

HB

243

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 243
() Publish Date: _____

Revision Date/Type (Note if correction): _____ Dept. Affected: Law
Title: "An Act relating to sexual assault or abuse of BRU Criminal Division
a minor." Component All
Sponsor: Representative Dyson
Requester: House Judiciary Committee Component No. _____

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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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)

HB 243 relates to sexual abuse of a minor where the definition of the crime depends on the victim being under a certain age. The bill requires that a defendant must have taken reasonable measures such as checking identification or verifying the victim's age with the victim's parents in order to assert the affirmative defense that the defendant believed the victim of be old enough to consent to sexual activity. It would be insufficient for the defendant to rely solely on the word of the victim or the victim's friends.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division: Attorney General's Office Date/Time 1/17/02 10:57 AM
Approved by: Bob Meiners for Bruce M. Boteelho, Attorney General Date 1/17/2002
Agency: Department of Law



Alaska State Legislature

• Interim (May-Dec) •
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• Session (Jan-May) •
Alaska State Capitol
Juneau, Alaska 99801-1182
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Toll free (800) 342-2199

REPRESENTATIVE FRED DYSON

MEMORANDUM

February 26, 2002

To: Senator Taylor,
Chair, Senate Judiciary

From: Fred Dyson
State Representative

A handwritten signature in cursive script that reads "Fred Dyson". Below the signature, the initials "WDC" are written in a smaller, handwritten font.

RE: Request for consideration of HB 243, relating to sexual assault
or abuse of a minor.

I respectfully request that you schedule HB 243 for hearing at your earliest
convenience.

Thank you.

• E-mail •
Representative_Fred_Dyson
@Legis.state.ak.us

• Internet •
<http://www.akrepublicans.org>

**REQUEST FOR
HEARING**



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REPRESENTATIVE FRED DYSON

HB 243 Sponsor Statement

"An Act relating to sexual assault or abuse of a minor

Updated: February 8, 2002

Contact: Representative Fred Dyson's office at (907) 465-2199

Periodically, sexual predators use the defense that they did not know that the victim was under age, and, that the victim said he/she was of age. House Bill 243 will force the perpetrator to show they took some action to verify the victim's age. This requirement is a step beyond the claim that they "reasonably believed" the victim was of age.

It is far too likely that fathers of babies born to teen mothers are much older than the mother. According to an Alaska Public Health Publication, 36% of known male partners of teen mothers (17 and under) were 21 years of age or older. There seems to be growing evidence that the teen pregnancies experienced by many young teens are the result of non-voluntary sex.

Our existing law that covers minors having sex with minors whose ages are within three years (AS 11.41.440) will still apply.

- E-mail -
Representative_Fred_Dyson
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<http://www.akrepublicans.org>

Sponsor Statement

Sec. 11.41.410. Sexual assault in the first degree.

- (a) An offender commits the crime of sexual assault in the first degree if
 - (1) the offender engages in sexual penetration with another person without consent of that person;
 - (2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;
 - (3) the offender engages in sexual penetration with another person
 - (A) who the offender knows is mentally incapable; and
 - (B) who is in the offender's care
 - (i) by authority of law; or
 - (ii) in a facility or program that is required by law to be licensed by the state; or
 - (4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and
 - (A) the offender is a health care worker; and
 - (B) the offense takes place during the course of professional treatment of the victim.
- (b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.420. Sexual assault in the second degree.

- (a) An offender commits the crime of sexual assault in the second degree if
 - (1) the offender engages in sexual contact with another person without consent of that person;
 - (2) the offender engages in sexual contact with a person
 - (A) who the offender knows is mentally incapable; and
 - (B) who is in the offender's care
 - (i) by authority of law; or
 - (ii) in a facility or program that is required by law to be licensed by the state;
 - (3) the offender engages in sexual penetration with a person who the offender knows is
 - (A) mentally incapable;
 - (B) incapacitated; or
 - (C) unaware that a sexual act is being committed; or
 - (4) the offender engages in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and
 - (A) the offender is a health care worker; and
 - (B) the offense takes place during the course of professional treatment of the victim.
- (b) Sexual assault in the second degree is a class B felony.

Sec. 11.41.425. Sexual assault in the third degree.

- (a) An offender commits the crime of sexual assault in the third degree if the offender
 - (1) engages in sexual contact with a person who the offender knows is
 - (A) mentally incapable;
 - (B) incapacitated; or
 - (C) unaware that a sexual act is being committed;
 - (2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or
 - (3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.
- (b) Sexual assault in the third degree is a class C felony.

Sec. 11.41.427. Sexual assault in the fourth degree.

- (a) An offender commits the crime of sexual assault in the fourth degree if
 - (1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or
 - (2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.
- (b) Sexual assault in the fourth degree is a class A misdemeanor.

Sec. 11.41.432. Defenses.

- (a) It is a defense to a crime charged under AS 11.41.410 (a)(3), 11.41.420(a)(2), 11.41.420(a)(3), or 11.41.425 that the offender is
 - (1) mentally incapable; or
 - (2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.
- (b) Except as provided in (a) of this section, in a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant.

Sec. 11.41.434. Sexual abuse of a minor in the first degree.

- (a) An offender commits the crime of sexual abuse of a minor in the first degree if
 - (1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;
 - (2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian; or
 - (3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and
 - (A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or
 - (B) the offender occupies a position of authority in relation to the victim.
- (b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.436. Sexual abuse of a minor in the second degree.

- (a) An offender commits the crime of sexual abuse of a minor in the second degree if
- (1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;
 - (2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;
 - (3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian;
 - (4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455 (a)(2) - (6); or
 - (5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and
 - (A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or
 - (B) the offender occupies a position of authority in relation to the victim.
- (b) Sexual abuse of a minor in the second degree is a class B felony.

Sec. 11.41.438. Sexual abuse of a minor in the third degree.

- (a) An offender commits the crime of sexual abuse of a minor in the third degree if
- (1) being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender; or
 - (2) being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.
- (b) Sexual abuse of a minor in the third degree is a class C felony.

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree.

- (a) An offender commits the crime of sexual abuse of a minor in the fourth degree if
- (1) being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender; or
 - (2) being 18 years of age or older, the offender engages in sexual contact with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.
- (b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor.

Sec. 11.41.445. General provisions.

(a) In a prosecution under AS 11.41.434 - 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless the offense was committed without the consent of the victim.

(b) In a prosecution under AS 11.41.410 - 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be that age or older, unless the victim was under 13 years of age at the time of the alleged offense.



Alaska Association of Chiefs of Police

January 3, 2002

The Honorable Fred Dyson
Alaska House of Representatives
State Capitol, Room 104
Juneau, AK 99801-1182

Re: Support for HB 243

Dear Representative Dyson:

As you are aware, the Alaska Association of Chiefs of Police is actively engaged in supporting or opposing legislation that impacts law enforcement efforts in Alaska.

I would like to advise you of our support for HB 243, which appropriately places the responsibility for determining the age of potential sexual partners where it belongs. To often in the past, perpetrators have been able to avoid conviction by claiming they "thought" the person appeared to be older.

If we can be of any assistance during the upcoming hearings, please let me know.

Thank you for your efforts on behalf of Alaska's youth.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Clemons", is written over a horizontal line.

Tom Clemons
President, AACOP

April 26, 2001

Representative Dyson:

I am sorry I was unable to speak on HB 243. I expect that the Chairman was unaware that I was on line. I had called in as a representative of the Department of Public Safety to support your bill.

I wanted to tell the committee that we supported this bill for a couple of reasons;

1) The bill provides for a two prong requirement for the defendant:
a) that he/she had reason to believe the "partner" was of age; and
b) that the defendant took some positive step to confirm the age of the partner prior to having sex.

2) Currently, if a person is charged with a sexual offense and his defense is that he/she "reasonably believes" there is a good chance that prosecution will not go forth. As you know, "reason to believe" is difficult to prove. This bill extends reasonable belief by requiring that the defendant present some additional evidence that he/she actually had some credible information which was used to establish his/her reasonable belief.

3) Typically what happens is a young teen goes to a teen club or private party where they meet up with one or more young adults and before the night is over there are sexual relations. When these cases are reported to the police the investigation is started and most of the time the suspect admits to the sexual act but says it was consensual and when confronted about the age of the partner, the suspect usually says he/she said they were 16 or older and the suspect believed it. At that point prosecution is difficult because of the current affirmative defense. We believe that requiring some additional action would be very beneficial to the prosecutors, victims and potential future victims.

4) The bottom line is the offender does not get a free pass simply based on his/her statement "I reasonably believed the victim to be that age or older." This bill establishes the requirement that a person must take some form of responsible action to confirm the age of the other person before having sex.

--
Lieutenant Steve Dunnagan
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