

Offered: 5/7/85  
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 SENATE CS FOR CS FOR HOUSE BILL NO. 88 (Judiciary)  
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 AS 12.45.045(a) is repealed and reenacted to read:

4 (a) In prosecutions for the crimes of sexual assault in any de-  
5 gree, sexual abuse of a minor in any degree, or unlawful exploitation  
6 of a minor, or an attempt to commit any of these crimes, evidence of  
7 the complaining witness' previous sexual conduct may not be admitted  
8 nor reference made to it in the presence of the jury except as pro-  
9 vided in this section. A defendant who seeks to admit the evidence  
10 for any purpose shall apply for an order of the court before the trial  
11 if the evidence is sought to be introduced at trial or before the  
12 preliminary hearing if the evidence is sought to be introduced at the  
13 preliminary hearing, unless the defendant demonstrates that the defen-  
14 dant, despite exercising due diligence, was unable to apply before the  
15 trial or preliminary hearing. After the application is made, the  
16 court shall conduct a hearing in camera to determine the admissibility  
17 of the evidence. If the court finds that evidence offered by the  
18 defendant regarding the sexual conduct of the complaining witness is  
19 relevant, and that the probative value of the evidence offered is not  
20 outweighed by the probability that its admission will create undue  
21 prejudice, confusion of the issues, or unwarranted invasion of the  
22 privacy of the complaining witness, the court shall issue a written  
23 order stating what evidence may be introduced and the nature of the  
24 questions that may be permitted. The defendant may then offer evi-  
25 dence under the order of the court.

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 AS 25.35.010(a) is repealed and reenacted to read:

27 (a) A person who is subjected to domestic violence may petition  
28 a superior court for injunctive relief restraining the infliction of  
29 further domestic violence against the petitioner by the respondent.

1 The court may appoint a guardian ad litem or attorney to represent a  
2 minor who is subject to this chapter in the same manner as an attorney  
3 may be appointed under AS 25.24.310.

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

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

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

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

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

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

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

24 (i) both parents,

25 (ii) the surviving parent, or

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

29 (B) the child being in need of medical treatment to

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

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

13           (D) the child having been, or being in imminent and  
14 substantial danger of being, sexually abused either by the  
15 child's parent, guardian or custodian, or as a result of con-  
16 ditions created by the child's parent, guardian or custodian, or  
17 by the failure of the parent, guardian or custodian adequately to  
18 supervise the child;

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

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

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

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

29           (1) the minor has been abandoned;

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

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

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

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

15 (c) When a child is taken into custody under (a) or (b) of this  
16 section, the department shall immediately, and in no event more than  
17 12 hours later unless prevented by lack of communication facilities,  
18 notify the parents or the person or persons having custody of the  
19 child. If the department determines that continued custody is neces-  
20 sary to protect the child, the department shall notify the court of  
21 the emergency custody by filing, within 24 hours after custody was  
22 assumed, [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-  
23 tion alleging that the child is a child in need of aid. If the de-  
24 partment releases the child within 24 hours after taking the child  
25 into custody and does not file a child in need of aid petition the  
26 department shall, within 24 hours after releasing the child, file with  
27 the court a report explaining why the child was taken into custody.

28 \* Sec. 10. AS 47.17.020(a) is amended to read:

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

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

4 (1) practitioners of the healing arts;

5 (2) school teachers and school administrative staff members  
6 of public and private schools;

7 (3) 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) paid employees of domestic violence and sexual assault  
13 programs, and crisis intervention and prevention programs as defined  
14 in AS 18.66.900 [LICENSED FOSTER CARE PROVIDERS].

15 \* Sec. 11. AS 47.17.020(b) is amended to read:

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

22 \* Sec. 12. AS 47.17.020 is amended by adding a new subsection to read:

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

29 \* Sec. 13. AS 47.17 is amended by adding a new section to read:

1           Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person  
2 who, in the course of processing or producing visual or printed  
3 matter, either privately or commercially, has reason to believe that  
4 the matter visually depicts a child engaged in conduct described in  
5 AS 11.41.455(a) shall promptly report this to the nearest law enforce-  
6 ment agency, and provide the law enforcement agency with all  
7 information known about the nature and origin of the matter.

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

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

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

16                   (2) if medically indicated, have a radiological examination  
17 of the child performed by a person who is licensed to administer a  
18 radiological examination.

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

23 \* Sec. 15. AS 47.17.068 is repealed and reenacted to read:

24           Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person who  
25 knowingly fails or refuses to report as required under AS 47.17.020 or  
26 47.17.023 is guilty of a class B misdemeanor.

27 \* Sec. 16. AS 47.17 is amended by adding a new section to read:

28           Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) A court may enjoin  
29 or limit a person from contact with a child if the attorney general

1 establishes by a preponderance of the evidence that the person

2 (1) has sexually abused a child;

3 (2) has physically abused a child; or

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

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

9 \* Sec. 17. AS 47.17.070(6) is amended to read:

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

15 \* Sec. 18. AS 47.17.070 is amended by adding new paragraphs to read:

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

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

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

29 \* Sec. 19. AS 47.35.070 is amended to read:

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

6 \* Sec. 20. AS 47.35.070 is amended by adding a new subsection to read:  
7           (b) The department may by regulation devise a system of civil  
8 enforcement. The system may employ civil penalties not to exceed \$200  
9 for each day during which one or more violations of a licensing stat-  
10 ute or licensing regulation occurs. The imposition of a civil penalty  
11 does not prevent prosecution and sentence for a criminal offense.  
12 \* Sec. 21. Section 5 of this Act takes effect September 30, 1985.