

Introduced: 1/18/85
Referred: Health, Education & Social
Services, Judiciary and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 88

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the protection of children; and
7 amending Rules 504, 505, and 506, Alaska Rules of
8 Evidence, and Rule 6(r), Alaska Rules of Criminal
9 Procedure."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 11.51.100 is amended to read:

12 Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST
13 DEGREE. (a) A person commits the crime of endangering the welfare of
14 a minor in the first degree if, being a parent, guardian, or other
15 person legally charged with the care of a child under 18 [10] years of
16 age, the person intentionally deserts the child in any place under
17 circumstances creating a substantial risk of physical injury to the
18 child.

19 (b) Endangering the welfare of a minor in the first degree is a
20 class C felony.

21 * Sec. 2. AS 11.51 is amended by adding a new section to read:

22 Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND
23 DEGREE. (a) A person commits the crime of endangering the welfare of
24 a minor in the second degree if, being entrusted with the care of a
25 child under 18 years of age, the person with criminal negligence

26 (1) exposes the child to circumstances creating a substan-
27 tial risk of physical injury or sexual abuse; or

28 (2) exposes the child to physical injury by failing to
29 provide the child with necessary food, care, clothing, shelter, or

1 medical attention.

2 (b) Endangering the welfare of a minor in the second degree is a
3 class A misdemeanor.

4 * Sec. 3. AS 11.61.125(a) is amended to read:

5 (a) A person commits the crime of distribution of child pornog-
6 raphy if the person brings or causes to be brought into the state for
7 sale or distribution, or in the state distributes, sells, or exhibits
8 to others for commercial consideration, or possesses, prepares, pub-
9 lishes, or prints with intent to distribute, sell, or exhibit to
10 others for commercial consideration, any material that visually de-
11 picts conduct described under AS 11.41.455(a), knowing that the pro-
12 duction of the material involved the use of a child under 18 years of
13 age who engaged in the conduct.

14 * Sec. 4. AS 12.10.020(c) is amended to read:

15 (c) Even if the general time limitation has expired, a prose-
16 cution under AS 11.41.410 -- 11.41.460, AS 11.66.110 -- 11.66.130,
17 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense
18 committed against a person under the age of 16 may be commenced within
19 one year after the crime is reported to a peace officer or the person
20 reaches the age of 16, whichever occurs first. This subsection does
21 not extend the period of limitation by more than five years.

22 * Sec. 5. AS 12.40 is amended by adding a new section to read:

23 Sec. 12.40.055. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL
24 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 --
25 11.41.460, AS 11.66.110 -- 11.66.130, former AS 11.41.430, or former
26 AS 11.51.130(a)(4), hearsay evidence of a statement relating to the
27 offense, not otherwise admissible, made by a child under the age of 16
28 may be admitted into evidence before the grand jury if

29 (1) the circumstances of the statement indicate its

1 reliability; and

2 (2) the child

3 (A) testifies at the grand jury proceeding; or

4 (B) is unavailable as a witness and there is some
5 additional evidence to corroborate the statement.

6 (b) In this section,

7 (1) "statement" means an oral or written assertion or
8 nonverbal conduct if the nonverbal conduct is intended as an asser-
9 tion;

10 (2) "unavailable" means that the child

11 (A) has a lack of memory of the subject matter of the
12 statement being offered;

13 (B) is unable to testify at the proceeding because of
14 death or then existing physical or mental illness or infirmity;

15 (C) is likely to suffer substantial psychological,
16 emotional, or physical harm if required to testify;

17 (D) is declared incompetent to testify by the judge;

18 or

19 (E) is absent from the proceeding and the prosecution
20 has been unable, after reasonable efforts, to procure the child's
21 attendance.

22 * Sec. 6. AS 12.45.045 is amended to read:

23 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR
24 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)
25 In prosecutions for the crimes [CRIME] of sexual assault in any de-
26 gree, sexual abuse of a minor in any degree, or unlawful exploitation
27 of a minor, or an attempt to commit any of these crimes [SEXUAL AS-
28 SAULT IN ANY DEGREE], evidence of the complaining witness' previous
29 sexual conduct may [SHALL] not be admitted nor reference made to it in

1 the presence of the jury except as provided in this section. When the
2 defendant seeks to admit the evidence for any purpose, the defendant
3 may apply for an order of the court at any time before or during the
4 trial or preliminary hearing. After the application is made, the
5 court shall conduct a hearing in camera to determine the admissibility
6 of the evidence. If the court finds that evidence offered by the
7 defendant regarding the sexual conduct of the complaining witness is
8 relevant, and that the probative value of the evidence offered is not
9 outweighed by the probability that its admission will create undue
10 prejudice, confusion of the issues, or unwarranted invasion of the
11 privacy of the complaining witness, the court shall make an order
12 stating what evidence may be introduced and the nature of the ques-
13 tions which may [SHALL] be permitted. The defendant may then offer
14 evidence under the order of the court.

15 * Sec. 7. AS 12.62.035(a) is amended to read:

16 (a) Notwithstanding any other provision of law, an interested
17 person as defined in (e) of this section may request from the commis-
18 sion records of all convictions for crimes that might pose a risk to a
19 child [INVOLVING CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND ANY
20 SEX CRIMES] of a person who holds or applies for a position in which
21 the person has or would have supervisory or disciplinary power over a
22 minor. The commission shall authorize the disclosure of the informa-
23 tion to the requesting interested person and shall provide a copy of
24 the information to the person who is the subject of the request.

25 * Sec. 8. AS 12.62.035(e)(1) is repealed and reenacted to read:

26 (1) "crime that might pose a risk to a child" includes a
27 violation or attempted violation of present or former Alaska statutes
28 regarding the offenses now designated as murder, manslaughter, negli-
29 gent homicide, assault, reckless endangerment, kidnapping, custodial

1 interference, sexual assault, sexual abuse of a minor, unlawful ex-
2 ploitation of a minor, incest, indecent exposure, robbery, arson,
3 endangering the welfare of a minor, criminal nonsupport, contributing
4 to the delinquency of a minor, distribution of child pornography,
5 promoting prostitution, driving while intoxicated, and felony offenses
6 involving distribution of controlled substances; it also includes a
7 violation or attempted violation of the laws of another jurisdiction
8 if the offense would have been one of the crimes listed in this para-
9 graph if committed in this state;

10 * Sec. 9. AS 12.62.035 is amended by adding a new subsection to read:

11 (f) In addition to the information for which disclosure is
12 authorized under (a) of this section, the commission may disclose the
13 existence of any outstanding warrants for the arrest of the person who
14 is the subject of the request.

15 * Sec. 10. AS 29.43.110 is amended to read:

16 Sec. 29.43.110. PENALTY FOR VIOLATION OF CURFEW. The penalty
17 for violation of AS 29.43.100 -- 29.43.110 is as prescribed by the
18 curfew ordinance of the city, and a fine so paid must [SHALL] be paid
19 to the city when the violation takes place in the city. Otherwise the
20 fine must [SHALL] be paid to the state. However, the penalty may
21 [SHALL] not exceed a fine of \$300[, OR IMPRISONMENT FOR UP TO 30 DAYS,
22 OR BOTH].

23 * Sec. 11. AS 47.10.010(b) is amended to read:

24 (b) When a minor is accused of violating a traffic statute or
25 regulation, a traffic ordinance or regulation of an incorporated
26 municipality, a fish and game statute or regulation under AS 16, a
27 [OR] parks and recreation facilities statute or regulation under
28 AS 41.21, or a curfew ordinance of a city under AS 29.43.100 --
29 29.43.110, excepting a statute the violation of which is a felony, the

1 procedure prescribed in AS 47.10.020 -- 47.10.090 may not be followed,
2 except that a parent, guardian or legal custodian shall be present at
3 all proceedings. The minor accused of a traffic offense, a fish and
4 game statute or regulation violation under AS 16, a [OR] parks and
5 recreational facilities violation under AS 41.21, or a curfew viola-
6 tion under AS 29.43.100 -- 29.43.110 must [SHALL] be charged, prose-
7 cuted, and sentenced in a district court in the same manner as an
8 adult.

9 * Sec. 12. AS 47.10.081(c) is amended to read:

10 (c) The court shall inform the child, the child's parents and
11 the attorneys representing the parties and the guardian ad litem that
12 the predisposition report will be available to them not less than two
13 working [10] days before the disposition hearing.

14 * Sec. 13. AS 47.10.142(a) is amended to read:

15 (a) The Department of Health and Social Services may take emer-
16 gency custody of a minor upon discovering any of the following circum-
17 stances:

18 (1) the minor has been abandoned;

19 (2) the minor has been grossly neglected by the minor's
20 parents or guardian as "neglect" is defined in AS 47.17.070(5), so
21 that, in the determination of the department, immediate removal from
22 the minor's surroundings is[, IN THE DETERMINATION OF THE DEPARTMENT,]
23 necessary to protect the minor's life, or immediate medical attention
24 is necessary;

25 (3) the minor has been abused, as "abuse" is defined in
26 AS 47.17.070(1), so that immediate medical attention or immediate
27 removal from the minor's surroundings is necessary, in the determina-
28 tion of the department;

29 (4) the minor has been sexually abused under circumstances

1 listed in AS 47.10.010(a)(2)(D).

2 * Sec. 14. AS 47.10.142(c) is amended to read:

3 (c) When a child is taken into custody under (a) or (b) of this
4 section, the department shall make reasonable efforts to immediately
5 [, AND IN NO EVENT MORE THAN 12 HOURS LATER UNLESS PREVENTED BY LACK
6 OF COMMUNICATION FACILITIES,] notify the parents or the person or
7 persons having custody of the child of this action. [AND THE COURT OF
8 THE ACTION AND FILE WITH THE COURT A PETITION ALLEGING THAT THE CHILD
9 IS A CHILD IN NEED OF AID.] Unless the department determines that
10 continued custody is not necessary to protect the child, the depart-
11 ment shall notify the court of the emergency custody by filing, within
12 24 hours after custody was assumed, excluding weekends or judicial
13 holidays, a petition alleging that the child is a child in need of
14 aid.

15 * Sec. 15. AS 47.10.290 is amended by adding a new paragraph to read:

16 (8) "sexual abuse" means

17 (A) conduct that would constitute a sexual offense
18 against a child under AS 11;

19 (B) the perpetrator's knowingly touching, directly or
20 through clothing, the genital area, groin, inner thighs, or
21 buttocks of a child, or causing a child to touch, directly or
22 through clothing, the genital area, groin, inner thighs, or
23 buttocks of the perpetrator or another; sexual abuse does not
24 include reasonable touching in the exercise of normal caretaker
25 responsibilities for a child or normal caretaker interactions
26 with a child or touching performed for the purpose of adminis-
27 tering a recognized and lawful form of treatment that is rea-
28 sonably adapted to promoting the physical or mental health of the
29 child; reasonable perceptions of the child that the touching is

1 sexual in nature are relevant to the determination of whether the
2 touching is sexual abuse;

3 (C) exposing the genital area, anus, female breast,
4 groin, or buttocks of a child to the perpetrator or another for
5 the sexual gratification of the child, the perpetrator, or another,
6 or exposing the genital area, anus, female breast, groin or
7 buttocks of the perpetrator or another to a child for the sexual
8 gratification of the child, the perpetrator, or another; reasonable
9 perceptions of the child that the conduct is sexual in
10 nature are relevant to the determination of whether the conduct
11 is sexual abuse; or

12 (D) verbal statements to a child which express a
13 desire or intent to have sexual contact with the child or encourage
14 the child to have sexual contact with the perpetrator or
15 another.

16 * Sec. 16. AS 47.17.010 is amended to read:
17 Sec. 47.17.010. PURPOSE. In order to protect children whose
18 health and well-being may be adversely affected through the infliction,
19 by other than accidental means, of harm through physical abuse,
20 mental injury, [OR] neglect, [OR] sexual abuse, or sexual exploitation,
21 the legislature requires the reporting of these cases by practitioners
22 of the healing arts and others to the appropriate public
23 authorities. It is the intent of the legislature that, as a result of
24 these reports, protective services will be made available in an effort
25 to prevent further harm to the child, to safeguard and enhance the
26 general well-being of the children in this state, and to preserve
27 family life whenever possible.

28 * Sec. 17. AS 47.17.020(a) is amended to read:

29 (a) The following persons who, in the performance of their

1 [PROFESSIONAL] duties, have cause to believe that a child has suffered
2 harm as a result of abuse or neglect shall immediately report the harm
3 to the nearest office of the department:

- 4 (1) practitioners of the healing arts;
- 5 (2) employees and volunteers of private and public schools
6 [SCHOOL TEACHERS AND SCHOOL ADMINISTRATIVE STAFF MEMBERS];
- 7 (3) human services providers [SOCIAL WORKERS];
- 8 (4) peace officers, and officers of the Department of
9 Corrections;
- 10 (5) administrative officers of institutions;
- 11 (6) child [LICENSED DAY] care providers [AND PAID STAFF];
- 12 (7) counselors, including church counselors and therapists,
13 whether licensed or not;
- 14 (8) court investigators;
- 15 (9) employees and volunteers of domestic violence programs
16 or crisis shelters;
- 17 (10) clergy when acting as counselor [LICENSED FOSTER CARE
18 PROVIDERS].

19 * Sec. 18. AS 47.17 is amended by adding a new section to read:

20 Sec. 47.17.023. REPORTS TO LAW ENFORCEMENT AGENCIES. (a) If a
21 person listed in AS 47.17.020, in the performance of the person's
22 duties, has cause to believe that a child under the age of 18 has
23 suffered harm as a result of physical or mental injury, neglect,
24 sexual abuse, sexual exploitation, or maltreatment by an individual
25 not responsible for the child's welfare, such that the child's health
26 or welfare is harmed or threatened, the person shall immediately
27 report the harm to the nearest law enforcement agency.

28 (b) A person who, in the course of processing or producing
29 visual or printed matter, either privately or commercially, has reason

1 to believe that the visual or printed matter submitted for processing
2 or producing visually depicts a minor engaged in conduct described
3 under AS 11.41.455(a) shall immediately report this to the nearest law
4 enforcement agency. The person shall provide the law enforcement
5 agency with all information known about the origin of the matter and
6 the person who submitted it.

7 (c) If a person making a report under this section cannot rea-
8 sonably contact the nearest law enforcement agency, and immediate
9 action appears necessary for the well-being of the child, the person
10 shall make the report to the nearest office of the department. The
11 department shall take immediate action to protect the child and shall,
12 at the earliest opportunity, notify the nearest law enforcement agen-
13 cy.

14 * Sec. 19. AS 47.17.050 is amended to read:

15 Sec. 47.17.050. IMMUNITY. A person who, in good faith, makes a
16 report under this chapter, or who participates in civil or criminal
17 [JUDICIAL] proceedings related to the submission of reports under this
18 chapter, is immune from any civil or criminal liability which might
19 otherwise be incurred or imposed.

20 * Sec. 20. AS 47.17.060 is repealed and reenacted to read:

21 Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. In a civil or criminal
22 proceeding related to a report under this chapter, no privilege is a
23 ground for excluding evidence regarding a child's harm, or its cause,
24 except (1) the attorney-client privilege; (2) the psychotherapist-
25 patient privilege; and (3) the clergyman privilege, if the communica-
26 tion was made to the clergyman in furtherance of a religious practice
27 and not for counseling purposes.

28 * Sec. 21. AS 47.17.068 is amended to read:

29 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person

1 required to file a report of abuse, [OR] neglect, or exploitation
2 under AS 47.17.020 or AS 47.17.023 who [WILFULLY OR] knowingly fails
3 or refuses to report as [THE HARM] required [UNDER AS 47.17.020] is
4 guilty of a class B misdemeanor.

5 * Sec. 22. AS 47.17 is amended by adding a new section to read:

6 Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney
7 general may bring an action to enjoin or limit a person from contact
8 with a child not related to the person if the person

9 (1) has sexually abused a child;

10 (2) has physically abused a child;

11 (3) has failed without lawful excuse to provide necessary
12 food, care, clothing, shelter, supervision, or medical attention for a
13 child entrusted to the care of the person; or

14 (4) otherwise constitutes a substantial danger to the
15 mental, emotional, or physical welfare of a child.

16 (b) The court may grant an order in whatever form is best suited
17 to protect children from harm based upon the facts of the case. This
18 section does not limit the authority of the attorney general or the
19 court to act to protect children.

20 * Sec. 23. AS 47.17.070(1) is amended to read:

21 (1) "child abuse or neglect" means the physical injury or
22 neglect, mental injury, sexual abuse, sexual exploitation, or mal-
23 treatment of a child under the age of 18 by a person who is responsi-
24 ble for the child's welfare under circumstances which indicate that
25 the child's health or welfare is harmed or threatened thereby;

26 * Sec. 24. AS 47.17.070(6) is amended to read:

27 (6) "practitioner of the healing arts" includes chiroprac-
28 tors, dentists, health aides, nurses, nurse practitioners, optome-
29 trists, osteopaths, physical therapists, physicians, physician's

1 assistants, psychiatrists, psychologists, religious healing practi-
2 tioners, and surgeons;

3 * Sec. 25. AS 47.17.070 is amended by adding new paragraphs to read:

4 (8) "child care provider" means an adult individual, or an
5 employee or volunteer of an organization, who provides care and super-
6 vision to a child not related to the caregiver;

7 (9) "human services provider" includes an individual human
8 services provider, and an employee or volunteer of a human services
9 organization, such as a social service, youth service, mental health,
10 or substance abuse agency, or a shelter for runaway or homeless youth;

11 (10) "mental injury" means an injury to the intellectual or
12 psychological capacity of a child as evidenced by an observable and
13 substantial impairment in the child's ability to function within a
14 normal range of performance and behavior, with due regard to the
15 child's culture;

16 (11) "organization" means a group or entity that provides
17 care and supervision to a child not related to the caregiver, and
18 includes a child care facility, pre-elementary school, head start
19 center, child foster home, residential child care facility, recreation
20 program, children's camp, and children's club.

21 * Sec. 26. AS 47.35.070 is amended to read:

22 Sec. 47.35.070. VIOLATIONS. (a) A person who violates a provi-
23 sion of AS 47.35 [47.35.010 -- 47.35.100] or a [RULE OR] regulation
24 adopted under AS 47.35 [47.35.010 -- 47.35.100] is guilty of a class B
25 misdemeanor[, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE
26 THAN \$200].

27 (b) The department may by regulation devise a system of civil
28 enforcement. The system may employ civil penalties not to exceed \$200
29 for each day during which one or more violations of a licensing

1 statute or licensing regulation occurs. The imposition of a civil
2 penalty does not prevent prosecution and sentence for a criminal
3 offense.

4 * Sec. 27. AS 12.40.050, added by sec. 5 of this Act, has the effect of
5 changing Rule 6(r), Alaska Rules of Criminal Procedure, by making certain
6 hearsay evidence admissible in grand jury proceedings for certain sexual
7 offenses without requiring compelling justification.

8 * Sec. 28. AS 47.17.060, as repealed and reenacted in sec. 20 of this
9 Act, has the effect of changing Rules 504, 505, and 506, Alaska Rules of
10 Evidence, by preventing the application in civil or criminal cases of the
11 privileges specified in those rules to evidence obtained through reports
12 made under AS 47.17.