

Introduced: 3/20/85
Referred: Health, Education & Social Services
and Judiciary

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 243

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

8 * Section 1. AS 11.51.100 is amended to read:

9 Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST
10 DEGREE. (a) A person commits the crime of endangering the welfare of
11 a minor in the first degree if, being a parent, guardian, or other
12 person legally charged with the care of a child under 13 [10] years of
13 age, the person intentionally deserts the child in any place under
14 circumstances creating a substantial risk of physical injury to the
15 child.

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

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

19 Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND
20 DEGREE. (a) A person commits the crime of endangering the welfare of
21 a minor in the second degree if, being entrusted with the care of a
22 child under 13 years of age, the person with criminal negligence

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

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

28 (b) Endangering the welfare of a minor in the second degree is a
29 class A misdemeanor.

1 * Sec. 3. AS 11.61.125(a) is amended to read:

2 (a) A person commits the crime of distribution of child pornog-
3 raphy if the person brings or causes to be brought into the state for
4 [SALE OR] distribution, or in the state distributes, or in the state
5 possesses, prepares, publishes, or prints with intent to distribute,
6 [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any mater-
7 ial that visually depicts conduct described in [UNDER] AS 11.41.-
8 455(a), knowing that the production of the material involved the use
9 of a child under 18 years of age who engaged in the conduct.

10 * Sec. 4. AS 11.61.125 is amended by adding a new subsection to read:

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

15 * Sec. 5. AS 12.10.020(c) is amended to read:

16 (c) Even if the general time limitation has expired, a prose-
17 cution under AS 11.41.410 - 11.41.460, AS 11.66.110 - 11.66.130,
18 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense
19 committed against a person under the age of 16 may be commenced within
20 one year after the crime is reported to a peace officer or the person
21 reaches the age of 16, whichever occurs first. This subsection does
22 not extend the period of limitation by more than five years.

23 * Sec. 6. AS 12.45.045(a) is amended to read:

24 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR
25 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)
26 In prosecutions for the crimes [CRIME] of sexual assault in any de-
27 gree, sexual abuse of a minor in any degree, or unlawful exploitation
28 of a minor, or an attempt to commit any of these crimes [SEXUAL AS-
29 SAULT IN ANY DEGREE], evidence of the complaining witness' previous

1 sexual conduct may [SHALL] not be admitted nor reference made to it in
2 the presence of the jury except as provided in this section. When the
3 defendant seeks to admit the evidence for any purpose, the defendant
4 may apply for an order of the court at any time before or during the
5 trial or preliminary hearing. After the application is made, the
6 court shall conduct a hearing in camera to determine the admissibility
7 of the evidence. If the court finds that evidence offered by the
8 defendant regarding the sexual conduct of the complaining witness is
9 relevant, and that the probative value of the evidence offered is not
10 outweighed by the probability that its admission will create undue
11 prejudice, confusion of the issues, or unwarranted invasion of the
12 privacy of the complaining witness, the court shall make an order
13 stating what evidence may be introduced and the nature of the ques-
14 tions that may [WHICH SHALL] be permitted. The defendant may then
15 offer evidence under the order of the court.

16 * Sec. 7. AS 47.10.081(c) is amended to read:

17 (c) The court shall inform the child, the child's parents, [AND]
18 the attorneys representing the parties, and the guardian ad litem that
19 the predisposition report will be available to them not less than six
20 working [10] days before the disposition hearing.

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

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

- 25 (1) the minor has been abandoned;
- 26 (2) the minor has been grossly neglected by the minor's
27 parents or guardian as "neglect" is defined in AS 47.17.070(5), and
28 the department determines that immediate removal from the minor's
29 surroundings is necessary to protect the minor's life or that

1 immediate medical attention is necessary;

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

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

8 (c) When a child is taken into custody under (a) or (b) of this
9 section, the department shall immediately, and in no event more than
10 12 hours later unless prevented by lack of communication facilities,
11 notify the parents or the person or persons having custody of the
12 child. If the department determines that continued custody is neces-
13 sary to protect the child, the department shall notify the court of
14 the emergency custody by filing, within 24 hours after custody was
15 assumed [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-
16 tion alleging that the child is a child in need of aid.

17 * Sec. 10. AS 47.10.290 is amended by adding a new paragraph to read:

18 (8) "sexual abuse" means

19 (A) conduct against a child that would constitute a
20 sexual offense under AS 11;

21 (B) the perpetrator's knowingly touching, directly or
22 through clothing, the genital area, groin, inner thighs, or
23 buttocks of a child, or causing a child to touch, directly or
24 through clothing, the genital area, groin, inner thighs, or
25 buttocks of the perpetrator or another; sexual abuse does not
26 include reasonable touching in the exercise of normal caretaker
27 responsibilities for a child or normal caretaker interactions
28 with a child or touching performed for the purpose of adminis-
29 tering a recognized and lawful form of treatment that is

1 reasonably adapted to promoting the physical or mental health of
2 the child;

3 (C) exposing the genital area, anus, breast, groin, or
4 buttocks of a child to the perpetrator or another for the sexual
5 gratification of the child, the perpetrator, or another, or
6 exposing the genital area, anus, breast, groin or buttocks of the
7 perpetrator or another to a child for the sexual gratification of
8 the child, the perpetrator, or another; or

9 (D) statements to a child that express a desire or
10 intent to have sexual contact or sexual penetration with the
11 child or encourage the child to have sexual contact or sexual
12 penetration with the perpetrator or another.

13 * Sec. 11. AS 47.17.010 is amended to read:

14 Sec. 47.17.010. PURPOSE. In order to protect children whose
15 health and well-being may be adversely affected through the inflic-
16 tion, by other than accidental means, of harm through physical injury,
17 [ABUSE OR] neglect, [OR] sexual abuse, or sexual exploitation, the
18 legislature requires the reporting of these cases by practitioners of
19 the healing arts and others to the appropriate public authorities. It
20 is the intent of the legislature that, as a result of these reports,
21 protective services will be made available in an effort to prevent
22 further harm to the child, to safeguard and enhance the general well-
23 being of the children in this state, and to preserve family life
24 whenever preserving it is in the best interests of the child [POS-
25 SIBLE].

26 * Sec. 12. AS 47.17.020 is repealed and reenacted to read:

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

- 1 (1) practitioners of the healing arts;
- 2 (2) employees and volunteers of private and public schools;
- 3 (3) human services providers;
- 4 (4) peace officers, and officers of the Department of
- 5 Corrections;
- 6 (5) administrative officers of institutions;
- 7 (6) child care providers;
- 8 (7) counselors, including church counselors and therapists,
- 9 whether licensed or not;
- 10 (8) court investigators;
- 11 (9) employees and volunteers of domestic violence programs,
- 12 sexual assault programs, or crisis shelters.

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

24 (c) A person listed in (a) of this section, who in the perfor-
25 mance of the person's occupational duties has cause to believe that a
26 child has suffered harm as a result of abuse or neglect, shall prompt-
27 ly report the harm to the nearest law enforcement agency if the person
28 making the report (1) has cause to believe that the harm was caused by
29 a person who is not responsible for the child's welfare; or (2) is

1 unable to determine (A) who caused the harm to the child; or (B)
2 whether the person who is believed to have caused the harm has respon-
3 sibility for the child's welfare. If a person making a report under
4 this subsection cannot reasonably contact the nearest law enforcement
5 agency, and immediate action appears necessary for the well-being of
6 the child, the person shall make the report to the nearest office of
7 the department. The department shall take immediate action to protect
8 the child and shall, at the earliest opportunity, notify the nearest
9 law enforcement agency.

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

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

18 Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person
19 who, in the course of processing or producing visual or printed
20 matter, either privately or commercially, has reason to believe that
21 the matter visually depicts a minor engaged in conduct described in
22 AS 11.41.455(a) shall promptly report this to the nearest law enforce-
23 ment agency. The person shall provide copies of the material to the
24 law enforcement agency along with all information known about the
25 origin of the matter.

26 * Sec. 14. AS 47.17.025 is repealed and reenacted to read:

27 Sec. 47.17.025. DUTIES OF PUBLIC AUTHORITIES. (a) After re-
28 ceiving a report of harm to a child resulting from abuse or neglect by
29 a person responsible for the child's welfare, a law enforcement agency

1 shall immediately notify the Department of Health and Social Services
2 and the Department of Law. The Department of Health and Social Ser-
3 vices shall investigate the report and, within 72 hours after receiv-
4 ing the report, shall provide a written report of its investigation to
5 the Department of Law for review. If after a preliminary investiga-
6 tion the Department of Health and Social Services determines that the
7 harm was not caused by a member of the child's family, the department
8 shall so notify the Department of Law.

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

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

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

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

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

17 (5) information that the department believes may be helpful
18 in establishing the identity of the person believed to have caused the
19 harm to the child.

20 * Sec. 15. AS 47.17.040(b) is amended to read:

21 (b) Investigation reports and reports of harm filed under this
22 chapter are considered confidential and are not subject to public
23 inspection and copying under AS 09.25.110 and 09.25.120. However, in
24 accordance with department regulations, investigation reports may be
25 used by appropriate governmental agencies with child-protection func-
26 tions, inside and outside the state [ALASKA], in connection with
27 investigations or civil or criminal [JUDICIAL] proceedings involving
28 [CHILD] abuse, neglect, or child custody. A person, not acting in
29 accordance with department regulations, who makes public information

1 contained in confidential reports is guilty of a misdemeanor.

2 * Sec. 16. AS 47.17.050 is amended to read:

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

8 * Sec. 17. AS 47.17.060 is amended to read:

9 Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. Neither the physi-
10 cian-patient nor the husband-wife privilege is a ground for excluding
11 evidence regarding a child's harm, or its cause, in a civil or crimi-
12 nal [JUDICIAL] proceeding related to a report made under this chapter.

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

14 Sec. 47.17.064. PHOTOGRAPHS AND X-RAYS. The department or a
15 practitioner of the healing arts may, without the permission of the
16 parents, take the following actions with regard to a child believed to
17 have suffered physical harm as a result of abuse or neglect by a
18 person responsible for the child's welfare

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

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

24 * Sec. 19. AS 47.17.068 is repealed and reenacted to read:

25 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person
26 who knowingly fails or refuses to report as required under AS 47.17.-
27 020 or 47.17.023 is guilty of a class B misdemeanor.

28 * Sec. 20. AS 47.17 is amended by adding a new section to read:

29 Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney

1 general may bring an action to enjoin or limit a person from contact
2 with a child not related to the person if the person

- 3 (1) has sexually abused a child;
4 (2) has physically abused a child;
5 (3) has failed without lawful excuse to provide necessary
6 food, care, clothing, shelter, supervision, or medical attention for a
7 child entrusted to the care of the person; or
8 (4) otherwise constitutes a substantial danger to the
9 mental, emotional, or physical welfare of a child.

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

14 * Sec. 21. AS 47.17.070(1) is amended to read:

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

21 * Sec. 22. AS 47.17.070(6) is amended to read:

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

27 * Sec. 23. AS 47.17.070(7) is repealed and reenacted to read:

28 (7) "sexual exploitation" means
29 (A) permitting, encouraging, inducing, or employing a

1 child to engage in prostitution or in the promotion of prosti-
2 tution as set out in AS 11.66.100 - 11.66.150; or

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

4 * Sec. 24. AS 47.17.070 is amended by adding new paragraphs to read:

5 (8) "child care provider" means an adult individual, or an
6 employee or volunteer of an organization, who provides care and super-
7 vision to a child;

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

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

17 (11) "person responsible for the child's welfare" means the
18 child's parent, guardian, foster parent, a person responsible for the
19 child's care at the time of the alleged abuse or neglect, or a person
20 responsible for the child's welfare in a public or private residential
21 agency or institution.

22 * Sec. 25. AS 47.35.070 is amended to read:

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

28 * Sec. 26. AS 47.35.070 is amended by adding a new subsection to read:

29 (b) The department may by regulation devise a system of civil

1 enforcement. The system may employ civil penalties not to exceed \$200
2 for each day during which one or more violations of a licensing stat-
3 ute or licensing regulation occurs. The imposition of a civil penalty
4 does not prevent prosecution and sentence for a criminal offense.