

**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 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

- (1) class B felony; or
- (2) class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.

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

**History -**

(Sec. 3 ch 166 SLA 1978; am Sec. 1 ch 57 SLA 1983; am Sec. 1 - 3, ch 161 SLA 1990; am Sec. 8 ch 79 SLA 1992; am Sec. 1, 2 ch 65 SLA 2000; am Sec. 1 ch 131 SLA 2004)

**Cross References -**

For crime of distribution of child pornography, see AS 11.61.125.

**Amendment Notes -**

The 2000 amendment, effective May 23, 2000, inserted ", video, electronic, or electromagnetic" and "or aurally" in subsections (a) and (b) and deleted "printed" preceding "material" near the end of subsection (b).

The 2004 amendment, effective September 27, 2004, added paragraph (c)(2) and made related changes.

**Decisions -**

"Live performance". - This section covers private, noncommercial live performances; however, "live performance" does not include the situation in which a single adult requests a child to display his or her genitals to that adult in private. *Braun v. State*, 911 P.2d 1075 (Alaska Ct. App. 1996).

Statutory construction. - Defendant's interpretation of this section under the rule of lenity, alleging that it was absurd that he was permitted to have sex with someone between the ages of 16 and 18, yet he was prohibited from photographing someone between those ages, was not persuasive; the relevant provisions simply refer to a child under 18 years of age, and do not distinguish between child

pornography produced or possessed for private purposes and that intended for distribution. *State v. Parker*, 147 P.3d 690 (Alaska 2006).

AS 11.61.127(a) forbids the possession of pornographic material that is generated by the conduct prohibited by AS 11.41.455(a), pornography that was generated by the use of a child under the age of 18; the government had to prove that defendant knew that this child pornography was in their possession and that defendant acted knowingly with respect to the circumstance that the pornography was generated illegally. *Ferrick v. State*, 217 P.3d 418 (Alaska Ct. App. 2009).

Joinder of offenses. - Where defendant was charged with sexual abuse of a minor, unlawful exploitation of a minor, distribution of child pornography, and possession of child pornography stemming from his sexual involvement with his girlfriend's minor daughter, the trial court did not err in denying defendant's motion to sever the sexual abuse charges from the pornography charges because all charges stemmed from defendant's inappropriate relationship with the young girl and were connected. *Ogletree v. State*, - P.3d - (Alaska Ct. App. Aug. 19, 2009).

Solicitation of crime. - Where defendant was charged with soliciting the crime of unlawful exploitation of a minor based on his asking victims to take off their clothes and let him photograph them, defendant's argument that he did not "solicit" the crime because the victims could not be guilty of the intended crime was foreclosed by the provision of AS 11.31.110 that it is no defense that the person solicited could not be guilty of the crime that is the object of the solicitation. *Braun v. State*, 911 P.2d 1075 (Alaska Ct. App. 1996).

Defendant's convictions for soliciting the crime of unlawful exploitation of a minor which were based on his asking victims to take off their clothes and let him photograph them were erroneous since defendant did not ask anyone else to engage in the prohibited conduct, i.e., inducing a child to engage in one of the sexual activities prohibited by this section, and thus he did not commit the crime of solicitation. *Braun v. State*, 911 P.2d 1075 (Alaska Ct. App. 1996).

Aggravating factors. - Where the superior court found an aggravating factor at the defendant's original sentencing, he faced a sentence more severe than the four-year presumptive term for second felony offenders at the time of his sentencing for exploitation of a minor. *Harris v. State*, 980 P.2d 482 (Alaska Ct. App. 1999).

Conviction and sentence upheld. - See *Depp v. State*, 686 P.2d 712 (Alaska Ct. App. 1984).

Withdrawal of plea bargain denied. - Where defendant pleaded no contest to three felonies as part of a plea bargain, his decision to plead no contest was not materially influenced by his mistaken understanding concerning the consequences of winning a suppression motion; trial court did not err in denying defendant's motion to withdraw his plea. *Parker v. State*, 90 P.3d 194 (Alaska Ct. App. 2004).

"Least serious" mitigator held inapplicable. - Defendant's alleged lack of intent to distribute pornographic photographs and videos of children, purportedly evidenced by his concealment of them in a locked briefcase in a closet in his house, even if proven by clear and convincing evidence, did not mandate a "least serious" mitigator. *State v. Parker*, 147 P.3d 690 (Alaska 2006).

Applied in *Qualle v. State*, 652 P.2d 481 (Alaska Ct. App. 1982); *Harris v. State*, 790 P.2d 1379 (Alaska Ct. App. 1990); *Parker v. State*, 151 P.3d 478 (Alaska Ct. App. 2006).

Cited in *Lawrence v. State*, 764 P.2d 318 (Alaska Ct. App. 1988); *Scroggins v. State*, 951 P.2d 442 (Alaska Ct. App. 1998); *Labrake v. State*, 152 P.3d 474 (Alaska Ct. App. 2007).