

HB

121



go0919hE  
Chenoweth  
3/13/89

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 121 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes of sexual assault on  
7 mentally incapable or incapacitated persons, and  
8 amending the penalty for the crime of sexual assault  
9 in the third degree; and providing for an effective  
10 date."

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

12 \* Section 1. AS 11.41.410(a) is amended to read:

13 (a) A person commits the crime of sexual assault in the first  
14 degree if, being any age,

15 (1) [BEING ANY AGE,] the defendant engages in sexual pene-  
16 tration with another person without consent of that person;

17 (2) [BEING ANY AGE,] the defendant attempts to engage in  
18 sexual penetration with another person without consent of that person  
19 and causes serious physical injury to that person;

20 (3) [BEING OVER THE AGE OF 18,] the defendant engages in  
21 sexual penetration with another person

22 (A) who the defendant knows is mentally incapable; and

23 (B) who is entrusted to the defendant's care

24 (i) by authority of law; or

25 (ii) in a facility or program that is required by  
26 law to be licensed by the Department of Health and Social  
27 Services.

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

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

1 second degree if

2 (1) the offender engages in sexual contact with another  
3 person without consent of that person;

4 (2) [BEING OVER THE AGE OF 18,] the offender engages in  
5 sexual contact with a person

6 (A) who the offender knows is mentally incapable; and

7 (B) who is entrusted to the offender's care

8 (i) by authority of law; or

9 (ii) in a facility or program that is required by  
10 law to be licensed by the Department of Health and Social  
11 Services; or

12 (3) [BEING OVER THE AGE OF 18,] the offender engages in  
13 sexual penetration with a person who the offender knows is

14 (A) mentally incapable; or

15 (B) incapacitated.

16 \* Sec. 3. AS 11.41.425 is amended to read:

17 Sec. 11.41.425. SEXUAL ASSAULT IN THE THIRD DEGREE. (a) An  
18 offender commits the crime of sexual assault in the third degree if  
19 [BEING OVER THE AGE OF 18,] the offender engages in sexual contact  
20 with a person who the offender knows is

21 (1) mentally incapable; or

22 (2) incapacitated [TEMPORARILY INCAFABLE OF APPRAISING THE  
23 NATURE OF THE PERSON'S CONDUCT AND IS PHYSICALLY UNABLE TO EXPRESS  
24 UNWILLINGNESS TO ACT].

25 (b) Sexual assault in the third degree is a class A misdemeanor  
26 [CLASS C FELONY].

27 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).  
28  
29

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

cc  
71B121

January 27, 1989

The Honorable Sam Cotten  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that corrects inequities in the law relating to sexual assault of mentally incapable and incapacitated persons. The current law was amended last year by CSHB 545(Jud), which was signed into law as ch. 96, SLA 1988.

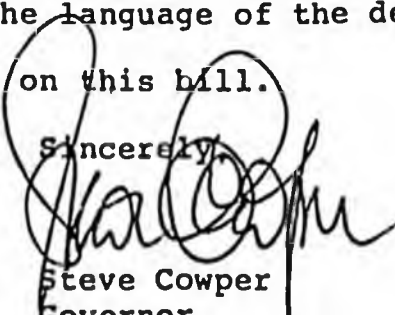
The inequity was created by an oversight, and had the effect of changing an uncontroversial law that had been in effect since the 1978 criminal code revision took effect. The main problem lies in the age element added to several provisions. For example, as a result of last year's amendments, if a 19-year-old and a 17-year-old sexually assault a person they know to be incapacitated, the 19-year-old could be prosecuted for a class B felony, and the 17-year-old would not have violated the law. Under prior law, both offenders could have been prosecuted.

A similar inequity is present in those portions of last year's amendments that stated new crimes. For example, if a 19-year-old orderly in a licensed facility and a 17-year-old orderly in a licensed facility sexually assault a person they know to be mentally incapable, the 19-year-old could be prosecuted for an unclassified felony, and the 17-year-old would not have violated the law.

In addition, the bill substitutes the word "incapacitated," in AS 11.41.425(a)(2), for the existing law's description of the condition of being incapacitated. This change is made because "incapacitated" is defined in AS 11.41.470(1), and there is no need to repeat the language of the definition.

I urge your favorable action on this bill.

Sincerely,

  
Steve Cowper  
Governor

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Law  
 Title: "sexual assault on mentally  
incapable or incapacitated persons." BRU: Prosecution  
 Sponsor: Rules Committee Components: All  
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CT.AIMS						
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						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill corrects a drafting oversight in the law relating to sexual assault of mentally incapable or incapacitated persons, which passed the legislature last year as CSHB 545 (Jud). Because the changes proposed in the bill are remedial in nature, the bill will not have fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: December 27, 1988  
 Approved by Commissioner: Grace Berg Schable, Atty. Gen. Date: December 27, 1988  
 Agency: Department of Law

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Effect of amendments. — The 1985 amendment rewrote subsection (a).

NOTES TO DECISIONS

Applied in Jager v. State, Ct. App. Op. No. 772 (File No. A-1145), P.2d (1988).

Sec. 11.41.450. Incest.

NOTES TO DECISIONS

Cited in Theodore v. State, Ct. App. Op. No. 435 (File No. A-554), 692 P.2d 987 (1985).

Sec. 11.41.455. Unlawful exploitation of a minor.

NOTES TO DECISIONS

Conviction and sentence upheld. — See Depp v. State, Ct. App. Op. No. 390 (File No. 7002), 686 P.2d 712 (1984).

Sec. 11.41.470. Definitions. For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

(1) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct and physically unable to express unwillingness to act;

(2) "mentally incapable" means a person who suffers from a mental disease or defect that renders the person incapable of understanding the nature of consequences of the person's conduct, including the potential for harm to that person;

(3) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;

(4) "without consent" means that a person

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

(B) is incapacitated as a result of an act of the defendant. (§ 3 ch 166 SLA 1978; am § 5 ch 78 SLA 1983; am § 5 ch 96 SLA 1988)

Revisor's notes. — Reorganized in 1988 to alphabetize the defined terms. Effect of amendments. — The 1988 amendment inserted paragraph (2).

nor in the fourth degree.

NS

tion under pre-1983 section — See Moor v. State, Ct. App. Op. No. 43 (File No. A-315), 709 P.2d 498

tion and sentence under section upheld. — See Depp v. State, Ct. App. Op. No. 390 (File No. 7002), 686 P.2d 712 (1984).

ion reversed. — Conviction under pre-1983 version of this section where the jury was not properly instructed regarding the culpable offense for the crime. Potts v. State, Ct. App. Op. No. 553 (File No. A-247), 712 P.2d 985.

in light of Flink v. State. — In Flink v. State, Ct. App. Op. No. 43 (File No. A-315), 709 P.2d 498, the court read before 1983 was reapplication of the specific instruction that the defendant acted with specific intent to achieve his own gratification or the sexual arousal of the defendant. See Depp v. State, Ct. App. Op. No. 390 (File No. 7002), 686 P.2d 712 (1984).

ate v. R.H., Ct. App. Op. No. 7768, 683 P.2d 269 (1984); Depp v. State, Ct. App. Op. No. 591 (File No. 7002), 686 P.2d 272 (1986); Agwiak v. State, Ct. App. Op. No. 789 (File No. 7002), 686 P.2d 610 (1988).

defense. In a prosecution where the defendant is charged with a defense that the defendant is the legal spouse of the victim,

in a prosecution under AS 11.41.440, whenever a defendant is charged with a crime on a victim's being under the age of 16 years of age at the time of the offense, the defendant is presumed to be the legal spouse of the victim if the defendant is at least 18 years of age at the time of the offense. (am § 2 ch 43 SLA 1988)

STATE OF ALASKA  
THE LEGISLATURE

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

Mary Van Nimwegen

H. HESS 2-22-89