

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5871 HOUSE JUDICIARY

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responsibility to develop standard interdepartmental policies and procedures integrating the state's response to the problems posed by child abuse and neglect.

The Grand Jury FURTHER RECOMMENDS that these policies and procedures clearly define the roles and responsibilities of each state agency and local official having child protection functions, and mandate uniform annual training throughout the state on these policies and procedures.

The Grand Jury FURTHER RECOMMENDS that these policies and procedures be published in a manual similar to the "Inter-Ministry Child Abuse Handbook" developed by the Province of British Columbia, and that this manual be distributed as a uniform training manual for the entire state.

A copy of the British Columbia manual, which has been received by the Grand Jury as Exhibit 113, is appended to this report.

5. Division of Family and Youth Services (DFYS).

Testimony received by the Grand Jury indicates that implementation of its recommendations will lead to increased reporting of child abuse and neglect, requiring more trained DFYS personnel than are currently available.

Therefore, the Grand Jury RECOMMENDS that DFYS be adequately funded for this increase by the legislature.


C. CONCLUSION OF PART I.

The Grand Jury believes that all members of this community have an interest in the protection of school children from sexual misconduct by others, and in the protection of all of children from all forms of abuse and neglect. The Grand Jury further believes that non-adversarial cooperation among all persons and agencies dealing with these children is essential and is possible, regardless of disputes on other issues.

The Grand Jury REQUESTS that Part I of its report be immediately made available to the public, and be specifically sent to the Governor of the State of Alaska, the President of the Alaska Senate, the Speaker of the Alaska House of Representatives, and to each of the public organizations mentioned herein.

DATED at Anchorage, Alaska, this 5th day of March, 1990.

Respectfully submitted,


Grand Jury Foreperson

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

TO: Representative Johnny Ellis
Chair, House HESS Committee
Representative Max Gruenberg
Representative Peter Goll
Co-Chairs, House Judiciary Committee

DATE: Feb. 9, 1990

FROM: Representative Fran Ulmer

SUBJ: SB 355

It has come to my attention that the bill you are considering, relating to sexual conduct between youth and adults who exercise authority over them, may contain an inconsistency ~~with~~ regard to teachers. It is my understanding that the bill, as passed by the Senate, would create a criminal offense for all of the adult categories listed, but would further create a professional limitation for teachers, but only teachers. If certification of a teacher is to be permanently removed as a result of this conduct, I wonder if the same rationale doesn't apply to the other professionals that are listed. The bill should be consistent: either deal with just the criminal conduct and specify the criminal penalty or have the certification standards reviewed for the various groups and require their licensing boards to consider this conduct for purposes of retaining a license for professional purposes.

This issue was brought to my attention by a retired teacher in Juneau, and I believe his concerns should be considered as the committee reviews this bill.

FU/bvh

Original sponsor(s): SEN. FISCHER

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 355 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes involving sexual penetra-
7 tion or sexual contact with minors, including sit-
8 uations where the adult abuses a position of special
9 trust in relation to the minor; defining 'legal
10 guardian' for certain crimes; and relating to the
11 issuance and revocation of teaching certificates and
12 occupational licenses for persons convicted of cer-
13 tain crimes and engaging in certain activities in-
14 volving a minor."

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

16 * Section 1. AS 08.01 is amended by adding a new section to read:

17 Sec. 08.01.077. SEXUAL MISCONDUCT WITH MINORS AS GROUNDS FOR
18 DENIAL OR REVOCATION OF LICENSE. (a) A board shall deny an applica-
19 tion for a license or permit by, and shall permanently revoke a li-
20 cense or permit previously issued to, a chiropractor under AS 08.20,
21 to a dentist under AS 08.36, to a medical doctor under AS 08.64, to a
22 nurse under AS 08.68, to a physical or occupational therapist or a
23 physical or occupational therapy assistant under AS 08.84, to a psy-
24 chologist or psychological associate under AS 08.86, and to a clinical
25 social worker under AS 08.95 if the person applying for a license or
26 holding a license has been convicted of a violation of AS 11.41.434 -
27 11.41.440 or 11.41.455, of AS 11.41.460 when the victim is a minor, or
28 of a law of another jurisdiction having substantially similar ele-
29 ments.

1 (b) A board may deny an application for a license or permit by,
2 and may revoke a license or permit previously issued to, a person
3 listed in (a) of this section who

4 (1) has engaged in conduct constituting a violation of
5 AS 11.41.434 - 11.41.440 or 11.41.455, or of 11.41.460 when the victim
6 was a minor; or

7 (2) has engaged in sexual penetration or sexual contact
8 with a person who at the time of the penetration or contact was 16 or
9 17 years old and at least three years younger than the person applying
10 for or holding the license, and the penetration or contact was sub-
11 stantially related to the qualifications, functions, or duties of the
12 occupation to which the license or permit requirement applies.

13 (c) A person who has been denied a license or who has had a
14 license revoked under (a) or (b) of this section may, no earlier than
15 five years after the person has received an unconditional discharge
16 for a conviction under (a) of this section or after the person has en-
17 gaged in the conduct described in (b) of this section, apply to the
18 appropriate board for the issuance or reinstatement of a license.
19 When deciding whether to grant or deny the application, the board
20 shall consider the nature of the particular crime or conduct, the
21 extent of the person's rehabilitation, and other factors that the
22 board considers significant.

23 (d) This section may not be construed as limiting other grounds
24 for which a license under this title may be denied, suspended, or
25 revoked.

26 (e) In this section

27 (1) "convicted" does not include a conviction in the juve-
28 nile justice system of this or another jurisdiction, but does include
29 a conviction that has been set aside under AS 12.55.085(e) or the

1 equivalent laws of another jurisdiction;

2 (2) "sexual penetration" and "sexual contact" have the
3 meanings given in AS 11.81.900;

4 (3) "unconditional discharge" has the meaning given in
5 AS 12.55.185.

6 * Sec. 2. AS 11.41.434(a) is amended to read:

7 (a) An offender commits the crime of sexual abuse of a minor in
8 the first degree if

9 (1) being 16 years of age or older, the offender engages in
10 sexual penetration with a person who is under 13 years of age or aids,
11 induces, causes, or encourages a person who is under 13 years of age
12 to engage in sexual penetration with another person;

13 (2) being 18 years of age or older, the offender engages in
14 sexual penetration with a person who is under 18 years of age, and the
15 offender is the victim's natural parent, stepparent, adopted parent,
16 or legal guardian [WHO

17 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
18 OF LAW; OR

19 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN
20 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD]; or

21 (3) being 18 years of age or older, the offender engages in
22 sexual penetration with a person who is under 16 years of age, and the
23 victim at the time of the offense is

24 (A) residing [AS A MEMBER OF THE SOCIAL UNIT] in the
25 same household as the offender and the offender is in a position
26 of authority over the victim; or

27 (B) temporarily entrusted to the offender's care.

28 * Sec. 3. AS 11.41.436(a) is amended to read:

29 (a) An offender commits the crime of sexual abuse of a minor in

1 the second degree if

2 (1) being 16 years of age or older, the offender engages in
3 sexual penetration with a person who is 13, 14, or 15 years of age and
4 at least three years younger than the offender, or aids, induces,
5 causes or encourages a person who is 13, 14, or 15 years of age and at
6 least three years younger than the offender to engage in sexual pene-
7 tration with another person;

8 (2) being 16 years of age or older, the offender engages in
9 sexual contact with a person who is under 13 years of age or aids,
10 induces, causes, or encourages a person under 13 years of age to
11 engage in sexual contact with another person;

12 (3) being 18 years of age or older, the offender engages in
13 sexual contact with a person who is under 18 years of age, and the
14 offender is the victim's natural parent, stepparent, adopted parent,
15 or legal guardian [WHO

16 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
17 OF LAW; OR

18 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN
19 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD];

20 (4) being 16 years of age or older, the offender aids,
21 induces, causes, or encourages a person who is under 16 years of age
22 to engage in conduct described in AS 11.41.455(a)(2) - (6); or

23 (5) being 18 years of age or older, the offender engages in
24 sexual contact with a person who is under 16 years of age, and the
25 victim at the time of the offense is

26 (A) residing [AS A MEMBER OF THE SOCIAL UNIT] in the
27 same household as the offender and the offender is in a position
28 of authority over the victim; or

29 (B) temporarily entrusted to the offender's care.

1 * Sec. 4. AS 11.41.440(a) is amended to read:

2 (a) An offender commits the crime of sexual abuse of a minor in
3 the fourth degree if [,]

4 (1) being under 16 years of age, the offender engages in
5 sexual penetration or sexual contact with a person who is under 13
6 years of age and at least three years younger than the offender; or

7 (2) being 18 years of age or older, the offender engages in
8 sexual penetration or sexual contact with a person who is 16 or 17
9 years of age and at least three years younger than the offender, and
10 the offender occupies a position of special trust in relation to the
11 victim and uses the position to induce the victim to engage in sexual
12 penetration or sexual contact.

13 * Sec. 5. AS 11.41.470 is amended by adding new paragraphs to read:

14 (5) "legal guardian" means a person who is under a duty to
15 exercise general supervision over a minor as a result of a court
16 order, statute, or regulation, and includes foster parents and staff
17 members and other employees of group homes or youth correctional
18 facilities where a child is placed as a result of a court order or the
19 action of the division of family and youth services;

20 (6) "position of special trust" means a youth leader, scout
21 leader, athletic manager, coach, teacher, counselor, school adminis-
22 trator, religious leader, doctor, nurse, psychologist, police officer,
23 probation officer, guardian ad litem, babysitter, or a substantially
24 similar position.

25 * Sec. 6. AS 14.20.020(a) is amended to read:

26 (a) Except as provided in (f) of this section, the [THE] depart-
27 ment shall issue a teacher certificate to every person who meets the
28 requirements in (b) and (c) of this section.

29 * Sec. 7. AS 14.20.020 is amended by adding new subsections to read:

1 (f) Except as otherwise provided in (h) of this section, the
2 department may not issue a teacher certificate to a person who has
3 been convicted of a violation of AS 11.41.434 - 11.41.440 or 11.41.-
4 455, or of 11.41.460 when the victim is a minor, or under a law of
5 another jurisdiction having substantially similar elements.

6 (g) The department may refuse to issue a teacher certificate to
7 a person who

8 (1) has engaged in conduct constituting a violation of
9 AS 11.41.434 - 11.41.440 or 11.41.455, or of 11.41.460 when the victim
10 was a minor; or

11 (2) has engaged in sexual penetration or sexual contact
12 with a person who at the time of the penetration or contact was 16 or
13 17 years old and at least three years younger than the person applying
14 for a certificate and who was a student in a school in which the
15 person applying for a certificate taught or was otherwise employed.

16 (h) When five years have elapsed after a person has received an
17 unconditional discharge for a conviction of a crime listed in (f) of
18 this section, or after the person has engaged in the conduct described
19 in (g) of this section, the person may petition the department to
20 issue the certificate in spite of the conviction or the conduct if the
21 person otherwise satisfies the requirements for the certificate. When
22 deciding whether to grant or deny the petition, the department shall
23 consider the nature of the particular crime or conduct, whether and to
24 what extent the person has been rehabilitated, and the other factors
25 that the department determines are significant.

26 * Sec. 8. AS 14.20.030 is amended by adding new subsections to read:

27 (b) The commissioner or the Professional Teaching Practices
28 Commission shall revoke for life the certificate of a person who has
29 been convicted of a violation of AS 11.41.434 - 11.41.440 or

1 11.41.455, or of 11.41.460 when the victim is a minor, or under a law
2 in another jurisdiction with substantially similar elements.

3 (c) The commissioner or the Professional Teaching Practices
4 Commission may revoke for life the certificate of a person who

5 (1) has engaged in conduct constituting a violation of
6 AS 11.41.434 - 11.41.440 or 11.41.455, or of 11.41.460 when the victim
7 was a minor; or

8 (2) has engaged in sexual penetration or sexual contact
9 with a person who at the time of the penetration or contact was 16 or
10 17 years old and at least three years younger than the person holding
11 the certificate and who was a student in a school in which the person
12 holding the certificate taught or was otherwise employed.

13 (d) When five years have elapsed after the person has received
14 an unconditional discharge for the conviction of a crime listed in (b)
15 of this section, or after the person has engaged in the conduct de-
16 scribed in (c) of this section, the person may petition the commission
17 for recertification. When deciding whether to grant or deny the
18 petition, the commission shall consider the nature of the particular
19 crime or conduct, whether and to what extent the person has been
20 rehabilitated, and the other factors that the commission determines
21 are significant.

22 * Sec. 9. AS 14.20.215 is amended by adding new paragraphs to read:

23 (7) "unconditional discharge" has the meaning given in
24 AS 12.55.185;

25 (8) "sexual penetration" and "sexual contact" have the
26 meanings given in AS 11.81.900.

27 * Sec. 10. AS 08.01.077, as enacted by sec. 1 of this Act, AS 14.20.-
28 020(f) and (g), as enacted by sec. 7 of this Act, and AS 14.20.030(b) and
29 (c), as enacted by sec. 8 of this Act, do not apply when the crime, sexual

1 penetration, or sexual contact occurred before the effective date of this
2 Act.

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5/5/90

Original sponsor(s): SEN. FISCHER

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 355 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes involving sexual penetra-
7 tion or sexual contact with minors, including sit-
8 uations where the adult occupies a position of spe-
9 cial trust in relation to the minor; defining 'legal
10 guardian' for certain crimes; and relating to the
11 issuance and revocation of teaching certificates for
12 persons convicted of certain crimes involving a
13 minor."

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

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17 the first degree if

18 (1) being 16 years of age or older, the offender engages in
19 sexual penetration with a person who is under 13 years of age or aids,
20 induces, causes, or encourages a person who is under 13 years of age
21 to engage in sexual penetration with another person;

22 (2) being 18 years of age or older, the offender engages in
23 sexual penetration with a person who is under 18 years of age, and the
24 offender is the victim's natural parent, stepparent, adopted parent,
25 or legal guardian [WHO

26 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
27 OF LAW; OR

28 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN
29 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD]; or

1 (3) being 18 years of age or older, the offender engages in
2 sexual penetration with a person who is under 16 years of age, and

3 (A) the victim at the time of the offense is [(A)]
4 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
5 as the offender and the offender has [IS IN A POSITION OF]
6 authority over the victim; or

7 (B) the offender occupies a position of authority in
8 relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFENDER'S
9 CARE].

10 * Sec. 2. AS 11.41.436(a) is amended to read:

11 (a) An offender commits the crime of sexual abuse of a minor in
12 the second degree if

13 (1) being 16 years of age or older, the offender engages in
14 sexual penetration with a person who is 13, 14, or 15 years of age and
15 at least three years younger than the offender, or aids, induces,
16 causes or encourages a person who is 13, 14, or 15 years of age and at
17 least three years younger than the offender to engage in sexual pene-
18 tration with another person;

19 (2) being 16 years of age or older, the offender engages in
20 sexual contact with a person who is under 13 years of age or aids,
21 induces, causes, or encourages a person under 13 years of age to
22 engage in sexual contact with another person;

23 (3) being 18 years of age or older, the offender engages in
24 sexual contact with a person who is under 18 years of age, and the
25 offender is the victim's natural parent, stepparent, adopted parent,
26 or legal guardian [WHO

27 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
28 OF LAW; OR

29 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN

1 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD];

2 (4) being 16 years of age or older, the offender aids,
3 induces, causes, or encourages a person who is under 16 years of age
4 to engage in conduct described in AS 11.41.455(a)(2) - (6); or

5 (5) being 18 years of age or older, the offender engages in
6 sexual contact with a person who is under 16 years of age, and

7 (A) the victim at the time of the offense is [(A)]
8 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
9 as the offender and the offender has [IS IN A POSITION OF]
10 authority over the victim; or

11 (B) the offender occupies a position of authority in
12 relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFENDER'S
13 CARE].

14 * Sec. 3. AS 11.41.440(a) is amended to read:

15 (a) An offender commits the crime of sexual abuse of a minor in
16 the fourth degree if [,]

17 (1) being under 16 years of age, the offender engages in
18 sexual penetration or sexual contact with a person who is under 13
19 years of age and at least three years younger than the offender; or

20 (2) being 18 years of age or older, the offender engages in
21 sexual penetration with a person who is 16 or 17 years of age and at
22 least three years younger than the offender, and the offender occupies
23 a position of authority in relation to the victim.

24 * Sec. 4. AS 11.41 is amended by adding a new section to read:

25 Sec. 11.41.442. SEXUAL ABUSE OF A MINOR IN THE FIFTH DEGREE.

26 (a) An offender commits the crime of sexual abuse of a minor in the
27 fifth degree if, being 18 years of age or older, the offender engages
28 in sexual contact with a person who is 16 or 17 years of age and at
29 least three years younger than the offender, and the offender occupies

1 a position of authority in relation to the victim.

2 (b) Sexual abuse of a minor in the fifth degree is a class B
3 misdemeanor.

4 * Sec. 5. AS 11.41.470 is amended by adding new paragraphs to read:

5 (5) "legal guardian" means a person who is under a duty to
6 exercise general supervision over a minor as a result of a court
7 order, statute, or regulation, and includes foster parents and staff
8 members and other employees of group homes or youth correctional
9 facilities where a child is placed as a result of a court order or the
10 action of the division of family and youth services, and police offi-
11 cers and probation officers when those officers are exercising custo-
12 dial control over a minor;

13 (6) "position of authority" means an employer, youth
14 leader, scout leader, coach, teacher, counselor, school administrator,
15 religious leader, doctor, nurse, psychologist, guardian ad litem,
16 babysitter, or a substantially similar position, and a police officer
17 or probation officer other than when the officer is exercising custo-
18 dial control over a minor.

19 * Sec. 6. AS 14.20.020(a) is amended to read:

20 (a) Except as provided in (f) of this section, the [THE] depart-
21 ment shall issue a teacher certificate to every person who meets the
22 requirements in (b) and (c) of this section.

23 * Sec. 7. AS 14.20.020 is amended by adding a new subsection to read:

24 (f) Except as otherwise provided in this subsection, the depart-
25 ment may not issue a teacher certificate to a person who has been
26 convicted of a crime involving a minor under AS 11.41.434 - 11.41.442,
27 11.41.455, or 11.41.460, or under a law in another jurisdiction with
28 elements substantially similar to an offense described in AS 11.41.-
29 434 - 11.41.442, 11.41.455, or 11.41.460. When five years have

1 elapsed after a person has received an unconditional discharge for a
2 conviction of a crime listed in this subsection, the person may peti-
3 tion the department to issue the certificate in spite of the convic-
4 tion if the person otherwise satisfies the requirements for the cer-
5 tificate. When deciding whether to grant or deny the petition, the
6 department shall consider the nature of the particular crime, whether
7 and to what extent the person has been rehabilitated, and the other
8 factors that the department determines are significant.

9 * Sec. 8. AS 14.20.030 is amended by adding a new subsection to read:

10 (b) The commissioner or the Professional Teaching Practices
11 Commission shall revoke for life the certificate of a person who has
12 been convicted of a crime involving a minor under AS 11.41.434 -
13 11.41.442, 11.41.455, or 11.41.460, or under a law in another juris-
14 diction with elements substantially similar to an offense described in
15 AS 11.41.434 - 11.41.442, 11.41.455, or 11.41.460. When five years
16 have elapsed after the person has received an unconditional discharge
17 for the conviction, the person may petition the commission for re-
18 certification. When deciding whether to grant or deny the petition,
19 the commission shall consider the nature of the particular crime,
20 whether and to what extent the person has been rehabilitated, and the
21 other factors that the commission determines are significant.

22 * Sec. 9. AS 14.20.215 is amended by adding a new paragraph to read:

23 (7) "unconditional discharge" has the meaning given in
24 AS 12.55.185.

25 * Sec. 10. AS 14.20.020(f), as enacted by sec. 7 of this Act, and
26 AS 14.20.030(b), as enacted by sec. 8 of this Act, do not apply when the
27 crime occurred before the effective date of this Act.
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Gaguine
5/2/90

Original sponsor(s): SEN. FISCHER

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 355 (Judiciary)
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6 For an Act entitled: "An Act relating to crimes involving sexual penetra-
7 tion or sexual contact with minors, including sit-
8 uations where the adult occupies a position of spe-
9 cial trust in relation to the minor; defining 'legal
10 guardian' for certain crimes; and relating to the
11 issuance and revocation of teaching certificates for
12 persons convicted of certain crimes involving a
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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

15 * Section 1. AS 11.41.434(a) is amended to read:

16 (a) An offender commits the crime of sexual abuse of a minor in
17 the first degree if

18 (1) being 16 years of age or older, the offender engages in
19 sexual penetration with a person who is under 13 years of age or aids,
20 induces, causes, or encourages a person who is under 13 years of age
21 to engage in sexual penetration with another person;

22 (2) being 18 years of age or older, the offender engages in
23 sexual penetration with a person who is under 18 years of age, and the
24 offender is the victim's natural parent, stepparent, adopted parent,
25 or legal guardian [WHO

26 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
27 OF LAW; OR

28 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN
29 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD]; or

1 (3) being 18 years of age or older, the offender engages in
2 sexual penetration with a person who is under 16 years of age, and

3 (A) the victim at the time of the offense is [(A)]
4 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
5 as the offender and the offender is in a position of authority
6 over the victim; or

7 (B) the offender occupies a position of special trust
8 in relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFEND-
9 ER'S CARE].

10 * Sec. 2. AS 11.41.436(a) is amended to read:

11 (a) An offender commits the crime of sexual abuse of a minor in
12 the second degree if

13 (1) being 16 years of age or older, the offender engages in
14 sexual penetration with a person who is 13, 14, or 15 years of age and
15 at least three years younger than the offender, or aids, induces,
16 causes or encourages a person who is 13, 14, or 15 years of age and at
17 least three years younger than the offender to engage in sexual pene-
18 tration with another person;

19 (2) being 16 years of age or older, the offender engages in
20 sexual contact with a person who is under 13 years of age or aids,
21 induces, causes, or encourages a person under 13 years of age to
22 engage in sexual contact with another person;

23 (3) being 18 years of age or older, the offender engages in
24 sexual contact with a person who is under 18 years of age, and the
25 offender is the victim's natural parent, stepparent, adopted parent,
26 or legal guardian [WHO

27 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
28 OF LAW; OR

29 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN

1 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD];

2 (4) being 16 years of age or older, the offender aids,
3 induces, causes, or encourages a person who is under 16 years of age
4 to engage in conduct described in AS 11.41.455(a)(2) - (6); or

5 (5) being 18 years of age or older, the offender engages in
6 sexual contact with a person who is under 16 years of age, and

7 (A) the victim at the time of the offense is [(A)]
8 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
9 as the offender and the offender is in a position of authority
10 over the victim; or

11 (B) the offender occupies a position of special trust
12 in relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFEND-
13 ER'S CARE].

14 * Sec. 3. AS 11.41 is amended by adding a new section to read:

15 Sec. 11.41.442. SEXUAL ABUSE OF A MINOR IN THE FIFTH DEGREE.

16 (a) An offender commits the crime of sexual abuse of a minor in the
17 fifth degree if, being 18 years of age or older, the offender engages
18 in sexual penetration with a person who is 16 or 17 years of age ^{or} and
19 at least three years younger than the offender, and the offender
20 occupies a position of special trust in relation to the victim and is

21 (1) a doctor, nurse, or psychologist licensed under AS 08;

22 (2) a teacher, counselor, or school administrator certifi-
23 cated under AS 14.20; or

24 (3) a police officer certificated under AS 18.65.240 or a
25 probation or parole officer certificated under AS 18.65.242.

26 (b) Sexual abuse of a minor in the fifth degree is a class B
27 misdemeanor.

28 * Sec. 4. AS 11.41 is amended by adding a new section to read:

29 Sec. 11.41.444. SEXUAL ABUSE OF A MINOR IN THE SIXTH DEGREE.

1 (a) An offender commits the crime of sexual abuse of a minor in the
2 sixth degree if, being 18 years of age or older, the offender engages
3 in sexual contact with a person who is 16 or 17 years of age and at
4 least three years younger than the offender, the offender occupies a
5 position of special trust in relation to the victim, and the offender
6 is a person listed in AS 11.41.442(a)(1) - (3).

7 (b) Sexual abuse of a minor in the sixth degree is a violation.

8 * Sec. 5. AS 11.41.470 is amended by adding new paragraphs to read:

9 (5) "legal guardian" means a person who is under a duty to
10 exercise general supervision over a minor as a result of a court
11 order, statute, or regulation, and includes foster parents and staff
12 members and other employees of group homes or youth correctional
13 facilities where a child is placed as a result of a court order or the
14 action of the division of family and youth services, and police offi-
15 cers and probation officers when those officers are exercising custo-
16 dial control over a minor;

17 (6) "position of special trust" means an employer, youth
18 leader, scout leader, coach, teacher, counselor, school administrator,
19 religious leader, doctor, nurse, psychologist, guardian ad litem,
20 babysitter, or a substantially similar position, and a police officer
21 or probation officer other than when the officer is exercising custo-
22 dial control over a minor.

23 * Sec. 6. AS 14.20.020(a) is amended to read:

24 (a) Except as provided in (f) of this section, the [THE] depart-
25 ment shall issue a teacher certificate to every person who meets the
26 requirements in (b) and (c) of this section.

27 * Sec. 7. AS 14.20.020 is amended by adding a new subsection to read:

28 (f) Except as otherwise provided in this subsection, the
29 department may not issue a teacher certificate to a person who has

1 been convicted of a crime involving a minor under AS 11.41.434 -
2 11.41.444, 11.41.455, or 11.41.460, or under a law in another juris-
3 diction with elements substantially similar to an offense described in
4 AS 11.41.434 - 11.41.444, 11.41.455, or 11.41.460. When five years
5 have elapsed after a person has received an unconditional discharge
6 for a conviction of a crime listed in this subsection, the person may
7 petition the department to issue the certificate in spite of the
8 conviction if the person otherwise satisfies the requirements for the
9 certificate. When deciding whether to grant or deny the petition, the
10 department shall consider the nature of the particular crime, whether
11 and to what extent the person has been rehabilitated, and the other
12 factors that the department determines are significant.

13 * Sec. 8. AS 14.20.030 is amended by adding a new subsection to read:

14 (b) The commissioner or the Professional Teaching Practices
15 Commission shall revoke for life the certificate of a person who has
16 been convicted of a crime involving a minor under AS 11.41.434 -
17 11.41.444, 11.41.455, or 11.41.460, or under a law in another juris-
18 diction with elements substantially similar to an offense described in
19 AS 11.41.434 - 11.41.444, 11.41.455, or 11.41.460. When five years
20 have elapsed after the person has received an unconditional discharge
21 for the conviction, the person may petition the commission for re-
22 certification. When deciding whether to grant or deny the petition,
23 the commission shall consider the nature of the particular crime,
24 whether and to what extent the person has been rehabilitated, and the
25 other factors that the commission determines are significant.

26 * Sec. 9. AS 14.20.215 is amended by adding a new paragraph to read:

27 (7) "unconditional discharge" has the meaning given in
28 AS 12.55.185.

29 * Sec. 10. AS 14.20.020(f), as enacted by sec. 7 of this Act, and

1 AS 14.20.030(b), as enacted by sec. 8 of this Act, do not apply when the
2 crime occurred before the effective date of this Act.
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HOUSE COMMITTEE REPORT

4/23

(7)

Date Referred: March 19, 1990

FURTHER REFERRALS:

JUDICIARY
FINANCE

Date of Committee Action: 4/23/90

The HESS Committee considered:

CSSSSB 358 (FINANCE)

CS SS SENATE BILL NO. 358 (Fin)

FINGERPRINTING OF MINORS

"An Act relating to fingerprinting of minors; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with HCS CS SS SA 358 (HESS) the same title
- have 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):
(Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

APPROVES PREVIOUS:

- fiscal note(s) 3/1/90 ^(Date/Dept) Pub. Safety
- zero fiscal note(s) 3/1/90 ^(Date/Dept) Pub. Safety
- zero fn/analysis _____ ^(Date/Dept) DHSS

SIGNING DO PASS:

J. Ellis ELLIS

Cheri Davis C. DAVIS

Max Boyer BOYER

Jacko JACKO

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

SIGNING:	Do Not Pass	No Rec	Amend
<u>W. Greenberg</u> GREENBERG			

J. Ellis
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
Title: Fingerprinting of Minors BRU: Alaska State Troopers
Sponsor: Senators Fischer & Kelly Component: Detachments
Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	17.6	17.6	17.6	17.6	17.6	17.6
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	17.6	17.6	17.6	17.6	17.6	17.6

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

GENERAL FUND	17.6	17.6	17.6	17.6	17.6	17.6
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	17.6	17.6	17.6	17.6	17.6	17.6

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is based upon the estimate of having State Troopers fingerprinting 1,500 juveniles per year. Each fingerprinting process will involve approximately 20 minutes for a total of approximately 500 hours per year. This equates to about 3 months of Trooper time statewide. The costs included on the fiscal note are based upon an average State Trooper position cost for three months. This would be a range 76, Step D.

Prepared by: Francis C. Allan Phone: 269-5691
Division: Alaska State Troopers Date: 02/08/90

Approved by Commissioner: Arthur English Date: 2-8-90
Agency: Department of Public Safety Page 1 of 1

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSSSB 358 (Jud)(b)
PUBLISH DATE: 2/27/90

FISCAL NOTE

REQUEST:

Revision Date: 2/23/90
Title: An Act Relating to the
Fingerprinting of Minors
Sponsor: Sen. Fischer
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: DPS Statewide Support
Component: AK Criminal Records
& ID

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	9.1	9.1	9.1	9.1	9.1	9.1
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	9.1	9.1	9.1	9.1	9.1	9.1

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

GENERAL FUND	9.1	9.1	9.1	9.1	9.1	9.1
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	9.1	9.1	9.1	9.1	9.1	9.1

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The Records and Identification Section operates the Alaska Automated Fingerprint Identification System (AAFIS) and maintains criminal history record information used by police and other criminal justice agencies.

(continued on attached)

Prepared by: Ken Bischoff
Division: Administrative Services

Phone: 465-4336
Date: 02/26/90

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 02/26/90

FISCAL NOTE - CSSSSB 358
Department of Public Safety
(Analysis - Page 2 of 2)

This bill would allow the fingerprinting of juveniles age 14 or older who are arrested for criminal offenses. These fingerprints would be compared with latent (crime scene) prints contained in the Alaska Automated Fingerprint Identification System (AAFIS).

This bill should have a positive impact on the ability of police to solve cases involving juvenile offenders. A large percentage of theft and burglary offenses are committed by juveniles. Fingerprint evidence is frequently found at the scene of these offenses, but is not matched to any suspect because juveniles are not fingerprinted. AAFIS records indicate that a large number of theft and burglary offenses are cleared when adults are arrested and their fingerprints matched to latents from crimes committed when the offender was a juvenile. Had these persons been fingerprinted as juvenile offenders they could have been identified, clearing additional cases and enabling the court to consider the offender's complete conduct when deciding the disposition of a case.

Existing AAFIS staff are not able to keep current with their present workload. Additional funding is required in Personal Services to increase the staff months of a part-time position approved for this unit for FY91 under a fiscal note for HB 52 (Chp 7 SLA 1990). The increased workload expected as a result of this bill is estimated as follows:

Estimated Number of Juvenile Fingerprint Cards	-	2,700
Total time to complete 15 processing steps	-	436 hrs

Clerk IV - Range 9A (3.5 months)

Salary	\$6,059
Benefits	<u>2,999</u>
Total Salary & Benefits	\$9,058

FISCAL NOTE

REQUEST:

Revision Date: 2/23/90 Agency Affected: Public Safety
Title: An Act Relating to the BRU: DPS Statewide Support
Fingerprinting of Minors
Sponsor: Sen. Fischer Component: AK Criminal Records
Requestor: Senate Judiciary & ID

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	9.1	9.1	9.1	9.1	9.1	9.1
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	9.1	9.1	9.1	9.1	9.1	9.1

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

GENERAL FUND	9.1	9.1	9.1	9.1	9.1	9.1
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	9.1	9.1	9.1	9.1	9.1	9.1

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The Records and Identification Section operates the Alaska Automated Fingerprint Identification System (AAFIS) and maintains criminal history record information used by police and other criminal justice agencies.

(continued on attached)

Prepared by: Ken Bischoff Phone: 465-4336
Division: Administrative Services Date: 02/26/90

Approved by Commissioner: Arthur English Date: 02/26/90
Agency: Department of Public Safety Page 1 of 2

Changes in CSSSB 358 (Fin)
have no fiscal impact
This fiscal note is
appropriate. 2/28/90 ML

FISCAL NOTE - CSSSSB 358
Department of Public Safety
(Analysis - Page 2 of 2)

This bill would allow the fingerprinting of juveniles age 14 or older who are arrested for criminal offenses. These fingerprints would be compared with latent (crime scene) prints contained in the Alaska Automated Fingerprint Identification System (AAFIS).

This bill should have a positive impact on the ability of police to solve cases involving juvenile offenders. A large percentage of theft and burglary offenses are committed by juveniles. Fingerprint evidence is frequently found at the scene of these offenses, but is not matched to any suspect because juveniles are not fingerprinted. AAFIS records indicate that a large number of theft and burglary offenses are cleared when adults are arrested and their fingerprints matched to latents from crimes committed when the offender was a juvenile. Had these persons been fingerprinted as juvenile offenders they could have been identified, clearing additional cases and enabling the court to consider the offender's complete conduct when deciding the disposition of a case.

Existing AAFIS staff are not able to keep current with their present workload. Additional funding is required in Personal Services to increase the staff months of a part-time position approved for this unit for FY91 under a fiscal note for HB 52 (Chp 7 SLA 1990). The increased workload expected as a result of this bill is estimated as follows:

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Total time to complete 15 processing steps	=	436 hrs
Clerk IV - Range 9A (3.5 months)		
Salary		\$6,059
Benefits		<u>2,999</u>
Total Salary & Benefits		\$9,058

CAF

FISCAL NOTE

REQUEST:

Revision Date: February 6, 1990
Title: An Act Relating to Fingerprinting
of Minors
Sponsor: Senators Fisher & Kelly
Requestor: _____

Agency Affected: DH&SS
BRU: Youth Services
Components: Probation Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This bill has no fiscal impact on the Department in FY90. SSSB358 permits the fingerprinting of minors arrested for an offence that is a felony if committed by an adult. Fingerprinting of minors 16 years of age and older could be entered into the Alaska automated fingerprint identification system. Arresting law enforcement agencies would take the fingerprints and the Department of Public

Prepared by: Russ Webb Phone: 465-3170

Division: Family and Youth Services Date: _____

Approved by Commissioner: [Signature] Date: 2/20/90

Agency: _____

Distribution (by preparer):

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

Changes in CS SSSB 358 (JW)
have no fiscal impact.
This fiscal note is
appropriate.

CK

Changes in SSSB 358 (Fin.)
have no fiscal impact
this fiscal note is
appropriate. 2/28/90 jsk

SSB358 An Act Relating to the Fingerprinting of Minors (con't.)

Safety would do the entries. This Department would not be fiscally impacted.

FISCAL NOTE

REQUEST:

Revision Date: February 6, 1990
Title: An Act Relating to Fingerprinting
of Minors
Sponsor: Senators Fisher & Kelly
Requestor: _____

Agency Affected: DH&SS
BRU: Youth Services
Components: Probation Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on the Department in FY90. SSSB358 permits the fingerprinting of minors arrested for an offence that is a felony if committed by an adult. Fingerprinting of minors 16 years of age and older could be entered into the Alaska automated fingerprint identification system. Arresting law enforcement agencies would take the fingerprints and the Department of Public

Prepared by: Russ Webb *Russ Webb* Phone: 465-3170
Division: Family and Youth Services Date: _____

Approved by Commissioner: *M. M. M. M.* Date: 2/20/90
Agency: _____

Distribution (by preparer):

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

Changes in CS SSSB 358 (JUD)
have no fiscal impact.
This fiscal note is
appropriate. *CK*

FISCAL NOTE -- CSSSSB 358
Department of Public Safety
(Analysis - Page 2 of 2)

This bill would allow the fingerprinting of juveniles age 14 or older who are arrested for criminal offenses. These fingerprints would be compared with latent (crime scene) prints contained in the Alaska Automated Fingerprint Identification System (AAFIS).

This bill should have a positive impact on the ability of police to solve cases involving juvenile offenders. A large percentage of theft and burglary offenses are committed by juveniles. Fingerprint evidence is frequently found at the scene of these offenses, but is not matched to any suspect because juveniles are not fingerprinted. AAFIS records indicate that a large number of theft and burglary offenses are cleared when adults are arrested and their fingerprints matched to latents from crimes committed when the offender was a juvenile. Had these persons been fingerprinted as juvenile offenders they could have been identified, clearing additional cases and enabling the court to consider the offender's complete conduct when deciding the disposition of a case.

Existing AAFIS staff are not able to keep current with their present workload. Additional funding is required in Personal Services to increase the staff months of a part-time position approved for this unit for FY91 under a fiscal note for HB 52 (Chp 7 SLA 1990). The increased workload expected as a result of this bill is estimated as follows:

Estimated Number of Juvenile Fingerprint Cards	=	2,700
Total time to complete 15 processing steps	=	436 hrs
Clerk IV - Range 9A (3.5 months)		
Salary		\$6,059
Benefits		<u>2,999</u>
Total Salary & Benefits		\$9,058

FISCAL NOTE

REQUEST:

Revision Date: 2/23/90 Agency Affected: Public Safety
Title: An Act Relating to the BRU: DPS Statewide Support
Fingerprinting of Minors
Sponsor: Sen. Fischer Component: AK Criminal Records
Requestor: Senate Judiciary & ID

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	9.1	9.1	9.1	9.1	9.1	9.1
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	9.1	9.1	9.1	9.1	9.1	9.1

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

GENERAL FUND	9.1	9.1	9.1	9.1	9.1	9.1
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	9.1	9.1	9.1	9.1	9.1	9.1

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The Records and Identification Section operates the Alaska Automated Fingerprint Identification System (AAFIS) and maintains criminal history record information used by police and other criminal justice agencies.

(continued on attached)

Prepared by: Ken Bischoff Phone: 455-4336
Division: Administrative Services Date: 02/26/90

Approved by Commissioner: Arthur English Date: 02/26/90
Agency: Department of Public Safety Page 1 of 2

FISCAL NOTE - C555B 35B
Department of Public Safety
(Analysis - Page 2 of 2)

This bill would allow the fingerprinting of juveniles age 14 or older who are arrested for criminal offenses. These fingerprints would be compared with latent (crime scene) prints contained in the Alaska Automated Fingerprint Identification System (AAFIS).

This bill should have a positive impact on the ability of police to solve cases involving juvenile offenders. A large percentage of theft and burglary offenses are committed by juveniles. Fingerprint evidence is frequently found at the scene of these offenses, but is not matched to any suspect because juveniles are not fingerprinted. AAFIS records indicate that a large number of theft and burglary offenses are cleared when adults are arrested and their fingerprints matched to latents from crimes committed when the offender was a juvenile. Had these persons been fingerprinted as juvenile offenders they could have been identified, clearing additional cases and enabling the court to consider the offender's complete conduct when deciding the disposition of a case.

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Total time to complete 15 processing steps	=	436 hrs
Clerk IV - Range 9A (3.5 months)		
Salary		\$6,059
Benefits		<u>2,999</u>
Total Salary & Benefits		\$9,058

252

FISCAL NOTE

REQUEST:

Revision Date: February 6, 1990
 Title: An Act Relating to Fingerprinting
 of Minors
 Sponsor: Senators Fisher & Kelly
 Requestor: _____

Agency Affected: DH&SS
 BRU: Youth Services
 Components: Probation Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This bill has no fiscal impact on the Department in FY90. SSSB358 permits the fingerprinting of minors arrested for an offence that is a felony if committed by an adult. Fingerprinting of minors 16 years of age and older could be entered into the Alaska automated fingerprint identification system. Arresting law enforcement agencies would take the fingerprints and the Department of Public

Prepared by: Russ Webb Phone: 465-3170
 Division: Family and Youth Services Date: _____

Approved by Commissioner: *M. M. M...* Date: 2/20/90
 Agency: _____

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

SSB358 An Act Relating to the Fingerprinting of Minors (con't.)

Safety would do the entries. This Department would not be fiscally impacted.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Fingerprinting of Minors

Agency Affected: Public Safety
BRU: Alaska State Troopers

Sponsor: Senators Fischer & Kelly
Requestor: Senate Judiciary

Component: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	17.6	17.6	17.6	17.6	17.6	17.6
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	17.6	17.6	17.6	17.6	17.6	17.6

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

GENERAL FUND	17.6	17.6	17.6	17.6	17.6	17.6
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	17.6	17.6	17.6	17.6	17.6	17.6

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is based upon the estimate of having State Troopers fingerprinting 1,500 juveniles per year. Each fingerprinting process will involve approximately 20 minutes for a total of approximately 500 hours per year. This equates to about 3 months of Trooper time statewide. The costs included on the fiscal note are based upon an average State Trooper position cost for three months. This would be a range 76, Step D.

Prepared by: Francis C. Allan
Division: Alaska State Troopers

Phone: 269-5691
Date: 02/08/90

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 2-8-90
Page 1 of 1

2/16/90

Alaska State Legislature

Senator Paul Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269



State Senate

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3791

Jim/Nina

MEMORANDUM

TO: Representatives Johnny Ellis, Chairmen
House Health, Education and Social Services
Committee

FROM: Senator Paul Fischer *PAF*

SUBJECT: CSSS Senate Bill 358 (Finance)
(fingerprinting of minors)

DATE: March 28, 1990

I would like to respectfully request that the above referenced bill be considered by the House Health, Education and Social Services Committee at the earliest possible time.

As you are aware this entire issue is of major concern to the various law enforcement agencies across the state.

In 1988, the legislature addressed this matter in depth, eventually passing compromise legislation that could be supported by the affected state agencies involved as well as provide a meaningful aid which was desired by law enforcement. However, it soon became evident to several of us in the legislature that the statute that was enacted in 1988 had never been implemented, thus the reason for the reintroduction of this legislation. As you know similar legislation was introduced on the House side by Representative Donley (HB 486) and is presently in your committee.

The Departments of Law and Public Safety are in full support of the legislation which passed the Senate. The Law Enforcement Coalition also supports the Senate version. This coalition is made up of members of the Alaska Association of Chiefs of Police, Alaska Peace Officers Association, and the Federal Bureau of Investigation National Academy Associates.

I am hopeful that we can pass Senate Bill 358, prior to adjournment, in order to complete the job we started in 1988.

Your consideration is appreciated.

PAF/sgn

Alaska Association of Chiefs of Police



Alaska Peace Officers Association, Inc.



**Federal Bureau of Investigation National Academy
Associates**



**Position Statement
from The Law Enforcement Coalition
Concerning Legislative Proposals
before the
Sixteenth Alaska Legislature
January 1990**

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JAN 29 1990

FOREWORD

This is the third year that the Coalition, consisting of the Alaska Peace Officers Association, Inc., the Alaska Association of Chiefs of Police, and the F.B.I. National Academy Associates, have jointly identified what we feel are the two top priorities involving legislation affecting public safety statewide.

During the last legislative session the limiting of Municipal liability imposed by the Busby decision was passed into law in the form of SB 66. We feel that was a significant accomplishment and appreciate the support of the Sixteenth Alaska Legislature. We are very satisfied that our concerns were heard by the members who met with us.

The other two priorities listed in our Statement last session were **Indemnification of Government Employees** and **Fingerprinting of Minors**. We feel these two issues are critical as they continue to affect the jobs police officers are able to do for their communities.

We strongly urge that you support these issues. The interests of every citizen in the State is affected. We strive for ever increasing professionalism throughout our ranks and we ask that the legislature continue to support us by passing laws which enable us to better serve the people of Alaska.

There are other bills being introduced this session which we intend to support. Recriminalization of marijuana continues to receive our support and urging. We are working for and will support legislation in favor of conspiracy, retirement reforms for peace officers in various fields, and possession of a deadly weapon during a violation of a domestic violence writ. We anticipate there will be other bills we support and favor and we always look forward to sharing our concerns.

Thank you for your interest. We extend to you an invitation to call or meet with any member of the Executive Boards for the Coalition. The officers are listed at the end of our Statement.

FINGERPRINTING OF MINORS

In 1988, Alaska State Statute 47.10.097 (Fingerprinting of Minors) was passed by the Legislature. This allows an officer to fingerprint a minor who is 16 years of age or older for entry into, or reference to, the Alaska Automated Fingerprint System (hereafter referred to as AAFIS) without a court order if the minor is convicted of, or adjudicated a delinquent for an offense that is a felony. However, we believe that the statute does not go far enough in that it does not allow for fingerprints to be taken, referenced, or entered into the AAFIS without a court order if the minor is only in custody and has not yet been adjudicated or convicted of a crime. This is what we wish to have amended.

Fingerprints are a primary tool for detection in many areas of criminal investigation. We believe, in the case of juveniles, a tremendous psychological deterrent to future criminal conduct. Statistics show that over the last 13 year period, juveniles constituted over 50% of the arrest rate for crimes such as burglary, larceny/theft, motor vehicle theft, and arson.

The "Coalition" believes that the true percentage of juvenile perpetrators is actually much higher. Detection, apprehension, and the rehabilitation process could advance much faster should law enforcement have access to fingerprint files of previously arrested youth between the ages of 14 and 17. We stress the rehabilitation process in this position statement as we strongly believe that the longer a juvenile is allowed to go undetected the more his or her conduct has been reinforced. This would, thereby, substantially diminish rehabilitation into productive adulthood.

The "Coalition" again urges the Legislature to pass into law a statute which would enable law enforcement to solve and prevent more crimes and ultimately better protect our citizens. We urge the Legislature to amend the 1988 statute to include the following:

1. A law enforcement officer may fingerprint and photograph any juvenile 14-17 years of age who has been arrested for any offense for which a person 18 years and older can be arrested, and
2. fingerprints taken from an arrested juvenile may then be entered and stored into AAFIS.

It is important to note that the Supreme Court of Alaska in 1987 removed the provisions governing the restrictions of fingerprinting and the photographing of minors from the "Children's Rules". After this ruling, the Attorney General's office recommended in a letter to the Youth Bureau of the Anchorage Police Department that they should, as a matter of policy, commence fingerprinting and photographing juveniles under the same conditions as for adults. They even included polygraphing arrested juveniles when necessary, however that is not what is of primary concern to us in this position statement.

The Supreme Court had given law enforcement the latitude they needed to protect the victims, as well as create the foundation for rehabilitation of those particular juveniles. We now ask that the Legislature assist in this same vein by considering the above recommendations.

A major concern from detractors of this proposal is that juveniles arrested for various crimes are too young to have realized the consequences of their mistakes. They conclude that by simple virtue of their age they should not then be subjected to fingerprinting and supposedly stigmatized for life. It must be countered that other than to certified law enforcement agencies, there is no access to juvenile files and that even access by other law enforcement agencies is extremely restricted. It is therefore our contention that this particular argument against juvenile fingerprinting is simply unwarranted and not a concern to the juvenile unless he or she becomes an habitual offender.

Unfortunately, it is a sad commentary of our present day society that an increasing number of crimes are being committed by juveniles. However, law enforcement needs to be able to use all the tools at their disposal to address and confront this growing problem and we are asking for your assistance in considering this important proposal.

FISCAL NOTE

REQUEST:

Revision Date: 4/10/90 Agency Affected: Public Safety
Title: An Act Relating to the BRU: DPS Statewide Support
Fingerprinting of Minors
Sponsor: Sen. Fischer Component: AK Criminal Records
Requestor: Senate Finance & ID

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	9.1	9.1	9.1	9.1	9.1	9.1
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	9.1	9.1	9.1	9.1	9.1	9.1

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	9.1	9.1	9.1	9.1	9.1	9.1
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	9.1	9.1	9.1	9.1	9.1	9.1

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The Records and Identification Section operates the Alaska Automated Fingerprint Identification System (AAFIS) and maintains criminal history record information used by police and other criminal justice agencies.

(continued on attached)

Prepared by: Ken Bischoff Phone: 465-4336
Division: Administrative Services Date: 04/10/90
Approved by Commissioner: S.A.H. English Date: 04/10/90
Agency: Department of Public Safety Page 1 of 2

Ken Bischoff
4/10/90

FISCAL NOTE - CSSSSB 358 (Fin)
Department of Public Safety
(Analysis - Page 2 of 2)

This bill would allow the fingerprinting of juveniles age 14 or older who are arrested for criminal offenses. These fingerprints would be compared with latent (crime scene) prints contained in the Alaska Automated Fingerprint Identification System (AAFIS).

This bill should have a positive impact on the ability of police to solve cases involving juvenile offenders. A large percentage of theft and burglary offenses are committed by juveniles. Fingerprint evidence is frequently found at the scene of these offenses, but is not matched to any suspect because juveniles are not fingerprinted. AAFIS records indicate that a large number of theft and burglary offenses are cleared when adults are arrested and their fingerprints matched to latents from crimes committed when the offender was a juvenile. Had these persons been fingerprinted as juvenile offenders they could have been identified, clearing additional cases and enabling the court to consider the offender's complete conduct when deciding the disposition of a case.

Existing AAFIS staff are not able to keep current with their present workload. Additional funding is required in Personal Services to increase the staff months of a part-time position approved for this unit for FY91 under a fiscal note for HB 52 (Chp 7 SLA 1990). The increased workload expected as a result of this bill is estimated as follows:

Estimated Number of Juvenile Fingerprint Cards	=	2,700
Total time to complete 15 processing steps	=	436 hrs
Clerk IV - Range 9A (3.5 months)		
Salary		\$6,059
Benefits		<u>2,999</u>
Total Salary & Benefits		\$9,058

... policy, a firm need not meet the customer's demand to resolve a complaint.

Company won't budge? Haunted by a question or complaint? Write the Troubleshooter, P.O. Box 149001, Anchorage, 99514-9001, or call 257-4343. Please include work and home phone numbers and photocopies of correspondence. Individual answers are not possible due to volume. Published letters will be edited.

Anchorage Daily News 2/23/90 E3

Police arrest suspect in Safeway stabbing

By MARILEE ENGE

Daily News reporter

Anchorage police on Thursday arrested a man suspected of stabbing two Safeway employees earlier this week after identifying him through the state's fingerprint computer.

Mike Troy White, 27, was charged with attempted murder and two counts of first-degree assault for the Monday morning stabbings. He was booked into Cook Inlet Pre-Trial Facility on \$100,000 bail.

Employees of the University Center Safeway store saw a man shoplift some cigarettes about 6 a.m. Monday, police said. When Donald Tomlinson and Dustin Prince tried to stop the man at the door, he pulled

a hunting knife and stabbed them.

Tomlinson was knifed in the back and underwent surgery at Providence Hospital. He was in stable condition there on Thursday. Price was treated for a leg wound and released.

Investigators took a fingerprint from the scene, ran it through the computer and came up with White's name. Then they pulled a photograph of him from state records and showed a photo line-up to witnesses, who identified him, said police spokesman Sgt. Walt Monegan.

Thursday, police found White at the Eagle Crest, a men's half-way house and residence hotel on Ninth Avenue. They surrounded the building and arrested him inside about 6 p.m.

Senate committee delays

The Associated Press

JUNEAU — A Senate committee vote on legislation that would ban flag desecration in Alaska was postponed Thursday because of a judge's ruling that the new federal flag-desecration law was unconstitutional.

The Senate Judiciary Committee had planned to approve the flag bill and

send it on its way. But the committee's vote was delayed by Sen. Jan Faiks, said a source. Faiks said he will look at the new legislation. "I don't think it's just for political purposes," Faiks said. He is a Republican from Anchorage's District 10.

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PARATEX

PIED PIPE

CALL US — 344-2538

465-4322

February 23, 1990

The Honorable Jan Faiks
Chairwoman
Senate Judiciary Committee
P.O. Box V
Juneau, AK 99811

RE: CS SSSB 358 (JUD), "An
Act Relating to Finger-
printing
of Minors"

Dear Senator Faiks:

At the Senate Judiciary Committee meeting yesterday regard-
ing SB 358, some questions were raised by committee members,
and I was asked to provide some additional information.

In response to the question regarding the number of juveniles
arrested for criminal offenses in Alaska, I am enclosing a
summary of those numbers for calendar years 1987 and 1988.
These numbers are based upon Uniform Crime Report (UCR) data
reported to the Department of Public Safety (DPS) by 24
police agencies; we estimate that about 85 percent of the
state's population is served by these 24 agencies.

As you may recall from the testimony given yesterday, the
Alaska Automated Fingerprint Identification System (AAFIS)
works in the following manner: A set of fingerprints taken
from an arrested offender is entered into the computer, and
compared with latent prints ("unknowns") collected from
crime scenes. The computer searches the entire data base,
and provides a list of prints that are possible matches
("hits"), with the most likely matches listed first. The
AAFIS operator then pulls and physically compares the
original fingerprint card with the latent prints. A
positive identification is based only on an actual
comparison of the original prints.

As you know, the committee substitute adopted by the Judi-
ciary Committee would allow the fingerprinting of juveniles
aged 14 or older who are arrested for criminal offenses. A
question was raised regarding the usefulness of fingerprints

Jan Faiks

February 23, 1990

taken from offenders aged 14 and 15 given that these offenders will continue to grow, and the size of their fingers will therefore change over time. I have spoken with Mr. Peter Davis, Supervisor of the DPS Records and Identification Section, and Mr. John Sauve, Supervisor of AAFIS, regarding this matter. They have informed me that our present AAFIS is accurate to "plus or minus 18 percent of growth." Beyond 18 percent there is a loss of accuracy in the computer's ability to detect a match. This loss of accuracy is in direct proportion to the quality of the original print. (Some latent prints collected at crime scenes are partial or somewhat smudged.) This loss of accuracy may mean that an actual match may not be detected; it would not result in an incorrect "match."

Based on our experience, and that of other law enforcement agencies with Automated Fingerprint Identification Systems (AFIS), we believe that the fingerprints of virtually all 14- and 15-year-olds would be within 18 percent of the size of the person's adult fingerprint. The San Francisco Police Department has included the fingerprints of juvenile offenders in its AFIS since 1984. They have informed us that the slight difference in size between juvenile and adult prints has not presented a problem in obtaining matches in their system. [Here in Alaska from 1984 through 1989 the fingerprints of 124 persons arrested for the first time as adults were matched with unidentified latent fingerprints taken from the scenes of unsolved crimes which were committed when the arrestee was a juvenile.] We believe very strongly that the ability to obtain and enter into AAFIS the fingerprints of 14- and 15-year-old juveniles arrested for criminal offenses would be of tremendous assistance in solving crimes in Alaska.

I would like to emphasize a point made during yesterday's hearing. Fingerprint records maintained in AAFIS are entirely separate from criminal history records, which are contained in the Alaska Public Safety Information Network (APSIN). [The presence of a person's fingerprints in AAFIS does not mean that a person has a criminal record.] For example, AAFIS contains thousands of fingerprints submitted by persons seeking employment in or certification for certain fields, such as school bus drivers, teachers, law enforcement officers, and security guards, to name a few. Under AS 44.41.020, any person who wishes to do so may submit his or her fingerprints, or those of their minor children, for inclusion in AAFIS.]

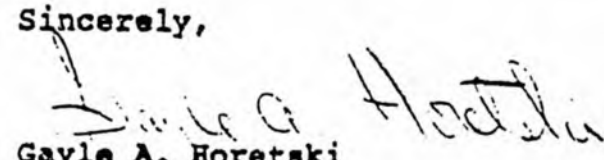
The Honorable Jan Faiks

-3-

February 23, 1990

I hope this letter answers the questions raised by committee members yesterday. Please let me know if I can provide any further information.

Sincerely,


Gayle A. Horetski
Deputy Commissioner

Enclosure: a/s

cc: The Honorable Pat Rodey
Vice-Chairman
Senate Judiciary Committee

The Honorable Rick Halford
Senate Judiciary Committee

The Honorable Drue Pearce
Senate Judiciary Committee

The Honorable Mike Szymanski
Senate Judiciary Committee

JUVENILE ARRESTS *

	1987	%	1988	%	87/88	%
Major Felonies**						
Total Arrests	990		1,100		2,090	
Juveniles	96	9.7%	97	9%	193	9%
Burglary						
Total Arrests	1,041		960		2,001	
Juveniles	475	46%	509	53%	984	49%
Larceny						
Total Arrests	4,934		4,398		9,332	
Juveniles	1,754	36%	1,624	37%	3,378	36%
Motor Vehicle Theft						
Total Arrests	331		481		812	
Juveniles	166	50%	214	44%	380	47%
Grand Totals					14,235 Arrests	
Juveniles					4,935	35%

* Data obtained from 24 police agencies submitting Uniform Crime Reports (about 85% of Alaska's population is served by these 24 police agencies)

** Major Felonies - Combined figures for Murder, Manslaughter, Rape, Robbery and Aggravated Assault

Letter of Intent

for

HCS FOR CS FOR SENATE BILL NO. 355 (Judiciary)

The changes to AS 11.41.434(a) are intended to clarify the meaning of two terms used in existing law -- "entrusted to the offender's care by authority of law" and "temporarily entrusted to the offender's care." The amendments are needed as a result of a recent Anchorage case, State v. Carlson, 3AN-S89-7443 Cr., in which the superior court concluded that the term "entrusted to the offender's care by authority of law" did not apply to teachers, and that if the legislature intended the language to apply to persons other than legal guardians, the statute was unconstitutionally vague. The term "temporarily entrusted to the offender's care" is clarified as well, in order to avoid litigating whether that term is unconstitutionally vague.

The amendments make it an unclassified felony to have sexual penetration (and a B felony to have sexual contact) with a person under 16 where the offender occupies a "position of special trust" in relation to the victim. In addition, where the offender occupies a "position of special trust" in relation to the victim and holds a license or certificate to engage in certain professions, it is a B misdemeanor to have sexual penetration (and a violation to have sexual contact) with a 16- or 17-year-old person who is at least three years younger than the offender.

A "position of special trust" is a position that could enable an offender to exercise influence over the victim. The definition includes a list of positions that fall within the law. The definition is intended to include all persons covered under the current law making it a crime to have sexual penetration or contact with a person under age 16 who is "temporarily entrusted to the offender's care," and to broaden the definition to include other persons, such as police officers and guardian ad litem, who are in a position that could enable them to exercise undue influence over children. Persons other than those specifically listed are included within the definition only if they are in a position substantially similar to a position specifically included in the definition.

For example, the definition includes the term "babysitter." Positions substantially similar to "babysitter" include a person who is temporarily caring for a minor while the minor's parents are out of town, or an adult who takes a minor along on a camping trip, or an adult who allows a minor to sleep in the adult's home overnight as the guest of the adult's own child. Other examples of positions that are substantially similar to those specifically listed within the definition are parents who

volunteer to work with children in schools or youth groups. These adults are in positions substantially similar to youth leaders and scout leaders.

The nature of an adult's position of special trust determines the duration of the prohibition against sexual relations between the adult and child. The relationship of special trust between a child and the child's teacher or youth leader continues even during the intervals between classes or formal meetings of the youth group, because there is an expectation of future, ongoing (albeit intermittent) contact between the adult and the child in the context of the relationship of special trust. On the other hand, an adult who volunteers to chaperon a single school dance does not thereby create an open-ended relationship of special trust with all the students who attend the dance; rather, that relationship is limited to the dance and the time before and after the dance when students are arriving and going home.

The amendments also make it an unclassified felony for a natural parent, stepparent, adopted parent, or legal guardian to engage in sexual penetration (and a B felony to engage in sexual contact) with a person under the age of 18. The penalties are the same as provided under current law for these categories of persons; the amendment is necessary as a result of removing the language "entrusted to the offender's care by authority of law" from the statute. The definition of "legal guardian" specifically includes foster parents, staff members of group homes or youth correctional facilities where a child is placed as a result of court order or action of the Division of Family and Youth Services, and police or probation officers exercising custodial control over a minor.

DRAFT
5/2/90

~~ADDITIONS TO SENATE LETTER OF INTENT~~
~~DELETIONS FROM SENATE LETTER OF INTENT~~

Letter of Intent

for

~~HCS FOR~~ CS FOR SENATE BILL NO. 355 (Judiciary)

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The amendments make it an unclassified felony to have sexual penetration (and a B felony to have sexual contact) with a person under 16 where the offender occupies a "position of special trust" in relation to the victim. In addition, where the offender occupies a "position of special trust" in relation to the victim and holds a license or certificate to engage in certain professions, it is a B misdemeanor ~~a B felony~~ to have sexual penetration (and a violation ~~a felony~~ to have sexual contact) with a 16- or 17-year-old person who is at least three years younger than the offender.

A "position of special trust" is a position that could enable an offender to exercise undue influence over the victim. The definition includes a list of positions that fall within the law. The definition is intended to include all persons covered under the current law making it a crime to have sexual penetration or contact with a person under age 16 who is "temporarily entrusted to the offender's care," and to broaden the definition to include other persons, such as police officers and guardian ad litem, who are in a position that could enable them to exercise undue influence over children. Persons other than those specifically listed are included within the definition only if they are in a position substantially similar to a position specifically included in the definition.

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along on a camping trip, or an adult who allows a minor to sleep in the adult's home overnight as the guest of the adult's own child. Other examples of positions that are substantially similar to those specifically listed within the definition are parents who volunteer to work with children in schools or youth groups. These adults are in positions substantially similar to youth leaders and scout leaders.

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~~Employers and job supervisors were specifically not included within the definition of "position of special trust."~~

The amendments also make it an unclassified felony for a natural parent, stepparent, adopted parent, or legal guardian to engage in sexual penetration (and a B felony to engage in sexual contact) with a person under the age of 18. The penalties are the same as provided under current law for these categories of persons; the amendment is necessary as a result of removing the language "entrusted to the offender's care by authority of law" from the statute. The definition of "legal guardian" specifically includes foster parents, and staff members of group homes or youth correctional facilities where a child is placed as a result of court order or action of the Division of Family and Youth Services, and police or probation officers exercising custodial control over a minor.

Original sponsor(s): SEN. FISCHER, Kelly

1 IN THE SENATE

BY THE HESS COMMITTEE

2 HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 358 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fingerprinting of minors; and
7 providing for an effective date."

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

9 * Section 1. INTENT. It is the intent of the amendment made to AS 44.-
10 41.025(c) by sec. 2 of this Act that, consistent with the current manner of
11 managing the Alaska automated fingerprint system, the commissioner of
12 public safety manage and strictly limit use of the fingerprints of minors
13 taken under AS 47.10.097 for purposes of identification. The commissioner
14 may not maintain those fingerprints for the purpose of developing or aug-
15 menting a criminal record for the minor.

16 * Sec. 2. AS 44.41.025(c) is amended to read:

17 (c) The department may enter into the Alaska automated finger-
18 print identification system the fingerprints of a minor whose finger-
19 prints are taken under AS 47.10.097. The commissioner of public
20 safety shall assure that fingerprints entered into the Alaska auto-
21 mated fingerprint system under AS 47.10.097 are not cross-referenced
22 with a record showing that the minor has been arrested or adjudicated
23 a delinquent.

24 * Sec. 3. AS 47.10.097(a) is amended to read:

25 (a) Except as provided in (b) of this section, a minor in the
26 custody of the department or of a law enforcement agency may not be
27 fingerprinted for reference to or entry into the Alaska automated
28 fingerprint system without a court order upon good cause shown. Good
29 cause exists if the minor is in custody for an offense that is a

S B

4 2 3

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 29, 1990

FURTHER REFERRALS:

Date of Committee Action: ~~March 29, 1990~~

The JUDICIARY Committee considered:

SB 423

SENATE BILL NO. 423

ASSAULT IN VIOLATION OF RESTRAINING ORDER

"An Act relating to misconduct involving possession of a weapon by a person who is in violation of a domestic violence restraining order."

RECOMMENDATIONS:

- be replaced with HCS SB 423 (JUD) the same title
- have 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):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) Pub. Safety 3/6/90
- zero fn/analysis Corrections 3/23/90

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass
No Rec
Amend

Peter Goll Goll.
Michael Davis DAVIS
Ellis Ellis
W. Gruenberg Gruenberg

Signature	Do Not Pass	No Rec	Amend
<u>Davidson</u> Davidson			
<u>Terry Martin</u> Martin			

Peter Goll / W. Gruenberg
 Chairman's Signature

ANCHORAGE TASK FORCE ON SEXUAL ASSAULT

HJD
Bill
File

c/o Abuse Prevention Program, Municipality of Anchorage, P.O.
Box 196650, Anchorage, AK 99519-6650, Tele. 343-4876

April 9, 1990

House of Representatives
Judiciary Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Peter Goll; Co-Chair
Representative Max Gruenberg; Co-Chair
Representative Mike Davis; Vice-Chair
Representative Cliff Davidson;
Representative Johnny Ellis;
Representative Terry Martin;
Representative Mike Miller:

RE: Letter of support for SB 423

The Anchorage Task Force on Sexual Assault (ATFSA) is comprised of over forty representatives from the State Departments' of Law, Corrections, Health and Social Services, local hospitals (Humana Hospital, Providence Hospital, and the Alaska Native Medical Center), the Anchorage Police Department, local crisis centers, the Municipal Health and Human Services Department, and interested professionals. The purpose of the ATFSA is to heighten community awareness, enhance inter-agency communication and cooperation, sensitize and improve systems affecting victims, and advocate for positive policies which affect victims and their families.

The ATFSA strongly supports SB 423 and urges the expeditious passage of the bill from the Judiciary Committee. SB 423 is an act relating to misconduct involving possession of a weapon by a person who is in violation of a domestic violence restraining order. The ATFSA is interested in this bill since many domestic violence victims are also sexually assaulted by the batterer. Recent studies show that approximately 37% of battered women have been sexually violated by their partners.

The bill speaks to the limitations of the arrest and apprehension of individuals acting in violation of their temporary restraining order and to the avoidance of lethal situations. Passage of SB 423 would expand arrest capabilities to include instances where the violator, of a domestic restraining order, enters or remains in the home or in a motor vehicle, and, or during the violation carries a deadly weapon. The bill also includes situations where the violator communicates with the plaintiff, in violation of the restraining order, and possess a deadly weapon.

The bill is especially important in light of research relating to the use of weapons and lethal incidents reported in domestic violence cases. According to the U.S. Department of Justice, Federal Bureau of Investigation, data indicates that 30% of female homicide victims are killed by their husbands or boyfriends. In a 1971 study conducted in Kansas City, police had been called previously at least five times in 50% of all homicides by one spouse of another within a two-year period before the homicide occurred. In 55% of the cases, the police had been summoned at least once.

Additional research suggests that spousal abuse results in more injuries that require medical treatment than rape, auto accidents, and muggings combined.

An in-depth case study of domestic violence in the Anchorage area reports that approximately 12% of the domestic violence victims experienced injury by weapons or objects. Approximately 9% of the victims were threatened with a knife, gun or other dangerous object.

Early data for 1989 suggest that an average of 218 domestic violence incidents were reported to the Anchorage Police Department. According to the U.S. Department of Justice, Bureau of Justice, wife assault is underreported by a factor of at least 10 to 1. Based on this information, an estimate of the actual occurrences of domestic violence in Anchorage could be as high as 2,180 incidents.

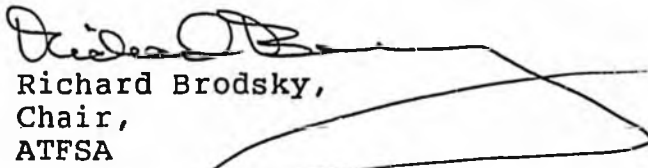
National research findings indicate that arrest is the most effective method of police intervention, more effective than attempting to counsel both parties or sending the assailant away from the home for a few hours. For example, the city of Newport News, Virginia, witnessed a decline in their domestic violence homicide rate (from 9 in 1984 to 0 in 1987) since they implemented a pro-arrest policy.

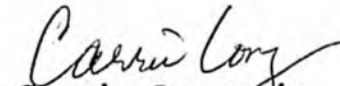
ATFSA
Letter of Support for SB 423
page 3

Police are often the primary source of intervention in domestic violence cases. The benefits in instituting broad pro-arrest laws reach beyond the goal of reducing domestic violence incidents. It is often the beginning for some victims to regain self-confidence and seek help. The victim sees herself as a victim of a crime, not as an "unfit" wife.

Through police intervention, society sends a powerful message. By passing SB 423, the Legislature is making a powerful statement--domestic violence is intolerable and there will be intervention.

Sincerely,


Richard Brodsky,
Chair,
ATFSA


Carrie Longoria
Chair,
Legislative Committee

#246/CDL

TELECOPY COVER SHEET

ANCHORAGE POLICE DEPARTMENT

4501 S. Bragaw Street

Anchorage, Alaska 99507-1599

Telephone: 786-8500 Fax Number: 563-0785

TELECOPY TO: Detstar Pease FAX NO. 465-3887

FROM: Shirley Warner NUMBER OF PAGES: 5

COMMENTS: Position Paper 58423

SENT: DATE _____ TIME _____

RECEIVED: DATE _____ TIME _____

THE ANCHORAGE DOMESTIC VIOLENCE COMMITTEE

March 30, 1990

The Honorable Paul Fischer
Alaska State Senate
Pouch V
Juneau, Alaska 99688

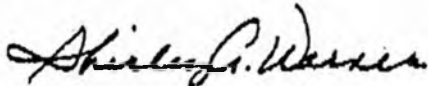
Dear Senator Fischer,

Attached is the position paper of the Anchorage Domestic Violence Committee regarding Senate Bill 423, possession of a dangerous weapon during the violation of a domestic violence writ. As you had requested of me while I was in Juneau in February I am sending this original to you for proper dissemination to other involved Legislators.

I really appreciate your assistance on this bill. I anticipate that this strong statement to violators of domestic violence writs will be very effective, and will reduce threat of injury to domestic violence victims.

If there is any more I can do to promote and insure the passage of this bill please do not hesitate to call. Thank you.

Sincerely,



Shirley A. Warner
Chairperson for the
Anchorage Domestic Violence Committee
President of the Alaska Peace
Officers Association
786-8851

POSITION PAPER

Domestic Violence Committee
4501 S. Bragaw Street
Anchorage, Alaska 99507-1599

February 26, 1990

RE: Support for Senate Bill 423: An act relating to misconduct involving possession of a weapon by a person who is in violation of a domestic violence restraining order.

The Domestic Violence Committee strongly urges you to pass SB 423. Our Committee was formed in June 1988 for the purpose of discussing, clarifying, and revising any areas of concern regarding domestic violence. We represent a variety of governmental agencies who deal with domestic violence on a daily basis. 20 to 30 people are in attendance at each quarterly meeting to deal with significant issues.

The goal of the Committee is to insure optimum protection for victims of domestic violence through an expedient and efficient procedure for dealing with violators.

We feel this bill will further our success in dealing with this most volatile crime. Currently when an officer responds to the scene of a violation of a domestic violence writ, and the respondent is in possession of a deadly weapon, the most the officer is able to do is place the person under arrest for a misdemeanor.

Research has shown, and current cases within the State have proven, that the likelihood of felonious assault and murder is greater if the violator is in possession of a deadly weapon.

The Committee feels the ideal would be that the respondent is warned via the writ that if he/she violates the writ, and is in possession of a deadly weapon, he/she shall be arrested for a felony. It is our hope that this addition would act as further deterrence in the injury and death of innocent people. In the event the respondent does not pay heed to this warning three things will occur: 1) an officer has the authority to arrest the respondent for a felony; 2) more time is allowed to pass providing for a "cooling off period"; 3) the respondent will become very aware of the seriousness of the crime and he/she will know the State is serious about this crime.

The following information should prove useful in your discussion with anyone who may oppose this worthwhile step in furthering the protection of victims of domestic violence.

From the National Women Abuse Prevention Project:

- * When battered women are killed by their abusers, it frequently occurs after they have been separated from them or taken other action to end the relationships.
- * FBI data indicate that 30% of female homicide victims are killed by their husbands or boyfriends. This translates into the death of four women per day at the hands of male partners.
- * An in-depth study of all one-on-one murder and non-negligent manslaughter cases from 1980-84 found that more than one-half (52%) of female victims were killed by male partners.
- * 40% of women seeking shelter services in Texas were abused with weapons.
- * Research suggests that spousal abuse results in more injuries that require medical treatment than rape, auto accidents, and muggings combined.

From Men Who Batter: An Integrated Approach for Stopping Wife Abuse, Edward W. Gondolf, Learning Publications, 1989:

- * In a study of domestic violence and the police in Kansas City, Missouri, it was found that police had responded to disturbance calls, at the address of homicide victims at least once in the two years before the homicide in 90% of the cases, and five or more times in 50% of the cases.

From the Statistical Study of Domestic Violence Cases: 1986-1988, in Anchorage:

- * Approximately 12% of the domestic violence victims experienced injury by weapons or objects.
- * Approximately 9% of the domestic violence victims were threatened with a knife, gun or other dangerous object.

If you have any questions, or if any member of this committee can assist in any way to insure the expeditious passage of this legislation, please call. Thank you.

Sincerely,

Shirley A. Warner

Lt. Shirley A. Warner
Chair, Domestic Violence Committee
Anchorage Police Department
786-8851

Nancy Scheetz-Freymler

Nancy Scheetz-Freymler
Executive Director
Abused Women's Aid in Crisis
272-0100

Carrie Longoria

Carrie Longoria
Director, Abuse Prevention Program
Municipality of Anchorage
343-4876

Gary Apperson

Sgt. Gary Apperson
Patrol Division
Anchorage Police Department
786-8500

James F. Wolf

James F. Wolf
Municipal Prosecutor
Municipality of Anchorage
343-4250

Cheryl Mann

Cheryl Mann
Executive Director
Alaska Women's Resource Center
276-0528

Doug Stowers

Sgt. Doug Stowers
Warrant Section
Anchorage Police Department
343-4198

Michael A. Grimes

Sgt. Michael A. Grimes
Violent Crimes Unit
Anchorage Police Department
786-8807

Dennis Casanovas

1st Sgt. Dennis Casanovas
Patrol Division
Alaska State Troopers
269-5511

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Corrections
 Title: "Misconduct involving weapon... in violation of domestic restraining order." BRU: _____
 Sponsor: Senator Pearce. et. al. Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-	-	-	-	-	-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

While it is clear that some fiscal impact will occur due to offenders serving time under a felony versus a misdemeanor, there is no data available through Department of Public Safety, Department of Law or Department of Corrections to accurately predict what the impact will be.

Prepared by: Susan E. Knighton, Director Phone: 465-3376
 Division: Administrative Services Date: 03/22/90

Approved by Commissioner: S. Thompson-Baswell Date: 03/22/90
 Agency: Department of Corrections

Distribution (by preparer):

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

BY SEN. PEARCE, Sturgulewski, Coghill, Binkley, Eliason, Jones, Faiks

1 IN THE SENATE

2

SENATE BILL NO. 423

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to misconduct involving possession
of a weapon by a person who is in violation of a
domestic violence restraining order."

7

8

9

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

10

* Section 1. AS 11.61.200(a) is amended to read:

11

(a) A person commits the crime of misconduct involving weapons
in the first degree if the person

12

13

(1) knowingly possesses a firearm capable of being con-
cealed on one's person after having been convicted of a felony by a
court of this state, a court of the United States, or a court of
another state or territory;

14

15

16

17

(2) knowingly sells or transfers a firearm capable of being
concealed on one's person to a person who has been convicted of a
felony by a court of this state, a court of the United States, or a
court of another state or territory;

18

19

20

21

(3) manufactures, possesses, transports, sells, or trans-
fers a prohibited weapon;

22

23

(4) knowingly sells or transfers a firearm to another whose
physical or mental condition is substantially impaired as a result of
the introduction of an intoxicating liquor or drug into that other
person's body;

24

25

26

27

(5) removes, covers, alters, or destroys the manufacturer's
serial number on a firearm with intent to render the firearm untrace-
able; [OR]

28

29

1 (6) possesses a firearm on which the manufacturer's serial
2 number has been removed, covered, altered, or destroyed, knowing that
3 the serial number has been removed, covered, altered, or destroyed
4 with the intent of rendering the firearm untraceable;

5 (7) violates AS 11.46.320 or 11.46.330 by entering or
6 remaining unlawfully on premises or in a propelled vehicle in viola-
7 tion of a provision of an order issued under AS 25.35.010(b) or 25.-
8 35.020 and, during the violation, possesses on the person a deadly
9 weapon; or

10 (8) communicates in person with another in violation of
11 AS 11.61.120(a)(6) and, during the communication, possesses on the
12 person a deadly weapon.

Original sponsor(s): SEN. PEARCE, Sturgulewski, Coghill, Binkley, Eliason, Jones, Faiks, Uehling; REP. Hanley

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 423 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to misconduct involving possession
7 of a weapon by a person who is in violation of a
8 domestic violence restraining order."

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

10 * Section 1. AS 11.61.200(a) is amended to read:

11 (a) A person commits the crime of misconduct involving weapons
12 in the first degree if the person

13 (1) knowingly possesses a firearm capable of being con-
14 cealed on one's person after having been convicted of a felony by a
15 court of this state, a court of the United States, or a court of
16 another state or territory;

17 (2) knowingly sells or transfers a firearm capable of being
18 concealed on one's person to a person who has been convicted of a
19 felony by a court of this state, a court of the United States, or a
20 court of another state or territory;

21 (3) manufactures, possesses, transports, sells, or trans-
22 fers a prohibited weapon;

23 (4) knowingly sells or transfers a firearm to another whose
24 physical or mental condition is substantially impaired as a result of
25 the introduction of an intoxicating liquor or drug into that other
26 person's body;

27 (5) removes, covers, alters, or destroys the manufacturer's
28 serial number on a firearm with intent to render the firearm untrace-
29 able; [OR]

1 (6) possesses a firearm on which the manufacturer's serial
2 number has been removed, covered, altered, or destroyed, knowing that
3 the serial number has been removed, covered, altered, or destroyed
4 with the intent of rendering the firearm untraceable;

5 (7) violates AS 11.46.320 or 11.46.330 by entering or
6 remaining unlawfully on premises or in a propelled vehicle in viola-
7 tion of a provision of an order issued under AS 25.35.010(b) or 25.-
8 35.020 and, during the violation, possesses on the person a deadly
9 weapon, other than an ordinary pocketknife; or

10 (8) communicates in person with another in violation of
11 AS 11.61.120(a)(6) and, during the communication, possesses on the
12 person a deadly weapon, other than an ordinary pocketknife.

S B

4 2 5

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 4, 1990

FURTHER REFERRALS:

Date of Committee Action: 4-29-90

The JUDICIARY Committee considered:

CSSB 425 (LABOR & COMMERCE)

CS SB NO. 425 (L&C)

DISCLOSURE OF AGENCY BY REALTORS

"An Act relating to disclosure of agency by holders of real estate licenses; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with HCS CSSB 425 (L+C) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) CD 2-22-90
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass
No Rec
Amend

SIGNING DO PASS:	SIGNING:	Do Not Pass	No Rec	Amend
<u>Msgr. Grunberg</u> Grunberg				
<u>Ellis</u> Ellis				
<u>Davidson</u> Davidson				
<u>Martin</u> Martin				
<u>Goll</u> Goll				

Pete Goll / Msgr. Grunberg
Chairman's Signature

Offered: 4/4/90
Referred: Judiciary

6-1993H

Prepared by CED 2/22/90

Original sponsor(s): SEN. STURGULEWSKI

1 IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 425 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to disclosure of agency by holders
7 of real estate licenses; and providing for an effective
8 date."

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

10 * Section 1. AS 08.88 is amended by adding a new section to read:

11 Sec. 08.88.396. DISCLOSURE OF AGENCY. (a) A person holding a
12 license under this chapter shall, when acting as an agent for a pro-
13 spective seller of real estate,

14 (1) disclose in writing the person's agency relationship
15 with the seller to each prospective buyer at the time that the person
16 begins to provide specific assistance to locate or acquire real estate
17 for the buyer, and obtain from each prospective buyer a signed
18 acknowledgement that the buyer is aware of the agency relationship
19 between the person licensed under this chapter and the seller; and

20 (2) include in the purchase agreement a statement of the
21 agency relationship between the person licensed under this chapter and
22 the seller.

23 (b) A person holding a license under this chapter shall, when
24 acting as an agent for a prospective buyer of real estate,

25 (1) disclose the person's relationship with the buyer to a
26 prospective seller of real estate, or to the seller's agent, at the
27 time of the initial contact between the person licensed under this
28 chapter and the prospective seller or the seller's agent, and confirm
29 the relationship in writing as soon as possible after the initial

1 contact;

2 (2) include in the purchase agreement a statement of the
3 agency relationship between the person licensed under this chapter and
4 the buyer;

5 (3) if the prospective seller has an unexpired exclusive
6 listing contract for a property, present an offer to purchase that
7 property to the seller's agent; and

8 (4) disclose in writing to all parties to a transaction
9 when the person's compensation as agent for the buyer is to be paid by
10 anyone other than the buyer being represented by the person.

11 (c) A person licensed under this chapter may not act as an agent
12 for both a prospective seller and a prospective buyer of real estate
13 unless the person informs both the seller and the buyer and obtains
14 written consent to the joint agency from both.

15 (d) When a change occurs during a transaction that makes a prior
16 written disclosure required by this section incomplete, misleading, or
17 inaccurate, the person licensed under this chapter shall make a re-
18 vised disclosure, in writing, to all parties to the transaction as
19 soon as possible. The revised disclosure must include the date of the
20 revision and shall be acknowledged in writing by all the parties.

21 * Sec. 2. AS 08.88.401(d) is amended to read:

22 (d) A person who violates a provision of this section, [OR OF]
23 AS 08.88.161, or AS 08.88.396 is guilty of a class A misdemeanor.

24 * Sec. 3. This Act takes effect January 1, 1991.

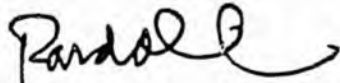
MEMORANDUM

State of Alaska

TO: Frank Homan, Legislative Aide
to Senator Arliss Sturgulewski

DATE: April 2, 1990

FILE NO:



TELEPHONE NO:

FROM: Randall P. Burns, Director
Division of Occupational Licensing
Department of Commerce and
Economic Development

SUBJECT: Comments on
CSSB 425(L&C)

Apparently, as a result of several public opinion messages (POMs), questions were raised in the House Labor and Commerce Committee regarding SB 425. Of apparent interest was an issue related to the impact of AS 08.88.396(b)(4) of the bill (page 2, lines 8 - 10) on the sale of HUD homes.

In the original bill, this paragraph required the buyer's agent to obtain the written consent of all parties when "the person's compensation as agent for the buyer is to be paid by anyone other than the buyer being represented by the person." This was amended in Senate Labor and Commerce to require disclosure -- rather than written consent -- to all parties to the transaction of the origin of compensation.

We have learned that HUD cannot sign addenda (i.e., the HUD purchase agreement form is a standardized national contract that cannot be altered without Washington, D. C.'s blessing), thus making it very difficult for salespersons representing HUD purchasers to comply with this section. The Senate Labor and Commerce amendment therefore makes sense in light of the inability to alter HUD contracts to reflect the written consent required of the original bill.

Another POM stated that, by law, all agents on HUD contracts represent the buyer. This is not true. While many agents do represent buyers on HUD-home purchases, there is no law mandating only agent-buyer relationships. Further, it is our understanding that the practice is not consistent across the nation by HUD's regional offices. Some consider the agents as buyers' agents and some consider them as HUD agents. HUD does not list properties exclusively with any agent.

Generally, the primary purpose of the bill is to make consumers aware of whom an agent is representing in a real estate transaction. Subsection (a) alerts buyers when they are not being represented. The disclosure required of this subsection will apprise the buyer that an agency relationship has been established between the salesperson and the seller, and clarify for the buyer that the seller is the one providing compensation for the agent's professional services. This requirement assures that the buyer is aware of the agent's role in the transaction.

Subsection (b) alerts a seller when an agent is representing the interests of a buyer, and apprises the seller that the salesperson will be advocating/negotiating on behalf of the buyer during the transaction. If the agent expects to be compensated by someone other than the buyer, then the seller should be put on notice before considering an offer. As stated previously above, to require written consent in this instance would be an unreasonable expectation and potentially discriminate against agents who represent buyers.

Finally, subsection (c) requires disclosure of "dual or joint agency," when the salesperson represents both the buyer and the seller.

This division and the Real Estate Commission support the bill as it passed out of the Senate Labor and Commerce Committee.

Thank you for your assistance in this matter.

RB/11p7463s
040290a



Alaska State Legislature

SENATE

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

April 4, 1990

The Honorable Dave Donley
Chairman
House Labor and Commerce Committee
PO Box V
Juneau, AK 99811

Dear Representative Donley:

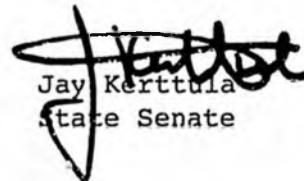
I received the enclosed letters concerning Senate Bill 425 and Senate Bill 288.

*referred to
jud.*

I would appreciate it if you would include letters as back-up on these two pieces of legislation.

Thank you for your assistance in this matter.

Sincerely,


Jay Kerttula
State Senate

JK:mf

enclosure

ASB 425
refused. jwd.

Matt
609



[Handwritten signature]

March 19, 1990

Senator Kerttula
P.O. Box V
Juneau, AK 99811

Dear Senator Kerttula:

The following Real Estate Broker and Agents support CSSB 425, as introduced on 1/31/90, regarding the disclosure of relationships between Real Estate Agencies and both buyer and seller.

The formal and written explanations for the relationships between the broker/agent to both the buyer and seller, as well as written responsibility of the fees involved, will help alleviate misunderstandings and make it easier for the broker/agent to fairly and effectively complete the transaction.

Sincerely,

Kevin Crozier

Kevin Crozier
Broker

Helga Larson

Helga Larson
Broker Associate

James Bonham

James Bonham
Broker Associate

Charlene Moss

Charlene Moss
Sales Associate

Troy Broadrick

Troy Broadrick
Sales Associate

John Neace

John Neace
Broker Associate

Kristan Tanner

Kristan Tanner
Broker Associate

Harley Harris
Sales Associate



RE/MAX of wasilla, inc.
1590 east financial drive, suite 110
wasilla, alaska 99687
phone: (907) 376-4515
an independent member broker

Alaska State Legislature



SENATOR
ARLISS STURGULEWSKI
Senate President Pro Tempore
Chairman, Senate Rules Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

While in Juneau
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3818

Senate

MEMORANDUM

March 20, 1990

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Senator Arliss Sturgulewski *AS*
District F

RE: Hearing request for CSSB 425(L&C) "An Act relating to
disclosure of agency by holders of real estate
licenses; and providing for an effective date."

Senate Bill 425 was requested by the Alaska Association of Realtors based on recommendations by the National Association of Realtors and a 1988 Alaska Real Estate Commission Task Force recommendation.

This legislation is aimed at reducing the confusion that the real estate consumers often encounter as to whom the real estate agent represents. Senate Bill 425 would place requirements on real estate agents to disclose whether they represent the seller, the buyer, or both to all parties.

This legislation is supported by the Alaska Association of Realtors, the Real Estate Commission, and the Department of Commerce and Economic Development. There is a zero fiscal note.

I would appreciate your consideration of SB 425 for a public hearing. Thank you.

Attachments

Original sponsor(s): SEN. STURGULEWSKI

1 IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE
2 CS FOR SENATE BILL NO. 425 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to disclosure of agency by holders
7 of real estate licenses; and providing for an effective
8 date."

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12 license under this chapter shall, when acting as an agent for a pro-
13 spective seller of real estate,

14 (1) disclose in writing the person's agency relationship
15 with the seller to each prospective buyer at the time that the person
16 begins to provide specific assistance to locate or acquire real estate
17 for the buyer, and obtain from each prospective buyer a signed
18 acknowledgement that the buyer is aware of the agency relationship
19 between the person licensed under this chapter and the seller; and

20 (2) include in the purchase agreement a statement of the
21 agency relationship between the person licensed under this chapter and
22 the seller.

23 (b) A person holding a license under this chapter shall, when
24 acting as an agent for a prospective buyer of real estate,

25 (1) disclose the person's relationship with the buyer to a
26 prospective seller of real estate, or to the seller's agent, at the
27 time of the initial contact between the person licensed under this
28 chapter and the prospective seller or the seller's agent, and confirm
29 the relationship in writing as soon as possible after the initial

1 contact;

2 (2) include in the purchase agreement a statement of the
3 agency relationship between the person licensed under this chapter and
4 the buyer;

5 (3) if the prospective seller has an unexpired exclusive
6 listing contract for a property, present an offer to purchase that
7 property to the seller's agent; and

8 (4) disclose to all parties to a transaction when the
9 person's compensation as agent for the buyer is to be paid by anyone
10 other than the buyer being represented by the person.

11 (c) A person licensed under this chapter may not act as an agent
12 for both a prospective seller and a prospective buyer of real estate
13 unless the person informs both the seller and the buyer and obtains
14 written consent to the joint agency from both.

15 (d) When a change occurs during a transaction that makes a prior
16 written disclosure required by this section incomplete, misleading, or
17 inaccurate, the person licensed under this chapter shall make a re-
18 vised disclosure, in writing, to all parties to the transaction as
19 soon as possible. The revised disclosure must include the date of the
20 revision and shall be acknowledged in writing by all the parties.

21 * Sec. 2. AS 08.88.401(d) is amended to read:

22 (d) A person who violates a provision of this section, [OR OF]
23 AS 08.88.161, or AS 08.88.396 is guilty of a class A misdemeanor.

24 * Sec. 3. This Act takes effect January 1, 1991.

SB 425: "An Act relating to disclosure of agency by holders of real estate licenses; and providing for an effective date."

Background

When a real estate broker consents to market a property for a seller, the relationship established between the seller (also known as the principal) and the broker is called an "agency" relationship because the broker becomes an agent for the seller. The agent (broker) is authorized by the principal (seller) to act on the principal's behalf, subject to the principal's control.

Because the relationship is a fiduciary one, the agent owes his principal the following:

1. good faith and fidelity;
2. exercise of reasonable care, skill, and judgment in securing the best price and terms possible for the principal;
3. avoidance of representing any interest contrary to that of the principal without the express written consent of the principal; and
4. full, fair, and timely disclosure to the principal of all facts which are/may be material to the principal's interest or which may influence his/her actions.

In the real world of real estate practice, this basic agency relationship has traditionally been between a seller and the broker who has a listing contract to market his property (commonly known as the "listing broker"). All of the sales associates in the listing broker's office, and sales associates affiliated with any other broker who works in cooperation with the listing broker are "subagents" for the same principal (seller). As subagents, they have the same level of fiduciary responsibilities to the principal as the agent (listing broker).

Problem

When one of these subagents introduces the property to a prospective buyer, prepares an offer to purchase, helps to negotiate a "good buy" for the buyer, assists the prospective buyer in obtaining financing, and serves as the conduit for information between the buyer and the seller, the buyer may think that the subagent is acting as a buyer's agent. This is NOT the case; the only duty to represent that has been established thus far is with the seller via the listing broker. However, if the buyer continues to believe the "subagent" is his agent and looking out for his interests as a buyer, that buyer is likely to feel he has been deceived or betrayed if and when he is finally informed that the seller was the one really being represented throughout the transaction.

It is not uncommon for lawsuits charging misrepresentation to follow. The Courts have ruled that the actions of an agent which imply that the agent was working on behalf of the buyer, representing the buyer's interests to the seller, are, in fact, sufficient to create that relationship. If this happens, a buyer becomes a principal and the real estate licensee is a "dual agent" with fiduciary responsibilities to both the buyer and the seller. Dual agency is recognized as valid only if both principals are informed and agree to it in writing. Failure to obtain this consent can result in transactions negotiated under such circumstances being rescinded by the Court.

This is not an isolated problem. In the 1980's, a Federal Trade Commission survey reported that 80% of the consumers in real estate transactions did not realize that real estate salespersons were actually agents of the seller in most cases. Both the National Association of Realtors (NAR) and the National Association of Real Estate License Law Officials (NARELLO) created task forces to study this issue and suggest solutions. In addition to the general lack of understanding of "agency" by consumers and the potential for inadvertent dual agency, the task forces also recognized that there were increasing industry efforts by brokers to represent a buyer's interest in a real estate transaction by executing an agency contract between a buyer and a broker in addition to the usual seller/broker relationship.

Recommended Solution

Since 1986, both NAR and NARELLO have supported the introduction and passage of agency disclosure laws as the most effective means of addressing this issue. By the beginning of 1988, twenty-six (26) states had enacted agency disclosure laws; legislation was pending in seven (7) more states. A one-line summary of the agency disclosure requirements in these states is attached. These were compiled by the NARELLO Agency Subcommittee in 1987 and published in the 1988 NARELLO DIGEST. No updates were published in 1989.

In 1988, the Alaska Real Estate Commission created its own task force to study the issue. The task force recommended the addition of an agency disclosure requirement to Alaska's real estate license law; the recommendation was endorsed by the full commission.

SB 425

The proposed language in SB 425 recognizes that an agency relationship can be established by a broker with either the buyer or the seller. Either is workable, but all parties involved in a real estate transaction should know exactly what these relationships are. SB 425, by requiring real estate agents to make written disclosures of the nature of these relationships to all parties of a real estate transaction, will minimize any misconceptions as to who is representing whom.

Through this disclosure, buyers will be advised of what the agents representing a seller must do for their principal, and what service they can still provide to a prospective buyer. Likewise, sellers will be put on notice that, when an agent is representing a buyer, he will be negotiating with the buyer's best interests in mind and that agent's fiduciary responsibilities will be to the buyer.