

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10848 HOUSE JUDICIARY

- c. Protective standards - With nearly 100 years of food safety regulation experience in the U.S. we know that the 5 risk factors that must be controlled are: food from unsafe sources, inadequate cooking, inadequate holding, contaminated equipment and poor personal hygiene.
- d. Rational regulatory scheme. 32 Alaska food safety experts (Food Safety and Sanitation staff) have reviewed how jurisdictions and industry ensure food safety in other states and developed Alaska's new regulatory scheme called Active Managerial Control. As the name implies, responsibility for food safety has been clearly placed on operators. It consists of food service workers that are knowledgeable about the causes of foodborne illness and practices to control them, written standard operating procedures and self-audits, and DEC enforcement implemented through on-sight inspections and record audits. HB 378 is needed to make the proposed rational regulatory scheme of AMC possible.
- e. Documented compliance. AMC incorporates various ways for operators to document and DEC health officers to verify compliance.
- f. Enforcement. Flexible mechanisms are needed to promote compliance through appropriate actions that prevent and deter rather than ineffective mechanisms that only react and punish.

- **Certification is a necessary part of an effective food safety system.**
- **Enforcement tools are necessary to promote compliance.**
- **Certification and enforcement are key components of Alaska's new Food Safety protection system called Active Managerial Control.**



Knowledgeable Workforce

Trained Workers

Certified Managers

Managing Risks

Quarterly Self Assessments

Standard Operating Procedures:

- Cleaning & Sanitizing
- Handwashing
- Employee Health
- Receiving and Storage
- Risk Factor related SOPs

Enforcement

Record Audits

Risk Based Inspections

Enforcement Actions

Dirty dining?
**'Dateline' hidden
cameras investigate
cleanliness of America's
top 10 fast food chains**

Fast food: It's served fast and you eat it fast, maybe too fast to notice the restaurant is a little dirty. The fact is that no one has ever done a national survey looking at the cleanliness of fast food chains — until now. Recently, we took our Dateline cameras undercover for the first-ever investigation of whether America's top 10 fast food chains are clean and safe. How did your favorite restaurant do? We're a nation fueled by fast food: burgers and fries, tacos, fried chicken. It's hot, tasty and easy. And with millions and millions of meals sold every day, most of us just assume it's all clean and safe. But when it's not, it can be devastating.

After eating at this McDonald's in Erwin, Tenn., last March, one hundred people became violently ill. Some ended up in the hospital, dehydrated and even hallucinating. The Centers for Disease Control says sick restaurant employees very likely contaminated food with a virus, although McDonald's disputes that.

Meanwhile, after eating at a KFC in Colorado, Gianni Velotta was infected with a dangerous salmonella bacteria. His mother says he almost died.

Natalie Velotta: "His kidneys weren't working. I mean, there's just no words to explain how bad it actually was."

How do your favorite restaurants rate?

Was there any way to prevent it? Well, had Natalie Velotta checked, she'd have learned health inspectors had cited and fined that KFC just a few months earlier.

Velotta: "If I would have known that they had several health violations, I would not have eaten there."

But who has time to check health inspection reports before they go to a fast food restaurant? Virtually no one, so Dateline decided to do it.

The biggest 10 chains have 75,000 restaurants. We couldn't look at all of them, so we hired a survey company to choose a sample, 100 restaurants from each chain, 1,000 in all, spanning 38 states.

hazardous problems.

What may shock you is just how many restaurants had critical violations. More than sixty percent of all fast food restaurants in our sample had at least one critical violation in the last year and a half.

How many total violations did each chain have? Here comes Dateline's dirty dining survey — it's a top 10 list where no fast food restaurant wants to come in number one:

10: TACO BELL

The 100 Taco Bells we sampled had the fewest total critical violations, 91, making it the best performer in our survey. But it was not without problems. Recurring violations included dirty food preparation counters and rodent droppings.

9. MCDONALD'S

The golden arches, the 100 McDonald's we looked at came in with a total of 136 critical violations. Some didn't have a trained and certified food handler on the job, required by law in many states.

Thompson: "It's that important?"

Smith-Dewaal: "Absolutely. We can't have food prepared by people who don't know that you can't combine raw meat with cooked meat, with people who don't understand the importance of proper temperatures in food preparation."

8. KFC

The 100 KFCs we sampled tallied up 157 critical violations, and two thirds of the "finger lickin' good" restaurants had at least one critical violation. Remember, it was at a KFC, the Health Department says, little Gianni Velotta picked up salmonella poisoning last year. We've now learned that another child was also sickened there, and the same restaurant has since been cited for three more critical violations.

While the Velotta's have settled a lawsuit against the restaurant, a lawyer for the owner of the franchise contends the salmonella cases did not originate there.

7. SUBWAY

The 100 Subways we looked at totaled 160 critical violations. A recurring problem at the sandwich chain was improper food holding temperatures.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

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Velotta: "If I would have known that they had several health violations, I would not have eaten there."

But who has time to check health inspection reports before they go to a fast food restaurant? Virtually no one, so Dateline decided to do it.

The biggest 10 chains have 75,000 restaurants. We couldn't look at all of them, so we hired a survey company to choose a sample, 100 restaurants from each chain, 1,000 in all, spanning 38 states.

We then collected and examined local health inspection reports for the last year and a half on each of those 1,000 restaurants. Some were inspected just once, some more often during that period.

In a first of its kind national investigation, Dateline is going to use these health inspection reports to find out which fast food chains in our survey are the cleanest and the dirtiest. What we found may do more than surprise you. Some of the horror stories in Dateline's dirty dining survey just might turn your stomach.

In a Chicago, in a Wendy's, inspectors found dead rodent decomposing on a rat trap. At a California Taco Bell, someone bit into a taco, only to find chewing gum. An inspector in Texas found a worm in a Wendy's salad. At a Hardee's in Florida, a customer was handed a cup of soda with blood dripping from it. There was blood on her change as well.

The list goes on. A cockroach in someone's soda, a sharp metal object in a man's sandwich. But as disgusting as those things are, they are rare. Experts say the things you can't see can be even more hazardous.

So what can be done about all this? Well, health inspectors tell us it's not that easy to just close down a restaurant, and they say their power is limited when it comes to even imposing heavy fines. What they can do is cite restaurants for what is known as a hazardous or critical violation.

Caroline Smith-Dewaal is with the Center for Science in the Public Interest, a food safety watchdog group.

Smith-Dewaal: "A critical violation is something that happens in a restaurant that may result in the food becoming contaminated."

Lea Thompson: "By definition, is a critical violation something that could make you sick?"

Smith-Dewaal: "Yes."

Critical violations are a benchmark for judging a restaurant's cleanliness. Most food regulations mandate they be corrected immediately, and they are the only type of violations we counted in our survey. They include things like handling ready-to-eat food with bare hands or unwashed hands, undercooked meat, improper food holding temperatures, sick employees preparing food, and a host of other potentially

hazardous problems.

What may shock you is just how many restaurants had critical violations. More than sixty percent of all fast food restaurants in our sample had at least one critical violation in the last year and a half.

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7. SUBWAY

The 100 Subways we looked at totaled 160 critical violations. A recurring problem at the sandwich chain was improper food holding temperatures.

Thompson: "What does that mean?"

Smith-Dewaal: "That means that bacteria in the food that's already cooked can start to grow, and it can reach levels that can cause serious illness for someone who consumes it."

6. JACK IN THE BOX

The 100 Jack in the Box restaurants had a total of 164 critical violations. A Ventura, Calif., Jack in the Box was a trouble spot. It had several customer complaints of food borne illness.

5. DAIRY QUEEN

The 100 Dairy Queens we examined totaled 184 total critical violations. One Dairy Queen in Hampton, Va., rang up a number of critical violations last summer for grime, debris, and an inaccurate thermometer.

When Dateline went back recently to take a look, the restaurant invited us in, and showed it had fixed the problem.

4. HARDEES

The 100 Hardee's tallied 206 critical violations. Again and again inspectors cited the presence of insects and rodents.

Smith-Dewaal: "Rodents and roaches are gross. But more importantly, they can also spread germs from food to food, and carry germs into a restaurant."

Last May, one restaurant was cited for not having soap in the employee's sink. Yet, inspectors found employees handling ready-to-eat food with their bare hands.

3. WENDY'S

100 Wendy's had 206 critical violations. That's the same as Hardees, but more Wendy's restaurants had violations. So Wendy's is number three in our Dateline dirty dining survey.

At a Wendy's in Mesa, Ariz., inspectors noted repeated problems with food holding temperatures, mice droppings on the shelves, bare hand food contact, and one food borne illness complaint.

2. ARBY'S

The 100 Arby's had 210 critical violations. The roast beef specialists had recurring violations for improper hand-washing and employees handling ready-to-eat foods with their bare hands.

Smith-Dewaal: And clearly, if the person isn't washing their hands or using other sanitation practices, they can really make people very sick.

1. BURGER KING

So which fast food chain finished number one on Dateline's dirty dining list? It's Burger King. The 100 Burger Kings we sampled rang up a whopping 241 total critical violations. Health inspectors cited a Virginia Burger King for 14 separate critical violations: employees not washing their hands, uncovered food in the fridge, grime and debris found on this ice chute, and on the drink machine at the drive-thru window. We observed one employee scooping ice into a cup with his bare hands, an apparent critical violation.

SO WHAT'S THE BIG PICTURE?

The 1,000 restaurants we sampled totaled 1,755 critical violations, and 613 restaurants were cited at least once. That's more than 60 percent with problems inspectors consider potentially hazardous to your health.

Still, in an industry where millions of meals are served...

Thompson: "Is it unrealistic to expect a fast food restaurant to come up with a clean bill of health every single time an inspector walks in the door?"

Smith-Dewaal: "The government inspector is the last checkpoint. The restaurant itself should be doing inspections and checking for critical violations every day. They shouldn't wait for a government inspector to tell them they're doing it wrong."

Steve Grover of the National Restaurant Association represents fast food restaurants. He's a former health inspector himself.

Thompson: "Does Dateline's survey concern you?"

Steve Grover: "It concerns me. I do not find critical violations acceptable."

Thompson: "Why are they there in the first place?"

Grover: "Because no one's perfect. I tell the executives every day, 99.9 percent is not good enough, when it comes to food safety."

Thompson: "What about 60 percent?"

Grover: "Sixty percent is not good enough when it comes to food safety."

Grover argues as long as critical violations are being corrected promptly, then the system is working. Inspectors are doing their job, and the restaurants are following the advice of the inspectors as they come through.

Most fast food restaurants are owned by individuals, but most chains say they inspect every restaurant that has their name on it.

In a letter to Dateline, Burger King says it is "Extremely disappointed" by (the) findings... We want to assure our guests we will quickly investigate... and take immediate and appropriate actions..." The president of Wendy's writes, "one critical violation on a health inspection report is one too many." And Hardees says, "We must always do better. Any critical deficiency is unacceptable - which is why we address them immediately." McDonald's says "No one cares more about operating clean, safe restaurants than McDonald's."

All are unanimous in agreeing with KFC that "Food safety is our number one priority." The Velottas, whose little boy became almost died, hope that's true.

Velotta: "Every single time I go to a fast food restaurant, there's that doubt in the back of my mind that they could get sick. Every single time."

Audits and Inspections

Audits

- ▶ New and existing establishments will initially be required to submit their SOPs, records, and self-inspections for review.
- ▶ Annually, and as part of the permit review process, a percentage of randomly selected establishments will be required to submit their self-inspections and records.

Inspections

- ▶ On-site evaluations of establishments will be conducted to determine their control of risk factors, to review SOPs and how they are implemented, and to audit required records and self-inspections.
- ▶ Enforcement actions, including administrative fines, may be initiated for risk factors that are not being controlled, imminent health hazards and other serious violations of the regulations.

Implementing the New System

Target Schedule



- ▶ Public Notice Food Code Spring 04
- ▶ Revisions Adopted Fall 04
- ▶ CFPM Required Fall 04
- ▶ Food Worker Training Fall 04
- ▶ AMC Workshops Fall 04
- ▶ AMC Required Fall 05

Elements of this new food safety system will be included in draft revisions to the Food Code (18 AAC 31). Food Establishment operators are encouraged to comment and will be directly notified when the draft regulations go out for public notice.

Your input is important, and can improve the regulations. Every comment will be considered, and changes may be made based on the comments received.

For more information visit our website:

www.state.ak.us/dec/deh/



Food Safety & Sanitation

Active Managerial Control: Improving Alaska's Food Safety System



Active Managerial Control is a comprehensive food safety system. It includes operators and staff who are knowledgeable about food safety issues, and are responsible for controlling practices and procedures that contribute to foodborne illness. It can be implemented in both urban and remote settings.

This new system offers greater assurance that safe food is served throughout Alaska.

Alaska Department of Environmental
Conservation
Division of Environmental Health
Food Safety and Sanitation Program
555 Cordova Street
Anchorage, AK 99501
(907) 269-7501 FAX (907) 269-7510

Elements of "Active Managerial Control"

Elements of Alaska's Food Safety System include trained food workers, standard operating procedures, monitoring and recordkeeping of certain risk factors, self-inspections, audits, and field evaluations. The details of these elements are explained below.

1. Training

- ▶ Establishments that serve unpackaged food will need to have a Certified Food Protection Manager (CFPM). She/he must pass a nationally recognized exam to become certified.
- ▶ All food workers must have food safety training and pass an exam.
- ▶ Many options will be available for both manager and food worker training, including self-study, online, and classroom training.

2. Written SOPs (Standard Operating Procedures)

Establishments must have SOPs that describe their policies on,

- ▶ proper handwashing,
- ▶ employee health,
- ▶ training,
- ▶ food sources,
- ▶ receiving and storage,
- ▶ chemical use and storage, and
- ▶ sanitation.

3. **SOPS, monitoring, and recordkeeping** will also be required, where applicable, for the following:

- ▶ hot and cold holding
- ▶ cooking,
- ▶ cooling,
- ▶ reheating, and
- ▶ handling ready-to-eat food.

4. Food Safety Checks

- ▶ Regular food safety checks, conducted by the operator, will help verify that the establishment's procedures, and good retail practices are being followed, and any required records are maintained.

The 5 Risk Factors for Foodborne Illness

Unsafe Holding Temperatures
Inadequate Cooking
Contaminated Equipment
Food from Unsafe Sources
Poor Personal Hygiene

Food Safety and Sanitation Program: Operator Assistance

DEC will hold workshops and provide training to help operators understand and implement Active Managerial Control. In addition, FSS plans to:

Provide Food Safety Training Opportunities

- ▶ Publish a list of CFPM Training Courses and Exams.
- ▶ Conduct Train the Trainer courses for employers and others who want to provide food worker employee training.
- ▶ Offer food worker training, testing, and certification online.
- ▶ Provide free training materials online and in print.

Provide Model SOPs and Forms

- ▶ Publish a Compliance Manual which will include permit applications, plan review requirements, instructions on identifying processes and risk factors, templates for writing customized SOPs, and example forms for recordkeeping and self-inspections. It will be available online and in print.
- ▶ Publish a Resource Manual to help operators implement their active managerial control system. It will include procedures for controlling risk factors, examples of policies, reproducible signs, and other information.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 378
 (H) Publish Date: 2/9/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to the Alaska Food, Drug, RDU Civil
and Cosmetic Act, including sales, advertising..." Component Environmental
 Sponsor House Finance
 Requester House Health, Education and Social Services Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 17.20.005 by adding a requirement that training, testing and certification be required for individuals who handle or prepare food, their supervisors, and their employers to ensure knowledge of food safety and sanitation. It also broadens the potential penalties and fines that may be imposed on anyone who violates one of the prohibited acts under the Food, Drug and Cosmetics Act but provides certain exceptions, under certain circumstances for disseminators of false advertising, and for donors of food to a food bank and to food banks themselves. The bill also gives concurrent jurisdiction to the Attorney General to act against violators of this revised statute.

Passage of this legislation will have a negligible fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division Administrative Services Date/Time 2/2/04 1:13 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/2/2004
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB378-EC-EH-1-14-04

Bill Version: _____

() Publish Date: _____

Revision Date/Time (Note if correction):
Title An Act Relating to Food, Drug and Cosmetics

Dept. Affected: Environmental Conservation
RDU Environmental Health
Component Food Safety and Sanitation

Sponsor Representative Bill Williams
Requester _____

Component No. 2343

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	106.7	106.7	106.7	106.7	106.7	106.7
Travel	5.0	5.0	5.0	5.0	5.0	5.0
Contractual	13.2	13.2	13.2	13.2	13.2	13.2
Supplies	72.0	2.0	2.0	2.0	2.0	2.0
Equipment	13.8	2.0	2.0	2.0	2.0	2.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	210.7	128.9	128.9	128.9	128.9	128.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1005/1156)	80.0	157.0	77.0	157.0	157.0	77.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1156 Receipt Supported Services	210.7	128.9	128.9	128.9	128.9	128.9
TOTAL	210.7	128.9	128.9	128.9	128.9	128.9

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	2	2	2	2	2	2
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Kristin Ryan, Director
Division Division of Environmental Health
Approved by: *Kristin Ryan*
Agency Department of Environmental Conservation

Phone 269-7645
Date/Time 1/14/04 12:22 PM
Date 1/14/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB378-EC-EH-1-14-04

ANALYSIS

This bill authorizes the department to implement key elements of the new food safety program called - Active Managerial:Control (AMC). This includes certification requirements for food service managers, separate food worker certification and testing, and authority to issue civil fines.

REVENUES

Food Worker Certification: Regulations will be implemented that require food workers to pass an exam administered by the department. A \$10.00 fee will be assessed for a three-year certification with a \$10.00 fee for each re-certification. There are approximately 16,000 food workers employed in the state.

- FY2005 – Half of the food workers will be certified in the first year of implementation producing \$80.0 in receipts. (There is a one-year grace period in effect that extends into FY2006).
- FY2006 – The other half of food workers will be certified plus 45% in new certifications representing estimated industry turnover for seasonal workers generating revenue estimated at \$152.0.
- FY2007 – Third year revenue is from turnover certification only.

Revenues continue in this pattern with a three-year re-certification cycle.

Civil Fines: Revenue projections include a minimal amount for civil fines at a rate of \$5.0 per year. The department will impose fines for failure to comply with the food safety system requirements or repeat or serious food safety violations. Food establishments will have a one year grace period for the necessary training and to implement the AMC system. Revenue from fines will not begin until after the grace period has expired (FY2006 or later) and are, at this point, difficult to estimate.

OPERATING COSTS

Personal Services: An Environmental Health Technician, will track compliance, deposit payments, issue certifications, and distribute training materials. An Environmental Health Officer will supervise Train-the-Trainer instruction on the requirements for food worker training and will coordinate with state and national providers of training for the Certified Food Protection Manager (CFPM) certification requirement in conjunction with state proctored exams.

Travel: Cost of conducting training, audits and to provide technical assistance.

Contractual: Funding for maintenance and support of the certification system and basic position support costs.

Supplies: Costs include a first year, one-time expenditure of \$70.0 for the purchase and implementation of a Food Safety System (software) that will provide food worker training and testing on-line and in multiple languages. Training and certification will be available in remote as well as urban areas, and to workers for whom English is not the primary language.

Equipment: Standard equipment purchases in the first year with ongoing maintenance costs.

FUNDING

Receipts from annual food establishment permit fee collections will be used to fund AMC activities.

Personal Services New Position Detail

Department of Environmental Conservation

Scenario: A Scenario for FY2005 Fiscal Notes (3605)
 Component: Food Safety & Sanitation (2343)
 RDU: Environmental Health (207)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#015	Environmental Health Tech.	FT	A	GP	Anchorage	2A	12B	12.0		31,308	0	0	15,944	47,252

Justification:

This position will be responsible for tracking compliance with the food worker certification requirement, deposit of the certification fees, issuance of the certifications and the distribution of training materials.

Funding Detail:

1156	Receipt Supported Services	100.00%	47,252
Total Funding:		100.00%	47,252

18-#016	Environmental Health Officer	FT	A	GP	Anchorage	2A	16B	12.0		41,136	0	0	18,257	59,393
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Justification:

This position will be responsible for providing food worker and Active Managerial Control (AMC) training, proctoring certification exams and "training the trainer" for 3rd party trainers in food worker and AMC requirements.

Funding Detail:

1156	Receipt Supported Services	100.00%	59,393
Total Funding:		100.00%	59,393

Component Summary:

Total New Positions: 2

Fund Description	Fund Percent	Fund Amount
1156 Receipt Supported Services	100.00%	106,645
Total Funding:	100.00%	106,645

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

HB

381

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: April 15, 2004

Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1433\D, HB 381, incorporating the attached five amendments. The bill was passed out of committee yesterday.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

CORRECTION

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Central Microfilm Services
Department of Education & Early Development
State of Alaska

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: April 15, 2004

Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1433\D, HB 381, incorporating the attached five amendments. The bill was passed out of committee yesterday.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

AMENDMENTS

HB 381 – “An Act relating to child endangerment” (23-LS1433\D)

AMENDMENT 1 - PASSED

Page 2, Lines 8-10

After “watercraft”

DELETE “under the influence of an intoxicant.”

REPLACE WITH “in violation of AS 28.35.030.”

AMENDMENT 2 - PASSED

Page 2, after subsection (4)

INSERT “(5) ^{knowingly} transports a child in a motor vehicle in violation of AS 28.05.095(b), and the child suffers physical injury or dies.”

AMENDMENT 3 - PASSED

Page 2, Lines 11-13

“Sec. 2. AS 11.51.100 is amended by adding a new subsection:

(e) Endangering the welfare of a child in the first degree under (a)(4) of this section is a class A misdemeanor.”

AMENDMENT 4 - PASSED

Page 2, Lines 14-15

Current Sec. 3 is replaced with:

“Sec. 3. AS 11.51.100 is amended by adding a new subsection:

(f) Endangering the welfare of a child in the first degree under (a)(5) of this section is a

- (1) class C felony if the child dies;
- (2) class A misdemeanor if the child suffers serious physical injury; or
- (3) class B misdemeanor if the child suffers physical injury.

DELETE language found in current Sec. 3

HB 381, version D

conceptual

Amendment #5 - PASSED
by Rep. McGuire

Apply AS 11.51.100 (a)(4) & (5) to all drivers
(not just parent, guardian, or other person legally
charged ... as w/ (1), (2) & (3))

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2995
Fax: (907) 465-6592



Interim:
716 W 4th Avenue, Suite 430
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire
Chair, Judiciary Committee

SPONSOR STATEMENT

HB 381

"An Act relating to child endangerment"

HB 381 addresses loopholes in Alaska Statute regarding vehicular related child endangerment. This bill includes specific provisions to our existing child endangerment statutes pertaining to transporting a child in a motor vehicle while intoxicated or transporting a child in a motor vehicle and failing to use proper restraints.

Currently, 27 states or territories have similar laws in effect. This bill will demonstrate Alaska's commitment to protecting our children, and our commitment to making adults responsible for their actions while transporting children.

HB 381 amends AS 11.51.100 (a) by adding two specific elements to the crime of child endangerment. First it specifies that a person commits the crime of child endangerment if they transport a child in a motor vehicle while under the influence of an intoxicant. Second, it adds that a person commits the crime of child endangerment if they fail to properly restrain a child, while transporting a child in a motor vehicle, and their failure to restrain leads to the injury or death of a child.

HB 381 will further help protect children from vehicular related injury or death, and because of this I encourage your support for this bill.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 381(HES)
 (H) Publish Date: 4/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Child Endangerment Driving Offenses BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative McGuire
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 The court system does not anticipate any fiscal impact from the passage of HB 381.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 4/2/04 12:22 PM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 4/2/2004
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 381(HES)
 (H) Publish Date: 4/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child endangerment BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Rep. McGuire
 Requester (H) HESS Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES:	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill would likely have some fiscal impact on the operations of the Public Defender Agency, because it criminalizes, at the felony level, conduct that does not currently qualify for the crime of child endangerment under the current statute. Making it a C felony for a driver to have a child in a car while the driver is "under the influence of an intoxicant" will certainly increase the caseload of the Agency. It will also increase the workload because felony offenses require more work from Agency attorneys. Adding the additional offense for transporting a child in a vehicle without proper seating restraint and making the offense either a B felony, C felony or A misdemeanor depending on the resulting injury to the child will have a similar fiscal impact on the Agency as the previous provision. The Agency does not currently handle a significant number of child endangerment offenses, but would expect to handle many more if this bill were enacted. Since it is impossible to predict the impact with any accuracy, an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director
 Division: Public Defender Agency
 Approved by: Kevin Jardell, Assistant Commissioner
 Agency: Administration

Phone (907)-334-4416
 Date/Time 4/5/04 12:00 AM
 Date 4/5/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 381(HES)
 (H) Publish Date: 4/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to child endangerment." RDU CRIMINAL
 Component CDCO
 Sponsor Representative McGuire
 Requester House Health, Education and Social Services Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 11.51.100 by adding two additional felony charges to the crime of endangering the welfare of a child in the first degree. The first adds a separate felony charge to a misdemeanor of driving of under the influence, if there were children in the vehicle at the time; the second felony charge would arise if a person failed to require a child to use seatbelts, and a vehicle accident ensued resulting in injury or death to the child.

The number of new felonies that would result from passage of this legislation is difficult to quantify. We anticipate a fiscal impact, but it is indeterminate at this point in time.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division Administrative Services Date/Time 4/5/04 9:14 AM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 4/5/2004
 Agency Department of Law

EVERY
CHILD
DESERVES™
A DESIGNATED
DRIVER

Child
Endangerment
Report



Mothers
Against
Drunk
Driving

ON THE COVER

There are very real cases in which a child's life is placed in danger by a parent or other caregiver's choice to drink and drive. Yet, as dangerous as it is, driving impaired with children in the vehicle is not a commonly acknowledged form of child endangerment or child abuse.

Carlie McDonald, 5 years old, was killed on January 1, 1998 by her intoxicated mother who was driving with a blood alcohol content (BAC) of .22 percent, over twice the illegal limit. Carlie had been placed in the front seat of the car; her unused booster seat was found in the back. Carlie's mother had been specifically court-ordered not to consume alcohol in Carlie's presence. This was not enough to save Carlie's life.

Carlie's father, Lieutenant Carl McDonald of the Wyoming Highway Patrol, had primary custody of his daughter. He was helpless to protect and ensure that Carlie would be safe when visiting her mother. His life has been forever changed.

Carlie loved playing with her dog, Sadie, and reading bedtime stories. Her favorite movie was *The Lion King*. Because her mother made the choice to drive while impaired with Carlie in the car, Carlie will never be able to live her life and attain her dreams. Her father must learn to live without her and continue his journey of grief.

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CHILD ENDANGERMENT AND CHILD ABUSE

Child abuse or neglect is defined in Black's Law Dictionary as:

"When a child's parent or custodian, by reason of cruelty, mental capacity, immorality or depravity, is unfit to properly care for him or her, neglects or refuses to provide necessary physical, affectional, medical, surgical or institutional care for him or her or is under such improper care or control as to endanger his or her morals or health."

Child endangerment as it pertains to impaired driving falls into the above legal definition of child abuse when a parent or caregiver knowingly puts a child in the car after drinking alcohol with the intention to drive. This choice falls under the "improper care...so as to endanger his or her morals or health." However, driving while impaired with a child in the vehicle is rarely, if ever, charged as child abuse.

CHILD ENDANGERMENT LAWS

Child endangerment is a term used to collectively identify laws that create a separate offense or enhance an existing penalty for an offender who endangers a minor. Endangerment is any action that might place a minor in jeopardy of physical, moral or mental well being.

While most states now have some kind of endangerment statute, 35 states currently have statutes that create special sanctions for cases of driving under the influence / driving while intoxicated (DUI/DWI) while the offender is transporting a child at the time of the offense. (See Appendix A.)

Child endangerment statutes fall into the following categories:

- **Enhanced penalties:** Penalties that are added to the penalties for a DUI/DWI law violation.
- **Separate offenses:** An offense for DUI/DWI with a minor in the vehicle that is separate from the DUI/DWI laws.
- **Aggravating circumstances:** Laws that allow the fact that a child was in the vehicle to be used by the judge/jury in sentencing as an aggravating factor, but not necessarily mandating a specific enhanced penalty.

Driving impaired is not an "accident" or a mistake. It is a choice, just as blatant physical child abuse is a choice. Rather than a fist, the weapon is a motor vehicle.

MADD is concerned about the increasing number of calls MADD victim advocates receive from distraught parents and other loved ones regarding allegations of an adult driving impaired with a child in the vehicle. In polling MADD chapters during the last year, MADD victim advocates across the nation received approximately 17,000 child endangerment calls. Many of these calls indicate that reports filed as child endangerment to state agencies are slipping through the cracks of the system, putting children at a greater risk of victimization.

These calls are not from victims of drunk driving crashes, but from potential victims of drunk driving. Often victim advocates feel helpless and frustrated with these calls for help. There seems to be no relief for the problem due in part to the lack of public awareness of the extent of the DUI/DWI child endangerment problem and the reluctance to accept that to drive impaired with a child in the vehicle is a form of child abuse.

Victim advocates on the panel identified common problems that victims report in calls of frustration and desperation. The following issues and concerns were raised:

- Cases are not being properly charged, resulting in lack of prosecution.
- Cases that are charged are often plea bargained down or dismissed.
- Reports made to child protective agencies are not being documented or investigated.
- A general lack of awareness of the seriousness of the problem.
- Divorced parents who are confronted with the problem of an ex-spouse who drives while impaired face legal challenges and the financial risk of subjecting themselves to civil contempt actions if they refuse visitation privileges to protect their children.
- Many victims do not have the financial resources to seek relief in the civil court system.

WHY IS THERE A NEED FOR A CHILD ENDANGERMENT STATUTE?

Within each state, it is the legislature that determines the structure of child endangerment laws. Statutes of this nature are important because motor vehicle crashes outrank all other injuries and diseases as the major cause of death for children ages 1 and above. In 2002, alcohol-related vehicle crashes accounted for 22 percent of motor vehicle crash deaths of children.

States with child endangerment laws widely vary in provisions and enforcement. Additionally, public awareness is often so low many people do not know such statutes exist. Individually, the situation is even more complicated because families with child endangerment issues are often already coping with the legal ramifications of separation, divorce, and visitation/custody issues. After a court has accepted custody arrangements, concerned parents and adults have very few options for protecting a child from a parent who drives impaired. Even worse, if a parent attempts to prevent the child from riding with their impaired parent, breach of the custody agreement could be enforced leading to further victimization.

The law enforcement officers, judge, civil attorney and prosecutor on the panel identified difficulties in enforcing the child endangerment statutes. The following issues were identified:

- There is difficulty in interpreting the existing DUI/DWI child endangerment laws; many of the laws are too complex.
- There is a lack of education on all aspects of the laws and the problem of child endangerment in general.
- There is difficulty in not being able to enforce civil remedies absent a restraining order or request of participation from child protective services.
- Laws are not being uniformly enforced.
- Violation of terms of the divorce decree as it relates to impaired driving with minor children in the car should be clearly tied to change in custody or visitation.
- There is a critical need for judicial education programs addressing all the issues surrounding child endangerment.
- DUI/DWI offenders' parental status should be a consideration at sentencing in terms of probation restrictions against driving after drinking with children in the vehicle.

RESEARCH AND STATISTICS

A 1999 national telephone survey, sponsored by the National Highway Traffic Safety Administration (NHTSA), estimates that between 46 and 102 million drinking-driving trips are made each year with children under the age of 15 in the vehicle.

In May 2000, the Journal of the American Medical Association (JAMA) published "Characteristics of Child Passenger Deaths and Injuries Involving Drinking Drivers." The study found that from 1985 to 1996, there were 5,555 child passenger deaths involving a drinking driver. Of these deaths, 3,556 (64 percent) occurred while the child was riding with a drinking driver; 67 percent of these drinking drivers were old enough to be the parent or caregiver of the child. *1 footnote

Of all drivers transporting a child who died, drinking drivers were more than twice as likely as non-drinking drivers to have had a previous license suspension (17.1 percent vs. 7.1 percent) and more than six times as likely to have a conviction for driving while intoxicated (7.9 percent vs. 1.2 percent). These findings underscore the serious risk that persons arrested for alcohol-impaired driving pose to others and to themselves.

Drivers who have been arrested for driving while impaired are known to be at substantially increased risk of future death in alcohol-related motor vehicle crashes compared with drivers who have not been arrested for this offense. *2 footnote

In addition, studies have shown that 70 percent of the drivers arrested for driving while impaired have alcohol abuse problems and between 10 and 50 percent are alcohol dependent. *3 footnote

Taken together, these findings emphasize the importance of aggressive intervention with persons convicted of DUI/DWI, including evaluation and treatment for alcohol problems, to prevent future deaths in alcohol-related crashes.

From 1988 through 1996, an estimated 149,000 child passengers were non fatally injured in crashes involving a drinking driver. Of these, 58,000 (38.9 percent) were riding with a drinking driver when injured in the crash. *4 footnote

*1 footnote Royal, D. National Survey of Drinking and Driving Attitudes and Behavior: 1999, Volume 1: Findings. Washington, DC: US Dept of Transportation, National Highway Traffic Safety Administration; 2000. DOT Report HS 809 190

*2 footnote Brewer RD, Morris PD, Cole TB, Watkins S, Patetta MJ, Popkin C. The risk of dying in alcohol-related automobile crashes among habitual drunk drivers. *The New England Journal of Medicine*. 1994; 331:513-517.

*3 footnote Wleczorek W, Miller B., Nochajski T. Multiple and Single Location Drinking Among DWI Offenders Referred for Alcoholism Evaluation. *American Journal of Drug and Alcohol Abuse* 1992; 18, no. 1: 103-116.

*4 footnote Quinlan KP, Brewer RD, Sleet DA, Dellinger AM. Characteristics of Child Passenger Deaths and Injuries Involving Drinking Drivers. *Journal of the American Medical Association* 2000; 283: 2249-2252.

During the five-year period of 1997-2001, 1,985 child passengers died and an estimated 87,226 were injured in alcohol-related crashes. Sixty-eight (60) percent of the deaths and 38 percent of the injuries occurred among children who were riding in the same vehicle with the drinking driver.

Of the children who died while riding in the same vehicle with the drinking driver, only 29 percent were known to have been restrained (restraint use was unknown for another 9 percent of child passenger deaths). As the BAC of the child's driver increased, child restraint use decreased.

Although restraint use in this group of children remains unacceptably low, restraint use has increased in recent years. The May 2000 JAMA study found that only 18 percent of children who were riding with the drinking driver at the time of the crash were known to have been restrained. The increase in restraint use seen among child passenger deaths is consistent with the increase in child restraint use over time in the general population. Strong enforcement of child safety seat laws and passage of primary enforcement seat belt laws in all states could further reduce child passenger deaths. The safety benefits of stricter enforcement of restraint laws may be even greater for children who are transported by drinking drivers because these drivers are known to have higher rates of serious crashes.

During the five-year period of 1997-2001, 58 percent of the alcohol-related crashes in which a child passenger died while riding with the drinking driver occurred during daytime or evening hours (6AM to 9PM). This finding adds further support for the need to increase high visibility enforcement of child safety seat, primary seat belt, and DUI/DWI laws, especially during daytime hours.

The MADD child endangerment panel of experts agreed that there is not any empirical research that has been done to determine scientifically if child endangerment laws that have been enacted have reduced alcohol-related deaths and injuries among child passengers. Funding for research needs to be acquired to evaluate the effectiveness of current child endangerment laws.

Child Restraint Laws

The Problem

The Safety Board's 1996 child passenger safety study involving more than 180 restrained children showed that the children tended to be restrained in systems too advanced for their physical development. For example, the report showed that 52 children used vehicle seat belts when they should have been placed in child restraint systems or booster seats.

In the summer of 1996 in Washington State, a 4-year-old, 45-pound boy was buckled into a lap/shoulder belt by his mother in accordance with State law. When their sport utility vehicle rolled over in a violent crash, the boy's lap/shoulder belt remained buckled, but the young boy was ejected from the restraint and the car, and killed.

The Centers for Disease Control and Prevention (CDC) issued a report in February 1999 indicating that 4- through 8-year-olds are not being protected because of gaps in the State laws that govern child safety seats. As a result, the CDC estimates that almost 500 children die on our highways every year because they are not properly secured in restraint systems—booster seats—that are appropriate for their age, height, and weight.

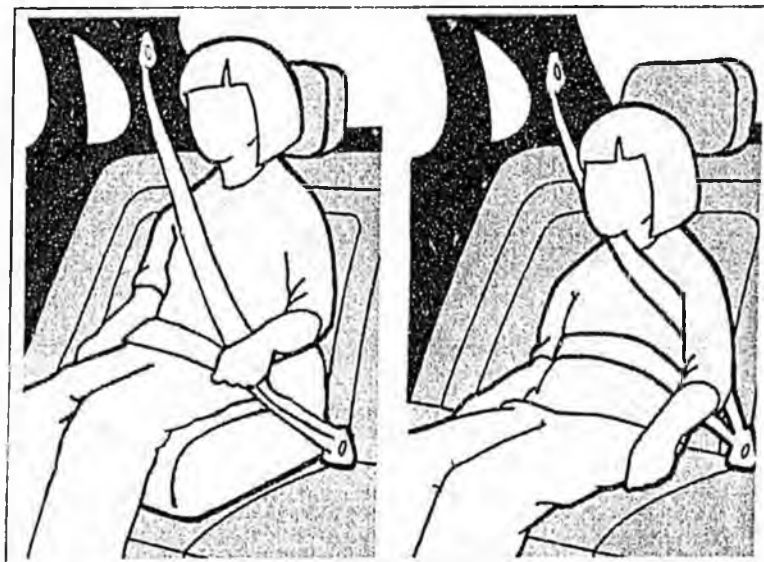


Illustration on left

Illustration on right

"Illustration on left shows proper fit of the combination of an adult safety belt with a child booster seat. By raising the child, the booster seat allows the lap belt to be properly positioned low across the thighs, while the shoulder belt is over the collarbone and away from the neck. In the event of an accident, the child would be properly restrained."

"Illustration on the right shows why booster seats are needed to make adult-size safety belts work properly. Without the booster seat, the safety belt is incorrectly positioned over the stomach and across the neck. In the event of an accident, this could cause serious injury. Utilizing a booster seat also allows for a more comfortable ride for a child."

Courtesy BoostAmerica

Lessons Learned

Seat belts, like air bags, were designed for adults. Children need to be almost 5 feet tall before the vehicle lap/shoulder belt will fit them properly. Although all 50 States and the District of Columbia have child passenger protection laws, in 1996, the Safety Board called on the States to strengthen their child restraint laws to do the following:

- Require all children under 4 years old to be in child safety seats.
- Require that 4- to 8-year-old children use auto safety booster seats.
- Eliminate provisions that permit children under 8 years old to be buckled up in a seat belt.
- Require all children under age 13 to ride in the back seat, if a seat is available.

Twenty-eight States and the District of Columbia require children of all ages (infants through teenagers) to be buckled up, although most permit seat belts to be substituted for child safety seats or booster seats. Only eight States require all children age 4 and under to be in child safety seats.

In addition, 6 out of 10 children killed in traffic crashes are not buckled up at all. The number of children killed each year could be reduced by 50 percent if every child were buckled up. There should be no tolerance for unbuckled children. State child restraint laws should be enforced and supported to reduce the number of children killed and injured in traffic crashes.

Safety Improvements

Actions taken subsequent to the Board's safety recommendations include the following:

- Washington State and California enacted laws in 2000 to require children under 6 years of age or 60 pounds to ride in a booster seat.
- Delaware, North Carolina, and Rhode Island require children to ride in the back seat of air bag-equipped cars. In Louisiana, all children less than 13 years of age must ride in the rear seat when one is available.
- NHTSA recently began an education campaign "Boost 'em before you Buckle 'em" to ensure that 4- to 8-year-olds get buckled up in age-appropriate restraint systems.

Traffic Safety Facts

Laws

Volume 1

Number 1

May 2003

Strengthening Child Passenger Safety Laws – Increase Laws – Increase Car Seat and Belt Use, Decrease Crash Fatalities and Injuries

Traffic crashes are a leading cause of death in the United States. All 50 States, the District of Columbia, Puerto Rico, and the U.S. Territories have child passenger safety laws ("car seat laws"). However, many of these laws have significant gaps and exemptions in coverage that diminish the protection that all children need in motor vehicles.

Essential Components of a Strong Law

Child passenger safety laws should cover every child (up to age 16), in every seating position, in every passenger vehicle. In 2002, NHTSA partnered with the National Committee on Uniform Traffic Laws and Ordinances, the National Transportation Safety Board, the Air Bag & Seat Belt Safety

Campaign, the Automotive Coalition for Traffic Safety, inc., and the Governors Highway Safety Association to create a "model law" which can assist States in drafting the language needed to eliminate the gaps that often occur in occupant protection legislation. This law recommends that every occupant (both children and adults) of a motor vehicle in motion should be covered at all times by an occupant protection law. This law is available at <http://www.ncutlo.org>

The following is a list of components that make up a strong child passenger law:

1. Cover all occupants up to age 16 in all seating positions. All child passenger laws should cover children up to age 16; the adult belt law should apply to all other occupants. Although some child passenger laws cover babies and young children, most laws do not protect children up to 16 years of age. For example, in many States, a 10-year-old can legally ride in the back seat without being secured because the laws in those States apply only to front seat occupants.

2. Primary enforcement. Occupant protection laws for children should be primary enforcement laws, which allow a law enforcement officer to stop a vehicle and issue a citation when the officer observes an unrestrained occupant.

3. Require child occupants to be properly restrained. The law should explicitly require a child to be in an

age- and size-appropriate child restraint system. Currently, many States allow a child to be restrained in a safety belt when, in fact, a child safety seat or booster seat is the appropriate safety device for the child's age and size.

4. Include all vehicles equipped with safety belts. A strong child passenger law should apply to all vehicles that are equipped with safety belts; no vehicles (i.e., pickup trucks), should be exempt.

5. Make the driver responsible for restraint use by all children under 16 years of age. Many laws assign responsibility to the parent or guardian, who may not be the driver or even be in the vehicle. Also, child passenger laws in many States do not assign responsibility to any specific adult, making these laws difficult to enforce.

6. Allow passengers to ride only in seating areas equipped with safety belts. A strong child passenger safety law should not include exemptions that allow children to be transported in areas not equipped with safety belts, (e.g., the cargo area of a truck). This practice is extremely dangerous and places children at unnecessary risk for death or serious injury.

7. Prohibit all passengers from riding in the cargo areas of pickup trucks. A strong child passenger safety law should prohibit all passengers from riding in the cargo areas of pickup trucks. When all

Essential Components of a Strong Law

1. Upgrade Child Safety Laws-Eliminate Exemptions

2. Conduct Combined Public Awareness and Enforcement Campaigns

3. The National Initiative for Increasing Seat Belt Use

4. Highway Safety Grant Programs for Occupant Protection Activities

passengers are prohibited, it is more likely that children will not be allowed to ride there. With or without a canopy, riding in the cargo area places all riders at unnecessary risk for death and injury. In a study conducted in Washington State, researchers found that persons riding in cargo areas were nine times more likely to be killed when compared with the general population of those involved in crashes.

Upgrade Child Safety Laws- Eliminate Exemptions

Many State laws have exemptions that allow children to ride unrestrained in certain vehicles and under unique circumstances. Listed below are exemptions and conditions that are included in many laws; leaving children unprotected:

- Exemption for overcrowded vehicles. In nearly half of the States, children can ride unsecured if all safety belts are in use.
- Exemption for "attending to the personal needs of the child." This encourages adults to carry children in their laps during feeding or other risky activities-behaviors.
- Loose guidelines for issuing medical waivers that allow children with special medical needs to ride unrestrained. Advances in child restraint systems have made it possible to accommodate children with almost any type of physical disability.
- Exemption for out-of-State vehicles, drivers, and children. Currently, children in many States are not required to be secured if the vehicle or driver is from another State. Children need to be protected, even when they're in a vehicle which is just "passing

through" or riding with a family in a vehicle with an out-of-State license.

- Exemption for drivers who are not the vehicle owner or who are not related to the children being transported. There are State laws that do not hold the driver accountable for unrestrained children.

Conduct Combined Public Awareness and Enforcement Campaigns

- Publicity and enforcement must go hand-in-hand. Publicity campaigns should educate the public about the importance of proper child passenger protection. Enforcement campaigns should include information on correct use, as well as publicity to raise public awareness of the law and its enforcement.
- Raise awareness of vehicle/child safety seat compatibility. Many parents and others who transport children do not understand the potential deadly results caused by a child seat or booster seat that is not properly used and secured in a vehicle.

National Initiative for Increasing Seat Belt Use

On April 16, 1997, the Secretary of Transportation issued the Presidential Initiative for Increasing Seat Belt Use Nationwide. Included in the initiative are ambitious child occupant goals. These goals aim to reduce child occupant fatalities (0-4 years) by 25 percent in 2005 (from a total of 653 in 1996). The National Initiative identifies closing the gaps in child passenger safety laws as an important strategy in meeting these new national goals.

Highway Safety Grant Programs for Occupant Protection Activities

On May 22, 1998, Congress passed H.R. 2400, the Transportation Equity Act for the 21st Century (TEA-21). A

number of programs established in TEA-21 have a direct impact on seat belt use and occupant protection. Beginning in FY 1999, the Section 157 Seat Belt Incentive Grant program authorized \$500 million over five years to encourage States to increase seat belt use rates. States received funds under this program based on projected annual savings in Federal medical costs resulting from increased seat belt use. States may use these grant funds for any eligible Title 23 project (which may include construction projects). The Act also provides that Section 157 funds not allocated to incentive grants in a fiscal year beginning in FY 2000 be allocated to the States to carry out innovative projects that promote increased seat belt use rates and child passenger safety activities. In addition, the Section 405(a) occupant protection incentive grant program authorized \$83 million over five years to target specific occupant protection laws and programs. Beginning in FY 1999, States received grants under the Section 405 program if they demonstrated that they had in place certain occupant protection laws and programs, such as primary safety belt use laws and special traffic enforcement programs. Finally, Section 2003 (b) of TEA-21 established a program in which the States received grants to carry out child passenger protection education and training activities.

These reports and additional information are available from your State Highway Safety Office, the NHTSA Regional Office nearest you, State Traffic Safety Councils, or the NHTSA's National Highway Traffic Safety Administration, 1215 21st Street, S.W., Washington, DC 20591, 202-366-4985, or NHTSA's web site at www.nhtsa.dot.gov





National Conference of State Legislatures
 Drunk Driving Child Endangerment Laws

as of December 2003

State	Citation	Provisions
AL	§32-5A-191(n)	Minimum sentences are double the usual sanction if an offender over age 21 was transporting a minor under age 14 at the time of the offense.
AK	none	
AS	none	
AZ	§§13-604(A), (C) & (U)(1) (a), 13-701(C), 13-801, & 28-1383(A)(3), (F), (G) & (L)(2)	A person commits a class 6 felony (aggravated DUI) if they violate the drunk driving laws while transporting a passenger under age 15. Sanctions: 1 st offense: 1 year; conviction with one prior felony: 1 to 2.5 years; conviction with two or more prior felonies: 3 to 4.5 years and fine \$150,000.
AR	none	
CA	Veh Code §23572	For non: injury offenses where a minor under 14 years old was a passenger, the following mandatory jail sanctions are imposed: 1 st offense: 48 continuous hours; 2 nd offense: 10 days; 3 rd offense: 30 days; 4 th offense: 90 days. (these sanctions are not imposed if the driver has been convicted of endangering the life or health of a child under Penal Code §273a)
CO	§§18-1-105(1)(a)(III) & (V)(A), and 18-6-401(1), (2), (7)(a)(I) & (III)	A person is guilty of child abuse if they knowingly or recklessly commit an act that either kills or injures a child under 16 years old. A person commits a class 2 felony where death results from such abuse and is subject to 8 to 24 years in jail and a fine of \$5,000 to \$1,000,000. A person commits a class 3 felony where injury results from such abuse and is subject to 4 to 12 years in jail and a fine of \$3,000 to \$750,000. For abuse resulting in either injury or death, a parole of 5 years is mandatory. In <i>People v. Deskins</i> , 927 P.2d 368 (Colo. 1996), it was held that a drunk driver is guilty of child abuse if they kill or injure a child riding in another vehicle that is involved in a collision with the offender's vehicle at the time of the offense.
CT	none	
DE	21 §4177(d)(5)	A person who commits a drunk driving offense while transporting a child under 17 years old is subject to the following sanctions, in addition to the standard sanctions for drunk driving offenses: 1 st offense: an additional fine of \$230 to \$1,150 and 40 hours of community service benefiting children; for subsequent offenses: an additional \$575 to \$2,300 and 80 hours of community service benefiting children.

DC	none	
FL	§§316.193(3) & (4), 775.082, 775.083 & 775.084	For a drunk driving offense with a passenger under age 18 in the vehicle, the following sanctions apply: 1 st offense: not more than 9 months in jail and a fine of \$500 to \$1,000; 2 nd offense: not more than 12 months in jail and a fine of \$1,000 to \$2,000; 3 rd offense: not more than 12 months in jail and a fine of \$2,000 to \$5,000.
GA	§§16-12-1(d) & 40-6-391 (1)	It is a separate offense to transport a child under age 14 while drunk. Sanctions: 1 st offense (misdemeanor): jail 1 to 5 months, fine \$200 to \$500; 2 nd offense (misdemeanor) jail 3 months to 1 year, fine \$400 to \$1,000; 3 rd and subsequent offenses (felony) jail 1 to 3 years, fine \$1,000 to \$5,000.
GU	none	
HI	§291-4(b)(4)	A driver 18 years of age or older who is convicted of an alcohol offense while transporting a passenger under 15 years old is subject to the following additional sanctions: mandatory jail term of 48 hours (total jail term not to exceed 30 days) and a mandatory fine of \$500.
ID	§§18-113 & 18-1501(3)	It is an offense for a person over 18 years of age to operate a motor vehicle in violation of the drunk driving laws while transporting a minor. If there is no injury or death associated with the offense, it is a misdemeanor with a jail term of not more than 6 months and/or a fine of not more than \$300. If the minor is injured or killed, it is a felony with imprisonment of 1 to 10 years.
IL	625 ILCS 5/11-501(c)	If at the time of the offense, the defendant was transporting a person under 16 years of age, jail sanctions are enhanced as follows: 1 st offense: 2 days; 2 nd offense: 10 days; 3 rd offense: 30 days; 4 th or subsequent offense: 90 days. For a 1 st or 2 nd offense within 5 years, a fine of \$500 is mandatory. The defendant is also subject to mandatory community service: 1 st offense: 5 days; 2 nd offense within 5 years: 10 days.
IN	none	
IA	§§702.5, 726.3 & 726.6	Iowa's criminal law provides for sanctions against persons who either abuse or neglect a child or 14 years or younger, who is under their control. The Iowa Supreme Court has held that a parent can be charged with child neglect, recklessly exposing their child to a danger, a class c felony, if, while transporting their child, they operate a motor vehicle in an intoxicated condition. <i>State v. Caskey</i> , 539 N.W. 2d 176 (Iowa 1995) There is also the possibility that general criminal child endangerment laws may apply, which make it an offense to create a situation where a child is exposed to substantial risk.
KS	none	
KY	none	
LA	§14:98(J)	A DUI offender is subject to the following mandatory sanctions if a child 12 years old or younger was a passenger in the vehicle at the time of the

		offense: 1 st offense: 10 days in jail and \$125 fine; 2 nd offense: 30 days in jail and \$300 fine; 3 rd offense: 6 months in jail; 4 th offense: 2 years in jail.
ME	29-A MRSA §§2451(5), 2472(4), 2411(5)	For persons over age 21 who refuse to take a breath test and had a passenger under age 21 in the vehicle at the time of the refusal, an additional mandatory 275 day license suspension applies. For persons under age 21 who refuse to take a breath test and had a passenger under age 21 in the vehicle at the time of the refusal, an additional mandatory 180 day license suspension applies. Upon conviction for DUI, the following mandatory jail terms apply: 1 st offense: not less than 48 hours (96 hours for refusal); 2 nd offense within 10 years: 7 days (12 days for refusal); 3 rd offense: 30 days (40 days for refusal); 4 th or subsequent offenses within 10 years: 6 months (6 months and 20 days for refusal).
MD	Tran. §27-101(q)	For conviction of an illegal per se drunk driving offense, while transporting a minor under age 18, the following sanctions apply: 1 st offense: jail not more than 2 years and fine not more than \$2,000; 2 nd offense: jail not more than 3 years and fine not more than \$3,000; 3 rd and subsequent offenses: jail not more than 4 years and fine not more than \$4,000. For conviction of driving under the influence of alcohol, drugs or a controlled dangerous substance while transporting a minor under age 18, the following sanctions apply: 1 st offense: jail not more than 6 months and fine not more than \$1,000; 2 nd offense: jail not more than 1 year and fine not more than \$2,000.
MA	none	
MI	§§257.319(8)(e) & 257.625(7)	For conviction of any DUI offense while carrying a passenger under age 16, the following sanctions apply: 1 st offense (misdemeanor): jail 1 to 5 years (with either mandatory 48 consecutive hours in jail or 30 days (mandatory) to 90 days of community service) and a fine of \$200 to \$1,000 and license suspension of 180 days (90 days mandatory); for subsequent offenses within 7 years (felony): 1 to 5 years in jail or with probation, 30 days (48 consecutive hours mandatory) to 1 year in jail and community service for 60 to 180 days, and a fine of \$500 to \$5,000. For conviction of the .02 (zero tolerance) law by persons under age 21, while carrying a passenger under age 16, the following sanctions apply: 1 st offense: not more than 93 days in jail, not more than 60 days community service, a fine of not more than \$500, and license suspension of not more than 180 days (90 days mandatory); for subsequent offenses: jail of 5 days to 1 year (48 consecutive hours mandatory), community service for 30 to 90 days, and a fine of \$200 to \$1,000. For either type of violation, vehicle forfeiture or immobilization sanctions may also apply.
MN	§§169.121, subd 3(a) and 169.1217	Driving while intoxicated with a child under 16 years of age in the vehicle, where the driver was at least 36 months older than the child, is a gross misdemeanor. In addition to the standard penalties for a DUI-related gross misdemeanor, the vehicle used in the offense may be subject to forfeiture.
MS	none	
MO	none	

MT	none	
NE	none	
NV	§484.3792(7)	If a child 15 years old or younger was present in the vehicle at the time of the DUI offense, such fact shall be considered an aggravating factor when determining sentence.
NH	§265:82-b, VIII	If the DUI offender was transporting a person under age 16 at the time of the offense, the offender must have their driving privileges revoked for the maximum time period provided by law.
NJ	none	
NM	none	
NY	none	
NC	§20-179	Upon conviction, the level of punishment is determined by weighing aggravating and mitigating factors (child endangerment is an aggravating factor), with Level 1 being more severe punishment and Level 2 being less severe sanctions. The court must impose Level 2 punishment if there was a child under 16 years old riding with the offender at the time of the offense. The court must impose Level 1 punishment if there was a child under 16 years old riding with the offender at the time of the offense and there was any additional aggravating factor involved.
ND	§§12.1-32-1 & 39-08-01.4	It is a class A misdemeanor, with a jail term for not more than 1 year and /or a fine of not more than \$1,000, for a person 21 of age or older to commit a drunk driving offense while transporting a minor (the specific age is not defined in the law but generally defined in ND to be anyone under age 18).
OH	§§2919.22, 2929.14, 2929.18 & 2929.21	It is a separate offense to operate a motor vehicle in violation of the drunk driving laws while carrying a passenger who is under 18 years old. Sanctions: 1 st offense (1 st degree misdemeanor): imprisonment for not more than 6 months and/or a fine of not more than \$1,000; on a 1 st offense where there has been serious physical harm to the child or for subsequent offenses (5 th degree felony): imprisonment of 6 to 12 months and /or a fine of not more than \$2,5000; subsequent child endangerment offense where there has been serious physical harm to the child or where there has been serious harm to the child and the offender has a prior drunk driving conviction (4 th degree felony): imprisonment of 6 to 18 months and/or a fine of not more than \$5,000. In addition to the above, offenders are subject to not more than 200 hours of community service, which is not in lieu of community services that may be imposed via probation, and license suspension for 90 days, which is consecutive to any other licensing action.
OK	none	
OR	none	

PA	none	
PR	none	
RI	§31-27-2(d)(4)	An offender who is over age 18 is subject to an imprisonment term of not more than 1 year if they were transporting a passenger under age 13 years at the time of the offense.
SC	§56-5-2947	A person over 18 years old who commits either a drunk driving offense or a death/serious bodily injury drunk driving offense while transporting a child under 16 years old is subject to additional jail and fine sanctions which are equal to not more than half the maximum jail and fine sanctions for these offenses. These additional sanctions are mandatory if jail or fine sanctions have been imposed for the original offense. In addition, the offender's driving privileges must be suspended for 60 days.
SD	none	
TN	§§40-35-111(b)(3) & (4), 40-35-111(e)(1) & 55-10-414	A person commits a class A misdemeanor if they commit a drunk driving offense and at the time were accompanied by a child under 13 years old. Sanctions: jail term of not more than 11 months and 29 days (30 days are mandatory) and a fine of not more than \$2,500 (\$1,000 is mandatory). If the child was injured at the time of the offense, the person commits a class D felony. Sanctions: jail term of 2 to 12 years and a fine of not more than \$5,000. If the child was killed at the time of the offense, the person commits a class C felony. Sanctions: jail term of 3 to 15 years and a fine of not more than \$10,000.
TX	none	
UT	none	
VT	none	
VA	§18.2-270	A person convicted of a drunk driving offense while carrying a child 17 years of age or younger is subject to the following additional sanctions: 1 st offense: a fine of \$500 to \$1,000 (\$500 mandatory) and 40 hours of mandatory community service benefiting children; for subsequent offenses, a fine of \$500 to \$1,000 (\$500 mandatory) and 80 hours of mandatory community service benefiting children. Under <i>Commonwealth v. Carter</i> , 462 S.E.2d 582 (Va.App. 1995), a drunk driving offender who operates a motor vehicle while transporting a child under 18 years of age may be subject to prosecution for child abuse and neglect under §18.2-371.1
VI	none	
WA	none	
WV	§§17C-5-2(I) & 17C-5A-2 (m)	A person who violates the drunk driving law while transporting a child under 16 years old commits a misdemeanor and is subject to a jail term of 2 days

		to 12 months (48 hours mandatory) and/or a fine of \$200 to \$1,000 (\$200 mandatory). A person who violates the administrative per se law while transporting a child under 16 years old is subject to a mandatory 2 year license revocation. If the person has a previous administrative per se suspension or revocation within 10 years, the revocation period is 10 years (mandatory); if the person has more than one previous administrative per se suspension or revocation within 10 years, the revocation period is for life (mandatory).
WI	§§343.305(10)(b)(4m), 343.31(3)(f), 346.65(2)(f) & (3), 343.31(3)(c) and 940.09(1b)	For refusal to take an implied consent breath test while transporting a child under 16 years old at the time of the refusal offense, the minimum and maximum license revocation periods are doubled. For conviction of a drunk driving offense while transporting a child under 16 years old at the time of the offense, the offender's drivers license is revoked for 4 years. For conviction of either injury or non-injury drunk driving offenses while transporting a child under 16 years old at the time of the offense, the maximum and minimum imprisonment, forfeiture and fine sanctions are doubled. For conviction of homicide by vehicle while transporting a child under 16 years old at the time of the offense, the maximum imprisonment and fine sanctions are doubled and the revocation period is 10 years.
WY	none	

Source: Digest of State Alcohol/Highway Safety Related Legislation, U.S. Dept. of Transportation, National Highway Traffic Safety Administration.

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Denver Office: Tel: 303-364-7700 | Fax: 303-364-7800 | 7700 East First Place | Denver, CO 80230 | Map
 Washington Office: Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 | Washington, D.C. 20001

HB

385

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 20, 2004

FURTHER REFERRALS:

Date of Committee Action: March 1, 2004

The JUDICIARY Committee considered:

HB 385

HOUSE BILL NO. 385

AWARDING CHILD CUSTODY

"An Act relating to awarding child custody; and providing for an effective date."

Recommends it be replaced with HCS or CS for HB 385 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
<u>CRT</u>				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Ogg	✓			
	Gruening	/			
	SAMUEL'S	/			
	HOLM	✓			
	Case	/			
Chair:	McBune	✓			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB385-ACS-TC-2-25-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Awarding Child Custody BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative McGuire
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 385.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/25/04 4:33 PM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/25/2004
 Agency Alaska Court System

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Jean Mischel, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 2, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1273\Q, HB 385, incorporating the attached two amendments. The bill was passed out of committee yesterday and we're hoping to get the CS back as soon as possible for a hearing on the House floor. In addition, please create a sectional analysis based on the Judiciary CS that you will be creating.

If you have any questions, please call me at 4990. Thank you very much!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

CS/HB 385 (version
"Q")
Amendment #1

by Rep.
Gruenberg

PASSED

P.4

L. 7+8

Delete "only"

Delete "clear + convincing"

Insert "a
preponderance of the"

CSHB 385 (version)

Amendment #2

- by Rep. Greenberg - PASSED

P. 5, L. 2.

~~with the same~~

~~Re-offered.~~

After "parent"

INSERT "Unless the court finds that the effects of the domestic violence are so severe that they render the parent unable to safely parent the child."

CSTHB 385 (version 8)
Amendment #3 - WITHDRAWN

P. 5, Line 2:

Delete "a"
Insert "the sole"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

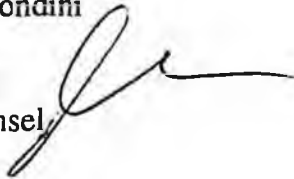
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 2, 2004

SUBJECT: Child Custody (CSHB 385(JUD))
(Work Order No. 23-LS1273\W)

TO: Representative McGuire
Attn: Vanessa Tondini

FROM: Jean M. Mischel
Legislative Counsel 

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional 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.

Section 1. Adds a cross-reference to the presumption established in sec. 5 of the bill for child custody purposes.

Section 2. Adds a cross-reference to the presumption established in sec. 5 of the bill and to the best interest of the child factors in sec. 4 of the bill for temporary custody determinations.

Section 3. Amends the factors for consideration in awarding shared child custody to include circumstances under which a court may not consider a parent's willingness and ability to facilitate a close relationship with the other parent. Those circumstances include situations of sexual assault and domestic violence.

Section 4. Amends the factors for consideration in awarding child custody to include circumstances under which a court may not consider a parent's willingness and ability to facilitate a close relationship with the other parent. Those circumstances include situations of sexual assault and domestic violence.

Section 5. Adds a rebuttable presumption against awarding sole or joint custody to a parent who has committed an act of domestic violence. Also adds provision for overcoming this presumption and for other findings of the court pertaining to domestic violence and custody and visitation orders. Also provides for considerations pertaining to

Representative McGuire
March 2, 2004
Page 2

an abused parent and child custody awards.

Section 6. Provides an effective date for the Act.

JMM:mdr
04-082.mdr

Enclosure

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2995
Fax: (907) 465-6592



Interim:
716 W 4th Avenue, Suite 430
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire
Chair, Judiciary Committee

SPONSOR STATEMENT

HB 385

"An Act relating to awarding child custody; and providing for an effective date."

Domestic violence is often a significant factor in divorce and child custody proceedings. According to the Administration for Children and Families, U.S. Department of Health and Human Services, domestic violence is the leading cause of injury to women in the United States. The American Psychological Association, the American Medical Association, the American Bar Association Center on Children and the Law, and numerous other organizations have recommended that if domestic violence has occurred in a relationship, the offender should not receive sole or joint legal or physical custody of children. A unanimous Joint Resolution of Congress, H. Con. Res. 172, adopted in 1990, urged states to adopt the statutory presumption "that it is detrimental to the child to be placed in the custody of the abusive spouse."

When children witness violence in the home, they have been found to suffer many of the symptoms that are experienced by children who are directly abused. Children exposed to domestic violence face increased risks that they will be killed or injured by the violence, that their emotional, physical and mental development will be adversely affected, and that they will be neglected or abused. We commonly encounter the mistaken assumption among professionals, including judges and custody evaluators, that children are in less danger from a batterer once a couple is no longer living together, when the reality is often the opposite.

By the end of the 2002 legislative session, 23 states had adopted the approach of the Model Code of the Family Violence Project of the National Council of Juvenile and Family Court Judges. This model state statute clearly states that there should be a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. It emphasizes that the safety and well-being of the child and the parent who is the victim must be primary.

Unfortunately, courts sometimes apply psychological pressures that keep women tied to their abusers. "Friendly parent" statutes ask courts to assess each parent's willingness to co-parent when making custody decisions. Despite their reasonable reluctance to co-parent, battered women may end up being labeled "uncooperative," with an increased risk of losing their children to theirs and their children's abuser. This perpetuates family violence from one generation to the next at great social cost to Alaskan society. Amazingly, "Studies show batterers are able to convince authorities that the victim is unfit or undeserving of sole custody in approximately 70% of challenged cases." (American Judges Association). Friendly parent statutes are often the tool used by abusive parents against the protective parent.

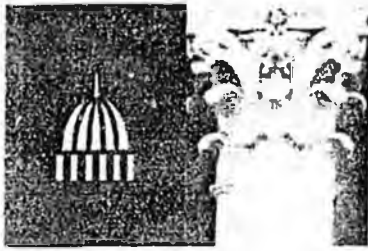
HB 385 serves to better protect children from the effects of domestic violence by achieving consistency between Alaska child protection statutes and child custody statutes. This bill incorporates the sense of the legislature in AS 47.10.011 (6), (7) & (8) and 1999's House Joint Resolution No. 36 that the effects of witnessing domestic violence is harmful to children, that parenting by a perpetrator of domestic violence places a child at a substantially higher risk of being directly abused, and that the sexual molestation of a child by their parents makes them unfit.

The bill also modifies our statutes "friendly parent" provision that inadvertently harms children, particularly in circumstances involving domestic violence, child abuse/sexual abuse and neglect. Alaska is in the minority of states that still have a "friendly parent" provision that inadvertently harms children, particularly in circumstances involving domestic violence, child abuse/sexual abuse and neglect. Also, while Alaska's child custody statutes specifically mention domestic violence as a factor to be considered, they allow wide discretion and do not give it special weight. It is simply one additional factor when considering the best interests of the child.

Effects of this violence on children have high costs in human lives and to our communities. Research has consistently shown that children who witness violence suffer a wide range of short and long-term emotional and behavioral problems that often follow them for life. These children are at higher risk for psychosomatic disorders, stuttering, anxiety and fears, sleep disruption, excessive crying, problems in school, drug and alcohol abuse, sexual acting out, running away, and even suicide. Boys who witness their fathers' abuse of their mothers or siblings are more likely to inflict severe violence as adults. Data suggest that girls who witness abuse may tolerate abuse as adults more than girls who do not.

Alaska ranks in the top 5 states in the nation for per capita rates of domestic violence. The rate of Alaskan women being killed by a partner is 1.5 times the national average. Alaska has 6 times the national average of reported child sexual assault. In 3 out of 4 reported cases, the victim knew the offender, the most commonly reported type of sexual abuse is a father who commits incest with his daughter--usually the eldest daughter. (AK Dept. of Health & Social Services)

HB 385 sends a clear message that we wish to halt the perpetuation of family violence from generation to generation and that perpetrators will be held accountable.



AUG./SEPT. 2003

National Conference of State Legislatures

LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

VOL. 11, No. 36

When Children Witness Domestic Violence

By Stephanie Walton

Children exposed to violence at home also are more likely to become perpetrators or victims of domestic abuse as adults.

In homes where one partner abuses the other, children also are more likely to be abused. Hundreds of studies have documented the negative effects for children exposed to violence. Even when they aren't physically abused, they can show symptoms of trauma, which include:

- Increased aggression.
- Depression, anxiety and fear.
- Lower scores on verbal, motor and cognitive skills tests.
- Physical symptoms, including headaches, stomach aches, ulcers and asthma.

Children exposed to violence at home also are more likely to become perpetrators or victims of domestic abuse as adults, according to the American Psychological Association.

State Action

At least 12 states allow or mandate increased penalties for a perpetrator if a child witnessed the domestic violence. Most of these laws allow courts to increase sentences, while a few require stiffer sentences. Oklahoma law, for example, requires the minimum penalty for domestic violence to be increased to a six-month sentence if a child is present. There is a one-year sentence for a second or subsequent violation in the presence of a child. In Oregon, a fourth degree domestic violence assault is raised from a Class A misdemeanor to a Class C felony if a child is present. Delaware, Georgia and Utah can charge defendants with a separate crime of child abuse when children witness a violent episode.



In most states, these laws are only a few years old, but their effects are already apparent. In Multnomah County, Ore., felony domestic violence charges rose nearly 150 percent after the stricter sentencing law was passed. Prosecutors in Georgia and Utah report they use the child abuse charges as additional "bargaining chips," leading to more convictions. Law enforcement officers in these states also are more likely to note in their crime reports whether children were present during a domestic violence incident. In addition, prosecutors are more likely to report the affected families to child welfare agencies, even though the laws don't require it.

Advantages and Disadvantages. Proponents of stiffer laws argue that criminal laws for violence in the presence of a child increase batterer accountability. In some states children become eligible for crime victim services and compensation. The laws also increase public awareness of the harm on children. Also, prosecutors have another way to pursue charges if the adult victim doesn't cooperate. Finally, a study commissioned by the National Institute of Justice suggests that such laws educate prosecutors, police and the courts about the harmful effects on children.

Opponents argue that prosecutors who use these laws as bargaining chips trivialize the real damage inflicted on children. They also note that since prosecutors are more likely to report families to child welfare agencies in states with these laws, workers need to be trained to understand the dynamics of family violence. Without training, they may hold victims responsible for exposing children to violence and remove them from the family. This can further traumatize both the children and the victim parent—although in some instances, the removal may be warranted. Children also may be required to testify against the batterer in court. This can frighten and confuse them, especially if the batterer is a parent. Finally, opponents say these laws increase the burden on the criminal justice system when state budgets already are severely strained.

Other Approaches. Some states have taken different approaches. Alaska law includes witnessing domestic violence as civil child maltreatment, and authorizes child welfare intervention. Advocates claim, however, that, in some cases, removing children penalizes the victim for the perpetrator's behavior. She may be held responsible for failing to protect her children. Child welfare agencies are removing children from homes even under more general "failure to protect" regulations.

Other states, including Alaska, focus efforts at the local level, providing cross-training for domestic violence workers, child welfare agencies, police officers, prosecutors, judges, probation officers and others who need to understand how witnessing domestic violence affects children. Localities in Colorado, Massachusetts and a number of other states place domestic violence advocates in child welfare offices to increase communication and understanding between the two systems.

It will take time to understand how states can best respond to help domestic violence victims and their children, but everyone agrees on the ultimate goal: keeping families safe.

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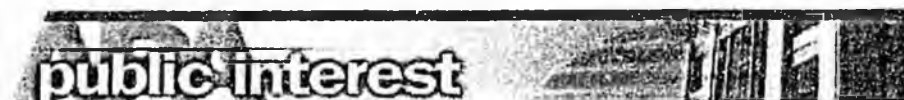
Contact for More Information

Stephanie Walton
NCSL—Denver
(303) 364-7700 ext. 1552
stephanie.walton@ncsl.org

Proponents of stiffer laws argue that they increase batterer accountability.

Opponents argue that prosecutors may hold victims responsible for exposing children to violence.

Other states focus efforts at the local level.



Issues and Dilemmas in Family Violence: Issue 5

American Psychological Association Presidential Task Force on Violence And The Family

WHEN PARENTS SEPARATE AFTER AN ABUSIVE RELATIONSHIP, SHOULDN'T FATHERS HAVE AS MUCH RIGHT AS MOTHERS TO BE GRANTED PHYSICAL CUSTODY OF AND VISITATION RIGHTS WITH THEIR CHILDREN?

Tensions exist between children's need for contact with their father and their need to be protected from the physical, sexual and psychological abuse that is common in families where there has been other forms of violence such as woman abuse.

Although most people believe that fathers should have equal access to their children after the termination of a relationship between the parents, the equal-access option is based on the assumption that the fathers will act in their children's best interests. However, that is a naive assumption in situations where family violence has occurred.

Fathers who batter their children's mothers can be expected to use abusive power and control techniques to control the children, too. In many of these families, prior to separation, the men were not actively involved in the raising of their children. To gain control after the marital separation, the fathers fight for the right to be involved. Often children who have been exposed to violence in the family are frightened to confront their father's negative or abusive behavior, and mothers cannot protect them. Sometimes the father tries to alienate the child from the mother by using money and other enticements, negative comments, or restricted access to the telephone during visitation with him. Other times, fathers may threaten or actually kidnap the child to punish the mother for leaving, or to try to force her to return.

Most people, including the battered woman herself, believe that when a woman leaves a violent man, she will remain the primary caretaker of their children. Family courts, however, may not consider the history of woman abuse relevant in awarding custody. Recent studies suggest that an abusive man is more likely than a nonviolent father to seek sole physical custody of his children and may be just as likely (or even more likely) to be awarded custody as the mother. Often fathers win physical custody because men generally have greater financial resources and can continue the court battles with more legal assistance over a longer period of time.

Family courts frequently minimize the harmful impact of children's witnessing violence between their parents and sometimes are reluctant to believe mothers. If the court ignores the history of violence as the context for the mother's behavior in a custody evaluation, she may appear hostile, uncooperative, or mentally unstable. For example, she may refuse to disclose her address, or may resist unsupervised visitation, especially if she thinks her child is in danger. Psychological evaluators who minimize the importance of violence against the mother, or pathologize her responses to it, may accuse her of alienating the children from the father and may recommend giving the father custody in spite of his history of violence.

Some professionals assume that accusations of physical or sexual abuse of children that arise during divorce or custody disputes are likely to be false, but the empirical research to date shows no such increase in false reporting at that time. In many instances, children are frightened about being alone with a father they have seen use violence towards their mother or a father who has abused them. Sometimes children make it clear to the court that they wish to remain with the mother because they are afraid of the father, but their wishes are ignored.

Research indicates that high levels of continued conflict between separated and divorced parents hinders children's normal development. Some practitioners now believe that it may be better for children's development to restrict the father's access to them and avoid continued danger to both mothers and the children.



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Child Custody and Visitation Decisions in Domestic Violence Cases : Legal Trends, Research Findings, and Recommendations

Daniel G. Saunders, Ph.D.
University of Michigan, School of Social Work

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Introduction

It may be hard to believe an abusive partner can ever make good on his threat to take the children away from his victim. After all, he has a history of violent behavior and she almost never does. Unfortunately, a surprising number of battered women lose custody of their children. The actual number is not known and offenders appear to be no more successful in gaining custody than non-offenders ([Liss & Stahlv, 1993](#)). However, violence against one parent by another is often considered in custody-determination proceedings ([Family Violence Project, 1995](#)). This document describes some of the legal and cultural trends surrounding custody and visitation decisions and the social science evidence supporting a need to consider domestic violence in these decisions.

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Legal Trends

Over the past 200 years, the bases for child custody decisions have changed considerably. The patriarchal doctrine of fathers' ownership of children gave way in the 1920's and 30's to little preference for one parent or the other obtaining custody. When given such broad discretion, judges tended to award custody to mothers, especially of young children. The mother-child bond during the early, "tender years" was considered essential for children's development. In the 1970's, "the best interests of the children" became the predominant guideline (Fine & Fine, 1994) and presumably was neutral regarding parental rights. Exposure to domestic violence was not originally included in the list of factors used to determine the child's best interest.

States recently came to recognize that domestic violence needs to be considered in custody decisions (Cahn, 1991 ; Hart, 1992 ; for a review of state laws see Family Violence Project, NCJFCJ, 1995 , and legislative updates for 1996 , 1997 , and 1998). While a growing number of states specifically mention domestic violence as a factor to be considered, most of them allow wide discretion and do not give it special weight. It is simply one additional factor when considering the best interests of the child. By the end of the 1997 legislative session, 13 states had adopted the Model Code of the Family Violence Project of the National Council of Juvenile and Family Court Judges (NCJFCJ, 1998). These statutes specify that there is a "rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence" (p. 33).

Statutes now address other concerns related to custody and the recent proliferation of legislation seems likely to continue. Statutes in some states now cover: the prevention of child abduction by the perpetrator through supervised visitation and similar safeguards (Girdner & Hoff, 1996 ; Hart, 1990), providing a defense against child abduction charges if battered women flee with their children, exempting battered women from mandated mediation (Girdner, 1996), protecting battered women from charges of "child abandonment" if they flee for safety without their children (Cahn, 1991), and allowing parents to check on the criminal charges against a divorce partner (Pennsylvania's Jen & Dave's law). Recent case law makes it easier for battered women to relocate far away from their abusers (Dunford-Jackson, in press). Unfortunately, courts may apply psychological pressures that keep women tied to their abusers. "Friendly parent" statutes ask courts to assess each parent's willingness to co-parent when making custody decisions (Zorza, 1992). Despite their reasonable reluctance to co-parent, battered women may end up being labeled "uncooperative," with an increased risk of losing their children. Along with legal changes, training and resource manuals for judges and court managers have recently been published, including guidelines for selecting custody evaluators and guardian ad litem (Goelman, Lehrman, Valente, 1996 ; Lemon, Jaffe, & Ganley, 1995 ; NCJFCJ, 1995 ; National Center for State Courts, 1997). For further discussion of these topics, see the references at the end of this document.

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General Views About Joint Custody

Enthusiasm for joint custody in the early 1980's was fueled by studies of couples who were highly motivated to "make it work" (Johnston, 1995). This enthusiasm has waned in recent years, in part

because of social science findings. For example, Johnston (1995) concluded from her most recent review that "highly conflictual parents" (not necessarily violent) had a poor prognosis for becoming cooperative parents and there is increasing evidence that children of divorce have more problems because of the conflict between the parents before the divorce and not because of the divorce itself (Kelly, 1993). "High conflict" parents should be allowed to develop separate parenting relationships with their children. Frequent visits and joint custody schedules led to more verbal and physical abuse. More frequent transitions between high-conflict parents were related to more emotional and behavioral problems of the children. If this is true of "high conflict" parents, it is likely to be even more true if mothers are being physically victimized.

Not all social scientists conclude that joint custody can be problematic. For example, Bender (1994) believes that "even the small percentage of parents who are very angry may be able to work out procedures to alleviate anger so that the child is not caught in the middle" (p. 126). However, his conclusion relies on data gathered at one point in time and thus statements about cause and effect are not possible. For example, better child adjustment is likely to result when joint custody is requested by (or ordered to) non-violent, low-conflict couples rather than from joint custody per se. Joint custody can be quite beneficial to the children of these non-violent, low-conflict couples, but not in cases of battering.

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Parents Most at Risk for Physical and Emotional Abuse of a Child

Social science evidence can help to establish which parent is most likely to harm children. The most convincing evidence for the potential of men who batter their partners also to batter their children comes from a nationally representative survey (Straus, 1983). Half the men who battered their wives also abused their children. Abuse was defined as violence more severe than a slap or a spanking. Battered women were half as likely as men to abuse their children. Several non-representative surveys show similar results (reviewed in Saunders, 1996). When battered women are not in a violent relationship, there is some evidence that they are much less likely to direct anger toward their children (Walker, 1984).

Emotional abuse of children by men who batter is even more likely because nearly all of these men's children are exposed to domestic violence (Pagelow, 1990). This exposure often constitutes a severe form of child abuse since the problems associated with witnessing abuse are now clearly documented (e.g., Edleson, 1997). There are short and long-term emotional and behavioral consequences for both boys and girls. Parents may not realize that their children can be affected even if they do not see the violence. For example, the children may be hiding in their bedrooms listening to repeated threats, blows, and breaking objects. Obviously, they may be afraid their mother will be injured or killed, but they may also have divided loyalties between their parents, guilt about not being able to intervene, and anger at their mothers for not leaving (Saunders, 1996). If mothers cannot find safety, their fears and depression may keep them from being as nurturing and supportive to their children as they normally would be.

Although state laws include emotional abuse in their statutory definitions of child abuse, such abuse is difficult to substantiate and child protection workers often give it low priority.

Mothers may also be blamed for harming their children in cases where evaluators and practitioners do

not understand the dynamics of abuse ([Edleson, 1997](#)). Their cases are sometimes labelled as "failure to protect" since they are supposedly able to protect their children from the physical and emotional abuse of their partners ([Enos, 1996](#)). Battered women may even face criminal charges ([Sierra, 1997](#)). However, battered women's actions often come from their desire to care for their children. They may not attempt to leave because of financial needs, because they believe that the children need a father, or because they fear losing the children to their abuser. They often leave the relationship when they see the impact of violence on their children, only to return when threatened with even greater violence or out of economic necessity. Innovative programs, like Project Protect in Massachusetts, were developed to address these concerns. They use specially trained staff and multidisciplinary teams to integrate interventions for child abuse and domestic violence ([Davidson, 1995](#)). On a policy level, states generally allow evidence to show that the non-abusive spouse feared retaliation from her partner and thus could not try to stop or prevent abuse to the child. However, only a few states explicitly authorize this type of evidence.

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Factors Related to Risk to the Children

In a given custody case, a number of factors related to or incorrectly attributed to child abuse and exposure to domestic violence may be present. Several factors -- parental separation, childhood victimization of the parents, the parents' psychological characteristics, and abuser interventions -- are discussed next.

Parental Separation. Parental separation or divorce does not prevent abuse to children or their mothers. On the contrary, physical abuse, harassment, and stalking of women continue at fairly high rates after separation and divorce. In one study, a fourth of the women reported threats against their lives during visitation ([Leighton, 1989](#)). Separation is a time of increased risk of homicide for battered women ([Wilson & Daly, 1994](#)) and these homicides sometimes occur during custody hearings or visitation exchanges of children. In rare cases, men kill children in retaliation for their female partners leaving them.

Children are also likely to be exposed to renewed violence if their fathers become involved with other women. Over half of men who batter go on to abuse a second woman ([Wofford, Elliot, & Menard, 1994](#)). Judges who consider the remarriage of a man to be a sign of stability and maturity should instead consider it as a possible sign that the children will once again be emotionally harmed.

Parents' Childhood Victimization. Evaluators may look to childhood risk factors of each parent to assess their child abuse potential. The link between being abused in childhood and becoming a child abuser is not as strong as was once thought, with about 30% of child abuse victims becoming abusers ([Kaufman & Zigler, 1987](#)). Some evidence suggests that the link is stronger in men than in women ([Miller & Challas, 1981](#)).

Parents' Psychological Characteristics. The parents' personality traits and psychological disorders are generally poor predictors of child abuse ([Wolfe, 1985](#)). Neither parent is likely to have chronic mental disorders of genetic origin (e.g., schizophrenia, or bipolar disorder). Personality disorders are much more likely to appear on the psychological tests of both parents. Great care must be taken, however, when interpreting parents' behaviors and psychological tests. Men who batter often have the types of personality disorders that keep childhood traumas, anxiety, and other problems hidden ([Holtzworth-](#)

Munroe & Stuart, 1994).

To the extent that psychological disorders continue to be used to describe battered women, they can be placed at a serious disadvantage. Compared with the chronic problems of their partners, battered women's psychological problems are much more likely to decrease as she becomes safer. Many battered women may seem very unstable, nervous, and angry (Crites & Coker, 1988). Other battered women may speak with a flat affect and appear indifferent to the violence they describe (Meier, 1993). These women probably suffer from the numbing symptoms of traumatic stress. The psychological test scores of some battered women may indicate severe personality disorders and mental illness. However, their behaviors and test scores must be interpreted in the context of the traumas they have faced or continue to face (Rosewater, 1987). The tactics used by their abusers parallel those used against prisoners of war and include threats of violence, forced isolation, degradation, and attempts to distort reality and increase psychological dependence. Severe depression and traumatic stress symptoms are the likely results. When women fear losing custody of children to an abusive partner, the stress can be overwhelming.

Interventions for the Abuser. Successful completion of treatment does not at all mean that the risks of child and woman abuse are eliminated. Although the evaluation of programs for men who batter is still in its infancy (Saunders, 1996), it is clear that a substantial proportion of women (35%, averaged across a number of studies) report that physical abuse by their partners occurs within 6-12 months after treatment. Psychological abuse is even more prevalent. Only two studies of programs for men who batter investigated the reduction of actual or potential violence toward the children (Myers, 1984 ; Stacey & Shupe, 1984). Both of these studies showed promising results, yet did not specifically focus on parenting issues. Only one description could be found of a special parent training program for men who batter (Mathews, 1995)

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Recommendations for Custody and Visitation

Despite the dearth of sound research in this area, some tentative recommendations can be made from practice wisdom and the research that does exist. There is general agreement that joint custody has many advantages when a woman has good financial resources and an ex-partner who is nonabusive and supportive as a co-parent. However, the past and potential behavior of men who batter means that joint custody (or sole custody to him) is rarely the preferred option for these families. In addition to their propensity for violence, these men are likely to abuse alcohol (Tolman & Bennett, 1990) and communicate in a hostile, manipulative manner (Holtzworth-Munroe & Stuart, 1994).

As stated earlier, the model state statute of the National Council of Juvenile and Family Court Judges clearly states that there should be a presumption that it is detrimental to the child to be placed in sole or joint custody with a perpetrator of family violence (NCJFCJ, 1993). The model statute emphasizes that the safety and well-being of the child and the parent who is the victim must be primary. The perpetrator's history of causing fear as well as physical harm should be considered. A parent's absence or relocation in an attempt to escape violence by the other parent should not be used as a factor to determine custody. Courts sometimes label battered women as "impulsive" or "uncooperative" if they leave suddenly to find safety in another city or state. The model statute specifies that it is in the best interest of the child to reside with the non-violent parent and that this parent should be able to choose the location of the residence, even if it is in another state. The noncustodial parent may also be denied access to the child's medical and educational records if such information could be used to locate the

custodial parent.

Visitation guidelines should be based on the following general principles: a) contact between child and parent should be structured in a way that limits the child's exposure to parental conflict; b) transitions should be infrequent in cases of ongoing conflict and the reasonable fear of violence; and c) substantial amounts of time with both parents may not be advisable (Johnston, 1992). Ideally, a court order should detail the conditions of supervised visitation, including the role of the supervisor (NCJFCJ, 1995). Unsupervised visitation should be allowed only after the abuser completes a specialized program for men who batter and does not threaten or become violent for a substantial period of time. Practitioners need to be aware of the strong likelihood that men who batter will become violent in a new relationship and that they often use nonviolent tactics that can harm the children. Rather than rely on official records of recidivism, the best way to establish that the perpetrator is nonviolent is to interview current and past partners.

Visitation should be suspended if there are repeated violations of the terms of visitation, the child is severely distressed in response to visitation, or there are clear indications that the violent parent has threatened to harm or flee with the child. Even with unsupervised visitation, it is best to have telephone contact between parents only at scheduled times, to maintain restraining orders to keep the offender away from the victim, and to transfer the child in a neutral, safe place with the help of a third party (Johnston, 1992). Hart (1990) describes a number of safety planning strategies that can be taught to children in these situations.

The model statute (NCJFCJ, 1993) states that visitation should only be awarded to the perpetrator if adequate safety provisions for the child and adult victim can be made. Orders of visitation can specify, among other things: the exchange of the child in a protected setting, supervised visitation by a person or agency, completion by the perpetrator of "a program of intervention for perpetrators", and no overnight visitation. If the court allows a family or household member to supervise the visitation, the court can set the conditions to be followed during visitation. For example, an order might specify that the batterer not use alcohol prior to or during a visit and that the child be allowed to call the mother at any time.

Visitation centers are expanding across North America in response to the need for safe access and visitation (Straus, 1995). The approaches of these centers vary. For example, most of them provide some form of observational records of the visit, but the role of these programs in evaluating parents and reporting to courts differs. The experience of the visitation center in Duluth, Minnesota, shows the difficulty of keeping a neutral stance given the traditional biases in our social systems (McMahon & Pence, 1995). The Duluth center found that the traditional over-emphasis on parental rights and child welfare may block from view the harm of domestic violence to both battered women and their children.

In conclusion, although there is a need for further practice experience and research, our current knowledge of risk factors for continued abuse of women and children means that decision-makers must exercise great caution in awarding custody or visitation to perpetrators of domestic violence. If custody or visitation is granted, careful safety planning and conditions attached to the court order are important to help lower the risk of harm to the children and their mothers.

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In Brief

The current enthusiasm for joint child custody and liberal visitation need to be tempered drastically in cases involving domestic violence for the following reasons:

- Men who batter their intimate partners have a high potential for physically and emotionally abusing their children.
- Child custody evaluations often place battered women at a disadvantage because living in an abusive relationship may produce traumatic effects that give the false impression that they are unfit parents.
- Battered women's attempts to protect themselves and their children can also give the false appearance that they are unfit parents.
- Men who batter are likely to have chronic behavioral and emotional problems that may not be easily detected.
- Many states are responding to these concerns by enacting laws that require domestic violence to be considered in child custody determinations and sometimes presume that the abuser should not have joint or sole custody. Other statutes address concerns over visitation, mediation, child abduction, and child abandonment.

Although more research is needed in the field, our current practice wisdom and social science research indicate that:

- Men who batter should rarely have sole or joint custody of their children.
- Divorce, separation and/or treatment of the abuser do not guarantee that the abuse of the women and children will stop.
- Visitation needs to be supervised in many cases or restricted in other ways.
- Battered women need to be allowed exemptions from mandated mediation.
- Battered women should be allowed to relocate with their children at a safe distance from their ex-partners and not be labelled "uncooperative" if they do not wish to coparent.

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Sec. 25.20.070. Temporary custody of the child.

Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 - 25.20.130.

Sec. 25.20.080. Mediation of child custody matter.

(a) Except as provided in (f) and (g) of this section, at any time within 30 days after a petition for child custody is filed under AS 25.20.060 the court may order the parties to submit to mediation. Each party has the right to challenge peremptorily one mediator appointed.

(b) Mediation shall be conducted informally as a conference, or by telephone, or series of conferences, as determined by the mediator. The parties to the action and a court-appointed representative of the minor children shall attend.

(c) If the mediator determines that mediation efforts are unsuccessful, the mediator shall terminate mediation and notify the court that mediation efforts have failed. The custody proceeding shall proceed in the usual manner.

(d) Upon submission of the parties to mediation under this section, a pending child custody proceeding shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made during the pending custody proceeding remain in effect during the period of mediation.

(e) Costs of mediation shall be paid as ordered by the court by one party, by both parties, or by the state if both parties are indigent.

(f) The court may not order or refer parties to mediation in a proceeding concerning custody or visitation of a child if a protective order issued or filed under AS 18.66.100 - 18.66.180 is in effect. The court may not order or refer parties to mediation if a party objects on the grounds that domestic violence has occurred between the parties unless the court finds that the conditions of (g)(1) - (3) of this section are met. If the court proposes or suggests mediation under this subsection,

(1) mediation may not occur unless the victim of the alleged domestic violence agrees to the mediation; and

(2) the court shall advise the parties that each party has the right to not agree to mediation and that the decision of each party will not bias other decisions of the court.

(g) A mediator who receives a referral or order from a court to conduct mediation under (a) of this section shall evaluate whether domestic violence has occurred between the parties. A mediator may not engage in mediation when either party has committed a crime involving domestic violence unless

(1) mediation is requested by the victim of the alleged domestic violence, or proposed by the court and agreed to by the victim;

(2) mediation is provided by a mediator who is trained in domestic violence in a manner that protects the safety of the victim and any household member, taking into account the results of an assessment of the potential danger posed by the perpetrator and the risk of harm to the victim; and

(3) the victim is permitted to have in attendance a person of the victim's choice, including an attorney.

Sec. 25.20.090. Factors for consideration in awarding shared child custody.

In determining whether to award shared custody of a child the court shall consider

- (1) the child's preference if the child is of sufficient age and capacity to form a preference;
- (2) the needs of the child;
- (3) the stability of the home environment likely to be offered by each parent;
- (4) the education of the child;
- (5) the advantages of keeping the child in the community where the child presently resides;
- (6) the optimal time for the child to spend with each parent considering
 - (A) the actual time spent with each parent;
 - (B) the proximity of each parent to the other and to the school in which the child is enrolled;
 - (C) the feasibility of travel between the parents;
 - (D) special needs unique to the child that may be better met by one parent than the other;
 - (E) which parent is more likely to encourage frequent and continuing contact with the other parent;
- (7) any findings and recommendations of a neutral mediator;
- (8) any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents;
- (9) evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child;
- (10) other factors the court considers pertinent.

Sec. 25.24.150. Judgments for custody.

(a) In an action for divorce or for legal separation or for placement of a child when one or both parents have died, the court may, if it has jurisdiction under AS 25.30.300 - 25.30.320, and is an appropriate forum under AS 25.30.350 and 25.30.360, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of a child of the marriage, make, modify, or vacate an order for the custody of or visitation with the minor child that may seem necessary or proper, including an order that provides for visitation by a grandparent or other person if that is in the best interests of the child.

(b) If a guardian ad litem for a child is appointed, the appointment shall be made under the terms of AS 25.24.310 (c).

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 - 25.20.130. In determining the best interests of the child the court shall consider

- (1) the physical, emotional, mental, religious, and social needs of the child;
- (2) the capability and desire of each parent to meet these needs;
- (3) the child's preference if the child is of sufficient age and capacity to form a preference;
- (4) the love and affection existing between the child and each parent;
- (5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent;
- (7) any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents;
- (8) evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child;
- (9) other factors that the court considers pertinent.

(d) In awarding custody the court may consider only those facts that directly affect the well-being of the child.

(e) Notwithstanding the provisions of (d) of this section, in awarding custody the court shall comply with the provisions of 25 U.S.C. 1901 - 1963 (P.L. 95-608, the Indian Child Welfare Act of 1978).

(f) If the issue of child custody is before the court at the time it issues a judgment under AS 25.24.160, the court shall concurrently issue a judgment for custody under this section unless, subject to AS 25.24.155, the court delays the custody decision for a later time.

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which check is
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of a ship to leave
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: Waxmann v.
40 F.Supp. 108,

Clearance card. A letter given to an employee by his employer, at the time of his discharge or end of service, showing the cause of such discharge or voluntary quit- tance, the length of time of service, his capacity, and such other facts as would give to those concerned infor- mation of his former employment.

Clearance certificate. Issued to ship's captain showing that customs requirements have been made.

Clear and convincing proof. That proof which results in reasonable certainty of the truth of the ultimate fact in controversy. *Lepre v. Caputo*, 131 N.J.Super. 118, 328 A.2d 650, 652. Proof which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable. In re Estate of Lobe, Minn.App., 348 N.W.2d 413, 414. See also Beyond a reasonable doubt; Burden of proof; Clear evidence or proof.

Clear and present danger doctrine. Doctrine in con- stitutional law, first formulated in *Schenck v. U. S.*, 249 U.S. 47, 39 S.Ct. 247, 63 L.Ed. 470, providing that governmental restrictions on First Amendment free- doms of speech and press will be upheld if necessary to prevent grave and immediate danger to interests which government may lawfully protect.

Speech which incites to unlawful action falls outside the protection of the First Amendment where there is a direct connection between the speech and violation of the law; this is the "clear and present danger test". *People v. Winston*, 64 Misc.2d 150, 314 N.Y.S.2d 489, 495.

Clear annual value. The net yearly value to the posses- sor of the property, over and above taxes, interest on mortgages, and other charges and deductions.

Clear annuity. The devise of an annuity "clear" means an annuity free from taxes or free or clear of legacy or inheritance taxes.

Clear chance. A "clear chance" to avoid accident with- in meaning of last clear chance doctrine involves the element of sufficient time to appreciate peril of the party unable to extricate himself therefrom, and to take necessary steps to avoid injuring him. *Klouse v. North- ern Pac. Ry. Co.*, 50 Wash.2d 432, 312 P.2d 647, 650. See also Last clear chance doctrine.

Clear days. If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively, as well of the first day as the last.

Clear evidence or proof. Evidence which is positive, precise and explicit, which tends directly to establish the point to which it is adduced and is sufficient to make out a prima facie case. It necessarily means a clear prepon- derance. It may mean no more than a fair preponder- ance of proof but may also be construed as requiring a higher degree of proof. It may convey the idea, under emphasis, of certainty, or understood as meaning beyond doubt. See also Beyond a reasonable doubt; Clear and convincing proof.

Clearing. The departure of a vessel from port, after complying with the customs and health laws and like local regulations. See also Clearance; Clearance certifi- cate.

In banking, a method of making exchanges and set- tling balances, adopted among banks and bankers. See Clearinghouse.

Clearing account. An account containing amounts to be transferred to another account(s) before the end of the accounting period.

Clearing corporation. A corporation, all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the U.S., such as the Securities Exchange Act of 1934. U.C.C. § 8-102(3).

Clearinghouse. An association or place where banks exchange checks and drafts drawn on each other, and settle their daily balances. See U.C.C. § 4-104(d).

With respect to a stock or commodities exchange, a facility which provides for the daily clearance of all transactions. With regard to futures transactions, a clearinghouse performs the following functions: con- firms that trades made each day are acknowledged by both parties; settles amounts owed daily on futures contracts due to changes in contract prices during the trading session; insures the financial worth of all fu- tures contracts that it has accepted.

Clearing loan. One made to a bond dealer while an issue of bonds is being sold.

Clearings. Method of making exchanges and settling balances among banks and bankers.

Clearing title. Acts or proceedings necessary to render title marketable.

Clear legal right. A right inferable as a matter of law from uncontroverted facts.

Clearly. Visible, unmistakable, in words of no uncertain meaning. Beyond a question or beyond a reasonable doubt; honestly, straightforwardly, and frankly; plain- ly. Without obscurity, obstruction, entanglement, con- fusion, or uncertainty. Unequivocal.

Clearly erroneous. For purposes of rule providing that findings of trial court shall not be set aside unless "clearly erroneous," refers to findings when based upon substantial error in proceedings or misapplication of law, *Kauk v. Anderson*, C.C.A.N.D., 137 F.2d 331, 333; or when unsupported by substantial evidence, or con- trary to clear weight of evidence or induced by errone- ous view of the law. *Smith v. Porter*, C.C.A.Ark., 143 F.2d 292, 294. As a basis for appellate review, a finding is "clearly erroneous" when, although there is evidence to support it, the reviewing court on entire evidence is left with definite and firm conviction that a mistake has been committed. *United States v. United States Gyp- sum*, 333 U.S. 364, 395, 68 S.Ct. 525, 542. See also Error.

Clearly proved. Proof by preponderance of the evi- dence. *Olson v. Union Oil Co. of California*, 25 Cal. App.2d 627, 78 P.2d 446, 447. Proof sufficient to satisfy

estly unreasonable may
ties, and what is reason-
pose and circumstances
X2). Acceptance of an
asonable time if no time
1, 207. See also U.C.C.
ction of goods); § 2-610
-608(2) (substitution of
ods).

a time for performance,
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done, as soon as circum-
County v. Leo L. Lan-
v.App., 424 S.W.2d 458.

arian owner may make
either natural or artifi-
t so use his rights so as
of water available to a
v. Bodoian, 376 Mass.
ommon enemy doctrine.
he value of a specific
en area for tax assess-

insurer procures the
ch he has insured (i.e.,
oss, death, etc.) to be
er insurer. See also

r refund of money in
t. A deduction from a
of insurance, in par-
A deduction or draw-
charge, or rate (as, a
ight by a railroad), not
it, but handed back to
e full stipulated sum-
rice made by manufac-
hase of product. Such
g proof of purchase to

rge refunded to a ship-
e Interstate Commerce

ed (i.e. refunded) to the
l payment of the tax-
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l resistance, by force
ons of the government,
y v. Press Pub. Co., 74
is a federal crime to
bellion or insurrection
ted States or the laws

empt of a court man-
ess, particularly of the

court of chancery. If a defendant refused to appear,
after attachment and proclamation, a "commission of
rebellion" issued against him. 3 Bl.Comm. 444.

Rebellious assembly. In old English law, a gathering
of twelve persons or more, intending, going about, or
practicing unlawfully and of their own authority to
change any laws of the realm; or to destroy the inclo-
sure of any park or ground inclosed, banks of fish-ponds,
pools, conduits, etc., to the intent the same shall remain
void; or that they shall have way in any of the said
grounds; or to destroy the deer in any park, fish in
ponds, coneys in any warren, dovehouses, etc.; or to
burn sacks of corn; or to abate rents or prices of
writals, etc. See also Unlawful assembly.

Rebus sic stantibus /riybəs sik stántabəs/. Lat. At
this point of affairs; in these circumstances. A name
given to a tacit condition, said to attach to all treaties,
that they shall cease to be obligatory so soon as the state
of facts and conditions upon which they were founded
has substantially changed.

Rebut. In pleading and evidence, to defeat, refute, or
take away the effect of something. When a plaintiff in
an action produces evidence which raises a presumption
of the defendant's liability, and the defendant adduces
evidence which shows that the presumption is ill-found-
ed, he is said to "rebut it." See Rebuttable presumption;
Rebuttal evidence.

Rebuttable presumption. In the law of evidence, a
presumption which may be rebutted by evidence. Oth-
erwise called a "disputable" presumption. A species of
legal presumption which holds good until evidence con-
trary to it is introduced. Beck v. Kansas City Public
Service Co., Mo.App., 48 S.W.2d 213, 215. It shifts
burden of proof. Heiner v. Donnan, 285 U.S. 312, 52
S.Ct. 358, 362, 76 L.Ed. 772. It gives particular effect to
certain group of facts in absence of further evidence,
and presumption provides prima facie case which shifts
to defendant the burden to go forward with evidence to
contradict or rebut fact presumed. Gulle v. Boggs, Fla.,
274 So.2d 26, 28. And which standing alone will sup-
port a finding against contradictory evidence. Lieber v.
Rigby, 34 Cal.App.2d 582, 94 P.2d 49, 50. See also
Presumption.

Rebuttal evidence. Evidence given to explain, repel,
counteract, or disprove facts given in evidence by the
opposing party. That which tends to explain or contra-
dict or disprove evidence offered by the adverse party.
Rayon v. State, 261 Ind. 251, 301 N.E.2d 633, 636.
Rebuttal occurs during the trial stage where evidence is
given by one party to refute evidence introduced by the
other party. Evidence which is offered by a party after
he has rested his case and after the opponent has rested
in order to contradict the opponent's evidence. See also
Rejoinder.

Also evidence given in opposition to a presumption of
fact or a prima facie case; in this sense, it may be not
only counteracting evidence, but evidence sufficient to
counteract, that is, conclusive. See Rebuttable presump-

Rebutter. In common law pleading, a defendant's an-
swer of fact to a plaintiff's surrejoinder; the third plead-
ing in the series on the part of the defendant.

Recall. A method of removal of official in which power
of removal is either granted to or reserved by the people.
Jones v. Harlan, Tex.Civ.App., 109 S.W.2d 251, 254.
Right or procedure by which a public official may be
removed from office before the end of his term of office
by a vote of the people to be taken on the filing of a
petition signed by required number of qualified voters.
Wallace v. Tripp, 358 Mich. 668, 101 N.W.2d 312, 314.
Recall may also be applicable to judges.

Under federal Consumer Product Safety Act, govern-
ment has power to require recall of unsafe products for
repair, replacement or refund. See 15 U.S.C.A.
§ 2064(c)-(f).

To summon a diplomatic minister back to his home
court, at the same time depriving him of his office and
functions.

Recall a judgment. To revoke, cancel, vacate, or re-
verse a judgment for matters of fact. When it is an-
nulled by reason of errors of law, it is said to be
"reversed."

Recant. To withdraw or repudiate formally and public-
ly. Pradlik v. State, 131 Conn. 682, 41 A.2d 906, 907.

Recapitalization. A process whereby stock, bonds or
other securities of a corporation are adjusted or restruc-
tured as to type, amount, income or priority. A restruc-
turing of the capital of a corporation through amend-
ment of the articles of incorporation or a merger with a
subsidiary or parent corporation. Recasting of capital
structure (e.g. exchange of bonds for stock) within frame-
work of existing corporation. Helvering v. Southwest
Consol. Corporation, La., 315 U.S. 194, 203, 62 S.Ct. 546,
552, 86 L.Ed. 789. See also Reorganization.

Recaption. At common law, a retaking, or taking back.
A species of remedy by the mere act of the party injured
(otherwise termed "reprisal"), which happens when any
one has deprived another of his property in goods or
chattels personal, or wrongfully detains one's wife, child,
or servant. In this case, the owner of the goods, and the
husband, parent, or master may lawfully claim and
retake them, wherever he happens to find them, so it be
not in a riotous manner, or attended with a breach of
the peace. Prigg v. Pennsylvania, 41 U.S. (16 Pet.) 539,
612, 10 L.Ed. 1060. It also signifies the taking a second
distress of one formerly distrained during the plea
grounded on the former distress. See also Distraint;
Distress; Ejectment; Repossession.

Also, formerly, a writ to recover damages for him
whose goods, being distrained for rent in service, etc.,
are distrained again for the same cause, pending the
plea in the county court, or before the justice.

Recapture. To recover (by IRS) the tax benefit of a
deduction or a credit previously taken by tax payer.
See, e.g., Recapture of depreciation.

ADN Alaska Digest
2/29/04

KETCHIKAN

Man suspected in death of toddler also faces child porn charges

The father of a toddler who was found dead last week is facing 31 counts of possessing child pornography. James Michael Paul, 44, of Ketchikan is being held in lieu of \$100,000 bail.

Paul's 22-month-old daughter Sarah was found dead Tuesday in his apartment, and he was found

unconscious on the floor near her. Results of an autopsy performed on the child have not been released, but a prosecutor Thursday called the death suspicious.

Assistant district attorney James Scott told District Court Judge Kevin Miller that \$100,000 bail was justified because of Paul's history and because he is a suspect in the suspicious death of his child.

Miller agreed to the bail and appointed the Public Defender Agency to represent Paul. He scheduled a preliminary hearing March 5.

The child pornography charges stem from a Ketchikan police investigation into allegations Paul's wife made Feb. 2 when she sought a domestic violence restraining order.

Nannapat Paul said that her husband constantly yelled at her and the child and that he sometimes hit the girl. She added that she had found child pornography on the computer. At a hearing that day, Magistrate Teresa Chenhall ordered Paul to stay away from his wife and daughter.

The girl's death Tuesday came four days after the restraining order was loosened to allow unsupervised visits between the father and daughter.

Police went to the Revilla Street apartment Tuesday afternoon after Nannapat Paul reported

that her husband had failed to return Sarah to her at the agreed-upon time. They found Paul unconscious and the child dead.

Paul has a previous misdemeanor conviction in a 2002 case. That case began with an indictment charging 22 felony counts of possessing child pornography, the same charge he faces now.

— The Associated Press

We, the undersigned, hereby support and request passage of House Bill 0385
 "An Act relating to awarding child custody; and providing for an effective date."

	Sign	Date	Name and Address (print clearly)	
1	Kim Finner	2/27/04	Ann Fama 145 Adelbert Place S.	KTN, AK
2	Maria Aspinwall	2/27/04	HAIA Aspinwall Box 715 WARD COVE	
3	K.T.	2/27/04	Kristen Thompson 1438 Fairy Creek	Ward, AK
4	Quinn Vinn	2/27/04	Jessica Verney 2430 First Ave Ktn	AK 99901
5	Gaume Piare	2/27/04	Taime Blasex 1412 Millar Kt	, AK 99901
6	Erin Nelson	2/27/04	Erin Nelson 832 Buren #16	KTN AK 99901
7	Scott Hart	2/27/04	SCOTT HART PO Box 1077 WARD COVE	AK 99928
8	Tracy S. Hwang	2/27/04	Tracy S Hwang 1728 S Compass	Ketchikan, AK 99901
9	Shawna Strouth-Shaw	2/27/04	Shawna Strouth-Shaw P.O. Box 596 WARD COVE	, AK 99928
10	Christine Shantz	2/27/04	Christine Shantz P.O. Box 23156 Ktn	99901
11	Michael Fitzgerald	2/27/04	MICHAEL FITZGERALD 925 JACKSON ST	KTN 99901
12	Judy Nolan	2/27/04	Judy Nolan Box 5806 Ktn	AK 99901
13	Patrick Nelson	2/27/04	PATRICK NELSON	
14	Mike Youker	2/27/04	Mike Youker Box 6143 Ketchikan	AK 99901
15	James Moody	2-27-04	James Moody P.O. Box 1143 WARD COVE	AK 99928
16	Elizabeth Dredbridge	2-27-04	Elizabeth Dredbridge 33575 Empress Ketchikan	AK 99901
17	Sally Hansen	27 Feb 04	Sally Hansen 415 Front W. Ktn	AK 99901
18	Amenda Gierdinger	2/27/04	Amenda Gierdinger P.O. Box 7662 Ktn	AK 99901
19	Judi Smith	2/27/04	Judi Smith 245 Tower Rd KTN AK	99901
20	Tracey Stall	2/27/04	Tracey Stall PO Box 1244 WARD COVE	AK 99928
21	Jani Steffel	2/27/04	JANI STEFFEL Box 534 KTN AK	99901
22	Richard L. Sayre	2-27-04	Richard L. Sayre - P.O. Box 5517 - Ketchikan, AK	
23	Jennifer L. Johnson	2-27-04	Jennifer L. Johnson P.O. Box 6852 Ktn.	AK
24	Sharon Stewart	2-27-04	Sharon Stewart 1252 Millar KTN	AK
25	Connie Finner	2-27-04	Connie Finner Box 7191 KTN, AK	
26	Judith Lundberg	2-27-04	Judith Lundberg 657 N Pt. HESSIE KTN, AK	
27	Elaine Caskey	2-27-04	ELAINE CASKEY BOX 1364 WARD COVE, AK	99928
28	Ronald Wendt	2-27-04	Ronald Wendt 3855 Everest Ketchikan	
29	Taave Cochauer	2-27-04	Taave Cochauer 1200 Woods. Id. Ketchikan, Alaska	
30	Sandra Sneyer	2-27-07	Sandra Sneyer P.O. Box 1171 WARD COVE	AK 99928

We, the undersigned, hereby support and request passage of House Bill 0385
 "An Act relating to awarding child custody; and providing for an effective date."

	Sign	Date	Name and Address (print clearly)
31	<i>[Signature]</i>	2-27-04	Dorothy Duncan 3407 Hopkins Ketchikan, AK
32	NICHOLE STARK	2-27-04	NICHOLE STARK PO BOX 9540 KTN, AKS 99901
33	<i>[Signature]</i>	2-27-04	219 Heekman Ketchikan AK
34	<i>[Signature]</i>	2-28-04	Heather Sullivan Box 5106 KTN AK
35	<i>[Signature]</i>	2-28-04	SARA Kay Vasce 3860 HILLSIDE ROAD Ketchikan, AK. 99901
36	<i>[Signature]</i>	2-28-04	301 Broadway #A. KTN. AK. 99901
37	Wade A. Jones	2-28-04	Ingrid L. Jones PO Box 9949 Ketchikan, AK 99901
38	<i>[Signature]</i>	2-1-04	Rebecca Bolling 2928 Island Ketchikan, AK 99901
39	<i>[Signature]</i>	3-1-04	Kay Kusuda PO Box 6393, Ketchikan AK 99901
40	<i>[Signature]</i>	2/21/04	Renelle Britton 20205 S151 Ktn AK 99901
41	Shelly Trudel	3/01/04	Shelly Trudel POB 8433 Ktn AK 99901
42	<i>[Signature]</i>	3/1/04	CARISERWA 5521 N. TORNGASS KTN 99901
43	<i>[Signature]</i>	3/1/04	GREY EUNICE P.O. BOX 6014 KTN AK 99901
44	Shirley Stieva	3-1-04	722 Hill Rd
45	Aracira D. Buendia	3-1-04	#3220 Inbelline Ct 101, KTN AK 99901
46	Trish L. Escobar	3-1-04	4414 J Hatcha way KTN AK 99901
47	Cecile Boulet	3-1-04	124 Hill Road
48	William D. Weston	3-1-04	PO Box 23072 (501 Pittingent 2) Ketchikan AK 99901
49	<i>[Signature]</i>	2-1-04	2325 1st Ave. Ketchikan AK 99901
50	<i>[Signature]</i>	3-1-04	248 Humbert Ave # 204 Ketchikan, AK 99901
51	Kellicore	3-1-04	247 Halbur St Ketchikan AK 99901
52	<i>[Signature]</i>	3/1/04	DIANE NAAB, P.O. Box 23633, Ketchikan
53	Margaret Hamilton	3/1/04	Margaret Hamilton 802 Monroe ST Ketchikan 99901
54	Tessie Manabat	3/1/04	Tessie MANABAT 418 Anderson DR
55	Anna Kinsman	3/1/04	Anna Kinsman 1416 Fairy Chasm
56	<i>[Signature]</i>	3-1-04	RITA KURT 900 EKSMAN ST KTN, AK
57	<i>[Signature]</i>	3/1-04	LINA KASTIMUSA - Box 7902 Ketchikan Ak
58	<i>[Signature]</i>	3/1/04	Bernie Buendia Box 6134 Ketchikan AK
59	<i>[Signature]</i>	3/1/04	P.O. Box 9478
60	FR. ALBA	3/1/04	818 EAST SESTON
61	<i>[Signature]</i>	3/1/04	MUNICIPAL 522 SUNSET DRIVE, KETCHIKAN, AK 99901
62	<i>[Signature]</i>		