

CHILD

PROTECTION

ANCHORAGE  
YOUTH - AT - RISK  
REPORT

A Report Prepared By:

The Youth-At-Risk Steering Committee

And

The Anchorage Commission On Youth

And

The Department of Social Services

October, 1984

MEMORANDUM

TO: CHILD PROTECTION WORK GROUP

FROM: KEVIN K. BRUCE

DATE: MARCH 7, 1985

RE: PROPOSED CONCURRENT RESOLUTION

The purpose of this concurrent resolution is to establish a Children's Code Task Force to review and revise the laws pertaining to children and the family unit.

It is expected that the task force will make recommendations in these and similar areas: the Indian Child Welfare Act, adoption procedures, runaways, juvenile commitment procedures, institutional placement, foster care review and parental rights matters. The above list is only illustrative in nature and should not be construed as necessarily including or excluding any subject area.

The resolution is also intended to assist the legislature in it's current effort in the area of child protection. Given the remaining time available for addressing substantive legislation, it is felt interim work in this area can finalize proposals for the second session in 1986.

The attached fiscal note would only allow for travel funds for appointed task force members. Travel for legislators, staff and administrative members would come from existing accounts and resources. The fiscal note reflects a "best guess" as to travel expenses since it is currently unknown who would be appointed to the task force.

SENATE CONCURRENT RESOLUTION

WHEREAS THE LAWS PERTAINING TO THE FAMILY UNIT, AND PARTICULARLY, CHILDREN, ARE VITAL TO ALASKAN SOCIETY; AND

WHEREAS THE GENERAL AREA OF FAMILY AND JUVENILE LAW IS A CONTINUALLY GROWING AND EXPANDING DISCIPLINE; AND

WHEREAS THE LEGISLATURE HAS DEMONSTRATED A COMPELLING INTEREST IN IMPROVING AND EXPANDING LAWS RELATED TO CHILD PROTECTION; AND

WHEREAS THIS CHILD PROTECTION EFFORT IS INEXORABLY LINKED TO OTHER AREAS OF FAMILY LAW; AND

WHEREAS IT WOULD BE BENEFICIAL TO PARENTS, ATTORNEYS, LAY PEOPLE, AND ADMINISTRATIONS OF VARIOUS STATE AND LOCAL AGENCIES WHO HAVE DUTIES AND RESPONSIBILITIES WITH REGARD TO CHILDREN AND OTHER FAMILY MATTERS TO BRING CONFORMITY TO ALASKAN LAW IN THIS AREA;

THEREFORE BE IT RESOLVED BY THE ALASKA STATE LEGISLATURE THAT THE LEGISLATIVE COUNCIL IS DIRECTED TO REVIEW EXISTING LAWS RELATING TO CHILDREN SPECIFICALLY AND THE FAMILY IN GENERAL, AND ACCOMPLISH ANY NECESSARY REVISION TO HARMONIZE CONFLICTS, SUPPLY OMISSIONS, AND GENERALLY CLARIFY THE LAWS PERTAINING TO THE FAMILY.

BE IT FURTHER RESOLVED BY THE ALASKA STATE LEGISLATURE THAT THE LEGISLATIVE COUNCIL IS DIRECTED TO APPOINT A COMMITTEE OF PROFESSIONALS, LAY PEOPLE, AND ADMINISTRATION MEMBERS TO ASSIST THE COUNCIL IN THEIR EFFORTS.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: \_\_\_\_\_  
Title: WAGE AND SALARY ADJUSTMENTS

FISCAL DETAIL

Agency Affected: LEGISLATIVE COUNCIL  
Program Category Affected: \_\_\_\_\_

Sponsor: \_\_\_\_\_  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
\_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL	8.5					
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>						

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	9.5					
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: \_\_\_\_\_ Phone: \_\_\_\_\_  
Division: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

511 24876 dha

# Alaska State Legislature

Advisory Council Members  
Senator Bennett, Chairman  
Senator Kerttula  
Senator Abood  
Senator Sackett



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SENATE ADVISORY COUNCIL

M E M O R A N D U M

*Memo from Elizabeth J. Hickerson to Kern Bruce*

TO: SENATOR JAN FAIKS  
FROM: ELIZABETH J. HICKERSON *ejh*  
SUBJECT: CHILD AND FAMILY PROTECTION LEGISLATIVE PACKET  
DATE: MARCH 25, 1985

In the last month, at your request, I have been involved in the meetings held by the Senate and House HESS and Judiciary Committees regarding the overall needs in Alaska concerning child and family protection. The Committee reviewed all recommendations presented by John Walsh and pending legislation. Sandra Schubert did an excellent job in providing a comparison between what Mr. Walsh suggested and the existing conditions in Alaska. A number of bills have been recommended for the legislature's consideration. During the committee's review of these various bills, numerous concerns were raised. Many of these concerns are not reflected in the various bills. Because of this, I would like to take this opportunity to inform you on the specific concerns raised.

SB 3/HB 67, Hearsay Evidence

In the discussions regarding hearsay evidence and its admission at the grand jury, several concerns were raised. These I will summarize as follows.

1. Whether or not there is a need to expand our present hearsay exceptions to provide for this particular type of evidence to be presented to the grand jury was questioned. It is felt, by some, that under our present rules of evidence, this type of hearsay is already admissible.
2. If a hearsay exemption is adopted, many feel that this should be limited to admissions or statements of the child victim only. As presently drafted, SB 3 provides for the statement of any child, not necessarily the victim of a sexual assault. Dana Fabe, the Public

Defender, is very concerned that this exception be narrowly drawn and only apply to the child victim.

#### SB 8, School curriculum

This bill reflects the need by the local school districts to adopt a personal safety curriculum. Teaching children the difference between good touch and bad touch, what to do in case of a personal emergency situation, and what protections are available to children, is an initial step in the prevention of child abuse. This is particularly true in the event that families are not teaching personal safety to children. Since most child abuse occurs in the home it is doubtful that those parents and relatives teach children that this is improper behavior. This bill or similar legislation is definitely needed. In Alaska, some school districts presently provide this type of program, however, it is usually provided on an intermittent basis and is not a part of the ongoing curriculum.

#### SB 21/HB 308, Background Checks

These bills provide that interested persons may request a list reflecting all convictions of an individual for crimes that might cause a risk of harm to children, if the individual holds or applies for a position in which the individual has or would have a supervisory or disciplinary power over a minor. Crimes that might pose a risk of harm to children are defined and are numerous. There may be some opposition to the individual crimes that are included in this definition. There may also be concern that the existence of an outstanding warrant will be available for release. Concerns were raised that this type of a background check on an individual does not take into consideration that person who has been convicted has served his or her time and should not face reprimand from society. Also regarding the outstanding warrants, people are concerned that an outstanding warrant is not based on a conviction and thus persons that have not been proven guilty will be subjected to possible retaliation through unemployment.

In addition to these concerns, people have stated that background checks should not be optional but should be mandatory. When I attended the Anchorage Crime Commission, the issue was raised that persons that contract with the Anchorage School District are not covered under this bill. It was particularly felt that school bus drivers and other persons under contract in direct association with children should be subject to background checks.

#### SB 27, Community Training

This bill provides funds for the training of local persons who are involved in the prevention, intervention, investigation and counseling of child victims of sexual assault. The persons

reviewing this bill consistently felt that this was a high priority.

#### SB 28, Reporting Incidents of Abuse

This bill has passed the Senate. It requires the training of state employees who are required to report the instances of child abuse as well as employees of school districts. This bill also received high priority by the committee. Concern has been voiced that children should be able to petition the court by themselves, and not limited through a parent, guardian or custodian. I support the limiting provision.

#### SB 88/HB 19, Missing and Runaway Children

Presently law enforcement agencies may detain runaways. These two bills do provide that the agencies shall transmit a runaway report into the Alaska Public Safety Network and the National Crime Information Center Computer System. In regard to the issue of runaways, it should be noted that there is an inadequate number of foster homes and group homes for these children. While everyone realizes that we have a problem with runaways, most people in the field believe that children are running away for reasons. Many of the runaways have been abused at home and thus returning them to an unsafe situation may not be in the best interest of the children. Without adequate facilities for housing runaways it is unclear where these children will be detained since the bills prohibit housing runaways in jails or detention facilities.

#### SCR 3/HCR 2, School Teacher Background Checks

These bills urge local school districts to implement background checks on all school district employees who come into contact with children. The issue has been raised that school districts should be required to provide background checks for all persons employed and persons under contract.

#### SCR 5, Missing Children on Milk Cartons

This resolution has already been read by the Governor.

#### SB 243/HB 88, The Omnibus Bill

These bills make several changes to civil and criminal laws. Most of the time was spent by the committee on these bills, and therefore, I would like to provide you with a list of concerns associated with each section.

Sec. 1 and Sec. 2 expand the current law regarding endangering the welfare of a minor. Two degrees for endangering the welfare of a minor are created. Presently we have only one law regarding endangering the welfare of a

minor. These sections were introduced by the Governor in a response to child care workers who endanger children. Under existing law a child care worker who physically or sexually abuses a child may be prosecuted. However, it was felt by the Department of Law, Criminal Division, that an additional law needed to be enacted to cover other forms of endangerment of minors by a child care provider. The expansion of the law as provided under Section 2 has been highly criticized by the Public Defender's Office. It is their concern that parents will be subject to criminal prosecution for injuries sustained by their children which are often beyond their control.

Sec. 3 and 4 provides a new definition for the distribution of child pornography. Kevin Bruce and I developed this definition based on a recent Supreme Court decision. The expanded definition of distribution provides that people can be prosecuted for the distribution of child pornography if they deliver, sell, rent, lease, lend, give, circulate, exhibit, present or buy or exchange these types of items, whether or not it was done for monetary or other consideration. I feel strongly that this provision is constitutional and leaves no legal loopholes.

Sec. 5 extends the statute of limitation for prosecution of sexual offenses against minors. No one objected to this provision.

Sec. 6 specifically provides that evidence of past sexual conduct of child victims of sexual assault will not be admissible prior to an in camera hearing. The judge would weigh the probative value of the evidence against the probability that undue prejudice, confusion of the issues or invasion of privacy of the victim will result. Presently our law provides this for victims of sexual assault. While no evidence was presented that child victims are being treated differently than adult victims, the Department of Law, Criminal Division, felt that the legislature should express its intent that children are to come under the protections of this section. My concern is that we may be setting a bad precedent whereby sections not so modified so as to particularly relate to children may be later interpreted as an intent not applied to children.

Sec. 7 provides for a reduction in time for a predisposition report involving a delinquent minor to be made available to the child, the child's parents, attorneys representing the parties, and the guardian ad litem. Presently this must be made available not less than ten days before the disposition hearing. Great discussion was involved on this section.

Originally HB 88 reduced the time to two days, and therefore, six days reflects a compromise that will be acceptable to most. The reason this time period should not be reduced to two days is the importance that is place on a predisposition report. Because of this, sufficient time should be available to review the report and investigate alternatives that may not have been recommended.

Sec. 8 provides more discretion for taking emergency custody of a minor by the Department of Health and Social Services. The expanded authority is subtle under these changes. Numerous people including the Public Defender, guardians ad litem, and parents have stated that the Department has wide discretion to take emergency custody of a child presently. I believe that the problem concerning custody is a problem associated with inadequately trained social workers who do not have the necessary skills to determine when a child should be taken into emergency custody. While abuses of the system are few, there have been situations where children have been taken by the Department and lengthy and costly time has been spent in retrieving the children. This poses one of the main problems with child protection. We should provide adequate laws and properly trained people in order to be able to intervene in dangerous situations. However, given the nature of these situations, zealots and incompetents can cause tremendous hardships for families where abuse does not exist. In addition, there is still a problem with an inadequate number of foster homes to care for the children taken into custody.

Sec. 9 is very controversial. This allows the Department additional time to notify the court after the child has been taken into their custody. Presently the court must be notified within 12 hours through a petition filed alleging that a child is in need of aid. A hearing must be held 48 hours after the petition is filed. The proposed change provides that the court will be notified within 24 hours after custody was assumed and then must hold a hearing within 48 hours after that. Therefore, we are extending the time that probably cause hearing must be held. This can be very dangerous, particularly in cases where children were taken without probable cause.

Another issue focuses on notice to parents. Judge Victor Carlson stated in a memo to Carla Forsythe of the Court System, that a letter indicating legislative intent should be attached to any revision concerning this statute. In part, his letter stated the following:

A note expressing the legislative intent that every effort be made to notify the custodian when a child has been taken into custody including the leaving of a note

at the place where custody was taken, informing a neighbor or relative and anything else that will help to inform the custodian should be appended. I believe the court should be informed each time a child has been taken into custody without a court order and a sworn statement of probable cause should be made to the court. Requiring a report to the court with a statement of probable cause will tend to police the discretion of the social workers. The only other policing technique is the civil suit for damages which is generally ineffective.

In addition it has been raised by guardians ad litem that more teeth are needed in this statute for violations by social workers. It has been suggested that civil penalties be imposed for failure to notify the parents or custodians within the time specified.

Sec. 10 expands the definition of sexual abuse. This definition has been criticized by many. The arguments can be summarized in one question: what is the definition of "normal caretaker interactions"? It is feared that actions of parents who have a healthy relationship with their children which includes normal touching, caressing and general loving will fall within the definition of sexual abuse.

Sec. 11 changes the present purpose statement regarding protective services for children. Presently, the Department is to provide protective services, and do so in an effort to prevent future harm to the child, to safeguard and enhance the general well being of the children in this state, and to preserve family life whenever possible. The change advocated here is that the Department will act to preserve family life whenever preserving it is in the best interest of the children. This change was in response to the suggestion that the Department often puts children back into harmful environments which is contrary to the best interest of the child. The Department has stated that this is done because the intent of the legislation governing their action has been to preserve the family unit. I support this change since all protective service should be done in the best interest of the child.

Sec. 12 modifies our reporting statute on child abuse and neglect cases. The persons required to report have been expanded. There may be some opposition to some of the persons required to report under this section, particularly volunteers and counselors. I suggested that guardians and conservators also be required to report these instances, however, SB 243 does not reflect that.

This section changes the procedures to be followed in reporting instances of child abuse and neglect. Presently

all reports are to be made to the nearest office of the Department, if that is not available, then people are to contact the nearest office of law enforcement. In reality, cases of abuse or neglect can be reported to either, and in many situations the first agency notified is law enforcement. SB 243, changes this procedure, and in my opinion makes it more difficult for people to report. I base this on the fact that the bill specifies that persons required to report these instances should report instances of harm believed to be caused by a person responsible for the child's welfare to the Department. However, if a person believes that the harm has been caused by a person not responsible for the child's welfare, or is unable to determine who caused the harm to the child, the local law enforcement agency is to be notified. I feel that this change creates an additional burden for persons required to report instances of child abuse and neglect and also imposes a burden on those persons to determine who caused the injury. This can particularly be bad public policy when we are requiring individuals who are not trained in counseling to make the initial inquiry with the child. According to Don Edwards, at the Division of Human Services of the AG's Office, he prefers the existing law which requires that all reports to be made to the Department of Health and Social Services.

Sec. 13 requires that persons who, in the course of processing or producing printed matter, be required to report materials which depict a minor engaged in activity that is defined as pornography. I think that this is a very needed provision in order to stop the processing of child pornography.

Sec. 14 describes the procedure that must be followed by the Department of Health and Social Services once a report of harm is received.

Sec. 15 clarifies that investigation reports may be used by appropriate governmental agencies inside and outside the state.

Sec. 16 clarifies that civil or criminal immunity will be given a person who, in good faith, makes a report of child abuse or neglect.

Sec. 17 provides that the physician/patient and the husband/wife privileges are not grounds for excluding evidence of a child's harm in a civil or criminal proceeding.

Sec. 18 allows the Department or a practitioner of the healing arts, without the permission of the parent, to take photographs or perform radiological examinations of a child

believed to have suffered physical harm as a result of abuse or neglect by a person responsible for the child's welfare.

Sec. 19 deletes the wording "who willfully fails to report" from the statute. Willfully has been determined to be archaic language and thus, is removed from this section. Therefore, the penalty reads, "a person who knowingly fails or refuses to report is guilty of a Class B misdemeanor in cases of suspected cases of child abuse or neglect."

Sec. 19 gives the Attorney General the right to seek a protective injunction. The injunction may limit a person from contact with a child not related to the person, if the person has sexually abused a child; has physically abused a child; has failed, without lawful excuse, to provide necessary food, clothing, care, shelter, supervision or medical attention for a child entrusted to the care of the person; or otherwise constitute substantial danger to the mental, emotional or physical welfare of a child. The intent of this section is to bring injunctions against child care providers. Some criticism was raised that this is subject to abuse by the system.

Sec. 21 redefines abuse and is necessary according to the Department of Health and Social Services.

Sec. 22 expands the persons that are included under the definition of practitioner of the healing arts, and did not receive any criticism.

Sec. 23 expands the definition of sexual exploitation, and did not receive any criticism.

Sec. 24 provides additional definitions for child care provider, human services provider, organization and person responsible for the child's welfare. These definitions are important because they expand the numbers of individuals that are required by law to report suspected cases of child abuse and neglect. I have heard some criticism that these definitions are overly broad.

Sec. 25 provides that a person who violates a provision of this chapter or regulation adopted under this chapter is guilty of a Class B misdemeanor. The civil fine is removed.

Sec. 26 provides that the Department may devise a system of citations for enforcement of this chapter. It is the feeling that civil penalties are more of a deterrent for violations of the chapter and, therefore, a system of enforcement should be created. This section may carry a large fiscal note.

Child Protection Packet

March 25, 1985

Page 9

I will be available to discuss these bills and any other legislation concerning child protection.

STATE OF ALASKA  
THE LEGISLATURE

FOUCH Y. STATE CAPITOL  
JUNEAU ALASKA 99811  
907-455 3820


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 20, 1985

SUBJECT: Changes in criminal statutes of limitation  
(Work Order No. 14-1401).

TO: Senator Pat Rodey

FROM: Richard A. Bradley   
Legislative Counsel

You have requested that we comment on the following question: May the legislature extend the statute of limitations for a particular criminal offense?

The question requires a construction of ex post facto provisions of our constitutions: art. I, sec. 10, cl. 1 of the United States Constitution and art. I, sec. 15, cl. 1 of the Alaska Constitution.

The Alaska Supreme Court explained the concept of an ex post facto law in Danks v. State, 619 P.2d 720 (Alaska 1980). An ex post facto law, the Court stated, is a law passed after the occurrence of a fact or commission of an act that retroactively changes the legal consequences of the fact or act.

The usual rule is that when a crime is committed, the statute of limitations then in effect controls the time within which a prosecution may be brought. The legislature may extend the limitations period without violating ex post facto provisions only if it does so before the prosecution is barred under the former law and if, some cases say, it clearly indicates that the new law applies to cases pending when it becomes effective. Andrews v. State, 392 So.2d 270 (Fla.App. 1980).

Thus a statute that attempts to extend the period after the earlier period has run as to a particular individual is an ex post facto law. Sobiek v. Superior Court in and for the County of San Mateo, 106 Cal.Rprt 516 (Cal. App. 1972).

The rule, therefore, is that such a law is not a facial violation of ex post facto concepts-- but only as applied.

And an extension of the statute is not ex post facto as to an individual for whom the statute of limitations had not run at the time of its effective date.

Extending a limitation period before a given prosecution is barred does not violate the ex post facto clause. Clements v. United States, 266 F.2d 397, 399 (9th Cir. 1959), cert. den. 359 U.S. 985 (1959). As the Supreme Court recently noted, "no ex post facto violation occurs if the change effected is merely procedural and does not increase the punishment nor change the ingredients of the offense or the ultimate facts necessary to establish guilt." Weaver v. Graham, 450 U.S. 24, 29 n. 12, quoting Hopt v. Utah, 110 U.S. 574, 590 (1884). The extension of the statute of limitations in this case was just such a "merely procedural" change. United States ex rel. Massarella v. Elrod, 682 F.2d 688, at 689 (7th Cir. 1982). [Emphasis in original.]

Accordingly, the law seems clear that the statute of limitations may be changed by the legislature at any time. A change made that extends the period will have no effect on those whose prosecution is barred at the time of the extension; those whose prosecution is not barred at the time of the extension may thereafter be prosecuted within the larger period set under the extension.

As the Andrews case suggested, a law that extends the statute of limitations, if intended to apply to cases not brought within the period of the former law, should state the legislative intent unequivocally. While this is good law generally, it is probably necessary to avoid the implications of AS 01.10.090; that section provides:

Sec. 01.10.090. RETROSPECTIVE STATUTES. No statute is retrospective unless expressly declared therein.

While it may be fairly argued that such an application is not "retrospective", a conservative drafting approach would acknowledge the existence of AS 01.10.090.

If I may be of further assistance, please advise.

RAB:mkr  
M1:150

Original sponsors: Kerttula, V.Fischer,  
Halford and Faiks

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 3 (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 hearsay evidence in prosecutions  
7 for certain sexual offenses; and amending Rule 6(r),  
8 Alaska Rules of Criminal Procedure."

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

10 \* Section 1. AS 12.40 is amended by adding a new section to read:

11 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL  
12 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -  
13 11.41.440 or 11.41.455, hearsay evidence of a child's statement  
14 related to the offense, not otherwise admissible, may be admitted into  
15 evidence before the grand jury if

16 (1) the circumstances of the statement indicate its relia-  
17 bility;

18 (2) the child is under 10 years of age when the hearsay  
19 evidence is sought to be admitted; and

20 (3) the child

21 (A) testifies at the grand jury proceeding; or

22 (B) is unavailable as a witness, the grand jury mem-  
23 bers are informed of the reason for the child's unavailability,  
24 and there is additional evidence introduced to corroborate the  
25 statement.

26 (b) In this section,

27 (1) "statement" means an oral or written assertion or  
28 nonverbal conduct if the nonverbal conduct is intended as an asser-  
29 tion;

1 (2) "unavailable" means the child

2 (A) is unable to attend or testify at the hearing  
3 because of death or a then existing physical or mental illness or  
4 infirmity;

5 (B) is likely to suffer substantial psychological,  
6 emotional, or physical harm if required to testify; or

7 (C) is absent from the hearing and beyond the juris-  
8 diction of the court to compel appearance and the proponent of  
9 the statement has exercised reasonable diligence in attempting to  
10 procure the child's attendance.

11 (c) A child is not unavailable under this section if the un-  
12 availability is due to the procurement or wrongdoing of the proponent  
13 of the statement to prevent the child from attending or testifying.


14 \* Sec. 2. AS 12.40.110, added by sec. 1 of this Act, has the effect of  
15 amending Rule 6(r), Alaska Rules of Criminal Procedure, by making certain  
16 hearsay evidence admissible in grand jury proceedings for certain sexual  
17 offenses without requiring compelling justification.

A M E N D M E N T S

TO: SCS FOR CS FOR HB 88 (JUDICIARY)

Amendment #1, Page 2, delete Sec. 4, lines 3 through 26, and add:

Sec. 4. AS 12.45.045(a) is amended to read:

Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a) In prosecutions for the crimes [CRIME] of sexual assault in any degree, sexual abuse of a minor in any degree, or unlawful exploitation of a minor, or an attempt to commit any of these crimes [SEXUAL ASSAULT IN ANY DEGREE], evidence of the complaining witness' previous sexual conduct may [SHALL] not be admitted nor may reference be made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit the evidence for any purpose, the defendant shall [MAY] ~~apply for an order of the court at any time before or during the trial or preliminary hearing.~~  After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, the court shall make an order stating what evidence may be introduced and the nature of the questions that may [WHICH SHALL] be permitted. The defendant may then offer evidence under the order of the court.

Amendment #2, Page 2, delete Section 5, Lines 27 through 29, and on Page 3, Lines 1 through 3.

Amendment #3, Page 3, delete Section 6, Lines 4 through 12.

Amendment #4, Page 5, delete Section 9, Lines 15 through 27, and add:

AS 47.10.142(c) is amended to read:

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

Amendment #5, Page 6, Delete Line 6, except for the semi-colon.

\*Renumber the following bill sections accordingly.

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 88 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the protection of children,  
7 family members, and dependent adults; and providing  
8 for an effective date."

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

10 \* Section 1. AS 11.61.125(a) is amended to read:

11 (a) A person commits the crime of distribution of child pornog-  
12 raphy if the person brings or causes to be brought into the state for  
13 [SALE OR] distribution, or in the state distributes, or in the state  
14 possesses, prepares, publishes, or prints with intent to distribute,  
15 [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any mater-  
16 ial that visually depicts conduct described in [UNDER] AS 11.41.-  
17 455(a), knowing that the production of the material involved the use  
18 of a child under 18 years of age who engaged in the conduct.

19 \* Sec. 2. AS 11.61.125 is amended by adding a new subsection to read:

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

24 \* Sec. 3. AS 12.10.020(c) is amended to read:

25 (c) Even if the general time limitation has expired, a prose-  
26 cution under AS 11.41.410 - 11.41.460, AS 11.66.110 - 11.66.130,  
27 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense  
28 committed against a person under the age of 16 may be commenced within  
29 one year after the crime is reported to a peace officer or the person

1 reaches the age of 16, whichever occurs first. This subsection does  
2 not extend the period of limitation by more than five years.

3 \* Sec. 4. AS 12.45.045(a) is repealed and reenacted to read:

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

26 \* Sec. 5. AS 25.35.070(a) is repealed and reenacted to read:

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

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

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

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

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

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

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

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

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

24 (i) both parents,

25 (ii) the surviving parent, or

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

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

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

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

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

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

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

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

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

29 (1) the minor has been abandoned;

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

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

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

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

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

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

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

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

4 (1) practitioners of the healing arts;

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

7 (3) social workers;

8 (4) peace officers, and officers of the Department of  
9 Corrections;

10 (5) administrative officers of institutions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 establishes by a preponderance of the evidence that the person

2 (1) has sexually abused a child;

3 (2) has physically abused a child; or

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

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

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

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

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

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

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

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

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

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

6 \* Sec. 20. AS 47.35.070 is amended by adding a new subsection to read:

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

12 \* Sec. 21. Section 5 of this Act takes effect September 30, 1985.  
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IN THE HOUSE

BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 88 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the protection of children, family members, and dependent adults; and providing for an effective date."

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

\* Section 1. AS 11.61.125(a) is amended to read:

(a) A person ~~commits~~ commits the crime of distribution of child pornography if the person brings or causes to be brought into the state for [SALE OR] distribution, or in the state distributes, or in the state possesses, prepares, publishes, or prints with intent to distribute, [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any material that visually depicts conduct described in [UNDER] AS 11.41.455(a), knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

\* Sec 2. AS 11.61.125 is amended by adding a new subsection to read:

(d) In this section, "distribution" includes delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, and exchanging, whether or not for monetary or other consideration.

\* Sec. 3. AS 12.10.020(c) is amended to read:

(c) Even if the general time limitation has expired, a prosecution under AS 11.41.410 - 11.41.460, AS 11.66.110 - 11.66.130, former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense committed against a person under the age of 16 may be commenced within one year after the crime is reported to a peace officer or the person

reaches the age of 16, whichever occurs first. This subsection does not extend the period of limitation by more than five years.

\* Sec. 4. AS 12.45.045(a) is repealed and reenacted to read: *ADD SB243 TITLE Amendment*

*Same as Bill Senate*

(a) In prosecutions for the crimes of sexual assault in any degree, sexual abuse of a minor in any degree, or unlawful exploitation of a minor, or an attempt to commit any of these crimes, evidence of the complaining witness' previous sexual conduct may not be admitted nor reference made to it in the presence of the jury except as provided in this section. A defendant who seeks to admit the evidence for any purpose shall apply for an order of the court before the trial if the evidence is sought to be introduced at trial or before the preliminary hearing if the evidence is sought to be introduced at the preliminary hearing, unless the defendant demonstrates that the defendant, despite exercising due diligence, was unable to apply before the trial or preliminary hearing. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, the court shall issue a written order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

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

*NEW SECTION (SB74)*

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

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

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

6 *New Section*  
7 *8/29* Sec. 25.35.060. DEFINITIONS. In this chapter, "domestic vio-  
8 lence" means a crime under AS 11.41 when the victim is a spouse or a  
9 former spouse of the respondent; a parent, grandparent, child, or  
10 grandchild of the respondent; [,] a member of the social unit composed  
11 [COMPRISED] of those living together in the same dwelling as the  
12 respondent; [,] or a person who is not a spouse or former spouse of  
13 the respondent but who previously lived in a spousal relationship with  
14 the respondent.

15  
16 \* Sec. 7. AS 47.10.010(a) is amended to read:

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

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

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

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

27 (i) both parents,

28 (ii) the surviving parent, or

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

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

*New House language*

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

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

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

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

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

26 8. AS 47.10.142(a) is repealed and reenacted to read:

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

(1) the minor has been abandoned;

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

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

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

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

(c) When a child is taken into custody under (a) or (b) of this section, the department shall immediately, and in no event more than 12 hours later unless prevented by lack of communication facilities, notify the parents or the person or persons having custody of the child. If the department determines that continued custody is necessary to protect the child, the department shall notify the court of the emergency custody by filing, within 24 hours after custody was assumed, [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a petition alleging that the child is a child in need of aid. If the department releases the child within 24 hours after taking the child into custody and does not file a child in need of aid petition the department shall, within 24 hours after releasing the child, file with the court a report explaining why the child was taken into custody.

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

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

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

(1) practitioners of the healing arts;

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

(3) social workers;

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

(5) administrative officers of institutions;

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

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

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

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

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

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

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

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Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reason to believe that the matter visually depicts a child engaged in conduct described in AS 11.41.455(a) shall promptly report this to the nearest law enforcement agency,

AND PROVIDE THE LAW ENFORCEMENT AGENCY WITH ALL INFORMATION KNOWN ABOUT THE NATURE AND CIRCUMSTANCES OF THE VIOLATION.

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

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

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

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

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

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

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

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

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

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*DROPPED HUMAN SERVICES DIVISION RESPONSIBLE FOR THE CHILD'S WELFARE \**

(1) has sexually abused a child;

(2) has physically abused a child; or

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

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

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

(6) "practitioner of the healing arts" includes chiropractors, dental hygienists, dentists, health aides, nurses, nurse practitioners, optometrists, osteopaths, physical therapists, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, religious healing practitioners, and surgeons;

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

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

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

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

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

Sec. 47.35.070. VIOLATIONS. A person who violates a provision

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

5 \* Sec. 20. AS 47.35.070 is amended by adding a new subsection to read:

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

11 \* Sec. 21. Section 5 of this Act takes effect September 30, 1985.

12  
13 *1/20/85*

14 *MARITIME LAKE* ~~AMENDMENT~~  
*AMENDMENT* *FRANKS*

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH H 01  
JUNEAU, ALASKA 99811  
PHONE: 465-3030  
DOCUMENT #85-138

April 24, 1985

The Honorable Patrick M. Rodey  
Chairman, Senate Judiciary Committee  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear Senator Rodey:

Based on the testimony that was presented to the Judiciary Committee on Tuesday, April 16, 1985 and based on the Governor's Child Protection bill, originally HB 88, the department would support a change in Section 10 (AS 47.10.290) of the Committee Substitute for Senate Bill 243. The department supports adding the following language, which was originally in the Governor's bill:

(8) "sexual abuse" means

(B) the perpetrator's knowingly touching, directly or through clothing, the genital area, groin, inner thighs, or buttocks of a child, or causing a child to touch, directly or through clothing, the genital area, groin, inner thighs, or buttocks of the perpetrator or another; sexual abuse does not include reasonable touching in the exercise of normal caretaker responsibilities for a child or normal caretaker interactions with a child or touching performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the child; reasonable perceptions of the child that the touching is sexual in nature are relevant to the determination of whether the touching is sexual abuse;

(C) exposing the genital area, anus, breast, groin, or buttocks of a child to the perpetrator or another for the sexual gratification of the child, the perpetrator, or another, or exposing the genital area, anus, breast, groin or buttocks of the perpetrator or another to a child for the sexual gratification of the child, the perpetrator, or another; reasonable perceptions of the child that the touching is sexual in nature are relevant to the determination of whether the touching is sexual abuse; or

In the majority of sexual abuse cases the abuser will claim the touching was not sexual in nature. Abusers share four behavior characteristics, they rationalize, justify, deny or minimize their sexual abusive acts. The above additional language would be helpful to children in cases of sexual abuse where the abuser claims the touching was appropriate and

April 24, 1985

not sexual in nature. The child's perception of the touching, although not a sole determinant of the case, would be admissible as evidence in a civil children's proceeding.

The department also supports the removal of section 17 (AS 47.17.060 EVIDENCE NOT PRIVILEGED) of CS SB 21. Initially the department supported this section so that it was clear to all persons involved in children's proceedings that the psychotherapist-client privilege was one of the privilege rules whereby what a client told his psychotherapist for diagnostic purposes regarding his emotional or mental condition was confidential and could not be disclosed without the client's permission. The department felt then, as it does now, that the inclusion of evidence from therapist-client relationships for use in civil or criminal proceedings would discourage persons from seeking or participating in treatment which may be essential to the goal of protecting children from continuing harm. Because the psychotherapist-patient privilege already exists under Alaska Rules of Evidence, Rule 504, and because this bill section has caused some confusion as to whether the "privileged" groups must make reports of harm, the department suggests that AS 47.17.060 remain as it is presently stated in Title 47 of the Alaska Statutes.

If the department can be of any further assistance to the Judiciary Committee, please contact me.

Sincerely,



Connie J. Sipe  
Deputy Commissioner

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

MEMORANDUM

April 25, 1985

SUBJECT: Title change to CSSB 243 (Judiciary)  
TO: Senator Pat Rodey  
Chairman, Senate Judiciary Committee  
FROM: Edward H. Hein *EHA*  
Legislative Counsel

The inclusion of sections 25 and 26 in CSSB 243 (Judiciary) necessitate a change in the title of the bill. The current title is "An Act relating to the protection of children." Because these two bill sections provide new criminal and civil penalties for licensing violations by operators of institutions for the care of dependent adults, as well as foster homes and other institutions relating to children, the bill title does not comply with the expression requirement of Article II, section 13 of the Alaska Constitution.

I recommend that the phrase "and dependent adults" be added to the end of the current bill title.

If you have any questions or comments, feel free to contact me at your convenience.

EHH:ojb  
J14/042

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER -CSSB 3(Hess)

SUPPORT

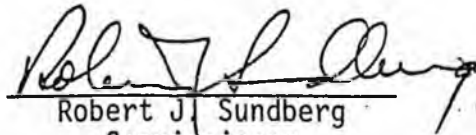
April 17, 1985

CSSB 3(Hess) - "An Act relating to the admissibility of certain hearsay evidence in grand jury proceedings for certain sexual offenses and amending rule 6(R), Alaska Rules of Criminal Procedure."

This Bill will allow the use of hearsay evidence from sexually abused children in grand jury proceedings. It is an attempt to shield victims from additional emotional trauma.

Senate Bill 3 will allow an individual trained in child abuse cases who has interviewed the victim to testify in his or her place or it will allow the submission of a video tape of the interview. Courtroom atmosphere often inhibits and intimidates the young victims - particularly one who may be discussing a sexual encounter with a parent or relative.

This legislation will not result in abuse of the grand jury system and only addresses cases of sexual abuse of minors. Although the admittance of hearsay evidence is not traditional in grand jury proceedings in Alaska cases of this type warrant an exception to protect the victims.

  
Robert J. Sundberg  
Commissioner

1 IN THE SENATE

IN THE JUDICIARY COMMITTEE

2 PROPOSED CS FOR SENATE BILL NO. 3

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 hearsay evidence in prosecutions  
7 for certain sexual offenses; and amending Rule 6(r),  
8 Alaska Rules of Criminal Procedure."

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

10 \* Section 1. AS 12.40 is amended by adding a new section to read:

11 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL  
12 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 --  
13 11.41.440 or 11.41.455, hearsay evidence of a statement related to the  
14 offense, not otherwise admissible, made by a child under the age of 13  
15 may be admitted into evidence before the grand jury if the  
16 circumstances of the statement indicate its reliability and additional  
17 evidence is introduced to corroborate the statement.

18 (b) In this section "statement" means an oral or written  
19 assertion or nonverbal conduct if the nonverbal conduct is intended as  
20 an assertion.

21 \* Sec. 2. AS 12.40.110, added by sec. 1 of this Act, has the effect of  
22 amending Rule 6(r), Alaska Rules of Criminal Procedure, by changing the  
23 circumstances under which hearsay evidence may be introduced at grand jury  
24 proceedings for certain sexual offenses.  
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Offered: 4/23/85  
Referred: Finance

Original sponsor: Phillips

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 67 (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 admissibility of hearsay  
7 evidence of certain statements by children before  
8 grand juries; and amending Rule 6(r), Alaska Rules of  
9 Criminal Procedure."

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

11 \* Section 1. AS 12.40 is amended by adding a new section to read:

12 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL  
13 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -  
14 11.41.440 or 11.41.455, hearsay evidence of a statement, not otherwise  
15 admissible, made by a child under the age of 12 who is the victim of  
16 the offense describing the conduct establishing the offense may be  
17 admitted into evidence before the grand jury if

18 (1) the circumstances of the statement indicate its relia-  
19 bility;

20 (2) additional evidence is introduced to corroborate the  
21 statement; and

22 (3) the child testifies at the grand jury proceeding or the  
23 child <sup>is</sup> ~~will~~ be available to testify at trial.

24 (b) In this section "statement" means an oral or written asser-  
25 tion or nonverbal conduct if the nonverbal conduct is intended as an  
26 assertion.

27 \* Sec. 2. AS 12.40.110, added by sec. 1 of this Act, has the effect of  
28 amending Rule 6(r), Alaska Rules of Criminal Procedure, by changing the  
29 circumst: under which hearsay evidence may be introduced in grand jury

*if evidence admitted under  
1) hearsay  
2) evidence relevant to case or  
3) absent from jurisdiction*

*Committee  
considered*

*(-) if unavailability - 1-  
court determination - hearsay statute  
automatic dismissal of indictment w/out prejudice*

CSHB 67(Jud)

1 proceedings for certain sexual offenses.

DRAFT

1 IN THE SENATE

IN THE JUDICIARY COMMITTEE

2 PROPOSED CS FOR SENATE BILL NO. 3

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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7 for certain sexual offenses; and amending Rule 6(r),  
8 Alaska Rules of Criminal Procedure."

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11 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL  
12 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 ---  
13 11.41.440 or 11.41.455, hearsay evidence of a statement related to the  
14 offense, not otherwise admissible, made by a <sup>VICTIM</sup> child under the age of 12  
15 may be admitted into evidence before the grand jury if

16 (1) the circumstances of the statement indicate its relia-  
17 bility;

18 (2) additional evidence is introduced to corroborate the  
19 statement; and

20 (3) the child <sup>TESTIFIES AT THE GRAND JURY PROCEEDINGS OF THE</sup> will be available to testify at trial. <sup>CHARGE</sup>

21 \* Sec. 2. AS 12.40.110, added by sec. 1 of this Act, has the effect of  
22 amending Rule 6(r), Alaska Rules of Criminal Procedure, by changing the  
23 circumstances under which hearsay evidence may be introduced in grand jury  
24 proceedings for certain sexual offenses.

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER -CSSB 3(Hess)

SUPPORT

April 17, 1985

CSSB 3(Hess) - "An Act relating to the admissibility of certain hearsay evidence in grand jury proceedings for certain sexual offenses and amending rule 6(R), Alaska Rules of Criminal Procedure."

This Bill will allow the use of hearsay evidence from sexually abused children in grand jury proceedings. It is an attempt to shield victims from additional emotional trauma.

Senate Bill 3 will allow an individual trained in child abuse cases who has interviewed the victim to testify in his or her place or it will allow the submission of a video tape of the interview. Courtroom atmosphere often inhibits and intimidates the young victims - particularly one who may be discussing a sexual encounter with a parent or relative.

This legislation will not result in abuse of the grand jury system and only addresses cases of sexual abuse of minors. Although the admittance of hearsay evidence is not traditional in grand jury proceedings in Alaska cases of this type warrant an exception to protect the victims.

  
Robert J. Sundberg  
Commissioner

Cramer  
4/23/85 ✓

Original sponsors: Josephson, V.Fischer,  
Kelly and Sturgulewski

1  
2 IN THE SENATE

BY THE JUDICIARY COMMITTEE

3 CS FOR SENATE BILL NO. 161 (Judiciary)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to compensation of elected offi-  
8 cials; and providing for an effective date."

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

10 \* Section 1. AS 24.15.020 is repealed and reenacted to read:

11 Sec. 24.15.020. COMPENSATION OF LEGISLATORS. The Commission on  
12 Compensation of Elected Officials shall set the compensation of legis-  
13 lators.

14 \* Sec. 2. AS 39.20.010 is repealed and reenacted to read:

15 Sec. 39.20.010. COMPENSATION OF THE GOVERNOR. The Commission on  
16 Compensation of Elected Officials shall set the compensation of the  
17 governor.

18 \* Sec. 3. AS 39.20.030 is repealed and reenacted to read:

19 Sec. 39.20.030. COMPENSATION OF LIEUTENANT GOVERNOR. The Com-  
20 mission on Compensation of Elected Officials shall set the compensa-  
21 tion of the lieutenant governor.

22 \* Sec. 4. AS 39.20.050 is amended to read:

23 Sec. 39.20.050. EXCLUSIVE COMPENSATION. Retirement benefits  
24 established by law and the [THE] compensation fixed by the Commission  
25 on Compensation of Elected Officials [LAW] for the governor and  
26 lieutenant governor are full compensation [IS IN FULL] for all servi-  
27 ces rendered by each of them in any official capacity or employment  
28 whatsoever during their respective terms of office, and shall be paid  
29 throughout their respective terms of office unless the office becomes  
vacant.

*Now*

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\* Sec. 5. In making initial appointments to the Commission on Compensation of Elected Officials, the governor shall appoint one member to a term of two years, one member to a term of three years, one member to a term of four years, one member to a term of five years, and one member to a term of six years.

\* Sec. 6. The compensation of the governor, lieutenant governor, and legislators established by law on the day before the effective date of this Act shall remain in effect until the Commission on Compensation of Elected Officials has issued an order setting the compensation.

\* Sec. 7. This Act takes effect on the effective date of an amendment to the Constitution of the State of Alaska creating a commission on compensation of elected officials.

Original sponsors: Josephson, V.Fischer,  
Kelly and Sturgulewski

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IN THE SENATE

BY THE JUDICIARY COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 15 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitu-  
tion of the State of Alaska creating a  
commission on compensation of elected  
officials.

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

\* Section 1. Article II, sec. 7, Constitution of the State of Alaska is  
amended to read:

SECTION 7. SALARY AND EXPENSES. Legislators shall receive  
annual salaries. They may receive a per diem allowance for expenses  
while in session and are entitled to travel expenses going to and from  
sessions. Presiding officers may receive additional compensation.  
Compensation of legislators shall be set by the Commission on Compen-  
sation of Elected Officials.

\* Sec. 2. Article III, sec. 15, Constitution of the State of Alaska is  
amended to read:

SECTION 15. COMPENSATION. The compensation of the governor and  
the lieutenant governor shall be prescribed by the Commission on  
Compensation of Elected Officials [LAW] and shall not be diminished  
during their term of office, unless by order of the commission consis-  
tent with a general law applying to all salaried officers of the  
State.

\* Sec. 3. Article XII, Constitution of the State of Alaska is amended  
by adding new sections to read:

SECTION 14. COMPENSATION COMMISSION. There is established a  
Commission on Compensation of Elected Officials. The commission is

1 composed of five members appointed by the governor, subject to confir-  
2 mation by a majority of the members of the legislature in joint ses-  
3 sion. Members serve for staggered terms of six years. The governor  
4 shall appoint members without regard to political affiliation. A  
5 member of the commission may not be employed by the state during the  
6 member's term and may not hold an elective state office during the  
7 term or within one year thereafter.

8 SECTION 15. POWERS AND DUTIES OF THE COMMISSION. Except for  
9 retirement benefits, which shall be established by general law appli-  
10 cable to all officers of the state, the commission shall establish the  
11 compensation of the governor, lieutenant governor, and members of the  
12 legislature, including their salaries, benefits, per diem, and allow-  
13 ances, if any. An order of the commission takes effect at the begin-  
14 ning of the next fiscal year of the state. The commission shall hold  
15 a public hearing in each judicial district before issuing an order  
16 that changes the compensation of an elected official. At least every  
17 two years, but not more frequently than every year, the commission  
18 shall review the compensation of elected officials. The commission  
19 shall issue an order with respect to salaries not later than thirty  
20 days before the end of the fiscal year.

21 SECTION 16. FINALITY OF ORDER. An order setting the compensa-  
22 tion of an elected official is not subject to veto by the governor.  
23 An order of the commission is subject to initiative and referendum in  
24 the same manner as an act of the legislature. The legislature shall  
25 appropriate money to fund the orders of the commission.

26 \* Sec. 4. The amendments proposed by this resolution shall be placed  
27 before the voters of the state at the next general election in conformity  
28 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
29 tion laws of the state.  
#

CALL FOR HEARING RE SEC. 20

Offered: 4/3/85  
Referred: Judiciary

Original sponsor: Health, Education and  
Social Services Committee

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 243 (HESS)

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  
amending Rules 504 and 505, Alaska Rules of Evi-  
dence."

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

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

11

Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST

12

DEGREE. (a) A person commits the crime of endangering the welfare of

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a minor in the first degree if, being a parent, guardian, or other

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person legally charged with the care of a child under 13 [10] years of

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age, the person intentionally deserts the child in any place under

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circumstances creating a substantial risk of physical injury to the

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child.

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

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class C felony.

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

21

Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND

22

DEGREE. (a) A person commits the crime of endangering the welfare of

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a minor in the second degree if, being entrusted with the care of a

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child under 13 years of age, the person with criminal negligence

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(1) exposes the child to circumstances creating a substan-

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tial risk of physical injury or sexual abuse; or

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(2) exposes the child to physical injury by failing to

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provide the child with necessary food, care, clothing, shelter, or

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medical attention.

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

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

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

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

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

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

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

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

26 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR  
27 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)  
28 In prosecutions for the crimes [CRIME] of sexual assault in any de-  
29 gree, sexual abuse of a minor in any degree, or unlawful exploitation

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

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

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

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

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

27 (1) the minor has been abandoned;

28 (2) the minor has been grossly neglected by the minor's  
29 parents or guardian as "neglect" is defined in AS 47.17.070(5), and

1 the department determines that immediate removal from the minor's  
2 surroundings is necessary to protect the minor's life or that immedi-  
3 ate medical attention is necessary;

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

9 (4) the minor has been sexually abused under circumstances  
10 listed in AS 47.10.010(a)(2)(D). *AND THE DEPARTMENT DETERMINES THAT IMMEDIATE REMOVAL FROM*  
*THE MINOR'S SURROUNDINGS IS NECESSARY TO PROTECT THE MINOR*  
11 \* Sec. 9. AS 47.10.142(c) is amended to read: *FROM FURTHER ABUSE*

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

20 tion alleging that the child is a child in need of aid. *IF THE DEPARTMENT*  
*DOES NOT FILE A PETITION, THE DEPARTMENT SHALL SUBMIT*  
21 \* Sec. 10. AS 47.10.290 is amended by adding a new paragraph to read:

22 (8) "sexual abuse" means

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

25 (B) the perpetrator's knowingly touching, directly or  
26 through clothing, the genital area, groin, inner thighs, or  
27 buttocks of a child, or causing a child to touch, directly or  
28 through clothing, the genital area, groin, inner thighs, or  
29 buttocks of the perpetrator or another; sexual abuse does not

*Ken A - Proposals of Child*

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include reasonable touching in the exercise of normal caretaker responsibilities for a child or normal caretaker interactions with a child or touching performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the child;

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

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

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

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

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

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

- 5 (1) practitioners of the healing arts;
- 6 (2) employees and volunteers of private and public schools;
- 7 (3) human services providers;
- 8 (4) peace officers, and officers of the Department of  
9 Corrections;
- 10 (5) administrative officers of institutions;
- 11 (6) child care providers;
- 12 (7) counselors;
- 13 (8) ~~court~~ investigators; (KIMBY)
- 14 (9) employees and volunteers of domestic violence programs,  
15 sexual assault programs, or crisis shelters;
- 16 (10) guardians and conservators.

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

28 (c) A person listed in (a) of this section, who in the perfor-  
29 mance of the person's occupational duties has cause to believe that a

DATE - 3/24/72  
HARRINGTON

1 child has suffered harm as a result of abuse or neglect, shall promptly  
2 ly report the harm to the nearest law enforcement agency if the person  
3 making the report (1) has cause to believe that the harm was caused by  
4 a person who is not responsible for the child's welfare; or (2) is  
5 unable to determine (A) who caused the harm to the child; or (B)  
6 whether the person who is believed to have caused the harm has respon-  
7 sibility for the child's welfare. If a person making a report under  
8 this subsection cannot reasonably contact the nearest law enforcement  
9 agency, and immediate action appears necessary for the well-being of  
10 the child, the person shall make the report to the nearest office of  
11 the department. The department shall take immediate action to protect  
12 the child and shall, at the earliest opportunity, notify the nearest  
13 law enforcement agency.

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

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

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

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

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

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

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

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

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

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

21 (5) information that the department believes may be helpful  
22 in establishing the identity of the person believed to have caused the  
23 harm to the child.

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

25 (b) Investigation reports and reports of harm filed under this  
26 chapter are considered confidential and are not subject to public  
27 inspection and copying under AS 09.25.110 and 09.25.120. However, in  
28 accordance with department regulations, investigation reports may be  
29 used by appropriate governmental agencies with child-protection

1 functions, inside and outside the state [ALASKA], in connection with  
2 investigations or civil or criminal [JUDICIAL] proceedings involving  
3 [CHILD] abuse, neglect, or child custody. A person, not acting in  
4 accordance with department regulations, who makes public information  
5 contained in confidential reports is guilty of a misdemeanor.

6 \* Sec. 16. AS 47.17.050 is amended to read:

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

12 \* Sec. 17. AS 47.17.060 is repealed and reenacted to read:

13 Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. In a civil or criminal  
14 proceeding related to a report under this chapter, no privilege is a  
15 ground for excluding evidence regarding a child's harm, or its cause,  
16 except

- 17 (1) the attorney-client privilege;  
18 (2) the psychotherapist-patient privilege; and  
19 (3) the clergyman privilege.

20 \* Sec. 18. 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. 19. 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. 20. 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. 21. 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. 22. 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. 23. 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. 24. 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, and an employee or volunteer of a human services  
16 organization, such as a social service, youth service, mental health,  
17 ~~or~~ substance abuse agency, or a shelter for runaway or homeless youth;

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

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

28 \* Sec. 25. AS 47.35.070 is amended to read:

29 Sec. 47.35.070. VIOLATIONS. A person who violates a provision

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

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

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

11 \* Sec. 27. AS 47.17.060, as repealed and reenacted in sec. 17 of this  
12 Act, has the effect of changing Rules 504 and 505, Alaska Rules of Evi-  
13 dence, by preventing the application in civil or criminal cases of certain  
14 privileges specified in those rules to evidence obtained through reports  
15 made under AS 47.17.

NOTIFICATION CHECKLIST

Yes	No	N/A	
_____	_____	_____	Police
_____	_____	_____	Rape Crisis Center
_____	_____	_____	Division of Family and Youth Services
_____	_____	_____	Parent or Responsible Adult

MEDICAL PERSONNEL AND CHAIN OF CUSTODY

Date of Examination \_\_\_\_\_

Time from \_\_\_\_\_ to \_\_\_\_\_

Institution \_\_\_\_\_

MEDICAL PERSONNEL

Physician(s)

Phone

\_\_\_\_\_  
(print)

\_\_\_\_\_

\_\_\_\_\_  
(print)

\_\_\_\_\_

Nurse(s)

\_\_\_\_\_  
(print)

\_\_\_\_\_

\_\_\_\_\_  
(print)

\_\_\_\_\_

\_\_\_\_\_  
(print)

\_\_\_\_\_

Other Medical

\_\_\_\_\_  
(print)

\_\_\_\_\_

\_\_\_\_\_  
(print)

\_\_\_\_\_

LAB (examiner of motile sperm slide)

\_\_\_\_\_  
(print)

\_\_\_\_\_

CHAIN OF CUSTODY

(Give All Evidence To Police Officer)

Person who gave evidence to police officer:

\_\_\_\_\_  
(print)

Police officer receiving evidence:

\_\_\_\_\_  
(print)

SEXUAL ASSAULT EXAMINATION

Victim  
Use the Sexual Assault Evidence Kit  
Initial Each Step Upon Completion

Victim \_\_\_\_\_

Suspect \_\_\_\_\_

Police # \_\_\_\_\_

STEP 1: PHOTOGRAPHS

Should Be Taken By Police Officer

- \_\_\_\_\_ 1. Photograph patient clothed from all angles.
- \_\_\_\_\_ 2. Photograph injuries visible before clothes removed.

STEP 2: CLOTHING

If patient was not wearing these clothes at time of assault, notify police to get the other clothes.

If patient was wearing these clothes at time of assault, follow this procedure:

- \_\_\_\_\_ 1. Patient undress over white paper in envelope labelled "Paper Sheet" (in kit).
- \_\_\_\_\_ 2. Remove each item of clothing and place each item in separate paper bags (in kit).
- \_\_\_\_\_ 3. Check items which have possible blood stains.

_____ outer jacket	_____ underwear
_____ sweater or vest	_____ bra
_____ blouse or shirt	_____ other underclothes
_____ pants	_____ socks or hose
_____ skirt or dress	_____ other _____
	(specify)

- \_\_\_\_\_ 4. Check items which have possible seminal stains.

_____ outer jacket	_____ underwear
_____ sweater or vest	_____ bra
_____ blouse or shirt	_____ other underclothes
_____ pants	_____ socks or hose
_____ skirt or dress	_____ other _____
	(specify)

- \_\_\_\_\_ 5. Fold white paper and put in envelope labelled "Paper Sheet."

STEP 3: INJURIES AND SUBSTANCES (NOT GENITALS)

Injuries

- \_\_\_\_\_ 1. Photograph all injuries.
- \_\_\_\_\_ 2. Note location of injuries on body diagram in kit.

Semen

- \_\_\_\_\_ 3. Remove wet or dry seminal remains on skin with saline swab. Use separate swab for each stain.
- \_\_\_\_\_ 4. Air dry swab(s) and put in envelope labelled "Semen Swabs (Skin)" (not in kit). Note location on envelope. Use separate envelope for each swab.
- \_\_\_\_\_ 5. Note location of seminal remains on body diagram in kit.

Blood

- \_\_\_\_\_ 6. Wet or moist: Remove with cotton and place in envelope labelled "Blood Swabs" (not in kit). Note location on envelope. Use separate envelope for each area of body.
- \_\_\_\_\_ 7. Dry: Scrape with clean scalpel onto the paper in envelope labelled "Dried Blood" (not in kit). Note location on envelope. Put scalpel in same envelope.
- \_\_\_\_\_ 8. Note location of blood on body diagram in kit. Note on diagram if blood was wet, moist, or dry.

Bites

- \_\_\_\_\_ 9. Note location of bites on body diagram in kit.
- \_\_\_\_\_ 10. Swab each bite with separate saline swab. Put each swab in separate envelopes marked "Bite Swabs" (not in kit). Note location on envelope.
- \_\_\_\_\_ 11. Call police officer in to photograph bites.

Fingernails

- \_\_\_\_\_ 12. If victim consents, cut each fingernail of each hand separately. Put clippings in envelopes labelled "Fingernail Clippings" (in kit). Mark which hand on envelope.
- \_\_\_\_\_ 13. If victim does not consent to cutting, scrape debris under nails into the same envelopes.

STEP 4: PUBIC HAIR

- \_\_\_\_\_ 1. Trim any hair apparently matted with dry semen. Place in envelope labelled "Pubic Hair Semen" (in kit).
- \_\_\_\_\_ 2. With comb in kit, comb pubic hair over paper. Place comb and paper into envelope labelled "Pubic Combings" (in kit).
- \_\_\_\_\_ 3. Cut 20 pubic hairs. Place in envelope marked "Pubic Hair (standard)" (in kit).

STEP 5: GENITAL AND RECTAL EXAMINATION

General

- \_\_\_\_\_ 1. Place any tampon or sanitary napkin in jar (not in kit).
- Was tampon compressed? yes / no  
This should be air dried first.
- \_\_\_\_\_ 2. Note on genital diagram in kit any injuries to thighs, genitals, buttocks.
- \_\_\_\_\_ 3. Collect any debris from genitals, thighs, buttocks, and place in envelope labelled "Genital/Buttock Debris" (in kit).
- \_\_\_\_\_ 4. Use woods light to examine genitals.
- Is there fluorescence? yes / no  
Note fluorescence areas on genital diagram in kit.

Vaginal

- \_\_\_\_\_ 5. Check vagina for secretions. Aspirate secretions (aspirator in kit) and place in test tube (not in kit) labelled "Vaginal Secretions."
- \_\_\_\_\_ 6. Use saline swab (in kit) and wipe posterior fornix of vagina.
- \_\_\_\_\_ 7. Smear two slides (in kit) with swab and fix slides. Replace slides in the plastic container labelled "Vaginal Smear on Slides (in kit)."
- \_\_\_\_\_ 8. Place swab in cardboard test tube (in kit) and mark "Vag."
- \_\_\_\_\_ 9. Irrigate vagina with saline. Aspirate and place fluid in tube (not in kit) labelled "Vaginal Wash."

Rectal

- \_\_\_\_\_ 10. Note any rectal injuries on genital diagram in kit.
- \_\_\_\_\_ 11. Swab off any lubricant. Place in test tube (not in kit) labelled "Rectal Lubricant."
- \_\_\_\_\_ 12. (If anal intercourse or ejaculation on buttocks) Swab rectal area (swab in kit). Smear two slides with swab and fix slides. Place slides in plastic container (in kit) labelled "Anal & Oral Smear on Slides."
- \_\_\_\_\_ 13. Place swab in cardboard tube (in kit) and mark "Anal."

STEP 6: EVIDENCE SAMPLES

- \_\_\_\_\_ 1. Cut 20 head hairs. Place in envelope (in kit) labelled "Head Hairs Standard."
- \_\_\_\_\_ 2. Take envelope from kit labelled "Saliva Specimen on Cloth." Place gauze pad (in envelope) in patient's mouth with forceps. Have patient saturate it with saliva. Using forceps, remove gauze from mouth. Air dry and place in envelope.
- \_\_\_\_\_ 3. Draw two tubes of at least 5 cc each (tubes not in kit). DO NOT FREEZE BLOOD.
- \_\_\_\_\_ 4. Take urine sample (in jar not in kit).

STEP 7: MEDICAL TESTS

- \_\_\_\_\_ 1. Venereal disease tests, including of mouth and rectum if indicated by assault.
- \_\_\_\_\_ 2. Pregnancy test if indicated.

If presenting problems is pregnancy, what is gestation in weeks? \_\_\_\_\_

STEP 8: SLIDE ANALYSIS

- \_\_\_\_\_ 1. Examine wet mount slide from vaginal examination for motile sperm.

Sperm were / were not seen.

Sperm were /were not motile.

- \_\_\_\_\_ 2. Examine a slide from rectal examination for motile sperm.

Sperm were / were not seen.

Sperm were / were not motile.

STEP 9: OBSERVATIONS OF PATIENT

Describe patient's general emotional state.

---

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---

Describe patient's emotional reaction to pelvic examination.

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State what parts of exam caused patient pain, if any.

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AUTHORIZATION FOR COLLECTION OF  
EVIDENCE AND RELEASE OF INFORMATION

Investigating Agency: \_\_\_\_\_ Case # \_\_\_\_\_

Officer's Name: \_\_\_\_\_ Date: \_\_\_\_\_

Hospital: \_\_\_\_\_ # \_\_\_\_\_ Time: \_\_\_\_\_

I authorize the above hospital to collect my clothes and blood, urine, tissue, hair and other specimens needed. I authorize the hospital to give what they have collected to the above law enforcement agency. I authorize the hospital to give all medical reports of this examination to the above law enforcement agency and to the district attorney. This permission includes photographs taken during the examination.

WITNESS:

PERSON  
EXAMINED: \_\_\_\_\_

Signature

\_\_\_\_\_  
Signature

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print

PARENT OR  
GUARDIAN: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

Address: \_\_\_\_\_  
\_\_\_\_\_

Patient Name \_\_\_\_\_

**HISTORY**

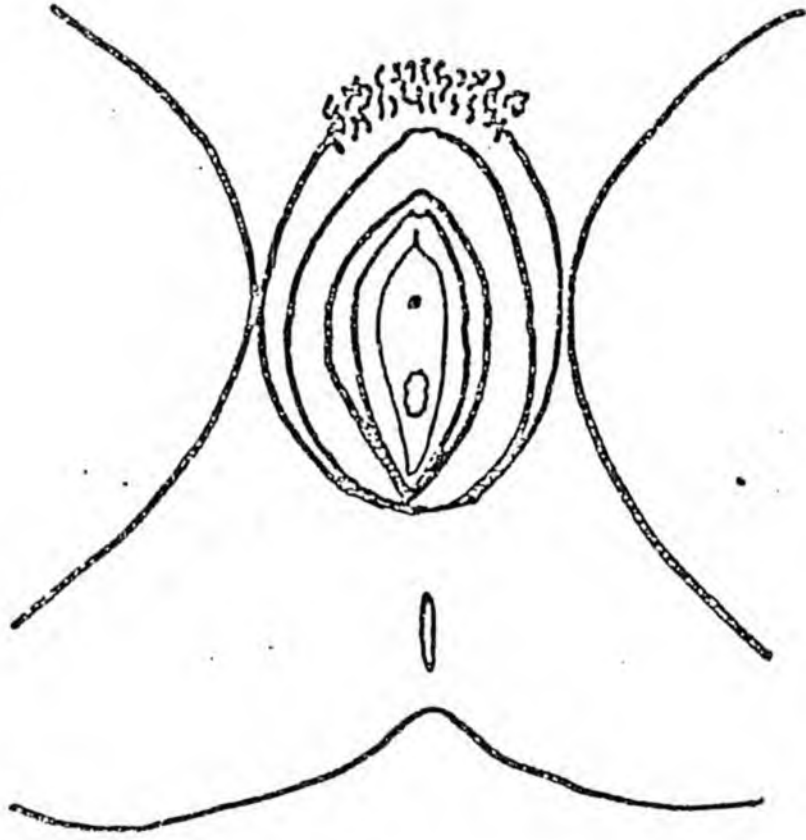
1. Age: \_\_\_\_\_ 2. Gravidity: \_\_\_\_\_ Parity: \_\_\_\_\_
3. Date of Termination of Last Pregnancy: \_\_\_\_\_
4. Age of Menarche: \_\_\_\_\_ 5. Date of Last Menses: \_\_\_\_\_
6. Last Menses Normal: Yes ( ) No ( ) If NO, Describe: \_\_\_\_\_
7. Patient known to be pregnant: Yes ( ) No ( )
8. Symptoms of pregnancy: Yes ( ) No ( ) If YES, Describe: \_\_\_\_\_
9. Most recent coitus prior to alleged assault:  
Date \_\_\_\_\_ Time \_\_\_\_\_ Condom used? Yes ( ) No ( )
10. Current mode of contraception (prior to alleged assault): \_\_\_\_\_
11. Patient states she is (was) virgin prior to assault: Yes ( ) No ( )
12. Vaginal tampons used: Yes ( ) No ( ) Age Begun \_\_\_\_\_
13. Douching practiced: Yes ( ) No ( ) Most Recent \_\_\_\_\_
14. During alleged assault:  
Did penis penetrate: \_\_\_\_\_ Did assailant have orgasm: \_\_\_\_\_  
Vulva: Yes ( ) No ( ) ? ( ) Vulva: Yes ( ) No ( ) ? ( )  
Mouth: Yes ( ) No ( ) ? ( ) Mouth: Yes ( ) No ( ) ? ( )  
Anus: Yes ( ) No ( ) ? ( ) Anus: Yes ( ) No ( ) ? ( )  
Did assailant wear condom? Yes ( ) No ( ) ? ( )
15. Since alleged assault has patient:  
Douched Yes ( ) No ( )  
Bathed or showered Yes ( ) No ( )  
Defecated Yes ( ) No ( )  
Urinated Yes ( ) No ( )
16. Has Patient knowledge of:  
Any present illness Yes ( ) No ( )  
Any present medication Yes ( ) No ( )  
Any drug allergy Yes ( ) No ( )
17. Has patient had a venereal disease (past or present):  
Yes ( ) No ( ) Describe Therapy: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Physician's Signature M.D.

Name \_\_\_\_\_ Autopsy No. \_\_\_\_\_

Age \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_ Date / /



PATIENT NAME \_\_\_\_\_

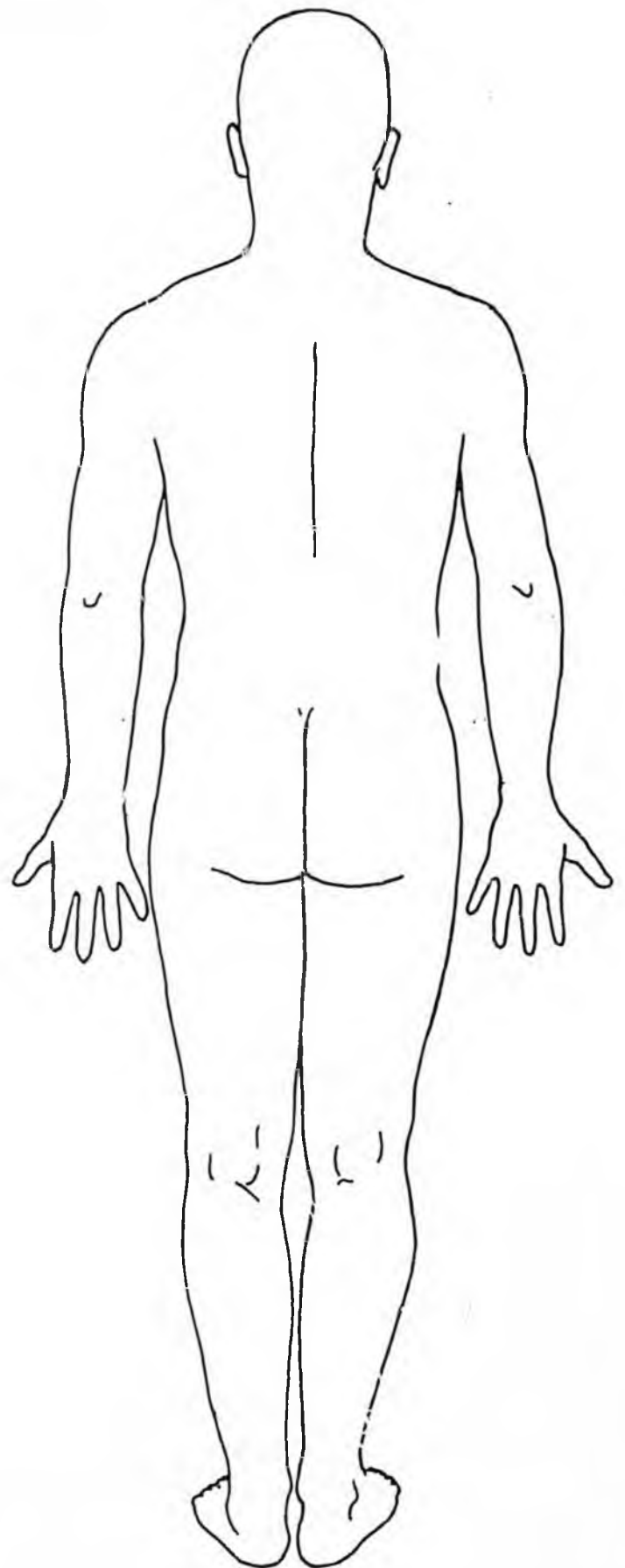
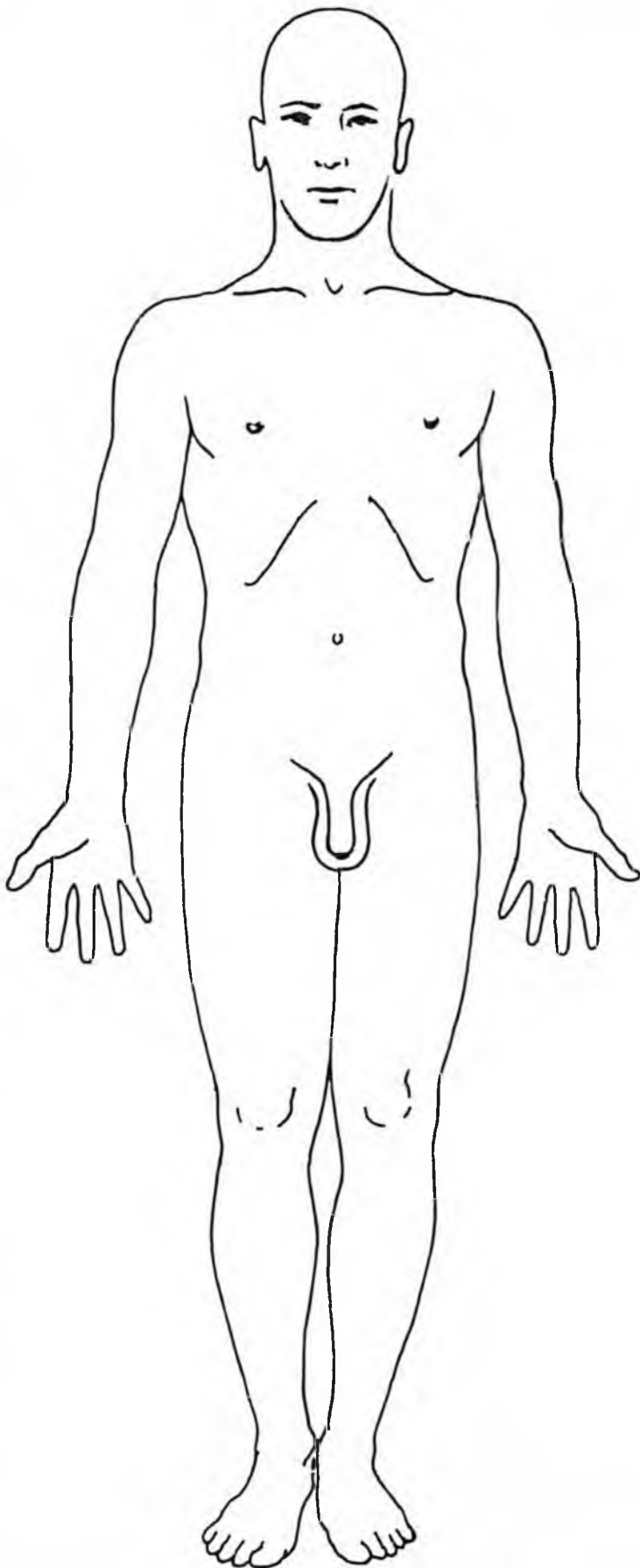
NOTES:

Full body, male, anterior and posterior views (ventral and dorsal).



Name \_\_\_\_\_ Autopsy No. \_\_\_\_\_

Age \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_ Date / /

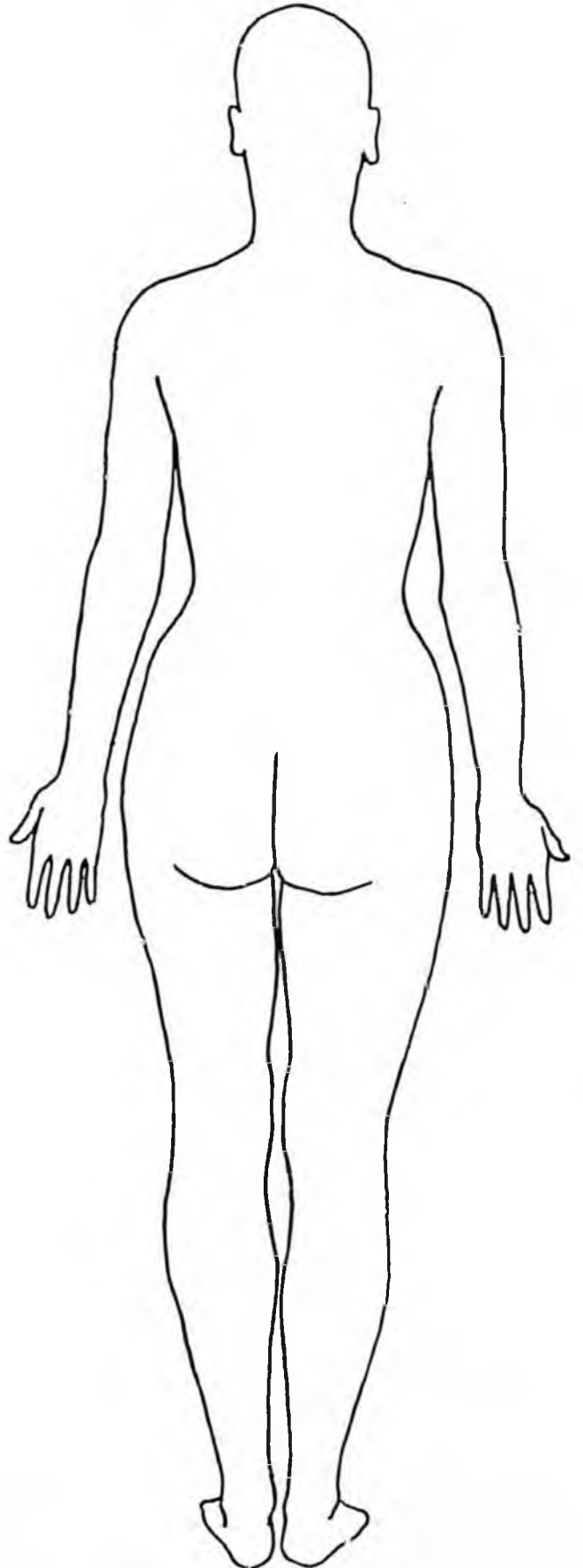
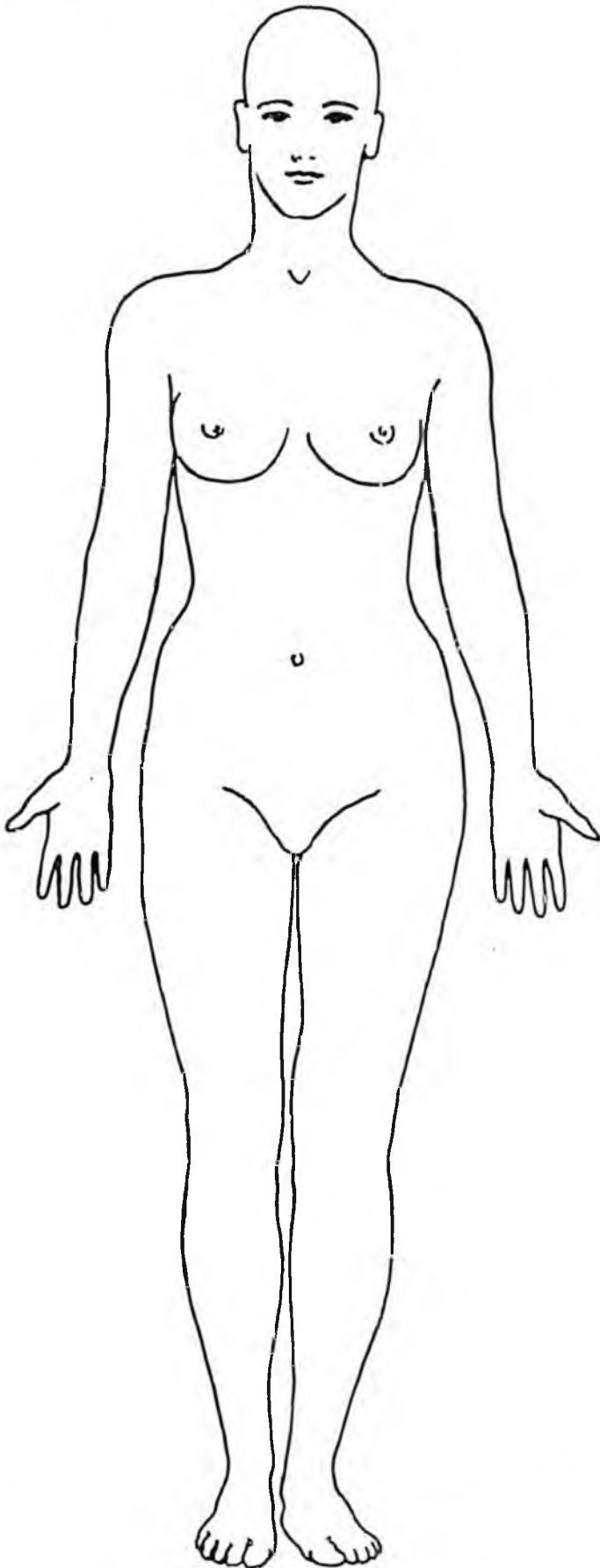




Full body, female, anterior and posterior views.

Name \_\_\_\_\_ Autopsy No. \_\_\_\_\_

Age \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_ Date / /



MEMORANDUM

TO: Senator Rodey

FROM: Kevin K. Bruce

DATE: March 11, 1985

RE: "An Act relating to criminal files of the  
Department of Public Safety."

*O.K.  
please draft*

The intent of this bill is to clarify the power of the Department of Public Safety in requiring standard forms and schedules of local law enforcement agencies reporting criminal activity. At the same time, the bill mandates that the department adopt regulations in this area, thereby allowing public input into the process.

The impetus for this legislation arose from the department's desire to establish an effective missing person's unit within the Division of State Troopers. Under current law, the department did not feel tht sufficient authority was given to compel local law enforcement to file missing persons reports in a uniform manner.

This legislation is designed to complement the child protection package that is currently being assembled.

DRAFT

18.65. Missing Persons Enforcement

(a) There is established in the Department of Public Safety, Division of State Troopers, a missing person's unit for the purpose of investigating the disappearance of individuals in the state.

Powers and Duties of Unit

(a) All peace officers in the state or any municipality or subdivision shall cooperate with the Department of Public Safety in creating and maintaining missing persons files. The Department may develop and require the use of standard forms for reporting missing persons.

Schedule of Reporting

(a) No later than 48 hours after receiving a written request to locate a person, a law enforcement agency shall notify the missing persons unit that an individual is missing. If the missing person is a minor, the Department shall file a report with NCIC. Upon receipt of a missing person report, the Department shall issue a statewide bulletin to all law enforcement agencies.

(b) If a person reported missing has not been located 25 days after a missing person report has been filed on that person the investigating agency shall prepare an information packet for Department files. The packet shall contain:

- 1) medical records;
- 2) dental records;
- 3) fingerprints;
- 4) photograph;
- 5) physical description;

of the missing person if available.

(c) No later than 24 hours after receiving notification that a person reported as missing under this section has been located, the Department shall notify all law enforcement agencies that the person has been located.

~~RECORDS~~ ~~CONFIDENTIAL~~  
Missing persons information collected and maintained under this section is subject to the provisions of AS 12.62

# Alaska State Legislature

*to Kevin  
from Sandra*

BETTYE FAHRENKAMP, Chairman  
ARLISS STURGULEWSKI, Vice Chairman  
JOE JOSEPHSON  
PAUL FISCHER  
EDNA ARMSTRONG-DE VRIES



POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate Committee on Health, Education and Social Services

TO: SENATE H.E.S.S. COMMITTEE MEMBERS

FROM: SENATE H.E.S.S. COMMITTEE STAFF

DATE: APRIL 2, 1985

RE: CHILD PROTECTION LEGISLATION

*all changes adopted in HESS CS*

SB 243, relating to the protection of children, is scheduled for committee action today. A draft committee substitute, reflecting changes proposed at our earlier hearing on this bill, has been prepared. Specific revisions are as follows:

- page 1, line 7 Title change, per the advice of Legal Division. Sec. 17 has been determined to amend the court rules on evidentiary privilege.
- page 4, line 9 Maintains Department's existing authority to take emergency custody of children who have been sexually abused. This section was unintentionally dropped out in the first draft of the bill.
- page 6, line 12 Eliminates the requirement of "church counselors" to report child abuse and neglect.
- page 6, line 16 Adds guardians and conservators to the list of persons required to report child abuse and neglect.
- page 7, line 27 Clarifies that film processors who suspect cases of child pornography allow law enforcement agents access to the material, rather than providing copies of the material.
- page 9, line 13 Clarifies that the attorney-client privilege, the psychotherapist-patient privilege, and the clergyman privilege are grounds for excluding evidence regarding a child's harm.

(The husband-wife and physician-patient privileges would not be grounds for excluding evidence.)

page 9, line 25 Broadens the Department's and a physician's authority to take photographs and X-rays of abused children to any incident, regardless of the perpetrator.

page 10, line 22 Removes the term nonaccidental physical injury from the definition of abuse in the reporting statute. This is intended to alleviate the reporter from having to determine the cause of the injury.

page 12, line 11 This is required language regarding the change in court rules 504 and 505 (per section 17, which prevents the application of physician-patient and husband-wife privileges specified in those rules to evidence obtained through reports).

A letter of intent for SB 243, addressing hiring and training practices for state social workers, has been prepared.

*adopted by HESS*

SB 3 relating to hearsay evidence in prosecutions for certain sexual offenses, is also scheduled for committee action. A draft committee substitute, which removes "lack of memory" as a definition of unavailable (and thus a reason to admit hearsay evidence), has been prepared.

SB 8 - (HESS CS) -

p. 1, line 23 - added "Dept Health + Soc Serv"

SB 86 - no changes in HESS C.S. from noticing group proposal

SCR 3 - p. 1, line 16 - "or under contract with"

SB 21 - still in HESS committee. (Mandatory checks!)

# DRAFT

adopted by HESS

## LETTER OF INTENT

CS SB 243 (HESS)

It is the intent of the Legislature in enacting CS SB 243 (HESS), an act relating to the protection of children, that the rights of both children and parents be afforded equal protection under the law. Child abuse statistics throughout our state have reached crisis proportions, and the Legislature recognizes that the statutory revisions embodied in CS SB 243 (HESS) are necessarily broad to allow effective enforcement of our child protection statutes and to provide effective tools for preventing child victimization.

However, in developing CS SB 243 (HESS), it has become apparent that the solution to our current crisis is not solely legislative in nature. Proper training of the employees at whom these laws are directed is an integral component of the solution. Time and again members of the Legislature have received reports of state social workers, ~~albeit well-intended, who through professional zeal or a lack of proper judgment,~~ have unnecessarily intervened in family affairs, even to the point of removing children from homes without proper cause. Parental attempts to rectify such situations have often proved futile, with devastating effects on both parents and child. SERIOUS AND LASTING

The Legislature is sensitive to the dramatic increase in social work caseloads over the last few years, and to the workload pressures state social workers are under. However, if we are to be successful in protecting the rights of both children and parents, efforts must be made to ensure that the critical decisions being made by social workers are responsible and appropriate.

The Legislature urges the Department of Health and Social Services to review its hiring and training practices for social workers, and to enhance them as necessary to ensure that employees are well qualified and that appropriate ongoing training is being provided. Competent, capable social workers will contribute much to the quality of service, and hence the quality of life, available to Alaska's children and their families.



*Help For Sexually Abused Children And Their Families*

---

303 E. 15th Terrace, Suite B  
Anchorage, Alaska 99501  
(907) 276-6440

*Sen Patrick Roddy*

I have been working with families who are involved in incest and sexual abuse for almost three years. I as well as many others in the different professional capacities are very concerned with the methods by which we handle families of incest. First are we looking for a solution to the problem or are we content with the system? Are we happy building more prisons, placing more on welfare, and is our system cost effective? Many of the experts or professional persons, I've spoke to are all looking to better what we have started and accomplished with our present laws, systems, and methods.

If we can find a better way would we be willing to try it? I hope so. This is why I feel that it's important to send you and all the Legislatures this fact sheet that is from California and the Child sexual abuse treatment program. This same system is being used in other States. Please read this as well as investigate on your own, California's way of handling incest and sexual abuse cases.

I feel that in Alaska the District Attorney's are doing everything in their power to stop or slow this down but they need help with new Legislature. I also feel that if we handcuff our judges with the Presumptive sentence for first time offenders we lose their effectiveness with a fair decision for everyone concern.

Please, if for any reason you need more information concerning this or anything that I can be of help, please call or write to:

Larry D. Brown  
9499 Brayton Drive  
Anchorage, Alaska 99507  
Phone (907) 344-8696

Thank you for anything you can do.

Larry D. Brown



# INSTITUTE FOR THE COMMUNITY AS EXTENDED FAMILY

P.O. Box 952, San Jose, California 95108

(408) 280-5055



## CHILD SEXUAL ABUSE TREATMENT/TRAINING PROGRAM FACT SHEET

The Child Sexual Abuse Treatment Program (CSATP) of Santa Clara County, California, started in 1971, by Hank Giarretto, Ph.D., has provided in-depth professional and self-help treatment to more than 6,000 sexually abused children and their families. Over 16,000 individuals have been served, many more than by any other single organization in the nation. In 1977, the CSATP staff began to conduct regularly scheduled training workshops which thus far have resulted in the establishment of 140 Additional CSATPs in the U.S., Canada and Australia.

A CSATP is made up of three components: The first consists of the integrated interventions of the professional law enforcement, criminal justice and human services agencies; the second consists of the self-help groups known as Parents United, Daughters and Sons United and Adults Molested as Children United; and the third consists of the cadre of trained volunteers. The persons representing these components work cooperatively for the child-victim's best interests, i.e., with the common understanding that this objective is satisfied in the majority of cases, if the child can be returned to his/her family—a family headed by parents who have been taught to be caring and effective.

Key features and results of the Santa Clara County CSATP approach are:

- The intensive public education effort encourages victims and their parents to report abusive situations. The annual referral rate has increased from 30 cases in 1971 to over 1000 cases in 1984. (The current active caseload averages 800 individuals.)
- Repeated interrogation of the child is avoided since about ninety percent of father-offenders confess their sexually abusive behavior to the authorities.
- Over ninety percent of the children avoid foster or institutional placement and remain with their mothers and siblings (father-offenders are given no-contact orders and leave their home).
- After long term therapy, father-offenders are returned to their homes only if they are deemed both physically and psychologically safe for their children.
- The reported recidivism rate among father-offenders who have been treated has remained at less than one percent.
- Child-victims treated by CSATP do not persist in the self-abusive behavior (promiscuity and other sexual behavior problems, drug and alcohol abuse, marital difficulties, criminal activities, etc.) reported by adults who were molested as children who did not receive individual and family therapy.
- The CSATP method is cost-effective:
  - a. Typically, a CSATP is coordinated by personnel in existing official agencies (child protective services, mental health agencies, probation and police departments).
  - b. Due to the use of volunteers, especially in the crisis stages, the cost to the community for client contacts is very low (less than \$3 per contact-hour).
  - c. Most of the families are reconstituted and, therefore, the community is not saddled with costs of foster home and institutional placements and welfare payments.
  - d. Because most of the fathers confess (about 90%), the costs due to prolonged court proceedings are sharply curtailed.
  - e. The fathers usually are rehabilitated within the community and do not receive long prison sentences. Those serving short jail sentences are placed on work furlough. The county and the state, therefore, avoid the high costs of incarceration and of family upkeep.
  - f. Since the fathers continue to work, there are no losses in federal and state tax revenues due to unemployment.

Above all must be stressed the ability of the CSATP to induce children and their parents to report the abusive situations and to treat them successfully. From a humane viewpoint, it is immensely gratifying to note that the children will not suffer lifelong devastation from the incestuous experience. From a social health viewpoint, it is also rewarding to realize that, when treated early, abused children are not likely to become the future social delinquents and/or criminals of society, as attested to by recent studies indicating that about eighty percent of our prisoners were physically, and/or sexually abused as children. A detailed description of the principles, methods and results of the CSATP is given in the book, "Integrated Treatment of Child Sexual Abuse" by Dr. Giarretto.

Hein  
3/19/8

1 IN THE SENATE

BY THE HEALTH, EDUCATION &  
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 21 (HESS)

HB 308

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 criminal background checks;  
7 providing for an effective date."

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

9 \* Section 1. AS 12.62.035(a) is amended to read:

10 (a) Notwithstanding any other provision of law, an interest-  
11 person [AS DEFINED IN (e) OF THIS SECTION] may request from the co-  
12 mission records of all convictions of an individual for crimes that  
13 might pose a risk of harm to a child if the individual [INVOLVED]  
14 CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND ANY SEX CRIMES OF  
15 PERSON WHO] holds or applies for a position in which the individ-  
16 [PERSON] has or would have supervisory or disciplinary power over  
17 minor. The commission shall authorize the disclosure of the informa-  
18 tion to the requesting interested person and shall provide a copy of  
19 the information to the individual [PERSON] who is the subject of the  
20 request.

21 \* Sec. 2. AS 12.62.035(e)(1) is repealed and reenacted to read:

22 (1) "crime that might pose a risk of harm to a child  
23 includes a violation or attempted violation of present or former  
24 Alaska statutes regarding the offenses now designated as murder  
25 manslaughter, negligent homicide, assault, reckless endangerment  
26 kidnapping, sexual assault, sexual abuse of a minor, unlawful ex-  
27 ploitation of a minor, incest, indecent exposure, robbery, arson,  
28 endangering the welfare of a minor, contributing to the delinquency of  
29 a minor, distribution of child pornography, promoting prostitution,

*Chris Paine licensed*

*MISSOURY*

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and felony offenses involving distribution of controlled substance it also includes a violation or attempted violation of the laws of another jurisdiction if the offense would have been one of the crimes listed in this paragraph if committed in this state:

\* Sec. 3. AS 12.62.035 is amended by adding a new subsection to read:

(f) In addition to the information for which disclosure is authorized under (a) of this section, the commission may disclose the existence of an outstanding warrant for the arrest of the person who is the subject of the request if the warrant is for a crime that might pose a risk of harm to a child.

\* Sec. 4. AS 25.23.100(d) is amended to read:

(d) Except as provided in (g) and (i) of this section, an investigation shall be made by the department or any other qualified agent or person designated by the court to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor. The department shall request a state and national criminal record background check by the Department of Public Safety on each person who seeks to adopt a minor.

\* Sec. 5. AS 47.35 is amended by adding a new section to read:

Sec. 47.35.058. INVESTIGATIONS OF PROSPECTIVE FOSTER HOMES. The department shall request a state and national criminal record check on each adult residing in a home before that home may be licensed as a foster home.

\* Sec. 6. This Act takes effect immediately in accordance with AS 11.10.070(c).

*Assess what is  
ISSUE Emergency license  
upon WITHHOLDING  
OF CRIM. HISTORY  
CHECK.*

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 HOUSE BILL NO.

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 criminal background checks; and  
7 providing for an effective date."

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

9 \* Section 1. AS 12.62.035(a) is amended to read:


10 (a) Notwithstanding any other provision of law, an interested  
11 person [AS DEFINED IN (e) OF THIS SECTION] may request from the com-  
12 mission records of all convictions of an individual for crimes that  
13 might pose a risk of harm to a child if the individual [INVOLVING  
14 CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND ANY SEX CRIMES OF A  
15 PERSON WHO] holds or applies for a position in which the individual  
16 [PERSON] has or would have supervisory or disciplinary power over a  
17 minor. The commission shall authorize the disclosure of the informa-  
18 tion to the requesting interested person and shall provide a copy of  
19 the information to the individual [PERSON] who is the subject of the  
20 request.

21 \* Sec. 2. AS 12.62.035(e)(1) is repealed and reenacted to read:

22 (1) "crime that might pose a risk of harm to a child"  
23 includes a violation or attempted violation of present or former  
24 Alaska statutes regarding the offenses now designated as murder,  
25 manslaughter, negligent homicide, assault, reckless endangerment,  
26 kidnapping, [custodial interference], sexual assault, sexual abuse of a  
27 minor, unlawful exploitation of a minor, incest, indecent exposure,  
28 robbery, arson, endangering the welfare of a minor, [criminal nonsup-  
29 port,] contributing to the delinquency of a minor, distribution of

1 child pornography, promoting prostitution. (driving while intoxicated,  
2 and felony offenses involving distribution of controlled substances;  
3 it also includes a violation or attempted violation of the laws of  
4 another jurisdiction if the offense would have been one of the crimes  
5 listed in this paragraph if committed in this state;

6 \* Sec. 3. AS 12.62.035 is amended by adding a new subsection to read:

7 (f) In addition to the information for which disclosure is  
8 authorized under (a) of this section, the commission may disclose the  
9 existence of any outstanding warrants <sup>CONVICTIONS THAT MIGHT POSE A RISK OF</sup> for the arrest of the person who  
10 is the subject of the request. 

11 \* Sec. 4. AS 25.23.100(d) is amended to read:

12 (d) Except as provided in (g) and (i) of this section, an inves-  
13 tigation shall be made by the department or any other qualified agency  
14 or person designated by the court to inquire into the conditions and  
15 antecedents of a minor sought to be adopted and of the petitioner for  
16 the purpose of ascertaining whether the adoptive home is a suitable  
17 home for the minor and whether the proposed adoption is in the best  
18 interest of the minor. The department shall request a background  
19 check by the Department of Public Safety under AS 47.35.065 on each  
20 person who seeks to adopt a minor.

21 \* Sec. 5. AS 47.35 is amended by adding a new section to read:

22 Sec. 47.35.065. BACKGROUND CHECK ON LICENSEES AND EMPLOYEES.

23 (a) The Department of Public Safety shall conduct background checks  
24 on all persons licensed under this chapter and their employees and, as  
25 requested by the Department of Health and Social Services under  
26 AS 25.23.100, on a person who seeks to adopt a minor. The background  
27 check shall consist of a <sup>PERSONAL DATA</sup> (demographic) check and a fingerprint check of  
28 both state and national criminal records. The background check shall  
29 be based on information gathered and submitted by the department.

1 Persons are subject to the background check as follows:

2 (1) persons currently licensed under this chapter and their  
3 employees shall, before their next birthday, consent to the background  
4 check and submit the appropriate information;

5 (2) future licensees or employees consent to the background  
6 check by submitting the appropriate information, and may not be li-  
7 censed or hired until the <sup>demographic</sup> ~~demographic~~ check is completed.

8 (b) A licensee or employee who has completed the background  
9 check shall be issued a card indicating that a background check has  
10 been conducted. The card is valid for two years.

11 (c) [The Department of Public Safety shall train the Department  
12 of Health and Social Services' employees in the procedures necessary  
13 to implement this section.] The cost of conducting the background  
14 check shall be paid by the licensee ~~or employee~~ <sup>or employee</sup>, except that an em-  
15 ployee who consents to the background check and is not hired shall  
16 receive a refund of one-half of the cost of the background check.]

17 (d) Information gathered under this section is confidential and  
18 is not subject to public inspection and copying under AS 09.25.110 and  
19 09.25.120. However, in accordance with department regulations, back-  
20 ground reports may be used by appropriate governmental agencies with  
21 licensing or child protection functions.

22 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.-  
23 10.070(c).

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Original sponsor: Phillips

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IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 67 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to hearsay evidence in prosecutions for certain sexual offenses; and amending Rule 6(r), Alaska Rules of Criminal Procedure."

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

\* Section 1. AS 12.40 is amended by adding a new section to read:

Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 - 11.41.440 or 11.41.455, hearsay evidence of a statement, not otherwise admissible, made by a child under the age of 10 ~~who is the victim of the offense describing the conduct establishing the offense~~ may be admitted into evidence before the grand jury if

(1) the circumstances of the statement indicate its reliability; and

(2) the child

(A) testifies at the grand jury proceeding; or

(B) is unavailable as a witness, the grand jury members are informed of the reason for the child's unavailability, and there is additional evidence introduced to corroborate the statement.

(b) In this section,

(1) "statement" means an oral or written assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion;

(2) "unavailable" means the child

1 (A) has a lack of memory of the subject matter of the  
2 statement being offered;

3 (B) is unable to attend or testify at the hearing  
4 because of death or a then existing physical or mental illness or  
5 infirmity;

6 (C) is likely to suffer substantial psychological,  
7 emotional, or physical harm if required to testify; or

8 ~~(D) is absent from the hearing and the proponent of~~  
9 ~~the statement has been unable to procure the child's attendance~~  
10 ~~by reasonable means.~~

11 *Change Page*  
12 (c) A child is not unavailable <sup>DOE TO CONDUCT</sup> ~~under this section if the un-~~  
13 ~~availability is due to the procurement or wrongdoing of the proponent~~ <sup>of the</sup>  
14 of the statement to prevent the child from attending or testifying.

15 \* Sec. 2. AS 12.40.110, added by sec. 1 of this Act, has the effect of  
16 amending Rule 6(r), Alaska Rules of Criminal Procedure, by making certain  
17 hearsay evidence admissible in grand jury proceedings for certain sexual  
18 offenses without requiring compelling justification.

19  
20 *(D) IS ABSENT FROM THE HEARING AND THE*  
21 *PROONENT OF THE STATEMENT HAS EXERCISED*  
22 *REASONABLE DILIGENCE TO PROCURE THE*  
23 *CHILD'S ATTENDANCE.*

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 30, 1985

SUBJECT: Sectional analysis of CSSB 243 (Judiciary)  
(4/29/85 draft)

TO: Senator Pat Rodey  
Chairman, Senate Judiciary Committee

FROM: Edward H. Hein *EH Hein*  
Legislative Counsel

The bill title has been changed by adding "and dependent adults" to reflect changes in sections 24 and 25 affecting nursing home operators.

Section 1 renames the crime of "endangering the welfare of a minor" to be "endangering the welfare of a minor in the first degree"; expands coverage to include children under 13 years of age instead of 10 years of age as in current law; changes crime from intentionally deserting a child to knowingly exposing a child to risk of physical injury or sexual abuse.

Sec. 2 creates the crime of endangering the welfare of a minor in the second degree. Makes it a class A misdemeanor for a person caring for a child under 13 years of age to expose the child to a substantial risk of physical injury or sexual abuse or to injure the child by failing to provide necessary food, care, clothing, shelter, or medical attention. The person must act with at least criminal negligence.

Sec. 3 revises the child pornography distribution statute to specifically include the act of distributing in the state, and eliminates the requirement that distribution be for commercial consideration.

Sec. 4 defines "distribution" for purposes of the child pornography distribution statute to include all forms of distributing whether or not for monetary or other consideration.

Sec. 5 provides for a maximum five-year extension of the statute of limitations for prosecution of the following crimes in which the victim is under 16 years of age: promoting prostitution, former sexual abuse in the third degree, and former contributing to the delinquency of a minor by engaging in sexual contact with a child 13, 14, or 15 years of age. The current statute already covers sexual assault, sexual abuse of a minor, incest, unlawful exploitation of a minor, and indecent exposure. The general statute of limitations for all these crimes is five years. This section allows prosecution within one year after the crime is reported or within one year after the victim reaches age 16, whichever occurs first, but in no event more than 10 years after the crime occurred.

Sec. 6 restricts the introduction of evidence of a victim's past sexual conduct in preliminary hearings and trials of sexual abuse or unlawful exploitation of a minor; requires defendant to request admittance of evidence before the preliminary hearing or before the trial, unless unable to do so despite exercising "due diligence"; requires written order from court limiting evidence and questions.

Sec. 7 expands coverage of AS 47.10 provisions to include cases in which a child is in imminent and substantial danger of being sexually abused by a parent, guardian, or custodian or as a result of conditions created by them or of their inadequate supervision.

Sec. 8 requires that a predisposition report on a child be available to the child, parents, the guardian ad litem, and the attorneys within six days of the disposition hearing, rather than within 10 days.

Sec. 9 clarifies that the Department of Health and Social Services may take custody of a minor if the department determines that (1) the minor has been neglected by parents or guardians and is in need of immediate medical attention, (2) that the minor has been physically injured, sexually abused, sexually exploited, or maltreated by a person responsible for the minor's welfare and immediate removal from the minor's surroundings is necessary to protect the minor's life, or (3) that the minor has been sexually abused by a parent, guardian, or custodian or as a result of conditions they created or by their inadequate supervision and that immediate removal from the minor's surroundings is

necessary to protect the minor's life or to prevent further sexual abuse.

Sec. 10 provides that if the Department of Health and Social Services takes emergency custody of a minor, it must notify the court within 24 hours by filing a child in need of aid petition. If the minor is held in emergency custody less than 24 hours and no petition is filed with the court, the department must, within 24 hours after releasing the minor, file a report with the court explaining why the minor was taken into custody.

Sec. 11 adds a definition of "sexual abuse" for purposes of AS 47.10.

Sec. 12 Subsection (a) revises the list of persons required to report child abuse. The new list adds teachers and administrative staff members of private schools; adds "human services providers" as defined in section 23 of the bill, instead of only social workers; adds all "child care providers" as defined in section 23 of the bill, instead of only licensed day care providers and paid staff; adds custody investigators, employees and volunteers of domestic violence or sexual assault programs or crisis shelters, and guardians and conservators; deletes licensed foster care providers, which is included in "child care providers".

Subsection (b) specifies the procedure for reporting to the Department of Health and Social Services child abuse thought to be committed by a person responsible for the child's welfare, as defined in section 24 of the bill.

Subsection (c) specifies the procedure for reporting to the police child abuse committed by a person not responsible for the child's welfare or when the reporter is uncertain of who abused the child or whether the suspect is responsible for the child's welfare.

Subsection (d) revises existing AS 47.17.020(b) to conform with the other changes made by this section of the bill.

Sec. 13 requires photo processors to report to police film or other materials they process that constitutes child pornography. The processor must allow police to inspect the material and must give information about the source of the material.

Sec. 14 revises AS 47.17.025 to conform with the new reporting procedures established under section 12 of the bill. Under subsection (a), if child abuse reported to police was committed by a person responsible for the child's welfare, the police must inform the Department of Health and Social Services and the Department of Law. DHSS must investigate and provide a written report to the Department of Law within 72 hours. If the DHSS preliminary investigation reveals that the abuse was not caused by a family member, DHSS must so notify the Department of Law.

Subsection (b) specifies the information that must be included in the DHSS report.

Secs. 15 and 16 clarify that a "judicial" proceeding includes any civil or criminal proceeding.

Sec. 17 provides that photos, and if necessary, x-rays of a physically abused child may be taken without the permission of the parents, guardian, or custodian, and that any x-rays must be taken by a person licensed to do so.

Sec. 18 makes it a class B misdemeanor for a photo processor to fail to report child pornography to the police.

Sec. 19 allows the attorney general to seek an injunction or restraining order to keep a known child abuser from contact with a child not related to the abuser.

Sec. 20 redefines "child abuse or neglect" as "abuse". "neglect" is already separately defined. This change conforms with terminology used throughout AS 47.17. In addition, the new definition expands the concept of child abuse to include harm caused by person's not responsible for the child's welfare, as well as those who are responsible. Thus, "abuse" of a child is defined by the harm committed, regardless of who commits it. Who commits it will determine how the harm is reported and investigated.

Sec. 21 requires dental hygienists, nurse practitioners, physician's assistants, and psychological associates to report child abuse.

Sec. 22 expands the definition of "sexual exploitation", for purposes of reporting, to include inducing or employing a child to engage in prostitution and expands coverage to

Senator Pat Rodey  
April 30, 1985  
Page 5

include exploitation by persons not responsible for the child's welfare.

Sec. 23 adds new definitions for terms introduced in section 13 of the bill and for the term "person responsible for a child's welfare", which appears in several places in AS 47.17.

Sec. 24 increases the possible penalty for violation of AS 47.35 to a maximum 90 days' imprisonment and a maximum fine of \$1,000. Current law allows no imprisonment and a maximum fine of \$200.

Sec. 25 authorizes the Department of Health and Social Services to levy civil fines of up to \$200 per day for licensing violations under AS 47.35.

EHH:ojb  
J14/062

B.2

Introduced: 1/18/85  
Referred: Health, Education & Social  
Services, Judiciary and Finance

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 88

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 amending Rules 504, 505, and 506, Alaska Rules of  
8 Evidence, and Rule 6(r), Alaska Rules of Criminal  
9 Procedure."

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

11 \* Section 1. AS 11.51.100 is amended to read:

12 Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST  
13 DEGREE. (a) A person commits the crime of endangering the welfare of  
14 a minor in the first degree if, being a parent, guardian, or other  
15 person legally charged with the care of a child under 18 [10] years of  
16 age, the person intentionally desert; the child in any place under  
17 circumstances creating a substantial risk of physical injury to the  
18 child. DEFINITIVE

19 (b) Endangering the welfare of a minor in the first degree is, a  
20 class C felony.

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

22 Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND  
23 DEGREE. (a) A person commits the crime of endangering the welfare of  
24 a minor in the second degree if, being entrusted with the care of a  
25 child under <sup>13</sup> 18 years of age, the person with criminal negligence

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

28 (2) exposes the child to physical injury by failing to  
29 provide the child with necessary food, care, clothing, shelter, or

*Manning Parents*

*FRAS TO PREVIEW  
— GROSS DEVIATION —*

1 medical attention.

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

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

5 (a) A person commits the crime of distribution of child pornog-  
6 raphy if the person brings or causes to be brought into the state for  
7 sale or distribution, or in the state distributes, [sells, or exhibits]  
8 to others [for commercial consideration,] or possesses ~~E~~ prepares, pub-  
9 lishes, or prints ~~I~~ with intent to distribute, [sell, or exhibit] to  
10 others [for commercial consideration,] any material that visually de-  
11 picts conduct described under AS 11.41.455(a), knowing that the pro-  
12 duction of the material involved the use of a child under 18 years of  
13 age who engaged in the conduct.

14 \* Sec. 4. AS 12.10.020(c) is amended to read:

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

22 \* Sec. 5. AS 12.40 is amended by adding a new section to read:

23 Sec. 12.40.055. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL  
24 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 --  
25 11.41.460, AS 11.66.110 -- 11.66.130, former AS 11.41.430, or former  
26 AS 11.51.130(a)(4), hearsay evidence of a statement relating to the  
27 offense, not otherwise admissible, made by a COMPLAINING WITNESS child under the age of 16 <sup>13</sup>  
28 may be admitted into evidence before the grand jury if

29 (1) the circumstances of the statement indicate its

1 reliability; and  
2 (2) the child  
3 (A) testifies at the grand jury proceeding; or  
4 (B) is unavailable as a witness and there is some  
5 additional evidence to corroborate the statement.

6 (b) In this section,

7 (1) "statement" means an oral or written assertion or  
8 nonverbal conduct if the nonverbal conduct is intended as an asser-  
9 tion;

10 (2) "unavailable" means that the child

11 (A) has a lack of memory of the subject matter of the  
12 statement being offered;

13 (B) is unable to testify at the proceeding because of  
14 death or then existing physical or mental illness or infirmity;

15 (C) is likely to suffer substantial psychological,  
16 emotional, or physical harm if required to testify;

17 ~~(D) is declared incompetent to testify by the judge;~~

18 ~~(E) is absent from the proceeding and the prosecution~~  
19 ~~has been unable, after reasonable efforts, to procure the child's~~  
20 ~~attendance.~~

21 \* Sec. 6. AS 12.45.045 's amended to read:

22 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR  
23 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)  
24 In prosecutions [for the crimes [CRIME]] of sexual assault in any de-  
25 gree [sexual abuse of a minor in any degree, or unlawful exploitation  
26 of a minor.] or an attempt to commit any of these crimes [SEXUAL AS-  
27 SAULT IN ANY DEGREE], evidence of the complaining witness' previous  
28 sexual conduct may [SHALL] not be admitted nor reference made to it in  
29

JUDICIAL DISCRETION AT TRIAL

DISCLOSURE TO THE COURT OF "UNAVAILABLE"

VIDEO IMAGE

HB 67 - 17-20 lines page 3

OK

1 the presence of the jury except as provided in this section. When the  
2 defendant seeks to admit the evidence for any purpose, the defendant  
3 may apply for an order of the court at any time before or during the  
4 trial or preliminary hearing. After the application is made, the  
5 court shall conduct a hearing in camera to determine the admissibility  
6 of the evidence. If the court finds that evidence offered by the  
7 defendant regarding the sexual conduct of the complaining witness is  
8 relevant, and that the probative value of the evidence offered is not  
9 outweighed by the probability that its admission will create undue  
10 prejudice, confusion of the issues, or unwarranted invasion of the  
11 privacy of the complaining witness, the court shall make an order  
12 stating what evidence may be introduced and the nature of the ques-  
13 tions which may [SHALL] be permitted. The defendant may then offer  
14 evidence under the order of the court.

15 \* Sec. 7. AS 12.62.035(a) is amended to read:

16 (a) Notwithstanding any other provision of law, an interested  
17 person as defined in (e) of this section may request from the commis-  
18 sion records of all convictions <sup>of interest</sup> for crimes that might pose a risk <sup>Too Serious?</sup> to a  
19 child [INVOLVING (CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND ANY  
20 SEX CRIMES) of a person <sup>IF THE PERSON</sup> who holds or applies for a position in which  
21 the person has or would have supervisory or disciplinary power over a  
22 minor. The commission shall authorize the disclosure of the informa-  
23 tion to the requesting interested person and shall provide a copy of  
24 the information to the person who is the subject of the request.

25 \* Sec. 8. AS 12.62.035(e)(1) is repealed and reenacted to read:

26 (1) "crime that might pose a risk <sup>of harm</sup> to a child" includes a  
27 violation or attempted violation of present or former Alaska statutes  
28 regarding the offenses now designated as murder, manslaughter, negli-  
29 gent homicide, assault, reckless endangerment, kidnapping, [custodial

1 interference, sexual assault, sexual abuse of a minor, unlawful ex-  
2 ploitation of a minor, incest, indecent exposure, robbery, arson,  
3 endangering the welfare of a minor, criminal nonsupport, contributing  
4 to the delinquency of a minor, distribution of child pornography,  
5 promoting prostitution, driving while intoxicated, and felony offenses  
6 involving distribution of controlled substances; it also includes a  
7 violation or attempted violation of the laws of another jurisdiction  
8 if the offense would have been one of the crimes listed in this para-  
9 graph if committed in this state;

10 \* Sec. 9. AS 12.62.035 is amended by adding a new subsection to read:

11 (f) In addition to the information for which disclosure is  
12 authorized under (a) of this section, the commission may disclose the  
13 existence of any outstanding warrants for the arrest of the person who  
14 is the subject of the request.

15 \* Sec. 10. AS 29.43.110 is amended to read:

16 Sec. 29.43.110. PENALTY FOR VIOLATION OF CURFEW. The penalty  
17 for violation of AS 29.43.100 -- 29.43.110 is as prescribed by the  
18 curfew ordinance of the city, and a fine so paid must [SHALL] be paid  
19 to the city when the violation takes place in the city. Otherwise the  
20 fine must [SHALL] be paid to the state. However, the penalty may  
21 [SHALL] not exceed a fine of \$300[, (OR IMPRISONMENT FOR UP TO 30 DAYS,  
22 OR BOTH)].

23 \* Sec. 11. AS 47.10.010(b) is amended to read:

24 (b) When a minor is accused of violating a traffic statute or  
25 regulation, a traffic ordinance or regulation of an incorporated  
26 municipality, a fish and game statute or regulation under AS 16, a  
27 [OR] parks and recreation facilities statute or regulation under  
28 AS 41.21, or a curfew ordinance of a city under AS 29.43.100 --  
29 29.43.110, excepting a statute the violation of which is a felony, the

Judge  
Turnkey  
in Name  
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1 procedure prescribed in AS 47.10.020 -- 47.10.090 may not be followed,  
2 except that a parent, guardian or legal custodian shall be present at  
3 all proceedings. The minor accused of a traffic offense, a fish and  
4 game statute or regulation violation under AS 16, a [OR] parks and  
5 recreational facilities violation under AS 41.21, or a curfew viola-  
6 tion under AS 29.43.100 -- 29.43.110 must [SHALL] be charged, <sup>HAND</sup> prose-  
7 cuted, and sentenced in a district court in the same manner as an  
8 adult.

9 \* Sec. 12. AS 47.10.081(c) is amended to read:

10 (c) The court shall inform the child, the child's parents and  
11 the attorneys representing the parties and the guardian ad litem  
12 the predisposition report will be available to them not less than  
13 working [10] days before the disposition hearing.

14 \* Sec. 13. AS 47.10.142(a) is amended to read:

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

- 18 (1) the minor has been abandoned;
- 19 (2) the minor has been grossly neglected by the minor's  
20 parents or guardian as "neglect" is defined in AS 47.17.070(5), so  
21 that, in the determination of the department, immediate removal from  
22 the minor's surroundings is, [IN THE DETERMINATION OF THE DEPARTMENT,]  
23 necessary to protect the minor's life, or immediate medical attention  
24 is necessary;
- 25 (3) the minor has been abused, as "abuse" is defined in  
26 AS 47.17.070(1), so that immediate medical attention or immediate  
27 removal from the minor's surroundings is necessary, in the determina-  
28 tion of the department;
- 29 (4) the minor has been sexually abused under circumstances

30 DAYS TO INVESTIGATE  
AND RECOMMEND - (20 DAYS)  
10 TO APPROVE

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1 listed in AS 47.10.010(a)(2)(D).

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

3 (c) When a child is taken into custody under (a) or (b) of this  
4 section, the department shall make reasonable efforts to immediately  
5 [, AND IN NO EVENT MORE THAN 12 HOURS LATER UNLESS PREVENTED BY LACK  
6 OF COMMUNICATION FACILITIES,] notify the parents or the person or  
7 persons having custody of the child of this action. [AND THE COURT OF  
8 THE ACTION AND FILE WITH THE COURT A PETITION ALLEGING THAT THE CHILD  
9 IS A CHILD IN NEED OF AID.] Unless the department determines that  
10 continued custody is not necessary to protect the child, the depart-  
11 ment shall notify the court of the emergency custody by filing, within  
12 24 hours after custody was assumed, excluding weekends or judicial  
13 holidays, a petition alleging that the child is a child in need of  
14 aid.

15 \* Sec. 15. AS 47.10.290 is amended by adding a new paragraph to read:

16 (8) "sexual abuse" means

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

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

*Don Edwards  
Arch. A. 16.*

1 sexual in nature are relevant to the determination of whether the  
2 touching is sexual abuse;

3 (C) exposing the genital area, anus, female breast,  
4 groin, or buttocks of a child to the perpetrator or another for  
5 the sexual gratification of the child, the perpetrator, or another,  
6 or exposing the genital area, anus, female breast, groin or  
7 buttocks of the perpetrator or another to a child for the sexual  
8 gratification of the child, the perpetrator, or another; reason-  
9 able perceptions of the child that the conduct is sexual in  
10 nature are relevant to the determination of whether the conduct  
11 is sexual abuse; or

12 (D) verbal statements to a child which express a  
13 desire or intent to have sexual contact with the child or encour-  
14 age the child to have sexual contact with the perpetrator or  
15 another.

*covered  
under AS 11*

16 \* Sec. 16. AS 47.17.010 is amended to read:  
17 Sec. 47.17.010. PURPOSE. In order to protect children whose  
18 health and well-being may be adversely affected through the inflic-  
19 tion, by other than accidental means, of harm through physical abuse,  
20 mental injury, [OR] neglect, [OR] sexual abuse, or sexual exploita-  
21 tion, the legislature requires the reporting of these cases by practi-  
22 tioners of the healing arts and others to the appropriate public  
23 authorities. It is the intent of the legislature that, as a result of  
24 these reports, protective services will be made available in an effort  
25 to prevent further harm to the child, to safeguard and enhance the  
26 general well-being of the children in this state, and to preserve  
27 family life whenever possible.

28 \* Sec. 17. AS 47.17.020(a) is amended to read:

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

INTER-FAMILY - DIV FAMIL + YOUTH SVCS  
NOW-FAMILY - LAW ENFORCEMENT

1 [PROFESSIONAL] duties, have cause to believe that a child has suffered  
2 harm as a result of abuse or neglect shall immediately report the harm  
3 to the nearest office of the department LAW ENFORCEMENT AGENCY

4 (1) practitioners of the healing arts; Page 11, Line 27

5 (2) employees and volunteers of private and public schools  
6 [SCHOOL TEACHERS AND SCHOOL ADMINISTRATIVE STAFF MEMBERS];

7 (3) human services providers [SOCIAL WORKERS]; PG. 17, Line 7

8 (4) peace officers, and officers of the Department of  
9 Corrections;

10 (5) administrative officers of institutions;

11 (6) ~~child~~ [LICENSED DAY] care providers [AND PAID STAFF]; PG 12, Line 4

12 (7) counselors, including church counselors and therapists,  
13 whether licensed or not; ~~the following persons:~~

14 (8) court investigators;

15 (9) employees and volunteers of domestic violence programs  
16 or crisis shelters;

17 (10) clergy when acting as counselor [LICENSED FOSTER CARE  
18 PROVIDERS].

19 \* ~~Sec. 18. AS 47.17 is amended by adding a new section to read:~~

20 Sec. 47.17.023. REPORTS TO LAW ENFORCEMENT AGENCIES. (a) If a  
21 person listed in AS 47.17.020, in the performance of the person's  
22 duties, has cause to believe that a child under the age of 18 has  
23 suffered harm as a result of physical or mental injury, neglect,  
24 sexual abuse, <sup>OR</sup> sexual exploitation, or maltreatment by an individual  
25 not responsible for the child's welfare, such that the child's health  
26 or welfare is harmed or threatened, the person shall immediately  
27 report the harm to the nearest office of the department  
law enforcement agency.

28 (b) A person who, in the course of processing or producing  
29 visual or printed matter, either privately or commercially, has reason

INTO TITLE II

INCLUDE →

Time 11

to believe that the visual or printed matter submitted for processing or producing visually depicts a minor engaged in conduct described under AS 11.41.455(a) shall immediately report this to the nearest law enforcement agency. The person shall provide the law enforcement agency with all information known about the origin of the matter and the person who submitted it.

~~(c) If a person making a report under this section cannot reasonably contact the nearest <sup>Department office.</sup> law enforcement agency, and immediate action appears necessary for the well-being of the child, the person shall make the report to the nearest <sup>LAW ENFORCEMENT AGENCY</sup> office of the department. The department shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest law enforcement agency.~~

HARMFUL

\* Sec. 19. AS 47.17.050 is amended to read:

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

\* Sec. 20. AS 47.17.060 is repealed and reenacted to read:

Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. In a civil or criminal proceeding related to a report under this chapter, no privilege is a ground for excluding evidence regarding a child's harm, or its cause, except (1) the attorney-client privilege; (2) the psychotherapist-patient privilege; and (3) the clergyman privilege, <sup>if</sup> the communication was made to the clergyman in furtherance of a religious practice and not for counseling purposes.

STATE v. WHEATON

Adding Civil or Criminal Immunity to old 060

\* Sec. 21. AS ~~47.17.068~~ is amended to read:

Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person

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CRIMINAL  
DOWNSIDE TO  
VIOLATION OF .069?  
Child Abuse Reporting

1 required to file a report of abuse, [OR] neglect, or exploitation  
2 under AS 47.17.020 or AS 47.17.023 who [WILFULLY OR] knowingly fails  
3 or refuses to report as [THE HARM] required [UNDER AS 47.17.020] is  
4 guilty of a class B misdemeanor.

5 \* Sec. 22. AS 47.17 is amended by adding a new section to read:

6 Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney  
7 general, <sup>OR GUARDIAN AD LITEM</sup> may bring an action to enjoin or limit a person from contact  
8 with a child not related to the person if the person

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

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

20 \* Sec. 23. AS 47.17.070(1) is amended to read:

21 (1) "child abuse or neglect" means the physical injury or  
22 neglect, mental injury, sexual abuse, sexual exploitation, or mal-  
23 treatment of a child under the age of 18 by a person who is responsi-  
24 ble for the child's welfare under circumstances which indicate that  
25 the child's health or welfare is harmed or threatened thereby;

26 \* Sec. 24. AS 47.17.070(6) is amended to read:

27 (6) "practitioner of the healing arts" includes chiroprac-  
28 tors, dentists, <sup>DENTAL HYGIENISTS</sup> health aides, nurses, nurse practitioners, optome-  
29 trists, osteopaths, physical therapists, physicians, physician's

DAY CARE  
UNLICENSED

RESPONSIBILITY  
OF THE WITNESS  
4/15/17

source

DELETED

1 assistants, psychiatrists, psychologists, religious healing practi-  
2 tioners, and surgeons;

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

4 (8) "child care provider" means an adult individual, or an  
5 employee or volunteer of an organization, who provides care and super-  
6 vision to a child not related to the caregiver;

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

11 (10) "mental injury" means an injury to the intellectual or  
12 psychological capacity of a child as evidenced by an observable and  
13 substantial impairment in the child's ability to function within a  
14 normal range of performance and behavior, with due regard to the  
15 child's culture;

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

21 \* Sec. 26. AS 47.35.070 is amended to read:

22 Sec. 47.35.070. VIOLATIONS. (a) A person who violates a provi-  
23 sion of AS 47.35 [47.35.010 -- 47.35.100] or a [RULE OR] regulation  
24 adopted under AS 47.35 [47.35.010 -- 47.35.100] is guilty of a class B  
25 misdemeanor[, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE  
26 THAN \$200].

27 (b) The department may by regulation devise a system of civil  
28 enforcement. The system may employ civil penalties not to exceed \$200  
29 for each day during which one or more violations of a licensing

*H. 1020*

1        statute or licensing regulation occurs. The imposition of a civil  
2        penalty does not prevent prosecution and sentence for a criminal  
3        offense.

4        \* Sec. 27. AS 12.40.050, added by sec. 5 of this Act, has the effect of  
5        changing Rule 6(r), Alaska Rules of Criminal Procedure, by making certain  
6        hearsay evidence admissible in grand jury proceedings for certain sexual  
7        offenses without requiring compelling justification.

8        \* Sec. 28. AS 47.17.060, as repealed and reenacted in sec. 20 of this  
9        Act, has the effect of changing Rules 504, 505, and 506, Alaska Rules of  
10       Evidence, by preventing the application in civil or criminal cases of the  
11       privileges specified in those rules to evidence obtained through reports  
12       made under AS 47.17.

CS HB 88

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

(c) When a child is taken into custody under (a) or (b) of this section, the department shall immediately, and in no event more than 12 hours later unless prevented by lack of communication facilities, notify the parents or the person or persons having custody of the child. If the department determines that continued custody is necessary to protect the child, the department shall notify the court of the emergency custody by filing, within 24 hours after custody was assumed, a petition alleging that the child is a child in need of aid [AND THE COURT OF THE ACTION AND FILE WITH THE COURT A PETITION ALLEGING THAT THE CHILD IS A CHILD IN NEED OF AID].

scan to Liz Hickerson - 9000

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 1, 1985

SUBJECT: Child protection legislation package  
TO: Sandra Schubert  
FROM: Edward H. Hein *E.H.*  
Legislative Counsel

The following is a list of the ideas from John Walsh's "Selected State Legislation" booklet that our discussion group has agreed to continue to consider for inclusion in the child protection legislation package. Page references are to Walsh's booklet. Item #15 is not from Walsh.

1. Missing child information center; clearinghouse; central registry; NCIC reporting -- pp. 1, 4, 7 - 8.
2. Unidentified bodies; central file of information to identify deceased persons; combine with missing persons information center; require use of NCIC; collect dental records and other information identifying missing children; require medical examiners and coroners to report descriptive information on dead persons who remain unidentified -- p. 3.
3. Eliminate waiting periods for investigation and dissemination of reports of missing children -- p. 3.
4. Reporting of child abuse & exploitation; check the list of persons required to report; include all persons, not just named occupations and professions; failure to report by general public should be limited to civil fines; who should reports be submitted to? -- pp. 9 - 11.
5. Requirement for prosecution to prove lack of consent and inquiry into past sexual experiences of child victims -- p. 17.
6. Mandatory sentences for sex-offenders -- p. 17.

70 -  
7. Require child sex offenders to register with law enforcement agencies -- p. 18.

8. Allow hearsay statements of child victim or witness into evidence at trial and grand jury proceedings; insure reliability; judge must find that requiring testimony of child would impair child's emotional, psychological well-being; may be recent court opinions on this subject worthy of review -- p. 20.

9. Videotaping children's testimony; should this be expanded to cover grand jury? Constitutional issue of confrontation; major expense -- p. 20.  
*close circuit TV*

10. Provide for education programs to teach prevention of child abductions; workshops for parents, teachers, and children to counteract stereotypes, train on child safety, and detect cases of abuse -- pp. 25 - 26.

11. Require schools to obtain school records, birth certificates, or other identifying documentation of new or transferring students; establish procedures for handling cases in which parent does not provide information; cover grades K - 12; procedure should include notifying missing children agencies; circulate lists of missing children among schools to compare with lists of enrolled students; note withdrawals of children from school and report to missing children agencies if no request received from new school for records within 15 days during school year, within 60 days during summer, or if child absent five consecutive days unaccountably; consider applying to foster home placement and home-based education -- pp. 27 - 28.

12. Require check of criminal history of employees, volunteers, foster and adoptive parents, and others who supervise or deal with children; consider whether old convictions (more than 7 - 10 years) of sex crimes should be released to inquiring party; review list of crimes included in HB 88 -- pp. 33 - 34.

*Justice - not judicial assistance*  
13. Require in-service training for judges and others in criminal justice system on child abuse issues; check with court system for current practice -- p. 35.

14. Expand child pornography statute to cover lending, exchange, etc. without commercial consideration; consider banning possession in the home; enforcement considerations and

Sandra Schubert  
March 3, 1985  
Page 3

constitutional privacy issues raised; consider relationship to conspiracy legislation for enforcement -- p. 45.

15. Draft resolution to the Board of Education requesting establishment of parenting classes in high schools.

EHH:ojb  
J12/048

Offered: 4/3/85  
Referred: Judiciary

Original sponsor: Health, Education and  
Social Services Committee

1 IN THE SENATE BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 243 (HESS)

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 amending Rules 504 and 505, Alaska Rules of Evi-  
8 dence."

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

10 \* Section 1. AS 11.51.100 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR  
27 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)  
28 In prosecutions for the crimes [CRIME] of sexual assault in any de-  
29 gree, sexual abuse of a minor in any degree, or unlawful exploitation

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

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

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

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

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

27                    (1) the minor has been abandoned;

28                    (2) the minor has been grossly neglected by the minor's  
29 parents or guardian as "neglect" is defined in AS 47.17.070(5), and

1 the department determines that immediate removal from the minor's  
2 surroundings is necessary to protect the minor's life or that immedi-  
3 ate medical attention is necessary;

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

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

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

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

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

22 (8) "sexual abuse" means

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

25 (B) the perpetrator's knowingly touching, directly or  
26 through clothing, the genital area, groin, inner thighs, or  
27 buttocks of a child, or causing a child to touch, directly or  
28 through clothing, the genital area, groin, inner thighs, or  
29 buttocks of the perpetrator or another; sexual abuse does not

1 include reasonable touching in the exercise of normal caretaker  
2 responsibilities for a child or normal caretaker interactions  
3 with a child or touching performed for the purpose of adminis-  
4 tering a recognized and lawful form of treatment that is rea-  
5 sonably adapted to promoting the physical or mental health of the  
6 child;

7 (C) exposing the genital area, anus, breast, groin, or  
8 buttocks of a child to the perpetrator or another for the sexual  
9 gratification of the child, the perpetrator, or another, or  
10 exposing the genital area, anus, breast, groin or buttocks of the  
11 perpetrator or another to a child for the sexual gratification of  
12 the child, the perpetrator, or another; or

13 (D) statements to a child that express a desire or  
14 intent to have sexual contact or sexual penetration with the  
15 child or encourage the child to have sexual contact or sexual  
16 penetration with the perpetrator or another.

17 \* Sec. 11. AS 47.17.010 is amended to read:

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

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

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

- 5 (1) practitioners of the healing arts;
- 6 (2) employees and volunteers of private and public schools;
- 7 (3) human services providers;
- 8 (4) peace officers, and officers of the Department of  
9 Corrections;
- 10 (5) administrative officers of institutions;
- 11 (6) child care providers;
- 12 (7) counselors;
- 13 (8) court investigators;
- 14 (9) employees and volunteers of domestic violence programs,  
15 sexual assault programs, or crisis shelters;
- 16 (10) guardians and conservators.

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

28 (c) A person listed in (a) of this section, who in the perfor-  
29 mance of the person's occupational duties has cause to believe that a

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

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

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

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

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

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

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

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

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

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

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

21 (5) information that the department believes may be helpful  
22 in establishing the identity of the person believed to have caused the  
23 harm to the child.

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

25 (b) Investigation reports and reports of harm filed under this  
26 chapter are considered confidential and are not subject to public  
27 inspection and copying under AS 09.25.110 and 09.25.120. However, in  
28 accordance with department regulations, investigation reports may be  
29 used by appropriate governmental agencies with child-protection

1 functions, inside and outside the state [ALASKA], in connection with  
2 investigations or civil or criminal [JUDICIAL] proceedings involving  
3 [CHILD] abuse, neglect, or child custody. A person, not acting in  
4 accordance with department regulations, who makes public information  
5 contained in confidential reports is guilty of a misdemeanor.

6 \* Sec. 16. AS 47.17.050 is amended to read:

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

12 \* Sec. 17. AS 47.17.060 is repealed and reenacted to read:

13 Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. In a civil or criminal  
14 proceeding related to a report under this chapter, no privilege is a  
15 ground for excluding evidence regarding a child's harm, or its cause,  
16 except

- 17 (1) the attorney-client privilege;  
18 (2) the psychotherapist-patient privilege; and  
19 (3) the clergyman's privilege.

20 \* Sec. 18. 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. 19. 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. 20. 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. 21. 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. 22. 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. 23. 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. 24. 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, and an employee or volunteer of a human services  
16 organization, such as a social service, youth service, mental health,  
17 or substance abuse agency, or a shelter for runaway or homeless youth;

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

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

28 \* Sec. 25. AS 47.35.070 is amended to read:

29 Sec. 47.35.070. VIOLATIONS. A person who violates a provision

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

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

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

11 \* Sec. 27. AS 47.17.060, as repealed and reenacted in sec. 17 of this  
12 Act, has the effect of changing Rules 504 and 505, Alaska Rules of Evi-  
13 dence, by preventing the application in civil or criminal cases of certain  
14 privileges specified in those rules to evidence obtained through reports  
15 made under AS 47.17.

MEMORANDUM

TO: Senator Rodey  
FROM: Kevin K. Bruce  
DATE: March 11, 1985  
RE: "An Act relating to criminal files of the  
Department of Public Safety."

The intent of this bill is to clarify the power of the Department of Public Safety in requiring standard forms and schedules of local law enforcement agencies reporting criminal activity. At the same time, the bill mandates that the department adopt regulations in this area, thereby allowing public input into the process.

The impetus for this legislation arose from the department's desire to establish an effective missing person's unit within the Division of State Troopers. Under current law, the department did not feel tht sufficient authority was given to compel local law enforcement to file missing persons reports in a uniform manner.

This legislation is designed to complement the child protection package that is currently being assembled.

14-0863  
Hein  
3/8/85✓

1 IN THE SENATE

BY RODEY

2 SENATE BILL NO.

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 criminal files of the Department  
7 of Public Safety."

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

9 \* Section 1. AS 18.65.060 is amended to read:

10 Sec. 18.65.060. PEACE OFFICERS TO COOPERATE. (a) All peace  
11 officers in the state or any municipality or subdivision shall  
12 cooperate with the Department of Public Safety in creating and  
13 maintaining its files. The department may develop and require the use  
14 of [, AND ALL INFORMATION SHALL BE CLASSIFIED UPON] standard forms and  
15 schedules for the reporting of information for its files. The files  
16 shall be kept available for the detection of crime and the  
17 identification of criminals. Criminal justice information collected  
18 and maintained under this section is subject to the provisions of AS  
19 12.62.

20 (b) The Department of Public Safety shall [MAY] adopt  
21 regulations necessary to carry out the purposes of this section [;  
22 HOWEVER, REGULATIONS PROPOSED BY THE DEPARTMENT SHALL BE SUBMITTED TO  
23 THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE ON THE DAY THE  
24 HOUSE CONVENES. THE LEGISLATURE HAS 60 DAYS OF A REGULAR SESSION, OR  
25 A FULL SESSION IF OF SHORTER DURATION TO DISAPPROVE THE PROPOSED  
26 REGULATIONS. UNLESS DISAPPROVED BY A SPECIAL CONCURRENT RESOLUTION  
27 INTRODUCED IN EITHER HOUSE, CONCURRED IN BY A MAJORITY OF THE MEMBERS  
28 OF THE LEGISLATURE IN JOINT SESSION, THE REGULATIONS BECOME EFFECTIVE  
29 AT A DATE TO BE DESIGNATED BY THE DEPARTMENT].

CHILD AND FAMILY PROTECTION

SB 3  
(HB 67)

HEARSAY EVIDENCE

SB 3 would allow hearsay evidence to be admitted at grand jury in prosecutions for sexual assault in the first and second degrees, sexual abuse of a minor in the first, second, third and fourth degrees, and unlawful exploitation of a minor. The child must be under the age of 10, and the child must either testify before the grand jury or be unavailable as defined in the bill.

SB 8

SCHOOL CURRICULA

SB 8 would urge expansion of existing health curricula to include the identification and prevention of child abuse, child abduction, neglect, sexual abuse, and domestic violence.

SB 21  
#5

BACKGROUND CHECKS

SB 21 would expand the type of convictions that may be released to include all crimes that might pose a risk to children (as defined in the bill), and allow the release of outstanding warrants for these crimes. It would require a criminal record check on foster parents and persons seeking to adopt minors.

SB 27 COMMUNITY TRAINING

SB 27 would provide funds to the Council on Domestic Violence and Sexual Assault to train teams of community professionals.

SB 28 REPORTING INCIDENTS OF ABUSE

SB 28 would require training of state employees required to report on the recognition and report of child abuse, and would require school districts to devote half of an inservice day to training teachers and administrators on the reporting law.

SB 86  
(HB 19)

MISSING CHILDREN

SB 86 would require that reports of missing or runaway children be taken immediately and within 24 hours entered into both the State (APSIN) and FBI (NCIC) computer systems. The bill would disallow housing of runaway or missing minors in jail facilities, and require that the legal custodian be immediately notified if the minor is taken into protective custody by the State.

SB 143  
(HB 88)

"THE OMNIBUS BILL"

SB 143 would make several changes to existing civil and criminal laws, and is intended to enhance the State's ability to protect children. (See sectional analysis.)

SCR 3 SCHOOL TEACHER BACKGROUND CHECKS

HCR 2

SCR 3 would urge local school districts to implement background checks on all school district employees who come into contact with children.

O - S. Hess 3/25/85

SJR  
SCR 3  
~~SCR 3~~  
~~SCR 3~~

MINK CARTON ~~Resolution~~

SB 29  
SB 1

AMENDING DOMESTIC VIOLENCE STATUTES

OK

Hein/Cook  
3/14/85

MIKE MARSH

EVIDENCE Rule 804

Original sponsor: Phillips

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

SB 3

2 CS FOR HOUSE BILL NO. ~~67~~ (HESS)

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 hearsay evidence in prosecutions  
7 for certain sexual offenses; and amending Rule 6(r),  
8 Alaska Rules of Criminal Procedure."

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

10 \* Section 1. AS 12.40 is amended by adding a new section to read:

11 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL  
12 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -  
13 11.41.440 or 11.41.455, hearsay evidence of a statement related to the  
14 offense, not otherwise admissible, made by a child under the age of 10  
15 may be admitted into evidence before the grand jury if

16 (1) the circumstances of the statement indicate its relia-  
17 bility; and

18 (2) the child

19 (A) testifies at the grand jury proceeding; or

20 (B) is unavailable as a witness, the grand jury mem-  
21 bers are informed of the reason for the child's unavailability,  
22 and there is additional evidence introduced to corroborate the  
23 statement.

24 (b) In this section,

25 (1) "statement" means an oral or written assertion or  
26 nonverbal conduct if the nonverbal conduct is intended as an asser-  
27 tion;

28 (2) "unavailable" means the child

29 (A) has a lack of memory of the subject matter of the

1 statement being offered;

2 (B) is unable to attend or testify at the hearing  
3 because of death or a then existing physical or mental illness or  
4 infirmity;

5 (C) is likely to suffer substantial psychological,  
6 emotional, or physical harm if required to testify; or

7 (D) is absent from the hearing and beyo the juris-  
8 diction of the court to compel appearance and the proponent of  
9 the statement has exercised reasonable diligence in attempting to  
10 procure the child's attendance.

11 (c) A child is not unavailable under this section if the un-  
12 availability is due to the procurement or wrongdoing of the proponent  
13 of the statement to prevent the child from attending or testifying.

14 \* Sec. 2. AS 12.40.110, added by sec. 1 of this Act, has the effect of  
15 amending Rule 6(r), Alaska Rules of Criminal Procedure, by making certain  
16 hearsay evidence admissible in grand jury proceedings for certain sexual  
17 offenses without requiring compelling justification.  
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Offered: 2/1/85  
Referred: Health, Education and  
Social Services

Original sponsors: Kerttula, Sturgulewski,  
Halford, et al

1 IN THE SENATE BY THE HEALTH, EDUCATION, AND SOCIAL SERVICES COMMITTEE  
2 CS FOR SENATE BILL NO. 8 (HESS)  
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 a personal safety curriculum in  
7 public schools."

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

9 \* Section 1. AS 14.30.360 is amended to read:

10 Sec. 14.30.360. CURRICULUM. (a) Each district in the state  
11 public school system shall be encouraged to initiate and conduct a  
12 program in health education for kindergarten through grade 12. The  
13 program should include instruction in physical health and personal  
14 safety including alcohol and drug abuse education, cardiopulmonary  
15 resuscitation (CPR), early cancer prevention and detection, dental  
16 health, family health, environmental health, the identification and  
17 prevention of child abuse. <sup>CHILD ABDUCTION</sup> neglect, sexual abuse and domestic  
18 violence, and appropriate use of health services.

19 (b) The state board shall establish by regulation guidelines for  
20 a health and personal safety education program. Personal safety  
guidelines are to be developed in consultation with the Council on  
Domestic Violence and Sexual Assault. Upon request, the Department  
21 of Education <sup>and the Council on Social Services</sup> shall provide technical assistance to  
22 school districts in the development of personal safety curriculum.

23 A school health education specialist posi-  
24 tion shall be established and funded in the department to coordinate  
25 the program statewide. Adequate funds to enable curriculum and re-  
26 source development, adequate consultation to school districts, and a  
27 program of teacher training in health and personal safety education  
28 shall be provided.

HESS - MOVED OUT - 3/25/85

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 ~~CS SB~~ HOUSE BILL NO. 21 (HESS)

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 criminal background checks; and  
7 providing for an effective date."

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

9 \* Section 1. AS 12.62.035(a) is amended to read:

10 (a) Notwithstanding any other provision of law, an interested  
11 person [as defined in (e) of this section] may request from the commis-  
12 sion records of all convictions of an individual for crimes that might  
13 pose a risk of harm to a child if the individual [INVOLVING CONTRIBUT-  
14 ING TO THE DELINQUENCY OF A MINOR AND ANY SEX CRIMES OF A PERSON WHO]  
15 holds or applies for a position in which the individual [PERSON] has  
16 or would have supervisory or disciplinary power over a minor. The  
17 commission shall authorize the disclosure of the information to the  
18 requesting interested person and shall provide a copy of the informa-  
19 tion to the individual [PERSON] who is the subject of the request.

20 \* Sec. 2. AS 12.62.035(e)(1) is repealed and reenacted to read:

21 (1) "crime that might pose a risk of harm to a child"  
22 includes a violation or attempted violation of present or former  
23 Alaska statutes regarding the offenses now designated as murder,  
24 manslaughter, negligent homicide, assault, reckless endangerment,  
25 kidnapping, sexual assault, sexual abuse of a minor, unlawful ex-  
26 ploitation of a minor, incest, indecent exposure, robbery, arson,  
27 endangering the welfare of a minor, contributing to the delinquency of  
28 a minor, distribution of child pornography, promoting prostitution,  
29 and felony offenses involving distribution of controlled substances;

1 it also includes a violation or attempted violation of the laws of  
2 another jurisdiction if the offense would have been one of the crimes  
3 listed in this paragraph if committed in this state;

4 \* Sec. 3. AS 12.62.035 is amended by adding a new subsection to read:

5 (f) In addition to the information for which disclosure is  
6 authorized under (a) of this section, the commission may disclose the  
7 existence of an outstanding warrant for the arrest of the person who  
8 is the subject of the request if the warrant is for a crime that might  
9 pose a risk of harm to a child.

10 \* Sec. 4. AS 25.23.100(d) is amended to read:

11 (d) Except as provided in (g) and (i) of this section, an inves-  
12 tigation shall be made by the department or any other qualified agency  
13 or person designated by the court to inquire into the conditions and  
14 antecedents of a minor sought to be adopted and of the petitioner for  
15 the purpose of ascertaining whether the adoptive home is a suitable  
16 home for the minor and whether the proposed adoption is in the best  
17 interest of the minor. The department shall request a background  
18 check by the Department of Public Safety under AS 47.35.065 on each  
19 person who seeks to adopt a minor. + foster

20 \* Sec. 5. AS 47.35 is amended by adding a new section to read:

21 ~~Sec. 47.35.065. BACKGROUND CHECKS. (a) The Department of~~  
22 ~~Public Safety shall conduct background checks on all persons licensed~~  
23 ~~under this chapter and their employees and, as requested by the~~  
24 ~~Department of Health and Social Services under AS 25.23.100(d), on a~~  
25 ~~person who seeks to adopt a minor. The background check shall consist~~  
26 ~~of an identity check for purposes of investigating criminal history~~  
27 ~~and a fingerprint check of both state and national criminal records.~~  
28 ~~The background check shall be based on information gathered and sub-~~  
29 ~~mitted by the department. Persons are subject to the background check~~

1 as follows:

2 (1) persons currently licensed under this chapter and their  
3 employees shall, before their next birthday, consent to the background  
4 check and submit the appropriate information;

5 (2) persons applying for licenses under this chapter or  
6 applying for employment by a licensee consent to the background check  
7 by submitting the appropriate information and may not be licensed or  
8 hired until the check is completed;

9 (3) persons seeking to adopt minors consent to the back-  
10 ground check by submitting the appropriate information.

11 (b) The cost of conducting the background check on a person  
12 shall be paid by that person. A person for whom the check has been  
13 completed shall be issued a card indicating that a background check  
14 has been conducted. The card is valid for two years.

15 (c) Information gathered under this section is confidential and  
16 is not subject to public inspection and copying under AS 09.25.110 and  
17 09.25.120. However, in accordance with department regulations, back-  
18 ground reports may be used by appropriate governmental agencies with  
19 licensing or child protection functions.

20 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.-  
21 10.070(c).

Funding Information  
General Fund \$235,900  
Other Funds - 0 -  
\$235,900

1 IN THE SENATE

BY FAIKS

2 SENATE BILL NO. 27

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Depart-  
7 ment of Public Safety, Council on Domestic Violence  
8 and Sexual Assault, for a training program on the  
9 prevention, intervention, investigation and treatment  
10 of sexual and physical abuse of minors; and providing  
11 for an effective date."

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

13 \* Section 1. The sum of \$235,900 is appropriated from the general fund  
14 to the Department of Public Safety, Council on Domestic Violence and Sexual  
15 Assault, for a program under AS 18.66.050 to train teams of community  
16 professionals, including but not limited to law enforcement officials,  
17 prosecuting attorneys, victim advocates, social workers, teachers and  
18 medical personnel on the prevention, intervention, investigation and treat-  
19 ment of sexual and physical abuse of minors.

20 \* Sec. 2. The unexpended and unobligated portion of the appropriation  
21 made by this Act lapses into the general fund June 30, 1986.

22 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
23 10.070(c).

Offered: 2/1/85  
Referred: Finance

Original sponsors: Faiks, Sturgulewski,  
Halford, et al

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 28 (HESS) am

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 training state employees, and  
certain employees of the districts of the state  
public school system on the recognition and reporting  
of child abuse and neglect."

7

8

9

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

11

\* Section 1. AS 47.17 is amended by adding a new section to read:

12

Sec. 47.17.022. TRAINING. (a) A person employed by the state

13

who is required under AS 47.17 to report abuse or neglect of children  
shall receive training on the recognition and reporting of child abuse  
and neglect.

14

15

16

(b) Each department of the state that employs persons required  
to report abuse or neglect of children shall provide

17

18

(1) initial training required by this section to each new  
employee during the employee's first six months of employment, and to  
any existing employee who has not received equivalent training; and

19

20

21

(2) appropriate in-service training required by this sec-  
tion as determined by the department.

22

23

(c) Each department that must comply with (b) of this section  
shall develop a training curriculum that acquaints its employees with

24

25

(1) laws relating to child abuse and neglect;

26

(2) techniques for recognition and detection of child abuse  
and neglect;

27

28

(3) agencies and organizations within the state that offer  
aid or shelter to victims and the families of victims of child abuse

29

*enrollment procedure*

Original sponsors: ~~Phillips, Goll  
and Larsen~~

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

**SB 86**

2 CS FOR ~~HOUSE BILL NO. 19~~ (HESS)

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 runaway and missing minors."

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

8 \* Section 1. AS 47.10.140(e) is amended to read:

9 (e) Except for temporary detention pending a detention hearing  
10 [OR TEMPORARY DETENTION UNDER (f) OF THIS SECTION], a minor may [NOT]  
11 be detained only [EXCEPT] by court order.

12 \* Sec. 2. AS 47.10 is amended by adding a new section to read:

13 Sec. 47.10.141. RUNAWAY AND MISSING MINORS. (a) Upon receiving  
14 a request to locate a minor evading the minor's legal custodian or  
15 otherwise missing, a law enforcement agency shall make reasonable  
16 efforts to locate the minor and shall immediately complete a missing  
17 person's report containing information necessary for the identifica-  
18 tion of the minor. As soon as practicable, but not later than 24  
19 hours after completing the report, the agency shall transmit the  
20 report for entry into the Alaska Public Safety Information Network and  
21 the National Crime Information Center computer system. As soon as  
22 practicable, but not later than 24 hours after the agency learns that  
23 the minor has been located, it shall request that the Department of  
24 Public Safety and the Federal Bureau of Investigation remove the  
25 information from the computer systems.

26 (b) A peace officer shall take into protective custody a minor  
27 described in (a) of this section if the minor is not otherwise subject  
28 to arrest or detention. The peace officer shall honor the minor's  
29 preference to either (1) return the minor to the legal custodian or

1 or neglect; and

2 (4) procedures for required notification of suspected abuse  
3 or neglect.

4 (d) Each department that must comply with (b) of this section  
5 shall file a current copy of its training curriculum and materials,  
6 with the Council on Domestic Violence and Sexual Assault. Any depart-  
7 ment may seek the technical assistance of the council or the Depart-  
8 ment of Health and Social Services in the development of its training  
9 program.

10 (e) The districts of the state public school system shall devote  
11 at least one-half day of existing in-service training time to train  
12 school teachers and school administrative staff members on the recog-  
13 nition and reporting of child abuse and neglect.

*enrollment procedure*

Original sponsors: ~~Phillips, Goll and Larsen~~

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

**SB 86**

2 CS FOR ~~HOUSE BILL NO. 19~~ (HESS)

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 runaway and missing minors."

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

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10 [OR TEMPORARY DETENTION UNDER (f) OF THIS SECTION], a minor may [NOT]  
11 be detained only [EXCEPT] by court order.

12 \* Sec. 2. AS 47.10 is amended by adding a new section to read:

13 Sec. 47.10.141. RUNAWAY AND MISSING MINORS. (a) Upon receiving  
14 a request to locate a minor evading the minor's legal custodian or  
15 otherwise missing, a law enforcement agency shall make reasonable  
16 efforts to locate the minor and shall immediately complete a missing  
17 person's report containing information necessary for the identifica-  
18 tion of the minor. As soon as practicable, but not later than 24  
19 hours after completing the report, the agency shall transmit the  
20 report for entry into the Alaska Public Safety Information Network and  
21 the National Crime Information Center computer system. As soon as  
22 practicable, but not later than 24 hours after the agency learns that  
23 the minor has been located, it shall request that the Department of  
24 Public Safety and the Federal Bureau of Investigation remove the  
25 information from the computer systems.

26 (b) A peace officer shall take into protective custody a minor  
27 described in (a) of this section if the minor is not otherwise subject  
28 to arrest or detention. The peace officer shall honor the minor's  
29 preference to either (1) return the minor to the legal custodian or

1 (2) take the minor to an office specified by the Department of Health  
2 and Social Services or a facility or contract agency of the depart  
3 ment. If an office specified by the department or a facility o  
4 contract agency of the department does not exist in the community, th  
5 officer shall take the minor to another suitable location and promptl  
6 notify the department. A minor under protective custody may not b  
7 housed in a jail or other detention facility. Immediately upon takin  
8 a minor into protective custody the officer shall advise the mino  
9 orally and in writing of the right to social services under AS 47.10.

10 ( 142(b), and, if known, the officer shall advise the legal custodia  
11 that the minor has been taken into protective custody.

12 \* Sec. 3. AS 47.10.140(f) and (g) are repealed.  
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*1 change*

Hein/Cook  
3/15/85.

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

*SB 143*

2 CS FOR ~~HOUSE~~ ~~BILL NO. 88~~ (HESS)

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

47.10.010(D)

ADD

// IMMEDIATE AND SUBSTANTIAL RISK THAT THE CHILD WILL BE SEXUALLY ABUSED //

JURISDICTIONAL PROBLEM - COURT CAN'T REMOVE CHILDREN IN SEXUAL ABUSE INSTANCES

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

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

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

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

(a) The Department of Health and Social Services may take emergency custody of a minor upon discovering any of the following circumstances:

(1) the minor has been abandoned;

(2) the minor has been grossly neglected by the minor's parents or guardian as "neglect" is defined in AS 47.17.070(5), and the department determines that immediate removal from the minor's 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 abuse,  
17 [OR] neglect, [OR] sexual abuse, or sexual exploitation, the legisla-  
18 ture requires the reporting of these cases by practitioners of the  
19 healing arts and others to the appropriate public authorities. It is  
20 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, <sup>CUSTODIAN OR GUARDIAN</sup> 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 <sup>person</sup> ~~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 \* Sec. 25. AS 47.35.070 is amended to read:

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

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

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

Introduced: 1/23/85  
Referred: Health, Education & Social Services  
and Judiciary

1 IN THE SENATE

BY DEVRIES

2

SENATE CONCURRENT RESOLUTION NO. 3

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

Relating to background checks on school

6

district employees who come into contact

7

with children.

8

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

9

WHEREAS sexual abuse of minors is a serious and widespread problem;

10

and

11

WHEREAS existing law permits employers of individuals having contact

12

with children to obtain certain information on convictions of these indi-

13

viduals relating to sex crimes (AS 12.62.035);

14

BE IT RESOLVED by the Alaska State Legislature that local school

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districts are encouraged to implement appropriate background checks on all

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school district employees who come into contact with children.

Original sponsor: Health, Education and  
Social Services Committee

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IN THE SENATE

BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 243 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the protection of children and  
dependent adults."

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

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

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

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

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

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

(1) exposes the child to circumstances creating a substantial risk of physical injury or sexual abuse; or

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

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

1 class A misdemeanor.

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

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

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

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

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

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

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

26 (a) In prosecutions for the crimes 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, evidence of  
29 the complaining witness' previous sexual conduct may not be admitted  
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

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

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

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

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

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

(i) both parents,

1  
2 (ii) the surviving parent, or

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

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

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

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

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

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

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

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

6 \* Sec. 9. 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 that immedi-  
15 ate medical attention is necessary;

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

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

25 \* Sec. 10. AS 47.10.142(c) is amended to read:

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

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2 necessary to protect the child, the department shall notify the court  
3 of the emergency custody by filing, within 24 hours after custody was  
4 assumed, [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-  
5 tion alleging that the child is a child in need of aid. If the de-  
6 partment releases the child within ~~24~~ hours after taking the child  
7 into custody and does not file a child in need of aid petition the  
8 department shall, within 24 hours after releasing the child, file with  
9 the court a report explaining why the child was taken into custody.

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

11 (8) "sexual abuse" means

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

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

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

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

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

OLD Sec 12  
PURPOSE DELETED

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

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

- 14 (1) practitioners of the healing arts;
- 15 (2) teachers and administrative staff members of private  
16 and public schools;
- 17 (3) human services providers;
- 18 (4) peace officers, and officers of the Department of  
19 Corrections;
- 20 (5) administrative officers of institutions;
- 21 (6) child care providers;
- 22 (7) custody investigators; COUNSELORS
- 23 (8) employees and volunteers of domestic violence programs,  
24 sexual assault programs, or crisis shelters;
- 25 (9) guardians and conservators.

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

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

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

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

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

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Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reason to believe that the matter visually depicts a minor engaged in conduct described in AS 11.41.455(a) shall promptly report this to the nearest law enforcement agency. The person shall allow law enforcement agents access to the material and provide the law enforcement agency with all information known about the origin of the matter.

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

Sec. 47.17.025. DUTIES OF PUBLIC AUTHORITIES. (a) After receiving a report of harm to a child resulting from abuse or neglect by a person responsible for the child's welfare, a law enforcement agency shall immediately notify the Department of Health and Social Services and the Department of Law. The Department of Health and Social Services shall investigate the report and, within 72 hours after receiving the report, shall provide a written report of its investigation to the Department of Law for review. If after a preliminary investigation the Department of Health and Social Services determines that the harm was not caused by a member of the child's family, the department shall so notify the Department of Law.

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

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

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

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

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

15 \* Sec. 16. AS 47.17.050 is amended to read:

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

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

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

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

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

1 radiological examination.

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

4 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person  
5 who knowingly fails or refuses to report as required under AS 47.17.-  
6 020 or 47.17.023 is guilty of a class B misdemeanor.

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

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

11 (1) has sexually abused a child;

12 (2) has physically abused a child;

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

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

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

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

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

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

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

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

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

6 (7) "sexual exploitation" means

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

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

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

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

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

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

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

\* 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].

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7 \* Sec. 25. AS 47.35.070 is amended by adding a new subsection to read:

8           (b) The department may by regulation devise a system of civil  
9 enforcement. The system may employ civil penalties not to exceed \$200  
10 for each day during which one or more violations of a licensing stat-  
11 ute or licensing regulation occurs. The imposition of a civil penalty  
12 does not prevent prosecution and sentence for a criminal offense.  
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For complete report see:  
LLIB 8500250

# AN INCIDENCE STUDY OF INCEST IN JUNEAU



**AWARE**

CSSB 243 (HESS), Relating to the protection of children

SECTION-BY-SECTION ANALYSIS

Section 1

Under existing AS 11.51.100, endangering the welfare of a minor, it is class C felony offense for a parent or guardian to intentionally desert a child under circumstances which place the child in substantial danger of injury. Section 1 of this bill adds "in the first degree" to the title of the existing crime (sec. 2, below, adds a "second degree" form of the crime), and expands the law's coverage to children under the age of 13 (rather than under age 10).

Section 2

This section creates a new class A misdemeanor crime: endangering the welfare of a minor in the second degree. A person commits this crime if he has been entrusted with the care of a child under 13 and either: (1) negligently exposes the child to circumstances creating a substantial risk of injury or abuse, or (2) negligently exposes the child to physical injury by failing to provide the child with necessary care, food, shelter, or medical attention.

Sections 3 and 4

Under AS 11.61.125, enacted in 1983, it is a class C felony offense to bring child pornography (visual depictions of children engaged in sex acts) into the state for sale or distribution. The law also prohibits possession or publication of such material with intent to sell it. As presently written, however, AS 11.61.125 does not explicitly prohibit the sale of child pornography. Section 3 strengthens existing law, by explicitly prohibiting sale, and further, prohibits sale and distribution whether or not for commercial consideration.

Section 5

AS 12.10.020(c), enacted in 1983, extended the general five-year statute of limitations for sex crimes against children. Under certain circumstances, a crime of this nature can be prosecuted up to 10 years after it was committed. This extension was adopted because, under the prior law, the five-year limitation period often expired before the child victim became old enough to report the assault. This was especially true when the victim was a very young child. Section 4 of this bill amends the language of AS 12.10.020 to include prostitution related offenses among those offenses to which the extension applies. The amended language also includes offenses committed under sections of the criminal code that were repealed when the laws relating to sexual offenses against children were revised in 1983.

### Section 6

AS 12.45.045, which limits the introduction in a sexual assault trial of evidence of the victim's previous sexual conduct, was adopted in 1978 as part of the new criminal code. Virtually all states have adopted some version of such a "rape shield" statute. The statute is designed to protect the sexual assault victim from unwarranted invasion into her private life. As originally adopted in the new criminal code, serious sexual offenses against children were included in the general sexual assault statutes. The protections included in AS 12.45.045 thus applied in child abuse cases as well as adult rape cases.

In 1983 the criminal laws regarding sexual offenses against children were revised; most sexual offenses against children are now called "sexual abuse of a minor" in one of four degrees. Unfortunately, the language of AS 12.45.045 was not altered to reflect the new designation for sexual crimes against children. Section 6 of this bill amends the statute to make it clear that the protections accorded to adult victims of a sexual assault apply to child victims as well.

### Section 7

Under AS 47.10.081, before a juvenile court may "dispose of" (sentence) a delinquent minor, all parties must receive a predisposition report. This report is prepared by a DFYS worker. Section 12 amends AS 47.10.081(c) to provide that the report must be provided to all parties six (rather than 10) working days before the hearing.

The present 10-day requirement presents considerable practical problems, and often requires a delay in the disposition proceedings. In delinquency dispositions where there are 30 or less calendar days between adjudication and disposition, investigating probation officers may have fewer working days to complete their investigation and prepare the disposition report than the parties have to review the document prior to court. The ten day requirement also eliminates any possibility of a practical effort to reduce the total time between adjudication and disposition for those children detained during that process. The present "10-day rule" has resulted in lengthening periods of detention because additional time is necessary to complete predisposition investigations and disposition hearings must be postponed.

### Section 8

This section would change the standard for assuming emergency custody in neglect cases to conform to the same standard used in abuse cases. It would thus allow earlier emergency intervention to protect neglected children. It would also allow assumption of custody of neglected children who need immediate medical attention rather than requiring that their life be endangered.

### Section 9

Section 9 allows DFYS discretion in filing petitions when emergency custody has been assumed in situations that do not require continued protective custody or DFYS involvement. These instances constitute a small percentage of the emergency custody cases, and involve situations in which a primary or temporary caretaker has allowed the child to wander off and the child is discovered by parties who do not know the family. Under current law, in order to provide temporary shelter for the child until parents are located, DFYS must assume emergency custody. A request to dismiss is often filed with the petition in these situations, and the petition is filed only because the present statute appears to require it. This section eliminates the need for this unnecessary paperwork.

### Section 10

Section 10 defines the term "sexual abuse" for purposes of civil child in need of aid (CINA) proceedings under AS 47. Although the term "sexual abuse" is now used in AS 47, it is not defined. The proposed definition would prevent constitutional challenges to the state's assumption of jurisdiction over children who are sexually abused by their parents.

To allow DFYS intervention in all cases of suspected sexual abuse, the definition is quite broad. It includes all sexual conduct which is also a crime. Other forms of inappropriate touching are also included, but conduct reasonably necessary for normal caretaker or medical responsibilities is excluded.

### Section 11

AS 47.17.010 is a statement of legislative intent that protective services should be provided to child victims of abuse and neglect to prevent further harm to the child, enhance the general well-being of children, and preserve family life. Section 11 clarifies that family life should be preserved whenever it is in the best interests of the child to do so.

### Section 12

This section revises and expands existing law requiring persons in certain professions to report to DFYS suspected abuse of a child by a parent or other caretaker. Under existing law, a significant number of persons who regularly have access to information that a child has suffered harm as the result of abuse or neglect by a caretaker are not required to report that information. The revised statute focuses upon those individuals who regularly have contact with a child, or a child's family, and are therefore in a position to gain knowledge of child abuse and neglect. These changes are needed to insure that all children abused or neglected by caretakers come to the attention of DFYS.

Under present law, persons in the categories listed in AS 47.17.020 are required to report suspected child abuse or neglect only if the abuse or neglect is caused by or attributable to the actions of a person "responsible for the child's welfare." Thus, harm caused by a person not related to the child or residing in the child's home need not be reported to DFYS.

Section 12 adds a new provision to the statutes: reports to law enforcement agencies. If a person listed in AS 47.17.020 (the general reporting statute) has reason to believe that a child has suffered harm as a result of injury, neglect, or exploitation by someone other than a family member or caretaker, the person must report that harm to a law enforcement officer (rather than DFYS). The law should require that all instances of abuse or neglect be reported to the authorities, not just intrafamily abuse. All children should be protected under the law, without regard to the identity of the perpetrator or the relationship to the child victim.

If the person reporting the abuse is not aware of the perpetrator's relationship to the victim, Section 12 allows a report to be made to either DFYS or a law enforcement officer.

### Section 13

Section 13 requires film processors to report suspected cases of child pornography to law enforcement authorities for investigation. Several other states have such a requirement. On at least one occasion in the past, an Alaska man who photographed a young child engaged in sex acts with him was apprehended as a result of a similar reporting requirement in another state. A person who knowingly fails to make a report as required in this section is guilty of a class B misdemeanor under AS 47.17.068 (see sec. 21, below).

### Section 14

The current scope of DFYS services does not extend beyond intra-family offenses. Section 14 clarifies that if, after a preliminary investigation, DFYS determines that the harm was not caused by a family member, the report shall be turned over to a local law enforcement officer.

### Section 15 - 17

Sections 15, 16 and 17 amend the confidentiality, immunity, and privileged evidence provisions in existing AS 47.17 to make it clear that the applicability of these provisions applies to both civil and criminal proceedings. This clarification is necessary as a result of the appellate court's decision in State v. R.H. and Wetherhorn, 683 P.2d

269 (Alaska App. 1984). The Wetherhorr court held that the phrase "judicial proceeding," as used in AS 47.17.060 (dealing with evidence that is not privileged), refers only to civil proceedings.

Section 18

Section 18 contains a conforming amendment per the clarified definition of abuse in Section 21.

Section 19

This section contains a conforming amendment extending existing "B" misdemeanor penalties for failure to report suspected child abuse, as explained above regarding Section 13.

Section 20

Section 20 of this bill provides broad authority to the state to enjoin or limit persons who endanger children in the ways specified from having contact with children. While there may be common law authority for this view, statutory confirmation of this authority removes one issue from possible litigation in cases where the attorney general chooses to bring an action to enjoin or limit a person from contact with children. This addresses the problem of no regulation of day care providers who care for less than five children without burdening the public with regulation of all day care providers.

Section 21

This section clarifies the definition of abuse in AS 47.17 (reporting statute) in light of existing definitions of "neglect" and "child" in this section. Abuse as used in Title 47 would apply to all incidents of harm against children regardless of who the perpetrator is unless it is specifically stated that the perpetrator must be a person responsible for the child's welfare. This distinction is necessary, as DFYS's scope does not extend beyond intra-family abuses.

Section 22

Existing law requires "practitioners of the healing arts" to report suspected child abuse or neglect. This section expands the definition of this term to include dental hygienists, nurse practitioners and physician's assistants. Although these health care professionals are considered included in the current definition, this amendment clears up any possible uncertainty by specifically referring to persons who hold these positions.

Section 23

This section clarifies the definition of sexual exploitation in AS 47.17 (reporting statute).

Section 24

This section adds new definitions related to the expanded classes of persons who must report child abuse.

Sections 25 and 26

Section 25 amends AS 47.35.070(a) to bring this statute into conformity with the criminal code by making violations of child care licensing statutes and regulations a class B misdemeanor. Section 26 adds language that gives statutory authority to the Department of Health and Social Services to establish a system of civil enforcement (including the levy of up to \$200 daily in civil penalties) for violations of its licensing statutes and regulations.

This authority will provide the department with a valuable regulatory tool. Presently, the department has only two choices with respect to licensees who violate statutes and regulations. The department can either revoke the license or do nothing. While the department can require the licensee to establish a plan of correction for violations, its only lever to enforce this requirement is the authority to revoke the license. If a system of civil penalties existed, the department would have the additional tool of fining licensees for minor violations of regulations and statutes. The new language makes it clear that imposition of a civil penalty would not preclude criminal prosecution in appropriate circumstances.

**Municipal Child Abuse Task Force**

**May 1985**

**Final Report and  
Recommendations for  
Mayor Tony Knowles  
Superintendent Gene Davis**

LEGISLATION  
SUBCOMMITTEE  
REPORT

## Overview

The Legislative Subcommittee reviewed all bills submitted in the Fourteenth Legislature by April 18, 1985. There were numerous meetings with social and health services providers, attorneys, Municipal employees including Chip Dennerlein, and school district employees. Many bills were modified during this time period. It is the subcommittee's belief that some bills were changed as a result of the discussed recommendation by members of this subcommittee. Obviously a great number of items will be carried over to the Fifteenth Legislature. The following recommendations should be of assistance in considering a position on legislation pertaining to child abuse. Legislation in this area can generally be classified in the following three categories: Prevention, Intervention, After Intervention.

### Prevention

Most of the measures that would assist in the prevention of child abuse are environmental factors that the general public may or may not associate with a set up for future abuse or neglect of children. This may be why there is so little legislation and funding for the investment toward no future abuse and neglect. Nonetheless, some areas that need to be addressed are described below.

The issue of pornography continues to be presented in the literature related to child abuse as at least a catalyst or stimulus for the perpetrator to engage in abusive acts toward children and women. One goal is to severely limit or eliminate the type of pornography that condones or depicts sexual and/or violent acts on children and women.

One of the best prevention is education about parenting and positive non-violent communication between individuals. Funding for these types of long term projects should be considered in the budget.

Another prevention effort is the systematic inclusion of support programs for parents in the budget. Such programs would include: public health nurses to visit every new parent at least once; support counseling for the non-offended child in a family as well as the victim; adequate availability of halfway homes or foster homes for children who are not or no longer victims but do not have a home that is safe, adequate employment and housing for everyone; professionals in the fields of health, social services, and education who are trained to recognize abuse and who are adequately prepared to provide daily living skills

that eliminates abuse behaviors; as part of the school curriculum, provide the opportunity for each child to learn about the effects of victimization and skills to not perpetuate the cycle of abuse.

Perhaps the Fifteenth Legislature or the Municipality of Anchorage will take up some of these issues.

### Intervention

The majority of the legislation proposed is in this general area. There are many impediments that appear to be an out growth of years of adding or modifying one section of a statute at a time in attempt to respond to practical problems in the field. Child sexual assault laws an example: first laws were passed making this a specific crime. Next, provisions were added to allow for videotaped testimony. Courts still do not have the equipment to implement this without bringing the child in front of the alleged perpetrator, presumptive sentences were passed without additional funds for police and prosecutors needed since more alleged perpetrators would choose to go to trial, especially in absence of community based treatment programs, rape shield laws are just now being extended to children, etc.

This subcommittee encountered many frustrations in attempting to identify the actual gaps and barriers in the legislation to fully and appropriately intervene in child abuse and neglect. Many bills such as CSHB67 and CSHB88 received many suggestions for additions and deletions before and throughout the hearing process. Perhaps future legislation will be proposed after full review of all pertinent sections of the law, administrative code, and practice. This approach would require legislators, attorneys, human service workers, and victims or parents of victims to be involved in productive hours of discussion seeking to identify the problems and potential solutions prior to drafting legislation.

### After Intervention

In a time of potential reduction of funding the topics of support counseling, treatment, and advocacy services for victims and their families are not the top priority of new legislation. Indeed, this subcommittee continuously found the reality that most amelioration of system's procedures in responding to child abuse and neglect would, in the immediate future, stimulate more request for services. There are many more victims than are currently identified since changes in the laws generally offers victim only safety to ask for help or at least be identified as needing assistance. The need to provide services for the

sometimes long process of rehabilitation is generally overlooked. Fiscal notes do not reflect the cost of the legislation as it affects the human services agencies in the community. An excellent example of this is the goal of responding to runaways within 12 hours when there is virtually no placement for the majority of these children.

#### CURRENT LEGISLATION FROM THE FOURTEENTH SESSION\*

Training: The Subcommittee generally supports all bills related to the concept of having in-service training for teachers and other school personnel. After discussing the possible fiscal note and the chance that training may be one of the items cut from the budget, the subcommittee supports the requirement of at least one half day being mandatory for training about the child abuse law, identification, and intervention skills for all school personnel. (HB 18, B 85).

The Subcommittee believed it would be impractical to require training as part of state certification for each teacher (HB 18, HB 174).

The Subcommittee endorses the concept of mandatory training on abuse of minors for all state employees and the development of trained response teams throughout the state (SB 27, CS SB 28).

Support payments: Subcommittee supports the bill as written (CS HB 92). There has long been a need to fully develop a collection mechanism for the court awards of child and spousal support.

Runaways: The concept received support but the subcommittee identified many problems with implementation; such as, there is no lead agency to deal with runaways, the fiscal note to DFYS and police would be great since new workers would need to be added. There is an inadequate number of available space in runaway shelters/safe homes. There is a lack of availability of affordable counseling for family members identified as a result of the minor's attempt to runaway (HB 19, SB 86).

Hearsay: The Subcommittee supported the admissibility of first party hearsay (a counselor who was told the story by the victim) at the grand jury level for child sexual assault cases.

\*Subcommittee recommendations represent unanimous support by subcommittee members except for CSS67, mandatory number of inservice training days for school personnel, and presumptive sentences for child sexual assault.

The Subcommittee further identified the need to fund the court system to implement existing videotape law and two way mirror testimony. These two mechanisms assist in protecting the child victim from possible psychological harm or intimidation as a result of giving their testimony in front of their accused while still protecting the accused's right to confront the accuser.

Suggestions were made about limiting the possible harm to the child witness by allowing the presence of a non-testifying advocate to be with the child during grand jury and limiting the questioning by the grand jury so only one juror asks all questions instead of many asking the child to detail the events. The concept of hearsay evidence at trial was discussed but generally agreed to be unconstitutional.

The Subcommittee believes there is a need to add to the definition of unavailability by including the concept of psychological incompetence or distress. Concern was expressed that videotaping/closed circuit testimony may prevent the defendant from confronting the accuser.

The Subcommittee recommends that hearsay testimony be applicable to children 10 years of age or younger (SB 3, HB 67, HB 88).

### Reporting

This legislation revises and expands existing law requiring persons in certain professions to report to DFYS suspected abuse of a child by a parent or other caretaker. Under existing law, a significant number of persons who regularly have access to information that a child has suffered harm as the result of abuse or neglect by a caretaker are not required to report that information. The revised statute would focus upon those individuals who regularly have contact with a child, or a child's family, and are therefore in a position to gain knowledge of child abuse and neglect. These changes are needed to insure that all children abused or neglected by caretakers come to the attention of DFYS.

Under proposed law, persons in the categories listed in AS 47.17.020 would be required to report suspected child abuse or neglect only if the abuse or neglect is caused by or attributable to the actions of a person "responsible for the child's welfare". Thus, harm caused by a person not related to the child or residing in the child's home need not be reported to DFYS.

The Subcommittee supports a new provision (CSHB88) to the statutes: reports to law enforcement agencies. If a person listed in AS 47.17.020 (the general reporting statute) has reason to believe that a child has suffered harm as a result of injury, neglect, or exploitation by someone other than a family member or caretaker, the person must report that harm to a law enforcement officer (rather than DFYS). The law should require that all instances of abuse or neglect be reported to the authorities, not just intra-family abuse. All children should be protected under the law, without regard to the identity of the perpetrator or the relationship to the child victim. If the person reporting the abuse is not aware of the perpetrator's relationship to the victim, the statute allows a report to be made to either DFYS or a law enforcement officer (HB 88, SB 243, HB 67, SB 3, HB 179, SB 1).

The Subcommittee also supports the expanded definition of abuse and the ability of the state to limit non-related persons from having contact with the child victim (HB 88, SB 243).

In addition, the Subcommittee urges that DFYS internal policies and procedures require workers to ensure that every report of child abuse and neglect be taken from the informants and forwarded to law enforcement. The current practice of merely redirecting callers concerned about interfamilial child abuse must be changed in order to minimize "lost" reports.

Definition of Domestic Violence: The Subcommittee supports the concept of the enlargement of domestic violence victims to include parents and grandparents. Further, the Subcommittee endorses the removal of marriage as a defense for sexual assault (CSSE 29).

Training Teams of Community Professionals: The Subcommittee supports the concept of each community receiving assistance to form a coordinated prevention and response team to all incidents of family violence and strangers sexual assault. It is hoped that local communities will pass one aspect of violence. The committees will hopefully receive training from their own local family violence agencies.

Clearing House for Central Registry/Missing Persons: The Subcommittee endorses the concept of a central registry of missing persons/children.

Physical Exams: The Subcommittee support development of protocol for addressing needs of child victims in regards to sexual assault examination kit.

Treatment resources are not adequate for child victims. The subcommittee Support recommends support for additional funding directed toward resources which are specifically geared for treating families, victims, and perpetrators.

Child Pornography: The Subcommittee supports the concept of the legislation that criminalizes all dispensing or production of pornography whether it is done for "commercial purposes" or private use. (CSHB88).

Restraining Orders: The majority of local communities police departments cooperate with Alaska State Troopers by serving domestic violence orders in these jurisdiction while the Troopers serve the area outside those boundaries. This does not occur in Anchorage. This bill would force such cooperation. The subcommittee understands the burden this legislation would place on local communities but believes that victims and families would be better served and protected by having the service performed by the same persons who must later enforce the orders (CSSB67).

#### FUTURE LEGISLATION

##### State Legislation

- (1) Mandate that all agencies utilize compatible statistics and categories in all computer data gathering (police, courts, local, and state reporting agencies) as has been recommended by the Attorney General's 1984 Task Force on Family Violence.
- (2) Develop protocols that address the needs of child victims of sexual assault during the necessary physical examination(s) and investigating interviews.
- (3) Form a Task Force on runaways, suicide, trouble teens, and children who do not fit within the guidelines of current services in order to develop a comprehensive system of case finding, intervention, and treatment.