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amount, if any, that was administratively established by the defendant up to the AFDC paid out during those months. 42 USC §656; 45 CFR §302.50.

6.39 The amount of public assistance that CAROLYN OLSON and her children received between 1976 and 1980 exceeded the monthly amount of the support obligations which had accrued as of the last month the family received assistance.

6.40 When CAROLYN OLSON and her children terminated AFDC in 1980, defendant was not entitled to retain future accruals of child support to reimburse itself for assistance previously paid, even though the monthly amounts of assistance Ms. Olson received in AFDC had exceeded the monthly amount of Mr. Gostischef's and Mr. Lessard's support obligations. CAROLYN OLSON did not believe that the assistance her family received from 1976 to 1980 was considered to be a loan which she was obligated to repay.

6.41 After CAROLYN OLSON and her children ceased receiving assistance in 1980 some child support was paid by Mr. Lessard. His payments were received and distributed by defendant's Office of Support Enforcement. Payments representing current support and arrears that accrued after Carolyn Olson went off assistance were forwarded to CAROLYN OLSON as is required by 42 U.S.C.§657(c) and RCW 26.23.035. Child support arrearages nevertheless accumulated during the months CAROLYN OLSON was not receiving assistance because Mr. Lessard's payments were sporadic and in amounts less than $170.00 per month.

6.42 As of December 29, 1989, CAROLYN OLSON's share of child support arrears, according to OSE records, was over $9,000.00.

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6.43 As of December 29, 1989, defendant's share of child support arrears, according to OSE records, was over $8,000.00.

6.44 After CAROLYN OLSON stopped receiving AFDC in 1980 she supported herself and her children with a combination of earnings as a self-employed accountant and paralegal and child support. In January 1990 CAROLYN OLSON reapplied for AFDC for herself and her son because of medical problems, and her inability to continue generating income from her business.

6.45 When CAROLYN OLSON reapplied for AFDC in 1990 she executed a new child support assignment. The assignment form she signed did not inform her that if she returned to AFDC, defendant would claim her child support arrears to repay AFDC previously paid out. (A copy of the assignment form is attached as Exhibit F). No other communication informed her of this either.

6.46 Because CAROLYN OLSON and her children returned to assistance, defendant claims that it can retain support arrears that accrued after CAROLYN OLSON went off assistance in 1980 to reimburse itself for any assistance Ms. OLSON received before she terminated AFDC in 1980. Consequently, defendant claims ownership of all the unpaid child support owed by Mickey Gostischef and Stephen Matthew Lessard.

VII. IRREPARABLE INJURY

7.1 Plaintiffs and the class they seek to represent will suffer immediate and irreparable injury if the defendant is allowed to keep instead of distribute the support collected following a family's termination from AFDC.

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8.4 Defendant's failure to provide adequate and timely notice to public assistance applicants who are former recipients that it intends to retain, if the applicants receive assistance, support arrears accrued since they stopped receiving assistance to pay itself for the earlier public assistance received violates the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court:

1. Assume jurisdiction of this case;

2. Certify this action as a class action pursuant to Fed. R.Civ. P. 23(a) and 23(b)(2);

3. Issue an order declaring that defendant's challenged actions, policies, and practices are inconsistent with the Social Security Act, 42 USC §654(6), 42 USC §656, 42 USC §657(c), federal regulations, 45 CFR §302.50, 45 CFR §302.51(f), and the due process and equal protection guarantees of the Fifth and Fourteenth Amendments to the U.S. Constitution;

4. Enter an order preliminarily and permanently enjoining defendants from continuing to apply their policies and practices in violation of the Social Security Act, federal regulations, and the Constitution of the United States;

5. Order defendant to notify all members of the plaintiff class of this Court's judgment and their rights thereunder;

6. Award plaintiffs their costs and reasonable attorney's fees pursuant to 42 USC §1988;

7.2 There is no other remedy at law as complete and adequate as the remedy in equity to protect plaintiffs and the class they seek to represent from said injury.

VIII. CLAIMS FOR RELIEF

8.1 Defendant, acting under color of state law, deprives plaintiffs and other class members of rights secured by federal statutes, including 42 USC §657(c), 42 USC §654(6), 42 USC §656, federal regulations, including 45 CFR §302.50, 45 CFR §302.51(f), and the federal constitution, in violation of 42 USC §1983, by failing to distribute to a family that is no longer receiving assistance, but which in the past received assistance on at least two separate occasions, child support arrears that accrued during the intervening months to the extent that these arrears exceed the amount which will reimburse defendant for assistance the family subsequently received.

8.2 Defendant violates the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution, the Social Security Act, and federal regulations by claiming entitlement to reimbursement of the full amount of public assistance paid out rather than the amount of child support accruing during and prior to the period public assistance was paid.

8.3 Defendant's distribution policy violates the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution, the Social Security Act, and federal regulations by effectively reviving, whenever a recipient reapplies for public assistance, an earlier assignment of support rights which has terminated by operation of federal law.

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7. Grant plaintiffs and class members such additional and further relief as justice may require.

DATED this 26th day of July, 1990.

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

NATALIE JENSEN, SHARYN WOODRUFF, and CAROLYN OLSON, individually and on behalf of all others similarly situated, Plaintiffs, vs. RICHARD THOMPSON, Secretary, State of Washington Department of Social and Health Services, Defendant.	CLASS ACTION NO. C90-5313T PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT (FRCP 56)

I. INTRODUCTION

Plaintiffs and class members are parents of minor children in Washington State who applied for and received public assistance from defendant Department of Social and Health Services (DSHS) on at least two separate occasions.[1] Plaintiffs sought assistance in many cases because defendant's Office of Support Enforcement (OSE) did not collect the support plaintiffs were owed under existing court orders. As a result of defendant's practices, needy families and children have lost thousands of dollars in child support rights that properly belong to them.

Defendant's wrongful practice, which is undisputed, is its claim that it can reimburse past public assistance plaintiffs received from child support that accrued after they stopped receiving public assistance if plaintiffs return to assistance. Defendant asserts this claim regardless of how brief the subsequent period of assistance turns out to be. Defendant admits that it has no claim to this child support so long as the family never returns to assistance. The instant the family returns to assistance, however, defendant claims all unpaid child support which accrued since the family last received assistance to reimburse itself for

[1] In an order entered on November 14, 1990, the court certified a class defined as follows: a) persons who have gone on and off public assistance (AFDC/FIP) at least twice in the State of Washington, and b) for whom some child support was owed and unpaid for the period(s) between when assistance was received, and c) for whom the child support obligation assigned to the State for an earlier assistance period was less than the amount of AFDC/FIP paid to the family during that same period, and d) for whom the child support that was owed and unpaid for the period following termination from public assistance plus the support owed for the subsequent period is greater than the assistance received during that subsequent period.

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any public assistance received in the past. The financial injury and hardship that plaintiffs suffer as a result of this practice is further compounded by defendant's failure to adequately inform applicants of the practice.

Plaintiffs maintain that defendant's challenged practice violates federal regulations, is inconsistent with the Social Security Act, frustrates Congress' intent that children be entitled to receive support that comes due after they go off public assistance, and constitutes a taking of property without due process of law in violation of rights guaranteed them under the Fifth and Fourteenth Amendments to the United States Constitution.

II. ILLUSTRATION

Defendant's practice is best illustrated by the following example used elsewhere by the State, and will be referred to throughout this memorandum:

> Assume that a family receives public assistance benefits in the amount of $10,000.00 and the state collects all the child support due during that period of time, which is $3,000.00. The family terminates from public assistance and an additional $4,000.00 worth of support accrues. The family then goes on public assistance for a second time... The state will use the "gap period arrears" of $4,000.00 to reimburse unpaid AFDC benefits from either the first or second welfare period.

Letter from Daniel Radin to Regional Representative of HHS, dated July 9, 1990, Paine Deposition Ex. 1 (Attached here as Exhibit "A"). Plaintiffs assert that the interim arrears of $4,000 can only be used to reimburse public assistance during the second assistance period. This is because no child support which had been assigned to the State is due and unpaid as of the time the family stopped receiving public assistance.

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the financial injury and hardship that defendant's challenged policies cause is demonstrated by the attached affidavits of plaintiffs and class members. For example, Natalie Jensen received Aid to Families with Dependent Children (AFDC) when two of her children were young. Natalie Jensen became self-supporting and went off AFDC. After this, $11,500 in unpaid child support due under a divorce decree accumulated. During this time, the Jensens did not receive AFDC and defendant's Office of Support Enforcement (OSE) did not succeed in collecting child support for the family. For almost four years Ms. Jensen supported herself and her children from her earnings. Because of a temporary disability precluding employment and the lack of income from child support, Natalie Jensen reapplied for AFDC and received a total of $1,734 over a three-month period. She then returned to work and ultimately reconciled with her former husband. OSE then began garnishing Ms. Jensen's former husband's wages and claimed that the $11,500 coming due during the 4 years the family was off assistance (and the more than $8000 due during the months the family received AFDC), belonged to the State until all AFDC ever paid the family was reimbursed. At the present time the garnishment continues; the State retains all the funds collected and the family has a reduced income available to meet the children's present needs.

Linda McDaniel and her children received AFDC from 1982-1985. She became a registered nurse, terminated AFDC, and worked to support herself and her children. Her former husband paid court ordered support sporadically and OSE did not succeed in obtaining regular collections from him. After Ms. McDaniel became ill and had exhausted her sick benefits at work, she returned to AFDC for

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three months in 1989. When she applied for assistance, she asked what she would be giving up in support rights if she returned to public assistance. She was told she would only lose rights to the support that came due during the months she received assistance. Instead, the State now claims the unpaid support accruing over the four years between 1985 and 1989 when the family was not on AFDC to repay AFDC they received between 1982 and 1985.

III. JURISDICTION

Plaintiffs move for summary judgment and seek declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202. Their claims arise under 42 U.S.C. § 1983. Jurisdiction exists pursuant to 28 U.S.C. §§ 1331 and 1343(3). Maine v. Thiboutot, 448 U.S. 1, 4 (1980).

IV. SUMMARY JUDGMENT STANDARDS

FRCP 56(a) and (c) provide that summary judgment is proper when there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. Anderson v Liberty Lobby, 477 U.S. 242 (1986). There is no genuine issue as to the material facts. The undisputed facts have either been admitted by the defendant, appear from its own documents, or in deposition testimony of department personnel. Plaintiffs' claims rest strictly upon questions of law to be decided by the court. 10 C. Wright, A. Miller, M. Kane, Federal Practice and Procedure 2712, 2713, n. 10 (2d Ed. 1983).

V. STATEMENT OF UNDISPUTED FACTS

The undisputed material facts are as follows:

If a family does not reapply for public assistance, child

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support coming due under a court or administrative order since the family last received public assistance belongs in full to the family. (DeKay Dep. at 23:13-21) (Cited references to Depositions are attached as appendixes). The moment the family reapplies for public assistance the State claims that child support to repay in full public assistance paid the family at any time in the past and in the future. This occurs even though public assistance is not a loan which the family is obligated to repay. (Paine Dep. at 75:25; 76:1-5).

When a family returns to public assistance, the State aggregates the total amount of public assistance ever paid and the total amount of child support arrears owed, regardless of when they accrued, and applies support collections against all public assistance ever paid. (Paine Dep. at 90:13-22; 91:7-11; DeKay Dep. at 24:2; 25:1-4; 27:5-29).

As part of the application process the family applying for assistance must sign an assignment of support rights form. (Bergh Dep. at 18:15-16) The forms most recently used are attached as Exhibits "B" and "C". These forms are drafted by OSE but presented for signature to applicants for public assistance by (IV-A office) personnel. (Paine Dep. at 30:1-12; Bergh Dep. at 17:16-25; 18:15-16).

VI. ARGUMENT

A. FEDERAL LAW PROHIBITS REIMBURSEMENT OF PUBLIC ASSISTANCE FROM CHILD SUPPORT ACCRUED AFTER A FAMILY STOPS RECEIVING ASSISTANCE.

The child support enforcement provisions of Title IV-D and the public assistance program provisions of Title IV-A of the Social Security Act are interrelated and are designed to help poor

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families achieve self-sufficiency. 42 U.S.C. § 651 et seq.; 42 U.S.C. 601 § et seq. As a condition of receiving federal funds for the State's AFDC program, DSHS is required to provide support enforcement services to both families receiving AFDC and to families not receiving AFDC, in accordance with Title IV-D of the Social Security Act, 42 U.S.C. §651 et seq., implementing federal regulations, 45 C.F.R. § 301 et seq., and a State plan approved by the U.S. Department of Health and Human Services.

As a condition of receiving public assistance, an applicant must assign to the State any child support rights which exist on behalf of a child for whom public assistance is sought, and which have accrued "at the time such assignment is executed." 42 U.S.C. § 602(a)(26)(A), 45 C.F.R. § 232.11(A)(1)(ii). The applicant must also assign rights to support that come due while the family is receiving assistance. The support rights assigned to the State during the assistance period constitute "an obligation owed to such State by the individual responsible for providing such support." The obligation is limited by the support amount established by court order or administrative process. 42 U.S.C. § 656(a)(1) and (2), 45 C.F.R. § 302.50(a) and (b). In the example given above, $3,000 represents the limit of the State's claim for the initial assistance period.

The assignment of child support rights is an assignment for purposes of collection only. 42 U.S.C. § 656(a)(1), 45 C.F.R. §§ 232.20(b), 45 C.F.R. 302.50(c). It does not govern the state's right to retain or duty to distribute child support once collected. Distribution of support is governed by 42 U.S.C. § 657 and 45 C.F.R. § 302.51.

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Child support collected by the IV-D agency while a family receives assistance is used to determine ongoing financial eligibility on the basis of whether the monthly support obligation is sufficient to meet the needs of the child as set off against the monthly public assistance grant. 45 C.F.R. §§ 232.20, 302.32. In accordance with rules prescribed in 45 C.F.R. § 302.51(b)(1)-(5), the State either distributes each support payment it collects to the family receiving assistance or retains it to offset AFDC expenditures.

When a family goes off public assistance, the assignment terminates as to future accruals of support, but the State's obligation to collect and distribute child support continues "on the same conditions and on the same basis as in the case of the individuals to whom services are furnished" who are not recipients of public assistance. 42 U.S.C. § 657(c), 45 C.F.R. § 302.51(f).

The State concedes that support which comes due after a family goes off public assistance belongs to the family and is not available to the State to reimburse public assistance previously furnished. (Paine Dep. at 79:17-25; 83:6-24; DeKay Dep. at 23:8-21). Thus, in the above example, the State would agree that as long as the family stays off AFDC the State has no claim to the $4,000 in post-assistance support even though the total support due and collected during the assistance period ($3,000) was less than the assistance the family previously received. This is because under 42 U.S.C. §656, the amount of the support obligation owed by the responsible parent is less than the amount of assistance furnished when the family terminates public assistance, and the amount of the State's claim is limited to the amount of the support

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obligation.

The family is also not required to pay the deficit that may exist between the value of assistance it received and the total support owed for the assistance period. Public assistance is not a loan to the family in need, and is not conditioned upon the giving of collateral of equal or greater value to satisfy the difference between the amount of public assistance received and the amount of child support owed under the assignment. (Paine Dep. at 62:19-25; 63:1-11).

B. THE STATE'S AUTHORITY TO RETAIN CHILD SUPPORT COLLECTIONS TO REIMBURSE ITSELF FOR PUBLIC ASSISTANCE PAID TO THE FAMILY IS NOT BASED ON THE PUBLIC ASSISTANCE ASSIGNMENT.

The State's right to reimbursement for public assistance is not co-extensive with the public assistance assignment of support. Federal law requires that distributions of support collected be shared between the family and the State and Federal governments. 45 C.F.R. § 302.51(b). Federal law also recognizes that the child support obligation may be less than the public assistance grant. 42 U.S.C. § 656.

Effective in 1984, if the State collects assigned support while the family is on AFDC, the family is entitled to receive the first $50 of each timely support payment, and any amount collected on a monthly obligation higher than the AFDC grant. 42 U.S.C. § 657(b)(1) and (3), 45 C.F.R. § 302.51(b)(1) and (3). The state retains current child support collections after the first $50 to repay that month's AFDC. 45 C.F.R. § 302.51(b)(2). In addition, child support amounts collected during the assistance period which include payments on support obligations for past months may be retained by the State to reimburse public assistance payments made

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during the months to which those support collections are attributable. 42 U.S.C. § 657(b)(4), 45 C.F.R. §§302.32(d), 302.51(b)(4).

The State's retention rights are limited to the amount of the support obligation owed in a month in which assistance was provided (less the family's portion identified above), unless the State also collects support amounts which represent the required support obligation "for periods prior to the first month in which the family received assistance". 45 C.F.R. § 302.51(b)(4). These pre-assistance amounts may reimburse the difference between the support obligation owed for the assistance period and the amount of public assistance paid during that period. 45 C.F.R. § 302.51(b)(4). Only if there are pre-AFDC arrears may the State collect any shortfall between the monthly child support obligation and the AFDC grant. 45 C.F.R. § 302.51(b)(4). The State never has access to post-AFDC arrears for this purpose. Thus, in the example above, nothing is available for the State's retention as reimbursement beyond the $3,000 already collected, because no child support arrears are owed in the period prior to the initial receipt of public assistance.

The State is not authorized to seek reimbursement of public assistance expenditures from future accruals of support. Amounts collected in excess of amounts required to be distributed under 45 C.F.R. § 302.51(b)(1)-(4) must be distributed to the family. 45 C.F.R. § 302.51(b)(5). Thus, in our example, there are no support arrears from which the State may capture the $7,000 deficit between the support owed and paid during the assistance period and the total amount of assistance provided to the family.

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When a family goes off public assistance, the State does not accrue any greater rights than it had while the family was receiving assistance. Upon termination from public assistance, the assignment of support rights terminates "except with respect to the amount of any unpaid support obligation that has accrued under such assignment." 45 C.F.R. § 302.51(f) (emphasis added). The State can continue to seek reimbursement for public assistance expenditures only in the same way it could while the family received assistance.

C. THE COLLECTION, RETENTION, AND DISTRIBUTION OF SUPPORT RULES DO NOT CHANGE IF A FAMILY IS FORCED TO REAPPLY FOR PUBLIC ASSISTANCE AFTER A PERIOD OF NON-RECEIPT.

The rules that govern whether support collections should be distributed to the family or retained by the State, contrary to defendant's practice, operate the same way when a family reapplies for public assistance, but with respect to the following assistance period. A new assignment of support rights is required as a condition of eligibility for the assistance the family is seeking to receive. (Bergh Dep. at 49:22-25; 50:1-2). Once again, distribution occurs as provided in 42 U.S.C. §657 (b) and 45 C.F.R. § 302.51(b). The State's claim continues to be limited to the amount of the support obligation as reimbursement for public assistance unless the State collects, during the assistance period, child support amounts which represent the required support obligation for "periods prior to the first month in which the family received assistance." 45 C.F.R. § 302.51(b)(4). There is still no authority to retain support collections that represent periods after the family received assistance to satisfy the difference between what was owed in child support and the assistance paid

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during a prior period of assistance.

When a family returns to public assistance, the State's practice, challenged here, is to aggregate the total amount of public assistance ever paid and to claim the total amount of child support arrears owed, regardless of when they accrued. This is what happened to Natalie Jensen and Linda McDaniel and other class members. The State pays no attention to when the assistance was paid or when the support obligation accrued. Nor does the State care how much public assistance is paid out in the subsequent period. (DeKay Dep. at 25-26). It could be as little as one month's public assistance grant. (DeKay Dep. at 25-26). Consequently, the State unlawfully applies the interim child support arrears ($4,000 in the above example) which accrued after the family stopped receiving assistance to repay the prior public assistance deficit. (Paine Dep. at 74-79, 90-91). This practice violates 45 C.F.R. § 302.51(b)(4), 45 C.F.R. § 302.51(f), as well as 42 U.S.C. § 656.

The defendant's position that reapplication triggers a substantive claim to support that accrued in the interim period to reimburse itself for any assistance the family has ever received is inconsistent with the principle that the assignment ended when the family previously went off assistance, and is prohibited by 45 C.F.R. § 302.51(b)(4). No statute or regulation provides that support which accrued during the interim period (and which belongs to the family) instantly belongs to the State for back AFDC the moment the family receives any assistance at a later date. Rather, the pool of funds available to the State to reimburse assistance furnished in an earlier period is settled, once and for all, based

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on the fixed amount of arrears accrued when the family went off assistance and the assignment terminated. The state's practice violates the basic principle expressed in 42 U.S.C. §656, that the debt due the State is limited to the value of the support obligation owed as of the time the assignment is executed and which accrues during the assistance period. By claiming the accrued post-AFDC arrears ($4,000 in our example) to reimburse the deficit from an earlier period of assistance, the State effectively converts the debt due the State from "the individual responsible for paying support" (42 U.S.C. § 656) to a State debt owed by the needy family.

No reasonable interpretation of the statutes and regulations sustains the State's position. In interpreting statutes and regulations, the court must not be guided by a single sentence or part or a sentence but must look to the provisions of the whole law and to its object and policy. Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 50 (1987). Words must be read in their context and with a view to their place in the overall scheme. United States v. Morton, 467 U.S. 822, 828-829 (1984). The State's view fails to take into account when the support accrued and when the assistance was furnished; it overlooks the fact that an assignment provides the State support rights from which the State can seek to reimburse itself for future assistance that the family receives after the assignment is executed. Seagraves v. Harris, 629 F.2d 385, 392 (5th Cir. 1980). Most significantly, it ignores the fact that the assignment terminates when a family goes off assistance and that future accruals belong to the family, many of whom have endured significant economic hardships due to the non-receipt of child

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support while attempting to remain free of the public assistance system. The statutes and regulations must be read together and interpreted in a way that is consistent with the principle that an assignment begins when a family receives public assistance and ends when the family terminates public assistance. Nowhere is the State given the authority to revive an assignment which has long since terminated in order to claim post-AFDC support arrears to reimburse prior public assistance.

D. THE RETENTION OF CHILD SUPPORT WHICH ACCRUES FOLLOWING TERMINATION FROM PUBLIC ASSISTANCE TO REIMBURSE PUBLIC ASSISTANCE RECEIVED DURING AN EARLIER PERIOD IS INCONSISTENT WITH THE POLICY UNDERLYING THE SOCIAL SECURITY ACT AND THE CHILD SUPPORT ENFORCEMENT PROGRAM STATUTES.

The evolution of the federal child support enforcement program is a dramatic story of Congress' increasingly aggressive efforts to compel the States to aid poor families. A principal goal of the federal Aid to Families with Dependent Children program since 1935 has been to "help maintain and strengthen family life and to help [parents] to attain or retain capability for the maximum self-support and personal independence..." 42 U.S.C. § 601, Shea v. Vialpando, 416 U.S. 251, 253 (1974). That goal became more elusive as the growing problem of non-support by absent parents became a significant cause of families resorting to AFDC.

In 1974 Congress enacted Title IV-D of the Social Security Act in response to this alarming situation. P.L. 93-647 § 101(a), 88 Stat. 2351, 42 U.S.C. § 651 et. seq. Legislative history of the IV-D program demonstrates the focus of Congressional concern:

> The problem of welfare in the United States is, to a considerable extent, a problem of the non-support of children by the absent parents. Of the 11 million recipients who are not receiving [AFDC], 4 out of every 5 are on the rolls because they have been deprived of the support of a parent who has absented himself from the home.

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Senate Report 93-1356, 93rd Cong. 2d Session (1974) reprinted in 1974 U.S. Code Cong. and Ad. News (USCCAN) 8146-7 (citing Rand Corporation Study, Winston and Forsher, "Nonsupport of Legitimate Children by Affluent Fathers as a Cause of Poverty and Welfare Dependence", December 1971).

Title IV-D first mandated that States establish procedures for establishing paternity and support obligations, locating absent parents, and collecting child support through judicial and administrative procedures. Congress expressly made support enforcement procedures available to non-welfare families in recognition that "the problem of non-support is broader than the AFDC rolls and that many families might be able to avoid the necessity of applying for welfare in the first place if they had adequate assistance in obtaining support due from absent parents." Id., 1974 USCCAN at 8158.

Congress deemed the public assistance assignment of support for collection as the "most effective and systematic method for an AFDC family to obtain child support from a deserting parent..." ID., 1974 USCCAN at 8152. Thus, the mandatory assignment of support rights as a condition of receiving AFDC was added to Title IV-A of the Social Security Act when Title IV-D was enacted. P.L. 93-647, § 101(c), 88 Stat 2337, 42 U.S.C. § 602(a)(26).

The distribution of support during the assistance period was separately provided for in 42 U.S.C. § 657(b). In order to ensure the successful transition from AFDC to self-sufficiency, in 1974 Congress authorized the States to continue to collect child support for a three month period after a family stops receiving public assistance, and pay the support to the family. 42 U.S.C. §657(c).

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See Seagraves v. Harris, 629 F.2d at 391. Congress considered that this transition period would allow the State sufficient time to notify "the father that in the future he will be making support payments directly to the family..." 1974 USCCAN at 8153. After the three month period, child support collections would go to the family, except that the State retained its interest to retain excess collections to satisfy previously assigned support. Seagraves, supra at 392.

In 1987, Congress amended 42 U.S.C. §657(c) to require States to continue support enforcement efforts indefinitely to all former AFDC recipients. Omnibus Budget Reconciliation Act of 1987, P.L. 100-203, § 9141(a)(1), 101 Stat. 1330-321, eff. Dec. 22, 1987. All post-AFDC child support funds collected must now be paid to the family.

The statutory changes in §657(c) reflect the evolution in policy underlying the federal child support enforcement program. Congress increasingly intends that families benefit from effective child support collections and that more funds be passed through to them.

For example, in 1984, in order to redress the States' inadequate implementation of child support enforcement procedures, particularly with respect to non-welfare families, Congress enacted the Child Support Enforcement Amendments of 1984. Sen. Rept., supra, No. 98-387 at 22, 48, reprinted in 1984 USCCAN 2397, 2418, 2444. Congress expressly required each state to implement and use specific enforcement tools (such as mandatory wage withholding, imposition of liens, interstate enforcement procedures, interception of federal income tax refunds, and posting of bonds

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and other security) and to give support enforcement services to non-AFDC families equal to those it gives AFDC families. P.L. 98-378, 98 Stat. 1305, effective October 1, 1984, see 42 U.S.C. §§654(6), 658, 666. Congress also restructured federal financial incentives to encourage States to focus on non-AFDC support collections. 42 U.S.C. §658(a). As regards former AFDC recipients, Congress recognized that "child support enforcement on behalf of these families may be crucial in enabling them to retain their economic independence." Sen. Rept. 93-378, supra, at 2432. (§ 474 USCAN)

In 1988, the child support enforcement tools were strengthened yet again in the Family Support Act of 1988. P. L. 100-485, §104, 102 Stat. 234. This time, Congress focused on the systemic delays by States in undertaking effective child support enforcement actions. Congress mandated HHS to implement specific standards and timelines by which States must begin enforcement action after application for services, timelines for distribution of support once collected and mandates for periodic review of support orders and collection actions. P.L. 100-485, §§101(a), 103(c), and 111.

Since 1974, Congressional efforts to compel States to enforce child support have been aimed at helping low income families (usually single women with small children) to become self-sufficient and at reducing welfare costs by avoiding the need for public assistance. Behunin v Jefferson County Department of Social Services, 744 F. Supp. 255 (D. Colo. 1990). Defendant's policy instead furnishes a disincentive for aggressive support collection on behalf of some families who have terminated from public assistance. For instance, if the State does not collect support

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or delays collection and the family returns to public assistance,[2] the State claims the support not collected to reimburse itself for any past assistance the family has received. Though plaintiffs attribute no ill motives to the State when delays occur, the court should not interpret the regulations in a manner which allows the State to benefit from delay.[3] The families adversely affected by the State's practice have often endured long periods of economic hardship due to the non-receipt of child support.[4] Natalie Jensen and Linda McDaniel, for instance, returned to public assistance for very short periods of time and only when public assistance was a last resort.

---

[2]Systemic delays in collection actions by the support enforcement agency are not uncommon. In a report of the Washington State Governor's Executive Task Force on Support Enforcement, the systemic delays were documented:

> The Office of Support Enforcement caseload has continued to increase every year but the funding for staff and equipment has not increased to meet the demand. As a result, enforcement has been delayed in some cases.

Final Report, Governor's Task Force on Support Enforcement (Sept. 1986) at 17.

[3]One advantage the state obtains from claiming interim accrued arrears (to reimburse the public assistance previously paid to the family) is the priority status it enjoys with respect to funds collected through the federal income tax refund intercept system authorized by 42 U.S.C. § 664, 45 C.F.R. § 303.72(h). Under these provisions any amounts attributable to the "state's arrears" must be reimbursed before the "family's arrears."

[4]In 1986, the Governor's Task Force reported:

> The failure of parents to financially support their children has reached alarming proportions. The federal government reports that 40 percent of single parents in this country are without an order for child support. Of the 60 percent who have support orders, 28 percent get no payments and 25 percent get only part of the amount owed. The total unmet obligation amounts to almost $4 billion per year.

Final Report at 12.

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E. DEFENDANT'S PRACTICE DENIES PLAINTIFFS DUE PROCESS.

1. Defendant's Practice Constitutes an Unconstitutional Taking under the Fifth Amendment.

The Fifth and Fourteenth Amendments to the U.S. Constitution provide that private property cannot be "taken for public use without just compensation." To establish a claim that government action constitutes a "taking," three factors have generally been recognized as significant: 1) the economic impact of the regulation or practice on the claimant, 2) the extent to which the practice has interfered with distinct expectations and 3) the character of the governmental action. Bowen v. Gilliard, 483 U.S. 587, 606 (1987). Nevertheless, no set formula has been developed to decide whether government action constitutes a "taking." Instead the court has relied on "ad hoc, factual inquiries into the circumstances of each case." Connolly v Pension Benefit Guaranty Corp., 475 U.S. 211, 224 (1986).

Plaintiffs and class members had distinct and legitimate expectations that supports rights accrued after they terminated from public assistance belonged to them and were not available to the State for past assistance. The governmental action here forces "some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. 40, 49 (1960). Public assistance is borne by the public as a whole; it is not a family's responsibility to repay. Defendant, however, is making plaintiffs repay public assistance received in the past from support rights that accrued after they went off assistance.

The economic impact on families affected by the defendant's

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practice here is severe. The family can lose thousands of dollars in accrued support rights. In Natalie Jensen's case, the State claimed over $7700 in support in return for $1734 in AFDC. In Cynthia Ohlig's case, the State claimed approximately $14,500 in return for less than $6000 in AFDC. (Ohlig declaration). The amounts plaintiffs received do not satisfy the "adequate compensation" required for a constitutional "taking" under the Fifth Amendment.

2. Defendant Fails to Provide Adequate Notice of Its Practice to Meet the Due Process Standards of the Fourteenth Amendment.

If the court concludes that defendant lacks the legal authority to claim the child support arrearages disputed here, then it will not be necessary to reach the notice claim. If, however, the court holds that DSHS has such authority it will be necessary to decide whether the procedures used afford plaintiffs procedural due process.

Child support due a custodial parent is a significant property interest in Washington. The parent is entitled to the money as trustee for the child. Hartman v. Smith, 100 Wn.2d 766, 764 P.2d 7[illegible] (1984). Until she applies for public assistance, this property interest belongs in full to the custodial parent and children, and the State has no claim to it. 42 U.S.C. §654. Even after going on AFDC the child and custodian retain a protectible property interest in child support passed through to them pursuant to 42 U.S.C. §657(b). Vanscoter v. Bowen, 706 F. Supp. 1432 (W.D. WA. 1988), aff'd in part, rev'd in part on other grounds 920 F.2d 1142, 1150 (9th Cir. 1990).

Under defendant's challenged practice, the child and

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custodian lose a significant portion of their property interest the moment they return to AFDC, because all child support arrears belonging to the family are converted to State arrears. (Paine Dep. at 89:10-16; DeKay Dep. at 26-28). The government cannot deny due process guarantees in any situation where a significant property interest is at stake. Board of Regents v. Roth, 408 U.S. 564, (1972). Any significant governmental taking of property must be preceded by adequate notice. Mullane v. Central Hanover Bank and Trust, 339 U.S. 306, 314-15, (1950). The notice must be reasonably calculated to inform the recipient of the action being taken. It must be of such a "nature as reasonably to convey the required information." Mullane, supra at 314-15.

The notice must be tailored in content and format to the particular audience. Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 14-15 and n. 15, (1978) (notice of utility service termination must be clear, since many readers may be unsophisticated). It must be sufficiently detailed and readable to meaningfully inform. Grueshow v. Harris. 492 F.Supp 419 (S.Dak. 1980). In public assistance programs, notice of eligibility requirements is necessary as a matter of due process. Banks v. Trainor 525 F.2d 837 (7th Cir. 1975).

In this case, only if adequate notice of the consequences of the required assignment is given can a public assistance applicant make an informed decision whether or not to accept public assistance benefits. The only notice DSHS gives applicants concerning the subject of child support falls far short of the constitutional standards articulated above.

Defendant acknowledges that the purpose of the current notice

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(Exhibit C) is to inform. (Paine Dep. at 133). Yet, the notice is not understandable for the intended audience. The notice requires a 10th grade reading level to comprehend (Declaration of Carrol Tama). This is four grade levels higher than Defendant's own standards recommend as appropriate for AFDC notices. (DSHS Paperwork Management Manual, Ex. D).

The notice provides only generalized, incorrect, and overbroad information. It does not accurately identify just what is being assigned. Defendant's administrator in charge of OSE policies could only speculate as to what is meant by the words "support debt" and "back support" in paragraph 1(a) and (b) of Exhibits B and C (Paine Dep. at 126:7-23). He admits that one would have to "read the statute" to discern the definition of those terms. A recipient must consult federal law to fully understand the impact of paragraph 6, which upon signature "withdraws all prior assignments ... unless they are in keeping with federal law." (Paine Dep. at 128:20 - 129:2).

Defendant admits that although the assignment form states in paragraph 3 that "all" child support assigned "belongs to DSHS", in reality the State is entitled to only a portion of the assigned support. (Paine Dep. at 126-128:15-19). The forms fail to identify which portions of child support belong to the parent and what belongs to the State, and is particularly misleading because in practice the State does pass through some child support during and after the family receives AFDC.

Defendant acknowledges that the assignment document is "not an accurate statement of what's going on," (Paine Dep. at 128) and that it "could be read a couple of different ways." (Paine Dep.

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at 130).

The notice is ambiguous and completely fails to disclose that, if AFDC benefits are accepted, child support belonging to the family will be taken by the State to reimburse AFDC paid out years before. Instead, it states both that: "OSE will also enforce and collect support for me when I stop getting public assistance" and that "after I am off assistance all support rights assigned above ... belong to DSHS...". It is not at all clear from the language of the notice that a family will lose thousands of dollars in support by accepting a few months of AFDC. The burden should not be placed on plaintiffs "to be so perceptive as to divine such broad meaning from the small amount of information given in the notice". Grueshow v. Harris, supra at 423, (holding that a notice about availability of new assistance program funds was constitutionally defect[illegible]ailing to clearly inform a large number of potential recipients of the basis for eligibility); Finberg v.Sullivan, 634 F. 2d 50 (3rd Cir. 1980) (failure to inform judgment debtor of statutory exemptions when bank account was garnished denied procedural due process). Defendant acknowledges that even its staff would have to consult federal statutes to know what particular provisions of the assignment form meant. (Paine Dep. at 118 - 119).

Oral conversations between AFDC applicants and an AFDC worker do not cure the deficiencies of the written notice. (Bergh Dep. at 51:10-52). In fact, two of the named plaintiffs have received explicit interpretations of OSE practices exactly contrary to DSHS's practices. (Decls. of Linda McDaniel and Sharyn Woodruff).

In evaluating the adequacy of notice and alternatives,

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competing concerns must be weighed: The interest at stake for the individual, the risk of an erroneous deprivation through the procedures used, the probable value of different or additional procedural safeguards, and the interest of the government in using the current procedures. Landon v. Plasencia, 459 U.S. 21 (1982), citing Matthews v. Eldridge, 429 U.S. 319 (1976).

The individual interest at stake in this case is great; it can be all the child support owed the custodian and the children. There is a major risk of error if the notice is not improved, since AFDC applicants do not know what rights they are giving up by accepting AFDC and therefore do not knowingly waive them. The burden on the State is nominal.[5]

For the reasons stated above, the notice is so inadequate as to deny procedural due process. The notice must be changed prospectively. In addition, any funds withheld from plaintiffs under the existing notice or previous versions have been taken without procedural due process and must be refunded.

VII. CONCLUSION

The court should grant plaintiffs' motion and declare that defendant's challenged practices violate federal regulations, federal statutes, and the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution. The defendant should be enjoined from continuing these practices and be required

[5]The state has already expressed its willingness to add a statement advising AFDC applicants that "the back support that is assigned may be used to reimburse the state for public assistance payments made in the past." Answer, paragraph 9.2. Though this would not resolve all of the defects, it would more meaningfully inform applicants of their rights and responsibilities. To date, no such statement has been added to the notice.

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to remedy them by paying plaintiffs and class members the support that has been wrongfully withheld from them.[6]

Dated: March 13, 1991.

Respectfully submitted,

Tom Chin
Deborah Perluss
Joyce Brekke
Attorneys for Plaintiffs

[6]Plaintiffs reserve the right to argue the scope of relief and to seek attorney's fees under 42 U.S.C. § 1988 upon receiving a favorable declaration on the merits of their claims.

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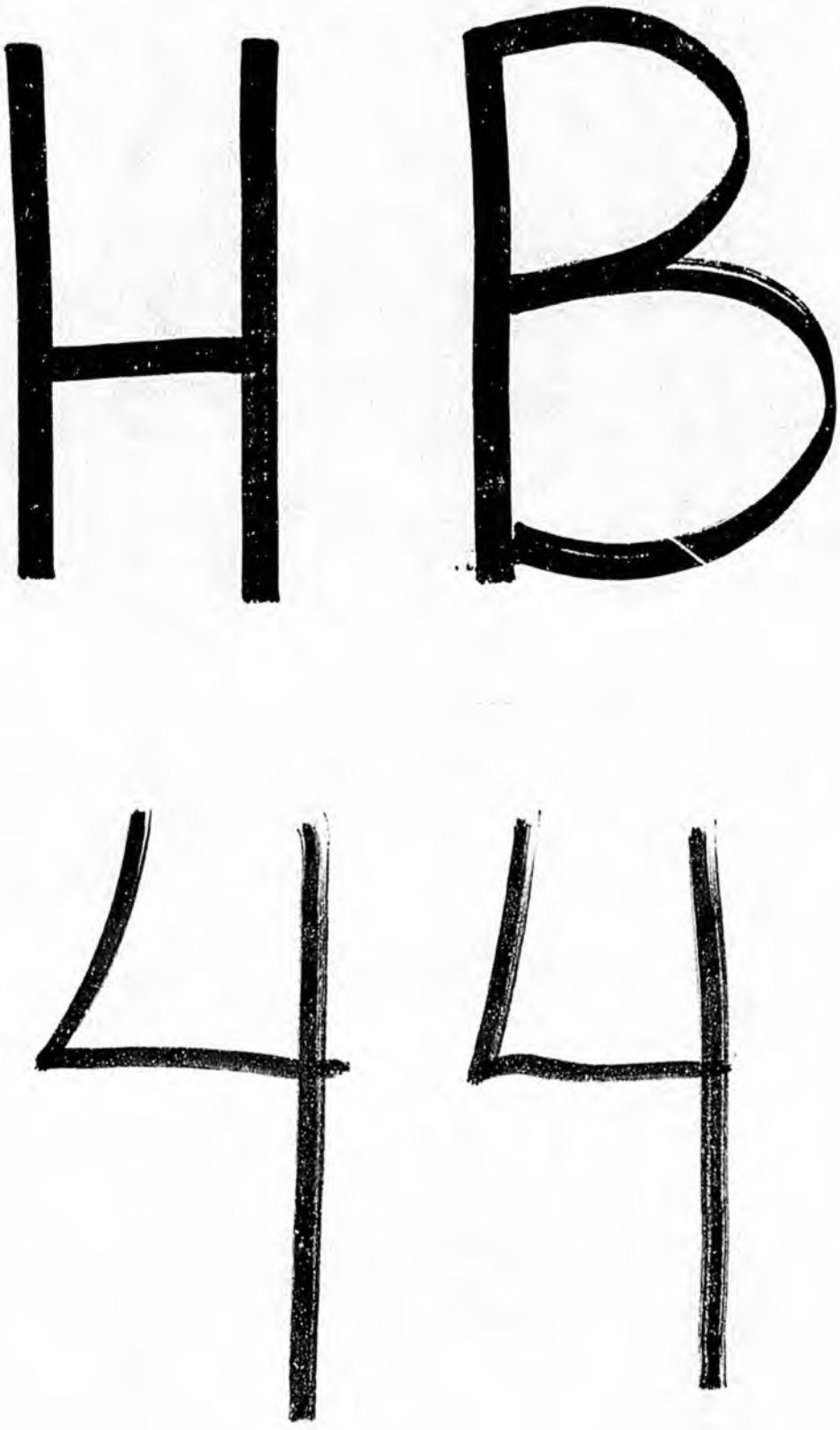
HB
44

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM

February 24, 1991

To: Representative Dave Donley, Chair
House Judiciary Committee

From: Representative Fran Ulmer

Subject: CSHB 44, "An Act relating to domestic violence."

Domestic violence is epidemic nationally and in Alaska. Each year more than one million women in the United States are treated for injuries caused during battering. In Alaska, more than 19,000 women are victims of domestic violence. HB44 is an important bill which revises existing laws to improve protection of victims. The bill includes:

1. A change in the harassment statute to clarify that if a person knowingly violates a provision of a domestic violence restraining order, the crime of harassment is committed. Under current law, arrests and prosecutions are not being made because it is difficult to prove that the defendant acted with "intent" to harass.

2. An amendment to statute which states that the court, in determining conditions of release, shall consider ordering the defendant to participate in personal counseling that provides alternatives to aggression, rather than family counseling. Many battered women report that family therapy sessions were followed by violent episodes.

3. A change to expand the list of persons eligible to obtain domestic violence restraining orders to include people in dating relationships. This change is necessary to respond to the increasing problem with to teen violence in Alaska.

4. A provision clarifying that the court is prohibited from issuing orders that restrain petitioners as well as respondents unless the court finds that the petitioner subjected the respondent to domestic violence. The practice of issuing mutual

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restraining orders is detrimental to the victim.

5. An amendment to law providing that the sentencing judge may mitigate the presumptive terms in cases of homicide and assault if the defendant acted in response to domestic violence perpetrated by the victim against the defendant or the defendant's child. The State of Washington lists domestic violence as a mitigating factor to presumptive sentencing. There are efforts underway in several states- including Ohio, which was highly publicized- to obtain pardons or sentence reductions for women where "the battered woman syndrome" was a precipitating factor.

Supporters of this bill include:
- Law Enforcement
- Alaska Department of Law
- Department of Health and Human Services, Municipality or Anchorage
- Alaska Network on Domestic Violence and Sexual Assault
- Alaska Council on Domestic Violence and Sexula Assault

Please schedule a hearing for this important bill at the earliest date possible. Thank you.

CSHB 44-- RELATED TO DOMESTIC VIOLENCE
Sectional Analysis
February 24, 1991

SECTION 1. Amends the harassment statute to clarify that if a person knowingly violates a provision of a domestic violence restraining order, the crime of harassment is committed.

SECTION 2. The change in this section is technical, necessitated by the renumbering in bill section 1.

Section 3. (a) The statutes are amended to specify that the court, in determining conditions of release, shall consider ordering the defendant to participate in personal counseling that provides alternatives to aggression if that counseling is available- rather than family counseling.

(b) The first change to the definition of domestic violence in this section is technical to make the definition consistent throughout the statutes. The second change amends and expands the list of persons eligible to obtain injunctive relief orders in cases of domestic violence to include people in dating, courtship or engagement relationships.

SECTION 4. Amends the statutes by establishing that a sentencing court may mitigate the presumptive terms in cases of assault, attempted assault, homicide or attempted homicide when the defendant acted in response to domestic violence against the defendant or a child of the defendant.

Section 5. The amendment is technical in order to make the definition of domestic violence consistent throughout the statutes, reference bill section 3.

Section 6. The amendment is technical in order to make the definition of domestic violence consistent throughout the statutes, reference bill section 3.

Section 7. The amendment is technical in order to make the definition of domestic violence consistent throughout the statutes, reference bill section 3.

Section 8. Technical amendments correct punctuation and make this section consistent with bill section 3 regarding conditions of release.

Section 9. Amends the statute to clarify that the court may not issue a domestic violence restraining order which restrains the petitioner as well as the respondent unless the respondent has been subjected to domestic violence by the petitioner.

Section 10. This amendment is made to provide consistency in the statutes, see bill section 9.

Section 11. The amendment is technical in order to make the definition of domestic violence consistent throughout the statutes, reference bill section 3.

Section 12. The change is technical, necessitated by renumbering in bill section 1.

CSHB 44-- RELATED TO DOMESTIC VIOLENCE
Sectional Analysis
February 5, 1991

SECTION 1. Amends the harassment statute to clarify that if a person knowingly violates a provision of a domestic violence restraining order, the crime of harassment is committed.

SECTION 2. The change in this section is technical, necessitated by the renumbering in bill section 1.

Section 3. (a) The statutes are amended to specify that the court, in determining conditions of release, shall consider ordering the defendant to participate in personal counseling that provides alternatives to aggression if that counseling is available. The court shall no longer consider ordering the defendant to engage in family counseling.

(b) The first change to the definition of domestic violence in this section is technical to make the definition consistent throughout the statutes. The second change amends and expands the list of persons eligible to obtain injunctive relief orders in cases of domestic violence to include people in dating, courtship or engagement relationships.

SECTION 4. Amends the statutes by establishing that a sentencing court may mitigate the presumptive terms in cases of assault, attempted assault, homicide or attempted homicide when the defendant acted in response to domestic violence against the defendant or a child of the defendant.

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Section 11. The amendment is technical in order to make the definition of domestic violence consistent throughout the statutes, reference bill section 3.

Section 12. The change is technical, necessitated by renumbering in bill section 1.

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

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Abused Women's Aid in Crisis (AWAIC);
Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC);
Manilaq Regional Women's Crisis Program;
Tongass Community Counseling Center; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Sitkans Against Family Violence (SAFV);
Seward Life Action Council (SLAC); Southwestern Alaska Council
for the Prevention of Child Sexual Assault (SWACPCSA);
South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);
Unalaskans Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WICCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

The Network on Domestic Violence and Sexual Assault supports HB 44 which provides important protection for victims of domestic violence. The comments focus on the substantive sections of the bill.

Section 1 changes the harassment statute so it is clear that any contact in violation of a restraining order is illegal. Arrests and prosecutions for contacts in violation of restraining orders are not being made under the language of the existing law because it is difficult to prove that defendants "intended" to harass or annoy the other parties. Yet, acts which on their face do not appear to be threatening or even objectionable, may be threatening given the history of a violent relationship.

Law enforcement officials state that harassment is considered one of the least serious crimes. The bill would increase the degree of crime for violation of restraining order to a Class A misdemeanor in order to increase attention to and supervision of respondents who violate restraining orders. This is important since studies show that violation of court orders is an indicator of an abuser's potential lethality.

Sections 4 and 9 change statutes to afford more protection to victims by changing language that allows courts to order defendants released before trials in criminal domestic violence cases or respondents of domestic violence restraining orders to engage in family counseling or mediation. With the new language courts are allowed to order defendants or respondents "to engage in personal counseling; if the court shall provide in that order that the counseling must propose alternatives to aggression if that type of counseling is available".

Family counseling and mediation are dangerous in domestic violence cases. Many battered women report that past family therapy and mediation sessions were followed by violent episodes. In family counseling, battering is not seen as the primary treatment issue but rather a symptom of some larger underlying problem. The result of this is that the batterers' non-violence may be seen as "negotiable". The primary purpose of a restraining order is safety for the victim. It is important for the batterer to address his/her violence, and that is best accomplished in a setting where the counselors are trained in domestic violence.

Sections 4, 7, 8 and 12 expand the list of persons eligible to obtain injunctive relief orders in cases of domestic violence as well as other legal protections provided to victims of domestic violence to include people in dating, courtship or engagement relationships.

There are many instances when people in dating, courtship or engagement relationships, adults and teens, need the protection of domestic violence restraining orders. Also, police officers may arrest for domestic violence misdemeanor assaults even if it was not committed in their presence: it is important that this protection be provided in dating, engagement and courting relationships.

Section 5 adds a mitigating factor to presumptive sentences for assaults or attempted assaults or for homicides or attempted homicides when the defendant acted in response to aggravated or repeated instances of domestic violence perpetration by the victim against the defendant.

Domestic violence, child abuse and elder abuse continue to be acute problems in our state. Victims of domestic violence who have been the victims of repetitive physical and psychological abuse develop the "battered woman syndrome." As the battered woman's syndrome progresses, a battered woman becomes economically and psychologically unable to leave her attacker. Also, victims who leave their abuser are in danger; many abusers do kill victims who leave. Battered women who kill their batterers are normally not a danger to society. They have committed this crime because they have no other way out of the brutal situations they were in or because they perceived they had no way out. For these reasons, it is important that the criminal justice system recognize that the crimes they committed against their batterers may be a form of self-defense.

Section 11 provides that judges may issues mutual restraining orders only if the respondent has been subjected to domestic violence. On February 1, the Council on Domestic Violence and Sexual Assault conducted a statewide teleconference and learned that courts in various communities are issuing orders that restrain petitioners as well as respondents. This restraint is usually not based on evidence that the petitioner was violent toward the respondent. This practice is against evidentiary standards of law and runs counter to the recommendations of the National Council of Juvenile and Family Court judges. Although the Network believes that existing law was not meant to restrain a petitioner, this becomes more important with the changes proposed in HB 44 which would make any contact in violation of a restraining order a crime.

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February 19, 1991

VIA FAX - 465-2652

House Health and Social
Services Committee

Re: HB 44

To Whom it May Concern:

I am writing to comment on House Bill 44, an act relating to domestic violence.

My primary concern with regard to this bill are the two sections in which a judge in a domestic violence case loses the option of ordering family counseling. I believe that judges should retain this option.

I suspect those who are pushing for this language will press the concept that all of these domestic violence cases involve husbands who intimidate and beat their wives, and that therefore it is unreasonable to force the battered wife into counseling. Unfortunately, that does not square with the facts of most domestic violence cases. I would guess that the majority of such petitions involve threats, property damage, mutual violence, or very light physical contact such as grabbing somebody by the arm or pushing somebody on the way out the door. The petitions are usually granted by the courts because they are concerned that the situation might elevate into actual, serious domestic violence. Nonetheless, they are not battering cases and don't deserve to be treated as if they are.

Another thing to keep in mind is that family counseling is merely an option for the judge, and not mandatory. I haven't seen anything to suggest that judges are overusing family counseling; in fact a family counseling order is fairly rare in the courtroom on the days these cases are heard. Nonetheless, it is an option available to the judge if he gets one of those cases in which it appears that the central problem is that communications within the family are breaking down. This is not the old days in which judges felt morally compelled to try to force warring couples back together; judges have generally used the power to order family counseling very conservatively.

An additional word on mutual violence: The petitioner is simply the party who got down to the courthouse first to file something. The question of who is the petitioner and who the respondent can be an arbitrary one. In some cases the language being proposed may prevent the court from ordering counseling for the real instigator of domestic violence.

The divorce rate in this country is a national tragedy. This is a societal problem, and there is rarely anything the courts or the lawyers can do to change that statistic. There are those, however, who continually push for additional legislation or court decisions which impel marriages which might otherwise be salvageable toward an inevitable divorce. For instance, attorneys who push for absolute no-contact orders (no phone, no letters, no counseling, no intermediaries) early in a separation are contributing to the divorce rate. All marriages have problems at some point or other, but we should not necessarily assume that the marriage is irreparable merely because one of the parties went down to the night magistrate and filed a paper to try to get the other party removed from the house. Commentators constantly bemoan the high divorce rate in this county; in HB 44 the legislature is being tempted to make it worse.

Sincerely yours,

KENNETH C. KIRK

KCK/baj

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM

February 6, 1991

To: Representative Georgianna Lincoln, Co-chair
House Committee on Health, Education and Social Services

From: Representative Fran Ulmer

Subject: CSHB 44, "An Act relating to domestic violence."

Domestic violence is epidemic nationally and in Alaska. Each year more than one million women in the United States are treated for injuries caused during battering. In Alaska, more that 19,000 women are victims of domestic violence. HB44 revises existing laws to improve protection of those victims. The bill includes:

1. A change in the harassment statute to clarify that if a person knowingly violates a provision of a domestic violence restraining order, the crime of harassment is committed. Under current law, arrests and prosecutions are not being made because it is difficult to prove that the defendant acted with "intent" to harass.
2. An amendment to statute to disallow an order by the court that the defendant participate in family counseling; rather that personal counseling which proposes alternatives to aggression be ordered. Family counseling is dangerous in domestic violence cases. Many battered women report that family therapy sessions were followed by violent episodes.
3. A change to expand the list of persons eligible to obtain domestic violence restraining orders to include people in dating relationships. This is in response to teen violence.
4. A provision clarifying that the court is prohibited from issuing orders that restrain petitioners as well as respondents unless the court finds that the petitioner subjected the respondent to domestic violence. The practice of issuing mutual restraining orders is detrimental to the victim.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

5. An amendment to law providing that the sentencing judge may mitigate the presumptive terms in cases of homicide and assault if the defendant acted in response to domestic violence perpetrated by the victim against the defendant or the defendant's child. The State of Washington lists domestic violence as a mitigating factor to presumptive sentencing. There are efforts underway in several states- including Ohio, which was highly publicized- to obtain pardons or sentence reductions for women where "the battered woman syndrome" was a precipitating factor.

Received 2/11/91
Submitted by Cindy Smith 1 of 3

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

The Network on Domestic Violence and Sexual Assault supports HB 44 which provides important protection for victims of domestic violence. The comments focus on the substantive section of the bill.

Section 1 changes the harassment statute so it is clear that any contact in violation of a restraining order is illegal. Arrests and prosecutions for contacts in violation of restraining orders are not being made under the language of the existing law because it is difficult to prove that defendants "intended" to harass or annoy the other parties. Yet, acts which on their face do not appear to be threatening or even objectionable, may be threatening given the history of a violent relationship.

The Network has several suggestions about this issue of violating a restraining order. On February 1, the Council on Domestic Violence and Sexual Assault conducted a statewide teleconference and learned that courts in various communities are issuing orders that restrain petitioners as well as respondents. This restraint is usually not based on evidence that the petitioner was violent toward the respondent. This practice is against evidentiary standards of law and runs counter to the recommendations of the National Council of Juvenile and Family Court Judges. Therefore, the [redacted] recommends the following clarification be added to AS 25.35.010 (a new section (d)):

> Notwithstanding (b) of this section, the court may not enter an order restraining the petitioner unless the court finds evidence that the petitioner subjected the respondent to domestic violence.

AS 25.35.020 will also need to be revised to add a similar provision. Although the Network believes that existing law was not meant to restrain a petitioner, this becomes more important with the changes proposed in HB 44 which would make any contact in violation of a restraining order a crime.

Also, the Network would like to see contact in violation of a restraining order as a separate crime, not part of the harassment statute. The new section could be called Violation of a Domestic Violence Injunctive Relief Order. Law enforcement officials state that harassment is considered one of the least serious crimes. The Network would also like to see the degree of crime for violation of restraining order increased to a Class A misdemeanor.

to: Patty
House Hess

Sections 3 and 9 change statutes to afford more protection to victims by changing language that allows courts to order defendants released before trials in criminal domestic violence cases or respondents of domestic violence restraining orders to engage in family counseling or mediation. With the new language courts are allowed to order defendants or respondents "to engage in personal counseling; if the court shall provide in that order that the counseling must propose alternatives to aggression if that type of counseling is available".

Family counseling and mediation are dangerous in domestic violence cases. Many battered women report that past family therapy and mediation sessions were followed by violent episodes. In family counseling, battering is not seen as the primary treatment issue but rather a symptom of some larger underlying problem. The result of this is that the batterers' non-violence may be seen as "negotiable". The primary purpose of a restraining order is safety for the victim. It is important for the batterer to address his/her violence, and that is best accomplished in a setting where the counselors are trained in domestic violence.

Sections 3, 7, 8, and 10 expand the list of persons eligible to obtain injunctive relief orders in cases of domestic violence as well as other legal protections provided to victims of domestic violence to include people in dating, courtship or engagement relationships.

There are many instances when people in dating, courtship or engagement relationships, adults and teens, need the protection of domestic violence restraining orders. Also, police officers may arrest for domestic violence misdemeanor assaults even if it was not committed in their presence; it is important that this protection be provided in dating, engagement and courting relationships.

Section 4 requires a minimum sentence of imprisonment of not less that 72 consecutive hours for a defendant previously convicted of a misdemeanor or felony involving domestic violence. Although the Network is concerned that many domestic violence offenders (including second and third-time offenders) are not serving any time in jail, the Network does not believe this section will address that problem. Records kept by various criminal justice agencies do not distinguish between domestic violence and non-domestic violence crimes. For example, if an individual is charged with fourth degree assault, there would be no way of knowing if that was a domestic violence assault.

Section 5 adds a mitigating factor to presumptive sentences for assaults or attempted assaults or for homicides or attempted homicides when the defendant acted in response to aggravated or repeated instances of domestic violence perpetration by the victim against the defendant or a minor child of the defendant. Since elder abuse is a problem in Alaska, the Network suggests specifying immediate family member not just minor child of the defendant.

Cindy Smith 3 of 3

Domestic violence, child abuse and elder abuse continue to be acute problems in our state. Victims of domestic violence who have been the victims of repetitive physical and psychological abuse develop the "battered woman syndrome." As the battered woman's syndrome progresses, a battered woman becomes economically and psychologically unable to leave her attacker. Also, victims who leave their abuser are in danger; many abusers do kill victims who leave. Battered women who kill their batterers are normally not a danger to society. They have committed this crime because they have no other way out of the brutal situations they were in or because they perceived they had no way out. For these reasons, it is important that the criminal justice system recognize that the crimes they committed against their batterers may be a form of self-defense.

HB 44 -- RELATED TO DOMESTIC VIOLENCE
Sectional Analysis

SECTION 1. Amends the harassment statute to clarify that if a person knowingly violates a provision of a domestic violence restraining order, the crime of harassment is committed.

SECTION 2. The change in this section is technical, necessitated by renumbering in bill section 1.

SECTION 3.(a) The statutes are amended to specify that the court, in determining conditions of release, shall consider ordering the defendant to participate in personal counseling that provides alternatives to aggression if that counseling is available. The court shall no longer consider ordering the defendant to engage in family counseling.

(b) The first change to the definition of domestic violence in this section is technical to make the definition consistent throughout the statutes. The second change amends and expands the definition to provide protection under the statutes for victims who have been in dating, courtship or engagement relationships with the defendant.

SECTION 4. Provides for a mandatory jail sentence of not less than 72 consecutive hours if the defendant is convicted of a misdemeanor involving domestic violence and if in the last ten years the defendant was convicted of either a felony or a misdemeanor involving domestic violence.

SECTION 5. Amends the statutes by establishing that a sentencing court may mitigate the presumptive terms in cases of assault, attempted assault, homicide or attempted homicide when the defendant acted in response to domestic violence against the defendant or a child of the defendant.

SECTION 6. The amendment is technical in order to make the definition of domestic violence consistent throughout the statutes, reference bill section 3.

SECTION 7. The amendment is technical in order to make the definition of domestic violence consistent throughout the statutes, reference bill section 3.

SECTION 8. The amendment is technical in order to make the definition of domestic violence consistent throughout the statutes, reference bill section 3.

SECTION 9. Technical amendments correct punctuation and make this section consistent with bill section 3 regarding conditions of release.

SECTION 10. The amendment is technical in order to make the definition of domestic violence consistent throughout the statutes, reference bill section 3.

SECTION 11. The change is technical, necessitated by renumbering in bill section 1.

HB 44 Sectional

BILL NO: HB 44

DATE: February 6, 1991

TITLE: An Act relating to domestic violence.

CONTACT: Barbara Miklos
Executive Director
Council on Domestic Violence
and Sexual Assault

The Council on Domestic Violence and Sexual Assault supports HB 44. This legislation contains numerous sections that will promote the protection of victims of domestic violence. As more is learned about the dynamics of domestic violence, it becomes apparent that revisions must be made to existing laws. This legislation addresses many of the changes in legislation the Council has identified as important.

Alaska continues to maintain high rates of domestic violence. According to a study conducted by the University of Alaska, 26% of the women in Alaska have been victims of domestic violence in their lives. Recently in Anchorage, an apparent domestic violence murder-suicide was committed. Tragedies such as this point out how important it is that changes in legislation to further protect victims are identified and made.

Sincerely, Andy Klamser

Andy Klamser, Chair
Council on Domestic Violence
and Sexual Assault

COUNCIL ON DOM. VIOLENCE POSITION

Sitkans Against Family Violence

February 1, 1991

To Whom It May Concern:

I am writing to indicate my support for Representative Ulmer's bill, HB 44. The revisions made to existing law within this bill are very much needed.

In my work in a shelter for battered women, I have seen many situations where a woman is abused by a dating partner with whom she has never lived. According to existing temoporary restraining order procedures, that woman is not eligible for relief from the court, even though her situation may be as violent and dangerous as a woman who has lived with her batterer.

The issue of "personal or family counseling" is also significant. We find that any counseling which forces the victim of violence into an office with her perpetrator is both unproductive and dangerous. A victim of violence cannot speak honestly about problems in a relationship in front of her perpetrator; she is endangered if she does so. The therapist may be able to stop violence in her/his office, but s/he can do nothing about what happens once the couple leaves. Sentencing a batterer to joint counseling forces the victim into this compromised position. I very much support Representative Ulmer's suggested revision in this area.

Thank you for considering my input. I would be happy to provide further comment at any time.

Sincerely,

Kathleen McGraw

Kathleen McGraw
Executive Director

2 of 2

P.O. Box 6136 Sitka, A Member of the Alask Additional Back-up. (907) 747-3370

Abuse victim freed after Seldovia stabbing case review

ANCHORAGE (AP) — Jailing a battered woman who killed her abusive boyfriend in Seldovia after a tormented relationship would be unjust, a special three-judge panel ruled Friday.

The panel sentenced Wanda Darlene Pabst, 41, to one year in jail, which is equivalent to time she has already served, and to four years probation. During that time, she will be required to spend about 13 months in residential treatment programs for battered women with alcohol problems.

"We see no need to confine her to protect the public," Superior Court Judge Brian Shortell said after the judges Friday listened to expert testimony that Pabst was a victim of "battered women's syndrome."

Pabst was charged with second-degree murder after stabbing Albert Gibbs in the chest at their Seldovia home in June. The state later reduced the charge to manslaughter, which carries a five-year presumptive sentence. Pabst pleaded no contest.

The case was referred to the three-judge sentencing panel in November when a Kenai judge concluded Pabst should be given a lesser sentence than the minimum 2½-year term he could legally impose.

When Gibbs was killed, he and Pabst had been living together for about a year. Court records show Gibbs repeatedly beat Pabst, sodomized her against her will, ripped out her fingernails and once forced her head into a "honey bucket."

Pabst learned only after he was dead that Gibbs had a long history of violent behavior, including convictions for assault and rape.

Three times during the year they lived together Pabst filed assault charges against Gibbs for beating her. Each time she asked that the charges be dropped.

In arguing for the five-year presumptive sentence, Assistant District Attorney Rhonda Butterfield Roberson of Kenai said Pabst should be held responsible for Gibbs' death because she rejected efforts by police and prosecutors to jail him and free her from the relationship.

"This whole thing could have been prevented if she had taken advantage of the protections offered by the system," Roberson said after the hearing.

But defense lawyer Kevin McCoy of Kenai said Gibbs isolated Pabst from her friends and family, controlled her money and convinced her no one would believe her if she took him into court.

Frances Purdy, an expert in domestic violence, testified Friday that Pabst's feelings of hopelessness and of being trapped are typical of battered women. Pabst was reared by abusive parents, she said.

On June 5, the night of the killing, Pabst and Gibbs spent part of the evening drinking at the Seldovia Lodge Bar and got into an argument when Pabst dropped her wallet and Gibbs refused to give it back. When they got home, Gibbs removed three photographs of Pabst's children from the wallet and burned them in front of her, court documents show.

Pabst went into the bathroom, noticed a knife there, took it and stabbed Gibbs once in the chest. She called for help immediately, but Gibbs was stabbed in the heart and he died.

Speaking in her defense Friday, Pabst said she stayed with Gibbs because he was not all bad and she wanted things to work out. She said, "I thought he'd change."

TESTIMONY TO HOUSE HESS
7 FEB 91
HB 44

(1)

Good morning, I am Steve Steube, pres. of the Alaska Family Support Group. I am here this morning to express strong objections to this bill as written by Alaska's Pro-Family interests.

We have some very serious concerns about this bill regarding the language change on Page 3 lines 8, 9, 10 that remove the words [or family] and new text is added. This change, takes domestic violence out of the realm of family violence and places the blame solely on the difendant.

Please note that Black's law dictionary defines domestic relations as that branch of law which deals with matters of the household or family. We deplore family violence and we believe the domestic violence issue is a family issue, not an issue to be dealt with solely by counseling the accussed. Shouldn't the perpetrator also be required to engage in counseling?

Family Violence in America is a national disgrace. The latest research in this field shows that more often than not mutual battering occurs rather then unilateral violence. Prof R L McNeely, PHD, submitted research to Congress on this issue that reveals male battering by women occurs at a 2 to 1 ratio more often than male to female violence.

On page 3 line 13, we make note that children are included in this domestic violence bill. What is the difference between an act of domestic violence against a child, and child abuse?

will accusations of child abuse/neglect be handled under this law or under current child abuse laws?

The addition to the statute on page 3, lines 21 thru 30, take the courts discretion away to apply reasonable penalties for domestic violence convictions. The court now has the option to impose sentences of imprisonment for convictions. This addition will result in mothers going to jail at an alarming rate. Statistics released by DFY's Director Russ Webb on Jan 20, 1991 to Sandy Armstrong; Alaska Dads and Moms, shows that during the Period 1987, 88, 89, 90, women were the perpetrators of child abuse neglect in 58% of the cases.

Regarding the same section of the bill - Does the issuance of a temporary restraining order constitute a conviction to be used as criteria for imprisonment? Please note that the manner in which TRO's are issued in Alaska violates due process of the accused because they are issued with no notice, and deny the accussed the opportunity to deny or disprove the allegations or request that his children be able to accuse him (OR HER) during the period covered by the ~~[redacted]~~ order. will Passage of this bill mean that all child abuse/neglect allegations will be initiated by a T.R.O.? How will this effect DFYS workload?

Finally, we are very concerned that false domestic violence, and child abuse/neglect allegations are being made in divorce proceedings to remove a parent from the home, and that 90% of these allegations are found to be invalid. Is this bill a tool to cut children completely out of their fathers lives?

We respectfully request that this bill be held in committee until we have the opportunity to have our legal council do a thorough analysis. We would also like to work with this committee on this bill to make it acceptable to families and children. We will forward copies of research to you that addresses the points made in our testimony.

Steven P. Strube
PO BOX 521155
BIG LK, AK 99652
892-7760

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

P.O. BOX V, JUNEAU 99811
(907) 465-3759

M E M O R A N D U M

To: Representative Donley, Chair
House Judiciary Committee
From: Representative Pat Carney, Co-Chair
House HESS Committee
Date: February 25, 1991
Re: CSHB 44

I received a letter from a constituent who had submitted the attached statement as testimony in support of HB 44. Unfortunately it did not reach the HESS Committee and was not included in the committee records. I have informed Ms. Bogda that the statement would be forwarded to you for insertion in the record. Thanks.

Alaska State Legislature

Please enter into the record my testimony to the House HESS
committee name

committee on HB 44 , dated February 7, 1991
bill/subject

Often when a victim seeks assistance to end the domestic violence in her life (women are the victims in more than 95% of domestic violence cases, frequently with injuries that require professional medical care), the domestic violence writ is the first step she takes in protecting herself and her children from further assaults. In thirteen years as a worker in the field of domestic violence and sexual assault, it is rarely if ever that I have seen a woman undertake the task of filing a domestic violence writ with ease. Their motivation is most frequently safety, but their concern is the effect it will have on the person whom the writ will restrain, their abusive partner. Fortunately they decide that their life, literally, is more important.

House Bill 44 is an extremely valuable piece of legislation, because it will fill in areas of the current legislation which make it difficult for persons with a writ to have more complete protection. The bill also broadens the scope of protection to victims not currently included, persons in dating relationships.

I am pleased that law enforcement officers and the Department of Law testified in support of this bill. Their insight and input further strengthen a bill which can only make the State of Alaska a safer place to live.

Thank you to the House HESS Committee for your commitment to "moving" bills during this legislative session. In this case it may well save lives.

Laura D Rogers

Co-Chair
Health, Education and
Social Services Committee

Resources Committee

Legislative Budget and Audit

Special Committee
on Oil and Gas

Alaska State Legislature

Representative Patrick J. Carney

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99811
(907) 465-2186

During Interim:
P.O. Box 87-1746
Wasilla, Alaska 99687
(907) 373-2518

February 25, 1991

Leslie D. Bogda, Executive Director
Valley Women's Resource Center
403 South Alaska Street
Palmer, Alaska 99645

Dear Ms. Bogda:

I am in receipt of your letter of February 21, 1991 concerning HB 44, together with a copy of your testimony in support of the bill.

CSHB 44 passed out of the House HESS Committee on February 20th, and has been forwarded to the House Judiciary Committee. However, I had not seen the testimony which you submitted with your letter. I have taken the liberty of forwarding your statement to the House Judiciary Committee for their consideration. The House Judiciary Committee has not yet set CSHB 44 for hearing as of this date.

I look forward to seeing you when you are in Juneau.

Very truly yours,

Representative Patrick Carney

pc/jrm
PS: A copy of CSHB 44 is enclosed for your reference.

Abused Women's Aid in Crisis, Inc.

100 W. 13TH AVENUE • ANCHORAGE, AK 99501 • (907) 279-9581

March 11, 1991

Rep. Dave Donley, Chair
House Judiciary Committee
P. O. Box V
Juneau, AK 99811

Dear Rep. Donley,

I would like to voice **my support for the committee substitute for HB44.** A temporary restraining order aims to protect the individual from harm and harassment. We often see cases where the women and children have experienced fear when he has come to the door of the house, or placed constant phone calls when he knows the restraining order is in place. They haven't felt safe. They also know they may or may not have been able to prove intent to harrass as exists under the current law. They are in fear, yet another burden is placed on them.

I would also support the provision that adds a dating, courtship or engagement relationship with the defendant in Sec. 3, line 17. I would like to remind the committee that Anchorage has experienced deaths in dating relationships just the past year. Those women needed the same access to the law as others have. I understand this provision is consistent with California state law.

I thank you for your support of this bill.

Sincerely,

Nancy K. Scheetz-Freymiller

Nancy K. Scheetz-Freymiller
Executive Director

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 22, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 3-13-91

The JUDICIARY Committee considered: HB 44

HOUSE BILL NO. 44 AMENDING DOMESTIC VIOLENCE LAWS

"An Act relating to domestic violence."

RECOMMENDATIONS:
be replaced with CS HB 44 (JUD) [X] the same title [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

2 [X] zero fiscal note Admin; Pub Def. OPA 3 [X] zero fiscal note(s) Pub. Safety - 2-22-91
Corrections 2-22-91
Courts 2-22-91

SIGNING DO PASS: SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
Dave Donley	Terry Martin		✓	
Mark Hanley				
Mike Miller				
Kevin Pat Parnell				
Jerry Ellis				

Dave Donley
Chairman's Signature

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 44

Revision Date: _____ Department Affected: Department of Administration

Title: "An Act relating to domestic violence." BRU: Public Defender Agency

Component: _____

Sponsor: Rep. Ulmer,Parnell,B.Davis

Requestor: HESS COMPONENT SERIAL NO. 4 2 _ _

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Barbara K. Bink for

Prepared By: John Salemi, Public Defender Phone: 279-7541

Division: Public Defender Agency Date: 2/6/91

Approved by Commissioner: Millett Keller

Agency: Department of Administration Date: 2/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 44

Revision Date: _____ Department Affected: Administration

Title: "An Act relating to domestic violence." BRU: Office of Public Advocacy

Component: Office of Public Advocacy

Sponsor: Ulmer, Parnell, B.Davis

Requestor: House Judiciary

COMPONENT SERIAL NO. | | | 4 | 3 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.) See Attached

Prepared By: Brant McGee, Public Advocate Phone: 274-1684

Division: Office of Public Advocacy Date: 2/5/91

Approved by Commissioner: Millett Keller

Agency: Department of Administration Date: 2/8/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 44

It is unlikely that the number of new cases generated under the provisions of this bill will have a significant impact on the Office of Public Advocacy civil and criminal caseload.

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 44(HES)
(H) Publish Date: 2/22/91

Revision Date: _____
Title: An act relating to domestic violence
Sponsor: Rep. Ulmer
Requestor: H. HESS

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO. | | 7 | 9 | 9 |

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

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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/PROG RCPT						
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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Gayle A. Horetski Phone: 465-4322
Division: Commissioner's Office Date: 2/6/91
Approved by Commissioner: Gayle A. Horetski for Richard L. Burton
Agency: Department of Public Safety Date: 2/6/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 2
Bill Version: CSHB 44(HES)
(H) Publish Date: 2/22/91

Revision Date: _____ Department Affected: Corrections
Title: "An Act relating to domestic violence." BRU: _____
Component: _____
Sponsor: Rep. Fran Ulmer
Requestor: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director Phone: 465-3376
Division: Administrative Services Date: 02-05-91

Approved by Commissioner: _____
Agency: Department of Corrections Date: 02-05-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

No. 3

FISCAL NOTE

Bill Version: CSHB 44(HES)
(H) Publish Date: 2/22/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date:
Title: An Act relating to domestic violence
Sponsor: Ulmer, Parnell, B. Davis
Requestor: Ulmer

Department Affected: Alaska Court System
BRU: Trial Courts
Components:

COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Division: Alaska Court System
Phone: 264-8228
Date: 02/04/91

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 02/04/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

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COMMITTEE COPY

SECTIONAL ANALYSIS
CS FOR HOUSE BILL 44( )
MARCH 13, 1991

SECTION 1.

Moves violating a Domestic Violence Restraining Order to a new section from the harassment section so that it can be readily identified. The offense is a class A misdemeanor. The section also clarifies that the crime is committed if a person knowingly violates a provision of the restraining order. Under current law, arrests and prosecutions are not being made because it is difficult to prove that the defendant acted with "intent."

SECTION 2.

Removes section (a) (6) which established that the crime of harassment was committed if a defendant violated a restraining order baring communication. That action will be the offense created in Bill Section 1, Violating a Domestic Violence Restraining Order.

SECTION 3.

The change in this section is technical, references the reader to the changes made in Bill Section 1.

SECTION 4.

- (lines 14 through 16) Specifies that the court, in determining conditions of release, shall consider ordering the defendant to participate in personal counseling that provides alternatives to aggression if that counseling is available- rather than family counseling.

- (lines 18 and 19) The change is technical to make the definition of domestic violence consistent throughout the statutes. (See AS 18.66.900 (3).)

- (lines 22 and 23) Expands the list of persons eligible to obtain domestic violence restraining orders to include persons in dating, courtship or engagement relationships.

SECTION 5.

Establishes that a sentencing court may mitigate the presumptive terms in cases of assault, attempted assault, homicide or attempted homicide when the defendant acted in response to domestic violence against the defendant.

SECTION 6.

The amendment is technical to make the definition of domestic violence consistent throughout the statutes.

SECTION 7.

The amendment is technical to make the definition of domestic violence consistent throughout the statutes.

SECTION 8.

The amendment is technical to make the definition of domestic violence consistent throughout the statutes.

SECTION 9.

The amendments are technical to correct punctuation and make this section consistent with bill section 4, regarding conditions of release.

SECTION 10.

Clarifies that the court may not issue a domestic violence restraining order which restrains the petitioner as well as the respondent unless the respondent has been subjected t domestic violence by the petitioner.

SECTION 11.

The amendment is made to make this section consistent with Bill Section 10.

SECTION 12.

The amendment is technical to make the definition of domestic violence consistent throughout the statutes.

SECTION 13. The change is technical, referencing the reader to the new section in Bill Section 1.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM March 14, 1991

SUBJECT: Domestic Violence (CSHB 44(Judiciary))

TO: Representative Dave Donley

FROM: Terri Lauterbach
Legislative Counsel

Enclosed is a CS for HB 44. It includes the amendments as passed out by the committee.

As you know, we have very little discretion to change language passed out by a committee, so the CS appears as requested (except for changing "must" to "shall"). However, I wish to convey to you a couple of concerns I have about the committee's amendments.

My first concern is about the committee's deletion of "personal" rather than reinserting "or family" with reference to the counseling that may be ordered by a court. It would be possible under the committee's language for a judge to order "counseling" without specifying either personal or family counseling. If a judge orders only "counseling," arguably neither of the special provisos about personal or family counseling would apply to the counseling order. I suggest reinserting "personal or family" in the counseling sections.

My second concern is about the language added by the committee about family counseling. It is stated in sort of a backward manner, requiring a finding if an order is made, as if the finding comes second. I think the committee's intent would be better achieved if the language required that the order be allowed only if the finding is made first. I suggest something more like the following: "the court may order the defendant to participate in family counseling only upon a finding that family counseling will not cause additional domestic violence." This is the more usual approach to court findings.

Please let me know if I can be of further assistance.

TML:pl
91-164.plm

Enclosure

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 44

Revision Date: _____
Title: An act relating to domestic violence
Sponsor: Rep. Ulmer
Requestor: H. HESS

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO. | | 7 | 9 | 9 |

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

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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/PROG RCPT						
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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Gayle A. Horetski
Phone: 465-4322
Division: Commissioner's Office
Date: 2/6/91

Approved by Commissioner: Gayle A. Horetski for Richard L. Burton
Agency: Department of Public Safety
Date: 2/6/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

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FN -0- PUBLIC SAFETY

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. H.B. 44

Revision Date: _____ Department Affected: Corrections

Title: "An Act relating to domestic violence." BRU: _____

Component: _____

Sponsor: Rep. Fran Ulmer

Requestor: _____ **COMPONENT SERIAL NO.** | | | | |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director Phone: 465-3376

Division: Administrative Services Date: 02-05-91

Approved by Commissioner: _____

Agency: Department of Corrections Date: 02-05-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FAI -0- ncc

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 44

Revision Date:
Title: An Act relating to domestic violence
Sponsor: Ulmer, Parnell, B. Davis
Requestor: Ulmer

Department Affected: Alaska Court System
BRU: Trial Courts
Components:
COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Division: Alaska Court System
Phone: 264-8228
Date: 02/04/91

Approved by: Arthur H. Snowden, II, Administrative Director Stephanie Cole, for
Agency: Alaska Court System
Date: 02/04/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FN1 -A- Court

PUBLIC OPINION MESSAGE

HB 44

DEAR: REPRESENTATIVE DONLEY

NAME: MR. JIM A. ARNESEN
TITLE:
ADDRESS: 1800 SHORE DRIVE
CITY: ANCHORAGE ZIP: 99515
PHONE: 344-7707
BILL NO: HB 44
SUBJECT: AMENDING DOMESTIC VIOLENCE LAWS
MESSAGE: I STRONGLY OBJECT TO THE REMOVAL OF "FAMILY" ON SECTION 3 (4) AND SECTION 8 (7). THIS BILL IS NOT ACCEPTABLE WITH THOSE DELETIONS. THERE ARE INSTANCES WHERE FAMILY COUNSELING MAY BE DESIREABLE AND THESE DELETIONS MAY REMOVE THAT OPTION. /CMR

POMID: 03155537
DATE: 91/03/08
TIME: 15:55:37
LIONAME: ANCHORAGE LIO

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PARNELL	KERTTULA
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GRUENBERG	
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MARTIN	
M.W.MILLER	
HANLEY	

HB

52

Alaska State Legislature

REPRESENTATIVE FRAN ULMER

MEMORANDUM
May 2, 1991

TO: Rep. Georgianna Lincoln, Co-chair
Rep. Pat Carney, Co-chair
House Health, Education and Social Services Committee

FROM: Rep. Fran Ulmer

RE: HB 52, relating to child support for non-minors

Throughout American history, the duty of parents to support their children terminated upon emancipation. Emancipation was defined as either living independently from the family, marrying, or reaching a state-determined age of adulthood, invariably age 21. About 20 years ago, however, arguments were made that someone old enough to be drafted should be allowed to vote. As a result, the 26th Amendment to the U.S. Constitution was enacted which lowered the voting age in federal elections to 18. Soon thereafter, many states followed federal precedent and set 18 as the age for voting in state elections **and** as the age of majority.

When the age of majority was 21, child support generally lasted until children were able to become successfully independent. Children had completed high school by 21 and most children in college were almost finished. Those out of school were supporting themselves by 21. But, when the age of majority was reduced to age18 in the early 1970's, child support terminated well before independence was a realistic possibility. Children between ages 18-21 were either attending high school, college or vocational school, looking for work, or making wages that were too low to sustain self-sufficiency. Since housing and rental costs have outpaced inflation since the 70's, many 18-21 year olds cannot afford to live independently of their parents today, even many of those with jobs. In order to accommodate these realities, many states have altered their child support laws to extend support until children are more realistically in a position to be independent.

The purpose of HB 52 is to provide child support for non-minor children for educational purposes. HB 52 allows the court to order child support for non-minor children in two instances:

(a) for unmarried children who are under the age of 22, living as dependents with a parent or guardian, and who have not completed high school; support may be ordered until secondary education is terminated; this extended period allows for handicapped and developmentally disabled students who may take longer to finish their secondary education; and

District 4B — Juneau
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(b) for unmarried children under the age of 26 who are at least half-time students in good standing in a post-secondary education program that qualifies for the use of scholarship loans from the Alaska Post-Secondary Education Commission. This extended period would allow a child who chooses to enlist in the military to complete military service before pursuing post-secondary education. In this instance, a child is eligible for child support while enrolled in a post-secondary program, but not during military service.

HB 52 authorizes the court to order "reasonable" support for post-secondary education. When determining what is reasonable, this legislation directs the court to consider:

(a) the earnings, income and resources of the parents;
(b) the financial needs and resources of the child, his or her physical and emotional condition, as well as the educational needs of the child;
(c) the standard of living, including the likely educational attainment, the child would have enjoyed if the divorce had not occurred.

It is unfortunately true that in almost every divorce, children are the losers. Family incomes decline and children who might otherwise have received financial assistance for college expenses see their opportunities evaporate in the cross-fire of divorce. HB 52 seeks to ensure that children's interests are adequately protected when a divorce or dissolution occurs.