

HB

212

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/9/94

FURTHER:

DATE TURNED INTO OFFICE: 5-894

The Finance Committee considered CS FOR HOUSE BILL NO. 212(JUD)

"An Act relating to a factor in aggravation of the presumptive term of a criminal sentence, and prohibiting the referral of a sentence based on application of that factor to a three-judge sentencing panel as an extraordinary circumstance."

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous S CS CS HB 212 (JUD)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

- adopts _____ Letter of Intent
- further referral to the _____

- do pass
- do not pass
- no recommendation
- individual recommendations

NEW FISCAL NOTES

| Department | Date | Zero | Fiscal |
|------------|---------|--------------|------------|
| DOC | 3/22/94 | 0 | 600.0 app. |
| | | | |
| | | | |
| | | | |
| | | | |

PREVIOUS FISCAL NOTES

| Department | Date | Zero | Fiscal |
|---------------|--------|--------------|--------|
| #7 Courts | 2/7/94 | 0 | |
| #8 DPS | 2/1/94 | 0 | |
| #9 DOLA | 2/7/94 | 0 | |
| #10 DOR (PDR) | 2/7/94 | 0 | |
| #11 DOA (OPA) | 2/7/94 | 0 | |

Appropriation No Fiscal Note

DO PASS:

Greg Kelly

 1. True Pearce
 Co-Chair: Signature/Recommendation

OTHER RECOMMENDATIONS:

Alan Rai No Rec

John ... No Rec

Bob ... No Rec

 2. Alan No Rec
 Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BD (S) Publish Date: 2-9-94

Revision Date: 02/07/94 Dept. Affected: Alaska Court System
 Title: Sentencing: aggravating factors BRU: Trial Courts
 Sponsor: Reps. Maclean, Ulmer 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 | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

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 *CSC* Phone: 264-8228
 Agency: Alaska Court System Date: 02/07/94
 Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CSC*
 Agency: Alaska Court System Date: 02/07/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 8
 Bill Version: CS HB 212 (JUD)
 (S) Publish Date: 2-9-94

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act relating to a factor in criminal sentence." BRU: Alaska State Troopers
 Sponsor: H. JUD Component: Detachments
 Requestor: S. JUD 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 () | -0- | -0- | -0- | -0- | -0- | -0- |
| <small>Revenue Code</small> | | | | | | |

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 State Troopers is anticipated.

Changes in CS HB 212 (JUD) have no fiscal impact. This fiscal note is appropriate.
2-8-94 date [Signature] Comte Aide (initial)

Prepared By: Lee Ann Lucas Phone: 465-4322
 Division: Commissioner's Office Date: 2/1/94
 Approved by Commissioner: [Signature] Date: 2/1/94
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

B 29
Bill Version: SCSCSHB 212 (Jud) -
(S) Publish Date: 2-9-94

Revision Date: February 7, 1994
Title: "An Act relating to a factor in aggravation of the presumptive term of a criminal sentence."
Sponsor: Representative MacLean
Requestor: Senate Judiciary Committee

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 | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

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.)
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: February 7, 1994
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law Date: February 7, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSCSHB 212 (JUD)

ANALYSIS CONTINUATION:

The Senate Judiciary Committee Substitute for HB 212 amends AS 12.55.155(c) to provide that when the offense was felony sexual abuse of a minor in the first and second degrees, and when the offender occupied a position of authority in relation to the victim, the sentencing court shall consider these factors and may aggravate the presumptive term set out in AS 12.55.125. The bill also amends AS 12.55.165(L) to provide that a court may not refer a case to a three judge panel based on the defendant's potential for rehabilitation if the court finds that either of these same factors is present. These sentencing provisions occur after the conviction of a defendant and, therefore, there should not be a fiscal impact for the Department of Law.

FISCAL NOTE

.o. 10
 P-II Version: SCS CSHB 212 (Jud)
 (S) Publish Date: 2-9-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to a factor in aggravation
of the presumptive" BRJ: Public Defender Agency
 Component: Public Defender Agency
 Sponsor: Rep. MacLean
 Requestor: (S) Jud 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
 Division: Public Defender Agency
 Approved by Commissioner: Nancy Bear Usery
 Agency: Administration

Phone: 264-4400
 Date: _____
 Date: 2/7/94

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FISCAL NOTE

No. 11

Bill Version: SCS HR 212 (Jud)

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

(S) Publish Date: 2-9-94

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to a factor in aggravation BPU: Office of Public Advocacy
of the presumptive" Component: Office of Public Advocacy
 Sponsor: Rep. MacLean
 Requestor: (S) Jud 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 |
| 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: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: _____
 Approved by Commissioner: Nancy Bear Usura Date: 2/7/94
 Agency: Administration

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STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO.: SCS CSHB 212(JUD)

| | | | |
|----------------|------------------------------------|---------------------|----------------------|
| Revision Date: | March 18, 1994 | Dept. Affected: | Corrections |
| Title: | Aggravating Factor in Sex Offenses | BRU: | Statewide Operations |
| Sponsor: | Rep. MacLean | Component: | Institutions |
| Requestor: | Senate Finance | Component Serial #: | 707-726 |

Expenditures/Revenue (Thousands of Dollars)

| OPERATING EXP. | FY95 | FY96 | FY97 | FY98 | FY99 | FY00 |
|------------------------|----------|----------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | 0 | 0 | 233.0 | 233.0 | 233.0 | 233.0 |
| TOTAL OPERATING | 0 | 0 | 233.0 | 233.0 | 233.0 | 233.0 |

| | | | | | | |
|-------------|-------|-----|-----|-----|-----|-----|
| CAPITAL EXP | 600.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-------------|-------|-----|-----|-----|-----|-----|

| | | | | | | |
|---------------------|--|--|--|--|--|--|
| CHANGES IN REVENUES | | | | | | |
|---------------------|--|--|--|--|--|--|

FUND SOURCE

| | | | | | | |
|--------------------------|--------------|----------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 600.0 | 0 | 233.0 | 233.0 | 233.0 | 233.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MITIA | | | | | | |
| Other | | | | | | |
| TOTAL | 600.0 | 0 | 233.0 | 233.0 | 233.0 | 233.0 |

Estimate of any current year (FY94) cost \$ 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 |

ANALYSIS: Please refer to the attached explanation.

Prepared by: Diane Schenker, Special Assistant
 Division: Office of the Commissioner
 Approved by: J. Frank Prewitt, Jr., Commissioner
 Agency: Department of Corrections

Phone: 465-4643/786-2147
 Date: 3/22/94
 Date: 3/22/94
 Page 1 of 3

The bill would add an aggravator to Sexual Abuse of a Minor I and II if the perpetrator were in a position of authority over the victim. Being in a position of authority over the victim is already an element of certain SAM offenses. This aggravator would only apply to offenses in which the element of authority has not already been factored into the type of crime charged. The bill would prohibit SAM cases involving this aggravator from being referred to a three-judge panel based upon the defendant's potential for rehabilitation.

Assumptions

1. The department's 3/31/93 fiscal note assumed that because these types of sex offenses often result in longer-than-average sentences, the impact of adding this aggravator would be minimal. The department's 2/7/94 revised fiscal note assumed that: (a) the availability of a new aggravator will simply further lengthen already longer-than-average sentences, and (b) even a minimal increase in sex offender sentence lengths will have a fiscal impact on the department due to the density of SAM offenders in the prison population.
2. Criminal records available for research (OBSCIS) include only the offense (e.g., SAM I, SAM II, etc.). The actual elements of individual offenses are unknown unless individual file reviews are done. The department does not have sufficient resources to conduct individual file reviews within the time limits necessary to assess this legislation. The Department of Law has estimated that this element will "very rarely" be a factor in aggravation.
3. An unclassified SAM I could be aggravated from the presumptive eight year sentence up to 30 years. According to the Department of Law, it would not be unrealistic to predict aggravation up to a 15 year sentence, which is almost a 100% increase in sentence length. A Class B SAM II could be aggravated from a probable 2 year sentence up to a probable 4 year sentence; again a 100% increase in sentence length.
4. Since the actual sentence length could be expected to increase by up to 100%, but the actual rate of occurrence of cases is unknown and occurs "very rarely", the department conservatively estimates only a 5% aggregate increase in the SAM II population as a result of this proposed sentence enhancement, beginning in FY97 when probable two-year sentences would be aggravated up to probable four-year sentences. The fiscal note does not measure the aggravating effect on a percentage of SAM I cases because the impact would not occur until after six years due to the current length of sentence.

5. On June 30, 1993, there were 113 prisoners incarcerated for Sexual Abuse of a Minor II, or 41,245 prisoner-days per year being served for these offenses under current sentencing laws.

6. The average statewide operating cost of a prison bed is \$113 per day. Operating expenses are reflected under "miscellaneous" on page 1 of the fiscal note since the total operating cost involves multiple categories of expenses. It is not possible to identify specific positions or locations of new positions necessary to absorb additional prisoner-days using this formula.

7. The cost of constructing an average prison bed in Alaska is approximately \$100,000. Capital expenses might be reduced if additional beds were purchased under contract, however there are no contract beds currently available in Alaska for prisoners with higher than minimum custody.

8. The prison system cannot absorb any additional prisoners without additional resources. The system has been operating over emergency capacity throughout the past year. Even when all aspects of the department's current population management plan are achieved, only the current overcrowding is likely to be addressed, not including any additional numbers caused by new legislation. In addition to posing safety hazards, operating over emergency capacity for prolonged periods of time may result in fines of up to \$1,000 per day if the department is found in contempt of court for violating population caps.

Operating Expenses

A 5% increase in the 41,245 SAM II prisoner-days = 2,062 additional prisoner-days

2,062 prisoner-days X \$113 per day = \$ 233,006 per year beginning in FY97

Capital Expenses

In order to absorb the increase in SAM II population of 2,062 prisoner-days per year, 6 additional prison beds will be needed.

2,062 prisoner-days divided by 365 days = 5.6 beds

6 beds X \$100,000 = \$ 600,000

FISCAL NOTE

No. 1

Bill Version: CSHB 212 (JUD)

H) Publish Date: 4/5/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act relating to a factor in aggravation
of the presumptive . . .
Sponsor: Representative MacLean
Requestor: House Judiciary

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

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

| OPERATING | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-------------------|-------|-------|-------|-------|-------|-------|
| 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:

| | | | | | | |
|--------------------------|---|---|---|---|---|---|
| 1002 Federal Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1003 GF Match | 0 | 0 | 0 | 0 | 0 | 0 |
| 1004 GF | 0 | 0 | 0 | 0 | 0 | 0 |
| 1005 GF/Program Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1006 GF/MHTIA | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 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 (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: 274-1684
Date: _____

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Date: 3/19/93

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FISCAL NOTE

Bill Version: CSHB 212 (JUD)
 (H) Publish Date: 4/5/93

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to a factor in aggravation of the BRU: Public Defender
presumptive..." Component: Public Defender
 Sponsor: Representative MacLean
 Requestor: House Judiciary COMPONENT SERIAL NO. 1631

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-------------------|-------|-------|-------|-------|-------|-------|
| 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:

| | | | | | | |
|--------------------------|---|---|---|---|---|---|
| 1002 Federal Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1003 GF Match | 0 | 0 | 0 | 0 | 0 | 0 |
| 1004 GF | 0 | 0 | 0 | 0 | 0 | 0 |
| 1005 GF/Program Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1006 GF/MHTA | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | 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 (FY93) impact: \$ none

ANALYSIS: (attach a separate page if necessary.)

Prepared By: John Salemi, Public Defender Phone: 274-1684
 Division: Public Defender Agency Date: _____

Approved by Commissioner: Nancy Bear Usery Date: 3/19/93
 Agency: Department of Administration

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FISCAL NOTE

No. 3

Bill Version: CSHR 212 (TID)

(H) Publish Date: 4/5/93

**STATE OF ALASKA
1993 LEGISLATIVE SESSION**

| | |
|---|------------------------------------|
| Revision Date: | Dept. Affected: <u>Corrections</u> |
| Title: <u>"An Act relating to a factor in</u> | BRU: <u>Institutions</u> |
| <u>aggravation of a presumptive term..</u> | Component: <u>Institutions</u> |
| Sponsor: <u>Representative MacLean</u> | <u>1860</u> |
| Requestor: <u>House Judiciary</u> | COMPONENT SERIAL NO. <u>1860</u> |

Expenditures/Revenues:

(Thousands of Dollars)

| OPERATING | FY94 | FY95 | FY96 | FY97 | FY98 | FY99 |
|------------------------|------|------|------|------|------|------|
| 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)

| FUNDING | FY94 | FY95 | FY96 | FY97 | FY98 | FY99 |
|--------------------------|------|------|------|------|------|------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | -0- | -0- | -0- | -0- | -0- | -0- |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

| POSITIONS | FY94 | FY95 | FY96 | FY97 | FY98 | FY99 |
|-----------|------|------|------|------|------|------|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary)

Please see the attached page.

Prepared by: Dana LaTour
 Division: Commissioner's Office
 Approved by Commissioner: Lloyd G. Rupp
 Agency: Corrections

Phone: 465-3376
 Date: 3-31-93
 Date: 3-31-93

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NO. 3
CS HS 212 (Fisc)
192

HB 212

"An Act relating to a factor in aggravation of the presumptive term of a criminal sentence, and prohibiting the referral of a sentence based on application of that factor to a three-judge panel as an extraordinary circumstance.

Fiscal Note Analysis

This legislation adds as an aggravating factor to be considered by the sentencing court if the offense was sexual abuse of a minor, and the offender was residing in the same household as the victim, or if the offender occupied a position of authority in relation to the victim.

After reviewing the sentence lengths given to offenders of these crimes and discussing it with representatives of the Department of Law, it appears that judges generally give longer sentences to offenders convicted of these crimes than are given to offenders committing crimes in similar felony groups.

For example, the average sentence length for a first time offender of a class B felony is one year. By comparison, a first time offender convicted of sexual abuse of a minor in the 2nd degree is about 2 years.

Since it appears that offenders may already receive longer than average sentences for sex crimes against minors, and since consideration of an aggravating factor may not necessarily result in a longer sentence, the Department of Corrections has prepared a zero fiscal note.

FISCAL NOTE

No. 4

Bill Version: CSHB 212 (JUD)

(H) Publish Date: 4/5/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: March 22, 1993
 Title: "An Act relating to a factor in aggravation of the presumptive term of a criminal sentence..."
 Sponsor: Representative MacLean
 Requestor: Representative MacLean

Department Affected: Department of Law
 BRU: Prosecution
 Component: All
 COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

| OPERATING | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| REVENUE FUND SOURCE: | | | | | | |
|----------------------|--|--|--|--|--|--|

FUNDING:

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

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: March 22, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

Date: March 22, 1993

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FISCAL NOTE

NO. 4

BILL NO. ^{CS} HB 212 (Jud)

19-2

STATE OF ALASKA
1993 LEGISLATIVE SESSION

ANALYSIS (Continued):

This bill amends AS 12.55.155(c) to provide that when the offense was sexual abuse of a minor in any degree and the victim at the time of the offense resided in the same household as the offender, or when the offender occupied a position of authority in relation to the victim, the sentencing court shall consider these factors and may aggravate the presumptive term set out in AS 12.55.125. The bill also amends AS 12.55.165(b) to provide that a court may not refer a case to a three judge panel based on the defendant's potential for rehabilitation if the court finds that either of these same factors is present. These sentencing provisions occur after the conviction of a defendant and, therefore, there should not be a fiscal impact for the Department of Law.

FISCAL NOTE

N^o 5

Bill version: CSHB 212 (JUD)

(H) Publish Date: 4/5/93

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Alaska Court System
 Title: Sentencing: Aggravating Factors BRU: Trial Courts
 Sponsor: MacLean Components: _____
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-------------------|-------|-------|-------|-------|-------|-------|
| 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 | | | | | | |
| FUND SOURCE | | | | | | |

FUNDING: (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 93) impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Division: Alaska Court System Date: 04/01/93
 Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 04/01/93
 Agency: Alaska Court System

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

FISCAL NOTE

No. 6

Bill Version: CSHB 212 (JUD)

(S) Publish Date: 2-9-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: 2/1/94 Dept. Affected: Corrections
 Title: An Act re: Aggravation of Presumptive Sentence BRU: All
 Component: All
 Sponsor: Representative MacLean
 Requester: Senate Judiciary COMPONENT SERIAL NO. 694 - 1884

| 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 | | | | | | | |
| MISCELLANEOUS | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 | |
| TOTAL OPERATING | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 | |

| | | | | | | |
|----------------------|----------|---|---|---|---|---|
| CAPITAL EXPENDITURES | 11,400.0 | 0 | 0 | 0 | 0 | 0 |
|----------------------|----------|---|---|---|---|---|

| | | | | | | |
|------------------------|---|---|---|---|---|---|
| CHANGE IN REVENUES () | 0 | 0 | 0 | 0 | 0 | 0 |
|------------------------|---|---|---|---|---|---|

| FUND SOURCE | | (Thousands of Dollars) | | | | | |
|--------------------------|----------------|------------------------|--------------|--------------|--------------|--------------|--|
| 1002 Federal Receipts | | | | | | | |
| 1003 GF Match | | | | | | | |
| 1004 GF | 1,969.2 | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 | |
| 1005 GF/Program Receipts | | | | | | | |
| 1006 GF/MHTIA | | | | | | | |
| Other | | | | | | | |
| TOTAL | 1,969.2 | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 | |

Estimate of any current year (FY94) cost: 0

| POSITIONS | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| FULL-TIME | | | | | | | |
| PART-TIME | | | | | | | |
| TEMPORARY | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Diane Schenker, Special Assistant *D. Schenker* Phone: 786-2147/465-466
 Division: Office of the Commissioner Date: 2/1/94
 Approved by Commissioner: J. Frank Prewitt, Jr. *JFP* Date: 2/2/94
 Agency: Department of Corrections

The bill would add an aggravator to certain Sexual Abuse of a Minor (SAM) felonies if the perpetrator were in a position of authority over the victim. Being in a position of authority over the victim is already an element of certain SAM offenses. This aggravator would only apply to offenses in which the element of authority has not already been factored into the type of crime charged. The bill would prohibit SAM cases involving this aggravator from being referred to a three-judge panel based upon the defendant's potential for rehabilitation.

Assumptions

1. The department's prior fiscal note assumed that because these types of sex offenses often result in longer-than-average sentences, the impact of adding this aggravator would be minimal. This revised fiscal note assumes that: (a) the availability of a new aggravator will simply further lengthen the already longer-than-average sentences, and (b) even a minimal increase in sex offender sentence lengths will have a fiscal impact on the department due to the density of SAM offenders in the prison population.
2. Criminal records available for research (OBSCIS) include only the offense (e.g., SAM I, SAM II, etc.). The actual elements of individual offenses are unknown unless individual file reviews are done. The department does not have sufficient resources to conduct individual file reviews within the time limits necessary to assess this legislation. The Department of Law advises that there is a "fairly narrow window" of offenses to which this aggravator would likely be applied, but cannot estimate an actual number either.
3. An unclassified SAM I could be aggravated from the presumptive eight year sentence up to 30 years. According to the department of law, it would not be unrealistic to predict aggravation up to a 15 year sentence, which is almost a 100% increase in sentence length. A Class B SAM II could be aggravated from a probable 2 year sentence up to a probable 4 year sentence; again a 100% increase in sentence length.
4. Since the actual sentence length could be expected to increase by 100%, but the actual rate of occurrence of cases is unknown and probably includes a "narrow window" of cases, the department conservatively estimates only a 5% actual increase in the felony SAM population as a result of this proposed sentence enhancement.
5. On June 30, 1993, there were 276 prisoners incarcerated for Sexual Abuse of a Minor felonies, or 100,740 prisoner-days per year for these offenses under current sentencing laws.
6. The average statewide operating cost of a prison bed is \$113 per day. Operating expenses are reflected under "miscellaneous" on page 1 of the fiscal note since the total operating cost involves multiple categories of expenses. It is not possible to identify specific positions or locations of new positions necessary to absorb additional prisoner-days using this formula.

7. The cost of constructing an average prison bed in Alaska is approximately \$100,000. Capital expenses might be reduced if additional beds were purchased under contract, however there are no contract beds currently available in Alaska for prisoners with higher than minimum custody.

8. The prison system cannot absorb any additional prisoners without additional resources. The system has been operating over emergency capacity throughout the past year. Even when all aspects of the department's current population management plan are achieved, only the current overcrowding is likely to be addressed, not including any additional numbers caused by new legislation. In addition to posing safety hazards, operating over emergency capacity for prolonged periods of time may result in fines of up to \$1,000 per day if the department is found in contempt of court for violating population caps.

Operating Expenses

A 5% increase in the 100,740 felony SAM prisoner-days = 5,037 additional prisoner-days

5,037 prisoner-days X \$113 per day = \$ 569,181 per year

Capital Expenses

In order to absorb the increase in felony SAM population of 5,037 prisoner-days per year, 14 additional prison beds will be needed.

5,037 prisoner-days = 13.8 prisoners, rounded up to 14 prisoners

14 beds X \$100,000 = \$1,400,000

FISCAL NOTE

No. 12

Bill Version: SOSCS HB 212 (TID)

(S) Publish Date: 2-22-94

**STATE OF ALASKA
1994 LEGISLATIVE SESSION**

Revision Date: 2/7/94 Dept. Affected: Corrections
 Title: An Act re: Aggravation of Presumptive Sentence BRU: All
 Sponsor: Representative MacLean Component: All
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 694 - 1884

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 | | | | | | |
| MISCELLANEOUS | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 |
| TOTAL OPERATING | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 |

| | | | | | | |
|-----------------------------|----------|---|---|---|---|---|
| CAPITAL EXPENDITURES | 11,400.0 | 0 | 0 | 0 | 0 | 0 |
|-----------------------------|----------|---|---|---|---|---|

| | | | | | | |
|-------------------------------|---|---|---|---|---|---|
| CHANGE IN REVENUES () | 0 | 0 | 0 | 0 | 0 | 0 |
|-------------------------------|---|---|---|---|---|---|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|----------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004-GF | 1,969.2 | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 1,969.2 | 569.2 | 569.2 | 569.2 | 569.2 | 569.2 |

Estimate of any current year (FY94) cost: \$ 0

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Diane Schenkar, Special Assistant Phone: 786-2147/465-4643
 Division: Office of the Commissioner Date: 2/7/94
 Approved by Commissioner: J. Frank Prewitt, Jr. (for) Date: 2/7/94
 Agency: Department of Corrections

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Fiscal Note/DOC
SCS CSHB 212(JUD)
Revised 2/7/94
Page 2 of 3

The bill would add an aggravator to certain Sexual Abuse of a Minor (SAM) felonies if the perpetrator were in a position of authority over the victim. Being in a position of authority over the victim is already an element of certain SAM offenses. This aggravator would only apply to offenses in which the element of authority has not already been factored into the type of crime charged. The bill would prohibit SAM cases involving this aggravator from being referred to a three-judge panel based upon the defendant's potential for rehabilitation.

Assumptions

1. The department's prior fiscal note assumed that because these types of sex offenses often result in longer-than-average sentences, the impact of adding this aggravator would be minimal. This revised fiscal note assumes that: (a) the availability of a new aggravator will simply further lengthen the already longer-than-average sentences, and (b) even a minimal increase in sex offender sentence lengths will have a fiscal impact on the department due to the density of SAM offenders in the prison population.
2. Criminal records available for research (OBSCIS) include only the offense (e.g., SAM I, SAM II, etc.). The actual elements of individual offenses are unknown unless individual file reviews are done. The department does not have sufficient resources to conduct individual file reviews within the time limits necessary to assess this legislation. The Department of Law advises that there is a "fairly narrow window" of offenses to which this aggravator would likely be applied, but cannot estimate an actual number either.
3. An unclassified SAM I could be aggravated from the presumptive eight year sentence up to 30 years. According to the department of law, it would not be unrealistic to predict aggravation up to a 15 year sentence, which is almost a 100% increase in sentence length. A Class B SAM II could be aggravated from a probable 2 year sentence up to a probable 4 year sentence; again a 100% increase in sentence length.
4. Since the actual sentence length could be expected to increase by 100%, but the actual rate of occurrence of cases is unknown and probably includes a "narrow window" of cases, the department conservatively estimates only a 5% actual increase in the felony SAM population as a result of this proposed sentence enhancement.
5. On June 30, 1993, there were 276 prisoners incarcerated for Sexual Abuse of a Minor felonies, or 100,740 prisoner-days per year for these offenses under current sentencing laws.
6. The average statewide operating cost of a prison bed is \$113 per day. Operating expenses are reflected under "miscellaneous" on page 1 of the fiscal note since the total operating cost involves multiple categories of expenses. It is not possible to identify specific positions or locations of new positions necessary to absorb additional prisoner-days using this formula.

Fiscal Note/DOC
SCS CSHB 212(JUD)
Revised 2/7/94
Page 3 of 3

7. The cost of constructing an average prison bed in Alaska is approximately \$100,000. Capital expenses might be reduced if additional beds were purchased under contract, however there are no contract beds currently available in Alaska for prisoners with higher than minimum custody.

8. The prison system cannot absorb any additional prisoners without additional resources. The system has been operating over emergency capacity throughout the past year. Even when all aspects of the department's current population management plan are achieved, only the current overcrowding is likely to be addressed, not including any additional numbers caused by new legislation. In addition to posing safety hazards, operating over emergency capacity for prolonged periods of time may result in fines of up to \$1,000 per day if the department is found in contempt of court for violating population caps.

Operating Expenses:

A 5% increase in the 100,740 felony SAM prisoner-days = 5,037 additional prisoner-days

5,037 prisoner-days X \$113 per day = \$ 569,181 per year

Capital Expenses

In order to absorb the increase in felony SAM population of 5,037 prisoner-days per year, 14 additional prison beds will be needed.

5,037 prisoner-days = 13.8 prisoners, rounded up to 14 prisoners

14 beds X \$100,000 = \$1,400,000

Back-up

ALASKA STATE LEGISLATURE

MAR 14 1994

Representative Eileen Panigeo MacLean
Co-Chair House Finance Committee
P.O. Box 830
Barrow, Alaska 99723
(907) 852-7111

WHILE IN JUNEAU
State Capitol, Room 507
Juneau, Alaska 99801-1182
465-4833
465-4525
463-3241 FAX

HOUSE OF REPRESENTATIVES

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Shungnak

Seward Peninsula

Brevig Mission
Diomedes
Shishmaref
Teller
Wales

MEMORANDUM

To: Senator Drue Pearce, Co-Chairman
Senator Steve Frank, Co-Chairman
Senate Finance Committee

From: Representative Eileen P. MacLean 

Date: March 14, 1994

Subj: Scheduling HB 212

I would appreciate your scheduling HB 212 for consideration by the Senate Finance Committee.

HB 212 relates to a specific factor aggravating a presumptive term of a criminal sentence and prohibiting the referral of a sentence based on application of that factor to a three-judge sentencing panel.

The intent of this bill is to ensure the most serious judicial response to the crime of sexual abuse of a minor when the offender is in a position of authority relative to the minor. The bill accomplishes this by adding the position of authority relationship to the list of aggravators to be considered in sentencing for crimes of sexual abuse against a minor in the first or second degree. It also adds these crimes to the list of offenses not to be referred to the three-judge panel for consideration of a reduced sentence.

Sexual abuse of a minor is an offensive societal crime in itself, but more so when the adult is in a position of authority to the child. In my view, the importance of condemning this kind of behavior by way of statutory direction to the judicial branch is important. The strictest of sentencing circumstances should be applied here.

I appreciate your consideration of a hearing on this bill.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 9, 1993

SUBJECT: House Bill 212 -- sectional analysis (Work Order No. 8-LS0780\A)

TO: Representative Eileen MacLean

FROM: Jack Chenoweth
Legislative Counsel

You have introduced House Bill 212 and, through staff, have asked me to prepare a sectional analysis of the measure

To reduce or eliminate disparity in criminal sentences, the criminal procedure code, AS 12, subjects offenders convicted of certain specified crimes to presumptive sentences. Presumptive sentences may be extended or reduced if the sentencing judge, by a decision based on clear and convincing evidence, identifies factors in aggravation or factors in mitigation of the sentence. AS 12.55.155(c) identifies a series of factors to be considered by the court in aggravation or extension of a presumptive sentence. **Bill section 1** amends AS 12.55.155(c)(18) by adding a new subparagraph under which the court may consider, as a factor in aggravation of a criminal sentence based on a conviction for sexual abuse of a minor in any degree (AS 11.41.434 - 11.41.440), evidence that the victim of the offense resided in the same household as the offender or evidence that the offender occupied a position of authority over the victim. The bill section offers a definition of the phrase "position of authority" by cross-reference to a definition of that term in the criminal code.

The criminal procedure code also provides for referral of certain criminal sentences by the sentencing judge to a three-judge sentencing panel. Under AS 12.55.165(a)

(a) If the defendant is subject to sentencing under [a presumptive sentencing provision] and the court finds by clear and convincing evidence that manifest injustice would result from . . . imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

Representative E. J. McLean

March 9, 1993

Page 2

However, subsection (b) of that section, added in 1992, limits the ability of the sentencing court to make a referral of a sentencing decision to a three-judge review panel in cases involving the application of certain aggravating factors. The amendment to AS 12.55.165(b) made by **bill section 2** places the aggravating factor added in the previous bill section to the list of aggravating factors whose application would not allow a sentencing judge to make a referral to a sentencing panel.

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MEMORANDUM

March 30, 1993

SUBJECT: Purpose and use of three-judge criminal sentencing panels

TO: Representative Eileen MacLean
ATTN: Rena Bukovich

FROM: Jack Chenoweth
Legislative Counsel

This memo is by way of response to your request of last week for a brief explanation of the purpose and use to be made of the three-judge criminal sentencing panel. Use of the panel is authorized by AS 12.55.175.

As I understand, under the former criminal code--in place in this state until 1980--sentencing authority was vested principally in the trial judge who would impose a criminal sentence generally within very broad statutory limits. The revised criminal code put into place a more detailed sentencing framework that set down tougher, more regular guidelines for imposing criminal sentences. Under the revised code, with the exception of particularly serious crimes, the sentencing judge continues to enjoy considerable discretion in sentencing first felony offenders. However, as to subsequent or repeat felony offenders, the statutes establish a series of presumptive sentences that the sentencing judge must follow, within constraints.

One set of constraints applicable to presumptive sentences goes to the finding and application of certain factors. The sentencing judge may increase a presumptive sentence because of the presence of so-called aggravating factors or reduce a presumptive sentence because of the presence of mitigating factors.

The second set of constraints under the revised Criminal Code is the referral of a sentence to a three-judge sentencing panel. That referral may be made if, under AS 12.55.165, the judge determines that manifest injustice would result from following the strict presumptive sentencing scheme.^{1/} The sentencing panel apparently has

^{1/} AS 12.55.165(a), captioned "Extraordinary Circumstances," provides:

(continued...)

two choices. If, after consideration of the record and opportunity for argument, the three-judge panel agrees with the sentencing court that a departure from strict application of the adjusted presumptive sentence is necessary, the panel may impose a different sentence. If the three-judge sentencing panel does not agree that a departure is necessary, it is to return the matter to the sentencing judge so that he or she may carry through and impose a sentence. So, in Heathcock v. State, 670 P.2d 1155 (Alaska App. 1983), the Court of Appeals observed:

. . . [A] departure from the presumptive sentencing scheme will not turn on the evaluation of one judge. Rather, a departure from the presumptive sentencing scheme under the provisions of AS 12.55.165 and AS 12.55.175 will involve the decision of four judges. First, the original trial judge makes the decision to refer the matter to the three-judge panel. Then the three-judge panel, if it agrees with the evaluation of the trial judge, imposes sentence.

670 P.2d at 1158.

In 1992, the Seventeenth Legislature started to take away from the authority of the trial court judge to make referrals to the three-judge panel. Those limitations have been set out in AS 12.55.165(b) and are in the nature of cross-references to aggravating factors that do not warrant referral of a criminal sentence to a three-judge panel.^{2/} By my reading of this new provision, if these aggravating factors are present, then the sentencing judge must determine, among other factors, the defendant's prospects for rehabilitation and enter a sentence. The judge may not find that "manifest injustice" will occur, so that the "extraordinary" remedy of referral of the matter to the sentencing panel is not available.

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^{1/}(...continued)

(a) If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) [the presumptive sentencing subsections,] and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

^{2/} Under AS 12.55.165(b):

(b) In making a determination under (a) of this section, the court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155(c)(2), (8), (10), (12), (15), (17), (18)(B), (20), (21), or (28) is present.

North Slope Borough School District



RESOLUTION 93-12 AMENDMENT TO TITLE ELEVEN OF THE ALASKA STATUTES

WHEREAS the North Slope Borough School District is strongly committed to the education and safety of its students; and

WHEREAS the NSBSD and the people of Alaska entrust the education and safety of their students to the teachers of the State; and

WHEREAS a breach of that trust involving the sexual contact of a student by a teacher causes irreparable harm to the student and society and, further, undermines the educational mission of the NSBSD and the State of Alaska; and

WHEREAS the NSBSD does not believe the criminal code sufficiently addresses sexual contact between a teacher and a student and, further, that likely punishments for teachers who have sexual contact with students who have been entrusted to them by the State and their families neither sufficiently reflects the trauma suffered by the student and society nor the intolerance which the people of the State of Alaska have for such conduct.

NOW, THEREFORE, BE IT RESOLVED that the NSBSD Board of Education strongly urges the Legislature of the State of Alaska to amend the criminal code (Title 11) so as to designate sexual contact of a student by a teacher as sexual abuse of a minor in the first degree; and

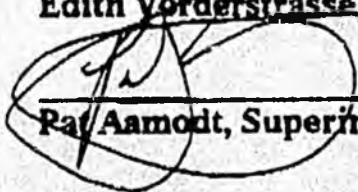
BE IT FURTHER RESOLVED that the Superintendent shall take such action as is necessary to make known and urge the immediate adoption of this position of the NSBSD to the Legislature and the Association of Alaska School Boards and the Alaska Association of School Administrators

Introduced: 2/09/93

Adopted: 2/09/93



Edith Vorderstrasse, Acting President, Board of Education



Pat Aamodt, Superintendent