

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6971 HOUSE JUDICIARY

8672

(UNDERAGE DRINKING POLICY STATEMENT

Much national media attention has been focused recently on the problem of underage drinking in our society. And in our own state of Alaska the press extensively covered the story of two lives taken in a traffic accident last summer which was caused by an underage drinker.

As parents, as citizens, and as involved members of the business community, we are seriously concerned with the impact this problem has on all our lives. The combined membership of the Alaska Wine and Spirits Wholesalers Association and the Alaska Cabaret, Hotel, Restaurant, and Retailers Association (CHARR), representing the beverage alcohol industry, is resolved to be part of the solution to this societal problem.

We wish to be forthright about our point of view as an industry. We advocate the concept of responsible decision making about alcohol use and the responsible use of the products we sell.

Persons under the age of 21 who attempt to purchase or consume alcohol are not making a responsible decision. They fail to consider fully the consequences of such an illegal action. They fail to make responsible use of beverage alcohol. And such irresponsibility has an impact on us all, in some cases, a tragic impact.

While we as an industry cannot provide a total solution, there are some actions we can take that will contribute to it. As we reaffirm our commitment to be responsible purveyors of a regulated product, we also pledge to undertake the following steps:

1. A Public Awareness Campaign

Through graphic point of sale materials we wish to raise the level of public consciousness of the underage drinking issue as well as to send a message to those under 21 seeking to purchase alcohol that we do not want their business. Parents of teenagers need to be reminded of the consequences of illegal use of alcohol. It is not just a case of "sowing wild oats"; the use of alcohol by persons under 21 is breaking the law.

2. Lobbying for Enforcement of Existing Law

The State of Alaska Statutes controlling alcoholic beverages are some of the most progressive of all 50 states. But our excellent laws are of little use if there is no enforcement effort. In our state, the Alcohol Beverage Control Board is established as a regulatory agency; enforcement is a function of police agencies. We will demand of our state and local government officials that police agencies be given the necessary direction to enforce the current law. If we as a society are sincere in our expressed concern for underage drinking, then our governmental bodies as our representatives must give this issue priority when providing direction and allocating resources to our police agencies. If we as a society are serious, if we mean what we say about the problem of underage drinking, then the underage drinker must pay a penalty for breaking the law.

3. Lobbying for Improvement of Existing Law

Although our state laws are very progressive, we see two areas where change could significantly affect the underage drinking problem for the better. First, the penalties for underage drinkers are the traditional fine and/or jail sentence for this misdemeanor. We believe that in addition, the courts should have the option of diversionary penalties such as community service and/or counseling programs. One of the best penalties, we feel, is to delay, suspend, or revoke the driver's license for an alcohol-related violation by a person under 21. This penalty is directed at the underage drinker and can serve as a real deterrent for teenagers.

The second area that requires change concerns the difficulties faced in preventing the use of false IDs. The State of Alaska must take steps to combat this problem by issuing drivers' licenses and identification cards that cannot be altered, duplicated, or counterfeited. Such technology is readily available and is already widely used by banks issuing credit cards. The state of New Jersey currently uses a "latent security image" to eliminate the alteration, duplication, and counterfeiting of drivers' licenses. We believe Alaska should also be a leader in taking this progressive step.

Article XXI of the U. S. Constitution grants states the right to regulate and control distribution and sale of alcohol beverages. We hope that our efforts will lead our local and state governments to exercise this right, adopting measures to curb underage drinking and lessen its impact on our society.

Pioneer Bar & Liquor Store, Inc.

CHRISTINE M. TENGS
President

141-143 Second Ave.
Post Office Box 190
Haines, Alaska 99827
(907) 766-9101 Business
(907) 766-2474 Office
(907) 766-3374 FAX

March 10, 1992

Representative Finkelstein, Chairman
Labor & Commerce Committee
Box V
Juneau, AK 99811

Dear Representative Finkelstein:

I am writing to urge you to amend House Bill 436, introduced by Representative Cheri Davis, to include changes to correct the wording of AS 04.21.020 "Civil Liability of persons providing alcoholic beverages" and AS 04.21.050 "Proof of Age."

As it now stands, the Proof of Age Statute defines acceptable I.D. as a valid Driver's License or I.D. Card encased in plastic with a photo and birthdate. The Civil Liability Statute says we may not be held civilly liable if we take a Signed Statement, Liquor I.D. Card (which we don't even have in Alaska) or Driver's License. In other words, if a person accepts a U.S. Military Card or other I.D. which meets the requirements of the Proof of Age Statute, there would be no protection from a civil suit if the I.D., accepted in good faith, turns out to be false. Please note that there would be protection from criminal charges (AS 04.21.050 (c)) if the same I.D. were taken.

The amendment being offered would replace "liquor identification card, or driver's license" in the Civil Liability Statute with "identification meeting the requirements of" the Proof of Age Statute. In addition the amendment would add to (c) of the Proof of Age Statute, regarding criminal liability, "meeting the requirements of AS 04.21.050 (b)".

As the A.B.C. Board, through regulation, redefines "valid identification" in the Proof of Age Statute, this amendment would protect licensees or their agents and employees from being held criminally and civilly liable for accepting such I.D.. For instance, the A.B.C. Board has recently adopted regulations allowing the acceptance of passports as "valid identification." Under the law, as it stands, we would not be protected from civil or criminal liability if we accepted a passport.

Please amend House Bill 436 to incorporate these changes. Thank you for your consideration of this request.

Very truly yours,



Christine M. Tengs
C.H.A.R.R. Board Member

copies to: Rep. Davis
Rep. Mackie
Rep. Choquette

Spaga

Rep's Identification		Phone	
CA	CA	MURPHY REAVIS	
Dept.		Phone #	766-2474
Fax #	465-3448	Fax #	766-2384

Sec. 04.21.050. Proof of age. (a) If a licensee or an agent or employee of the licensee questions or has reason to question whether a person entering licensed premises, or ordering, purchasing, attempting to purchase, or otherwise procuring or attempting to procure alcoholic beverages, has attained the age of 21 years or is entering without consent in violation of AS 04.16.049(a)(3) and has not attained the age of 16 years, the licensee, agent, or employee shall require the person to furnish proof of age acceptable under (b) of this section or proof of consent in a form determined by the board. If the person questioned does not furnish proof of age acceptable under (b) of this section, or if a licensee, agent, or employee questions or has reason to question the validity of the proof of age furnished, the licensee, employee, or agent shall require the person to sign a statement that the person is over the age of 21 or 16 years as appropriate. This statement shall be made on a form prepared by and furnished to the licensee by the board.

(b) A valid driver's license or a valid identification card is acceptable as proof of age when used for identification in the purchase of alcoholic beverages and for securing entry to and remaining on premises where alcoholic beverages are sold if the license or identification card is made of or occurred in plastic and contains a photograph of the licensee or card holder and a statement of age or date of birth.

(c) A licensee, or an agent or employee of the licensee, may not be charged for a violation of AS 04.16.051 - 04.16.052 if a signed statement as provided in (a) of this section is secured in good faith, or a valid driver's license or identification card is presented indicating that the owner and possessor of the presented driver's license or identification card is 21 or 16 years of age or over as appropriate.

MEANS THE REQUIREMENTS OF AS 04.21.050(b)

Sec. 04.21.020. Civil Liability of persons providing alcoholic beverages. A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license issued under AS 04.11.080 - 04.11.220, or is an agent or employee of such a licensee and (1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, license identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or (2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030.

FOR IDENTIFICATION

CORRECTION

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

2 pages

To	Rep Finkelstein	From	CHRISTY TEXAS
Co.		Co.	
Dept.		Phone #	766-2474
Fax #	465-3448	Fax #	766-2384

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MEETING THE REQUIREMENTS of AS.04.21.050(b)

Sec. 04.21.020. Civil liability of persons providing alcoholic beverages. A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080 - 04.11.220, or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, license-identification-card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030.

← "OR IDENTIFICATION"

Sec. 04.16.051. Furnishing of alcoholic beverages to persons under the age of 21. (a) A person may not furnish an alcoholic beverage to a person under the age of 21 years.
(b) This section does not prohibit the furnishing of an alcoholic beverage
(1) by a parent to the parent's child, by a guardian to the guardian's ward, or by a person to the legal spouse of that person if the furnishing occurs off licensed premises; or
(2) by a licensed physician or nurse to a patient in the course of administering medical treatment.
(c) Acts unlawful under AS 11.51.130 are not made legal by (b) of this section. (3 ch 131 SLA 1980; am 9 ch SLA 1983)

Sec. 04.21.080. Definitions. (a) In this title (1) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Sec. 12.55.135. Sentences of imprisonments for misdemeanors. (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

Sec. 12.55.125. Sentences of imprisonment for felonies.
(e) A defendant convicted of a class "C" felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.125-12.55.175:
(1) if the offense is a second felony conviction, two years
(2) if the offense is a third felony conviction, three years

Sec. 12.55.035. Fines. (a) Upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law. In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden its payment will impose. No defendant may be imprisoned solely because of inability to pay a fine.

(2) \$50,000 for a class A, B, C felony:
(3) \$5,000 for a class A misdemeanor:

'Alarming' ozone depletion found

See page 11

SPORTS

Magic no All-Star, says Charles Barkley

See page 7

Imelda says far comes from hid

See page

Ketchikan Daily

Vol. 57 No. 029, (UPS 293-940), 12 Pages

Ketchikan, Alaska, Tuesday, February 4, 1992

REP CHERI DAVIS
P.O. BOX V
KETCHIKAN, AK. 99901
2722 05/13/92

Mother wants stiffer 'furnishing' laws

By TOM MILLER
Daily News Staff Writer

"We must change laws to save our kids."

"Furnishing alcohol kills our kids."

"Make providing a felony."

"Providers endanger us all. Make it a felony."

Those messages were scrawled on placards carried by two women outside the Alaska courthouse Monday afternoon. Inside, 23-year-old James C. Porter was being arraigned on a charge of furnishing alcohol to a minor. Ketchikan District Court was packed as 50 or more people came to watch the arraignment. Most of them were there to support the two mothers of Joshua Smith, 17, and Michael Nygaard, 17. The two teens were killed instantly on New Year's Eve when a motorcycle they were riding crashed into another vehicle at high speed on North Tongass Highway.

Troopers said that alcohol was involved, and they appealed to the public to help find the person responsible for providing a 1.75 liter bottle of Smirnoff vodka to the boys.

Troopers announced on Jan. 27 that Porter had been charged with the misdemeanor that is punishable by up to one year in jail, a \$5,000 fine or both.

District Judge George Gucker read Porter his rights and asked him if he would obtain his own attorney or if he wanted a court-appointed lawyer. Porter chose to ask for a court appointed attorney. He offered no plea. Then Gucker disqualified himself from the case because he is familiar with one of

the families, he said. Porter was scheduled to appear again in court on Tuesday at 1:30 p.m. to learn if he qualifies for a court attorney.

Porter left the courtroom. Approximately 35 other people walked out behind him.

Wants stiffer penalties
Jesmene Henry, the mother of Joshua Smith, said after the proceedings that she will aggressively seek to change Alaska's laws concerning people who furnish alcohol to minors. Rather than being classified as a misdemeanor, she says the crime should be a felony. Further, Henry wants violations to be punished for the consequences of teen drinking, whether it be alcohol-related accidental deaths, assault, rape or other crimes.

That change in the law should be followed by a law providing that signs be posted in liquor stores which state that buying booze for youngsters is a felony, she said.

"Kids are immature. They are part children and part adults. They are unable to handle alcohol," Henry said. "If a buyer felt the danger of being jailed for the consequences, they'd think twice."

"An adult can't just give a gallon of vodka to kids and say: 'Have a good time.'"

Henry told her children that if someone ever gave them drugs or alcohol, she would "make a big stink over it," she said. Now, she said, her oldest of three children is dead because someone gave him alcohol. She holds her son respon-

See 'Mother' on page 3



Colleen Blaka, along with Joyce Silberling (background) picketed outside the State Office Building Monday afternoon when James C. Porter was in court on a charge of selling alcohol to minors Michael Nygaard and Josh Smith, both 17. The youths died in a motorcycle accident on Dec. 31, 1991. The women want selling alcohol to a minor changed from a misdemeanor to a felony.

Staff photo by Neil Anderson

Check the record

When Jesmene Henry was interviewed by the Daily News in the halls of the state office building, she pointed back toward the district courtroom and said: "Almost every case happening in there is alcohol related."

As if to help emphasize her point, the Ketchikan Police Department report for Monday was full of alcohol related "public record" material.

CITY POLICE

Jan. 30

Police took a woman into protective custody after a caller said someone was passed out in the bus stop at Sea Level Drive.

Jan. 31

Police investigated a report that rocks were thrown by kids at a window at Ketchikan High School. Damage to a window was estimated at \$200. Police stopped two juveniles,

aged 16 and 15, in connection with the vandalism at Kaybi and charged them with minor consuming alcohol. One of them, a 15-year-old girl, said she had been given a tequila drink by a 26-year-old man.

James T. Evans, 63, was arrested and charged with being drunk on a licensed premises.

Feb. 1

Charles B. Hodge, 33, and Carlos A. Atreola, 24, were arrested in front of the Marine Bar and charged with disorderly conduct after an officer allegedly observed them punching each other's faces. They didn't stop fighting when ordered until they were both incapacitated, the report said.

An officer was waved over by a person who pointed to a man who was passed out on the sidewalk on

See 'Record' on page 2

Mother

Continued from page 1

sible for making a bad choice to use alcohol, but she is committed to following through now and raising the issue.

"I'm not going to stop talking until we get a stiff law against providing alcohol to kids here, and until we get some options. We have 22 bars here," Henry said. "I'm not saying close them, but look at it. What's wrong with this picture?"

"We're being totally irresponsible. We want to just say, 'Just say no,' and then close our eyes."

Industry shares blame

The liquor industry is partly responsible, Henry said, because it pays for lobbying that keeps the laws loose. The industry's advertising promotes attitudes that keep people drinking, said Henry. They glorify it. They make kids think drinking is cool and fun, she said.

Ketchikan society is responsible because it fails to provide kids with alternatives to drug and alcohol abuse, she said.

"There are 22 bars, one theater, and one bowling alley," she said.

The bowling alley is full of drinking adults and a family night at the movies is expensive, she said.

"They get run out of the mall," Henry said. "But at some point, they don't want to sit at home with you and watch movies. They want somewhere to go."

Kids need to have a place where they can socialize, eat, dance, and be with their dates, said Henry.

Henry said she has been told that Ketchikan can't afford a roller rink or similar place for kids because the money needs to be spent on economic development instead.

"How economically developed are we going to be when business people look at Ketchikan and say: 'I don't want to move there to raise my kids — not on a bet.'"

Henry wants more education that will make teens think twice before drinking. "Kids need to read the coroner's reports," she said. "We're protecting them from the ugliness of what it does, but we don't protect them from the option [of drinking]."

Henry will be traveling to Juneau to lobby state legislators on behalf of House Bill 436, filed last Thursday by Rep. Cheri Davis, R-Ketchikan. The bill, entitled "Penalty for providing alcohol to a minor," would make the crime a class C felony punishable by up to five years in jail and/or a \$50,000 fine.

"It can't be just a senseless thing," Henry said. "There's got to be something positive that comes out of this."

"I'm not saying prohibition. I'm saying responsible," Henry said.

Nazis

Continued from page 1

studies. "I think it's very important to prove what happened."

Richmann was kidnapped by Israeli commandos in 1960, taken to Jerusalem for trial, convicted and hanged. Mengele's family say he drowned in Brazil in 1979.

Josef Schwammberger, a commandant at labor camps in Poland, was extradited in 1990 and now is on trial in Stuttgart, Germany, for war crimes.

Schwammberger, now 79, lived here under his own name. So did Mengele, who obtained a driver's license and an identity card from police, the magazine Somos reported over the weekend, after apparently having had a...

Federal Police files on display at the news conference included folders with faded news clips, photographs and typed statements about Mengele, Bormann and others. Reporters were allowed to photograph the folders, but not examine them.

It's unclear how many Nazis found shelter here. Some reports put the number in the thousands, but Manzano, the interior minister, said it was "much, much less."

He also insisted that those who came did so on Red Cross passports and not — as has been reported — on Argentine passports issued by Peru.

William Ray and Rose M. Davis.

Dec. 17

Robert L. Sellards and Nancy Mona Haldane.

Dec. 23

Robert A. Gunselman Jr and Coralyn M. Fitzsimmons.

Dec. 29

Delain A. Tate and Dawn J. Francisco.

Dec. 30

Marvin E. Dewitt and Rita Marie Braz.

Record

Continued from page 1

Front Street. The man was taken into protective custody. Michael W. Paulsen, 20, and Pamela Metcalf, 18, were cited for minor consuming alcohol. Paulsen was also arrested and charged with driving while intoxicated. The charges were made after an officer stopped Paulsen for speeding. Neither Paulsen nor Metcalf would say where they obtained the alcohol they had been drinking. A man was taken into protective custody after a taxi driver complained that an occupant of the cab wouldn't pay a fare and that the man had been thrown out of a downtown bar.

Feb. 1

Police searched the Potlatch Bar for \$5,000 in cash and a checkbook that a man said he was missing after drinking there from 3:15 p.m. to 8 p.m. The man said he didn't know if someone might have picked his pocket or if he could

TLMP

and look at the economic impact of their (U.S. Forest Service) decision," he said.

The final EIS of the Tongass Land Management Plan is in the works and the Forest Service hopes to have a Record of Decision on the plan by July, said Steve Brink, U.S. Forest Service team leader for the plan.

The Forest Service is now processing the 7,000 individual responses to the plan. A summary of the comments will be categorized by resource, such as timber, wildlife issues, etc., said Brink.

The state's position on the plan also is being reviewed.

ARRAIGNMENTS

Jan. 17

Samuel Barber pleaded innocent to driving with a suspended license.

Rex Seley, reckless driving.

Jan. 21

Dave Snyder pleaded innocent to third-degree criminal mischief.

Nancy Martin, disorderly conduct.

John M. Crippen, fourth-degree assault.

Jan. 22

Frank Jones, one count of third-degree misconduct involving a controlled substance. Bail was set at \$10,000.

have lost the money, police said. The money had been in a white envelope in the man's pocket, he told police.

Nick Krmaloff, 57, was arrested and charged with disorderly conduct, and open container after an officer reportedly saw him drinking white port wine from a bottle in the spruce mill parking lot.

Feb. 2

One 17-year-old boy, two 15-year-old boys, and two 14-year-old girls were in a van that was stopped for having a bright spotlight turned on that was pointed backwards into the eyes of following motorists. All but one of the 14-year-old girls were subsequently charged with minor consuming alcohol and curfew violation. The 14-year-old was charged only with curfew violation. They all refused to say where they had gotten the alcohol they drank.

done, it could be another year before the Record of Decision is reached.

"We hope that isn't necessary, but we won't know until we get information back on the market demand," Brink said.

The FRIS is expected to address old-growth areas, wildlife habitat changes, biological diversity, socioeconomic affects, recreation and tourism, timber supply and subsistence.

The plan is being done to manage the 17-million acre Tongass National Forest. Forest planning is much like a local Comprehensive Plan where zoning ordinances are related.

Ketchikan Daily News

REP CHERI DAVIS
P O BOX V
JUNEAU, AK, 99811
2722 05/13

(UPS 293-940), 14 pages

Ketchikan, Alaska, Tuesday, January 28, 1992

In brief

Porter charged

Alaska State Troopers have charged James C. Porter, 23, with furnishing alcohol to a minor in connection with a fatal Dec. 31, 1992 motorcycle accident on North Tongass Highway. Joshua Smith, 17, and 17-year-old Michael Nygard died instantly when the motorcycle they were riding went out of control, crossed the center line and collided with another vehicle.

"Alcohol is believed to have been the main contributing factor in the accident," Trooper 1st Sgt. Ted Bachman said in a Monday press release.

Porter is to appear in Ketchikan District Court on Feb. 2.

The maximum penalties for furnishing to a minor are one year or \$5,000 or both, said Bachman. The judge could also impose community work service and treatment.

SPORTS

Ingell, Misschiefs meet for third

See page A-8

Relief flights to republics begin

See page C-1

WEEKEND

REP. CHERI DAVIS
P. O. BOX 5
JUNEAU, AK, 99811
2722 05/13/92

**JUD

EDITION

Juneau, Alaska, Saturday-Sunday, February 8-9, 1992

\$1.25

'How many have to die?'

Smith's mother campaigns for stiffer liquor laws

By TOM MILLER

Daily News Staff Writer

Jeanneane Henry, the mother of a teen-ager who died in a motorcycle accident after drinking, carried her demand for stiffer laws against furnishing alcohol to minors to the Governor's Advisory Board on Alcoholism and Drug Abuse Friday. She was backed up by Cara Nygard, whose son died in the same New Year's Eve accident.

The board was in its second day of a three-day meeting in Ketchikan and took testimony here and from around the state by teleconference at the Cape Fox Hotel.

Henry passed a picture of her family around the board table as she told them that she wants the crime of furnishing to be a felony instead of a misdemeanor as it is now.

Her son, Joshua Smith, 17, and his friend Michael Nygard, also 17, died instantly when the motorcycle they were riding went out of control, crossed the center line and collided with another vehicle.

"Alcohol is believed to have been the main contributing factor in the accident," Alaska State Trooper 1st Sgt. Ted Bachman said in a press release after the incident.

Henry called her son a "miracle child" because she had been told that she couldn't have children, then she had three, beginning with Joshua.

She said he was a bright, wonderful boy. He made a bad choice, she said, when he drank; but blame should also go to the adult who bought a bottle of vodka and gave it to teen-agers.

James C. Porter, a 23-year-old restaurant cook, admitted to Alaska State Troopers that he purchased a 1.75 liter bottle of vodka on Dec. 30 and gave it to Richard Knusus, 17, according to Assistant District Attorney Thomas Wagner. Porter knew Knusus was a minor, Wagner said. According to Porter, Nygard and Smith drank vodka from that bottle the night they were killed. A jury trial for Porter is scheduled for April 20 and 21.

Because they drank, Henry said their sons were killed in a horrible way. She said her boy was decapitated and that his chest organs were



Members of the Governor's Advisory Board on Alcoholism and Drug Abuse listen to Cara Nygard tell of her son's death in a motorcycle accident on New Year's Eve. Alcohol was involved in the incident, according to Alaska State Troopers. Pictured from left are: Boardmember Reggie L. Jouse, Nygard, Boardmember Frank O. Williams and Boardmember E. Dwain McKenzie. A photograph of Nygard's deceased son Michael rests on the corner of the table. Staff photo by Tom Miller

crushed. The only parts of him that were not mangled were a kidney, his bladder, his genitals and his right hand, she said.

"I'm not telling you this to gross you out," Henry added. "But it was the result of a legal drug that we glorify."

Kids don't manufacture, distribute or advertise alcohol — adults do, she said.

"How many kids have to die before we learn to say 'no.'"

A bar can be held liable if an adult staggers out of it and is hurt, she said. If he breaks his ankle or is killed in a fall or drowns because he got too drunk in the bar, the bar can be sued, she said.

Henry called for a law making it a felony to furnish alcohol to minors and for a law that would make the furnisher an accomplice in any crimes committed by a teen-ager under the

See 'Alcohol,' page A-4

Alcohol

Continued from page A-1

influence.

With a felony furnishing law in place, warning signs should be posted in liquor stores that tell potential furnishers of the felony consequences of the act, she said. Liquor ads should be taken off television just as cigarette ads were removed; and she wants warnings placed on bottles.

Kids need a place to hang out, she said.

"We as adults have to focus on this problem," Henry said.

"Why is there no place for them to hang out? Are they such a low priority," she asked the board.

Boardmember Dr. William Browner agreed with Henry's argument about liquor advertising and said: "There is great concern about the promotion of alcohol on television and that it should be treated like cigarettes."

Nygard speaks

Cara Nygard placed a large portrait of her son on the table before she spoke. She emphasized Henry's assertion that society glorifies alcohol: "They've got these slinky chicks and beautiful guys who are looking real good and saying alcohol is great."

She also illustrated the gruesomeness of the accident that killed the two mothers' sons: "It took two days to figure out which parts belonged to which kids," she said.

Nygard told the board that she works for the public defenders agency and that 95 percent of the cases handled by the agency are alcohol related.

The minor consuming cases come in and out, she said. The same kids keep showing up in court. New kids keep showing up too.

"They're lucky," she said. "As a parent, I wish my kid was able to show up in court."

After listening to the controlled but emotional presentations by both women, Boardmember George W. McNeven spoke to Nygard in a soft voice, saying: "I want you to know, we don't come to this looking through rose-colored glasses."

He said he was born into a family of nine children of alcoholic parents. The parents died because of alcohol when he was aged six, he said. Three of his siblings died because of alcohol, he said.

"I've never had a drink in my life," McNeven said. "We want to see your suggestions. We will support you."

Sitting to McNeven's left, boardmember Charles Clay said: "That's right. That's right."

Henry's plans include speaking to Rotary 2000 Tuesday at noon; and on a special town meeting radio program entitled: "Ketohikan and Alcohol," on KRSD-FM, Feb. 24.

Farwest

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Liquor burden widened

Court takes hard line on furnishing minors

By James Wallace
P-I Reporter

In a case that could have broad social implications, the state Supreme Court ruled yesterday that a person who furnishes liquor to a minor in a social setting can be held responsible if the minor is injured or killed as a result of intoxication.

Previously, legal responsibility was limited to commercial settings, such as a restaurant or bar.

"It sends a message to adults out there, and to the public," said Sim Osborn, the Seattle attorney who represented Judith Hansen of Kent in a wrongful death suit dismissed in 1988 by a King County Superior Court judge. Her 15-year-old son drowned while on a fishing trip after a night of drinking. His access to beer at the campsite had not been restricted by the two 21-year-old men he was with, according to court records. They also were drinking.

The state Supreme Court split 5-4 in sending the case back to King County for trial.

Judith Hansen said she always held out hope that the case would go before a jury. "I don't believe minors know right from wrong. They don't know at what point they should stop," she said. "Adults should not be allowed to give minors alcohol or drugs."

In a strongly worded dissent, Justice Jim Dolliver wrote that the majority was "usurping" the powers of the state Legislature, which in 1955 repealed a law that imposed liability on social hosts.

"The majority, apparently transfixed by the facts before it and harboring a belief that youth must be served, has determined it can and, indeed, should take on a more creative role in usurping the powers of [the Legisla-

ture]," Dolliver wrote. "... It seems more than likely that in the next case involving a social host the court will declare the doctrine of social host immunity has ceased to exist in this state and hold there is a duty by any social host toward those to whom the host has furnished alcohol beverages."

But Justice Charles Johnson, writing for the majority, said the crux of the case must be determined on existing state law that makes it a crime to give or sell liquor to anyone under 21. "The Legislature has thus established that

See LIQUOR, Page B4



KURT SMITH/P-I

Judith Hansen filed suit after her 15-year-old son drowned while intoxicated.

Seattle PI - 2/21/92

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Cancer: Others urged to demand the treatment

From Page B1

"a human life," said the Michigan State University graduate who grew up in Seattle, California and Michigan as the eldest of three children.

Federal judges in other parts of the country have ordered insurers to pay for the procedure.

Although the settlement of LeRoux's case means won't set a formal precedent she wants to see other women with breast cancer take note of her suit.

"I hope that women like me that need to have a bone-marrow transplant and are denied by their insurance companies can find the courage to take them on," LeRoux said.

Already, she said, the case has "generated a huge reaction," bringing telephone calls of support.

Liquor: Social hosts have responsibility

From Page B1

both commercial hosts and social hosts commit a criminal act if they furnish liquor to a minor," Johnson wrote. "Pursuant to this statute, social hosts owe a duty to exercise ordinary care not to furnish liquor to a minor."

Hansen drowned April 24, 1987, the opening day of fishing season, at Lake Jameson in Eastern Washington. He went there with Robert Friend and Robert Petty, both of Kent. After a night of drinking beer, he apparently wandered away from the campsite and fell into the lake. His body was not found for several weeks. An autopsy determined his blood-alcohol level was twice the legal limit for intoxication.

There is still dispute over who fur-

nished the beer the three drank before and during the fishing trip. The state Supreme Court, said that issue will have to be determined by a jury. Harold Field, the attorney for Friend, said yesterday he is convinced the evidence will show the beer was supplied by Petty, and thus his client is not liable.

The attorney for Petty was not available for comment yesterday.

Yesterday's ruling reversed the decision of King County Superior Court Judge Charles Burdell to throw out the wrongful death suit. Joining Johnson in the majority opinion were Justices Jim Andersen, Bob Brachtenbach, Charles Smith and Bob Utter. Signing Dolliver's dissent were Justices Rich Guy, Barbara Durham and Chief Justice Fred Dore.

Deaths

ALEX: Clifford E., 71, of Seattle, Feb. 13.
ANDERSON: Carl J., 78, of North Bend, Feb. 12.
BEAUDREAU: Helene M., 98, of Federal Way, Feb. 11.
BERGNER: Vivian E., 88, of Seattle, Feb. 17.
BESK: Patricia M., 66, of Seattle, Feb. 12.
BEYERS: Willard L., 76, of Seattle, Feb. 13.
BODE: Dorothy L., 59, of Sumner, Feb. 12.
BOUK: Lillian A., 83, of Seattle, Feb. 16.
BROWN: Eva, 91, of Seattle, Feb. 18.
CALDERON: Victor E., 65, of Seattle, Feb. 17.
CHRISTIANSON: Charles O., 80, of Seattle, Feb. 12.
COATNEY: Edna N., 77, of Kirkland, Feb. 15.
COON: W.E., 65, of Seattle, Feb. 15.
DE LOS ANGELES: Juan, 80, of Woodinville, Feb. 14.

ELLISON: Elaine S., 66, of Seattle, Feb. 13.
ELLSWORTH: Doris B., 91, of Des Moines, Feb. 12.
FLEURY: Michael G., 33, of Seattle, Feb. 11.
FOLEY: Alice, 81, of Seattle, Feb. 14.
GAMBLE: Faith L., 73, of Kent, Feb. 13.
GARCIA: Dominga T., 80, of Seattle, Feb. 18.
GENTRY: Nettie, 77, of Des Moines, Feb. 11.
GREEN: Nancy L., 23, of Kent, Jan. 21.
HALEY: Alexander P.M., 70, of Seattle, Feb. 9.
HARRISON: Harold W., 77, of Renton, Feb. 13.
HAUGLAND: Sigfred E., 41, of Seattle, Feb. 16.
HERZOG: Marianne H., 56, of Bellevue, Feb. 14.
HOFSTAD: Mary L., 65, of Seattle, Feb. 14.
HUDSON: Wynona E., 84, of Mercer Island,

Feb. 14.
JOHNSON: Vera M., 60, of Kent, Feb. 14.
KAMIYA: Jon K., 44, of Kent, Feb. 17.
KRUMBACH: Lowell D., 80, of Kirkland, Feb. 13.
KUMMERFELDT: Waller J., 66, of Edmond, Feb. 15.
LARRIMER: Mary M., 73, of Kirkland, Feb. 13.
LEIER: Greta M., 74, of Seattle, Feb. 17.
LEO: Agnes V., 92, of Seattle, Feb. 14.
MACDONALD: Fredrick A., 74, of Tukwila, Feb. 13.
MARSHALL: William W., 91, of Mercer Island, Feb. 16.
MARTIN: Kathryn B., 76, of Seattle, Feb. 11.
MCNALLY: Vivian, 80, of Seattle, Feb. 16.
OLSEN: Ray L., 87, of Seattle, Feb. 14.
ROWE: Helen G., 95, of Des Moines, Feb. 14.

SANCHEZ: Cristobal S., 77, of Seattle, Feb. 16.
SCHURMAN: Esther M., 83, of Renton, Feb. 13.
SCHWARTZ: Oliver, 66, of Kent, Feb. 15.
SHARPE: Edgar A., 69, of Seattle, Feb. 15.
SLADEK: Richard O., 66, of Snohomish, Feb. 13.
STOOPS: Ricky A., 38, of Seattle, Feb. 13.
TRUEBLOOD: Kara O., 84, of Des Moines, Feb. 11.
URCH: Kathryn M., 76, of Redmond, Feb. 14.
VAUGHN: William M., 71, of Woodinville, Feb. 17.
WATT: Dolores J., 70, of Bellevue, Feb. 15.
WOJCIOWICZ: Bernice C., 72, of Seattle, Feb. 13.
WOOD: Julia V., 55, of Redmond, Feb. 15.

Funerals and Deaths

Paid Notices

Hilda M. ANDERSON

Age 87. Beloved wife of Victor, Seattle. Aunt of Karen Nelson, California. One sister, two brothers and several nieces and nephews in Sweden. Member of Kilpan No. 228 V.O.A. and Swedish Club. Cryptic services Tuesday, 11 a.m. at Washelli Cemetery directed by Wiggen and Sons. In lieu of flowers, memorials to American Heart Association.

Forrest W. MARRIOTT

Age 79, died February 19, 1992. Beloved father of Carol Britton and Robert Marriott. Two grandsons. At his request, no services. Cremation.
EVERGREEN-WASHELLI FUNERAL HOME

Robert Sanford MUTTER

Of Federal Way, died Feb. 18, 1992 at age 81. He was

Gill Otto OAK

Age 83, of Renton, died February 19, 1992. Services Saturday, February 22, 1992 at 1 p.m. at BONHEY-WATSON Washington Memorial 16445 Pacific Highway South

Alvin J. SPADAFORE

Died February 19, 1992. Arrangements pending.
BONHEY-WATSON

Joseph T. THOMAS, Lt. Col. U.S.A.F., retired

Age 67, of Edmonds, passed away February 20, 1992 at Swedish Hospital in Seattle. He was the youngest of ten children born to Mr. and Mrs. Lewis Thomas, Greensboro, North Carolina. He graduated from flying school in Naples, Alabama in 1943 and served 23 years in the Air Force Tactical Air Command as a fighter pilot. Following military retirement he was a program director of Northrop Corporation for

Citation	Rank(R)	Page(P)	Database	Mode
--- P.2d ----	R 1 OF 28	P 1 OF 16	WA-CS	P

(Cite as: 1992 WL 28858 (Wash.))

Judith HANSEN, individually and as Personal Representative of the Estate of
Keith Hansen. Petitioner,

v.

Robert Anthony FRIEND and Jane Doe Friend, husband and wife; Robert M. Petty
and Jane Doe Petty, husband and wife; and John and Jane Does 1-10, husbands
and wives. Respondents.

No. 57658-1.

Supreme Court of Washington.

En Banc.

Feb. 20, 1992.

Kargianis, Austin & Osborn, Bruce A. Wolf, Sim Osborn, Seattle, for
petitioner.

Murray, Dunham & Murray, Harold B. Field, Ronald L. Unger, Reed & McClure,
William Robert Hickman, Pamela A. Okano, Marilee C. Erickson, Seattle, for
respondents.

JOHNSON, Justice.

> *1 Fifteen-year-old Keith Hansen drowned in an alcohol-related incident.
The petitioner, Hansen's mother, seeks review of the Court of Appeals opinion
affirming the trial court's summary judgment dismissal of her wrongful death
suit. 59 Wash.App. 236, 797 P.2d 521. In her suit, she alleges the
respondents, two adult social hosts, negligently furnished liquor to her minor
son, causing his intoxication and death. The Court of Appeals held that social
hosts could not be held liable as a matter of law. We reverse the Court of
Appeals and remand the case to the trial court.

On April 24, 1987, 15-year-old Keith Hansen and 21-year-old Robert Friend
drank liquor at Friend's house in Kent, Washington. Hansen supplied the liquor
from his parents' house. The two drank through the night and into the morning.

When 21-year-old Robert Petty arrived at Friend's house that morning, both
Hansen and Friend were visibly intoxicated. Petty and Friend had planned to
leave that day for Lake Jameson in Eastern Washington for an overnight fishing
trip. When Petty arrived, he had with him two or three half-cases of beer.
Friend asked Petty if Hansen could go on the fishing trip with them, and Petty
agreed.

On the way to Lake Jameson, the three stopped at a store where Petty bought
another 6-pack of beer. The three arrived at Lake Jameson around 6:30 p.m.,
set up camp and had dinner. Petty stated in his deposition that he and Friend
had some beer at this time, but that Hansen did not. Friend's deposition
indicates, however, that Hansen may also have consumed alcohol at this time.
Clerk's Papers, at 64-65. Petty went to sleep around 9 p.m., after having two
or three beers. By this time, Friend had consumed from two to four beers.
Hansen's access to the beer does not appear to have been restricted in any way
at the campsite.

Around 11 p.m., Hansen and Friend entered an adjacent campsite. Both were visibly and severely intoxicated. They stumbled back toward their own campsite around 11:30 p.m. Alan Petty, Robert's brother, arrived at the lake about this time. Shortly after Alan Petty's arrival at the campsite, Hansen left once again, stating he was going to another campsite to steal a beer.

Sometime afterward, the campers at the adjacent campsite heard a loud splash. They then heard something or someone splashing in the water, going up and down gasping for air. They ran to Hansen's campsite to get help. Alan Petty and one of the other campers got in a boat and searched the lake, but they found nothing. Hansen's body floated to the surface of Lake Jameson about 2 weeks later.

(1) The petitioner contends Friend and Robert Petty negligently furnished liquor to her minor son. In order to prove actionable negligence, a plaintiff must establish: (1) the existence of a duty owed to the complaining party; (2) a breach of that duty; (3) a resulting injury; and (4) that the claimed breach was the proximate cause of the injury. *Pedroza v. Bryant*, 101 Wash.2d 226, 228, 677 P.2d 166 (1984). At issue here is whether Friend and Petty owed a duty of care to Hansen.

> *2 (2)(3) Whether a defendant owes a duty of care to the complaining party is a question of law. *Pedroza*, at 228, 677 P.2d 166. The standard of conduct required of a reasonable person may be prescribed by legislative enactment. *Young v. Caravan Corp.*, 99 Wash.2d 655, 659, 663 P.2d 834, 672 P.2d 1267 (1983) (citing *W. Prosser, Torts* s 36 (4th ed. 1971)). The >petitioner argues RCW 66.44.270(1) provides the relevant duty of care in this case. This statute provides, in part, that:

It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. (FN1)

The Legislature has thus established that both commercial hosts and social hosts commit a criminal act if they furnish liquor to a minor. See also RCW 66.44.320 (also prohibiting the sale of liquor to any minor). This court has held that commercial hosts can be held liable in a civil cause of action for breaching their statutory duty not to sell liquor to minors. See *Young*, at 660, 663 P.2d 834. We are thus faced with the question of whether RCW >66.44.270(1), which makes it a criminal act for "any person" (FN2) to furnish liquor to a minor, also defines the standard of conduct required of a reasonable person in a social host position.

The Washington courts have adopted the 4-part test from the Restatement (Second) of Torts s 286 (1965) for determining when the court may adopt a legislative enactment as a reasonable person's standard of conduct. *Young*, at 659-60, 663 P.2d 834.

The Restatement indicates:

The court may adopt as the standard of conduct of a reasonable (person) the requirements of a legislative enactment ... whose purpose is found to be exclusively or in part

(a) to protect a class of persons which includes the one whose interest is invaded, and

(b) to protect the particular interest which is invaded, and

(c) to protect that interest against the kind of harm which has resulted, and

(d) to protect that interest against the particular hazard from which the harm results.

Restatement (Second) of Torts s 286 (1965).

The first question under this test is whether Hansen was a member of the class protected under the statute. RCW 66.44.270(1) prohibits persons from furnishing liquor to a minor. The statute defines "minor" as any person under the age of 21 years. RCW 66.44.270(1). A rational basis exists for setting the legal drinking age at 21 years. *Houser v. State*, 85 Wash.2d 803, 808, 340 P.2d 412 (1975), overruled on other grounds in *State v. Smith*, 93 Wash.2d 329, 336, 610 P.2d 869, cert. denied, 449 U.S. 873, 101 S.Ct. 213, 66 L.Ed.2d 93 (1980). Hansen was 15 years old when the incident occurred and therefore was a member of the protected class.

The second question under the Restatement is whether the statute protects the particular interest which was invaded. The purpose behind the Washington State Liquor Act is to protect "the welfare, health, peace, morals, and safety of the people of the state". RCW 66.08.010. RCW 66.44.270(1) protects a minor's health and safety interest from the minor's own inability to drink responsibly. The Legislature believed that persons under 21 years of age are neither physically nor mentally equipped to handle the consumption of intoxicating liquor. *Young*, 99 Wash.2d at 660, 663 P.2d 834 (citing *Callan v. O'Neil*, 20 Wash.App. 32, 39, 579 P.2d 890 (1978)). Hansen's health and safety interest was invaded by the effects of alcohol. The statute was thus designed to protect the particular interest which was invaded.

> *3 The third question is whether the statute protects a minor's health and safety interest against the kind of harm which resulted. RCW 66.44.270(1)'S prohibition against giving alcohol to minors protects a minor's interest against physical harm which could result from his or her abuse of alcohol. Hansen suffered physical harm in this case, allegedly as a result of his intoxication. The statute therefore protects against the kind of harm suffered here.

The final question is whether the purpose of the statute is to protect a minor's health and safety interest from the particular hazard from which the harm resulted. The particular hazard the statute regulates is alcohol in the hands of minors. The statute was therefore designed to protect Hansen from the particular hazard at issue.

The statute thus meets the Restatement's 4-part test for adoption as a reasonable person's standard of conduct. The respondents argue, however, that *Burkhart v. Harrod*, 110 Wash.2d 381, 755 P.2d 759 (1988) should still bar a cause of action in this case. In *Burkhart*, this court held that social hosts who served liquor to an adult guest could not be sued for injuries resulting from the guest's intoxication.

This court reasoned in *Burkhart* that the only indication of legislative intent in the area of social host liability was the disinclination to impose such liability due to the fact that the Legislature repealed the dramshop act in 1955. (FN3) *Burkhart*, at 387-88, 755 P.2d 759. In this case, however, the Legislature has acted to prohibit both social hosts and commercial hosts from furnishing liquor to minors. The Legislature has enacted criminal penalties on "any person" who gives, sells or otherwise furnishes liquor to minors.

(4)(5) This case involves furnishing liquor to a minor, not an adult, and is thus distinguishable from *Burkhart*. The Legislature established that persons under 21 years of age are a protected class under the Washington State Liquor Act, RCW Title 66. *Young*, 99 Wash.2d at 660, 663 P.2d 834 (citing *Callan v. O'Neil*, supra). We therefore conclude that RCW 66.44.270(1) imposes a duty

of care on social hosts not to serve liquor to minors. A minor may maintain an action against a social host where this duty is breached, and the injuries sustained by the minor are proximately caused by this breach.

(6) If a social host breaches his or her duty not to furnish liquor to a minor, the trier of fact may consider the breach as evidence of negligence, rather than as negligence per se. See RCW 5.40.050. The Legislature has abolished the common law doctrine of negligence per se for cases filed on or after August 1, 1986. See RCW 5.40.050; (FN4) Laws of 1986, ch. 305, s 910, p. 1367. Because the petitioner filed this suit in 1988, the negligence per se doctrine does not apply.

(7)(8) The practical effect of RCW 5.40.050 is:

to eliminate what might be called the "strict liability" character of statutory violations under the old negligence per se doctrine, (and) to allow jury to weigh the violation, along with other relevant factors, in reaching its ultimate determination of liability.

*4 Doss v. ITT Rayonier, Inc., 60 Wash.App. 125, 129-30, 803 P.2d 4, review denied, 116 Wash.2d 1034, 813 P.2d 583 (1991). In weighing the relevant factors, the trier of fact may find a statutory violation is not negligence where the violation is due to some cause beyond the violator's control, and ordinary care could not have guarded against the violation. See

6 Wash.Prac., WPI 60.03 (3d ed. 1989); Young, 99 Wash.2d at 661, 663 P.2d 834 (interpreting the above language as an exception under the former negligence per se standard) (citing Brotherton v. Day & Night Fuel Co., 192 Wash. 362, 369-70, 73 P.2d 788 (1937)). Whether or not ordinary care could have guarded against the statutory violations alleged here is a question for the trier of fact.

(9)(10) Petty argues that a social host's duty not to furnish liquor to a minor should be limited only to minors who subsequently drive while intoxicated. We note, however, that the concept of foreseeability determines the scope of the duty owed. Christen v. Lee, 113 Wash.2d 479, 492, 780 P.2d 1307 (1989). Foreseeability is normally an issue for the trier of fact. Christen, at 492, 780 P.2d 1307. In order to establish foreseeability:

the harm sustained must be reasonably perceived as being within the general field of danger covered by the specific duty owed by the defendant.

Christen, at 492, 780 P.2d 1307 (quoting Maltman v. Sauer, 84 Wash.2d 975, 981, 530 P.2d 254 (1975)). Many minors do not drive, as they are ineligible to obtain drivers' licenses until the age of 16 years. RCW 46.20.031(1). It therefore remains a question for the trier of fact whether the harm 15-year-old Hansen sustained was foreseeable.

(11)(12) Although a minor may maintain a suit against a social host, two factors may limit the extent of a minor's recovery. First, minors can be found contributorily negligent for violating RCW 66.44.270(2) which provides: "It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor." In Young, this court held that the 19-year-old decedent who consumed alcohol in a commercial host setting was contributorily negligent as a matter of law. Young, 99 Wash.2d at 661-62, 663 P.2d 834. The issue of contributory negligence for minors from 6 to 16 years of age, however, is generally a question for the trier of fact. Bauman v. Crawford, 104 Wash.2d 241, 244, 704 P.2d 1181 (1985). Therefore, whether 15-year-old Hansen was contributorily negligent in this case is an issue for the trier of fact.

(13) Second, a minor's recovery may be limited by RCW 5.40.060 which provides that:

It is a complete defense to an action for damages for personal injury or wrongful death that the person injured or killed was under the influence of intoxicating liquor ... at the time of the occurrence causing the injury or death and that such condition was a proximate cause of the injury or death and the trier of fact finds such person to have been more than fifty percent at fault....

> *5 A minor is thus barred by statute from receiving damages from a social host where the trier of fact finds the minor more than 50 percent at fault.

(14)(15)(16) Even in view of social host liability for furnishing liquor to minors, Friend and Petty both argue that the trial court's summary judgment in their favor is still appropriate. A court will grant summary judgment only when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Wilson v. Steinbach*, 98 Wash.2d 434, 437, 656 P.2d 1030 (1982). The court must consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party. *Wilson*, at 437, 656 P.2d 1030. The motion will be granted only if reasonable persons could reach only one conclusion from all of the evidence. *Wilson*, at 437, 656 P.2d 1030.

Friend argues summary judgment in his favor is appropriate because he did not give or otherwise supply liquor to Hansen. However, it is unclear from the record whether the liquor at the campsite was Petty's or both Friend's and Petty's. Questions of material fact remain in Friend's case. Summary judgment as to Friend is therefore inappropriate.

Petty argues summary judgment in his favor is appropriate for two reasons. First, he argues the record reflects he did not give any liquor to Hansen; rather, Hansen merely took the liquor without Petty's knowledge. Second, Petty argues the record does not reflect he knew or had reason to know Hansen was a minor. Petty failed to raise either of these arguments before the trial court. An appellate court will generally not consider arguments raised for the first time on appeal, and we decline to do so here. See *Smith v. Shannon*, 100 Wash.2d 26, 37, 666 P.2d 351 (1983). Summary judgment is inappropriate as to both Petty and Friend.

> In conclusion, under RCW 66.44.270(1), it is a criminal act for any person, including a social host, to furnish liquor to a minor. Pursuant to this statute, social hosts owe a duty to exercise ordinary care not to furnish liquor to a minor. A minor may maintain an action against a social host where this duty is breached, and the injuries sustained by the minor are proximately caused by this breach. The minor's recovery, however, may be limited by a finding of contributory negligence. Moreover, if the trier of fact finds the minor more than 50 percent at fault, the minor's recovery is entirely barred by statute.

Because questions of material fact remain in this case as to both respondents, we remand the case to the trial court for proceedings consistent with this opinion.

UTTER, BRACHTENBACH, ANDERSEN and SMITH, JJ., concur.

DOLLIVER, Justice (dissenting).

Like Julia, in *Burkhart v. Harrod*, 110 Wash.2d 381, 755 P.2d 759 (1988), the court whispered, "I will ne'er consent". Now, like Julia, it has consented.

As is so many times the case in contemporary society, the court chooses to use as its vehicle for significant doctrinal change the presumed welfare of persons under the age of majority. In doing so, the court completely disconnects itself from its previous analysis of the duty of care for a social host who serves alcoholic beverages.

> *6 The underpinnings for Burkhart, which rested upon the belief that (1) the Legislature had effectively preempted the field relative to all aspects of alcoholic beverages (Burkhart, at 390, 755 P.2d 759 (quoting *Settlemyer v. Wilmington Veterans Post 49, Am. Legion, Inc.*, 11 Ohio St.3d 123, 127, 464 N.E.2d 521 (1984))), and (2) the "judiciary is ill equipped" to impose social host liability, have been scuttled. Burkhart, 110 Wash.2d at 388, 755 P.2d 759. While the analysis of the majority moves briskly to the point and suggests considerable authority as it imposes a duty on a social host relative to minors, it is idle to infer the Legislature in enacting RCW >66.44.270(1) (Laws of 1933, 1st Ex.Sess., ch. 62, s 37(1), p. 193) somehow thought it was imposing a duty of care, actionable in tort, for a social host who serves liquor to minors; or that nearly 60 years hence that duty would be discovered by this court.

I have consistently held to the belief that without legislative mandate no tort action should lie against a host, either commercial (*Dickinson v. Edwards*, 105 Wash.2d 457, 482, 486, 716 P.2d 814 (1986) (Callow, J., dissenting; Durham, J., dissenting)) or social (*Burkhart v. Harrod*, supra) (but see *Young v. Caravan Corp.*, 99 Wash.2d 655, 663 P.2d 834, 672 P.2d 1267 (1983)), and continue to do so. Nothing which has occurred in the months since Burkhart persuades me otherwise. Furthermore, the Legislature has failed to act. Nonetheless, the majority, apparently transfixed by the facts before it and harboring a belief that "youth must be served", has determined it can and, indeed, should "take on a more creative role in usurping powers of (the Legislature)." Burkhart, 110 Wash.2d at 390, 755 P.2d 759. This is an odd way to maintain continuity in the law and surely does little to engender respect.

Thus, given the action of the court today, I do not believe it can any longer, with integrity, maintain its previous position. To do so would be a transparent charade. Although I dissent here, it seems more than likely that in the next case involving a social host the court will declare the doctrine of social host immunity has ceased to exist in this state and hold there is a duty by any social host toward those to whom the host has furnished alcoholic beverages. *Christen v. Lee*, 113 Wash.2d 479, 510, 780 P.2d 1307 (1989) (Utter, J., concurring in part, dissenting in part); Burkhart, 110 Wash.2d at 391, 755 P.2d 759 (Utter, J., concurring); Recent Cases, *Negligence--Social Host Liability--Social Hosts Not Liable for Accidents Caused by Intoxicated Guests.--Burkhart v. Harrod*, 110 Wash.2d 381, 755 P.2d 759 (1988), 102 Harv.L.Rev. 349 (1988).

DORE, C.J., and GUY and DURHAM, JJ., concur.

FN1. A previous version of this statute was in effect at the time of Hansen's death. See Laws of 1955, ch. 70, s 2. The previous version, like the present version, prohibited giving or otherwise supplying liquor to minors. As such, the two versions of the statute do not differ materially for the purpose of our analysis.

- > FN2. RCW 66.44.270 provides for the following narrow exceptions where minors may be given liquor, none of which apply in this case:
- "(3) This section does not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian....
- "(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.
- "(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service."

FN3. The dramshop act formerly provided a cause of action to anyone injured by an intoxicated person against anyone who sold or gave the liquor to the intoxicated person. See Laws of 1905, ch. 62, s 1, p. 120.

FN4. RCW 5.40.050 allows for the following limited exceptions where the negligence per se doctrine continues to apply: "any breach of duty as provided by statute, ordinance, or administrative rule relating to electrical fire safety, the use of smoke alarms, or driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se."

Wash., 1992.

Hansen v. Friend

--- P.2d ----, 1992 WL 28858 (Wash.)

END OF DOCUMENT

West's
REVISED CODE
OF
WASHINGTON ANNOTATED

*Under Official
Allocation and Numbering*

Titles 66 to 67

1991
Cumulative Annual Pocket Part

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MAR 01 1991

Includes laws through the 1990 Second Extraordinary Session
--

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Historical and Statutory Notes Intent—Laws 1987, ch. 202: See Historical Note following § 2.04.190.
1987 Legislation
Laws 1987, ch. 202, § 223, throughout the section, substituted "deputy" for "constable".

CHAPTER 66.44—ENFORCEMENT—PENALTIES

Section
66.44.328. Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty.
66.44.365. Juvenile driving privileges—Alcohol or drug violations.
66.44.800. Compliance by Washington wine commission.

66.44.010. Local officers to enforce law—Authority of board—Liquor enforcement officers

(1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power to arrest, without a warrant any person or persons found in the act of violating any of the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor.

Amended by Laws 1987, ch. 202, § 224.

Historical and Statutory Notes Intent—Laws 1987, ch. 202: See Historical Note following § 2.04.190.
1987 Legislation
Laws 1987, ch. 202, § 224, near the end of subsec. (1), substituted "district court" for "justice court".

66.44.180. General penalties—Jurisdiction for violations

Every person guilty of a violation of this title for which no penalty has been specifically provided shall be liable, on conviction, for a first offense to a penalty of not more than five hundred dollars, or to imprisonment for not more than two months, or both; for a second offense to imprisonment for not more than six months; and for a third or subsequent offense to imprisonment for not more than one year. If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor.

Amended by Laws 1987, ch. 202, § 225.

Historical and Statutory Notes
1987 Legislation
Laws 1987, ch. 202, § 225, near the beginning of the second paragraph, substituted "district judge and municipal judge" for "justice of the peace and magistrate".
Intent—Laws 1987, ch. 202: See Historical Note following § 2.04.190.

66.44.200. Sales to persons apparently under the influence of liquor

Notes of Decisions
Negligence per se 3
Obviously intoxicated 2

Purchase v. Meyer (1987) 108 Wash.2d 220, 737 P.2d 661.

Exceptions to general rule of nonliability for furnishing intoxicants to able-bodied persons exist for obviously intoxicated persons, persons in state of helplessness, or persons in special relationship to furnisher of intoxicants. Rhea v. Grandview School Dist. No. JT 116-200 (1985) 39 Wash.App. 557, 694 P.2d 666.

3. Negligence per se

Liquor establishment was not negligent per se in violating West's RCWA 66.44.200 and 66.44.320 by furnishing intoxicating liquor to intoxicated person who was also minor, for purposes of assault victim's action against liquor establishment based upon intoxicated patron's assault of victim; prevention of driver error was obvious and legitimate purpose behind legislation and thus, statutes were not intended to protect against particular hazard of subsequent criminal assault by patron. Christen v. Lee, Wash.1989, 119 Wash.2d 479, 780 P.2d 1307.

2. Obviously intoxicated

Results of alcohol breath test taken hours after minor was served alcoholic beverages at restaurant and pharmacologist's affidavit which, based on breath test results, purported to relate minor's blood alcohol content back to time minor was last served at restaurant did not show that minor appeared "obviously intoxicated," for purpose of this section, when she was served at restaurant. Purchase v. Meyer (1987) 108 Wash.2d 220, 737 P.2d 661.

Investigating officer's testimony as to how minor appeared to him at scene of motor vehicle accident an hour or two after minor was last served alcohol at restaurant did not show that minor appeared "obviously intoxicated" to those around her when she was served liquor at restaurant, for purpose of this sec-

66.44.270. Furnishing liquor to minors—Possession, use—Exceptions

(1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control.

(2) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor.

(3) This section does not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter 66.24 RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years.

Amended by Laws 1987, ch. 458, § 3.

Historical and Statutory Notes

1987 Legislation

Laws 1987, ch. 458, § 3, rewrote the section.

Severability—Laws 1987, ch. 458: See Historical Note following § 48.21.160.

Notes of Decisions

Consumption 2.6

Possession 2.5

2. In general

State v. Hornaday (1984) 38 Wash. App. 431, 685 P.2d 653 [main volume] reversed 105 Wash.2d 120, 713 P.2d 71.

This section does not protect third parties injured by intoxicated minors; rather, section protects minors from injuries to themselves stemming from their alcohol consumption. Mills v. Estate of Schwartz (1986) 44 Wash.App. 578, 722 P.2d 1363.

2.5. Possession

Once alcohol within person's system, power of person to control, possess, use or dispose of is at an end; "possession" of liquor does not include liquor which has been assimilated by the body. State v. Hornaday (1986) 105 Wash.2d 120, 713 P.2d 71.

2.6. Consumption

Alcohol which has already been swallowed and is in process of being assimilated into person's body is not being consumed for purposes of this section. State v. Hornaday (1986) 105 Wash.2d 120, 713 P.2d 71.

5. Negligence per se

Even if county violated statute [§ 66.44.270] making it unlawful for anyone to permit any person under age of 21 to consume liquor on premises or any premises under his control, motorcyclist who was struck by vehicle driven by minor who allegedly became intoxicated in county park and who drove out of park at direction of park official was not member of class of persons statute was designed to protect and, therefore, violation of statute was not actionable by motorcyclist under theory of negligence per se. Hostetler v. Ward (1985) 41 Wash.App. 343, 704 P.2d 1193.

County in its role as property owner did not have sufficient control over activities in park to justify finding that it permitted minor to consume liquor on its premises and, therefore, county could not be held liable for injuries sustained by motorcyclist who was struck by vehicle driven by minor after minor allegedly became intoxicated in park and had been directed to leave by park official. Hostetler v. Ward (1985) 41 Wash.App. 343, 704 P.2d 1193.

Decedent, who was killed when automobile driven by minor was involved in accident, was not member of class protected by this section, for purpose of minor's estate's contribution claim against deceased victim's employer, which had held Christmas party which decedent and minor had attended, and at which minor had consumed alcoholic beverages, so that employer could not be

held liable for decedent's death on negligence per se theory based on its alleged violation of section and, therefore, since no joint and several liability could exist between employer and minor's estate, minor's estate failed to state claim for contribution. Mills v. Estate of Schwartz (1986) 44 Wash.App. 578, 722 P.2d 1363.

66.44.291. Minor purchasing or attempting to purchase liquor—Penalty against persons between ages of eighteen and twenty, inclusive

Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of RCW 66.44.290 is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service.

Amended by Laws 1987, ch. 101, § 1.

Historical and Statutory Notes

1987 Legislation

Laws 1987, ch. 101, § 1, rewrote the section.

66.44.316. Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment

It is lawful for:

(1) Professional musicians, professional disc jockeys, or professional sound or lighting technicians actively engaged in support of professional musicians or professional disc jockeys, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians, disc jockeys, or sound or lighting technicians;

(2) Persons eighteen years of age and older performing janitorial services to enter and remain on premises licensed under the provisions of Title 66 RCW when the premises are closed but only during and in the course of their performance of janitorial services;

(3) Employees of amusement device companies, which employees are eighteen years of age or older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment for the purpose of installing, maintaining, repairing, or removing an amusement device. For the purposes of this section amusement device means coin-operated video games, pinball machines, juke boxes, or other similar devices; and

(4) Security and law enforcement officers, and fire fighters eighteen years of age or older to enter and to remain in any premises licensed under Title 66 RCW, but only during and in the course of their official duties and only if they are not the direct employees of the licensee. However, the application of the [this] subsection to security officers is limited to casual, isolated incidents arising in the course of their duties and does not extend to continuous or frequent entering or remaining in any licensed premises.

HB

440

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 3, 1992
 Date of Committee Action: 3-2-92

FURTHER REFERRALS:

Finance

The JUDICIARY Committee considered:

HB 440

HOUSE BILL NO. 440

SEX OFFENDER REGISTRATION

"An Act relating to registration and community notification of sex offenders and amending Alaska Rule of Criminal Procedure 32(b)."

RECOMMENDATIONS:

be replaced with CS HB 440 (JUD) the same title
 a new title

have attached amendments(s)

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 Law

fiscal note(s) _____

zero fiscal note Corrections, Admin x 2,

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>David D. Donley</i>	X				
<i>Kevin Padgham</i>	✓				
<i>Mike Miller</i>	✓				
<i>Larry Martin</i>	✓				
<i>Mark Stanley</i>	X				
<i>M. J. Puchner</i>	-				

David D. Donley

 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. H.B. 440

Revision Date: _____ Department Affected: Department of Corrections
 Title: "An Act relating to registra- BRU: Statewide Operations
tion...of sex offenders..." Component: Various
 Sponsor: Rep. Ulmer
 Requestor: House Judiciary COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached fiscal analysis.

Prepared By: *Diane Schenker* Diane Schenker, Legislative Liaison Phone: 465-3376
 Division: Office of the Commissioner Date: 02/24/92
 Approved by Commissioner: *Lloyd Hames* Lloyd Hames, Commissioner
 Agency: Department of Corrections Date: 02/24/92

CONTINUATION OF FISCAL ANALYSIS

BILL: HB 440 "An Act relating to registration and community notification of sex offenders and amending Alaska Rule of Criminal Procedure 32(b)."

The bill requires the Department of Corrections to provide notification of a sex offender's release, parole, community placement, work release placement, furlough, or escape to the police in the community in which the offender will reside and to the Alaska State Trooper post nearest to where the offender will reside. The notice must be given at least 10 days prior to release. In the case of escape, notice must be given immediately.

The bill also requires the Department of Corrections to provide written notification to sex offenders of the registration requirements at the time of release from confinement, including receipt and retention of a signed acknowledgement. The Department would also be required to give written notice of the registration requirements to a sex offender placed under the Department's authority through the Interstate Corrections Compact.

Projected release dates of sex offenders currently incarcerated are as follows:

<u>Time Period</u>	<u>Number of Sex Offenders Released</u>
01/01/92 - 12/31/92	52
" 93 - " 93	100
" 94 - " 94	50
" 95 - " 95	54
" 96 - " 96	37

The number of sex offender cases under the Interstate Compact are as follows:

01/01/90 - 12/31/90	38
" 91 - " 91	27

Based on an average of the above-listed cases, approximately 51 sex offenders would require notification per year, or slightly over four per month. This duty can be absorbed without additional staff, since various paperwork must be completed at the time of release for each offender anyway. These sections will require revision of Department Policies and Procedures. This task can be absorbed by the staff who are currently assigned to revise such policies on an on-going basis. Therefor, no fiscal impact is expected due to these requirements.

HB 440 CONTINUATION OF FISCAL ANALYSIS

The bill would also make it a Class B Misdemeanor for a sex offender to knowingly fail to register as required. Information regarding a similar sex offender registration requirement in Washington state suggests that about 76% of the sex offenders comply with the registration requirement. Assuming that approximately 50 sex offenders are released and required to register each year, a 24% failure rate would make 12 offenders eligible for a Class B misdemeanor each year.

In 1983 the Alaska Judicial Council studied a sample of 1795 misdemeanant cases to determine sentencing patterns. Approximately 29% were sentenced to some incarceration, other than concurrent sentences involving other charges. This would suggest that only 30% of 12 offenders would be likely to be sentenced to incarceration for this offense, or less than four offenders per year. Information on the length of sentence is not available. It is assumed that four misdemeanants per year requiring some period of incarceration would not have significant fiscal impact on the Department and could probably be absorbed through the use of existing community residential center beds.

However, since this bill would criminalize a behavior which is currently not illegal in Alaska, it must be recognized that the above estimates are speculative. Should the noncompliance rates be greater in Alaska, or should sentencing for these Class B misdemeanors result in frequent or lengthy (up to one year) incarcerations, one long term effect of this bill may be to accelerate the pace at which the Department of Corrections moves toward the need to expand prison space through construction of new facilities, with associated increases in operating costs.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 440

Revision Date: _____

Department Affected: Administration

Title: An Act relating to registration and community notification of sex offenders and amending Alaska Rule of Criminal Procedure 32(b).

BRU: Office of Public Advocacy

Sponsor: Ulmer

Component: Office of Public Advocacy

Requestor: House Judiciary

COMPONENT SERIAL NO.

		4	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	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.)

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

Phone: 274-1684
Date: February 10, 1992

Approved by Commissioner: Nancy Bear Usual
Agency: Administration

Date: 2/21/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 440

Revision Date: _____

Department Affected: Administration

Title: Sex Offender Registration

BRU: Public Defender

Sponsor: Ulmer

Component: Public Defender

Requestor: House Judiciary

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	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.)

Prepared by: Kevin Brooks
Division: Administrative Services

Phone: 465-2277
Date: February 21, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Administration

Date: 2/21/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 440 (IUD)

Revision Date: February 28, 1992
Title: "...registration by and community notification of sex offenders..."
Sponsor: Representative Ulmer
Requestor: House Judiciary Committee

Department Affected: Department of Law
BRU: Prosecution, Legal Services
Component: Prosecution - All Legal Services - Operations
COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91, 93

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: February 28, 1992
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law Date: February 28, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 440 (JUD) 2/21/92 WORK DRAFT

The Judiciary Committee work draft substitute for HB 440, dated February 21, 1992, eliminates the primary concern expressed in the Department of Law's February 24 fiscal note, because it does away with the requirement that sex offenders petition the court to be relieved of the duty to register. The substitute version of the bill sets term-certain periods that a sex offender must be registered, instead. In the case of a sex offender's unconditional discharge for a conviction of a sex offense for an unclassified, class A or class B felony, the period would be 10 years. The registration period for a person convicted of a lesser sex offense would be 5 years, after a sex offender's unconditional discharge. This change eliminates the requirement for district attorneys to serve as respondents for petitions to terminate registration, as this process would no longer be required. Consequently, there will not be a fiscal impact for the Department of Law.

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

February 22, 1992

To: All Members, House Judiciary Committee

From: Representative Fran Ulmer

Subject: HB 440, "An Act relating to registration by and community notification of sex offenders and amending Alaska Rules of Criminal Procedure 11(c) and 32(b)."

This memorandum and attachments are to provide you with information about HB 440, which requires that convicted sex offenders register with the Alaska State Trooper post nearest their place of residence and authorizes the release of that information to agencies and to the public upon request. This bill will enhance protection of the public by making the identities of known, convicted sex offenders accessible, as well as assisting law enforcement in tracking sex offenders as they move from community to community.

We should be alarmed by the rates of sexual assault and child sexual abuse in our state. Alaska leads the nation in the rate of child sexual abuse and is the second highest in sexual assault! And the rates show no signs of abating. We must act in every way that we can to stop the epidemic, to provide our citizens, our children, with better protection.

This bill is simple and straight forward. It makes information available to prospective employers, volunteer coordinators and other persons who are concerned about screening people who may be inappropriate for work with children or other vulnerable individuals. Although technically that information is already publicly available, as a practical matter it is extremely difficult to obtain. This bill will allow parents seeking child care to learn the identities of the known sex offenders in the area, and the owner of the local day care center to screen out known sex offenders from employment. It will enable Scouting officials and Little League directors to evaluate individuals who volunteer to work with children. Hopefully, as a result we will see less sexual abuse in Alaska.

I have received support on this bill from people across the state, many victims or parents of victims themselves. There is support from the Alaska Peace Officers Association, the Anchorage Police Department's Crimes Against Children Unit, victims rights groups and day care operators. I assure you, your support of this bill will be greatly appreciated.

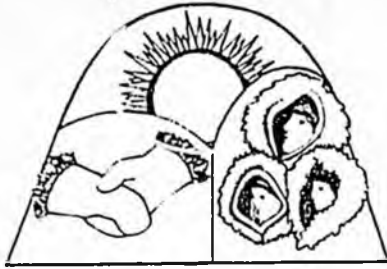
PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: DEBORAH BLOOM
TITLE:
ADDRESS: BOX 231273
CITY: ANCHORAGE ZIP: 99523
PHONE: 344-9638
BILL NO: HB 440
SUBJECT: SEX OFFENDER REGISTRATION
MESSAGE: AS A SEXUAL ASSAULT VICTIM, I BEG YOU PLEASE PASS THIS BILL. /JSM

POMID: 03110311
DATE: 92/02/05
TIME: 11:03:11
LIONAME: ANCHORAGE LIO

COPIES:	<u>REPRESENTATIVES</u>	<u>REPRESENTATIVES</u>	<u>SENATORS</u>
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	ZAHACKI		ZHAROFF



Bering Sea Women's Group

February 18, 1992

Representative Fran Ulmer
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Fran,

Thank you for introducing HB 440 to the Alaska State Legislature! As a professional who has worked for many years with victims of sexual assault, both children and adults, I applaud your efforts to reduce the risk to Alaskans. You are certainly correct about behavior patterns of sex offenders and we all know that many people come to Alaska to escape constraints imposed on them in the Lower 48 states, making Alaska a place where offenders may feel free to migrate. Not only does this bill offer us all some extra protection, it also makes a statement that we will not tolerate the abuse of our people.

As Executive Director of the Bering Sea Women's Group, as a Social Worker and as a private citizen, you have my full support for the passage of this piece of legislation.

If I can be of any assistance, please do not hesitate to contact me.

Sincerely,

Candace L. Brower.

Candace L. Brower, LCSW
Executive Director

February 8, 1992

Representative Fran Ulmer
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

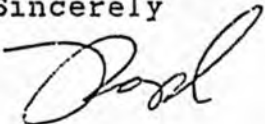
Dear Fran

I am writing in support of H.B. 440. Research tells us that sexual offenders repeat their behavior, victimizing others wherever they go. We also know that curing them is impossible and all we can do is monitor their behavior which reduces the risk of repeat acts.

This bill would help us get one step closer to monitoring or forcing these individuals to allow us to monitor their behavior and whereabouts.

Please pass this legislation on behalf of potential victims, many of whom cannot protect themselves at all.

Sincerely



Floyd H. Richmond
P. O. Box 5438
Ketchikan, Alaska 99901

cc: Representative Cheri Davis
Representative Robin Taylor
Senator Lloyd Jones



Abused Women's Aid in Crisis, Inc.
100 W. 13TH AVENUE, ANCHORAGE, AK 99501 • (907) 279-9581

Shelter and counseling
services for women and children

Heather Flynn
Executive Director

Counseling services
for men



Abused Women's Aid in Crisis, Inc.

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

24 February, 1992

Representative Fran Ulmer
Pouch V
Juneau, AK 99822

Dear Fran,

AWAIC would like to lend its support to your efforts to provide protection from sex offenders (HB 440).

It has come to our attention that more than 200 sex offenders will be released from jail in the next few years. While there is a sex offender program available to prisoners, there is no clear evidence as to its effectiveness and, further, because it is voluntary, there is no guarantee that offenders will have attended the program. The public, particularly potential victims, have little protection from sex offenders.

It is our experience that many victims of domestic violence, both adult women and children, are abused by men who have been sexually abused as children and grow up to take out their anger on women and children.

Further, like most non-profits, we rely heavily on volunteers. We need an easily accessible, inexpensive method of identifying persons who are clearly not acceptable volunteers.

Thank you for your efforts on HB 440, and your commitment to AWAIC.

Sincerely,

A handwritten signature in cursive script that reads "Heather".



A United Way Agency

895 West 12th Street, Apt. 420
Juneau, AK 99801-1572

February 10, 1992

Honorable Fran Ulmer
Alaska State Legislature
State Capitol, Room 421
Juneau, AK 99811

Dear Fran:

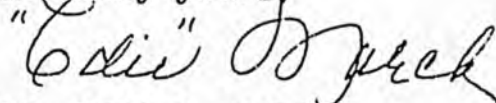
Enclosed are two copies of the article I mentioned to you on the telephone this evening.

As I mentioned, when this article came out I contacted the offices of the chairpersons and co-chairpersons of the Judiciary and Health, Education and Social Services committees of both Houses.

I was pleased to learn that all said they would be interested in the article and wanted to know how to obtain copies. I do know that Senator Sturgulewski received hers when I received mine.

You will be appalled at what you read and I sincerely hope that legislation will be forthcoming regarding incest and child molestation. TOUGH AND SEVERE LEGISLATION!!

Sincerely yours,

A handwritten signature in cursive script that reads "Edna C. March". The signature is written in dark ink and is positioned above the typed name.

MRS. EDNA C. MARCH

Enclosures 2

February 13, 1992

House Finance & Judiciary Committees
Alaska State Legislature
P.O. box V (MS3100)
Juneau, Alaska 99811

Re: Registration For Sex Offenders

Dear Representatives:

You are being asked to once again consider a bill that will require convicted sex offenders to register with law enforcement authorities. I say, once again, because this bill has been previously considered by the Legislature and the last time it was before you the House Counsel reported that it would, in all probability, be a violation of the Alaska Constitution's explicit guarantee of the right to privacy. House Counsel also found that there may be other violations subjecting the Bill to Constitutional Challenge.

You must remember that all persons convicted of a crime, when released from supervision, have their civil rights restored. Since there is a potential, in fact a likelihood, of a violation of fundamental rights guaranteed by the Alaska Constitution, passage of this Bill must not be equated with the recent Bill in Washington State. The Washington State Constitution does not have an explicit guarantee of a right to privacy, as does Alaska's. Also since fundamental rights are at issue, you must first consider whether there is a less restrictive alternative to accomplish your goal intended by this legislation. And, there is a less restrictive alternative. This less restrictive alternative will limit the infringement of rights and reduce the fiscal impact of the Bill.

Hopefully, your asserted goal is to eliminate sex offenders from certain occupations. If your goal is to simply keep tabs on these offenders and to keep them under supervision then the Bill is punitive in nature and gives rise to an attack as being cruel and unusual punishment and in violation of the prohibition on ex post facto laws. Since the valid goal is occupational and regulatory, you can accomplish the same goals by requiring employers, in certain job fields, to ask this question on an employment application. Make it a Class A misdemeanor or Class C felony for an applicant to lie on this application. This can be accomplished by amendments to Title 23, Labor.

House Finance & Judiciary Committee

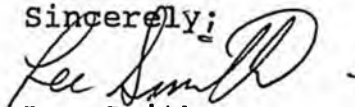
February 13, 1992

Next, require these employers to provide the Social Security Number and Name of the Applicant to Public Safety who will be required to run the name through NCIC, the Crime Information System. This will catch the applicants who lie on the application and protect those employers. The Alaska Supreme Court would more likely than not uphold such a provision, even in light of its potential infringement of fundamental rights, because it would be protecting an important governmental interest. Requiring all offenders to register, however, may be subject to attack, because there are clearly less restrictive alternatives available. When less restrictive alternatives are available to accomplish the goal intended, the infringement will not stand up against constitutional attack. Especially where fundamental rights are at stake.

If you require registration of all offenders, the fiscal impact will be considerable. While the fiscal impact of only screening applicants for certain professions will reduce the amount required to administer the Law. Passage of the Bill, as it now stands, will also cause a fiscal impact in the money spent to defend against the many law suits that will be filed and the appeals thereof. The State will be required to defend against these suits and even if the plaintiffs don't prevail, the State will not be able to recover their attorneys' fees. Attorneys' fees are not available in Civil Rights Cases unless the case is deemed to be frivolous by the Courts.

This is an election year and surely you wish to show the voters that you are tough on crime. Passing legislation that is likely to be overturned on constitutional grounds, however, is not the manner in which to appease your voters. The voters are also looking to you to be fiscally responsible during this and future sessions. Show the voters that you're both tough on crime and fiscally responsible. House counsel pointed out the last time you considered this Bill that it would probably be subject to constitutional attack. Nothing has changed from that time -- the constitution remains the same. Either amend or vote down the Bill requiring registration of all persons convicted of sexual offenses.

Sincerely;



Lee Smith
733 W. 4th Avenue, Suite 401
Anchorage, Alaska 99501

Schleuss & McComas

ATTORNEYS AT LAW

600 L STREET, SUITE 300

ANCHORAGE, ALASKA 99501

(907) 258-7807

FAX (907) 278-1158

February 28, 1992

Representative Dave Donley, Chairman
House Judiciary Committee

RE: CS For House Bill No. 440
House Bill No. 156

Dear Representative Donley:

I am informed that House Bill No. 440 is scheduled for a hearing in front of the House Judiciary Committee this afternoon, Friday, February 28, 1992, at 1:30 p.m. The Alaska Action Trust is preparing a Position Paper on the Committee Substitute for HB 440. Would it be possible for the Committee to schedule another hearing on HB 440 for sometime next week after the Trust has had an opportunity to fully review the Bill and prepare its Position Paper? Any consideration you can give to my request for a Committee hearing next week would be much appreciated.

Being sent with this letter is a copy of the Trust's Position Paper regarding HB 156. As you can see from the Position Paper, the Trust agrees that it is appropriate to extend the physician/psychotherapist-patient privilege to include violence counselors. However, because this Bill has no exception for criminal prosecutions after an in camera review and findings that communications are relevant to material issues in the case, we believe that to the extent it applies to criminal cases, the Bill as written is unconstitutional. The Position Paper suggests additional language to be included with the Bill so that it would then be constitutional in the criminal context.

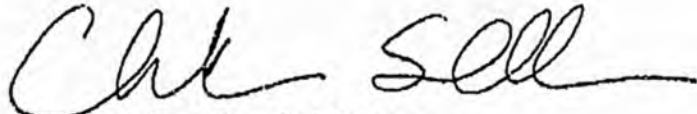
Rep. Dave Donley
RE: HB 440/HB 156
February 28, 1992
Page 2

I am faxing this Position Paper to Laurie Otto in your Anchorage office. I appreciate the consideration of the House Judiciary Committee to the position of the Trust on HB 156. Unfortunately, neither I nor another member of the Trust Criminal Committee is available to testify on HB 156 this afternoon. I would much appreciate it if the Committee could consider rescheduling this Bill for hearing next week.

Thank you for your attention to the matters set forth in this fax. I'd be more than happy to discuss the Trust's position on these two Bills and to work on proposed substitute language with anyone.

Sincerely yours,

LAW OFFICES OF SCHLEUSS & MCCOMAS



Christine S. Schleuss

CSS:2795\ja
Attachment

Transcription
of
Testimony on House Bill 465
by
DR. ROB FREEMAN LONGO

House Judiciary Meeting
March 30, 1990

CHAIRMAN PETER GOLL (GOLL): Do you have prepared remarks or would you like Representative Koponen to provide some framework for your remarks? If you have prepared thoughts that you'd care to share with us the floor is your, and if you'd rather kind of respond to particular concerns, then I'm sure Mr. Koponen could voice those for you.

DR. ROB FREEMAN LONGO (LONGO): I don't have any prepared remarks on this.

GOLL: Niilo would you care to frame the discussion a little bit for Mr. Longo?

REPRESENTATIVE NIILLO KOPONEN (KOPONEN): Well, we're concerned about the growth of our prison population, the impact of (indiscernible) procedure, and also, the question of treatment of offenders for rehabilitation before release, or the followup after release, that they do not reoffend. Currently, we are paying for the possibility of the release of a number of prisoners within the next year unless we deal with the problem of overcrowding. We have a constitutional mandate for rehabilitation for protection of the public, not for revenge but there are different driving points (indiscernible).

GOLL: Mr. Longo, I'd add to that, if I could, that we have presumptive sentencing in this state that deals with sexual offenses. We know you have a great deal of expertise in treatment in that area. There's a constant question before this committee as to whether or not treatment programs are effective, and some are and some are not, and you can give us some specific guides in identifying which are which. Basically part of the question before us is, is there a way that we can responsibly deal with such offenders to avoid recidivism other than just keeping them incarcerated forever, and your thoughts will be very valuable to the committee.

LONGO: Sure. Well, I assume that the committee has a sense of what I'm presently doing, but if you don't I will tell you what I am doing with the State. I am on contract with the Department of Corrections, helping them put together their systemized approach to treating sexual offenders, specifically my primary area of expertise, and let me first begin by saying that I think Alaska's move to a position now to what they are currently doing, to be a state that will be a model state in programming. As a matter of fact, the state that I am from, Oregon, I recently left that program because of some real dysfunctional things going on, and I think a giant step backwards, and I'm turning to look in your direction. So, I think it's, you can be very pleased with what it is that is going on here. I think what we're faced with,

and your state here, is no different than what we're faced with in the other 48 contiguous states down below, and in Hawaii as well, which is also, as you might know, in the process of developing sex offender programming, and that is that there's, as you establish more victim agencies and stiffer penalties for sexual offenders, once you get increased reporting, and you want get even more people going to prison for that sort of behavior, and so that's what's uniform. And a lot of states that have had less severe penalties for sexually abusing behaviors have been turning more and more towards stricter all kinds of penalties with greater consequences for such behavior. Oregon, for instance, has recently moved to making more serious these types of crimes, and therefore, you'll be seeing more and more people going to prison for these kinds of crimes.

What will tend to happen, generally speaking, is that you're going to have this increase in reporting, and we're going to have the public's attention, and they're not going to want these people running around on the streets. What we can tell you about this type of offender is that they are typically, number one, dangerous left untreated; the chances of recidivism, left untreated, are about 80%. You look at some different studies, but the figure that keeps coming back is seventy-eighty percent recidivism among non-treated sexual offenders. And they have a very, very high rate of recidi-

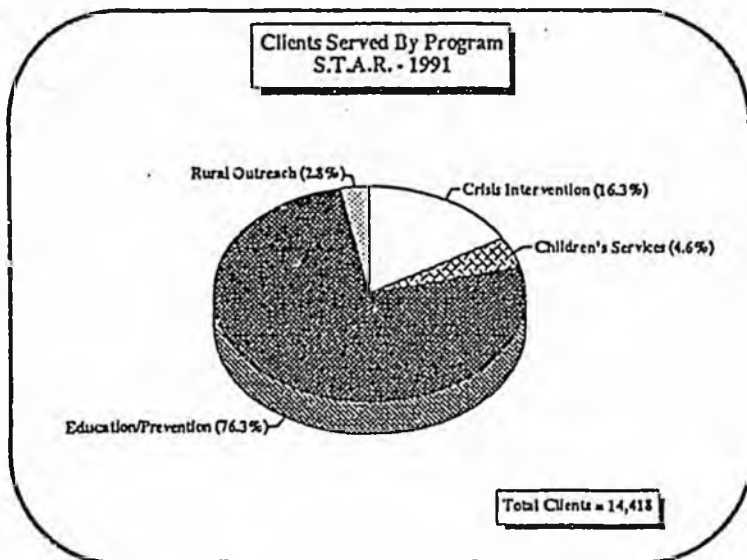
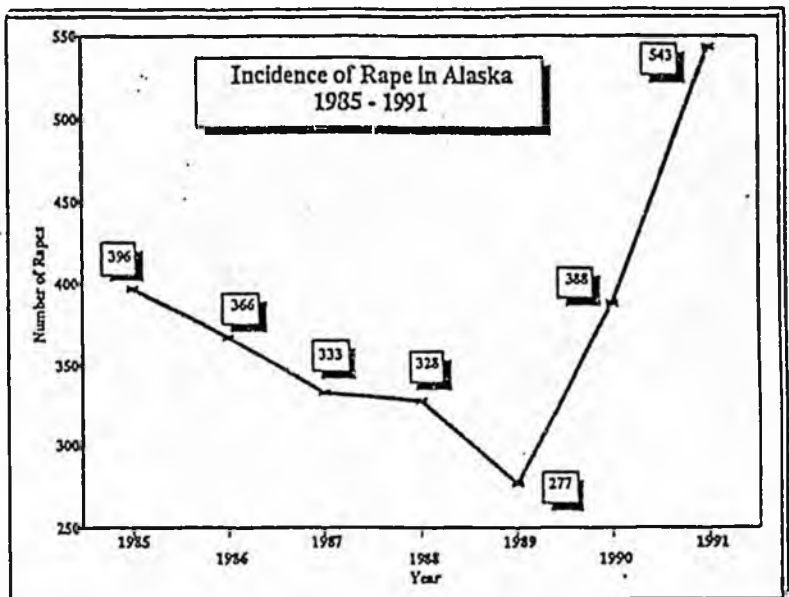
vism. I have done a study based on a study that was done by Jean Able several years ago, and we can tell you that the average, you know, rapist is going to have ten or fifteen victims. The average child molester is going to have somewhere around 20-30 victims greater, and that incarceration, in and of itself, is not going to alter the problem. Incarceration for sex offenders basically keeps them safe, and off the streets, and therefore, keeps the potential victim safe. So, I'm certainly an advocate for intervention and treatment. I have recommended to the Department of Corrections and they have pursued this, that we begin up here using what's known as the ^{Relapse} relaxed prevention model. The reason I've recommended that model is a) it's the only model that has any research coming out of it as a particular model of treatment; b) it's the only model that has that data coming out of it that's based on a state level including state funded research out of two states; and c) because I think it's the only way to go from all the approaches I have seen; and 4) it becomes, it can be systemized. It can be used at the beginning of treatment on a lay-down group, their release and subsequently being supervised in the community. So, what, you know, we are doing right now I think is basically state-of-the-art treatment and preparation for programming, and I certainly have no concerns about (indiscernible) either. You mentioned presumptive parole dates, and I can't say I'm necessarily in favor of presump-

tive parole dates. I think the problem that we all face with overcrowding is what do we do when prisons get overcrowded? Who do we cut loose, and under what conditions? Would I recommend that we move towards community treatment of these offenders in lieu of prison treatment? I would think not. I think that most people really need to be incarcerated initially, and will benefit much more so from intensive in-patient treatment. The average clinician when treating a client on the outside, sex offender or otherwise, probably thinks one may be two hours a week, and in the course of the year that's about a hundred hours, allotting for two weeks of vacation time. Okay? In an in-patient program, you're looking at a program that's going to take place at least four hours of that day, probably five, maybe six, seven hours of program and group therapy education, one to one. Let's take the average, the number five. That 25 hours a week, that is basically 1250 hours of treatment in one year. You'd have to have to have ten years of out-patient treatment to be equivocal to a year of in-patient treatment. Okay? I don't know any really significant studies that have shown that there's a benefit to, you know, out-patient treatment per se over in-patient treatment, and the study that shows recidivism that I've seen that are good studies are from in-patient programs, so you know, there is that information. I don't want to get long winded on you, but we can carry on from here with other questions.

1991 Brought a Dramatic Increase in the Need and Demand for Sexual Assault/Abuse Services

Sexual Assault

- ★ In 1990, Alaska experienced a 40% increase in sexual assaults.
- ★ In Anchorage, the rate at which women, children and men were raped increased by 57% between January, 1990 and July, 1991
- ★ The consequent demand for counseling, accompaniments, education/prevention, and advocacy services at S.T.A.R. increased by 189% between July and October, 1991.
- ★ Alaska's sexual assault rate is the second highest in the nation, with a woman, child or man being sexually assaulted every 21 hours.



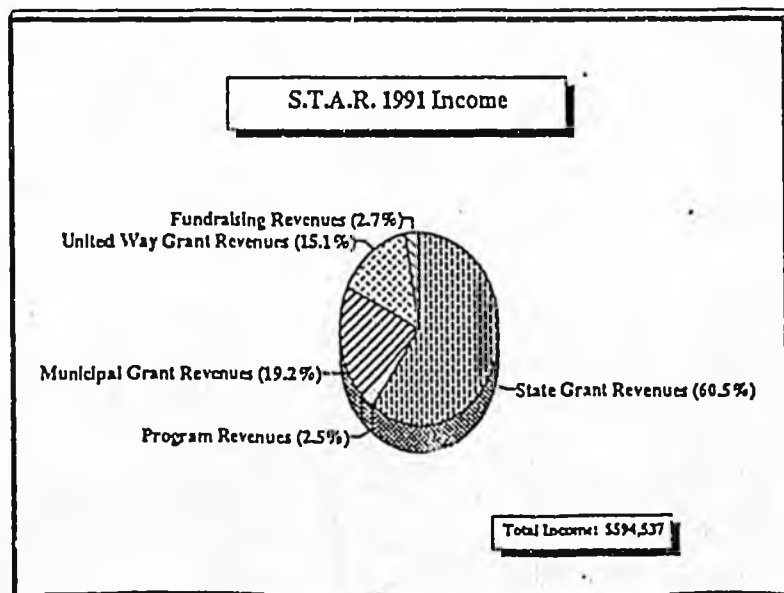
Child Sexual Abuse:

- ★ Alaska leads the nation in the rate of child sexual abuse - the rate of abuse in our state is 6 times the national average.
- ★ In 1990, 1305 children were sexually abused in Alaska.
- ★ In the first quarter of 1991, the Department of Family and Youth Services reported 160 incidents of child sexual abuse in Anchorage. This represents a 20% increase over the same period in 1990.
- ★ One (1) out of every 6 children in Anchorage is sexually abused.

- ★ For the first time in S.T.A.R.'s history, there are waiting lists for up to six (6) weeks for adult and child clients to be seen by staff counselors.
- ★ S.T.A.R. is recognized throughout Alaska as the primary sexual assault agency. S.T.A.R. educators train professionals and para-professionals in Anchorage and throughout the state.

Reduction in Funding Support

- ★ The combined funding cuts received by S.T.A.R. in 1991 and 1992 totaled \$148,000. These cuts forced S.T.A.R. to eliminate 5 staff positions (two education/prevention staff and three client services/counseling staff) during a period of escalating need and demand for services.



Editorial

Fair warning

12/84

A recent sentence by Superior Court Judge Thomas Schulz should be fair warning to child abusers. Like rape, people are now more inclined to report cases of sexual abuse of children, prosecutors are more likely to take the cases to court and judges aren't afraid to impose strict sentencing. A Ketchikan man was recently sentenced by Schulz to 19 years in jail for sexual abuse of a minor. That term will be added to a five-year sentence the man is already serving for the same charge.

Nineteen years sounds like a stiff penalty, but in some cases it doesn't approach justice. In this case, the man had a prior conviction from Washington state. Despite that, his wife obtained a state license for a child care facility in Ketchikan — where the man abused an 8-year-old boy. While awaiting sentencing on that charge, he sexually abused still another child.

One could argue that justice has been served. The mother of the 8-year-old sued the state and collected about \$1.5 million for her claims that the state was negligent in not warning child care clients of the man's tendencies and for not revoking the child care license. And the man has now been sentenced on both charges.

But the sad part of the story is that a convicted abuser was able to go as far as he did. There were just enough cracks in the system to let him through. And there are still more cracks available, depending on probation.

But people's perceptions of child abuse are changing. Just a few years ago, rape victims were the ones who felt guilty of a crime. Now people are beginning to acknowledge that it's the perpetrator, not the victim, who deserves the scrutiny. As that perception changed, women became more likely to report rapes and pursue convictions.

The same thing is happening with child abuse. People, including family members, are more willing to admit that it's the children, not the adult perpetrator, who are the victims. In some cases, treatment for the offender may help solve the problem. In other cases, stiff sentencing is the only answer.

Public reporting on child abuse cases is another factor that can help stem its growth. If abusers know they face criminal prosecution, they should also know that their name will appear in public.

But more important than shaming the criminal, public information about child abuse can help people understand and come to terms with it. As each child abuse case is reported, it serves as an example to someone else who might be lying with it — and thinking they're alone with it.

Unfortunately, public scrutiny might also have the effect of as well. We're confident that will change. The first step is under

Ketchikan Daily News 12/84

February 4, 1992, All-Alaska Weekly.

Hearing set for molester

BETHEL—A public hearing before a state professional board is set for convicted child molester John Hawkins, Ph.D, who seeking his license to practice as a psychologist, according to *The Tundra Drums*.

The Board of Psychologist and Psychological Associate Examiners will hear the re-licensing case in Bethel February 17. The hearing was originally scheduled for last November in Anchorage.

Hawkins, 72, had his psychologist's license revoked following a 1984 conviction of sexually abusing a 13-year old girl. He spent two years in prison and underwent several years of court-ordered sex offender treatment.

Prior to his conviction, Hawkins was a clinical psychologist for the Yukon-Kuskokwim Health Corporation and the Lower Kuskokwim School District.

This is Hawkins' second attempt to get his license back. He was denied it by the board in 1989.

Hawkins' public statements about child-molestation have been controversial.

2/5/92 Daily News

Bill requires sex offenders to register

The Associated Press

JUNEAU — A bill that would require convicted sex offenders to register with the state is among the new bills introduced in the legislature this week.

The proposal would require convicted sex offenders to register with the Alaska State Troopers within 30 days of release from prison

or within 45 days of moving to Alaska.

Offenders who relocate within Alaska would be required to notify the nearest trooper station within 10 days.

"Sex crimes are an epidemic in Alaska," said Rep. Fran Ulmer, D-Juneau and prime sponsor of House Bill 440. "This bill is, in part, a

statement of frustration with the increasing amount of sexual violence against women and children.

"It's primarily prevention to make sure people aren't hired into a position where they have a lot of victims available to them."

The bill would make it easier for employers, such as day-care centers and nursing

homes, to find out if potential employees have sex-crime convictions, Ulmer said. The public would also have access to the information.

Ulmer, who serves on Alaska Sentencing Commission, said her bill is modeled after a more sweeping Washington law enacted in 1990.

THE

CHILD

KB
KA

He's a man you trust.

He's a man your children trust.

He's a teacher, a coach,

a Cub Scout leader—someone

your family knows well. And

he's much more likely to sexually

abuse little boys than little

girls, according to a landmark

study of 403 sex offenders.

In this shocking report, the

doctor who headed the research

team offers a profile of the

typical child abuser—and tells

you how to protect your children

BY GENE G. ABEL, M.D.,
WITH NORA HARLOW

*Gene G. Abel, M.D., who has been a sex researcher for 20 years, is a professor of psychiatry at the Emory University School of Medicine and director of the Behavioral Medicine Unit. He is married to Nora Harlow, a frequent contributor to Redbook, who is the author of *Lover to Lover: Secrets of Sex Therapy* (G.P. Putnam's Sons, 1983).*

Maudeine Smith,⁹ a 33-year-old special education teacher, was shocked when her daughter, three-year-old Emily, described what the man who owned the day-care center she attended had done to her that day. Maudeine realized her little girl was describing an oral sex act. "I immediately checked with my seven-year-old son, Jake, who attended the same day-care center after school, to find out if he knew anything about what might have happened to his baby sister," says Maudeine. "I couldn't believe that this man, Michael Jones, had molested my daughter. He and his wife attended the adult Sunday School class I taught at our local Baptist church. They had been to our house for dinner. He seemed like such a nice man. How could he possibly have done anything as terrible as Emily had described?"

Still, Maudeine knew that a three-year-old could hardly make up a story like the one Emily had told. So Maudeine questioned her son. "At first Jake said, 'No.' Then he coughed. Then he hung his head and started crying. I said to him, 'I know this is awfully hard to talk about, but Mamma needs to know the truth.'" So her son told her the truth—that he had also been molested by this same man. "He told me how Michael Jones had made him put his mouth on Jones' penis, and how he threatened Jake by telling him he'd kill me if Jake ever told anyone. I was flabbergasted. I never once thought that my son could be molested. I only worried about my daughter. Then Jake told me that this had been going on for years! I didn't know I had so much adrenaline in my body. My heart started beating so hard that I felt I couldn't keep it in my chest.

"And then I became frightened for the other children at the center. I felt sure that there were other children involved who also had not told their parents."

Sheila Kane knew that her 11-year-old son, Derek, was seriously troubled. "He had tried to kill himself three times by taking a few of my nonprescription sleeping pills and by making some small cuts on his wrist—feeble attempts that couldn't have really killed him, but signals that something was terribly wrong. We had been in therapy with him for months trying to find the problem.

"Then one night Derek broke down and told his father that he had been molested by Jim Brown, the youth minister at our church. I stood at the top of the stairs in our house listening to them talking in the living

* NAMES HAVE BEEN CHANGED TO PROTECT PRIVACY.

room and was absolutely dumbfounded when I heard Derek say that both he and his nine-year-old brother, Sean, had been molested by this man. As Derek explained to his father how the youth minister had molested him orally and anally, I literally had to go and vomit. I just could not believe that this had happened to my children."

The mothers interviewed for this article were shocked to discover that their sons had been molested. Then they were shocked again when they found out that the men who had molested their sons were men they knew well, men they trusted. Each of these mothers thought that her son's victimization was a tragic, isolated occurrence and that incidents like these are unusual. But although these mothers lived in very different communities—one in a small town and the other in a prosperous suburb of a large city—they actually had very similar stories to tell.

As a psychiatrist who specializes in the study and treatment of pedophilia—a sexual perversion in which an adult prefers children as partners—I hear this kind of story, from mothers and molesters, again and again. I've just completed an eight-year national study on child molesters for the Antisocial and Violent Behavior Branch of the National Institute of Mental Health. The data I've collected from interviews with, and physiologic laboratory assessments of, 403 molesters is now being analyzed by the Department of Psychiatry at Emory University in Atlanta. This new information, collected with the help of five of my colleagues in four different cities, reveals that men who assault children have a surprisingly high number of victims. The 403 molesters we evaluated had molested more than 67,000 children.

But we were most surprised by the high number of boys who are victimized. When we looked at the total number of children who were molested—including those who were not touched but were the object of such offenses as indecent exposure and window peeping—we found what we expected to find: Little girls are molested most often. However, when we looked only at the more serious offenses—ones in which the child is touched—we found that 63 percent of the children who are sexually assaulted are little boys. And not only do molesters assault boys more often than they assault girls, but men who molest boys also have an astonishingly higher number of victims—an average of 282 victims compared to an average of 23 victims among men who assault girls.

ABUSER

How can you spot him?

The sheer number of molesters in this study makes it the largest study of its kind to be conducted anywhere in the world. But this research project is also unique because, like 90 percent of all child molesters, these men were not in prison—they were living freely in the community. Their participation was voluntary. Two hundred of them also volunteered to participate in a 34-week treatment program. The men were referred to us by physicians, parole officers, judges or social workers, or they entered the study after hearing about our free treatment program through radio and television announcements.

BUT WE TRUSTED HIM!

While we were surprised by the number of children that these men had molested, we were not surprised to find that these molesters, like those we had treated before, were very different from the kind of men parents teach children to avoid. Most of us think that a child molester is a rather slimy individual—a stranger in town, sitting in his car near a schoolyard, luring children with candy. Our findings reveal that, on the contrary, the child molester is not a stranger, but is someone we know well. He often is a man we trust, a man our children trust.

Many child molesters try to move themselves into positions or occupations within the community that will allow them to spend time alone with children without attracting much notice. Molesters often become youth ministers, day-care workers, Boy Scout leaders, teachers, Big Brothers and pediatricians.

We should *not* assume, however, that only youth ministers or day-care workers or teachers molest children. In fact, within any of these occupations, the number of men who molest children is exceedingly small. But these men do exist. As a physician and a psychiatrist who has spent most of my life working with child molesters, I wish I could say, for example, that no physician or psychiatrist has ever molested a child. And indeed, among physicians—as among youth ministers, day-care workers and teachers—there are exceedingly few men who are child molesters. But there are a few. Of the several hundred molesters I've treated in the last two years, one was a school physician, two were child psychiatrists, another was a pediatrician.

Given these facts—that our children are being molested by men we know and trust—what can we do to protect not only our own children, but *all* children, from suffering such a terrible experience?

First of all, we can learn about pedophilia—what it is, what kind of men become pedophiles and how they manage to manipulate our children into becoming their victims.

Men who are pedophiles desire sexual involvement with young children. They most often have other interests and abilities that are completely normal—often exemplary. Their abnormal sexual interest in young children appears to develop in isolation from any other antisocial behaviors.

A pedophile's sexual desire for young children leads him to behave toward a child in many of the same ways that adults behave sexually toward each other. Most adults will arrange their lives to meet members of the opposite sex and spend time with them. They will fantasize about a potential partner and feel sexually excited in that person's company. The child molester goes through the same process—only his object of desire is a child. The other big difference between normal adults and child molesters is that, whereas healthy adult sex is consensual, the molester manipulates and threatens the child into complying with his wishes.

What kind of man would do this to a child? Our study shows that he is most often Caucasian between the ages of 20 and 40. He typically has had more than one year of college and holds a full-time job. As a rule, he is married and has children of his own whom he usually does *not* molest. He is almost always a well-respected, even loved, member of his community. He is often an active Christian who is involved in his church. He never assaults children he does not know; he only chooses children with whom he can first build a trusting relationship.

ARE THESE MEN SICK?

How does a man become a child molester? Quite often his interest in children begins when he himself is a child and then emerges full-blown at age 16 or 17 when he actually starts abusing children. Essentially, he has some generalized erotic interest in other young children when he is *(continued)*



**SPECIAL
REPORT**

also young. Most children do. Kids like to 'play "doctor," for example, or take baths together so they can see each other's body. But as the molester gets older, he discovers that while others his age have stopped having any interest in young children, he has sustained his interest. It was once thought that a child molester was interested *only* in children and that if therapy could stimulate his sexual interest in an adult woman, such as his wife, his obsession with children would disappear. Now we know that, in most cases, the child molester has a normal sex life with his wife but still maintains his deviant sexual interest in children.

A few years ago many psychiatrists believed that boys who were molested as children very often became molesters as adults. And our study found that, indeed, 40 percent of the men who molest boys and 24 percent of the men who molest girls were molested themselves as children. However, most child molesters were *not* molested as children but developed this obsession anyway.

One factor that appears to be true of all men who become child molesters is that they pair sexual fantasies about children with masturbation. Freudian theory suggests that orgasm is a powerful reinforcer of any sexual interest, so that when a man masturbates while fantasizing about young children, this entrenches his obsessive desire.

We also found that child molesters commonly exhibit multiple sexual deviations. The fact that these men are often also exhibitionists, fetishists, rapists and, on occasion, incest offenders suggests that their deviations may evolve not from family or interpersonal conflicts, as was once believed, but from their general inability to suppress inappropriate sexual interests—interests that "healthy" adults *do* suppress.

It's often difficult to spot the man who might possibly molest our children because we expect a molester to be a man who displays many antisocial behaviors; and in the case of a molester whose victims are little boys, we expect him to be homosexual. But in our study, we found that most men who molest little boys are not gay. Only 21 percent of the child molesters we studied who assault little boys were exclusively homosexual. Nearly 80 percent of the men who molested little boys were heterosexual or bisexual, and most of these men were married and had children of their own.

Usually molesters are able to abuse many, many children without being caught. The only way they are caught is if a child tells someone what has happened. They are rarely caught in the act of molesting a child by suspicious parents. Even when parents do become suspicious, the molester is usually able to deflect that suspicion because he is often a respected member of the community. Many molesters have told me that the first thing they did when suspicions arose about them was to join the parents and take up the

cry that child molestation is a terrible thing and must be stopped. For example, John, a former professional athlete and baseball coach, said that he would fend off suspicious parents by agreeing with them. He'd say, "I do believe that your kid has been molested because he does seem to talk about sex more than he should. Now, I was hoping that if I got close to him, he would tell me who it was."

WHY DON'T KIDS TELL?

How is it possible that so many little boys have been molested without our knowledge?

Sara Johnson's seven-year-old son, Peter, had spent six months visiting a therapist who was preparing him to be a court witness to the molestation of other children after Lou Taylor, his Cub Scout leader, was found to be a child molester. After the discovery, Sara said, "I knew my son couldn't have been molested because, well, my children tell me everything, and then, well, Peter is a rough, tough little boy. He's the kind of boy who, the dirtier he gets, the happier he gets. If anyone approached him, he'd just say, 'Get your damn hands off me!'"

Sara's voice shakes as she recalls the night that Lou Taylor finally confessed, waived his right to a trial and was taken to jail. "I had put Peter to bed and I was standing at the kitchen sink washing the dishes when I heard Peter's little footsteps coming up behind me. Then I heard him say in his sweet little voice, 'Mommy, is it okay for me to tell you now what Mr. Taylor did to me?'"

There are several reasons why a little boy doesn't tell. First of all, the molester usually threatens him personally. Often the boy is protecting his parents, whom the molester also may have threatened to hurt.

Peter was told by Lou Taylor that if he reported the incidents, Taylor would call the police when his mother brought Peter to the next Cub Scout meeting and the police would put Peter in prison.

Michael Jones, the owner of Jake's day-care center, told Jake that he would kill Jake's mom if Jake said anything.

Jim Brown, Derek's youth minister, showed Derek and his brother the gun that he carried in his briefcase—and led the boys to believe he would use it.

These threats are effective with children because a child does not know exactly how the adult world works. Peter must have believed, for example, that the police really would put him in jail. The terrible part is that children tend to believe all adults—and because even a young child has already absorbed the message that it isn't nice to talk about sex, the child is unable to check out the validity of what the molester says.

IS YOUR SON AT RISK?

It is not only in their use of threats that child molesters are so successful. If a man—even a man in a respected position—molested a child quite suddenly, the child would be very

likely to tell his parents. Men who molest boys are so very successful, however, because they often spend months selecting and preparing their victims.

A man who once had been named teacher of the year told me, for example, of the system he had devised. He said, "I'd tell the class some secret and then I'd wait to see which boys told and which didn't. If a kid can't keep a secret, I don't go near him. Then, I'd see which kids would follow orders. If they were difficult to control, I'd stay away from them. So I am always looking for a kid who is well-behaved, who will do what I say and who can keep secrets."

Molesters also choose children who are particularly vulnerable and then try to gain their trust by giving them special favors. Derek's father was in the hospital having the second of two back operations when Jim Brown came to the boy's house and offered to take Derek camping. Jake's parents were divorcing when he started attending the day-care center at age three. Michael Jones gave Jake special presents and let him pass out snacks and feed the rabbit. Seeing these special favors, parents add their trust in the molester to the child's trust.

To make matters worse, most parents teach their children to obey adults unquestioningly, which also gives the child molester a decided advantage. One of Sara's worst memories is what she used to tell her son. "When I think of what I used to say every week when I dropped Peter off at his Cub Scout meeting... I'd say, 'Good-bye, Peter. Mamma loves you. You be sure and do whatever Mr. Taylor says.'"

Another reason that boys are victimized more often than girls may be that, even when they are very young, boys are taught to be tough and not tell anyone when they are hurt. Because they know that they are expected to handle tough situations without crying or acting like "a sissy," it is often, ironically, the toughest boys who keep the secret the longest. Parents also feel much less protective of their sons than of their daughters, and it is this pervasive lack of protective attitudes toward boys that allows child molesters so much access to them. A man who takes boys camping or has them over to his house is seen as a "good Joe." Any man who tried to do the same with little girls would immediately arouse our suspicion. But the difference between the legitimate "good Joe" and the child molester is that the molester devises reasons to spend special private time alone with a boy.

Parents need to be aware, then, that a boy may not tell them if he is being molested. There are, however, certain signs parents can watch for. Most likely they may notice a sudden decline in their son's schoolwork—either he can't concentrate or his grades fall. His eating habits may change. He may withdraw from his friends. He may suddenly begin having

(continued on page 138)

THE CHILD ABUSER

continued from page 100

nightmares. He may become fearful of men—not necessarily only the man who molested him, but many men. He may try to avoid going to school if the molester works there. Or he may attempt to avoid the molester by making up silly reasons why he doesn't want to go on outings with the man.

If parents suspect that their child has been molested, it's not enough simply to ask him if anyone has touched him inappropriately. Parents first need to assure the child that, no matter what anyone has told him, they love him and can protect him. If a child then reveals that he has been molested, parents must also be careful not to react in a way that will alarm him. Instead they should calmly assure him that what happened is not his fault and that they won't let it happen again.

Even after a boy reveals that he has been molested and is protected from his victimizer, he may continue to show the above-mentioned symptoms of distress. Madeleine points out, for example, that although both her son and daughter were molested, she feels her son has suffered the most. "I think that's because Jake was molested more often. My daughter, who was barely touched and was only three at the time, seems to have recovered. She is sociable and is a happy little girl going on with her life. But even after two years my son has not recovered.

"At first Jake withdrew. He didn't want to be around any of his friends. Even now he is very selective about who he plays with. And although he is very bright, his grades have fallen. He stays away from all men except his dad. And he has developed clinging behaviors. He is now ten years old, and he still doesn't want me out of his sight.

"He is also very afraid that someone will find out what happened to him. When it was time for him to tell his story to the caseworker, he curled up behind the pillows on my bed and screamed, 'No! No! This is bad! I don't want anyone to know! This is bad!'"

DON'T BLAME THE CHILD!

Unfortunately, the societal belief that little boys should be able to protect themselves from child molesters often prevails even after the boys identify themselves as victims. During legal questioning, Derek, for example, was asked by a lawyer, "Well, if you didn't like it, why did you let it go on for so long?" And when Peter's mother, Sara, asked a trusted member of her church why no one spoke to her anymore and why their minister refused to counsel her or say any prayers for her son, the man said, "Look, every man is approached by some homo. Peter should just have said No!"

But the adults who made these comments don't understand that a molester makes it

impossible for a boy to say no. Unfortunately, society tends to "blame the victim" in sex crimes when the victim is a child, just as they do when the victim is a woman.

The parents of these victimized children were totally surprised and deeply hurt when their neighbors and friends failed to offer them sympathy or support. When Sara Johnson pressed charges against Lou Taylor, the Cub Scout leader who molested her son, Peter, she was astonished that many of her neighbors wrote letters to the judge describing Taylor as a "wonderful man." Madeleine Smith was amazed at the way everyone treated her. "I taught Sunday School, and yet my neighbors acted as though I had the plague," she says. "I received absolutely no support from the people at our church either. Michael Jones, Jake's molester, was very well liked there. People didn't want to believe he had done such an awful thing.

"After Michael Jones' arrest, our minister immediately went to his house to comfort his wife," says Madeleine. "But the minister never came to our house or offered support to any of the ten families whose children were Jones' victims. Eight of those families eventually left the church."

Unfortunately, these stories are not unusual. When a molester is discovered, community members often fumble around, not knowing what to do, then come out strongly on the side of the child molester and against the victims and their families. Why?

When a respected member of a community is discovered to be a child molester, community members find it impossible to believe that such a person is living in their midst. People also tend to take the molester's side because his behavior around adults is so good. Then too, because the problem of child molestation is so terribly upsetting, adults have a powerful desire to deny that it exists. That way they won't have to worry about the safety of their own children.

It is for these reasons—an inability to cope with, and a wish to deny, the problem—that communities will often knowingly pass a child molester on to another town. After the youth minister was convicted, for example, the Kanes checked into his background and discovered that he had gotten into trouble for molesting children at his previous church, but had nevertheless been sent on to his present church with good references. Sheila Kane was outraged. "If he had been prosecuted then," she says, "my sons would never have had to go through this."

PROTECT YOUR CHILD

It is crucially important that parents do everything in their power to protect their children. Perhaps some of the new information

we have gathered about child molesters will help parents to do just that. Here are a few things that all of us can do:

1. Be aware that even tough little boys are in danger of being assaulted. Because child molesters victimize children through a combination of manipulation and threats, even the toughest little boys need protection.

2. Talk to a child in ways that counteract a molester's threats. It really isn't enough to ask a child if anyone has touched him. We must first assure him that, despite what he may have been told, if he does "tell on" the molester, no one will kill his parents, his parents will still love him, and his parents are fully able to protect him from the molester.

3. Watch for the typical operating procedures that a child molester is likely to follow:

- Molesters spend excessive amounts of time with children. They often arrange to take boys on trips without another adult. A man who wants to spend more time with your children than you do may be a molester.

- Molesters often seek out a position—as a camp counselor, Boy Scout leader, school physician, coach, teacher or youth minister—that will allow them to spend time alone with children. The major difference between a man who is a child molester and the majority of respectable men who hold these positions is that the child molester will manufacture excuses for spending inordinate amounts of time alone with children.

- Molesters will often abuse the privileges of their positions to engage children in inappropriate activities. If the mothers quoted in this article, for example, had asked their boys exactly what went on during outings with these men, they might have realized a lot sooner that these men were molesters. The youth minister took the boys skinny-dipping and back to his house for private bouts of nude wrestling. The Cub Scout leader would give the boys "physicals," paying particular attention to their genitals. While a child may not realize that his Scout leader is not the appropriate person to give him a physical, a parent certainly would.

- Molesters prey on children who are particularly vulnerable. A man who offers your child excessive favors at a time of family stress or financial crisis may be a molester.

4. Check the history and background of anyone who is going to be spending a lot of time with your children. Never assume that anyone is beyond suspicion by virtue of his respected position, strong religious beliefs, years in the community or kindness to children. Call previous employers and talk to people who worked with the man while he was working with children. Be alert to gaps in his resumé. Molesters often simply omit jobs in which they were found out or became the object of suspicion.

5. Warn children that child molesters exist. Many people believe that it is better not to talk to children about the dangers of molestation because talking to them about it will only make them fearful. It is true that warning children about danger

(continued)

THE CHILD ABUSER

continued from page 138

instills some fear in them. When we teach children to be careful while crossing the street, for example, we also alert them to the consequences of being hit by a car. But keeping silent about the dangers of child molestation protects the child molester, not the child.

6. Never blame the child. Studies reveal that in almost every incident of sexual assault, the victim—whether that victim is an adult woman, a little girl or a little boy—feels in some way responsible for his or her victimization. The child molester knows this and will use this knowledge against his young victims, reinforcing their fear that they are to blame by telling them things like, "Well, you did come to my room," or "You did get an erection." Children are never to blame for their abuse at the hands of adult men. They must be told that clearly and repeatedly.

7. Never blame the child's family. If a victim's family can convince others that the molester has committed a crime, the molester runs the risk of being exposed and possibly convicted and sent to jail. Molesters will, therefore, almost always try to evade detection by saying that there is something deeply wrong with the families who accuse them. And because the child molester typically does so many good deeds for so many people, and because we don't want to believe something so terrible about such a wonderful man, we may be inclined to believe him and to think badly of the family who accuses him. If a respectable figure in your community is accused of child molesting, think twice before speaking ill of, or behaving coldly toward, the family who is making the charges.

I believe that child molestation can be stopped. I know that we can drastically reduce the number of children who are molested. First we must recognize that child molestation is a public health problem—an estimated 20 percent of all children are molested. And, like any health problem, it cannot be eradicated by treating its victims after they become victims. We must stop the molester before he molests again.

Parents should know that a handful of states have allotted funds to develop and maintain treatment programs designed to help molesters stop molesting children. In addition, the Federal government has funded several research projects aimed at preventing child molestation. Parents of victims have also organized into support groups.

All of these efforts are steps in the right direction. No one person, program or organization can single-handedly eliminate this terrible problem. We must all work together to keep our children safe.

For additional help or information, call The National Child Abuse Hotline: 800-422-4453. This Hotline, sponsored by Childhelp USA, handles crisis calls, provides information and offers referrals to local agencies nationwide.

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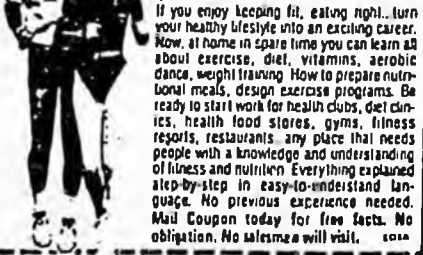
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EVALUATION and TREATMENT

CHARACTERISTICS OF ADULT SEXUAL OFFENDERS. Before any intervention in the behavior of sexual offenders can be undertaken, it is necessary to have an idea of who it is, at least in a general sense, we are dealing with. Vernon Quinsey has recently published a lengthy review of deviance-related literature and presents us with a broadly-based description of who and what sexual offenders are. The reader is referred to that work (In D. Weisstub (Ed.) (in press), Law and Mental Health: International perspective. Pergamon, New York.)

To summarize, Quinsey proposes that there are two primary factors in the genesis of a sexual aggressive. One, that there exists a continuum of relative sexual attraction or preference for the deviant focus and, two, that there are a variety of reasons why that focus is chosen. He describes these factors as additive.

Within the framework of these two factors he explores the individual qualities of known sexual offenders. While the paper is principally concerned with child molesters, because of the amount of behavioral crossover seen in this population, (Abel, G. Mittelman, M. Becker, J. Cunningham-Rathner, J. and Lucas, L. The Characteristics of Men Who Molest Young Children. World Congress of Behavior Therapy, 1983) I believe that inferences can be made for sex offenders in general. (I'm not sure that Dr. Quinsey would approve of this undocumented inference, but what we are interested in here are generalities upon which to structure an exploratory, evaluation protocol).

In terms of motivation, Quinsey presents a convincing picture of the offender as acting out his deviance as a result of an active, measurable sexual attraction. This attraction is experienced by the offender, prior to and during the behavior, as pleasurable and desirable. In addition, he reports that this attraction has frequently been first recognized by the offenders in their own childhoods (first overt act of sexual deviance at about age 16). As part of this attraction/preference, the offenders are prone to fantasize sexually about their deviant behavior. This, in effect, allows the offender to rehearse the behavior in imagination in the absence of a suitable target/victim.

Sexual offenders also act out their deviance at high rates. In the Able study cited above (1983) the average number of sexual assaults completed, by each offender against children, was 167. The average number of child victims was 76. Their behavior does not show the pattern of decline in frequency with age as found in property offenders. It appears that they do not outgrow their sexually exploitive preferences. Recidivism rates are high and increase in relation to the number of previous sex offenses and with attraction to male (non-incest) child victims.

Even though this population is known because of its deviation, the majority show no other psychopathology.

Their principal diagnoses are paraphilia (. . . an unusual act or fantasy is required or sexual arousal) and one of the forms of character disorder.

In terms of developmental histories, one finds a general high level of dysfunction in the offender's family of origin including physical, emotional and sexual abuse of themselves as well as other family members. The degree of family dysfunction increases as one moves from a community treatment population upward through incarcerated offender populations. One speculates that this is the result of a criminal justice selection process which places the more serious offenders in secure facilities and leaves the less serious in the community.

A preliminary study of sexual offenders in community treatment (Wolf, S. and Conte, J., 1984) found that they had been overtly (hands on) sexually abused as children in 27% of the cases observed. This compares to 53% noted by Quinsey for incarcerated offenders. Community-treated offenders, in that study, however, showed the same kinds of family of origin dysfunction that Quinsey reported in incarcerated offenders.

Their patterns of offending were also very similar. While the community-treated population showed fewer victims and more limited histories, they did show the same patterns of beginning overt sexually aggressive behavior in childhood and adolescence (approximately 75%). They show the same levels of premeditation and planning. The community-treated offenders who have molested male children also show the highest frequency of deviant behavior, number of victims and greatest tendency to reoffend.

Incest offenders, in both groups, show more limited deviant histories in general but more than has been believed. For example, Abel (1983) found that his sample of heterosexual-incest offenders had also molested female children outside their families 44% of the time. His sample showed crossover to a degree that indicates that it is risky to assume that the offender, at discovery, only acts out in the deviance for which he was caught.

In summary, sexual offenders are motivated to act out their deviance as a sexual preference. In simple terms, they like what they do. They are not in any large numbers psychotic or schizophrenic. Once their sexual preference is established they tend to continue to pursue it. They will most often, at the time of discovery, have more than one victim and probably more than one deviant sexual focus. In Incest cases, for example, they also molest children outside their homes almost half the time.

From clinical experience, offenders, when caught, will either deny the offense, minimize their responsibility (she made me do it . . . He liked it . . . They do it in Africa all the time . . .) or claim the cure (I've learned my lesson . . . found God . . . sobered up . . .). They also, all other things being equal, tend to return to deviance shortly after they feel safe from criminal justice sanctions. In their histories they will have quit many times, often after each

offense. They will lie extensively about their deviance and will be reluctant to reveal information beyond what is known about them already.

Clinical Note: Offenders, during evaluation, seem to reveal information about their deviance at a set rate. Re-

EVALUATING OFFENDERS. This article will deal with the evaluation of sexual offenders who are admitting to, at least, the behavior for which they have been referred. Evaluating denying offenders will be dealt with in a later issue of the SVQ. For further discussion of this topic see "Developing Your Theoretical Framework," Evaluating Sexual Offenders in Volume 1, Number 1 of the SVQ.

The specialized evaluation of the sexual offender forms the basis for planning a treatment response. It is "specialized" in that it addresses a specific problem and makes recommendations as to treatment and limitations to the freedom of the client. It is specialized in that its foundation is a specific body of data focused on the problem of sexual violence.

Since sexual offenders do not in any significant numbers self-refer for their problems, evaluation will most often occur after discovery and before sentencing. The offender will have been referred by someone in the criminal justice system and the evaluation may be used by the court in sentencing the offender.

Given the above, the client will be resistant to revealing much about himself. He will probably believe that he has cured himself of the referring problem and will "just want to forget about it." What information he will reveal will be distorted and minimized. As such, the client's self-report will be of limited direct use in defining the sexual problem. To compensate for this serious limitation, the specialized evaluation relies on information gathered from a variety of sources outside of the client.

The first step in the evaluation, after deciding to evaluate the offender, is the development of an information access system. Information needed for the evaluation comes from two sources: internal and external. Internal information is that which one derives from the offender directly. This includes self-report, personality assessment instruments, and psychophysiological assessments such as the penile plethysmograph and clinical polygraph. External information is that derived from contacts with discovery materials, witness and victim statements, victim evaluations, contacts with partners, family of origin, friends, pastors etc.

External data sources require signed releases of information from the offender. He must be fully informed as to the purpose of the releases, who will be contacted, what will be discussed and why it is necessary to the evaluation. In most cases this will include the client/offender's attorney. An attorney is used to operating within an adversarial system and will see the evaluator as either for or against his client. The evaluator must communicate that his agenda is to assess the nature of the client's problem, estimate his potential for further harm to others and recommend reasonable treatment alterna-

tion, he has a lot more that he will withhold.

NOTE: Citations and references are listed in the RESEARCH section under bibliography.

tives. Again, if the evaluator and the attorney representing the offender cannot come to agreement on the purpose and form of the evaluation, it would be advisable to not proceed further.

Internally derived information begins with the interview of the offender. One is looking to understand the life forces which created the potential, now realized, to make this individual into a sexual offender. One is looking for histories of interfamily abuse; sexual, physical and emotional which provides us with examples of values development in the family and the offender which supports sexually violent behavior.

Since the reality of the sexual deviance is not at question, the evaluation is intended to assess the risk for reoffense of this offender and his amenability for treatment. The more enmeshed in the offender's family background the deviance is (attitudes, values, family history) the more likely deviance will function as part of the offender's lifestyle. The more deviance is a part of the offender's lifestyle, the less likely the offender is willing to give the behavior up. All other factors considered, history of deviance, type of offending, and frequency, are probably the best predictor of treatment failure and reoffense.

One is also looking for the actual beginnings of sexual violence in the offender's life, its frequency over time, periods of no deviance, and periods of behavioral escalation. One is asking, what precipitated the suppression of behavior, what factor preceded or may have precipitated the return to deviance. This information details the offender's pattern of deviant behavior. The structure of this pattern forms the focus of treatment planning and functions as behavioral evidence of approaching reoffense. For example, an exhibitionist client has a history of withdrawing from friends and spouse, becoming argumentative and spending increasing amounts of time driving around alone prior to and during exposing. During treatment these behaviors reappear. It is probable that this client either is, or will be reoffending. These behavioral "warning signs" must be identified and noted in the evaluation's discussion of his deviant pattern.

The next step is to elicit from the offender his version of the presenting deviant behavior. Recognizing that he will give a minimized accounting of what happened, it is useful to hear him out. His report will expose the distortions in his thinking and the style and strength of his defenses. This step is useful in assessing the amenability or the vulnerability of the offender to treatment. The greater the client's distortions of what actually happened, the more a part of his value system the deviance is. The more a part of the offender's value system the deviance is, the less vulnerable he is to treatment messages that the behavior is hurtful to others. The more robust his distortions and defenses, the less amenable he is to treatment.

Personality assessment is the next step in the evaluation process. At the present time there are no dependable "test" profiles which identify sexual offenders 100% of the time. This is due in large measure to the offenders' consistent attempts to make themselves look good. They will attempt to "fake good" on the instruments rendering the results frequently invalid. When valid results are seen, the most frequent profile will express antisocial or asocial value systems, ruminativeness, impulsivity, and low empathy. The utility of personality assessment with this population may be that it measures their willingness to answer questions candidly. The danger of using them is that one finds very (behaviorally defined) dangerous offenders who represent normal looking personality profiles. As such, personality tests are of limited use and cannot be used, alone, to define the level of personality disorder present.

Psychophysiological assessment is the last source of internal data to be considered here. The two instruments most used are the penile plethysmograph and the polygraph. The plethysmograph is used to identify the range of sexual arousal which the offender experiences. (NOTE: an in-depth discussion of the plethysmograph is planned for the next issue of the SVQ.) This data should be used with the same attitude which one approaches personality testing. That is, endorsements of interest in, or attraction to, deviant themes must be accounted for. However, their absence from the test results does not mean that they don't exist, just that they were not measured.

External data collection is the next step in the evaluation. After the first meeting with the offender, the evaluator contacts the referring agency, the offender's attorney and any other individuals involved in the case. Discovery materials are collected and any previous reports are reviewed. The offender's version of the deviant behavior is compared and contrasted with other sources. Differences are explored to assess why they might exist. Are the differences the result of different perceptions, distorted thinking, or dishonesty on the part of the offender or others?

If one has the option, placing the offender in a sex offender treatment group is an excellent way to gather further data. This allows the offender to see others with problems similar to his dealing honestly with their deviance. One expects the amenable client to expand his self disclosure, his defenses to weaken and his distortions in perception of his deviance to change somewhat in the face of confrontations by the group members. If one does not observe these changes in the offender one can summarize that the likelihood of his profiting from treatment is minimal.

Even in cases where you cannot place the offender in group, it is important to see as much of the individual

as possible. The less time you can spend with the offender, the more external data you will need.

The final step in the evaluation is to make recommendations. What you recommend as your treatment plan, even if your recommendation is prison, depends on a number of factors. First, what motivates the client into treatment. Is he voluntary or court-ordered. Is he a present risk to the safety of the community. Can you, as a therapist, reasonably expect the offender to profit from treatment at your agency. (Be careful of your own sense of grandiosity. It is seductive to have referral sources think of you as the "Wizard." Your errors will be borne by the offender's next victim.)

The first consideration, the source of motivation, determines whether specialized treatment will take place. Offenders are unlikely to remain in a treatment setting which makes demands on him or expects that he will work directly on his deviance unless forced to. Without a clear mandate, from the court for example, the offender will find the least intrusive treatment he can. The least intrusive, of course, being no treatment at all.

The next consideration is dangerousness. The best predictor of future behavior is still past behavior. If the offender has a history of sexual abuse and exploitation extending back into his childhood, if his deviance has been constant or highly patterned, you can expect him to continue in that pattern. This means reoffense. Given what you know about the offender, and what you suspect, can external controls be structured around the offender to prevent reoffense opportunity? In that light, does the offender's family see him as a risk and can they be counted on to protect others from his abuse?

The final factor is the most difficult to assess. Is he internally motivated for treatment? Does his behavior cause him any real pain, guilt or embarrassment? If he experiences little guilt around his deviance, or doesn't think of it as wrong, he is not amenable to treatment in any setting. Your best efforts as a therapist will fail. Even if he is motivated to change out of his discomfort with his deviance, is he so out of control that he is probably reoffending as you read this? Sexual offenders can only be counted on to do what feels the best to them. If they really had any internal motivation to stop or discomfort with deviance, they would have sought treatment prior to being caught or stopped the behavior on their own.

These are the general components of evaluating sexual offenders. It is a different approach than most of mental health. It has most in common with evaluations of other criminal populations. It also shares the risks of that group in that when we, as evaluators and therapists, make errors in our assessment of risk, someone else pays the price for that mistake.

OCT 23 1985

Analysis of Sex Offender Data

The Department of Corrections, Division of Statewide Programs, has gathered data on sentenced sex offenders. The following represents the first analysis of this data. Data on newly sentenced sex offenders continues to be collected and further analyses will be completed in the future when time allows.

Of the approximately 450 sex offenders in the prison system on March 1, 1985, 354 were sentenced. All sentenced sex offenders were asked to complete a Sex Offender Treatment Application. If an offender refused to fill it out, the offender's probation officer was required to complete it using information contained in the offender's file. All data was verified by the probation officer. The applications were then checked by Central Office staff who highlighted omissions and possible inaccuracies and returned them to the probation officers for completion. When completed and returned to Central Office, the data was entered into the computer. A basic analysis of the data reveals the following composite picture of the "average" sex offender in Alaska:

He is a white male between 20 and 40 years old. He has a high school education and was employed at the time of the offense. He could be either single or married. He has lived in Alaska since childhood. He committed the offense alone, without a weapon. He committed the offense in Anchorage and was under the influence of alcohol at the time of the offense.

The victim was a female aged 16 or younger, who was a relative, friend or acquaintance of the offender. Of the victims who were related to the offenders, 62% were natural daughters or stepdaughters.

The data also reveals that a child under the age of ten is most likely to be molested by a relative. This continues to hold true for children in the ten to 16 year old age group. Once over 16, a person is most likely to be victimized by a friend or acquaintance.

Further analysis of the data shows that more sentenced sex offenders were convicted of first degree sexual assault than other sex offenses.

Most sex offender cases went to a jury trial as opposed to the offender pleading guilty or no contest.

Most sex offenders (55%) are not eligible for parole.

For First Degree Sexual Assault, the most frequent sentence was six to eight years of jail time to serve.

For Sexual Abuse of a Minor* the most frequent sentence was four years or less to serve.

*Sexual Abuse of a Minor in the 1980 Criminal Code was a Class C felony. It was changed on October 17, 1983 to Sexual Abuse of a Minor; First, Second, Third and Fourth degrees.

SEX OFFENDER REGISTRATION IN WASHINGTON STATE: COMPLIANCE, 1991

FINDINGS

- Three out of every four adult sex offenders required to register in Washington State had done so as of November 1991. Overall compliance was 76 percent, up 19 percent from the compliance rate measured one year earlier during the implementation phase of the law.¹ (See Figures 1 and 2.) *Total Adults=5143, Registered=3914*
- Overall compliance for juveniles as of November 1991 was 67 percent, down 3 percent from the compliance rate measured in March 1991. (See Figures 3 and 4.) *Total Juveniles=388, Registered=259*
- The sex offender registration law was changed in 1991, shortening the timelines for registration and requiring more sex offenders to register.

CHANGES IN THE LAW

More Offenders and Shorter Timelines

The Community Protection Act required that all convicted sex offenders (adults and juveniles) released from custody or on active supervision by the Departments of Corrections and Social and Health Services on or after February 28, 1990, register with the sheriff in their county of residence. The law was amended in 1991 to require registration of all sex offenders who were under the jurisdiction of the Indeterminate Sentencing Review Board on the date of the original law.

Previously, convicted sex offenders had 30 days to register following release, or sentencing if not confined. Amendments to the law in 1991 reduced this time to 24 hours for those released from confinement, and required immediate registration of those sentenced and not confined. Also, the number of days has been reduced from 45 to 30 for sex offenders moving or returning to Washington State. These changes went into effect on July 1, 1991.

¹ For background on the registration law, previous findings, and methodology, see "Adult Sex Offender Registration in Washington State: Initial Compliance, 1990," and "Juvenile Sex Offender Registration in Washington State: Implementation and Initial Compliance 1991" (Felver with Lieb). This paper uses the same methodology and sources of information as the two earlier studies. Contact the Institute for Public Policy for copies.

HB

441

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 21, 1992

FURTHER REFERRALS:

Date of Committee Action: 3/9/92

The JUDICIARY Committee considered:

HB 441

HOUSE BILL NO. 441

EMPLOYER'S LIABILITY FOR REFERENCE INFO

"An Act relating to the disclosure of information by an employer about the job performance of an employee or former employee."

RECOMMENDATIONS: the same title
 be replaced with _____ a new title

have attached amendments(s)

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) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>J. H. Ellis</i>	<input checked="" type="checkbox"/>				
<i>Kevin Pat Parnell</i>	<input checked="" type="checkbox"/>				
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>Terry Martin</i>	<input checked="" type="checkbox"/>				
<i>John Humphrey</i>	<input checked="" type="checkbox"/>				
<i>Mark P. Ashley</i>	<input checked="" type="checkbox"/>				

John Humphrey
 Vice CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 441

Revision Date: _____
 Title: "...disclosure of information by an employer about the job performance..."
 Sponsor: Representative Gruenberg
 Requestor: House Judiciary Committee

Department Affected: Department of Law
 BRU: Legal Services
 Component: Operations

COMPONENT SERIAL

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

This bill protects an employer, who acts in good faith, from liability for disclosing the job performance of an employee or former employee to a prospective employer. This protection would not shield an employer who provided information the employer knew was false or misleading, was given with a malicious purpose, or violated a civil right of the employee or former employee that is protected by Alaska's antidiscrimination laws under AS 18.80, or federal law. This bill will apply to all employers in the state and will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: March 5, 1992
 Date: March 5, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. HB 441

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the disclosure of BRU: Trial Courts
information... about job performance Components: _____
 Sponsor: Gruenberg
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 *CSC* Phone: 264-8228
 Division: Alaska Court System Date: 02/19/92
 Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CSC*
 Agency: Alaska Court System Date: 02/19/92

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 441

Revision Date: _____

Department Affected: Administration

Title: Disclosure of job performance information

BRU: Personnel/OEEO

Sponsor: Gruenberg

Component: Personnel/OEEO

Requestor: House Labor and Commerce

COMPONENT SERIAL NO.

		5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	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: 0

ANALYSIS: (Attach a separate page if necessary.)
This bill will not leave a fiscal impact on this division.

Prepared by: R. H. King, Director *Richard P. King*
Division: Personnel/OEEO

Phone: 465-4430
Date: February 18, 1992

Approved by Commissioner: Nancy Bear Usura *Nancy Bear Usura*
Agency: Administration

Date: 2/19/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

State of Alaska



House Majority Leader
COMMITTEES
HOUSE JUDICIARY
HOUSE RULES
HOUSE STATE AFFAIRS
SPECIAL COMMITTEE
MILITARY AND VET. AFFAIRS
LEGISLATIVE COUNCIL

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

P.O. Box V
JUNEAU, AK 99811
(907) 465-3718
465-4968/4986
(SESSION)

3111 C STREET, SUITE 440
ANCHORAGE, AK 99503
(907) 561-7621

MEMORANDUM

TO: All members
House Judiciary Committee

FROM: Rep. Max Greueberg *Max*

RE: Sponsor Statement HB 441
Disclosure of information by an employer

DATE: March 5, 1992

This bill is fashioned after a Florida Law which protects employers when giving references for former employees.

HB 441 presumes that an employer was acting in good faith, unless it is shown that the reference was knowingly false, deliberately misleading, was given with malicious purpose or violated the employees civil right.

Thank you.

Date of Committee Action: 2/20/92

2/20/92

LABOR AND COMMERCE Committee considered:

HB 441

HOUSE BILL NO. 441

EMPLOYER'S LIABILITY FOR REFERENCE INFO

Act relating to the disclosure of information by an employer about the job performance of an employee former employee."

RECOMMENDATIONS: the same title
replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

OPTIONS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S):

(Dept)

APPROVES PREVIOUS:

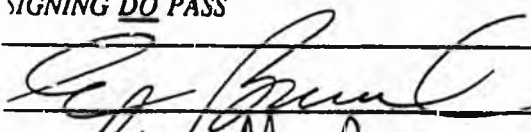
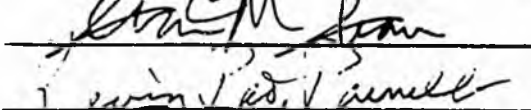
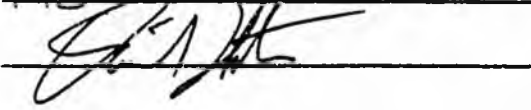
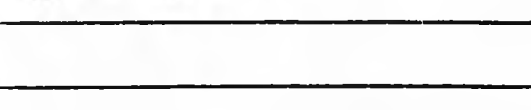
(Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Administration; Courts

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	✓				
	✓				
	✓				
	✓				


CHAIRMAN'S SIGNATURE

State of Alaska

House Majority Leader
COMMITTEES
HOUSE JUDICIARY
HOUSE RULES
HOUSE STATE AFFAIRS
SPECIAL COMMITTEE
MILITARY AND VET AFFAIRS
LEGISLATIVE COUNCIL



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MEMORANDUM

TO: Representative David Finkelstein
Chair, House Labor and Commerce

FROM: Representative Max Gruenberg *MFG*

DATE: February 7, 1992

RE: Scheduling of HB 441

I would very much appreciate it if you would schedule HB 441, "An Act relating to the disclosure of information by an employer about the job performance of an employee or former employee." as soon as possible.

HB 441 presumes that an employer was acting in good faith, unless it is shown that the reference was knowingly false, deliberately misleading, was given with malicious purpose or violated the employees civil rights.

If you have any questions, please call me or Stan Robbins, my Chief of staff, at ext 4968.

Thank you for your consideration.

State of Alaska

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MEMORANDUM

TO: Representative David Finkelstein
Chair, House Labor and Commerce

FROM: Rep. Max Greueberg *Max*

RE: Sponsor Statement HB 441
Disclosure of information by an employer

DATE: February 19, 1992

This bill is fashioned after a Florida Law which protects employers when giving references for former employees.

HB 441 presumes that an employer was acting in good faith, unless it is shown that the reference was knowingly false, deliberately misleading, was given with malicious purpose or violated the employees civil right.

Thank you.

State of Alaska

House Majority Leader
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M E M O R A N D U M

February 19, 1992

To: Representative Max Gruenberg

From: Mark Handley *MH*

Re: The Law of Defamation in the Context of Former Employee References

Defamation is a doctrine of the common law, that allows for the recovery of damages, from people who cause one to suffer a loss, by publication of a lie that injures to ones reputation. Any communication between two or more people can constitute publication. The defendant must have been at least negligent in regards to whether or not the statement was false.

If the defamatory statement would tend to injure one in his or her business or profession, as would be the case in most actions involving employer references, the injured party is not required to prove specific monetary damages.

There is a limited privilege in the common law that provides some protection to a person who defames someone when they are acting in the interest of others. The basic test is that the publication must be justified by the interest served and it must be called for by the a legal or moral duty or by generally accepted standards of decent conduct. This doctrine has been applied to cases involving statements by a former employer. However, the scope of this privilege is so vague that the best way for an employer to limit their exposure to liability for defamation is to refrain from making any negative statements about former employees.

SLANDER.TXT\MTH

Alaska State Legislature

Legislative Research Agency




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February 20, 1992

MEMORANDUM

TO: Representative Max Gruenberg

FROM: Christine M. Cheff 
Legislative Analyst

RE: Employer Liability for Negative References
Research Request 92.127

You asked for a copy of the new Florida law which provides immunity from liability to an employer who in good-faith discloses information about a former employee's job performance to a prospective employer. You also asked for a copy of any synopsis or analysis of the law.

Florida House Bill 497 became law on May 30, 1991, without the governor's approval (Attachment A).¹ According to a House Judiciary Committee analysis of the bill, prior to passage of this law employers had no explicit exemption from liability for good-faith disclosure (Attachment B). Various Florida court decisions however provided the impetus for introduction of legislation by recognizing an employer's "qualified privilege" in communicating information about a former employee, if given to a prospective employer in good faith and without malice. The judiciary committee analysis also suggests this new law complements Florida statutes which make falsification of an employment application a first degree misdemeanor. It is believed the combination of these laws enables employers to make better employment decisions from accurate information.

Also included with this memorandum are copies of three law review articles which may be of interest to you.² The articles were written during the late 1980s when the number of libel and slander cases filed by former employees against former employers was noticeably increasing. Employers consequently began to limit the amount of information disclosed about former employers in

¹Chapter 91-165.

²Wayne R. Wells, Robert Walter and Robert J. Calhoun, "Potential Employer Liability for the Disclosure of Employee Information," *Akron Business and Economic Review*, 1989, pp. 22-28. James B. Conroy, "Defamation in the Workplace: The Law of Massachusetts," *Massachusetts Law Review*, Summer 1989, pp.84-94. William A. Hancock, "Liability for Employment References," *Corporate Counsel's Quarterly*, October 1988, pp.1-27.

Representative Gruenberg
February 20, 1992
Page 2

an effort to reduce the litigation risk. All three articles provide overviews of the legal principles of defamation, apparently the most common claim in such lawsuits, and offer suggestions for limiting employer liability.

We hope this information will be useful. Please let us know if we can be of further assistance on this or any other matter.

Attachments