

HOUSE CS FOR CS FOR SENATE BILL NO. 323(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/7/98

Referred: Rules

Sponsor(s): SENATORS PEARCE, Taylor, Lincoln, Kelly, Donley, Miller, Green, Duncan

REPRESENTATIVES Ryan, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sexual offenses, to those who commit sexual offenses, and to
2 registration of sex offenders; amending Rule 6(r)(2), Alaska Rules of Criminal
3 Procedure; and providing for an effective date."

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

5 * **Section 1.** AS 09.10.060(c) is amended to read:

6 (c) A person who was the victim of sexual abuse may not maintain an action
7 for recovery of damages against the perpetrator of the act or acts of sexual abuse based
8 on the perpetrator's intentional conduct for an injury or condition suffered as a result
9 of the sexual abuse unless the action is commenced within three years. In this
10 subsection, "sexual abuse" means an act committed by the defendant against the
11 plaintiff maintaining the cause of action if the defendant's conduct would have violated
12 a provision of AS 11.41.410 - 11.41.440 or 11.41.450 - 11.41.458 [11.41.450 -
13 11.41.455] at the time it was committed.

14 * **Sec. 2.** AS 09.55.650(c) is amended to read:

(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** [11.41.450 - 11.41.455], former AS 11.15.120, 11.15.134, or 11.15.160, or former AS 11.40.110 at the time it was committed.

* **Sec. 3.** AS 11.41 is amended by adding a new section to read:

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.

* **Sec. 4.** AS 11.41.460 is amended to read:

Sec. 11.41.460. Indecent exposure in the second degree. (a) An offender commits the crime of indecent exposure **in the second degree** if the offender **knowingly** [INTENTIONALLY] exposes the offender's genitals **in the presence of** [TO] another person with reckless disregard for the offensive, insulting, or frightening effect the act may have [ON THAT PERSON].

(b) Indecent exposure **in the second degree** before a person under 16 years of age is a class A misdemeanor. Indecent exposure **in the second degree** before a person 16 years of age or older is a class B misdemeanor.

* **Sec. 5.** AS 11.61.125(c) is amended to read:

(c) Distribution of child pornography is a **class B** [CLASS C] felony.

* **Sec. 6.** AS 11.61.125 is amended by adding a new subsection to read:

(e) The possession of 100 or more films, audio, video, electronic, or electromagnetic recordings, photographs, negatives, slides, books, newspapers, magazines, or other materials, including a combination of these items totaling 100 or more, is prima facie evidence of distribution and intent to distribute under (a) of this section.

1 * **Sec. 7.** AS 11.61.127(a) is amended to read:

2 (a) A person commits the crime of possession of child pornography if the
3 person **knowingly** possesses any material that visually or aurally depicts conduct
4 described in AS 11.41.455(a) knowing that the production of the material involved the
5 use of a child under 18 years of age who engaged in the conduct.

6 * **Sec. 8.** AS 11.61.127(c) is amended to read:

7 (c) Possession of child pornography is a **class C felony** [CLASS A
8 MISDEMEANOR].

9 * **Sec. 9.** AS 11.61.127 is amended by adding a new subsection to read:

10 (d) Each film, audio, video, electronic, or electromagnetic recording,
11 photograph, negative, slide, book, newspaper, magazine, or other material that visually
12 or aurally depicts conduct described in AS 11.41.455(a) that is possessed by a person
13 knowing that the production of the material involved the use of a child under 18 years
14 of age that engaged in the conduct is a separate violation of this section.

15 * **Sec. 10.** AS 12.10.020(c) is amended to read:

16 (c) Even if the general time limitation has expired, a prosecution under
17 **AS 11.41.410 - 11.41.458** [AS 11.41.410 - 11.41.455], AS 11.66.110 - 11.66.130, or
18 former AS 11.41.430, for an offense committed against a person under the age of 18,
19 may be commenced at any time.

20 * **Sec. 11.** AS 12.25.030(b) is amended to read:

21 (b) In addition to the authority granted by (a) of this section, a peace officer
22 (1) shall make an arrest under the circumstances described in
23 AS 18.65.530;

24 (2) without a warrant may arrest a person if the officer has probable
25 cause to believe the person has, either in or outside the presence of the officer,

26 (A) committed a crime involving domestic violence, whether the
27 crime is a felony or a misdemeanor; in this subparagraph, "crime involving
28 domestic violence" has the meaning given in AS 18.66.990;

29 (B) committed the crime of violating a protective order in
30 violation of AS 11.56.740; or

31 (C) violated a condition of release imposed under AS 12.30.025

1 or 12.30.027;

2 (3) without a warrant may arrest a person when the peace officer has
3 reasonable cause for believing that the person has

4 (A) committed a crime under or violated conditions imposed as
5 part of the person's release before trial on misdemeanor charges brought under
6 AS 11.41.270;

7 (B) violated AS 04.16.050 or an ordinance with similar
8 elements; however, unless there is a lawful reason for further detention, a
9 person who is under the age of 18 and who has been arrested for violating
10 AS 04.16.050 or an ordinance with similar elements shall be cited for the
11 offense and released to the person's parent, guardian, or legal custodian; or

12 (C) violated conditions imposed as part of the person's release
13 before trial on felony charges brought under AS 11.41.410 - 11.41.458
14 [AS 11.41.410 - 11.41.455].

15 * **Sec. 12.** AS 12.40.110(a) is amended to read:

16 (a) In a prosecution for an offense under AS 11.41.410 - 11.41.458
17 [AS 11.41.410 - 11.41.440 OR 11.41.455], hearsay evidence of a statement related to
18 the offense, not otherwise admissible, made by a child who is the victim of the offense
19 may be admitted into evidence before the grand jury if

20 (1) the circumstances of the statement indicate its reliability;

21 (2) the child is under 10 years of age when the hearsay evidence is
22 sought to be admitted;

23 (3) additional evidence is introduced to corroborate the statement; and

24 (4) the child testifies at the grand jury proceeding or the child will be
25 available to testify at trial.

26 * **Sec. 13.** AS 12.55.025(h) is amended to read:

27 (h) If the defendant has been convicted of two or more crimes under
28 AS 11.41.200 - 11.41.250 or 11.41.410 - 11.41.458 [11.41.410 - 11.41.455] in which
29 the victim or victims of the crimes were minors and the judgment on any of the
30 convictions has not been entered, the court shall impose some consecutive period of
31 imprisonment for each conviction.

* **Sec. 14.** AS 12.55.155(c)(18) is amended to read:

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant; or

(B) specified in AS 11.41.410 - 11.41.458 [AS 11.41.410 - 11.41.455] and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim;

* **Sec. 15.** AS 12.63.020(a) is amended to read:

(a) The duty of a sex offender to comply with the requirements of AS 12.63.010 for each sex offense

(1) continues for the lifetime of a sex offender convicted of two or more sex offenses; for purposes of this section, a person convicted of indecent exposure before a person under 16 years of age under AS 11.41.460 more than two times has been convicted of two or more sex offenses;

(2) ends 15 years following the sex offender's unconditional discharge from a conviction for a single sex offense.

* **Sec. 16.** AS 12.63.100(3) is amended to read:

(3) "sex offense" means a crime, or an attempt to commit a crime, under AS 11.41.410 - 11.41.438, 11.41.450 - 11.41.458, 11.41.460 if the indecent exposure is before a person under 16 years of age if the offender has a previous conviction for that offense [11.41.450, 11.41.455], AS 11.61.125, 11.61.127, AS 11.66.110, former AS 11.15.120 or 11.15.134, or former AS 11.40.110 or 11.40.200, or a similar law in another jurisdiction;

* **Sec. 17.** AS 14.20.020(f) is amended to read:

(f) The [EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE] department may not issue a teacher certificate to a person who has been convicted of a crime, or an attempt, solicitation, or conspiracy to commit a crime, involving a minor under AS 11.41.410 - 11.41.460 [AS 11.41.434 - 11.41.440, 11.41.455, OR 11.41.460,] or [UNDER] a law or ordinance in another jurisdiction

with elements [SUBSTANTIALLY] similar to an offense described in **this subsection** [AS 11.41.434 - 11.41.440, 11.41.455, OR 11.41.460. WHEN FIVE YEARS HAVE ELAPSED AFTER A PERSON HAS RECEIVED AN UNCONDITIONAL DISCHARGE FOR A CONVICTION OF A CRIME LISTED IN THIS SUBSECTION, THE PERSON MAY PETITION THE DEPARTMENT TO ISSUE THE CERTIFICATE IN SPITE OF THE CONVICTION IF THE PERSON OTHERWISE SATISFIES THE REQUIREMENTS FOR THE CERTIFICATE. WHEN DECIDING WHETHER TO GRANT OR DENY THE PETITION, THE DEPARTMENT SHALL CONSIDER THE NATURE OF THE PARTICULAR CRIME, WHETHER AND TO WHAT EXTENT THE PERSON HAS BEEN REHABILITATED, AND THE OTHER FACTORS THAT THE DEPARTMENT DETERMINES ARE SIGNIFICANT].

* **Sec. 18.** AS 14.20.030(b) is amended to read:

(b) The commissioner or the Professional Teaching Practices Commission shall revoke for life the certificate of a person who has been convicted of a crime, **or an attempt, solicitation, or conspiracy to commit a crime,** involving a minor under **AS 11.41.410 - 11.41.460** [AS 11.41.434 - 11.41.440, 11.41.455, OR 11.41.460,] or [UNDER] a law **or ordinance** in another jurisdiction with elements [SUBSTANTIALLY] similar to an offense described in **this subsection** [AS 11.41.434 - 11.41.440, 11.41.455, OR 11.41.460. WHEN FIVE YEARS HAVE ELAPSED AFTER THE PERSON HAS RECEIVED AN UNCONDITIONAL DISCHARGE FOR THE CONVICTION, THE PERSON MAY PETITION THE COMMISSION FOR RECERTIFICATION. WHEN DECIDING WHETHER TO GRANT OR DENY THE PETITION, THE COMMISSION SHALL CONSIDER THE NATURE OF THE PARTICULAR CRIME, WHETHER AND TO WHAT EXTENT THE PERSON HAS BEEN REHABILITATED, AND THE OTHER FACTORS THAT THE COMMISSION DETERMINES ARE SIGNIFICANT].

* **Sec. 19.** AS 28.15.046(c) is amended to read:

(c) The department may not issue a license under this section to an applicant who has been convicted of any of the following offenses within 20 years of the time of application:

- 1 (1) sexual abuse of a minor in any degree under AS 11.41.434 -
 2 11.41.440;
- 3 (2) sexual assault in any degree under AS 11.41.410 - 11.41.425
 4 [AS 11.41.410 OR 11.41.420];
- 5 (3) incest under AS 11.41.450;
- 6 (4) unlawful exploitation of a minor under AS 11.41.455;
- 7 (5) contributing to the delinquency of a minor under AS 11.51.130;
- 8 (6) a felony involving possession of a controlled or imitation controlled
 9 substance under AS 11.71 or AS 11.73;
- 10 (7) a felony or misdemeanor involving distribution of a controlled or
 11 imitation controlled substance under AS 11.71 or AS 11.73;
- 12 (8) promoting prostitution in the first or second degree under
 13 AS 11.66.110 or 11.66.120;
- 14 **(9) indecent exposure in the first or second degree under**
 15 **AS 11.41.458 or 11.41.460.**

16 * **Sec. 20.** AS 47.17.020(e) is amended to read:

17 (e) The department shall immediately notify the nearest law enforcement
 18 agency if the department

19 (1) concludes that the harm was caused by a person who is not
 20 responsible for the child's welfare;

21 (2) is unable to determine

22 (A) who caused the harm to the child; or

23 (B) whether the person who is believed to have caused the harm
 24 has responsibility for the child's welfare; or

25 (3) concludes that the report involves

26 (A) possible criminal conduct under AS 11.41.410 - 11.41.458
 27 [AS 11.41.410 - 11.41.455]; or

28 (B) abuse or neglect that results in the need for medical
 29 treatment of the child

30 * **Sec. 21.** Rule 6(r)(2), Alaska Rules of Criminal Procedure, is amended to read:

31 (2) In a prosecution for an offense under AS 11.41.410 - 11.41.458

[AS 11.41.410 - 11.41.440 OR 11.41.455], hearsay evidence of a statement related to the offense, not otherwise admissible, made by a child who is the victim of the offense may be admitted into evidence before the grand jury if

(i) the circumstances of the statement indicate its reliability;

(ii) the child is under 10 years of age when the hearsay evidence is sought to be admitted;

(iii) additional evidence is introduced to corroborate the statement; and

(iv) the child testifies at the grand jury proceeding or the child will be available to testify at trial.

*** Sec. 22. APPLICABILITY OF SECTIONS 15 AND 16.** (a) Except as otherwise provided in this subsection, a sex offender with only one conviction for a sex offense that is a violation of AS 11.41.460 or AS 11.61.127 who has been unconditionally discharged from that sex offense before July 1, 1984, is not required to register under or otherwise comply with AS 12.63. A sex offender who has been unconditionally discharged from a sex offense that is a violation of AS 11.41.460 or AS 11.61.127 on or after July 1, 1984, but before the effective date of this Act, shall register under and otherwise comply with AS 12.63 by July 1, 1998. A sex offender with two or more convictions for a sex offense or more than two convictions of AS 11.41.460 before a person under 16 years of age before the effective date of this Act, regardless of whether the sex offender was unconditionally released from the sex offenses before, on, or after July 1, 1984, who was not required to register under sec. 12, ch. 41, SLA 1994, shall register under and otherwise comply with AS 12.63 by July 1, 1998.

(b) A conviction for a sex offense before the effective date of this Act is a sex offense for purpose of the duration of registration requirement of AS 12.63.020(a).

(c) In this section, "sex offender" and "sex offense" have the meanings given by AS 12.63.100, as amended by sec. 16 of this Act.

*** Sec. 23. APPLICABILITY OF SECTIONS 3 - 9.** Sections 3 - 9 of this Act apply to offenses committed on or after the effective date of this Act.

*** Sec. 24.** This Act takes effect immediately under AS 01.10.070(c).