

SENATE BILL NO. 81

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/18/99

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sexual assault and the definitions of 'sexual contact,'
2 'sexual penetration,' and 'legal guardian' in AS 11."

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

4 * **Section 1.** AS 11.41.425(a) is amended to read:

5 (a) An offender commits the crime of sexual assault in the third degree if

6 (1) the offender engages in sexual contact with a person who the
7 offender knows is

8 (A) [(1)] mentally incapable;

9 (B) [(2)] incapacitated; or

10 (C) [(3)] unaware that a sexual act is being committed;

11 (2) the offender, while employed in a state correctional facility or
12 other placement designated by the commissioner of the Department of Corrections
13 for the custody and care of prisoners, engages in sexual penetration with a person
14 who the offender knows is committed to the custody of the Department of

1 **Corrections to serve a term of imprisonment or period of temporary commitment;**
 2 **or**

3 **(3) the offender engages in sexual penetration with a person 18 or**
 4 **19 years of age who the offender knows is committed to the custody of the**
 5 **Department of Health and Social Services under AS 47.10 or AS 47.12 and the**
 6 **offender is the legal guardian of the person.**

7 * **Sec. 2.** AS 11.41 is amended by adding a new section to read:

8 **Sec. 11.41.427. Sexual assault in the fourth degree.** (a) An offender
 9 commits the crime of sexual assault in the fourth degree if

10 (1) while employed in a state correctional facility or other placement
 11 designated by the commissioner of the Department of Corrections for the custody and
 12 care of prisoners, the offender engages in sexual contact with a person who the
 13 offender knows is committed to the custody of the Department of Corrections to serve
 14 a term of imprisonment or period of temporary commitment; or

15 (2) the offender engages in sexual contact with a person 18 or 19 years
 16 of age who the offender knows is committed to the custody of the Department of
 17 Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal
 18 guardian of the person.

19 (b) Sexual assault in the fourth degree is a class A misdemeanor.

20 * **Sec. 3.** AS 11.41.470(3) is amended to read:

21 (3) "legal guardian" means a person who is under a duty to exercise
 22 general supervision over a minor **or other person committed to the custody of the**
 23 **Department of Health and Social Services under AS 47.10 or AS 47.12** as a result
 24 of a court order, statute, or regulation, and includes **Department of Health and Social**
 25 **Services employees,** foster parents, and staff members and other employees of group
 26 homes or youth [CORRECTIONAL] facilities where **the minor or other person** [A
 27 CHILD] is placed as a result of a court order or the action of the **Department of**
 28 **Health and Social Services** [DIVISION OF FAMILY AND YOUTH SERVICES],
 29 and police officers, [AND] probation officers, **and social workers** when those **persons**
 30 [OFFICERS] are exercising custodial control over a minor **or other person.**

31 * **Sec. 4.** AS 11.81.900(b)(55) is amended to read:

1 (55) "sexual contact" means

2 (A) the defendant's

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

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

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

9 (i) that may reasonably be construed to be normal
10 caretaker responsibilities for a child, interactions with a child, or
11 affection for a child; [OR]

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

15 (iii) that are a necessary part of a search of a person
16 committed to the custody of the Department of Corrections or the
17 Department of Health and Social Services;

18 * Sec. 5. AS 11.81.900(b)(56) is amended to read:

19 (56) "sexual penetration" means

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

23 (B) but "sexual penetration" does not include acts

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

27 (ii) that are a necessary part of a search of a person
28 committed to the custody of the Department of Corrections or the
29 Department of Health and Social Services;

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