ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6339 SENATE JUDICIARY

743

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 355 (JUD)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: Sexual offenses against children
Sponsor: Fischer
Requestor: Senate Judiciary

Agency Affected: Education
BRU: _____
Components: _____

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						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

) Changes in CS SB 355 (Jud) have no fiscal impact. This fiscal note is appropriate. CJC

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Date: 1/16/90

Approved by Commissioner: William G. Demmert
Agency: Education
Date: 1/16/90

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Anchorage Daily News Wed
1.24.90

Senators move quickly on teacher-sex bill

By BRIAN S. AKRE
The Associated Press

JUNEAU — Legislation to close the loophole that made it legal for an Anchorage high school teacher to have sex with a student is on the fast track to a vote on the Senate floor.

Senate leaders said the legislation, approved Tuesday by the Senate Judiciary Committee, will come before the full Senate within a week.

The swift handling is in response to last week's dismissal of criminal charges against former teacher and newspaper columnist Gordon "Sateh" Carlson. A judge found Carlson's sexual relations with a 17-year-old student did not violate state law.

The bill goes far beyond student-teacher sex, however. As amended by the committee, it also would outlaw sexual relations between high-school age youths and their coaches, counselors, school administrators, religious leaders, police or probation officers, recreation or youth leaders, health-care workers, parents and anyone else "in a special position of trust."

It even covers licensed hearing-aid dealers.

The committee defended the wide net the bill would cast over adults who have sex with teen-agers, saying it's needed to address the issues raised in the Carlson case.

"We don't think we've reached too far," said Sen. Jan Faiks, R-Anchorage, the committee chairwoman. "We think we were very, very specific. We wrote a very detailed law. That's unusual for around here."

Senate Bill 355, as originally introduced by Sen. Paul Fischer, R-Soldotna, dealt only with sex between 16- and 17-year-old students and anyone working with them in a school setting. The general age of consent in Alaska is 16. Sex with youths under that age already is illegal.

At the urging of the state Law Department, the committee expanded the bill to involve others who have a "special trust relationship" with teen-agers.

That relationship covers a wide variety of circumstances. For example, parents who allow their child's friend to spend the weekend or join them on a vacation would come under the bill's provisions, said Laurie Otto, an assistant attorney general.

The amended bill makes sex with a 16- or 17-year-old student a felony only if the adult is at least three years older than the student. That's aimed at avoiding prosecution of incidents in which, for example, a 19-year-old teacher's aide has consentual sex with a 17-year-old cheerleader.

The committee also provided for lighter penalties than Fischer, who would have made sexual intercourse with a 16- or 17-year-old student punishable by up to 30 years in prison and a $75,000 fine. The committee's version makes it punishable by up to 10 years in prison and a $50,000 fine.

Sexual contact other than intercourse, such as fondling, would be punishable by up to five years in prison and a $50,000 fine under the committee's bill.

Under Fischer's version, teachers convicted under the law would be banned from teaching for life. The amended bill would also impose a lifetime ban, but would give teachers a chance to regain their right to work in the classroom.

A convicted teacher could reapply for a teaching certificate with the state Professional Teaching Practices Commission five years after completing all terms of the sentence, including parole.

That provision was endorsed Tuesday by Bob Cooksey, lobbyist for the National Education Association-Alaska. Cooksey, however, suggested the legislation may be more than is needed.

"The whole movement is an overreaction to what happened in Anchorage," he said.

Sen. Drue Pearce, R-Anchorage, said the committee was acting in response to public pressure.

The Senate will debate this bill more than most when it reaches the floor, Pearce predicted.

VIDENCE OK: Hazelwood sobriety test / C-2 ■ **OBITUARIES:** / C-5 ■ **FORUM:** Letters, letters, letters / C-7

METRO

WEDNESDAY
SECTION C Jan. 24, 1990

Daily News file photo
n "Satch" Carlson

D.A. won't pursue teacher's case

By SHEILA TOOMEY
Daily News reporter

Former teacher Gordon "Satch" Carlson is off the hook. A court order dismissing felony sex abuse charges against him for his affair with a 17-year-old student will not be appealed to a higher court, the Anchorage District Attorney said Tuesday.

District Attorney Dwayne McConnell's decision means the charges against Carlson cannot be reinstated.

Superior Court Judge Karl Johnstone ruled last week that state statutes do not outlaw sex between a teacher and a student above the age of consent, which in Alaska is 16. The legislature is now in the process of amending the law to raise the age of consent to 18 when a teacher is involved.

■ **IN JUNEAU:** Lawmakers move fast to pass bill against teacher-student sex. **C-3**

"The discretion of a Superior Court judge in interpretation of the statutes is wide-ranging," McConnell said.

"The likelihood of overturning (Johnstone's) decision, though I disagree with it, is unlikely."

Carlson was forced to retire last August and indicted by a grand jury in November on three counts of child sexual abuse. He was accused of having sex with a female student on Bartlett High School grounds during the 1989 winter semester. Prosecutors cited a law raising the age of consent to 18 when a teen-ager is entrusted by law to an adult's care.

The statute in question had previously been used only against foster parents and employees in institutions where teens are committed by court order.

Carlson's attorney, Jeff Feldman, successfully argued that the law was never meant to apply to teachers and had previously been rejected by McConnell himself for use against a teacher.

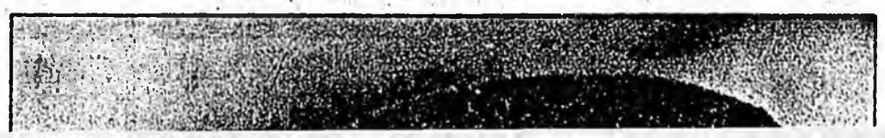
Feldman said Tuesday he is pleased the fight is over, but disputed McConnell.

A trial court judge actually has no discretion in such cases, Feldman said. "Mr McConnell's comment reflects the same peculiar legal reasoning that gave rise to this case in the first place."

McConnell also mentioned the pending changes in the law as a reason for not appealing Johnstone's decision.

"It is clear from this case that the vast majority of Alaskans believe that sexual activity by a teacher with a student should be criminalized conduct," McConnell said. "This case has clearly been the focal point to ensure that this type of behavior will result in criminal sanctions in the future and will no longer be a loophole through which a teacher or other people in similar positions of authority can prey upon young, impressionable men and women."

IEIGHBORS LOSE BATTLE AGAINST 'GOD'S GARDEN'



City's battles flare up

Chapter 20. Teachers and School Officials.

Article
1. Teacher Certification (§§ 14.20.010 — 14.20.040)
2. Employment and Tenure (§§ 14.20.095 — 14.20.215)
3. Salary Scales (§ 14.20.220)
4. Sabbatical Leave (§§ 14.20.280 — 14.20.350)
5. Professional Teaching Practices Act (§§ 14.20.370 — 14.20.510)
6. Negotiation and Mediation (§§ 14.20.550 — 14.20.610)
7. Interstate Agreement on Qualification of Educational Personnel (§§ 14.20.620 — 14.20.650)

Article 1. Teacher Certification.

Section
10. Teacher certificate required
20. Requirements for issuance of certificate
30. Causes for revocation and suspension
40. Applicability of the Administrative Procedure Act

Collateral references. — 68 Am. Jur. 2d Schools, §§ 128-143.

78 C.J.S. Schools and School Districts, §§ 154-182.

Matters proper for consideration in appointment of teachers. 94 ALR 1484.

Tests of moral character of fitness as requisite to issuance of teacher's license or certificate. 96 ALR2d 536.

Bias of members of license revocation board. 97 ALR2d 1210.

Actionability of statements imputing inefficiency or lack of qualification to public school teacher 40 ALR3d 490.

Self-defense or defense of another as justification, in dismissal proceedings, for use or threat of use of force against student. 37 ALR4th 842.

Sec. 14.20.010. Teacher certificate required. A person may not be employed as a teacher in the public schools of the state unless that person possesses a valid teacher certificate except that a person who has made application to the department for a teacher certificate or renewal of a teacher certificate which has not been acted upon by the department may be employed as a teacher in the public schools of the state until the department has taken action on the application, but in no case may employment without a certificate last longer than three months. (§ 37-5-3 ACLA 1949; am § 9 ch 98 SLA 1966; am § 1 ch 165 SLA 1976)

Sec. 14.20.020. Requirements for issuance of certificate. (a) The department shall issue a teacher certificate to every person who meets the requirements in (b) and (c) of this section.

(b) A person is not eligible for a teacher certificate unless that person has received at least a baccalaureate degree from an institution of higher education accredited by a recognized regional accrediting association or approved by the commissioner. However, this subsection is not applicable to

(1) persons employed in the state public school system on September 1, 1962;

(2) persons issued an emergency certificate during a situation which, in the judgment of the commissioner, requires the temporary issuance of a certificate to a person not otherwise qualified.

(c) The board may establish by regulation additional requirements for the issuance of certificates, including the fees to be charged for each certificate.

(d) The board may by regulation establish various classes of certificates.

(e) The commissioner of administration shall separately account for teacher certification fees that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this section and to support the activities of the Professional Teaching Practices Commission under AS 14.20.460, 14.20.470, and 14.20.500. (§ 37-5-4 ACLA 1949; am § 1 ch 76 SLA 1962; am § 10 ch 98 SLA 1966; am §§ 13, 14 ch 32 SLA 1971; am §§ 19, 20 ch 138 SLA 1986)

Effect of amendments. — The 1986 amendment added "including the fees to be charged for each certificate" at the end of subsection (c) and added subsection (e).

Sec. 14.20.030. Causes for revocation and suspension. The commissioner or the Professional Teaching Practices Commission may revoke or suspend a certificate only for the following reasons:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

(3) substantial noncompliance with the school laws of the state or the regulations of the department; or

(4) upon a determination by the Professional Teaching Practices Commission that there has been a violation of ethical or professional standards or contractual obligations. (§ 11 ch 98 SLA 1966; am § 1 ch 9 SLA 1975, am § 1 ch 103 SLA 1976)

NOTES TO DECISIONS

Quoted in Watts v. Seward School Bd., Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966).

Collateral references. — Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal. 72 ALR 283.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence. 136 ALR 1154.

Validity of governmental requirement of oath of allegiance or loyalty as applied to college curators. 18 ALR2d 303.

Rejection of public school teacher because of disloyalty. 27 ALR2d 487.

Assertion of immunity as ground for discharge of teacher. 44 ALR2d 799.

Wearing of religious garb by public school teachers. 60 ALR2d 300.

Tests of moral character of fitness as requisite to issuance of teacher's license or certificate. 96 ALR2d 536.

Revocation of teacher's certificate for moral unfitness. 97 ALR2d 827.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public school teacher. 4 ALR3d 1090.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancelation of teacher's certificate. 47 ALR3d 754.

Dismissal of, or disciplinary action against, public school teachers for violation of regulation as to dress or personal appearance of teachers. 58 ALR3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 ALR3d 19.

Sec. 14.20.040. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to all proceedings under AS 14.20.030, and revocations and suspensions are final and reviewable in accordance with AS 44.62.560 — 44.62.570. (§ 12 ch 98 SLA 1966; am § 2 ch 9 SLA 1975)

Sec. 14.20.090. Revocation of certificates. [Repealed, § 59 ch 98 SLA 1966.]

Article 2. Employment and Tenure.

Collateral references. — 68 Am. Jur. 2d Schools, §§ 138-143, 149-214.

78 C.J.S. Schools and School Districts, §§ 154-217.

Extent of power of school district to provide for the comfort and convenience of teachers and pupils. 7 ALR 791; 52 ALR 249.

Teacher as an officer whose right may be tested by quo warranto. 30 ALR 1423.

Status of teacher as an officer or employee. 75 ALR 1352.

Sec. 11.41.430. Sexual assault in the third degree. [Repealed, § 10 ch 78 SLA 1983. For current law, see AS 11.41.420(a)(2).]

Sec. 11.41.432. Defenses. (a) It is a defense to a crime charged under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), or 11.41.425 that the offender is

(1) mentally incapable; or

(2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.

(b) Except as provided in (a) of this section, in a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant. (§ 4 ch 96 SLA 1988; am § 27 ch 50 SLA 1989)

Effect of amendments. — The 1989 amendment, May 27, 1989, designated the provisions of this section as subsection (a) and added subsection (b).

Legislative history reports. — For an analysis of the 1989 amendment to this section, see Senate-House Joint Journal Supplement No. 10, May 5, 1989, p. 5, under "Sec. 27."

Sec. 11.41.434. Sexual abuse of a minor in the first degree. (a) An offender commits the crime of sexual abuse of a minor in the first degree if

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

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

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild; or

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

(A) residing as a member of the social unit in the same household as the offender and the offender is in a position of authority over the victim; or

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

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 2 ch 78 SLA 1983; am § 3 ch 66 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 28, 1988, in subsection (a), added paragraph (3), and made related stylistic changes.

Legislative history reports. — For House letter of intent on ch. 66, SLA 1988 (CSHB 237 (Jud)), which amended this section, see 1988 House Journal 2330-2337.

NOTES TO DECISIONS

Editor's notes. — Some of the cases cited in the notes below were decided under former AS 11.15.134. Some were also decided under former AS 11.41.410(a)(4), which provided that a person 18 years of age or older who engaged in sexual penetration with another person under 18 years of age who was entrusted to his care by authority of law or was his child committed sexual assault in the first degree.

For cases construing former rape statute, see AS 11.41.410, Notes to Decisions, analysis line II.

State's authority to control sexual conduct of children. — Although juveniles may have certain rights to sexual privacy, the state may nevertheless exercise control over the sexual conduct of children beyond the scope of its authority to control adults. Anderson v. State, 562 P.2d 351 (Alaska 1977).

Where juveniles have certain rights to privacy and to express their own autonomy, the state's interest in the well-being of its children may justify legislation that could not properly be applied to adults. Anderson v. State, 562 P.2d 351 (Alaska 1977).

As to constitutionality of former statute making lewd and lascivious acts toward children a crime, see Anderson v. State, 562 P.2d 351 (Alaska 1977).

Physical conduct punished under former statute. — See Anderson v. State, 562 P.2d 351 (Alaska 1977); Smiloff v. State, 579 P.2d 28 (Alaska 1978).

Former section prohibited fellatio. — See Anderson v. State, 562 P.2d 351 (Alaska 1977).

Consent is not at issue. — The state may forbid an adult to have fellatio with a child under the statutorily prescribed age regardless of whether the child consents to the act. Anderson v. State, 562 P.2d 351 (Alaska 1977).

Intrusion into genitals. — Cunnilingus and fellatio do not require an intrusion into the genitals. Murray v. State, 770 P.2d 1131 (Alaska Ct. App. 1989).

Victim's statement held admissible under hearsay exception. — The victim's statement to a prosecution witness, made two or three days after the incident, that the victim's father came into her bed while she was undressed and "did something wrong" was admissible under the first-complaint hearsay exception. Nusunginya v. State, 730 P.2d 172 (Alaska Ct. App. 1986).

Victim's identification of accused. — Prosecution could properly present to the grand jury a child abuse victim's statements identifying the accused which the victim made during her medical treatment, where, even if the testimony did not fall within the medical diagnosis exception to the hearsay rule, the victim's inability to testify before the grand jury constituted "compelling justification" for presenting hearsay evidence under Criminal Rule 6(r). State v. Nollner, 749 P.2d 905 (Alaska Ct. App. 1988).

Mental examination of victim. — Defendants' convictions of sexual abuse of a minor in the first degree and sexual abuse of a minor in the second degree were reversed, where the trial court denied defendants' request for a mental examination of the victims after a psychologist's testimony had placed the children's psychological characteristics in controversy. Anderson v. State, 749 P.2d 369 (Alaska Ct. App. 1988).

Trial court did not abuse its discretion in denying defendant's motion for a psychiatric evaluation of the victim, where the corroborating evidence against him was relatively slight and he failed to establish some specific ground for concluding that the victim suffered from psychological or emotional problems that might affect her veracity or have a direct bearing on some other material issue. Daniels v. State, 767 P.2d 1163 (Alaska Ct. App. 1989).

Testimony as to typical child abuser traits. — Admission of a state trooper's testimony regarding the characteristics of a typical child sexual abuser, at defendant's trial for sexual abuse of a minor, was sufficiently prejudicial to warrant reversal of his conviction. Haakanson v. State, 760 P.2d 1030 (Alaska Ct. App. 1988).

Testimony as to victim's prior consistent statements. — Admission of testimony concerning a sexual abuse victim's prior consistent statements was reversible error, where some of the witnesses testified before the victim had even taken the stand and been impeached, and another witness was allowed to express her personal belief in the truth of the accusations that the victim made against defendant. Thompson v. State, 770 P.2d 990 (Alaska Ct. App. 1989).

Leeway in charging time of offense. — The state must be given considerable

leeway in charging the time that sexual activity with a minor occurred. Horton v. State, 758 P.2d 628 (Alaska Ct. App. 1988).

Sexual offenses performed as part of one continuous assault. — Where defendant was convicted on separate sexual abuse counts alleging fellatio and masturbation, his conviction on the masturbation count was vacated in view of evidence showing that defendant could have performed the acts of fellatio and masturbation together as part of one continuous assault. Clifton v. State, 758 P.2d 1279 (Alaska Ct. App. 1988).

Two acts of sexual contact performed as part of a single transaction with a single incident of sexual penetration permit but one conviction for the most serious contact, i.e., the sexual penetration. Johnson v. State, 762 P.2d 493 (Alaska Ct. App. 1988).

Record ambiguous as to whether separate counts part of single incident. — Separate sexual abuse counts alleging genital contact and digital penetration of the victim merged, where the record was ambiguous as to whether the counts arose at the same time and as a single incident, or whether two separate incidents occurred, and defendant could be sentenced on only one of the two charges. Horton v. State, 758 P.2d 628 (Alaska Ct. App. 1988).

Evidence of prior assault held admissible. — Evidence that defendant had been convicted of sexually assaulting the same victim two years prior to the alleged indictment was admissible because it indicated a significant sexual desire for the specific victim, thus supplying persuasive circumstantial evidence that he had sexually assaulted the victim. Patterson v. State, 732 P.2d 1102 (Alaska Ct. App. 1987).

Exclusion of evidence of victim's involvement in a sexual assault on another child deprived defendant of his constitutional right to confront the witnesses against him, where his defense was based on the premise that the victim fabricated her accusation in retaliation for defendant's attempt to oust her from her foster home for sexual misconduct. Daniels v. State, 767 P.2d 1163 (Alaska Ct. App. 1989).

Motion for judgment of acquittal denied. — Trial court properly denied defendant's motion for a judgment of acquittal and submitted his case to the jury, where the evidence was sufficient to allow fair-minded jurors to differ on the issue of his guilt. Daniels v. State, 767 P.2d 1163 (Alaska Ct. App. 1989).

Convictions under former law reversed. — Convictions under former AS 11.15.134, former AS 11.41.410(a)(4) and former AS 11.41.440(a)(2) were reversed where extensive evidence of prior consistent statements was admitted at trial without any determination of its actual probative value and before any charge of recent fabrication or improper motive or influence was made against the victim. Nitz v. State, 720 P.2d 55 (Alaska Ct. App. 1986).

Convictions for lewd and lascivious acts toward children under former AS 11.15.134(a) and for rape under former AS 11.15.120(a) were reversed where evidence admitted concerning alleged assaults on victims other than those in the case at hand was improper propensity evidence; neither intent nor identity were at issue, and the acts did not constitute an admissible common scheme or plan or prove facts in dispute. Bolden v. State, 720 P.2d 957 (Alaska 1986).

Admissibility of evidence of false charges previously made by alleged victim. — Extrinsic evidence that an alleged victim of sexual abuse had previously made false charges of sexual assault is permitted where the defendant who wishes to use the evidence obtains a preliminary ruling from the trial court that it is admissible. Covington v. State, 703 P.2d 436 (Alaska Ct. App. 1985).

Mitigating factors. — In prosecution for first-degree sexual assault, defendant's familiarity with his victim (his 12-year old daughter) was not a mitigating factor. Hodges v. State, 660 P.2d 1203 (Alaska Ct. App. 1983).

Sentence under former AS 11.15.134 upheld. — See Noble v. State, 552 P.2d 142 (Alaska 1976); Buchanan v. State, 554 P.2d 1153 (Alaska 1976); Morgan v. State, 598 P.2d 952 (Alaska 1979); Baker v. State, 602 P.2d 797 (Alaska 1979); Alvarado v. State, 626 P.2d 582 (Alaska 1981).

Sentence upheld. — See Horton v. State, 758 P.2d 628 (Alaska Ct. App. 1988).

Sentence of eight-year presumptive term for first-degree sexual abuse of a minor and concurrent sentences of three years for two counts of second-degree sexual abuse of a minor to run concurrently with the eight-year term were upheld. The defendant's continued efforts to jus-

tify his conduct as "sex education" and his only limited acceptance and understanding of the grave risks of psychological damage to children that his conduct presented led the court of appeals to conclude the trial judge was not clearly erroneous in concluding that the mitigating factor of conduct among the least serious in the definition of the offense was not established by clear and convincing evidence. S.B. v. State, 706 P.2d 695 (Alaska Ct. App. 1985); Bynum v. State, 708 P.2d 1293 (Alaska Ct. App. 1985).

Imposition of presumptive sentence of eight years for a first felony offender convicted of having sexual relations with his stepdaughter over five years was upheld; rejection of a proposed mitigating factor, that the offense was committed under some degree of compulsion, was proper. Bynum v. State, 708 P.2d 1293 (Alaska Ct. App. 1985).

A sentence of eight years with two years suspended was affirmed, where there was evidence of defendant's knowledge that his victim had previously been sexually abused, his persistent approaches to the victim, his fleeing the jurisdiction to avoid apprehension, and his unwillingness or inability to concede responsibility. Gnegy v. State, 729 P.2d 895 (Alaska Ct. App. 1986).

It was not manifestly unjust to impose a five-year presumptive term upon defendant's conviction of attempted sexual assault of a minor, and he was not automatically entitled as a matter of law to have his case referred to a three-judge panel for sentencing. Aveoganna v. State, 757 P.2d 75 (Alaska Ct. App. 1988).

Sentence for assault upheld. — In prosecution of defendant with no prior criminal record on two counts of first-degree sexual assault of his 12-year old daughter, sentence of two consecutive eight-year terms with five years suspended was not excessive. Hodges v. State, 660 .2d 1203 (Alaska Ct. App. 1983).

In light of the substantial duration of defendant's sexual abuse of his stepdaughter (three years), his failure to learn from the earlier discovery of his prior offenses, his disregard of a court order that he avoid contact with the victim, and his total failure to take any meaningful step toward rehabilitation, 10-year sentence with four years suspended was not excessive for conviction of first-degree sexual assault. Langton v. State, 662 P.2d 954 (Alaska Ct. App. 1983).

Where there is evidence from which the trial court could infer that a sentence of incarceration would have destroyed a viable family and cause long-term psychological damage to the victim, sentence under former AS 11.41.410(a)(4) involving no incarceration is not too lenient. State v. Morris, 680 P.2d 1190 (Alaska Ct. App. 1984).

A sentence of eight years with three years suspended, upon defendant's conviction on one count of sexual abuse of a minor in the first degree, was affirmed, where, although the abuse occurred over a period of two or three years and involved his step-daughter, evidence of his potential for rehabilitation was found to be compelling. State v. Ridgway, 750 P.2d 362 (Alaska Ct. App. 1988).

A sentence of three concurrent eight-year presumptive terms upon defendant's conviction of three counts of sexual abuse of a minor in the first degree was affirmed, where, according to the evidence, the abuse included digital and penile sexual penetration, as well as oral sexual contact, and there may have been as many as fifty separate incidents of sexual abuse. Winther v. State, 749 P.2d 1356 (Alaska Ct. App. 1988).

Sentence under AS 11.15.134 held excessive. — See Qualle v. State, 652 P.2d 481 (Alaska Ct. App. 1982).

Sentence for assault held excessive. — Sentence of 20 years imprisonment for first-degree sexual assault of two-year old child was excessive and case was remanded for resentencing not to exceed 120 years. Langton v. State, 662 P.2d 954 (Alaska Ct. App. 1983).

Sentence for assault held too lenient. — Suspended five-year sentence for first-degree sexual assault of defendant's four-year old son was disapproved as too lenient, with a 90-day to three-year sentence suggested. Langton v. State, 662 P.2d 954 (Alaska Ct. App. 1983).

Sentence under former AS 11.41.410(a)(4) for assault held too lenient. — See State v. Rushing, 680 P.2d 500 (Alaska Ct. App. 1984); State v. Woods, 680 P.2d 1195 (Alaska Ct. App. 1984).

Given a series of nine assaults of a stepdaughter by a stepfather, substantial evidence that intercourse was accomplished without consent, and the fact that the victim has left the defendant's home, a sentence of one year of incarceration under former AS 11.41.410(a)(4) was disapproved and a sentence of at least three

years recommended. State v. Couey, 680 P.2d 513 (Alaska Ct. App. 1984).

Remand for resentencing for conviction under former law. — See State v. Covington, 711 P.2d 1183 (Alaska Ct. App. 1985).

Sentence clearly mistaken. — A sentence of 24 years with four years suspended, upon conviction of three counts of sexual abuse of a minor in the first degree, was clearly mistaken, where the trial court did not address the 10- to 15-year benchmark established in prior decisions concerning aggravated cases of sexual assault, and nothing in the record established that a sentence in excess of 15 years was necessary to protect the public. Mosier v. State, 747 P.2d 548 (Alaska Ct. App. 1987).

A sentence of 20 years with five years suspended for a first felony offender, for sexual abuse of a minor in the first degree, was clearly mistaken, where the offense did not involve multiple acts with multiple victims or a prior felony record. Zackar v. State, 761 P.2d 1015 (Alaska Ct. App. 1988).

Sentence of 15 years with five years suspended was clearly mistaken, where defendant was a first felony offender with an otherwise good record. Lawrence v. State, 764 P.2d 318 (Alaska Ct. App. 1988).

Composite term of sixty years upon conviction of two counts of sexual abuse of a minor in the first degree was clearly mistaken, and the case was remanded for imposition of a total sentence not to exceed sixty years with ten years suspended, where the sentencing court's reliance upon the seriousness of defendant's prior murder conviction placed inordinate and disproportionate weight on a single aggravating factor. Murray v. State, 770 P.2d 1131 (Alaska Ct. App. 1989).

Remand for resentencing. — See Lewis v. State, 706 P.2d 715 (Alaska Ct. App. 1985); Bodine v. State, 737 P.2d 1072 (Alaska Ct. App. 1987); Howell v. State, 758 P.2d 103 (Alaska Ct. App. 1988).

Conditions of probation. — Conditions of probation restricting defendant from unauthorized contact with his daughter and with other girls under 18 years of age were not vague or unduly restrictive of his constitutionally protected right to freedom of association. Nitz v. State, 745 P.2d 1379 (Alaska Ct. App. 1987).

Applied in Seymore v. State, 655 P.2d 786 (Alaska Ct. App. 1982); Juelson v. State, 758 P.2d 1294 (Alaska Ct. App. 1988); Allen v. State, 769 P.2d 457 (Alaska Ct. App. 1989).

Cited in Higgs v. State, 676 P.2d 610 (Alaska Ct. App. 1984); Benboe v. State, 698 P.2d 1230 (Alaska Ct. App. 1985); Dancer v. State, 715 P.2d 1174 (Alaska Ct. App. 1986); James v. State, 739 P.2d 1314 (Alaska Ct. App. 1987); Patterson v. State, 747 P.2d 535 (Alaska Ct. App. 1987); Kirby v. State, 748 P.2d 757 (Alaska Ct. App. 1987); Jager v. State, 748 P.2d 1172 (Alaska Ct. App. 1988); James v. State, 754 P.2d 1336 (Alaska Ct. App. 1988).

Sec. 11.41.436. Sexual abuse of a minor in the second degree. (a) An offender commits the crime of sexual abuse of a minor in the second degree if

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

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

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

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild;

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

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

(A) residing as a member of the social unit in the same household as the offender and the offender is in a position of authority over the victim; or

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

(b) Sexual abuse of a minor in the second degree is a class B felony. (§ 2 ch 78 SLA 1983; am § 4 ch 66 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 28, 1988, in subsection (a), added paragraph (5), and made related stylistic changes.

Legislative history reports. — For House letter of intent on ch. 66, SLA 1988 (CSHB 237 (Jud)), which amended this section, see 1988 House Journal 2330-2337.

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

No culpable mental state required. — Under the current statutory definition of "sexual contact," the offense of sexual abuse of a minor in the second degree may properly be established by evidence proving knowing conduct within the scope of AS 11.81.900(b)(52)(A); no secondary culpable mental state need be established with respect to surrounding circumstances. Van Meter v. State, 743 P.2d 385 (Alaska Ct. App. 1987).

Burden of proving exclusions. — If some evidence of justification is advanced in the record, the state must bear the additional burden of establishing that the defendant's conduct did not fall within the exclusions of AS 11.81.900(b)(52)(B). Van Meter v. State, 743 P.2d 385 (Alaska Ct. App. 1987).

Evidence of prior assault held admissible. — Evidence that defendant had been convicted of sexually assaulting the same victim two years prior to the alleged indictment was admissible because it indicated a significant sexual desire for the specific victim, thus supplying persuasive circumstantial evidence that he had sexually assaulted the victim. Patterson v. State, 732 P.2d 1102 (Alaska Ct. App. 1987).

Mental examination of victim. — Defendants' convictions of sexual abuse of a minor in the first degree and sexual abuse of a minor in the second degree were reversed, where the trial court denied defendants' request for a mental examination of the victims after a psychologist's testimony had placed the children's psychological characteristics in controversy. Anderson v. State, 749 P.2d 369 (Alaska Ct. App. 1988).

Testimony as to typical child abuser traits. — Admission of a state trooper's testimony regarding the characteristics of a typical child sexual abuser, at defendant's trial for sexual abuse of a minor, was sufficiently prejudicial to warrant reversal of his conviction. Haakanson v. State, 760 P.2d 1030 (Alaska Ct. App. 1988).

Testimony as to victim's prior consistent statements. — Admission of testimony concerning a sexual abuse victim's prior consistent statements was reversible error where some of the witnesses testified before the victim had even taken the stand and been impeached, and another witness was allowed to express her personal belief in the truth of the accusations that the victim made against defendant. Thompson v. State, 770 P.2d 990 (Alaska Ct. App. 1989).

Admissibility of evidence. — See Van

Meter v. State, 743 P.2d 385 (Alaska Ct. App. 1987).

Evidence held inadmissible. — See Van Meter v. State, 743 P.2d 385 (Alaska Ct. App. 1987).

Acts performed as part of single incident. — Two acts of sexual contact performed as part of a single transaction with a single incident of sexual penetration permit but one conviction for the most serious contact, i.e., the sexual penetration. Johnson v. State, 762 P.2d 493 (Alaska Ct. App. 1988).

Admission of an investigator's statements concerning defendant's sexual fantasies and orientation, at defendant's trial for attempted sexual abuse of a minor in the second degree, was harmless error, where the evidence against defendant was substantial and defendant's attorney demonstrated the irrelevance of the statements on cross-examination. Stevens v. State, 748 P.2d 771 (Alaska Ct. App. 1988).

Conviction reversed where evidence of prior incident between victim and defendant improperly admitted. — See Johnson v. State, 730 P.2d 175 (Alaska Ct. App. 1986).

Lesser included offenses. — Trial court properly treated the crime of contributing to the delinquency of a minor as a lesser included offense of attempted sexual abuse of a minor in the second degree, where defendant, by encouraging an eight-year-old girl to have sexual contact with him, encouraged her to engage in conduct prohibited by law. Sullivan v. State, 766 P.2d 51 (Alaska Ct. App. 1988).

Conviction of attempted sexual abuse reversed. — Defendant's conviction of attempted sexual abuse of a minor in the second degree was reversed, where evidence showing that he wrote notes to an eight-year-old girl asking her to be his girlfriend and to kiss him established only that he engaged in preparatory conduct and not that he took a substantial step toward sexual contact with the girl. Sullivan v. State, 766 P.2d 51 (Alaska Ct. App. 1988).

Imposition of direct no-contact orders. — Where defendant pleads nolo contendere to a charge of sexual abuse of a minor, the superior court has no authority — statutory or inherent — to impose a direct no-contact order against defendant as part of the punishment for the offense. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987) (not determining if superior court's general authority to enter injunctions empowers it to enter no-contact order as an independent equitable requirement).

Sentence upheld. — See Bartholomew v. State, 720 P.2d 54 (Alaska Ct. App. 1986); Goodman v. State, 756 P.2d 918 (Alaska Ct. App. 1988).

Sentence of eight-year presumptive term for first-degree sexual abuse of a minor and concurrent sentences of three years for two counts of second-degree sexual abuse of a minor to run concurrently with the eight-year term were upheld. The defendant's continued efforts to justify his conduct as "sex education" and his only limited acceptance and understanding of the grave risks of psychological damage to children that his conduct presented led the court of appeals to conclude the trial judge was not clearly erroneous in concluding that the mitigating factor of conduct among the least serious in the definition of the offense was not established by clear and convincing evidence. S.B. v. State, 706 P.2d 695 (Alaska Ct. App. 1985).

Sentencing goals of general deterrence and community condemnation cannot, in themselves, support the imposition of a maximum 10-year term for a first offender convicted of a class B felony, such as sexual assault of a minor. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987).

Sentence held excessive. — See Whitlow v. State, 719 P.2d 267 (Alaska Ct. App. 1986).

Where a defendant who pleaded nolo contendere to a charge of sexual abuse of a minor was undeniably dishonest and abused the trust inherent in his role as the victim's karate instructor, but there was no evidence of any assaultive conduct or of any physical or psychological coercion or intimidation and the victim was 15-years old, the upper age limit included in the definition of the offense of second-degree sexual abuse, the absence of any prior conviction precluded the court of appeals from predicting with any degree of confidence that the defendant was in fact incapable of rehabilitation and could not be deterred. The sentencing court's abandonment of rehabilitation and personal deterrence as sentencing goals was unwarranted; its imposition of a maximum sentence was clearly mistaken; and the case was remanded for imposition of a sentence of not more than 10 years with four years suspended. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987).

Applied in Higgs v. State, 676 P.2d 610

(Alaska Ct. App. 1984); Olp v. State, 738 P.2d 1117 (Alaska Ct. App. 1987); Horton v. State, 758 P.2d 628 (Alaska Ct. App. 1988); Juelson v. State, 758 P.2d 1294 (Alaska Ct. App. 1988).

Cited in Smith v. State, 745 P.2d 1375 (Alaska Ct. App. 1987); Patterson v. State, 747 P.2d 535 (Alaska Ct. App. 1987); Jager v. State, 748 P.2d 1172 (Alaska Ct. App. 1988); Foster v. State, 751 P.2d 1383 (Alaska Ct. App. 1988); Russell v. State, 752 P.2d 1022 (Alaska Ct. App. 1988); Lahmeyer v. State, 765 P.2d 985 (Alaska Ct. App. 1988); Allen v. State, 769 P.2d 457 (Alaska Ct. App. 1989).

Sec. 11.41.438. Sexual abuse of a minor in the third degree. (a) An offender commits the crime of sexual abuse of a minor in the third degree if, being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the third degree is a class C felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Cited in State v. Ridgway, 750 P.2d 362 (Alaska Ct. App. 1988).

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree. (a) An offender commits the crime of sexual abuse of a minor in the fourth degree if, being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 9 ch 102 SLA 1980; am § 3 ch 78 SLA 1983)

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Specific intent crime. — Sexual abuse of a minor is a specific intent crime. J.E.C. v. State, 681 P.2d 1358 (Alaska Ct. App. 1984).

Instructions. — The trial court erred in its instructions regarding the mens rea required for sexual abuse of a minor under former AS 11.41.440(a)(2) and contributing to the delinquency of a minor under former AS 11.51.130(a)(4). Flink v. State, 683 P.2d 725 (Alaska Ct. App. 1984).

Although the trial court erred in refusing to give defendant's proposed instruction that he had to have a specific intent to arouse or gratify his or the child's sexual desires in order to be convicted of violating former AS 11.41.440(a)(2), this error was harmless beyond reasonable doubt where the jury was told that defendant had to knowingly engage in sexual contact with the child. J.E.C. v. State, 681 P.2d 1358 (Alaska Ct. App. 1984).

Probationary sentence. — Although a probationary sentence may properly be used when a first offender is convicted of a class C felony involving sexual abuse of a child, such a sentence will be appropriate only if mitigating circumstances exist and the offender is a promising candidate for

NOTES TO DECISIONS

Applied in Jager v. State, 748 P.2d 1172 (Alaska Ct. App. 1988).

Sec. 11.41.450. Incest. (a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

(1) an ancestor or descendant of the whole or half blood;

(2) a brother or sister of the whole or half blood; or

(3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Death of defendant abated prosecution under former section. Hartwell v. State, 423 P.2d 282 (Alaska 1967). (Decided under former AS 11.40.110.)

Cited in Theodore v. State, 692 P.2d 987 (Alaska Ct. App. 1985).

Collateral references. — Aiding and abetting offense of incest by one not related to party, 5 ALR 784; 74 ALR 1110; 131 ALR 1322.

Relationship created by adoption as within statute regarding incest, 151 ALR 1146.

Consent as element of incest, 36 ALR2d 1297.

Sexual intercourse between persons related by half blood, 72 ALR2d 703.

Prosecutrix as accomplice or victim, 74 ALR2d 705.

Rape, incest as included within charge of, 76 ALR2d 484.

Sec. 11.41.455. Unlawful exploitation of a minor. (a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

(1) sexual penetration;

(2) the lewd touching of another person's genitals, anus, or breast;

(3) the lewd touching by another person of the child's genitals, anus, or breast;

(4) masturbation;

(5) bestiality; or

(6) the lewd exhibition of the child's genitals.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is

intended to be used in producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 57 SLA 1983)

Cross references. — For crime of distribution of child pornography, see AS 11.61.125.

NOTES TO DECISIONS

Conviction and sentence upheld. — See Depp v. State, 686 P.2d 712 (Alaska Ct. App. 1984).

Applied in Qualle v. State, 652 P.2d 481 (Alaska Ct. App. 1982).

Cited in Lawrence v. State, 764 P.2d 318 (Alaska Ct. App. 1988).

Sec. 11.41.460. Indecent exposure. (a) An offender commits the crime of indecent exposure if the offender intentionally exposes the offender's genitals to another person with reckless disregard for the offensive, insulting, or frightening effect the act may have on that person.

(b) Indecent exposure before a person under 16 years of age is a class A misdemeanor. Indecent exposure before a person 16 years of age or older is a class B misdemeanor. (§ 4 ch 78 SLA 1983)

Sec. 11.41.470. Definitions. For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

(1) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct and physically unable to express unwillingness to act;

(2) "mentally incapable" means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person's conduct, including the potential for harm to that person;

(3) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;

(4) "without consent" means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

(B) is incapacitated as a result of an act of the defendant. (§ 3 ch 166 SLA 1978; am § 5 ch 78 SLA 1983; am § 5 ch 96 SLA 1988; am § 28 ch 50 SLA 1989)

Revisor's notes. — Reorganized in 1988 to alphabetize the defined terms.

Cross references. — For definition of terms used in this title, see AS 11.81.900.

(51) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, including cable, subscription, or pay television or other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, and the supplying of equipment for use;

(52) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child; or

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated;

(53) "sexual penetration" means

(A) genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body;

(B) but "sexual penetration" does not include acts performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated;

(C) each party to any of the acts defined as "sexual penetration" is considered to be engaged in sexual penetration;

(54) "solicits" includes "commands";

(55) "threat" means a menace, however communicated, to engage in conduct described in AS 11.41.520(a)(1) — (7) but under AS 11.41.520(a)(1) includes all threats to inflict physical injury on anyone;

(56) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violation is not entitled

(A) to a trial by jury; or

(B) to have a public defender or other counsel appointed at public expense to represent the person;

(57) "voluntary act" means a bodily movement performed consciously as a result of effort and determination, and includes the possession of property if the defendant was aware of the physical posses-

which the credit is being granted. (Eff. 5/30/71; Register 38, am 10/4/73, Register 47; am 8/12/82, Register 83; am 6/9/85, Register 94; am 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.010
AS 14.20.040

Editor's notes. — A copy of the publications listed in 4 AAC 12.100(1) may be obtained from the Coordinator, Teacher Education and Certification, Department of Education, P.O. Box F, Juneau, Alaska 99811. Prior regulations, 1967 — 69 Edition, Revised, continue in effect for the life of certificates issued prior to May 15, 1971.

CHAPTER 15. ALLOWANCES FOR PROFESSIONAL PERSONNEL

4 AAC 15.010. SALARIES: GENERAL. Repealed 1/22/81.

4 AAC 15.020. CREDITABLE TEACHING EXPERIENCE. (a) Certificated teachers serving a school term of 140 instructional days or more shall be credited with a year of teaching service.

(b) Fractional years of teaching, either through teaching full days under a contract for less than a full term, or through teaching part of a day under a full-term contract, or part of an instructional day under a contract of less than a full term may be converted to full school terms to determine creditable service. No part-time teaching may be credited for placement on the district salary schedule unless the terms for the part-time teaching are specifically stated in the contract.

(c) Teaching days less than a full instructional day shall be given a fractional value. This value times the number of days actually taught shall give the number of equivalent instructional days.

(d) Repealed 1/22/81.

(e) No creditable year may be counted until July 1, following the completion of the creditable year.

(f) The provisions of (b) — (d) of this section are not retroactive and become effective July 1, 1971.

(g) For salary purposes, credit shall be given for military service in cases where the teacher's actual service in Alaska has been interrupted and the teacher immediately returns to teaching in an Alaska public school upon completion of such service. One year of creditable service shall be granted for each year of military service up to a maximum of five years. (In effect before 7/28/59; am 6/9/61, Register 3; am

4 AAC 12.900. DEFINITIONS. As used in this chapter

(1) "approved programs" means those offered by regionally accredited teacher training institutions that have been determined to meet the program standards set out in

(A) Standards for State Approval of Teacher Education, published by the National Association of State Directors of Teacher Education and Certification, 1981 edition; or

(B) Standards for the Accreditation of Teacher Education published by the National Council for Accreditation of Teacher Education, 1983 edition;

(2) "credit" means credit granted by an institution of higher education accredited by the Northwest Association of Secondary and Higher Schools or its counterpart in other regions;

(3) "satisfactory service" means service by a teacher currently on tenure, or service which has been recommended as satisfactory by one or more superintendents, principals and/or supervisors under which the teacher has served during the past five years;

(4) "special services area" means school nurse, social workers, speech therapist, psychologist, librarian, and other areas as approved by the State Board of Education;

(5) "nonacademic credit" means credit granted by the commissioner of education for travel, institutes, and workshops, which may be applied toward renewal of certificates;

(6) "standard certificate" for the purposes of AS 14.20 means any regular certificate based on a baccalaureate or higher degree.

(7) "Alaska studies" means study of the environment, indigenous and immigrant residents, and institutions of Alaska, with specific study of the social, economic, and political history of Alaska and the educational institutions and laws that affect the people of Alaska;

(8) "multicultural education" means the study of the meaning of culture, and the relationship and influences between culture and education, with specific study of the teaching, administration, and effectiveness of schooling as they relate to multicultural student populations;

(9) "crosscultural communications" means an interdisciplinary examination of communication and language in a crosscultural educational situation, with specific study of the language, literacy, and interethnic communication of children, and cultures, in Alaska;

(10) "continuing education unit" means a credit awarded for at least 15 contact hours of participation in an organized continuing education experience by a regionally accredited institution of higher education, or by an organization that has been approved for the granting of continuing education credit by the national organization that represents the field of study or professional membership in

(g) The commissioner may, for good cause shown, waive a requirement imposed by this chapter for renewal of a certificate. (Eff. 1/28/66, Register 40; am 9/6/66, Register 25; am 5/30/71, Register 38; am 8/30/75, Register 55; am 11/14/80, Register 76; am 1/28/82, Register 81; am 8/30/84, Register 91; am 6/13/87, Register 101; am 2/24/88, Register 105)

Authority: AS 14.07.060
AS 14.20.010
AS 14.20.020

4 AAC 12.090. PRIOR COMMITMENTS. Nothing in these rules will abrogate certification commitments which were in existence prior to the effective date of these regulations. (Eff. 5/30/71, Register 38)

Authority: AS 14.20.010
AS 14.20.020

4 AAC 12.095. POST REVOCATION OR SUSPENSION PROCEDURE. (a) A person whose certificate, issued under 4 AAC 12, has been revoked or suspended shall deliver the certificate to the department within 30 days after notification of revocation or suspension.

(b) The department shall provide to all other state departments of education notice of revocation or suspension of a certification and of conviction of a certificate holder for a crime involving moral turpitude. (Eff. 3/30/84, Register 89; am 8/30/86, Register 99)

Authority: AS 14.07.060
AS 14.20.030

4 AAC 12.115. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. A certificate denial, as well as a revocation or suspension, is final and reviewable in the manner provided by AS 44.62.560 — 44.62.570. (Eff. 8/30/86, Register 99)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.120. CURRENT ADDRESS. The holder of a certificate issued under 4 AAC 12 shall maintain a current, valid mailing address on file with the Department of Education at all times. The latest mailing address on file for the holder of a current, lapsed, suspended, or revoked certificate is the address for official communications, notifications, or service of legal process. (Eff. 8/30/86, Register 99)

Authority: AS 14.07.060
AS 14.20.020

(2) the plan is defined in terms of credit hours or the equivalent of credit hours, and consists of at least six semester hours of work;

(3) the applicant provides verification, in writing, from the institution that approved the plan, that the applicant has completed the plan.

(b) A plan for an applicant renewing a certificate for the first time must meet the coursework requirements of 4 AAC 12.075(b). (Eff. 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020(c)

4 AAC 12.080. GENERAL PROVISIONS. (a) Institutes and workshops may be accepted for renewal of certificates under the following conditions:

(1) prior to attending workshop or institute, the applicant may apply to the commissioner requesting approval for certificate renewal purposes;

(2) upon receipt of the application the commissioner shall notify the applicant of the number of hours of nonacademic credit to be granted for the proposed workshop or institute;

(3) if approved, evidence of satisfactory completion must be submitted by the instructor or workshop leader to the certification supervisor.

(b) For the certification purposes, satisfactory teaching experience must have been completed in a state approved or accredited school.

(c) Partial years of experience will be prorated toward experience requirements for certification.

(d) Expired Certificates. An expired certificate may be reinstated within one calendar year of the expiration date by completion of the renewal credits required for renewal by 4 AAC 12.075. After one calendar year, the applicant must meet the requirements for issuance of a new certificate at the time of the new application.

(e) A person employed as a chief school administrator must possess, or be eligible to possess, an administrative certificate issued under 4 AAC 12.030, with an endorsement as superintendent issued under 4 AAC 12.060, except that the endorsement is not required if the person's administrative certificate is issued under 4 AAC 12.030(e).

(f) Semester credits required for renewal of a certificate under 4 AAC 12.050(b) and 4 AAC 12.075 must be earned from

(1) the University of Alaska;

(2) an institution authorized to operate in the state by the Alaska Commission on Postsecondary Education; or

(3) an institution of higher education accredited by the Northwest Association of Secondary and Higher Schools (or its counterpart in other regions).

(3) Type III, Student Teacher: This letter of authorization will, in the discretion of the commissioner, be issued to a student teacher when assigned to a public school for the purpose of completing a course in practice teaching. The fee will be waived for student teachers. (Eff. 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.075. REGULAR, ADMINISTRATIVE, AND SPECIAL SERVICES CERTIFICATE RENEWAL REQUIREMENTS. (a) A certificate issued under 4 AAC 12.020 — 4 AAC 12.040 may be renewed any number of times by presenting six semester hours of credit, or their equivalent as determined by the department, earned during the life of the certificate. At least three of the six semester hours must be upper division or graduate credit. Up to three semester hours may be continuing education units, correspondence credits from an accredited institution, or, with prior written approval of the commissioner, nonacademic credit.

(b) An applicant for renewal for the first time of a certificate that was issued after the effective date of this section, who had not completed three semester hours in Alaska studies and three semester hours in multicultural education before issuance of the certificate, must complete three semester hours in each of those areas before renewal of the certificate. Completion of the multicultural education requirement may be used to meet the six-semester-hour requirement of (a) of this section. Completion of the Alaska studies requirement must be in addition to the six semester hours required by (a) of this section.

(c) For a certificate issued under 4 AAC 12.040 with an endorsement in speech, language, or hearing, the multicultural education requirement of (b) of this section may be satisfied by completion of three semester hours in crosscultural communications. (Eff. 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020(c)

4 AAC 12.077. PROFESSIONAL DEVELOPMENT PLAN. (a) Notwithstanding 4 AAC 12.075, a certificate issued under 4 AAC 12.020 — 4 AAC 12.040 may be renewed any number of times by implementing and completing a professional development plan during the life of the expiring certificate, if

(1) the plan permitted by this section is approved in writing by the department head or dean of an approved teacher education program, and is signed by a notary public, before its implementation;

4 AAC 12.060. ENDORSEMENTS. (a) Each certificate will be endorsed indicating the area(s) in which each applicant is qualified.

(b) Endorsements are based on

(1) the preparing institution's recommendation; or

(2) repealed 8/30/84.

(c) For the "vocational" endorsement, the applicant must also submit evidence of two years' successful work experience related to the vocational area which was outside the field of education.

(d) For the "school psychology" endorsement, the applicant must possess a masters or higher degree and be recommended for endorsement in school psychology by an institution whose school psychology program has been accredited by the National Council for Accreditation of Teacher Education or approved by the American Psychological Association.

(e) For the "speech," "language," or "hearing" endorsement, the applicant must possess a master's or higher degree and be recommended for the endorsement by an institution whose program has been accredited by the National Council for Accreditation of Teacher Education or approved by the American Speech-Language-Hearing Association. (Eff. 5/30/71, Register 38; am 8/30/75, Register 55; am 3/28/82, Register 81; am 8/30/84, Register 91; am 6/28/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020

Editor's notes. — The "vocational" endorsement, which is referred to in subsection (c), is required of persons teaching vocational education courses under the provisions of a memorandum of agreement between the Division of Vocational Education and individual school districts.

4 AAC 12.070. LETTER OF AUTHORIZATION. (a) A letter of authorization, valid to the end of the school year in which it is issued, may be issued to applicants who do not qualify for regular, special services, vocational trade, or administrative certificates.

(b) A letter of authorization will be issued only at the request of the school board through the chief school administrator.

(c) The fee for a letter of authorization is $10.

(d) Types of Letters of Authorization.

(1) Type I, Recognized Expert: This letter of authorization will be issued only for areas of specialization for which there is usually no formal preparation in an institution of higher learning.

(2) Type II, Emergency: This letter of authorization will, in the discretion of the commissioner, be granted in an extreme emergency, to an applicant who does not meet the requirements of a regular certificate and only at the request of the school board through the chief school administrator certifying that a regularly certificated person is not available.

(In effect before 7/28/59; am 6/9/61, Register 3; am 4/4/63, Register 10; am 1/28/66, Register 20; am 9/8/66, Register 24; am 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.055. EARLY CHILDHOOD EDUCATION CERTIFICATE (Type E). (a) The department will issue an Early Childhood Associate I certificate, valid for five years, to an applicant who has

(1) completed a 30-credit university or college early-childhood education program that requires at least 400 hours of supervised practicum experience; or

(2) obtained a valid Child Development Associate (CDA) award from the Bank Street College of Education.

(b) The department will issue an Early Childhood Associate II certificate, valid for five years, to an applicant who

(1) has completed an approved associate degree program in early childhood education; and

(2) has obtained an Early Childhood Associate I certificate.

(c) Possession of an Early Childhood Education certificate does not qualify the holder to be assigned as a regular (Type A) classroom teacher.

(d) Early Childhood Associate I and Early Childhood Associate II certificates may be renewed upon submission of evidence of completion of six semester hours of credit in early childhood education, or related field, and, for the Early Childhood Associate I certificate, the renewal of a Child Development Associate ', if applicable. (Eff. 3/30/84, Register 89)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.057. UNIVERSITY IFICATE (Type U). (a) The department will issue a univers tificate, valid for five years, to an applicant who is employed in a ing position in an approved teacher training program in Alaska who

(1) is eligible to possess a Type rtificate; or

(2) has been approved for the unive certificate by the teacher training program.

(b) A university certificate may be ren wed any number of times upon evidence of satisfactory completion of 50 clock hours of K-12 teaching during the life of the certificate. (Eff. 4/19/87, Register 102)

Authority: AS 14.07.060
AS 14.20.010
AS 14.20.020

ment was issued. (Eff. 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55; am 3/28/82, Register 81; am 9/30/83, Register 87; am 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.042. TEMPORARY CERTIFICATE. A temporary certificate, valid for one year, will be issued to an applicant who

(1) meets all application requirements for certification under 4 AAC 12.020, 4 AAC 12.030, or 4 AAC 12.040, except the requirement that the applicant earn six semester hours of credit within the five years immediately preceding the application;

(2) provides evidence of satisfactory service during at least three of the five years immediately preceding the application;

(3) has never possessed a certificate issued under this chapter; and

(4) has an earned doctorate from an accredited institution.

(Eff. 9/30/83, Register 87; am 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.010
AS 14.20.020

4 AAC 12.045. PROFESSIONAL CERTIFICATE. Repealed 8/30/86.

4 AAC 12.050. VOCATIONAL TRADES CERTIFICATE (Type D). (a) A vocational trades certificate, valid for two years, shall be issued to an applicant who

(1) repealed 8/30/75;

(2) has completed four or more calendar years of full-time work experience in a trade or vocational pursuit, for which not more than two years of formal training (trade school or technical institute) may be substituted; and

(3) has letters of recommendation from one or more training agencies or supervisors of the trade experience stating the experience has been satisfactory; and

(4) has proof of employment in his trade or vocational area for a school district or nonpublic school.

(b) A vocational trades certificate may be renewed any number of times upon submission of evidence of completion of three semester hours of credit or additional training and/or work experience acceptable to the commissioner, and evidence of satisfactory service obtained during the life of the certificate.

(c) The fee for a vocational trades certificate is $10.

classroom experience or other related experience in the field of education, as well as other demonstrated strengths.

(f) A certificate issued under (e) of this section is valid only in the district that requested issuance of the certificate, is valid only for employment as the chief school administrator of that district, and expires if the holder ceases employment as the chief school administrator of that district. (In effect before 7/28/59; am 6/9/61, Register 3; am 4/4/63, Register 10; am 1/28/66, Register 20; am 9/8/66, Register 24; am 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55; am 9/30/83, Register 87; am 8/30/84, Register 91; am 8/30/86, Register 99; am 4/9/87, Register 102; am 6/13/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.040. SPECIAL SERVICES CERTIFICATE (Type C). (a) A special services certificate, valid for five years, may be issued to an applicant who has completed a program in a special service area, has a bachelor's or higher degree, and is recommended by the preparing institution.

(1) Repealed 8/30/75.

(2) Repealed 8/30/75.

(b) Except as otherwise provided by 4 AAC 12.042 the applicant must have earned at least six semester hours of credit within the five years immediately preceding application.

(c) Repealed 4/9/87.

(d) A special services certificate does not qualify the holder to be assigned as a regular classroom teacher.

(e) Repealed 4/9/87.

(f) Notwithstanding 4 AAC 12.075, a special services certificate endorsed in "school psychology" may be renewed any number of times if an applicant provides evidence of

(1) satisfactory service obtained during the life of the certificate; and

(2) completion of a minimum of 90 contact hours in the areas of assessment, evaluation, intervention, program planning, program development, or staff or program administration in

(A) accredited college or university course work;

(B) workshops, seminars, or institutes;

(C) school district or university sponsored in-service training programs;

(D) college training; or

(E) workshop or seminar teaching.

(g) A certificate or endorsement in "school psychology" issued before the effective date of (f) of this section may be renewed once subject to the requirements in effect at the time the certificate or endorse-

Authority: AS 14.07.060 AS 14.20.020
AS 14.20.010 AS 14.20.030

4 AAC 12.020. REGULAR CERTIFICATE (Type A). (a) The regular certificate, valid for five years, shall be issued to an applicant who

(1) has completed a teacher education program approved by the Alaska State Board of Education, has a bachelor's degree, and is recommended by the preparing institution; or

(2) has completed a comparable program in another state and is recommended by the preparing institution or the certifying state agency.

(b) Except as otherwise provided by 4 AAC 12.042, the applicant must have earned at least six semester hours of credit within the five years immediately preceding application.

(c) Repealed 4/9/87.

(d) Repealed 4/9/87.

(In effect before 7/28/59; am 6/9/61, Register 3; am 4/4/63, Register 10; am 1/28/66, Register 20; am 9/8/66, Register 24; am 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55; am 9/30/83, Register 87; am 8/30/86, Register 99; am 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.030. ADMINISTRATIVE CERTIFICATE (Type B). (a) The administrative certificate, valid for five years, shall be issued to an applicant who

(1) has completed an approved program in school administration, has a master's or higher degree, is recommended by the preparing institution or the certifying state agency, and has three years of satisfactory teaching experience on a regular certificate; or

(2) repealed 8/30/84;

(3) repealed 8/30/75;

(b) Except as otherwise provided by 4 AAC 12.042, the applicant must have earned at least six semester hours of credit within the five years immediately preceding application.

(c) Repealed 4/9/87.

(d) Repealed 4/9/87.

(e) Upon written request of a district school board, an administrative certificate may be issued to an applicant who does not meet all of the requirements of (a) and (b) of this section if

(1) the applicant has at least a master's degree from an accredited institution; and

(2) the state Board of Education determines that the applicant is qualified on the basis of the applicant's educational background,

(b) The following shall be submitted by teachers in applying for a certificate:

(1) completed application; must be notarized;

(2) an official transcript of all college work;

(3) certificate fee.

(c) Transcripts and other required documents shall become a part of the teacher's permanent records and shall remain on file with the Department of Education.

(d) Certificates shall be dated as of the date the completed application, transcripts, experience [illegible], and fee are received, and shall remain effective until the expiration date indicated on the certificate.

(e) Neither the state nor a district school board shall pay a salary to any teacher who has not obtained a valid Alaska teaching certificate.

(f) Nonpublic schools which employ noncertificated teachers shall not be approved by the state, or if approved, shall be dropped from the register of approved schools.

(g) Certificate fees are $60 except as otherwise noted.

(h) The fee for endorsement is $10.

(i) An applicant for a certificate shall, on the application, disclose a suspension or revocation of a certificate by this or another state. A teacher who has been issued a certificate by this state shall immediately notify the department of suspension or revocation of a certificate issued by another state. Failure to inform the department of a suspension or revocation as required by this subsection may result in denial or revocation of a certificate.

(j) The fee for each duplicate certificate is five dollars.

(k) Any misrepresentation or willful omission of information on a certification application may result in denial or revocation of the certificate.

(l) The department may deny a certificate to an applicant who has committed an act of immorality, which is defined as:

(1) child abuse or molestation;

(2) sexual abuse of a minor;

(3) contributing to the delinquency of a minor;

(4) rape or sexual assault;

(5) a criminal act resulting in personal injury or destruction of property;

(6) misconduct involving a controlled substance in the first through the fifth degree; or

(7) any other act involving moral turpitude.

(In effect before 7/28/59; am 4/4/63, Register 10; am 1/28/66, Register 20; am 4/17/67, Register 24; repealed and reenacted 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55; am 3/30/84, Register 89; am 8/30/84, Register 91; am 7/11/86, Register 99; am 8/30/86, Register 99; am 11/27/86, Register 100; am 2/20/87, Register 101)

4 AAC 09.130. SCHOOL DISTRICT AUDIT. A district must submit the annual audit of the district's operating fund for the fiscal year to the commissioner no later than October 1 of the succeeding fiscal year. (Eff. 5/24/81, Register 78; am 1/15/87, Register 101)

Authority: AS 14.14.050 AS 14.17.190
AS 14.17.081 AS 14.17.200

4 AAC 09.140. AUDIT REVIEW. Repealed 1/15/87.

4 AAC 09.150. REQUEST FOR WAIVER. Repealed 1/15/87.

4 AAC 09.160. FUND BALANCE. (a) Eligible reserves in the year-end fund balance in a school's operating fund may be only in the following categories:

(1) encumbrances,
(2) inventory,
(3) prepaid expenses including fuel,
(4) retirement incentive program, and
(5) self-insurance.

(b) Other uses of a school's balance must be listed under the unreserved portion of the fund balance as "designations". (Eff. 12/13/87, Register 104)

Authority: AS 14.17.082
AS 14.17.200

CHAPTER 12. CERTIFICATION OF PROFESSIONAL PERSONNEL

Section
10. Certification of teachers
20. Regular certificate (Type A)
30. Administrative certificate (Type B)
40. Special services certificate (Type C)
42. Temporary certificate
45. (Repealed)
50. Vocational trades certificate (Type D)
55. Early childhood education certificate (Type E)
57. University certificate (Type U)
60. Endorsements
70. Letter of authorization

Section
75. Regular, administrative, and special services certificate renewal requirements
77. Professional development plan
80. General provisions
90. Prior commitments
95. Post revocation or suspension procedure
115. Applicability of the Administrative Procedure Act
120. Current address
900. Definitions

4 AAC 12.010. CERTIFICATION OF TEACHERS. (a) All teachers in public and state approved nonpublic schools shall be at least 18 years of age and shall obtain an Alaska teacher's certificate unless they are participating in an approved exchange program.

SEX OFFENSES: EXISTING LAW

By Age of Offender and Classification of Felony

DESCRIPTION OF OFFENSE	Any Age	18 Or Older	16 Or Older
Victim: Under 13 **Relationship:** None	**Penetration:** Unclass. **Contact:** B felony		
Victim: 13, 14, 15 + 3 yrs younger **Relationship:** None			**Penetration:** B felony **Contact:** C felony
Victim: Under 16 **Relationship:** Same household & offender in position of authority		**Penetration:** Unclass. **Contact:** B felony	
Victim: Under 16 **Relationship:** Temporarily entrusted to offender's care		**Penetration:** Unclass. **Contact:** B felony	
Victim: Under 18 **Relationship:** Entrusted to offender's care by authority of law		**Penetration:** Unclass. **Contact:** B felony	
Victim: Under 18 **Relationship:** Son or daughter (all kinds)		**Penetration:** Unclass. **Contact:** B felony	
Victim: Any Age **Relationship:** Ancestor, descendant, brother, sister, uncle, aunt, nephew, niece		**Penetration:** C felony	
Victim: Any Age **Relationship:** None	**Pen./No Consent:** Unc. **Con./No Consent:** B		

SB 358

6-1845H
Chenoweth
2/14/90

Original sponsor(s): SEN. FISCHER, Kelly

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 358 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to fingerprinting of minors."

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

* Section 1. AS 47.10.097(a) is amended to read:

(a) Except as provided in (b) of this section, a minor in the custody of the department or of a law enforcement agency may not be fingerprinted for reference to or entry into the Alaska automated fingerprint system without a court order upon good cause shown. Good cause exists if the minor is in custody for a criminal offense or if identification of the minor is necessary for the safety of the minor or of other persons.

* Sec. 2. AS 47.10.097(b) is amended to read:

(b) A law enforcement officer may fingerprint a minor who is 14 [16] years of age or older for reference to or entry into the Alaska automated fingerprint system without a court order when the minor is arrested [CONVICTED OF, OR ADJUDICATED A DELINQUENT] for [,] an offense that is a crime if committed by an adult [FELONY].

6-1845H
Chenoweth
2/12/90

Original sponsor(s): SEN. FISCHER, Kelly

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 358 (Judiciary)

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* Sec. 2. AS 47.10.097(b) is amended to read:

(b) A law enforcement officer may fingerprint a minor who is 14 [16] years of age or older for reference to or entry into the Alaska automated fingerprint system without a court order when the minor is arrested [CONVICTED OF, OR ADJUDICATED A DELINQUENT] for a criminal [, AN] offense [THAT IS A FELONY].

Introduced: 2/6/90
Referred: Judiciary and Finance

6-1845E

BY SEN. FISCHER, Kelly

IN THE SENATE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 358

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to fingerprinting of minors."

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

* Section 1. AS 47.10.090 is amended by adding a new subsection to read:

(d) Notwithstanding (a) of this section, if the court orders a minor who is 14 years of age or older to the custody of the department for placement in a juvenile facility under AS 47.10.080(b), the court shall transmit a copy of the order to the Department of Public Safety. On the basis of the court's order, the commissioner of public safety, or a law enforcement officer designated by the commissioner, may fingerprint the minor. The provisions of AS 47.10.097(d) apply to fingerprints obtained under this subsection. The commissioner of public safety may not create or maintain a record based on the copy of the court order transmitted to the commissioner under this subsection and shall promptly destroy the copy of the court order after the minor's fingerprints have been secured.

* Sec. 2. AS 47.10.097(a) is amended to read:

(a) Except as provided in (b) of this section, a minor in the custody of the department or of a law enforcement agency may not be fingerprinted [FOR REFERENCE TO OR ENTRY INTO THE ALASKA AUTOMATED FINGERPRINT SYSTEM] without a court order upon good cause shown. Good cause exists if the minor is in custody for a ~~serious~~ offense ~~against persons or property~~ or if identification of the minor is necessary for the safety of the minor or of other persons.

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

(b) A law enforcement officer may fingerprint a minor who is 14 [16] years of age or older [FOR REFERENCE TO OR ENTRY INTO THE ALASKA AUTOMATED FINGERPRINT SYSTEM] without a court order

(1) when the minor is arrested [CONVICTED OF, OR ADJUDICATED A DELINQUENT] for [,] ~~an offense that is a felony if committed by~~ an adult; ~~or~~

~~(2) immediately after the minor is institutionalized upon adjudication for delinquency.~~

* Sec. 4. AS 47.10.097 is amended by adding a new subsection to read:

(d) If the minor is 14 or 15 years of age, the fingerprints taken under (b) of this section may be checked through the Alaska automated fingerprint identification system once and then shall be immediately destroyed. If the minor is 16 or 17 years of age, the fingerprints may be entered in the Alaska automated fingerprint identification system.

Alaska State Legislature

Senator Paul Fischer
Senate District D
Box 784
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State Senate

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

MEMORANDUM

RECEIVED
FEB 2 1990
JAN FAIKS
SENATE OFFICE

TO: Senator Jan Faiks, Chairman
Senate Judiciary Committee

FROM: Senator Paul Fischer

SUBJECT: Senate Bill 358
(relating to fingerprinting of minors)

DATE: February 2, 1990

I appreciate your scheduling the above referenced bill before the Senate Judiciary Committee in such a timely manner.

As you are aware, I introduced similar legislation in the Fifth-teenth Legislature and it passed the Senate on January 27, 1988; however, it eventually died in the House.

Since that time, several concerns have been brought to my attention by the Department of Law and our own Legal Services. I plan to introduce a Sponsor Substitute that addresses these factors prior to your committee meeting next week.

Again, your consideration is greatly appreciated.

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OK

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

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 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 virture 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.

EXECUTIVE BOARDS FOR THE COALITION

AACP

Mike Daugherty
President
Homer, 235-8113

Duane Udland
Vice President
Anchorage, 786-8552

George Novaky
Secretary
Anchorage, 786-8958

Glen Godfrey
Treasurer
Anchorage, 269-5511

Dan Anslinger
Board Member
Ketchikan, 225-6631

Richard Cummings
Board Member
Fairbanks, 452-1527

APOA

Shirley Warner
President
Anchorage, 786-8851

Dale Florian
Vice President
Fairbanks, 474-7721

Don Otis
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Juneau, 789-2161

John Shover
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Fairbanks, 452-2114

Greg Russell
Board Member
Anchorage, 262-4455

Greg Hansen
Board Member
Anchorage, 786-8787

Terry Quarton
Board Member
Wasilla, 276-3550

FBINAA

Terry McConnaughey
President
Anchorage. 269-5643

Dan Anslinger
Vice President
Southeast Region
225-6631

Glenn Flothe
Vice President
South Central Region
262-4453

Richard Cummings
Vice President
Northern Region
452-1527

Turk Mayfield
Secretary/Treasurer
Willow
495-6413

BILL NO: SSSB 358

DATE: February 14, 1990

TITLE: An Act relating to the fingerprinting of minors

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF PUBLIC SAFETY

This bill would allow the fingerprinting of juveniles arrested for felony offenses or committed to a juvenile facility upon adjudication for delinquency. Under this legislation, the fingerprints of offenders 14 and older could be taken for comparison with latent (crime scene) prints contained in the Alaska Automated Fingerprint Identification System (AAFIS). The prints of offenders 14 and 15 years old are required to be destroyed after comparison. Prints of offenders 16 and older may be retained in 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.

The Department of Public Safety supports SSSB 358.

Arthur English
Commissioner

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO

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PHONE: (907) 465-3428

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1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 7, 1990

The Honorable Paul Fischer
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Re: Legislation Authorizing Fingerprinting Minors

Dear Senator Fischer:

You have asked for the Criminal Division's comments on your proposal to reintroduce CSSB 37 (Rules) (1987). In addition, you have asked for comments on AS 47.10.097, which allows minors over the age of 16 to be fingerprinted under limited circumstances.

Proposal to Reintroduce CSSB 37 (Rules) (1987)

Fingerprinting minors over the age of 14, without a court order, would be permissible under CSSB 37 (Rules) in two situations. First, a law enforcement officer could take fingerprints when a minor is arrested for an offense that is a felony if committed by an adult. Second, fingerprints could be taken immediately after a minor is institutionalized upon adjudication for delinquency. If the minor is 16 or 17 years of age, the statute would allow the fingerprints to be entered in the Alaska Automated Fingerprint Identification System (AAFIS). An earlier version of the bill required a minor's fingerprints to be purged from AAFIS when the minor reached age 18; this language was deleted from CSSB 37 (Rules).

As you know, unidentified fingerprints found at the scene of a crime are checked for comparison with fingerprints in the computerized AAFIS database. Statistics show that the majority of burglary arrests in Alaska are of juveniles between the ages of 14 and 18 years of age. 1/ Since there are juveniles who remain involved in criminal activity after reaching adulthood, we do not

1/ The majority of burglaries where arrests have been made, however, are committed by adults.

believe it makes sense to purge the fingerprints of 16- and 17-year-olds from the system. Doing so would deprive law enforcement officers of a valuable investigative tool, and may result in the inability to solve crimes that could be solved if the fingerprints remained in AAFIS.

During the hearings on SB 37, proponents of purging argued that keeping the prints on AAFIS beyond the minor's 18th birthday is inconsistent with the philosophy of keeping records of juvenile convictions confidential. However, contrary to the assumption that was made during the 1987 hearings, AAFIS records are not linked to criminal history records. And, since there is more than one reason for entry of a minor's fingerprints onto AAFIS, the fact that a minor's fingerprints are in AAFIS would not imply that the minor had a criminal record. 2/ Since the existence of an AAFIS fingerprint record is not the equivalent of a criminal record, we do not believe that maintaining fingerprints beyond a minor's 18th birthday is inconsistent with the law on confidentiality of records.

Experience with AS 47.10.097

In 1988, the Legislature added a section to Title 47 that allowed law enforcement officers to

> fingerprint a minor who is 16 years of age or older for reference to or entry into the Alaska automated fingerprint system without a court order when the minor is convicted of, or adjudicated a delinquent for, an offense that is a felony.

However, the statue failed to address how a law enforcement officer would know whether a minor had been convicted of a felony. Since juvenile conviction records are confidential under AS 47.10.090, the Department of Public Safety has been completely unable to implement AS 47.10.097. For some time, the Division of Family and Youth Services has been working on a policy that would result in court orders being issued authorizing the release of information to the Department of Public Safety. This policy, however, has yet to be implemented in all areas of the state.

In order to simplify the implementation of AS 47.10.097, even if you do not decide to reintroduce CSSB 37 (Rules) (1987), AS 47.10.090 needs to be amended to allow for disclosure, to the Department of Public Safety, of adjudication and conviction records of minors over the age of 16 who have been convicted of, or

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2/ For example, under A.S. 44.41.025(d), a parent or guardian can submit any minor's fingerprints for entry onto AAFIS.

adjudicated a delinquent for, an offense that is a felony. However, even with an amendment of this nature, the Department of Public Safety would have difficulty implementing the law without a court order requiring the minor to appear at a particular time and place where fingerprints could be taken. Since the purpose of the law is to allow fingerprinting without a court order, a more comprehensive amendment to AS 47.10.090 would need to be developed.

Recommended Amendments to CSSB 37 (Rules)

Your proposal to reintroduce CSSB 37 (Rules) goes a long way towards solving the problem currently faced by the Department of Public Safety in implementing AS 47.10.097 by allowing the fingerprints of all minors over the age of 14 to be taken at the time of arrest by a trained law enforcement officer. However, since the bill also provides for taking fingerprints immediately after a minor is institutionalized upon an adjudication for delinquency, an amendment is necessary to allow a record of institutionalization to be released to the Department of Public Safety. In order to protect the rights of minors, the statute should specify that the record of institutionalization must be destroyed as soon as the fingerprints are entered into AAFIS, and that no record other than the fingerprints may be maintained about the juvenile by the Department of Public Safety.

We suggest that a new section be added to CSSB 37 (Rules) as follows:

> Section 1. AS 47.10.090 is amended by adding a new section to read:
>
> (d) Notwithstanding (a) of this section, the court shall forward an order of institutionalization following an adjudication of delinquency to the Department of Public Safety if the minor is 14 years of age or older. The order shall serve as the basis for obtaining fingerprints from the minor under AS 47.10.097 and shall be immediately destroyed after the fingerprints are obtained. Except for entry of the minor's fingerprints in the Alaska Automated Fingerprint Identification System under AS 47.10.097, the Department of Public Safety may not maintain or create any record based on an order of institutionalization released under this section.

Thank you for the opportunity to comment on this interesting piece of legislation. If you have any comments or questions about the issues raised in this letter, please let me know.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: _____
Laurie H. Otto
Assistant Attorney General

cc: Bob Evans

LHO:me-169

The following procedures should be followed when visitation rights are denied prior to the termination of parental rights: first, the Department of Health and Social Services, Division of Family and Youth Services should have primary authority to set visitation based on the best interests of the child, since the division is in the best position to make this decision in the first instance; and secondly, either the guardian ad litem or the parents should be entitled to request an expedited evidentiary hearing of a denial of visitation, which would consist of an independent determination by the superior court that clear and convincing evidence showed that the child's best interests were served by disallowing parental visitations. K.T.E. v. State, 689 P.2d 472 (Alaska 1984).

De facto determination of natural parent's visitation rights. — Where the Department of Health and Social Services decided to allow minor children, who had been adjudicated as children in need of aid, to move from Alaska to Alabama with their foster care family, the state's action constituted a de facto termination of a natural parent's visitation rights; the natural father was unemployed and virtually penniless, the state would not provide airfare so that the father could visit his children on a regular basis, and the father would be limited to phone "visits" because of his lack of funds. D.H. v. State, 723 P.2d 1274 (Alaska 1986).

Standard of review of state action constituting de facto termination of natural parent's right of reasonable visitation. — The appropriate standard of review for state decisions which essentially terminate a natural parent's right of reasonable visitation under subsection (c) is an independent determination of whether the state has proved by clear and convincing evidence that termination of parental visitation is in the child's best interest. D.H. v. State, 723 P.2d 1274 (Alaska 1986).

Applied in In re B.L.J., 717 P.2d 376 (Alaska 1986).

Sec. 47.10.090. Records. (a) The court shall make and keep records of all cases brought before it. The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. All information and social records pertaining to a minor and prepared by an employee of the court or by a federal, state or city agency in the discharge of the employee's or agency's official duty, including driver's license action under AS 28.15.185, are privileged and may not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law-enforcement agency shall disclose information regarding a case which is needed by the person or agency charged with making a preliminary investigation for the information of the court. The court shall forward a record of adjudication of a violation of an offense listed in AS 28.15.185(a) to the Department of Public Safety, if the court imposes a license revocation under AS 28.15.185. Within 30 days of the date of a minor's 18th birthday or, if the court retains jurisdiction of a minor past the minor's 18th birthday, within 30 days of the date on which the court relinquishes jurisdiction over the minor, the court shall order sealed all the court's official records, information and social records pertaining to that minor, as well as records of all driver's license proceedings under AS 28.15.185, criminal proceedings against the minor and punishments assessed against the minor except for traffic offenses. A person may not use these sealed records for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.

(b) The name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent child or a child in need of aid unless authorized by order of the court, except that the name of a minor who is found for the second time to have violated a law, which if committed by an adult would be a felony, shall be made public unless the court, for good cause shown, in certain individual cases, enters an order prohibiting the disclosure.

(c) A person who violates a provision of this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500 or by imprisonment for not more than one year, or by both. (§ 10(3)(4) art I ch 145 SLA 1957; am § 1 ch 124 SLA 1972; am § 1 ch 90 SLA 1975; am § 20 ch 63 SLA 1977; am § 4 ch 130 SLA 1988; am § 56 ch 50 SLA 1989)

Effect of amendments. — The 1988 amendment, effective September 1, 1988, in subsection (a), inserted "including traffic offenses and driver's license action under AS 28.15.185" in the third sentence and "driver's license proceedings under AS 28.15.185" in the next-to-last sentence, and inserted the fifth sentence.

The 1989 amendment, effective May 27, 1989, deleted "traffic offenses and" following "including" in the third sentence in subsection (a).

NOTES TO DECISIONS

Confidentiality policy. — The policy of confidentiality in Child in Need of Aid proceedings is not absolute. The court has discretion to disclose records in CINA proceedings under subsection (a). Clifton v. State, 758 P.2d 1279 (Alaska Ct. App. 1988).

Quoted in Sledge v. State, 763 P.2d 1364 (Alaska Ct. App. 1988).

Sec. 47.10.097. Fingerprinting of minors. (a) Except as provided in (b) of this section, a minor in the custody of the department or of a law enforcement agency may not be fingerprinted for reference to or entry into the Alaska automated fingerprint system without a court order upon good cause shown.

(b) A law enforcement officer may fingerprint a minor who is 16 years of age or older for reference to or entry into the Alaska automated fingerprint system without a court order when the minor is convicted of, or adjudicated a delinquent for, an offense that is a felony.

(c) Fingerprint records under this section are not subject to AS 47.10.090. (§ 3 ch 121 SLA 1988)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SSSB 358
PUBLISH DATE:

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

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

2/8/90

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SSB 358
PUBLISH DATE: February 6, 1990

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-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: Myra M Munson (R)
Date: 2/20/90
Agency:

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

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSSSB 358 (Jud)
PUBLISH DATE:

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
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
Division: Administrative Services
Phone: 465-4336
Date: 02/26/90

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

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	2,999
Total Salary & Benefits	$9,058

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 358

For an act entitled: "An Act relating to the fingerprinting of minors".

This bill would amend existing Alaska Statutes section 47.10.097 (Fingerprinting of Minors) to permit the fingerprinting of minors:

1. by court order for reference and entry into Alaska Automated Fingerprint System, (AAFIS) only on showing of good cause.

2. 14 years of age or older when **arrested** for an offence that is a felony.

3. 14 years of age or older when adjudicated and committed to a correctional facility for **any** offense.

BACKGROUND

The present law allows for the fingerprinting of minors under two conditions;

a. Any minor may be fingerprinted for reference to or entry into AAFIS on order of the Court for good cause shown.

b. A law enforcement officer may only fingerprint a minor who is 16 years of age or older for reference or entry into AAFIS without a Court order when the minor is **convicted of or adjudicated** a delinquent for an offence that is a felony.

The practice is that an adjudicated minor who meets the age and offence conditions and is under supervision and resides in a community placement is instructed to report to the Department of Public Safety for the fingerprinting process. Those minors who are committed to department youth facilities are made available to law enforcement for fingerprinting at the facility.

ANALYSIS

Law enforcement agencies desire access to and use of fingerprint records of minors for current and future investigative purposes. These agencies believe that additional crimes can be cleared by having access to fingerprints of those minors who have a history of arrest.

SSSB358 would loosen the restriction on fingerprinting minors who
are in the custody of the department or a law enforcement agency by permitting a law enforcement officer to fingerprint a minor 14 years of age or older who has been merely **charged** with a felony offense or who has been institutionalized on **any** offense. The fingerprints of minors under age 16 could be checked only once in AAFIS and then destroyed. The fingerprints of minors 16 years of age or older could be retained indefinitely in AAFIS for subsequent checks. These fingerprints could be retained well after a minor's 18th birthday.

DEPARTMENT POSITION

The Department opposes the broad fingerprinting requirements of this bill since it would subject many arrested juveniles to the fingerprinting process with little likelihood of useful result. Because the **arrest** charge would be the basis for fingerprinting it is likely that overcharging would occur in the arrest of minors for the purpose of obtaining fingerprints. Such overcharging would burden the department intake offices and legal advisors with unnecessary case analysis. Additionally, such unnecessary action by law enforcement officials would tend to lessen rather than enhance a youthful offender's respect for the law.

Alaska's juvenile justice system is based on achieving short term protection of the public and juveniles through control and long term benefit to society through rehabilitation. Protection and rehabilitation, including accountability, are the desired outcomes, not punishment. To provide an incentive for positive change by youths and to achieve complete rehabilitation the law provides for records of juvenile delinquency to be sealed when minors reach age 18.

POSITION PAPER/Department of Health & Social Services

This bill would reduce this incentive by retaining fingerprint records of juveniles beyond the time when all other records of delinquency are sealed.

This bill would also result in the collection and retention of the fingerprints of minors who have no record of conviction. And although these records would not be connected to a specific criminal record there is a perceived stigma to having fingerprint records in a criminal justice information system. The general public, lacking specific expertise and information on the collection and retention of law enforcement records, associates fingerprinting with criminal activity. Many professions and organizations have long opposed routine fingerprinting precisely because of the association with criminal activity.

The Department opposes SSSB358 in its current form.

The department could support the bill if SSSB358 were amended to permit the fingerprinting of minors without a court order only in those cases where the minor has been **adjudicated** for an offense that would be a felony for an adult and if all fingerprints collected from a minor and retained in AAFIS were expunged from the system when the minor reaches age 18.

Russell Webb — 2/14/90 Date
Russell Webb
Director
Division of Family and
Youth Services

Myra M. Munson — 2/15/90 Date
Myra M. Munson
Commissioner
Department of Health and
Social Services

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

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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

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.

ANCHORAGE POLICE DEPARTMENT

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Training Coordinator
APOA STATE BOARD MEMBER

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APOA ANCHORAGE CHAPTER PRESIDENT

INDEMNIFICATION OF GOVERNMENT EMPLOYEES

Indemnification for public employees is our number one priority again this year. The impact of recent court rulings in the Lower 48 imposing personal punitive damages, and current cases being heard in the courts locally, are placing the livelihoods of our public employees in jeopardy. Their only wrong doing was that they were performing their duties in good faith.

We would like to reiterate our position from last year that it has long been accepted that government must be held responsible for its actions. When the government takes, or fails to take action, courts have held that the government is liable and injured parties have, through law suits or claims, received compensation for what was deemed wrong.

Generally when a lawsuit is filed it is filed against the government and employees are listed as parties to the action. In the past, employees have not been held personally liable for actions taken at the behest of their employer, unless they were clearly working outside the scope of their authority.

The trend where public employees are being held personally liable places these employees in a position where their own personal assets are at risk. All govenment employees are in danger, from the highest level policy maker to the lowest level of workers where those policies are carried out. The social workers, the road maintenance supervisor, the police officer, the medic, the fire fighter, and the department manager, are all vulnerable.

We in law enforcement believe this is an undue burden upon the State's public employees. It carries great potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets.

When employees are doing the work of the government, within the scope of their authority, and without malice, they should not be held personally liable when they are named as parties to law suits.

Legislation should be passed that indemnifies public employees and frees them from the burden of working under the constant threat that the good faith judgements they make can result in the loss of their homes, their cars, or their savings.

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 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 virture 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.

EXECUTIVE BOARDS FOR THE COALITION

AACP

Mike Daugherty
President
Homer, 235-8113

Duane Udland
Vice President
Anchorage, 786-8552

George Novaky
Secretary
Anchorage, 786-8958

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Don Otis
Board Member
Juneau, 789-2161

John Shover
Board Member
Fairbanks, 452-2114

Greg Russell
Board Member
Anchorage, 262-4455

Greg Hansen
Board Member
Anchorage, 786-8787

Terry Quarton
Board Member
Wasilla, 276-3550

FBINAA

Terry McConnaughey
President
Anchorage. 269-5643

Dan Anslinger
Vice President
Southeast Region
225-6631

Glenn Flothe
Vice President
South Central Region
262-4453

Richard Cummings
Vice President
Northern Region
452-1527

Turk Mayfield
Secretary/Treasurer
Willow
495-6413

SB 367

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that makes several changes in the area of forfeiture of property due to violation of state drug laws. These changes are needed in order to have a greater impact on drug dealing by taking the profit out of that activity. A section-by-section description of the bill follows.

Section 1 of the bill replaces existing provisions in art. 2 of AS 17.30 with new drug forfeiture provisions as follows:

Proposed AS 17.30.103 expands the type of property that is subject to forfeiture. In particular, it permits forfeiture of money, securities, and other property that is "traceable" to illegal drug activity or that was used to buy drugs. This provision thus allows for forfeiture of drug proceeds or capital to a greater extent than is permitted under current Alaska law; however, it does not go as far as current federal law in that it does not permit forfeiture of homes and other real property that has been merely used as a place to store or sell drugs. This new section also provides for forfeiture of guns and other weapons, regardless of whether they are visible (as required by current law) or hidden away.

Proposed AS 17.30.105 clarifies existing law on seizure of property without court orders, to permit seizure if it is otherwise constitutionally permissible. Current law allows seizure only if incidental to a lawful arrest. However, in many cases there might be no arrest but the property is in plain view, which is a constitutionally proper reason for seizing it. This new section also authorizes a court order of seizure if a grand jury has reviewed the evidence and found that the property is subject to forfeiture. It makes

little sense to require evidence that has already been presented in a grand jury proceeding, in order to obtain a criminal indictment, to be presented once again in order to obtain a court seizure order.

Proposed AS 17.30.107 is nearly identical to current AS 17.30.126, which creates special seizure, forfeiture and disposal provisions for drugs. As part of the new art. 2 in AS 17.30, this new section specifically applies to imitation controlled substances as well.

Proposed AS 17.30.109 combines the provisions for release and sale of seized property found in current AS 17.30.118 and 17.30.120, and adds additional equitable authority for the issuance of restraining orders and injunctions, or other action designed to preserve the availability and value of seized property.

Proposed AS 17.30.111 contains many of the notice provisions contained in current AS 17.30.116(a). The new section makes it clear that notice must be given to known claimants after property is seized, and to unknown claimants (by publication) only after a forfeiture proceeding is actually initiated.

Proposed AS 17.30.113 sets out the procedure to be followed by persons claiming an interest in property subject to forfeiture, and is essentially the same as current AS 17.30.116(b).

Proposed AS 17.30.115 sets out the procedures for forfeiture proceedings and retains the provisions that are in current AS 17.30.112 and 17.30.116(c). In addition, this section also provides that the state can prove a prima facie case for forfeiture, which switches the burden of proof to the claimants of the property, by showing that a grand jury indictment has been issued charging that the property is subject to forfeiture, or that a conviction has been obtained for violation of state drug laws. As explained above, and as recognized in current AS 17.30.112(a), it makes little sense to repeatedly present the same evidence of the offense. The primary issue in most forfeiture proceedings is not whether the property was used in drug dealing, but rather whether the claimant reasonably should have known of the offense and whether the interest in the property was acquired in good faith, issues in which the burden has always been placed on the person claiming the property.

Proposed AS 17.30.117 is a wholly new provision that authorizes forfeiture through expeditious and less expensive administrative proceedings. This type of administrative forfeiture has been recommended by national organizations such as the Council on State Governments and

the American Legislative Exchange Council, and is limited to property worth $100,000 or less. Under this new section, the commissioner of administration would appoint hearing officers to hold hearings to determine whether the property is to be forfeited or returned to an innocent owner.

Proposed AS 17.30.119 is a new provision that specifies what can be part of a forfeiture order. The order must take the remission provisions of proposed AS 17.30.121 into account, and the expenses of forfeiture or remission must be included as part of a defendant's criminal sentence or as an assessment of costs. Because assets are often moved, sold, or diminished in value before they can be forfeited, this new section also provides for the forfeiture of substituted assets. This section also continues the policy expressed in current AS 17.30.124(b) that drug dealers will not be permitted to protect their own property by using cars or other property borrowed or rented from innocent third parties.

In addition, proposed AS 17.30.119(b) creates exemptions to forfeiture so that persons are not left without the necessities of life. Except for liquor licenses or limited entry permits that are traced to the profits of drug dealing, this provision leaves drug traffickers with the same amount of property as someone who has filed for bankruptcy.

One additional provision in proposed AS 17.30.119(f) gives the state a lien creditor preference over persons who claim an unperfected security interest in property, limited to the costs of the forfeiture, investigation, and prosecution. This provision is in response to the Alaska Supreme Court's opinion in Fehir v. State, 755 P.2d 1107 (Alaska 1988), which allows persons with unperfected security interests to file a claim for forfeited property. Drug traffickers are often adept at hiding assets or otherwise thwarting forfeitures by transferring assets to family, friends, or business associates. Therefore it is appropriate to give the state priority over these unknown (i.e. unrecorded) claimants to the property, at least to the extent that the state is able to recoup its expenses.

Proposed AS 17.30.121 provides for the remission of property to innocent claimants. Except as to aircraft, vehicles, and vessels, current statues do not specify what is required for a claimant to obtain return of the property. Therefore, this new section adopts the requirements approved in the Alaska Supreme Court opinions in Fehir v. State, and State v. Rice, 626 P.2d 104 (Alaska 1984).

Finally, AS 17.30.123 provides for disposal of property by the Department of Administration. The new section is patterned after current AS 17.30.122, but includes an important new provision that allows municipalities to share in the forfeiture of assets. Under this section, up to a total of 50 percent of the forfeited assets can be shared with municipal law enforcement agencies that make significant contributions to the investigation leading to the forfeiture.

Sections 2 and 3 of the bill make needed definition changes, and sec. 4 repeals an unnecessary statute in AS 11.73 and existing provisions in AS 17.30 that are replaced by new provisions in sec. 1 of this bill.

I urge your prompt and favorable action on this bill.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM January 24, 1990

SUBJECT: Comparison between SSSB 19 and SB 367

TO: Senator Arliss Sturgulewski
ATTN: Melissa A. Fouse

FROM: Jack Chenoweth
Legislative Counsel

This memorandum highlights the principal similarities and differences between Sponsor Substitute for Senate Bill 19. your measure proposing additions and amendments to the laws applicable to seizure and forfeiture, and Senate Bill 367, the governor's bill on substantially the same subject.

This memo keys to the bill order set out in SSSB 19 and cross-references from that measure to the related provisions of the administration's bill.

SCOPE OF SUBJECT MATTER COVERED IN MEASURES:

SSSB 19 brings together seizure and forfeiture provisions applicable to property used in violation of the criminal laws of the state governing

-- alcoholic beverages (AS 04);

-- controlled substances (AS 11.71 and 17.30); and

-- imitation controlled substances (AS 11.73).

If enacted, the legislation would replace seizure and forfeiture provisions separately applicable to these chapters with a single set of procedures applicable to the taking of property used in violation of state law applicable to alcoholic beverages, controlled substances, and imitation controlled substances. The procedures defined in the sponsor substitute are made part of Title 12, the Code of Criminal Procedure. (While forfeiture is a civil process, its actual use relates so closely to criminal conduct that it seemed to me best to place the material in the part of the statutes--

AS 12.35, relating to search and seizure--to which the subject matter of the legislation most logically relates.) */ Additionally, SSSB 19 is, in my view, a more "process"-sensitive approach in that it is organized in a manner that more nearly approximates the chronology that the owner or claimant of seized property, or that party's legal counsel, would likely encounter in dealing with questions of seizure and forfeiture of property.

SB 367, the administration measure, omits reference to alcoholic beverages, limiting the changes proposed to state laws applicable to controlled substances and imitation controlled substances. Consequently, the administration seeks to achieve its objective through a revision of current seizure and forfeiture laws in existing AS 17.30.100 and the sections that follow.

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*/ Initially, the drafting strategy for what eventually became Senate Bill 19 involved consolidating in one place seizure and forfeiture provisions applicable to property involving any criminal violation so that one set of procedures and standards would govern throughout state law. Following discussion with the administration representatives, you asked me to omit from the draft of SB 19 the provisions governing each of the following, as to each of which explicit seizure and forfeiture provisions may be found in the respective titles and chapters elsewhere in the body of state law:

-- property used in violation of guide licensing laws;

-- property used to violate criminal laws relating to illegal use of animals;

-- property used to violate state gaming laws; and

-- property used in violation of state fish and game statutes and regulations.

Each of these topics continues to be covered by its own separate statutory foreclosure provisions.

Committees considering the legislation should determine the scope of the subject matter to be addressed in this legislation: if limited to controlled substances/imitation controlled substances, placement of the subject material in AS 17.30 is proper; if broadened to include other subjects, use of AS 12.35 seems a better choice.

*

SSSB 19 is, in some respects, a more traditional approach. Under it, seizure and foreclosure responsibilities devolve on one executive branch agency--the Department of Public Safety--and, in contested foreclosures, the judicial branch has the exclusive role.

SB 367 introduces some additional players--while public safety has a role in the seizure and custody, the commissioner of administration figures prominently in the administrative and property disposition process--and, indeed, the Department of Administration has a larger role in contested summary administrative hearings.

Committees considering the legislation should also determine whether and to what extent the role of executive agencies in the consideration and disposition of forfeiture actions should be enlarged.

DRAFTING NOTES:

SSSB 19's bill section 1 establishes the procedures applicable to seizure and forfeiture, while the remainder of the bill (sections 2 - 8) define the applicability of those procedures in relationship to the specific statutes in which forfeiture of property is currently authorized under the various separate titles, and makes other necessary changes.

The principal operative provision of SB 367, also its bill section 1, inserts into AS 17.30 a sequence of new sections in place of materials proposed to be repealed. The remaining few sections of the bill make technical conforming amendments.

Both bills incorporate necessary repealers.

*

APPLICABILITY:

An "Applicability" section appears only in SSSB 19; there is no directly comparable provision in the administration bill. Proposed AS 12.35.200 [Applicability] of SSSB 19 identifies in general or collective terms property subject to forfeiture under the alcoholic beverage control laws (AS 04) and property covered by the controlled substance (AS 17.30) and imitation controlled substances laws (AS 11.73).

SEIZURE:

Proposed AS 12.35.210 [Seizure] of SSSB 19 authorizes, in the alternative,

-- actual seizure of "property subject to forfeiture" under a warrant or court order;

-- constructive seizure of that property under a warrant or court order; or

-- actual or constructive seizure of that property without a warrant

-- if made incident to a valid arrest;

-- if subject to prior judgment in a criminal proceeding; or

-- under a showing of probable cause.

In its AS 17.30.105(a) [page 2, line 11 and following], SB 367, the administration measure, likewise authorizes seizure either under court order or without court order and sets out relevant standards to guide those property seizures. As the transmittal letter accompanying SB 367 notes, the administration measure incorporates seizure authority "if otherwise constitutionally permissible," in order to take advantage of the constitutionally-authorized exceptions to the warrant requirement, and authorizes seizure on the basis of a grand jury finding that the property is subject to forfeiture. These additional circumstances are not explicitly incorporated into the legislation you have introduced.

Proposed AS 12.35.210 in SSSB 19 also briefly describes how a constructive seizure of the property may be made. The administration measure makes no provision for a constructive seizure.

CUSTODY OF SEIZED PROPERTY:

In SSSB 19, proposed AS 12.35.220 [Custody] directs the commissioner of public safety (or, by definition, the commissioner's designee) to take custody of seized property, and sets out the alternatives available to that officer in the performance of that duty.

Custody is briefly addressed in AS 17.30.105(b) of the administration measure. The task is assigned to the commissioner of public safety or a municipal law enforcement agent whom the commissioner authorizes.

DURATION OF CUSTODY OF SEIZED PROPERTY:

In SSSB 19, proposed AS 12.35.230 [Duration] sets limits on the duration of the holding of seized property. As a general rule, as to property used or intended for use in a crime that is movable, the period of holding is limited to the earlier of the securing of an order of forfeiture from a court or 48 hours. The holding rule is subject to exceptions that permit longer retention of certain illicitly-held alcoholic beverages and controlled substances, nor does the holding limitation apply to property whose forfeiture is pursued in conjunction with a criminal prosecution.

In the administration measure, SB 367, a 48 hour holding period is likewise set (see AS 17.30.105(a)(2)(C)) for property of this type.

RESPONSIBILITY TO INVENTORY AND VALUE SEIZED PROPERTY:

As to the seized property, SSSB 19's proposed AS 12.35.240 [Inventory and valuation] outlines minimal inventory and valuation procedures that the commissioner must follow after obtaining custody of the seized property. Inventory and valuation must occur within 10 days. The commissioner is to inform the attorney general who, after determining whether or not a successful forfeiture proceeding may be maintained, may order return of the seized property (excepting only illicit controlled substances).

Substantially the same process is to be followed in the inventory and valuation provisions of the administration's measure, SB 367. The same time limit applies. See AS 17.30.105(b) and (c).

* * *

In SSSB 19, the forfeiture procedure itself commences with proposed AS 12.35.250 [Proceedings] and 12.35.260 [Notice].

FORFEITURE ALTERNATIVES:

Three alternative forfeiture methods are identified. Foreclosure may occur

-- in conjunction with a criminal proceeding, under a jeopardy forfeiture motion;

-- through the summary administrative proceeding process outlined in the bill; and

-- by commencement of an in rem civil proceeding under the process outlined in the bill.

An exception from these requirements is made for property seized under a court order explicitly forfeiting the property to the state.

The comparable provision in SB 367 is AS 17.30.115(a). The administration's alternatives include "filing a motion to forfeit in a . . . civil proceeding," an alternative not set out in SSSB 19.

NOTICE:

In SSSB 19, forfeiture is predicated upon the reasonable efforts of the commissioner of public safety, once having valued the property seized, to determine the identity of the owner of the seized property and any other persons who may hold an interest in the property. Within the 20 day period following the property's seizure, the commissioner of public safety is to give actual and publication notice to the parties indicated in the manner prescribed.

In SB 367, the comparable provision is AS 17.30.111. The administration extends the notice window to 30 days after seizure, and establishes a minimum value of the property for which the notice of seizure and forfeiture must be given at $500. As with SSSB 19, actual notice that is in compliance with applicable rules of civil procedure is authorized. However, a different requirement for publication notice attaches. In SSSB 19, the manner of publication notice depends on the method of forfeiture selected.

ADMINISTRATIVE FORFEITURE:

Both measures authorize administrative or summary forfeiture. This is, as Governor Cowper's transmittal letter declares, a concept new to current Alaska law. The procedures applicable are outlined in a fair measure of detail, especially in SSSB 19. The scope of permissible use of administrative forfeiture and the procedures applicable differ between the two bills.

In SSSB 19, proposed AS 12.35.270 [Administrative forfeiture] establishes a summary administrative forfeiture process applicable to

-- seized property of a value of not more than $100,000; or

-- seized property that is a conveyance.

Under your bill, there is no obligation to use the administrative or summary process. The decision as to use rests with the commissioner of public safety (who has at least nominal custody of the seized item(s)). If the commissioner elects to use the summary administrative process, the commissioner must give the publication notice in the manner required by AS 12.35.270(b). Thereafter, a person having an interest must submit a claim and a bond, cash, or certified check. If the claim and the bond or deposit are not found satisfactory, the commissioner may allow limited additional time for the claimant to make the claim satisfactory. If found satisfactory, the commissioner must promptly commence a civil proceeding in rem, looking to the courts to order final disposition of the seized property. If found not satisfactory within the time allowed, the commissioner may, at the conclusion of the administrative proceeding, order the property forfeited. Thus, administrative proceedings are available for what the administration has described as "uncontested" foreclosure proceedings only, that is, when no claim against the property is forthcoming. "Contested" claims would be referred to the judiciary.

The administration's approach, set out in AS 17.30.117 of SB 367, differs. Use of summary administrative forfeiture is limited to property of less than $100,000 value; there is no separate exception for conveyances. The alternative remains discretionary, but under the administration's approach, the discretion (and the process) become the responsibility of

the commissioner of administration. SB 367 does not incorporate a bond requirement, and authorizes the commissioner (through a hearing officer) to make final disposition of the seized property in all cases, contested or uncontested.

IN REM FORFEITURE:

In rem is the usual or normal process applicable to the forfeiture of seized property. Don't be put off by the term. "In rem" is Latin shorthand for "[a civil action against] the thing," meaning an action against, in the context of a forfeiture action, the object(s) whose ownership is to be determined.

In SSSB 19, the in rem forfeiture proceeding is set out in proposed AS 12.35.280 [In rem forfeiture]. The process essentially involves court examination of the state's claim to forfeiture of the subject property, with the property itself as the focal point of the inquiry.

The section outlines applicable notice provisions, to be followed if there are no comparable applicable provisions adopted in the state's rules of civil procedure. A principal purpose of the notice is to give a person claiming an interest in the property opportunity to file an answer and claim with the court. Unless disposed of in another manner, or summarily in the absence of any answer and claim, the court is to consider and determine any claim and answer. Subsection (g) of AS 12.35.280 specifically provides that an in rem proceeding may be held in abeyance while criminal proceedings are undertaken against a property claimant.

In SB 367, the in rem process is not described in the same order within one section. For example, the notice provision (comparable to SSSB's AS 12.35.280(b)) relies on the general notice provision of AS 17.30.111(b) and applicable civil rule, and the claim provision (comparable to SSSB 19's AS 12.35.280(d) - (f)) is set out in proposed AS 17.30.113. On the other hand, as will be noted later in this memo, SB 367 provides more detail with respect to other aspects of forfeiture proceedings, especially as regards standard and burden of proof and the scope of a claimant's ability to participate in the foreclosure proceedings.

LIMITATION OF CRIMINAL PROCEEDING AS A DEFENSE:

Each bill incorporates as a "defense" a roughly similar provision that, while acknowledging the interrelationship be-

tween the in rem proceeding and an associated criminal prosecution, is intended to affirm that the proceedings are separate, and that the criminal proceeding or prosecution, or its outcome, is not dispositive in the in rem proceeding. (A "defense" is evidentiary matter interposed by the defendant that must be met and disproved by the prosecution beyond a reasonable doubt.) In SSSB 19, that provision is AS 12.35.290 [Limitation of defense]. In SB 367, the provision is AS 17.30.115(e). The language differs--indeed, the administration's language covers all proceedings while SSSB 19's applies, by its terms, only in in rem proceedings. But, since, under SSSB 19, in rem proceedings are used in all contested proceedings, the difference may be one more of form than of substance.

* * *

When forfeiture proceedings are completed, the court enters a forfeiture order.

STATUS OF PROPERTY ORDERED FORFEITED:

The administration has advised you, and in his transmittal letter Governor Cowper noted to the legislature, that it would be well to have a provision that

> . . . gives the state a lien creditor preference over persons who claim an unperfected security interest in property . . . . [Such a provision would be] in response to the Alaska Supreme Court's opinion in Fehir v. State, 755 P.2d 1107 (Alaska 1988), which allows persons with unperfected security interests to file a claim for forfeited property. Drug traffickers are often adept at hiding assets or otherwise thwarting forfeitures by transferring assets . . . . Therefore, it is appropriate to give the state priority over these unknown (i.e. unrecorded) claimants to the property, at least to the extent that the state is able to recoup its expenses.

The language used differs--indeed, the provision of your bill is a little tighter than that proposed by the governor--but SSSB 19's AS 12.35.300 and SB 367's AS 17.30.119(f) are intended to address this concern.

REMISSION OR RELIEF:

Recent incidents involving criminal activities aboard vessels without knowledge of the vessel owners prompts inclusion of a remission provision in both bills.

In SSSB 19, proposed AS 12.35.310 [Remission] is concerned with the property rights and interests of "innocent" owners of seized property and of "innocent" third parties having a valid security or similar interest in seized property subject to forfeiture. The section outlines how those parties may exercise their rights and secure return of the property. Property of an innocent owner may not be forfeited if the owner, in an administrative or an in rem proceeding, meets the burden of proof prescribed in subsection (a) (preponderance of the evidence), while property in which an innocent third party has an interest may not be forfeited in one of those proceedings if the party having the interest meets the burden of proof prescribed in subsection (b) (preponderance of the evidence). The approach taken is one of interposing a prohibition against forfeiture in those situations.

The comparable provision in the administration's measure appears as AS 17.30.121. The administration's approach is one of authorizing remission if the claimant meets the standards established, and requiring the claimant to file an answer in a foreclosure proceeding. (SSSB 19 does not explicitly indicate how the owner or claimant is to indicate an interest in the property; filing of a claim or answer is presumed, not stated.) The administration's measure also makes provision for remission claims based on partial value and remission claims involving multiple claimants; these are not addressed in SSSB 19.

SALE OF SEIZED PROPERTY:

In SSSB 19, as an alternative to availing oneself of the remission claim process, if a party has a claim on seized property, the party may petition the court for the property's sale. The procedures for sale of the property in response to petition are set out in AS 12.35.320 [Sale of seized item]. The court may allow that sale if the court makes the findings specifically required by subsection (b). If sale is allowed and occurs, the proceeds of the property's sale are substituted for the property itself as the object of the forfeiture action.

On the subject of sale, the administration's measure provides more detail. AS 17.30.109(b) and (c) authorize sale and substitution of the sale proceeds in further foreclosure proceedings. In the administration's measure, the state (as well as any claimant) may seek sale, and both parties may seek a release of the property. The requirements that must be met and the standards that the court must apply in considering a petition for sale or release are more explicit; all five requirements and standards must be met, including the submission of a bond.

DISPOSITION FOLLOWING FORFEITURE:

In SSSB 19, proposed AS 12.35.330 [Disposal upon forfeiture] outlines the manner of disposition of seized property. Forfeited alcoholic beverages are to be transferred to a state peace officer and destroyed. SSSB 19 makes provision for the summary forfeiture of certain plants grown in violation of AS 11.71 and AS 17.30. See AS 17.30.115(b), added by bill section 6. The holding and disposition by a local government of controlled substances that are seized would not be authorized.

Except for the handling of alcoholic beverages and controlled substances, under AS 12.35.330, other forfeited property is to be returned to the custody of the commissioner of public safety, who may thereafter order the property to be used in law enforcement activities, transferred, or sold, with the proceeds of the sale (subject to legislative appropriation) made available to cover expenses of the applicable seizure and forfeiture proceedings, or deposited into the state general fund. A key addition is the proposed "transfer to a political subdivision" formula, page 10, lines 10 - 22.

In SB 367, the disposal provisions are set out in AS 17.30.-107 and 17.30.123. The provisions are not dissimilar. The administration bill requires seizure, summary forfeiture, and disposal of controlled substances and imitation controlled substances by the state. All other forfeited property is transferable to the commissioner of administration for use or sale across a comparable range of options.

* * *

SB 367 incorporates additional provisions or adds detail as to some aspects of the seizure and forfeiture process, not

included in SSSB 19. Among the chief provisions set out in SB 367 that are not directly replicated in SSSB 19:

-- an equitable relief provision, AS 17.30.109(a), authorizing a court (or a hearing officer in an administrative proceeding) to provide for issuance of restraining orders and injunctions, principally to protect property that may be subject to foreclosure;

-- explicit provisions, set out in AS 17.30.-115(b), describing the burden of proof that the state must bear in trying to secure a forfeiture order, and establishing the means by which a prima facie case may be made (shifting the burden of proof to any claimants) based on a criminal conviction or grand jury indictment;

-- more specific direction, given by AS 17.30.-119(a), that mandates forfeiture (subject to remission) and specifies what must be contained within a forfeiture order;

-- authority, under AS 17.30.119(b), to claim exemptions from the forfeiture order under the state's Exemptions Act;

-- a duty, imposed by AS 17.30.119(c), on a person "who causes property to be subject to forfeiture" to pay certain expenses related to the property;

-- a provision, AS 17.30.119(d), spelling out what must be incorporated into the forfeiture order; and

-- authority, given by AS 17.30.105(d), for a person claiming an exemption under AS 17.30.119(b) to petition for court for use of the exempted property while forfeiture procedures are pending.

Some or all of these might be considered for inclusion in SSSB 19.

* * *

The subject remaining to be discussed involves the respective approaches taken to identify property subject to seizure and forfeiture.

In SSSB 19, bill section 5, an amendment of AS 17.30.110, identifies controlled substance-related property that may be forfeited. In SB 367, that list appears in proposed AS 17.-30.103. The list in SB 367 is more encompassing; it also authorizes, as Governor Cowper's transmittal letter notes, forfeiture of property "traceable" to illegal activity. Briefly:

-- In SSSB 19, the controlled substances are forfeitable. In SB 367, AS 17.30.107 makes controlled substances summarily forfeitable.

-- In SSSB 19, "property," including raw materials incorporated into controlled substances, used in conjunction with illicit activity involving the controlled substance if that illicit activity is a felony is forfeitable. In SB 367, while there is a reference to forfeiture of raw materials, there is no directly parallel provision, but the general reference to "property" set out in proposed AS 17.30.103(b) might be read to embrace the same items.

-- SSSB 19 authorizes forfeiture of containers for drugs; SB 367 has no directly parallel provision, but, again, the general provision applicable to "property" in AS 17.30.103(b) would appear to apply.

-- Both bills make provision for forfeiture of conveyances or vehicles used in felony offenses.

-- Both incorporate reference to forfeiture of books, records, equipment, and data.

-- Both make provision for forfeiture of money, securities, and negotiable instruments.

-- Both bills authorize forfeiture of firearms (SSSB 19 retains a concealed weapon requirement; SB 367 eliminates that contingency); only SB 367 explicitly authorizes forfeiture of explosives and weapons.

-- SSSB 19 specifically identifies as forfeitable any real property that is involved in the commission of a felony offense; SB 367 does not enumerate this, and the governor's transmittal letter specifically notes its omission.

* * *

In SSSB 19, six bill sections apply the seizure and forfeiture procedures to specific types of property to which state law currently specifically authorizes a seizure and forfeiture provision:

Bill sections 2 and 3 treat with alcoholic beverages and related property, a subject not covered in SB 367.

Bill sections 4 - 7 identify forfeitable property used in violation of laws applicable to controlled substances and imitation controlled substances, for which there are related provisions in SB 367.

JC:gc
G13/063

Introduced: 1/8/90
Referred: Judiciary and Finance

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE SENATE

SENATE BILL NO. 367

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to forfeiture as a result of violating state drug laws."

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

* Section 1. AS 17.30 is amended by adding new sections to read:

AS 17.30.110(1)
AS 17.30.110

Sec. 17.30.103. PROPERTY SUBJECT TO FORFEITURE. (a) In addition to a controlled substance or imitation controlled substance that is manufactured, delivered, possessed, concealed, stored, acquired, or transported in violation of AS 11.71 or AS 11.73, the following property is also subject to forfeiture to the state if used, or intended to be used, to manufacture, deliver, possess, conceal, store, acquire, or transport a controlled substance or imitation controlled substance in violation of AS 11.71 or AS 11.73:

AS 17.30.110(7)
AS 17.30.110(6)

(1) firearms, explosives, or weapons of any type;

(2) money, securities, negotiable instruments, or anything of value, whether tangible or intangible, secured or unsecured, excluding real property;

AS 17.30.110(2)

(3) raw materials, chemicals, pharmaceuticals, or anything, including plants or other living organisms, from which controlled substances might be derived;

AS 17.30.110(5)

(4) books, records, tapes, formulas, research papers, and equipment of any type, including data processing or other electronic equipment; and

AS 17.30.110(4)

(5) aircraft, vehicles, vessels, and conveyances of any type, if the crime committed, solicited, or attempted is a felony