

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 545

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending crimes relating to sexual assault as  
7 they relate to persons who are mentally incapable."

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

9 \* Section 1. AS 11.41.410(a) is repealed and reenacted to read:

10 (a) A person commits the crime of sexual assault in the first  
11 degree if,

12 (1) being any age, the defendant engages in sexual pene-  
13 tration with another person without consent of that person;

14 (2) being any age, the defendant attempts to engage in  
15 sexual penetration with another person without consent of that person  
16 and causes serious physical injury to that person;

17 (3) being over the age of 18, the defendant engages in  
18 sexual penetration with another person who the defendant knows is  
19 mentally incapable and who is entrusted to the defendant's care by  
20 authority of law.

21 \* Sec. 2. AS 11.41.420(a) is amended to read:

22 (a) An offender commits the crime of sexual assault in the  
23 second degree if [THE OFFENDER ENGAGES IN]

24 (1) the offender engages in sexual contact with another  
25 person without consent of that person; [OR]

26 (2) being over the age of 18, the offender engages in  
27 sexual contact [PENETRATION] with a person who the offender knows is  
28 mentally incapable and who is entrusted to the offender's care by  
29 authority of law; or

1           (3) being over the age of 18, the offender engages in  
2 sexual penetration with a person who the offender knows is

3                   (A) mentally incapable; or

4                   (B) temporarily incapable of appraising the nature of  
5 the person's conduct and physically unable to express unwilling-  
6 ness to act

7                   [(A) IS SUFFERING FROM A MENTAL DISORDER OR DEFECT  
8 WHICH RENDERS THE PERSON INCAPABLE OF APPRAISING THE NATURE OF  
9 THE CONDUCT UNDER CIRCUMSTANCES IN WHICH A PERSON WHO IS CAPABLE  
10 OF APPRAISING THE NATURE OF THE CONDUCT WOULD NOT ENGAGE IN  
11 SEXUAL PENETRATION; OR

12                   (B) IS INCAPACITATED].

13 \* Sec. 3. AS 11.41 is amended by adding a new section to read:

14           Sec. 11.41.425. SEXUAL ASSAULT IN THE THIRD DEGREE. (a) An  
15 offender commits the crime of sexual assault in the third degree if,  
16 being over the age of 18, the offender engages in sexual contact with  
17 a person who the offender knows is

18                   (1) mentally incapable; or

19                   (2) temporarily incapable of appraising the nature of the  
20 person's conduct and is physically unable to express unwillingness to  
21 act.

22                   (b) Sexual assault in the third degree is a class C felony.

23 \* Sec. 4. AS 11.41 is amended by adding a new section to read:

24           Sec. 11.41.432. DEFENSE. It is a defense to a crime charged  
25 under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), or 11.41.-  
26 425 that the offender is mentally incapable.

27 \* Sec. 5. AS 11.41.470(1) is repealed and reenacted to read:

28                   (1) "mentally incapable" means a person who suffers from a  
29 mental disease or defect that renders the person incapable of

- 1 understanding the nature or consequences of the person's conduct,
- 2 including the potential for harm to that person;