

Offered: 5/2/85
Referred: Finance

Original sponsor: Health, Education and
Social Services Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 243 (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 and
7 dependent adults."

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

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

10 Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST
11 DEGREE. (a) A person commits the crime of endangering the welfare of
12 a minor in the first degree if, being a parent, guardian, or other
13 person legally charged with the care of a child under 13 [10] years of
14 age, the person knowingly exposes [INTENTIONALLY DESERTS] the child to
15 [IN ANY PLACE UNDER] circumstances creating a substantial risk of
16 physical injury to or sexual abuse of the child.

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

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

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

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

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

29 (b) Endangering the welfare of a minor in the second degree is a

1 class A misdemeanor.

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

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

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

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

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

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

24 * Sec. 6. AS 12.45.045(a) is repealed and reenacted to read:

25 (a) In prosecutions for the crimes of sexual assault in any de-
26 gree, sexual abuse of a minor in any degree, or unlawful exploitation
27 of a minor, or an attempt to commit any of these crimes, evidence of
28 the complaining witness' previous sexual conduct may not be admitted
29 nor reference made to it in the presence of the jury except as

1 provided in this section. A defendant who seeks to admit the evidence
 2 for any purpose shall apply for an order of the court before the trial
 3 if the evidence is sought to be introduced at trial or before the
 4 preliminary hearing if the evidence is sought to be introduced at the
 5 preliminary hearing, unless the defendant demonstrates that the
 6 defendant, despite exercising due diligence, was unable to apply
 7 before the trial or preliminary hearing. After the application is
 8 made, the court shall conduct a hearing in camera to determine the
 9 admissibility of the evidence. If the court finds that evidence
 10 offered by the defendant regarding the sexual conduct of the complain-
 11 ing witness is relevant, and that the probative value of the evidence
 12 offered is not outweighed by the probability that its admission will
 13 create undue prejudice, confusion of the issues, or unwarranted inva-
 14 sion of the privacy of the complaining witness, the court shall issue
 15 a written order stating what evidence may be introduced and the nature
 16 of the questions that may be permitted. The defendant may then offer
 17 evidence under the order of the court.

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

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

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

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

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

29 (i) both parents,

1 (ii) the surviving parent, or
2 (iii) one parent if the other parent's rights and
3 responsibilities have been terminated under AS 47.10.080 or
4 voluntarily relinquished;

5 (B) the child being in need of medical treatment to
6 cure, alleviate, or prevent substantial physical harm, or mental
7 harm as evidenced by failure to thrive, severe anxiety, depres-
8 sion, withdrawal, or untoward aggressive behavior or hostility
9 toward others, and the child's parents are unwilling to provide
10 the medical treatment;

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

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

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

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

29 * Sec. 8. AS 47.10.081(c) is amended to read:

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

5 * Sec. 9. AS 47.10.142(a) is repealed and reenacted to read:

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

9 (1) the minor has been abandoned;

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

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

20 (4) the minor has been sexually abused under circumstances
21 listed in AS 47.10.010(a)(2)(D) and the department determines that
22 immediate removal from the minor's surroundings is necessary to pro-
23 tect the minor from further sexual abuse.

24 * Sec. 10. 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 24 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 24 hours after taking the child
6 into custody and does not file a child in need of aid petition the
7 department shall, within 24 hours after releasing the child, file with
8 the court a report explaining why the child was taken into custody.

9 * Sec. 11. AS 47.10.290 is amended by adding a new paragraph to read:

10 (8) "sexual abuse" means

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

13 (B) the perpetrator's knowingly touching, directly or
14 through clothing, the genital area, groin, inner thighs, or
15 buttocks of a child, or causing a child to touch, directly or
16 through clothing, the genital area, groin, inner thighs, or
17 buttocks of the perpetrator or another; sexual abuse does not
18 include reasonable touching in the exercise of normal caretaker
19 responsibilities for a child or normal caretaker interactions
20 with a child or touching performed for the purpose of adminis-
21 tering a recognized and lawful form of treatment that is rea-
22 sonably adapted to promoting the physical or mental health of the
23 child; reasonable perceptions of the child that the touching is
24 sexual in nature are relevant to the determination of whether the
25 touching is sexual abuse;

26 (C) exposing the genital area, anus, breast, groin, or
27 buttocks of a child to the perpetrator or another for the sexual
28 gratification of the child, the perpetrator, or another, or
29 exposing the genital area, anus, breast, groin or buttocks of the

1 perpetrator or another to a child for the sexual gratification of
2 the child, the perpetrator, or another; reasonable perceptions of
3 the child that the exposure is sexual in nature are relevant to
4 the determination of whether the exposure is sexual abuse; or

5 (D) statements to a child that express a desire or
6 intent to have sexual contact or sexual penetration with the
7 child or encourage the child to have sexual contact or sexual
8 penetration with the perpetrator or another.

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

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

13 (1) practitioners of the healing arts;

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

16 (3) human services providers;

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

19 (5) administrative officers of institutions;

20 (6) child care providers;

21 (7) custody investigators;

22 (8) employees and volunteers of domestic violence programs,
23 sexual assault programs, or crisis shelters;

24 (9) guardians and conservators.

25 (b) A person listed in (a) of this section, who in the perfor-
26 mance of the person's occupational duties has cause to believe that a
27 child has suffered harm as a result of abuse or neglect by a person
28 responsible for the child's welfare, shall promptly report the harm to
29 the nearest office of the department. If the person making a report

1 of harm under this subsection cannot reasonably contact the nearest
2 office of the department and immediate action is necessary for the
3 well-being of the child, the person shall make the report to a peace
4 officer. The peace officer shall take immediate action to protect the
5 child and shall, at the earliest opportunity, notify the nearest
6 office of the department.

7 (c) A person listed in (a) of this section, who in the perfor-
8 mance of the person's occupational duties has cause to believe that a
9 child has suffered harm as a result of abuse or neglect, shall prompt-
10 ly report the harm to the nearest law enforcement agency if the person
11 making the report (1) has cause to believe that the harm was caused by
12 a person who is not responsible for the child's welfare; or (2) is
13 unable to determine (A) who caused the harm to the child; or (B)
14 whether the person who is believed to have caused the harm has respon-
15 sibility for the child's welfare. If a person making a report under
16 this subsection cannot reasonably contact the nearest law enforcement
17 agency, and immediate action appears necessary for the well-being of
18 the child, the person shall make the report to the nearest office of
19 the department. The department shall take immediate action to protect
20 the child and shall, at the earliest opportunity, notify the nearest
21 law enforcement agency.

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

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 mat-
3 ter, either privately or commercially, has reason to believe that the
4 matter visually depicts a minor engaged in conduct described in
5 AS 11.41.455(a) shall promptly report this to the nearest law enforce-
6 ment agency. The person shall allow law enforcement agents access to
7 the material and provide the law enforcement agency with all informa-
8 tion known about the origin of the matter.

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

10 Sec. 47.17.025. DUTIES OF PUBLIC AUTHORITIES. (a) After re-
11 ceiving a report of harm to a child resulting from abuse or neglect by
12 a person responsible for the child's welfare, a law enforcement agency
13 shall immediately notify the Department of Health and Social Services
14 and the Department of Law. The Department of Health and Social Ser-
15 vices shall investigate the report and, within 72 hours after receiv-
16 ing the report, shall provide a written report of its investigation to
17 the Department of Law for review. If after a preliminary investiga-
18 tion the Department of Health and Social Services determines that the
19 harm was not caused by a member of the child's family, the department
20 shall so notify the Department of Law.

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

- 23 (1) the names and addresses of the child and the child's
24 parents or other persons responsible for the child's care, if known;
25 (2) the age and sex of the child;
26 (3) the nature and extent of the harm to the child;
27 (4) the name and age and address of the person known or
28 believed to be responsible for the harm to the child, if known;
29 (5) information that the department believes may be helpful

1 in establishing the identity of the person believed to have caused the
2 harm to the child.

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

4 (b) Investigation reports and reports of harm filed under this
5 chapter are considered confidential and are not subject to public
6 inspection and copying under AS 09.25.110 and 09.25.120. However, in
7 accordance with department regulations, investigation reports may be
8 used by appropriate governmental agencies with child-protection func-
9 tions, inside and outside the state [ALASKA], in connection with
10 investigations or civil or criminal [JUDICIAL] proceedings involving
11 [CHILD] abuse, neglect, or child custody. A person, not acting in
12 accordance with department regulations, who makes public information
13 contained in confidential reports is guilty of a misdemeanor.

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

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

20 * Sec. 17. AS 47.17.064 is repealed and reenacted to read:

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

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

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

1 radiological examination.

2 * Sec. 18. AS 47.17.068 is repealed and reenacted to read:

3 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person
4 who knowingly fails or refuses to report as required under AS 47.17.-
5 020 or 47.17.023 is guilty of a class B misdemeanor.

6 * Sec. 19. AS 47.17 is amended by adding a new section to read:

7 Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney
8 general may bring an action to enjoin or limit a person from contact
9 with a child not related to the person if the person

10 (1) has sexually abused a child;

11 (2) has physically abused a child;

12 (3) has failed without lawful excuse to provide necessary
13 food, care, clothing, shelter, supervision, or medical attention for a
14 child entrusted to the care of the person; or

15 (4) otherwise constitutes a substantial danger to the
16 mental, emotional, or physical welfare of a child.

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

21 * Sec. 20. AS 47.17.070(1) is amended to read:

22 (1) "[CHILD] abuse [OR NEGLECT]" means [THE] physical
23 injury [OR NEGLECT], sexual abuse, sexual exploitation, or maltreat-
24 ment of a child [UNDER THE AGE OF 18 BY A PERSON WHO IS RESPONSIBLE
25 FOR THE CHILD'S WELFARE] under circumstances that [WHICH] indicate
26 that the child's health or welfare is harmed or threatened thereby;

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

28 (6) "practitioner of the healing arts" includes chiroprac-
29 tors, dental hygienists, dentists, health aides, nurses, nurse

1 practitioners, optometrists, osteopaths, physical therapists, physi-
2 cians, physician's assistants, psychiatrists, psychologists, psycho-
3 logical associates, religious healing practitioners, and surgeons;

4 * Sec. 22. AS 47.17.070(7) is repealed and reenacted to read:

5 (7) "sexual exploitation" means

6 (A) permitting, encouraging, inducing, or employing a
7 child to engage in prostitution or in the promotion of prosti-
8 tution as set out in AS 11.66.100 - 11.66.150; or

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

10 * Sec. 23. AS 47.17.070 is amended by adding new paragraphs to read:

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

14 (9) "human services provider" includes an individual human
15 services provider, a social worker, and an employee or volunteer of a
16 human services organization, such as a social service, youth service,
17 mental health, or substance abuse agency, or a shelter for runaway or
18 homeless youth;

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

24 (11) "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 abuse or neglect, or a person
27 responsible for the child's welfare in a public or private residential
28 agency or institution.

29 * Sec. 24. 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. 25. 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.