

S B

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HOUSE COMMITTEE REPORT

(7)

Date Referred: March 30, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/5/90

5/5

Rule

The JUDICIARY Committee considered:

CSSB 355 (JUDICIARY) 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 HCS CS SB 355 (Judiciary) the same title a new title
- have attached amendment(s)
- 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 _____ *5 cents*] fiscal note(s) _____ *corrections*
 - zero fiscal note _____ 3 zero fiscal note(s) 1/24/90 *Corrections/Hawthorn*
 - zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check appropr. column)

Do Not Pass
No Rec
Amend

<u>Mr. Gruenberg</u> Gruenberg	<u>Mike D</u> DAVIS			
<u>Ellis</u> Ellis	<u>Pete</u> Gail		<input checked="" type="checkbox"/>	
<u>Terry Martin</u> Martin				
<u>Michael Miller</u> Miller				

Pete Gail

Mr. Gruenberg

Chairman's Signature

Original sponsor(s): SEN. FISCHER

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 355 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes involving sexual penetra-
7 tion or sexual contact with minors, including sit-
8 uations where the adult occupies a position of
9 special trust in relation to the minor; defining
10 'legal guardian' for certain crimes; and relating to
11 the issuance and revocation of teaching certificates
12 for persons convicted of certain crimes involving a
13 minor."

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

15 * Section 1. AS 11.41.434(a) is amended to read:

16 (a) An offender commits the crime of sexual abuse of a minor in
17 the first degree if

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

22 (2) being 18 years of age or older, the offender engages in
23 sexual penetration with a person who is under 18 years of age, and the
24 offender is the victim's natural parent, stepparent, adopted parent,
25 or legal guardian [WHO

26 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
27 OF LAW; OR

28 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN
29 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD]; or

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

3 (A) the victim at the time of the offense is [(A)]
4 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
5 as the offender and the offender has [IS IN A POSITION OF]
6 authority over the victim; or

7 (B) the offender occupies a position of authority in
8 relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFENDER'S
9 CARE].

10 * Sec. 2. AS 11.41.436(a) is amended to read:

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

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

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

23 (3) being 18 years of age or older, the offender engages in
24 sexual contact with a person who is under 18 years of age, and the
25 offender is the victim's natural parent, stepparent, adopted parent,
26 or legal guardian [WHO

27 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
28 OF LAW; OR

29 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN

1 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD];

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

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

7 (A) the victim at the time of the offense is [(A)]
8 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
9 as the offender and the offender has [IS IN A POSITION OF]
10 authority over the victim; or

11 (B) the offender occupies a position of authority in
12 relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFENDER'S
13 CARE].

14 * Sec. 3. AS 11.41.438(a) is amended to read:

15 (a) An offender commits the crime of sexual abuse of a minor in
16 the third degree if [,]

17 (1) being 16 years of age or older, the offender engages in
18 sexual contact with a person who is 13, 14, or 15 years of age and at
19 least three years younger than the offender; or

20 (2) being 18 years of age or older, the offender engages in
21 sexual penetration with a person who is 16 or 17 years of age and at
22 least three years younger than the offender, and the offender occupies
23 a position of authority in relation to the victim.

24 * Sec. 4. AS 11.41.440(a) is amended to read:

25 (a) An offender commits the crime of sexual abuse of a minor in
26 the fourth degree if [,]

27 (1) being under 16 years of age, the offender engages in
28 sexual penetration or sexual contact with a person who is under 13
29 years of age and at least three years younger than the offender; or

1 (2) being 18 years of age or older, the offender engages in
2 sexual contact with a person who is 16 or 17 years of age and at least
3 three years younger than the offender, and the offender occupies a
4 position of authority in relation to the victim.

5 * Sec. 5. AS 11.41.470 is amended by adding new paragraphs to read:

6 (5) "legal guardian" means a person who is under a duty to
7 exercise general supervision over a minor as a result of a court
8 order, statute, or regulation, and includes foster parents and staff
9 members and other employees of group homes or youth correctional
10 facilities where a child is placed as a result of a court order or the
11 action of the division of family and youth services, and police offi-
12 cers and probation officers when those officers are exercising custo-
13 dial control over a minor;

14 (6) "position of authority" means an employer, youth lead-
15 er, scout leader, coach, teacher, counselor, school administrator,
16 religious leader, doctor, nurse, psychologist, guardian ad litem,
17 babysitter, or a substantially similar position, and a police officer
18 or probation officer other than when the officer is exercising custo-
19 dial control over a minor.

20 * Sec. 6. AS 14.20.020(a) is amended to read:

21 (a) Except as provided in (f) of this section, the [THE] depart-
22 ment shall issue a teacher certificate to every person who meets the
23 requirements in (b) and (c) of this section.

24 * Sec. 7. AS 14.20.020 is amended by adding a new subsection to read:

25 (f) Except as otherwise provided in this subsection, the depart-
26 ment may not issue a teacher certificate to a person who has been
27 convicted of a crime involving a minor under AS 11.41.434 - 11.41.442,
28 11.41.455, or 11.41.460, or under a law in another jurisdiction with
29 elements substantially similar to an offense described in

1 AS 11.41.434 - 11.41.442, 11.41.455, or 11.41.460. When five years
2 have elapsed after a person has received an unconditional discharge
3 for a conviction of a crime listed in this subsection, the person may
4 petition the department to issue the certificate in spite of the
5 conviction if the person otherwise satisfies the requirements for the
6 certificate. When deciding whether to grant or deny the petition, the
7 department shall consider the nature of the particular crime, whether
8 and to what extent the person has been rehabilitated, and the other
9 factors that the department determines are significant.

10 * Sec. 8. AS 14.20.030 is amended by adding a new subsection to read:

11 (b) The commissioner or the Professional Teaching Practices
12 Commission shall revoke for life the certificate of a person who has
13 been convicted of a crime involving a minor under AS 11.41.434 -
14 11.41.442, 11.41.455, or 11.41.460, or under a law in another juris-
15 diction with elements substantially similar to an offense described in
16 AS 11.41.434 - 11.41.442, 11.41.455, or 11.41.460. When five years
17 have elapsed after the person has received an unconditional discharge
18 for the conviction, the person may petition the commission for re-
19 certification. When deciding whether to grant or deny the petition,
20 the commission shall consider the nature of the particular crime,
21 whether and to what extent the person has been rehabilitated, and the
22 other factors that the commission determines are significant.

23 * Sec. 9. AS 14.20.215 is amended by adding a new paragraph to read:

24 (7) "unconditional discharge" has the meaning given in
25 AS 12.55.185.

26 * Sec. 10. AS 14.20.020(f), as enacted by sec. 7 of this Act, and
27 AS 14.20.030(b), as enacted by sec. 8 of this Act, do not apply when the
28 crime occurred before the effective date of this Act.

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

LETTER OF INTENT

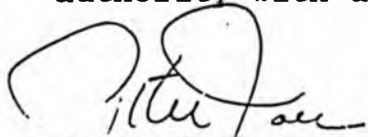
FOR

HCS FOR CS FOR SENATE BILL NO. 355 (Judiciary)


As used in AS 11.41.470, a "position of authority" is a position that enables an offender to exercise undue influence over the victim. The definition is intended to include those persons covered under the current law that makes 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 extend the definition to include other persons, such as police officers and guardians ad litem, who are in positions that enable them to exercise undue influence over children.

Employers are specifically included in the definition of position of authority. In the context of AS 11.41.434 - 11.41.440, an employer is a natural person who owns a business or operates an agency. A direct job supervisor with hiring and firing authority is in a position substantially similar to that of an employer.

The nature of an adult's position of authority in relation to the victim determines the duration of the prohibition against sexual relations between the adult and child. For example, the relationship of authority between a child and the child's teacher may continue even during the intervals between classes. On the other hand, an adult who volunteers to chaperon a single school dance does not thereby automatically create a continuing relationship of authority with all students attending the dance.



Co-Chairman Peter Goll



Co-Chairman Max Gruenberg

5/7/90

Date: May 7th, 1990

Letter of Intent

for

HCS FOR CS FOR SENATE BILL NO. 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 clarified 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 and holds a license or certificate to engage in certain professions, it is a B misdemeanor to have sexual penetration (and a violation 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, such as police officers and guardian ad litem, 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. Other 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.

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, staff members 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, and police or probation officers exercising custodial control over a minor.

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 31, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/29/90

JUDICIARY

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
[] a new title
[] have attached amendment(s)
[X] 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) _____
[3] zero fiscal note(s) 1/24/90 Corr./Ind/Ed
[] zero fn/analysis _____

SIGNING DO PASS:

J. Ellis
W. H. ...
...
...

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>W. H. ...</i>		*	

J. Ellis
Chairman's Signature

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.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

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

x x \$B 355

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-S89-7443 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.

X

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

X
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

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x

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 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.

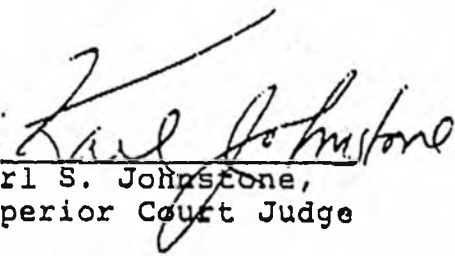
In summary, the court concludes that the statutes in question do not apply to prohibit sexual activity between a high school teacher and a 17 year old student. Alternatively, even if the legislature did intend the statutes to apply, the statutes are unconstitutionally vague.

X

X

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. Johnstone,
Superior Court Judge

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 11.41.434(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. Other 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, recreational 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...



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 *Jan Faiks*
Senator Paul Fischer *Paul 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.

RECEIVED

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

JAN 24 1990
JAN FAIKS
SENATE OFFICE
STATE CAPITOL
NEW PALM AVENUE
ANCHORAGE, ALASKA 99511
907 465 3800

MEMORANDUM

January 24, 1990

SUBJECT: Sectional summary of CSSB 355 (Jud) am
(Work Order No. 6-1663H, 1/24/90)

TO: Senator Jan Faiks
Chair, Senate Judiciary Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a sectional summary of the above described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 prohibits an adult from engaging in sexual penetration with a minor, if the adult is the minor's natural parent, stepparent, adopted parent, or legal guardian. Prohibits an adult from engaging in sexual penetration with a person under 16 if the minor at the time of the offense resides in the same household as the adult and the adult is in a position of authority over the minor. Prohibits an adult from engaging in sexual penetration with a person under 16 if the adult occupies a position of special trust in relation to the minor. Deletes certain language in the current statute. These are crimes of sexual abuse of a minor in the first degree and are unclassified felonies.

Section 2 prohibits an adult from engaging in sexual contact with a minor, if the adult is the minor's natural parent, stepparent, adopted parent, or legal guardian. Prohibits an adult from engaging in sexual contact with a person under 16 if the minor at the time of the offense resides in the same household as the adult and the adult is in a position of authority over the minor. Prohibits an adult from engaging

in sexual contact with a person under 16 if the adult occupies a position of special trust in relation to the victim. Prohibits an adult from engaging in sexual penetration with a person who is 16 or 17 years old, and at least three years younger than the adult, if the adult occupies a position of special trust in relation to the victim. Deletes certain language from the current statute. These are crimes of sexual abuse of minor in the second degree and class B felonies.

Section 3 prohibits an adult from engaging in sexual contact with a person who is 16 or 17 years old, and at least three years younger than the adult, if the adult occupies a position of special trust in relation to the minor. This is a crime of sexual abuse of a minor in the third degree and a class C felony.

Section 4 defines "legal guardian" and "position of special trust" for AS 11.41.410 - 11.41.470.

Section 5 creates an exception to the requirement that the Department of Education issue a teacher certificate to every person who meets certain listed requirements. The substance of the exception is contained in sec. 6.

Section 6 prohibits the Department of Education from issuing a teacher certificate to a person who has been convicted of a crime involving a minor under certain statutes of the state that are listed in the section, or under a law in another jurisdiction with elements substantially similar to the listed state statutes. Five years after an unconditional discharge from the conviction, allows the person to petition the department to issue the certificate in spite of the conviction. Indicates what factors the department is to consider when making its decision.

Section 7 directs the Commissioner of Education or the Professional Teaching Practices Commission to revoke for life the certificate of a person who has been convicted of a crime involving a minor under certain statutes of the state that are listed in the section, or under a law in another jurisdiction with elements substantially similar to the listed state statutes. Five years after an unconditional discharge from the conviction, allows the person to petition the commission for recertification. Indicates what factors the commission is to consider when making its decision.

Senator Jan Faiks
Page 3
January 24, 1990

Section 8 defines "unconditional discharge" for AS 14.20.010
- 14.20.215.

Section 9 states that the license issuance prohibition contained in sec. 6 and the mandatory license revocation contained in sec. 7 do not apply when the crime occurred before the effective date of the Act.

If I can be of further assistance, please advise.

TBC:gc
G13/067

SEX OFFENSES: CSSB 355 (Judiciary)^{am}
 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, ~~recreational leader~~, scout leader, athletic manager, coach, teacher, counselor, school administrator, religious leader, ^{doctor, nurse, psychologist} practitioner of the healing arts, police officer, probation officer, guardian ad litem, babysitter, or substantially similar position.

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		

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to sexual offenses
against children."
Sponsor: Senator Fischer
Requestor: _____

Agency Affected: Department of Corrections
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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-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
Division: Administrative Services

Phone: 465-3376
Date: 01-12-90

Approved by Commissioner: *James H. Mohrney-Barnett*
Agency: Department of Corrections

Date: 01-12-90

Distribution (by preparer):

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

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

col

page 1 of 1

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						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

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 Phone: 465-2800
 Division: Commissioner's Office Date: 1/16/90
 Approved by Commissioner: William G. Demmert Date: 1/16/90
 Agency: Education

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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

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. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: January 24, 1990
Approved by Commissioner: Richard I. Pegues / FOR /
Douglas B. Bailly, 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, 3AN-589-7443 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. 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.

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.



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.

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.

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2
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 5th day of March, 1990.

Respectfully submitted,


Grand Jury Foreperson

Original sponsor(s): SEN. FISCHER

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 355 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes involving sexual penetra-
7 tion or sexual contact with minors, including sit-
8 uations where the adult abuses a position of special
9 trust in relation to the minor; defining 'legal
10 guardian' for certain crimes; and relating to the
11 issuance and revocation of teaching certificates and
12 occupational licenses for persons convicted of cer-
13 tain crimes and engaging in certain activities in-
14 volving a minor."

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

16 * Section 1. AS 08.01 is amended by adding a new section to read:

17 Sec. 08.01.077. SEXUAL MISCONDUCT WITH MINORS AS GROUNDS FOR
18 DENIAL OR REVOCATION OF LICENSE. (a) A board shall deny an applica-
19 tion for a license or permit by, and shall permanently revoke a li-
20 cense or permit previously issued to, a chiropractor under AS 08.20,
21 to a dentist under AS 08.36, to a medical doctor under AS 08.64, to a
22 nurse under AS 08.68, to a physical or occupational therapist or a
23 physical or occupational therapy assistant under AS 08.84, to a psy-
24 chologist or psychological associate under AS 08.86, and to a clinical
25 social worker under AS 08.95 if the person applying for a license or
26 holding a license has been convicted of a violation of AS 11.41.434 -
27 11.41.440 or 11.41.455, of AS 11.41.460 when the victim is a minor, or
28 of a law of another jurisdiction having substantially similar ele-
29 ments.

1 (b) A board may deny an application for a license or permit by,
2 and may revoke a license or permit previously issued to, a person
3 listed in (a) of this section who

4 (1) has engaged in conduct constituting a violation of
5 AS 11.41.434 - 11.41.440 or 11.41.455, or of 11.41.460 when the victim
6 was a minor; or

7 (2) has engaged in sexual penetration or sexual contact
8 with a person who at the time of the penetration or contact was 16 or
9 17 years old and at least three years younger than the person applying
10 for or holding the license, and the penetration or contact was sub-
11 stantially related to the qualifications, functions, or duties of the
12 occupation to which the license or permit requirement applies.

13 (c) A person who has been denied a license or who has had a
14 license revoked under (a) or (b) of this section may, no earlier than
15 five years after the person has received an unconditional discharge
16 for a conviction under (a) of this section or after the person has en-
17 gaged in the conduct described in (b) of this section, apply to the
18 appropriate board for the issuance or reinstatement of a license.
19 When deciding whether to grant or deny the application, the board
20 shall consider the nature of the particular crime or conduct, the
21 extent of the person's rehabilitation, and other factors that the
22 board considers significant.

23 (d) This section may not be construed as limiting other grounds
24 for which a license under this title may be denied, suspended, or
25 revoked.

26 (e) In this section

27 (1) "convicted" does not include a conviction in the juve-
28 nile justice system of this or another jurisdiction, but does include
29 a conviction that has been set aside under AS 12.55.085(e) or the

1 equivalent laws of another jurisdiction;

2 (2) "sexual penetration" and "sexual contact" have the
3 meanings given in AS 11.81.900;

4 (3) "unconditional discharge" has the meaning given in
5 AS 12.55.185.

6 * Sec. 2. AS 11.41.434(a) is amended to read:

7 (a) An offender commits the crime of sexual abuse of a minor in
8 the first degree if

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

13 (2) being 18 years of age or older, the offender engages in
14 sexual penetration with a person who is under 18 years of age, and the
15 offender is the victim's natural parent, stepparent, adopted parent,
16 or legal guardian [WHO

17 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
18 OF LAW; OR

19 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN
20 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD]; or

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

24 (A) residing [AS A MEMBER OF THE SOCIAL UNIT] in the
25 same household as the offender and the offender is in a position
26 of authority over the victim; or

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

28 * Sec. 3. AS 11.41.436(a) is amended to read:

29 (a) An offender commits the crime of sexual abuse of a minor in

1 the second degree if

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

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

12 (3) being 18 years of age or older, the offender engages in
13 sexual contact with a person who is under 18 years of age, and the
14 offender is the victim's natural parent, stepparent, adopted parent,
15 or legal guardian [WHO

16 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
17 OF LAW; OR

18 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN
19 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD];

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

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

26 (A) residing [AS A MEMBER OF THE SOCIAL UNIT] in the
27 same household as the offender and the offender is in a position
28 of authority over the victim; or

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

1 * Sec. 4. AS 11.41.440(a) is amended to read:

2 (a) An offender commits the crime of sexual abuse of a minor in
3 the fourth degree if [,]

4 (1) being under 16 years of age, the offender engages in
5 sexual penetration or sexual contact with a person who is under 13
6 years of age and at least three years younger than the offender; or

7 (2) being 18 years of age or older, the offender engages in
8 sexual penetration or sexual contact with a person who is 16 or 17
9 years of age and at least three years younger than the offender, and
10 the offender occupies a position of special trust in relation to the
11 victim and uses the position to induce the victim to engage in sexual
12 penetration or sexual contact.

13 * Sec. 5. AS 11.41.470 is amended by adding new paragraphs to read:

14 (5) "legal guardian" means a person who is under a duty to
15 exercise general supervision over a minor as a result of a court
16 order, statute, or regulation, and includes foster parents and staff
17 members and other employees of group homes or youth correctional
18 facilities where a child is placed as a result of a court order or the
19 action of the division of family and youth services;

20 (6) "position of special trust" means a youth leader, scout
21 leader, athletic manager, coach, teacher, counselor, school adminis-
22 trator, religious leader, doctor, nurse, psychologist, police officer,
23 probation officer, guardian ad litem, babysitter, or a substantially
24 similar position.

25 * Sec. 6. AS 14.20.020(a) is amended to read:

26 (a) Except as provided in (f) of this section, the [THE] depart-
27 ment shall issue a teacher certificate to every person who meets the
28 requirements in (b) and (c) of this section.

29 * Sec. 7. AS 14.20.020 is amended by adding new subsections to read:

1 (f) Except as otherwise provided in (h) of this section, the
2 department may not issue a teacher certificate to a person who has
3 been convicted of a violation of AS 11.41.434 - 11.41.440 or 11.41.-
4 455, or of 11.41.460 when the victim is a minor, or under a law of
5 another jurisdiction having substantially similar elements.

6 (g) The department may refuse to issue a teacher certificate to
7 a person who

8 (1) has engaged in conduct constituting a violation of
9 AS 11.41.434 - 11.41.440 or 11.41.455, or of 11.41.460 when the victim
10 was a minor; or

11 (2) has engaged in sexual penetration or sexual contact
12 with a person who at the time of the penetration or contact was 16 or
13 17 years old and at least three years younger than the person applying
14 for a certificate and who was a student in a school in which the
15 person applying for a certificate taught or was otherwise employed.

16 (h) When five years have elapsed after a person has received an
17 unconditional discharge for a conviction of a crime listed in (f) of
18 this section, or after the person has engaged in the conduct described
19 in (g) of this section, the person may petition the department to
20 issue the certificate in spite of the conviction or the conduct if the
21 person otherwise satisfies the requirements for the certificate. When
22 deciding whether to grant or deny the petition, the department shall
23 consider the nature of the particular crime or conduct, whether and to
24 what extent the person has been rehabilitated, and the other factors
25 that the department determines are significant.

26 * Sec. 8. AS 14.20.030 is amended by adding new subsections to read:

27 (b) The commissioner or the Professional Teaching Practices
28 Commission shall revoke for life the certificate of a person who has
29 been convicted of a violation of AS 11.41.434 - 11.41.440 or

1 11.41.455, or of 11.41.460 when the victim is a minor, or under a law
2 in another jurisdiction with substantially similar elements.

3 (c) The commissioner or the Professional Teaching Practices
4 Commission may revoke for life the certificate of a person who

5 (1) has engaged in conduct constituting a violation of
6 AS 11.41.434 - 11.41.440 or 11.41.455, or of 11.41.460 when the victim
7 was a minor; or

8 (2) has engaged in sexual penetration or sexual contact
9 with a person who at the time of the penetration or contact was 16 or
10 17 years old and at least three years younger than the person holding
11 the certificate and who was a student in a school in which the person
12 holding the certificate taught or was otherwise employed.

13 (d) When five years have elapsed after the person has received
14 an unconditional discharge for the conviction of a crime listed in (b)
15 of this section, or after the person has engaged in the conduct de-
16 scribed in (c) of this section, the person may petition the commission
17 for recertification. When deciding whether to grant or deny the
18 petition, the commission shall consider the nature of the particular
19 crime or conduct, whether and to what extent the person has been
20 rehabilitated, and the other factors that the commission determines
21 are significant.

22 * Sec. 9. AS 14.20.215 is amended by adding new paragraphs to read:

23 (7) "unconditional discharge" has the meaning given in
24 AS 12.55.185;

25 (8) "sexual penetration" and "sexual contact" have the
26 meanings given in AS 11.81.900.

27 * Sec. 10. AS 08.01.077, as enacted by sec. 1 of this Act, AS 14.20.-
28 020(f) and (g), as enacted by sec. 7 of this Act, and AS 14.20.030(b) and
29 (c), as enacted by sec. 8 of this Act, do not apply when the crime, sexual

1 penetration, or sexual contact occurred before the effective date of this
2 Act.

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Original sponsor(s): SEN. FISCHER

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 355 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes involving sexual penetra-
7 tion or sexual contact with minors, including sit-
8 uations where the adult occupies a position of spe-
9 cial trust in relation to the minor; defining 'legal
10 guardian' for certain crimes; and relating to the
11 issuance and revocation of teaching certificates for
12 persons convicted of certain crimes involving a
13 minor."

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

15 * Section 1. AS 11.41.434(a) is amended to read:

16 (a) An offender commits the crime of sexual abuse of a minor in
17 the first degree if

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

22 (2) being 18 years of age or older, the offender engages in
23 sexual penetration with a person who is under 18 years of age, and the
24 offender is the victim's natural parent, stepparent, adopted parent,
25 or legal guardian [WHO

26 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
27 OF LAW; OR

28 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN
29 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD]; or

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

3 (A) the victim at the time of the offense is [(A)]
4 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
5 as the offender and the offender has [IS IN A POSITION OF]
6 authority over the victim; or

7 (B) the offender occupies a position of authority in
8 relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFENDER'S
9 CARE].

10 * Sec. 2. AS 11.41.436(a) is amended to read:

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

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

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

23 (3) being 18 years of age or older, the offender engages in
24 sexual contact with a person who is under 18 years of age, and the
25 offender is the victim's natural parent, stepparent, adopted parent,
26 or legal guardian [WHO

27 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
28 OF LAW; OR

29 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN

1 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD];

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

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

7 (A) the victim at the time of the offense is [(A)]
8 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
9 as the offender and the offender has [IS IN A POSITION OF]
10 authority over the victim; or

11 (B) the offender occupies a position of authority in
12 relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFENDER'S
13 CARE].

14 * Sec. 3. AS 11.41.440(a) is amended to read:

15 (a) An offender commits the crime of sexual abuse of a minor in
16 the fourth degree if [,]

17 (1) being under 16 years of age, the offender engages in
18 sexual penetration or sexual contact with a person who is under 13
19 years of age and at least three years younger than the offender; or

20 (2) being 18 years of age or older, the offender engages in
21 sexual penetration with a person who is 16 or 17 years of age and at
22 least three years younger than the offender, and the offender occupies
23 a position of authority in relation to the victim.

24 * Sec. 4. AS 11.41 is amended by adding a new section to read:

25 Sec. 11.41.442. SEXUAL ABUSE OF A MINOR IN THE FIFTH DEGREE.

26 (a) An offender commits the crime of sexual abuse of a minor in the
27 fifth degree if, being 18 years of age or older, the offender engages
28 in sexual contact with a person who is 16 or 17 years of age and at
29 least three years younger than the offender, and the offender occupies

1 a position of authority in relation to the victim.

2 (b) Sexual abuse of a minor in the fifth degree is a class B
3 misdemeanor.

4 * Sec. 5. AS 11.41.470 is amended by adding new paragraphs to read:

5 (5) "legal guardian" means a person who is under a duty to
6 exercise general supervision over a minor as a result of a court
7 order, statute, or regulation, and includes foster parents and staff
8 members and other employees of group homes or youth correctional
9 facilities where a child is placed as a result of a court order or the
10 action of the division of family and youth services, and police offi-
11 cers and probation officers when those officers are exercising custo-
12 dial control over a minor;

13 (6) "position of authority" means an employer, youth
14 leader, scout leader, coach, teacher, counselor, school administrator,
15 religious leader, doctor, nurse, psychologist, guardian ad litem,
16 babysitter, or a substantially similar position, and a police officer
17 or probation officer other than when the officer is exercising custo-
18 dial control over a minor.

19 * Sec. 6. AS 14.20.020(a) is amended to read:

20 (a) Except as provided in (f) of this section, the [THE] depart-
21 ment shall issue a teacher certificate to every person who meets the
22 requirements in (b) and (c) of this section.

23 * Sec. 7. AS 14.20.020 is amended by adding a new subsection to read:

24 (f) Except as otherwise provided in this subsection, the depart-
25 ment may not issue a teacher certificate to a person who has been
26 convicted of a crime involving a minor under AS 11.41.434 - 11.41.442,
27 11.41.455, or 11.41.460, or under a law in another jurisdiction with
28 elements substantially similar to an offense described in AS 11.41.-
29 434 - 11.41.442, 11.41.455, or 11.41.460. When five years have

1 elapsed after a person has received an unconditional discharge for a
2 conviction of a crime listed in this subsection, the person may peti-
3 tion the department to issue the certificate in spite of the convic-
4 tion if the person otherwise satisfies the requirements for the cer-
5 tificate. When deciding whether to grant or deny the petition, the
6 department shall consider the nature of the particular crime, whether
7 and to what extent the person has been rehabilitated, and the other
8 factors that the department determines are significant.

9 * Sec. 8. AS 14.20.030 is amended by adding a new subsection to read:

10 (b) The commissioner or the Professional Teaching Practices
11 Commission shall revoke for life the certificate of a person who has
12 been convicted of a crime involving a minor under AS 11.41.434 -
13 11.41.442, 11.41.455, or 11.41.460, or under a law in another juris-
14 diction with elements substantially similar to an offense described in
15 AS 11.41.434 - 11.41.442, 11.41.455, or 11.41.460. When five years
16 have elapsed after the person has received an unconditional discharge
17 for the conviction, the person may petition the commission for re-
18 certification. When deciding whether to grant or deny the petition,
19 the commission shall consider the nature of the particular crime,
20 whether and to what extent the person has been rehabilitated, and the
21 other factors that the commission determines are significant.

22 * Sec. 9. AS 14.20.215 is amended by adding a new paragraph to read:

23 (7) "unconditional discharge" has the meaning given in
24 AS 12.55.185.

25 * Sec. 10. AS 14.20.020(f), as enacted by sec. 7 of this Act, and
26 AS 14.20.030(b), as enacted by sec. 8 of this Act, do not apply when the
27 crime occurred before the effective date of this Act.
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Original sponsor(s): SEN. FISCHER

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 355 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes involving sexual penetra-
7 tion or sexual contact with minors, including sit-
8 uations where the adult occupies a position of spe-
9 cial trust in relation to the minor; defining 'legal
10 guardian' for certain crimes; and relating to the
11 issuance and revocation of teaching certificates for
12 persons convicted of certain crimes involving a
13 minor."

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

15 * Section 1. AS 11.41.434(a) is amended to read:

16 (a) An offender commits the crime of sexual abuse of a minor in
17 the first degree if

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

22 (2) being 18 years of age or older, the offender engages in
23 sexual penetration with a person who is under 18 years of age, and the
24 offender is the victim's natural parent, stepparent, adopted parent,
25 or legal guardian [WHO

26 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
27 OF LAW; OR

28 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN
29 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD]; or

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

3 (A) the victim at the time of the offense is [(A)]
4 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
5 as the offender and the offender is in a position of authority
6 over the victim; or

7 (B) the offender occupies a position of special trust
8 in relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFEND-
9 ER'S CARE].

10 * Sec. 2. AS 11.41.436(a) is amended to read:

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

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

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

23 (3) being 18 years of age or older, the offender engages in
24 sexual contact with a person who is under 18 years of age, and the
25 offender is the victim's natural parent, stepparent, adopted parent,
26 or legal guardian [WHO

27 (A) IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY
28 OF LAW; OR

29 (B) IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN

1 ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD];

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

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

7 (A) the victim at the time of the offense is [(A)]
8 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
9 as the offender and the offender is in a position of authority
10 over the victim; or

11 (B) the offender occupies a position of special trust
12 in relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFEND-
13 ER'S CARE].

14 * Sec. 3. AS 11.41 is amended by adding a new section to read:

15 Sec. 11.41.442. SEXUAL ABUSE OF A MINOR IN THE FIFTH DEGREE.

16 (a) An offender commits the crime of sexual abuse of a minor in the
17 fifth degree if, being 18 years of age or older, the offender engages
18 in sexual penetration with a person who is 16 or 17 years of age ^{or} and
19 at least three years younger than the offender, and the offender
20 occupies a position of special trust in relation to the victim and is

21 (1) a doctor, nurse, or psychologist licensed under AS 08;

22 (2) a teacher, counselor, or school administrator certifi-
23 cated under AS 14.20; or

24 (3) a police officer certificated under AS 18.65.240 or a
25 probation or parole officer certificated under AS 18.65.242.

26 (b) Sexual abuse of a minor in the fifth degree is a class B
27 misdemeanor.

28 * Sec. 4. AS 11.41 is amended by adding a new section to read:

29 Sec. 11.41.444. SEXUAL ABUSE OF A MINOR IN THE SIXTH DEGREE.

1 (a) An offender commits the crime of sexual abuse of a minor in the
2 sixth degree if, being 18 years of age or older, the offender engages
3 in sexual contact with a person who is 16 or 17 years of age and at
4 least three years younger than the offender, the offender occupies a
5 position of special trust in relation to the victim, and the offender
6 is a person listed in AS 11.41.442(a)(1) - (3).

7 (b) Sexual abuse of a minor in the sixth degree is a violation.

8 * Sec. 5. AS 11.41.470 is amended by adding new paragraphs to read:

9 (5) "legal guardian" means a person who is under a duty to
10 exercise general supervision over a minor as a result of a court
11 order, statute, or regulation, and includes foster parents and staff
12 members and other employees of group homes or youth correctional
13 facilities where a child is placed as a result of a court order or the
14 action of the division of family and youth services, and police offi-
15 cers and probation officers when those officers are exercising custo-
16 dial control over a minor;

17 (6) "position of special trust" means an employer, youth
18 leader, scout leader, coach, teacher, counselor, school administrator,
19 religious leader, doctor, nurse, psychologist, guardian ad litem,
20 babysitter, or a substantially similar position, and a police officer
21 or probation officer other than when the officer is exercising custo-
22 dial control over a minor.

23 * Sec. 6. AS 14.20.020(a) is amended to read:

24 (a) Except as provided in (f) of this section, the [THE] depart-
25 ment shall issue a teacher certificate to every person who meets the
26 requirements in (b) and (c) of this section.

27 * Sec. 7. AS 14.20.020 is amended by adding a new subsection to read:

28 (f) Except as otherwise provided in this subsection, the
29 department may not issue a teacher certificate to a person who has

1 been convicted of a crime involving a minor under AS 11.41.434 -
2 11.41.444, 11.41.455, or 11.41.460, or under a law in another juris-
3 diction with elements substantially similar to an offense described in
4 AS 11.41.434 - 11.41.444, 11.41.455, or 11.41.460. When five years
5 have elapsed after a person has received an unconditional discharge
6 for a conviction of a crime listed in this subsection, the person may
7 petition the department to issue the certificate in spite of the
8 conviction if the person otherwise satisfies the requirements for the
9 certificate. When deciding whether to grant or deny the petition, the
10 department shall consider the nature of the particular crime, whether
11 and to what extent the person has been rehabilitated, and the other
12 factors that the department determines are significant.

13 * Sec. 8. AS 14.20.030 is amended by adding a new subsection to read:

14 (b) The commissioner or the Professional Teaching Practices
15 Commission shall revoke for life the certificate of a person who has
16 been convicted of a crime involving a minor under AS 11.41.434 -
17 11.41.444, 11.41.455, or 11.41.460, or under a law in another juris-
18 diction with elements substantially similar to an offense described in
19 AS 11.41.434 - 11.41.444, 11.41.455, or 11.41.460. When five years
20 have elapsed after the person has received an unconditional discharge
21 for the conviction, the person may petition the commission for re-
22 certification. When deciding whether to grant or deny the petition,
23 the commission shall consider the nature of the particular crime,
24 whether and to what extent the person has been rehabilitated, and the
25 other factors that the commission determines are significant.

26 * Sec. 9. AS 14.20.215 is amended by adding a new paragraph to read:

27 (7) "unconditional discharge" has the meaning given in
28 AS 12.55.185.

29 * Sec. 10. AS 14.20.020(f), as enacted by sec. 7 of this Act, and

1 AS 14.20.030(b), as enacted by sec. 8 of this Act, do not apply when the
2 crime occurred before the effective date of this Act.

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