

Offered: 5/30/83
Referred: Finance

Original sponsors: Pestinger, Cowdery,
Barnes and Lindauer

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 117 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act revising the laws relating to sexual abuse of
7 a minor, sexual assault, and indecent exposure;
8 extending the time limitation for prosecution of
9 sexual offenses; and amending AS 01.05.031(c) and
10 sec. 4, ch. 58, SLA 1982."

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

12 * Section 1. AS 01.05.031(c) is amended to read:

13 (c) Except in AS 11 and AS 12, the [THE] revisor shall edit and
14 revise the laws as they are enacted by the legislature, without
15 changing the meaning of any law, so as to avoid the use of pronouns
16 denoting masculine or feminine gender.

17 * Sec. 2. Section 4, ch. 58, SLA 1982 is amended to read:

18 Sec. 4. Except in AS 11 and AS 12, the [THE] revisor of statutes
19 is directed to avoid the use of pronouns denoting masculine or
20 feminine gender in the printed pamphlets of the Alaska Statutes as
21 they are scheduled for reprinting.

22 * Sec. 3. AS 11.41.420 is repealed and reenacted to read:

23 Sec. AS 11.41.420. SEXUAL ASSAULT IN THE SECOND DEGREE. (a) A
24 person commits the crime of sexual assault in the second degree if he
25 engages in

26 (1) sexual contact with another person without consent of
27 that person; or

28 (2) sexual penetration with a person who he knows
29 (A) is suffering from a mental disorder or defect

1 which renders the person incapable of appraising the nature of
2 the conduct under circumstances in which a person who is capable
3 of appraising the nature of the conduct would not engage in
4 sexual penetration; or

5 (B) is incapacitated.

6 (b) Sexual assault in the second degree is a class B felony.

7 * Sec. 4. AS 11.41 is amended by adding new sections to read:

8 Sec. AS 11.41.434. SEXUAL ABUSE OF A MINOR IN THE FIRST DEGREE.

9 (a) A person commits the crime of sexual abuse of a minor in the
10 first degree if

11 (1) being 16 years of age or older, he engages in sexual
12 penetration with a person who is under 13 years of age or aids,
13 induces, causes, or encourages a person who is under 13 years of age
14 to engage in sexual penetration with another person; or

15 (2) being 18 years of age or older, he engages in sexual
16 penetration with a person who is under 18 years of age and who

17 (A) is entrusted to his care by authority of law; or

18 (B) is his son or daughter, including an illegitimate
19 or adopted child, or a stepchild.

20 (b) Sexual abuse of a minor in the first degree is an unclassi-
21 fied felony and is punishable as provided in AS 12.55.

22 Sec. 11.41.436. SEXUAL ABUSE OF A MINOR IN THE SECOND DEGREE.

23 (a) A person commits the crime of sexual abuse of a minor in the
24 second degree if

25 (1) being 16 years of age or older, he engages in sexual
26 penetration with a person who is 13, 14, or 15 years of age and at
27 least three years younger than he, or aids, induces, causes or
28 encourages a person who is 13, 14, or 15 years of age and at least
29 three years younger than he to engage in sexual penetration with

1 another person;

2 (2) being 16 years of age or older, he engages in sexual
3 contact with a person who is under 13 years of age or aids, induces,
4 causes, or encourages a person under 13 years of age to engage in
5 sexual contact with another person;

6 (3) being 18 years of age or older, he engages in sexual
7 contact with a person who is under 18 years of age and who

8 (A) is entrusted to his care by authority of law; or

9 (B) is his son or daughter, including an illegitimate
10 or adopted child, or a stepchild; or

11 (4) being 16 years of age or older, he aids, induces,
12 causes, or encourages a person who is under 16 years of age to engage
13 in conduct described in AS 11.41.455(a)(2) - (6).

14 (b) Sexual abuse of a minor in the second degree is a class B
15 felony.

16 Sec. 11.41.438. SEXUAL ABUSE OF A MINOR IN THE THIRD DEGREE.

17 (a) A person commits sexual abuse of a minor in the third degree if,
18 being 16 years of age or older, he engages in sexual contact with a
19 person who is 13, 14, or 15 years of age and at least three years
20 younger than he.

21 (b) Sexual abuse of a minor in the third degree is a class C
22 felony.

23 * Sec. 5. AS 11.41.440 is repealed and reenacted to read:

24 Sec. 11.41.440. SEXUAL ABUSE OF A MINOR IN THE FOURTH DEGREE.

25 (a) A person commits sexual abuse of a minor in the fourth degree if,
26 being under 16 years of age, he engages in sexual penetration or
27 sexual contact with a person who is under 13 years of age and at least
28 three years younger than he.

29 (b) Sexual abuse of a minor in the fourth degree is a class A

1 misdemeanor.

2 * Sec. 6. AS 11.41 is amended by adding a new section to read:

3 Sec. 11.41.460. INDECENT EXPOSURE. (a) A person commits the
4 crime of indecent exposure if he intentionally exposes his genitals,
5 buttock, anus, or female breast to another person with reckless
6 disregard for the offensive, insulting, or frightening effect the act
7 may have on that person.

8 (b) Indecent exposure before a person under 16 years of age is a
9 class A misdemeanor. Indecent exposure before a person 16 years of
10 age or older is a class B misdemeanor.

11 * Sec. 7. AS 11.41.470 is amended to read:

12 Sec. 11.41.470. DEFINITIONS. For purposes of AS 11.41.410 -
13 11.41.470, unless the context requires otherwise,

14 (1) "incapacitated" means that a person is temporarily
15 incapable of appraising the nature of his conduct and is physically
16 unable to express unwillingness to act;

17 (2) "victim" means the person alleged to have been sub-
18 jected to sexual assault in any degree or sexual abuse of a minor in
19 any degree;

20 (3) "without consent" means that a person

21 (A) with or without resisting, is coerced by the use
22 of force against a person or property, or by the express or
23 implied threat of [IMMINENT] death, imminent physical injury, or
24 [IMMINENT] kidnapping to be inflicted on anyone; or

25 (B) is incapacitated as a result of an act of the
26 defendant.

27 * Sec. 8. AS 12.10.020 is amended by adding a new subsection to read:

28 (c) Even if the general time limitation has expired, a prosecu-
29 tion under AS 11.41.410 - 11.41.455 for an offense committed against a

1 person under the age of 16 may be commenced within one year after the
2 crime is reported to a peace officer or the person reaches the age of
3 16, whichever occurs first. This provision does not extend the period
4 of limitation by more than five years.

5 * Sec. 9. AS 12.55.125(i) is amended to read:

6 (i) A defendant convicted of sexual assault in the first degree
7 or sexual abuse of a minor in the first degree may be sentenced to a
8 definite term of imprisonment of not more than 30 years, and shall be
9 sentenced to the following presumptive terms, subject to adjustment as
10 provided in AS 12.55.155 - 12.55.175:

11 (1) if the offense is a first felony conviction and does
12 not involve circumstances described in (2) of this subsection, eight
13 years;

14 (2) if the offense is a first felony conviction, and the
15 defendant possessed a firearm, used a dangerous instrument, or caused
16 serious physical injury during the commission of the offense, 10
17 years;

18 (3) if the offense is a second felony conviction, 15 years;

19 (4) if the offense is a third felony conviction, 25 years.

20 * Sec. 10. AS 18.66.900(6) is amended to read:

21 (6) "sexual assault" means a crime specified in AS 11.41.-
22 410 - 11.41.450 [OR AS 11.51.130(a)(4)];

23 * Sec. 11. AS 11.41.410(a)(3) and (4), AS 11.41.430, AS 11.51.130(a)-
24 (4), and AS 11.61.110(a)(7) are repealed.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS HB 117 (Judiciary)
 Title Sexual Abuse of a Minor
 Requested by House Finance Committee Date 6/17/83

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services
 Program Category Affected Division of Corrections
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES		325.6				
700 GRANTS, CLAIMS, ETC.						
TOTAL		\$325.6				

FUNDING (Thousands of Dollars)

GENERAL FUND		325.6				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS -----

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The legislature wishes to fund only the design of any additional beds that may be necessary due to passage of this legislation. The funding provided represents 10% of total construction costs, as estimated by Corrections. The legislature prefers to appropriate funds for capital improvements on the basis of clearly delineated plans and cost estimates, instead of this initial total construction cost estimate.

Inasmuch as operational costs such as additional personnel, contractual services, commodities and the like are closely linked to decisions on capital construction, the legislature declines to endorse any estimates of those costs at this time. When actual construction plans are presented to the legislature, the need for additional operating funds will be addressed.

IV. DATE June 17, 1983

PREPARED BY Al Adams, Chair *APA*
 AGENCY House Finance Committee

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First)

PHONE 465-3706

Legislator Named)

The following individuals may testify on HB 117:

Representative Sam Pestinger, prime sponsor

A representative of the Division of Corrections, Department of Health and Social Services

Gail Huretsky, Office of the Chief Prosecutor, Department of Law

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSHB 117 (Jud.)
 Title: Sexual abuse of a minor
 Sponsor: Pestinger
 Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected: Justice
 BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				396.0	419.8	445.0
200 TRAVEL				1.8	1.9	2.0
300 CONTRACTUAL			14.0	50.0	53.0	56.2
400 COMMODITIES			45.9	48.7	51.6	54.7
500 EQUIPMENT				2.0		
600 LAND & STRUCTURES		3255.8				
700 GRANTS, CLAIMS, ETC			4.2	6.3	6.6	7.0
TOTAL OPERATING			64.1	504.8	532.9	564.9
CAPITAL		3255.8				
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			64.1	504.8	532.9	564.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME				9.0	9.0	9.0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Source not identified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: William W. Ladwig *William W. Ladwig* Phone: 465-3376
 Division: Adult Corrections Date: 06/02/83
 Approved by Commissioner: Robert Loren Smith, Ph.D. Date: 6/7/83
 Department: Health & Social Services

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

FISCAL NOTE

CS for House Bill No. 117 (Judiciary)

Page 2

IV. ANALYSIS:

The enactment of CS for House Bill No. 117 would result in changing the penalties for sexual abuse of a minor.

For purposes of this fiscal analysis, the following information was used:

1. Section 1 raises the present offense from a Class C felony to Class B. It is estimated that one person per year is convicted for this offense and the proposed provision would add one additional year to the sentence length requiring the need to provide one additional man year of confinement.
2. Section 2 raises all current sexual assault/abuse of a minor provisions from Class C felonies to Class B felonies which would add an additional year of incarceration for those sentenced to serve jail time. It is expected that approximately 30 convictions per year result from violations of this provision of the law. Of these 30 convictions, it is estimated that 10 persons would be released to probation rather than incarcerated. This would add the requirement for another 20 man years of confinement.
3. Section 3 raises the penalty for contributing to delinquency of a minor from Class A misdemeanor to Class C felony which adds approximately one-half year to the penalty for violation of this provision of law. It is estimated that there are two cases per year as a result of conviction for violating this provision of the statute; therefore, an additional one-man year of incarceration would be required.
4. Section 5 raises the penalty for disorderly conduct charges (indecent exposure) from Class B misdemeanor to Class A misdemeanor dependent upon the age of the witness to the exposure. It is estimated that there is currently one case per year of a person being committed for violation of this provision of the law. The modification would add an additional sentence length resulting in an additional 0.3 man years of incarceration.

Sections 4 and 6 of CS H.B. No. 117 have no impact upon the Division of Adult Corrections.

The impact of the above proposed modifications on the state correctional system will be the need for approximately 22.3 additional beds. The cost of these additional beds is estimated to be: $22.3 \times \$146,000$ (medium security bed cost) = \$3,255,800.

Because of construction time, the additional beds would not be available for occupancy until FY 1986. Personal services costs are not identified until that time. In estimating personal services cost, it is assumed one staff person will be required for every 2.5 inmates. Twenty-two beds would require nine positions. An average FY '84 position cost of \$44,000 (plus inflation) was used to project personal services cost. The final staffing of a correctional facility cannot be determined until it has been designed, and the staffing would be influenced by such factors as total bed capacity, floor plan for security, and programs to be provided as a part of rehabilitation.

Offered: 5/30/83
Referred: Finance

Original sponsors: Pestinger, Cowdery,
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7 may have on that person.

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9 class A misdemeanor. Indecent exposure before a person 16 years of
10 age or older is a class B misdemeanor.

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21 (A) with or without resisting, is coerced by the use
22 of force against a person or property, or by the express or
23 implied threat of [IMMINENT] death, imminent physical injury, or
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25 (B) is incapacitated as a result of an act of the
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1 person under the age of 16 may be commenced within one year after the
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8 definite term of imprisonment of not more than 30 years, and shall be
9 sentenced to the following presumptive terms, subject to adjustment as
10 provided in AS 12.55.155 - 12.55.175:

11 (1) if the offense is a first felony conviction and does
12 not involve circumstances described in (2) of this subsection, eight
13 years;

14 (2) if the offense is a first felony conviction, and the
15 defendant possessed a firearm, used a dangerous instrument, or caused
16 serious physical injury during the commission of the offense, 10
17 years;

18 (3) if the offense is a second felony conviction, 15 years;

19 (4) if the offense is a third felony conviction, 25 years.

20 * Sec. 10. AS 18.66.900(6) is amended to read:

21 (6) "sexual assault" means a crime specified in AS 11.41.-
22 410 - 11.41.450 [OR AS 11.51.130(a)(4)];

23 * Sec. 11. AS 11.41.410(a)(3) and (4), AS 11.41.430, AS 11.51.130(a)-
24 (4), and AS 11.61.110(a)(7) are repealed.

HB 117

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 117 Date on Bill: 1/26/83
Title: An Act Relating to sexual abuse of a minor
Sponsor: Representative Pestinger
Requestor: House HESS

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue								
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2. Source of funds to offset fiscal impact of bill:

Source of funds not identified by sponsor

3. Assumptions:

No fiscal impact

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Paul Conger Phone: 465-4338
Division: Administrative Services Date: 2/28/83

Approved by Commissioner: [Signature] Date: 2/28/83
Department: Public Safety

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSHB 117 (Judiciary)
 Title: "...laws relating to sexual abuse..."
 Sponsor: House Judiciary (Orig.-Pestinger)
 Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Admin. Justice
 BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING		27.0	34.1	36.1	38.3	40.6
100 PERSONAL SERVICES		2.5	3.2	3.4	3.6	3.8
200 TRAVEL		4.0	4.3	4.6	4.9	5.2
300 CONTRACTUAL		2.8	1.0	1.1	1.2	1.3
400 COMMODITIES		1.5				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	37.8	42.5	45.2	48.0	50.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	37.8	42.5	45.2	48.0	50.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME	-0-	1	1	1	1	1
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: June 2, 1983
 Approved by Commissioner: Richard I. Pegues/for Date: June 2, 1983
 Department: Department of Law

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

L11117

CSHB 117 (Judiciary)
Fiscal Note
Analysis

This bill is a comprehensive revision of current law regarding sexual assault and sexual abuse of a minor. Current laws dealing with sexual offenses against children appear in several different areas of the criminal code. Depending upon the age of the child victim, current law authorizes vastly different penalties for acts which are similar in nature or on the part of the offender. Some conduct which is extremely harmful to children is not covered at all.

Sexual offenses against children include many types of conduct. This bill groups all of this conduct in one area of the code and labels most of it "Sexual Abuse of a Minor." The conduct is divided into four degrees of seriousness, and penalties appropriate to the classification of the crime are attached.

In most instances the penalties which may be imposed upon conviction for conduct constituting sexual abuse of a minor are raised. These increases in the possible penalties for offenders are needed to protect children from sexual abuse, and to punish and isolate offenders, but will not have any appreciable effect upon the costs of prosecution. Radical impact will occur only in those limited areas where a new crime is created to prohibit conduct which is not included under current law. It is estimated that the additional coverage in these limited areas will require an increase in prosecution resources equivalent to .5 of an attorney position.

Fiscal Analysis - CSHB 117 (Judiciary)

The impact of CSHB 117 is expected to result in the addition of one-half the time of an Attorney IV on a statewide basis. Actual placement of cumulative positions and costs can only be determined after the Legislature has acted and we know what bills and fiscal notes have been approved. For purposes of the analysis, salary schedule A has been used.

The first year of the analysis is FY 84 and costs have been calculated on a 10 month basis to account for the time required to establish new positions and the time it takes to get a new program underway. The costs after FY 84 are on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	<u>Atty IV (PPT)</u>	<u>Total</u>
Personal Services	27.0	27.0
Travel	2.5	2.5
Contractual	4.0	4.0
Commod. - ongoing	.8	.8
Commod. - single time	2.0	2.0
Equipment - single time	1.5	1.5
		<hr/>
		37.8

2nd Year (12 months + 6% annual inflation)

Personal Services	34.1	34.1
Travel	3.2	3.2
Contractual	4.3	4.3
Commodities	1.0	1.0
		<hr/>
		42.5

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT X	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.	
2.	TYPE OF POSITION PPT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.			
3.	CONTINUATION LEVEL				JUSTIFICATION						
4.	TYPE OF EXPENDITURE										
	1		2		3						
	PERSONAL SERVICES										
5.	Salary	2,215 X 10 mos.	21,250								
6.	Benefits		3,278								
7.	Supplemental Benefits		1,303								
8.	Fixed Benefits		1,200								
9.	TOTAL PERSONAL SERVICES		01	27,031							
10.	Travel		02	2,500							
11.	Contractual		03	4,000							
12.	Commodities		04	2,800							
13.	Equipment		05	1,500							
14.	Other										
15.	TOTAL COST			37,831							
	RECEIPT CODE				FUNDING SOURCE						
16.					Federal Receipts 1002						
17.					G.F. Match 1003						
18.					General Funds 1004		37,831				
19.					I-A Receipts 1005						
20.					Program Receipts 1028						
21.					Other						
FOR B&M USE ONLY											
4A KEY NUMBER _____											

Enactment of the revisions to the current law regarding sexual assault and sexual abuse of a minor, contained in this bill, will require the services of an Attorney IV, on a part time basis. The additional workload occurs in a few limited areas where a new crime is created to prohibit conduct that is not included under current law. Because sexual assault and abuse offenses are difficult to try, a skilled litigator, at the full working level of Attorney IV, will be required.

13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM ADMINISTRATION OF JUSTICE
BRU PROSECUTION
COMPONENT THIRD JUDICIAL DISTRICT

FY 84

Page 1 of 1
Revised Date _____

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSHB 117 (Jud.)
 Title: Sexual abuse of a minor
 Sponsor: Pestinger
 Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected: Justice
 BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				396.0	419.8	445.0
200 TRAVEL				1.8	1.9	2.0
300 CONTRACTUAL			14.0	50.0	53.0	56.2
400 COMMODITIES			45.9	48.7	51.6	54.7
500 EQUIPMENT				2.0		
600 LAND & STRUCTURES		3255.8				
700 GRANTS, CLAIMS, ETC			4.2	6.3	6.6	7.0
TOTAL OPERATING			64.1	504.8	532.9	564.9
CAPITAL		3255.8				
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			64.1	504.8	532.9	564.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME				9.0	9.0	9.0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Source not identified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: William W. Ladwig
 Division: Adult Corrections

Phone: 465-3376
 Date: 6/7/83

Approved by Commissioner: Robert Gordon Smith, Ph.D.
 Department: Health & Social Services

Date: 6/7/83

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS:

The enactment of CS for House Bill No. 117 would result in changing the penalties for sexual abuse of a minor.

For purposes of this fiscal analysis, the following information was used:

1. Section 1 raises the present offense from a Class C felony to Class B. It is estimated that one person per year is convicted for this offense and the proposed provision would add one additional year to the sentence length requiring the need to provide one additional man year of confinement.
2. Section 2 raises all current sexual assault/abuse of a minor provisions from Class C felonies to Class B felonies which would add an additional year of incarceration for those sentenced to serve jail time. It is expected that approximately 30 convictions per year result from violations of this provision of the law. Of these 30 convictions, it is estimated that 10 persons would be released to probation rather than incarcerated. This would add the requirement for another 20 man years of confinement.
3. Section 3 raises the penalty for contributing to delinquency of a minor from Class A misdemeanor to Class C felony which adds approximately one-half year to the penalty for violation of this provision of law. It is estimated that there are two cases per year as a result of conviction for violating this provision of the statute; therefore, an additional one-man year of incarceration would be required.
4. Section 5 raises the penalty for disorderly conduct charges (indecent exposure) from Class B misdemeanor to Class A misdemeanor dependent upon the age of the witness to the exposure. It is estimated that there is currently one case per year of a person being committed for violation of this provision of the law. The modification would add an additional sentence length resulting in an additional 0.3 man years of incarceration.

Sections 4 and 6 of CS H.B. No. 117 have no impact upon the Division of Adult Corrections.

The impact of the above proposed modifications on the state correctional system will be the need for approximately 22.3 additional beds. The cost of these additional beds is estimated to be: 22.3 x \$146,000 (medium security bed cost) = \$3,255,800.

Because of construction time, the additional beds would not be available for occupancy until FY 1986. Personal services costs are not identified until that time. In estimating personal services cost, it is assumed one staff person will be required for every 2.5 inmates. Twenty-two beds would require nine positions. An average FY '84 position cost of \$44,000 (plus inflation) was used to project personal services cost. The final staffing of a correctional facility cannot be determined until it has been designed, and the staffing would be influenced by such factors as total bed capacity, floor plan for security, and programs to be provided as a part of rehabilitation.

Rec'd 5/23/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST CS for HB
Bill/Resolution No.: #109 (Jud.) a.m.
Title:..persons 16 or 17 yrs. old..amend.
Sponsor: Rep. Pestinger
Requestor: _____

II. FISCAL DETAIL
Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES				985.2	1044.3	1106.9
200 TRAVEL			2.0	6.4	6.8	7.2
300 CONTRACTUAL		14.4	43.9	184.0	195.0	206.7
400 COMMODITIES		24.8	75.4	187.0	198.2	210.1
500 EQUIPMENT				5.9		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC		2.5	9.5	30.0	31.8	32.0
TOTAL OPERATING	-0-	41.7	130.8	1398.5	1476.1	1562.9
CAPITAL	-0-	9052.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	9093.7	130.8	1398.5	1476.1	1562.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	23	23	23
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill have not been identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
 Division: Adult Corrections Date: May 11, 1983
 Approved by Commissioner: *Robert London Smith, Ph.D.* Date: 5/16/83
 Department: Health & Social Services

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS

A. Assumptions

1. If CSHB 109 (Judiciary) am is implemented, there will be a requirement for 62.25 beds. The calculation for this follows:

<u>Annual Frequency of Convictions</u>	<u>Presumptive Sentence</u>	<u>Est. Avg. Sent. for 16-17 Yr. Olds Convicted As An Adult</u>	<u>Actual Time to Serve w/Credit For Good Time</u>
1 unclassified felony	20 Years	15 Years	11.25 x 1 = 11.25
5 Class A felonies (w/firearm)	7 Years	6 Years	4.5 x 4 = 18.0 Yrs. 1 probation
8 Class A felonies (w/o firearm)	5 Years	4 Years	3 x 8 = 18.0 Yrs. 2 probation
1 sexual assault 1st (w/firearm)	10 Years	7 Years	5.25 x 1 = 5.25 Yrs.
3 sexual assault 1st (w/o firearm)	8 Years	5 Years	3.75 x 2 = 7.5 Yrs. 1 probation
	<u>Non-Presumptive</u>		
2 Class B felonies	0-10 Years	2 Years	1.5 x 1 = 1.5 Yrs. 1 probation
2 Class C felonies	0-5 Years	1 Year	.75 x 1 = .75 Yrs. 1 probation
			Total 62.25 Man Years

2. Inflation of 6% for all expenditure object groups was assumed calculating subsequent fiscal years.

B. Program Summary

1. Positions

It is estimated that 23 positions will be required to provide security and supervision for the 62 additional bed spaces. The positions are:

- 1 - Correctional Officer III
- 20 - Correctional Officers II
- 2 - Probation Officers II

These positions would be needed July 1, 1985, the estimated opening date for the new beds.

2. Other Expenditures

- a. Capital Expenditures: Because of the serious nature of the offenses, construction of maximum security beds were originally considered appropriate at \$162,000 per bed. However, because of the age of the offenders, it is now assumed they will be placed in medium security beds, but separate from older inmates. The number of beds was also rounded to 62, at a cost of \$146,000 per bed.

62 beds @ \$146,000 per bed
62 x \$146,000 = \$9,052,000

- b. Incremental cost will be incurred for 16 and 17-year-olds beginning in FY 1984. These costs include:

Contractual Services: Medical costs at \$1800 per inmate year for 8 full time equivalent inmates. 8 x \$1800 = \$14,400
Commodities: Food, clothing, bedding, etc. for 8 full time equivalent inmates at \$8.48 per day. 8 x \$8.48 x 365 = \$24,762
Grants: Inmate gratuities paid for work crew participants.
Estimated need \$2,500.

FY 1986 Costs - Adult Confinement

Personal Services	\$ 985,200
Travel	6,400
Contractual Services	184,000
Commodities	187,000
Equipment	5,900
Inmate Gratuities	<u>30,000</u>
TOTAL	\$1,398,500

D. Economic Impact:

Passage of this bill will have effect on the state budget, but little impact on the State's economy.

E. Impact on Local Governments:

Passage of this bill will not have impact on local government units.

1.	POSITION TITLE Probation Officer II (2)			RANGE/STEP 16/A	WARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 24	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION	ELECTION DISTRICT	LEC.	

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	61,752	
6.	Benefits	10,554	
7.	Supplemental Benefits	3,786	
8.	Fixed Benefits	5,760	
9.	TOTAL PERSONAL SERVICES	01	81,852
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		81,852

JUSTIFICATION

Single Position Cost

Salary 2573/Mo.	\$30,876
Variable Benefits	5,277
SBS	1,893
Health Insurance	2,880
	<u>\$38,046</u>
	40,926

These positions would provide counseling, pre-release planning and preparation for Parole Board Applications.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	81,852
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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4A KEY NUMBER _____

13 REQUEST FOR NEW POSITION

AGENCY Department of Corrections

PROGRAM Offender Confinement, Reformation & Supervision

BRU Adult Confinement

COMPONENT _____

FY 84

Page _____ of _____
Revised Date _____

1.	POSITION TITLE Correctional Officer II (20)				RANGE/STEP 13/B	DARG. UNIT G	FORM 12 PAGE/LINE	COV.	APPROV.	DISAP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 240	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION		
4.	TYPE OF EXPENDITURE		AMOUNT	
	1	2	3	
	PERSONAL SERVICES		O.T. 76,000	
5.	Salary	519,840	Shift	
6.	Benefits	156,660	Diff 10,000	
7.	Supplemental Benefits	35,920		
8.	Fixed Benefits	57,600		
9.	TOTAL PERSONAL SERVICES	01	856,020	
10.	Travel	02		
11.	Contractual	03		
12.	Commodities	04		
13.	Equipment	05		
14.	Other			
15.	TOTAL COST		856,020	

JUSTIFICATION

Single Position Cost

Salary 2166/Mo.	\$25,992
Overtime	3,800
Shift Differential	500
	<u>\$30,292-</u>
Peace Officer Retirement	2,827
Variable Benefits	5,006
SBS	1,796
Health Insurance	2,880
	<u>\$42,801</u>

These positions would provide security coverage for prisoners.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	856,020
19.		I-A Receipts 1005	
20.		Program Receipts 1020	
21.		Other	

FOR O&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR NEW POSITION

AGENCY: Department of Corrections
 PROGRAM: Offender Confinement, Reformation & Supervision
 BRU: Adult Confinement
 COMPONENT: _____

Page _____ of _____
 Revised Date _____

FY 84

1.	POSITION TITLE Correctional Officer III				RANGE/STEP 15/A	DARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2		3						
	PERSONAL SERVICES			O.T. 4,118						
5.	Salary 2398	28,776		Shift						
6.	Benefits	8,956*		Diff. 600						
7.	Supplemental Benefits	2,040								
8.	Fixed Benefits	2,880								
9.	TOTAL PERSONAL SERVICES		01	47,370						
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST			47,370						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004			47,370					
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR D&M USE ONLY										
4A KEY NUMBER _____										

This position would provide supervision for Correctional Officer II staff as well as security for prisoners.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Corrections
PROGRAM Offender Confinement, Reformation & Supervision
BRU Adult Confinement
COMPONENT _____

Page _____ of _____
Revised Date _____

FY 84

COMMENTARY AND SECTIONAL ANALYSIS
FOR CSHB 117 (JUDICIARY)

Sections 1 and 2. AS 01.05.031(c), Use of Personal Pronouns.

In 1982 the legislature passed ch. 58, SLA 1982, which required the revisor of statutes to alter the language of statutes to avoid the use of personal pronouns denoting masculine or feminine gender. These changes are to be made both when new laws are enacted, and when the printed pamphlets of statutes are scheduled for reprinting. This directive, as it applies to the criminal code, is merely a matter of form, as all criminal laws, including those relating to sexual assault and sexual abuse of a minor, are "sex neutral." See AS 01.10.-050 and the Legislative Commentary to the Criminal Code.

In many criminal statutes, including some amended in this bill, the complete elimination of the use of personal pronouns cannot be accomplished without rewriting the statutes. This rewriting raises the potential for unintentional alteration of the meaning of a provision and a change in the way the law is interpreted by a court. There is a well established rule of statutory interpretation (called the "rule of lenity") which establishes that any ambiguity in a criminal statute must be construed against the state and in favor of the defendant. Criminal statutes are also subject to constitutional challenge of the statutory language is vague, or fails to give clear notice of what conduct is prohibited.

Because the elimination of personal pronouns accomplishes no substantive purpose (the code is already sex neutral), and may cause obscurity or ambiguity in the statutory language which could hamper the effective enforcement of the laws, sections 7 and 8 of the bill amend the law to allow the continued use of personal pronouns in Titles 11 and 12, the Criminal Law and Criminal Procedure Codes.

Section 3. AS 11.41.420, Sexual Assault in the Second Degree.

This section does two things. It amends the current Sexual Assault in the Second Degree statute to define the crime as "sexual contact with another person without consent of that person." The amended language is consistent with that used in the Sexual Assault in the First Degree statute, which prohibits sexual penetration without consent. Under the current Sexual Assault in the Second Degree law the prosecutor must prove that the victim was "coerced" to submit to the sexual contact by the express or implied threat of imminent death, imminent physical injury, or imminent kidnapping. Technically, if a defendant physically forces a person to have sexual contact with him, rather than coercing the victim through the use of threats, the defendant has not committed Sexual Assault in the Second Degree. The amended language establishes that any sexual contact with a person without that person's consent is a class B felony.

The second change which this section makes is to raise the current class C felony offense of Sexual Assault in the Third Degree, penetration with a person who is suffering from a mental defect or is incapacitated, to Sexual Assault in the Second Degree, a class B felony (punishable by up to ten years in prison). The language describing the crime has not been altered.

Section 4. This section adds three new statutes to the Criminal Code, as described below.

AS 11.41.434, Sexual Abuse of a Minor In the First Degree.

This section creates a new classification of offense, Sexual Abuse of a Minor in the First Degree. The section prohibits a person 16 years of age or older from engaging in sexual penetration with a person who is under the age of 13. It also prohibits a person 18 years of age or older from engaging in sexual penetration with a person under 18 who is entrusted to the adult's care by authority of law or is his son or daughter, including illegitimate or adopted children and step-children.

Basically, this provision takes conduct which is currently labelled Sexual Assault in the First Degree (subsections (a)(3) and (a)(4) of present AS 11.41.410) and moves it to a new section entitled Sexual Abuse of a Minor in the First Degree. The conduct continues to be punishable as an unclassified felony, which carries a maximum sentence of up to 30 years in prison and a presumptive term of eight years upon conviction for a first offense. Forcible sexual penetration of any person, including a child, would continue to be punishable as Sexual Assault in the First Degree, an unclassified felony.

AS 11.41.436, Sexual Abuse of a Minor in the Second Degree.

This section creates a new classification of crime, Sexual Abuse of a Minor in the Second Degree. It includes all three types of conduct now prohibited in the Sexual Abuse of a Minor statute (AS 11.41.440), but raises the classification of the crime from a C to a B felony level. In subsection (a)(1) the requirement that the defendant be at least three years older than the victim has been added. This language would exempt from prosecution those teenagers who have consensual sexual relations with other teens near their own age (a 17-year-old boy and his 15-year-old girlfriend, for example).

Paragraph 3 creates a new offense to address an omission in existing law. Under current law, sexual contact by a parent or guardian with his own child is a crime only if the child is under 13 (a class C felony) or under 16 (a class A misdemeanor). Fondling of a child's genitals or breasts by a parent is a serious violation of the trust and authority relationships within a family, and is often the precursor of a more serious assault. Existing law in this area is not sufficiently serious nor comprehensive. This provision extends the protection of the law to all children under age 18, and raises the classification of the conduct to a B felony level, punishable by up to ten years in prison.

AS 11.41.438, Sexual Abuse of a Minor in the Third Degree.

This section creates a new classification of offense entitled Sexual Abuse of a Minor in the Third Degree. Basically, this is the current Contributing to the Delinquency of a Minor statute (AS 11.51.130(a)(4)) raised from its present classification as an A misdemeanor to a class C felony level. Class C felonies are punishable by up to five years in prison.

The contributing statute now applies to defendants who are 19 years of age or older. The threshold age in this provision has been dropped to 16 to be consistent with the other sexual abuse provisions, but the requirement that there be at least a three year age difference between the defendant and the victim excludes consensual sexual contact between teenagers of approximately the same age.

Section 5. AS 11.41.440, Sexual Abuse of a Minor in the Fourth Degree.

This section creates a new provision to address a problem which has arisen under the present sexual assault laws. Virtually all of the statutes which deal with sexual offenses against children require that the actor be 16 years of age or older. Unfortunately, prosecutors and social workers have discovered numerous instances where an older child has sexually mistreated a much younger child, often while "babysitting" the younger child. This section prohibits all sexual contact or penetration between a child under 16 and another child who is three or more years younger, and makes such contact a class A misdemeanor.

The three year age difference requirement is included to ensure that a child who engages in sexual play with another child of approximately the same age may not be charged with a crime. Such behavior may, in some circumstances, be cause for parental concern, but it is not generally considered appropriate or useful to classify it as a crime. The purpose of making it a misdemeanor for a child to prey upon a much younger child is to establish the violation of a law which would allow intervention by the juvenile courts or social service workers. This intervention could be important; studies of adult sexual offenders indicate that many convicted offenders began to commit sexual assaults in their early teen years. Early identification and treatment of juvenile sexual offenders may ultimately decrease the number of adult offenders.

Section 6. AS 11.41.460, Indecent Exposure.

This section creates a new crime entitled Indecent Exposure, which is the intentional exposure of a person's genitals, buttock, anus or female breast to another person with reckless disregard for the offensive, insulting or frightening effect that the exposure that might have on the other person. Under current law this conduct is Disorderly Conduct, a class B misdemeanor offense with a maximum penalty of ten days in jail.

Some recent studies indicate that it is not uncommon for sex offenders to begin their assaultive behavior by exposing themselves to young children, and to gradually increase the seriousness of their conduct to sexual contact or penetration. Current law treats sexual exposure, especially to young children, much too leniently. This section raises the classification of Indecent Exposure to an A misdemeanor level (maximum sentence of one year) if the object of the exposure is a child under the age of 16. The offense remains a B misdemeanor (maximum sentence of 90 days in jail) if the witness to the exposure is an adult.

Section 7. AS 11.41.470, Definitions.

This section amends the definition of "without consent" to remove the requirement that the death or kidnapping with which the defendant threatens the victim be "imminent". Threats to inflict harm of this magnitude are inherently coercive, and the prosecution should not have to prove exactly when the defendant intended to cause the death or kidnapping. A threatened physical injury must still be "imminent" to fit within the definition.

Section 8. AS 12.10.020, Specific Time Limitation.

This section creates an exception to the general five year statute of limitations for prosecution for a crime (AS 12.10.010). If the five year limitation period has expired, this provision would allow prosecution for a sexual offense against a child to be commenced within one year after the child reaches the age of 16, or reports the crime to a law enforcement officer, whichever occurs first. In no case will the period of limitation be extended by more than five years, however.

This change is necessary because sexual offenses against young children (especially intrafamilial abuse) are frequently not discovered until the child reaches sufficient maturity to realize the wrongfulness of the conduct and to identify those adults to whom the conduct may safely be reported. A child of 12, 13 or 14 will often report for the first time sexual abuse which has been occurring since he or she was 4 or 5 years old. While the most recent assaults may be prosecuted, these offenses may be classified as less serious than the earlier ones, because of the child's older age. In those situations where the sexual abuse has been a continuing course of conduct which spans several years of a child's life the trier of fact should be entitled to reach and consider all aspects of the adult's conduct.

Section 9. AS 12.55.125(i), Sentences of Imprisonment for Felonies.

This section amends existing penalty provisions to conform to the change in the title of the offense described in new AS 11.41.434, Sexual Abuse of a Minor in the First Degree. Under current law this conduct is labelled Sexual Assault in the First Degree and is included in AS 11.41.410(a)(3) and (4).

Section 10. AS 18.66.900(6), Definitions

This section amends the definition of "sexual assault" as used in the violent crimes compensation law to include the crime of Unlawful Exploitation of a Minor (making child pornography). It also deletes a reference to AS 11.51.-130(a)(4), which is repealed by this bill. The content of that statute has been included in the new AS 11.41.438.

Section 11. Repealed sections.

This section repeals those statutes whose content has been incorporated into the provisions discussed above.

Introduced: 1/26/83
Referred: Health, Education and
Social Services,
Judiciary and Finance

BY PESTINGER, COWDERY,
AND BARNES

1 IN THE HOUSE

2 HOUSE BILL NO. 117

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to sexual abuse of a minor."

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

8 * Section 1. AS 11.41.440 is amended to read:

9 Sec. 11.41.440. SEXUAL ABUSE OF A MINOR. (a) A person commits
10 the crime of sexual abuse of a minor in the first degree if, being 16
11 years of age or older, that person [HE]

12 (1) [ENGAGES IN SEXUAL PENETRATION WITH A PERSON WHO IS
13 UNDER 16 YEARS OF AGE BUT 13 YEARS OF AGE OR OLDER OR AIDS, INDUCES,
14 CAUSES OR ENCOURAGES A PERSON UNDER 16 YEARS OF AGE BUT 13 YEARS OF
15 AGE OR OLDER TO ENGAGE IN SEXUAL PENETRATION WITH ANOTHER PERSON;]

16 (2) engages in sexual contact with a person who is under 13
17 years of age or aids, induces, causes or encourages a person under 13
18 years of age to engage in sexual contact with another person; or

19 (3) aids, induces, causes or encourages a person who is
20 under 16 years of age to engage in conduct described in AS 11.41.455-
21 (a)(2) - (6).

22 (b) Sexual abuse of a minor in the first degree is a class B [C]
23 felony.

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

25 Sec. 11.41.442. SEXUAL ABUSE OF A MINOR IN THE SECOND DEGREE.

26 (a) A person commits the crime of sexual abuse of a minor in the
27 second degree if, being 16 years of age or older, that person engages
28 in sexual penetration with a person who is under 16 years of age but
29 13 years of age or older or aids, induces, causes, or encourages a

1 person under 16 years of age but 13 years of age or older to engage in
2 sexual penetration with another person.

3 (b) Sexual abuse of a minor in the second degree is a class C
4 felony.

Offered: 4/7/83
Referred: Judiciary
and Finance

BY THE HEALTH, EDUCATION
AND SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 117 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act revising the laws relating to sexual abuse of
7 a minor."

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

9 * Section 1. AS 11.41 is amended by adding a new section to read:

10 Sec. AS 11.41.435. SEXUAL ABUSE OF A MINOR IN THE FIRST DEGREE.

11 (a) A person commits the crime of sexual abuse of a minor in the
12 first degree if

13 (1) that person engages in sexual penetration with a person
14 who is under 13 years of age and at least three years younger than the
15 offender or aids, induces, causes, or encourages a person who is under
16 13 years of age and at least three years younger than the offender to
17 engage in sexual penetration with another person; or

18 (2) being 18 years of age or older, that person engages in
19 sexual penetration with a person who is under 18 years of age and who

20 (A) is entrusted to that person's care by authority of
21 law; or

22 (B) is that person's son or daughter, including an
23 illegitimate or adopted child, or a stepchild.

24 (b) Sexual abuse of a minor in the first degree is a class A
25 felony.

26 * Sec. 2. AS 11.41.440 is repealed and reenacted to read:

27 Sec. 11.41.440. SEXUAL ABUSE OF A MINOR IN THE SECOND DEGREE.

28 (a) A person commits the crime of sexual abuse of a minor in the
29 second degree if

1 (1) that person engages in sexual contact with a person who
2 is under 13 years of age and at least three years younger than the
3 offender, or aids, induces, causes, or encourages a person under 13
4 years of age and at least three years younger than the offender to
5 engage in sexual contact with another person;

6 (2) that person engages in sexual penetration with a person
7 who is aged 13, 14, or 15, and at least three years younger than the
8 offender, or aids, induces, causes, or encourages a person who is aged
9 13, 14, or 15, and at least three years younger than the offender to
10 engage in sexual penetration with another person;

11 (3) being 18 years of age or older, that person engages in
12 sexual contact with a person who is under 18 years of age and who

13 (A) is entrusted to that person's care by authority of
14 law; or

15 (B) is that person's son or daughter, including an
16 illegitimate or adopted child or stepchild; or

17 (4) that person aids, induces, causes, or encourages a
18 person who is 16 years of age or younger to engage in conduct de-
19 scribed in AS 11.41.455(a)(2) - (6).

20 (b) Sexual abuse of a minor in the second degree is a class B
21 felony.

22 * Sec. 3. AS 11.41.410(a)(4) is repealed.

Offered: 5/30/83
Referred: Finance

Original sponsors: Pestinger, Cowdery,
Barnes and Lindauer

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 117 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act revising the laws relating to sexual abuse of
7 a minor, sexual assault, and indecent exposure;
8 extending the time limitation for prosecution of
9 sexual offenses; and amending AS 01.05.031(c) and
10 sec. 4, ch. 58, SLA 1982."
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
12 * Section 1. AS 01.05.031(c) is amended to read:
13 (c) Except in AS 11 and AS 12, the [THE] revisor shall edit and
14 revise the laws as they are enacted by the legislature, without
15 changing the meaning of any law, so as to avoid the use of pronouns
16 denoting masculine or feminine gender.
17 * Sec. 2. Section 4, ch. 58, SLA 1982 is amended to read:
18 Sec. 4. Except in AS 11 and AS 12, the [THE] revisor of statutes
19 is directed to avoid the use of pronouns denoting masculine or
20 feminine gender in the printed pamphlets of the Alaska Statutes as
21 they are scheduled for reprinting.
22 * Sec. 3. AS 11.41.420 is repealed and reenacted to read:
23 Sec. AS 11.41.420. SEXUAL ASSAULT IN THE SECOND DEGREE. (a) A
24 person commits the crime of sexual assault in the second degree if he
25 engages in
26 (1) sexual contact with another person without consent of
27 that person; or
28 (2) sexual penetration with a person who he knows
29 (A) is suffering from a mental disorder or defect

1 which renders the person incapable of appraising the nature of
2 the conduct under circumstances in which a person who is capable
3 of appraising the nature of the conduct would not engage in
4 sexual penetration; or

5 (B) is incapacitated.

6 (b) Sexual assault in the second degree is a class B felony.

7 * Sec. 4. AS 11.41 is amended by adding new sections to read:

8 Sec. AS 11.41.434. SEXUAL ABUSE OF A MINOR IN THE FIRST DEGREE.

9 (a) A person commits the crime of sexual abuse of a minor in the
10 first degree if

11 (1) being 16 years of age or older, he engages in sexual
12 penetration with a person who is under 13 years of age or aids,
13 induces, causes, or encourages a person who is under 13 years of age
14 to engage in sexual penetration with another person; or

15 (2) being 18 years of age or older, he engages in sexual
16 penetration with a person who is under 18 years of age and who

17 (A) is entrusted to his care by authority of law; or

18 (B) is his son or daughter, including an illegitimate
19 or adopted child, or a stepchild.

20 (b) Sexual abuse of a minor in the first degree is an unclassi-
21 fied felony and is punishable as provided in AS 12.55.

22 Sec. 11.41.436. SEXUAL ABUSE OF A MINOR IN THE SECOND DEGREE.

23 (a) A person commits the crime of sexual abuse of a minor in the
24 second degree if

25 (1) being 16 years of age or older, he engages in sexual
26 penetration with a person who is 13, 14, or 15 years of age and at
27 least three years younger than he, or aids, induces, causes or
28 encourages a person who is 13, 14, or 15 years of age and at least
29 three years younger than he to engage in sexual penetration with

1 another person;

2 (2) being 16 years of age or older, he engages in sexual
3 contact with a person who is under 13 years of age or aids, induces,
4 causes, or encourages a person under 13 years of age to engage in
5 sexual contact with another person;

6 (3) being 18 years of age or older, he engages in sexual
7 contact with a person who is under 18 years of age and who

8 (A) is entrusted to his care by authority of law; or

9 (B) is his son or daughter, including an illegitimate
10 or adopted child, or a stepchild; or

11 (4) being 16 years of age or older, he aids, induces,
12 causes, or encourages a person who is under 16 years of age to engage
13 in conduct described in AS 11.41.455(a)(2) - (6).

14 (b) Sexual abuse of a minor in the second degree is a class B
15 felony.

16 Sec. 11.41.438. SEXUAL ABUSE OF A MINOR IN THE THIRD DEGREE.

17 (a) A person commits sexual abuse of a minor in the third degree if,
18 being 16 years of age or older, he engages in sexual contact with a
19 person who is 13, 14, or 15 years of age and at least three years
20 younger than he.

21 (b) Sexual abuse of a minor in the third degree is a class C
22 felony.

23 * Sec. 5. AS 11.41.440 is repealed and reenacted to read:

24 Sec. 11.41.440. SEXUAL ABUSE OF A MINOR IN THE FOURTH DEGREE.

25 (a) A person commits sexual abuse of a minor in the fourth degree if,
26 being under 16 years of age, he engages in sexual penetration or
27 sexual contact with a person who is under 13 years of age and at least
28 three years younger than he.

29 (b) Sexual abuse of a minor in the fourth degree is a class A

1 misdemeanor.

2 * Sec. 6. AS 11.41 is amended by adding a new section to read:

3 Sec. 11.41.460. INDECENT EXPOSURE. (a) A person commits the
4 crime of indecent exposure if he intentionally exposes his genitals,
5 buttock, anus, or female breast to another person with reckless
6 disregard for the offensive, insulting, or frightening effect the act
7 may have on that person.

8 (b) Indecent exposure before a person under 16 years of age is a
9 class A misdemeanor. Indecent exposure before a person 16 years of
10 age or older is a class B misdemeanor.

11 * Sec. 7. AS 11.41.470 is amended to read:

12 Sec. 11.41.470. DEFINITIONS. For purposes of AS 11.41.410 -
13 11.41.470, unless the context requires otherwise,

14 (1) "incapacitated" means that a person is temporarily
15 incapable of appraising the nature of his conduct and is physically
16 unable to express unwillingness to act;

17 (2) "victim" means the person alleged to have been sub-
18 jected to sexual assault in any degree or sexual abuse of a minor in
19 any degree;

20 (3) "without consent" means that a person

21 (A) with or without resisting, is coerced by the use
22 of force against a person or property, or by the express or
23 implied threat of [IMMINENT] death, imminent physical injury, or
24 [IMMINENT] kidnapping to be inflicted on anyone; or

25 (B) is incapacitated as a result of an act of the
26 defendant.

27 * Sec. 8. AS 12.10.020 is amended by adding a new subsection to read:

28 (c) Even if the general time limitation has expired, a prosecu-
29 tion under AS 11.41.410 - 11.41.455 for an offense committed against a

1 person under the age of 16 may be commenced within one year after the
2 crime is reported to a peace officer or the person reaches the age of
3 16, whichever occurs first. This provision does not extend the period
4 of limitation by more than five years.

5 * Sec. 9. AS 12.55.125(i) is amended to read:

6 (i) A defendant convicted of sexual assault in the first degree
7 or sexual abuse of a minor in the first degree may be sentenced to a
8 definite term of imprisonment of not more than 30 years, and shall be
9 sentenced to the following presumptive terms, subject to adjustment as
10 provided in AS 12.55.155 - 12.55.175:

11 (1) if the offense is a first felony conviction and does
12 not involve circumstances described in (2) of this subsection, eight
13 years;

14 (2) if the offense is a first felony conviction, and the
15 defendant possessed a firearm, used a dangerous instrument, or caused
16 serious physical injury during the commission of the offense, 10
17 years;

18 (3) if the offense is a second felony conviction, 15 years;

19 (4) if the offense is a third felony conviction, 25 years.

20 * Sec. 10. AS 18.66.900(6) is amended to read:

21 (6) "sexual assault" means a crime specified in AS 11.41.-
22 410 - 11.41.450 [OR AS 11.51.130(a)(4)];

23 * Sec. 11. AS 11.41.410(a)(3) and (4), AS 11.41.430, AS 11.51.130(a)-
24 (4), and AS 11.61.110(a)(7) are repealed.