ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7485 SENATE JUDICIARY

18 months), but the D.A.'s office took the remaining two defendants to trial and cost Los Angeles taxpayers $15 million.

After the jury acquitted Ray Buckey and his mother on 52 counts and deadlocked on 13 other counts, Reiner decided to retry the case, despite his frank admissions about the lack of evidence. It is difficult not to conclude that politics, not justice, was the uppermost consideration in such a decision.

How exceptional was the *McMartin* case? Its size and cost were certainly unprecedented, but its basic flaws were the same that we have seen in hundreds of other cases. In the aftermath of the jury's verdict in the *McMartin* case, a parent wrote a letter to a local newspaper, the *Daily Breeze*. His experiences are similar to those of thousands of others, but few have summarized them so well.

> My son attended a preschool in Manhattan Beach. It was not the McMartin school. After his preschool closed for unexplained reasons, my wife "concluded" that our son had been a victim of molestation.
>
> She took him to see the sheriff's investigative team for an interview (twice), but nothing was turned up. Then, on the advice of a "support group," my wife took our son for a discovery session with a psychologist at a South Bay counseling center.
>
> The session with this expert produced a horrible story of physical and sexual abuse. Unfortunately, the interview was not recorded.
>
> On the way to school the next morning, I told my son that I had heard what happened and I was sorry there were such people in the world. After a short pause, he looked at me and said, "Dad, that puppet story wasn't true. It really wasn't true."
>
> When I told my wife what he had said, I was instructed that this was merely denial and that indeed the story was true.
>
> Our son was taken to individual therapy for more than three years, even though he showed no signs of emotional distress. The therapist kept my wife completely upset by alluding to "privileged" secrets that she had with our son. She also advised my wife that our son "shows a lot of anger" (which is nonsense) and that the therapy would go better if he came in twice a week.
>
> The therapist could not understand when I objected to the additional counseling, because the Los Angeles County Victim's Witness Office was going to pay for it. I wrote to the Victim's Witness Program and told them they were not to pay any fees. I suspected they paid anyway, but the office refused to show me my son's file.
>
> It struck me as ironic that these psychologists were chanting, "Believe the children," but that didn't apply if the child wanted to say a puppet story was untrue. Then it was "denial" that needed extensive counseling.
>
> Anyone with some experience with small children knows that children will go along with a fantasy game. But to take advantage of a child's colorful imagination to implant serious accusations that are not true is a form of child abuse.
>
> Some serious child abuse occurred as a direct result of very unprofessional work by some psychologists. Is there no way to hold these people accountable?

Ramifications

Most forms of child abuse are not new. While some societies do better than others, none protects its children to the degree that they deserve. We see no reason to doubt that sexual abuse of children, like other forms of abuse, may leave permanent scars.

We think it is especially tragic, however, when a society creates a new form of child abuse that is perpetrated by the very agencies mandated to prevent abuse. While we are sure that none of the individuals involved intends anything but protection for children, we are equally sure that many children are being abused by the faulty investigations of recent years.

The cases we have studied lead us to conclude that children who learn to believe they were abused, as a result of ongoing interviews by investigators and therapists, may develop the same fears as those who were real victims. Many such children are learning from their interviewers that their lives or the life of a parent is in danger. And many have had a loving relationship with a parent (usually a father) destroyed.

Not only do false accusations cause psychological damage to the child; they often destroy whole families. Even after a successful end to criminal charges, the families of the falsely accused are often left in a shambles, with life savings gone and relationships never quite the same.

We also consider the accusers in many cases to be victims. Many of the parents of the *McMartin* children, to cite just one notorious example, still believe and undoubtedly always will believe that their children were molested at the school. Their adamant point of view, however, is the result of having been told repeatedly by trusted medical and mental health experts that molestation had been proven by reliable scientific techniques. If many parents, after months or years of therapy for abuse they are assured has taken place, are unable to see how they have been misled, it is the professionals and not the parents who are responsible. These families, whom we may call the false accusers, are harmed just as surely as are those of the falsely accused.

Society also pays a heavy price for the large number of people falsely accused. Today, people are afraid to have neighborhood children in their homes. They are afraid to touch a child in a caring way for fear of being accused. Teachers, Boy Scout and Girl Scout leaders, day-care providers, and anyone else in contact with children are

drawing back. Fathers are becoming afraid to bathe their infant daughters. Such fear is certainly not going to reduce the incidence of child molestation, but it is reducing the incidence of normal, healthy contact between adults and children.

Our legal system is left to process the results of investigations done improperly, and we all pay the price. Some judges or jurors may wonder whether accusations are ever genuine. Others, inclined to confuse political agendas with courtroom fact-finding, may be determined not to let a child molester get away. The ferocity with which child molestation cases are fought leads to many ethical violations by attorneys who are bent on winning at any cost. Judges are afraid of being voted out of office because these cases are so political. Doctors are afraid to testify for fear their practices will be harmed if word gets out that they "defended a child molester."

Each year, hundreds of laws of questionable constitutionality are proposed, and many passed, as a way to make convictions easier. Politicians are afraid not to jump on the bandwagon, fearing they will be labeled "soft" on child molesters. Important elements in our legal, medical, and social systems are threatened, all in the name of protecting children.

Panic never protected anyone, and we know of no better word to summarize the developments described above. It is time to admit the mistakes we have made, muster the courage to look closely at why we made them, and start again.

Reforms

If the analysis we have presented is correct, the necessary reforms follow logically. First, police and child protection agencies must recognize the mistake of relying on a few persons from the mental health and medical fields who have set the tone for the new child sexual abuse prevention movement. Investigators must *not* think like therapists, but like investigators.

The practical ramification is that investigators must be retrained. In place of the "believe the child" approach, they must rely on neutral investigation that acknowledges the reality of both true and false accusations of child molestation.

Investigators who truly understand that finding the truth, and not assuming abuse, is the best way to protect children will be more likely to avoid leading and suggestive interviews. Their retraining must include practice in avoiding such questioning. There is no need for mental health professionals to be involved in such training.

While investigators should be required to tape record all their interviews, those with the child are especially crucial. If the child is able to tell his or her own story, even tentatively, a tape recording will document this fact, and such evidence should help convict the child molester. If, on the other hand, the child's real source of information is an overzealous interviewer, that will also be revealed by the tape recording, and such evidence will help avoid convictions of innocent persons. If the truth is our goal, we have everything to gain and nothing to lose by responsibly documenting all interviews with children.

Investigators must also learn how they have been misled by a few doctors who are confusing their desire to stop child abuse with legitimate medical science. Until these doctors reform themselves, the investigators should no longer send children to them for examinations. Ordinary pediatricians who confine themselves to describing bona fide medical findings should be encouraged to perform such examinations.

District attorneys have the power to implement many of these changes simply by letting police and child protection agencies know that cases will not be accepted for prosecution unless minimal standards are observed. A neutral investigation, fully documented, should be a minimum requirement insisted upon by all prosecutors.

The courts also must improve. Judges must do a better job of judging the competence of potential child witnesses. Children who know that a blue tie is not a red tie, and that to say otherwise is to tell a lie, have not demonstrated their competence to testify. The competent witness must also be able to base testimony on *personal recollection* or *independent recall*. In order to decide whether a child's statements are based on such recall or are instead a product of training by interviewers, judges must study the prior interviews and not just the child's statements in court.

Juvenile court judges are especially in need of a reminder that a finding that molestation has occurred, if in reality there has been no molestation, is just as harmful to a child as the failure to recognize and stop abuse that has in fact occurred. The argument that "it is better to err on the side of the child," meaning that molestation will be assumed, is an easy cop-out that may make judges feel better but does nothing to protect children.

Finally, legislators need to recognize that the flood of legislation in recent years, which is generally aimed at weakening due process protections of accused persons, should not be equated with better protection of children. The evidence that false allegations are widespread is now too strong to make such an easy assumption. In our view, efforts to encourage hearsay exceptions, to deny the right of confrontation, and to pass draconian sentences that make plea bargaining more likely than a contested trial are making convictions easier but are promoting neither justice nor child protection.

We do not expect these reforms to come easily. The law enforcement/mental health alliance is too busy defending current practices to be receptive to such changes. The only hope lies in more effective courtroom advocacy that exposes current mistakes, coupled with a growing public awareness that our child protection system needs an overhaul. CJ

SEX ABUSE LEGITIMACY SCALE
(SAL SCALE)

An Instrument for Differentiating Between
Bona Fide and Fabricated Sex-Abuse Allegations of Children

Richard A. Gardner, M.D.

Clinical Professor of Child Psychiatry
Columbia University
College of Physicians & Surgeons

WARNING: In order to be used in a meaningful way, this instrument *must* be used in association with the information provided by Dr. Richard A. Gardner in chapters 3, 4, and 5 of his book, *The Parental Alienation Syndrome and the Differentiation Between Fabricated and Genuine Child Sex Abuse* (Cresskill, New Jersey: Creative Therapeutics, 1987). The book explains how best to evaluate and score each of the items in the scale. Failure to use these guidelines may result in misleading or erroneous conclusions.

Creative Therapeutics, PO Box R, Cresskill, NJ 07626-0317

ISBN: 0-933812-19-1

Packets of 25 copies of the SEX ABUSE LEGITIMACY SCALE may be obtained at $12.50 per packet + $2.50 postage and handling from Creative Therapeutics, P.O. Box R, Cresskill, N.J. 07626-0317.

INSTRUCTIONS

The differentiating criteria in this scale are most applicable when the sex abuse has taken place in a family situation in which the father (or stepfather) is the alleged offender and the mother is the accuser. It is also applicable when the alleged offender is known to the family and can be identified. This would include relatives, frequent visitors to the home, and babysitters. The scale is most valid if all three parties (child, accuser, and accused) are interviewed, individually and in various combinations, as warranted. The scale is less valuable (but may still be useful) when the alleged offender is unknown or inaccessible for interview. It is applicable to both boys and girls as the victims of the alleged incest.

Medical evidence may provide the most compelling confirmation that the child has been sexually abused. Medical evidence includes findings such as damage to the genital or rectal tissues; general body trauma; foreign objects in the genital, rectal, or urethral openings; the presence of a sexually transmitted disease; and pregnancy (obviously, applicable only to teenagers). When such evidence is present, the SAL Scores can provide additional data—generally confirmatory, but in rare situations nonconfirmatory. When medical evidence is not present, the SAL Scores may be the primary sources of information about whether or not the sex-abuse allegation is valid.

The items are worded so that the greater the number of *Yes* answers, the greater the likelihood that the sex abuse is genuine. In contrast, the smaller the number of *Yes* answers, the greater the likelihood the sex abuse has been fabricated. The differentiating criteria are divided into three categories, from the most to the least valuable. In order to give greater weight to the more valuable criteria, the following point scores are to be given for *Yes* answers in each of the three categories.

Part A. Very Valuable Differentiating Criteria—3 points for each *Yes* answer.
Part B. Moderately Valuable Differentiating Criteria—2 points for each *Yes* answer.
Part C. Differentiating Criteria of Low But Potentially Higher Value—1 point for each *Yes* answer.

Checks are placed in the *Yes*, *No*, or *Not Clear or Not Applicable* columns to the right of each item, in whichever column is appropriate. The total number of *Yes* responses in each category is multiplied by the appropriate factor for that category to obtain a weighted score for that part. The sum of the weighted part scores (Part A + Part B + Part C) is referred to as the *Sex Abuse Legitimacy Score (SAL Score)*. Separate SAL Scores are calculated for the child (maximum 60 points), the accuser (maximum 27 points), and the accused (maximum 27 points). A cumulative SAL Score of all three parties is not computed.

Because of the large number of criteria and because no individual can be expected to satisfy all or even most of them—even in cases of proven sexual abuse—SAL Scores in the range of 50% of the maximum or more are highly suggestive of bona fide sexual abuse. In contrast, when the abuse is fabricated, the SAL Scores are usually quite low (below 10% of the maximum) and may even be close to or at the zero level in many cases. Accordingly, when using this scale, the best way to interpret the findings is to consider very low SAL Scores (below 10% of the maximum) to be strongly indicative of fabrication. From that low point, the higher the SAL Score above the 10% level, the greater the likelihood the abuse is genuine. This is especially the case when the SAL Score exceeds 50% of the maximum.

The SAL Scale was developed by Dr. Richard A. Gardner from studies conducted between 1982 and 1987 of children who made allegations of sex abuse. As a result of these studies, Dr. Gardner concluded in some cases that the children were indeed sexually abused and in other cases that they were not. The criteria he used for making this differentiation are embodied in this scale. The items that were selected for inclusion in this scale appeared to be clinically useful indicators for differentiating between bona fide and fabricated sex-abuse allegations. Face validity only is claimed for these items. These clinical studies indicated into which of the part categories (A, B, or C) the item should reasonably be placed. Clinical experience also suggested the cutoff levels for differentiating between the two classes of sex abuse. Accordingly, the cutoff levels and their significance should be viewed as preliminary and tentative. They may be modified after more extensive studies (by Dr. Gardner and possibly others) and will be revised, if necessary, in future editions of this scale.

The examiner does well to give serious consideration to conclusions derived from the SAL Scale, but not to make the complete decision on the basis of its findings. Rather, it is crucial that other data be considered

before coming to a final conclusion. These other sources of information would include medical reports, reports from other examiners, and interviews with other parties (especially those who claim to have been witnesses to the alleged abuse).

The SAL Scale is not designed to be used as a questionnaire, wherein the examiner asks the interviewee his or her opinion regarding whether or not a criterion is present. If direct input from the interviewee is elicited, it is very likely that the conclusions will be contaminated by the bias of the respondent. Rather, the scale should be used *after* the interviews with the child, accuser, and accused have been completed. Both individual and joint interviews *must* be conducted in order to properly assess conflicting data that is often provided. This is especially the case for the child's items, because parental input may be crucial if one is to assess adequately each item, and properly score it. It is only after all of these interviews have been completed that the examiner is in a position to properly utilize the scale. Before completing the evaluation, the examiner should review the SAL Scale (not in the interviewee's presence), in order to be sure that *all* items have been considered. Not to do so will compromise significantly the value of the findings.

The Child Who Alleges Sex Abuse

Name _____ DOB: _____
Address _____
Date(s) of interview(s) _____

Part A *Very Valuable* *Differentiating Criteria* (3 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
1. Very hesitant to divulge the sexual abuse			
2. Fear of retaliation by the accused			
3. Guilt over the consequences to the accused of the divulgences			
4. Guilt over participation in the sexual acts			
5. Provides specific details of the sexual abuse			
6. Description of the sex abuse credible			
7. If the description of the sex abuse does *not* vary over repeated interviews, check *Yes*. If the description *does* vary, check *No*.			
8. Frequent episodes of sexual excitation, apart from the abuse encounters.			
9. Considers genitals to have been damaged			
10. Desensitization play engaged in at home or during the interview			
11. Threatened or bribed by the accused to discourage divulgence of abuse			
12. If a parental alienation syndrome is *not* present, check *Yes*. If a parental alienation syndrome *is* present, check *No*.			
13. If the *complaint* was *not* made in the context of a child custody dispute or litigation, check *Yes*. If there *is* such a dispute, check *No*.			
Total *number* of checks in the *Yes* column for Part A (items 1–13) _____ (maximum 13)			

Part B *Moderately Valuable* *Differentiating Criteria* (2 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
14. If the description does *not* have the quality of a well-rehearsed litany, check *Yes*. If it *does* have a litany quality, check *No*.			
15. If there is *no* evidence of a "borrowed scenario" (description taken from other persons or sources), check *Yes*. If the description appears to have been taken from external sources, check *No*.			
16. Depression			
17. Withdrawal			
18. Compliant personality			
19. Psychosomatic disorders			
20. Regressive behavior			
21. Deep sense of betrayal, especially regarding the sex abuse			
Total *number* of checks in the *Yes* column for Part B (items 14–21) _____ (maximum 6)			

Part C *Differentiating Criteria of Low But Potentially Higher Value* (1 point for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
22. Sleep disturbances			
23. Abuse took place over extended period			
24. Retraction with *fear* of reprisals by the accused, rather than retraction with *guilt* over the consequences to the accused of the divulgences			
25. Pseudomaturity (girls only)			
26. Seductive behavior with the accused (girls only)			
Total *number* of checks in the *Yes* column for Part C (items 22–26) _____ (maximum 5)			

Computation of the Child's Sex Abuse Legitimacy Score	*Number of Yes Checks*	*Multiply by Factor*	*Weighted Score*
Score Part A (items 1–13)		x3	(maximum 39)
Score Part B (items 14–21)		x2	(maximum 16)
Score Part C (items 22–26)		x1	(maximum 5)
SAL Score (sum of scores A+B+C) _____ (maximum 60)			

A SAL Score of 6 or below indicates that the sex-abuse allegation is extremely likely to have been fabricated.

SAL Scores from 7 through 29 are inconclusive. However, the closer the SAL Score is to 7, the more likely the allegation was fabricated; the closer it is to 29, the more likely the abuse took place.

SAL Scores of 30 and above are strongly suggestive of bona fide sex abuse.

The Accuser
(Especially when the accuser is the mother)

Name _____ DOB: _____
Address _____
Date(s) of interview(s) _____

Part A *Very Valuable* *Differentiating Criteria* (3 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
1. Initially denies and/or downplays the abuse			
2. If the complaint was *not* made in the context of a child custody dispute or litigation, check *Yes*. If there *is* such a dispute, check *No*.			
3. Shame over revelation of the abuse			
4. If she does *not* want to destory, humiliate, or wreak vengeance on the accused, check *Yes*. If such attitudes are present, check *No*.			
5. If she has *not* sought a "hired gun" attorney or mental health professional, check *Yes*. If such professionals have been or are being sought, check *No*.			
6. If she does *not* attempt to corroborate the child's sex-abuse description in joint interview(s), check *Yes*. If she *does* exhibit such behavior, check *No*.			
Total *number* of checks in the *Yes* column for Part A (items 1-6) _____ (maximum 6)			

Part B *Moderately Valuable* *Differentiating Criteria* (2 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
7. Appreciates the psychological trauma to the child of repeated interrogations			
8. Appreciates the importance of maintenance of the child's relationship with the accused			
9. Childhood history of having been sexually abused herself			
10. Passivity and/or inadequacy			
Total *number* of checks in the *Yes* column for Part B (items 7-10) _____ (maximum 4)			

Part C *Differentiating Criterion of Low But Potentially Higher Value* (1 point for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
11. Social isolate			
Total *number* of checks in the *Yes* column for Part C (item 11) _____ (maximum 1)			

Computation of the Accuser's Sex Abuse Legitimacy Score	*Number of Yes Checks*	*Multiply by Factor*	*Weighted Score*
Score Part A (items 1-6)		x3	(maximum 18)
Score Part B (items 7-10)		x2	(maximum 8)
Score Part C (item 11)		x1	(maximum 1)
SAL Score (sum of scores A+B+C) _____ (maximum 27)			

A SAL Score of 3 or below indicates that the sex-abuse allegation is extremely likely to have been fabricated.

SAL Scores from 4 through 13 are inconclusive. However, the closer the SAL Score is to 4, the more likely the allegation was fabricated; the closer it is to 13, the more likely the sex abuse took place.

SAL Scores of 14 and above are strongly suggestive of bona fide sex abuse.

The Accused
(Especially when the accused is the father)

Name _____ DOB: _____
Address _____
Date(s) of interview(s) _____

Part A *Very Valuable* *Differentiating Criteria* (3 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
1. Bribed and/or threatened the child to keep the "secret"			
2. Weak and/or feigned denial			
3. If the complaint was *not* made in the context of a child custody dispute or litigation, check *Yes*. If there *is* such a dispute, check *No*.			
4. Presence of other sexual deviations			
Total *number* of checks in the *Yes* column for Part A (items 1-4) _____ (maximum 4).			

Part B *Moderately Valuable* *Differentiating Criteria* (2 points for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
5. Childhood history of having been sexually abused himself			
6. Reluctance or refusal to take a lie detector test			
7. History of drug and/or alcohol abuse			
8. Low self-esteem			
9. Tendency to regress in periods of stress			
10. Career choice which brings him in close contact with children			
Total *number* of checks in the *Yes* column for Part B (items 5-10) _____ (maximum 6)			

Part C *Differentiating Criteria of Low* *But Potentially Higher Value* (1 point for each *Yes* response)	*Yes*	*No*	*Not Clear or Not Applicable*
11. Moralistic			
12. Controlling			
13. Stepfather or other person with frequent access to the child			
Total *number* of checks in the *Yes* column for Part C (itemse 11-13) _____ (maximum 3)			

Computation of the Accused's *Sex Abuse Legitimacy Score*	*Number of* *Yes Checks*	*Multiply* *by Factor*	*Weighted Score*
Score Part A (items 1-4)		x3	(maximum 12)
Score Part B (items 5-10)		x2	(maximum 12)
Score Part C (item 11-13)		x1	(maximum 3)
SAL Score (sum of scores A+B+C) _____ (maximum 27)			

A SAL Score of 3 or below indicates that the sex-abuse allegation is extremely likely to have been fabricated.

SAL Scores from 4 through 13 are inconclusive. However, the closer the rating is to 4, the more likely the allegation was fabricated; the closer it is to 13, the more likely the sex abuse took place.

SAL Scores of 14 and above are strongly suggestive of bona fide sex abuse.

Thursday, June 29, 1989 WEATHER: Su

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Albany, N.Y.

THE TIMES UI

NOW urges veto of bill outlawing false child-abuse calls

By Deborah Gesensway
Capitol bureau

ALBANY — The state Legislature wants to make it illegal to knowingly and maliciously make a false report to the state's child-abuse hot line.

● **Other legislation**/B-16, B-20

But women's rights advocates say the measure may end up scaring some people — particularly parents involved in custody disputes — from reporting legitimate child-abuse cases.

"This bill is based on ignorance and false information," said Amy Neustein, a Brooklyn sociologist, speaking on behalf of the National Organization for Women. "This bill is going after women, women men see as vindictive and vengeful."

She and other opponents are urging Gov. Mario M. Cuomo to veto the bill.

Sponsors of the bill, however, say opponents don't understand that the bill's provisions can't be used against anyone who reports suspected child abuse in good faith.

"All they need (to make a report to the state child-abuse hot line) is reason to believe," said Stephanie H. Wacholder, an aide to Assemblyman William B. Hoyt, D-Buffalo, sponsor of the false-reporting bill. "We think this is important because there are people out there using the child-abuse hot line maliciously, to get back at a neighbor or a spouse."

The bill, which has been passed unanimously in the last few days by both the Senate and the Assembly and sent to Cuomo for his signature, would make it a crime to report a case to the Central Register of Child Abuse and Maltreatment that the person knew to be "false or baseless." If convicted of the misdemeanor, the person making the false charge could be jailed for one year.

"The burden of proof is clearly on the person who brings the charge of false report"

— Paul Elisha, state Department of Social Services

It is already illegal to knowingly report a false incident to police, but the bill would extend that to include false reports made to the state child-abuse hot line.

Once a suspected case of child abuse is reported to the statewide hot line, it is referred to local child protective services offices in each county, whose caseworkers investigate.

Of the 88,000 cases reported in 1988, nearly two-thirds were ruled "unfounded" by child protective services caseworkers, according to Paul Elisha of the state Department of Social Services, which runs the hot line. "Unfounded" means that caseworkers were unable to find enough evidence to declare a case valid, he said, not that the cases were false. Wacholder said about 15 percent of all reports are considered false.

Elisha said his agency didn't originally back the bill because of fears that it might have "a chilling effect on reporting of child abuse," but the department isn't opposing the provisions now because officials think that they include enough safeguards to protect people who report cases in good faith that then turn out to be false.

"The burden of proof is clearly on the person who brings the charge of false report," he said. "They have to prove malicious intent and knowledge beforehand that it is false."

Several legislators, including Democratic Assembly members Helene Weinstein of Brooklyn and Jerrold Nadler of Manhattan, have said they have serious concerns about the bill, although they voted for it. They and their aides said they have seen instances in which mothers who report their ex-husbands for allegedly sexually abusing their children have been punished by the court system for making the accusations.

That is what Neustein, of NOW, said

See **ABUSE** / A-1

ABUSE

Continued from A-1

happened to her. "Incest is prevalent and there are judges who refuse to believe that," she said. "They don't think a father would do that so they charge the mothers with brainwashing their children to say they were sexually abused by daddy and then take the children away from the mothers" for emotionally abusing their children.

Neustein lost custody of her 8-year-old daughter after she accused her ex-husband of sexually abusing the child. Her case has been the subject of a Senate investigation and featured prominently in joint Senate-Assembly hearings this spring into Family Court procedures for assigning custody and visitation rights where charges of sexual abuse have been made.

Tom McGreevy of the state Fathers Rights Association, on the other hand, said this kind of legislation is needed because feuding parents — both women and men — have taken to calling the child-abuse hot line to report their spouse in an attempt to gain an edge in custody hearings.

"The difference is when a mother uses this strategy, she usually wins custody," he said. "When the case is finally cleared up and they find there was no abuse, the court will say that since the child has been in the custody of the mother, the child should stay there."

Men who have attempted to use the system in the same way usually lose all visitation rights, he said. Added Wacholder, "We know that this is being used in custody disputes oftentimes at the suggestion of an attorney."

Jules Kerness, an aide to Sen. Mary B. Goodhue, R-Mount Kisco, who also sponsored the bill, said he understands the women's groups' fears that criminalizing false reporting could discourage some people from calling in real cases.

"We're looking for a chilling effect for the harassment calls that are clogging the system," he said.

THE TIMES UNION
Thursday,
July 13, 1989

Child abuse claims

To the Editor:

The National Organization for Women's opposition to the Legislature's bill outlawing false child-abuse calls bears testimony to the widespread misuse of the Child Abuse Hotline by mothers and matrimonial attorneys who have victimized:

☑ Non-abused children misdiagnosed and mistreated for sexual abuse;

☑ Innocent fathers deprived of access to their children during the pendency of a custody dispute;

☑ Uneducated, untrained child protective workers who are all too anxious to assist falsely accusing mothers;

☑ Gullible judges who presume falsely accused fathers to be guilty until proven innocent, and

☑ The system itself when used maliciously and intentionally to deprive our children of access to their fathers.

The horrendous national disgrace of our children being deprived of their fathers by overzealous child protective workers, manipulative matrimonial attorneys, misguided family court judges and the feminist radicals of the National Organization for Women requires an immediate and comprehensive solution which would include (1) passage of additional legislation to punish and deter false allegations of child abuse, (2) education and training for social workers to enable them to distinguish between true and false allegations of abuse, and (3) education and training for family court judges to enable them to consider false allegations as one of the criteria in determining custody.

PETER G. SOKARIS
Albany

THE TIMES UNION
Thursday,
July 20, 1989

Law makes malicious charges of abuse a crime

Associated Press

ALBANY — Gov. Mario M. Cuomo on Wednesday signed into law a bill that supporters said will curb malicious, false reports to the state child abuse hot line.

The law will apply only to those people who have no reason to believe their accusations of child abuse are true, said Stephanie Wacholder, an aide to Assembly sponsor William Hoyt, D-Buffalo.

The law, which takes effect in November, will make calling the hot line with a baseless abuse charge a misdemeanor, falsely reporting an incident. The crime will be punishable by up to $1,000 fine and a year in jail.

The state's chapter of the National Organization for Women had urged Cuomo to veto the bill, saying it could be used to penalize mothers.

Amy Neustein of NOW said the state should be concentrating on jailing abusers, not abuse reporters.

"Why are they using their paltry resources to go after the one who makes the call?" she said.

Wacholder said the law doesn't apply to callers who have reason to believe that there is a basis for their abuse charge.

Neustein said she didn't trust the state's criminal justice system to decide which calls are malicious.

The state Department of Social Services has estimated that up to 15 percent of the false reports received by the hot line are made maliciously, Wacholder said.

In other bill action Wednesday:

● Cuomo signed a law that will place stricter controls on professional fund-raisers working for law enforcement support groups, such as police unions.

The new law requires any organization that raises money for police or their families to register with the state.

Furthermore, it bars fund-raisers from identifying themselves falsely as police officers or from promising donors special breaks, such as immunity from parking tickets.

The law takes effect immediately.

● State research scientists will finally be able to share in the royalties for new products and processes they patent, under legislation designed to bring New York into conformity with federal rules.

The new law, which takes effect immediately, will allow state employees to take royalty money in addition to their salaries.

● Under another law that took effect immediately, the state Department of Environmental Conservation has been ordered to develop an inventory of bodies of water that are out of compliance with cleanliness standards and to identify the sources that pollute them.

The law also authorizes EnCon to administer a grant program to fund up to half the cost of cleaning up the pollution.

● Cuomo also signed legislation extending the life of the state Superfund Management Board, which oversees cleanup of hazardous waste sites, through March 31, 1994. The law takes the state economic development commissioner off the panel and adds two citizen representatives instead.

● Cuomo signed a law extending the program that requires utilities to conduct home energy-conservation surveys.

● Christmas trees will be considered a crop under another bill signed by Cuomo.

The law, which took effect immediately, includes Christmas trees in the legal definition of a crop so that land used to grow the trees can be eligible for agricultural assessments.

● Patrons of Off-Track Betting simulcast parlors will be able to pay their bar tabs with credit cards under another new law.

The measure, which took effect immediately, also increases to 15 the number of simulcast facilities permitted in New York City and to three per county permitted all other OTB districts.

● Leased used cars will be included in the used-car Lemon Law. The bill is aimed at helping people who lease used cars that are defective by requiring dealers to issue warranties. It takes effect in November.

● Cemetery vandals could find themselves sentenced to repair the damage they cause under another new law.

The law allows judges to direct cemetery vandals to repair or maintain cemeteries as a condition of probation or conditional discharge. It takes effect in November.

● Rural letter carriers will no longer have to fiddle with their seat belts every time they deliver mail, thanks to Cuomo's approval of a measure exempting motorized mailmen from the state's mandatory seat-belt law. The exemption takes effect immediately.

● Effective Nov. 1, kerosene cannot be placed in portable containers of less than five gallons unless the containers have spouts and tight closures or are designed so contents can be poured without spilling.

● Starting next month, banks will be forbidden to charge fees for accepting U.S. coins for deposit or exchange into paper money. However, the coins must be properly rolled and must display the customer's account number. No more than 10 rolls can be turned in at any one time.

Cuomo names rape panel

Associated Press

ALBANY — Gov. Mario M. Cuomo, saying that New York needs to improve the way it responds to crimes of sexual assault and rape, appointed a task force Wednesday to recommend changes in laws.

Cuomo said he hoped that his study commission, chaired by Judith Avner, director of the state's Division for Women, would come up with recommendations in time for next year's legislative session.

There were 91,000 reported rapes in the United States in 1987, Cuomo said, and this represents only a fraction of the actual crimes. Too many women, fearing the continued wrongful impression that they're somehow to blame for attacks against them, fail to report crimes, he said.

"Clearly we have to face rape and sexual assaults for what they are," Cuomo said. "They are dehumanizing acts of violence. Seeing it any other way absolves the violator and condemns the violated."

Cuomo's task force includes members of state agencies for health, social services, parole, youth, domestic violence and crime victims. The panel also includes state Supreme Court Justice Richard Andrias of New York City and officials of several county and city agencies dealing with sexual assault.

State Senate Majority Leader Ralph Marino said he welcomed Cuomo's task force, but said lawmakers should act quickly on three Republican-backed bills. These proposals would restrict plea bargaining in rape cases, increase penalties if a weapon is used in sexual assault and establish a statewide rape crisis program with a 24-hour hot line.

"These bills should be enacted as quickly as possible and are not in need of further study," Marino said.

M E M O R A N D U M I N S U P P O R T
submitted in accordance with Assembly Rule III, §1 (e)

Number: Assembly 2050-A Senate _____ _X_ Memo on original bill ___ Memo on amended bill

Sponsor(s): Member(s) of Assembly: William B. Hoyt

Senator(s): _____

TITLE OF BILL:

AN ACT to amend the penal law and the social services law, in relation to falsely reporting a case of child abuse or maltreatment.

SUMMARY OF SPECIFIC PROVISIONS:

Section one of the bill amends section four hundred twenty-four of the social services law to require local child protective services to refer suspected cases of falsely reporting child abuse and maltreatment in violation of provisions of the Penal Law as added by this act, to the appropriate law enforcement agency or district attorney.

Section two of the proposal adds a new subdivision three to section 240.55 of the Penal Law, relating to the making of false reports of child abuse or maltreatment to the statewide central register of child abuse and maltreatment. Specifically, a person would be guilty of falsely reporting in the second degree if he or she when, knowing a report is false or baseless, reports, by word or action, to the State Central Register, an alleged occurrence or condition of child abuse or maltreatment which did not in fact occur or exist. Falsely reporting in the second degree is a Class A misdemeanor.

EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER:

1. Under current law there is some question under what circumstances it is a crime to knowingly make a false report of suspected child abuse or maltreatment to the State Central Register. Currently, it is illegal to, knowing the information to be false, report -- an alleged occurrence or impending occurrence of a catastrophe or emergency which did not in fact occur or does not in fact exist. A report of suspected child abuse or maltreatment may not necessarily involve an impending catastrophe or emergency. This bill makes it clear, by adding a new subdivisior to Section 240.55 that any knowingly false report to the State Central Register, whether or not an emergency or catastrophe is alleged, is illegal.

2. Under current law (section 422(4), Social Services Law) a court or grand jury has access to information contained in the State Central Register, under current law and practice, however, this information is only made available to such entities upon request. This bill proposes to make clear that the State Department of Social Services may, in its discretion, refer a suspected case of false reporting of child abuse or maltreatment to the appropriate district attorney.

STATEMENT OF SUPPORT:

The incidence of child abuse and maltreatment in New York State has reached alarming proportions. Each year since the establishment of the State Central Register, the number of reports of suspected child abuse or maltreatment has increased steadily, more than tripling from 1973 to 1988. In 1988, the number of reports was 122,917 involving 199,878 children.

It has been estimated that perhaps 15% of all reports of suspected child abuse or maltreatment may be reports that, when made, were known by the reporter to be false. A number of reports which have been investigated have involved situations where an individual used the Central Register to harass and annoy someone with whom they have a personal relationship, or for purposes of increasing an individual's chances in a child custody case.

In some instances, the same individual would repeatedly make false reports. Although the subject of the report and the reporter were both known to the register, under the law, with each report, an appropriate investigation must take place.

The subject of the report does have a right, even if somewhat limited, to protect themselves. The subject may commence a libel or slander action or may file a criminal complaint alleging Harassment (Penal Law §240.25) or Aggravated Harassment (Penal Law §240.30). Because of the difficulty of proving these cases, and apparently for personal reasons, these avenues for recourse are rarely, if ever, used.

The state, however, does not have the ability to discourage such improper use of the register. Improper use, which is annoying to the subject, also wastes valuable state and local resources. Caseworkers, heavily burdened with cases and responsibilities, should not have to repeatedly investigate allegations they know, from past investigations, to be false. This bill will help to reduce the number of false reports.

This bill gives the State Department of Social Services the ability to notify the local district attorney who may commence a criminal proceeding.

FISCAL IMPLICATIONS:

May result in more efficient use of state and local resources.

LEGISLATIVE HISTORY:

1984 - A.11415 - Referred to Codes Committee
1985 - A.3205 - Referred to Codes Committee
1986 - A 3205 - Passed Assembly, Died in Senate Rules

EFFECTIVE DATE:

First day of November after this act becomes law.

HB44

Other "Truths" about Domestic Violence: A Reply to McNeely and Robinson-Simpson

Mr Daniel G. Saunders

Whenever I read in a professional journal that someone has found the Truth about a problem I wonder if more heat than light is being generated. An example is "The Truth about Domestic Violence: A Falsely Framed Issue."[1] The authors, McNeely and Robinson-Simpson, claim that the problem of domestic violence has been presented falsely as a problem of men's violence against women. They believe that male victimization has been ignored, that the public, legislators and change agents are acting on a faulty assumption, and that legal action to protect the rights of women may lead to men's "social and legal defenselessness."[2]

As with most social problems, the truth about domestic violence is far more elusive than McNeely and Robinson-Simpson would like us to think. In fact, they may have led social workers further from the truth by failing to mention important limitations of the research they cite, ignoring evidence that counters the research, and relying heavily on conjecture, opinion, and anecdotal evidence. Existing evidence shows that women are abused to a greater extent than men and thus our priorities for services and legislation have been placed properly. Especially disturbing is that the conclusions made by McNeely and Robinson-Simpson may be used to block services for battered women, deny them their rights, and suggest types of intervention that may increase their risk of victimization. The question of whether husband abuse is a significant problem is profoundly important to the social work profession because social workers have been involved in developing services and policies aimed at halting domestic violence.

Women's Right to Defense

McNeely and Robinson-Simpson cite several representative community and national surveys and one crime victimization survey to show that rates of violence by husbands and wives are about equal; more selective surveys of help-seeking battered women show similar results.[3] However, to call the violence by women "abusive" is to miss the mark. The authors fail to cite evidence that most of the wives' violence is in self-defense and that size and strength differences mean the women will be the most victimized.

McNeely and Robinson-Simpson make the same mistake as Steinmetz in citing statistics on the equal rates of spousal homicides by husbands and wives without reporting the rates at which the homicides were in response to violence. Wolfgang's study, which showed equal rates of homicide for husbands and wives, also showed that in 60 percent of the cases in which wives killed husbands, the women were responding to violence. In only 9 percent of the cases in which husbands killed wives were the men reacting to the wives' violence. Although a justifiable self-defense motive was not established firmly in the study, Wolfgang concludes that "we are left with the undeniable fact that husbands more often than wives are major precipitating factors in their own homicide deaths."[4] Indirect evidence for self-defense comes from a study of women who had been in both a violent and a nonviolent relationships: 23 percent used violence occasionally when in a relationship with a violent man whereas only 4 percent did so in a nonviolent relationship.[5]

A study by this author of battered women at five shelters and a family service agency showed that most of the women had used violence, but largely for self-defense.[6] Of the women who used severe violence, 71 percent used it exclusively to defend themselves against their partner's aggression, which they often defined as "fighting back." The women's reports on their motives for violence were not correlated with a measure of social desirability response bias.

McNeely and Robinson-Simpson rely heavily on the early work of Steinmetz but do not reveal the flaws in her data presentation and conclusions. Some researchers have called her work on battered husbands "the battered data syndrome."[7] For example, Steinmetz left out the most serious forms of violence from her initial report; a subsequent report revealed that four wives and none of the husbands in 54 marriages suffered severe and repetitive beatings.[8] McNeely and Robinson-Simpson also were selective in the data they presented. They left out the category of Steinmetz's original study—"pushing, shoving, grabbing"—that showed much higher rates for husbands. Contrary to the claims of McNeely and Robinson-Simpson and of Steinmetz herself, nowhere does Steinmetz measure who initiated physical aggression or what their motives were for being aggressive. All of the studies cited in the article suffer from the same inadequacy, yet McNeely and Robinson-Simpson apply the term "victim" to men unequivocally and use the phrase "reciprocal violence," which implies that the violence is equal in purpose and effect.

McNeely and Robinson-Simpson also report selectively from other studies. For example, two of the frequency categories in the Gelles study, both of which showed higher frequencies for husbands, were not reported.[9] The authors do not mention that the increases and decreases in marital violence rates between the 1975 and 1985 national family violence studies are not statistically significant.[10] The false conclusion is that violence against husbands is increasing and violence against wives is decreasing. The authors quote Straus and Gelles to explain that continued violence against husbands is probably from a lack of public concern and ameliorative programs for the problem of women's violence. Yet something is being done: If current findings on women's self-defense are generalizable, then efforts to stop men's violence and to offer women alternatives to a violent home will decrease violence against men.

Consequences of Physical Differences

The generally greater size and strength of men means that women are likely to suffer greater injuries and, if they are to repel an attack, to be required to use a more severe form of violence. McNeely and Robinson-Simpson play down Steinmetz's statements that physical differences lead to greater injury to women by saying that "men were somewhat more likely to cause greater injury."[11] Steinmetz actually makes stronger statements about the greater harm to women:

> When the wife slaps her husband, her lack of physical strength, plus his ability to restrain her, reduces the physical damage to a minimum. When the husband slaps his wife, however, his strength, plus her

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nability to restrain him, results in considerably more damage."[13]

n who batter average 45 pounds heavier four to five inches taller than their part-s, but strength and fighting experience are likely to give them an advantage.[13] IcNeely and Robinson-Simpson falsely me that the higher frequency of some es of severe violence by women suggests their violence is not merely a response iolence by their partners. Yet it is legal-stifiable and likely that women will use e severe forms of violence to defend nselves or their children.[14] The results of Leod's survey showed that none of the was seriously injured unless a weapon or knife) had been used against them. eporting on the Straus and Gelles study, Neely and Robinson-Simpson claim that nen used "weapons" more often but e "hitting, or trying to hit with ething" in the same category as the "use knife or gun." Given size and strength rences, hitting with an object constitutes rent "weapons" for men and women. refore, the Conflict Tactics (CT) scale other measures of marital violence are balanced for gender differences. Simp-eporting men's and women's rates for a item or assigning categories of vere" and "nonsevere" can be highly eading.

pplying the theory of defensive violence e National Crime Survey (NCS) data pro-s very different conclusions. If the cases rious assault were most similar to Wolf-g's homicide cases, then only a small entage of the men used violence defen-y compared with the majority of women. same assumption applied to the NCS shows an estimated 74 percent of the us assaults by women to be in response acks by their partners. McLeod's finding men were more likely to be injured was result of the use of weapons, and such s are more likely to be reported in the type ime study she conducted. Although the ortion of incidents of women using a e or gun was higher in the NCS study (34 ent compared with 22 percent), given the o 13 ratio of male to female victimization the ratio of men to women having a knife n used against them still is skewed (one to eight women). McNeely and Robin-Simpson do not reveal that 88 percent of nen's injuries were minor; 17 percent of nen needed some medical attention com-d with 24 percent of the women (an over-ale–female ratio of one to 18). The ratio nospitalization rates is even more lop-d—one man was hospitalized for every 46 en. Thus, although the proportion of men ng injuries is higher, the representative NCS study indicates that women suffer more serious injuries.

McLeod's conclusion that the profiles of weapon use and injury are different for men and women is consistent with the theory of defensive violence. Her statement that violence against men and violence against women are independent events does not mean that the violence of one person is not in reaction to the violence of another, only that women used weapons more often than men and that as a result men were more likely to be injured.

Most studies of domestic violence fail to ask about the motives for and consequences of violence. The issue is not whether women have the capacity to be aggressive but whether they are abusive in their aggression, using it for coercion, domination, or the expression of anger and not for self-protection or the protection of others.

Research Flaws and Misconceptions

In trying to correct what they see as an imbalance in the domestic violence literature, McNeely and Robinson-Simpson describe what they perceive as a number of "research flaws and common misconceptions." They also draw on literature from outside the realm of domestic violence.

Who Is More Aggressive?

To show that women are as aggressive as men, they cite a review by Frodi, Macaulay, and Thome.[16] However, the review also contains some important qualifying statements. First, none of the studies was of people who were given the option of truly violent, hurtful behavior. Second, although women in the experiments did not differ from men in their overall rates of applying the experimental aggression (shock or annoying noise), in many situations the women avoided acting aggressively because of anxiety or guilt about being aggressive. Third, one factor that brought women's aggression up to the rate of male aggression was situations in which the justification for aggression was socially approved.

Child Abuse

To bolster the point that women are as aggressive or more aggressive than men, McNeely and Robinson-Simpson cite Steinmetz, who says that women are more likely to abuse children. However, McNeely and Robinson-Simpson do not add that Steinmetz also points out that women spend more time with children and are usually the parent in single-parent homes, which are prone to increased levels of stress.[17] When official reports of abuse were analyzed in a study by the American Humane Society and the study contained controls for "time at risk," 76 percent of the abusers were fathers.[18] In the first national study of family violence by Gelles, the difference between fathers and mothers was not very great and fathers used more serious forms of violence.[19]

Underreported Victimization

McNeely and Robinson-Simpson also follow Steinmetz in claiming that the problem of husband abuse has been ignored because men are less likely to admit to their victimization. However, the evidence contradicts this claim. In the NCS data, the differences are not substantial, with 54 percent of the women and 45 percent of the men stating that they reported their victimization to the police.[20] One reason that some men may be reluctant to report all but the most severe violence against them is that they fear being arrested for just having attacked their partners. McNeely and Robinson-Simpson speculate that only a few men in the Steinmetz study participated in the face-to-face interview because they were reluctant to discuss their victimization, but Steinmetz gives other reasons—the time did not seem convenient for the husbands or they saw the research on families as the wives' obligation.[21]

The first national study of family violence by Straus and the community survey by Nisonoff and Bitman suggest that men are more willing than women to admit being subject to violence.[22] In both of these random surveys, the proportion of men who admitted being subject to violence was higher than the proportion of women who admitted being aggressive toward their partners. Underreporting by women appeared to occur in the community survey but not in the national study. Gelles speculated that "There are a number of possible reasons for these discrepancies, but one is that men, being in a superior position in the family and society, are perhaps less humiliated by being hit and are more likely to admit it than their wives."[23]

Battered Women's Reasons for Staying

Most researchers, including Straus, list women's economic entrapment in intimate relationships as one of the reasons to aid battered women more than abused men.[24] McNeely and Robinson-Simpson, in contrast, state that "examinations of female spouse abuse victims reveal that low-income women are more likely than affluent women to leave."[25] This statement is based on Steinmetz's distortions

the United States," in R. J. Gelles, ed., *Family Violence*, p. 84.

20. McLeod, "Women Against Men," p. 173.

21. Steinmetz, *The Cycle of Violence*, p. 16.

22. M. A. Straus, R. J. Gelles, and S. K. Steinmetz, *Behind Closed Doors: Violence in the American Family* (New York: Anchor Press, 1980); and McNeely and Robinson-Simpson, "The Truth about Domestic Violence," p. 485.

23. Gelles, "The Truth About Husband Abuse," p. 140.

24. Straus, Gelles, and Steinmetz, *Behind Closed Doors*, p. 44.

25. McNeely and Robinson-Simpson, "The Truth about Domestic Violence," p. 487.

26. B. E. Aguirre, "Why Do They Return? Abused Wives in Shelters," *Social Work*, 30 (1985), pp. 350–354; L. M. Cristall, "A Comparison of Androgyny and Self-Actualization in Battered Women," *Dissertation Abstracts International*, 39 (1979), pp. 5039–5040; C. Ellsworth and L. Wagner, "Formerly Battered Women: A Follow-up Study." Paper presented at Council on Social Work Education, Louisville, Kentucky, 1981; C. A. Heintzelman, "Differential Utilization of Selected Community Resources by Abused Women." Unpublished doctoral dissertation, The Catholic University of America, 1980; B. Z. Lesser, "Factors Influencing Battered Women's Return to Their Mates Following a Shelter Program: Attachment and Situational Variables." Unpublished doctoral dissertation, California School of Professional Psychology, 1981; L. E. Okun, "A Study of Woman Abuse: 300 Battered Women Taking Shelter, 119 Woman–Batterers in Counseling." Unpublished doctoral dissertation, University of Michigan, 1983; and *(reports two studies)* M. J. Strube, "The Decision to Leave an Abusive Relationship: Empirical Evidence and Theoretical Issues." Unpublished manuscript, Department of Psychology, Washington University, St. Louis, Mo.

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28. B. J. Rounsaville, "Theories in Marital Violence: Evidence from a Study of Battered Women," *Victimology*, 3 (1978), pp. 11–31.

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38. McNeely and Robinson Simpson, "The Truth about Domestic Violence," p. 488.

39. D. Finkelhor and K. Yllo, *License to Rape: Sexual Abuse of Wives* (New York: Holt, Rinehart & Winston, 1985), pp. 170–171.

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**THE TIMES UNION
Monday, January 7, 1991
B SECTION

Child abuse hot line a noose for unjustly accused

☐State has no way to sort malicious reports from true ones.

By John Caher
Staff writer

For thousands of battered and neglected children, the state's child abuse hot line is a lifeline rescuing kids from the horrors of beatings and sexual molestations.

But for unjustly accused adults who go to astounding lengths to prove their innocence and for children who are exploited as pawns in divorce or custody battles, the hot line is a noose.

Since 1973, the Central Register of Child Abuse and Maltreatment has provided a way for those who suspect child abuse to report their suspicions anonymously and initiate a prompt investigation. State law requires caseworkers to investigate all hot-line complaints within 24 hours and arms them with the power to interrogate children and adults. When warranted, the child can be placed in foster care.

The system is designed to err on the side of overprotection.

Child care workers, law enforcement officers, teachers and medical professionals are required to report their suspicions, no matter how slight, and can be charged with a misdemeanor if they don't. The standard of proof needed to indicate child abuse — "some credible evidence" — is far below the proof "beyond a reasonable doubt" needed to sustain criminal charges. Courts have found that Fourth Amendment protections against unreasonable searches don't apply if the caseworker deems the situation an emergency.

"It's a very sad commentary on our society," said Schenectady County Family Court Judge G. Douglas Griset. "We are now at the point where we have so much abuse and neglect of our children ... that we have to devise laws and systems to deal with this horrible problem."

While few dispute that the hot line has helped many abused children, critics claim that a zealous effort to crack down on child abuse has trampled the rights of adults and children, disrupted and undermined families and victimized the very people the system is designed to protect — children.

Aside from simple mistakes, in which a well-meaning person wrongly reports what on the surface appears to be a case of child abuse, authorities acknowledge that the hot line is sometimes abused by estranged couples and malicious neighbors as a tool of intimidation and harassment. In New York, about 60 percent of the 130,000 reports to the hot line last year were unfounded — meaning investigators were unable to find any credible evidence of abuse or neglect when they interviewed the child and alleged abuser, said Terrance McGrath, spokesman for the state Department of Social Services, which operates the hot line. About half of the people who appeal an indication of abuse or neglect have the finding overturned, state figures show.

Some child welfare advocates have estimated that as many as 15 percent of calls to the hot line may be outright lies, up to 20,000 calls annually.

After scores of individuals and groups such as Victims of Child Abuse Laws complained about false allegations, the Legislature enacted a statute in November 1989 making it a crime to file a false report intentionally with the hot line.

Although the law threatens a $1,000 fine, a year in jail or both, the number of unfounded complaints has remained about the same and it is unclear whether anyone has ever been convicted of making a false report, McGrath said.

Skeptics say the law is toothless because calls to the hot line can be made anonymously.

"Anybody who makes a false report is not going to leave their name," McGrath said. "It is not going to happen."

McGrath said the law was designed more to deter false calls than to prosecute malicious callers. Victims of Child Abuse Laws has been seeking a stronger statute that would remove the veil of confidentiality that shields those who call the hot line.

"It is very easy to raise the allegation," Griset said. "From that bare allegation oftentimes comes a very traumatic experience for the children and the person charged."

In recent years, dozens of people have called *The Times*

See HOT LINE / B-2

HOT LINE

Continued from B-1

Union claiming to be victims of malicious reports. One caller last month said that during his 17-month custody battle he has repeatedly been the target of false allegations of sexually abusing his 5-year-old son.

The Albany County man, who like many others who called asked that his name not be published, said in his last call that he was fleeing with his son to another state to escape the repeated investigations and interviews by caseworkers. He suspects that the child's mother, who is challenging the father for custody, is responsible for malicious reports to the hot line.

"They are torturing my son," said the father, who claimed that every investigation has determined that the abuse allegations were unfounded.

"They grill this kid over the coals with all sorts of sexual questions and he doesn't even know what the hell they are talking about."

Another caller to the newspaper claimed that she was caught in the middle of a custody tug of war between her boyfriend and his former wife.

The woman, a local college professor, said there have been nine anonymous reports — all unfounded — alleging that she or the father had abused his 3-year-old boy and 4-year-old girl. She said the children had initially told caseworkers that they had been abused, and then recanted.

"The true abuse," she said, "is these children have been forced to fabricate stories. They have learned that to win their mother's approval they have to harm us. Every time one of these stories is told, these children are grilled by social services workers."

Without proof that their mother is making the allegations and knows that they are false, there is nothing that can be done to put a stop to the endless stream of allegations and investigations.

Divorce attorneys and family law specialists say that allegations of child abuse — particularly sexual abuse — have become so pervasive in custody and divorce cases across the country that some judges have stopped taking the charges seriously, creating a "cry wolf syndrome" that jeopardizes children who really are being mistreated.

Studies conducted by the University of Minnesota Medical School's department of family practice and community health indicate that as many as 70 percent of child molestation allegations raised in the context of a divorce or custody proceeding are false.

On the other hand, organizations such as Victims of Child Abuse Laws contend that some judges are so protective of children that even baseless allegations of abuse will cost the parent custody.

"It's a balance," said Griset. "Do you restrict the people making hotline complaints and jeopardize little children, or do you have the parent falsely charged suffer the indignity of an investigation?"

Some parents who claim to have been wrongfully accused suffer far deeper indignities than a personal investigation.

At the University of Minnesota Medical School, for example, adults desperately seeking to prove their innocence submit to a battery of tests, including psychological profiles, polygraph examinations and voice-stress comparisons. Some men go so far as to allow clinicians to show them pornographic pictures of children while a gauge attached to the penis measures arousal level.

While McGrath concedes that little can be done to stop people intent on misusing the hot line, he suspects that there are far fewer malicious reports than suggested by some studies.

"All reports that are not substantiated are not necessarily malicious or false," McGrath said.

Griset said the problem of false reports pales in comparison with the number of actual cases of abuse and neglect.

The judge said that over the last decade the statewide family court docket of child abuse cases has swollen 800 percent. Griset, noting a dramatic increase of cases in his court in which adults admit abusing or neglecting children, said the child protective system is properly geared toward overinvestigating and overreporting allegations.

HB

90

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

BILL NUMBER: HB 90
ABBREVIATED TITLE: Criminal Fines & Restitution

SPONSER: Ulmer ORIGINAL RECEIVED: March 4, 91
WRITTEN REQUEST TO SCHEDULE REC'D: 3-11-91 FROM: Ulmer
SPONSER'S STATEMENT REC'D: 3-11-91 FROM: Ulmer
SECTIONAL ANALYSIS RQST'D: ________ FROM: ________
SECTIONAL ANALYSIS RECEIVED: ________
FISCAL NOTE (ORIGINAL)
RQST'D OF: ________ REC'D FROM: A ST DATE: With File
RQST'D OF: ________ REC'D FROM: A G DATE: "
RQST'D OF: ________ REC'D FROM: Courts DATE: "
FISCAL NOTE (C.S.)
RQST'D OF: ________ REC'D FROM: ________ DATE: ________
RQST'D OF: ________ REC'D FROM: ________ DATE: ________
RQST'D OF: ________ REC'D FROM: ________ DATE: ________
FIVE DAY NOTICE GIVEN: [illegible] NOTICE OF HEARINGS GIVEN: 4-11-91
COMMITTEES OF REFERRAL: FIRST: Jud SECOND: Fin THIRD: ____

COMMITTEE ACTION

DATE:	
3-19-91	Ulmer presents Bill. Amendment ~~adopted~~ "agreed" to in work session.
	Sent to LAA for draft 3-20-91
4-18-91	[illegible] 4-17-91 [illegible]
	[illegible]
4-19-91	[illegible]

PERSONS TO BE NOTIFIED OF HEARING

1. SPONSOR Ulmer
2. AGENCY
3. ________
4. ________
5. ________
6. ________
7. ________
8. ________
9. ________
10. ________

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 90

Revision Date:
Title: An act relating to fines and restitution in criminal cases.
Sponsor: Rep. Ulmer
Requestor: House Judiciary

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

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

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

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Gayle A. Horetski
Division: Commissioner's Office
Phone: 465-4322
Date: 2/13/91

Approved by Commissioner: Gayle A. Horetski for Richard L. Burton
Agency: Department of Public Safety
Date: 2/13/91

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

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 90

Revision Date: _____ Department Affected: Department of Law

Title: "An Act relating to fines and restitution in criminal cases." BRU: Prosecution/Legal Services

Component: Prosecution/Criminal Justice Litigation
Legal Services/Operations

Sponsor: Representative Ulmer

Requestor: House Judiciary COMPONENT SERIAL NO. 8 9 9 3

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
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 12, 1991

Approved by Commissioner: Richard I. Pegues/FOR Charles E. Cole, Attorney General

Agency: Department of Law Date: February 12, 1991

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 90 (as amended)

Revision Date:
Title: An Act relating to fines and restitution in criminal cases
Sponsor: Ulmer
Requestor: Judiciary

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

COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Robert G. Fisher, Manager, Fiscal Operations
Division: Alaska Court System
Phone: 264-8215
Date: 03/11/91

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 03/11/91

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

Rev 10/90

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM

March 8, 1991

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Representative Fran Ulmer

SUBJECT: HB 90, "An act relating to fines and restitution in criminal cases."

HB 90 deals with fines and restitution ordered in criminal cases. It will improve efficiency and result in an increase in the amount of fines that are actually collected by the state. In addition, the bill removes obstacles in awarding restitution to persons who are injured by a crime.

In brief, the bill does the following:

1. Requires the court to consider whether a defendant has the ability to pay fines and restitution after the defendant has failed to pay, rather than at the time of sentencing. The court will no longer have to guess at what the defendant's financial situation might be in the future when the fine or restitution is due.

2. Requires the defendant who has failed to pay a fine or restitution to present evidence justifying why payment has not been made. The defendant's financial situation is best known by the defendant.

3. Empowers the court to award restitution to persons other than the "victim," who suffered a loss as a result of the defendant's conduct.

4. Empowers the court to award restitution for a victim's future expenses, incurred after the date of sentencing.

HB 990 is supported by the Department of Law and the Council on Domestic Violence and Sexual Assault.

Please schedule HB 90 for hearing at the earliest possible date.

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

HB 90 –

Hodum Conte – Thurs Work Session –

2 Changes to original

A) P2 line 13-14 –

B) Spensers Change –

New Sec 4 –

For Small Cases where Short on No fair time.

Now Have CS Draft 6 of 4/17/91

Same as original <u>except</u>

a) Moves Roden/Holford amendment to p 2 line 31 Subt

b) Spensers Change for Small Cases.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM March 21, 1991

SUBJECT: Fines/restitution bill (SCS HB 90 (Jud))

TO: Senator Rick Halford
Chair, Senate Judiciary Committee

FROM: John B. Gaguine JBG
Legislative Counsel

Enclosed is a draft of SCS HB 90 (Jud) containing the changes you requested. One of these changes, I believe, is somewhat confusing. As amended, AS 12.55.045(a) would state flatly that a defendant is presumed to have the present or future ability to pay restitution. However, AS 12.55.045(e), added by the bill, provides that a defendant is presumed to have the ability to pay unless the defendant at the sentencing hearing establishes an inability to pay. The two subsections seem inconsistent to me. I think that the bill worked better before the ability to pay language was added back into (a).

The whole approach of AS 12.55.045(e) is also puzzling to me. I am not sure why a court may consider the ability to pay when a small amount of restitution is ordered, but not when a large amount is ordered. It seems to me that the relevant fact is not the amount of restitution ordered, but when it is to be paid. If a defendant will be in jail for a long time, and hence not liable for restitution for a long time, it seems inappropriate to consider ability to pay at the time of sentencing, regardless of amount. Conversely, if the defendant is supposed to pay restitution at once or in the near future (usually because little or no jail time was imposed), it seems appropriate to consider ability to pay at the time of sentencing, regardless of the amount at issue.

If I may be of further assistance, please advise. With your permission, I would like to send a copy of this memorandum to Representative Ulmer's office.

JBG:gc
91-159.glc

Enclosure

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM

March 11, 1991

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Representative Fran Ulmer

SUBJECT: HB 90, "An act relating to fines and restitution in criminal cases."

Please include the attached amendment in the packet for HB 90.

The amendment is added in response to a concern that the bill could result in an increase in the number of post-judgement hearings for minor cases. The amendment allows that if a judge proposes to order restitution of less than $5,000, the judge may consider the defendant's ability to pay at the time of sentencing. Further, in such a case, it is presumed that the defendant can pay the amount ordered, unless the defendant establishes at the sentencing, by a preponderance of evidence, the inability to pay.

HB 90 has zero fiscal notes from the Department of Public Safety, the Court System and the Department of Law. In fact, the Department of Law indicates that more fines will be collected by the state and more restitution will be paid to victims.

Thank you again for prompt scheduling of this bill.

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

7-LS0349\A.2
Gaguine
03/11/91

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 90

new Sec 4 —

Page 2, following line 23:

Insert a new bill section to read:

"* **Sec. 4.** AS 12.55.045 is amended by adding a new subsection to read:

(e) If a court proposes to order a defendant to pay restitution under this section of less than $5,000, the court may take into account at the time of sentencing the defendant's present and future ability to pay the restitution proposed. A defendant is presumed to have the ability to pay the amount proposed unless the defendant at the sentencing hearing establishes by a preponderance of the evidence the inability to pay the amount proposed."

Renumber following bill sections accordingly.

Frans Concern - If they go to jail we should resolve this later.

If not going to jail - let them resolve now -

7-LS0349\A.2
Gaguine
03/11/91

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 90

Page 2, following line 23:

Insert a new bill section to read:

"* **Sec. 4.** AS 12.55.045 is amended by adding a new subsection to read:

(e) If a court proposes to order a defendant to pay restitution under this section of less than $5,000, the court may take into account at the time of sentencing the defendant's present and future ability to pay the restitution proposed. A defendant is presumed to have the ability to pay the amount proposed unless the defendant at the sentencing hearing establishes by a preponderance of the evidence the inability to pay the amount proposed."

Renumber following bill sections accordingly.

7-LS0349\G
Gaguine
4/17/91

adopted Tie CS — moved on 2nd Rec — Sen. Halford

SENATE CS FOR HOUSE BILL NO. 90 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE ULMER

A BILL

FOR AN ACT ENTITLED

"An Act relating to fines and restitution in criminal cases."

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

* **Section 1.** PURPOSE. It is the purpose of this Act to ensure full payment of fines imposed in criminal cases and to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible, by

(1) requiring courts to consider whether a defendant has the ability to pay fines and restitution at a hearing held after a defendant has failed to pay, rather than asking courts to predict at the time of sentencing whether a defendant will have the ability to pay fines and restitution in the future;

(2) requiring a defendant who has failed to pay a fine or restitution to come forward with evidence justifying why the fine or restitution was not paid;

(3) allowing courts to order that restitution be made to all persons who have suffered a loss as a result of a defendant's conduct; and

(4) allowing courts to order restitution for expenses that will be incurred after the date of sentencing.

* **Sec. 2.** AS 12.55.035(a) is amended to read:

(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.]

* **Sec. 3.** AS 12.55.045(a) is amended to read:

(a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim **or other person injured by the offense**, to a public, private, or private nonprofit organization that has provided **or is or will be providing** counseling, medical, or shelter services to the victim **or other person injured by the offense**, or as otherwise authorized by law. [A DEFENDANT IS PRESUMED TO HAVE THE ABILITY TO PAY RESTITUTION UNLESS THE DEFENDANT ESTABLISHES THE INABILITY TO PAY BY A PREPONDERANCE OF THE EVIDENCE.] In determining the amount and method of payment of restitution, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; **and**

(2) financial burden placed on the victim and those who provide services to the victim **and other persons injured by the offense** as a result of the criminal conduct of the defendant [; AND

(3) FINANCIAL RESOURCES OF THE DEFENDANT AND THE NATURE OF THE BURDEN ITS PAYMENT WILL IMPOSE ON DEPENDENTS OF THE DEFENDANT].

* **Sec. 4.** AS 12.55.045 is amended by adding new subsections to read:

(e) If a court proposes to order a defendant to pay restitution under this section of less than $5,000, and the defendant's sentence does not include a period of unsuspended incarceration exceeding 90 days, the court may take into account at the time of sentencing the defendant's present and future ability to pay the restitution proposed. The court shall presume that the defendant has the ability to pay the amount proposed unless the defendant at the sentencing hearing establishes by a preponderance of the evidence the inability to pay the amount proposed.

(f) Except as provided by (e) of this section, the court may not, in ordering the amount

of restitution, consider the defendant's ability to pay restitution.

* Sec. 5. AS 12.55.051(a) is amended to read:

(a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment **and, if the payment was made a condition of the defendant's probation, may revoke the probation of the defendant. In a contempt or probation revocation proceeding brought as a result of failure to pay a fine or restitution, it is an affirmative defense that the defendant was unable to pay despite having made continuing good faith efforts** [. IF THE STATE PRESENTS EVIDENCE OF THE DEFENDANT'S FAILURE TO PAY RESTITUTION, THE COURT MAY PRESUME THAT THE DEFENDANT HAS INTENTIONALLY REFUSED TO PAY THE FINE OR RESTITUTION OR HAS NOT MADE A GOOD FAITH EFFORT TO PAY THE FINE OR RESTITUTION UNLESS THE DEFENDANT PRESENTS SOME EVIDENCE THAT THE DEFENDANT'S FAILURE TO PAY THE FINE OR RESTITUTION WAS NOT INTENTIONAL OR THAT THE DEFENDANT HAS MADE A GOOD FAITH EFFORT] to pay the fine or restitution. **If the court finds that the defendant was unable to pay despite having made continuing good faith efforts, the defendant may not be imprisoned solely because of the inability to pay.** If the court **does not find** [FINDS BY A PREPONDERANCE OF THE EVIDENCE] that the default was attributable to **the defendant's inability to pay despite having made continuing good faith efforts** [AN INTENTIONAL REFUSAL OR FAILURE TO MAKE A GOOD FAITH EFFORT] to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each $50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

* Sec. 6. AS 12.55.051(c) is repealed and reenacted to read:

(c) A defendant who has been sentenced to pay a fine or restitution may request a hearing regarding the defendant's ability to pay the fine or restitution at any time that the defendant is required to pay all or a portion of the fine or restitution. The court may deny the request if it has previously considered the defendant's ability to pay and the defendant's request does not allege changed circumstances. If at a hearing under this subsection, the defendant

proves by a preponderance of the evidence that the defendant will be unable through good faith efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the order so that the defendant can pay the fine or restitution through good faith efforts. The court may reduce the fine or restitution ordered, change the payment schedule, or otherwise modify the order.

7-LS0349\D
Gaguine
3/21/91

SENATE CS FOR HOUSE BILL NO. 96 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE ULMER

A BILL

FOR AN ACT ENTITLED

"An Act relating to fines and restitution in criminal cases."

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

* Section 1. PURPOSE. It is the purpose of this Act to ensure full payment of fines imposed in criminal cases and to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible, by

(1) requiring courts to consider whether a defendant has the ability to pay fines and restitution at a hearing held after a defendant has failed to pay, rather than asking courts to predict at the time of sentencing whether a defendant will have the ability to pay fines and restitution in the future;

(2) requiring a defendant who has failed to pay a fine or restitution to come forward with evidence justifying why the fine or restitution was not paid;

(3) allowing courts to order that restitution be made to all persons who have suffered a loss as a result of a defendant's conduct; and

(4) allowing courts to order restitution for expenses that will be incurred after the date of sentencing.

* **Sec. 2.** AS 12.55.035(a) is amended to read:

(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.]

* **Sec. 3.** AS 12.55.045(a) is amended to read:

(a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim **or other person injured by the offense**, to a public, private, or private nonprofit organization that has provided **or is or will be providing** counseling, medical, or shelter services to the victim **or other person injured by the offense**, or as otherwise authorized by law. A defendant is presumed to have the **present or future** ability to pay restitution [UNLESS THE DEFENDANT ESTABLISHES THE INABILITY TO PAY BY A PREPONDERANCE OF THE EVIDENCE]. In determining the amount and method of payment of restitution, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; **and**

(2) financial burden placed on the victim and those who provide services to the victim **and other persons injured by the offense** as a result of the criminal conduct of the defendant [; AND

(3) FINANCIAL RESOURCES OF THE DEFENDANT AND THE NATURE OF THE BURDEN ITS PAYMENT WILL IMPOSE ON DEPENDENTS OF THE DEFENDANT].

* **Sec. 4.** AS 12.55.045 is amended by adding a new subsection to read:

(e) If a court proposes to order a defendant to pay restitution under this section of less than $5,000, the court may take into account at the time of sentencing the defendant's present and future ability to pay the restitution proposed. A defendant is presumed to have the ability to pay the amount proposed unless the defendant at the sentencing hearing establishes by a preponderance of the evidence the inability to pay the amount proposed.

* **Sec. 5.** AS 12.55.051(a) is amended to read:

(a) If the defendant defaults in the payment of a fine or any installment or of restitution

or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment **and, if the payment was made a condition of the defendant's probation, may revoke the probation of the defendant. In a contempt or probation revocation proceeding brought as a result of failure to pay a fine or restitution, it is an affirmative defense that the defendant was unable to pay despite having made continuing good faith efforts** [. IF THE STATE PRESENTS EVIDENCE OF THE DEFENDANT'S FAILURE TO PAY RESTITUTION, THE COURT MAY PRESUME THAT THE DEFENDANT HAS INTENTIONALLY REFUSED TO PAY THE FINE OR RESTITUTION OR HAS NOT MADE A GOOD FAITH EFFORT TO PAY THE FINE OR RESTITUTION UNLESS THE DEFENDANT PRESENTS SOME EVIDENCE THAT THE DEFENDANT'S FAILURE TO PAY THE FINE OR RESTITUTION WAS NOT INTENTIONAL OR THAT THE DEFENDANT HAS MADE A GOOD FAITH EFFORT] to pay the fine or restitution. **If the court finds that the defendant was unable to pay despite having made continuing good faith efforts, the defendant may not be imprisoned solely because of the inability to pay.** If the court **does not find** [FINDS BY A PREPONDERANCE OF THE EVIDENCE] that the default was attributable to **the defendant's inability to pay despite having made continuing good faith efforts** [AN INTENTIONAL REFUSAL OR FAILURE TO MAKE A GOOD FAITH EFFORT] to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each $50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

* **Sec. 6.** AS 12.55.051(c) is repealed and reenacted to read:

(c) A defendant who has been sentenced to pay a fine or restitution may request a hearing regarding the defendant's ability to pay the fine or restitution at any time that the defendant is required to pay all or a portion of the fine or restitution. The court may deny the request if it has previously considered the defendant's ability to pay and the defendant's request does not allege changed circumstances. If at a hearing under this subsection, the defendant proves by a preponderance of the evidence that the defendant will be unable through good faith efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the order so that the defendant can pay the fine or restitution through good faith efforts. The court

may reduce the fine or restitution ordered, change the payment schedule, or otherwise modify the order.

HOUSE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ULMER

Introduced: 2/1/91
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to fines and restitution in criminal cases."

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

* **Section 1.** PURPOSE. It is the purpose of this Act to ensure full payment of fines imposed in criminal cases and to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible, by

(1) requiring courts to consider whether a defendant has the ability to pay fines and restitution at a hearing held after a defendant has failed to pay, rather than asking courts to predict at the time of sentencing whether a defendant will have the ability to pay fines and restitution in the future;

(2) requiring a defendant who has failed to pay a fine or restitution to come forward with evidence justifying why the fine or restitution was not paid;

(3) allowing courts to order that restitution be made to all persons who have suffered a loss as a result of a defendant's conduct; and

(4) allowing courts to order restitution for expenses that will be incurred after the date of sentencing.

DEFENDANT'S FAILURE TO PAY RESTITUTION, THE COURT MAY PRESUME THAT THE DEFENDANT HAS INTENTIONALLY REFUSED TO PAY THE FINE OR RESTITUTION OR HAS NOT MADE A GOOD FAITH EFFORT TO PAY THE FINE OR RESTITUTION UNLESS THE DEFENDANT PRESENTS SOME EVIDENCE THAT THE DEFENDANT'S FAILURE TO PAY THE FINE OR RESTITUTION WAS NOT INTENTIONAL OR THAT THE DEFENDANT HAS MADE A GOOD FAITH EFFORT] to pay the fine or restitution. **If the court finds that the defendant was unable to pay despite having made continuing good faith efforts, the defendant may not be imprisoned solely because of the inability to pay.** If the court **does not find** [FINDS BY A PREPONDERANCE OF THE EVIDENCE] that the default was attributable to **the defendant's inability to pay despite having made continuing good faith efforts** [AN INTENTIONAL REFUSAL OR FAILURE TO MAKE A GOOD FAITH EFFORT] to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each $50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

* ~~Sec. 5.~~ AS 12.55.051(c) is repealed and reenacted to read:

Sec 6

(c) A defendant who has been sentenced to pay a fine or restitution may request a hearing regarding the defendant's ability to pay the fine or restitution at any time that the defendant is required to pay all or a portion of the fine or restitution. The court may deny the request if it has previously considered the defendant's ability to pay and the defendant's request does not allege changed circumstances. If at a hearing under this subsection, the defendant proves by a preponderance of the evidence that the defendant will be unable through good faith efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the order so that the defendant can pay the fine or restitution through good faith efforts. The court may reduce the fine or restitution ordered, change the payment schedule, or otherwise modify the order.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

HOUSE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ULMER

Introduced: 2/1/91
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to fines and restitution in criminal cases."

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

* **Section 1.** PURPOSE. It is the purpose of this Act to ensure full payment of fines imposed in criminal cases and to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible, by

(1) requiring courts to consider whether a defendant has the ability to pay fines and restitution at a hearing held after a defendant has failed to pay, rather than asking courts to predict at the time of sentencing whether a defendant will have the ability to pay fines and restitution in the future;

(2) requiring a defendant who has failed to pay a fine or restitution to come forward with evidence justifying why the fine or restitution was not paid;

(3) allowing courts to order that restitution be made to all persons who have suffered a loss as a result of a defendant's conduct; and

(4) allowing courts to order restitution for expenses that will be incurred after the date of sentencing.

* Sec. 2. AS 12.55.035(a) is amended to read:

(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.]

* Sec. 3. AS 12.55.045(a) is amended to read:

(a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim **or other person injured by the offense**, to a public, private, or private nonprofit organization that has provided **or is or will be providing** counseling, medical, or shelter services to the victim **or other person injured by the offense**, or as otherwise authorized by law. [A DEFENDANT IS PRESUMED TO HAVE THE present and future ABILITY TO PAY RESTITUTION. ~~UNLESS THE DEFENDANT ESTABLISHES THE INABILITY TO PAY BY A PREPONDERANCE OF THE EVIDENCE~~.] In determining the amount and method of payment of restitution, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; **and**

(2) financial burden placed on the victim and those who provide services to the victim **and other persons injured by the offense** as a result of the criminal conduct of the defendant [; AND

(3) FINANCIAL RESOURCES OF THE DEFENDANT AND THE NATURE OF THE BURDEN ITS PAYMENT WILL IMPOSE ON DEPENDENTS OF THE DEFENDANT].

~~* Sec. 4.~~ Sec 5 AS 12.55.051(a) is amended to read:

(a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment **and, if the payment was made a condition of the defendant's probation, may revoke the probation of the defendant. In a contempt or probation revocation proceeding brought as a result of failure to pay a fine or restitution, it is an affirmative defense that the defendant was unable to pay despite having made continuing good faith efforts** [. IF THE STATE PRESENTS EVIDENCE OF THE

DEFENDANT'S FAILURE TO PAY RESTITUTION, THE COURT MAY PRESUME THAT THE DEFENDANT HAS INTENTIONALLY REFUSED TO PAY THE FINE OR RESTITUTION OR HAS NOT MADE A GOOD FAITH EFFORT TO PAY THE FINE OR RESTITUTION UNLESS THE DEFENDANT PRESENTS SOME EVIDENCE THAT THE DEFENDANT'S FAILURE TO PAY THE FINE OR RESTITUTION WAS NOT INTENTIONAL OR THAT THE DEFENDANT HAS MADE A GOOD FAITH EFFORT] to pay the fine or restitution. **If the court finds that the defendant was unable to pay despite having made continuing good faith efforts, the defendant may not be imprisoned solely because of the inability to pay.** If the court **does not find** [FINDS BY A PREPONDERANCE OF THE EVIDENCE] that the default was attributable to **the defendant's inability to pay despite having made continuing good faith efforts** [AN INTENTIONAL REFUSAL OR FAILURE TO MAKE A GOOD FAITH EFFORT] to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each $50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

* ~~Sec. 5.~~ AS 12.55.051(c) is repealed and reenacted to read:

Sec 6 - (c) A defendant who has been sentenced to pay a fine or restitution may request a hearing regarding the defendant's ability to pay the fine or restitution at any time that the defendant is required to pay all or a portion of the fine or restitution. The court may deny the request if it has previously considered the defendant's ability to pay and the defendant's request does not allege changed circumstances. If at a hearing under this subsection, the defendant proves by a preponderance of the evidence that the defendant will be unable through good faith efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the order so that the defendant can pay the fine or restitution through good faith efforts. The court may reduce the fine or restitution ordered, change the payment schedule, or otherwise modify the order.

BILL NO: HB 90

DATE: February 21, 1991

TITLE: An Act relating to fines and restitution in criminal cases

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

The Council on Domestic Violence and Sexual Assault supports HB 90 which ensures that all persons who have been injured as a result of criminal behavior will receive full restitution to the greatest extent possible.

This bill removes obstacles in awarding restitution for victims of crimes and enables the court to award restitution to other persons injured by an offense. Other family members are often traumatized when a crime is committed against someone in their family. For example, sexual assault of a spouse, son or daughter, or sibling has grave effects on other family members. Those persons often require counseling and support services or suffer financial losses from the crime. Payment for services required, as well as financial losses, should be made by the offender.

Andy Klamser, Chair
Council on Domestic Violence
and Sexual Assault

HB

92

SB 99 is Same?

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

Bill Number: HB 92
Abbreviated Title: Exemption For JRS & Former EORS

Sponsor: HS JUD Original Received: April 20, 1991

Written Request to Schedule Rcv'd: _____ From: _____
Sponser's Statement Rcv'd: _____ From: _____
Sectional Analysis Rqst'd: _____ From: _____
Sectional Analysis Received: _____
Fiscal Note (Original)
Rqst'd Of: _____ Rcv'd From Courts & Date: With File.
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Fiscal Note (C.S.)
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Five Day Notice Given: In House Notice of Hearings Given: May 15, 1991 May 18-
Committees of Referral: First: Jud Second: _____ Third: _____
LAA Contact: _____ To Senate Secretary: _____

COMMITTEE ACTION

DATE:
May 19 Heard - Pass Jud Rep - Delt Sen Sec.
_____ _____
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PERSONS TO BE NOTIFIED OF HEARING

1. Sponsor
2. Agency
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

April 22, 1991

The Honorable Rick Halford
Chairman, Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Halford:

I am writing to request that the Judiciary Committee schedule a hearing on House Bill 92, relating to retirement system exemptions from execution, at its earliest convenience. This bill was introduced at the request of the Alaska Supreme Court. It is identical to CSSB 99 (STA) which is also pending in the Judiciary Committee at this time.

CSHB 92 (JUD) proposes amendments to AS 09.38.015(b), a provision of the Alaska Exemptions Act. As you know, that act provides debtors with certain protection from creditors. AS 09.38.015(b) specifically provides that a creditor (other than a bankruptcy creditor) may not seize amounts held in an individual debtor's Teachers' Retirement System (TRS) account or Public Employees' Retirement System (PERS) account.

Through an oversight, this statute does not provide the same protection to participants in the Judicial Retirement System (JRS) or the Elected Public Officers' Retirement System (EPORS). CSHB 92 (JUD) merely adds the JRS and EPORS to the existing exemption list, giving participants in those systems the same protection currently granted to participants in the TRS and PERS.

The Conference of Alaska Judges passed a resolution in support of the judicial exemption in 1986; a copy of this resolution is attached. The bill has no fiscal impact.

Please feel free to contact me if you have any questions or comments.

Very truly yours,

C. S. Christensen III
Staff Counsel

CSC:bh

Attachment

CONFERENCE OF ALASKA JUDGES

Resolution No. 86 - 09

A RESOLUTION SUPPORTING EXEMPTION OF JUDICIAL RETIREMENT FUNDS FROM EXECUTION

IT IS HEREBY RESOLVED by the Conference of Alaska Judges that the Court Administration propose the amendment of Alaska Statutes Section 09.38.015 to exempt funds held in the Judicial Retirement System from execution.

PASSED this 2nd day of July, 1986, at Anchorage, Alaska, by the members of the Conference of Alaska Judges.

H. E. Crutchfield

HERSCHEL "ED" CRUTCHFIELD
President

ATTEST:

Acting Secretary


HB
100

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

Bill Number: HB 100
Abbreviated Title: Victems Rights

Sponsor: Donley Original Received: May 3, 1991
Written Request to Schedule Rcv'd: _____ From: _____
Sponser's Statement Rcv'd: _____ From: _____
Sectional Analysis Rqst'd: _____ From: _____
Sectional Analysis Received: _____
Fiscal Note (Original)
Rqst'd Of: _____ Rcv'd From: Law ~~O~~ Date: 2-15-91
Rqst'd Of: _____ Rcv'd From: Pub Saf ~~O~~ Date: 3-22-91
Rqst'd Of: _____ Rcv'd From: HSS ~~O~~ Date: 4-3-91
Fiscal Note (C.S.)
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Five Day Notice Given: _____ Notice of Hearings Given: _____
Committees of Referral: First: _____ Second: _____ Third: _____
LAA Contact: John Hoffine To Senate Secretary: _____

COMMITTEE ACTION

DATE:
14 May 91 Heard Adopt Senfnd CS —
_____ Deletion most of Sec 50 - Moved on and Rec.
_____ Called Hoffine for final —
_____ Need Ricks Legislature —

PERSONS TO BE NOTIFIED OF HEARING

1. Sponsor
2. Agency
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK

CHAIRMAN
JUDICIARY COMMITTEE

VICE CHAIRMAN
REGULATION REVIEW COMMITTEE

MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

M E M O R A N D U M

TO: Senator Rick Halford
Judiciary Chair

FROM: Representative Dave Donley DB

DATE: May 3, 1991

RE: Request to Schedule HB 100

I respectfully request that HB 100, the Victim's Rights Act of 1991, be scheduled for a hearing in the Senate Judiciary Committee at the earliest possible opportunity. The bill increases the rights available to crime victims and will help ensure that victims of crime are not further victimized by being ignored and left out of the criminal justice process.

For example, under current law, if an offense is committed by a juvenile, the victim of the offense does not automatically have the right to attend court hearings involving the person who injured them. This inequity is corrected in HB 100. The bill also increases the rights of victims of crime to participate in sentencing and post-conviction hearings.

Other provisions of the bill make it easier for crime victims to collect civil damages for their injuries from criminal defendants, allow victims of violent crimes to recover treble damages and full attorneys fees in civil cases brought against the person who committed the crime, and protect the addresses and telephone number of victims and witnesses from unnecessary disclosure.

A sectional analysis that describes the bill in more detail, and additional back-up materials, are attached to this memorandum.

Thank you very much for your consideration of this request.

DD:lc

JUNEAU OFFICE
(During Legislative Session January through May)
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM April 9, 1991

SUBJECT: Sectional analysis of CSHB 100 (Jud)

TO: Representative Dave Donley
Chair, House Judiciary Committee
Attn: Laurie Otto

FROM: John B. Gaguine JBG
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill gives its short title, the Victims' Rights Act of 1991.

Sections 2 - 4 provide that a criminal's victims may seize earnings and assets of the criminal that would not be seizable by other creditors of the criminal, and define victims to include the spouse and dependents of a deceased person and the spouse, parents, or guardian of a minor or of an incompetent or incapacitated person.

Section 5 provides that victims of various criminal offenses, including those killed, injured or otherwise damaged while trying to prevent the commission of a crime, to apprehend the offender, or to assist a police officer, may obtain treble damages from the criminal and may recover full attorney's fees necessary to bring a civil action for damages.

Sections 6 - 9 give a victim of a crime the right, at the sentencing hearing of the criminal who victimized him or her, or at a hearing on a subsequent motion to modify the sentence, to give sworn testimony or to make an unsworn statement.

Section 10 - 12 amend the rights-of-victims chapter of the code of criminal procedure to be consistent with the changes made in sections 6 - 9 of the bill.

Section 13 provides that the addresses and telephone numbers of crime victims and witnesses are confidential; that a defendant's attorney may not disclose this information to the defendant; that the court may order a defendant proceeding without counsel to use a third party to arrange meetings with witnesses, if the court finds this procedure necessary; that a representative of the defendant must advise the victim of the victim's right not to talk with the representative or to have the victim's own representative present; and that the names of victims of sexual assaults shall not be made public.

Sections 14 and 15 require that a victim, on written request, shall receive notice from the Department of Corrections whenever the offender against the victim escapes or is released on custody, and shall on written request receive a recent photograph of the offender.

Section 16 gives the victim of an offense with which a juvenile has been charged the right to attend all proceedings involving the juvenile, even though those proceedings are normally closed to the public.

Section 17 requires juvenile probation officers, after a juvenile has been adjudged delinquent for an offense with a victim, to prepare a victim impact statement for the court's consideration in ordering the appropriate disposition of the delinquent minor.

Section 18 makes a technical change, relocating a definition.

Sections 19 - 22 provide for changes in court rules consistent with the statutory changes made by the bill.

Section 23 repeals a statute that has been superseded by other sections of this bill.

Section 24 provides that sections 2 - 5 of this bill will apply only to crimes committed after the effective date of the enactment.

Sections 25 - 28 note that two sections of this bill alter procedural court rules, and provide that they will only take effect if they receive a two-thirds vote in each house.

JBG:lmb
91-104.lmb

Alaska State Legislature

COMMITTEES:

MEMBER
RULES
INTERNATIONAL TRADES & TOURISM
LABOR & COMMERCE
ETHICS
WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

P.O. BOX 1441
WRANGELL, ALASKA 99929
(907) 874-2316

While in Juneau
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4905

House of Representatives

ROBIN L. TAYLOR
MINORITY LEADER

MEMORANDUM

TO: Senator Rick Halford

FROM: Rep. Robin L. Taylor

DATE: 4/29/91

REF: HB 100

Rick:

I have serious reservations about Section 5 of the attached bill and would appreciate your assistance in removing the section entirely when HB100 reaches the Senate.

I will be attempting to draft a compromise amendment with Max, but doubt that effort will succeed.

I've highlighted my specific concerns. This otherwise well meaning legislation is an open invitation to court dockets overloaded claims for damages and attorney fees.

Call me if you have any questions.

Alaska Association Chiefs of Police

March 21, 1991

Representative Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Donley,

Those of us in the law enforcement community for many years have felt that the rights of victims are overlooked in our legal system. Too often, victims are helpless and unable to recover damages they suffer at the hands of criminals. Compounding this is the fact that victims are excluded from having a voice in post-conviction hearings for adults, while being totally barred from any proceeding involving a minor.

The Alaska Association of Chiefs of Police supports House Bill 100 because many of these injustices would be corrected. We are supportive of laws that give victims a voice in a system that has traditionally focused on wrongdoers, rather than the innocent.

Sincerely,

Duane S. Udland

Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507

VICTIMS for Justice

March 19, 1991

Representative Dave Donley
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley,

Thank you so much for your support and help in writing legislation concerning victims. Our goal is to see "justice for all... even the victim"!

Paul Stockler, a local attorney, who until this month, has worked for the District Attorney's Office is now the legislative liaison and Board Member of Victims for Justice. Paul is writing to you from the legal perspective concerning the 1991 Anti-Crime Legislation. I am writing from the victim's perspective and only on the issues that I have dealt with directly in working with victims.

HB 100 would be a wonderful help to families whose loved ones have been murdered by a juvenile. Presently, if a juvenile murders a family member, a terrible process begins which compounds the victim's grief, and virtually neglects the families legal needs. The victim's family must first go through the trauma of filling out a petition to attend the juvenile hearings. After the juvenile petition is filed the defense attorney will usually respond as to why the family should not attend the proceedings. A family has no legal representation and is always overwhelmed with the defense's response. Mr. Cole, from the Attorney General's Office, due to the juvenile privacy law cannot provide the family with any legal help, "as he represents the State not the victim". The right to be informed is wrongly denied these suffering families.

The family needs to confront the perpetrator, just as the law says the perpetrator must face the victim, so the victim needs to confront the perpetrator as a part of the healing process. The juvenile perpetrator needs the opportunity to face the victim in order to deal with accountability. In a recent case, the family won the decision to be a part of the hearings, but they kept the juvenile behind a two-way glass because he did not want to face the family whose son he murdered. What a terribly painful experience for the victim's family. I also believe an injustice to the juvenile perpetrator.

In adult court Victim Impact Statements are encouraged at the time of sentencing. In a juvenile hearing the victim's family is not allowed to give a victim impact statement. Espe-

(907) 278-0977 619 East 5th Avenue Anchorage, Alaska 99501

CORRECTION

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Alaska State Legislature

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WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

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House of Representatives

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MINORITY LEADER

MEMORANDUM

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FROM: Rep. Robin L. Taylor

DATE: 4/29/91

REF: HB 100

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The Alaska Association of Chiefs of Police supports House Bill 100 because many of these injustices would be corrected. We are supportive of laws that give victims a voice in a system that has traditionally focused on wrongdoers, rather than the innocent.

Sincerely,

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Anchorage, Alaska 99507

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Heard May 19th Sunday —

Rick Questions Sec Section 5 —

Laurie will ask Bentley —

Heard till end of Calendar

—

Sec 5 amended as Per Laurie Attn —

Pass CS And Senate on Indefinite.

Alaska Association Chiefs of Police

March 21, 1991

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Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

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In adult court Victim Impact Statements are encouraged at the time of sentencing. In a juvenile hearing the victim's family is not allowed to give a victim impact statement. Espe-

information in order to face accountability and the victim needs the opportunity to feel a part of the system. This bill would be very valuable in considering the victim's rights. The criminal justice system is traumatic enough without the complications of considering only the juvenile's rights.

One issue I would suggest be changed in HB 101 is "minors under the age of 18 who are treated as adults be placed in juvenile institutions rather than adult prisons." Minors who are adjudicated as adults should not be placed in McLaughlin but perhaps isolated in an adult jail, away from adult prisoners or in a special prison. McLaughlin is overcrowded and mixing murderers with the general population creates some negative roll models to already disturbed children.

HB 103:Fingerprinting of Minors: Most crimes are committed by juveniles under the age of 16. Therefore tracking these early offenders is a way to help these youths face accountability.

HB 105: Facilitating Joint Trials of Multiple Defendants and Joining Charges Against One Defendant: This bill saves money, provides a jury with a more accurate picture of the crime and allows the victim to experience the pain of one trial instead of multiple.

HB 142: Closing Loopholes in Escape Statue. I was surprised that this would even be an issue. I am grateful that someone is interpreting the law to make it more practical and realistic.

Thank you for your hard work.

Sincerely,

Janice Lienhart

Sharon Nahorney

Janice Lienhart
Sharon Nahorney

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

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

HB 100
VICTIM'S RIGHTS

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit membership organization comprised of 23 agencies statewide that work with victims of domestic violence & sexual assault and their families.

The Network supports HB 100, which provides important additions to the rights of crime victims in Alaska. The Network is especially supportive of provisions which allow for oral presentatations and sworn testimony, for treble damages in civil actions, and for victims of violent crimes to be present at juvenile hearings.

The Network believes that providing an opportunity for oral presentation is important to victims who may not have writing skills or who may be dealing with English as a second language. It is appropriate to ensure that victims can make their statements in the manner most comfortable and least threatenin, to them.

The bill provides for treble damages and fees in cases where someone has been injured as a result of violent crime or as a result of trying a victim of such a crime. Civil action, particularly in cases of rape and child sexual assault, provides a means for victims to recover the long-term damages suffered as a result of their victimization. It holds the offender responsible for paying those costs.

Victims of violent crimes should have a right to attend all proceedings that bear on their case. According to the Committee for Children, in 1987 children under the age of 15 were arrested for 11,284 agravated assaults and 1,660 forcible rapes. Among teen girls who are raped, 40-65% are assaulted by an acquaintance, usually a date or boyfriend. When these cases are prosecuted under current law, the victim of the crime may never know what, if anything, was done in his/her behalf. This is extremely difficult for victims for whom coming forward in the first place can be a tough decision. It is an ineffective treatment of offenders, many of whom minimize or deny the impact their action has had on the victim.

The Network would like to request that the sponsor consider the addition of the words "or the victim's designee" to Section 12 to allow a victim to designate an advocate or other party to attend the hearings in their behalf, and to consider wording to allow the victim to bring an advocate to those hearings at which the victim is required to testify. The Network is concerned, however, that when children strike back against a physically or sexually abusive party, that that party not be allowed into hearings under this bill, and would respectfully request that a waiver of this right be considered in such circumstances.

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Children in Custody, 1975-85

Census of Public and Private Juvenile Detention, Correctional, and Shelter Facilities

Table 41. Number of juveniles held in public and private juvenile facilities, by reason held and sex, 1985

Reason held	Number of juveniles in:								
	All facilities			Public facilities			Private facilities		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Total	83,402	66,393	17,009	49,322	42,549	6,773	34,080	23,844	10,236
Juveniles detained or committed for:									
Delinquent acts[a]	57,743	51,001	6,742	46,086	40,929	5,157	11,657	10,072	1,585
Violent offenses	14,093	12,858	1,235	12,245	11,214	1,031	1,848	1,644	204
Murder, nonnegligent manslaughter, forcible rape, robbery, and aggravated assault	9,466	8,840	626	8,656	8,096	560	810	744	66
Negligent manslaughter, simple assault, and sexual assault	4,627	4,018	609	3,589	3,118	471	1,038	900	138
Property offenses	27,918	25,230	2,688	22,020	19,978	2,042	5,898	5,252	646
Burglary, arson, larceny-theft, and motor vehicle theft	19,312	17,882	1,430	16,129	14,948	1,181	3,183	2,934	249
Vandalism, forgery, counterfeiting, fraud, stolen property, and unauthorized use of a motor vehicle	8,606	7,348	1,258	5,891	5,030	861	2,715	2,318	397
Alcohol/drug offenses	3,356	2,902	454	2,660	2,319	341	696	583	113
Public-order offenses and probation violations	7,147	5,651	1,496	6,493	5,157	1,336	654	494	160
All other offenses[b]	5,229	4,360	869	2,668	2,261	407	2,561	2,099	462
Nondelinquent reasons	25,451	15,248	10,203	3,104	1,519	1,585	22,347	13,729	8,618
Status offenders[c]	9,019	5,092	3,927	2,293	1,096	1,197	6,726	3,996	2,730
Nonoffenders[d]	9,280	5,646	3,634	512	263	249	8,768	5,383	3,385
Voluntary admissions	7,152	4,510	2,642	299	160	139	6,853	4,350	2,503
Other[e]	208	144	64	132	101	31	76	43	33

Note: The data were collected on Feb. 1, 1985.

[a]Acts that would be criminal if committed by adults.

[b]Includes unknown and unspecified delinquent offenses.

[c]Acts that would not be criminal for adults, such as running away, truancy, and incorrigibility.

[d]Those held for dependency, neglect, abuse, emotional disturbance, or mental retardation.

[e]Includes all other unspecified acts.

Table 14. Perceived race of offender(s), by race and age of victim, and type of violent crime, 1982-84

Type of crime and race and age of victims	Total	Percent of victimizations involving: All white offenders	All black offenders	All other race offenders	Offenders of different races	Race not known not ascertained
White victims						
Crimes of violence*						
12-19 years old	100%	78%	15%	4%	3%	2%
20 and older	100	71	20	4	2	4
Robbery						
12-19 years old	100	49	38	5	6	—
20 and older	100	41	48	5	4	4
Aggravated assault						
12-19 years old	100	78	12	6	2	4
20 and older	100	75	15	3	2	5
Simple assault						
12-19 years old	100	83	10	3	2	2
20 and older	100	79	14	3	1	3
Black victims						
Crimes of violence*						
12-19 years old	100	11	83	2	2	3
20 and older	100	13	78	2	3	5
Robbery						
12-19 years old	100	8	86	—	—	—
20 and older	100	9	80	—	4	6
Aggravated assault						
12-19 years old	100	9	86	—	—	—
20 and older	100	14	76	2	3	5
Simple assault						
12-19 years old	100	14	79	—	—	—
20 and older	100	14	78	—	—	4

Note: Percentages may not total to 100 because of rounding.
—Too few cases to obtain statistically reliable data.
*Includes data on rape, not presented as a separate category.

Table 15. Perceived age of offender(s), by age of victim and type of violent crime, 1982-84

Type of crime and age of victim	Total	Percent of victimizations involving offender(s) who were: All under 15	All 15-17	All 18-20	All 21 and older	Mixed ages	Age not known/not ascertained
Crimes of violence*							
12-15 years old	100%	32%	29%	7%	13%	16%	4%
16-19	100	1	20	24	35	16	4
20 and older	100	1	4	10	70	8	7
Robbery							
12-15 years old	100	22	32	10	8	25	—
16-19	100	—	13	23	30	27	7
20 and older	100	1	6	12	54	15	11
Aggravated assault							
12-15 years old	100	29	21	6	16	20	8
16-19	100	—	17	23	38	17	4
20 and older	100	1	3	9	71	9	7
Simple assault							
12-15 years old	100	37	30	6	11	12	3
16-19	100	—	24	25	33	13	4
20 and older	100	1	3	9	76	6	4

Note: Percentages may not total to 100 because of rounding.
—Too few cases to obtain statistically reliable data.
*Includes data on rape, not presented as a separate category.

Table 16. Police reporting rates, by age of victim and type of crime, 1982-84

Type of crime and age of victim	Percent of victimizations: Reported to police	Not reported to police
Crimes of violence		
12-15 years old	31%	67%
16-19	41	58
20 and older	53	46
Rape		
12-15 years old	74	—
16-19	53	47
20 and older	48	51
Robbery		
12-15 years old	34	64
16-19	46	54
20 and older	60	39
Aggravated assault		
12-15 years old	41	57
16-19	48	50
20 and older	61	38
Simple assault		
12-15 years old	25	74
16-19	34	65
20 and older	45	54
Crimes of theft		
12-15 years old	9%	90%
16-19	19	79
20 and older	31	67

Note: Percentages may not total to 100 because of rounding and the exclusion from the table of percentages (2% or less) where police reporting was not known or not ascertained.
—Too few cases to obtain statistically reliable data.

Introduction

From 1982 through 1984, teenagers (ages 12-19) experienced an average of 1.8 million violent crimes and 3.7 million crimes of theft annually. Teenage victimization rates for these crimes were about twice as high as those of the adult population, ages 20 and older. The average annual violent crime victimization rate was 60.1 per 1,000 teenagers compared to 26.9 for the adult population. For crimes of theft, the teenage rate was 123.5; the adult rate, 65.6.

Within the teenage population itself, older teens (ages 16-19) had higher violent crime victimization rates than did younger teens (ages 12-15). The two groups had similar victimization rates for crimes of theft.

Trends in crime rates against teenagers since 1973 have been similar to those for adults. Teenagers have experienced a decline in theft victimization rates, but violent crime victimization rates have remained essentially unchanged.

Both younger and older teens were more likely than adults to be attacked during a violent crime and were less likely than adults to be injured. In other ways, however, the characteristics of incidents against older teens more closely resembled those of adult victimizations. Similar proportions of older teens and adults faced armed offenders and, if injured, sustained serious injuries. By contrast, younger teens were least likely of the three age groups to face armed offenders; if injured, they were less likely to sustain serious injuries.

Crimes against teenagers were less likely to be reported to the police than crimes against adults. Among teenagers, crimes against younger teens were less likely to be reported than crimes against older teens.

Violent crimes against teenagers were more likely to be committed by other teenagers than by adults. Most of these crimes against younger teenagers were committed by offenders under 18 years old. Close to half of the violent crimes against older teenagers were committed by offenders under 21. By contrast, 70% of the violent crimes against adults were committed by offenders age 21 or older.

Teenagers of all ages also reported knowing their assailants more often than adults. Younger teens were most likely to report that the offender was a casual acquaintance or someone known by sight, but least likely to identify their assailant as a complete stranger.

The information in this report is based on data obtained from the National Crime Survey (NCS) for the years 1982 through 1984. The NCS obtains information about personal and household crimes, including crimes not reported to the police, from individuals ages 12 and over in a nationally representative sample of households. Although NCS interviewers obtain information directly from most household members, nearly all the interviews for 12- and 13-year-olds are completed by a knowledgeable adult household member (see methodology).

Victimization rates

• Teenagers had higher annual violent crime victimization rates than did adults from 1982 through 1984. Young teenagers had a rate of 52.0 per 1,000 teens; the rate for older teens was 67.8 per 1,000 (table 1). Adults had a violent crime victimization rate of 26.9 per 1,000. For each category of violent crime (rape, robbery, and assault) teenagers in both age groups had higher victimization rates than adults.

• Overall, teenagers had higher victimization rates for crimes of theft than adults. The rates for personal larceny with contact (purse snatching or pocket picking) were not measurably different for teens and adults. The rate for personal larceny without contact, however, was higher for teenagers than for adults.

• Within the adolescent population, older teenagers had higher victimization rates than younger teens for crimes of violence in general and for the specific violent crimes of robbery and aggravated assault. Younger and older teens experienced similar rates of personal thefts.

• Within the U.S. population, personal victimization rates generally decrease as the age of the victim increases (table 2). Because older age groups have lower personal victimization rates than do young adults, the rates for the entire adult population are lower than the rates for teenagers. However, the victimization rates for young adults ages 20-24 and teenagers are more similar than the aggregated adult rates suggest.

• Similar to the adult population, male teenagers had higher violent and theft crime rates than did female teens. Black teenagers had higher violent crime rates than teenagers of other racial groups. Within categories of teenagers based on race and sex, however, older teens consistently had higher victimization rates for violent crimes than younger teens in the same group (table 3).[1] On the other hand, victimization rates for crimes of theft generally did not vary by age within these same categories; young black teens, however, had higher rates than older black teens.

[1] The difference between victimization rates for 12-15-year-old blacks and 16-19-year-old blacks was significant at the 90% confidence level.

National Victim Center

Crime, Safety and You!

A Quarterly Membership Publication of the National Victim Center

Volume 1, Issue 2

Children And Violence

There has never been a time, in the past two centuries, when our children were exposed to and exhibited the violent tendencies of today. Violence surrounds the children of the '90's. In today's media-oriented society, the television and movies children watch, and the music they listen to, all contribute to learned patterns of violent behavior.

The theory 30 years ago focused on violent children as products of their environments; ghettos produced gangs, which perpetrated violence against each other and society. A movie popular in the 1950's, "The Bad Seed", portrayed an angelic-looking, upper middle-class child who committed violent crimes against people who displeased her. Then, it was dismissed as "movie fantasy."

Just Some Examples

- Approximately 5,200 secondary school teachers are attacked each month by students.
- In a borough of New York City, a 17-year-old student was killed in November, 1989 by a gun-toting classmate in a crowded hallway of his high school as he was changing classes.
- An assistant principal was shot in the back at an Arlington, Texas junior high school parking lot, reportedly by a 13-year old student.
- And students at an elementary school in Stockton, California still live in fear, following the January 1989 schoolyard attack by a man carrying an AK-47 semiautomatic assault rifle that left five children dead and 29 others injured.

How Safe Are You?

Violence against children — which can range from throwing an object to using a weapon — occurs in 62 percent of American families every year. But violence against children is not limited to the home. According to the Committee For Children in Seattle, Washington:

- In a study of 8th and 10th grade students, 34% of students reported that another student threatened to hurt them during the year.
- Almost 8% of urban junior and senior high school students miss at least one day of school each month because they are afraid to go.
- Each month, about 282,000 students are physically attacked in America's secondary schools by other students.
- In 1987, children under the age of 15 were arrested for 11,284 aggravated assaults and 1,660 forcible rapes.

The More You Know

Violence against children and in schools is rapidly reaching epidemic proportions. Think back to the time when you were a student. Did your school have metal detectors you had to pass through before entering? How many times were teachers assaulted on school property? Did "gang activity" mean anything more to you than simply the kids you hung around with? Was the most dangerous thing offered to you in the school restroom a cigarette?

Yet, the children of today face life and health-threatening hazards simply by showing up at school each morning.

The grief and anger a child feels after a victimization are sometimes more intense than an adult's reaction would be.

There is still a tendency in our society to blame the victim:

- When your car gets stolen, the first question asked is "Did you leave the keys in the ignition?", indicating you were responsible for the crime.

307 West 7th Street, Suite 1001 • Fort Worth, Texas

HB

104

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

Bill Number: H 104
Abbreviated Title: Misconduct w Weapons -

Sponsor: Donley; Ulmer, Barnes, etc Original Received: May 1, 1991
Written Request to Schedule Rcv'd: May 2, 91 From: Donley
Sponser's Statement Rcv'd: _____ From: _____
Sectional Analysis Rqst'd: _____ From: _____
Sectional Analysis Received: _____
Fiscal Note (Original)
Rqst'd Of: _____ Rcv'd From: Pub Saf - Date: May 1, 1991
Rqst'd Of: _____ Rcv'd From: Court - Date: With Bill
Rqst'd Of: _____ Rcv'd From: Correction - Date: With Bill
Law - With Bill -
Fiscal Note (C.S.)
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Rqst'd Of: _____ Rcv'd From: _____ Date: _____
Five Day Notice Given: By House - Notice of Hearings Given: _____
Committees of Referral: First: Jud Second: — Third: —
LAA Contact: _____ To Senate Secretary: _____

COMMITTEE ACTION

DATE:
May 17, 1991 Senate C S Adopted - unreadable adopted
Passed Out Rec -
Sent to Finance for "fiscal"

PERSONS TO BE NOTIFIED OF HEARING

1. Sponsor
2. Agency
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

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ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
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CHAIRMAN
JUDICIARY COMMITTEE

VICE CHAIRMAN
REGULATION REVIEW COMMITTEE

MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

MEMORANDUM

TO: Senator Rick Halford, Judiciary Chair

FROM: Representative Dave Donley, Judiciary Chair DD

DATE: May 2, 1991

RE: Request to hear CSHB 104 (Judiciary) am

I respectfully request that HB 104 be scheduled for a Senate Judiciary hearing. HB 104 places strict limits on convicted felons having firearms, and makes it illegal for kids under the age of 21 to have guns on school property without the permission of the school principal. The bill also clarifies that it is legal to carry mace or small stun guns to defend yourself against muggers.

Substantial changes were made to HB 104 in the House Judiciary Committee in order to accommodate concerns raised by the Departments of Public Safety and Law and the National Rifle Association. In its present form, the bill is supported by all interested parties.

Current Alaska law on allowing felons to possess firearms is much more lenient than other states. Also it is unclear in existing law whether it is legal to carry concealed defensive weapons such as mace and small stun guns for personal protection. Since Alaska has such a high rate of violent crime, including one of the highest rape rates in the country, I believe our laws must be amended to allow law-abiding citizens to protect themselves and to keep weapons that are easily abused away from felons to the greatest extent possible.

In addition to the major amendments described above, HB 104 makes several other minor amendments to our weapons laws that correct problems brought to my attention. A sectional analysis describing the amendments in more detail is attached to this memorandum.

Thank you very much for your consideration of this request.

DD:lc

JUNEAU OFFICE
(During Legislative Session January through May)
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661

SECTIONAL ANALYSIS - CSHB 104 (JUDICIARY) am

Section 1. Clarifies that first degree robbery is committed when a defensive weapon (defined in bill section 10 as certain electric stun guns or devices designed to dispense substances such as mace) is used or attempted to be used.

Section 2. Clarifies that first degree escape is committed when a defensive weapon is used or attempted to be used.

Section 3. Clarifies that it is illegal to bring defensive weapons into correctional institutions.

Section 4. **(1)** Makes it illegal for convicted felons to have a removable rifle magazine capable of containing more than five cartridges; **(2)** replaces undefined term "drug" with defined term "controlled substance"; **(3)** clarifies definition of "under the influence" for purposes of the weapons statute; **(4)** clarifies that it is illegal to possess defensive weapons during a violation of a domestic violence restraining order; **(5)** makes it illegal for a convicted felon to knowingly live in a dwelling in which there is a concealable firearm or high volume rifle magazine without authorization from a court or the head of a local police agency.

Section 5. Extends the period of time during which most felons are prohibited from having concealable firearms or high volume rifle magazines from five years to ten years, and permanently prohibits felons convicted of committing a violent crime from having concealable firearms or high volume rifle magazines.

Section 6. Removes metal knuckles, switchblades, and gravity knives from the list of prohibited weapons (these weapons will remain prohibited under bill sections 7 and 8).

Section 7. **(1)** Prohibits a person from possessing firearms in the interior of a vehicle while intoxicated; **(2)** reduces penalty for possessing or selling metal knuckles from a C felony to an A misdemeanor; **(3)** reduces penalty for selling switchblades and gravity knives from a C felony to an A misdemeanor.

Section 8. **(1)** Clarifies that it is not illegal to carry a defensive weapon concealed on the person; **(2)** prohibits kids under the age of 21 from having guns on school property without permission from the school principal but allows adults to have guns on school property in the trunk of a car, in a closed container, or with the permission of the principal; **(3)** reduces the penalty for possessing switchblades and gravity knives from a C felony to a B misdemeanor.

Section 9. Makes a technical change to conform with section 8.

Section 10. Defines "defensive weapon".

Section 11. Repeals statute to conform to section 4 amendment.

bill requested 9/14/90

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM September 11, 1990

SUBJECT: Is carrying defensive weapons forbidden by the state concealed weapons statute? (Work order 7-0045A)

TO: Representative Dave Donley

FROM: Jack Chenoweth
Legislative Counsel

You have asked whether a person's carrying a so-called defensive weapon--a chemical agent such as tear gas or mace, or a stun gun or similar device--is prohibited by the state's concealed weapons statute.

I can offer no definitive conclusion, only a review of the following elements that appear to be pertinent to a determination. The legislature may wish to clarify the apparent ambiguity by statute.

*

What is commonly referred to as the state's "concealed weapons statute" is the offense of misconduct involving weapons in the third degree, a class B misdemeanor. AS 11.61.220(a) provides:

> A person commits the crime of misconduct involving weapons in the third degree if the person
> (1) knowingly possesses a deadly weapon, other than an ordinary pocket knife, that is concealed on the person;
> . . . .

Thus, a person's concealed possession of these items would be an offense only if the items may be regarded as "deadly weapons."

The Criminal Code defines "deadly weapon" as

> . . . any firearm, or anything designed for and capable of causing death or serious physical injury . . . .

AS 11.81.900(a)(12), and "serious physical injury" is defined to include

> (A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or
> (B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that lawfully terminates a pregnancy;

AS 11.81.900(a)(50).

A stun gun is not a firearm. The statutory definition of "firearm" includes a requirement that the weapon be "designed for discharging a shot capable of causing death or serious physical injury," AS 11.81.900(a)(21), and it is clear that a stun gun is not so designed. See Kinnish v. State, 777 P.2d 1179 (Alaska App. 1989).

Thus, a chemical agent or a stun gun qualifies as a deadly weapon only if one can conclude that each was "designed for and capable of" causing the victim's death or causing serious physical injury to the victim.

Depending on its nature, application, or use, a chemical agent or a stun gun is capable of causing or contributing to protracted impairment of health or protracted loss or impairment of the function of a body member. Thus, when used in a manner likely to produce death or great bodily harm, the chemical agent or the device may be classified as a deadly weapon.

There is no Alaska decision on the subject that provides guidance. As a general rule, however, if the crime charged is not for the commission of an offense by the use of a deadly weapon, but the essential element of the offense consists in the defendant's carrying or having possession of the weapon, it is for the court to determine, as a matter of