

HB

2

SENATE COMMITTEE REPORT

DATE: 3/28/03

FURTHER: Judiciary

DATE TURNED
IN TO OFFICE: 4/11/03

State Affairs Committee considered CS FOR HOUSE BILL NO. 2(JUD)(title am)

HB 2 CIVIL STATUTE OF LIMITATIONS/SEX OFFENSES

"An Act relating to the statute of limitations for certain civil actions relating to acts constituting sexual offenses; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____


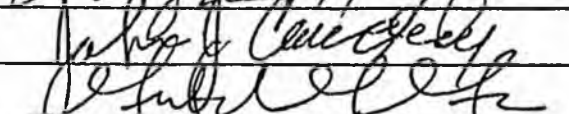
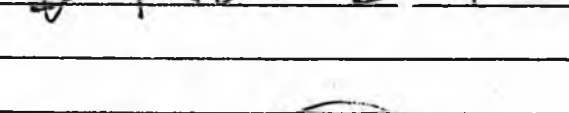
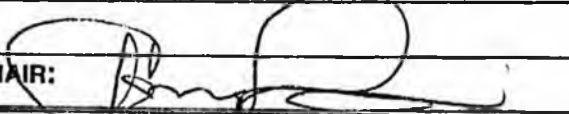
NEW FISCAL NOTE(S):

| Department | Date | Fiscal | Zero | FN# |
|------------|------|--------|------|-----|
| | | | | |
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PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Zero | FN# |
|------------|---------|--------|------|-----|
| ACS | 3/12/03 | | ✓ | 1 |
| DOL | 3/10/03 | | ✓ | 2 |
| | | | | |
| | | | | |
| | | | | |

APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | DO PASS | DO NOT PASS | NO REC | AMEND |
|--|---------|-------------|--------|-------|
|  | | | ✓ | |
|  | ✓ | | | |
|  | | | ✓ | |
| | | | | |
| | | | | |
| CHAIR:  | ✓ | | | |

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 2(JUD)
 (H) Publish Date: 3/12/2003

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Statute of Limitation for Sex Crimes 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 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

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 (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 2.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 3/12/03 2:26 PM
 Approved by: Stephanie Cole, Administrative Director Date 3/12/2003
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 2(JUD)
(H) Publish Date: 3/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to the statute of limitations for BRU Civil Division
certain civil actions; . . ." Component Special Litigation
Sponsor Representative Meyer
Requester House Judiciary Committee Component No. 2213

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

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 (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)
This bill removes the statute of limitations for when a person may bring a civil action for unlawful exploitation of a minor, and extends the statute of limitations for other civil actions stemming from certain criminal conduct.

This bill concerns private rights of action against perpetrators of specified criminal conduct, and 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 3/10/03 11:28 AM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General Date 3/10/2003
Agency: Department of Law

(LIMITED RUN SHOWING ALL ADDITIONAL SPONSORSHIPS)

CS FOR HOUSE BILL NO. 210(JUD) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/24/01

Offered: 4/11/01

Sponsor(s): REPRESENTATIVES MEYER, Guess, Dyson, Croft, Hudson, Hayes, McGuire, Bunde, Wilson

SENATORS Pearce, Halford, Taylor, Leman, Ward, Olson, Cowdery, Hoffmat, Davis, Lincoln, Therriault, Ellis

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to sexual assault and sexual abuse of a minor."**

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

3 *** Section 1.** AS 09.10.060(c) is repealed and reenacted to read:

4 (c) Notwithstanding other provisions in this chapter, a person may bring an
5 action at any time for the following acts:

6 (1) felony sexual abuse of a minor; or

7 (2) felony sexual assault.

8 *** Sec. 2.** AS 12.10.010 is repealed and reenacted to read:

9 **Sec. 12.10.010. General time limitations.** (a) Prosecution for the following
10 offenses may be commenced at any time:

11 (1) murder;

12 (2) felony sexual abuse of a minor;

13 (3) sexual assault that is an unclassified, class A, or class B felony or a
14 violation of AS 11.41.425(a)(2) or (3);

15 (4) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458,

1 AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person
2 who, at the time of the offense, was under 18 years of age.

3 (b) Except as otherwise provided by law or in (a) of this section, a person may
4 not be prosecuted, tried, or punished for an offense unless the indictment is found or
5 the information or complaint is instituted not later than

6 (1) 10 years after the commission of a felony offense in violation of
7 AS 11.41.120 - 11.41.370, 11.41.425(a)(1), or 11.41.450 - 11.41.458; or

8 (2) five years after the commission of any other offense.

9 * Sec. 3. AS 12.10.020(c) is repealed.

10 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 APPLICABILITY. The extension of the statute of limitations for felony sexual
13 assault provided in sec. 2 of this Act applies to all offenses occurring

14 (1) on or after the effective date of this Act; and

15 (2) to all offenses occurring before the effective date of this Act if the statute
16 of limitations applicable to that offense on the day before the effective date of this Act has not
17 expired, including any specific time periods for that offense under AS 12.10.020, as that
18 section read the day before the effective date of this Act, and any period when the limitations
19 period did not run under AS 12.10.040.

Journal Text



04-23-2001 House Journal 1141
HB 210

The following was read the second time:

HOUSE BILL NO. 210
"An Act relating to sexual assault and sexual abuse of a minor."

| with the: | Journal Page |
|-----------------------------|--------------|
| JUD RPT CS(JUD) 3DP 1NR 1AM | 953 |
| FN1: INDETERMINATE(ADM) | 954 |
| FN2: ZERO(CRT) | 954 |
| FN3: ZERO(LAW) | 954 |
| FIN REFERRAL WAIVED | 994 |

Representative James moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

CS FOR HOUSE BILL NO. 210(JUD)
(same title)

There being no objection, it was so ordered.

Amendment No. 1 was offered by Representative Berkowitz:

Page 1, following line 2:

Insert "*Section 1. AS 09.10.060 is repealed and reenacted to read:

Sec. 09.10.060. Notwithstanding other provisions in this chapter, a person may bring an action at any time for the following acts:

- (a) sexual abuse of a minor; or
- (b) sexual assault."

Renumber the following bill sections accordingly.

04-23-2001 House Journal 1142

Representative Berkowitz moved and asked unanimous consent that Amendment No. 1 be adopted.

Representative Meyer objected.

Amendment to Amendment No. 1 was offered by Representative Davies:

Under (a) and (b) preceding "sexual":
Insert "felony"

Representative Davies moved and asked unanimous consent that Amendment to Amendment No. 1 be adopted. There being no objection, it was so ordered.

There being no further objection to Amendment No. 1 as amended, it was adopted.

Representative James moved and asked unanimous consent that CSHB 210(JUD) am be considered engrossed, advanced to third reading, and placed on final passage. There being no objection, it was so ordered.

Journal Text



04-24-2001 House Journal 1169
HB 210

Representative Berkowitz brought up reconsideration of the vote on CSHB 210(JUD) am (page 1143).

04-24-2001 House Journal 1170

The following was again before the House in third reading:

CS FOR HOUSE BILL NO. 210(JUD) am
"An Act relating to sexual assault and sexual abuse of a minor."

Representative Berkowitz moved and asked unanimous consent that CSHB 210(JUD) am be returned to second reading for the specific purpose of considering Amendment No. 1 (page 1141). There being no objection, it was so ordered.

Representative Berkowitz moved and asked unanimous consent that the House rescind previous action in adopting Amendment No. 1. There being no objection, it was so ordered.

Without objection, New Amendment No. 1 was offered by Representative Berkowitz to replace Amendment No. 1:

Page 1, following line 2:

Insert "*Section 1. AS 09.10.060(c) is repealed and reenacted to read:

- (c) Notwithstanding other provisions in this chapter, a person may bring an action at any time for the following acts:
- (1) felony sexual abuse of a minor; or
 - (2) felony sexual assault."

Renumber the following bill sections accordingly.

Representative Berkowitz moved and asked unanimous consent that New Amendment No. 1 be adopted. There being no objection, it was so ordered.

The question to be reconsidered: "Shall CSHB 210(JUD) am pass the House?" The roll was taken with the following result:

CSHB 210(JUD) am--RECONSIDERATION
Third Reading
Final Passage

YEAS: 37 NAYS: 0 EXCUSED: 1 ABSENT: 2
04-24-2001 House Journal 1171

Yeas: Berkowitz, Bunde, Chenault, Cissna, Coghill, Crawford, Croft, Davies, Dyson, Fate, Foster, Green, Guess, Halcro, Harris, Hayes, Hudson, James, Joule, Kerttula, Kohring, Kookesh, Kott, Lancaster, Masek, McGuire, Meyer, Morgan, Moses, Murkowski, Porter, Rokeberg, Scalzi, Stevens, Whitaker, Williams, Wilson

Excused: Ogan

Absent: Kapsner, Mulder

And so, CSHB 210 (JUD) am passed the House on reconsideration and was referred to the Chief Clerk for engrossment.

Bill Root: |



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[LIVE KTOO STREAMS](#)



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REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

Sponsor Statement

CS HB 2(JUD)(title am)

“An Act relating to the statute of limitations for certain civil actions relating to acts constituting sexual offenses; and providing for an effective date.”

CS HB 2(JUD)(title am) is a clean-up bill that clarifies which misdemeanors and felonies involving sexual assault and sexual abuse have a three-year statute of limitations on civil actions, and which felonies have no statute of limitations on civil actions.

In 2001, the Twenty-second Legislature passed HB 210 Statute of Limitations: Sexual Assault and Sexual Abuse of a Minor. The original intent of HB 210 was to remove the criminal statute of limitations for felony sexual assault and sexual abuse of a minor. HB 210 was amended on the House floor and, as a result, both the criminal and the civil statute of limitations for all felony sexual assault and felony sexual abuse of a minor were removed. The floor amendment caused several statutory inconsistencies pertaining to civil statute of limitations.

The 2001 floor amendment did not reference “felony sexual abuse of a minor” and “felony sexual assault” to particular sections of the criminal code. The floor amendment did not make clear whether certain felonies included in AS 09.10.060(c) that are not sexual assault or sexual abuse of a minor, are intended to have: 1. No statute of limitations; 2. A two-year statute of limitations; or, 3. A three-year statute of limitations.

Also, the floor amendment did not make a specific provision for misdemeanor sexual abuse or sexual assault crimes. As a consequence, the civil statute of limitations for those crimes dropped to two years, for torts in general. Prior to the floor amendment, the statute of limitations was three years.

CS HB 2(JUD)(title am) establishes the civil statute of limitations at three years for misdemeanor sexual assault, misdemeanor sexual abuse of a minor, incest, and felony indecent exposure. Under CS HB 2(JUD)(title am), unlawful exploitation of a minor, a class B felony, is added to the list of sexual assault crimes in which the civil statute of limitations is removed.

Last Updated: March 31, 2003

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 10, 2003

SUBJECT: HB 2 (Work Order No. 23-LS0008\A); Civil Statute of Limitations for sex offenses

TO: Representative Kevin Meyer

FROM: Pam Finley 
Revisor of Statutes

You have asked for a sectional analysis of HB 2.

Bill section 1. This section amends AS 09.10.065 by adding unlawful exploitation of a minor to the list of sex offenses that do not have a civil statute of limitations. The amendment also clarifies that (1) it is the defendant's conduct, not a criminal conviction, that makes the section apply, and (2) for the purposes of this section, the defendant's conduct is to be judged according to the elements of the offenses as they existed at the time of the offense (not, for example, at the time the civil lawsuit is filed.)

Bill section 2. This bill section establishes a three year civil statute of limitations for conduct constituting misdemeanor sexual abuse of a minor, misdemeanor sexual assault, incest, and felony indecent exposure. Currently, acts described by these offenses would have a two year civil statute of limitations under AS 09.10.070.

Bill section 3. This bill section amends AS 09.10.140(b) to conform to the fact that conduct covered by AS 09.10.065(a) ---in bill section 1--- no longer has a statute of limitations. It is essentially a technical amendment.

Bill section 4. This bill section makes bill sections 1-3 retroactive to October 1, 2001, which was the effective date of sec. 1, ch. 86, SLA 2001. Section 1, ch. 86, SLA 2001, eliminated the civil statute of limitations for felony sexual abuse of a minor and felony sexual assault and also indirectly changed the civil statute of limitations for unlawful exploitation of a minor, misdemeanor sexual abuse of a minor, misdemeanor sexual assault, incest, and felony indecent exposure from three years to two years. Based on discussions of last year's revisor's bill, it appears that the legislature did not intend the indirect change from three years to two years. To reflect the legislature's intent in restoring the three year civil statute of limitations, this bill is made retroactive. (The addition of unlawful exploitation of a minor to those offenses that have no civil statute of limitations is also retroactive, as is the technical amendment in bill section 3.) While I do

not believe that this provision creates any constitutional problems, the bill does limit retroactivity "to the extent permitted by the state and federal constitutions."¹

Bill section 5. This bill section gives the bill an immediate effective date.

Because it may be helpful to see the statutes to which this bill relates, I have set out below AS 09.10.070 (the two year statute of limitations for torts in general), AS 09.55.650 (referred to in sec. 3), and the current versions of related criminal statutes. I am also attaching copies of the former statutes referred to in AS 09.55.650(c), as they existed at the time of their repeal in 1980.

AS 09.10.070. (general statute of limitations for torts):

Sec. 09.10.070. Actions for torts, for injury to personal property, for certain statutory liabilities, and against peace officers and coroners to be brought in two years.

(a) Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

(b) A person may not bring an action against a peace officer or coroner upon a liability incurred by the doing of an act in an official capacity or by the omission of an official duty, including the nonpayment of money collected upon an execution, unless brought within two years. This subsection does not apply to an action for an escape.

AS 09.55.650 (referred to in sec. 3):

Sec. 09.55.650. Claim based on sexual abuse to a minor under 16 years of age.

(a) A person who, as a minor under 16 years of age, was the victim of sexual abuse may maintain an action for recovery of damages against the perpetrator of the act

¹ Normally, a civil statute of limitations may be extended before it has expired. Assuming that HB 2 takes effect before October 1, 2003, the statute of limitations for all acts occurring after ch. 86, SLA 2001 took effect will not have expired. However, there may be acts that occurred while the statute of limitations was three years (e.g., in 2000), but which would have been barred in 2002 under a two year statute of limitations. There are some cases in some jurisdictions that suggest that a defendant may have a vested, constitutionally protected right not to be sued once the statute of limitations has expired. See discussion at 51 AM JUR 2d, Limitation of Actions §§ 4, 49, 50, and 51. While these may be distinguishable from the situations covered by HB 2, and while Alaska's Supreme Court has not ruled on this issue, I thought it prudent to indicate that even if the constitution prevents HB 2 from being applied retroactively to some cases, it should be applied retroactively to those cases for which there is no constitutional impediment.

or acts of sexual abuse based on the perpetrator's intentional conduct for an injury or condition suffered as a result of the sexual abuse.

(b) If the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff is not required to prove which specific act caused the injury.

(c) In this section, "sexual abuse" means an act committed by the defendant against the plaintiff maintaining the cause of action if the defendant's conduct would have violated a provision of AS 11.41.410 - 11.41.440 or 11.41.450 - 11.41.458, former AS 11.15.120, 11.15.134, or 11.15.160, or former AS 11.40.110 at the time it was committed.

AS 11.41.410 - 11.41.458

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

(1) reasonably believed the victim to be that age or older; and

(2) undertook reasonable measures to verify that the victim was that age or older.

Sec. 11.41.450. Incest.

(a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

(1) an ancestor or descendant of the whole or half blood;

(2) a brother or sister of the whole or half blood; or

(3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony.

Sec. 11.41.455. Unlawful exploitation of a minor.

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to

Representative Kevin Meyer

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engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child's genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony.

(d) In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.

Sec. 11.41.458. Indecent exposure in the first degree.

(a) An offender commits the crime of indecent exposure in the first degree if

- (1) the offender violates AS 11.41.460(a);
 - (2) while committing the act constituting the offense, the offender knowingly masturbates; and
 - (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.

PF:lmb

03-025.lmb

Enclosure:




REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: March 31, 2003

TO: Senator Gary Stevens
Chairman, Senate State Affairs Committee

FROM: Representative Kevin Meyer 

RE: CS HB 2(JUD)(title am)

There were two minor changes that were made in the House Judiciary Committee Substitute for HB 2:

Section 1: Page 1, line 6-7

Delete: "Notwithstanding other provisions in this chapter, a"

Section 2: Page 1, line 13

Delete: "Notwithstanding other provisions in this chapter"

The title of CS HB 2(JUD) was amended on the House Floor to clarify that the civil actions are limited to the civil actions for acts constituting sexual offenses.