

S B

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPK. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary:

1988 - April 29

HOUSE COMMITTEE REPORT

(7)

Date referred: 5/16/87

FURTHER REFERRALS: Finance

DATE: April 29, 1988

The Judiciary Committee has considered CSSB 231 (HESS)

"An Act relating to sexual abuse of a minor."

RECOMMENDS:

- replace with HCS CS SB 231 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNER DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature]

 Chairman's signature

Original sponsors: Halford, Jones,
Duncan, et al.

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 231 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND 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 11.41.434(a) is amended to read:

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

11 (1) being 16 years of age or older, the offender engages in
12 sexual 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, the offender engages in
16 sexual penetration with a person who is under 18 years of age and who

17 (A) is entrusted to the offender's care by authority of
18 law; or

19 (B) is the offender's son or daughter, including an
20 illegitimate or adopted child, or a stepchild; or

21 (3) being 18 years of age or older, the offender engages in
22 sexual penetration with a person who is under 16 years of age, and the
23 victim at the time of the offense is

24 (A) residing as a member of the social unit in the
25 same household as the offender and the offender is in a position
26 of authority over the victim; or

27 (B) temporarily entrusted to the offender's care.

28 * Sec. 2. AS 11.41.436(a) is amended to read:

29 (a) An offender commits the crime of sexual abuse of a minor in

1 the second degree if

2 (1) being 16 years of age or older, the offender engages in
3 sexual penetration with a person who is 13, 14, or 15 years of age and
4 at least three years younger than the offender, or aids, induces,
5 causes or encourages a person who is 13, 14, or 15 years of age and at
6 least three years younger than the offender to engage in sexual pene-
7 tration with another person;

8 (2) being 16 years of age or older, the offender engages in
9 sexual contact with a person who is under 13 years of age or aids,
10 induces, causes, or encourages a person under 13 years of age to
11 engage in sexual contact with another person;

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

14 (A) is entrusted to the offender's care by authority
15 of law; or

16 (B) is the offender's son or daughter, including an
17 illegitimate or adopted child, or a stepchild; [OR]

18 (4) being 16 years of age or older, the offender aids,
19 induces, causes, or encourages a person who is under 16 years of age
20 to engage in conduct described in AS 11.41.455(a)(2) - (6); or

21 (5) being 18 years of age or older, the offender engages in
22 sexual contact with a person who is under 16 years of age, and the
23 victim at the time of the offense is

24 (A) residing as a member of the social unit in the
25 same household as the offender and the offender is in a position
26 of authority over the victim; or

27 (B) temporarily entrusted to the offender's care.

Senator Rick Halford

Halford / *A*



Senate District 1
Chugiak, Eagle River, East Anchorage, Fort Richardson

Senate Finance Committee
Co-Chairman

March 31, 1988

APR 11 1988

MEMORANDUM

TO: Representative John Sund, Chairman
House Judiciary Committee

FROM: Senator Rick Halford, Co-Chairman
Senate Finance Committee *Rick Halford*

SUBJECT: Request for Hearing of Senate Bill 231

I would appreciate your consideration in scheduling Senate Bill 231, "An Act relating to sexual abuse of a minor." This bill sets the penalty for sexual penetration of a minor by a parent or parent figure without regard for whether the victim was the legal son or daughter of the offender.

It is an unclassified felony to sexually penetrate one's son or daughter.

Under existing law, it is an unclassified felony offense for an offender to have intercourse with his or her son or daughter. However, an adult who is in a position of authority over a child, but who is not legally related to a child, is not subject to the same provisions.

It is a Class B felony or no crime at all if a parent figure not married to the child's other parent sexually penetrates a minor child.

For example, a man who has intercourse with his 15 year old daughter or stepdaughter has committed an unclassified offense. But a man who has intercourse with the 15 year old daughter of a woman with whom he has lived for several years is subject only to a B felony. A man who has sexual intercourse with a 16 year old daughter of a woman with whom he is living is subject to no criminal penalties at all.

Under AS 11.41.434, any person who sexually penetrates his or her son or daughter (including illegitimate, adopted or step) is guilty of an unclassified felony.

Under AS 11.41.436(A)(1), any person who sexually penetrates a 13 to 15 year old child who is not legally his or her son or daughter commits a Class B felony. Any person who sexually penetrates a 16 or 17 year old child who is not legally his or her son or daughter is not guilty of any crime.

The absence of a marriage certificate should not shorten a sentence for sexual assault of a minor by a person who has "parental" control over them.

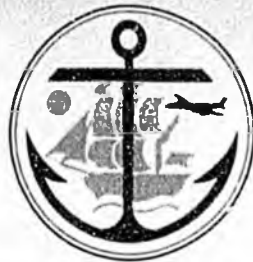
The proposed bill assumes that the presence or absence of a marriage certificate or other legal document should not change the penalty for sexual abuse of a minor by a parent figure.

Support for the bill:

The bill is supported by Standing Together Against Rape (STAR), the Alaska Network on Domestic Violence and Sexual Assault, and the Anchorage Municipal Health and Human Services Commission.

Should you need additional information, please contact Theresa Maser of my staff at 465-4958.

**Municipality
of
Anchorage**



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4674

Tom Fink
MAYOR

MUNICIPAL HEALTH & HUMAN SERVICES COMMISSION

MAR 14 1988

March 9, 1988

Representative John Sund, Chair
House Judiciary Committee
Alaska State Legislature
POB V
Juneau, Alaska 99811

Dear Representative Sund,

The Municipal Health and Human Services Commission would like to lend their full support to the passage of SB231. Child abuse and neglect is ranked as the highest behavioral and mental health problem priority in the Anchorage Health and Human Services Plan (January 1988). Due to the increasing number of reports of child sexual abuse offenses committed by nonfamilial/custodial adults residing with the child, it is important to add language to existing statutes which include offenders who reside with the child and who have authority over the child.

Passage of SB231 is consistent with the first and second objectives noted in Volume 3 of the plan, Policy Recommendations and Objectives for Anchorage's Health and Human Services Delivery System (January 1988). The first objective promotes adequate funding of treatment services for child sexual abuse victims, their siblings and the nonoffending parent. In order to secure adequate funding, an accurate account of the incidence of child sexual abuse victims is essential. Extending statutory definitions of the sexual abuse of a minor to include minors "residing as a member of a social unit in the same household with the offender and under the authority of the offender" will facilitate accurate reporting and consequently lend additional justification for adequate funding of treatment.

Objective #3 promotes adequate funding of primary prevention of child abuse and neglect. Statutory expansion of the definition of the victim of child sexual abuse is an excellent, essential way to encourage the prevention of child sexual abuse.

If you have any questions, please call me (562-2828) or our staff (343-4674).

Sincerely,

Gari B. Andreini, Chair
Municipal Health and Human Services Commission

cc: House Judiciary Committee
Senator Rick Halford, Sponsor
Anchorage Municipal Assembly
Tom Fink, Mayor, Municipality
of Anchorage

Ron Garzini, Manager, Municipality of
Anchorage
Robert A. (Bert) Hall, Director,
Health and Human Services,
Municipality of Anchorage

SJ22/dPD20

5-0539L✓

Chenoweth
3/3/88

Original sponsors: Halford, Jones,
Duncan, et al.

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BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 231 (Judiciary)

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

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6 least three years younger than the offender to engage in sexual pene-
7 tration with another person;

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22 sexual contact with a person who is under 16 years of age, and the
23 victim at the time of the offense is

24 (A) residing as a member of the social unit in the
25 same household as the offender and the offender is in a position
26 of authority over the victim; or

27 (B) temporarily entrusted to the offender's care.
28
29

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to sexual abuse of a minor."
Sponsor: Halford, Jones, et al.
Requestor: Judiciary

Agency Affected: Administration
BRU: Office of Public Advocacy
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: 1/20/88

Approved by Commissioner: John Andrews
Agency: Department of Administration

Date: 1/27/88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 231
PUBLISH DATE: 4/23/87

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to sexual
abuse of a minor"
Sponsor: Senator Halford
Requestor: Senator Judiciary

Agency Affected: Dept. of Administration
BRU: Public Defender Agency

Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Dana Eabe, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: January 19, 1988

Approved by Commissioner: John Andrews
Agency: Department of Administration

Date: 1/21/88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

POSITION PAPER

CS SB 231

The Alaska Public Defender Agency and the Office of Public Advocacy are totally reactive agencies which provide representation to indigent persons when appointed by the court. These agencies do not make policy nor do they initiate litigation. Only proposed legislation with fiscal or program ramifications for these agencies can be said to have a direct agency impact. Thus, the Public Defender Agency and Office of Public Advocacy submit position papers for legislation which will affect these agencies fiscally or programatically or will require these agencies to litigate constitutional issues raised by the legislation.

Fiscal impact: X None See attached fiscal note _____
Program impact: _____ None See analysis below X
Constitutional impact: _____ None See analysis below X

This bill is designed to expand the offense of sexual abuse of a minor in the first degree to include persons who have quasi-parental authority over a child in the household but are not legally related to that child. We agree with this goal. However, although attempts have been made to narrow the bill's focus, the bill is still drafted so broadly that it could apply to a number of situations which may not merit the eight-year presumptive term for a first offender of this offense.

Since the goal of this legislation is to make culpable persons in a quasi-stepparent relationship with a child victim, regardless of whether that adult is married to the victim's parent or guardian, the statute should be framed more specifically to target that population. The term "authority" should be narrowed to specify that the offender must have "quasi-parental" authority over the child.

With this drafting amendment, the Alaska Public Defender Agency and the Office of Public Advocacy have no opposition to the bill.

Dana Fabe *A*
Dana Fabe, Director
Public Defender Agency

1/20/88
Date

Brant McGee *A*
Brant McGee, Director
Office of Public Advocacy

1/20/88
Date

John Andrews
Commissioner John Andrews
Department of Administration

1/21/88
Date

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to sexual abuse of a minor
Sponsor: Halford, Jones, et.al.
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
Division: Council on Domestic Violence & Sexual Assault Date: 1/19/88
Approved by Commissioner: David A. H. Nelson, Dep. Comm. Date: 1-27-88
Agency: Public Safety

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

The Fairbanks Child Sexual Abuse Task Force

1423 Peger Road
Fairbanks AK 99709

February 22, 1988

House Judiciary Committee Members

Representatives Barnes, Cotten, Gruenberg, Navarre, Sund,
Taylor and Ulmer

Interior Delegation Members

Representatives Boyer, Davis, Frank, Koponen, Miller, Shultz
Senators Coghill, Fahrenkamp, Fanning

P.O. Box V

Juneau, AK 99811

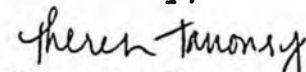
Re: Senate Bill 252 am

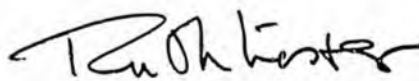
Dear Legislators,

I am writing on behalf of the Fairbanks Child Sexual Abuse Task Force, a coalition of agencies, organizations and associations involved in prevention and treatment of child sexual abuse. The CSATF wants to express its views on Senate Bill 252, which expands the exceptions to the statutory duty of confidentiality on the part of psychologists and psychological associates.

The Task Force supports this bill. In the interior, there have been suits brought by child sexual offenders in precisely those instances contemplated by the new subsection (3) which the bill would add to AS 08.86.200(a), i.e., the offender has made to the therapist an immediate threat of serious physical harm to an identifiable victim, which the therapist has then disclosed, following which the offender sued the therapist for violation of confidentiality. The court's ruling was in accordance with the statutory proposal, i.e., the offender's right to confidentiality does not apply in such situations; but having this codified in statutory form would reduce the costs of defending such an action, as well as discourage the filing of such a suit in the first place. For the sake of the victims and potential victims of such offenders, and the sake of the psychologists and psychological associates who have better uses for their time than fending off such suits, we urge enactment of the bill. Thank you for your consideration.

Sincerely,


Theresa Tanoury
Coordinator


Ruth Lister
Chair

CS SB 231 - Sexual Abuse of a Minor

This bill was introduced at the request of STAR (Standing Together Against Rape).

Purpose:

Its purpose is to correct a loophole in the sentencing of parents and parent figures who sexually abuse a child.

Currently, a father or stepfather who sexually abuses his daughter under 18 is guilty of an unclassified felony offense. But the abusing live-in boyfriend of the child's mother is guilty of only a Class B felony.

Frequently a child is encouraged to accept a live-in partner as a substitute parent. The child is vulnerable to the influence and control of the parent figure. The presence or absence of a marriage certificate should not change the length of sentence for sexual abuse of a minor.

Fiscal notes:

The bill has zero fiscal notes.

The Committee Substitute (HESS) is supported by:

STAR

Child Advocacy Network (81 agencies and 110 individual statewide)

Municipality of Anchorage Department of Health and Human Services

Anchorage Police Department

Anchorage Police Department Employee Association legislative committee

Alaska Association of Chiefs of Police

Alaska Women's Lobby

Department of Health and Social Services

Department of Public Safety

Concerned Citizens for Justice for Children

The Alaska Network on Domestic Violence has not met to discuss the bill. It strongly supports the concept.

The law:

The law concerning sexual abuse of a minor differs from that concerning sexual assault. Sexual assault: Under AS11.41.410, it is sexual assault in the first degree to sexually penetrate another person of any age without the victim's consent.

Sexual abuse of a minor: But consent does not apply if the victim is a minor child. In the case of a minor child, the law looks at the age of the victim and the relationship between the victim and the offender:

If the offender is the victim's legal parent or guardian, sexual penetration of a son or daughter, (including illegitimate, adopted or step) is 1st degree sexual abuse of a minor and an unclassified felony. AS 11.41.434(a) and (b).

If the offender is not the victim's legal parent (or guardian), sexual penetration of a child between the ages of 13 and 15 is 2nd degree sexual abuse of a minor and a Class B felony.

If the offender is not the victim's legal parent (or guardian), sexual penetration of a child 16 and 17 is not a crime at all. AS 11.41.436(a)(1).

Penalties:

Under current law, first degree sexual abuse of a minor by a legal parent is an unclassified felony. It is a presumptive sentence, with no probation. The sentence for the first conviction is 8 years. For the second conviction it is 15 years. Imprisonment cannot exceed 30 years. AS 12.55.125(i).

Under current law, sexual penetration of a child ages 13-15 by someone who is not legally the child's parent is a Class B felony. It is a presumptive sentence upon the second conviction. The presumptive sentence for the second conviction is 4 years. For a third conviction, it is 6 years. Imprisonment may not exceed 10 years. AS 12.55.125(d).

Sexual Abuse of a Minor:

- 1st degree: Offender's age: 16+
Victim's age: under 13
Act: sexual penetration
Relationship: N/A
Statute: 11.41.434
Unclassified offense: 8 years presumptive sentence
- 1st degree: Offender's age: 18+
Victim's age: under 18
Act: sexual penetration
Relationship: offender is legal parent or cares for the
child by authority of law.
Statute: 11.41.434
Unclassified offense: 8 years presumptive sentence
- 2nd degree: Offender's age: 16+
Victim's age: 13-15 and three yrs younger than offender
Act: sexual penetration
Relationship: N/A
Statute: 11.41.436
Class B felony. Not presumptive until second conviction.
Second conviction: 4 years presumptive
- 2nd degree: Offender's age: 16+
Victim's age: under 13
Act: sexual contact
Relationship: N/A
Statute: 11.41.436
Class B felony. Not presumptive until second conviction.
Second conviction: 4 years presumptive
- 2nd degree: Offender: 18+
Victim's age: under 18
Act: sexual contact
Relationship: legal parent or cares for the child by
authority of law
Statute: 11.41.436
Class B felony. Not presumptive until second conviction.
Second conviction: 4 years presumptive

Incest as included within charge of rape. 76 ALR2d 484.

Criminal responsibility of husband for rape, or assault to commit rape, on wife. 84 ALR2d 1017.

Fraud or impersonation, rape by. 91 ALR2d 591.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape. 23 ALR3d 1351.

Rape or similar offense based on intercourse with woman who is allegedly mentally deficient. 31 ALR3d 1227.

Liability of parent for injury to unemancipated child caused by parent's negligence. 41 ALR3d 904.

Seizure or detention for purpose of cora-

mitting rape, robbery, or similar offense - constituting separate crime of kidnapping. 43 ALR3d 699.

Consent as defense in prosecution for sodomy. 58 ALR3d 636.

Multiple instances of forcible intercourse involving same defendant and same victim as constituting multiple crimes of rape. 81 ALR3d 1228.

What constitutes offense of "sexual battery." 87 ALR3d 1250.

Constitutionality of rape laws limited to protection of females only. 99 ALR3d 129.

Validity and construction of statute defining crime of rape to include activity traditionally punishable as sodomy or the like. 3 ALR4th 1009.

Sec. 11.41.410. Sexual assault in the first degree. (a) A person commits the crime of sexual assault in the first degree if,

(1) being any age, the defendant engages in sexual penetration with another person without consent of that person;

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

(3) [Repealed, § 10 ch 78 SLA 1983.]

(4) [Repealed, § 10 ch 78 SLA 1983.]

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 3 ch 166 SLA 1978; am § 8 ch 102 SLA 1980; am § 6 ch 143 SLA 1982; am § 10 ch 78 SLA 1983)

Cross references. — For evidence of past sexual conduct in trials of sexual assault in any degree or attempt to commit sexual assault in any degree, see AS 12.45.045.

Effect of amendments. — The 1980 amendment inserted "or aids, induces, causes or encourages a person under 13 years of age to engage in sexual penetration with another person" near the end of paragraph (3) in subsection (a).

The 1982 amendment substituted "an

unclassified felony and is punishable as provided in AS 12.55" for "a class A felony" at the end of subsection (b).

The 1983 amendment repealed paragraphs (3) and (4) of subsection (a).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

I. General Consideration.

II. Former Law.

A. Generally.

B. Age of Consent.

C. Procedure.

I. GENERAL CONSIDERATION.

History of first-degree sexual assault statute. — See Reynolds v. State, Ct. App.

Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Constitutionality. — In order to prove a violation of AS 11.41.410(a)(1), the state

must prove that engaged in s- recklessly disreg consent. Construo does not punish neither vague n- State, Ct. App. O- 664 P.2d 621 (19

Construing th- concurrent amer- tences together i- ture has not distinguish betw- and the penalty offenses provisor not subject defenc- punishment or d- process or the equ- Reynolds v. Stat- (File No. 6890), 6

Categories co — All of the cate- the definition of s- degree under su- (a)(4) of this sect- offense for legal p- Ct. App. Op. No. P.2d 823 (1982), r- and aff'd on rehe- 259 (File No. 560

And none is others. — Nothin- tory language of tl- tive history of the- the type of condu- subsection (a)'s meant to be inher- any of the other- grouping of these i- duct together un- heading, with ide- class A felonies, i- the legislature's c- paragraphs were involving equally v. State, Ct. App 5606), 641 P.2d 8 other grounds and App. Op. No. 259 (30 (1983).

Subsection (a common law defi v. State, Ct. App 5606), 641 P.2d 8 other grounds and App. Op. No. 259 (30 (1983).

Mental state rec Lack of consent is

(B) is incapacitated.

(b) Sexual assault in the second degree is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 78 SLA 1983)

Effect of amendments. — The 1987 amendment rewrote subsection (a).

NOTES TO DECISIONS

For cases construing former crime of rape, see notes to AS 11.41.416.

Attempted sexual assault in the first degree and sexual assault in the second degree are closely related, since sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent. *Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).*

Constitutionality of conviction where original charge was under AS 11.41.410. — Where defendant was charged with attempted sexual assault in the first degree, he was thereby assumed to have notice that he might be convicted of second-degree sexual assault because of the similarities in the elements of the two offenses, and his conviction for the latter offense did not violate due process. *Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).*

Evidence. — Where victim woke up in the early morning hours to find defendant

in her bed and fondling her breast, and where she testified that she was temporarily in shock and afraid he would hurt her, a jury could find that victim's momentary acquiescence in defendant's fondling her breast constituted second-degree sexual assault. *Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).*

Instructions. — The trial judge did not err in refusing to instruct on the lesser included offense of attempted sexual contact in the second degree. *Johnson v. State, Ct. App. Op. No. 267 (File No. 6662), 665 P.2d 566 (1983).*

Sentence upheld. — Sentence of eight years with three years suspended for sexual assault in the second degree was not clearly mistaken. *Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 664 P.2d 603 (1983).*

Cited in *Stores v. State, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980).*

Sec. 11.41.430. [Repealed, § 10 ch 78 SLA 1983. For current law, see AS 11.41.420(a)(2).]

Sec. 11.41.434. Sexual abuse of a minor in the first degree. (a) An offender commits the crime of sexual abuse of a minor in the first degree if

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

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

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 2 ch 78 SLA 1983)

Editor's note below 11.15.134 a

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As to cons ute making toward child State, Sup. 2641), 562 P

Physical former statu Sup. Ct. Op. . P.2d 351 (197 Op. No. 1637 (1978).

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Consent is may forbid ar child under t: regardless of the act. Ander 1407 (File No

Mitigating for first-degre familiarity w: daughter) wa Hodges v. Sta 7330), 660 P.2

Sentence u upheld. — Se No. 1286 (Fil (1976); Bucha

Sec. 11. (a) An offer second deg

NOTES TO DECISIONS

Editor's notes. — The cases cited in the note below were decided under former AS 11.15.134 and former AS 11.41.410(a)(4).

For cases construing former rape statute, see AS 11.41.410. Notes to Decisions, analysis line II.

State's authority to control sexual conduct of children. — Although juveniles may have certain rights to sexual privacy, the state may nevertheless exercise control over the sexual conduct of children beyond the scope of its authority to control adults. *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Where juveniles have certain rights to privacy and to express their own autonomy, the state's interest in the well-being of its children may justify legislation that could not properly be applied to adults. *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

As to constitutionality of former statute making lewd and lascivious acts toward children a crime, see *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Physical conduct punished under former statute. — See *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977); *Smiloff v. State*, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Former section prohibited fellatio. — See *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Consent is not at issue. — The state may forbid an adult to have fellatio with a child under the statutorily prescribed age regardless of whether the child consents to the act. *Anderson v. State*, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Mitigating Factors. — In prosecution for first-degree sexual assault, defendant's familiarity with his victim (his 12-year old daughter) was not a mitigating factor. *Hodges v. State*, Ct. App. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

Sentence under former AS 11.15.134 upheld. — See *Noble v. State*, Sup. Ct. Op. No. 1286 (File No. 2468), 552 P.2d 142 (1976); *Buchanan v. State*, Sup. Ct. Op.

No. 1316 (File No. 2552), 554 P.2d 115 (1976); *Morgan v. State*, Sup. Ct. Op. No. 1908 (File No. 4187), 598 P.2d 952 (1975); *Baker v. State*, Sup. Ct. Op. No. 1968 (File No. 4031), 602 P.2d 797 (1979); *Alvarado v. State*, Sup. Ct. Op. No. 2323 (File No. 5133), 626 P.2d 582 (1981).

Sentence for assault upheld. — In prosecution of defendant with no prior criminal record on two counts of first-degree sexual assault of his 12-year old daughter, sentence of two consecutive eight-year terms with five years suspended was not excessive. *Hodges v. State*, Ct. App. Op. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

In light of the substantial duration of defendant's sexual abuse of his stepdaughter (three years), his failure to learn from the earlier discovery of his prior offenses, his disregard of a court order that he avoid contact with the victim, and his total failure to take any meaningful step toward rehabilitation, 10-year sentence with four years suspended was not excessive for conviction of first-degree sexual assault. *Langton v. State*, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Sentence under AS 11.15.134 held excessive. — See *Qualle v. State*, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

Sentence for assault held excessive. — Sentence of 20 years imprisonment for first-degree sexual assault of two-year old child was excessive and case was remanded for resentencing not to exceed 120 years. *Langton v. State*, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Sentence for assault held too lenient. — Suspended five-year sentence for first-degree sexual assault of defendant's four-year old son was disapproved as too lenient, with a 90-day to three-year sentence suggested. *Langton v. State*, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Applied in *Seymore v. State*, Ct. App. Op. No. 196 (File No. 6995), 655 P.2d 786 (1982).

Sec. 11.41.436. Sexual abuse of a minor in the second degree.
(a) An offender commits the crime of sexual abuse of a minor in the second degree if

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

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

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

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild; or

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) — (6).

(b) Sexual abuse of a minor in the second degree is a class B felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Sec. 11.41.438. Sexual abuse of a minor in the third degree. (a) An offender commits the crime of sexual abuse of a minor in the third degree if, being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the third degree is a class C felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree. (a) An offender commits the crime of sexual abuse of a minor in the fourth degree if, being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor. (§ 2 ch 78 SLA 1983)

Effect of an amendment reviding the 1983 amendment. Legislative I

Prior law. — prior law, see notes to Decisions. Applied in C Op. No. 201 (File 1983).

Collateral relief for carnal knowledge of girl under age 17. 79 ALR 1229. Assault with consenting female. ALR 599. Parent or pers

Sec. 11.41.410 — the alleged offense unless

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- (2) the defense
- (b) In a provision of law under a certain alleged offense age or older, of the alleged

Sec. 11.41.440. being 18 years of age or older, sexual penetration with a person who is illegitimately

- (1) an ancestor
- (2) a brother
- (3) an uncle
- (b) Incest is

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction, 15 years.

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, four years;

(2) if the offense is a third felony conviction, six years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, two years.

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum term may not be otherwise reduced.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), or (i) of this section, except to the extent permitted under AS 12.55.155 — 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided.

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

3691), 578 P.2d 971 (1978); Putnam v. State, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980); State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984); Cleary v. State, Sup. Ct. Op. No. 1257 (File No. 2623), 548 P.2d 952 (1976); Salazar v. State, Sup. Ct. Op. No. 1404 (File No. 2567), 562 P.2d 694 (1977); Cleary v. State, Sup. Ct. Op. No. 1431 (File No. 3059), 564 P.2d 374 (1977); Amidon v. State, Sup. Ct. Op. No. 1434 (File Nos. 2511, 2512), 565 P.2d 1248 (1977); Black v. State, Sup. Ct. Op. No. 1506 (File No. 3327), 569 P.2d 804 (1977); Sumabat v. State, Sup. Ct. Op. No. 1648 (File No. 3739), 580 P.2d 323 (1978); Hansen v. State, Sup. Ct. Op. No. 1689 (File No. 3412), 582 P.2d 1041 (1978); Kanipe v. State, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); Hintz v. State, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981).

Inclusion of improper reference to unverified police contacts did not require remand for resentencing before different judge. — See Parks v. State, Sup. Ct. Op. No. 1529 (File No. 3209), 571 P.2d 1003 (1977).

Reference to unverified police contacts in a presentence report does not require a remand for resentencing where the record

indicates that the sentencing judge was not unduly or improperly influenced by reference to the unverified police contacts. Pascoe v. State, Sup. Ct. Op. No. 2249 (File No. 4290), 628 P.2d 547 (1980).

Case remanded for resentencing. — See Neal v. State, Sup. Ct. Op. No. 2341 (File No. 4767), 628 P.2d 19 (1981).

Case remanded for sentence review. — Although a sentence of 15 years' imprisonment with eligibility for parole at the discretion of the parole board upon conviction of manslaughter was not excessive, since the trial court had sentenced defendant as if his conviction had been obtained within one year of the crime and therefore substantially ignored his subsequent history of steady employment, his meritorious service in the army, and his lack of involvement in any criminal activity other than a few traffic offenses in the 12 years since the commission of the crime, the case was remanded for the purpose of permitting the trial court to review the sentence it imposed, in light of all available information concerning defendant without excluding the time period commencing one year from the time of the killing until the present. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Sec. 12.55.125. Sentences of imprisonment for felonies. (a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years.

(b) A defendant convicted of murder in the second degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years.

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

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

(2) if the offense is a first felony conviction, other than for manslaughter, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

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

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

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

(4) if the offense is a third felony conviction, 25 years. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28-30 ch 143 SLA 1982; am § 5 ch 78 SLA 1983; am §§ 1-3 ch 92 SLA 1983)

Cross references. — For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010.

Effect of amendments. — The first 1982 amendment in subsection (b), deleted "or" preceding "kidnapping" and inserted "or misconduct involving a controlled substance in the first degree."

The second 1982 amendment in subsection (c), redesignated former paragraphs (1)-(3) as present paragraphs (2)-(4), added present paragraph (1), and substituted "possessed a firearm, used a dangerous instrument" for "possessed or used a firearm" and "seven years" for "six years" in present paragraph (2). The amendment also substituted "under (c), (d)(1), (d)(2), (e)(1), (e)(2), or (i) of this section" for

"under (c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) of this section" in the introductory language of subsection (g), corrected the section number set out in paragraphs (1) and (2) of subsection (g), and added subsection (i).

The first 1983 amendment inserted "or sexual abuse of a minor in the first degree" in the introductory language of subsection (i).

The second 1983 amendment in (c)(2) added "or knowingly directed . . . at the time of the offense," added paragraph (3) of subsection (d), added paragraph (3) of subsection (e), and made other minor punctuation changes.

Editor's notes. — For declaration of legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

NOTES TO DECISIONS

- I. General Consideration.
- II. Presumptive Sentencing.

I. GENERAL CONSIDERATION.

Limited use of both suspended jail time and probation is permitted under AS 12.55.155. *Lacquement v. State*, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982). See also *Friedberg v. State*, Ct. App. Op. No. 258 (File No. 7015), 663 P.2d 558 (1983).

Probationary sentences. — Although a probationary sentence may properly be used when a first offender is convicted of a class C felony involving sexual abuse of a child, such a sentence will be appropriate only if mitigating circumstances exist and the offender is a promising candidate for rehabilitation through probationary supervision. *State v. Coats*, Ct. App. Op. No. 291 (File No. 7102), 669 P.2d 1329 (1983).

Under former law where statutory

mitigating factors warrant a sentence of 90 days to three years, extraordinary circumstances might justify a sentence of straight probation. *State v. Brinkley*, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984).

Placement of offenders. — It is within the sentencing judge's authority to make a recommendation to the commissioner regarding the appropriate placement of the offender. Under AS 33.30.100, the commissioner has the power to effectuate such a recommendation by placing the offender in the appropriate facility, and although the commissioner is not bound by the sentencing court's recommendation, a demonstrated failure to provide an appropriate rehabilitation program or to further the purposes of the sentence may justify judicial intervention. *Nell v. State*, Ct. App. Op. No. 77 (File No. 5565), 642 P.2d 1361 (1982).

Incarceration section (g). — subsection (g) required to or convicted felon place him on probation for his placement as a condition App. Op. No. 7 1361 (1982).

For cases 12.55.050, imposed for persons convicted felony, see *Bow* 769 (File No. 1 State v. Carlso (File Nos. 2908, Davis v. State, No. 2698), 566 P. State, Sup. Ct. 3424), 580 P.2c State, Sup. Ct. 3348), 593 P.2d State, Sup. Ct. 4416), 621 P.2d 454 U.S. 1090, 1: 628 (1981); *Shea* No. 87 (File N (1982).

Sentence upon State, Ct. App. O 627 P.2d 657 (1: Hoover v. State, No. 6223), 64 App. Op. No. 190 577 (1982) *Nukapigak v. Sta* (File No. 5820), (first-degree mur App. Op. No. 205 850 (1983) (se Hodges v. State, C No. 7330), 66C (first-degree sexu State, Ct. App. C 7188, 6247, 7114 (first-degree sexu State, Ct. App. Op. 669 P.2d 961 (198

Sentence not upon years' imprisonment sexual assault of excessive and cas resentencing not Langton v. State. (File Nos. 7188, 62- (1983).

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Municipality of Anchorage



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Tom Fink
MAYOR

MUNICIPAL HEALTH & HUMAN SERVICES COMMISSION

March 9, 1988

Representative John Sund, Chair
House Judiciary Committee
Alaska State Legislature
PO Box V
Juneau, Alaska 99811

Dear Representative Sund,

*SB what is this
This is in H/S 237*

The Municipal Health and Human Services Commission would like to lend their full support to the passage of SB231. Child abuse and neglect is ranked as the highest behavioral and mental health problem priority in the Anchorage Health and Human Services Plan (January 1988). Due to the increasing number of reports of child sexual abuse offenses committed by nonfamilial/custodial adults residing with the child, it is important to add language to existing statutes which include offenders who reside with the child and who have authority over the child.

Passage of SB231 is consistent with the first and second objectives noted in Volume 3 of the plan, Policy Recommendations and Objectives for Anchorage's Health and Human Services Delivery System (January 1988). The first objective promotes adequate funding of treatment services for child sexual abuse victims, their siblings and the nonoffending parent. In order to secure adequate funding, an accurate account of the incidence of child sexual abuse victims is essential. Extending statutory definitions of the sexual abuse of a minor to include minors "residing as a member of a social unit in the same household with the offender and under the authority of the offender" will facilitate accurate reporting and consequently lend additional justification for adequate funding of treatment.

Objective #3 promotes adequate funding of primary prevention of child abuse and neglect. Statutory expansion of the definition of the victim of child sexual abuse is an excellent, essential way to encourage the prevention of child sexual abuse.

If you have any questions, please call me (562-2828) or our staff (343-4674).

Sincerely,

Gari B. Andreini, Chair
Municipal Health and Human Services Commission

cc: ✓ House Judiciary Committee
Senator Rick Halford, Sponsor
Anchorage Municipal Assembly
Tom Fink, Mayor, Municipality
of Anchorage

Ron Garzini, Manager, Municipality of
Anchorage
Robert A. (Bert) Hall, Director,
Health and Human Services,
Municipality of Anchorage

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