

SB

231

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

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 231 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

8 * Section 1. AS 11.41.434(a) is amended to read:

9 (a) An offender commits the crime of sexual abuse of a minor in
10 the first degree if ^{14/15} [*spiritually/physically/mentally*]

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
18 of law; [OR]

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

21 (C) at the time of the offense, is residing as a
22 member of a social unit in the same household with the offender
23 and is under the authority of the offender.

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

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

27 (1) being 16 years of age or older, the offender engages in
28 sexual penetration with a person who is under 13 years of age and
29 at least three years younger than the offender, or aids, induces,

1 causes or encourages a person who is 13, 14, or 15 years of age and at
2 least three years younger than the offender to engage in sexual pene-
3 tration with another person;

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

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

10 (A) is entrusted to the offender's care by authority
11 of law; [OR]

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

14 (C) at the time of the offense, is residing as a
15 member of a social unit in the same household with the offender
16 and is under the authority of the offender; or

17 (4) being 16 years of age or older, the offender aids,
18 induces, causes, or encourages a person who is under 16 years of age
19 to engage in conduct described in AS 11.41.455(a)(2) - 15 .
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American Civil Liberties Union

Alaska Civil Liberties Union - Legislative Committee - 217 Second St. #204 - Juneau, Alaska 99801

April 22, 1987

APR 23 1987

Senator Paul Fischer
Senate Health, Education and Social Services
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 231

Dear Senator Fischer:

The Alaska Civil Liberties Union would like to express its concern with the language of SB 231, now under consideration by the HESS Committee. While we do not oppose the concept of the bill, if we understand it correctly, we believe that the language does not accomplish the intent, and are also concerned that the amendment may be unconstitutionally vague.

We assume that the intent of the bill is to prevent sexual contact or penetration in the situation where the victim may be particularly vulnerable because of a family-type relationship of trust. Such a relationship may exist, for example, in the situation where a man and woman live together as a stable family unit without getting married, and one of them has a child. Clearly, the situation of sexual contact between one of the adults and the child would be comparable to the other situations addressed in the same section, and would fall within the intent of the statute.

However, here is another quite common situation to consider. Suppose that a household has two children, an eighteen year old girl and seventeen year old boy. A seventeen year old friend of the boy comes to stay with the family for a month in the summer, and has a sexual relationship with the eighteen year old girl. There is nothing criminal about such a relationship under present law. Would the daughter be punishable under the amendment? The answer depends on the meaning of the phrase "residing as a member of a social unit in the same household". Change the hypothetical a little bit to suppose that the visiting boy stays for the summer, or for a school semester. At what point does the liason become criminal? When are the boy and girl "residing together as a social unit".

The "void for vagueness" doctrine requires that a criminal statute be sufficiently specific to give notice of what is prohibited. We believe, based on the examples cited above, that the amendment does not give adequate notice unless further definition is given to the "social unit" and "residing" concepts. It is also quite clear that the cited examples do not involve violation of a relationship of special trust, as do the other sections of the statute, and we doubt whether the sponsors intend to criminalize conduct under those circumstances.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. H. Grant". The signature is written in dark ink and is positioned above the typed name.

Paul H. Grant
ACLU Legislative Committee

cc: Senator Rick Halford
Don Clocksin (for Anchorage distribution)
Marian Butcher

SB 231 -- Sexual Abuse of a Minor

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

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 assault of a minor.

Suggested added language:

At the suggestion of Public Defender Dana Fabe, I would request an addition to the bill. The bill's language states that "at the time of the offense (the minor child) is residing as a member of a social unit in the same household with the offender." Dana Fabe suggests adding "...and the offender has authority over the minor child." The Department of Law, which helped with technical aspects of the wording of the bill, concurs with that language.

Fiscal notes:

The bill has zero fiscal notes.

Support for the bill:

The bill with the suggested added language is supported by:

STAR

The Child Advocacy Network (81 agencies and 110 individuals statewide)
The Municipality of Anchorage Dept of Health and Human Services
The Anchorage Police Dept and APD Employees Assn legislative committee
The Alaska Association of Chiefs of Police
The Alaska Women's Lobby
The Department of Health and Social Services
The Department of Public Safety
The Alaska Network on Domestic Violence and Sexual Assault has not officially met to discuss this bill but strongly supports it in concept.

The law:

The law concerning sexual abuse of a minor differs from that concerning sexual assault. Under AS 11.41.410, it is sexual assault in the first degree to sexually penetrate another person of any age without the victim's consent.

But consent does not apply if the victim is a minor child (under the age of 18). In the case of minor children, the law looks at the age of the victim and the relationship between victim and offender.

The relationship between victim and offender: If the offender is the victim's legal parent or guardian, sexual penetration of a child under 18 (the offender's son or daughter, including an illegitimate or adopted child, or a step child) is 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 a Class B felony and 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 a 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

<u>Victim's age:</u>	under 13	under 18	13-15	16-17
<u>Act:</u>	sexual penetratn	sexual penetratn	sexual penetratn	sexual penetratn
<u>Relationship:</u>	_____	legal parent	_____	_____
<u>Offense:</u>	unclassified	unclassified	B felony	Not a crime
<u>Statute:</u>	11.41.434	11.41.434	11.41.436	



**STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS**

DEPARTMENT Health & Social Services	DIVISION Family & Youth Services	BILL NUMBER SB 231	SPONSOR Senator Halford, et. al.
DEPARTMENT POSITION The Department of Health and Social Services supports this legislation.			
PREPARED BY Yvonne Chase, Director, DFYS	DATE 4/22/87	COMMISSIONER'S SIGNATURE <i>Marge M. Munson</i>	DATE 4/22/87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Council on Domestic Violence and Sexual Assault Department of Law	CONSTITUENT GROUP(S) AFFECTED BY BILL
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

To make clear the applications of AS 11.41.434 to adult offenders residing in the same household as the victim, whether or not the offender has responsibility for the child's care or is related to the child.

ANALYSIS OF BILL/PROGRAM EFFECTS

The change would eliminate a possible loophole in the current statute by clarifying that an offender, if living in the same social unit, need not be related to nor responsible for the care of the victim, in order to be convicted of sexual abuse of a minor.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: SB 231
Publish Date: 4-8-87

Revision Date: _____

Agency Affected: Dept. of Corrections
BRU: _____

Title: "An Act related to sexual
abuse of a minor"

Sponsor: Halford, Jones, Duncan

Components: _____

Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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 should have minimal impact on the Department of Corrections.

Prepared by: Susan E. Knighton, Research Analyst IV
Division: Statewide Programs

Phone: 465-3376
Date: 4-21-87

Approved by Commissioner: Susan Humphrey-Barnett
Agency: Department of Corrections

Date: 4-21-87

Distribution (by preparer):

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

BILL NO: SB 231

DATE: April 10, 1987

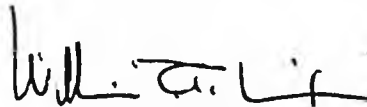
TITLE: An Act relating to sexual
abuse of a minor

CONTACT: Barbara Miklos
Executive Director
Council on Domestic
Violence & Sexual
Assault

DEPARTMENT OF
PUBLIC SAFETY

The Council on Domestic Violence and Sexual Assault supports the concept of SB 231 which adds a provision to the sexual abuse of a minor statutes to include an offense against a victim who is residing as a member of a social unit in the same household with the offender. Such a relationship is not covered in statutes describing first and second degree sexual abuse of a minor, yet a notable number of minors are sexually assaulted by live-in partners of the parent who are recognized by the child as a parental or authoritative figure. In many instances, encouragement is given to accept live-in partners as surrogate parents and to comply with any parental authority which may be extended. In essence this "sets up" a child to yield to an adult who is not the legally-recognized custodian, but who is in a position to exert a great degree of control and influence. Therefore, the child is vulnerable to this authority and should be specifically protected in statute.

The language in Section 11.41.434(a)(2)(C) is too broad because it could include consensual sexual penetration of a 15-year-old by a 19-year-old. Also the Council feels that the word illegitimate in Section (B) should be replaced with a term with less stigma on the child. It could read "a child born out of wedlock".



William R. Nix
Acting Commissioner

RESERVED

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: SB 231

Publish Date: _____

Revision Date: _____

Agency Affected: Public Safety

Title: An Act relating to sexual
abuse of a minor

BRU: Council on Domestic

Violence & Sexual Assault

Sponsor: Halford, Jones, etc.

Components: _____

Requestor: Senate HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Barbara Miklos, Executive Director
Division: Council on Domestic Violence & Sexual Assault

Phone: 465-4356

Date: 4-10-87

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 4/13/87

Distribution (by preparer):

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

JMK
4/17/87

POSITION PAPER

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 apparently designed to expand the offense of sexual abuse of a minor in the first degree to include persons who have authority over a child in the household but are not legally related to that child. Unfortunately, this bill is 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.

Specifically, the bill would allow conviction of an eighteen year old exchange student who has a romantic relationship with the seventeen year old daughter of the family with whom he is living. If sexual penetration including digital penetration were to occur, that eighteen year old would be subject to prosecution and conviction with an eight-year presumptive term. Similarly, if two adults with teenage children were to begin to live together, and the teenagers, age eighteen and seventeen were to have a romantic relationship which involved any sexual penetration, the eighteen year old could be convicted of this offense.

Since the apparent 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.

Based on the information above, the Alaska Public Defender Agency and the Office of Public Advocacy oppose this bill.

Dana Fabe
Dana Fabe, Director
Public Defender Agency

2/10/87
Date

Brant McGee

Brant McGee, Director
Office of Public Advocacy

Date 4/10/87

Garrey Peska
Commissioner Garrey Peska
Department of Administration

Date 4/13/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : SB 231
Publish Date : _____

REQUEST: _____
Revision Date: April 10, 1987
Title: "An Act relating to sexual
abuse of a minor"
Sponsor: Sen. Halford
Requestor: Senate Judiciary

Agency Affected: Department of Administration
BRU: Public Defender Agency
Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

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 Fabe, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: April 10, 1987

Approved by Commissioner: Garrey Peska
Agency: Department of Administration

Date: 4/13/87

Distribution (by preparer):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : SB 231
Publish Date : 4/2/87

REQUEST: _____
Revision Date: 4/10/87
Title: "An Act relating to sexual abuse of a minor..."
Sponsor: Halford, Jones, et.al.
Requestor: Senate Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

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

Phone: 274-1684
Date: 4/10/87

Approved by Commissioner: Garrey Peska
Agency: Department of Administration

Date: 4/13/87

Distribution (by preparer):

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