

Offered: 5/4/85
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 88 (Finance)
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,
7 family members, and dependent adults; and providing
8 for an effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 11.61.125(a) is amended to read:
11 (a) A person commits the crime of distribution of child pornog-
12 raphy if the person brings or causes to be brought into the state for
13 [SALE OR] distribution, or in the state distributes, or in the state
14 possesses, prepares, publishes, or prints with intent to distribute,
15 [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any mater-
16 ial that visually depicts conduct described in [UNDER] AS 11.41.-
17 455(a), knowing that the production of the material involved the use
18 of a child under 18 years of age who engaged in the conduct.
19 * Sec. 2. AS 11.61.125 is amended by adding a new subsection to read:
20 (d) In this section, "distribution" includes delivering, sell-
21 ing, renting, leasing, lending, giving, circulating, exhibiting,
22 presenting, providing, and exchanging, whether or not for monetary or
23 other consideration.
24 * Sec. 3. AS 12.10.020(c) is amended to read:
25 (c) Even if the general time limitation has expired, a prose-
26 cution under AS 11.41.410 - 11.41.460, AS 11.66.110 - 11.66.130,
27 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense
28 committed against a person under the age of 16 may be commenced within
29 one year after the crime is reported to a peace officer or the person

1 reaches the age of 16, whichever occurs first. This subsection does
2 not extend the period of limitation by more than five years.

3 * Sec. 4. AS 12.45.045(a) is amended to read:

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

25 * Sec. 5. AS 25.35.010(a) is repealed and reenacted to read:

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

1 minor who is subject to this chapter in the same manner as an attorney
2 may be appointed under AS 25.24.310.

3 * Sec. 6. AS 25.35.060 is amended to read:

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

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

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

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

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

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

23 (i) both parents,

24 (ii) the surviving parent, or

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

28 (B) the child being in need of medical treatment to
29 cure, alleviate, or prevent substantial physical harm, or in need

1 of treatment for mental harm as evidenced by failure to thrive,
2 severe anxiety, depression, withdrawal, or untoward aggressive
3 behavior or hostility toward others, and the child's parent,
4 guardian, or custodian has knowingly failed [PARENTS ARE UNWILL-
5 ING] to provide the [MEDICAL] treatment;

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

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

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

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

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

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

27 (1) the minor has been abandoned;

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

1 the department determines that immediate removal from the minor's
2 surroundings is necessary to protect the minor's life or provide
3 immediate necessary medical attention;

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

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

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

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

22 * Sec. 10. 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 child [PHYSICAL]
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. 11. AS 47.17.020(a) is amended to read:

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

- 11 (1) practitioners of the healing arts;
- 12 (2) school teachers and school administrative staff members
13 of public and private schools;
- 14 (3) social workers;
- 15 (4) peace officers, and officers of the Department of
16 Corrections;
- 17 (5) administrative officers of institutions;
- 18 (6) child [LICENSED DAY] care providers [AND PAID STAFF];
- 19 (7) paid employees of domestic violence and sexual assault
20 programs, and crisis intervention and prevention programs as defined
21 in AS 18.66.900 [LICENSED FOSTER CARE PROVIDERS].

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

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

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

1 (d) This section does not require a religious healing practi-
2 tioner to report as neglect of a child the failure to provide medical
3 attention to the child if the child is provided treatment solely by
4 spiritual means through prayer in accordance with the tenets and
5 practices of a recognized church or religious denomination by an
6 accredited practitioner of the church or denomination.

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

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

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

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

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

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

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

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

1 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person who
2 knowingly fails or refuses to report as required under AS 47.17.020 or
3 47.17.023 is guilty of a class B misdemeanor.

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

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

8 (1) has sexually abused a child;

9 (2) has physically abused a child; or

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

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

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

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

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

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

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

1 (10) "person responsible for the child's welfare" means the
2 child's parent, guardian, foster parent, a person responsible for the
3 child's care at the time of the alleged child abuse or neglect, or a
4 person responsible for the child's welfare in a public or private
5 residential agency or institution.

6 * Sec. 20. AS 47.35.070 is amended to read:

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

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

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

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