

SB

135

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 3/8/05

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 135

SB 135 ASSAULT & CUSTODIAL INTERFERENCE

"An Act relating to the crimes of assault and custodial interference; 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 Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			X	
<i>[Signature]</i>				X
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
CHAIR: <i>Ralph Decker</i>	✓			

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF CHILDREN'S SERVICES

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110630
JUNEAU, ALASKA 99811-0630
PHONE: (907) 495-3170

April 6, 2005

Honorable Senator Ralph Seekins
Senate Judiciary Chair
State Capitol, Room 125
Juneau, AK 99801-1182

Re: SB 135

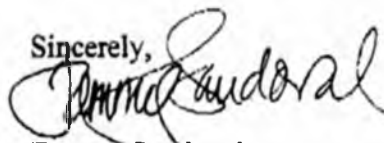
Dear Senator Seekins:

Thank you to you and Senate Judiciary Committee members for hearing Senate Bill 135.

While the intent of SB 135 primarily relates to the criminal code, it impacts child protective services as well. Specifically, section 2, C (2) establishes that a parent should not be able to violate a custody order on the grounds of suspected child abuse or neglect without reporting that abuse, neglect, or imminent physical danger to a social services agency. So this is to say, despite child custody disputes between parents, any concerns of child abuse or neglect must be reported immediately.

We support the passage of SB 135 and appreciate your work on this piece of legislation.

Sincerely,



Tammy Sandoval
Acting Deputy Commissioner

cc: Commissioner Joel Gilbertson



SENATOR FRED DYSON

SPONSOR STATEMENT (Prepared by the Department of Law)

SB 135—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, treatment, or care." 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 take 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, or had their legal names changed—to avoid being found. The kidnapper often defends his/her conduct by claiming that the child was not being cared for by the custodial parent, or was being abused, 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.

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.

STATE OF ALASKA

FRANK H. MURKOWSKI,
GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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Sectional Analysis of SB 135 (Relating to the Crimes of Assault and Custodial Interference)

(Prepared by the Department of Law, March 11, 2005)

SB 135 addresses the crime of assault in the third degree and the affirmative defense of necessity in a prosecution for custodial interference.

Sec. 1: *Assault in the third degree:* AS 11.41.220(a)(1)(C)(i) prohibits a person 18 years of age or older from recklessly causing physical injury to a child under 10 years of age, if the injury reasonably requires medical treatment. This conduct is a class C felony. The bill would amend the statute so that it prohibits similar conduct injuring a child that causes a reasonable caregiver to seek medical care for the child, including medical diagnosis, treatment, or care. The bill addresses the recent decision in *Wells v. State*, 102 P.3d 972 (Alaska App. 2004). *Wells* reversed the conviction of a person for third degree assault who had caused multiple head injuries to an infant over a two-week period. The court reasoned that although the injuries required diagnostic procedures including a CT scan, they did not require procedures to treat the injuries after the diagnostic procedures, and thus the statute did not apply. The bill would clarify that medical procedures for treating, diagnosing, or caring for the child are sufficient for application of this section of the third degree assault statute.

Sec. 2: *Affirmative defense of necessity in a prosecution for custodial interference:* AS 11.41.330 (Custodial Interference in the Second Degree), a class A misdemeanor, prohibits taking a child (or incompetent person) from a lawful custodian with the intent to keep the child for a protracted period. Recently, persons prosecuted for this offense have raised the defense of necessity, claiming that they had to take the child from the other person--often the other parent, and in violation of a custody order--because of potential harm to the child. The bill would amend AS 11.41.330, to make the affirmative defense of necessity unavailable if the unlawful period exceeded the shorter of 24 hours or the time necessary to report to a peace officer or social service agency that the child has been abused or neglected or is in imminent physical danger. The amendment would also by reference apply to custodial interference in the first degree under AS 11.41.320, that makes it a class C felony to commit custodial interference and take the child outside the state or keep the child outside the state. This section is proposed to address the decision in *Perrin v. State*, 66 P.3d 21 (Alaska App. 2003).

Sec. 3: *Effective date:* This section establishes an effective date of July 1, 2005.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 135
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Assault and Custodial Interference BRU Alaska Court System
 Component Trial Courts
 Sponsor Senator Dyson
 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 433-4750
 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: _____
 Bill Version: SB135-LAW-CDCO-4-5-1
 () Publish Date: _____

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

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 135
 () Publish Date: _____

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.: 1031

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