

HB

361

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 361

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title "...sexual assault committed against BRU: Prosecution  
 ...unaware that a sexual act is being committed." Component: All  
 Sponsor: Representative B. Davis  
 Requestor: House Judiciary COMPONENT SERIAL NO. 

--	--	--	--

  
 84 through 91

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Pegues*

Prepared By: Richard I. Pegues Director Phone: 465-3672  
 Division: Administrative Services Date: January 21, 1992  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: January 21, 1992

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 361

This bill amends AS 11.41.420(a) to add to the offense of sexual assault in the second degree the conduct of engaging in sexual penetration with a person who is unaware that a sexual act is being committed. The bill also amends AS 11.41.425(a) to include in the crime of sexual assault in the third degree the conduct of engaging in sexual conduct with a person who is unaware that a sexual act is being committed. AS 11.41.432 is amended to provide that it is an affirmative defense to a crime charged under AS 11.41.420(a)(3)(C) or AS 11.41.425(a)(3) that the defendant held a reasonable belief that the victim of the sexual act would not have objected to the act if the victim had been aware of the act. Last, the bill amends AS 11.41.470 to add a new paragraph defining "sexual act" as meaning sexual penetration or sexual contact. These changes are not expected to have a fiscal impact on the department.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 361

Revision Date: \_\_\_\_\_ Department Affected: Public Safety  
 Title: An Act relating to the offenses of BRU: Domestic Violence & Sexual Assault  
sexual assault committed against a person... Component: Domestic Violence & Sexual Assault  
 Sponsor: B. Davis et al  
 Requestor: House Judiciary COMPONENT SERIAL NO. 

	5	2	1
--	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
-------------------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)  
 No fiscal impact is anticipated.

Prepared By: Joanne E. Lopez *Joanne E. Lopez* Phone: 465-4356  
 Division: Council on Domestic Violence & Sexual Assault Date: 1-21-92  
 Approved by Commissioner: Richard L. Burton  
 Agency: Department of Public Safety Date: 1-21-92

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. H.B. 361

Revision Date: \_\_\_\_\_ Department Affected: Department of Corrections

Title: "An Act related to sexual assault  
committed against a person who is unaware."  
BRU: Statewide Operations

Component: Various

Sponsor: Rep. Bettye Davis

Requestor: Judiciary COMPONENT SERIAL NO. 

--	--	--	--

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

The frequency of this type of offense is not expected to be high enough to cause significant fiscal impact.

Prepared By: Carl Nickel, Director *Carl Nickel* Phone: 465-3376

Division: Administrative Services Date: 01/17/92

Approved by Commissioner: Lloyd Hames, Commissioner *Lloyd Hames*

Agency: Department of Corrections Date: 01/17/92

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill No. HB 361

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to offenses of sexual BRU: Trial Courts  
assault... Components: \_\_\_\_\_  
 Sponsor: B. Davis  
 Requestor: Judiciary COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

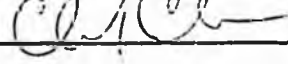
POSITIONS:

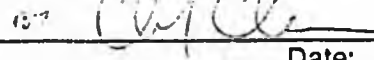
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228  
 Division: Alaska Court System Date: 01/21/92

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 01/21/92  
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

**BILL NO. HB 361**

Revision Date: \_\_\_\_\_  
 Title: An Act relating to Offenses of Sexual Assault Committed Against Person Unaware that Sexual Act is Being Committed  
 Sponsor: Representative Bettie Davis  
 Requestor: House Judiciary

Department Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy

COMPONENT SERIAL NO. 

		4	3
--	--	---	---

**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)  
 No impact.

Prepared by: Kevin Brooks, Director *KB*  
 Division: Administrative Services

Phone: 465-2277  
 Date: 1/21/92

Approved by Commissioner: Nancy Bear Usera *NBU*  
 Agency: Administration

Date: 1/21/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Olc., & Impacted Agency(ies).

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 361

Revision Date: \_\_\_\_\_  
Title: An Act relating to the offenses of sexual assault against a person who is unaware that a sexual act is being committed.  
Sponsor: Rep. B. Davis  
Requestor: House Judiciary

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender Agency  
COMPONENT SERIAL NO. 

4	2		
---	---	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
See attached.

Prepared by: John Salemi, Public Defender  
Division: Public Defender Agency

Phone: 279-7541  
Date: January 21, 1992

Approved by Commissioner: Nancy Bear Usera  
Agency: Administration

Date: 1/21/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

## ANALYSIS: (continued)

Title: "An Act relating to the offenses of sexual assault against a person who is unaware that a sexual act is being committed."

HB 361 amends the definition of criminal offenses, Sexual Assault in the Second Degree and Sexual Assault in the Third Degree. This revision of the criminal code ensures that a person can be prosecuted for a sexual act committed against a person/victim who is unaware that the act is being committed. The proposed legislation further distinguishes said criminal sexual acts from those contained in AS 11.41.410 (Sexual Assault in the First Degree). Thus this bill defines certain conduct as criminal and reclassifies (to the extent that the defined conduct was already embraced in current criminal statutes) the crimes in terms of potential sanctions.

It is unlikely that such an amendment would have a significant impact on Public Defender work or caseload numbers. As such, no fiscal impact is anticipated.

SECTIONAL ANALYSIS  
SPONSOR SUBSTITUTE FOR HB 361

Section 1: Findings and Purpose

Section 2: The bill section amends the first degree sexual assault statute to make illegal for a health care worker to engage in sexual penetration during the course of professional treatment with a person who the offender knows is unaware that a sexual act is being committed. By specifically including this conduct within the statute, the legislation closes the door on a technical legal defense to a charge of sexual assault in a future case similar to the one involving Dr. Ake. First degree sexual assault is an unclassified felony.

Section 3: The bill section amends the second degree sexual assault statute to make it illegal for a health care worker to engage in sexual contact during the course of professional treatment, and for anyone to engage in sexual penetration, with a person who the offender knows is unaware that a sexual act is being committed. As with bill section 2, the legislation closes the door on a technical legal defense to a charge of sexual assault. Second degree sexual assault is a class B felony.

Section 4: The bill section amends the third degree sexual assault statute to make it illegal for anyone to engage in sexual contact with a person who the offender knows is unaware that a sexual act is being committed. As with bill section 2, the legislation closes the door on a technical legal defense to a charge of sexual assault. Third degree sexual assault is a class C felony.

Section 5: The bill section is amended by adding a new subsection to read: "It is an affirmative defense to a crime charged under AS 11.41.420(a)(3)(C) or 11.41.425(a)(3) that the defendant held a reasonable belief that the victim of the sexual act would not have objected to the act if the victim had been aware of the act."

Section 6: The bill section defines the term "health care worker" as used in bill sections 2 and 3. The definition includes those persons who are employed in a job in which it is possible to engage in sex with a patient without the patient being aware that sex is occurring.

7-LS0547G  
Casey  
1/24/92

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 361 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES B.DAVIS, Ellis, Barnes, Ulmer, Lincoln, Bruckman, Brown, Boyer, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the offenses of sexual assault committed against a person who is  
2 unaware that a sexual act is being committed."

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

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

5 (a) An offender [A PERSON] commits the crime of sexual assault in the first degree if

6 (1) the offender [DEFENDANT] engages in sexual penetration with another  
7 person without consent of that person;

8 (2) the offender [DEFENDANT] attempts to engage in sexual penetration with  
9 another person without consent of that person and causes serious physical injury to that person;

10 or

11 (3) the offender [DEFENDANT] engages in sexual penetration with another  
12 person

13 (A) who the offender [DEFENDANT] knows is mentally incapable; and

14 (B) who is entrusted to the offender's [DEFENDANT'S] care

- 1 (i) by authority of law; or  
2 (ii) in a facility or program that is required by law to be licensed  
3 by the Department of Health and Social Services; or  
4 (4) the offender engages in sexual penetration with a person who the offender  
5 knows is unaware that a sexual act is being committed and  
6 (A) the offender is a health care worker; and  
7 (B) the offense takes place during the course of professional treatment  
8 of the victim.

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

10 (a) An offender commits the crime of sexual assault in the second degree if

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

13 (2) the offender engages in sexual contact with a person

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

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

16 (i) by authority of law; or

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

19 (3) the offender engages in sexual penetration with a person who the offender  
20 knows is

21 (A) mentally incapable; [OR]

22 (B) incapacitated; or

23 (C) unaware that a sexual act is being committed;

24 (4) the offender engages in sexual contact with a person who the offender  
25 knows is unaware that a sexual act is being committed and

26 (A) the offender is a health care worker; and

27 (B) the offense takes place during the course of professional treatment  
28 of the victim.

29 \* Sec. 3. AS 11.41.425(a) is amended to read:

30 (a) An offender commits the crime of sexual assault in the third degree if the offender  
31 engages in sexual contact with a person who the offender knows is

- 1 (1) mentally incapable; [OR]  
2 (2) incapacitated; or  
3 (3) unaware that a sexual act is being committed.

4 \* Sec. 4. AS 11.41.470 is amended by adding new paragraphs to read:

- 5 (7) "health care worker" means a person who is or who purports to be an  
6 anesthesiologist, acupuncturist, chiropractor, dentist, health aide, hypnotist, massage therapist,  
7 mental health counselor, midwife, nurse, nurse practitioner, osteopath, naturopath, physical  
8 therapist, physical therapy assistant, physician, physician's assistant, psychiatrist, psychologist,  
9 psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or  
10 a substantially similar position;  
11 (8) "sexual act" means sexual penetration or sexual contact.

**ALASKA NETWORK**  
**ON**  
**DOMESTIC VIOLENCE**  
**AND**  
**SEXUAL ASSAULT**

419 6th Street, No. 116 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC); Advocates for Victims of Violence (AVV);  
Aiding Women in Abuse and Rape Emergencies (AWARE);  
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWiC);  
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;  
Kodiak Women's Resource & Crisis Center (KWRC);  
Merrill Regional Women's Crisis Program; Parent Aid Family Support Center;  
Safe & Fear-Free Environment (SAFE); Geward Life Action Council (SLAC);  
Sitka Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);  
Standing Together Against Rape (STAR);  
Tongass Community Counseling Center; Tundra Women's Coalition (TWC);  
Unalaska Against Sexual Assault & Family Violence (USAFV);  
Valley Women's Resource Center (VWRC);  
Women in Crisis Counseling & Assistance (WCCA);  
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

HB 361  
**SEXUAL ASSAULT BY HEALTH PRACTITIONERS**

The Alaska Network on Domestic Violence and Sexual Assault supports HB 361, which provides clarification of the law regarding sexual assault in health care settings. The Network is a non-profit organization with 22 member programs which provides service to victims and their families.

In the past, the legislature has recognized that when professionals in positions of special trust use that trust to sexually assault an especially vulnerable group, those professionals must be held accountable for that violation. Nowhere is this more the case than when health care workers, whose profession is to provide for the physical and mental well-being of society, misuse the trust and vulnerability of their patients in order to rape them. Breach of that trust is irreparable. Following the Ake case, Network programs heard from many women, especially survivors of sexual assault, who felt that they were facing a choice between their primary health care needs and their physical safety.

The Network urges your support for this important legislation.