurrences only rarely. It is certainly not a sufficiently frequently or consistently occurring phenomenon to justify creating a framework by which individuals can essentially be convicted upon unsworn prior statements. Police officers, investigators, and social workers often times, perhaps with the best of motivations, interrogate children with leading questions that suggest the answer. The phenomenon of children and those in dependent positions desiring to provide answers that the parental or authority figure desires is well known and frequently observed. As a consequence, it is not at all uncommon to have individuals, not only in sexual abuse cases but in other cases as well, provide responses to interrogations out of court that are quite different from what the individual would state in court, when properly questioned and placed under oath.

In summary, House Bill 237 has a lot of problems. It is a bad Bill and should not be passed. It is easy and popular to take positions that make one appear "tough" on problems such as child abuse. And to be sure, child abuse is a problem worth being "tough" over. Being "tough" does not necessarily mean being irrational, unfair and misguided, which I think is how House Bill 237 is best described. If you have any further questions concerning this issue, I would be pleased to confer with you.

Very truly yours,



Jeffrey M. Feldman

JMF:jd

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF LAW

CRIMINAL DIVISION/FIRST JUDICIAL DISTRICT  
OFFICE OF THE DISTRICT ATTORNEY

REPLY TO:

- POUCH KA  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3620
- 415 MAIN STREET, RM. 304  
KETCHIKAN, ALASKA 99901  
PHONE: (907) 225-6128
- P.O. BOX 1630  
SITKA, ALASKA 99835  
PHONE: (907) 747-5851

February 11, 1987

Barbara Walker  
326 Fourth Street, Suite B  
Juneau, Alaska 99801

Re: Impact of FY 88 budget on sexual abuse cases

Dear Barbara:

As a result of your request on Friday, February 6, 1987, I am providing you with information regarding the impact of the proposed FY 88 budget on the prosecution of both physical and sexual abuse of children.

In FY 84 there were 309 cases referred to the district attorney offices across the state which dealt with sexual abuse of children. During that year, the district attorneys declined 37% of the cases submitted for prosecution. There was a dramatic increase in the number of cases in FY 85 with 462 cases being submitted for prosecution and 40% of those cases being declined. In FY 86, 356 cases were submitted for prosecution with 43% of the cases being declined. This figure compares with a 30% rate of decline of all felony cases being submitted to the Criminal Division of the Department of Law.

Barbara Walker  
February 11, 1987  
Page 2

It is my belief that the higher percentage of declination in sexual assault cases is a direct result of the availability of staff to deal with these cases. Child sexual assault cases are very labor intensive. In FY 84 we had the resources to spend time with children to prepare them for the impact of the criminal justice system on their lives after they had already been victimized. For example, in FY 84 one attorney in the Juneau District Attorney's Office was assigned responsibility for all child sexual abuse cases; I was the assigned attorney to deal with child sexual abuse cases and had sufficient time to be involved in the initial interview with the child. Because of the impact of declining oil revenues on this office, it is impossible to maintain this specialized skill. In the court building here in Juneau we had established a child interview room where the police or social worker's initial interview with the child was conducted with me being present. This limited the number of times the child had to be interviewed regarding the sexual assault. This is no longer the case. As a result of the decline in resources, it became necessary to do away with the child interview room and to no longer be involved in the initial interview with the child. This is a result of both the declining resources in the district attorney's office and with the police officers investigating these cases.

Barbara Walker  
February 11, 1987  
Page 3

What I attempted to do, after I could no longer become involved in the initial interview, was to conduct two meetings with the child. The first meeting was simply an introductory meeting where I would talk with the child and we would not discuss the elements of the sexual assault. During the next couple of days a grand jury would be set up and before the grand jury was to hear the case, I would spend another hour talking with the child, going over what was going to happen during the grand jury, a view of the grand jury room and going over what the child's testimony would be. Unfortunately, with the decline in resources, the time available to even do this two-step meeting process has been for the most part eliminated.

To illustrate the effect of the FY 88 budget on the Criminal Division, I should first point to the amount of proposed funding for this division. In the governor's budget for FY 88 there is 7.7 million dollars allocated to the Criminal Division of the Department of Law. This compares to 9.35 million dollars which is presently allocated for the Office of Public Advocacy and the Public Defender Agency. In other words, OPA and Public Defender have approximately 20% more money for the defense of criminal cases than the state has for the prosecution of those cases. This obviously does not include any private money spent

Barbara Walker  
February 11, 1987  
Page 4

for the defense of criminal cases. Two years ago, approximately 50% of all child sexual abuse cases were handled by private attorneys. This is probably the first time in history that the defense can far outspend the prosecution in bringing a case to trial. It must not be forgotten that the state has the burden of proving beyond a reasonable doubt that an offense occurred and this generally means that the majority of the cost of the trial will be borne by the state. On an average, my estimate would be five witnesses are called by the state for every two or three called by the defense in a child sexual abuse case. The defense can rely upon any perceived weakness in the state's case and choose to call no witnesses at all. Obviously the increased funding for counsel at public expense and the ability of people who can afford attorneys to defend cases will negatively impact the ability of the state to prosecute all felony cases, including child physical and sexual abuse cases.

As I indicated above, the Criminal Division's proposed budget for FY 88 is 7.7 million dollars. This compares to the FY 87 budget when the state was funded at 11.7 million dollars and the FY 86 budget where the Criminal Division received even more. Sixty-six positions are being eliminated from the Criminal Division. The Criminal Division has operated with 20 of these

Barbara Walker  
February 11, 1987  
Page 5

positions unfilled for several months, so there will be a lay-off, come the first of July, of 46 Department of Law employees. This will include the elimination of almost all victim-witness aid that we now provide. The paralegals who will be left with the department will have to spend all of their time on litigation support and will not be able to deal with lessening the impact of the criminal justice system on victims and witnesses. Although it is a policy of the Criminal Division not to divert any sex offenders, the Pretrial Diversion Program is totally eliminated. The prosecution of child abuse cases in Valdez, Sitka, Dillingham and Barrow will obviously be impacted by the closing of offices in those locations.

Child sexual abuse cases have been on the increase in Juneau with 20 cases being referred in FY 84, 28 in FY 85 and 31 in FY 86. Because of the closure of the Sitka District Attorney's Office, it is necessary to use an attorney from the Juneau DA's Office to cover that community. With the legislature creating a superior court judgeship in Wrangell and Petersburg, it is necessary for the Juneau District Attorney's Office to have an attorney cover those communities as well. Because this obviously decreases the amount of time a Juneau attorney can spend on Juneau cases, this negatively impacts all criminal cases