

HB

231

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/27/94

FURTHER:

DATE TURNED INTO OFFICE: 5-1-94

The Finance Committee considered CS FOR HOUSE BILL NO. 231(FIN)

HB 231 AGGRAVATING AND MITIGATING FACTORS - SEX CRIMES

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous _____ CS _____ (_____)
- 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

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DOLaw	12/9/93	<input checked="" type="checkbox"/>	
Courts	11/28/94	<input checked="" type="checkbox"/>	
DOA (PDA)	11/28/94	<input checked="" type="checkbox"/>	
DOA (ODA)	11/28/94	<input checked="" type="checkbox"/>	
DPS	2/1/94	<input checked="" type="checkbox"/>	

Appropriation No Fiscal Note

DO PASS:

Travis Kelly
Steve Kusi
Scott May

OTHER RECOMMENDATIONS:

1. *[Signature]*
 Co-Chair: Signature/Recommendation

2. *[Signature]*
 Co-Chair: Signature/Recommendation

SENATE FINANCE COMMITTEE REPORT

RETURNED TO FINANCE FROM RULES

DATE: 5/3/94

FURTHER:

5-5-94

DATE TURNED INTO OFFICE: _____

The Finance Committee considered CS FOR HOUSE BILL NO. 231(FIN)

"An Act relating to when previous conduct constituting a sexual offense may be used as an aggravating factor at sentencing."

and recommends:

- replace with _____ CS _____ (FINANCE)
- or adopt previous _____ CS _____
- 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	4/29/94	0	500.0

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DI/Law	12/9/93	✓	
Courts	1/28/94	✓	
DOA (PDH)	1/28/94	✓	
DOA (OPA)	1/28/94	✓	
DPS	2/1/94	✓	

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

1. _____ DO Pass
 Co-Chair: Signature/Recommendation

2. _____
 Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 7

Bill Version: CSLB 231 (FIN)

BILI (H) Publish Date: 2/7/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: December 9, 1993

Department Affected: Department of Law

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

BRU: Prosecution

Sponsor: Representative Kort

Component: All

Requestor: Governor's Office

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.) 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

Phone: 465-3672

Division: Administrative Services/Division 7

Date: December 9, 1993

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law

Date: December 9, 1993

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FISCAL NOTE

No. 8

Bill Version: CSHB 231 (FIN)

(H) Publish Date: 2/7/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

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						
----------------------	--	--	--	--	--	--

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

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

No. 9

Bill Version: CSHB 231 (FIN)

(H) Publish Date: 2/7/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO.

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 Usara Date: 1/28/94
 Agency: Administration

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(Rev. 10/93) PL 1/28/94

FISCAL NOTE

No. 10

Bill Version: CSHB 231 (FIN)

BILL NO (H) Publish Date: 2/7/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to aggravating and mitigating ERL: Office of Public Advocacy
factors at sentencing" Component: Office of Public Advocacy
 Sponsor: Rep. Kott
 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 Phone: 274-1684
 Division: Office of Public Advocacy Date: _____

Approved by Commissioner: Nancy Bear Usura Date: 1/28/94
 Agency: Administration

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FISCAL NOTE

No. 11

P. 1

Bill Version: CSHB 231 (FIN)

(H) Publish Date: 2/7/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act relating to aggravating and
mitigating factors at sentencing" BRU: Alaska State Troopers
 Sponsor: Ben Kort 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 ()	-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-

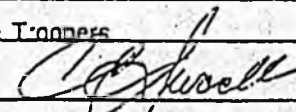
Estimate of current year (FY 94) impact: \$ _____

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.

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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STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO.: CSHB 231(FIN)

Revision Date:	April 26, 1994	Dept. Affected:	Corrections
Title:	Sex Offense/Aggravating Factors	BRU:	All
Sponsor:	Rep. Kott	Component:	All
Requestor:	S. JUD	Component Serial #:	694-1884

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXP	500.0	*	*	*	*	*
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CHANGES IN REVENUES						
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	500.0	*	*	*	*	*
1005 GF/Program Receipts						
1006 GF/MHTLA						
Other						
TOTAL	500.0	*	*	*	*	*

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

POSITIONS

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

ANALYSIS: There will be an indeterminate impact on the prison system, with a demand for at least 5 additional beds.

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: 4/26/94
 Date: 4/26/94
 Page 1 of 2

The bill expands the ability of the court to aggravate a presumptive sentence for a sex offense when the perpetrator has previously been convicted of a sex offense.

Assumptions

1. The department has been unable to locate any data to indicate the frequency of occurrence of the behaviors addressed in the bill. However, since the bill expands the circumstances under which a sentence can be aggravated, it is assumed that there will be some increase in sentence lengths for sex offenders as a result of the bill.
2. There are approximately 500 sex offenders incarcerated in state facilities, or 182,500 inmate-days being served per year for sex offenses. Since the actual sentence length could increase up to 100% due to aggravation, but the actual rate of occurrence of the aggravator is unknown, the department conservatively estimates an aggregate 1% increase in prisoner-days for sex offenders. That would result in an additional 1,825 days of incarceration per year. The system would need to add 5 beds to accommodate these prisoner-days (1,825 divided by 365.)
3. There would be no increased operating costs in FY95 since the bill aggravates sentences which would already occur. Indeterminate operating costs are reflected in the following years, since it is unknown when each sentence would have ended without the aggravation.
4. The correctional system has been operating over its emergency capacity for over a year. A motion to hold the department in contempt of court has been filed and may lead to \$1,000 per day fines if upheld. Crisis levels of overcrowding present safety hazards as well as legal problems and potential fines. The system cannot absorb additional prisoners without additional resources.
5. The cost for constructing an average state correctional bed is approximately \$100,000. Capital costs could be reduced or eliminated by contracting for beds, but contract beds available in Alaska are limited to minimum or community custody offenders and the state is unaware of any out-of-state beds for inmates with higher than medium custody. Capital costs might also be reduced by increasing staffing and programs, in combination with some facility reconfiguration, at existing facilities. Because there are a number of crime bills pending before the legislature, it is not possible for the department to identify where bedspace would be expanded until the total increased demand for beds is known.

Alaska State Legislature
House of Representatives

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PHONE (907) 694-8944
FAX 694-8945

SESSION:
STATE CAPITOL
JUNEAU, AK 99811
PHONE (907) 465-3777

Representative Pete Kott

SECTIONAL ANALYSIS
CS FOR HOUSE BILL 231 (FIN)

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



Back-up

Alaska State Legislature
House of Representatives

HB 231

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JUNEAU, AK 99811
PHONE (907) 465-3777

Representative Pete Kott

April 26, 1994

Senator Steve Frank
Co-Chair
Senate Finance Committee

Senator Drue Pearce
Co-Chair
Senate Finance Committee

Re: CS HB 231(FIN)

Dear Senators Frank and Pearce:

Please find CS HB 231(FIN) attached hereto, along with supporting materials.

CS HB 231(FIN), which expands a previously existing aggravating factor applicable to sex offenses, unanimously passed the House on February 9, 1994. It was voted out of Senate Judiciary Committee this date.

I am hereby requesting that CS HB 231(FIN) be scheduled for a hearing before the Senate Finance Committee as soon as possible.

Thank you in advance for your kind assistance in this matter. Should you have any questions, do not hesitate to contact me.

Sincerely,

Pete Kott
District 24





Alaska Sentencing Commission

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

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Philip R. Volland, Vice Chair

Jayne E. Andreen
Richard L. Burton

Charles E. Cole
Hon. Beverly W. Outler

Sen. Steve Frank
Lloyd G. Rupp

John Holmes
Hon. Warren W. Matthews

Gigi Filcher
John Salemi

Duane S. Udland
Rep. Fran Ulmer

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.

Representative Pete Kott
March 25, 1993
Page 2

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