

HB

297

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 297(JUD)
 (H) Publish Date: 2/8/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act related to aggravating factors at BRU Criminal Division
sentencing." Component All
 Sponsor Representative Meyer
 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 297 adds supplying alcohol or a controlled substance to a victim of a sexual offense as an aggravating factor to be considered at sentencing.

Passage of this legislation is not expected to have a fiscal impact on the Department of Law. The bill adds an additional factor for the judge to consider at sentencing, but will not add new hearings, extend the length of current proceedings, nor make them more difficult.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 1/25/02 2:19 PM
 Approved by: Kathryn Daughhelee for Bruce M. Botelho, Attorney General Date 1/25/2002
 Agency: Department of Law

FISCAL NOTE

**STATE OF ALASKA
2002 LEGISLATIVE SESSION**

Fiscal Note Number: 2
 Bill Version: CSHB 297(JUD)
 (H) Publish Date: 2/8/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: "An Act related to aggravating
factors in sentencing." BRU: Legal and Advocacy Services
 Component: Public Defender Agency
 Sponsor: Rep. Meyer
 Requester: House Judiciary Component No.: 1831

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)

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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: 3
 Bill Version: CSHB 297(JUD)
 (H) Publish Date: 2/8/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An Act relating to aggravating factors
sentencing." BRU Administration and Operations
 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	***	***	***	***	***	***

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 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 465-4852
 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



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

MEMORANDUM

DATE: February 28, 2002

TO: Senator Robin Taylor
Chair, Senate Rules Committee

FROM: Representative Kevin Meyer *KM*

RE: Scheduling of CS HB 297(JUD) Aggravator for Sexual Assault

At your earliest convenience, please schedule CS HB 297(JUD), Aggravator for Sexual Assault, for a hearing in your committee.

CS HB 297(JUD) adds an aggravating factor to AS 12.55.155 that declares if a defendant supplied drugs or alcohol to a victim in furtherance of a sexual assault with the intent to make the victim incapacitated, the defendant may be held to a higher degree of punishment.

Attachments.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

SPONSOR STATEMENT

CS HB 297(JUD)

“An Act related to aggravating factors at sentencing.”

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

CS HB 297(JUD) adds an aggravating factor to AS 12.55.155 that declares if a defendant supplied drugs or alcohol to the victim in furtherance of the offense, 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. CS HB 297(JUD) 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 the maximum allowed.

It is important to remember that an aggravator is applied at sentencing. The defendant will have already been convicted of sexual assault.

2/25/02

al or simulated

- (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)

or breast;

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."

child under 18

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.

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(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)

on knowing that

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.

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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."

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

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- (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 the 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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JAN 25 2002



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

1057 W. FIREWEED LANE, SUITE 230 • ANCHORAGE, ALASKA 99503 • BUSINESS 907-276-7279

24-HOUR CRISIS 907-276-7273 • TOLL FREE 1-800-478-8999 • FAX 907-278-9983 • TTDY 907-278-9988 • STAR@AK.NET

Providing advocacy and support for victims and their loved ones, and education for our community

STATE OF ALASKA

JAN 25 2002

DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

TONY KNOWLES, GOVERNOR

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4358
FAX: (907) 465-9627
OFFICE ADDRESS: 450 WHITTIER ST.

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



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 OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

January 31, 2002

Representative Kevin Meyer
State Capitol
Juneau, AK 99801-1182

Dear Representative Meyer:

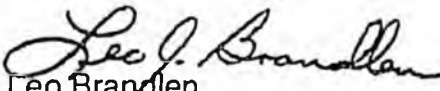
Thank you for introducing House Bill 297 (22-LS1186VA) related to aggravated factors of sentencing as it pertains to providing alcohol or a controlled substance to a victim.

The APOA State Board of Directors recently met and after discussing proposed legislation, decided to unanimously support this bill.

We believe that this legislation will assist prosecutors in the sentencing of offenders in cases where the offender has given the victim alcohol or drugs to take advantage of the victim such as in cases involving "date rape" drugs and the like.

Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,


Leo Brandlen
State President

To: Ethan Berkowitz
From: Karen Bitzer, Executive Director
Date: February 6, 2002

Thank you for your conversations regarding HB 297. I appreciate your introspection and willingness to talk with us regarding the bill.

I have talked with law enforcement, which actually inspired this bill, and offer the following scenarios for you. They are based in reality.

A man who gives her alcohol as a "relaxant" assaults a 12-year-old girl. He could be charged with giving alcohol to a minor, sexual abuse of a minor, and probably a few other things. But he pleads to SAM and is sentenced to 10 years, will be serving 6. In the course of the case, he reveals that he will plead, do his 6 and come out to do more kids. He likes to do kids and he will serve his time now and will plead again if he is caught the next time. Even though the original charge did not include the providing alcohol to a minor, the case could be made a sentencing to add the aggravator.

Or we have a victim in the hospital right now who was severely beaten and raped and sodomized. Every bone in her face is broken, her leg is broken and her pelvic and abdominal region injuries are so severe, she will require extensive surgery and will never be "normal" again – physically or emotionally. Date rape drugs are suspected. As a victim advocate I would hope that every aggravator and charge would be used to ensure this mad not have access to another person – especially a young woman – again...ever.

From a victim advocate perspective, one of the hardest things for a victim to realize is that the prosecuting attorney is there to present the case – not necessarily what she believes to be the whole case or her case. When sentencing aggravators are possible, and the victim has the ability to reference those in victim impact statements, it allows the victim to feel that they have advocated for themselves. This is especially true with drugs or alcohol that is sometimes plead away in the charges and yet can be reinforced in the sentencing phase, especially if the prosecutor and the victim can make the case together.

A victim is really not able to stand before the judge in a victim impact statement and say *please consider building the case law allowed for under AS.....section.....that would allow for a sentencing aggravator because drugs or alcohol were used.* A victim can say, please consider applying the sentencing aggravator because he kept buying me beers and telling me that "one more won't hurt" or "if I didn't drink the beer with him, he would leave me with no way to get home." STAR is a victim advocacy agency. We think victims should have every tool possible. The sentencing phase is the only time a victim is really allowed to speak on his or her own behalf. If they are on the stand, a victim can only answer the questions of the DA or defense and it never goes the way they hope. They always wish they had been able to say something else. And if the suspect pleads, the victim is only left with the impact statement at sentencing to even be heard by the court.

Thanks Ethan for your thoughtful reflection. Please do not hesitate to call with comments or questions.

I will look forward to seeing you in Juneau.