

HB

231

HFIN

FILE

HOUSE COMMITTEE REPORT

(11) *

Date Referred: April 7, 1993

FURTHER REFERRALS:

Date of Committee Action: 2/4/94

The FINANCE Committee considered:

HB 231

HOUSE BILL NO. 231

AGGRAVATING/MITIGATING FACTORS: SEX CRIMES

"An Act relating to aggravating and mitigating factors at sentencing."

RECOMMENDATIONS:

be replaced with CS HB 231 (FIN) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

5 zero fiscal note LAW; AK COURT Sys; 2 Admin, DPS zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>E.P. Maclean</i> Maclean	<input checked="" type="checkbox"/>	<i>Richard Foster</i> Foster		<input checked="" type="checkbox"/>	
<i>Ronald Larson</i> Larson	<input checked="" type="checkbox"/>				
<i>Tom Martin</i> Martin	<input checked="" type="checkbox"/>				
<i>Paul Parrott</i> Parrott	<input checked="" type="checkbox"/>				
<i>Zan Gressendorf</i> Gressendorf	<input checked="" type="checkbox"/>				
<i>Tom Hoffman</i> Hoffman	<input checked="" type="checkbox"/>				
<i>Mike Navarre</i> Navarre	<input checked="" type="checkbox"/>				
<i>Ray Brown</i> BROWN	<input checked="" type="checkbox"/>				
<i>Tom Thurnau</i> Thurnau	<input checked="" type="checkbox"/>				

Ronald Larson *E.P. Maclean*
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 231 (JUD)

Revision Date: December 9, 1993
Title: "An Act relating to aggravating and mitigating factors at sentencing."
Sponsor: Representative Kott
Requestor: Governor's Office

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.) This bill makes miscellaneous amendments to the aggravating and mitigating factors used at sentencing. These sentencing provisions take place after a defendant has been convicted, and therefore they will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division
Approved by Commissioner: Charles E. Cole (Attorney General)
Agency: Department of Law

Phone: 465-3672
Date: December 9, 1993
Date: December 9, 1993

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB 231(JUD)

Revision Date: 01/28/94 Dept. Affected: Alaska Court System
 Title: Aggravating/mitigating factors for sex crimes BRU: Trial Courts
 Sponsor: Rep. Kott Components: _____
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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 EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: \$ None

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

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Agency: Alaska Court System Date: 01/28/94

Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System Date: 01/28/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 231 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to aggravating and mitigating factors at sentencing" BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: Rep. Kolt
 Requestor: (H) Fin COMPONENT SERIAL NO. 43

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy
 Approved by Commissioner: Nancy Bear Usura
 Agency: Administration

Phone: 274-1684
 Date: _____
 Date: 1/28/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 231 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to aggravating and mitigating BRU: Public Defender Agency
factors at sentencing" Component: Public Defender Agency
 Sponsor: Rep. Kott
 Requestor: (H) Fin COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Salemi, Public Defender Phone: 264-4400
 Division: Public Defender Agency Date: _____
 Approved by Commissioner: Nancy Bear Usera Date: 1/28/94
 Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 231(JUD)

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act relating to aggravating and mitigating factors at sentencing" BRU: Alaska State Troopers
 Sponsor: Rep Kott Component: Detachments
 Requestor: H. FIN COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () <small>Revenue Code</small>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

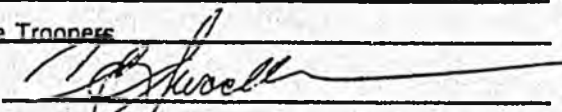
Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No significant fiscal impact upon the Alaska Statr. Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 2/1/94
 Approved by Commissioner:  Date: 2/1/94
 Agency: Richard L. Burton, Dept. of Public Safety

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BY: Rep. Kay Brown

AMENDMENT |

TO: CSHB 231 (JUD)

Page 2, line 6, Insert after "offense"

" , unless the prior conviction and the present offense are violations of AS 11.41."

SPONSOR STATEMENT
CS FOR HOUSE BILL 231(JUD)

AS 12.55.155(c) establishes a series of aggravating factors relevant to presumptive sentencing. Subsection (18) of this statute addresses aggravating factors to be used in sentencing people convicted of sex crimes. As the law now reads, there is an aggravating factor when a defendant is convicted of a sex crime against a minor and has engaged in the same or similar conduct against a minor. Also, there is an aggravating factor when the defendant is convicted of sexual assault (or unlawful exploitation of a minor) and previously engaged in sexual assault (or unlawful exploitation of a minor). However, the law does not currently provide an aggravating factor pertaining to a potential situation whereby a defendant is subject to presumptive sentencing for sexual abuse of a minor and he previously committed sexual assault against an adult. Section 1 of this bill corrects this problem.

Pursuant to Section 1, in all cases where a defendant is subject to presumptive sentencing for a felony sex crime, any other conduct which violates AS 11.41.410 through AS 11.41.460 constitutes an aggravating factor.

It is the sponsor's intent that only conduct other than the specific act which is the basis for a conviction shall constitute an aggravating factor. That is to say, if event "A" is the basis for a given conviction, then event "A" can not be the basis for aggravating the sentence.

Section 1 of CS For HB 231 has a collateral effect of enlarging the class of cases which, pursuant to AS 12.55.165(b), may not be referred to the Three Judge Sentencing Panel.

Section 2 establishes a mitigating factor for purposes of presumptive sentencing. This mitigating factor operates when a prior felony conviction triggers the presumptive sentencing provisions and said prior conviction pertains to a less serious class of offenses than the offense before the court.

It respectfully is asserted that Sections 1 and 2 of this bill capture the essence of recommendations made by the Alaska Sentencing Commission. Additionally, Section 1 corrects an unfortunate gap now embodied in existing law. For these reasons, CS For House Bill 231 is commended to you for approval.

SECTIONAL ANALYSIS
CS FOR HOUSE BILL 231 (JUD)

Section 1, which amends AS 12.55.155(c)(18)(B) and deletes AS 12.55.155(c)(18)(C), expands the scope of other sex crimes as an aggravating factor in the presumptive sentencing of sex offenders. As amended, AS 12.55.155(c)(18)(B) establishes an aggravating factor when the defendant is subject to presumptive sentencing for a felony crime "...specified in AS 11.41.410 - 11.41.455 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 -11.41.460 involving the same or another victim;". It may be noted that Section 1 of CS HB 231 does not require that the conduct utilized as an aggravating factor be reduced to a conviction. And, it does not require that said conduct have occurred prior to the crime for which the defendant is being sentenced.

It may be noted that Section 1 of this bill has the collateral effect, pursuant to AS 12.55.165(b), of expanding the class of cases which may not be referred to the Three Judge Sentencing Panel

Section 2 establishes a mitigating factor which operates when a prior felony conviction triggers presumptive sentencing and the prior felony conviction is in a less serious class than the offense for which the defendant is being sentenced.



Alaska Sentencing Commission

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501 (907) 279-2526 FAX (907) 276-5046

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March 25, 1993

Representative Pete Kott
Alaska House of Representatives
State Capitol
Juneau, AK 99811

RE: House Bill 231

Dear Representative Kott:

Thank you for sponsoring HB 231, "an act relating to aggravating and mitigating factors at sentencing." This bill enacts recommendations made by the Alaska Sentencing Commission in its 1991 annual report.

Section 1 of the bill is similar to the commission's recommendation that the list in AS 12.55.155(c) be expanded by adding an aggravating factor for sex offenders who have committed a prior sex offense. The commission found that repetitive sex offenders present such a high risk to the public that more prison time is necessary than current presumptive sentences would impose. The commission found that sex offenders usually offend multiple times and/or against multiple victims and are rarely caught the first time they offend. They often escape conviction or are allowed to plead to lesser conduct because sex offenses are difficult to prove, especially when the victims are children. With Class B offenses in particular, the commissioners felt that there was a need to impose sentences long enough to allow completion of a two-year sex offender treatment program.

In 1992, the legislature added an aggravator to be applied when the offense is one specified in AS 11.41.410-.425 and .455, and the defendant has previously engaged in conduct covered by one of those sections involving the same or another victim. AS 12.55.155(c)(18)(c). For some reason, defendants convicted of sexual assault and unlawful exploitation of a minor are not covered if their prior conduct includes sexual abuse of a minor, and defendants convicted of sexual abuse of a minor are not covered if their prior conduct includes sexual assault of an adult. HB 231 closes the gap in coverage and is consistent with the recommendations of the Sentencing Commission.

Section 2 of HB 231 adds a mitigating factor when the defendant's prior offense was of a less serious class than the present offense. This mitigating factor was part of the original list adopted by the legislature, but was repealed in 1982. (There is a parallel aggravating factor for when defendant's prior conduct was of a more serious class of offense). The legislature's rationale for eliminating the mitigating factor was that it could reward criminals who in fact were developing an escalating pattern of seriousness in their criminal behavior. However, the commission felt that it should be reinstated, since there are times when it is necessary to remove rigidity from the system.

For example, a person might be convicted of a minor felony, such as theft of a snowmachine or bootlegging, as a young adult. If that person is convicted of first-degree assault ten years later, he or she will serve the same term as an offender with a recent manslaughter conviction. A large number of young adults commit low-level property offenses, and the commission felt that these offenses should not be treated as the equivalent of serious felonies committed by a more mature individual. To answer the concern expressed by the legislature in repealing this mitigating factor originally, the commission recommended that the legislative history reflect that this factor should not be applied if it would reward an escalating pattern of behavior or criminal career. Section 2 is consistent with the commission's recommendations.

Section 3 of HB 231 appears to maintain the status quo of the 1992 amendment which forbid referral of a case to the three-judge panel based on the defendant's potential for rehabilitation if the court finds certain aggravating factors, in this case prior sexual abuse of a minor. The commission took no position on this legislation last year, but your amendment appears to be consistent with last year's amendment.

We would urge the legislature to adopt HB 231. Please feel free to call if we can be of assistance.

Sincerely,



Marcia Vandercook
Staff Attorney

MV:pjs