

C S H B

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SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 5/6/88

4/30/88
Mr. President:

Finance Committee considered CSHB 237 (JUD)

physical and sexual offenses against children; amending the definitions of the crimes of murder in the second degree and assault in the first degree; relating to the joinder of offenses of the same or similar character and the admissibility in a criminal proceeding of evidence, etc.
and recommended

replace with S CS CSHB 237 (Fin) same title
 or adopt _____ CS _____ new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous

zero DOC fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

Rick Halford do pass

Chairman signature and recommendation

Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to murder, assault
and physical abuse of children."
Sponsor: Rep. Ulmer, Hudson
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
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	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
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)

This legislation, as revised, will have minimal impact on the Department if current sentencing practices continue. If sentencing practices change and large amounts of consecutive time are imposed, there would be a substantial impact on the Department.

Prepared by: Susan E. Knighton, Director of Admin. Svs. Phone: 465-3376
Division: Administrative Services Date: 2/18/88

Approved by Commissioner: Susan Humphrey-Barnett Date: 2/18/88
Agency: Department of Corrections

Distribution (by preparer):

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

WORK DRAFT

WORK DRAFT

WORK DRAFT

5-0809N
Chenoweth
5/2/88

Adopted
JD: *uj*

Original sponsors: Ulmer, Hudson,
Grussendorf, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 237 (*Finance*)

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 physical and sexual offenses
7 against children; amending the definitions of the
8 crimes of murder in the second degree and assault in
9 the first degree; relating to the joinder of offenses
10 of the same or similar character and the admissibil-
11 ity in a criminal proceeding of evidence of prior
12 acts; amending Rule 8(a) of the Alaska Rules of
13 Criminal Procedure; amending Rule 404(b) of the
14 Alaska Rules of Evidence; and providing for an effec-
15 tive date."

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

17 * Section 1. AS 11.41.110(a) is amended to read:

18 (a) A person commits the crime of murder in the second degree if

19 (1) with intent to cause serious physical injury to another
20 person or knowing that the conduct is substantially certain to cause
21 death or serious physical injury to another person, the person causes
22 the death of any person;

23 (2) the person knowingly engages in conduct [INTENTIONALLY
24 PERFORMS AN ACT] that results in the death of another person under
25 circumstances manifesting an extreme indifference to the value of
26 human life; or

27 (3) acting either alone or with one or more persons, the
28 person commits or attempts to commit arson in the first degree, kid-
29 napping, sexual assault in the first degree under AS 11.41.410(a)(1)

1 or (2), sexual assault in the second degree, burglary in the first
2 degree, escape in the first or second degree, or robbery in any degree
3 and, in the course of or in furtherance of that crime, or in immediate
4 flight from that crime, any person causes the death of a person other
5 than one of the participants.

6 * Sec. 2. AS 11.41.200(a) is amended to read:

7 (a) A person commits the crime of assault in the first degree if

8 (1) that person recklessly causes serious physical injury
9 to another by means of a dangerous instrument;

10 (2) with intent to cause serious physical injury to another,
11 the person causes serious physical injury to any person; or

12 (3) the person knowingly engages in conduct [INTENTIONALLY
13 PERFORMS AN ACT] that results in serious physical injury to another
14 under circumstances manifesting extreme indifference to the value of
15 human life.

16 * Sec. 3. AS 12.55.025(e) is amended to read:

17 (e) Except as provided in (g) and (h) of this section, if the
18 defendant has been convicted of two or more crimes, sentences of
19 imprisonment shall run consecutively. If the defendant is imprisoned
20 upon a previous judgment of conviction for a crime, the judgment shall
21 provide that the imprisonment commences at the expiration of the term
22 imposed by the previous judgment.

23 * Sec. 4. AS 12.55.025 is amended by adding a new subsection to read:

24 (h) If the defendant has been convicted of two or more crimes
25 under AS 11.41.200 - 11.41.250 or 11.41.410 - 11.41.455 in which the
26 victim or victims of the crimes were minors and the judgment on any of
27 the convictions has not been entered, the court shall impose some
28 consecutive period of imprisonment for each conviction.

29 * Sec. 5. AS 12.55.155(c) is amended to read:

1 (c) The following factors shall be considered by the sentencing
2 court and may aggravate the presumptive terms set out in AS 12.55.125:

3 (1) a person, other than an accomplice, sustained physical
4 injury as a direct result of the defendant's conduct;

5 (2) the defendant's conduct during the commission of the
6 offense manifested deliberate cruelty to another person;

7 (3) the defendant was the leader of a group of three or
8 more persons who participated in the offense;

9 (4) the defendant employed a dangerous instrument in fur-
10 therance of the offense;

11 (5) the defendant knew or reasonably should have known that
12 the victim of the offense was particularly vulnerable or incapable of
13 resistance due to advanced age, disability, ill health, or extreme
14 youth or was for any other reason substantially incapable of exercis-
15 ing normal physical or mental powers of resistance;

16 (6) the defendant's conduct created a risk of imminent
17 physical injury to three or more persons, other than accomplices;

18 (7) a prior felony conviction considered for the purpose of
19 invoking the presumptive terms of this chapter was of a more serious
20 class of offense than the present offense;

21 (8) the defendant's prior criminal history includes conduct
22 involving aggravated or repeated instances of assaultive behavior;

23 (9) the defendant knew that the offense involved more than
24 one victim;

25 (10) the conduct constituting the offense was among the most
26 serious conduct included in the definition of the offense;

27 (11) the defendant committed the offense pursuant to an
28 agreement that the defendant either pay or be paid for the commission
29 of the offense, and the pecuniary incentive was beyond that inherent

1 in the offense itself;

2 (12) the defendant was on release under AS 12.30.020 or
3 12.30.040 for another felony charge or conviction or for a misdemeanor
4 charge or conviction having assault as a necessary element;

5 (13) the defendant knowingly directed the conduct constitut-
6 ing the offense at an active officer of the court or at an active or
7 former judicial officer, prosecuting attorney, law enforcement offi-
8 cer, correctional employee, fire fighter, emergency medical techni-
9 cian, paramedic, ambulance attendant, or other emergency responder
10 during or because of the exercise of official duties;

11 (14) the defendant was a member of an organized group of
12 five or more persons, and the offense was committed to further the
13 criminal objectives of the group;

14 (15) the defendant has three or more prior felony convic-
15 tions;

16 (16) the defendant's criminal conduct was designed to obtain
17 substantial pecuniary gain and the risk of prosecution and punishment
18 for the conduct is slight;

19 (17) the offense was one of a continuing series of criminal
20 offenses committed in furtherance of illegal business activities from
21 which the defendant derives a major portion of the defendant's income;

22 (18) the offense was a crime

23 (A) specified in AS 11.41 and was committed against a
24 spouse, a former spouse, or a member of the social unit comprised
25 of those living together in the same dwelling as the defendant;
26 or

27 (B) specified in AS 11.41.410 - 11.41.460 and was
28 committed against a minor, and the defendant has engaged in the
29 same or similar conduct involving the same or another victim who

1 was a minor;

2 (19) the defendant's prior criminal history includes an
3 adjudication as a delinquent for conduct that would have been a felony
4 if committed by an adult;

5 (20) the defendant was on furlough under AS 33.30 or on
6 parole or probation for another felony charge or conviction;

7 (21) the defendant has a criminal history of repeated in-
8 stances of conduct violative of criminal laws, whether punishable as
9 felonies or misdemeanors, similar in nature to the offense for which
10 the defendant is being sentenced under this section;

11 (22) the defendant knowingly directed the conduct constitut-
12 ing the offense at a victim because of that person's race, sex, color,
13 creed, physical or mental disability, ancestry, or national origin;

14 (23) the defendant is convicted of an offense specified in
15 AS 11.71 and the offense involved the delivery of a controlled sub-
16 stance under circumstances manifesting an intent to distribute the
17 substance as part of a commercial enterprise;

18 (24) the defendant is convicted of an offense specified in
19 AS 11.71 and the offense involved the transportation of controlled
20 substances into the state;

21 (25) the defendant is convicted of an offense specified in
22 AS 11.71 and the offense involved large quantities of a controlled
23 substance;

24 (26) the defendant is convicted of an offense specified in
25 AS 11.71 and the offense involved the distribution of a controlled
26 substance that had been adulterated with a toxic substance.

27 * Sec. 6. Rule 8(a), Alaska Rules of Criminal Procedure, is amended to
28 read:

29 (a) JOINDER OF OFFENSES. Two or more offenses may be charged in

1 the same indictment or information in a separate count for each of-
2 fense if the offenses charged, whether felonies, misdemeanors or both,

3 (1) are of the same or similar character and it can be
4 determined before trial that it is likely that evidence of one charged
5 offense would be admissible to prove another charged offense,

6 (2) [OR] are based on the same act or transaction, or

7 (3) are based on two or more acts or transactions connected
8 together or constituting parts of a common scheme or plan.

9 * Sec. 7. Rule 404(b), Alaska Rules of Evidence, is amended to read:

10 (b) Other Crimes, Wrongs, or Acts.

11 (1) Evidence of other crimes, wrongs, or acts is not admissible
12 to prove the character of a person in order to show that he acted in
13 conformity therewith. It may, however, be admissible for other pur-
14 poses, such as proof of motive, opportunity, intent, preparation,
15 plan, knowledge, identity, or absence of mistake or accident.

16 (2) In a prosecution for a crime involving a physical or sexual
17 assault or abuse of a minor, evidence of other acts by the defendant
18 toward the same or another child is admissible to show a common scheme
19 or plan if admission of the evidence is not precluded by another rule
20 of evidence and if the prior offenses

21 (i) are not too remote in time;

22 (ii) are similar to the offense charged; and

23 (iii) were committed upon persons similar to the pros-
24 ecuting witness.

25 * Sec. 8. Section 7 of this Act is retroactive and applies

26 (1) to evidence of acts committed before the effective date of
27 this Act; and

28 (2) in trials involving offenses committed before the effective
29 date of this Act.



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1 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

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FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to murder, assault
and physical abuse of children."
Sponsor: Rep. Ulmer, Hudson
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
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	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
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)

This legislation, as revised, will have minimal impact on the Department if current sentencing practices continue. If sentencing practices change and large amounts of consecutive time are imposed, there would be a substantial impact on the Department.

Prepared by: Susan E. Knighton, Director of Admin. Svs. Phone: 465-3376
Division: Administrative Services Date: 2/18/88

Approved by Commissioner: Susan Humphrey-Barnett Date: 2/18/88
Agency: Department of Corrections

Distribution (by preparer):

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

Original sponsors: Ulmer, Hudson,
Grussendorf, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 237 (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 physical and sexual offenses against children; amending the definitions of the crimes of murder in the second degree and assault in the first degree; relating to the joinder of offenses of the same or similar character and the admissibility in a criminal proceeding of evidence of prior acts; amending Rule 8(a) of the Alaska Rules of Criminal Procedure; amending Rule 404(b) of the Alaska Rules of Evidence; and providing for an effective date."

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

17

* Section 1. AS 11.41.110(a) is amended to read:

18

(a) A person commits the crime of murder in the second degree if

19

(1) with intent to cause serious physical injury to another person or knowing that the conduct is substantially certain to cause death or serious physical injury to another person, the person causes the death of any person;

23

(2) the person knowingly engages in conduct [INTENTIONALLY PERFORMS AN ACT] that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life; or

27

(3) acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree under AS 11.41.410(a)(1)

28

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1 or (2), sexual assault in the second degree, burglary in the first
2 degree, escape in the first or second degree, or robbery in any degree
3 and, in the course of or in furtherance of that crime, or in immediate
4 flight from that crime, any person causes the death of a person other
5 than one of the participants.

6 * Sec. 2. AS 11.41.200(a) is amended to read:

7 (a) A person commits the crime of assault in the first degree if

8 (1) that person recklessly causes serious physical injury
9 to another by means of a dangerous instrument;

10 (2) with intent to cause serious physical injury to another,
11 the person causes serious physical injury to any person; or

12 (3) the person knowingly engages in conduct [INTENTIONALLY
13 PERFORMS AN ACT] that results in serious physical injury to another
14 under circumstances manifesting extreme indifference to the value of
15 human life.

16 * Sec. 3. AS 11.41.434(a) is amended to read:

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

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

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

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

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

29 (3) being 18 years of age or older, the offender engages in

1 sexual penetration with a person who is under 16 years of age, and the
2 victim at the time of the offense is

3 (A) residing as a member of the social unit in the
4 same household as the offender and the offender is in a position
5 of authority over the victim; or

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

7 * Sec. 4. AS 11.41.436(a) is amended to read:

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

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

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

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

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

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

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

29 (5) being 18 years of age or older, the offender engages in

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

3 (A) residing as a member of the social unit in the
4 same household as the offender and the offender is in a position
5 of authority over the victim; or

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

7 * Sec. 5. AS 12.55.025(e) is amended to read:

8 (e) Except as provided in (g) and (h) of this section, if the
9 defendant has been convicted of two or more crimes, sentences of
10 imprisonment shall run consecutively. If the defendant is imprisoned
11 upon a previous judgment of conviction for a crime, the judgment shall
12 provide that the imprisonment commences at the expiration of the term
13 imposed by the previous judgment.

14 * Sec. 6. AS 12.55.025 is amended by adding a new subsection to read:

15 (h) If the defendant has been convicted of two or more crimes
16 under AS 11.41.200 - 11.41.250 or 11.41.410 - 11.41.455 in which the
17 victim or victims of the crimes were minors and the judgment on any of
18 the convictions has not been entered, the court shall impose some
19 consecutive period of imprisonment for each conviction.

20 * Sec. 7. AS 12.55.155(c) is amended to read:

21 (c) The following factors shall be considered by the sentencing
22 court and may aggravate the presumptive terms set out in AS 12.55.125:

23 (1) a person, other than an accomplice, sustained physical
24 injury as a direct result of the defendant's conduct;

25 (2) the defendant's conduct during the commission of the
26 offense manifested deliberate cruelty to another person;

27 (3) the defendant was the leader of a group of three or
28 more persons who participated in the offense;

29 (4) the defendant employed a dangerous instrument in

1 furtherance of the offense;

2 (5) the defendant knew or reasonably should have known that
3 the victim of the offense was particularly vulnerable or incapable of
4 resistance due to advanced age, disability, ill health, or extreme
5 youth or was for any other reason substantially incapable of exercis-
6 ing normal physical or mental powers of resistance;

7 (6) the defendant's conduct created a risk of imminent
8 physical injury to three or more persons, other than accomplices;

9 (7) a prior felony conviction considered for the purpose of
10 invoking the presumptive terms of this chapter was of a more serious
11 class of offense than the present offense;

12 (8) the defendant's prior criminal history includes conduct
13 involving aggravated or repeated instances of assaultive behavior;

14 (9) the defendant knew that the offense involved more than
15 one victim;

16 (10) the conduct constituting the offense was among the most
17 serious conduct included in the definition of the offense;

18 (11) the defendant committed the offense pursuant to an
19 agreement that the defendant either pay or be paid for the commission
20 of the offense, and the pecuniary incentive was beyond that inherent
21 in the offense itself;

22 (12) the defendant was on release under AS 12.30.020 or
23 12.30.040 for another felony charge or conviction or for a misdemeanor
24 charge or conviction having assault as a necessary element;

25 (13) the defendant knowingly directed the conduct constitut-
26 ing the offense at an active officer of the court or at an active or
27 former judicial officer, prosecuting attorney, law enforcement offi-
28 cer, correctional employee, fire fighter, emergency medical techni-
29 cian, paramedic, ambulance attendant, or other emergency responder

1 during or because of the exercise of official duties;

2 (14) the defendant was a member of an organized group of
3 five or more persons, and the offense was committed to further the
4 criminal objectives of the group;

5 (15) the defendant has three or more prior felony convictions;
6

7 (16) the defendant's criminal conduct was designed to obtain
8 substantial pecuniary gain and the risk of prosecution and punishment
9 for the conduct is slight;

10 (17) the offense was one of a continuing series of criminal
11 offenses committed in furtherance of illegal business activities from
12 which the defendant derives a major portion of the defendant's income;

13 (18) the offense was a crime

14 (A) specified in AS 11.41 and was committed against a
15 spouse, a former spouse, or a member of the social unit comprised
16 of those living together in the same dwelling as the defendant;
17 or

18 (B) specified in AS 11.41.410 - 11.41.460 and was
19 committed against a minor, and the defendant has engaged in the
20 same or similar conduct involving the same or another victim who
21 was a minor;

22 (19) the defendant's prior criminal history includes an
23 adjudication as a delinquent for conduct that would have been a felony
24 if committed by an adult;

25 (20) the defendant was on furlough under AS 33.30 or on
26 parole or probation for another felony charge or conviction;

27 (21) the defendant has a criminal history of repeated in-
28 stances of conduct violative of criminal laws, whether punishable as
29 felonies or misdemeanors, similar in nature to the offense for which

1 the defendant is being sentenced under this section;

2 (22) the defendant knowingly directed the conduct constitut-
3 ing the offense at a victim because of that person's race, sex, color,
4 creed, physical or mental disability, ancestry, or national origin;

5 (23) the defendant is convicted of an offense specified in
6 AS 11.71 and the offense involved the delivery of a controlled sub-
7 stance under circumstances manifesting an intent to distribute the
8 substance as part of a commercial enterprise;

9 (24) the defendant is convicted of an offense specified in
10 AS 11.71 and the offense involved the transportation of controlled
11 substances into the state;

12 (25) the defendant is convicted of an offense specified in
13 AS 11.71 and the offense involved large quantities of a controlled
14 substance;

15 (26) the defendant is convicted of an offense specified in
16 AS 11.71 and the offense involved the distribution of a controlled
17 substance that had been adulterated with a toxic substance.

18 * Sec. 8. Rule 8(a), Alaska Rules of Criminal Procedure, is amended to
19 read:

20 (a) JOINDER OF OFFENSES. Two or more offenses may be charged in
21 the same indictment or information in a separate count for each of-
22 fense if the offenses charged, whether felonies, misdemeanors or both,

23 (1) are of the same or similar character and it can be
24 determined before trial that it is likely that evidence of one charged
25 offense would be admissible to prove another charged offense,

26 (2) [OR] are based on the same act or transaction, or

27 (3) are based on two or more acts or transactions connected
28 together or constituting parts of a common scheme or plan.

29 * Sec. 9. Rule 404(b), Alaska Rules of Evidence, is amended to read:

1 (b) Other Crimes, Wrongs, or Acts.

2 (1) Evidence of other crimes, wrongs, or acts is not admissible
3 to prove the character of a person in order to show that he acted in
4 conformity therewith. It may, however, be admissible for other pur-
5 poses, such as proof of motive, opportunity, intent, preparation,
6 plan, knowledge, identity, or absence of mistake or accident.

7 (2) In a prosecution for a crime involving a physical or sexual
8 assault or abuse of a minor, evidence of other acts by the defendant
9 toward the same or another child is admissible to show a common scheme
10 or plan if admission of the evidence is not precluded by another rule
11 of evidence and if the prior offenses

12 (i) are not too remote in time;

13 (ii) are similar to the offense charged; and

14 (iii) were committed upon persons similar to the pros-
15 ecuting witness.

16 * Sec. 10. Section 9 of this Act is retroactive and applies

17 (1) to evidence of acts committed before the effective date of
18 this Act; and

19 (2) in trials involving offenses committed before the effective
20 date of this Act.

21 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

LETTER OF INTENT
CSHB 237 (Judiciary)

Sections 1 and 2

The changes to AS 11.41.110(a)(2) and 11.41.200(a)(3) are solely intended as technical amendments to make it clear that the language "intentionally performs an act" means "knowingly engages in conduct". This amendment thus conforms the statutes to the interpretation provided in Neitzel v. State, 655 P.2d 325 (Alaska App. 1982).

Sections 3 and 4

The addition of AS 11.41.434(a)(30) and 11.41.436(a)(5) recognizes that the most serious forms of child sexual abuse are often committed by those who live in the same household as the victim or who are temporarily entrusted with the victim's care. Despite having no legal authority over the victim, such persons are nonetheless in a position of power such that even older children often find it impossible to thwart their advances. Because other subsections of these statutes already cover sexual misconduct with persons under the age of 13, the new changes apply only to victims from 13 to 15 years old. The cutoff at 16 years of age was specifically chosen instead of the 18-year-old cutoff in other subsections dealing with persons with legal or biological ties to the victim.

Sections 5 and 6

In enacting these sections, which require judges to impose some consecutive period of incarceration for each sexual or physical assault against a child, the legislature intends to leave to the court full discretion in determining the length of the consecutive term of incarceration. The court can impose whatever consecutive time as it decides is appropriate pursuant to the sentencing considerations in AS 12.55.005. One of the purposes of adopting a mandatory consecutive sentencing scheme for offenses against children is to express the Legislature's preference for judges to impose some consecutive period of time so as to reflect the community's abhorrence of these types of offenses, and to bring home to the offender that some additional penalty must be paid for each and every proven offense. In some cases, the court may find that only a minimal period of consecutive time to serve may be necessary while in other cases the court may find that a lengthy consecutive term is required. Another purpose of this amendment is to allow judges to fashion some consecutive period of suspended time, with conditions of probation, to assure that offenders being released from prison have an adequate period of supervision by the

court or the Department of Corrections.

Section 7

AS 12.55.155(c)(18)(B) has been amended to create a new aggravating factor for repeated sexual misconduct toward minors. This change reflects the Legislature's intent that, although most judges already take into account prior misconduct in sentencing, it should be specifically recognized as a statutory aggravating factor. It is not necessary that a conviction have been entered to constitute this aggravating factor. This factor is also intended to apply to incidents not resulting in convictions. Prior convictions already trigger imposition of presumptive sentencing, or can constitute a separate aggravating factor if there are three or more felonies (AS 12.55.155(c)(15)) or if there are repeated instances of similar conduct (AS 12.55.155(c)(21)). Convictions used for those purposes are not intended to trigger this aggravating factor. As used in this aggravating factor, the phrase "same or similar conduct" is not intended to require a strict analysis of statutory elements of offenses.

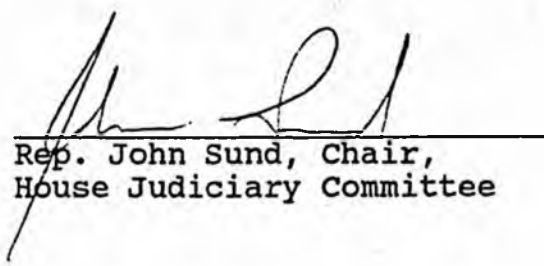
Section 8

The amendment to Rule 8 of the Alaska Rules of Criminal Procedure is specifically intended to reverse the decision in Johnson v. State, 730 P.2d 175 (Alaska App. 1986) to permit multiple offenses to be joined for trial when evidence of one offense is admissible to prove another. It is intended that the determination that evidence will likely be cross-admissible be made before trial. This determination depends to a large extent on the state of the prosecution's evidence. The courts should be given great latitude to structure these pretrial proceedings to rely as much as possible on offers of proof and other non-testimonial showings, so as to avoid conducting a mini-trial, and to avoid situations where defendants use this procedure to obtain pretrial depositions to which they are not otherwise entitled. The determination on cross-admissibility may also turn on the precise parameters of a person's defense. A defendant who declines, in an *ex parte in camera* hearing, to disclose a defense, which could have been anticipated at this point in the proceedings and which would render evidence of other offenses inadmissible, should be deemed to have waived any objection to joinder.

Section 9

As the Alaska Court of Appeals has emphasized, "[a] sexually abusing parent has tremendous control over his dependent children. He can pick his time and place to minimize the risk of discovery." Soper v. State 731 P.2d 537 (Alaska App. 1987) at 590. Evidence of past acts is therefore particularly important when there is "a swearing contest between the parent denying unlawful conduct and

the child alleging it" because the evidence "may tend to make the alleged incident appear much more plausible and probable." Id. at 590-1. However, having heard testimony about patterns of behavior of many of these offenders, the Legislature finds that the judiciary has drawn the line too narrowly in excluding evidence of prior misconduct, particularly as to non-family members. The Legislature therefore specifically intends to reverse the decision in Bolden v. State, 720 P.2d 957 (Alaska App. 1986). The intent of the Legislature is that, if the court finds that such prior bad acts are relevant to a disputed fact at trial under a common scheme or plan analysis, the court must still balance the probative impact against the prejudicial effect of the evidence pursuant to Evidence Rule 403. As used in this rule, the phrase "similar acts" is not intended to be limited to statutory offenses nor require a strict analysis of statutory elements. It is the intent of the Legislature that this evidentiary provision will apply not only to cases involving sexual assault, sexual abuse and physical abuse against a child, but also to homicides where the victim is a child and to cases involving unlawful exploitation of children.



Rep. John Sund, Chair,
House Judiciary Committee



HB 237

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR M. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 9, 1988

Representative Sund
Chairman
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

I am writing to express some of my concerns about the procedures used to amend court rules. As you know, court rules can be amended both through the legislative process and through action by the supreme court. For the reasons I have outlined below, I suggest that the legislature consider sending a request for a rule change to the supreme court, prior to any direct action by the legislature to change a rule.

The procedure that the court has now adopted to change court rules is designed to provide a careful, structured review of any proposed rule change. The procedure allows those persons who would be affected by a proposed change to express their opinions to the supreme court. The procedure also insures that any change will be consistent with other court rules.

Let me outline the procedure the court follows when a proposed rule amendment is received. First, the court rules attorney researches the legal and practical consequences of the proposed amendment. The attorney reviews the court's historical file on the rule in question, to determine if the problem which generated the proposal has been previously addressed. The attorney also compares the proposal to the corresponding federal court rule, and in some cases, researches comparable rules from other states.

After this research is completed, the proposal is referred to a rules committee for a recommendation. There are presently five rules committees, which review civil, criminal, appellate, childrens' (delinquency, CINA, adoptions), and probate rules proposals. The committees hold telephonic meetings to allow for

Representative Sund
February 9, 1988
Page 2

state-wide participation. These committees are composed of attorneys and judges appointed by the chief justice. The appropriate committee evaluates the merits of the proposal and also attempts to anticipate any unintentional consequences of the proposal, whether legal or practical. The committees and the court rules attorney strive to determine the effects of proposed amendments on other court rules. For example, the argument in favor of changing a particular civil rule may also apply to a criminal rule. Often one rule change may require that several other rules also be amended.

After the appropriate rules committee makes a recommendation about the proposed change, the court solicits comments by sending notices of proposals (in legislative form and usually including a commentary) to all attorneys and court clerks. Depending on the proposal, the court may also request comments from other persons who may be affected. The court rules attorney analyzes and consolidates all recommendations and comments in a memorandum which is forwarded to the supreme court. The supreme court then decides whether to adopt the proposal, based on the background research, the rules committee recommendation and other comments as well as the court's own experience and research.

There may be circumstances in which the supreme court declines to amend a rule, and yet the legislature may feel that the proposed change is desirable. In such a circumstance, if the supreme court's rulemaking procedure has been completed prior to legislative action, the legislature will be able to obtain the results of the court's research and review of the proposed change.

I appreciate your consideration of the court's concerns in this matter.

Very truly yours,



Arthur H. Snowden, II
Administrative Director



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

January 21, 1988

TO: House Judiciary Committee
FROM: Representative Fran Ulmer
SUBJECT: House Bill 237

The proposed CS which you have in front of you today, differs from original House Bill 237 in several significant ways.

The original bill proposed combining several instances of abuse into a new offense a pattern or practice of abuse. This approach was designed to permit the court to try several instances of abuse under one charge in one trial so that in cases like Covington where the child victim could not identify with precision the time, date and place of each act of abuse, it would be possible to convict the offender of abuse.

During the interim, I have had many discussions with individuals regarding this approach. We have researched other states to see whether similar legislation has been adopted. Only the State of Washington has approached child abuse in this manner, with the passage of a new statute last spring. As of this date, there have been no prosecutions under that section or any appellate efforts to shed light on its constitutionality. As you may remember from earlier testimony, the concern which the public defender has regarding the "pattern or practice" charge is the constitutional requirement for a unanimous jury. Her argument is that if you have several instances of abuse combined in a "pattern or practice" charge that the jury may not be unanimous as to which incidents occurred and which were committed by the defendant.

Although there is considerable debate about how the court might interpret the unanimous jury requirement in any challenge to this new "pattern or practice" charge, I have avoided this debate in this proposed CS by attempting to solve the problem in a different way. The CS no longer has a pattern or practice charge for either physical or sexual abuse or assault. Instead, the CS changes court rules which permit related cases to be tried together.

The question as to whether a court should sever or join a case rests on a variety of factors, including the economy of justice, the similarity and related nature of the charged offenses, potential prejudice to the accused, convenience to the parties, and other factors.

CS HB 237 clarifies that cases should be joined if the evidence of one charged offense would be admissible to prove another charged offense. It is preferable to do so for many of the parties involved; certainly for the court system and for the efficiency of the administration of justice. It will save money and time. It accomplishes part of what I had hoped to accomplish with a pattern or practice, but avoids the constitutional issue altogether.

Another major change in the proposed CS is new language amending Rule 404. This new language is a recommendation from the legislative committee of S.T.A.R. (Standing Together Against Rape) and, I believe, is more narrowly focused in a way which directly accomplishes the objective.

The third major change in the CS is the addition of an aggravating factor to be considered at sentencing so that the judge considers additional time for those offenders who abuse or assault minor victims more than once.

The next major difference in the proposed CS is a definition of the phrase "over whom the offender had authority". This proposed new language will clarify that it is intended to cover not only those individuals who reside within the household of the victim, (e.g., a live-in boyfriend), but also cover someone who is caring for the child, like a babysitter.

The final major difference between this CS and the original bill is the addition of a section which clarifies sentencing for concurrent and consecutive terms. Representative Ramona Barnes introduced a bill which was passed by the Legislature and has been interpreted by the courts to mean something quite different than what was originally intended. Sections 4 and 5 are an effort to restore some balance: if the offender is convicted of multiple charges, his sentences should not all run concurrently.

In summary, this proposed CS deals with the issues of joinder of cases, admissibility of evidence, sentencing for multiple offenders. I sincerely hope that after the testimony from individuals who have experience with prosecuting these cases, we'll have a clearer understanding of how these changes will have a positive effect on the administration of criminal justice in Alaska.

BILL NO: CS HB 237 (Judiciary) DATE: February 26, 1988

TITLE: An act relating to the physical and sexual assault and sexual abuse of children; amending Rule 8(a) of the Alaska Rules of Criminal Procedure; amending Rule 404(b) of the Alaska Rules of Evidence; and providing for an effective date.
CONTACT: Barbara Miklos
Executive Director
Council on Domestic Violence
and Sexual Assault
Dept. of Public Safety

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

The Council on Domestic Violence and Sexual Assault supports CSHB 237(Judiciary).

Sections 1 and 2 changes the language of the present 2nd Degree murder and 1st Degree assault statutes, by substituting the phrase "knowingly engages in conduct" for "intentionally performs an act". This change simply brings the language of the statutes into accordance with the way it has been interpreted by the Alaska Court of Appeals.

Section 3 allows a charge of 1st Degree Sexual Abuse of a Minor (SAM I) to be brought against a person over 18 who engages in sexual penetration with someone under 16 who is living in the same household and is under the offender's authority, or who has been temporarily entrusted to the offender's care. Under current statute, this offense would be classified as SAM I only if the victim were under 13 years of age. Section 4 similarly amends the 2nd Degree Sexual Abuse of a Minor (SAM II) statute to include situations in which a person over 18 engages in sexual contact with someone under 16 who is living in the same household and under the offender's authority, or who has been temporarily entrusted to the offender's care. Currently, this offense is classified as 3rd Degree Sexual Abuse of a Minor (SAM III) if the victim is 13, 14 or 15 years of age. The kind of offense addressed by these amendments is more likely to be repeated or continuous in nature than a similar assault by someone who does not hold a position of trust and authority over the child. Children who have been abused by an authority figure often have long-term emotional and psychological problems which stem from the abuse of power and betrayal of trust in assaults of that nature. The same protection afforded to children who are abused by a parent should be extended to children who are abused by other authority figures.

Sections 5 and 6 amend AS 12.55.025 to require that a person convicted of two or more physical or sexual assaults committed against a minor will be sentenced to some consecutive period of imprisonment for each conviction. The length of the consecutive period is to be determined by the judge in each case.

Section 7 permits consideration of a defendant's previous sexual offenses against a minor as an aggravating factor in determining the presumptive sentence for a crime under AS 11.41.410 - 11.41.460. This enables the court to increase the sentences of those offenders who have repeatedly victimized children. The aggravating factor applies to conduct "similar" to the present offense; the defendant need not have been tried or convicted for the previous offense. This further protects child victims, since many sexual assaults against children do not result in criminal convictions.

Section 8 modifies Rule 8 of the Alaska Rules of Criminal Procedure to allow two or more offenses to be charged in the same indictment or information if the offenses are of the same or similar character and it can be determined before trial that evidence of one charged offense would likely be admissible to prove another charged offense, or the offenses are based on the same act, or two or more acts are connected together or constitute parts of a common scheme or plan. Currently, a child may be required to testify at numerous trials under certain circumstances, (e.g.: if there are multiple victims). Even under the best circumstances, testifying in court can be extremely difficult for a child, as s/he may be required to confront the defendant and relive the abuse again and again. This amendment will lessen the trauma of the court process for these victims.

Section 9 amends Rule 404(b) of the Alaska Rules of Evidence to allow the introduction of evidence, in a trial for physical or sexual assault or abuse of a minor, of other similar acts by the defendant towards children in order to show a common scheme or plan. This evidence is allowable only if the prior offenses are reasonably recent, similar to the offense charged, and committed against persons similar to the prosecuting witness. Many sex offenders follow a pattern in their offenses. Evidence of previous similar acts is important to establish a framework in which the jury may fairly evaluate the victim's testimony regarding the charged acts.

Section 10 provides that the changes to the evidence rules made in section 9 applies to acts and offenses committed before the effective date of the bill. Section 11 establishes an immediate effective date.



Arthur English
Commissioner

SENATE COMMITTEE REPORT

REC'D
4/14/88
EJC

FURTHER

FINANCE

4/14/88

DATE TURNED INTO OFFICE _____

Mr. President:

JUDICIARY Committee considered CSHB 237 (JUD)

physical and sexual offenses against children; amending the definitions of the crimes of murder in the second degree and assault in the first degree; relating to the joinder of offenses of the same or similar character and the and recommended admissibility in a criminal proceeding of evidence, etc. (with House Letter of Intent)

[] replace with _____ CS _____) [] same title
[] or adopt _____ CS _____) [] new title

[] attached amendment(s) and

whole [] do pass

[] do not pass

[] no recommendation

individual recommendations

[] further referral to _____

letter of intent adopted House Letter

*House Letter
intent adopted*

Committee attached or [] adopted fiscal note(s)
[] new [] updated or previous
 zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Quirk
William Stuenkel
John Kober
Bob Anderson

[Signature]
Chairman signature and recommendation

[] Committee Backup attached

SENATE COMMITTEE REPORT

FURTHER JUDICIARY
FINANCE

3/8/88

DATE TURNED INTO OFFICE 4/13/88

Mr. President:

HESS Committee considered CSHB 237 (JUD)

physical and sexual offenses against children; amending the definitions of the crimes of murder in the second degree and assault in the first degree; relating to the joinder of offenses of the same or similar character and the admissibility in a criminal proceeding of evidence, etc. and recommended (with House Letter of Intent)

replace with _____ CS _____) same title
 or adopt _____ CS _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)
 new updated or previous
 zero fiscal impact *ND*

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

1 Sec. Josephson

2 Mr. Fanning No Rec

1 Paul Thicke (Do Pass)
Chairman signature and recommendation

Committee Backup attached