

Offered: 5/10/85
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 SENATE CS FOR 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 (a) In prosecutions for the crimes [CRIME] of sexual assault in
5 any degree, sexual abuse of a minor in any degree, or unlawful
6 exploitation of a minor, or an attempt to commit any of these crimes
7 [SEXUAL ASSAULT IN ANY DEGREE], evidence of the complaining witness'
8 previous sexual conduct may [SHALL] not be admitted nor may reference
9 be made to it in the presence of the jury except as provided in this
10 section. When the defendant seeks to admit the evidence for any
11 purpose, the defendant shall [MAY] apply for an order of the court at
12 any time before or during the trial or preliminary hearing. After the
13 application is made, the court shall conduct a hearing in camera to
14 determine the admissibility of the evidence. If the court finds that
15 evidence offered by the defendant regarding the sexual conduct of the
16 complaining witness is relevant, and that the probative value of the
17 evidence offered is not outweighed by the probability that its
18 admission will create undue prejudice, confusion of the issues, or
19 unwarranted invasion of the privacy of the complaining witness, the
20 court shall make an order stating what evidence may be introduced and
21 the nature of the questions that may [WHICH SHALL] be permitted. The
22 defendant may then offer evidence under the order of the court.

23 * Sec. 5. AS 47.10.010(a) is amended to read:

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

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

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

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

5 (i) both parents,

6 (ii) the surviving parent, or

7 (iii) one parent if the other parent's rights and
8 responsibilities have been terminated under AS 47.10.080 or
9 voluntarily relinquished;

10 (B) the child being in need of medical treatment to
11 cure, alleviate, or prevent substantial physical harm, or in need
12 of treatment for mental harm as evidenced by failure to thrive,
13 severe anxiety, depression, withdrawal, or untoward aggressive
14 behavior or hostility toward others, and the child's parent,
15 guardian, or custodian has knowingly failed [PARENTS ARE UNWILL-
16 ING] to provide the [MEDICAL] treatment;

17 (C) the child having suffered substantial physical
18 harm or if there is an imminent and substantial risk that the
19 child will suffer such harm as a result of the actions done by or
20 conditions created by the child's parent, guardian or custodian
21 or the failure of the parent, guardian or custodian adequately to
22 supervise the child;

23 (D) the child having been, or being in imminent and
24 substantial danger of being, sexually abused either by the
25 child's parent, guardian or custodian, or as a result of con-
26 ditions created by the child's parent, guardian or custodian, or
27 by the failure of the parent, guardian or custodian adequately to
28 supervise the child;

29 (E) the child committing delinquent acts as a result

1 of pressure, guidance, or approval from the child's parents,
2 guardian or custodian;

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

6 * Sec. 6. AS 47.10.142(a) is repealed and reenacted to read:

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

10 (1) the minor has been abandoned;

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

16 (3) the minor has been subjected to child abuse or neglect
17 by a person responsible for the minor's welfare, as "child abuse or
18 neglect" is defined in AS 47.17.070(1), and the department determines
19 that immediate removal from the minor's surroundings is necessary to
20 protect the minor's life or that immediate medical attention is neces-
21 sary; or

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

24 * Sec. 7. AS 47.10.142(c) is amended to read:

25 (c) When a child is taken into custody under (a) or (b) of this
26 section, the department shall immediately, and in no event more than
27 12 hours later unless prevented by lack of communication facilities,
28 notify the parents or the person or persons having custody of the
29 child. If the department determines that continued custody is

1 necessary to protect the child, the department shall notify the court
2 of the emergency custody by filing, within 12 hours after custody was
3 assumed, [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-
4 tion alleging that the child is a child in need of aid. If the de-
5 partment releases the child within 12 hours after taking the child
6 into custody and does not file a child in need of aid petition the
7 department shall, within 12 hours after releasing the child, file with
8 the court a report explaining why the child was taken into custody.

9 * Sec. 8. AS 47.17.020(a) is amended to read:

10 (a) The following persons who, in the performance of their
11 occupational [PROFESSIONAL] duties, have cause to believe that a child
12 has suffered harm as a result of child abuse or neglect shall immedi-
13 ately report the harm to the nearest office of the department:

14 (1) practitioners of the healing arts;

15 (2) school teachers and school administrative staff members
16 of public and private schools;

17 (3) social workers;

18 (4) peace officers, and officers of the Department of
19 Corrections;

20 (5) administrative officers of institutions;

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

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

25 * Sec. 9. AS 47.17.020(b) is amended to read:

26 (b) This section does not prohibit the named persons from re-
27 porting cases that [WHICH] have come to their attention in their
28 nonoccupational [NONPROFESSIONAL] capacities, nor does it prohibit any
29 other person from reporting a child's harm that [WHICH] the person has

1 cause to believe is a result of child abuse or neglect. These reports
2 shall be made to the nearest office of the department.

3 * Sec. 10. AS 47.17.020 is amended by adding a new subsection to read:

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

10 * Sec. 11. AS 47.17 is amended by adding a new section to read:

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

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

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

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

26 (2) if medically indicated, have a radiological examination
27 of the child performed by a person who is licensed to administer a
28 radiological examination.

29 (b) The department or a practitioner of the healing arts shall

1 notify the parents, guardian, or custodian of a child as soon as
2 possible after taking action under (a) of this section with regard to
3 the child.

4 * Sec. 13. AS 47.17.068 is repealed and reenacted to read:

5 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person who
6 knowingly fails or refuses to report as required under AS 47.17.020 or
7 47.17.023 is guilty of a class B misdemeanor.

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

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

12 (1) has sexually abused a child;

13 (2) has physically abused a child; or

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

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

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

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

25 * Sec. 16. AS 47.17.070 is amended by adding new paragraphs to read:

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

29 (9) "organization" means a group or entity that provides

1 care and supervision for compensation to a child not related to the
2 caregiver, and includes a child care facility, pre-elementary school,
3 head start center, child foster home, residential child care facility,
4 recreation program, children's camp, and children's club;

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

10 * Sec. 17. AS 47.35.070 is amended to read:

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

16 * Sec. 18. AS 47.35.070 is amended by adding a new subsection to read:

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

22 * Sec. 19. This Act takes effect July 1, 1985.