

CS FOR SENATE BILL NO. 323(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 3/25/98

Referred: Rules

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

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:

1 (c) In this section, "sexual abuse" means an act committed by the defendant
 2 against the plaintiff maintaining the cause of action if the defendant's conduct would
 3 have violated a provision of AS 11.41.410 - 11.41.440 or **11.41.450 - 11.41.458**
 4 [11.41.450 - 11.41.455], former AS 11.15.120, 11.15.134, or 11.15.160, or former
 5 AS 11.40.110 at the time it was committed.

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

7 **Sec. 11.41.458. Indecent exposure in the first degree.** (a) An offender
 8 commits the crime of indecent exposure in the first degree if

9 (1) the offender violates AS 11.41.460(a);

10 (2) while committing the act constituting the offense, the offender
 11 knowingly masturbates; and

12 (3) the offense occurs within the observation of a person under 16 years
 13 of age.

14 (b) Indecent exposure in the first degree is a class B felony.

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

16 **Sec. 11.41.460. Indecent exposure in the second degree.** (a) An offender
 17 commits the crime of indecent exposure **in the second degree** if the offender
 18 **knowingly** [INTENTIONALLY] exposes the offender's genitals to another person with
 19 reckless disregard for the offensive, insulting, or frightening effect the act may have
 20 on that person.

21 (b) Indecent exposure **in the second degree** before a person under 16 years
 22 of age is a **class C felony** [CLASS A MISDEMEANOR]. Indecent exposure **in the**
 23 **second degree** before a person 16 years of age or older is a **class A** [CLASS B]
 24 misdemeanor.

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

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

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

28 (c) Possession of child pornography is a **class B felony** [CLASS A
 29 MISDEMEANOR].

30 * **Sec. 7.** AS 12.10.020(c) is amended to read:

31 (c) Even if the general time limitation has expired, a prosecution under

1 **AS 11.41.410 - 11.41.458** [AS 11.41.410 - 11.41.455], AS 11.66.110 - 11.66.130, or
 2 former AS 11.41.430, for an offense committed against a person under the age of 18,
 3 may be commenced at any time.

4 * **Sec. 8.** AS 12.25.030(b) is amended to read:

5 (b) In addition to the authority granted by (a) of this section, a peace officer

6 (1) shall make an arrest under the circumstances described in
 7 AS 18.65.530;

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

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

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

15 (C) violated a condition of release imposed under AS 12.30.025
 16 or 12.30.027;

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

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

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

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

30 * **Sec. 9.** AS 12.40.110(a) is amended to read:

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

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

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

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

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

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

10 * **Sec. 10.** AS 12.55.025(h) is amended to read:

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

16 * **Sec. 11.** AS 12.55.155(c)(18) is amended to read:

17 (18) the offense was a felony

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

21 (B) specified in **AS 11.41.410 - 11.41.458** [AS 11.41.410 -
 22 11.41.455] and the defendant has engaged in the same or other conduct
 23 prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or
 24 another victim;

25 * **Sec. 12.** AS 12.63.100(3) is amended to read:

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

31 * **Sec. 13.** AS 14.20.020(f) is amended to read:

1 (f) **The** [EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
 2 THE] department may not issue a teacher certificate to a person who has been
 3 convicted of a crime involving a minor under **AS 11.41.410 - 11.41.460** [AS 11.41.434
 4 - 11.41.440, 11.41.455, OR 11.41.460], or under a law in another jurisdiction with
 5 elements substantially similar to an offense described in **AS 11.41.410 - 11.41.460**
 6 [AS 11.41.434 - 11.41.440, 11.41.455, OR 11.41.460. WHEN FIVE YEARS HAVE
 7 ELAPSED AFTER A PERSON HAS RECEIVED AN UNCONDITIONAL
 8 DISCHARGE FOR A CONVICTION OF A CRIME LISTED IN THIS
 9 SUBSECTION, THE PERSON MAY PETITION THE DEPARTMENT TO ISSUE
 10 THE CERTIFICATE IN SPITE OF THE CONVICTION IF THE PERSON
 11 OTHERWISE SATISFIES THE REQUIREMENTS FOR THE CERTIFICATE.
 12 WHEN DECIDING WHETHER TO GRANT OR DENY THE PETITION, THE
 13 DEPARTMENT SHALL CONSIDER THE NATURE OF THE PARTICULAR
 14 CRIME, WHETHER AND TO WHAT EXTENT THE PERSON HAS BEEN
 15 REHABILITATED, AND THE OTHER FACTORS THAT THE DEPARTMENT
 16 DETERMINES ARE SIGNIFICANT].

17 * **Sec. 14.** AS 14.20.030(b) is amended to read:

18 (b) The commissioner or the Professional Teaching Practices Commission shall
 19 revoke for life the certificate of a person who has been convicted of a crime involving
 20 a minor under **AS 11.41.410 - 11.41.460** [AS 11.41.434 - 11.41.440, 11.41.455, OR
 21 11.41.460], or under a law in another jurisdiction with elements substantially similar
 22 to an offense described in **AS 11.41.410 - 11.41.460** [AS 11.41.434 - 11.41.440,
 23 11.41.455, OR 11.41.460. WHEN FIVE YEARS HAVE ELAPSED AFTER THE
 24 PERSON HAS RECEIVED AN UNCONDITIONAL DISCHARGE FOR THE
 25 CONVICTION, THE PERSON MAY PETITION THE COMMISSION FOR
 26 RECERTIFICATION. WHEN DECIDING WHETHER TO GRANT OR DENY THE
 27 PETITION, THE COMMISSION SHALL CONSIDER THE NATURE OF THE
 28 PARTICULAR CRIME, WHETHER AND TO WHAT EXTENT THE PERSON HAS
 29 BEEN REHABILITATED, AND THE OTHER FACTORS THAT THE
 30 COMMISSION DETERMINES ARE SIGNIFICANT].

31 * **Sec. 15.** AS 28.15.046(c) is amended to read:

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

4 (1) sexual abuse of a minor in any degree under AS 11.41.434 -
 5 11.41.440;

6 (2) sexual assault in any degree under AS 11.41.410 - 11.41.425
 7 [AS 11.41.410 OR 11.41.420];

8 (3) incest under AS 11.41.450;

9 (4) unlawful exploitation of a minor under AS 11.41.455;

10 (5) contributing to the delinquency of a minor under AS 11.51.130;

11 (6) a felony involving possession of a controlled or imitation controlled
 12 substance under AS 11.71 or AS 11.73;

13 (7) a felony or misdemeanor involving distribution of a controlled or
 14 imitation controlled substance under AS 11.71 or AS 11.73;

15 (8) promoting prostitution in the first or second degree under
 16 AS 11.66.110 or 11.66.120;

17 **(9) indecent exposure in the first or second degree under**
 18 **AS 11.41.458 or AS 11.41.460.**

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

20 (e) The department shall immediately notify the nearest law enforcement
 21 agency if the department

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

24 (2) is unable to determine

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

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

28 (3) concludes that the report involves

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

31 (B) abuse or neglect that results in the need for medical

1 treatment of the child

2 * **Sec. 17.** Rule 6(r)(2), Alaska Rules of Criminal Procedure, is amended to read:

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

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

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

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

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

14 * **Sec. 18.** APPLICABILITY OF SECTION 12. (a) A sex offender with only one
 15 conviction for a sex offense that is a violation of AS 11.41.460 or AS 11.61.127 who has been
 16 unconditionally discharged from that sex offense before July 1, 1984, is not required to
 17 register under or otherwise comply with AS 12.63. A sex offender who has been
 18 unconditionally discharged from a sex offense that is a violation of AS 11.41.460 or
 19 AS 11.61.127 on or after July 1, 1984, but before the effective date of this Act, shall register
 20 under and otherwise comply with AS 12.63 by July 1, 1998. A sex offender with two or more
 21 convictions for a sex offense before the effective date of this Act, regardless of whether the
 22 sex offender was unconditionally released from the sex offense before, on, or after July 1,
 23 1984, who was not required to register under sec. 12, ch. 41, SLA 1994, shall register under
 24 and otherwise comply with AS 12.63 by July 1, 1998.

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

27 (c) In this section, "sex offender" and "sex offense" have the meanings given by
 28 AS 12.63.100, as amended by sec. 12 of this Act.

29 * **Sec. 19.** APPLICABILITY OF SECTIONS 3 - 6. Sections 3 - 6 of this Act apply to
 30 offenses committed on or after the effective date of this Act.

31 * **Sec. 20.** This Act takes effect immediately under AS 01.10.070(c).