

Offered: 4/24/85  
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 88 (Judiciary)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to the protection of children and family members; and providing for an effective date."

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

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\* Section 1. AS 11.61.125(a) is amended to read:

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(a) A person commits the crime of distribution of child pornography if the person brings or causes to be brought into the state for [SALE OR] distribution, or in the state distributes, or in the state possesses, prepares, publishes, or prints with intent to distribute, [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any material that visually depicts conduct described in [UNDER] AS 11.41.455(a), knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

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\* Sec. 2. AS 11.61.125 is amended by adding a new subsection to read:

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(d) In this section, "distribution" includes delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, and exchanging, whether or not for monetary or other consideration.

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\* Sec. 3. AS 12.10.020(c) is amended to read:

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

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

2 \* Sec. 4. 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 may reference be made  
10 to it in the presence of the jury except as provided in this section.  
11 When the defendant seeks to admit the evidence for any purpose, the  
12 defendant shall [MAY] apply for an order of the court at any time  
13 before or during the trial or preliminary hearing. After the applica-  
14 tion is made, the court shall conduct a hearing in camera to determine  
15 the 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. 5. AS 25.35.010(a) is repealed and reenacted to read:

25 (a) A person who is subjected to domestic violence may petition  
26 a superior court for injunctive relief restraining the infliction of  
27 further domestic violence against the petitioner by the respondent.  
28 The court may appoint a guardian ad litem or attorney to represent a  
29 minor who is subject to this chapter in the same manner as an attorney

1           may be appointed under AS 25.24.310.

2       \* Sec. 6. AS 25.35.060 is amended to read:

3           Sec. 25.35.060. DEFINITIONS. In this chapter, "domestic vio-  
4           lence" means a crime under AS 11.41 when the victim is a spouse or a  
5           former spouse of the respondent; a parent, grandparent, child, or  
6           grandchild of the respondent; [,] a member of the social unit composed  
7           [COMPRISED] of those living together in the same dwelling as the  
8           respondent; [,] or a person who is not a spouse or former spouse of  
9           the respondent but who previously lived in a spousal relationship with  
10          the respondent.

11       \* Sec. 7. AS 47.10.010(a) is amended to read:

12           (a) Proceedings relating to a minor under 18 years of age resid-  
13           ing or found in the state are governed by this chapter, except as  
14           otherwise provided in this chapter, when the court finds the minor

15                   (1) to be a delinquent minor as a result of violating a  
16           criminal law of the state or of a municipality of the state; or

17                   (2) to be a child in need of aid as a result of

18                           (A) the child being habitually absent from home or  
19                           refusing to accept available care, or having no parent, guardian,  
20                           custodian or relative caring or willing to provide care, includ-  
21                           ing physical abandonment by

22                                   (i) both parents,

23                                   (ii) the surviving parent, or

24                                   (iii) one parent if the other parent's rights and  
25                           responsibilities have been terminated under AS 47.10.080 or  
26                           voluntarily relinquished;

27                           (B) the child being in need of medical treatment to  
28                           cure, alleviate, or prevent substantial physical harm, or in need  
29                           of treatment for mental harm as evidenced by failure to thrive,

1 severe anxiety, depression, withdrawal, or untoward aggressive  
2 behavior or hostility toward others, and the child's parent,  
3 guardian, or custodian has knowingly failed [PARENTS ARE UNWILL-  
4 ING] to provide the [MEDICAL] treatment;

5 (C) the child having suffered substantial physical  
6 harm or if there is an imminent and substantial risk that the  
7 child will suffer such harm as a result of the actions done by or  
8 conditions created by the child's parent, guardian or custodian  
9 or the failure of the parent, guardian or custodian adequately to  
10 supervise the child;

11 (D) the child having been sexually abused either by  
12 the child's parent, guardian or custodian, or as a result of  
13 conditions created by the child's parent, guardian or custodian,  
14 or by the failure of the parent, guardian or custodian adequately  
15 to supervise the child;

16 (E) the child committing delinquent acts as a result  
17 of pressure, guidance, or approval from the child's parents,  
18 guardian or custodian;

19 (F) the child having suffered substantial physical  
20 abuse or neglect as a result of conditions created by the child's  
21 parent, guardian or custodian.

22 \* Sec. 8. AS 47.10.142(a) is repealed and reenacted to read:

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

26 (1) the minor has been abandoned;

27 (2) the minor has been grossly neglected by the minor's  
28 parents or guardian as "neglect" is defined in AS 47.17.070(5), and  
29 the department determines that immediate removal from the minor's

1 surroundings is necessary to protect the minor's life or provide  
2 immediate necessary medical attention;

3 (3) the minor has been abused by a person responsible for  
4 the minor's welfare, as "abuse" is defined in AS 47.17.070(1), and the  
5 department determines that immediate removal from the minor's sur-  
6 roundings is necessary to protect the minor's life or that immediate  
7 medical attention is necessary; or

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

10 \* Sec. 9. AS 47.10.142(c) is amended to read:

11 (c) When a child is taken into custody under (a) or (b) of this  
12 section, the department shall immediately, and in no event more than  
13 12 hours later unless prevented by lack of communication facilities,  
14 notify the parents or the person or persons having custody of the  
15 child. If the department determines that continued custody is neces-  
16 sary to protect the child, the department shall notify the court of  
17 the emergency custody by filing, within 12 hours after custody was  
18 assumed [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-  
19 tion alleging that the child is a child in need of aid.

20 \* Sec. 10. AS 47.17.010 is amended to read:

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

1 being of the children in this state, and to preserve family life  
2 whenever preserving it is in the best interests of the child [POS-  
3 SIBLE].

4 \* Sec. 11. AS 47.17.020(a) is amended to read:

5 (a) The following persons who, in the performance of their  
6 occupational [PROFESSIONAL] duties, have cause to believe that a child  
7 has suffered harm as a result of abuse or neglect shall immediately  
8 report the harm to the nearest office of the department:

9 (1) practitioners of the healing arts;

10 (2) school teachers and school administrative staff members  
11 of public and private schools;

12 (3) social workers;

13 (4) peace officers, and officers of the Department of  
14 Corrections;

15 (5) administrative officers of institutions;

16 (6) child [LICENSED DAY] care providers [AND PAID STAFF];

17 (7) paid employees of domestic violence programs and crisis  
18 intervention and prevention programs as defined in AS 18.66.900  
19 [LICENSED FOSTER CARE PROVIDERS].

20 \* Sec. 12. AS 47.17.020(b) is amended to read:

21 (b) This section does not prohibit the named persons from  
22 reporting cases that [WHICH] have come to their attention in their  
23 nonoccupational [NONPROFESSIONAL] capacities, nor does it prohibit any  
24 other person from reporting a child's harm that [WHICH] the person has  
25 cause to believe is a result of abuse or neglect. These reports shall  
26 be made to the nearest office of the department.

27 \* Sec. 13. AS 47.17.020 is amended by adding a new subsection to read:

28 (d) This section does not require a religious healing practi-  
29 tioner to report as neglect of a child the failure to provide medical

1 attention to the child if the child is provided treatment solely by  
2 spiritual means through prayer in accordance with the tenets and  
3 practices of a recognized church or religious denomination by an  
4 accredited practitioner of the church or denomination.

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

6 Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person  
7 who, in the course of processing or producing visual or printed  
8 matter, either privately or commercially, has reason to believe that  
9 the matter visually depicts a minor engaged in conduct described in  
10 AS 11.41.455(a) shall promptly report this to the nearest law enforce-  
11 ment agency.

12 \* Sec. 15. AS 47.17.064 is repealed and reenacted to read:

13 Sec. 47.17.064. PHOTOGRAPHS AND X-RAYS. (a) The department or  
14 a practitioner of the healing arts may, without the permission of the  
15 parents, guardian, or custodian, take the following actions with  
16 regard to a child believed to have suffered physical harm as a result  
17 of abuse or neglect:

18 (1) take or have taken photographs of the areas of trauma  
19 visible on the child; and

20 (2) if medically indicated, have a radiological examination  
21 of the child performed by a person who is licensed to administer a  
22 radiological examination.

23 (b) The department or a practitioner of the healing arts shall  
24 notify the parents, guardian, or custodian of a child as soon as  
25 possible after taking action under (a) of this section with regard to  
26 the child.

27 \* Sec. 16. AS 47.17.068 is repealed and reenacted to read:

28 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person who  
29 knowingly fails or refuses to report as required under AS 47.17.020 or

1 47.17.023 is guilty of a class B misdemeanor.

2 \* Sec. 17. AS 47.17 is amended by adding a new section to read:

3 Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) A court may enjoin  
4 or limit a person from contact with a child if the attorney general  
5 establishes by a preponderance of the evidence that the person

6 (1) has sexually abused a child;

7 (2) has physically abused a child; or

8 (3) has engaged in conduct that constitutes a clear and  
9 present danger to the mental, emotional, or physical welfare of a  
10 child.

11 (b) This section does not limit the authority of the attorney  
12 general or the court to act to protect a child.

13 \* Sec. 18. AS 47.17.070(6) is amended to read:

14 (6) "practitioner of the healing arts" includes chiroprac-  
15 tors, dental hygienists, dentists, health aides, nurses, nurse practi-  
16 tioners, optometrists, osteopaths, physical therapists, physicians,  
17 physician's assistants, psychiatrists, psychologists, psychological  
18 associates, religious healing practitioners, and surgeons;

19 \* Sec. 19. AS 47.17.070 is amended by adding new paragraphs to read:

20 (8) "child care provider" means an adult individual, or an  
21 employee of an organization, who provides care and supervision to a  
22 child for compensation;

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

28 (10) "person responsible for the child's welfare" means the  
29 child's parent, guardian, foster parent, a person responsible for the

1 child's care at the time of the alleged abuse or neglect, or a person  
2 responsible for the child's welfare in a public or private residential  
3 agency or institution.

4 \* Sec. 20. AS 47.35.070 is amended to read:

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

10 \* Sec. 21. AS 47.35.070 is amended by adding a new subsection to read:

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

16 \* Sec. 22. Section 5 of this Act takes effect September 30, 1985.