

SB

15

<TARGET><BILL>SB 15</BILL><SUBJECT>SB
15</SUBJECT><COMM>HJUD27</COMM></TARGET>

ALASKA STATE LEGISLATURE

Interim:
716 West 4th Avenue
Anchorage, Alaska 99501-2133
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Senator_Kevin_Meyer@legis.state.ak.us



Session:
Alaska State Capitol
Juneau, Alaska 99801-1182
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SENATOR KEVIN MEYER MAJORITY LEADER

TO: Representative Carl Gatto, Chair
House Judiciary Committee

FROM: Senator Kevin Meyer *K*

DATE: April 8, 2011

RE: CSSB 15 Request for Hearing

received
04/08/11 5:00 pm Jm

I respectfully request the House Judiciary Committee to schedule a hearing for CSSB 15, "An Act relating to penalties for certain alcohol offenses involving persons under 21 years of age committed by a sex offender or child kidnapper" pending referral.

The following documents are attached and will be sent electronically:

- Memo Requesting Hearing
- Sponsor Statement
- SB 15, CSSB 15
- Memo of changes
- Fiscal Notes
- Back up information
- Letters of support
- Witness/Testimony:
 - Kate Burkhart, Executive Director of the Advisory Board on Alcoholism and Drug Abuse
- Staff member assigned to the bill: Christine R. Marasigan, 465-6876

This bill would provide aggravated penalties for sex offenders and child kidnappers who provide alcohol to people under 21 years of age.

Please contact Christine if you have any questions regarding this legislation.

Alaska State Legislature



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716 West 4th Ave.
Anchorage, Alaska 99501
(907) 269-0199

Session:
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Senator Kevin Meyer
Senate District O

SPONSOR STATEMENT FOR CSSB 15 (JUD)

"An Act relating to penalties for certain alcohol offenses involving persons under 21 years of age committed by a sex offender or a child kidnapper."

Senate Bill 15 makes providing alcohol for those who are under 21 years of age by a person who is required to register as a sex offender or child kidnapper.

If SB 15 is enacted, penalties will increase as follows:

- A Violation to a Class B Misdemeanor
- A Class A Misdemeanor to a Class C Felony
- A Class C Felony to a Class B Felony

According to the Anchorage Police Department, alcohol is involved in over 51.2% of sexual assaults reported in Anchorage between 2006 and 2007. Almost a fourth of those sexual assaults were perpetrated against victims between the ages of 15 and 19. Law enforcement and social service agencies all recognize a strong pattern in the use of drugs and alcohol as a "grooming" tool in an attempt to lure young people into sexual activity.

CHANGES TO SB 15:

CSSB 15 SHSS: 27-LS0119\D

Two substantive changes:

Lines 5 and 6 on page 1:

Aggravated penalties applies to:

- AS 04.16.51
Furnishing or delivery of alcoholic beverages to persons under the age of 21.
- AS 04.16.055
Room rental for purposes of consuming alcoholic beverages.
- AS 04.16.057
Permitting a person under 21 years of age to possess liquor in dwelling.

Lines 6 and 7 on page 2:

The addition of AS 12.63.100 -- the definition of sex offender child kidnapper.

Changes make the bill more accurately reflect the situations where a young person may be lured into providing sexual favors for alcohol.

Fiscal Note from Department of Corrections:

From GF: \$469.2 for FY 2012-2013, \$821.1 for FY 2014, \$1,173.0 for FY 2014-2015, \$1,524.9 for FY 2016, \$1,876.8 for FY 2017

CSSB 15 SJUD: 27-LS0119\E

One main change:

Line 10 on page 1:

- “who is required to register as a sex offender or child kidnapper under AS 12.63”

Change was recommended by the Department of Law.

Revised Fiscal Note from Department of Corrections:

From GF: \$182.4 for FY 2012, \$232.2 for FY 2013-2017.

CSSB 15 SFIN

Fiscal Note from Department of Corrections: Indeterminate

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 1
Bill Version CSSB 15(HSS)
(S) Publish Date 3/18/11

Identifier (file name) SB015-DOC-OC-03-14-11
Title "An Act relating to penalties for certain alcohol offenses involving
Sponsor Senator Kevin Meyer
Requester Senate Health and Social Services
Dept. Affected DOC
Appropriation Administration & Support
Allocation Office of the Commissioner
OMB Component Number 694

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities	469.2	469.2	821.1	1,173.0	1,173.0	1,524.9	1,876.8	
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	469.2	469.2	821.1	1,173.0	1,173.0	1,524.9	1,876.8	

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	469.2	469.2	821.1	1,173.0	1,173.0	1,524.9	1,876.8
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	469.2	469.2	821.1	1,173.0	1,173.0	1,524.9	1,876.8

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version; not applicable

Prepared by Leslie Houston, Director
Division Dept. of Corrections - Administrative Services
Approved by Joseph D. Schmidt, Commissioner
Dept. of Corrections

Phone 465-3339
Date/Time 3/15/11 11:00 AM
Date 3/15/2011

FISCAL NOTE #1

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO CSSB 15(HSS)

Analysis

This bill would elevate the offenses of furnishing alcohol to persons under the age of 21 (under AS 04.16.051 - AS 04.16.057) if the offense is committed by a sex offender or child kidnapper. For example, if the offense committed under AS 04.16.051 - AS 04.16.057 is a class C felony, the offense would be elevated to a class B felony.

Should this legislation pass, the Department of Corrections has data to support an average of 3.5 convictions per year under the following sections:

Section 1(2): if the underlying offense is a class A misdemeanor, a sex offender or child kidnapper committing the offense is guilty of a class C felony and shall be punished as provided in AS 12.55;

3.5 convictions per year represents an increase of 860 mandays per year @ \$136.44/day = \$117.3/yr

Section 1(3) : if the underlying offense is a class C felony, a sex offender or child kidnapper committing the offense is guilty of a class B felony and shall be punished as provided in AS 12.55.

3.5 convictions per year represents an increase of 2,579 mandays per year @ \$136.44/day = \$351.9/yr

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 2
 Bill Version CSSB 15(HSS)
 (S) Publish Date 3/18/11

Identifier (file name): SB015-LAW-CRIM-03-11-11 Dept. Affected Law
 Title An Act relating to penalties for certain alcohol offenses involving persons Appropriation Criminal
under 21 years of age committed by a sex offender or child kidnapper. Allocation Criminal Justice Litigation
 Sponsor SENATOR(S) MEYER
 Requester (S) HEALTH & SOCIAL SERVICES OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
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 (please identify)								
TOTAL		***	***	***	***	***	***	***

Estimate of any current year (FY2011) cost ***

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
 Date/Time 3/11/11 4:30 PM
 Date 3/11/2011

FISCAL NOTE #2

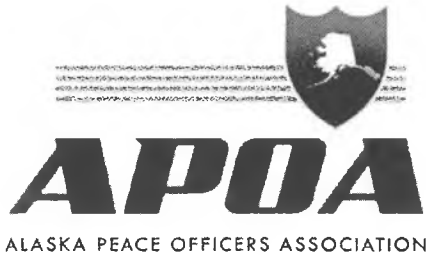
STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSSB 15(HSS)

Analysis

SB 15 raises one level the severity of offenses for providing alcohol to persons under 21 years of age if the offender is a sex offender or child kidnapper. For example, a nonlicensee who furnishes alcohol to a person under 21 years of age commits a class A misdemeanor for a first offense. SB 15 would make this offense a class C felony if the offender was a sex offender or child kidnapper.

This would have an indeterminate fiscal impact on the Department of Law. Any time an offense is raised from a misdemeanor to a felony there is an impact. Felony prosecutions require more time – for example, a felony requires a grand jury indictment and a jury of 12 persons.



February 14, 2011

Senator Kevin Meyer
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator Meyer:

On behalf of our respective organizations, we would like to thank you for introducing SB 15, an Act relating to penalties for certain alcohol offenses involving persons under 21 years of age committed by a sex offender or child kidnapper.

We met recently to review proposed legislation and decided to unanimously support this bill.

Again, thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organizations can do to assist in the passage of this bill.

Sincerely,

John Lucking Jr., President
Alaska Peace Officers
Association
PO Box 240106
Anchorage AK 99524

Tom Clemons, President
Alaska Association of
Chiefs of Police
183 Nelson Ave
Wasilla AK 99654

Michele Logan, President
Women Police
of Alaska
PO Box 233306
Anchorage AK 99523

**Advisory Board on Alcoholism
and Drug Abuse**



Alaska Mental Health Board

ALASKA MENTAL HEALTH BOARD
ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE
431 NORTH FRANKLIN STREET, SUITE 200
JUNEAU, ALASKA 99801
(907) 465-8920

March 29, 2011

Senator Kevin Meyer
Alaska State Legislature
Capitol Building, Room 103
Juneau, Alaska 99801

Re: SB 15 – Alcohol Offenses Committed by Sex Offenders, Child Kidnappers

Dear Senator Meyer,

On behalf of the Advisory Board on Alcoholism and Drug Abuse, I would like to express our support for your efforts to protect children and youth from falling victim to sexual exploitation, trafficking, and kidnapping. While there is no specific data reflecting how often a young person gains access to alcohol through a convicted sex offender or child kidnapper, there is data that shows that young people gain access to alcohol at least one third of the time from adults or friends.

The Center for Behavioral Health Statistics and Quality reported in February 2011 that, between 2006 and 2009, 93.4% of the 709,000 adolescents aged 12-14 who reported drinking alcohol gained access to the alcohol — for free — from other people. Of those, 13.5% were given the alcohol by an unrelated adult. In Alaska, 34.7% of traditional high schools students participating in the 2009 Youth Risk Behavior Survey reported that they had used alcohol in the past thirty days and that they got that alcohol from someone else. While we don't know who provided that alcohol, or whether they were a convicted sex offender or child kidnapper, we do know there is connection between providing alcohol to minors and victimization.

Recent new coverage of sexual exploitation of young Alaskan women by Channel 2, KTUU news highlighted the role of drugs and alcohol in this form of victimization. Young people are often ensnared in human trafficking and sexual exploitation through the provision of drugs and alcohol, among other "grooming" efforts. By creating an aggravating factor to target individuals who use alcohol to coerce, induce, or otherwise attempt to engage a young person in sexual activity will help to address this problem.

Given the traumatic and potentially lifelong harm that can result from situations in when predators use alcohol (and other drugs) to prey upon young people, SB 15 provides a balanced approach to increasing the penalty for individuals who engage in this sort of victimization and exploitation. We appreciate your efforts on behalf our most vulnerable youth.

Sincerely,

J. Kate Burkhart
Executive Director

system. These violations can be enforced by traditional criminal procedures, including the use of search warrants. *State v. Euteneier*, 31 P.3d 111 (Alaska Ct. App. 2001).

The trial court erred in granting a defendant's motion to suppress evidence discovered pursuant to a search warrant in a prosecution for consuming alcohol as a minor, because while consuming alcohol as a minor was classified as a violation rather than a misdemeanor, search warrants could validly be issued to investigate violations. *State v. Euteneier*, 31 P.3d

111 (Alaska Ct. App. 2001).

Stated in *Shamberg v. State*, 762 P.2d 488 (Alaska Ct. App. 1988); *Alex v. State*, 127 P.3d 847 (Alaska Ct. App. 2006).

Cited in *M.O.W. v. State*, 645 P.2d 1229 (Alaska Ct. App. 1982); *Alfred v. State*, 758 P.2d 130 (Alaska Ct. App. 1988); *State v. Simpson*, 946 P.2d 890 (Alaska Ct. App. 1997); *Johnson v. State*, 88 P.3d 1137 (Alaska Ct. App. 2004); *Estate of Logusak v. City of Togiak*, 185 P.3d 103 (Alaska 2008); *Brown v. State*, 221 P.3d 20 (Alaska Ct. App. 2009).

Sec. 04.16.051. Furnishing or delivery of alcoholic beverages to persons under the age of 21. (a) A person may not furnish or deliver an alcoholic beverage to a person under the age of 21 years. This subsection does not apply to a licensee or an agent or employee of a licensee while working on licensed premises.

(b) This section does not prohibit the furnishing or delivery of an alcoholic beverage

(1) by a parent to the parent's child, by a guardian to the guardian's ward, or by a person to the legal spouse of that person if the furnishing or delivery occurs off licensed premises; or

(2) by a licensed physician or nurse to a patient in the course of administering medical treatment.

(c) Acts unlawful under AS 11.51.130 are not made legal by (b) of this section.

(d) A person acting with criminal negligence who violates this section is guilty of a class C felony if

(1) within the five years preceding the violation, the person has been previously convicted under

(A) this section; or

(B) a law or ordinance of this or another jurisdiction with elements substantially similar to this section;

(2) the person who receives the alcoholic beverage negligently causes serious physical injury to or the death of another person while under the influence of the alcoholic beverage received in violation of this section; in this paragraph,

(A) "negligently" means acting with civil negligence; and

(B) "serious physical injury" has the meaning given in AS 11.81.900; or

(3) the violation occurs within the boundaries of a municipality or the perimeter of an established village that has adopted a local option under AS 04.11.491 and has not opted out of applying a class C felony to violations of this section under AS 04.11.491(g). (§ 3 ch 131 SLA 1980; am § 9 ch 109 SLA 1983; am §§ 7, 8 ch 156 SLA 1988; am § 1 ch 50 SLA 1989; am § 1 ch 46 SLA 1994; am § 4 ch 90 SLA 2002; am § 7 ch 124 SLA 2004; am § 6 ch 75 SLA 2008)

Effect of amendments. — The 2002 amendment, effective September 25, 2002, in subsection (d) added paragraph (2) and the paragraph (1) designation, and in paragraph (1) redesignated former paragraphs (1) and (2) as subparagraphs (A) and (B).

The 2004 amendment, effective July 1, 2004, added paragraph (d)(3) and made related stylistic changes.

The 2008 amendment, effective July 1, 2008, added the last sentence of subsection (a).

Editor's notes. — Section 32(a), ch. 124, SLA 2004,

provides that the 2004 amendment of (d) of this section applies "to offenses committed on or after July 1, 2004."

Section 43(a), ch. 75, SLA 2008 provides that the 2008 amendment of (a) of this section "[applies] to an offense occurring on or after July 1, 2008."

Section 44, ch. 75, SLA 2008, explicitly declares that § 6, ch. 75, SLA 2008, amending (a) of this section, is subject to severability as authorized by AS 01.10.030.

NOTES TO DECISIONS

Contributory negligence. — Fact that injured party violated this section by providing liquor to minor causing accident does not mitigate liability of seller of liquor in violation of AS 04.16.052. *Morris v.*

Farley Enters., Inc., 661 P.2d 167 (Alaska 1983).

Comparative negligence. — A licensee who violates this section is not entitled to assert the comparative fault of the minor/consumer, in an action for

damages resulting from the unlawful sale of intoxicating liquor. *Loeb v. Rasmussen*, 822 P.2d 914 (Alaska 1991).

Double jeopardy violation. — Trial court violated defendant's double jeopardy rights by sentencing him for both contributing to the delinquency of a minor and for furnishing alcohol to a minor for the single act of furnishing alcohol to the minor, where defendant engaged in only a single criminal act which violated two separate statutes and the two counts should have merged. *Newsome v. State*, 782 P.2d 689 (Alaska Ct. App. 1989).

Exceptions as affirmative defenses. — At a

minimum, the exceptions specified under subsection (b) are "defenses" to criminal liability; that is, if a defendant wishes to invoke one of these exceptions, then at the very least the defendant must affirmatively raise the exception and point to some evidence from which a reasonable jury could decide that issue in his or her favor. Accordingly, where defendant presented no evidence that he had received his alcoholic beverages from a parent, guardian, or spouse, his conviction was affirmed. *Trout v. State*, 866 P.2d 1323 (Alaska Ct. App. 1994).

Cited in *Powell v. State*, — P.3d — (Alaska Ct. App. July 23, 2008), (memorandum opinion).

Collateral references. — Serving liquor to minor in home as unlawful sale or gift. 14 ALR3d 1186.

Sec. 04.16.052. Furnishing of alcoholic beverages to persons under the age of 21 by licensees. A licensee or an agent or employee of the licensee may not with criminal negligence

(1) allow another person to sell, barter, or give an alcoholic beverage to a person under the age of 21 years within licensed premises;

(2) allow a person under the age of 21 years to enter and remain within licensed premises except as provided in AS 04.16.049;

(3) allow a person under the age of 21 years to consume an alcoholic beverage within licensed premises;

(4) allow a person under the age of 21 years to sell or serve alcoholic beverages;

(5) while working on licensed premises, furnish or deliver alcoholic beverages to a person under the age of 21 years. (§ 3 ch 131 SLA 1980; am § 10 ch 109 SLA 1983; am § 7 ch 75 SLA 2008)

Effect of amendments. — The 2008 amendment, effective July 1, 2008, added paragraph (5).

Editor's notes. — Section 43(a), ch. 75, SLA 2008 provides that the 2008 amendment of this section "[applies] to an offense occurring on or after July 1, 2008."

Section 44, ch. 75, SLA 2008, explicitly declares that § 7, ch. 75, SLA 2008, amending this section, is subject to severability as authorized by AS 01.10.030.

NOTES TO DECISIONS

Negligence per se. — Violation of this section by sale of alcoholic beverages to a person under 19 by a licensee is negligence per se in a case involving resulting injuries to the customer or to others. *Morris v. Farley Enters., Inc.*, 661 P.2d 167 (Alaska 1983) (decided under AS 04.15.020 repealed).

Proximate cause. — It was neither unforeseeable nor extraordinary that the sale of liquor in violation of this section would result in the sharing of the liquor with companions and that an accident caused by companion's intoxication would result. *Morris v. Farley Enters., Inc.*, 661 P.2d 167 (Alaska 1983) (decided under former AS 04.15.020).

Contributory negligence. — Fact that injured

party violated law by providing liquor to minor causing accident does not mitigate liability of seller of liquor in violation of this section. *Morris v. Farley Enters., Inc.*, 661 P.2d 167 (Alaska 1983) (decided under former AS 04.15.020).

Proof of patron's age. — It was reversible error for the trial court to allow the prosecution to prove a liquor establishment's patron's age, a material element of the crime for which defendant was charged (former AS 04.15.020), by admitting the patron's conviction for being a minor on a liquor premises in evidence. *Wike v. State*, 623 P.2d 356 (Alaska Ct. App. 1981).

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 253-258.

48 C.J.S., Intoxicating Liquors, §§ 341, 345-350.

Criminal offense of selling liquor to a minor or

permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age. 12 ALR3d 991.

Sec. 04.16.055. Room rental for purposes of consuming alcoholic beverages. A