

HB

297

22-LS1186L
Luckhaupt
1/31/02

ADOPTED

CS FOR HOUSE BILL NO. 297()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE MEYER

A BILL

FOR AN ACT ENTITLED

1 **"An Act related to aggravating factors at sentencing."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1. AS 12.55.155(c) is amended by adding a new paragraph to read:**

4 (30) the defendant is convicted of an offense specified in AS 11.41.410
5 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
6 the victim in furtherance of the offense with the intent to make the victim
7 incapacitated; in this paragraph, "incapacitated" has the meaning given in
8 AS 11.41.470;

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

- (3) the offense occurs within the observation of a person under 16 years of age.
- (b) Indecent exposure in the first degree is a class C felony. (§ 3 ch 81 SLA 1998)

Effective dates. — Section 24, ch. 81, SLA 1998 makes this section effective June 11, 1998, in accordance with AS 01.10.070(c).

Editor's notes. — Section 23, ch. 81, SLA 1998 provides that the provisions of this section "apply to offenses committed on or after June 11, 1998."

Sec. 11.41.460. Indecent exposure in the second degree. (a) An offender commits the crime of indecent exposure in the second degree if the offender knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offensive, insulting, or frightening effect the act may have.

(b) Indecent exposure in the second degree before a person under 16 years of age is a class A misdemeanor. Indecent exposure in the second degree before a person 16 years of age or older is a class B misdemeanor. (§ 4 ch 78 SLA 1983; am § 4 ch 81 SLA 1998)

Effect of amendments. — The 1998 amendment, effective June 11, 1998, inserted "in the second degree" throughout, and in subsection (a) substituted "if the offender knowingly exposes the offender's genitals in the presence of another person" for "if the offender intentionally exposes the offender's genitals to an-

other person," and deleted "on that person" from the end.

Editor's notes. — Section 23, ch. 81, SLA 1998 provides that the 1998 amendments to this section "apply to offenses committed on or after June 11, 1998."

Sec. 11.41.470. Definitions. For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

(1) "health care worker" includes a person who is or purports to be an anesthesiologist, acupuncturist, chiropractor, dentist, health aide, hypnotist, massage therapist, mental health counselor, midwife, nurse, nurse practitioner, osteopath, naturopath, physical therapist, physical therapy assistant, physician, physician's assistant, psychiatrist, psychologist, psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or a substantially similar position;

(2) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act;

(3) "legal guardian" means a person who is under a duty to exercise general supervision over a minor or other person committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 as a result of a court order, statute, or regulation, and includes Department of Health and Social Services employees, foster parents, and staff members and other employees of group homes or youth facilities where the minor or other person is placed as a result of a court order or the action of the Department of Health and Social Services, and police officers, probation officers, and social workers when those persons are exercising custodial control over a minor or other person.

(4) "mentally incapable" means suffering from a mental disease or defect that renders a person incapable of understanding the nature or consequences of the person's conduct, including the potential for harm to that person;

(5) "position of authority" means an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, babysitter, or a substantially similar position, and a police officer or probation officer other than when the officer is exercising custodial control over a minor;

(6) "sexual act" means sexual penetration or sexual contact;

(7) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;

(8) "without consent" means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

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52 P.2d 481 (Alaska)
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764 P.2d 318 (Alaska)
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5 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
6 the victim in furtherance of the offense with the intent to incapacitate.

MOVED
ADOPTED AS
AMENDED

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE OGAN

TO: HB 297

Delete lines 4 - 6

Insert new paragraph to read:

1 (30) the defendant is convicted of an offense specified in AS 11.41.410 -
2 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to the
3 victim in ~~the connection with~~ the offense with the intent to incapacitate.

furtherance of

Conceptual amendment #B
delete

Conceptual amend. #A
adopted

FAILS 3-4



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

SPONSOR STATEMENT

HB 297

“An Act related to aggravating factors at sentencing.”

When drugs or alcohol are intentionally used to lower the inhibitions of a person to a point where they become the victim of a premeditated sexual assault, the seriousness of the crime should be elevated in the eye of the court.

House Bill 297 adds an aggravating factor to AS 12.55.155 that declares if a defendant supplied drugs or alcohol to the victim, the defendant may be held to a higher degree of punishment. An aggravating factor is an element or circumstance involved in the commission of a crime that elevates its seriousness; a fact justifying more than the usual measure of damages or punishment.

AS 12.55.125 lists presumptive terms of sentencing. HB 297 will allow a judge to increase a presumptive sentence up to the maximum term of imprisonment for that offense.

For example, the presumptive sentence for a first time offender convicted of a sexual assault in the first degree is eight years. With this new aggravator, the judge could increase the sentence to up to 30 years, which is the maximum allowed.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 297
 () Publish Date: _____

Revision Date/Time (Note If correction): _____ Dept. Affected: Administration
 Title "An Act related to aggravating BRU Legal and Advocacy Services
factors in sentencing." Component Public Defender Agency
 Sponsor Rep. Meyer
 Requester House Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would add an aggravator in felony sentencing if the defendant is convicted of a sexual offense and supplied alcohol or a controlled substance to the victim in connection with the offense. The Public Defender Agency believes this bill will have a fiscal impact on the workload of the Agency, but not on the caseload of the Agency, but cannot quantify it, and therefore an indeterminate fiscal note is submitted.

Prepared by: Barbara Brink, Director Phone (907) 334-4416
 Division Public Defender Agency Date/Time 1/29/02 3:42 PM
 Approved by: Jim Duncan, Commissioner Date 1/29/2002
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 297
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An Act relating to aggravating factors BRU Administration and Operations
sentencing." Component All
 Sponsor Representative Meyer
 Requester House Judiciary Committee Component No. 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would create a new aggravator in sentencing for offenders who supplied alcohol or controlled substances to the victim in sexual assault offenses. Offenders can already be charged with other crimes in these circumstances, e.g., Misconduct Involving a Controlled Substance or Furnishing Liquor to a Minor, so the Department of Corrections is not anticipating a large impact as a result of this legislation, therefore, we are submitting an indeterminate fiscal note.

Prepared by: Candace Brower Phone 465-4652
 Division Commissioner's Office Date/Time 1/29/02 2:19 PM
 Approved by: Margaret Pugh, Commissioner Date 1/29/02
 Agency Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. HB 297

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Aggravator for Sexual Offenses BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Meyer
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Court System does not anticipate any fiscal impact from the passage of HB 297.

Prepared by: Douglas Wooliver Phone 463-4750
 Division Alaska Court System Date/Time 1/30/02 12:20 PM
 Approved by: Stephanie Cole Date 1/30/02
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

Inadvertently not adopted by the committee.

Sec. 12.55.155. Factors in aggravation and mitigation. (a) If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) and

(1) the presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

(2) the presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation.

(b) Sentence increments and decrements under this section shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

(c) The following factors shall be considered by the sentencing court and may aggravate the presumptive terms set out in AS 12.55.125:

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking the presumptive terms of this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense pursuant to an agreement that the defendant either pay or be paid for the commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17) the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;

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(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant;

(B) specified in AS 11.41.410 — 11.41.458 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; or

(C) specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 12.55.145(a)(1)(B);

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and

(A) the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise; or

(B) at the time of the conduct resulting in the conviction, the defendant was caring for or assisting in the care of a child under 10 years of age;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;

(27) the defendant, being 18 years of age or older,

(A) is legally accountable under AS 11.16.110(2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

(B) is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang.

(d) The following factors shall be considered by the sentencing court and may mitigate the presumptive terms set out in AS 12.55.125:

(1) the offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;

(2) the defendant, although an accomplice, played only a minor role in the commission of the offense;

(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected the defendant's conduct;

(4) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;

(5) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;

(6) in a conviction for assault under AS 11.41.200 — 11.41.220, the defendant acted with serious provocation from the victim;

(7) except in the case of a crime defined by AS 11.41.410 — 11.41.470, the victim provoked the crime to a significant degree;

(8) *[Repealed, § 42 ch 143 SLA 1982.]*

(9) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;

(10) before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;

(11) the defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;

(12) the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

(13) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(16) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

(17) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior.

(e) If a factor in aggravation is a necessary element of the present offense, or requires the imposition of a presumptive term under AS 12.55.125(c)(2), that factor may not be used to aggravate the presumptive term. If a factor in mitigation is raised at trial as a defense reducing the offense charged to a lesser included offense, that factor may not be used to mitigate the presumptive term.

(f) If the state seeks to establish a factor in aggravation at sentencing or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence. Factors in aggravation and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury. All findings must be set out with specificity.

(g) Voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor.

(h) In this section, "serious provocation" has the meaning given in AS 11.41.115(f). (§ 12 ch 166 SLA 1978; am §§ 39 — 41 ch 102 SLA 1980; am §§ 19, 20 ch 45 SLA 1982; am §§ 36, 38, 39, 42 ch 143 SLA 1982; am §§ 6, 7 ch 92 SLA 1983; am § 19 ch 37 SLA 1986; am § 1 ch 37 SLA 1987; am § 4 ch 69 SLA 1987; am § 1 ch 83 SLA 1987; am § 7 ch 66 SLA 1988; am § 1 ch 10 SLA 1990; am § 13 ch 21 SLA 1991; am § 5 ch 64 SLA 1991; am § 26 ch 79 SLA 1992; am § 1 ch 55 SLA 1995; am § 4 ch 6 SLA 1996; am § 12 ch 7 SLA 1996; am § 9 ch 30 SLA 1996; am § 9 ch 60 SLA 1996; am § 14 ch 81 SLA 1998; am § 7 ch 99 SLA 1998; am § 1 ch 67 SLA 2000)

whereabouts and the child's whereabouts hidden from his wife and the authorities; this conduct was sufficient to constitute that actus reus of the offense of custodial interference: the keeping of the child with no legal right to do so. *Strother v. State*, 891 P.2d 214 (Alaska Ct. App. 1995).

Protracted period. — See note under same catchline, AS 11.41.320, *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Sec. 11.41.370. Definitions. In AS 11.41.300 — 11.41.370, unless the context requires otherwise,

(1) "lawful custodian" means a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another;

(2) "relative" means a parent, stepparent, ancestor, descendant, sibling, uncle, or aunt, including a relative of the same degree through marriage or adoption;

(3) "restrain" means to restrict a person's movements unlawfully and without consent, so as to interfere substantially with the person's liberty by moving the person from one place to another or by confining the person either in the place where the restriction commences or in a place to which the person has been moved; a restraint is "without consent" if it is accomplished

(A) by acquiescence of the restrained person, if the restrained person is under 16 years of age or is incompetent and the restrained person's lawful custodian has not acquiesced in the movement or confinement; or

(B) by force, threat, or deception. (§ 3 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

NOTES TO DECISIONS

Restraint by deception. — The jury could have concluded that defendant had secured victim's presence in his van through deception — by luring her with false promises of information concerning a child custody dispute — thereby committing an act of restraint. *State v. McDonald*, 872 P.2d 627 (Alaska Ct. App. 1994).

Defense that victim was defendant's relative. — The new criminal code, which states in AS 11.41.300(b)(1) that it is an affirmative defense that defendant was a relative of the victim, provides for a

broader exemption from the kidnapping statute than the absolute exemption for the abduction of a minor by his parent under former AS 11.15.260. *Crump v. State*, 625 P.2d 857 (Alaska 1981).

Quoted in *Alam v. State*, 793 P.2d 1081 (Alaska Ct. App. 1990).

Stated in *Strother v. State*, 891 P.2d 214 (Alaska Ct. App. 1995).

Cited in *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Article 4. Sexual Offenses.

Section

- 410. Sexual assault in the first degree
- 420. Sexual assault in the second degree
- 425. Sexual assault in the third degree
- 427. Sexual assault in the fourth degree
- 432. Defenses
- 434. Sexual abuse of a minor in the first degree
- 436. Sexual abuse of a minor in the second degree
- 438. Sexual abuse of a minor in the third degree

Section

- 440. Sexual abuse of a minor in the fourth degree
- 445. General provisions
- 450. Incest
- 455. Unlawful exploitation of a minor
- 458. Indecent exposure in the first degree
- 460. Indecent exposure in the second degree
- 470. Definitions

Cross references. — For provisions concerning evidence and procedure in certain sexual offense cases, see AS 12.45.045 and 12.45.046.

For authority of court to order a defendant to submit to a blood test when sexual penetration is an element of the offense, see AS 18.15.300.

NOTES TO DECISIONS

Origin. — The Alaska Revised Code provisions defining sexual offenses are based on a proposed

Michigan Code. *Reynolds v. State*, 664 P.2d 621 (Alaska Ct. App. 1983).

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Collate §§ 1 12; 6 2d, Sodom 42 C.J.S 97; 75 C.J. et seq. Anthon; Sex Crim; Entrap; 1194. Incest a 484. Crimin; assault to ALR4th 1 Fraud t Impote; rape, or a 1351. Rape o woman w 1227. Consen ALR3d 6; Multip same defi tiple crim What ALR3d 1

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Cros conduct attemp AS 12.4 Effe



January 22, 2002

Representative Kevin Meyer
Alaska State Capitol Rm. # 110
Juneau, AK 99801-1182

Dear Representative Meyer:

I am writing on behalf of the Board of Directors of Standing Together Against Rape, Inc. (STAR) in Anchorage, Alaska. As you are aware, STAR is a non-profit agency whose mission is to support and advocate for victims of sexual violence and their loved ones.

We are writing today to express our support for House Bill 297 to add *supplying alcohol or a controlled substance to a victim as an aggravating factor for sentencing*. On January 16, at a regular meeting of the Board of Directors, the Board voted to support this bill.

Thank you for your continued efforts on behalf of victims of sexual assault and abuse.

Sincerely,

Karen Bitzer
Executive Director

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

130 Seward, Rm 209
Juneau, Alaska 99801

(907) 586-3650 ph
(907) 463-4493 fx

To: Representative Meyer
From: Lauree Hugonin *LH*
Date: 1/23/02
Re: HB297

Thank you for introducing HB297, an Act related to aggravating factors at sentencing. The Network supports adding this aggravating factor for judges to consider in sentencing convicted sex offenders.

The Alaska Network on Domestic Violence and Sexual Assault (Network) is the statewide coalition of community domestic violence and sexual assault intervention programs for Alaska. Twenty full member and five supporting member programs provide shelter, advocacy, crisis intervention, and, information and referral services to victims seeking assistance in ending the violence being perpetrated against them. The Network works to promote institutional and systemic change necessary to end violence against women.

People who choose to commit sex offenses often look for people who are vulnerable and can offer the least resistance. They often try and increase that vulnerability through the deliberate use of alcohol or controlled substances.

In 1997, the legislature passed legislation to add flunitrazepam (rohypnol) and gamma-hydroxybutrate (GHB) to the schedule 4-A drug list. Both are commonly known as "date rape" drugs and "forget pills". Sex offenders use these drugs to keep victims from being able to resist and as a defense against being caught. Because survivors will have been heavily sedated, they probably will not have complete recall of the sexual assault. They may be uncertain about exactly what happened and who was involved. The inability of a victim to recall facts makes prosecution of a sexual assault where these drugs were used very difficult.

We have heard anecdotally of an increase in GHB use in sexual assaults on the Kenai Peninsula. Well publicized, your bill can send a strong message to those offenders that the penalties they face will be increased and maybe some of them will make the choice not to offend.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

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January 23, 2002

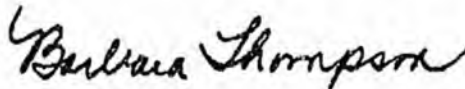
The Honorable Kevin Meyer
Alaska State House of Representative
State Capitol, Room
Juneau, AK 99801-1182

Dear Representative Meyer:

As the state council charged with providing leadership in meeting the needs of victims of domestic violence and sexual assault, the Council on Domestic Violence and Sexual Assault strongly supports House Bill 297, "an Act relating to aggravating factors at sentencing." This bill would allow for stiffer sentences for sexual predators in Alaska, and could be a strong deterrent for perpetrators who intentionally use drugs or alcohol to lower the inhibitions of their victims.

Many sexual assaults in Alaska involve alcohol or other drugs. Victims debilitated by intoxication often present little or no resistance during the assault; nor do they clearly recall the event later. These factors allow the perpetrators to commit serious crimes, seemingly without accountability or punishment. House Bill 297 can help keep Alaskans safe not only by serving as a deterrent, but also by giving courts the option to impose longer sentences for those who commit the crime of sexual assault by intentionally sedating their victims. The Council supports your efforts to increase the penalty for committing this horrible crime in Alaska and appreciates your concern for the protection and safety of Alaskans.

Sincerely,



Barbara Thompson
Chair