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STATE OF ALASKA  
THE LEGISLATURE

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Mary Van Nimwegen

SB 355

H. HESS

3/20/90

H. HESS

3/29/90

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 31, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 3/29/90

The HESS Committee considered:

CSSB 355(JUD)am

CS SB NO. 355 (Jud) am SEX OFFENSES BY TEACHERS/SCHOOL EMPLOYEES

"An Act relating to crimes involving sexual penetration or sexual contact with minors, including situations where the adult occupies a position of special trust in relation to the minor; defining 'legal guardian' for certain crimes; and relating to the issuance to, and revocation of teaching certificates of, persons convicted of certain crimes involving a minor."

RECOMMENDATIONS:

- be replaced with \_\_\_\_\_  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) 1/24/90 Corr./Incl/Educa
- zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		*	
_____			
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[Signature]  
Chairman's Signature

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3811

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 16, 1990

SUBJECT: Amendments to CSSB 355 (Jud) am  
TO: Representative Johnny Ellis  
Attn: Jim Nordlund  
FROM: John B. Gaguine *JBG*  
Legislative Counsel

Enclosed is one amendment you requested to CSSB 355 am S (the "Satch Carlson bill") based on the grand jury report. This amendment is the one imposing a reporting requirement to the Professional Teaching Practices Commission (PTPC) by law enforcement officers and social workers. (I added the social worker requirement because it seemed appropriate and consistent with AS 47.17.) There is, however, a major problem with this amendment. As you see, it necessitates a title change, which under the Uniform Rules cannot be done without a resolution. If you wish, I can prepare such a resolution, or I can redo the amendment as a new bill.

I did not draft the other amendment recommended, relating to the PTPC notifying other state teacher licensing authorities about revocations for sexual misconduct, because the authority already exists. I happened to see on the news last night that the PTPC revoked Carlson's certificate, and notified all the other states. So I called the PTPC to see what their authority to do that was. They pointed me to a regulation, 4 AAC 12.095(b), which requires the Department of Education to "provide to all other state departments of education notice of revocation or suspension of a certification." I think that this regulation, which apparently was overlooked by the grand jury, meets the grand jury's desires. Of course, if you still want legislation on this matter, I will be happy to draft it.

If I may be of further assistance, please advise.

JBG:pl  
WKP3/047  
Enclosure

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 355 (Judiciary) am

Page 1, line 10:

Delete "and"

Page 1, line 13, following "minor":

Insert "; and requiring law enforcement officers and social workers to report to the Professional Teaching Practices Commission information concerning sexual misconduct by teachers"

Page 5, following line 16:

Insert a new bill section to read:

"\* Sec. 9. AS 47.17 is amended by adding a new section to read:

Sec. 47.17.021. REQUIRED REPORTING OF TEACHER MISCONDUCT. (a) A law enforcement officer or a social worker in the state shall disclose to the Professional Teaching Practices Commission information that the person has acquired in the performance of the person's professional duties and that gives the person reason to believe that a teacher in the state has engaged in conduct with a minor violating AS 11.41.434 - 11.41.438, 11.41.455, or 11.41.460. The report required under this subsection is in addition to the report required under AS 47.17.020.

(b) This section does not prohibit law enforcement officers and

social workers from reporting cases that have come to their attention in their nonoccupational capacities, nor does it prohibit any other person from reporting the information set out in (a) of this section."

Renumber the following bill section accordingly.

'x 'x \$1355

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs, )  
 )  
 GORDON C. CARLSON )  
 )  
 Defendant )

Case No. 3AN-889-7443 Cr.

MEMORANDUM DECISION AND ORDER

The defendant is an Anchorage high school teacher charged with two counts of Sexual Abuse of a Minor in the First Degree under AS 11.41.434(a)(2)(A) and one count of Sexual Abuse of a Minor in the Second Degree under 11.41.436(a)(3)(A) with a 17 year old female student. Both statutes prohibit a person 18 years of age or older from engaging in sexual penetration and contact with a person who is under 18 years old and who "is entrusted to the offender's care by authority of law."

The defendant moved to dismiss, asserting that the statutes do not apply to a high school teacher-17 year old student relationship. Alternatively, the defendant argues that even if the statutes are applicable, they are void for vagueness. The state opposes the motion to dismiss, arguing that the statutes are applicable because of the special legal relationship between high school teachers and students. The state also asserts that the statutes are not void for vagueness.

The language, "entrusted to the offender's care by authority of law," is not defined in the statutes, and the meaning of the phrase is not clear on the face of the statutes. The defendant argues that the language should be construed narrowly to refer to a guardian-ward relationship. The state argues for a broader definition that would encompass a variety of relationships, including teacher and student.

The goal of statutory interpretation is to give effect to legislative intent, with due regard for the meaning the statutory language conveys to others. Tesoro Alaska Petroleum Co. v. Kenai Pipeline Co., 746 P.2d 896 (Alaska 1987). Legislative intent is generally found in the statutory language, but where the language is vague or ambiguous, the intent must be derived by applying rules of construction.

A traditional rule of construction is that vague or ambiguous criminal statutes should be read narrowly in favor of the defendant and against the state. Kuvaas v. State, 696 P.2d 684 (Alaska App. 1985); State v. R.H., 683 P.2d 269 Alaska App. 1984). The court believes that construing the disputed language narrowly to refer to a guardian-ward relationship would be consistent with this rule of construction. This conclusion is further supported by several other considerations.

In construing statutes, courts may also resort to legislative history. City and Borough of Sitka v. I.B.E.W., Local Union 1547, 653 P.2d 332 (Alaska 1982). The Alaska Senate considered identical language in an earlier statute in 1978. See former AS 11.41.410. The Senate commented that the statute

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X

was intended to prohibit an offender from having sexual contact with a minor "under 18 who is entrusted to his care by authority of law (i.e., ward) or who is his son or daughter." 1978 Alaska Senate Journal, Supplement No.47, at 23. The Senate's use of the language, "i.e., ward" is instructive. The abbreviation, "i.e." stands for the Latin "id est," meaning "that is" or "that is to say." Black's Law Dictionary (5th Ed. 1979). This can be distinguished from the abbreviation, "e.g.," which generally means "for example." In using the language, "i.e., ward," the Senate apparently meant to limit application of the statute to wards.

The state's argument for a broad construction of the term "ward", based on the Model Penal Code, is not persuasive. Under the state's theory, the statutes could be applied to a variety of individuals, such as camp supervisors. The court believes that the term "ward" should be given its more traditional legal meaning. For example, in Title 13 of the Alaska Statutes, which covers decedent's estates, guardianships and trusts, "ward" is defined as "a person for whom a guardian has been appointed." AS 13.25.005(10). A "guardian," according to that section, is one who possesses the duties and powers set forth in AS 13.26.150(c), or one whose powers and duties have been specified by court order. A high school teacher does not fall within either category. Such a traditional construction is also consistent with the rule that vague statutes should be read narrowly in favor of the defendant. It is also consistent with the usage employed by the Alaska Supreme Court in discussing the

guardian-ward relationship. In Johnson v. Johnson, 544 P.2d 65 (Alaska 1975) the court stated that general guardians are "entrusted with the general care and supervision" of a ward or a ward's estate.

Another applicable rule of statutory construction is the doctrine of ejusdem generis, which means "of the same kind, class, or nature." Black's Law Dictionary (5th Ed. 1979). Under this doctrine, where general words are closely followed or preceded by specific words, the general words are regarded as referring to the same type or kind of thing as the specific words. State v. First National Bank of Anchorage, 660 P.2d 406 (Alaska 1982). In both statutes, the disputed language is followed in the same subsection with the phrase, "the offender's son or daughter, including an illegitimate or adopted child, or a stepchild." This language is specific, since it refers to a clearly defined group of people. The more general language, "entrusted to the offender's care by authority of law," should be construed as referring to the same type of relationship as the specific language. A guardian-ward relationship is very similar to the family relationships specified in the statutes. On the other hand, a teacher-student relationship is substantially different. Therefore, it appears that the legislature did not intend the general phrase to apply to a teacher-student relationship.

Had the legislature intended these statutes to apply to teachers, it could have said so in precise language. Other statutes use the specific term "teacher" when they are intended

to apply to teachers. For example, AS 11.81.430 provides several justifications for the use of physical force against another person. Subsection (a)(1) is directed toward "a parent, guardian or other person entrusted with the care and supervision of a child." Subsection (a)(2) is directed specifically at "a teacher." The court also notes the proposed legislation amending AS 11.41.434 by making it specifically applicable to "high school" personnel and "students." These examples clearly indicate the ability of the legislature to use precise terminology when it intends to refer to teachers.

Even if the legislature intended the statutes to apply to teachers, this court concludes that the language used is unconstitutionally vague. In order to survive a vagueness challenge, a statute "must give adequate notice to the ordinary citizen of what is prohibited." Stock v. State, 526 P.2d 3 (Alaska 1974). An ordinary citizen reading the statutes here would not have adequate notice of what conduct is prohibited.

Another concern in analysis of vagueness problems "is whether the statute gives undue discretion to prosecuting authorities in determining what constitutes the crime." Stock v. State, 526 P.2d 3 (Alaska 1974). Where imprecise statutes have invited arbitrary application "so that there has been a history or a strong likelihood of uneven application," they have been held unconstitutionally vague. Id. The defendant's affidavits provide evidence that the statutes have been applied unevenly in the past. The court need not decide this allegation, since it is sufficient if a "strong likelihood" of arbitrary

X

enforcement exists. In this case, the possibility<sup>X</sup> of uneven enforcement is sufficiently great, that the statute should be declared unconstitutionally vague.

Where the legislature does not clearly define the scope of a statute's coverage, the prosecution has unfettered discretion to apply the statute to whomever it desires. No matter how distasteful or undesirable certain alleged conduct may appear to the state or the public, the courts cannot permit the prosecution to assume this legislative responsibility. The state should not have the discretion whether or not to charge an individual teacher with an unclassified felony, carrying a maximum penalty of 30 years in prison with a presumptive sentence of 8 years, based on a statute which on its face does not clearly apply to teachers. Considering the level of influence a music teacher is likely to exercise over a 17 year old female student, such a result would seem illogical when one considers that an adult offender engaging in sexual penetration of a 13 year old generally commits only a class B felony, with no presumptive sentence. AS 11.41.436(c)(1). Certainly a 13 year old generally would be more susceptible to influence than a 17 year old high school student.

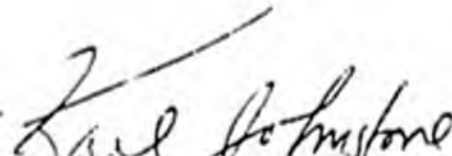
In summary, the court concludes that the statutes in question do not apply to prohibit sexual activity between a high school teacher and a 17 year old student. Alternatively, even if the legislature did intend the statutes to apply, the statutes are unconstitutionally vague.

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It is, therefore, ORDERED that the defendant's motion to dismiss indictment is GRANTED.

Dated this 18 day of January, 1990 at Anchorage, Alaska.

  
Karl S. Johnson,  
Superior Court Judge

**SEX OFFENSES: CSSB 355 (Judiciary) (RM)**  
**By Age of Offender and Classification of Felony**

DESCRIPTION OF OFFENSE	Any Age	18 Or Older	16 Or Older
Victim: Under 13 Relationship: None	Penetration: Unclass. Contact: B felony		
Victim: 13, 14, 15 + 3 yrs younger Relationship: None			Penetration: B felony Contact: C felony
Victim: Under 16 Relationship: Same household & offender in position of authority		Penetration: Unclass. Contact: B felony	
Victim: Under 16 Relationship: "Position of special trust"***		Penetration: Unclass. Contact: B felony	
Victim: 16 or 17 + 3 yrs younger Relationship: "Position of special trust"***		Penetration: B felony Contact: C felony	
Victim: Under 18 Relationship: Parent or "legal guardian"		Penetration: Unclass. Contact: B felony	
Victim: Any Age Relationship: Ancestor, descendant, brother, sister, uncle, aunt, nephew, niece		Penetration: C felony	
Victim: Any Age Relationship: None	Pen./No Consent: Unc. Con./No Consent: B		

\* "Legal guardian" means a person who is under a duty to exercise general supervision over a minor as a result of a court order, statute, or regulation, and includes foster parents and staff members and other employees of group homes or youth correctional facilities where a child is placed as a result of court order or action of the Division of Family and Youth Services.

\*\* "Position of special trust" means a youth leader, ~~employment leader~~, scout leader, athletic manager, coach, teacher, counselor, school administrator, religious leader, ~~possessions of the business~~, police officer, probation officer, guardian ad litem, babysitter, or substantially similar position.

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

**SEX OFFENSES: EXISTING LAW**  
By Age of Offender and Classification of Felony

DESCRIPTION OF OFFENSE	Any Age	18 Or Older	16 Or Older
Victim: Under 13 Relationship: None	Penetration: Unclass. Contact: B felony		
Victim: 13, 14, 15 + 3 yrs younger Relationship: None			Penetration: B felony Contact: C felony
Victim: Under 16 Relationship: Same household & offender in position of authority		Penetration: Unclass. Contact: B felony	
Victim: Under 16 Relationship: Temporarily entrusted to offender's care		Penetration: Unclass. Contact: B felony	
Victim: Under 18 Relationship: Entrusted to offender's care by authority of law		Penetration: Unclass. Contact: B felony	
Victim: Under 18 Relationship: Son or daughter (all kinds)		Penetration: Unclass. Contact: B felony	
Victim: Any Age Relationship: Ancestor, descendant, brother, sister, uncle, aunt, nephew, niece		Penetration: C felony	
Victim: Any Age Relationship: None	Pen./No Consent: Unc. Con./No Consent: B		

Senate Letter of Intent  
(amended)

for

CSSB 355 (Judiciary)

The changes to AS 11.41.434(a) are intended to clarify the meaning of two terms used in existing law -- "entrusted to the offender's care by authority of law" and "temporarily entrusted to the offender's care." The amendments are needed as a result of a recent Anchorage case, State v. Carlson, 3AN-S89-7443 Cr., in which the superior court concluded that the term "entrusted to the offender's care by authority of law" did not apply to teachers, and that if the legislature intended the language to apply to persons other than legal guardians, the statute was unconstitutionally vague. The term "temporarily entrusted to the offender's care" is replaced as well, in order to avoid litigating whether that term is unconstitutionally vague.

The amendments make it an unclassified felony to have sexual penetration (and a B felony to have sexual contact) with a person under 16 where the offender occupies a "position of special trust" in relation to the victim. In addition, where the offender occupies a "position of special trust" in relation to the victim, it is a B felony to have sexual penetration (and a C felony to have sexual contact) with a 16- or 17-year-old person who is at least three years younger than the offender.

A "position of special trust" is a position that could enable an offender to exercise undue influence over the victim. The definition includes a list of positions that fall within the law. The definition is intended to include all persons covered under the current law making it a crime to have sexual penetration or contact with a person under age 16 who is "temporarily entrusted to the offender's care," and to broaden the definition to include other persons who are in a position that could enable them to exercise undue influence over children. Persons other than those specifically listed are included within the definition only if they are in a position substantially similar to a position specifically included in the definition.

For example, the definition includes the term "babysitter." Positions substantially similar to "babysitter" include a person who is temporarily caring for a minor while the minor's parents are out of town, or an adult who takes a minor along on a camping trip, or an adult who allows a minor to sleep in the adult's home overnight as the guest of the adult's own child. Others examples of positions that

are substantially similar to those specifically listed within the definition are parents who volunteer to work with children in schools or youth groups. These adults are in positions substantially similar to youth leaders, and scout leaders.

The nature of an adult's position of special trust determines the duration of the prohibition against sexual relations between the adult and child. The relationship of special trust between a child and the child's teacher or youth leader continues even during the intervals between classes or formal meetings of the youth group, because there is an expectation of future, ongoing (albeit intermittent) contact between the adult and the child in the context of the relationship of special trust. On the other hand, an adult who volunteers to chaperon a single school dance does not thereby create an open-ended relationship of special trust with all the students who attend the dance; rather, that relationship is limited to the dance and the time before and after the dance when students are arriving and going home.

Employers and job supervisors were specifically not included within the definition of "position of special trust."

The amendments also make it an unclassified felony for a natural parent, stepparent, adopted parent, or legal guardian to engage in sexual penetration (and a B felony to engage in sexual contact) with a person under the age of 18. The penalties are the same as provided under current law for these categories of persons; the amendment is necessary as a result of removing the language "entrusted to the offender's care by authority of law" from the statute. The definition of "legal guardian" specifically includes foster parents and staff members and other employees of group homes or youth correctional facilities where a child is placed as a result of court order or action of the Division of Family and Youth Services.

Senate adopted 1/29/90.

## Senate Judiciary Letter of Intent

### Commentary to CSSB 355 (Jud)

The changes to AS 11.11.434(a) are intended to clarify the meaning of two terms used in existing law -- "entrusted to the offender's care by authority of law" and "temporarily entrusted to the offender's care." The amendments are needed as a result of a recent Anchorage case, State v. Carlson, 3AN-S89-7443 Cr., in which the superior court concluded that the term "entrusted to the offender's care by authority of law" did not apply to teachers, and that if the legislature intended the language to apply to persons other than legal guardians, the statute was unconstitutionally vague. The term "temporarily entrusted to the offender's care" is replaced as well, in order to avoid litigating whether that term is unconstitutionally vague.

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Official Business

# Alaska State Legislature

## Senate

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

January 25, 1990

### MEMORANDUM

TO: All Senators

FROM: Senator Jan Faiks *J. Faiks*  
Senator Paul Fischer *P. Fischer*

SUBJECT: SB 355 "An Act relating to sexual offenses against children."

SB 355 is before the Senate for consideration today. The Senate Judiciary Committee has held several hearings on this legislation, and recommends that it be replaced with a Judiciary Committee substitute. Members will find attached to this memo a sectional analysis of the substitute.

SB 355 was introduced in response to the indictment brought against an Anchorage teacher for allegedly having sex with a 17 year old student. The teacher was charged with first degree sexual abuse of a minor, an unclassified felony. Under Alaska law, the age of consent is generally 16. However, the law also provides that an adult may not have sex with a 16 or 17 year old if the minor was entrusted to the adult's care "by authority of law." In the Anchorage case, the Department of Law argued that students are placed in a teacher's care by authority of law, making 18 the age of consent for teacher-student sex. The teacher argued that this law only applies to legal guardians and other persons similarly situated. While the Judiciary Committee was considering SB 355, Judge Johnstone dismissed the charges against the teacher, ruling that the statute did not prohibit teachers from having sex with 16 and 17 year old students.

Working closely with the Department of Law, the Judiciary Committee drafted a substitute that closes this loophole in the law. In addition, the bill criminalizes sex between a minor and any adult in a "position of special trust." The committee believes that certain adults, in addition to teachers, are in a position to manipulate 16 and 17 year old minors. These include youth leaders, recreational leaders, scout leaders, athletic managers, coaches, counselors, school

administrators, religious leaders, practitioners of the healing arts, police officers, probation officers, guardians ad litem, babysitters, and substantially similar positions. Accordingly, adults in these categories are prohibited from having sex with minors who are 16 and 17 years old and at least three years younger than the offender. A letter of intent serves to clarify the bill, and provide the kind of guidance to the courts that is obviously missing from the current law.

In addition, the bill imposes a lifetime prohibition on the possession of a teaching certificate on any adult convicted of certain crimes, including sexual abuse of a minor, sexual exploitation of a minor, and indecent exposure to a minor. Five years after a person has completed any jail sentence, probation or parole imposed as a result of the conviction, the person may petition the Professional Teaching Practices Commission for relief from the ban. The PTPC must consider the underlying nature of the crime, as well as any rehabilitation that might have occurred in ruling on the petition.

In drafting this substitute, the Judiciary Committee took care to balance the rights of adults against the need to protect our children. The bill reflects the values of a majority of Alaskans, and provides guidance to the public and to the courts on what activity is simply unacceptable. We urge your support for this essential piece of legislation.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the )  
Grand Jury for the Third )  
Judicial District at Anchorage )  
for the Term of Proceedings )  
Commencing in January, 1990. )  

---

PART I OF THE GRAND JURY  
INVESTIGATION CONCERNING  
REPORTING OF SEXUAL ABUSE  
OF SCHOOL CHILDREN

March 5, 1990

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## PREAMBLE

Since January 24, 1990, the Grand Jury has investigated the conduct of public organizations and individuals in response to a complaint of sexual misconduct against Mr. Gordon C. Carlson, formerly a teacher with the Anchorage School District. The Grand Jury has also considered evidence of other cases from the Anchorage area, and from other areas of Alaska, which raise related issues of public concern.

The Grand Jury has met for a total of 22 days, has heard testimony from 71 separate witnesses, and has received 120 exhibits, comprising several thousand pages of printed and written material.

The evidence heard by the Grand Jury shows that existing statutes, regulations, policies and procedures governing the reporting and investigation of sexual abuse and sexual exploitation of school children are inadequate to protect those children. The findings of this Grand Jury should apply not only to sexual abuse and sexual exploitation of school children, but to all children and all types of child abuse and neglect. The Grand Jury finds that public safety and welfare will best be served by an immediate report to the public recommending changes in these existing rules. The Grand Jury also finds that it has both the right and duty to make such a report under Article I, Section 8 of the Alaska Constitution.

The Grand Jury is aware that Criminal Rule 6.1 contemplates delay in publication of its report to allow review and possible litigation by persons who believe they are unjustly criticized. To avoid this delay, the Grand Jury has chosen to issue its report in separate parts. Part I identifies specific deficiencies in current statutes, regulations, policies and procedures relating to the reporting and investigation of sexual misconduct with school children. It also contains recommendations for changing these rules. Subsequent parts of this report will address other issues.

No criticism of any identifiable person is intended in Part I. The Grand Jury believes that all interested parties will agree that the matters contained in Part I should be shared with the public immediately so that recommendations in this area of vital public concern may be reviewed, debated and implemented without delay.

## PART I

### A. OBJECTIVES OF REPORTING RULES.

The Grand Jury believes that school children may be harmed by adults or other children who exploit them for personal sexual gratification. Consequently, the primary objective of all rules in this area must be to prevent this potentially harmful conduct, whether it occurs in school, at home, or elsewhere in the community. Effective rules must therefore provide for the earliest possible identification of sexual offenders so that they may be denied access to their victims, and to other potential victims in the future. It is equally important that such rules encourage early identification of actual victims, so that they may receive appropriate counselling or other treatment to remedy the harm they have suffered. This is necessary whether or not the offender is ever specifically identified or disciplined.

The Grand Jury finds that these considerations require rules that mandate EARLY REPORTING.

Other important interests must also be accommodated. The Grand Jury has received expert testimony that children who are victims of sexual misconduct will most often initially deny that such misconduct has occurred, or will minimize its frequency and seriousness. The Grand Jury recognizes that teachers, school nurses, and school administrators who deal regularly with children may have the ability, due to their training and experience, to quickly recognize when a child is

troubled. However, these professionals do not necessarily have the specific training required to elicit from the child reliable and detailed information concerning sexual offenses. Nor can these professionals be expected to have training in the legal rules of investigation or interrogation necessary to gain evidence from victims or suspected offenders that would be admissible in court. The state's Division of Family and Youth Services (DFYS) has personnel specifically trained to question children about sexual offenses. Law enforcement agencies such as the Anchorage Police Department (APD) and the Alaska State Troopers (AST) have officers trained in the investigation of sexual offenses against children, and are required by law to do so.

+ }  
The Grand Jury finds that effective reporting rules must therefore clearly state that ALL INVESTIGATION OF THESE MATTERS IS THE RESPONSIBILITY OF DFYS AND LAW ENFORCEMENT AGENCIES.

The Grand Jury has heard testimony that school personnel have provided valuable assistance and cooperation to DFYS and law enforcement agencies in past cases of suspected sexual abuse of school children. This assistance has materially aided in the efficient resolution of such cases. The Grand Jury believes that most teaching professionals and administrators have both a personal and professional interest in continuing to assist whenever possible.

Therefore, the Grand Jury believes that effective

reporting rules should require SCHOOL PERSONNEL TO COOPERATE WITH INVESTIGATING AGENCIES, AND SHOULD PROTECT THESE PERSONNEL.

The child who may have been victimized must be protected from public exposure. The alleged offender must be protected from damage to his or to her personal or professional reputation due to public disclosure of unfounded complaints. Persons who report must be assured that their identities will be kept confidential if possible, and informed if that is not possible.

The Grand Jury finds that reporting rules should MAINTAIN THE MAXIMUM CONFIDENTIALITY CONSISTENT WITH EFFECTIVE INVESTIGATION.

Parents have a right to be and should be informed that their children may have been victimized by others, and to be kept informed of what action is being taken by investigating agencies. The employer of a suspected offender may have a right and duty to remove that person from a position of access to children while investigation is in progress, and to terminate employment of that person if accusations are proven true. Labor agreements which protect a suspected offender from unwarranted employment action must be considered. However, labor agreements should not be allowed to impede a child abuse investigation. Public licensing authorities charged with responsibility to grant or revoke certificates of professionals suspected of sexual misconduct must be given sufficient information to act.

The Grand Jury finds that reporting rules should

REQUIRE TIMELY SHARING OF INFORMATION WITH THOSE HAVING A LEGITIMATE NEED FOR IT.

B. EXISTING REPORTING RULES AND RECOMMENDATIONS.

1. Alaska Statutes. The Grand Jury finds that the provisions of AS 47.17.020 -.070, as presently written, do not effectively implement the purposes stated in AS 47.17.010 in the area of sexual misconduct with school children.

(a) "Cause to believe". This term is not defined in the reporting statutes. While it may have a particular meaning to those trained in the law, and may even designate a particular level of information sufficient to support enforcement in most situations, it could be confusing and inexact to a person faced with a decision to report or to delay reporting until more information becomes available. The absence of a readily available definition could also lead to a claim or belief that one charged with reporting must investigate the truth or falsity of information to a particular degree of personal belief before reporting it.

(b) "Child abuse or neglect." This term is defined in AS 47.17.070. However, as regards sexual misconduct, it is possible to interpret the existing definitions to mean that only criminal acts are reportable. It is also possible to read the definitions to require or permit reporting of sexual misconduct that is not otherwise criminal. Confusion about what conduct is reportable could cause nonreporting or permit delay while an investigation is conducted to establish evidence of violation of

a particular criminal statute before a report is made. While the existing definitions may permit enforcement, clarification would make the statutes more effective.

Specific definitions will limit or remove the uncertainties of individual judgment. Persons who might otherwise be tempted to avoid or delay reporting due to conflicting personal or professional concerns will have such temptations removed. Specific definitions will help clarify that reporting is the individual responsibility of the person who first receives sufficient information. This will prevent passing reporting responsibility to supervisors or to groups, which could cause reports to be delayed or miscoordinated. The Grand Jury also believes that specific definitions in the statutes themselves will increase public confidence that reports will be timely made. It should also remove possible causes of mistrust between those who must report and those to whom such reports must be made.

Therefore, the Grand Jury RECOMMENDS that the legislature amend the reporting statutes to specifically define the terms "cause to believe" and "child abuse and neglect."

Consistent with its belief that the earliest possible reporting is desirable, the Grand Jury FURTHER RECOMMENDS that the legislature define "cause to believe" so that reports will be made with the least amount of information consistent with practical investigation and due process requirements.

The Grand Jury MAKES NO RECOMMENDATION on what types

of sexual misconduct should be made criminal, or reportable if noncriminal, believing such decisions best left to the legislature's discretion.

(c) "Person responsible for the child's welfare."

This phrase, included in the definition of "child abuse and neglect" found in AS 47.17.070, could be interpreted to exclude school teachers of 17 year-old high school students under the theory that, since such students are not required by law to attend school beyond their 16th birthdays, teachers of such students are not "legally" responsible for their welfare. Such an interpretation would mean that a teacher who engaged in sex with one of his or her 17 year-old students would not be reported. If the legislature intends that such conduct by teachers should be reported, this definition should be modified to specifically cover teachers of students between 16 and 18 years of age.

The Grand Jury therefore RECOMMENDS that the legislature amend the definition of "person responsible for the child's welfare" in AS 47.17.070(8) to clarify legislative intent.

(d) "Immediately." The Grand Jury believes that this term in AS 47.17.020 is sufficiently clear to achieve its purpose.

(e) Persons required to report. The Grand Jury finds that, if AS 47.17.020 is to be effective in requiring early reporting, this definition should be amended to specifically

state that the individual first receiving sufficient information must immediately report, and that this responsibility is not discharged by passing the information to a supervisor or administrator within the same organization.

The Grand Jury RECOMMENDS that the legislature amend this section of AS 47.17.020 as shown above.

(f) Training. AS 47.17.022 does not appear to apply to local school district personnel who are charged with the duty to report. The Grand Jury has received evidence leading it to believe that such personnel would benefit from more structured and more frequent training on their specific rights and responsibilities under the reporting statutes.

The Grand Jury therefore RECOMMENDS that the legislature include all local public and private, primary and secondary school personnel under AS 47.17.022.

The Grand Jury FURTHER RECOMMENDS that this training be provided on an annual basis.

(g) Confidentiality. AS 47.17.040 does not appear to permit DFYS or law enforcement agencies to share some critical investigative information with non-offending parents or with school district employers or potential employers, or with professional licensing agencies such as the Professional Teaching Practices Commission (PTPC). The Grand Jury believes that strictly controlled sharing of some of this information with persons and organizations such as those mentioned, but who might not be "governmental agencies with child-protection

functions," should be legitimized if possible. The Grand Jury believes that such sharing would improve cooperation among parents of victims, employers of suspected sexual offenders, investigating agencies and professional licensing agencies. From evidence it has heard, the Grand Jury believes that inability to share such information could cause competition for the exclusive right to possess and use it for legitimate but narrow purposes, resulting in delayed reporting and diminished cooperation.

The Grand Jury RECOMMENDS that the legislature amend AS 47.17.040 to permit sharing of critical investigative information with a limited number of persons or organizations that have a legitimate need for it.

(h) Immunity. Whether or not AS 47.17.050, as a matter of law, provides civil and criminal immunity to those who delay reporting but eventually report, the Grand Jury believes that any uncertainty is harmful to the overall reporting scheme. The Grand Jury further believes that the statute should state that it will protect from liability a person who non-maliciously reports information that does not amount to "cause to believe," or who mistakenly but non-maliciously reports potentially harmful conduct that does not constitute "child abuse or neglect." The Grand Jury finds that clarification of these areas will encourage reporting.

The Grand Jury RECOMMENDS that the legislature amend this statute to clarify the protection it provides to potential

reporters.

2. Alaska Administrative Code. The Grand Jury has been advised that the Alaska Administrative Code (AAC) has recently been amended to specifically provide that sexual activity between teachers and students is a violation of the Code of Ethics and Teaching Standards (20 AAC 10.020). The Grand Jury has also been advised that all certificated personnel subject to that code are now required to report such sexual activity to the Professional Teaching Practices Commission (PTPC), which has the authority to revoke or suspend teacher certification in this state for violation of the code. From testimony it has received, the Grand Jury believes that required mandatory reporting of such activity is in the best interests of the public and will be welcomed by teachers who are justifiably proud of their profession and its high ethical standards. The Grand Jury further believes that a mandatory reporting requirement will materially assist the PTPC to perform its duties, and will benefit school districts both in Alaska and in other states where offending teachers might seek employment.

However, the Grand Jury has also been advised that there is currently no statute or regulation requiring or clearly permitting law enforcement personnel to provide information about sexual misconduct between teachers and their minor students to the PTPC.

Therefore, the Grand Jury RECOMMENDS that the legislature enact legislation requiring that law enforcement

personnel report to the PTPC information concerning sexual misconduct by teachers that is in violation of the Code of Ethics and Teaching Standards, and clearly defining individual rights, responsibilities, and immunities in this regard.

The Grand Jury FURTHER RECOMMENDS that the legislature provide by statute or regulation that the PTPC automatically share information concerning teachers disciplined for such violations with school districts in Alaska, and with teacher licensing authorities in other states.

The Grand Jury FURTHER RECOMMENDS that the legislature provide adequate funding for the PTPC to carry out its increased responsibilities.

3. Anchorage School District (ASD) Policies and Procedures.

The Grand Jury finds that existing ASD policies concerning reporting of sexual abuse of school children merely restate current statutes in that area. Consequently, these policies suffer from the same deficiencies as do the statutes.

From the evidence received by the Grand Jury, it appears that there are a few written procedures currently available to educators or administrators in ASD secondary schools. While personnel in primary schools have more written procedures in place dealing with the area of sexual misconduct against students, even these do not clearly establish a single standard method for reporting, but may be interpreted to require

different procedures depending on whether the alleged offender is or is not an ASD employee.

The Grand Jury believes that, regardless whether state statutes in this area are clarified, specific written policies and procedures must be distributed to all educators and administrators having a duty to report sexual misconduct against school children. In the absence of such written guidance, school personnel may have felt and may continue to feel dependent upon verbal interpretations and instructions from their supervisors in determining their own reporting responsibilities. This may have contributed to past uncertainty and anxiety among teachers and administrators concerning what information is reportable, when, to whom and by whom, which complaints should be handled as disciplinary or personnel matters and which are reportable as "child abuse and neglect." The Grand Jury believes that the absence of written procedures may also have, and may continue to cause uncertainty within the schools, within DFYS and other state agencies, among law enforcement-officers, among parents, and within the community as to what is being reported, to whom, when, and for what purpose.

The Grand Jury has received testimony indicating that the Anchorage School District has already begun to develop new policies and procedures in this important area.

However, the Grand Jury finds that each group and public organization having a legitimate interest in the success of new reporting policies and procedures must participate in

formulating them, and that these groups and organizations should share joint responsibility for their approval.

Therefore, the Grand Jury RECOMMENDS that the Anchorage School Board, a public body directly responsible to the community, appoint one of its members to chair a committee charged with the responsibility to develop comprehensive, workable policies and procedures covering the entire area of reporting and investigation of sexual misconduct against school children. The recommendations of this committee should be submitted to the school board for approval and implementation.

The Grand Jury FURTHER RECOMMENDS that this committee be made up of the following persons:

One teacher currently teaching in a primary school.

One teacher currently teaching secondary students.

One parent of a primary school student.

One parent of a secondary school student.

One local high school student.

One school nurse.

One intake worker from DFYS.

One local Assistant Attorney General who regularly handles child protection cases.

One local Assistant District Attorney who regularly prosecutes sexual offenses against children.

One ASD administrator who regularly handles labor relations.

One representative of the Anchorage Education Association.

One representative of Standing Together Against Rape (STAR) or a similar victim advocacy organization.

One investigator from the Anchorage Police Department who regularly handles investigation of sexual crimes against children.

One investigator from the Alaska State Troopers who also regularly does investigations of sexual crimes against children.

One community representative who has no connection with any of the other represented agencies and who currently has no children in Anchorage schools.

#### 4. Statewide Policies and Procedures.

The Grand Jury has heard evidence that there are currently no standard policies and procedures guaranteeing a unified response by state agencies, local law enforcement authorities, and educators throughout Alaska to the problems associated with child abuse and neglect. The Grand Jury believes that this lack of standardization has unnecessarily frustrated effective cooperation in several cases. The Grand Jury further believes that standardized statewide policies and procedures will eliminate wasteful and divisive inconsistencies in training, reporting, and investigation practices.

Therefore the Grand Jury RECOMMENDS that the Governor of the State of Alaska immediately charge the Commissioner of the Department of Education, the Commissioner of the Department of Health and Social Services, the Commissioner of the Department of Public Safety, and the Attorney General with the joint

responsibility to develop standard interdepartmental policies and procedures integrating the state's response to the problems posed by child abuse and neglect.

The Grand Jury FURTHER RECOMMENDS that these policies and procedures clearly define the roles and responsibilities of each state agency and local official having child protection functions, and mandate uniform annual training throughout the state on these policies and procedures.

The Grand Jury FURTHER RECOMMENDS that these policies and procedures be published in a manual similar to the "Inter-Ministry Child Abuse Handbook" developed by the Province of British Columbia, and that this manual be distributed as a uniform training manual for the entire state.

A copy of the British Columbia manual, which has been received by the Grand Jury as Exhibit 112, is appended to this report.

5. Division of Family and Youth Services (DFYS).

Testimony received by the Grand Jury indicates that implementation of its recommendations will lead to increased reporting of child abuse and neglect, requiring more trained DFYS personnel than are currently available.

Therefore, the Grand Jury RECOMMENDS that DFYS be adequately funded for this increase by the legislature.

C. CONCLUSION OF PART I.

The Grand Jury believes that all members of this community have an interest in the protection of school children from sexual misconduct by others, and in the protection of all of children from all forms of abuse and neglect. The Grand Jury further believes that non-adversarial cooperation among all persons and agencies dealing with these children is essential and is possible, regardless of disputes on other issues.

The Grand Jury REQUESTS that Part I of its report be immediately made available to the public, and be specifically sent to the Governor of the State of Alaska, the President of the Alaska Senate, the Speaker of the Alaska House of Representatives, and to each of the public organizations mentioned herein.

DATED at Anchorage, Alaska, this 5<sup>th</sup> day of March, 1990.

Respectfully submitted,

Emily McKenzie  
Grand Jury Foreperson

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Department of Corrections  
 Title: "An Act relating to sexual offenses against children." BRU: \_\_\_\_\_  
 Sponsor: Senator Fischer Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

This legislation would have minimal, if any, impact on the Department of Corrections.

*Susan E. Knighton*

Prepared by: Susan E. Knighton, Director Phone: 465-3376  
 Division: Administrative Services Date: 01-12-90  
 Approved by Commissioner H. H. H. Barnett Date: 01-12-90  
 Agency: Department of Corrections

Distribution (by preparer):

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

Changes in CS SB 355 (JLD)  
 have no fiscal impact.  
 This fiscal note is appropriate.

*col*

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Sexual offenses against children  
 Sponsor: Fischer  
 Requestor: Senate Judiciary

Agency Affected: Education  
 BRU: \_\_\_\_\_  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

) Changes in CS SB 355 (Jud) have no fiscal impact. This fiscal note is appropriate. CJC

Prepared by: Mary Hakala  
 Division: Commissioner's Office  
 Approved by Commissioner: William G. Demmert  
 Agency: Education

Phone: 465-2800  
 Date: 1/16/90  
 Date: 1/16/90

Distribution (by preparer):

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

## FISCAL NOTE

**REQUEST:**

Revision Date: January 24, 1990  
Title: "An Act relating to... sexual  
penetration ... contact with minors..."  
Sponsor: Senate Judiciary  
Requestor: Senate Judiciary

Agency Affected: Department of Law  
BRU: Prosecution  
Components: All

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Date: January 24, 1990  
 Approved by Commissioner: Richard I. Peques / FOR /  
Douglas B. Bally, Attorney General Date: January 24, 1990  
 Agency: Department of Law

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 355 (JUD)

The Committee Substitute for SB 355 makes the following changes to AS 11.41 and AS 14.20.

Section 1 makes it an unclassified felony (up to 30 years with an eight year presumptive sentence) for a person "in a position of special trust with the victim" to engage in sexual penetration with a minor under the age of 16.

Section 2 makes it a class B felony (up to ten years) for a person in a position of special trust with the victim to engage in sexual penetration with a 16 or 17 year old who is at least three years younger than the offender, or to engage in sexual contact (touching the genitals, buttocks or female breasts) with a minor under the age of 16.

Section 3 makes it a class C felony (up to five years) for a person in a position of special trust to engage in sexual contact with a 16 or 17 year old who is at least three years younger than the offender.

Section 4 defines "position of special trust" as youth leaders, recreational leaders, scout leaders, athletic managers, coaches, teachers, counselors, school administrators, religious leaders, practitioners of the healing arts, police officers, probation officers, guardians ad litem, babysitters, and substantially similar positions.

Sections 5, 6, and 7 provide that a person convicted of a sex offense against minors is barred for life from teaching; however, the person may petition the PTPC for a certificate five years after their unconditional discharge from the conviction (i.e. five years after they have completed any sentence including years spent on parole). PTPC must consider the underlying nature of the crime as well as any rehabilitation that might have occurred in deciding whether or not to grant the certificate.

The changes to AS 11.41.434(a) are intended to clarify the meaning of two terms used in existing law -- "entrusted to the offender's care by authority of law" and "temporarily entrusted to the offender's care." The amendments are needed as a result of a recent Anchorage case, State v. Carlson, 3AM-589-743 Cr., in which the superior court concluded that the term "entrusted to the offender's care by authority of law" did not apply to teachers, and that if the legislature intended the language to apply to persons other than legal guardians, the statute was unconstitutionally vague. The term "temporarily entrusted to the offender's care" is replaced as well, in order to avoid litigating whether that term is unconstitutionally vague. Until the court's decision in State v. Carlson, it was the department's view the existing law already addressed these offenses. Consequently, there should not be a fiscal impact for the Department of Law.



## ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS

326 Fourth Street • Suite 408 • Juneau, Alaska 99801 • (907) 586-9702

LEADERSHIP  
FOR LEARNING

### RESOLUTION 89-90-5A SEXUAL MISCONDUCT OF EDUCATORS

The Alaska Association of School Administrators requests the Alaska Legislature to support efforts to reduce sexual misconduct of educators.

WHEREAS, the problem of sexual abuse and sexual exploitation of children is a national problem on the rise, and

WHEREAS, there is also an increase on the national level in the number of reports involving sexual abuse and exploitation of students by educators, and

WHEREAS, the education profession believes that any sexual conduct between an educator and a student is in violation of professional standards, and

WHEREAS, various gaps exist in the law permitting an educator, who has been convicted of sexual abuse and /or has had a certificate revoked due to sexual conduct with a student, to move to another state for purposes of obtaining an educational position, and

NOW, THEREFORE, BE IT RESOLVED, that the Alaska Association of School Administrators supports all efforts to minimize the risk of a sex offender from being hired by any school district, and to that end supports SB 355.

BE IT FURTHER RESOLVED, that the Alaska Association of School Administrators supports all efforts to minimize the possibility of sexually abusive educators remaining in their positions, and to that end supports efforts by the Department of Education and the Professional Teaching Practices Commission to establish reporting requirements in situations where an educator has knowledge that sexual misconduct involving an educator has occurred.

ASSOCIATION OF ALASKA SCHOOL BOARDS

316 W. 11th St. • Juneau, Alaska 99801-1510 • (907) 586-1083

Position Paper  
SB 355- Sexual Offenses Against Children

The Association of Alaska School Boards (AASB) strongly supports SB 355 regarding sexual offenses against children, and urges passage of SB 355.

AASB is committed to the safety and well-being of all Alaska's students regardless of age. The absence of laws defining sexual contact by school district employees and volunteers needs to be addressed.

The recent public outcry against sexual abuse in the school environment has eroded public confidence in the schools. This bill carries two important messages: Sexual abuse will not be tolerated in public schools, and sexual offenders will be eliminated from the teaching pool. The public, who entrust their children in the hands of our public schools, need assurances that their kids will be safe while attending school.

# Opinion

**A** sudden legislative passion for outlawing sex between teen-agers and teachers has struck in Alaska and in Washington. In both states, the effective goal is to raise the age of consent from 16 to 18.

New legislation in Alaska results from the controversial case of Satch Carlson, a teacher and newspaper columnist, who had sexual relations with a female high school student.

Not  
too  
fast

Although the respective proposals have major differences, the legislation proposed in both states attempts to broaden the prohibition against sexual relations with teen-agers to cover more people than the teen-agers' own teachers. In Washington, the bill covers only teachers,

but broadens the prohibition of the code of conduct for the state's teachers so that they would be prohibited from sexual relations with not only their own students but any other students under 18.

The Alaska bill, introduced principally by Sen. Paul Fischer, R-Soldotna, attempts to bar sexual activity with sub-18 teens by adults in any child custodial capacity.

The Fischer proposal would apply to the likes of recreation leaders, probation workers and counselors. By extension, it seems likely that it would apply to a private employer in certain cases, such as if a student is employed as part of a school-sponsored work-study program. It even covers licensed hearing aid dealers, as The Associated Press pointed out.

The idea, in the words of the bill's backers, is to establish a hands-off zone between school-age teen-agers and anyone who works with them "in a special position of trust."

This is a good idea. No one argues against the intent. But there is need to mull its ramifications, its scope and the penalties proposed.

The legislators, who so rarely rush other legislation, should not rush this until they have considered all that it might do.

It is designed to convince adults who work with teen-agers that the risk of going to prison or being severely fined is too great to take chances.

It will also have a chilling effect, however, on others, perhaps: effective teachers whose personalities allow for a certain amount of innocent touching with students; coaches who must often help students in pseudo-parental capacities while traveling away from home for athletic events; any staff members or parents who take charge of students on field trips.

The potential for abuse by teen-agers would be greatly magnified in cases, albeit few in number, in which a student falsely accuses a teacher or other youth worker of taking advantage of them. It happens. The victims of such false scandal often lose their jobs or, even when cleared, find they must change towns and jobs to get away from the taint of scandal.

This bill would add the threat of a five-year sentence or a \$50,000 fine.

The goal of Senate Bill 355 is worthwhile. The question is whether it goes too far in a good cause. The Alaska Legislature should be willing to take enough time to be sure that this approach is the best approach before proceeding.

§ 11.41.425

16 P.2d 918 (Alaska Ct. App. 1984).  
of eight years with three years  
for sexual assault in the second  
is not clearly mistaken. Howard  
664 P.2d 603 (Alaska Ct. App.

tion and sentence upheld. —  
Peras v. State, 675 P.2d 654  
t. App. 1984).

is held clearly mistaken. —  
of eight years with one year sus-  
a first offender convicted of as-  
the second degree was clearly  
Benboe v. State, 698 P.2d 1230  
t. App. 1985).

urt exceeded scope of sen-  
wers by ordering defendant to  
sexual offender rehabilitation  
incarcerated, where the or-  
out as a separate provision of  
judgment and not a condi-  
ation, and any failure to abide  
r could not have served as a  
r a finding of criminal con-  
boe v. State, 738 P.2d 356  
App. 1987); Cavanaugh v.  
P.2d 757 (Alaska Ct. App.

n Jonas v. State, Ct. App. Op.  
File No. A-2032), P.2d

Stores v. State, 625 P.2d 620  
); Bolhouse v. State, 687 P.2d  
t. App. 1984); James v.  
2d 1314 (Alaska Ct. App.  
v. State, 754 P.2d 1336  
App. 1988).

rd degree. (a) An of-  
ie third degree if being  
sexual contact with a

nature of the person's  
inwillingness to act.  
as C felony. § 3 ch 96

§ 11.41.430

Sec. 11.41.430. Sexual  
ch 78 SLA 1983. For cu

Sec. 11.41.432. Defens  
under AS 11.41.410(a),  
11.41.425 that the offender is

- (1) mentally incapable; or
- (2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.

(b) Except as provided in (a) of this section, in a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant. (§ 4 ch 96 SLA 1988; am § 27 ch 50 SLA 1989)

Effect of amendments. — The 1989 amendment, May 27, 1989, designated the provisions of this section as subsection (a) and added subsection (b).

Legislative history reports. — For an

§ 11.41.434

ree. [Repealed, § 10  
1.420(a)(2).]

to a crime charged  
11.41.420(a)(3), or

analysis of the 1989 amendment to this section, see Senate-House Joint Journal Supplement No. 10, May 5, 1989, p. 5, under "Sec. 27."

Sec. 11.41.434. Sexual abuse of a minor in the first degree.  
(a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or  
(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild; or

(3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and the victim at the time of the offense is

(A) residing as a member of the social unit in the same household as the offender and the offender is in a position of authority over the victim; or  
(B) temporarily entrusted to the offender's care.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 2 ch 78 SLA 1983; am § 3 ch 66 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 28, 1988, in subsection (a), added paragraph (3), and made related stylistic changes.

House letter of intent on ch. 66, SLA 1988 (CSHB 237 (Jud)), which amended this section, see 1988 House Journal 2330-2337.

Legislative history reports. — For

## NOTES TO DECISIONS

**Editor's notes.** — Some of the cases cited in the notes below were decided under former AS 11.15.134. Some were also decided under former AS 11.41.410(a)(4), which provided that a person 18 years of age or older who engaged in sexual penetration with another person under 18 years of age who was entrusted to his care by authority of law or was his child committed sexual assault in the first degree.

**For cases construing former rape statute,** see AS 11.41.410, Notes to Decisions, analysis line II.

**State's authority to control sexual conduct of children.** — Although juveniles may have certain rights to sexual privacy, the state may nevertheless exercise control over the sexual conduct of children beyond the scope of its authority to control adults. *Anderson v. State*, 562 P.2d 351 (Alaska 1977).

Where juveniles have certain rights to privacy and to express their own autonomy, the state's interest in the well-being of its children may justify legislation that could not properly be applied to adults. *Anderson v. State*, 562 P.2d 351 (Alaska 1977).

**As to constitutionality of former statute making lewd and lascivious acts toward children a crime,** see *Anderson v. State*, 562 P.2d 351 (Alaska 1977).

**Physical conduct punished under former statute.** — See *Anderson v. State*, 562 P.2d 351 (Alaska 1977); *Smiloff v. State*, 579 P.2d 28 (Alaska 1978).

**Former section prohibited fellatio.** — See *Anderson v. State*, 562 P.2d 351 (Alaska 1977).

**Consent is not at issue.** — The state may forbid an adult to have fellatio with a child under the statutorily prescribed age regardless of whether the child consents to the act. *Anderson v. State*, 562 P.2d 351 (Alaska 1977).

**Intrusion into genitals.** — Cunnilingus and fellatio do not require an intrusion into the genitals. *Murray v. State*, 770 P.2d 1131 (Alaska Ct. App. 1989).

**Victim's statement held admissible under hearsay exception.** — The victim's statement to a prosecution witness, made two or three days after the incident, that the victim's father came into her bed while she was undressed and "did something wrong" was admissible under the first-complaint hearsay exception. *Nusunginya v. State*, 750 P.2d 172 (Alaska Ct. App. 1986).

**Victim's identification of accused.** — Prosecution could properly present to the grand jury a child abuse victim's statements identifying the accused which the victim made during her medical treatment, where, even if the testimony did not fall within the medical diagnosis exception to the hearsay rule, the victim's inability to testify before the grand jury constituted "compelling justification" for presenting hearsay evidence under Criminal Rule 6(r). *State v. Nollner*, 749 P.2d 905 (Alaska Ct. App. 1988).

**Mental examination of victim.** — Defendants' convictions of sexual abuse of a minor in the first degree and sexual abuse of a minor in the second degree were reversed, where the trial court denied defendants' request for a mental examination of the victims after a psychologist's testimony had placed the children's psychological characteristics in controversy. *Anderson v. State*, 749 P.2d 369 (Alaska Ct. App. 1988).

Trial court did not abuse its discretion in denying defendant's motion for a psychiatric evaluation of the victim, where the corroborating evidence against him was relatively slight and he failed to establish some specific ground for concluding that the victim suffered from psychological or emotional problems that might affect her veracity or have a direct bearing on some other material issue. *Daniels v. State*, 767 P.2d 1163 (Alaska Ct. App. 1989).

**Testimony as to typical child abuser traits.** — Admission of a state trooper's testimony regarding the characteristics of a typical child sexual abuser, at defendant's trial for sexual abuse of a minor, was sufficiently prejudicial to warrant reversal of his conviction. *Haakanson v. State*, 760 P.2d 1030 (Alaska Ct. App. 1988).

**Testimony as to victim's prior consistent statements.** — Admission of testimony concerning a sexual abuse victim's prior consistent statements was reversible error, where some of the witnesses testified before the victim had even taken the stand and been impeached, and another witness was allowed to express her personal belief in the truth of the accusations that the victim made against defendant. *Thompson v. State*, 770 P.2d 990 (Alaska Ct. App. 1989).

**Leeway in charging time of offense.** — The state must be given considerable

leeway in charging activity with a minor. *State*, 758 P.2d 92 (1988).

**Sexual offenses of one continuous nature.** — Defendant was convicted on abuse counts alleging penetration, his conviction on one count was vacated on showing that defendant formed the acts of penetration together as part of a single transaction. *Clifton v. State*, Alaska Ct. App. 1989.

Two acts of sexual contact as part of a single transaction of sexual penetration conviction for the fact, i.e., the sexual abuse. *State*, 762 P.2d 49 (1988).

**Record ambiguous separate counts per defendant.** — Separate sexual offenses involving genital contact with a victim in the record was ambiguous counts arose at the same single incident, or where incidents occurred, and be sentenced on only one charge. *Horton v. State*, Alaska Ct. App. 1989.

**Evidence of prior conviction.** — Evidence that a defendant was previously convicted of sexual abuse of the same victim two years prior to indictment was admissible to indicate a significant sexual history with the specific victim, thus supporting circumstantial evidence that the defendant sexually assaulted the victim. *State*, 732 P.2d 1102 (1987).

**Exclusion of evidence of defendant's involvement in a sexual offense.** — Defendant's involvement in a sexual offense with another child deprived defendant of a constitutional right to confront witnesses against him, where his conviction was based on the premise that the defendant's accusation in retaliation for her accusation in retaliation against defendant's attempt to oust her from her home for sexual misconduct. *State*, 767 P.2d 1163 (1989).

**Motion for judgment of acquittal.** — Trial court properly denied defendant's motion for a judgment of acquittal and submitted his case to the jury where the evidence was sufficient.



tify his conduct as "sex education" and his only limited acceptance and understanding of the grave risks of psychological damage to children that his conduct presented led the court of appeals to conclude the trial judge was not clearly erroneous in concluding that the mitigating factor of conduct among the least serious in the definition of the offense was not established by clear and convincing evidence. *S.B. v. State*, 706 P.2d 695 (Alaska Ct. App. 1985); *Bynum v. State*, 708 P.2d 1293 (Alaska Ct. App. 1985).

Imposition of presumptive sentence of eight years for a first felony offender convicted of having sexual relations with his stepdaughter over five years was upheld; rejection of a proposed mitigating factor, that the offense was committed under some degree of compulsion, was proper. *Bynum v. State*, 708 P.2d 1293 (Alaska Ct. App. 1985).

A sentence of eight years with two years suspended was affirmed, where there was evidence of defendant's knowledge that his victim had previously been sexually abused, his persistent approaches to the victim, his fleeing the jurisdiction to avoid apprehension, and his unwillingness or inability to concede responsibility. *Gnegy v. State*, 729 P.2d 895 (Alaska Ct. App. 1986).

It was not manifestly unjust to impose a five-year presumptive term upon defendant's conviction of attempted sexual assault of a minor, and he was not automatically entitled as a matter of law to have his case referred to a three-judge panel for sentencing. *Aveoganna v. State*, 757 P.2d 75 (Alaska Ct. App. 1988).

**Sentence for assault upheld.** — In prosecution of defendant with no prior criminal record on two counts of first-degree sexual assault of his 12-year old daughter, sentence of two consecutive eight-year terms with five years suspended was not excessive. *Hodges v. State*, 660 P.2d 1203 (Alaska Ct. App. 1983).

In light of the substantial duration of defendant's sexual abuse of his stepdaughter (three years), his failure to learn from the earlier discovery of his prior offenses, his disregard of a court order that he avoid contact with the victim, and his total failure to take any meaningful step toward rehabilitation, 10-year sentence with four years suspended was not excessive for conviction of first-degree sexual assault. *Langton v. State*, 662 P.2d 954 (Alaska Ct. App. 1983).

Where there is evidence from which the trial court could infer that a sentence of incarceration would have destroyed a viable family and cause long-term psychological damage to the victim, sentence under former AS 11.41.410(a)(4) involving no incarceration is not too lenient. *State v. Morris*, 680 P.2d 1190 (Alaska Ct. App. 1984).

A sentence of eight years with three years suspended, upon defendant's conviction on one count of sexual abuse of a minor in the first degree, was affirmed, where, although the abuse occurred over a period of two or three years and involved his step-daughter, evidence of his potential for rehabilitation was found to be compelling. *State v. Ridgway*, 750 P.2d 362 (Alaska Ct. App. 1988).

A sentence of three concurrent eight-year presumptive terms upon defendant's conviction of three counts of sexual abuse of a minor in the first degree was affirmed, where, according to the evidence, the abuse included digital and penile sexual penetration, as well as oral sexual contact, and there may have been as many as fifty separate incidents of sexual abuse. *Winther v. State*, 749 P.2d 1356 (Alaska Ct. App. 1988).

**Sentence under AS 11.15.134 held excessive.** — See *Qualle v. State*, 652 P.2d 481 (Alaska Ct. App. 1982).

**Sentence for assault held excessive.** — Sentence of 20 years imprisonment for first-degree sexual assault of two-year old child was excessive and case was remanded for resentencing not to exceed 120 years. *Langton v. State*, 662 P.2d 954 (Alaska Ct. App. 1983).

**Sentence for assault held too lenient.** — Suspended five-year sentence for first-degree sexual assault of defendant's four-year old son was disapproved as too lenient, with a 90-day to three-year sentence suggested. *Langton v. State*, 662 P.2d 954 (Alaska Ct. App. 1983).

**Sentence under former AS 11.41.410(a)(4) for assault held too lenient.** — See *State v. Rushing*, 680 P.2d 500 (Alaska Ct. App. 1984); *State v. Woods*, 680 P.2d 1193 (Alaska Ct. App. 1984).

Given a series of nine assaults of a stepdaughter by a stepfather, substantial evidence that intercourse was accomplished without consent, and the fact that the victim has left the defendant's home, a sentence of one year of incarceration under former AS 11.41.410(a)(4) was disapproved and a sentence of at least three

there is evidence from which the court could infer that a sentence of imprisonment would have destroyed a family and cause long-term psychological damage to the victim, sentence under AS 11.41.410(a)(4) involving probation is not too lenient. *State v. Couey*, 680 P.2d 1190 (Alaska Ct. App. 1984).

Sentence of eight years with three years suspended, upon defendant's conviction of three counts of sexual abuse of a minor in the first degree, was affirmed, although the abuse occurred over a two or three years and involved laughter, evidence of his potential rehabilitation was found to be sufficient. *State v. Ridgway*, 750 P.2d 1356 (Alaska Ct. App. 1988).

Sentence of three concurrent eight-year terms upon defendant's conviction of three counts of sexual abuse of a minor in the first degree was affirmed, according to the evidence, which included digital and penile sexual contact, as well as oral sexual contact and there may have been as many as three separate incidents of sexual abuse. *State v. Ridgway*, 750 P.2d 1356 (Alaska Ct. App. 1988).

Sentence under AS 11.15.134 held too lenient. — See *Qualle v. State*, 652 P.2d 1356 (Alaska Ct. App. 1982).

Sentence for assault held excessive. — Sentence of 20 years imprisonment for sexual assault of two-year old child excessive and case was remanded for resentencing not to exceed 120 months. *State v. Stinson*, 662 P.2d 954 (Alaska Ct. App. 1983).

Sentence for assault held too lenient. — Sentence of five-year suspended sentence for sexual assault of defendant's son was disapproved as too lenient. *Langton v. State*, 662 P.2d 1356 (Alaska Ct. App. 1983).

Sentence under former AS 11.15.134 for assault held too lenient. — *State v. Rushing*, 680 P.2d 1195 (Alaska Ct. App. 1984); *State v. Couey*, 680 P.2d 1190 (Alaska Ct. App. 1984).

Sentence of nine assaults of a step-daughter, substantial evidence of force was accomplished in defendant's home, and the fact that the victim was a minor, a sentence of incarceration under AS 11.15.134 was disapproved. — Sentence of at least three

years recommended. *State v. Couey*, 680 P.2d 1190 (Alaska Ct. App. 1984).

Remand for resentencing for conviction under former law. — See *State v. Couey*, 680 P.2d 1190 (Alaska Ct. App. 1984); *State v. Couey*, 711 P.2d 1183 (Alaska Ct. App. 1985).

Sentence clearly mistaken. — A sentence of 24 years with four years suspended, upon conviction of three counts of sexual abuse of a minor in the first degree, was clearly mistaken, where the trial court did not address the 10- to 15-year benchmark established in prior decisions concerning aggravated cases of sexual assault, and nothing in the record established that a sentence in excess of 15 years was necessary to protect the public. *Mosier v. State*, 747 P.2d 548 (Alaska Ct. App. 1987).

A sentence of 20 years with five years suspended for a first felony offender, for sexual abuse of a minor in the first degree, was clearly mistaken, where the offense did not involve multiple acts with multiple victims or a prior felony record. *Zackar v. State*, 761 P.2d 1015 (Alaska Ct. App. 1988).

Sentence of 15 years with five years suspended was clearly mistaken, where defendant was a first felony offender with an otherwise good record. *Lawrence v. State*, 764 P.2d 318 (Alaska Ct. App. 1988).

Composite term of sixty years upon conviction of two counts of sexual abuse of a minor in the first degree was clearly mistaken, and the case was remanded for imposition of a total sentence not to exceed

sixty years with ten years suspended, where the sentencing court's reliance upon the seriousness of defendant's prior murder conviction placed inordinate and disproportionate weight on a single aggravating factor. *Murray v. State*, 770 P.2d 1131 (Alaska Ct. App. 1989).

Remand for resentencing. — See *Lewis v. State*, 706 P.2d 715 (Alaska Ct. App. 1985); *Bodine v. State*, 737 P.2d 1072 (Alaska Ct. App. 1987); *Howell v. State*, 758 P.2d 103 (Alaska Ct. App. 1988).

Conditions of probation. — Conditions of probation restricting defendant from unauthorized contact with his daughter and with other girls under 18 years of age were not vague or unduly restrictive of his constitutionally protected right to freedom of association. *Nitz v. State*, 745 P.2d 1379 (Alaska Ct. App. 1987).

Applied in *Sevmore v. State*, 655 P.2d 786 (Alaska Ct. App. 1982); *Juelson v. State*, 758 P.2d 1294 (Alaska Ct. App. 1988); *Allen v. State*, 769 P.2d 457 (Alaska Ct. App. 1989).

Cited in *Higgs v. State*, 676 P.2d 610 (Alaska Ct. App. 1984); *Benboe v. State*, 698 P.2d 1230 (Alaska Ct. App. 1985); *Dancer v. State*, 715 P.2d 1174 (Alaska Ct. App. 1986); *James v. State*, 730 P.2d 1314 (Alaska Ct. App. 1987); *Patterson v. State*, 747 P.2d 535 (Alaska Ct. App. 1987); *Kirby v. State*, 748 P.2d 757 (Alaska Ct. App. 1987); *Jager v. State*, 748 P.2d 1172 (Alaska Ct. App. 1988); *James v. State*, 754 P.2d 1336 (Alaska Ct. App. 1988).

**Sec. 11.41.436. Sexual abuse of a minor in the second degree.**

(a) An offender commits the crime of sexual abuse of a minor in the second degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild;

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) — (6); or

(5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and the victim at the time of the offense is

(A) residing as a member of the social unit in the same household as the offender and the offender is in a position of authority over the victim; or

(B) temporarily entrusted to the offender's care.

(b) Sexual abuse of a minor in the second degree is a class B felony. (§ 2 ch 78 SLA 1983; am § 4 ch 66 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective May 28, 1988, in subsection (a), added paragraph (5), and made related stylistic changes.

**Legislative history reports.** — For

House letter of intent on ch. 66, SLA 1988 (CSHB 237 (Jud)), which amended this section, see 1988 House Journal 2330-2337.

#### NOTES TO DECISIONS

**Prior law.** — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

**No culpable mental state required.** — Under the current statutory definition of "sexual contact," the offense of sexual abuse of a minor in the second degree may properly be established by evidence proving knowing conduct within the scope of AS 11.81.900(b)(52)(A); no secondary culpable mental state need be established with respect to surrounding circumstances. *Van Meter v. State*, 743 P.2d 385 (Alaska Ct. App. 1987).

**Burden of proving exclusions.** — If some evidence of justification is advanced in the record, the state must bear the additional burden of establishing that the defendant's conduct did not fall within the exclusions of AS 11.81.900(b)(52)(B). *Van Meter v. State*, 743 P.2d 385 (Alaska Ct. App. 1987).

**Evidence of prior assault held admissible.** — Evidence that defendant had been convicted of sexually assaulting the same victim two years prior to the alleged indictment was admissible because it indicated a significant sexual desire for the specific victim, thus supplying persuasive circumstantial evidence that he had sexually assaulted the victim. *Patterson v. State*, 732 P.2d 1102 (Alaska Ct. App. 1987).

**Mental examination of victim.** — Defendants' convictions of sexual abuse of a minor in the first degree and sexual abuse of a minor in the second degree were reversed, where the trial court denied defendants' request for a mental examination of the victims after a psychologist's testimony had placed the children's psychological characteristics in controversy. *Anderson v. State*, 749 P.2d 369 (Alaska Ct. App. 1988).

**Testimony as to typical child abuser traits.** — Admission of a state trooper's testimony regarding the characteristics of a typical child sexual abuser, at defendant's trial for sexual abuse of a minor, was sufficiently prejudicial to warrant reversal of his conviction. *Haakanson v. State*, 760 P.2d 1030 (Alaska Ct. App. 1988).

**Testimony as to victim's prior consistent statements.** — Admission of testimony concerning a sexual abuse victim's prior consistent statements was reversible error, where some of the witnesses testified before the victim had even taken the stand and been impeached, and another witness was allowed to express her personal belief in the truth of the accusations that the victim made against defendant. *Thompson v. State*, 750 P.2d 990 (Alaska Ct. App. 1989).

**Admissibility of evidence.** — See *Van*

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Meter v. State, 743 P.2d 385 (Alaska Ct. App. 1987).

Evidence held inadmissible. — See Van Meter v. State, 743 P.2d 385 (Alaska Ct. App. 1987).

Acts performed as part of single incident. — Two acts of sexual contact performed as part of a single transaction with a single incident of sexual penetration permit but one conviction for the most serious contact, i.e., the sexual penetration. Johnson v. State, 762 P.2d 493 (Alaska Ct. App. 1988).

Admission of an investigator's statements concerning defendant's sexual fantasies and orientation, at defendant's trial for attempted sexual abuse of a minor in the second degree, was harmless error, where the evidence against defendant was substantial and defendant's attorney demonstrated the irrelevance of the statements on cross-examination. Stevens v. State, 748 P.2d 771 (Alaska Ct. App. 1988).

Conviction reversed where evidence of prior incident between victim and defendant improperly admitted. — See Johnson v. State, 730 P.2d 175 (Alaska Ct. App. 1986).

Lesser included offenses. — Trial court properly treated the crime of contributing to the delinquency of a minor as a lesser included offense of attempted sexual abuse of a minor in the second degree, where defendant, by encouraging an eight-year-old girl to have sexual contact with him, encouraged her to engage in conduct prohibited by law. Sullivan v. State, 766 P.2d 51 (Alaska Ct. App. 1988).

Conviction of attempted sexual abuse reversed. — Defendant's conviction of attempted sexual abuse of a minor in the second degree was reversed, where evidence showing that he wrote notes to an eight-year-old girl asking her to be his girlfriend and to kiss him established only that he engaged in preparatory conduct and not that he took a substantial step toward sexual contact with the girl. Sullivan v. State, 766 P.2d 51 (Alaska Ct. App. 1988).

Imposition of direct no-contact orders. — Where defendant pleads nolo contendere to a charge of sexual abuse of a minor, the superior court has no authority — statutory or inherent — to impose a direct no-contact order against defendant as part of the punishment for the offense. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987) not determining if superior court's general authority to enter no-

junctions empowers it to enter no-contact order as an independent (separable requirement).

Sentence upheld. — See Bartomow v. State, 720 P.2d 51 (Alaska Ct. App. 1986); Goodman v. State, 756 P.2d 918 (Alaska Ct. App. 1988).

Sentence of eight-year presumptive term for first-degree sexual abuse of a minor and concurrent sentences of three years for two counts of second-degree sexual abuse of a minor to run concurrently with the eight-year term were upheld. The defendant's continued efforts to justify his conduct as "sex education" and his only limited acceptance and understanding of the grave risks of psychological damage to children that his conduct presented led the court of appeals to conclude the trial judge was not clearly erroneous in concluding that the mitigating factor of conduct among the least serious in the definition of the offense was not established by clear and convincing evidence. SB v. State, 706 P.2d 995 (Alaska Ct. App. 1985).

Sentencing goals of general deterrence and community condemnation cannot, in themselves, support the imposition of a maximum 10-year term for a first offender convicted of a class B felony, such as sexual assault of a minor. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987).

Sentence held excessive. — See Whitlow v. State, 719 P.2d 267 (Alaska Ct. App. 1986).

Where a defendant who pleaded nolo contendere to a charge of sexual abuse of a minor was undeniably dishonest and abused the trust inherent in his role as the victim's karate instructor, but there was no evidence of any assaultive conduct or of any physical or psychological coercion or intimidation and the victim was 15 years old, the upper age limit included in the definition of the offense of second-degree sexual abuse, the absence of any prior conviction precluded the court of appeals from predicting with any degree of confidence that the defendant was in fact incapable of rehabilitation and could not be deterred. The sentencing court's abandonment of rehabilitation and personal deterrence as sentencing goals was unwarranted; its imposition of a maximum sentence was clearly mistaken, and the case was remanded for imposition of a sentence of not more than 10 years with four years suspended. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987).

Applied in Hughes v. State, 820 P.2d 1010

(Alaska Ct. App. 1984); *Olp v. State*, 738 P.2d 1117 (Alaska Ct. App. 1987); *Horton v. State*, 758 P.2d 628 (Alaska Ct. App. 1988); *Juelson v. State*, 758 P.2d 1294 (Alaska Ct. App. 1988).

Cited in *Smith v. State*, 745 P.2d 1375 (Alaska Ct. App. 1987); *Patterson v. State*, 747 P.2d 535 (Alaska Ct. App.

1987); *Jager v. State*, 748 P.2d 1172 (Alaska Ct. App. 1988); *Foster v. State*, 751 P.2d 1383 (Alaska Ct. App. 1988); *Russell v. State*, 752 P.2d 1022 (Alaska Ct. App. 1988); *Lahmeyer v. State*, 765 P.2d 985 (Alaska Ct. App. 1989); *Allen v. State*, 769 P.2d 457 (Alaska Ct. App. 1989).

**Sec. 11.41.438. Sexual abuse of a minor in the third degree.**  
 (a) An offender commits the crime of sexual abuse of a minor in the third degree if, being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the third degree is a class C felony. (§ 2 ch 78 SLA 1983)

#### NOTES TO DECISIONS

**Prior law.** — For cases decided under prior law, see notes to AS 11.41.434. Notes to Decisions.

Cited in *State v. Ridgway*, 750 P.2d 362 (Alaska Ct. App. 1988).

**Sec. 11.41.440. Sexual abuse of a minor in the fourth degree.**  
 (a) An offender commits the crime of sexual abuse of a minor in the fourth degree if, being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 9, § 102 SLA 1980; am § 3 ch 78 SLA 1983)

**Legislative history reports.** — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Sup-

plement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 26, 1980.

#### NOTES TO DECISIONS

**Prior law.** — For cases decided under prior law, see notes to AS 11.41.434. Notes to Decisions.

**Specific intent crime.** — Sexual abuse of a minor is a specific intent crime. *J.E.C. v. State*, 681 P.2d 1358 (Alaska Ct. App. 1984).

**Instructions.** — The trial court erred in its instructions regarding the mens rea required for sexual abuse of a minor under former AS 11.41.440(a)(2) and contributing to the delinquency of a minor under former AS 11.51.130(a)(4). *Plink v. State*, 683 P.2d 725 (Alaska Ct. App. 1984).

Although the trial court erred in refusing to give defendant's proposed instruc-

tion that he had to have a specific intent to arouse or gratify his or the child's sexual desires in order to be convicted of violating former AS 11.41.440(a)(2), this error was harmless beyond reasonable doubt where the jury was told that defendant had to knowingly engage in sexual contact with the child. *J.E.C. v. State*, 681 P.2d 1358 (Alaska Ct. App. 1984).

**Probationary sentence.** — Although a probationary sentence may properly be used when a first offender is convicted of a class C felony involving sexual abuse of a child, such a sentence will be appropriate only if mitigating circumstances exist and the offender is a promising candidate for

er v. State, 748 P.2d 1172 App. 1988; Foster v. State, 383 Alaska Ct. App. 1988; State, 752 P.2d 1022 Alaska Ct. App. 1988; Lahmeyer v. State, 763 Alaska Ct. App. 1988; Allen v. P.2d 457 Alaska Ct. App.

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ad to have a specific intent ralise his or the child's we- rder to be convicted of co- AS 11.41.440(a)(2), this rmlss beyond reasonable he jury was told that deten- nowingly engage in sexual rchild J.E.C. v. State and asia Ct. App. 1984. ry sentence. — Although r sentence may properly be r offender is convicted of a rvolving sexual abuse of a r sentence will be appropriate r circumstances exist and r promising candidate for

rehabilitation through probationary su- pervision State v. Coats, 669 P.2d 1329 Alaska Ct. App. 1983.

Conviction under pre-1983 section upheld. — See Moor v. State, 709 P.2d 195 Alaska Ct. App. 1985.

Conviction and sentence under pre-1983 section upheld. — See Depp v. State, 686 P.2d 712 Alaska Ct. App. 1984.

Conviction reversed. — Conviction under the pre-1983 version of this section was reversed where the jury was not properly instructed regarding the culpable mental state for the crime Potts v. State, 712 P.2d 385 Alaska Ct. App. 1985.

Remand in light of Flink v. State. — Case involving a non-jury trial under this

section as it read before 1983 was re- manded for application of the specific in- tent standard that the defendant acted with the specific intent to achieve his own sexual arousal or the sexual arousal of the victim Colgan v. State, 711 P.2d 543 Alaska Ct. App. 1985.

Applied in Gouiden v. State, 656 P.2d 1218 Alaska Ct. App. 1983; Higgs v. State, 676 P.2d 610 Alaska Ct. App. 1984.

Cited in Stores v. State, 625 P.2d 429 Alaska 1990; Hodges v. State, 660 P.2d 1303 Alaska Ct. App. 1983; State v. R.H., 683 P.2d 269 Alaska Ct. App. 1984; Kizaire v. State, 715 P.2d 272 Alaska Ct. App. 1986; Aguiar v. State, 750 P.2d 846 Alaska Ct. App. 1988.

Collateral references. — Civil liability for carnal knowledge with actual consent of girl under age of consent, 45 ALR 740; 79 ALR 1259

Assault with intent to ravish or rape consenting female under age of consent, 41 ALR 399

Parent or person in loco parentis, liability for rape of minor child, 19 ALR2d 460

Assault with intent to commit unnatu- ral sex act upon minor as affected by lat- ter's consent, 65 ALR2d 748

Applicability of rape statute involving children of a specified age, with respect to a child who has passed the anniversary date of such age, 73 ALR2d 471

Sec. 11.41.443. Spousal relationship no defense. Repealed, § 61 ch 50 SLA 1989. For current law, see AS 11.41.442(b)1

Sec. 11.41.445. General provisions. (a) In a prosecution under AS 11.41.434 — 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless the offense was committed without the consent of the victim.

(b) In a prosecution under AS 11.41.410 — 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be that age or older, unless the victim was under 13 years of age at the time of the alleged offense. § 3 ch 166 SLA 1978, am § 2 ch 43 SLA 1985.

Effect of amendments. — The 1985 amendment requiring subsection 1

## NOTES TO DECISIONS

Applied in *Jager v. State*, 714 P2d 1172 (Alaska Ct. App. 1988).

**Sec. 11.41.450. Incest.** (a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

- (1) an ancestor or descendant of the whole or half blood;
  - (2) a brother or sister of the whole or half blood; or
  - (3) an uncle, aunt, nephew, or niece by blood.
- (b) Incest is a class C felony. (3 3 ch 166 SLA 1978)

## NOTES TO DECISIONS

Death of defendant abated prosecution under former section. *Hartwell v. State*, 423 P2d 282 (Alaska 1967). (Decided under former AS 11.40.110.)

Cited in *Theodore v. State*, 692 P2d 997 (Alaska Ct. App. 1985).

Collateral references. — Aiding and abetting offense of incest by one not related to party. 5 ALR 784; 74 ALR 1110, 131 ALR 1322.

Relationship created by adoption as within statute regarding incest. 131 ALR 1146.

Consent as element of incest. 36 ALR2d 1299.

Sexual intercourse between persons related by half blood. 72 ALR2d 206.

Prosecutor as accomplice or victim. 74 ALR2d 705.

Rape, incest as included within charge of. 76 ALR2d 144.

**Sec. 11.41.455. Unlawful exploitation of a minor.** (a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality; or
- (6) the lewd exhibition of the child's genitals.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is

intended to be used in producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony. (S 3 ch 166 SLA 1978; am § 1 ch 57 SLA 1983)

**Cross references.** — For crime of distribution of child pornography, see AS 11.61.125.

NOTES TO DECISIONS

**Conviction and sentence upheld.** — Applied in *Qualle v. State*, 652 P.2d 481 (Alaska Ct. App. 1982). See *Depp v. State*, 686 P.2d 712 (Alaska Ct. App. 1984). Cited in *Lawrence v. State*, 764 P.2d 318 (Alaska Ct. App. 1988).

**Sec. 11.41.460. Indecent exposure.** (a) An offender commits the crime of indecent exposure if the offender intentionally exposes the offender's genitals to another person with reckless disregard for the offensive, insulting, or frightening effect the act may have on that person.

(b) Indecent exposure before a person under 16 years of age is a class A misdemeanor. Indecent exposure before a person 16 years of age or older is a class B misdemeanor. (S 4 ch 78 SLA 1983)

**Sec. 11.41.470. Definitions.** For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

(1) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct and physically unable to express unwillingness to act;

(2) "mentally incapable" means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person's conduct, including the potential for harm to that person;

(3) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;

(4) "without consent" means that a person (A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or (B) is incapacitated as a result of an act of the defendant. (S 3 ch 166 SLA 1978; am § 5 ch 78 SLA 1983; am § 5 ch 96 SLA 1988; am § 28 ch 50 SLA 1989)

**Revisor's notes.** — Reorganized in 1988 to alphabetize the defined terms. **Cross references.** — For definition of terms used in this title, see AS 11.41.000.

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