

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4538 HES HB 237 - HB 243

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in Juneau, especially child abuse cases, which are especially labor intensive.

Another cause for the increased time involved in child sexual abuse cases and the increasing rate of district attorney offices declining these cases is a result of procedural changes in the law made by the court of appeals. The first major setback dealt to the state by the court of appeals in the prosecution of child sexual assault cases came in Covington v. State, 503 P.2d 436 (Alaska App. 1985). The facts in Covington are set out by the court of appeals as follows:

Covington's victim was his natural daughter, D.C.O.

She testified at trial that Covington began sexually abusing her when she was 9 or 10 years old. D.C.O. was 18 years old at the time of trial. D.C.O. testified that Covington slept with her, touched her breasts and penetrated her vagina with his finger. After D.C.O.'s death in November 1977 when D.C.O. was 13-years-old, Covington told her that she reminded him of her mother and had D.C.O. sleep with him in bed.

Shortly before D.C.O.'s sixteenth birthday, Covington began having sexual intercourse with her. D.C.O. testified that she had sexual intercourse with Covington "practically every night," until she moved out in March 1983. Covington allegedly told her that he did not want her to "grow up naive like [her] mother." C.C., D.C.O.'s brother, the 13-year-old son of the defendant, also corroborated D.C.O. testifying that on Mother's Day 1982 he saw an empty condom package on the night table next to the bed in which

Covington and D.C.O. were sleeping but that he could not see if they had clothes on, nor could he remember if the door of the bedroom had been shut. He also testified that throughout 1982 his father and sister were sleeping in the same bed. Covington testified in his own defense, he conceded that he had slept in the same bed with D.C.O. from August or September 1979 until D.C.O. moved out in March 1983 but contended he had never fondled or penetrated her with his finger or penis. He stated that the bedroom door was always open and that D.C.O. had slept with him at her own request and not because of anything he said or did. He also denied the truth of earlier out-of-court tape recorded statements in which he admitted having had sexual intercourse with D.C.O. after her sixteenth birthday. Covington's testimony also suggested that D.C.O. was motivated to lie in order to obtain custody of her younger sister and prevent Covington from moving out-of-state with her.

In this case the court of appeals reversed Covington's conviction because D.C.O. could not be specific with the jury as to any particular instance and hence it was possible that some members of the jury were thinking of one instance of sexual intercourse and convicting Mr. Covington for that offense, while others were thinking of a different instance of sexual assault and convicting Covington for that instance. In effect, Covington because of the frequency and number of occasions that he penetrated his daughter, was able to convince the court of appeals that a jury could not be unanimous as to any specific act he engaged in and therefore should have his conviction reversed. In Covington the victim was, at the time of trial, over 18 years of age and the

state may well have been able to focus in on one of the sexual assaults sufficient to convince all twelve people on a jury of that one event. However, this case all but eliminates the prosecution of multiple sexual assaults on young children who cannot as readily distinguish between events occurring on consecutive nights when they are four or five years of age. The Covington decision rewards the multiple sex offender who offends against younger children. If an offender were to sexually abuse a child on only one occasion, the child could be specific to that event; however, if multiple sexual assaults have occurred, as they do in the majority of cases, young children are unable to distinguish between multiple events.

This was aptly demonstrated only a week ago in Ketchikan when during the middle of a trial the state was forced to dismiss the sexual abuse case against a child who, although testified consistently as to sexual abuses by his father, on cross-examination gave different dates than the state elicited in its direct examination. Children up through third grade often have difficulty in time sequencing and specificity as to dates. A statute similar to AS 11.46.110, Consolidation of Theft Offenses: Pleading and Proof, which allows for a jury to convict

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a person guilty of a crime of theft on multiple theories may solve the Covington problem.

In a case arising out of Juneau, Moor v. State, 709 P.2d 498 (Alaska App. 1985), the court of appeals rejected the long-held belief that incidents of sexual abuse involving other child victims are admissible in sexual assault cases to show "lewd disposition." The Alaska Supreme Court in Burke v. State, 624 P.2d 1240 (Alaska 1980), seemed to agree with the state's position but the court of appeals distinguished Burke in saying that the prior sexual misconduct needed to be with the same victim.

Another blow was dealt to the prosecution of child sexual assault cases by the court of appeals in Bolden v. State, 720 P.2d 957 (Alaska App. 1986). The facts in Bolden as recited by the court of appeals are:

Robert Bolden was convicted after a jury trial of three counts of Lewd and Lascivious Acts Towards Children, former AS 11.15.135(a) and of one count of Rape, former AS 11.15.120(a). The victims were Bolden's daughters, R., then aged 13 or 14, and M., then aged 11 or 12. The incidents occurred in December 1978 and through 1979.

Concerning the incident charged in Count I of the indictment, R. testified that Bolden had offered to pay her \$50 to "give him head." R. testified that Bolden forced her to touch his penis after she refused. In addition to this incident, R. testified that Bolden frequently fondled her breasts and that Bolden had touched her vagina on numerous occasions.

R. also testified to other incidents involving Bolden, herself, her sisters, and friends. R. testified that she had seen Bolden fondle her sister K.'s vaginal area. She also testified that Bolden supplied herself and one of her friends with liquor, and that Bolden attempted to molest her friend. R. additionally testified that Bolden had once attempted penile intercourse with her and that he had attempted to bribe her to have sex with him. The state charged Bolden with one incident only with respect to R. - that being the incident when he offered R. the \$50.

Of course, under Covington the state was precluded from charging multiple counts and had to be very specific as to one incident. Returning to the court's description of the case, the court said:

The other three counts of the indictment charged Bolden with incidents involving M. M. testified that Bolden had inserted his fingers into her vagina on four or five occasions. M. also testified that Bolden touched her breasts and forced her to touch his penis.

In addition to the incidents involving her personally, M. testified that she saw Bolden with his hand under the bed covers near R.'s vaginal area. M. also related an incident when she heard a friend, who was spending the night, tell Bolden to "stop it." M. similarly described an incident involving another friend who was also spending the night. In this incident, M.'s friend apparently became intoxicated on liquor that Bolden had supplied and had intercourse with Bolden. The victim was also a minor.

In addition to Bolden's two daughters' testimony, the state presented several other witnesses who testified about uncharged sexual acts. A third daughter, K., reluctantly testified for the state. She testified that Bolden had touched her breasts and vagina. She also indicated that she had seen Bolden touch her sisters and corroborated M.'s account of the incident where Bolden had supplied liquor and had sexual intercourse with M.'s friend. Bolden's daughters' mother (Bolden's ex-wife) testified that she had seen one incident in which Bolden was fondling K.

The state called several other minor victims. One testified that Bolden had laid on top of her, without her consent, and tried to force her legs apart, and that Bolden had bought her liquor. Another testified that Bolden pulled her close to him on the couch and then asked her to take off her robe. Yet another testified that Bolden kissed her without her permission. Finally, the state called a minor who related two separate incidents involving Bolden. First, she testified that Bolden, M., and herself were all in Bolden's bedroom naked. She testified that Bolden performed cunnilingus upon her, digital penetration on her, and forced her to perform fellatio upon him. Second, she testified that Bolden bought her, R., M., and another friend liquor and ordered them to take their underwear off. She testified that Bolden then had intercourse with the other friend while she and Bolden's daughter watched. All of the described incidents occurred when the witnesses were spending the night at Bolden's home when Bolden's wife was away and appeared to have occurred within a three year period.

The trial court admitted the evidence of the acts of sexual misconduct which were not specifically set out in the indictment under Evidence Rule 404(b) which says:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to

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show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Bolden appealed his conviction claiming that the trial court was wrong in allowing in the evidence of his sexual activity except for the very specific incidents charged in the indictment. The state contended that the acts were admissible under Evidence Rule 404(b) to show a common scheme or plan. This is the accepted rule in California. People v. Thomas, 20 Cal. 3rd 457, 143 Cal. Rptr. 215, 573 P.2d 433 (Calif. 1978). The Alaska Court of Appeals found that admissions of the defendant's previous similar sexual acts, with another victim, constituted inadmissible propensity evidence and therefore reversed his conviction.

By far the most troubling case is Brower v. State, \_\_\_\_\_ P.2d \_\_\_\_\_, Ct. App. Op. No. 656 (November 28, 1986), because this case changes the rules of evidence as they relate to sexual abuse of minor cases but to no other offense. The court of appeals appears to be holding the state to a different standard, and a higher standard in sexual abuse cases than in any other type of criminal prosecution. The facts as set out by the court of appeals in Brower are:

John Brower was charged with several counts involving sexual misconduct. The convictions from which Brower appeals involves J.L.

J.L. testified to the grand jury that she was 16 years old at the time of the incidents. J.L. lived with Brower in Barrow.

J.L. testified before the grand jury about several incidents involving Brower. J.L. testified about an incident which occurred when he was watching TV in the living room of Brower's home. J.L. testified that Brower entered the room, approached J.L., and began to rub J.L. on the back and legs. J.L. allegedly told Brower to stop, but Brower continued, unbuckling J.L.'s belt. J.L. became scared and began wrestling with Brower. Brower then purported threw J.L. on the floor. J.L. picked up a metal coffee cup and threatened Brower, who then discontinued his advances. J.L. stated that he received a bruise from the fall. J.L. moved out of Brower's house for three days, then returned. The incident gave rise to Count IX, charging attempted first degree sexual assault, for which the jury convicted Brower of the lesser included offense of attempted second degree sexual assault.

J.L. also testified that Brower approached J.L. on one night as J.L. was going to sleep. Brower allegedly began to rub J.L.'s penis. No further testimony was presented. This incident gave rise to Count XI (second degree sexual assault).

At trial, J.L. testified regarding another incident describing Brower's actions: "he tried to hump on me so I told him no." However, J.L. totally recanted his description of the incident which had given rise to the sexual assault charge. The state successfully impeached J.L. with his grand jury testimony.

It is a longstanding rule in the prosecution of all forms of criminal activity that a witness, including the victim, may be impeached by his or her prior inconsistent evidence. The

impeachment evidence is to be considered by the jury as substantive evidence in the trial. The court of appeals recognized this rule in Van Hatten v. State, 666 P.2d 1047, 1050-51 (Alaska App. 1983), but decided in Brower that a new rule should prevail for sexual abuse cases. In Brower the court found that J.L.'s uncorroborated prior sworn testimony before the grand jury was an inconsistent statement with his testimony at trial and hence insufficient to convict Brower. The court reached this conclusion despite the evidence of witness tampering by Brower in sending J.L. a note prior to trial attempting to influence J.L.'s testimony.

The combination of budgetary cuts and changes in the procedural law by the court of appeals over the last three years has resulted in a decline in the number of child sexual abuse cases accepted for prosecution by the district attorney's offices across the state and it can be expected that the reduced budget

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of the Criminal Division of the Department of Law will substantially impair the state's ability to bring child abusers to justice.

Sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By: \_\_\_\_\_  
Richard Svobodny  
District Attorney



# SPEC

*Society to Prevent Exploitation  
of Children*

P.O. Box 3027

Homer, Alaska 99603

To HESS  
RE: Written testimony on H.B. 237

Dear sir or Madame,

I am sorry that I was not able to testify on behalf of SPEC's members and affiliates on 4/22/87 regarding HB237 due to an oversight on the moderators part. I would like the opportunity however to let you know how we feel on HB 237.

We are most concerned about victims and lack of justice on their part and/or the inability of the victim to have his/her "day in court". This is especially true of children as when they are victims the court system seems to put special road blocks in their way making it extremely difficult to be heard. According to the N.I.J. publication "When the Victim is a Child" over 90% of known sexual abuse cases do not go forward to prosecution.

In the Homer area of the 38 reported sexual abuse cases in 1986 three were unfounded and 35 were either partially or fully substantiated according to D.F.Y.S. Of these 35 cases only two went forward to prosecution. There are a number of reasons for this to include fear of the defendant, delayed reporting, children not able to pinpoint dates or times, age of the child, etc.

The upshot of all this is that we have in the State of Alaska a very big fiscal note in treating these victims and in a continuing cycle of crime. Since the average sexual abuser can molest up to 80 victims we have a problem in not identifying the abuser to the public thus not making it more difficult for him to continue his crime.

We therefore support HB 237 and others that make it possible for increased evidence to be entered into the courts. This hopefully will result in a greater number of prosecutions.

I would like to take the opportunity now to address Dana Fabes' remarks. I would suggest that she has misinterpreted the intent of section 6 or the "pattern of abuse aspect" of the legislation as she states it is "unconstitutional". Obviously this is not true as the jury still needs a unanimous decision that the act occurred at least three times. In fact the act may have occurred fifteen to two hundred times. We victims of crime are tired of hearing the twenty five cent catch word "unconstitutional" when we speak of equal rights for the victim under the law.

Where is the victim in the process? Why don't they have a constitutional right to be heard? Why is there no parity or justice for the child victim in our system?

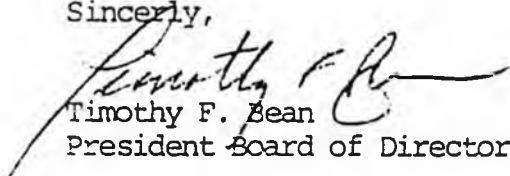
She also stated in her testimony that legislation regarding a "pattern of abuse" is not necessary because separate counts can be brought by establishing separate dates and times. She is disregarding a major stumbling block in the ability to prosecute as we, young children do not orient well to dates and times and many times it takes up to two years or more before disclosure is made on the part of the child.

In addressing her remarks on the need to differentiate between incest and other offenders, it is true that there appears to not be much difference in offenders, however "incest is not best". As the research and common sense dictates, incest is much more devastating to the victim than non-incestuous offenses. I can tell you from first hand experience about the "non-violent" crime of incest and how it creates the runaways on the streets of Alaska and how it puts 16 year old girls in the hospital with drug overdoses and attempted suicide by knife wounds. Non-violent? Give me a break. When a child's universe i.e. parent or parents or guardian turns against them they have no where to go. There is no way out, the adult-child trust relationship has been totally breached. A child may suffer very much who has been abused by a friend of the family, neighbor, baby sitter, etc. but usually they have the support of the parents. Because of the greater responsibility of parent and or guardian I feel this bill is a step in the right direction.

Lastly, when she states there is "no problem" regarding the ability to prosecute these cases, and cites the full prisons as her documentation, it is obvious she is not informed on the issue. Many of the three hundred people in the Homer area affiliated with SPEC can document the national statistics of only one in ten known sexual assault cases going forward to prosecution. We can document first hand the difficulties of this type of prosecution in a system that treats children with mistrust and expects them to perform as adults. Our statistics are much worse than the national average on lack of prosecution and on the frequency of abuse. These two things are undeniably linked.

Thank you for your time. Please find enclosed a brochure introducing SPEC and some legislative proposals we are currently working on.

Sincerely,

  
Timothy F. Bean  
President Board of Directors

When the Victim  
Is a Child



# Society to Prevent the Exploitation of Children

A group of parents and concerned citizens in Homer have formed a non-profit organization called Society to Prevent the Exploitation of Children (SPEC). Our fundamental purpose is to decrease the alarming number of child sexual abuse cases in our state. Our primary tool for accomplishing this will be public education and development of public awareness. Some of our specific goals are:

- Arranging workshops and seminars for professionals and lay people.
- Developing resource material for professionals and parents.
- Publicizing the unique plight of sexually victimized children.
- Advocating child safety and the child's absolute right to be free from sexual abuse and sexual exploitation.
- Monitoring the handling and disposition of child sexual abuse cases within the court system.
- Working to make the public and the legislature aware of legislation that will lessen the trauma of child victims in the courtroom and legislation that will help ensure that truly guilty offenders don't escape justice if at all possible.

Recent nationwide statistics show that one in every three or four children will become a victim of some type of sexual abuse or assault. This is alarming information, but even more appalling is the knowledge that more than ninety percent of all reported child sexual abuses cases never go forward to prosecution (according to the National Institute of Justice in Washington, D.C.). Since the average pedophile molests approximately eighty victims, the children are indeed between a rock and a hard place.

Legislative reform is an absolute necessity if we are to see a change in the way our children are handled in the courts. Other states are already ahead of Alaska in addressing this problem. Within our judicial system children are specially handicapped. First, the criminal justice system distrusts them and puts special barriers in the path of prosecuting their claims to justice. Second, the system seems indifferent to the legitimate special needs that arise from a child's participation in the courtroom.

We have researched child abuse legislation from many other states and have examined studies and recommendations from a variety of groups and governmental agencies. Legislation that we support for the 1987 session follows:

S.P.E.C.

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- (1) Remote closed-circuit testimony for child victims. Child sexual abuse victims would be allowed to testify from a room adjoining the courtroom and they would be present via live closed-circuit television. An advocate could be present with the child, but no one else. The judge, jury, defendant and attorneys could still observe the child and question her or him. The child would still see the courtroom scene. The only difference would be that the child would not be physically present; but this can mean all the difference in the world to an abused child. A "face to face" courtroom confrontation between a child victim and an adult defendant is inherently intimidating and unfair. This legislation can be written so as not to abridge the rights given in the 14th and 6th Amendments to the Constitution. As a part of this legislation we strongly support a competency law that would deem children automatically competent to testify and would leave in the hands of the jury the question of the child's veracity and the weight to be given to the child's testimony.
- (2) Hearsay exception law for certain statements. This law would allow the introduction at trial of certain types of statements made by the victim that, because of their very nature, are inherently reliable. This law would require a set of carefully crafted guidelines outlining the types of hearsay that would be admissible.
- (3) Sex offender registration. We support legislation that would result in all convicted sex offenders being required to report to local authorities their whereabouts within thirty days of moving. California has had this law since the 1950's. We know that offenders move often and this law would be a deterrent to their re-offending. We feel that this law would be especially important in a state as spread out as Alaska but with such a small population base. Coupled with this legislation would be a law requiring a check for sex offense convictions for professionals working with children (i.e. this check would be required before a teacher could be certified by the state certification board to teach in Alaska).

Please help us accomplish our goal of child safety. Let your legislator know that you support such laws. Many of our members are parents of children who have been victimized by sexual abuse; if you need to talk to someone who has experienced this pain please contact us. And if you are able, support our effort by joining SPEC.

S.P.E.C.

SOCIETY TO PREVENT THE EXPLOITATION OF CHILDREN

Summary of goals and objectives in the area of legislation dealing with child sexual abuse.

The following issues represent a random compilation and are not intended to be presented in any order of perceived importance.

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#### MANDATORY RECORD CHECKS

Professionals dealing with child molesters have learned that offenders will often seek out activities which will bring them into frequent contact with children. Criminal history checks should be required for all teachers in Alaska (before they are allowed into the classroom) and for all licensed day care providers. This criminal history check must be accomplished through the use of fingerprint cards in order to be effective. The only truly reliable way to check a person's criminal record is by having a set of applicant fingerprint cards which can be sent to the F.B.I. We feel that it would be possible to implement a system whereby other criminal history entries (for crimes other than sex offenses) are not disclosed to the school district.

#### EXTENDING THE STATUTE OF LIMITATIONS FOR CHILD ABUSE

It is common for victims of child sexual abuse to hide the fact of the molestation for years. Offenders frequently use threats or intimidation to ensure the victim's silence. Prosecution should not be impossible merely because the offender was successful in silencing the victim for a period of time. Although most other crimes cannot be prosecuted unless an arrest has occurred within a certain amount of years (usually 3 to 5 years for felonies) the reality of molestation requires a much longer period (perhaps 10 years) within which charges may be brought against an offender.

#### VICTIM ADVOCATE PROVISION

A child victim should be allowed to have a person present during any testimony (including Grand Jury) for moral support. Legislation should also allow the courtroom to be cleared of spectators, in legally appropriate cases, while a child victim is testifying.

#### REMOTE VICTIM TESTIMONY

The United States Constitution gives all criminal defendants the right to confront and cross-examine all witnesses against them. Nevertheless, child abuse cases are unique in that the victim is a child and children are obviously going to be traumatized by the ordeal of facing their abuser in an intimidating courtroom

REMOTE VICTIM TESTIMONY, (cont.)

setting and then undergoing cross-examine, often more than once. We recognize that a fair trial requires that the child provide testimony and undergo examination by defense counsel and be visible and audible to the judge, jury, defendant and counsel. We feel that the requirements of the Constitution, and of a fair trial, would be met by having the child victim give testimony from a room adjacent to the courtroom and via closed circuit television. The only difference here is that the person is not physically present on the witness stand; the witness can be seen and heard and questioned remotely. Conversely, the witness can also see the attorneys, defendant, jury and judge. Many courts throughout the country now utilize closed-circuit television for court proceedings, including the arraignment of defendants (who remain in the correctional facility and are arraigned by a judge via closed circuit television).

OFFENDER REGISTRATION

Some states require convicted sex offenders to register with local police wherever they go and both statewide and local records are kept. Only law enforcement and the courts have access to these records. California has had such a law since the 1950's and it has withstood constitutional challenges. This law becomes more important as we realize that treatment specialists still do not know the underlying root cause of child sexual abuse. We know that offenders frequently reoffend and tend to be very mobile, traveling to avoid detection and come into contact with other victims.

PAYMENTS FOR VICTIM TREATMENT

If payment is not a means of avoiding imprisonment, convicted molesters should be required by statute to reimburse the victim or the state for the cost of victim counseling or treatment made necessary by the abuse.

QUALIFICATION OF CHILDREN AS WITNESSES (COMPETENCY)

Children of any age should not have to "qualify" at a hearing before being allowed to testify. A child's competency should be a matter for the jury to weigh. Currently, adults who may be murderers, perjurers or habitual liars do not have to specially qualify in order to provide testimony; nor should children. Legislation should establish that all child victims are competent to testify. Only the jury should decide the truthfulness and accuracy of a witnesses' testimony.

page three/SPEC legislative objectives

#### CHILD VICTIM HEARSAY

In situations where a child victim made a statement describing a sexual act, under circumstances strongly indicating the statements reliability, the statement should be used as evidence, particularly where the child is too psychologically traumatized to testify.

#### PRESUMPTIVE SENTENCING

The State of Alaska should retain, in its original form, mandatory jail sentences for first degree offenses. The State Court of Appeals has recently begun handing down reversals of major child abuse cases involving presumptive sentencing. The Court of Appeals has said that the presumptive sentencing legislation is not clear on several issues. The legislature should act speedily to clean up any problem areas in the legislation so that the intent of the original legislation is carried out by the courts. Additionally, the legislature should recognize that eight year presumptive sentences have had the side effect of causing numerous plea bargains resulting in second degree convictions. While this is often a desirable disposition (frequently sparing the victim the trauma of a trial and ensuring a conviction), it also frequently results in little or no jail time. Recognizing that treatment programs generally take at least two or three years, and that jail time can be an effective deterrent, we advocate a presumptive sentencing law that would require jail sentences of two to three years for convictions of sexual abuse of a minor in the second degree (AS11.41.436). This would have the added benefit of separating the offender from any children at least for the period of time that the offender is in custody.

#### MANDATED PUBLIC SCHOOL PROGRAMS

Legislation should require and fund school programs which involve educating children to recognize, report and avoid sexual abuse and abduction. Educating children about sexual abuse and what to do about it is our best way of breaking the cycle of child sexual abuse.

#### DIVERSION OF CHILD MOLESTERS

Diversion should be specifically forbidden in all classes of child sexual abuse. Diversion involves the prosecutor agreeing to forego prosecution if the offender enters into an agreement where he/she promises to abide by certain conditions, i.e. receiving treatment.

page four/SPEC legislative objectives

SPECIALIZED INVESTIGATION AND PROSECUTION

Legislation should create and fund a task force(s) of specially trained investigators and prosecutors within the Department of Law who would be responsible for prosecution of most child abuse cases in the state. Such units would utilize "vertical prosecution" (the same prosecutor at all stages), limited plea bargaining and other techniques designed to increase the chances of conviction and imprisonment of the offender while minimizing the trauma to the victim(s).

# HOUSE COMMITTEE REPORT

(7)

Date referred: 4/1/87

FURTHER REFERRALS: Judiciary  
Finance

DATE: 5/1/87

The Health, Education and Social Services Committee has considered HB 237

"An Act relating to murder, assault, and the physical and sexual abuse of children; the admissibility of certain evidence in criminal prosecutions; amending Rule of 404 of the Alaska Rules of Evidence; and providing for an effective date."

**RECOMMENDS:**

- replace with CSHB 237 (HESS)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

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**SIGNING OTHER RECOMMENDATIONS:**

George Vanley - No Rec

John Ellis - no rec

Steve Korman - no rec

Bill Huds - No Rec

McKinnon - No rec.

Paul E. Collins - No Rec

David Buly - No Rec

Steve Korman

CO-Chairman's signature

Paul E. Collins

HB 237 An Act relating to murder, assault, and the physical and sexual abuse of children; the admissibility of certain evidence in criminal prosecutions; amending Rule 404 of the Alaska Rules of Evidence; and providing for an effective date.

#### File Contents

- 1) Copy of HB 237
- 2) Zero Fiscal Note, Public Defender Agency, 4/8/87
- 3) Zero Fiscal Note, Office of Public Advocacy, 4/9/87
- 4) Fiscal Note, Department of Corrections, 4/21/87, with analysis
- 5) Remarks to House by Representative Ulmer, 3/27/87
- 6) Department of Law letter, 2/11/87, re Impact of FY 88 budget on sexual abuse cases
- 7) Legislative Affairs Agency Memo, 4/1/87
- 8) Public Defender Agency letter, 4/9/87
- 9) Zero Fiscal Note, Department of Law, 4/23/87
- 10) Letter, Gilmore & Feldman to Niilo Koponen, 4/9/87
- 11) CS for HB 237 (HESS), Levy 4/30/87

5-0809L ✓  
Levy  
4/30/87

Original sponsors: Ulmer, Hudson,  
Grussendorf, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 237 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to murder, assault, and the physical  
7 and sexual abuse of children; amending Rule 404 of  
8 the Alaska Rules of Evidence; and providing for an  
9 effective date."

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

11 \* Section 1. AS 11.41.110(a) is amended to read:

12 (a) A person commits the crime of murder in the second degree if

13 (1) with intent to cause serious physical injury to another  
14 person or knowing that the conduct is substantially certain to cause  
15 death or serious physical injury to another person, the person causes  
16 the death of any person;

17 (2) the person knowingly engages in conduct [INTENTIONALLY  
18 PERFORMS AN ACT] that results in the death of another person under  
19 circumstances manifesting an extreme indifference to the value of  
20 human life; [OR]

21 (3) acting either alone or with one or more persons, the  
22 person commits or attempts to commit arson in the first degree, kid-  
23 napping, sexual assault in the first degree under AS 11.41.410(a)(1)  
24 or (2), sexual assault in the second degree, burglary in the first  
25 degree, escape in the first or second degree, or robbery in any degree  
26 and, in the course of or in furtherance of that crime, or in immediate  
27 flight from that crime, any person causes the death of a person other  
28 than one of the participants; or

29 (4) under circumstances manifesting an extreme indifference

1 to the welfare of a child under the age of 16, the person engages in a  
2 pattern or practice of abuse or gross neglect of the child that re-  
3 sults in the death of the child.

4 \* Sec. 2. AS 11.41.110 is amended by adding a new subsection to read:

5 (c) In this section, "abuse or gross neglect" includes inten-  
6 tional bodily impact, restraint, confinement, administration of lethal  
7 chemicals or drugs that create a substantial and unjustifiable risk  
8 that the child will suffer serious physical injury, or knowingly  
9 exposing the child to conditions which create a substantial risk that  
10 the child will suffer serious physical injury due to burns, hypother-  
11 mia, or suffocation.

12 \* Sec. 3. AS 11.41.200(a) is amended to read:

13 (a) A person commits the crime of assault in the first degree if  
14 (1) that person recklessly causes serious physical injury  
15 to another by means of a dangerous instrument;

16 (2) with intent to cause serious physical injury to anothe-  
17 er, the person causes serious physical injury to any person; [OR]

18 (3) the person knowingly engages in conduct [INTENTIONALLY  
19 PERFORMS AN ACT] that results in serious physical injury to another  
20 under circumstances manifesting extreme indifference to the value of  
21 human life; or

22 (4) the person engages in a pattern or practice of abuse or  
23 gross neglect of a child under the age of 16 that results in serious  
24 physical injury to the child.

25 \* Sec. 4. AS 11.41.200 is amended by adding a new subsection to read:

26 (c) In this section, "abuse or gross neglect" includes inten-  
27 tional bodily impact, restraint, confinement, administration of lethal  
28 chemicals or drugs that create a substantial and unjustifiable risk  
29 that the child will suffer serious physical injury, or knowingly

1 exposing the child to conditions which create a substantial risk that  
2 the child will suffer serious physical injury due to burns, hypo-  
3 thermia, or suffocation.

4 \* Sec. 5. AS 11.41 is amended by adding new sections to read:

5 Sec. 11.41.441. REPEATED SEXUAL ABUSE OF A MINOR IN THE FIRST  
6 DEGREE. (a) A person commits the crime of repeated sexual abuse of a  
7 minor in the first degree if, being 16 years of age or older and  
8 having authority over a child under the age of 13, the person engages  
9 in a pattern or practice of sexual penetration with a child who is  
10 under 13 years of age or aids, induces, causes, or encourages a person  
11 who is under 13 years of age to engage in a pattern or practice of  
12 sexual penetration with another person.

13 (b) Repeated sexual abuse of a minor in the first degree is an  
14 unclassified felony and is punishable as provided in AS 12.55.

15 Sec. 11.41.442. REPEATED SEXUAL ABUSE OF A MINOR IN THE SECOND  
16 DEGREE. (a) A person commits the crime of repeated sexual abuse of a  
17 minor in the second degree if, being 16 years of age or older and  
18 having authority over a child under the age of 16, the offender

19 (1) engages in a pattern or practice of sexual penetration  
20 with a child who is 13, 14, or 15 years of age and at least three  
21 years younger than the person, or aids, induces, causes, or encourages  
22 a child who is 13, 14, or 15 years of age and at least three years  
23 younger than the person to engage in a pattern or practice of sexual  
24 penetration with another person; or

25 (2) engages in a pattern or practice of sexual contact with  
26 a child who is under 13 years of age or aids, induces, causes, or  
27 encourages a child under 13 years of age to engage in a pattern or  
28 practice of sexual contact with another person.

29 (b) Repeated sexual abuse of a minor in the second degree is a

1 class A felony.

2 \* Sec. 6. AS 11.41 is amended by adding a new section to read:

3 Sec. 11.41.444. REPEATED SEXUAL ABUSE OF A MINOR IN THE THIRD  
4 DEGREE. (a) A person commits the crime of repeated sexual abuse of a  
5 minor in the third degree if

6 (1) being 16 years of age or older and having authority  
7 over a child under the age of 16, the person engages in a pattern or  
8 practice of sexual contact with a child who is 13, 14, or 15 years of  
9 age and at least three years younger than the person, or aids, in-  
10 duces, causes, or encourages a child who is 13, 14, or 15 years of age  
11 and at least three years younger than the person to engage in a pat-  
12 tern or practice of sexual contact with another person; or

13 (2) being under 16 years of age and having authority over a  
14 child under the age of 13, the person engages in a pattern or practice  
15 of sexual penetration or sexual contact with a child who is under 13  
16 years of age and at least three years younger than the person.

17 (b) Repeated sexual abuse of a minor in the third degree is a  
18 class B felony.

19 \* Sec. 7. AS 11.41.445 is amended to read:

20 Sec. 11.41.445. AFFIRMATIVE DEFENSES [GENERAL PROVISIONS]. (a)  
21 In a prosecution under AS 11.41.434 - 11.41.444 [AS 11.41.434 - 11.-  
22 41.440] it is an affirmative defense that, at the time of the alleged  
23 offense, the victim was the legal spouse of the defendant unless the  
24 offense was committed without the consent of the victim.

25 (b) In a prosecution under AS 11.41.410 - 11.41.444 [AS 11.-  
26 41.410 - 11.41.440], whenever a provision of law defining an offense  
27 depends upon a victim's being under a certain age, it is an affirma-  
28 tive defense that, at the time of the alleged offense, the defendant  
29 reasonably believed the victim to be that age or older, unless the

1 victim was under 13 years of age at the time of the alleged offense.

2 \* Sec. 8. AS 11.41 is amended by adding new sections to read:

3 ARTICLE 6. GENERAL PROVISIONS.

4 Sec. 11.41.600. PATTERN OR PRACTICE. In a prosecution under  
5 this chapter for an offense that includes as one of its elements that  
6 a person engaged in a "pattern or practice" of conduct toward a child

7 (1) it is not necessary that the person be separately  
8 charged with specific incidents of prohibited conduct; however, prose-  
9 cution for separate incidents is not precluded;

10 (2) to support a conviction, each juror in a jury trial  
11 must be convinced beyond a reasonable doubt that at least three inci-  
12 dents of prohibited conduct occurred, but the jury need not be unani-  
13 mous as to particular incidents;

14 (3) if a person who is separately charged with a specific  
15 incident of prohibited conduct is found not guilty of an incident,  
16 that incident may not be relied upon to establish the pattern or  
17 practice; and

18 (4) incidents occurring before the effective date of the  
19 law establishing the offense may be used to establish the pattern or  
20 practice as long as there was at least one incident that occurred  
21 after the effective date of the law.

22 Sec. 11.41.610. DEFINITIONS. In this chapter

23 (1) "having authority over a child" means

24 (A) the child is entrusted to the person's care by  
25 authority of law;

26 (B) the child is the person's son or daughter, includ-  
27 ing an illegitimate or adopted child, or a stepchild;

28 (C) the person resides as a member of a social unit in  
29 the same household as the child; or

1 (D) the child has been temporarily entrusted to the  
2 person's care;

3 (2) "pattern or practice" means three or more incidents of  
4 the prohibited conduct.

5 \* Sec. 9. AS 11.81.250(a) is amended to read:

6 (a) For purposes of sentencing under AS 12.55, all offenses  
7 defined in this title, except murder in the first and second degree,  
8 sexual assault in the first degree, sexual abuse of a minor in the  
9 first degree, repeated sexual abuse of a minor in the first degree,  
10 misconduct involving a controlled substance in the first degree, and  
11 kidnapping, are classified on the basis of their seriousness, accord-  
12 ing to the type of injury characteristically caused or risked by  
13 commission of the offense and the culpability of the offender. Except  
14 for murder in the first and second degree, sexual assault in the first  
15 degree, sexual abuse of a minor in the first degree, repeated sexual  
16 abuse of a minor in the first degree, misconduct involving a con-  
17 trolled substance in the first degree, and kidnapping, the offenses in  
18 this title are classified into the following categories:

19 (1) class A felonies, which characteristically involve  
20 conduct resulting in serious physical injury or a substantial risk of  
21 serious physical injury to a person;

22 (2) class B felonies, which characteristically involve  
23 conduct resulting in less severe violence against a person than class  
24 A felonies, aggravated offenses against property interests, or ag-  
25 gravated offenses against public administration or order;

26 (3) class C felonies, which characteristically involve  
27 conduct serious enough to deserve felony classification but not seri-  
28 ous enough to be classified as A or B felonies;

29 (4) class A misdemeanors, which characteristically involve

1 less severe violence against a person, less serious offenses against  
2 property interests, less serious offenses against public adminis-  
3 tration or order, or less serious offenses against public health and  
4 decency than felonies;

5 (5) class B misdemeanors, which characteristically involve  
6 a minor risk or physical injury to a person, minor offenses against  
7 property interests, minor offenses against public administration or  
8 order, or minor offenses against public health and decency;

9 (6) violations, which characteristically involve conduct  
10 inappropriate to an orderly society but which do not denote criminal-  
11 ity in their commission.

12 \* Sec. 10. AS 11.81.250(b) is amended to read:

13 (b) The classification of each felony defined in this title,  
14 except murder in the first and second degree, sexual assault in the  
15 first degree, sexual abuse of a minor in the first degree, repeated  
16 sexual abuse of a minor in the first degree, misconduct involving a  
17 controlled substance in the first degree, and kidnapping, is designat-  
18 ed in the section defining it. A felony under Alaska law defined  
19 outside this title for which no penalty is specifically provided is a  
20 class C felony.

21 \* Sec. 11. AS 12.55.035(b) is amended to read:

22 (b) Upon conviction of an offense, a defendant who is not an  
23 organization may be sentenced to pay, unless otherwise specified in  
24 the provision of law defining the offense, a fine of no more than

25 (1) \$75,000 for murder in the first or second degree,  
26 sexual assault in the first degree, sexual abuse of a minor in the  
27 first degree, repeated sexual abuse of a minor in the first degree,  
28 kidnapping, or misconduct involving a controlled substance in the  
29 first degree;

1 (2) \$50,000 for a class A, B, or C felony;

2 (3) \$5,000 for a class A misdemeanor;

3 (4) \$1,000 for a class B misdemeanor;

4 (5) \$300 for a violation.

5 \* Sec. 12. AS 12.55.125(i) is amended to read:

6 (i) A defendant convicted of sexual assault in the first degree,  
7 repeated sexual abuse of a minor in the first degree, or sexual abuse  
8 of a minor in the first degree may be sentenced to a definite term of  
9 imprisonment of not more than 30 years, and shall be sentenced to the  
10 following presumptive terms, subject to adjustment as provided in  
11 AS 12.55.155 - 12.55.175:

12 (1) if the offense is a first felony conviction and does  
13 not involve circumstances described in (2) of this subsection, eight  
14 years;

15 (2) if the offense is a first felony conviction, and the  
16 defendant possessed a firearm, used a dangerous instrument, or caused  
17 serious physical injury during the commission of the offense, 10  
18 years;

19 (3) if the offense is a second felony conviction, 15 years;

20 (4) if the offense is a third felony conviction, 25 years.

21 \* Sec. 13. Rule 404, Alaska Rules of Evidence, is amended by adding a  
22 new subsection to read:

23 (c) Notwithstanding (b) of this rule, in a prosecution for  
24 physical assault upon or sexual misconduct with a child under the age  
25 of 16, evidence of prior acts of the defendant involving the same or  
26 another victim is admissible to show the defendant's disposition to  
27 commit the offense.

28 \* Sec. 14. Section 13 of this Act is retroactive and applies

29 (1) to evidence of acts committed before the effective date of

1 this Act; and

2 (2) in trials involving offenses committed before the effective  
3 date of this Act.

4 \* Sec. 15. This Act takes effect immediately under AS 01.10.070(c).  
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HB

241

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:

May 8, 1987

HB 241      An Act providing for independent  
                 investigation of complaints against foster  
                 parents.

FILE CONTENTS

- 1)            Copy of HB 241
- 2)            Alaska Foster Parents Association position paper
- 3)            Alaska Foster Parents Association paper re fair  
                 hearing process
- 4)            Petition, AFPA
- 5)            Position Paper, DFYS, 5/4/87, with fiscal note




**Alaska State Legislature**  
**House of Representatives**  
COMMITTEE ON HEALTH, EDUCATION  
AND SOCIAL SERVICES

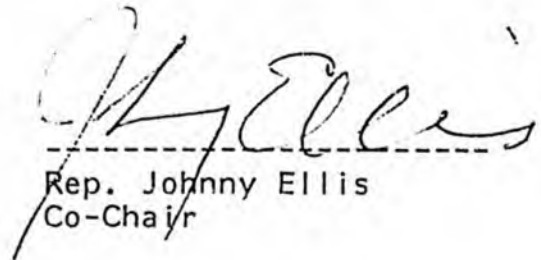
OFFICIAL BUSINESS

POUCHV  
JUNEAU, AK 99811  
465-3759

LETTER OF INTENT  
FOR CS HB 241 (HESS)

The Legislature intends that the Department of Health and Social Services shall adopt regulations which clarify that during emergency and regular investigations of complaints against foster homes, the authority for oversight of investigations shall be placed with the manager of the office in the region where the complaint was filed, with final determination the responsibility of the director of the Division of Family and Youth Services.

  
-----  
Rep. Niilo Koponen  
Co-Chair

  
-----  
Rep. Johnny Ellis  
Co-Chair

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

Bill Version : CSHB 241 (HESS)  
Publish Date : \_\_\_\_\_

**REQUEST:** \_\_\_\_\_  
Revision Date: \_\_\_\_\_  
Title: An Act providing for independent investigation of foster parents  
Sponsor: \_\_\_\_\_  
Requestor: \_\_\_\_\_

Agency Affected: DH&SS  
BRU: Social Services  
Components: \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>		- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
<b>CAPITAL</b>		- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
<b>REVENUE</b>		- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Yvonne M. Chase, Director *AMC* Phone: 465-3170  
Division: Family & Youth Services Date: May 6, 1987  
Approved by Commissioner: Myra M. Munson, Commissioner *Myra M. Munson* Date: \_\_\_\_\_  
Agency: Health & Social Services

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

Proposed Amendment to CSHB 241 (HESS)

Submitted by the Department of Health and Social Services

AS 47.35 is amended by adding a new section to read:

Sec. 47.35.065. INVESTIGATION OF COMPLAINTS. Except in emergency situations when only the licensing employee is available, a complaint filed with the department concerning a foster home may not be investigated by the employee who licensed the foster home against which a specific complaint has been filed.

\* \* \* \*

Proposed intent language:

The Legislature intends that the Department of Health and Social Services shall adopt regulations which clarify that during emergency and regular investigations of complaints against foster homes, the authority for oversight of investigations shall be placed with the manager of the office in the region where the complaint was filed, with final determination the responsibility of the director of the Division of Family and Youth Services.



# Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508

## COMPLAINT INVESTIGATIONS OF FOSTER HOMES 1987



FEB 13 1987

A continuing priority of Alaska Foster Parent Association since 1980, this problem must be at least partially addressed by the legislature. This is an extremely complex issue because it deals with not only child abuse and neglect allegations, but violations of regulations that can be interpreted in numerous ways, and that foster parents fall under special rules that do not apply to most families.

**POSITION:** Legislation and agency policy must be developed that deals with the many facets of this complex problem. Resolutions must include the recognition of the unique positions of foster parents--a position that is different than any other situation including parenting and day care. Since the Division of Family & Youth Services is responsible for enforcing child protection law and administering and supervising the foster care program, certain conflicts of interest exist. A separate individual or agency must be established in each area to investigate complaints against licensed homes and report directly to DFYS with their findings and recommendations for any further action.

Needing to be clarified are the intent of regulations, what foster parents can be investigated for, the difference between a concern and a complaint, defining abuse (which is interpreted different in foster homes than in biological families), implementation of complaint investigation procedures, and when foster children are to be removed and replaced in the foster home

### JUSTIFICATION:

It must be made clear that AFPA, under no circumstances condone child abuse or neglect or flagrant disobedience to foster care regulations. However, we do believe in the innocence of individuals until proven otherwise and their right to a fair, unbiased investigation and hearing. We also feel foster parents have the right to clear, consistent, and known expectations and support from the agency they serve. Children and youth are sometimes severely hurt when they are moved and this damage can be more destructive than the concern that began the process. The community and various agencies do not recognize the vulnerability of foster parents to false reports from children, parents, the community, or inter-agency. Foster parents are in a unique position that is not matched anywhere and yet, as licensed facilities, should have the support and help of the agency they serve without compensation for time, knowledge, or efforts. The agency/worker conflict of interest is very apparent when the same worker who recruits, trains, licenses, and supports the foster parents and is their advocate within the agency becomes the investigator and prosecutor when any allegations are made against a foster home. Different areas of the state and even different workers interpret the regulations and incidences various ways. Foster parents are not sure what they can be investigated for and do not have the facts to be able to protect themselves. Investigations usually destroy the foster home and cause us to lose many valuable, experienced foster parents each year due to false allegations.

**FUNDING:** No additional funds are needed.



# Alaska Foster Parents Association

P. O. BOX 8651 • ANCHORAGE, ALASKA 99508



## CHILD ABUSE/NEGLECT ALLEGATIONS IN FOSTER/ADOPTIVE FAMILIES

1986

**PROBLEM:** Foster families and adoptive families are especially vulnerable to reports of abuse/neglect as outlined on the following page in the POLICY STATEMENT.

The Division of Family & Youth services, responsible for all such complaints, their investigations and disposition, does not recognize the vulnerability of foster parents from the children, community, or inter-agency reports. Foster/adoptive parents are often investigated in ways that ruin their reputation on their job, at church, with friends and neighbors, or with the children. Since foster/adoptive families are working to raise children with special needs and problems it is often necessary to use behavior management techniques not known or understood even by the social worker, but accepted in institutions, group homes, and by "professionals".

**RECOMMENDATIONS:** Provide for a "screening process" to assure that only valid complaints are investigated.

Establish an independent individual, agency to conduct the investigation; relate their findings to DFYS for appropriate action.

Recognize the conflict of interest that exists when the agency that investigates then licenses foster parents (and does home studies and places adoptive children) & provides supervision becomes the investigator when complaints of child abuse/neglect or regulation violations are logged.

Enclosed: Position Statement accepted by the Alaska Foster Parent Association 12-10-84  
Resolution accepted by Alaska Foster Parent Assn, chartered local associations, and individual foster parents 3-83

## POSITION STATEMENT

### RE: CHILD ABUSE/NEGLECT ALLEGATIONS IN FOSTER/ADOPTIVE FAMILIES

The Alaska Foster Parent Association, herein referred to as AFPA, is an organization of foster child care workers and concerned citizen. We are extremely concerned about the increasing number of allegations of child abuse/neglect among foster/adoptive parents. This problem is apparent in Alaska and throughout the country.

Under no circumstances do we condone child abuse/neglect in any family. However, we recognize there are circumstances which make some foster/adoptive families especially vulnerable to reports of abuse/neglect and susceptible to misjudgments. These circumstances are as follows:

Children who have experienced the uncertainties and insecurities of years of foster care, often with multiple moves, have been damaged in ways which affect their behavior for years. Many children who have suffered such damage have learned maladaptive or anti-social coping behaviors, thus are manipulative, unable to trust, lack a sense of honesty and responsibility, and are deficient in many areas of their development.

Such children, due to their histories, typically behave in ways which jeopardize the security and stability of the families diligently striving to undo some of the damage of the past and to help the children develop more appropriate and socially acceptable behaviors. These children often lie and play on the responses of other adults who do not view their behaviors in the context of the children's prior experiences. Some children deliberately hurt those who offer help and try to destroy close relationships. After a sequence of adult rejections, they cannot accept that others care about or love them. It is not uncommon for the children themselves to make false reports of abuse/neglect in an effort to control adult behavior or to deal with fears of close relationships.

Foster/Adoptive parents of difficult or emotionally disturbed children are often subjected to community scrutiny and suspicion that biological families do not experience. Foster/adoptive families are sometimes highly visible in their communities due to their size or composition. Many people do not understand why someone would choose to adopt/foster older children, large numbers of children, children with handicapping conditions or negative histories. Hence, they are suspicious of the parents' motives.

This lack of understanding can also apply to the agencies responsible for investigations of alleged abuse/neglect. In addition, agency standards for investigations are not uniform in practice nor necessarily of high quality. Protective services workers may be untrained or inexperienced. Workers may not be familiar with the complexities of the pathologies displayed by the children and the stresses they bring to family living.

The child's psychological, medical, and educational records may not be considered in an investigation. Appropriate child management techniques and therapeutic interventions may be viewed out of context by those not familiar with their purposes. Unsubstantiated charges can go unchallenged, and the Alaska standard in child abuse/neglect investigations can result in overly subjective decisions.

Due to these factors, foster/adoptive parents can be unfairly targeted and unduly stressed. Instead of receiving support and assistance from the community, they may be forced to expend their energies on defending themselves rather than getting on with their parenting job.

Parents who have foster and adopted children join with all parents in seeking acceptance and support from their communities. We share a commitment to our children and a belief in the value of family life. Above all, we seek the health and well-being of all of our children. Therefore, we support the following:

1) Increased efforts to identify child abusers/neglectors to assure that all children are safe and that their parents provide nurturing environments.

2) Increase preventive, corrective, and rehabilitative services. All parents must have continuous opportunities to learn about and improve parenting skills. Community agencies must provide on-going and widely publicized programs. Young people must have instruction in the area of children's psychological and physical needs in order to prepare them for parenting.

3) Provision of on-going support and educational services to parents adopting or providing foster care for children with special needs. We encourage Social Services Departments to use Preventive Services monies and resources in order to prevent the disruption of families with special needs children.

4) Higher standards for the selection of protective services workers and increased training requirements. Continuing education must be provided concerning adoptive and foster families and the behaviors presented by some adoptive and foster children. Workers must be required to include in their investigations all historical information on the child as well as testimony from knowledgeable therapists, educators, and medical resources.

5) Appropriate legislation or regulation to assure the above.



Alaska Foster Parent Assn.



# Alaska Foster Parents Association

P. O. BOX 8651 • ANCHORAGE, ALASKA 99508



## RESOLUTION

Whereas foster parents are a valuable resource to the community and the Division of Family and Youth Services in taking full day to day responsibility for over 840 children in foster care;

Whereas foster parents save the State of Alaska an average of \$101. per day per child equalling over \$30,000,000. yearly over institutional care;

Whereas foster parents volunteer their services, for which they are not paid, to the Division of Family and Youth Services and other child placing agencies;

Whereas foster parents are putting themselves in a vulnerable position by taking children and youth who often have problems either due to separation from their families or the circumstances leading up to their separation resulting in angry, hurt, rebellious, often disturbed youngsters;

Whereas foster parents are licensed by the Division of Family and Youth Services and the Division therefore has some responsibility to those foster parents who have been screened and selected as suitable parents;

BE IT RESOLVED that when complaints against foster parents come to the attention of the Division of Family and Youth Services or other child placing agencies, they need to be handled in a sensitive and straightforward manner taking into account the valuable, volunteer services given by foster parents and the vulnerable position they may be in. Complaints against foster homes will be handled in the same manner as complaints against other parents in the community--with sensitivity, a thorough and confidential investigation starting with notifying and discussing the complaint with the foster family, assessing the nature of the complaint, giving foster parents notice of the procedure to be followed and appraised of their rights, and not removing children/youth until the establishment of proof equalling that which would result in removal of a child from his natural family.

Upon acceptance of this position the Division of Family and Youth Services and Alaska Foster Parent Assn. will jointly develop a written procedure for investigating complaints against foster homes using the above positions.

ACCEPTED BY

  
for Alaska Foster Parent Assn.  DATE

FOR Division of Family & Youth DATE

Resolutions pg



*Miriam Seaman*  
745-7797

## Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508



FEB 13 1987

*Let them know if DFYS  
day is a teleconf.*

FAIR HEARING PROCESS FOR FOSTER PARENTS & OTHERS 1987

*Send letter of thanks*

### POSITION:

A resolution or legislation must be passed allowing for a workable, realistic fair hearing/appeal process for foster parents, parents, and children/youth when they have unresolved difficulties with the agency.

### JUSTIFICATION:

In the teamwork approach to services, as outlined under Title IV-E, foster parents are part of the team working to help children/youth and their families. Foster Parents live and deal with the child in their home 24 hours a day and come to know and understand that child—his needs, desires, feelings, and actions; the worker may see the child occasionally. The foster parent often has information and knowledge that would help make the best decisions for children, but that knowledge may not be solicited when decisions are made. Parents and children are also part of the decision-making process and have information and desires that must be taken into account. When this shared decision-making does not take place, disagreements can arise that cannot be resolved in an informal method, especially when the child, parents, and foster parents are put in a vulnerable position by their disagreement. Parents and foster parents alike have complained of children being moved or children not being placed in their homes because they disagreed with the worker, tried to resolve a difficulty by following the chain of command, or by advocating for the needs of the child.

To enhance the agencies ability to make decisions in the best interests of children/youth and families, others must be involved in information sharing and decision-making. This also enhances accountability of the agency to the public. Foster parents, parents, and children must have an established, workable procedure to follow that gives them a fair and unbiased hearing.

**HISTORY:** This problem was identified in 1977 with work groups developing the procedure in 1978-79. In 1981 a Senate resolution was introduced to mandate such a procedure and DFYS developed the METHOD FOR RESOLVING DIFFERENCES which was recinded in 1985. This METHOD was not workable as foster parents were prevented from using it in every instance known to AFPA. Concerns were tracked in 1985 and a procedure was promised to foster parents, which has never materialized. Several drafts were proposed, but foster parents who tried to use the procedure found that when they put in for a hearing, the procedure had changed.

**FUNDING:** No funding should be needed

Introduced: 2/17/81  
Referred: Health, Education  
& Social Services

1 IN THE SENATE

BY PARR

2 SENATE CONCURRENT RESOLUTION NO. 11

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 Relating to conflicts between foster  
6 parents, <sup>parents, and children</sup> and social workers.

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

8 WHEREAS the use of well-qualified foster homes is an essential component  
9 of the state's system of child care; and

10 WHEREAS foster parents often have a much better opportunity to observe  
11 the children under their care than do social workers assigned to the case;  
12 and

13 WHEREAS there are occasions in which the experience and observations of  
14 the foster parents are not given sufficient credence; and

15 WHEREAS there is a need to insure that foster parents recommendations  
16 are considered when crucial decisions affecting the child are made;

17 BE IT RESOLVED by the Alaska State Legislature that the Governor is  
18 respectfully requested to direct the Department of Health and Social Services  
19 to establish a procedure for the mediation of conflicts between foster  
20 parents and social workers by a disinterested person in which both the  
21 social worker and the foster parents participate.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_  
 Revision Date: \_\_\_\_\_  
 Title: An Act providing for independent investigation of foster parents  
 Sponsor: House HESS  
 Requestor: \_\_\_\_\_

Bill Version: HB No. 241  
 Publish Date: \_\_\_\_\_

Agency Affected: DH&SS  
 BRU: Social Services

Components: Southcentral Region

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		129.6	129.6	129.6	129.6	129.6
TRAVEL		30.0	30.0	30.0	30.0	30.0
CONTRACTUAL		2.0	2.0	2.0	2.0	2.0
SUPPLIES		0.5	0.5	0.5	0.5	0.5
EQUIPMENT		1.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		163.1	162.1	162.1	162.1	162.1

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		35.9	34.9	34.9	34.9	34.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: *Yvonne M. Chase* Director  
 Division: Family & Youth Services

Phone: 465-3170  
 Date: April 23, 1987

Approved by Commissioner: *Myra M. Munson* Commissioner  
 Agency: Health & Social Services

Date: 4-23-87

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 No. 241

### Cost Analysis

Personal Services: four PFT Social Worker III, two located in Anchorage, one in Fairbanks, one in Juneau - \$129.6

Travel: travel to investigate complaints in communities outside three major urban areas where staff would be located - \$30.0

Contractual: communications, printing, mailings, duplication - \$2.0

Commodities: materials (e.g., paper, office supplies) - \$0.5

Equipment: office furniture (e.g., desk, chair) - \$1.0

4-23-87

my name is Larky Spurgeon  
Rt 2 Box 102  
Ketchikan AK.

I am the President of the Alaska Foster Parent Assoc.

I cannot be present at the testimony of Bills 241 & 242. So I would like to take this time to urge to support these 2 Bills.

Gov Bill 241 - there has <sup>almost</sup> always been a conflict of interest with the policy as it is for licensing workers to ~~investigate~~ investigate foster homes.

In case of a complaint against a supervisor there definitely need to be a change in policy.

Bill 242 -

is of utmost importance to have quality Foster homes & keep retention - AFPA cannot stress enough the importance we feel to support this Bill.

Mr. Chairman and Committee members:

Thank you for this opportunity to request your support of HB 241 providing for independent investigations of Foster Homes.

This is an extremely complex issue because it deals with not only child abuse and neglect allegations, but violations of regulations that can be interpreted in numerous ways.

It must be made clear that Alaska Foster Parent Assn., under no circumstances condones child abuse, neglect, or flagrant disobedience to Foster care regulations. However, we do believe in the innocence of individuals until proven otherwise and their right to a fair and unbiased investigation and hearing. We also feel foster parents have the right to clear, consistent, and known expectations and support from the agency they serve and that licenses them. There must be recognition of the unique positions of foster parents--a position that is different than any other situation including day care and parenting.

HB 241 addresses part of the concern--which is the conflicts of interest that can occur when the same worker who recruits,

trains, licenses, and support the foster parents, and is their advocate within the agency suddenly becomes the investigator and prosecutor when any allegations are made against a foster home--even if those allegations are made by that same worker! Currently the licensing or social worker who conducts the investigation must have the concurrence of their supervisor as to the findings of the investigation. These facts leave open the possibility of misuse of the complaint and investigation procedure.

The primary way to reduce this conflict of interest and insure fairness and justice is to establish a separation between the functions of recruitment, licensing, training and investigations. We see HB 241 as a major step in that direction. HB 241 would provide for investigations of foster homes to be completed by persons who work under the direct supervision of the Director of DFYS and not involved in recruitment, licensing, training, or support of foster homes, although they must be knowledgeable about foster care.

When HB 241 passes, it could be implemented in several ways, depending on DFYS personnel and management decisions. We would suggest three alternatives:

1. A licensing worker from an area near to the foster parent, but not involved in any way with that foster home could investigate, but for purposes of the investigation would be under the supervision of the DFYS Director.
2. Have DFYS staff in each region who conduct investigations under supervision of the Director that go to

various locations.

3. Have a person in each major area that can conduct investigations and for that specific job are under the DFYS Director.

Your packets should include a copy of a petition signed at the statewide conference on foster care by 38 people, 11 representing their local foster parent association or agency that we hope you will consider. Each group offered to take the petition to their people for more individual signatures if desired.

Again, please support HB 241. We must insure that those people wishing to be licensed as foster parents retain their constitutional rights and receive fair, unbiased investigations and judgements by non-involved individuals.

Thank you.

Miriam Summer <sup>HW</sup>

4

PETITION

The following people respectfully request you to introduce a resolution requesting the Division of Family & Youth Services to clarify what foster parents can be investigated for, clarify regulations, and establish consistent policies for investigating foster homes.

We further request you to introduce legislation providing for a person or persons under the supervision of the Director of Division of Family & Youth Services to conduct investigations of foster homes when allegations are received, to insure fair and unbiased investigations of individuals licensed as foster parents. HB 241

We wish to clarify that we want investigations of legitimate allegations against foster homes to be conducted to insure the safety of children and youth. The requested legislation would only insure fair, unbiased, and consistent investigations and that foster parents had the opportunity to know what could be investigated and the procedure to be followed. Please see attached POSITION STATEMENT.

NAME	ADDRESS	PHONE	REPRESENTING.
M. Mark Routh	CRVA Drawer H Copper Center, AK	822-3291	Copper River Native Aca
Mary Hayano	Cnrh 99501	274-6484	
E. L. McDowell	1026 E. 11 <sup>th</sup> Ave Cnrch AK 99501		
Kim Brewer	3401 Shamrock	338-1127	
Susan H. Mayer	220 Oscar St Palmer AK	745-8163	
Shalene Peterson	20 Box 770821 Eagle River	694-6779	
Goma Lehman	5842 Lund Junction	780-4531	
Jennie Lindell	P.O. Box 134 Hoonah AK	945-3348	
William Bergraham	Box 9023 Ktn	225-4280	
Jacquie Sullivan	1788-1 <sup>st</sup> Ave Ktn	225-4378	
Della M. Dunkin	P.O. Box 3147 Ktn.	225-3855	Ktn FPA
Kyle Brown	314 Kenn. Ave, Ft Richmond	428-0814	Anch Y.S. FPA
James R. [Signature]	8509 Junction P. Junction AK	789-7075	Junction FPA
[Signature]	Box 0173 YTN	775 4751	KTN

(5)

NAME	ADDRESS	PHONE	REPRESENTING
Kathy Spangler	1912 B of 102 KTN AK	225-2057	AFPA President
Vred Thurston	Box 964 W19 AK 99929	874.3874	Wronski Local
Dee Cramer	10001 Arrow Anchorage	346-1727	AFPA
Welda Lucas	SR Box 7555-A Palmer	745-6871	AFPA/MSV FPA
Mary J. Lunde	820 Sed Nat Kenai 99611	283 3247	AFPA/Kenai FPA
Bebe L. Paul	516 N. 1 Ylerrin Anchorage, AK 99508	277-7770	AFPA
Louise Rodoni	2730 Britton Dr. 99504	333-2523	AFPA/AFCA
Kara Stomely	Box 788 Nome AK	443 2030	AFPA-Nome
Theresa Stomely	9237 Quest	789-2875	AFPA Juneau
Vicki Schell	SRB Box 9556-A Palmer AK	745-7089	AFPA-MSV ON
Patricia Herak	1749 Skelad Circle	337-7066	AFPA
Ann Buler	2730 Britton Dr Anchorage AK		AFPA
Judith West	4033 Deborah Ln. Juneau, AK.	789-1546	Juneau
Ann Buler	SRB 7026 Palmer AK 99645		Mat Sit Valley FPA
Tom Whelshue	588 Box 7471 Palmer	745-2036	

Mauro

Phone

6

Mariani, Samuel

SRB 9026 Palmer 745-7797

18 self  
14 organizations

52

POSITION PAPER

HOUSE BILL NO. 241

For an Act entitled: "An Act providing for the independent investigation of complaints against foster parents."

Concern with the possibility of abuse in out-of-home child care settings has been a focus of national attention for the past decade. The reality is that complaints against foster parents must be investigated. These cases are very complex and time consuming with few staff having the specialized training and knowledge required to handle these investigations. Experience and research have indicated that some professionals charged with these investigations may have a bias when the same person who licenses children in foster care is also responsible for investigating allegations of abuse in those settings. House Bill 241 addresses that concern.

While the Department agrees that such conflicts should be avoided and supports the intent of HB 241, the Department opposes placing absolute prohibitions against staff involving in recruitment or training investigating complaints in emergency situations. In a 1-3 person office, for example, if a complaint is filed and a decision made that the complaint must be investigated immediately, then staff from another office would need to put their caseload on hold and be temporarily assigned to investigate that complaint.

In addition, the Department has the following concerns regarding the language of the proposed bill:

1. A person who has provided training to foster parents may not have been involved in recruitment or licensing of that specific foster home.
2. The proposed bill indicates that complaints filed against a foster parent may only be investigated by someone under the direct supervision of the Director. The bill would unreasonably restrict management's ability to efficiently and effectively allocate staff requiring immediate supervision by the Director of the Division of Family and Youth Services of those staff assigned to investigate complaints about foster parents regardless of how minor the complaint or the location of the foster home. This is an overly broad approach to an issue which is fundamentally administrative in nature and can be best dealt with through administrative policies. Additional difficulties associated with having the investigator working under the direct supervision of the director include:
  - a. Even if a complaint investigator were stationed in each of the three regions, the Division does not have sufficient travel funds to allow an individual from one of the regional offices to travel to each of the smaller field offices whenever a complaint is received.
  - b. The Division presently does not have sufficient social workers to reduce the caseloads to the National recommendation (35 cases per worker) or the accepted standard for Alaska (50 cases per worker). To specify a number of positions and to change their job descriptions to Foster Home Complaint Investigator would

shift the existing child protection caseloads to other workers, thereby increasing the number of cases per worker.

- c. When a complaint against a foster parent involves allegations of abuse or neglect to the foster child(ren), the complaint must be referred to the police and the District Attorney's Office and criminal charges may result, as well as a decision by the Division to remove the children from that specific placement.
- d. With the possible exception of Anchorage, the number of complaints against foster parents per month do not require a full-time position. The regional offices report the following estimated number of complaints against foster parents in the last year: Southeastern: 4, Southcentral: 88, Northern: 28. (Total Statewide: 120). The number of complaints specifically in Anchorage was 64.

The Department currently has an investigation procedure which places the responsibility for the investigation of abuse complaints where children are in State custody with a team. The present investigation is joint between child protection workers, licensing workers, and police, if appropriate. Where abuse is not alleged, the investigation is usually handled by a licensing worker.

The Department is in support of the concept presented in this proposed bill and recognizes the potential conflict inherent in the present procedure. The Division of Family and Youth Services (DFYS) will make, by July 1, 1987, a change in their agency policy and procedures to reflect the following: "A complaint filed with the Department concerning a foster parent may be investigated only by a person who has not licensed the foster home against which a specific complaint is filed." The only exception to this policy would be in emergency situations in small offices like the example previously described. In every location oversight of the investigation would be placed in the regional office with a final sign-off by the Division Director.

This procedural change will accommodate the intent of this proposed bill without undue administrative burden and a costly fiscal note. Complaints will be assigned to a staff person or persons who fit the criteria above. This procedure will allow the Division to assign the investigation to someone locally without additional travel costs. Because Anchorage represents almost half of the State's population and has the largest office in the State, one position will be identified to handle Anchorage complaints.

RECOMMENDED:

*Yvonne M. Chase*  
Yvonne M. Chase, Director  
Division of Family  
and Youth Services

DATE:

*May 3, 1987*

APPROVED:

*Myra M. Munson*  
Myra M. Munson, Commissioner  
Department of Health  
and Social Services

DATE:

*May 4, 1987*

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

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

Bill Version : HB No. 241  
Publish Date : \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act providing for independent investigation of foster parents

Agency Affected: Health & Social Services  
BRU: Social Services

Sponsor: House HESS  
Requestor: \_\_\_\_\_

Components: Southcentral Region,  
Northern Region, Southeast Region

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

OPERATING	FY 87	FY 88	FY 89	FY 90	-Y 91	FY 92
PERSONAL SERVICES		190.5	190.5	190.5	190.5	190.5
TRAVEL		30.0	30.0	30.0	30.0	30.0
CONTRACTUAL		5.0	5.0	5.0	5.0	5.0
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT		3.1	3.1	3.1	3.1	3.1
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>199.6</b>	<b>199.6</b>	<b>199.6</b>	<b>199.6</b>	<b>199.6</b>

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND		199.6	199.6	199.6	199.6	199.6
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME		3	3	3	3	3
PART-TIME		2	2	2	2	2
TEMPORARY						

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

See Attached

Prepared by: Yvonne M. Chase, Director  
Division: Family and Youth Services

Phone: 465-3170  
Date: 5/1/87

Approved by Commissioner: Myra M. Munson, Commissioner  
Agency: Health and Social Services

Date: 5/4/87

**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 No. 241

### Cost Analysis:

Personal Services: four PFT Social Worker III's, two located in Anchorage, one in Fairbanks, one in Juneau - \$190.5

Travel: travel to investigate complaints in communities outside three major urban areas where staff would be located - \$30.0

Contractual: communications, printing, mailings, duplication - \$5.0

Commodities: materials (e.g., paper, office supplies) - \$1.0

Equipment: office furniture (e.g., desk, chair) - \$3.1

5-0855B ✓  
Hein  
5/5/87

Original sponsor: Health, Education and  
Social Services Committee

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 241 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing for the independent investigation  
7 of complaints against foster parents."

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

9 \* Section 1. AS 47.35 is amended by adding a new section to read:

10 Sec. 47.35.065. INVESTIGATION OF COMPLAINTS. A complaint filed  
11 with the department concerning a foster parent may not be investigated  
12 by persons who have been involved in the licensing of the foster  
13 parent.  
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H B

242

FILE CONTENTS

- 1) Copy of HB 242
- 2) Position Paper by Department of Health and Social Services
- 3) Fiscal Note, Health and Social Services
- 4) Alaska Foster Parents Association Position Paper
- 5) Petition, AFPA
- 6) Statement by Kathy Spurgeon, President, AFPA
- 7) Statement by Marion Sumner, AFPA
- 8) House HESS minutes, 4/23/87
- 9) House HESS minutes, 5/6/87

POSITION PAPER

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 242

For an Act entitled: "An Act relating to the training of foster parents."

The Division of Family and Youth Services (DFYS), within the Department of Health and Social Services, has primary responsibility for foster placements. On June 30, 1986, there were 738 children in foster care and 948 state licensed foster homes.

The Division is very supportive of foster parent training. Placement in out-of-home care is, unfortunately, a reality for many of Alaska's children, and if they are to receive not only the food, shelter and nurturance that they need, but an environment which will assist them in meeting their own special needs, training for foster parents is not only important, but essential.

The goal of foster parent training is to increase knowledge, and enhance skills of foster parents to work with children who usually enter foster care with a number of emotional and behavioral disturbances. These children often require specialized skills and foster parents, as significant participants in the child welfare service delivery system, are better equipped to participate as an active member of the service team when appropriately trained. In addition, national studies in other states have shown that foster parent retention is significantly lengthened when foster parents receive appropriate training.

There is no simple formula for determining who has the greatest need and the Department is supportive of a requirement of a minimal level of training which will be required of all foster parents. The Division of Family and Youth Services is presently developing foster care regulations which will be ready for public hearing by July 1, 1987. All foster parents statewide will receive a copy of the proposed regulations and will have the opportunity to comment on the appropriateness and feasibility of training requirements, especially in rural locations. Through regulations, levels of training for different types of care and different geographical areas of the State can be established.

RECOMMENDED:

*Yvonne M. Chase*  
Yvonne M. Chase, Director  
Division of Family  
and Youth Services

DATE:

*May 8, 1987*

APPROVED:

*Myra M. Munson*  
Myra M. Munson, Commissioner  
Department of Health  
and Social Services

DATE:

*May 13, 1987*

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

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

Bill Version : CS HB 242  
Publish Date : \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act relating to the training  
of foster parents.  
Sponsor: House HESS  
Requestor: \_\_\_\_\_

Agency Affected: Health & Social Services  
BRU: Child & Youth Custody  
Components: Foster Care

**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-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

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

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

n/a

Prepared by: Yvonne M. Chase, Director *YMC*  
Division: Division of Family and Youth Services  
Approved by Commissioner: Myra M. Munson, Commissioner  
Agency: Department of Health and Social Services

Phone: 465-3170  
Date: 5/8/87  
Date: 5/13/87

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

POSITION PAPER

HOUSE BILL NO. 242

For an Act entitled: "An Act relating to the training of foster parents."

The Division of Family and Youth Services (DFYS), within the Department of Health and Social Services, has primary responsibility for foster placements. On June 30, 1986, there were 738 children in foster care and 948 state licensed foster homes.

The Division is very supportive of foster parent training. Placement in out-of-home care is, unfortunately, a reality for many of Alaska's children, and if they are to receive not only the food, shelter and nurturance that they need, but an environment which will assist them in meeting their own special needs, training for foster parents is not only important, but essential.

The goal of foster parent training is to increase knowledge, and enhance skills of foster parents to work with children who usually enter foster care with a number of emotional and behavioral disturbances. These children often require specialized skills and foster parents, as significant participants in the child welfare service delivery system, are better equipped to participate as an active member of the service team when appropriately trained. In addition, national studies in other states have shown that foster parent retention is significantly lengthened when foster parents receive appropriate training.

There is no simple formula for determining who has the greatest need and the Department is supportive of a requirement of a minimal level of training which will be required of all foster parents. The Division of Family and Youth Services is presently developing foster care regulations which will be ready for public hearing by July 1, 1987. All foster parents statewide will receive a copy of the proposed regulations and will have the opportunity to comment on the appropriateness and feasibility of training requirements, especially in rural locations. Through regulations, levels of training for different types of care and different geographical areas of the State can be established.

The Department anticipates continuation of contractual services for foster parent training, but the present training contract reaches approximately one-half of the state's licensed foster parents in any one year. The two-year provision for foster parents to meet their initial training requirements through the availability of funds presently in the Division's FY 88 budget for foster parents training. However, the bill in its present form will require the attached fiscal note. The Department recommends deletion of line 19, "Each adult..." through line 22, "...of annual training".

On page 2, line 4, the Department also recommends including the language from the Committee Substitute for SB 169 (Section 3): "Notwithstanding the provisions of AS 47.35.035, as enacted by sec. 2 of this Act, a licensee shall be considered to have completed annual training if the licensee completes the training during either fiscal year 1988 or fiscal year 1989. The Department of Health and Social Services may schedule training so that approximately one-half of licensed foster parents receive training during each of the fiscal years 1988 and 1989."

RECOMMENDED:

Yvonne M. Chase  
Yvonne M. Chase, Director  
Division of Family  
and Youth Services

DATE:

April 13, 1987

APPROVED:

Myra M. Munson  
Myra M. Munson, Commissioner  
Department of Health  
and Social Services

DATE:

April 15, 1987

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

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

Bill Version : HB 242  
Publish Date : \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act relating to the training  
of foster parents  
Sponsor: House HESS Committee  
Requestor : \_\_\_\_\_

Agency Affected: Health & Social Services  
BR: Child & Youth Custody

Components : Foster Care

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

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	100,000	250,000				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>100,000</b>	<b>250,000</b>				

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	100,000	250,000				
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>100,000</b>	<b>250,000</b>				

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary) The current contract with the Alaska Foster Parent Association provides training for one-half of foster parents statewide. If mandated for all foster parents, training costs would more than double. Costs would be incurred in modifying curriculum for different levels of care and in achieving a minimum standard for different areas of the state.

Prepared by: Yvonne M. Chase, Director *AMC* Phone: 465-3170  
Division: Division of Family & Youth Services Date: 4/13/87

Approved by Commissioner: Myra M. Munson, Commissioner *Myra M. Munson* Date: 4/15/87  
Agency: Department of Health & Social Services

**Distribution (by preparer):**

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

①

## PETITION

## MANDANTORY TRAINING FOR FOSTER PARENTS

TO ALL LEGISLATORS:

Please expedite passage of CSSB 169<sup>AND</sup> HB242 relating to training of Foster parents, with the few word changes in the last sentence as suggested by Alaska Foster Parent Association and the Division of Family & Youth Services. Thank you.

SIGNED:

NAME	ADDRESS	
Joy Lyon	5010 N. Douglas Ineav AK-99801	
PAUL KING	Box 5	Galena, AK. 99741
MARY HOGANS	1214 E. 10 <sup>th</sup> Ave	ANCH AK 99501
Ener Lee Melton	1026 E. Ave Anch.	AK 99501
Kim Brewer	3401 Shamrock	Anch. AK 99504
Susan A. Mayer	220 Oscar St, Palmer	745-8163
Shardene Peterson	P.O. Box 170821	Eagle River 694-6779
Sharon Joul	P.O. Box 1934	Sitka 747-3780
Karna Lehman	5842 Lund, Juneau	780-4531
Jennie Lindby	P.O. Box 194	Hoonah 945-3348
Corinne R. Rengraham	Box 9053, Ketchikan	225-4280
Jacquie Sullivan	1788-1 <sup>st</sup> Ave	225-4378
Cheri Turcotte	3040B Wendy's way Anchorage 99517	243-5132
Tom Whitehouse	SEB Ba 7477 Palmer	99645 745-2036
Kessiah Angitak	P.O. Box 84	Manokotak 289-1072
Annie Jugathak	P.O. Box 84	Manokotak 289-1072
Jessie Angasak	P.O. Box 6	Koyuk, AK 963-3531
		963-2231

(8)

NAME	ADDRESS	PHONE	ORGANIZATION
<i>[Handwritten Name]</i>	<i>[Handwritten Address]</i>	<i>[Handwritten Phone]</i>	<i>[Handwritten Org]</i>
Debra M. Dunkin	PO Box 3142 Ketchikan, AK	789-7070	Juneau FPA
Margaret Crosby	PO Box 7352 Ketchikan	225-3855	2nd FPA
Myrtle BROWN	371 A Keenani Ave Ft Richardson	225-2519	428-0814
Carol Dumban	Box 9623, Ft TN	225-4280	AYS FPA
Jane Anderson	Box 1209 Nome, AK	443-5386	
Kathy Spangler	At 2604 102 <sup>nd</sup> St Anchorage	225-2057	AFPA President
Shea Clomer	10001 Gracie Anchorage	346-1727	AFPA/Anchorage
Wilda Lucas	SRB 7555-A Palmer, AK	745-6871	AFPA - NAT-Su Valley
Eileen Schwab	SRB 81777 Palm, AK	745-2036	AFPA
Mary Komic	820 Set Net Kenai	283-5247	AFPA/Kenai
Bebe L. Paul	516 N. Klevin Anchorage, AK	277-7770	AFPA
Josephine Roberts	2730 Anchorage Dr. Anchorage	333-2323	AFPA/Anchorage
Karla Stumeling	Box 708 Nome AK	443-2820	AFPA/NOME FPA
Fred Stumeling	Box 964 Wrangell AK	874-3874	Wrangell FPA
Mrs. [Handwritten]	9237 GEE St	789-2875	Juneau FPA
Joe Lyon	5010 N. Douglas Juneau AK	586-6989	Juneau
Kate Schel	SRD Box 9556A Palmer	745-7089	AFPA/Mt. Su
[Handwritten]	1749 Skelton Circle	337-7066	NFCH
[Handwritten]	2730 B... Anchorage	333-2323	AFPA

9

Name	ADDRESS	
James Sumner	SRB 7026 Palmer AK. 99645	745-7797
Eugene Dalton	8420th <sup>3</sup> Anchorage	self
Harold Sumner	SRB 7026 Palmer, Ak 99645	745-7797

29 self  
 12 August 1987  
 JI

4-23-87

My name is Lachy Spurgeon  
 Rt 2 Box 102  
 Ketchikan AK.

I am the President of the Alaska Foster Parent Assoc.

I cannot be present the the testimony of Bills 241 & 242. So I would like to take this time to urge to support these 2 Bills.

Gov Bill 241 - there has <sup>almost</sup> always been a conflict of interest with the policy as it is for licensing workers to ~~investigate~~ investigate foster homes.

In case of a complaint against a supervisor there diffinitely need to be a change in policy.

Bill 242 -

is of utmost importance to have quality Foster homes & keep retention - HFPA cannot stress enough the importance we feel to support this Bill.

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

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

Bill Version : CSHB 242 (HESS)

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

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

Title: An Act relating to the training of foster parents.

Agency Affected: Health & Social Services

BRU: Child & Youth Custody

Sponsor: House HESS Committee

Components: Foster Care

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

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

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

CAPITAL		0	0	0	0	0
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REVENUE		0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		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: Randall P. Burns

Phone: 465-3030

Division: Office of the Commissioner

Date: 5/6/87

Approved by Commissioner: *Myra M. Munson*

Date: 5/6/87

Agency: Department of Health & Social Services

Distribution (by preparer):

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

*House*  
TESTIMONY FOR ~~SENATE~~ HESS COMMITTEE  
~~MARCH 10, 1987~~

Mr. Chairman and Committee Members,

Thank you for this opportunity to request your total support for ~~SB 165~~, to provide for training for foster parents.

*HB 242*

Alaska Foster Parent Association has been actively seeking an addition to statutes and regulations to require training of foster parents for the past 7 years. We believe that orientation and ongoing training will greatly upgrade the quality of services provided to children and youth in the foster care system.

A research project was completed in approximately 1980 through the Social Work Department of the University of Alaska, Anchorage that explored why foster parents really quit being foster parents. A high percentage of former foster parents stated that foster care was not what they thought it was going to be or they did not know how to cope with all the various aspects of foster caring, therefore they resigned. When a foster parent quits it usually results in a move of their foster children to another home, which damages the children emotionally, not to even mention the feelings of guilt, failure, and defeat of both the foster parents, their family, and foster children. Another research paper completed in 1986 in Juneau showed training to be a high priority of both foster parents and social workers.

Training for foster parents, nationwide, has been found to have the following benefits:

1. Preventing or reducing the movement of children between foster homes.
2. Retention of foster parents, therefore, more stable placements of children and more experienced foster homes available to accept placement of children.
3. Foster parents who can take more responsibility, therefore, relieving the social worker who must deal with crisis first and ongoing needs as they can find time.
4. Insuring foster parents know how to meet the needs of the children and youth placed with them--therefore providing treatment and help to those children rather than childcare.
5. Enhances the ability of foster parents to work as team members with others involved with the child, including the birth parent, social worker, psychologist, teachers, etc.

*HB 242 2/12*

6. Enables foster parents to detect potential or actual problem areas before they escalate, therefore enhancing prevention of future abuse, neglect, delinquency, or other problems that will cost the state even more to treat.

Over half of the other states in the United States have mandatory training requirements for foster homes in recognition of these benefits.

Alaska Foster Parent Association and its 10 local chapters support this bill as written. We wish to point out a few features of this bill:

It requires potential foster parents to receive initial orientation to prepare them to be foster parents and to screen out those applicants for which foster care is not what they thought it was. The many states that have this mandatory orientation have found that fewer foster parents are licensed, but those that are licensed stay longer in the system and are capable of handling more difficult children, therefore actually increasing the numbers of foster parents in a couple of years time.

This bill also requires each foster family to acquire 15 hours of ongoing training per year, with each adult to acquire a minimum of 5 hours. This will insure that all adults in the household have a good base of knowledge about issues in fostering. This requirement should be easily reached by existing and future foster families through resources already available--we are not asking for the Department to provide this training, as we feel the resources are already available in most communities and can be tapped by foster parents based on the area they feel they need more information. For example, a foster parent taking teens would find in the community workshops or classes dealing with things such as discipline, alcohol or drugs, or teen pregnancies. A foster family working with sexually abused children would look for classes on detecting or treating the sexually abused child.

This bill should not require any fiscal notes. For orientation we have licensing workers and experienced foster parents who can facilitate orientation training using prepared curriculums such as NOVA training from NOVA University or ISSUES IN FOSTERING from Eastern Michigan University. Several DFYS offices throughout the state are currently providing such training using licensing worker-foster parent co-trainers in the evening once a week and giving that licensing worker comp-time the next morning. This would require no new funding.

For ongoing training most communities have numerous training workshops, seminars, or classes each year through such places as crisis centers, sexual abuse or women's centers, native organizations, mental health, colleges, etc. Alaska Foster Parent Association has a \$105,000. contract to provide training statewide, which offers a state conference of 12-20 hours of training, a newsletter with educational



Original sponsor: Health, Education and  
Social Services Committee

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 242 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the training of foster parents."

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

8 \* Section 1. AS 47.35 is amended by adding a new section to read:

9 Sec. 47.35.035. FOSTER PARENT TRAINING. (a) A person may not  
10 be licensed under this chapter to maintain or conduct a foster home  
11 unless the person has completed an orientation for foster parents  
12 approved by the department. An orientation required under this sub-  
13 section must provide information about foster care regulations, poli-  
14 cies, and procedures, practical instruction about the realities of  
15 caring for a child who is placed in a foster home, and other appro-  
16 priate information.

17 (b) To maintain a license issued under this chapter for the  
18 maintenance or conduct of a foster home, a licensee shall complete  
19 annual foster parent training approved by the department. Training  
20 under this subsection need not be conducted in a classroom setting,  
21 but must include methods of instruction that meet the varying needs of  
22 foster parents and the department.

23 (c) The requirements for training under this section may not be  
24 waived.

25 \* Sec. 2. AS 47.35.040(c) is amended to read:

26 (c) Except as provided in AS 47.35.035, the [THE] department may  
27 waive compliance with a standard set out in regulations adopted under  
28 AS 47.35.010 - 47.35.080 if an acceptable alternative is established  
29 that meets the purpose of the provision and reasonably assures the

1 well-being of persons in care.

2 \* Sec. 3. Notwithstanding the provisions of AS 47.35.035, as enacted by  
3 sec. 1 of this Act, and AS 47.35.040(c), as amended by sec. 2 of this Act,  
4 a licensee shall be considered to have completed annual training if the  
5 licensee completes the training during either fiscal year 1988 or fiscal  
6 year 1989. The Department of Health and Social Services may schedule  
7 training so that approximately one-half of licensees receive training  
8 during each of the fiscal years 1988 and 1989.  
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243

# HOUSE COMMITTEE REPORT

(7)

Date referred: 4/3/87

FURTHER REFERRALS: Judiciary  
Finance

DATE: \_\_\_\_\_

The Health, Education and Social Services Committee has considered HB 243

"An Act prohibiting certain sale and consumption of alcoholic beverages."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

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**SIGNING OTHER RECOMMENDATIONS:**

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Chairman's signature

FISCAL NOTE

REQUEST

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
 Title: "An Act prohibiting certain sale and consumption of alcohol." BRU: Alaska State Troopers  
 Sponsor: Rep. Schultz, Menard . . . Components: Detachments and C.I.B.  
 Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

*JWR*  
*2/11/87*  
Prepared by: Francis C. Allan *F.C.A.*  
Division: Alaska State Troopers

Phone: 269-5691

Date: 2/6/88

Approved by Commissioner: Arthur English  
Agency: Public Safety

Date: 2/6/88

Distribution: (by preparer):

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

BILL NO: HB 243

DATE: 4/8/87

TITLE: "An Act prohibiting certain sale and consumption of alcoholic beverages."

CONTACT: Major Walter J. Gilmour  
Acting Director  
Alaska State Troopers

The intent of this legislation is to provide statute sections which can be utilized to charge persons with furnishing alcoholic beverages to someone prohibited from consuming same by sentence of the court or conditions of parole/probation. Further, it provides the court with a means by which to impose a suspended sentence or suspended imposition of sentence if the defendant's conduct constituting the offense was substantially influenced by the consumption of an alcoholic beverage.

With reference to proposed Section .035 of A.S. 04.16; the following question arises: How does the licensee, agent, or employee know if the person to whom he is furnishing the alcoholic beverage is prohibited from consuming alcohol? This would be very difficult, if not impossible, to prove in court.

With reference to proposed Section .077 of A.S. 12.55; it appears that being intoxicated while committing an offense could be construed as justification by the court to suspend the sentence or a portion thereof; or impose a suspended imposition of sentence.

This proposed legislation does, however, provide probation/parole personnel an additional tool with which to enforce conditions of probation/parole imposed by the court.

In summary, this legislation contains both good and bad points.

The Division of Alaska State Troopers is neutral on this legislation.

William R. Nix  
Acting Commissioner

POSTED IN DEPARTMENT OF PUBLIC SAFETY

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 243

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

REQUEST

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

Title: "An Act prohibiting certain sale and consumption of alcohol."

Sponsor: Rep. Schultz, Menard...

Requestor: H HESS

Agency Affected: Public Safety

BRU: Alaska State Troopers

Components: Detachments & CIB

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 FUNDS		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)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan

Division: Alaska State Troopers

Phone: 269-5691

Date: 4/9/87

Approved by Commissioner: William R. Nix

Agency: Public Safety

Date: 5/1, 1987

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Senate Secretary

page \_\_\_\_ of \_\_\_\_

JAM  
4/10/87