

SB

135

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FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSSB 135(JUD)
(S) Publish Date: 4/14/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An act relating to the crimes of assault and RDU: CRIMINAL
custodial interference..." Component: Criminal Justice Litigation
Sponsor: Senator Dyson
Requester: Senate Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 - Regulatory Cost Charge						
TOTAL						

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 11.41.220(a) (Offenses Against the Person - Assault in the third degree) by adding clarifying language regarding medical treatment when a child under the age of 10 years is assaulted by someone 18 years of age or older. It also amends AS 11.41.340 (Custodial Interference in the second degree) by further limiting instances of where a person may claim the defense of necessity.

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

Prepared by: Kathryn Daughhotee, Director Phone: 465-3673
Division: Administrative Services Division Date/Time: 4/5/05 3:39 PM
Approved by: Kathryn Daughhotee for David Marquez, Attorney General Date: 4/5/2005
Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 135(JUD)
(S) Publish Date: 4/14/05

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Assault and Custodial Interference BRU Alaska Court System
Sponsor Senator Dyson Component Trial Courts
Requester _____ Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 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 SB 135.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
Division: Alaska Court System Date/Time 4/1/05 8:21 AM
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 4/1/2005
Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 135(JUD)
(S) Publish Date: 4/14/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to the crimes of RDU Legal and Advocacy Services
assault and custodial interference. Component Public Defender Agency
Sponsor Senator Dyson
Requester Senate Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill should have minimal fiscal impact on the operations of the Public Defender Agency. The Agency does not expect to handle a significant number of offenses covered under this proposed legislation.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
Division: Public Defender Agency Date/Time 4/4/05 8:54 AM
Approved by: Michael Tibbles, Deputy Commissioner Date 4/4/2005
Agency: Department of Administration

~~SB~~ with drawn

HOUSE AMENDMENT # 1

5/9/05

TO: SB 135

BY: BERKOWITZ

Page 1 Line 13-14
2 1-2 } DELETE

~~the~~ P 1, line 13 following "injury"
insert

" Causes disfigurement, impairment of health, or loss or impairment of the function of a body member or organ."

This amendment substitutes language from the criminal definition section of 11.81, rather than introducing a list of new terms into the criminal code. This amendment also keeps the focus on the injury to a child victim, rather than the actions of a "reasonable" caregiver.

Submit original amendment to the Chief Clerk.
It will then be numbered and duplicated.



SENATOR FRED DYSON

SPONSOR STATEMENT (Prepared by the Department of Law)

CS SB 135 (JUD)—*“An Act relating to the crimes of assault and custodial interference; and providing for an effective date.”*

SB 135 is aimed to provide additional protection to Alaska's children, and was drafted by the Criminal Division of the Department of Law. The bill focuses on two crimes: assault and custodial interference.

Assault. Assault in the third degree concerns the reckless injury (of a young child) that *reasonably requires medical treatment*. The abuse that vulnerable infants and small children experience, however, is often difficult to accurately diagnose without extensive medical testing. In *Wells v. State*, 102 P.3d 972 (Alaska App. 2004), the Alaska court of appeals held that this diagnostic testing does not constitute “treatment.” In that particular case, the emergency room doctor found “numerous bruises” on the head of a 9-month old infant, so they ordered a CT scan and blood tests. Two doctors testified that the bruises could not have been caused by the infant banging his own head on the crib because he could not have generated enough force. The defendant was convicted by a jury, and the court of appeals reversed.

SB 135 proposes to change “reasonably requires medical treatment” to “would cause a reasonable caregiver to seek medical attention from a health care professional in the form of diagnosis or treatment.” This change is consistent with other statutes, such as criminal nonsupport—a misdemeanor for failure to provide a child with necessary “medical attention.” This phrase has been interpreted by Alaska courts as broader than mere “treatment,” because “children may suffer injuries sufficiently threatening to require a medical examination, even if that examination ultimately discloses no need for treatment.” *S.R.D. v. State*, 820 P.2d 1088, 1090-91 (Alaska App. 1991).

Custodial Interference. Parents who kidnap their children from the custodial parent keep them for long periods, and it is usually months before the children can be accounted for and the parents brought to justice. Often, the children are moved from place to place, kept out of public school, had their legal names changed, or taken out of state—to avoid being found. The kidnapper often defends his/her conduct by claiming that the child was being abused or neglected by the custodial parent, and therefore it was necessary to take the child. A “necessity” defense is allowed for many crimes (AS 11.81.320), but was not believed to be allowed in parental kidnapping cases until *Perrin v. State*, 66 P.3d 21 (Alaska App. 2003). Some boundaries to this defense are appropriate to reinforce custodial orders from the court and to stand against parents who inappropriately ‘take matters into his/her own hands.’

SB 135 proposes to recognize a limited “necessity” defense for parental kidnapping, but only if the parent holds the child for no longer than 24 hours, or the time necessary to contact authorities, whichever is shorter.