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COMMITTEE REPORT

HOUSE

JUDICIARY

FURTHER:

(7)

3/25/83

Date:

4/5/83

Mr. Speaker: HEALTH, EDUCATION AND SOCIAL SERVICES

The Committee on _____ has had SSB 270

An Act relating to child pornography.

under consideration and reports it back as follows:

[] do pass [] do not pass

[] do pass with attached amendments(s)

[x] replace with CS for SSB 270 [x] same title [] new title

and recommends DO PASS

[] AND attaches a "Letter of Intent" [] New Fiscal Note

[] reports it back without recommendation [] Zero Fiscal Note Attached

[] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

Handwritten signatures: M. W. Miller, Do Pass, etc.

Blank lines for other recommendations.

Handwritten signature: MILO H. HARTZ CHAIRMAN

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SS HB 270
Title: Child Pornography
Sponsor: Alaska
Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Law
Program Category Affected: Admin. of Justice
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		130.1	165.5	175.4	185.9	197.1
200 TRAVEL		10.1	12.8	13.6	14.4	15.3
300 CONTRACTUAL		18.0	20.7	21.9	23.2	24.6
400 COMMODITIES		10.0	5.7	6.0	6.4	8
500 EQUIPMENT		17.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		185.6	204.7	217.0	230.0	243.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		185.6	204.7	217.0	230.0	243.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor

IV. ANALYSIS: Attached separate page for any Analysis

Prepared By: Richard I. Pegues Phone: 465-3672
 Division: Administrative Services Date: March 29, 1983
 Approved by Commissioner: Richard I. Pegues/Asst
Norman C. Gorsuch, Attorney General Date: March 29, 1983
 Department: Department of Law

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor

Section 1 of this bill adds a new subsection to the current Unlawful Exploitation of a Minor statute, making it a class B felony for a parent or guardian to knowingly allow his child to participate in sexual activities which will be used to produce a pornographic film, TV show, photograph, etc. Since in most cases a parent who would knowingly allow his child to engage in such activity would also be involved in "inducing or employing" the child to perform these acts (conduct which is already covered under existing law), it is expected that there would be only a few additional prosecutions under this portion of the bill. These few new cases could probably be handled by the present prosecution staff.

Section 2 of the bill makes it a class C felony for a person to knowingly sell or distribute pornographic material which visually depicts children engaged in sexual behavior. The bill could result in a large number of additional criminal prosecutions, as the sale or distribution of pornographic material of any sort is not now a criminal offense in this state. It is anticipated that enforcement of the new law would require the addition of two new prosecutors and one new secretary statewide. This estimate is based on the number of establishments in this state which are known to sell pornographic material, the complexity of legal issues that are involved in these types of cases, and the knowledge that con-

victions under similar statutes in other states are almost always appealed on constitutional grounds to the highest appellate court in the state, and frequently to the United States Supreme Court.

Fiscal Analysis - SSHB 270

The impact of HB 270 is expected to result in the addition of two Attorney IV positions (SR 24) and one Legal Secretary position (SR 10).

The first year of this analysis will cover 10 months of FY 84, allowing 2 months for these three positions to be established. The costs beyond FY 84 have been projected on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	<u>AIV(PFT)</u>	<u>AIV(PFT)</u>	<u>L/SI(PFT)</u>	<u>TOTAL</u>
Personal Services	53.7	53.7	23.4	130.1
Travel	5.0	5.0	-0-	10.0
Contractual	8.0	8.0	2.0	18.0
Commodities - ongoing	1.5	1.5	1.5	4.5
Commod. - single time	2.0	2.0	1.5	5.5
Equipment - single time	1.5	1.5	14.5	17.5
				<hr/>
				185.6

2nd Year (12 months + 6% annual inflation)

Personal Services	68.3	68.3	28.9	165.5
Travel	6.4	6.4	-0-	12.8
Contractual	9.1	9.1	2.5	20.7
Commodities	1.9	1.9	1.9	5.7
				<hr/>
				204.7

1.	POSITION TITLE Attorney IV			RANGE/STEP 24A	BARC. UNIT X	FORM 12 PAGE/LINE 8	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PMT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL	ADDITION			JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	4,251/month	42,510						
6.	Benefits		6,555						
7.	Supplemental Benefits		2,240						
8.	Fixed Benefits		2,400						
9.	TOTAL PERSONAL SERVICES		01	53,705					
10.	Travel		02	5,000					
11.	Contractual		03	8,000					
12.	Commodities		04	3,500					
13.	Equipment		05	1,500					
14.	Other								
15.	TOTAL COST			,705					
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts	1002						
17.		G.F. Match	1003						
18.		General Funds	1004	71,705					
19.		I-A Receipts	1005						
20.		Program Receipts	1028						
21.		Other							
FOR B&M USE ONLY 4A KEY NUMBER _____									

To accommodate the addition of new felony statutes for the prosecution of those who knowingly sell or distribute pornographic material which visually depicts children engaged in sexual behavior, the Department of Law is requesting two new attorney positions and a new secretary position. This is one of two attorney positions which will be responsible for the enforcement of the new felony statutes statewide, including the pursuit of the many cases which will undoubtedly be appealed on constitutional grounds to the state's highest court and to the U.S. Supreme Court. These cases will involve complex legal issues which have been previously unaddressed by Alaska's criminal code.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Law
 PROGRAM Due Process
 BRU Prosecution
 COMPONENT Third Judicial District

Page _____ of _____
 Revised Date _____

FY 84

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARC. UNIT X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1			2			3			
	PERSONAL SERVICES									
5.	Salary 4,251/month			42,510						
6.	Benefits			6,555						
7.	Supplemental Benefits			2,240						
8.	Fixed Benefits			2,400						
9.	TOTAL PERSONAL SERVICES			01			53,705			
10.	Travel			02			5,000			
11.	Contractual			03			8,000			
12.	Commodities			04			3,500			
13.	Equipment			05			1,500			
14.	Other									
15.	TOTAL COST						71,705			
	RECEIPT CODE			FUNDING SOURCE						
16.				Federal Receipts 1002						
17.				G.F. Match 1003						
18.				General Funds 1004			71,705			
19.				I-A Receipts 1005						
20.				Program Receipts 1028						
21.				Other						
FOR B&M USE ONLY 4A KEY NUMBER _____										

To accommodate the addition of new felony statutes for the prosecution of those who knowingly sell or distribute pornographic material which visually depicts children engaged in sexual behavior, the Department of Law is requesting two new attorney positions and a new secretary position. This is the second of two attorney positions which will be responsible for the enforcement of the new felony statutes statewide, including the pursuit of the many cases which will undoubtedly be appealed on constitutional grounds to the state's highest court and to the U.S. Supreme Court. These cases will involve complex legal issues which have been previously unaddressed by Alaska's criminal code.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Law
 PROGRAM Due Process
 BRU Prosecution
 COMPONENT Third Judicial District

FY 84

Page _____ of _____
 Revised Date _____

1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARC. UNIT GCU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	1,726/month	17,260							
6.	Benefits		2,660							
7.	Supplemental Benefits		1,058							
8.	Fixed Benefits		2,400							
9.	TOTAL PERSONAL SERVICES		01	23,400						
10.	Travel		02	-0-						
11.	Contractual		03	2,000						
12.	Commodities		04	3,000						
13.	Equipment		05	14,500						
14.	Other									
15.	TOTAL COST			42,500						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		42,900						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

This position is required to provide support for the two new attorney positions. This secretary will be responsible for the preparation of a large volume of court documents generated by the appeal of cases dealing with the constitutionality of Alaska's statutes on child pornography. The allocation of a single secretary to serve two full time attorneys is the minimum amount of support needed to meet the workload anticipated and is within the normal ratio of attorneys to secretaries for the Department of Law.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Law

PROGRAM Due Process

BRU Prosecution

COMPONENT Third Judicial District

FY 84

Page _____ of _____

Revised Date _____

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 270
 Title: Act relating to child pornography
 Sponsor: Rep Iiska
 Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Crime & ID
 BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis: No Fiscal Impact Anticipated

Prepared By: Paul Conger Phone: 465-4338
 Division: Administrative Services Date: 3-29-83
 Approved by Commissioner: [Signature] Date: 3/29/83
 Department: Public Safety

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/2/83

POSITION PAPER

Sponsor Substitute for House Bill No. 270

"An Act relating to child pornography."

House Bill No. 270 raises the penalty for exploitation of a minor from a Class C felony to a Class B felony in AS 11.41.455. House Bill No. 270 also adds a new section, Sec. 11.61.125, to Alaska State Statutes which makes distribution of child pornography a Class C felony. The Department estimates that one additional medium security bed will be necessary to house offenders convicted of unlawful exploitation of a minor and/or distribution of child pornography.

Recommended by:

for Roger C. Lange

Roger V. Endell, Director
Division of Adult Corrections

Date:

April 1, 1983

Approved by:

Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Date:

4/7/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SS for H.B. #270
Title: "An Act relating to child porno."
Sponsor: Representative Liska
Requestor: HESS Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected:
Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		2.4	5.1	5.4	5.7	6.1
400 COMMODITIES		2.5	5.3	5.6	6.0	6.3
500 EQUIPMENT						
600 LAND & STRUCTURES			-	-	-	-
700 GRANTS, CLAIMS, ETC		.2	.2	.3	.3	.4
TOTAL OPERATING		5.1	10.6	11.3	12.0	12.8
CAPITAL	-0-	146.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	151.1	10.6	11.3	12.0	12.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
Division: Adult Corrections Date: March 31, 1983
Approved by Commissioner: Robert Gordon Smith Date: 4/7/83
Department: Health & Social Services

Distribution:

Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
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Copy to Requestor (if different from Sponsor)

3/8/83

IV. ANALYSIS

A. Assumptions

Based on conversations with Department of Law staff, it is assumed that there will be one additional Class B felony conviction and four Class C felony convictions per year. It is assumed all will be first time offenders. Therefore it is estimated that 50% of the Class B and 20% of the Class C felony offenders will receive terms of confinement. This will result in approximately 1.5 person years per year of jail time will be served.

It is further assumed that the distributors of child pornography will remove these materials from their visible stock and convictions for distribution of child pornography will decrease from the original estimate of four per year.

Therefore, it is estimated that one additional medium security bed will be required if this proposed legislation is enacted.

B. Program Summary

1. Positions - An average of one position is required for every 2½ beds. Since only one bed is requested in the fiscal note, no positions are identified as being needed.
2. Other expenditures
 - a. Contractual Services
Medical care and counseling services \$2400
 - b. Commodities
Food and clothing \$2500
 - c. Grants
Inmate gratuities for kitchen, janitorial or other assigned tasks \$200.

C. Impact

There will be no significant economic on local government as a result of passage of this bill.

I. REQUEST
 Bill/Resolution No.: HB 270
 Title: Child Pornography
 Sponsor: L.ska
 Requestor: _____

II. FISCAL DETAIL
 Agency Affected: H&SS
 Program Category Affected: Social Service
 BRU, Program of Subprogram(s) Affected: None

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Enactment of this Bill would have no fiscal impact on the Division of Family and Youth Services as child pornography is already included in reporting of abuse.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael L. Price, Director Phone: 465-3170
 Division: Family and Youth Services Date: 3/22/83
 Approved by Commissioner: Robert Landon Smith Date: 4/8/83
 Department: H & SS

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
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STAFF REPORT

HB 270 RELATING TO CHILD PORNOGRAPHY

MARCH 30, 1983

Dave Palmer

Section 1.

11.41.455 (a) Unlawful exploitation of a minor--defines the crime. This is the existing statute. No change.

(b) This new subsection provides that those adults who have custody of a minor who knowingly permit the exploitation in (a) are guilty of exploitation.

(c) Both offenses are a class B felony.

11.61.125 (a) This new section makes distribution or intent to distribute child pornography a crime.

(b) certain exemptions are allowed for employees of a theater.

(c) Distribution of child pornography is a class C felony.

The SSHB 270 deletes the definition of "obscene". A memo from legal services cites a US Supreme Court case that allows penalization for the production of child pornography and the distribution of material depicting children engaged in sexual conduct without requiring that the material be legally obscene.

Additional amendments are proposed by the sponsor. He requests they be incorporated into the bill as a committee substitute. The proposed changes are attached to this report

Two fiscal notes are attached. a zero note from the Department of Public Safety, and a \$185.6 fiscal note from the Department of Law.

ADDITIONAL AMMENDMENTS
FOR HOUSE BILL 270

1. Raising age covered from 16 to 18:

Sec. 11.41.455 (a) (Line 14 and 15, Page 1)
(b) (Line 26, Page 1)

Rationale:

- a. Enforcement of this law is predicated on proving to the court that the persons featured in these pornographic materials is under a certain age. When a victim cannot be positively identified (as in cases where materials are imported from outside Alaska and the child is not physically present) it is very difficult to prove beyond the standard reasonable doubt that a child who has reached the puberty stage of development is under 16 from physical appearance alone. Using 18, it would be much easier to prove when dealing with victims are actually between 13 and 16. This is the age bracket most encountered in the experience of the Anchorage Police Department according to Police Chief Porter.
- b. Under existing law a person under the age of 18 is treated generally as subject to the juvenile system of justice as opposed to the adult system. It is only logical that we apply the same maturity standard when that same person is the victim under the law.
- c. January 26, 1983 Senator Specter introduced similar legislation in Washington, D.C. and the Bill being reviewed by Judiciary uses the age of 18 as its criteria. Should this Bill pass, Alaska State Statutes would conform to the Federal standard.

2. Addition to include "Simulated" sexual acts:

Amend to read in Sec. 11.41.455, Line 16 page 1:

"in the following actual or simulated conduct:"

Rationale:

The deplorable intent is the same whether the sexual acts involved in the exploitation of these children are actual or simulated. We also want to avoid the technicality of having to prove whether the acts were actually performed or only simulated.

3. Change this exploitation of a minor from a Class B Felony to a Class A Felony, and distribution of the materials from a Class C Felony to a Class B Felony.

Rationale:

- a. Experience of experts shows that the "damage" to these victims is of major proportions. These are not minor crimes. Aside from the actual physical injury caused to many of these victims, the psychological damage is often extensive. There is also the continuing threat of having those acts depicted in these pornographic materials publically and graphically exposed throughout the victim's lifetime. There also seems to be a heavy causal effect to the child's subsequent hard delinquency. In addition there seems to be a likelihood that these victims can continue the abuse on their own children.

"An Act relating to child pornography."

House Bill 270 amends the criminal code by adding three major provisions to the laws dealing with child pornography:

1. The parent, legal guardian or person having custody or control of a child under 16 years of age under this Bill commits the crime of unlawful exploitation of a minor if he permits the child to engage in unlawful sexual conduct for commercial purposes;
2. The Bill defines "obscene", which previously had been up to the discretion of the courts to define;
3. The Bill adds a new section which makes the distribution of child pornography materials illegal.

BACKGROUND

The extent to which Alaskan youth are victims of child pornography is unknown, although recent investigations by the Anchorage Crime Commission indicate there may be as many as 30 child slavery and pornography rings in Alaska, with networks to the lower 48 and overseas. Anchorage law enforcement officials believe the problem to be worse in Alaska than in other parts of the country due to criminals being drawn to Alaska by its wealth, by the heavy drug and alcohol abuse, the young and mobile Alaskan population and the overloaded law enforcement and court systems. In a case currently before the courts in Anchorage, one individual is charged with 29 counts of sex crimes against juveniles, including the making of pornographic movies.

It is estimated that at least half the youths in McLaughlin have been sexually abused, and some private residential facilities would estimate that closer to 85% - 95% of the youth served have been victims of sexual abuse. Many youth who have been sexually abused at home, runaway and end up being victimized by individuals who lure them into prostitution, child pornography and other illegal activities.

POSITION

The Department of Health and Social Services supports House Bill 270, which considerably strengthens the statutes regarding child pornography. By making it illegal for the person who has the legal custody or control of the child, whether the parent or not, to permit the child to engage in child pornography for commercial purposes, it recognizes the responsibility of parents and custodians to provide protection for children in their care. Secondly, by extending criminal liability to the distributor of child pornography, this bill recognizes that without promotion and marketing of the child pornography materials, there would be no financial motive for the sexual exploitation of children.

RECOMMENDED: Michael L. Price
Michael L. Price, Director
Division of Family and
Youth Services

DATE: March 23, 1983

APPROVED BY: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

DATE: 3/30/83

I. REQUEST

Bill/Resolution No.: HB 270
Title: Child Pornography
Sponsor: Liska
Requestor: _____

II. FISCAL DETAIL

Agency Affected: H&SS
Program Category Affected: Social Services
BRU, Program of Subprogram(s) Affected: None

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Enactment of this Bill would have no fiscal impact on the Division of Family and Youth Services as child pornography is already included in reporting of abuse.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael L. Price, Director Phone: 465-3170
Division: Family and Youth Services Date: 3/22/83
Approved by Commissioner: [Signature] Date: 3/30/83
Department: [Signature]

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
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- Copy to Requestor (if different from Sponsor)

HORETSKI -

OPPOSE AGE to 18.

AGE DETERMINED VISUALLY

EASIER FOR PROSECUTION AGE @ 16

Amendments

- 1) ACTUAL OR SIMULATED s: 16 page 1
- 2) p 2 li 7 delete "sends or causes to be sent, or
- 3) li 12, 13 delete "minor or a person who reasonably appears to be a minor" Add ... children under the age of ¹⁶18.

MOVE

Amendments s: 14, 15, 26 from 16-18

TERMS OF IMPRISONMENT

OCTOBER 1, 1982

FIRST FELONY CONVICTION SECOND FELONY CONVICTION THIRD FELONY CONVICTION

MURDER I
 MUR. I & KIDNAP. &
 M. I. C. S. I
 SEXUAL ASSAULT
 1ST **
 SEXUAL ASSAULT
 1ST
 A FELONY **
 A FELONY
 B FELONY
 C FELONY

[20] -- 99	[20] -- 99	[20] -- 99
[5] -- 99	[5] -- 99	[5] -- 99
5 -- (10) -- 30	7 1/2 -- (15) -- 30	12 1/2 -- (25) -- 30
4 -- (8) -- 30	7 1/2 -- (15) -- 30	12 1/2 -- (25) -- 30
3 1/2 -- (7) -- 20	5 -- (10) -- 20	7 1/2 -- (15) -- 20
2 1/2 -- (5) -- 20	5 -- (10) -- 20	7 1/2 -- (15) -- 20
0 -- 10	0 -- (4) -- 10	3 -- (6) -- 10
0 -- 5	0 -- (2) -- 5	0 -- (3) -- 5

*APPLIES WHEN A DEFENDANT POSSESSED A FIREARM, USED A DANGEROUS WEAPON OR CAUSED SERIOUS PHYSICAL INJURY EXCEPT FOR MANSLAUGHTER.
 NUMBERS IN (BRACKETS ARE) PRESUMPTIVE SENTENCES. NUMBERS ENCLOSED BY BOXES ARE MANDATORY MINIMUM SENTENCES.
 NUMBERS TO LEFT OF BRACKETS ARE LOWEST MITIGATED SENTENCES. NUMBERS TO RIGHT ARE HIGHEST AGGRAVATED SENTS.

Introduced: 3/25/83
Referred: Health, Education & Social
Services and Judiciary

BY LISKA, ADAMS, BUSSELL, FLOOD, FRITZ,
GRUSSENDORF, HURLBERT, LINDAUER,
MALONE, MARTIN, PHILLIPS, SHULTZ,
SZYMANSKI, TISCHER, WARD, CLOCKSIN,
PESTINGER, UEHLING AND MCBRIDE

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 270

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child pornography."

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

8 * Section 1. AS 11.41.455 is repealed and reenacted to read:

9 Sec. 11.41.455. UNLAWFUL EXPLOITATION OF A MINOR. (a) A person
10 commits the crime of unlawful exploitation of a minor if, in this
11 state and with the intent of producing a live performance, film,
12 photograph, negative, slide, book, newspaper, or magazine that
13 visually depicts the conduct listed below, the person knowingly
14 induces or employs a child under ¹⁸16 years of age to engage in, or
15 photographs, films, or televises a child under ¹⁸16 years of age engaged
16 in the following ^{actual or simulated} conduct:

17 (1) sexual penetration;

18 (2) the lewd touching of another person's genitals, anus,
19 or female breast;

20 (3) the lewd touching by another person of the child's
21 genitals, anus, or female breast;

22 (4) masturbation;

23 (5) bestiality; or

24 (6) the lewd exhibition of the child's genitals.

25 (b) A parent, legal guardian, or person having custody or con-
26 trol of a child under ¹⁸16 years of age commits the crime of unlawful
27 exploitation of a minor if, in this state, the person permits the
28 child to engage in conduct described in (a) of this section knowing
29 that the conduct is intended to be used in producing a live

1 performance, film, photograph, negative, slide, book, newspaper, or
2 magazine that visually depicts such conduct.

3 (c) Unlawful exploitation of a minor is a class B felony.

4 * Sec. 2. AS 11.61 is amended by adding a new section to read:

5 Sec. 11.61.125. DISTRIBUTION OF CHILD PORNOGRAPHY. (a) A
6 person commits the crime of distribution of child pornography if the
7 person ~~sends or causes to be sent, or~~ brings or causes to be brought,
8 into this state for sale or distribution, or in this state possesses,
9 prepares, publishes, or prints with intent to distribute, sell, or
10 exhibit to others for commercial consideration, any matter which
11 visually depicts conduct described under AS 11.41.455(a), knowing that
12 the production of the matter involves the use of a ~~minor or a person~~ ^{child under 18}
13 ~~who reasonably appears to be a minor~~ engaged in such conduct.

14 (b) This section does not apply to acts that are an integral
15 part of the exhibition or performance of a motion picture when the
16 acts are done within the scope of employment by a motion picture
17 operator or projectionist employed by the owner or manager of a thea-
18 ter or other place for the showing of motion pictures, unless the
19 motion picture operator or projectionist

20 (1) has a financial interest in the theater or place in
21 which employed; or

22 (2) caused the performance or motion picture to be per-
23 formed or exhibited without the consent of the manager or owner of the
24 theater or other place of showing.

25 (c) Distribution of child pornography is a class C felony.

Alaska State Legislature

COMMITTEES

Vice Chairman — Judiciary

Vice Chairman — Legislative
Regulations Review

Resources

Finance Sub Committee on Labor



House of Representatives

John J. Liska

While in Session

Pouch V
State Capitol
Juneau, Alaska 99611
(907) 465-3733

Home - District 15
Star Route Box 421
Eagle River, Alaska 99577
(907) 688-2525

March 14, 1983

MEMORANDUM

TO: All House Members

FROM: John J. Liska, Representative - District 15

SUBJECT: Child Pornography Legislation

Enclosed is a draft of a Bill I have introduced regarding child pornography. In recent months there have been many newspaper articles regarding this issue. Having had my staff research this subject, we have found that there is no statute that covers the sale or distribution of pornography involving children. Nor is there any statute covering parental consent of the use of their children in pornographic materials.

This Bill addresses all of the above. Your support for this Bill is needed to curb these atrocities.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 17, 1983

SUBJECT: Child pornography
(HB 270)

TO: Representative John Liska

FROM: James H. Lear
Legislative Counsel *JHL*

In response to your request, I drafted HB 270 relating to child pornography. Monday afternoon, Mike Gay requested that I redo the bill to define the word "obscene". He indicated that it would have to be done by 9:00 yesterday morning. With just a short amount of time to fulfill this request, I inserted sec. 2 that would add a new paragraph to AS 11.41.470 (definitions) that would define "obscene" to mean

". . . conduct that, taken as a whole and applying to contemporary community standards,

- (A) appeals to the prurient interest in sex;
- (B) is patently offensive; and
- (C) lacks serious literary, artistic, political, or scientific value."

This definition sets out the standard established by the United States Supreme Court in Miller v. California, 413 U.S. 15, 37 L.Ed.2d 419, 93 S.Ct. 2607 (1973).

You should be advised that the standard set forth in Miller for determining obscenity may be relaxed by the states in prohibiting child pornography. Unfortunately, I was not aware of the July, 1982, case of New York v. Ferber, ___ U.S. ___, 73 L.Ed.2d 1113, 102 S.Ct. 3348, in which the United States Supreme Court drew the distinction between child pornography and other forms of obscenity.

I will outline the critical points made in New York v. Ferber, supra, and summarize your alternatives with HB 270.

At issue in New York v. Ferber is the constitutionality of a New York criminal statute which prohibits persons from knowingly promoting sexual performances by children under the age of 16 by distributing material which depicts such performances.

The decision highlights the fact that the federal government and 47 states have sought to combat the problem of child pornography with statutes specifically directed at the production of child pornography. At least half of such statutes do not require that the materials produced be legally obscene (i.e., that apply the Miller standard). Thirty-five states and the United States Congress have also passed legislation prohibiting the distribution of such materials. Twenty states prohibit the distribution of material depicting children engaged in sexual conduct without requiring that the material be legally obscene.

The heart of the New York v. Ferber case is a pronouncement by the United States Supreme Court that it is permissible for a state to penalize the production of child pornography and the distribution of material depicting children engaged in sexual conduct without requiring that the material be legally obscene.

Here is how the Court arrived at that decision. The Court stated the issue as follows:

To prevent the abuse of children who are made to engage in sexual conduct for commercial purposes, could the New York State Legislature, consistent with the first amendment, prohibit the dissemination of material which shows children engaged in sexual conduct, regardless of whether such material is obscene?

The Supreme Court indicated that this case constitutes its first examination of a statute directed at and limited to depictions of sexual activity involving children. The Court then began with the question of whether a state has somewhat more freedom in proscribing works which portray sexual acts or lewd exhibitions of genitalia by children. The Court reviewed the position taken in Miller, supra, that the

. . . states have a legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries with it a significant

danger of offending the sensibilities of unwilling recipients or of exposure to juveniles.

Miller v. California, 413 U.S., at 19.

The Miller standard, like its predecessors, was an accommodation between the states' interests in protecting the "sensibilities of unwilling recipients" from exposure to pornographic material and the dangers of censure inherent in unabashedly content based laws. Like obscenity statutes, laws directed at the dissemination of child pornography run the risk of suppressing protected expression by allowing the hand of the censor to become unduly heavy. For the following reasons, the Court was persuaded that the states are entitled to greater leeway in the regulation of pornographic depictions of children.

(1) It is evident beyond the need for elaboration that a state's interest in "safeguarding the physical and psychological well-being of a minor" is compelling.

(2) The distribution of photographs of and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children.

(3) The advertising and selling of child pornography provides an economic motive for and is thus an integral part of the production of such materials, an activity illegal throughout the nation.

(4) The value of permitting live performances and photographic reproductions of children engaged in lewd sexual conduct is exceeding modest, if not deminimus.

(5) Recognizing and classifying child pornography as a category of material outside the protection of the First Amendment is not incompatible with the Court's earlier decisions.

The Court reiterated that the test for child pornography is separate from the obscenity standard enunciated in Miller, but may be compared to it for purposes of clarity. The Miller formulation is adjusted in the following respects:

(1) A trier of fact need not find that the material appeals to the prurient interest of the average person;

(2) It is not required that sexual conduct portrayed be done so in a patently offensive manner; and

(3) The material at issue need not be considered as a whole.

The Court did indicate, however, that there are limits on the category of child pornography which, like obscenity, is unprotected by the First Amendment. As with all legislation in this sensitive area, the conduct to be prohibited must be adequately defined by the applicable state law, as written or authoritatively construed. Here the nature of the harm to be combatted requires that the state offense be limited to works that visually depict sexual conduct by children below a specified age. The category of "sexual conduct" proscribed must also be suitably limited and described.

The Supreme Court proceeded to analyze the New York statute observing that the forbidden acts to be depicted are listed with sufficient precision and represent the kind of conduct, that, if it were the theme of a work, could render it legally obscene: "Actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals". The Court gave special emphasis to the fact that the term "lewd exhibition of the genitals" is not unknown to the Court in this area and, indeed, was given in Miller as an example of a permissible regulation.

The Supreme Court made it perfectly clear that a state is not barred by the First Amendment from prohibiting the dissemination of material which shows children engaged in sexual conduct, regardless of whether such material is obscene.

The Court further clarified its position with regard to child pornography by dismissing the claim that the New York statute is unconstitutionally overbroad because it would forbid the distribution of material with serious literary, scientific or educational value or material which does not threaten the harm sought to be combatted by the state. The Court held this to be the paradigmatic case of a state statute whose legitimate reach dwarfs its arguably impermissible applications. The Court seriously doubted that those arguably impermissible applications of the statute amount to more than a tiny fraction of the materials within the statute's reach.

Representative John Liska
Page 5
March 17, 1983

The Supreme Court refused to assume that the New York Courts will widen the possibly invalid reach of the statute by giving an expansive construction to the proscription on "lewd exhibitions of the genitals". Whatever overbreadth might exist should be cured through case by case analysis of the fact situations to which its sanctions, assertedly, may not be applied.

Now, how does this decision effect HB 270?

It means that HB 270 could be amended to delete the definition of "obscene" set out in sec. 2 of the bill, since it is permissible for the state to enforce AS 11.41.455 and AS 11.61.125 without a court finding that a depicted touching or exhibition is obscene. I would suggest, however, inserting the word "visually" before the word "depicts" on page 1, line 13, and on page 2, line 18; and changing the word "obscene" to "lewd" on page 1, lines 18, 20, and 24.

The suggested changes to HB 270 would give the state much greater latitude in enforcing the child pornography laws and still be within the constitutional guidelines set forth by the United States Supreme Court.

JHL:ljb
10/012

Introduced: 3/16/83
Referred: Health, Education &
Social Services and Judiciary

BY LISKA, ADAMS, BUSSELL FLOOD,
FRITZ, GRUSSENDORF, HURLBERT,
LINDAUER, MALONE, MARTIN, PHILLIPS,
SHULTZ, SZYMANSKI, TISCHER AND
WARD

1 IN THE HOUSE

2

HOUSE BILL NO. 270

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to child pornography."

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

8 * Section 1. AS 11.41.455 is repealed and reenacted to read:

9 Sec. 11.41.455. UNLAWFUL EXPLOITATION OF A MINOR. (a) A person
10 commits the crime of unlawful exploitation of a minor if, in this
11 state and with the intent of producing for any commercial purpose a
12 live performance, film, photograph, negative, slide, book, newspaper,
13 or magazine that depicts the conduct listed below, the person know-
14 ingly induces or employs a child under 16 years of age to engage in,
15 or photographs, films, or televises a child under 16 years of age
16 engaged in the following conduct:

17 (1) sexual penetration;

18 (2) the obscene touching of another person's genitals,
19 anus, or female breast;

20 (3) the obscene touching by another person of the child's
21 genitals, anus, or female breast;

22 (4) masturbation;

23 (5) bestiality; or

24 (6) the obscene exhibition of the child's genitals.

25 *New* (b) A parent, legal guardian, or person having custody or con-
26 *to* trol of a child under 16 years of age commits the crime of unlawful
27 exploitation of a minor if, in this state, the person permits the
28 child to engage in conduct described in (a) of this section knowing
29 that the conduct is intended to be used in producing for a commercial

1 purpose a live performance, film, photograph, negative, slide, book,
2 newspaper, or magazine.

3 *SAME →* (c) Unlawful exploitation of a minor is a class B felony.

4 * Sec. 2. AS 11.41.470 is amended by adding a new paragraph to read:

5 (4) "obscene" means, conduct that, taken as a whole and
6 *new* applying contemporary community standards,

7 (A) appeals to the prurient interest in sex;

8 (B) is patently offensive; and

9 (C) lacks serious literary, artistic, political, or
10 scientific value.

11 * Sec. 3. AS 11.61 is amended by adding a new section to read:

12 Sec. 11.61.125. DISTRIBUTION OF CHILD PORNOGRAPHY. (a) A
13 person commits the crime of distribution of child pornography if the
14 person sends or causes to be sent, or brings or causes to be brought,
15 into this state for sale or distribution, or in this state possesses,
16 prepares, publishes, or prints with intent to distribute, sell, or
17 exhibit to others for commercial consideration, any visual or printed
18 matter which depicts conduct described under AS 11.41.455(a), knowing
19 that the production of the matter involves the use of a minor engaged
20 in such conduct.

21 (b) This section does not apply to acts that are an integral
22 part of the exhibition or performance of a motion picture when the
23 acts are done within the scope of employment by a motion picture
24 operator or projectionist employed by the owner or manager of a thea-
25 ter or other place for the showing of motion pictures, unless the
26 motion picture opera^ror or projectionist

27 (1) has a financial interest in the theater or place in
28 which employed; or

29 (2) caused the performance or motion picture to be

1 performed or exhibited without the consent of the manager or owner of
2 the theater or other place of showing.

3 (c) Distribution of child pornography is a class C felony.

STAFF REPORT

HB 270

child Pornography

SECTION 1

11.41.455 ^{with/without} (2) EXPLOITATION of a minor - DEFINES THE CRIME -
THIS IS EXISTING STATUTE

(b) This NEW subsection provides that those adults who HAVE CUSTODY of a minor who KNOWINGLY KNOWINGLY permit the EXPLOITATION in (2) ARE GUILTY of EXPLOITATION

(c) Both offenses are a CLASS B FELONY -
(SEE CHART)

11.61.125 (2) ~~B~~ This NEW SECTION MAKES DISTRIBUTION OR INTENT to distribute child pornography a CRIME.

(b) CERTAIN EXEMPTIONS FOR EMPLOYEES of a theater ARE ALLOWED.

(c) Distribution is a CLASS C FELONY.