

HB

231

Alaska State Legislature
House of Representatives

COMMITTEES:
HEALTH, EDUCATION
& SOCIAL SERVICES
JUDICIARY
STATE AFFAIRS

SPECIAL COMMITTEES:
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JUNEAU, AK 99811
PHONE (907) 465-3777

Representative Pete Kott

SPONSOR STATEMENT
CS FOR HOUSE BILL 231(FIN)

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.

It respectfully is asserted that this bill captures the essence of a recommendation made by the Alaska Sentencing Commission. Additionally, it corrects an unfortunate gap now embodied in existing law.



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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



FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 231(FIN)

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: 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-
Code Revenue						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1006 GF MHT, A						
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. Allen Phone: 283.5891
 Division: Alaska State Troopers Date: 2/16/94
 Approved by Commissioner: _____
 Agency: Richard I. E

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FISCAL NOTES

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 231 (Fin)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to aggravating and mitigating EAU: Office of Public Advocacy
factors at sentencing Component: Office of Public Advocacy
 Sponsor: Rep. Kott
 Requestor: (H) Rules 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
 Division: Office of Public Advocacy
 Approved by Commissioner: Nancy Bear Ucera
 Agency: Administration

Phone: 274-1684
 Date: _____
 Date: 2/5/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 231 (Fin)

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) Rules 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 Usher
 Agency: Administration

Phone: 264-4400
 Date: _____
 Date: 2/10/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 231 (FIN)

Revision Date: February 15, 1994
Title: "...previous conduct constituting a sexual offense may be used as an aggravating factor..."
Sponsor: Representative Kott
Requestor: Representative Kott

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						
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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.)
Please see the attached analysis.

Richard I. Peques

Prepared by: Richard I. Peques, Director

Phone: 465-3672

Division: Administrative Services Division

Date: February 15, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General

Agency: Department of Law

Date: February 15, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 231 (FIN)

ANALYSIS CONTINUATION:

The House Finance Committee version of HB 231 provides that previous conduct constituting a sexual offense may be used as an aggravating factor at sentencing if the victim was either an adult or a minor. The existing statute limits the use of such previous conduct as an aggravating factor to cases where the victim was a minor. This is a sentencing provision that takes place after a defendant has been convicted, and therefore the bill will not have a fiscal impact on the Department of Law.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO.: CSHB 231(FIN)

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

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/MIITIA						
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 Sentencing Commission

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

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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