

Offered: 4/10/85
Referred: Judiciary and
Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 88 (HESS)

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 and 505, Alaska Rules of Evi-
8 dence."

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

10 * Section 1. AS 11.51.100 is repealed and reenacted to read:

11 Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST
12 DEGREE. (a) A person responsible for the welfare of a minor under 12
13 years of age commits the crime of endangering the welfare of a minor
14 in the first degree if, the person intentionally abandons the minor
15 under circumstances creating a substantial risk of physical injury to
16 the minor.

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

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

20 Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND
21 DEGREE. (a) A person responsible for the welfare of a minor under 12
22 years of age commits the crime of endangering the welfare of a minor
23 in the second degree if the person with criminal negligence

24 (1) exposes the minor to circumstances creating a substan-
25 tial risk of physical injury or sexual abuse; or

26 (2) exposes the minor to physical injury by failing to
27 provide the minor with necessary food, care, clothing, shelter, or
28 medical attention.

29 (b) Endangering the welfare of a minor in the second degree is a

1 class A misdemeanor.

2 * Sec. 3. AS 11.51 is amended by adding a new section to read:

3 Sec. 11.51.200. DEFINITION. In this chapter "person responsible
4 for the welfare of a minor" means the minor's parent, guardian, or
5 foster parent, a person responsible for the minor's care at the time
6 the endangering of the welfare of the minor is alleged to have
7 occurred, or a person responsible for the minor's welfare in a public
8 or private residential agency or institution.

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

10 (a) A person commits the crime of distribution of child pornog-
11 raphy if the person brings or causes to be brought into the state for
12 [SALE OR] distribution, or in the state distributes, or in the state
13 possesses, prepares, publishes, or prints with intent to distribute,
14 [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any mater-
15 ial that visually depicts conduct described in [UNDER] AS 11.41.-
16 455(a), knowing that the production of the material involved the use
17 of a child under 18 years of age who engaged in the conduct.

18 * Sec. 5. AS 11.61.125 is amended by adding a new subsection to read:

19 (d) In this section, "distribution" includes delivering, sell-
20 ing, renting, leasing, lending, giving, circulating, exhibiting,
21 presenting, providing, and exchanging, whether or not for monetary or
22 other consideration.

23 * Sec. 6. AS 12.10.020(c) is amended to read:

24 (c) Even if the general time limitation has expired, a prose-
25 cution under AS 11.41.410 - 11.41.460, AS 11.66.110 - 11.66.130,
26 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense
27 committed against a person under the age of 16 may be commenced within
28 one year after the crime is reported to a peace officer or the person
29 reaches the age of 16, whichever occurs first. This subsection does

1 not extend the period of limitation by more than five years.

2 * Sec. 7. AS 12.45.045(a) is amended to read:

3 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR
4 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)
5 In prosecutions for the crimes [CRIME] of sexual assault in any de-
6 gree, sexual abuse of a minor in any degree, or unlawful exploitation
7 of a minor, or an attempt to commit any of these crimes [SEXUAL AS-
8 SAULT IN ANY DEGREE], evidence of the complaining witness' previous
9 sexual conduct may [SHALL] not be admitted nor reference made to it in
10 the presence of the jury except as provided in this section. When the
11 defendant seeks to admit the evidence for any purpose, the defendant
12 shall [MAY] apply for an order of the court at any time before or
13 during the trial or preliminary hearing. After the application is
14 made, the court shall conduct a hearing in camera to determine the
15 admissibility of the evidence. If the court finds that evidence
16 offered by the defendant regarding the sexual conduct of the complain-
17 ing witness is relevant, and that the probative value of the evidence
18 offered is not outweighed by the probability that its admission will
19 create undue prejudice, confusion of the issues, or unwarranted inva-
20 sion of the privacy of the complaining witness, the court shall make
21 an order stating what evidence may be introduced and the nature of the
22 questions that may [WHICH SHALL] be permitted. The defendant may then
23 offer evidence under the order of the court.

24 * Sec. 8. AS 47.10.081(c) is amended to read:

25 (c) The court shall inform the child, the child's parents₁ [AND]
26 the attorneys representing the parties₁ and the guardian ad litem that
27 the predisposition report will be available to them not less than six
28 working [10] days before the disposition hearing.

29 * Sec. 9. AS 47.10.142(a) is repealed and reenacted to read:

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

4 (1) the minor has been abandoned;

5 (2) the minor has been grossly neglected by the minor's
6 parents or guardian as "neglect" is defined in AS 47.17.070(5), and
7 the department determines that immediate removal from the minor's
8 surroundings is necessary to protect the minor's life or provide
9 immediate necessary medical attention;

10 (3) the minor has been abused by a person responsible for
11 the minor's welfare, as "abuse" is defined in AS 47.17.070(1), and the
12 department determines that immediate removal from the minor's
13 surroundings is necessary to protect the minor's life or that immedi-
14 ate medical attention is necessary; or

15 (4) the minor has been sexually abused under circumstances
16 listed in AS 47.10.010(a)(2)(D).

17 * Sec. 10. AS 47.10.142(c) is amended to read:

18 (c) When a child is taken into custody under (a) or (b) of this
19 section, the department shall immediately, and in no event more than
20 12 hours later unless prevented by lack of communication facilities,
21 notify the parents or the person or persons having custody of the
22 child. If the department determines that continued custody is neces-
23 sary to protect the child, the department shall notify the court of
24 the emergency custody by filing, within 24 hours after custody was
25 assumed [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-
26 tion alleging that the child is a child in need of aid.

27 * Sec. 11. AS 47.10.290 is amended by adding a new paragraph to read:

28 (8) "sexual abuse" means

29 (A) conduct against a child that would constitute a

1 sexual offense under AS 11;

2 (B) the perpetrator's knowingly touching, directly or
3 through clothing, the genital area, groin, inner thighs, breast,
4 or buttocks of a child, or causing a child to touch, directly or
5 through clothing, the genital area, groin, inner thighs, or
6 buttocks of the perpetrator or another; sexual abuse does not
7 include reasonable touching in the exercise of normal caretaker
8 responsibilities for a child or normal caretaker interactions
9 with a child or a recognized and lawful form of contact that is
10 reasonably adapted to promoting the physical or mental health of
11 the child;

12 (C) exposing the genital area, anus, breast, groin, or
13 buttocks of a child to the perpetrator or another for the sexual
14 gratification of the child, the perpetrator, or another, or
15 exposing the genital area, anus, breast, groin or buttocks of the
16 perpetrator or another to a child for the sexual gratification of
17 the child, the perpetrator, or another; or

18 (D) statements to a child that express a desire or
19 intent to have sexual contact or sexual penetration with the
20 child or encourage the child to have sexual contact or sexual
21 penetration with the perpetrator or another.

22 * Sec. 12. AS 47.17.010 is amended to read:

23 Sec. 47.17.010. PURPOSE. In order to protect children whose
24 health and well-being may be adversely affected through the inflic-
25 tion, by other than accidental means, of harm through physical injury,
26 [ABUSE OR] neglect, [OR] sexual abuse, or sexual exploitation, the
27 legislature requires the reporting of these cases by practitioners of
28 the healing arts and others to the appropriate public authorities. It
29 is the intent of the legislature that, as a result of these reports,

1 protective services will be made available in an effort to prevent
2 further harm to the child, to safeguard and enhance the general well-
3 being of the children in this state, and to preserve family life
4 whenever preserving it is in the best interests of the child [POS-
5 SIBLE].

6 * Sec. 13. AS 47.17.020 is repealed and reenacted to read:

7 Sec. 47.17.020. REPORTING OF CHILD ABUSE OR NEGLECT. (a) The
8 following persons are required to report abuse or neglect of a child
9 as required in (b) and (c) of this section:

- 10 (1) practitioners of the healing arts;
- 11 (2) employees of private and public schools;
- 12 (3) human services providers;
- 13 (4) peace officers, and officers of the Department of
14 Corrections;
- 15 (5) administrative officers of institutions;
- 16 (6) child care providers;
- 17 (7) court personnel;
- 18 (8) employees of domestic violence programs, sexual assault
19 programs, or crisis shelters.

20 (b) A person listed in (a) of this section, who in the perfor-
21 mance of the person's occupational duties has cause to believe that a
22 child has suffered harm as a result of abuse or neglect by a person
23 responsible for the child's welfare, shall promptly report the harm to
24 the nearest office of the department. If the person making a report
25 of harm under this subsection cannot reasonably contact the nearest
26 office of the department and immediate action is necessary for the
27 well-being of the child, the person shall make the report to a peace
28 officer. The peace officer shall take immediate action to protect the
29 child and shall, at the earliest opportunity, notify the nearest

1 office of the department.

2 (c) A person listed in (a) of this section, who in the perfor-
3 mance of the person's occupational duties has cause to believe that a
4 child has suffered harm as a result of abuse or neglect, shall prompt-
5 ly report the harm to the nearest law enforcement agency if the person
6 making the report (1) has cause to believe that the harm was caused by
7 a person who is not responsible for the child's welfare; or (2) is
8 unable to determine (A) who caused the harm to the child; or (B)
9 whether the person who is believed to have caused the harm has respon-
10 sibility for the child's welfare. If a person making a report under
11 this subsection cannot reasonably contact the nearest law enforcement
12 agency, and immediate action appears necessary for the well-being of
13 the child, the person shall make the report to the nearest office of
14 the department. The department shall take immediate action to protect
15 the child and shall, at the earliest opportunity, notify the nearest
16 law enforcement agency.

17 (d) This section does not prohibit the named persons from re-
18 porting cases that have come to their attention in their nonoccupa-
19 tional capacities, nor does it prohibit any other person from report-
20 ing a child's harm that the person has cause to believe is a result of
21 abuse or neglect. These reports shall be made to the nearest office
22 of the department or to the nearest law enforcement agency in the
23 manner set out in (b) and (c) of this section.

24 * Sec. 14. AS 47.17 is amended by adding a new section to read:

25 Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person
26 who, in the course of processing or producing visual or printed
27 matter, either privately or commercially, has reason to believe that
28 the matter visually depicts a minor engaged in conduct described in
29 AS 11.41.455(a) shall promptly report this to the nearest law

1 enforcement agency.

2 * Sec. 15. AS 47.17.025 is repealed and reenacted to read:

3 Sec. 47.17.025. DUTIES OF PUBLIC AUTHORITIES. (a) After re-
4 ceiving a report of harm to a child resulting from abuse or neglect by
5 a person responsible for the child's welfare, a law enforcement agency
6 shall immediately notify the Department of Health and Social Services
7 and the Department of Law. The Department of Health and Social Ser-
8 vices shall investigate the report and, within 72 hours after receiv-
9 ing the report, shall provide a written report of its investigation to
10 the Department of Law for review. If after a preliminary investiga-
11 tion the Department of Health and Social Services determines that the
12 harm was not caused by a member of the child's family, the department
13 shall so notify the Department of Law.

14 (b) A report of harm to a child from abuse or neglect required
15 from the department by this section must include:

16 (1) the names and addresses of the child and the child's
17 parents or other persons responsible for the child's care, if known;

18 (2) the age and sex of the child;

19 (3) the nature and extent of the harm to the child;

20 (4) the name and age and address of the person known or
21 believed to be responsible for the harm to the child, if known;

22 (5) information that the department believes may be helpful
23 in establishing the identity of the person believed to have caused the
24 harm to the child.

25 * Sec. 16. AS 47.17.040(b) is amended to read:

26 (b) Investigation reports and reports of harm filed under this
27 chapter are considered confidential and are not subject to public
28 inspection and copying under AS 09.25.110 and 09.25.120. However, in
29 accordance with department regulations, investigation reports may be

1 used by appropriate governmental agencies with child-protection func-
2 tions, inside and outside the state [ALASKA], in connection with
3 investigations or civil or criminal [JUDICIAL] proceedings involving
4 [CHILD] abuse, neglect, or child custody. A person, not acting in
5 accordance with department regulations, who makes public information
6 contained in confidential reports is guilty of a class A misdemeanor.

7 * Sec. 17. AS 47.17.050 is amended to read:

8 Sec. 47.17.050. IMMUNITY. A person who, in good faith, makes a
9 report under this chapter, or who participates in civil or criminal
10 [JUDICIAL] proceedings related to the submission of reports under this
11 chapter, is immune from any civil or criminal liability that [WHICH]
12 might otherwise be incurred or imposed.

13 * Sec. 18. AS 47.17.060 is repealed and reenacted to read:

14 Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. In a civil or criminal
15 proceeding related to a report under this chapter, no privilege is a
16 ground for excluding evidence regarding a child's harm, or its cause,
17 except

- 18 (1) the lawyer-client privilege;
19 (2) the psychotherapist-patient privilege; and
20 (3) the clergyman privilege.

21 * Sec. 19. AS 47.17.064 is repealed and reenacted to read:

22 Sec. 47.17.064. PHOTOGRAPHS AND X-RAYS. The department or a
23 practitioner of the healing arts may, without the permission of the
24 parents, guardian, or custodian, take the following actions with
25 regard to a child believed to have suffered physical harm as a result
26 of abuse or neglect:

- 27 (1) take or have taken photographs of the areas of trauma
28 visible on the child; and
29 (2) if medically indicated, have a radiological examination

1 of the child performed by a person who is licensed to administer a
2 radiological examination.

3 * Sec. 20. AS 47.17.068 is repealed and reenacted to read:

4 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person who
5 knowingly fails or refuses to report as required under AS 47.17.020 or
6 47.17.023 is guilty of a class B misdemeanor.

7 * Sec. 21. AS 47.17 is amended by adding a new section to read:

8 Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney
9 general may bring an action to enjoin or limit a person from contact
10 with a child if the person

11 (1) has sexually abused a child;

12 (2) has physically abused a child;

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

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

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

22 * Sec. 22. AS 47.17.070(1) is amended to read:

23 (1) "[CHILD] abuse [OR NEGLECT]" means nonaccidental [THE]
24 physical injury [OR NEGLECT], sexual abuse, sexual exploitation, or
25 maltreatment of a child [UNDER THE AGE OF 18 BY A PERSON WHO IS RE-
26 SPONSIBLE FOR THE CHILD'S WELFARE] under circumstances that [WHICH]
27 indicate that the child's health or welfare is harmed or threatened
28 thereby;

29 * Sec. 23. AS 47.17.070(6) is amended to read:

1 (6) "practitioner of the healing arts" includes chiroprac-
2 tors, dental hygienists, dentists, health aides, nurses, nurse practi-
3 tioners, optometrists, osteopaths, physical therapists, physicians,
4 physician's assistants, psychiatrists, psychologists, psychological
5 assistants, religious healing practitioners, and surgeons;

6 * Sec. 24. AS 47.17.070(7) is repealed and reenacted to read:

7 (7) "sexual exploitation" means

8 (A) permitting, encouraging, inducing, or employing a
9 child to engage in prostitution or in the promotion of prosti-
10 tution as set out in AS 11.66.100 - 11.66.150; or

11 (B) engaging in conduct described in AS 11.41.455;

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

13 (8) "child care provider" means an adult individual, or an
14 employee of an organization, who provides care and supervision to a
15 child;

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

20 (10) "organization" means a group or entity that provides
21 care and supervision to a child not related to the caregiver, and
22 includes a child care facility, pre-elementary school, head start
23 center, child foster home, residential child care facility, recreation
24 program, children's camp, and children's club;

25 (11) "person responsible for the child's welfare" means the
26 child's parent, guardian, foster parent, a person responsible for the
27 child's care at the time of the alleged abuse or neglect, or a person
28 responsible for the child's welfare in a public or private residential
29 agency or institution.

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

2 Sec. 47.35.070. VIOLATIONS. A person who violates a provision
3 of this chapter [AS 47.35.010 - 47.35.100] or a regulation adopted
4 under this chapter [AS 47.35.010 - 47.35.100] is guilty of a class B
5 misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE
6 THAN \$200].

7 * Sec. 27. AS 47.35.070 is amended by adding a new subsection to read:

8 (b) The department may by regulation devise a system of civil
9 enforcement. The system may employ civil penalties not to exceed \$200
10 for each day during which one or more violations of a licensing stat-
11 ute or licensing regulation occurs. The imposition of a civil penalty
12 does not prevent prosecution and sentence for a criminal offense.

13 * Sec. 28. AS 47.17.060, as repealed and reenacted in sec. 18 of this
14 Act, has the effect of changing Rules 504 and 505, Alaska Rules of Evi-
15 dence, by preventing the application in civil or criminal cases of certain
16 privileges specified in those rules to evidence obtained through reports
17 made under AS 47.17.