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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
707 465 1200

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 15, 1990

SUBJECT: Sectional summary of SB 355
(Work Order No. 6-1663A)

TO: Senator Paul Fischer

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 makes it a crime for an adult to engage in sexual penetration with a 16 or 17 year-old if the minor attends a public or private school (high school or lower) and if the adult is authorized by the school or its school district to work with the students, either in a paid or voluntary capacity, as part of the curriculum or activities of the school or school district. Makes this activity a crime of sexual abuse of a minor in the first degree, which is an unclassified felony.

Section 2 makes it a crime for an adult to engage in sexual contact with a 16 or 17 year-old if the minor attends a public or private school (high school or lower) and if the adult is authorized by the school or its school district to work with the students, either in a paid or voluntary capacity, as part of the curriculum or activities of the school or school district. Makes this activity a crime of sexual abuse of a minor in the second degree, which is a class B felony.

Section 3 creates an exception to the requirement that the

Senator Paul Fischer
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January 15, 1990

Department of Education issue a teacher certificate to every person who meets the listed requirements. The substance of the exception is contained in sec. 4.

Section 4 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.

Section 5 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.

Section 6 states that the license issuance prohibition contained in sec. 4 and the mandatory license revocation contained in sec. 5 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
G13/031



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.

CAROL A. STOLPE
CHAMBER OF COMMERCE SPEECH
NOVEMBER 20, 1989

The issue before us today is serious. It centers on the actions of the Anchorage Police Department and the response of the Anchorage School District. The issues appear to have become blurred - out of focus - with all of the media attention, letters to the editors and the rumor mill. I will focus on the issues and then talk some about my response as a member of the School Board.

In May of this year a student at one of our high schools told an assistant principal that she thought her girlfriend was having a physical relationship with a teacher. The student and the teacher were interviewed separately. They vehemently denied any such activity. The building administrators discussed the matter and decided, in their professional judgement, they could not take any action because both people denied any such activity. The building administrators were also aware that the student was over the age of consent and that the relationship would not violate any criminal statute. The first student approached the assistant principal again, two weeks later, with the same concern. Again, the teacher and student were interviewed separately and denied the relationship. At this time the student graduated from high school and left to attend a college summer session in another state and the teacher left the country for the summer.

In early August the student's father met with the principal of Bartlett High School and explained that he now believed rumors that he had heard in May that his daughter and the teacher may have been involved. On behalf of the District, a high school supervisor and an attorney travelled to the college, interviewed the student, received a signed statement from her and returned to Anchorage. At this point in mid-August the School Board was advised of the situation.

The Administration attempted to locate the teacher who was still out of the country. Immediately upon his return he was notified of the situation. A resignation was negotiated with him. The purpose of the agreement was two-fold. One - to immediately and finally remove the teacher from the classroom in this city, this state, and to the extent of our ability to do so, in this country; and second - to protect the identity of the young woman. A contract and termination of that contract between a teacher and school district must adhere to the laws of the State of Alaska. To fire a teacher allows that teacher, under state law, to a public trial; to protest and appeal in such a way as to allow

the teacher to remain on the payroll until the public trial; requires a school district to defend itself and possibly pay the teacher's legal fees and requires full disclosure of the identity and testimony of any witnesses, including the student. In this case, the student refused to admit to their relationship unless she was promised that her identity would be kept confidential. The Administration and the School Board acted in the best interest of the student. The behavior of this teacher is reprehensible. Behavior of this kind is not tolerated by this School Board, Dr. Coats and his Administration.

During the process of completing the paperwork regarding this teacher, the principal of the high school submitted a form to the Administration Building noting that this teacher was eligible for rehire. The principal's supervisor discovered the error within a few days and placed a new form in the teacher's file stating he was not eligible for rehire. The agreement between the teacher and the School District was worded to ensure that this person would never teach in the State of Alaska again in a public school setting kindergarten through twelfth grade.

The agreement also provided that all reports and disclosure required by law would be made. These actions were completed by the fourth week in August. The teacher never returned to the classroom. On September 7, after the Labor Day weekend, the School District notified the Division of Family and Youth Services of the situation using the usual procedure that had been developed over the years and a procedure agreed to and accepted by both DFYS and the School District. Following usual procedures DFYS notified the police. The School Board was kept advised during the entire process. We thought the matter was closed and went about our business of attending to the needs of public education.

Unknown to us, however, the police did not consider the matter closed. They asked for and received search warrants, 12 in all, covering our School District Administration Building, Bartlett High School and our attorneys' office and placing six School District administrators, including the Superintendent, under criminal investigation. I believe that at some time prior to the raid on October 3, Detective Chapman and Chief O'Leary had a number of options available to them that would have resulted in addressing and resolving their concerns. Detective Chapman and Chief O'Leary could have asked for the information they were seeking. It would have been provided. He could have asked for the information through a subpoena. Historically, the working relationship between ASD and APD has been cooperative. Prior to October 3 established procedures were acceptable and workable. We had no reason to believe otherwise until the police entered our building with a dozen search warrants. For reasons we do not know the police chose

not to follow their usual investigating procedures. Or, another option in the interests of the community, particularly the children, the Mayor, the Assembly or the School Board, all of whom are held accountable by the public, could have been asked to intervene. Or, Chief O'Leary could have obtained the search warrants he thought necessary and served them in a calm, reasoned manner in order to gain the information he thought he needed.

Instead, on October 3 Chief O'Leary entered the School District Administration Building dressed in a police uniform complete with pistol on the hip and wearing a bulletproof vest, accompanied by a dozen police officers. He threatened the switch board operator with arrest if she allowed any incoming or outgoing calls, stationed men on the three floors of the building, entered a meeting the Superintendent was conducting and ordered the Superintendent to come with him while he initiated the search of his office.

Surely there was a better way for Chief O'Leary to achieve his stated goal of gaining documentation he felt had been withheld. For two days the buildings was searched - every office, every file, every desk, all the nooks and crannies andddd the trash. At this point the action would have been merely outrageous - words to describe it could have been excessive, overreactive, unwarranted, ill-conceived. Sad to say the police exceeded the authority granted to them by the judge in the search warrants. For those who have never seen a search warrant it is a simple one page document which is very specific. The laws of this country protect every citizen. We are protected from the police entering our homes and our businesses. If the police want to search us they must have a warrant which says what, who and where they will search. The warrant must be narrow and specific. A general search is not constitutional. When the police searched the Administration Building they did not obey the law. They went well beyond the scope of the warrants. I know this to be true. I observed some of the search. At the same time the Administration Building was being occupied, our attorneys' office and a high school were being searched.

Ladies and Gentlemen, anyone of you could be the object of such a search. If the police can enter one place, in this instance school district facilities, and search as they please without regard to the law; then nothing will stop them from entering your home or business. They could look where they please, take what they choose, place you under criminal investigation for indefinite periods of time in a very public way and not tell you why you are being searched or what they think you have done wrong. Think about what I have said.

In the week following the School Board and the Administration wrestled with how to respond. The police had put us in a position where we had few options. We approached the District Attorney and the police. We asked them to tell us why they were searching so that we could resolve the problem without litigation. They weren't interested. With no options available to us we took action to protect the rights of our students and our employees, to stop the police from examining files protected by law, to find out why the police were investigating our administrators.

The School Board has, in the past, worked in a very positive and cooperative way with many citizen groups and we expect to continue working with these groups. They are important. Regarding Mr. Schutte and his committee I assume, and would appreciate Mr. Schutte explaining, if in his quest for a review of certain policies, procedures and practices of ASD, that his same quest for understanding and review will be extended to other agencies working on behalf of children. A partial listing would include the Anchorage Police Department, the Division of Family and Youth Services, the Courts and laws of the State of Alaska. In addition to working with various citizen groups the School Board and the Administration want to find avenues that will restore the good working relationships we have enjoyed in the past with the police department. The entire community must commit to finding solutions to end this awful situation.

In closing I will offer these observations. First, I believe that the employees of the Anchorage School District care about children, their welfare and their education. Dr. Coats is a man of integrity and has demonstrated genuine commitment to public education and to this community. He continues to have strong support from the School Board. Secondly, five years ago I won my election and a seat on the Anchorage School Board. I was elected to represent you in the matters of public education. The oath which I took states, "I pledge to uphold the Constitution of the United States." It continues, "and I pledge to uphold the Constitution of the State of Alaska." The search conducted by the Anchorage Police Department violated the constitutional rights of students and employees. It is my obligation as a School Board member to "uphold" the Constitution to protect these valued and important civil rights in our free society. I will, with other members of the School Board, continue to fulfill the duties and responsibilities of my office.

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

ASD MEMORANDUM #175 (89-90)

January 8, 1990

TO: SCHOOL BOARD

FROM: OFFICE OF THE SUPERINTENDENT

William Crato

SUBJECT: CHILD ABUSE AND NEGLECT REPORTING PROCEDURES

PERTINENT FACTS:

The Anchorage School District has established procedures in administrative manuals and the school nurse's handbook for reporting child abuse and neglect. Last year alone District personnel reported 688 cases of suspected child abuse and neglect to the Division of Family and Youth Services, State of Alaska.

In 1936 a change in the state law occurred which required training for all employees of the District who are required to report abuse or neglect of children. (AS 47.17.022). The District complied with this by doing District-wide training in the 1986-87 school year for all employees required to report. The statutes also required training on an on-going basis for new employees within six months of employment. Last spring, in an effort to revise and update our training activities, a review of existing procedures was begun. We had scheduled an in-service for school nurses for October 17, 1989 to review and provide information on the training of new to the District teachers. Because of the concerns raised regarding the recent police department search and investigation of one case which we did report, we decided to have our October 17, 1989 in-service placed on hold. We did a comprehensive review of our updated procedures and asked our legal counsel to review these also. Attached are the DRAFT revised procedures.

We are actively seeking input from a wide range of affected groups. We have disseminated for comment this DRAFT to our employee bargaining groups, school administrators, community agencies such as the Division of Family and Youth Services - State of Alaska (DFYS), the law enforcement agencies and other interested groups such as the Anchorage Council of PTA.

The procedures will be placed on the consent agenda for first reading for School Board action on January 15, 1990 and second reading on February 12, 1990. Through this process the public and members of the school community are invited to present testimony directly to the School Board.

WC/BC/dc

Attachment

DRAFT

ANCHORAGE SCHOOL DISTRICT

PROPOSED

CHILD ABUSE AND NEGLECT

REPORTING PROCEDURES

JANUARY 1990

DRAFT

I. PROVISIONS OF LAW.

A. Introduction.

School teachers, school administrators and administrative staff members, practitioners of the healing arts, and others, are required by law to make reports when they have cause to believe that child abuse or neglect has resulted in harm to a child. This obligation is an individual legal duty. Reports made in good faith in performance of this duty result in absolute immunity for the reporter from being sued civilly or being prosecuted criminally. On the other hand, a knowing failure to report may result in criminal prosecution. The procedures and definitions provided below are designed to assist all school district employees in fulfilling their obligations under this law. In cases where an individual is uncertain as to whether or not cause to believe child abuse or neglect has occurred, a team approach should be utilized. However, this approach does not relieve any individual from the obligation to report once they conclude that there is cause to believe that child abuse or neglect has occurred. See Section IV.B.

Reports must be made by telephone, followed by a written report, to the Division of Family and Youth Services (DFYS) whenever there is cause to believe that a child has suffered abuse or neglect. See Section IV.B. and C. Additionally, a copy of the written report must be forwarded to the police department when

there is cause to believe that the child abuse or neglect was inflicted by a person who is not responsible for the child's welfare or where the identity of the person who is responsible for the child's welfare cannot be determined, or where the identity of the person believed to have committed the abuse is unknown or cannot be determined. See Section IV.D.

It is essential that all school district employees familiarize themselves with the reporting requirements and definitions set forth below. A working knowledge of these definitions and requirements will enable you to comply with your legal duties in fulfilling these challenging obligations.

B. The Reporting Requirement.

Employees of the district are required by law and Board Policy to immediately report to the nearest office of the Department of Health and Social Services, Division of Family and Youth Services (DFYS), instances where, in the performance of their professional duties, they have cause to believe that a child has suffered harm as a result of child abuse or neglect. If an employee making a report of harm cannot reasonably contact the nearest office of DFYS, and immediate action is necessary for the well-being of the child, the employee shall make the report to a peace officer. (AS 47.17.020; Board Policy 474.1)

C. Immunity.

Any employee who, in good faith, reports suspected child abuse or neglect, or who participates in judicial proceedings related to

submission of these reports of child abuse or neglect is immune from any civil or criminal liability which might otherwise be incurred or imposed. (AS 47.17.050, Attachment 1)

D. Failure to Report.

Any employee of the district who wilfully or knowingly fails to make a report of child abuse or neglect required by law and school policy, is subject to criminal prosecution and is further subject to disciplinary action by the district, up to, and including termination of employment for cause. (AS 47.17.068; Board Policy 474)

II. PERSONS REQUIRED TO REPORT (AS 47.17.020).

A. School teachers, which includes any person serving in a teaching or counseling capacity and required to be certificated in order to hold the position. Also included are teacher's aides, substitute teachers, tutors, coaches, instructors and other personnel in the employ of the school district to provide educational or social services to the students of the district.

B. School Administrators and Administrative Staff Members, which includes persons employed by the district in the capacity of administrators, school principals or assistant principals, supervisors, managers, directors, or coordinators.

C. Practitioners of the Healing Arts, which includes persons employed in the capacity of chiropractors, dental hygienists, dentists, health aides, nurses, nurse practitioners, occupational therapists, occupational therapy assistants, optometrists,

osteopaths, naturopaths, physical therapists, physical therapy assistants, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, audiologists, (licensed under AS 08.11), hearing aid dealers (licensed under AS 08.55), religious healing practitioners, and surgeons.

D. Police Liaison Officers.

E. Others, as identified by Alaska statute.

III. DEFINITIONS.

A. "Child Abuse or Neglect" [AS 47.17.070(2)]. Child abuse or neglect means the physical injury or neglect, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby (authority: AS 47.17.070, Attachment 1).

B. "Neglect" [AS 47.17.070(6)] means the failure to provide necessary food, care, clothing shelter or medical attention for a child.

C. "Cause to Believe" exists where, based on the total circumstances, including direct observation, knowledge and information gained from others, and the exercise of professional judgment, a person has a good or adequate reason, supported by specific and identifiable facts, to believe that child abuse or neglect has occurred or is occurring. Cause to believe is less than a probability, but more than a mere suspicion, conjecture, or

inkling.

D. "Sexual Exploitation" includes

1. allowing, permitting, or encouraging a child under the age of 18 years to engage in prostitution prohibited by AS 11.66.100-11.66.150, by a person responsible for the child's welfare; or

2. allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a), by a person responsible for the child's welfare.

E. "Person Responsible for the Child's Welfare" [AS 47.17.070(8)] means the child's parent, guardian, foster parent, a person responsible for the child's care at the time of the alleged child abuse or neglect, or a person responsible for the child's welfare in a public or private residential agency or institution.

IV. REPORTING PROCEDURES.

A. When Cause To Believe Exists.

Any district employee having cause to believe that child abuse or neglect as described in Section I, above, has occurred shall follow these procedures in reporting the abuse or neglect:

1. Inform the building principal/administrative designee of the child abuse or neglect;

2. Make a telephone report to the Division of Family and Youth Services (DFYS), call 276-1450 (for Anchorage reports), or call 694-9546 (for Eagle River reports).

(i) Request an intake case worker or screener. Obtain the name of the case worker, note the time and date the call was made and enter on the written report form.

(ii) Report the injury or circumstances, and any other pertinent information related to the cause, source, frequency or duration of the child abuse or neglect, including a description of the home situation, if known.

(iii) State your name, title and school. You also may indicate whether your name may or may not be used by DFYS during the investigation.

(iv) If there is a problem contacting DFYS, notify the principal/administrative designee. The principal may contact an ASD supervisor to seek additional assistance in contacting a DFYS case worker or supervisor. If immediate action is necessary for the well-being of the child, make a telephone report to the Police Department: 786-8500 (for Anchorage reports) or 694-2715 (for Eagle River reports), or 269-5511 (Alaska State Troopers).

B. When Unsure of Existence of Cause to Believe.

Any district employee uncertain about the existence of cause to believe that child abuse or neglect has occurred or is occurring shall utilize the following team approach:

1. Inform the building principal/administrative designee of the facts or circumstances which give rise to the employee's concerns. The principal/administrative designee may designate an assistant principal, nurse, counselor or psychologist to observe, examine or talk to the child, in order to determine whether there is, or is not cause to believe that the child has suffered harm as the result of child abuse or neglect.

2. The person designated to investigate shall observe or examine the child, and may confer with any other district employees who may be in a position to have information relevant to the inquiry. The investigator may confer with the teacher, or teachers, for the history relating to the child, and gather any other information which may support or refute the need for reporting.

3. The investigator shall report the results of the investigation to the principal/administrative designee and all other district employees involved in the initial report to the principal and/or the subsequent investigation.

The team alternative is designed to develop additional information and to permit consultation among the district employees involved to assist them in determining whether there is cause to believe that child abuse or neglect has occurred in a particular case.

4. When two or more members of the investigative team

reach agreement one may be designated to make the required telephone report to the appropriate agency. The written report shall indicate the names of the individuals who agree that a report is necessary and show their concurrence that the report is being made on their behalf. If the investigative team decides no report is necessary but an individual member of the team believes there is cause to believe that child abuse or neglect has occurred, that individual must make the required report. The duty to report child abuse or neglect described in Section I above, is an individual duty. No district employee shall fail to make a report if that person has cause to believe such a report is required by law or district policy. No person making such a report shall be subject to any sanction by the school district for making the report. The team alternative is designed to develop additional information and permit consultation among the district employees involved to assist them in determining whether there is cause to believe that child abuse/neglect is occurring in a particular case.

5. The duty to report is a continuing one. If additional information creates cause to believe that child abuse or neglect has occurred or is occurring, a report must be made, even though cause as to the same child was previously insufficient.

C. Written Reports Required.

Within 24 hours of making a telephone report of child abuse or neglect, the employee shall prepare a written report. The original copy shall be routed as follows:

1. for Anchorage reports:

Division of Family and Youth Services
550 West 8th Avenue, Suite 201
Anchorage, AK 99501

2. for Eagle River reports:

Division of Family and Youth Services
Parkgate Building
11723 Old Glenn Highway, #113
Eagle River, AK 99577

The report shall be made on an official school district form available at the principal's office or from the central administration building. (phone _____). The report shall include:

1. The names and addresses of the child and the child's parent or guardian.
2. The child's age.
3. A description of the facts, injuries or circumstances giving rise to cause to believe that child abuse or neglect occurred or is occurring.
4. Any information that might assist determining the cause of any injuries and the identity of persons responsible for causing harm to the child.
5. Any statements made by the child including graphic quotes, if any.

6. The names of any other persons who may have information relevant to the child abuse or neglect.

7. The state or municipal agency to which the telephonic report was made, including the name of the person to whom the report was made, and the date and time of the telephonic report.

A copy of the report shall be routed to the principal. The principal shall sign the report and maintain it in a confidential file labeled "Child Abuse and Neglect Referrals - Confidential." These reports will be maintained at the school for a minimum of seven years. The reports will not be maintained with individual student school records nor will they be forwarded with individual student school records.

If the principal/administrative designee has conducted, or had an investigator conduct an investigation to determine whether cause to report suspected child abuse or neglect exists, the principal/administrative designee shall attach all investigative notes, memoranda, records of interviews photographs and other information collected to the report.

D. Copy of Written Report to Police.

When a telephonic and written report have been made to the Division of Family and Youth Services (DFYS), a copy of the written report shall also be forwarded to the nearest law enforcement agency in those cases where the employee has cause to believe that the harm was caused by

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1. a person who is not responsible for the child's welfare;
 2. a person whose identity is unknown and cannot be determined; or
 3. a person whose responsibility for the child's welfare is unknown and cannot be determined.

The nearest law enforcement agency is as follows:

1. for Anchorage reports:

Chief of Police
Anchorage Police Department
4501 S. Bragaw
Anchorage, Alaska 99507

2. for Eagle River reports:

Chief of Police
Anchorage Police Department
16707 Coronado Street
Eagle River, Alaska 99577

E. Maintaining Confidentiality.

All school district employees are required to protect students' rights to privacy and confidentiality. As such, all information and reports regarding child abuse or neglect shall be treated as confidential and shall be maintained in a safe place. No employee shall make available, or allow access to this information by other students, staff or members of the public, except as required by school rule, Board Policy or law.

The principal shall maintain the confidentiality of all reports of child abuse and neglect received, other than making the

reports available to the appropriate agencies to which the reports were initially made. The principal shall make provisions to protect, and to maintain as confidential, the identity of the employee or employees making the report.

V. STUDENT INTERVIEWS.

Student interviews regarding child abuse and neglect must be conducted in accordance with Board Policy 471.4, and the Memorandum of Agreement between the Division of Family and Youth Services and the Anchorage School District. (Attachments 3, 4)

VI. EMERGENCY CUSTODY.

In any case where a representative of the Division of Family and Youth Services informs the district in writing that emergency custody of a student is being asserted pursuant to AS 47.10.142, the district shall immediately relinquish custody of the student to the representative of DFYS. In all such cases it shall be the responsibility of the DFYS to notify the parent/guardian as soon as practicable that the DFYS has assumed custody of the child. (Attachment 4)

VII. CHILD ABUSE AND NEGLECT TRAINING FOR PERSONS REQUIRED TO REPORT.

A. The principal shall ensure that persons required to report child abuse or neglect will receive training in the recognition and reporting of child abuse and neglect during the employee's first six months of employment, and to any employee who

has not received equivalent training. (AS 47.17.022, Attachment 1)

B. Training shall include:

- the laws relating to child abuse and neglect;
- techniques for recognition and detection of child abuse and neglect;
- agencies and organizations within the state that offer aid and shelter to victims and families of victims of child abuse or neglect; and
- procedures for required notification of suspected abuse or neglect.

C. Documentation of child abuse and neglect training shall be sent to the Staff Development Department by January 31 of each school year. (Attachment 4)

Attachments:

1. Child Abuse and Neglect Reporting Law, Alaska Statutes Chapter 17, Sec. 47.010-47.17.070
2. Referral Form to Division of Family and Youth Services (ASD #326)
3. Board Policy 471.4
4. Memorandum of Agreement between the Anchorage School District and State of Alaska, Department of Health and Social Services (Division of Family and Youth Services)
5. Child Abuse and Neglect Training Form
6. Child Abuse and Neglect Report Form
7. Criminal Prostitution Law, Alaska Statute, Chapter 66, Sec. 11.66.100-11.66.150

§ 47.15.040

ALASKA STATUTES

§ 47.17.010

diction the institution is operated, or whose department or agency is charged with performing the service. (§ 3 ch 88 SLA 1960)

Sec. 47.15.040. Financial arrangements. The compact administrator, subject to the approval of the commissioner of administration, may make or arrange for the payments necessary to discharge the financial obligations imposed upon this state by the compact or by a supplementary agreement made under the compact. (§ 4 ch 88 SLA 1960)

Sec. 47.15.050. Appointment of attorney or guardian. Appointment of an attorney or guardian ad litem under the provisions of this compact shall be made in accordance with AS 25.24.310 or AS 44.21.400 — 44.21.440. (§ 5 ch 88 SLA 1960; am § 55 ch 94 SLA 1980; am § 16 ch 55 SLA 1984)

Cross references. — See Admin. R. 13, Alaska Rules of Court.

Effect of amendments. — The 1984 amendment rewrote this section, which formerly read "A council or guardian ad

litem appointed under the provisions of this compact may be paid as provided in the Rules Governing the Administration of all Courts."

Sec. 47.15.060. Enforcement. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which are within their respective jurisdiction. (§ 6 ch 88 SLA 1960)

Sec. 47.15.070. Additional procedures not precluded. In addition to the procedures provided in articles IV and VI of the compact for the return of a runaway juvenile, the particular states, the juvenile or the juvenile's parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile. (§ 7 ch 88 SLA 1960)

Sec. 47.15.080. Short title. This chapter may be cited as the Uniform Interstate Compact on Juveniles. (§ 8 ch 88 SLA 1960)

Chapter 17. Child Protection.

Section

- 10. Purpose
- 20. Persons required to report
- 25. Duties of public authorities
- 30. Action on reports; termination of parental rights
- 40. Central registry; confidentiality

Section

- 50. Immunity
- 60. Evidence not privileged
- 64. Photographs and x-rays
- 68. Penalty for failure to report
- 70. Definitions

Sec. 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by

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§ 47.17.020 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.17.020

other than accidental means, of harm through physical abuse or neglect or sexual abuse or sexual exploitation, the legislature requires the reporting of these cases by practitioners of the healing arts and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of the children in this state, and to preserve family life whenever possible. (§ 1 ch 100 SLA 1971; am § 3 ch 104 SLA 1982)

Effect of amendments. — The 1982 amendment, in the first sentence, substituted "neglect or sexual abuse or sexual exploitation" for "neglect requiring the attention of a practitioner of the healing arts" and inserted "of the healing arts."

NOTES TO DECISIONS

Use of reports. — The reports of child abuse and neglect required by this section are intended for use in child protection proceedings and are not intended for use in criminal proceedings. State v. R.H., Ct. App. Op. No. 375 (File No. 7768). P.2d (1984). See also notes to AS 47.17.060, under catchline "Judicial proceeding."

Collateral references. — 42 Am. Jur. 2d, Infants, §§ 16, 17.
43 C.J.S., Infants, §§ 36 to 39, 70 to 75, 94.
Medical attention, criminal neglect by failure to provide, 12 ALR2d 1047.

Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR3d 904.
Validity and construction of penal statute prohibiting child abuse, 1 ALR4th 38.

Sec. 47.17.020. Persons required to report. (a) The following persons who, in the performance of their professional duties, have cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the department:

- (1) practitioners of the healing arts;
- (2) school teachers and school administrative staff members;
- (3) social workers;
- (4) peace officers, and officers of the Department of Corrections;
- (5) administrative officers of institutions;
- (6) licensed day care providers and paid staff;
- (7) licensed foster care providers.

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

see Supplement

(c) If the person making a report of harm under this section cannot reasonably contact the nearest office of the department and immediate action is necessary for the well-being of the child, the person shall make the report to a peace officer. The peace officer shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest office of the department. (§ 1 ch 100 SLA 1971; am §§ 4, 5 ch 104 SLA 1982; am E.O. No. 55, § 42 (1984))

Effect of amendments. — The 1982 amendment, in subsection (a), added "and school administrative staff members" at the end of paragraph (2) and added paragraphs (6) and (7).

The 1984 amendment substituted "Department of Corrections" for "division of corrections" in paragraph (4) of subsection (a).

NOTES TO DECISIONS

Cited in *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Collateral references. — Civil liability of physician for failure to diagnose or report battered child syndrome, 97 ALR3d 338.

Sec. 47.17.025. Duties of public authorities. (a) A law enforcement agency shall immediately notify the department of the receipt of a report of harm to a child from abuse. Upon receipt from any source of a report of harm to a child from abuse, the department shall notify the Department of Law and investigate the report and, within 72 hours of the receipt of the report, shall provide a written report of its investigation of the harm to a child from abuse to the Department of Law for review.

(b) The report of harm to a child from abuse required from the department by this section shall include:

- (1) the names and addresses of the child and the child's parent or other persons responsible for the child's care, if known;
- (2) the age and sex of the child;
- (3) the nature and extent of the harm to the child from abuse;
- (4) the name and age and address of the person known or believed to be responsible for the harm to the child from abuse, if known;
- (5) information that the department believes may be helpful in establishing the identity of the person believed to have caused the harm to the child from abuse. (§ 6 ch 104 SLA 1982)

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§ 47.17.030 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.17.030

NOTES TO DECISIONS

Applied in *State v. R.H.*, Cl. App. Op.
No. 375 (File No. 7768), P.2d
(1984).

Sec. 47.17.030. Action on reports; termination of parental rights. (a) If a child, concerning whom a report of harm is made, is believed to reside within the boundaries of a local government exercising health functions for the area in which the child is believed to reside, the department may, upon receipt of the report, refer the matter to the appropriate health or social services agency of that local government. For cases not referred to an agency of a local government, the department shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child.

(b) A local government health or social services agency receiving a report of harm shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child. In addition, the agency receiving a report of harm shall forward a copy of its report of the investigation, including information the department requires by regulation, to the department.

(c) Action shall be taken regardless of whether the identity of the person making the report of harm is known.

(d) Before the department or a local government health or social services agency may seek the termination of parental rights, under AS 47.10.080(c)(3), it shall offer protective social services and pursue all other reasonable means of protecting the child.

(e) In all actions taken by the department or a health and social services agency of a local government under this chapter that result in a judicial proceeding, the child shall be represented by a guardian ad litem in that proceeding. Appointment of a guardian ad litem shall be made in accordance with AS 25.24.310. (§ 1 ch 100 SLA 1971; am § 1 ch 222 SLA 1976; am § 17 ch 55 SLA 1984)

Effect of amendments. — The 1984 amendment added the second sentence in subsection (e).

NOTES TO DECISIONS

Effect of subsection (d). — Subsection (d) of this section is clearly intended to prevent further abuse by providing protective services to the child, and it does not place a mandatory duty on the state to pro-

vide counseling and other support services to the family prior to seeking termination of parental rights. *E.A. v. State*, Sup. Ct. Op. No. 2289 (File Nos. 4687, 4870), 623 P.2d 1210 (1981).

Applied in *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Quoted in *Granato v. Oochipintu*, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Collateral references. — 43 C.J.S., *Infants*, §§ 71, 72.

Physical abuse of child by parent as ground for termination of parent's right to child, 53 ALR3d 605.

Sexual abuse of child by parent as

ground for termination of parent's right to child, 58 ALR3d 1074.

Validity of state statute providing for termination of parental rights, 22 ALR4th 774.

Sec. 47.17.040. Central registry; confidentiality. (a) The department shall maintain a central registry of all investigation reports but not of the reports of harm.

(b) Investigation reports and reports of harm filed under this chapter are considered confidential and are not subject to public inspection and copying under AS 09.25.110 and 09.25.120. However, in accordance with department regulations, investigation reports may be used by appropriate governmental agencies with child-protection functions, inside and outside Alaska, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody. A person, not acting in accordance with department regulations, who makes public information contained in confidential reports is guilty of a misdemeanor. (§ 1 ch 100 SLA 1971; am § 2 ch 222 SLA 1976)

NOTES TO DECISIONS

Psychotherapist/patient privilege. — Child abuse reports are not open to the public, and are therefore not within A.R.E.R. 504(d)(5), which provides that there is no physician or psychotherapist/patient privilege "as to information that the physician or

psychotherapist is required to report to a public employee or as to information required to be recorded in a public office, if such report or record is open to public inspection." *State v. R.H.*, Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Sec. 47.17.050. Immunity. A person who, in good faith, makes a report under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability which might otherwise be incurred or imposed. (§ 1 ch 100 SLA 1971)

Sec. 47.17.060. Evidence not privileged. Neither the physician-patient nor the husband-wife privilege is a ground for excluding evidence regarding a child's harm, or its cause, in a judicial proceeding related to a report made under this chapter. (§ 1 ch 100 SLA 1971)

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§ 47.17.064 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.17.070

NOTES TO DECISIONS

For discussion of constitutional problems in interpreting this section to abrogate psychotherapist privilege in criminal proceedings, see State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Applicability to psychologists. — The court assumed but did not decide that this section applies to psychologists who are not physicians. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

"Judicial proceeding". — This section only applies to child protective proceedings instituted under AS 47.10 and not to criminal proceeding for sexual abuse. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Giving the Department of Health and Social Services primary control of the abused child again indicates a legislative intent that the "judicial proceedings"

referred to in this section occur through the department in relation to protective services, and are civil rather than criminal. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Since AS 47.17.025 refers to the Department of Law, without reference to the criminal division, AS 47.17.025 does not, standing alone, necessarily resurrect the requirement of former AS 11.67.040 that the district attorney receive child abuse reports; nor does it establish an intent that child abuse reports result in criminal prosecutions; and consequently, the Court of Appeals could not find that a criminal prosecution for child sexual abuse is necessarily "a judicial proceeding related to a report made under this chapter" pursuant to this section. State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Sec. 47.17.064. Photographs and x-rays. The department or a person required under AS 47.17.020(a)(1) to report that a child suffered substantial harm as a result of physical abuse or neglect may without the permission of the parents

- (1) take or have taken photographs of the areas of trauma visible on the child; and
- (2) if medically indicated, have a radiological examination of the child performed. (§ 7 ch 104 SLA 1982)

See Supplement

Sec. 47.17.068. Penalty for failure to report. A person required to file a report of abuse or neglect under AS 47.17.020 who wilfully or knowingly fails or refuses to report the harm required under AS 47.17.020 is guilty of a class B misdemeanor. (§ 7 ch 104 SLA 1982)

See Supplement

Cross references. — For penalties for misdemeanors, see AS 12.65.135.

Sec. 47.17.070. Definitions. In AS 47.17.010 — 47.17.070

- (1) "child abuse or neglect" means the physical injury or neglect, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;
- (2) "child" means a person under 18 years of age;
- (3) "department" means the Department of Health and Social Services;

See Supplement

(4) "institution" means a private or public hospital or other facility providing medical diagnosis, treatment, or care;

(5) "neglect" means the failure to provide necessary food, care, clothing, shelter, or medical attention for a child;

(6) "practitioner of the healing arts" includes chiropractors, dentists, health aides, nurses, optometrists, osteopaths, physical therapists, physicians, psychiatrists, psychologists, religious healing practitioners, and surgeons;

(7) "sexual exploitation" means

(A) permission or encouragement to a child for prostitution prohibited by AS 11.66.100 — 11.66.150 by a person responsible for the child's welfare;

(B) permission, encouragement, or activity involved in the unlawful exploitation of a minor prohibited by AS 11.41.455 by a person responsible for the minor's welfare. (§ 1 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 3 ch 222 SLA 1976; am §§ 56, 57 ch 94 SLA 1980; am §§ 8, 9 ch 104 SLA 1982)

See Supplement

Effect of amendments. — The 1980 amendment substituted "18" for "eighteen" near the middle of paragraph (1), and substituted "18" for "16" in paragraph (2).

The 1982 amendment inserted "or neglect" and "sexual exploitation" in paragraph (1) and added paragraph (7).

NOTES TO DECISIONS

Where parents refuse permission for blood transfusion because of religious conviction, the state may intercede and make the child a dependent minor by the parents' failure to provide medical

attention under paragraph (5) of this section, obtaining custody and thereafter consenting to the operation. In re Lausterer, Superior Court, 3rd Jud. Dist., No. CP2720 (1972).

Chapter 20. Exceptional Children.

Section	Section
05. Purpose	20. Standards for assistance
10. Assistance authorized	50. Definitions

Sec. 47.20.005. Purpose. It is the purpose of AS 47.20.005 — 47.20.050 to provide appropriate public education and training for the exceptional children in this state who have not reached the age of three. To the maximum extent possible, the department shall establish a learning program which emphasizes individual needs, is home based, and involves parents in the education and training of their children. (§ 1 ch 77 SLA 1978)

Sec. 47.20.010. Assistance authorized. (a) The department shall provide professional guidance and financial assistance to organized groups of parents, nonprofit corporations, school districts, and regional educational attendance areas according to regulations adopted by the

(1) after being informed of the minor's right to privacy, the minor consents in writing to the disclosure of the records;

(2) the records are relevant to an investigation or proceeding involving child abuse or neglect or a child in need of aid petition; or

(3) disclosure of the records is necessary to protect the life or health of the minor. (§ 4 ch 144 SLA 1988)

Sec. 47.10.350. Immunity from liability. (a) The officers, directors, and employees of a licensed program for runaway minors are not liable for civil damages as a result of an act or omission in admitting a minor to the program.

(b) This section does not preclude liability for civil damages as a result of recklessness or intentional misconduct. (§ 4 ch 144 SLA 1988)

Sec. 47.10.360. Municipal powers. Authority to establish and operate a licensed program for runaway minors is granted to municipalities that do not otherwise have that authority. (§ 4 ch 144 SLA 1986)

Sec. 47.10.390. Definitions. In AS 47.10.300 — 47-10.390

(1) "licensed program for runaway minors" means a residential or nonresidential program licensed by the department under AS 47.10.310;

(2) "runaway minor" means a person under 18 years of age who

(A) is habitually absent from home;

(B) refuses to accept available care;

(C) has no parent, guardian, custodian, or relative able or willing to provide care; or

(D) has been physically abandoned by

(i) both parents;

(ii) the surviving parent; or

(iii) one parent if the other parent's rights and responsibilities have been terminated under AS 25.23.180(c) or AS 47.10.080 or voluntarily relinquished. (§ 4 ch 144 SLA 1988)

Chapter 17. Child Protection.

Section

20. Persons required to report

22. Training

23. Reports regarding child pornography

64. Photographs and x-rays

Section

68. Penalty for failure to report

69. Protective injunctions

70. Definitions

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§ 47.17.010 WELFARE, SOCIAL SERVICES & INSTITUTIONS § 47.17.020

Sec. 47.17.010. Purpose.

NOTES TO DECISIONS

Cited in Gerlach v. State, Ct. App. Op.
No. 468 (File No. A-501), 699 P.2d 358
(1985).

Sec. 47.17.020. Persons required to report. (a) The following persons who, in the performance of their occupational duties, have cause to believe that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department:

- (1) practitioners of the healing arts;
- (2) school teachers and school administrative staff members of public and private schools;
- (3) social workers;
- (4) peace officers, and officers of the Department of Corrections;
- (5) administrative officers of institutions;
- (6) child care providers;
- (7) paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.900.

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

(c) If the person making a report of harm under this section cannot reasonably contact the nearest office of the department and immediate action is necessary for the well-being of the child, the person shall make the report to a peace officer. The peace officer shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest office of the department.

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

(e) A person listed in (a) of this section, who in the performance of the person's occupational duties has cause to believe that a child has suffered harm as a result of abuse, shall promptly report the harm to the nearest law enforcement agency if the person making the report (1) has cause to believe that the harm was caused by a person who is not responsible for the child's welfare; or (2) is unable to determine (A)

who caused the harm to the child; or (B) whether the person who is believed to have caused the harm has responsibility for the child's welfare. If a person making a report under this subsection cannot reasonably contact the nearest law enforcement agency, and immediate action appears necessary for the well-being of the child, the person shall make the report to the nearest office of the department. The department shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest law enforcement agency. In this subsection, "abuse" means the physical injury, sexual abuse, sexual exploitation, or maltreatment of a child by any person under circumstances that indicate that the child's health or welfare is harmed or threatened. (§ 1 ch 100 SLA 1971; am §§ 4, 5 ch 104 SLA 1982; am E.O. No. 55, § 42 (1984); am §§ 8 — 10 ch 39 SLA 1985; am § 2 ch 114 SLA 1986)

Effect of amendments. — The 1985 amendment rewrote subsections (a) and (b) and added subsection (d). The 1986 amendment added subsection (e).

Sec. 47.17.022. Training. (a) A person employed by the state who is required under this chapter to report abuse or neglect of children shall receive training on the recognition and reporting of child abuse and neglect.

(b) Each department of the state that employs persons required to report abuse or neglect of children shall provide

(1) initial training required by this section to each new employee during the employee's first six months of employment, and to any existing employee who has not received equivalent training; and

(2) appropriate in-service training required by this section as determined by the department.

(c) Each department that must comply with (b) of this section shall develop a training curriculum that acquaints its employees with

(1) laws relating to child abuse and neglect;

(2) techniques for recognition and detection of child abuse and neglect;

(3) agencies and organizations within the state that offer aid or shelter to victims and the families of victims of child abuse or neglect; and

(4) procedures for required notification of suspected abuse or neglect.

(d) Each department that must comply with (b) of this section shall file a current copy of its training curriculum and materials, with the Council on Domestic Violence and Sexual Assault. A department may seek the technical assistance of the council or the Department of Health and Social Services in the development of its training program. (§ 1 ch 1 SLA 1986)

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§ 47.17.023 WELFARE, SOCIAL SERVICES & INSTITUTIONS § 47.17.064

Sec. 47.17.023. Reports regarding child pornography. A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reason to believe that the matter visually depicts a child engaged in conduct described in AS 11.41.455(a) shall promptly report this to the nearest law enforcement agency, and provide the law enforcement agency with all information known about the nature and origin of the matter. (§ 11 ch 39 SLA 1985)

Sec. 47.17.025. Duties of public authorities.

NOTES TO DECISIONS

Reliance on sexual abuse report for purposes of initiating prosecution is not prohibited by this section. *Strehl v. State*, Ct. App. Op. No. 638 (File No. A-717), P.2d (1986).

Sec. 47.17.030. Action on reports; termination of parental rights.

NOTES TO DECISIONS

Cited in *Gerlach v. State*, Ct. App. Op. No. 468 (File No. A-501), 699 P.2d 358 (1985).

Sec. 47.17.040. Central registry; confidentiality.

NOTES TO DECISIONS

Cited in *Gerlach v. State*, Ct. App. Op. No. 468 (File No. A-501), 699 P.2d 358 (1985).

Sec. 47.17.060. Evidence not privileged.

NOTES TO DECISIONS

"Judicial proceeding". — The phrase "judicial proceeding related to a report made under this chapter" in this section only refers to child protection proceedings under AS 47.10.010 *State v. Wetherhorn*, Ct. App. Op. No. 375 (File No. 7768), 683 P.2d 269 (1984).

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

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

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

(b) The department or a practitioner of the healing arts shall notify the parents, guardian, or custodian of a child as soon as possible after taking action under (a) of this section with regard to the child. (§ 7 ch 104 SLA 1982; am § 12 ch 39 SLA 1985)

Effect of amendments. — The 1985 amendment rewrote this section.

Sec. 47.17.068. Penalty for failure to report. A person who knowingly fails or refuses to report as required under AS 47.17.020 or 47.17.023 is guilty of a class B misdemeanor. (§ 7 ch 104 SLA 1982; am § 13 ch 39 SLA 1985)

Effect of amendments. — The 1985 amendment rewrote this section.

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

(1) has sexually abused a child;

(2) has physically abused a child; or

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

(b) This section does not limit the authority of the attorney general or the court to act to protect a child. (§ 14 ch 39 SLA 1985)

Sec. 47.17.070. Definitions. In this chapter

(1) "child" means a person under 18 years of age;

(2) "child abuse or neglect" means the physical injury or neglect, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

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

(4) "department" means the Department of Health and Social Services;

(5) "institution" means a private or public hospital or other facility providing medical diagnosis, treatment, or care;

(6) "neglect" means the failure to provide necessary food, care, clothing, shelter, or medical attention for a child;

(7) "organization" means a group or entity that provides care and supervision for compensation to a child not related to the caregiver,

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§ 47.17.070 WELFARE, SOCIAL SERVICES & INSTITUTIONS § 47.17.070

and includes a child care facility, pre-elementary school, head start center, child foster home, residential child care facility, recreation program, children's camp, and children's club;

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

(9) "practitioner of the healing arts" includes chiropractors, dental hygienists, dentists, health aides, nurses, nurse practitioners, occupational therapists, occupational therapy assistants, optometrists, osteopaths, naturopaths, physical therapists, physical therapy assistants, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55, religious healing practitioners, and surgeons;

(10) "sexual exploitation" includes

(A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100 — 11.66.150, by a person responsible for the child's welfare;

(B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a), by a person responsible for the child's welfare. (§ 1 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 3 ch 222 SLA 1976; am §§ 56, 57 ch 94 SLA 1980; am §§ 8, 9 ch 104 SLA 1982; am §§ 15, 16 ch 39 SLA 1985; am § 8 ch 56 SLA 1986; am § 3 ch 114 SLA 1986; am § 14 ch 131 SLA 1986; am § 31 ch 2 FSSLA 1987)

Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms.

Effect of amendments. — The 1985 amendment rewrote paragraph (8) and added paragraphs (3), (7), and (8).

The first 1986 amendment in paragraph (9) inserted "naturopaths."

The second 1986 amendment rewrote paragraph (10).

The third 1986 amendment inserted "audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55," near the end of paragraph (9).

The 1987 amendment, effective January 1, 1988, in paragraph (9) inserted "occupational therapists, occupational therapy assistants" and "physical therapy assistants."

Chapter 23. Child Support Enforcement Agency.

Section

- 20. Duties and responsibilities of the agency
- 22. Enforcement requests from other states
- 25. Rates of interest
- 45. Determination of support obligation
- 60. Order of support
- 62. Income withholding order for support

Section

- 75. Employment information
- 100. All persons may use agency
- 105. Audit of collections
- 125. Accounting and disposition of federal receipts and agency collections
- 135. Limitation on actions to establish child support obligation
- 140. Power of agency to administratively

ANCHORAGE SCHOOL DISTRICT
Health Services Department

REFERRAL TO: DIVISION OF FAMILY AND YOUTH SERVICES
550 W. 8th Avenue Suite 201 CR 11723 Old Glenn Hwy. #113
Anchorage, AK. 99501 Eagle River, AK. 99577
Telephone: 276-1450 Telephone: 694-9546

Telephone report made to: _____ on _____
(circle title: intake person, caseworker, supervisor) (date/time)

Name of student referred: _____

Birthdate: _____ Sex _____ Grade in school: _____

Parent names: _____

Home address: _____

Home telephone: _____ Work telephone: _____

Siblings if known: _____

Briefly state reason for the referral:

Circle service requested: home assessment, parent contact, meeting at school, immediate investigation

Referral made by: _____ (name and title) _____ (phone number)

Name of Referrer to remain confidential: Yes _____ No _____
(School)

To be completed by the principal or designee:

A written report was mailed to the Division of Family and Youth Services.

^{and written}
Oral report to Police _____
Yes _____ No _____ (Principal/designee signature) (Date/Time)

- Distribute copies to:
1. Original to Division of Family and Youth Services
 2. Copy to principal's child abuse neglect file
(do not place in student file; do not transfer the report)

A.S.D. Policy ManualStudents and Student Personnel Services

471.2 List of Names of Students

Senior high school principals may prepare a list of the names and addresses of potential graduates each year. This list may be released to organizations, agencies, institutions, or groups who, in the judgment of the Superintendent may offer opportunities or benefits to students. A student who does not wish to have his/her name and/or address on this list may prevent its inclusion as provided by Section 344.34 (h) of this policy manual.

471.3 Supervision of Students After Regular School Hours

No student or group of students shall remain in the school building after dismissal time except when under the supervision of an authorized person.

471.4 Student Interviews

- a. Any person who seeks to confer with a student in school or on the school grounds or to take a child from school, or who telephones or leaves directions as to where a student must meet another person, must provide positive identification to the principal before such a request can be granted. In every instance such requests should be referred to the principal or his/her assistant in charge. Principals are responsible for the enforcement of this regulation and for informing clerks, custodians, and teachers concerning the full implications of this rule. . . .
- b. Individual students may not be interviewed by any person, except an employee of the District, without the approval of the principal, the permission of the parent/ guardian, if possible, and in the presence of the principal or his/her representative.
- c. No principal shall grant such an interview unless he/she deems it essential to the welfare of the student or as may be required by police, official agency, or court officials. When interviews are conducted by police, official agency, or court officials the principal should be present.

- d. In cases where a properly identified agency of the Alaska Department of Health and Social Services or other law enforcement agency seeks to interview a student who is believed to be the victim of abandonment, neglect, abuse, or sexual abuse as defined in AS 47.10.142(a) or is believed to be a child in need of aid as defined in AS 47.10.010 (a) (2), the principal may permit the student to be interviewed without prior notification to the student's parent or guardian and without the principal being present. Such an interview may be granted pursuant to procedures established by the superintendent.

(Section 471.4 (d) - Approved by School Board on January 10, 1983)

- e. Parental custody is limited to officially listed parents or guardians. A child may not be interviewed by a legally estranged parent except in the presence of the principal and with the consent of the legal parent or guardian.

471.5 Student Messengers

Students may not perform errands or act as messengers between buildings during school hours without the approval of the principal and without the permission of the parents/guardians. This permit must be in writing and kept on file in the principal's office. Student messenger service is permitted only for a very specific need such as the transmission of emergency reports, etc., that would take too much time to go through the regular District mail.

(Section 471.6 Deleted by School Board on June 25, 1984 - See Section 451)

472 The School's Responsibility to Needy Children

472.1 Extent of the School's Responsibility

It is the policy of the Board that no child shall be deprived of any of the opportunities or benefits offered by the program of instruction of the public schools because of the financial difficulties of his/her family. Therefore, provisions shall be made for assistance to such students for materials for instruction, extracurricular activity fees, etc.

MEMORANDUM OF AGREEMENT

WHEREAS, the State of Alaska, Department of Health & Social Services, Division of Family and Youth Services has the duty to investigate suspected cases of child abandonment, neglect, abuse, and sexual abuse; and

WHEREAS, various employees of the Anchorage School District are required by statute (AS 47.17.020(a)(2)) and school board policy (School Board Policy Section 474.1) to report cases of suspected abuse or neglect; and

WHEREAS, the District has responsibility to protect students and their parents from unwarranted invasions of privacy or interference with the parent/child relationship; and

WHEREAS, child abuse and neglect (including sexual abuse) are recognized as significant societal problems which are very difficult to detect and investigate; and

WHEREAS, the School District and the Division desire to cooperate to the end of protecting children from abuse and neglect without interfering unnecessarily with the parent/child relationship;

NOW, THEREFORE, the parties agree as follows:

1. Reports Initiated by the School District. In cases where employees of the school district have cause to believe that a child has suffered harm as the result of abuse or neglect, a report shall be made immediately to the Department of Health & Social Services, Division of Family and Youth Services in Anchorage. The District will cooperate with the Division in the Division's investigation. The student who is

believed to have been abused or neglected may be interviewed at school without prior notification to or permission from the student's parent/guardian, where in the opinion of the Division, such an interview appears to be in the best interests of the child. A representative of the District (i.e. the principal or designee) shall be present at any interview unless the Division informs the District in writing of its belief that the presence of the District representative would be detrimental to the interview. Where the interview occurs without the prior knowledge of the student's parent/guardian, it shall be the responsibility of the Division to make a diligent effort to notify the parents of the interview regardless of the conclusions drawn from the interview as soon as feasible after the interview but not later than 10:00 p.m. on the day when the interview occurs.

2. Investigations Initiated by Non-District Sources. In cases where the Division has received a report indicating that a student may be the victim of abuse or neglect based upon information and reports not originating with School District employees, the District will permit an interview of the student without permission of the parent/guardian only upon written certification by the Department as to the following:

- a. That the Division has received a report indicating that the student may be the victim of abuse or neglect.
- b. That the interview is necessary to make a determination as to whether or not abuse or neglect has occurred.
- c. That the proposed interview is in the best interest of the child.

d. That the Division will make a diligent effort to notify the parent/guardian that the interview occurred as soon as feasible after the conclusions of the interview but not later than 10:00 p.m. on the day when the interview occurs.

A representative of the School District (i.e. the principal or designee) shall be permitted to be present at any such interview unless the Division informs the District in writing of its belief that the presence of the District representative would be detrimental to the interview.

3. In any case where a representative of the Department informs the District in writing that emergency custody of a student is being asserted pursuant to AS 47.10.142, the District shall immediately relinquish custody of the student to the representative of the Division. In all such cases, it shall be the responsibility of the Division to notify the parent/guardian as soon as practicable that the Division has assumed custody of the child.

4. A student who is believed to possess information relative to child abuse or neglect, but who is not believed to be the object of such abuse or neglect may not be interviewed in school relative to such information without a court order or without prior notification to and approval from the student's parent/guardian.

5. Nothing in this agreement is intended to limit the Division's authority under AS 47.10.142 to take emergency custody of children who are the victims of abuse or neglect.

6. The State of Alaska agrees to defend and hold the School District, its officers, employees, agents, and insurers, harmless from any claim pertaining to an interview or assumption of custody which

might be asserted by or on behalf of any student who is interviewed or taken into custody at school without the presence of a district representative under Section 1 hereof or who is interviewed or taken into custody at school without the presence of a district representative or without prior parental notification pursuant to Section 2 or 3 hereof.

7. This agreement may be terminated at any time upon written notification by either party to the other party. The agreement may be amended in writing upon mutual agreement of the parties.

DATED at Anchorage, Alaska this 11 day of February, 1983.

STATE OF ALASKA
Department of Health &
Social Services

ANCHORAGE SCHOOL DISTRICT

By: M. L. P. [Signature]
Title: Assistant

By: E. E. [Signature]
E. E. (Gene) Davis
Superintendent of Schools

Approved as to form.

Approved as to form.

Department of Law

Hellen & Partnow, P.C.
Counsel for Anchorage
School District

By: [Signature]
Assistant Attorney General

By: [Signature]
Peter C. Partnow

ANCHORAGE SCHOOL DISTRICT

CHILD ABUSE TRAINING

Child Abuse Training was provided at _____
(Name of School)

on _____ by _____
(Date) (Nurse/Trainer)

for the following individuals:

FIRST NAME LAST NAME

Please return this form to Staff Development.

ATTACHMENT 6

(CHILD ABUSE & NEGLECT REPORTING FORM)

- SAMPLE -

§ 11.65.010

CRIMINAL LAW

§ 11.66.100

Chapter 65. Offenses Against Public Convenience.

Secs. 11.65.010 — 11.65.020. (Renumbered as AS 30.50.020 and 30.50.010.)

Sec. 11.65.030. Tampering with posted notices. (Repealed, § 21 ch 166 SLA 1978.)

Chapter 66. Offenses Against Public Health and Decency.

Article

1. Prostitution and Related Offenses (§§ 11.66.100 — 11.66.150)
2. Gambling Offenses (§§ 11.66.200 — 11.66.230)

Article 1. Prostitution and Related Offenses.

Section

100. Prostitution
110. Promoting prostitution in the first degree
120. Promoting prostitution in the second degree

Section

130. Promoting prostitution in the third degree
140. Corroboration of certain testimony not required
150. Definitions

NOTES TO DECISIONS

Municipal ordinances not prohibited. — The enactment of this article does not prohibit municipal ordinances penalizing the solicitation of prostitutes by putative customers. *Municipality of Anchorage v. Afualo*, 657 P.2d 407 (Alaska Ct. App. 1983).

There is nothing in this article which

would support an inference that the legislature sought to encourage men to patronize prostitutes nor is there any indication in this article that the legislature sought statewide uniformity in regulating commercial sexual relations. *Municipality of Anchorage v. Afualo*, 657 P.2d 407 (Alaska Ct. App. 1983).

Collateral references. — 63A Am. Jur. 2d, Prostitution, § 1 et seq.

27 C.J.S., Disorderly Houses, § 1 et seq.; 73 C.J.S., Prostitution, § 1 et seq.

Constitutionality and construction of pandering acts, 74 ALR 311.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases, 77 ALR3d 519.

Sec. 11.66.100. Prostitution. (a) A person commits the crime of prostitution if the person engages in or agrees or offers to engage in sexual conduct in return for a fee.

(b) Prostitution is a class B misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law, whereas fornication and prostitution were not. *Eleazar v. United States*, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956). (Decided under former AS 11.40.220.)

This section is not irreconcilable with a municipal ordinance prohibiting the solicitation of prostitutes by putative customers. *Municipality of Anchorage v. Afualo*, 657 P.2d 407 (Alaska Ct. App. 1983).

Actual payment of a fee is not required; an act of prostitution is complete

when an offer is extended or an agreement made to engage in sexual conduct in return for a fee. *Garibay v. State*, 658 P.2d 1350 (Alaska Ct. App. 1983).

Proof. — Customer's testimony that he agreed to purchase sexual favors for sum of \$200, his testimony that he charged the purchase price using his VISA card, and the VISA charge slip itself, were all highly probative of whether an agreement or offer to engage in sexual conduct in return for a fee was in fact made. *Garibay v. State*, 658 P.2d 1350 (Alaska Ct. App. 1983).

Collateral references. — Prostitution as vagrancy, 14 ALR 1501.

Entrapment to procure women for im-

moral purposes, 18 ALR 186; 66 ALR 478; 86 ALR 263.

Sec. 11.66.110. Promoting prostitution in the first degree.
(a) A person commits the crime of promoting prostitution in the first degree if the person

(1) induces or causes a person to engage in prostitution through the use of force;

(2) as other than a patron of a prostitute, induces or causes a person under 16 years of age to engage in prostitution; or

(3) induces or causes a person in that person's legal custody to engage in prostitution.

(b) In a prosecution under (a)(2) of this section, it is not a defense that the defendant reasonably believed that the person induced or caused to engage in prostitution was 16 years of age or older.

(c) Except as provided in (d) of this section, promoting prostitution in the first degree is a class B felony.

(d) A person convicted under (a)(2) of this section is guilty of a class A felony. (§ 8 ch 166 SLA 1978; am §§ 1, 2 ch 50 SLA 1983)

NOTES TO DECISIONS

Promoting prostitution and managing prostitution enterprise. — Punishment for inducing or causing a person under the age of 16 to engage in prostitution (AS 11.66.110(a)(2)) and for managing, supervising, controlling or owning a prostitution enterprise (AS 11.66.120(a)(1)) did not violate double jeopardy since the offenses proscribed by the two statutes involve different intents and different conducts and differing societal interests are

furthered. *Bell v. State*, 668 P.2d 829 (Alaska Ct. App. 1983).

Precluding mistake of age as defense. — Subsection (b) of this section, which expressly dispenses with mistake of age as a defense to promoting prostitution in the first degree, does not violate due process of law. *Bell v. State*, 668 P.2d 829 (Alaska Ct. App. 1983).

Under the Revised Alaska Criminal Code, it is defendant's intentional pro-

curement of a person under the age of 16 years for prostitution that renders him liable for first-degree promoting, regardless of his actual awareness of that person's age. *Bell v. State*, 668 P.2d 829 (Alaska Ct. App. 1983).

The act of procuring another for purposes of prostitution is malum in se, without regard to the age of the person procured, and thus, in a prosecution for procuring a person under the age of 16 years, the intent to procure satisfies the minimal constitutional requirement of criminal intent. *Bell v. State*, 668 P.2d 829 (Alaska Ct. App. 1983).

For case construing former statute prohibiting importing or exporting females for immoral purposes, see *State v. Adkerson*, 403 P.2d 673 (Alaska 1965).

For case construing former procurement statute, see *Johnson v. State*, 501 P.2d 762 (Alaska 1972).

Sentence for procurement upheld. — See *Price v. State*, 565 P.2d 858 (Alaska 1977).

For case construing former statute concerning necessary evidence for prostitution or seduction, see *Johnson v. State*, 501 P.2d 762 (Alaska 1972).

Collateral references. — Transporting female for purpose of prostitution, 74 ALR 330.

Woman conniving or consenting to own transportation, 84 ALR 376.

Sec. 11.66.120. Promoting prostitution in the second degree.
(a) A person commits the crime of promoting prostitution in the second degree if the person

(1) manages, supervises, controls, or owns, either alone or in association with others, a prostitution enterprise other than a place of prostitution; or

(2) procures or solicits a patron for a prostitute.

(b) Promoting prostitution in the second degree is a class C felony. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Promoting prostitution and managing prostitution enterprise. — Punishment for inducing or causing a person under the age of 16 to engage in prostitution (AS 11.66.110(a)(2)) and for managing, supervising, controlling or owning a prostitution enterprise (AS 11.66.120(a)(1)) did not violate double jeopardy since the offenses proscribed by the two statutes involve different intents and different conducts and differing societal interests are furthered. *Bell v. State*, 668 P.2d 829 (Alaska Ct. App. 1983).

For case construing former statute prohibiting soliciting or procuring for purpose of prostitution, see *Plas v. State*, 598 P.2d 966 (Alaska 1979).

Instruction. — Trial court did not err in refusing to give instruction requiring state to prove that prostitution enterprise involved in case was of an ongoing nature. *Garibay v. State*, 658 P.2d 1350 (Alaska Ct. App. 1983).

Collateral references. — Separate acts of taking earnings of or support from

prostitute as separate or continuing offenses of pimping, J ALR4th 1195.

Sec. 11.66.130. Promoting prostitution in the third degree.

(a) A person commits the crime of promoting prostitution in the third degree if, with intent to promote prostitution, the person

(1) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;

(2) as other than a patron of a prostitute, induces or causes a person 16 years of age or older to engage in prostitution;

(3) as other than a prostitute receiving compensation for personally rendered prostitution services, receives or agrees to receive money or other property pursuant to an agreement or understanding that the money or other property is derived from prostitution; or

(4) engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

(b) Promoting prostitution in the third degree is a class A misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.40.260, 11.40.300, 11.40.330, 11.40.410, and 11.40.420.

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law. *Eleazar v. United States*, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956).

Lessor may be guilty as keeper. — If a man leases his house to a woman to be kept as a bawdyhouse for purposes of prostitution, and it is kept for such purposes, with his knowledge, he is guilty as keeper. *Rosencranz v. United States*, 155 F. 38 (9th Cir. 1907).

As well as agent of lessor. — The agent of an owner, who rents a house knowing that it is to be used as a house of prostitution, and that it is so used, may be

found guilty as a keeper. *Rosencranz v. United States*, 155 F. 38 (9th Cir. 1907)

For case construing former statute prohibiting employment in a house of prostitution or living on the earnings of a prostitute, see *Johnson v. State*, 501 P.2d 762 (Alaska 1972).

For case construing former statute prohibiting importing or exporting females for immoral purposes, see *State v. Adkerson*, 403 P.2d 673 (Alaska 1965).

For case construing former statute prohibiting pimping, see *Johnson v. United States*, 260 F. 783 (9th Cir. 1919).

For case construing former statute prohibiting a male's living with or on the earnings of a prostitute, see *Dunn v. State*, 426 P.2d 993 (Alaska 1967).

Quoted in *Bell v. State*, 668 P.2d 829 (Alaska Ct. App. 1983).

Collateral references. — 27 C.J.S., *Disorderly Houses*, §§ 1 to 18; 73 C.J.S., *Prostitution*, §§ 6, 7.

Constitutionality of statute conferring on chancery courts power to abate bawdyhouses as nuisances, 5 ALR 1474; 22 ALR 542; 75 ALR 1298.

Number of females who reside in house or resort thereto for immoral purposes as

affecting disorderly character thereof, 12 ALR 529.

Entrapment to commit offense as to house of prostitution or as to pandering, 52 ALR2d 1194.

Construction of provision of pandering statute as to placing a female in charge or custody of another, 51 ALR2d 1178.

Sec. 11.66.140. Corroboration of certain testimony not required. In a prosecution under AS 11.66.110 — 11.66.130, it is not necessary that the testimony of the person whose prostitution is alleged to have been compelled or promoted be corroborated by the testimony of any other witness or by documentary or other types of evidence. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former rule as to corroboration of prostitute's testimony, see *Johnson v. State*, 501 P.2d 762 (Alaska 1972).

For cases construing former statute providing that common fame was competent evidence in a prosecution for

keeping a bawdyhouse, see *Botts v. United States*, 155 F. 50 (9th Cir. 1907); *Hall v. United States*, 155 F. 52 (9th Cir. 1907).

Cited in *Bell v. State*, 668 P.2d 829 (Alaska Ct. App. 1983).

Sec. 11.66.150. Definitions. In AS 11.66.100 — 11.66.150, unless the context requires otherwise,

(1) "place of prostitution" means any place where a person engages in sexual conduct in return for a fee;

(2) "prostitution enterprise" means an arrangement in which two or more persons are organized to render sexual conduct in return for a fee;

(3) "sexual conduct" means genital or anal intercourse, cunnilingus, fellatio, or masturbation of one person by another person. (§ 8 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

NOTES TO DECISIONS

Quoted in *Bell v. State*, 668 P.2d 829 (Alaska Ct. App. 1983).

Article 2. Gambling Offenses.

Section	Section
200. Gambling	240. Possession of gambling records in the second degree
210. Promoting gambling in the first degree	250. Affirmative defenses
220. Promoting gambling in the second degree	260. Possession of a gambling device
230. Possession of gambling records in the first degree	270. Forfeiture
	280. Definitions

Collateral references. — 38 Am. Jur. 2d, Gambling, § 1 et seq.
27 C.J.S., Disorderly Houses, § 1 et seq.; 38 C.J.S., Gaming, § 1 et seq.

Racing as a game within statute, 45 ALR 998.
Constitutionality of statutes forbidding or regulating dissemination of betting

Positive Action

January 12, 1990
Circulation 50

P. O. Box 242903 Anchorage 99524-2903
Editors Kathy Cuddy & Cheri Jacobus

On December 27, 1989 Cheri Jacobus and Kathy Cuddy met for two hours with a top official of the State of Alaska Department of Education. The discussion was frank, informative, and positive. At that meeting a draft copy of the regulatory changes the Department is proposing was received. The changes address sexual conduct between teachers and students. The draft copy is included in this newsletter, as well as background information explaining reasons necessitating regulatory changes. These changes will be presented to the State Board of Education meeting this month. Public support is important to aid their acceptance by the Board.

Background

Sexual abuse of students by school personnel. It is an ugly subject, and fortunately a rarity. The vast number of teachers and school personnel we have in our Anchorage School District perform their job every day in a professional and compassionate manner. Unfortunately, there will always be the one teacher who abuses his or her position. It is a very small group, but it is a group we need to address, because the effects on children are life-long. According to therapists, students abused by a teacher suffer from anorexia, suicidal tendencies and reclusive behavior. The child often is turned away from school for the rest of his/her life. The Spokane Chronicle made a review of more than 100 cases of alleged sexual misconduct by teachers in

continued p.2 Background

Professional Teaching Practices Commission

An Anchorage teacher is accused of sexual misconduct during the school day at school with a student, and the Anchorage School District's response is to quietly retire him with a provision that "the term of this Agreement shall remain confidential as between the parties and shall not be disclosed to any other person." (Quote taken directly from the contract.) Contractually, the ASD cannot tell prospective employers making reference checks about accusations of sexual misconduct!

Just like doctors, accountants, attorneys and other professional organizations have their self-regulating bodies, the teaching profession has the Professional Teaching Practices Commission (PTPC), a body of 9

continued p.2 PTPC

Background cont.

Washington and Idaho and found it is not uncommon for administrators to choose the path of least resistance and strike deals with the teachers to quietly resign with nothing said about the allegations. The Chronicle found that districts in those states repeatedly have agreed to such "gag orders", known as Contracting Out. Teachers who have been allowed to quietly slip into the night move from school district to school district.

Molesting Teachers have been traced in eight or more school districts. For each offender there are likely to be several victims whose scars can remain a lifetime. The New York Police Department sex crimes unit reports that at least 85% of the people they arrest are repeat offenders. While the number of offenders may be small, the absolute number of students they impact is far greater.

Stopping the flow of abusive teachers has to be a cooperative effort within and between states. Fortunately, the State of Alaska participates in a national computer network. Any teacher who is decertified is immediately placed on that network, and he/she is red-flagged nationally. The state can inhibit abusive teachers from teaching in other states. But, this works only if suspected cases of abuse are reported to the Professional Teaching Practices Commission.

PTPC cont.

members appointed by the governor that certifies teachers. The PTPC has the right to decertify teachers under specific provisions of AS14.20.170. A criminal conviction is not necessary. Should the 9 members serving on the PTPC decertify a teacher, their name is immediately placed on a national computer network accessed by schools and others dealing with children. The teacher would not be able to teach nationally, period. Instead, the ASD agreed in the teacher's retirement contract, "the District shall not file a complaint with the state of Alaska, Professional Teaching Practices Commission, concerning the matter it has investigated." (Quote taken from contract.)

Why would a school district choose not to protest children and agree not to report a teacher accused of abuse?

The Alaska Department of Education is proposing a regulation change to require superintendents of administrators to report teachers to the PTPC when there is cause to believe sexual contact has occurred. This proposal deserves support. Officials with the State Department of Education said that until a teacher is decertified, they are eligible to teach and new district frequently only ask if a teacher is certified. Only the PTPC or the Commission of Education can decertify a teacher. Please take a moment and notify the state Board of Education of your support. The Board is meeting January 27. It is important to make your contact prior to that time.

Sexual Conduct with Students

4 AAC 12 is amended by adding new sections to read:

4 AAC 12.092. SEXUAL CONDUCT WITH STUDENTS FORBIDDEN. (a) A public school teacher may not engage in sexual conduct, as that term is defined in 4 AAC 12.900 with a student enrolled in the district employing that teacher.

(b) Violation of this section is ground for revocation or suspension of the violator's teacher certificate.

(c) School superintendents or school district administrators who have cause to believe that sexual conduct has occurred between teacher and student as referenced in (a) above, shall file a report within ten (10) days to the Professional Teaching Practices Commission.

4 AAC 12.900 is amended by adding a new subsection to read:

4 AAC 12.900. As used in this chapter . . .

(12) "sexual conduct" includes both "sexual penetration" and "sexual contact" as those terms are defined in AS 11.81.900.

Legal information on teacher certification can be found in A.S.14.20. The PTPC is specifically addressed in A.S. 14.20.370-510.

"In a typical year, an estimated 100,000 to 500,000 American youngsters will be sexually molested -- though most of these incidents will never be reported to any authority." Senator Paula Hawkins Children at Risk

Dear Board of Education,
I support regulatory changes that require superintendents or school administrators to report cases of suspected sexual misconduct to the Professional Teachers Practices Commission.

Sincerely,

Coming events of importance:

January 15	School Board Meeting 7 pm
January 22 2/12	School Board Meeting 7 pm
January 27	State Board of Education Juneau 7 pm

Please fill out, and send in, the form below to help with our efforts

Name	_____
Address	_____
City	_____
Zip	_____
Phone #	_____

Positive Action
P. O. Box 242903
Anchorage, Alaska 99524-2903

Last fall Anchorage was shocked with accusations of sexual misconduct between a teacher and students, and the resulting lawsuit filed by the Anchorage School District against the Police Department. At that time concerned citizens looked specifically into how the Anchorage School District internally handles cases of sexual misconduct. Months later, the inquiry has not been exhaustive, but very exhausting! Public court documents have been thoroughly read, interviews conducted statewide, and national material reviewed as we sought to understand what has become a state-wide issue.

It is the intent of this newsletter, which is not affiliated with any other group, to put forth to the public information and hopefully initiate positive action. Enclosed in the next issue of Positive Action will be a listing of local and state officials. Please keep it handy should you wish to take action on this or any other matter of public concern. Each issue of the newsletter will present a different facet of the situation.

As an outcome of the study, specific recommendations have been made to the School Board and State Board of Education. Furthermore, the individuals who did the research are actively working with the Department of Education and state legislators to help reduce the risk of sexual exploitation of our public school students. Our children deserve no less.

You are receiving this newsletter either because you have previously indicated concern for this issue, or your name has been recommended to the editors of Positive Action as a possible supporter. It is not our intent to intrude into anyone's home with unwanted literature. Should you not wish to receive further copies, please send a note to our address. Or, hopefully, you know of others who would like to receive our mailing. We would appreciate any names and addresses you may wish to pass on.

The sexual use of children and juveniles is a hideous act against the individual, and society as a whole. It is a very difficult issue to deal with, but it must be addressed publicly. For those of you willing to take a stand for the protection of our youth, you deserve the wholehearted gratitude of our community. Any action you can take is important.

Background cont.

Washington and Idaho and found it is not uncommon for administrators to choose the path of least resistance and strike deals with the teachers to quietly resign with nothing said about the allegations. The Chronicle found that districts in those states repeatedly have agreed to such "gag orders", known as Contracting Out. Teachers who have been allowed to quietly slip into the night move from school district to school district.

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PTPC cont.

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4 AAC 12.900 is amended by adding a new subsection to read:

4 AAC 12.900. As used in this chapter . . .

(12) "sexual conduct" includes both "sexual penetration" and "sexual contact" as those terms are defined in AS 11.81.900.

Legal information on teacher certification can be found in A.S.14.20. The PTPC is specifically addressed in A.S. 14.20.370-510.

"In a typical year, an estimated 100,000 to 500,000 American youngsters will be sexually molested -- though most of these incidents will never be reported to any authority." Senator Paula Hawkins Children at Risk

*postcard omitted
on US copy.*

Dear Board of Education,
I support regulatory changes that require superintendents or school administrators to report cases of suspected sexual misconduct to the Professional Teachers Practices Commission.

Sincerely,

Coming events of importance:

January 15	School Board Meeting 7 pm
January 28 2/1a	School Board Meeting 7 pm
January 27	State Board of Education Juneau 7 pm

Please fill out, and send in, the form below to help with our efforts

Name	_____
Address	_____
City	_____
Zip	_____
Phone #	_____

Positive Action
P. O. Box 242903
Anchorage, Alaska 99524-2903

Children at Risk

Positive Action

January 12, 1990
Circulation 50

P. O. Box 242903 Anchorage 99524-2903
Editors Kathy Cuddy & Cheri Jacobus

On December 27, 1989 Cheri Jacobus and Kathy Cuddy met for two hours with a top official of the State of Alaska Department of Education. The discussion was frank, informative, and positive. At that meeting a draft copy of the regulatory changes the Department is proposing was received. The changes address sexual conduct between teachers and students. The draft copy is included in this newsletter, as well as background information explaining reasons necessitating regulatory changes. These changes will be presented to the State Board of Education meeting this month. Public support is important to aid their acceptance by the Board.

Background

Sexual abuse of students by school personnel. It is an ugly subject, and fortunately a rarity. The vast number of teachers and school personnel we have in our Anchorage School District perform their job every day in a professional and compassionate manner. Unfortunately, there will always be the one teacher who abuses his or her position. It is a very small group, but it is a group we need to address, because the effects on children are life-long. According to therapists, students abused by a teacher suffer from anorexia, suicidal tendencies and reclusive behavior. The child often is turned away from school for the rest of his/her life. The Spokane Chronicle made a review of more than 100 cases of alleged sexual misconduct by teachers in

continued p.2 Background

Professional Teaching Practices Commission

An Anchorage teacher is accused of sexual misconduct during the school day at school with a student, and the Anchorage School District's response is to quietly retire him with a provision that "the term of this Agreement shall remain confidential as between the parties and shall not be disclosed to any other person." (Quote taken directly from the contract.) Contractually, the ASD cannot tell prospective employers making reference checks about accusations of sexual misconduct!

Just like doctors, accountants, attorneys and other professional organizations have their self-regulating bodies, the teaching profession has the Professional Teaching Practices Commission (PTPC), a body of 9

continued p.2 PTPC

Last fall Anchorage was shocked with accusations of sexual misconduct between a teacher and students, and the resulting lawsuit filed by the Anchorage School District against the Police Department. At that time concerned citizens looked specifically into how the Anchorage School District internally handles cases of sexual misconduct. Months later, the inquiry has not been exhaustive, but very exhausting! Public court documents have been thoroughly read, interviews conducted statewide, and national material reviewed as we sought to understand what has become a state-wide issue.

It is the intent of this newsletter, which is not affiliated with any other group, to put forth to the public information and hopefully initiate positive action. Enclosed in the next issue of Positive Action will be a listing of local and state officials. Please keep it handy should you wish to take action on this or any other matter of public concern. Each issue of the newsletter will present a different facet of the situation.

As an outcome of the study, specific recommendations have been made to the School Board and State Board of Education. Furthermore, the individuals who did the research are actively working with the Department of Education and state legislators to help reduce the risk of sexual exploitation of our public school students. Our children deserve no less.

You are receiving this newsletter either because you have previously indicated concern for this issue, or your name has been recommended to the editors of Positive Action as a possible supporter. It is not our intent to intrude into anyone's home with unwanted literature. Should you not wish to receive further copies, please send a note to our address. Or, hopefully, you know of others who would like to receive our mailing. We would appreciate any names and addresses you may wish to pass on.

The sexual use of children and juveniles is a hideous act against the individual, and society as a whole. It is a very difficult issue to deal with, but it must be addressed publicly. For those of you willing to take a stand for the protection of our youth, you deserve the wholehearted gratitude of our community. Any action you can take is important.

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.

RECEIVED

JAN 24 1990

JAN FAIKS
SENATE OFFICE
LEGISLATIVE AGENCY
STATE CAPITOL
JUNEAU ALASKA 99811
907.465.3100

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 24, 1990

SUBJECT: Sectional summary of CSSB 355(Jud)
(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



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
Senator 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.

Differences between SB 355 and CSSB 355 (Jud):

- SB 355 made sexual penetration of a 16 or 17 year old student by an adult teacher an unclassified felony. Through a drafting error, it left sexual penetration of a 13, 14 or 15 year old by a teacher only a class B felony (section 1). The Judiciary CS makes it an unclassified felony (up to 30 years with an 8 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 1) and makes it a class B felony (up to 10 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 2).
- SB 355 made sexual contact with a 16 or 17 year old student by an adult teacher a class B felony (section 2). The Judiciary CS makes it a class C felony (up to 5 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;
- SB 355 only covered teachers. The Judiciary CS covers 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. It also defines "legal guardian." (section 4)
- SB 355 provided that a person convicted of sexual abuse or exploitation of a minor, or indecent exposure to a minor, was barred for life from having a teaching certificate (sections 3, 4, and 5). The Judiciary CS provides that a person convicted of those offenses 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 (sections 5, 6, and 7).

Alaska State Legislature



Senate Judiciary Committee

January 24, 1990

MEMORANDUM

TO: All Senators

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee

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

SB 355 will be on the Senate calendar tomorrow, following the Senate Judiciary Committee's adoption of a committee substitute and letter of intent yesterday afternoon. Because of the speed at which this essential piece of legislation is moving through the system, I am providing an information packet explaining the committee's substitute and the changes it makes to current law. If you have any questions, please feel free to contact me or Chris Christensen of my staff.

January 25, 1990

MEMORANDUM

TO: All Senators

FROM: Senator Jan Faiks
Senator Paul Fischer

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

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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.

SEX OFFENSES: CSSB 355 (Judiciary)
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, practitioner of the healing arts, police officer, probation officer, guardian ad litem, babysitter, or substantially similar position.

Letter of Intent

Proposed 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, JAN-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, but would also include 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.

1/22/90 Department of Law
Proposed CSSB 355 (Jud.)

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

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

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

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

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

(B)] is the victim's natural parent, stepparent, adopted parent, or legal guardian [OFFENDER'S SON OR DAUGHTER, INCLUDING AN ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD]; or

(3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and [THE VICTIM AT THE TIME OF THE OFFENSE IS]

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

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

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

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

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

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or

aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

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

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

(B)] is the victim's natural parent, stepparent, adopted parent, or legal guardian [OFFENDER'S SON OR DAUGHTER, INCLUDING AN ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD];

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

(5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and [THE VICTIM AT THE TIME OF THE OFFENSE IS]

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

(B) the offender occupies a position of special trust in relation to the victim [TEMPORARILY ENTRUSTED TO THE OFFENDER'S CARE]; or

(6) being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of special trust in relation to the victim.

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

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

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

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

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

(5) "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;

(6) "position of special trust" means a position that could enable the offender to exercise undue influence over the victim; a position of special trust includes the position occupied by a youth leader, recreational leader, scout leader, athletic manager, coach, teacher, counselor, school administrator, religious leader, doctor, psychologist, police officer, probation officer, guardian ad litem, babysitter, or substantially similar position.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 17, 1990

SUBJECT: Vagueness of language in proposed
CSSB 355 (Judiciary)

TO: Senator Jan Faiks
Chair, Senate Judiciary Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the draft that you requested of a Senate Judiciary committee substitute for SB 355.

Please be aware that the language relating to the "special position of trust" is vague and may not survive constitutional scrutiny under the due process provisions of the federal and state constitutions. The problem is that the conduct to be prohibited is not determined by sufficiently specific standards. The average person does not have adequate notice of when sexual activity with minors is prohibited. Unless the person's position is listed in the definition of the term, the person has to guess whether the language applied to the person's position. In addition, the language of the bill may make it possible for the position of trust to be created in the minor's mind without the adult being aware of it. Vagueness would also give government officials too much discretion in the enforcement of the provision, which could result in uneven and discriminatory enforcement. I suggest reworking the language so as to be very specific.

If I can be of further assistance, please advise.

TLB:lmb
L9/057

Enclosure

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

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

...

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

(A) occupies a position of special trust in relation to the victim [IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY OF LAW]; or

(B) is the victim's natural parent, stepparent, adopted parent, or ~~other~~ legal guardian [IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD].

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

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

...

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

(A) occupies a position of special trust in relation to the victim [IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY OF LAW]; or

(B) is the victim's natural parent, stepparent, adopted parent, or ~~other~~ legal guardian [IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD].

*Sec. 3. AS 11.41.470 is amended by adding a new subsection to read:

(5) "position of special trust" means a position that enables a person to exercise undue influence over the victim; a position of special trust includes, ~~but is not limited to,~~ the position occupied by a youth leader or recreational leader, athletic manager, coach, teacher, counselor, religious leader, doctor, police officer, ~~employer,~~ foster parent, ~~or~~ scout leader, school administrator, or substantially similar position.

CHANGE THIS TO 2nd degree abuse of minor

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

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

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

(A) occupies a position of special trust in relation to the victim [IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY OF LAW] or

(B) is the victim's natural parent, stepparent, adopted parent, or ~~other~~ legal guardian [IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD].

THIS SHOULD CONTINUE TO BE 1ST DEGREE

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

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

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

(A) occupies a position of special trust in relation to the victim [IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY OF LAW]; or

(B) is the victim's natural parent, stepparent, adopted parent, or ~~other~~ legal guardian [IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD].

CHANGE THIS TO 2nd degree abuse of minor

*Sec. 3. AS 11.41.470 is amended by adding a new subsection to read:

(5) "position of special trust" means a position that enables a person to exercise undue influence over the victim; a position of special trust includes, ~~but is not limited to,~~ the position occupied by a youth leader or recreational leader, athletic manager, coach, teacher, counselor, religious leader, doctor, police officer, [employer] foster parent, ~~or~~ scout leader or

substantially similar position.

school administrator

or spouse

- NO COMPROMISE RE DECLASSIFICATION
- TITLE TIGHTENING

OK
2nd Degree (?)

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

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

...

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

(A) occupies a position of special trust in relation to the victim [IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY OF LAW]; or

(B) is the victim's natural parent, stepparent, adopted parent, or ~~other~~ legal guardian [IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD].

NEED TO KEEP THIS PART STRIP UNCLASSIFIED PER LAW

OK
3rd Degree (?)

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

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

...

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

(A) occupies a position of special trust in relation to the victim [IS ENTRUSTED TO THE OFFENDER'S CARE BY AUTHORITY OF LAW]; or

(B) is the victim's natural parent, stepparent, adopted parent, or ~~other~~ legal guardian [IS THE OFFENDER'S SON OR DAUGHTER, INCLUDING AN ILLEGITIMATE OR ADOPTED CHILD, OR A STEPCHILD].

*Sec. 3. AS 11.41.470 is amended by adding a new subsection to read:

(5) "position of special trust" means a position that enables a person to exercise undue influence over the victim; a position of special trust includes, ~~but is not limited to,~~ the position occupied by a youth leader or recreational leader, athletic manager, coach, teacher, counselor, religious leader, doctor, police officer, employer, foster parent, ~~or~~ scout leader ^{could}

or substantially similar position.

OK

Original sponsor(s): SEN. FISCHER

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 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
8 situations 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 to, and revocation of teaching
12 certificates of, persons convicted of certain crimes
13 involving a 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; or [TEMPORARILY ENTRUSTED TO THE
13 OFFENDER'S CARE]

14 (6) being 18 years of age or older, the offender engages in
15 sexual penetration with a person who is 16 or 17 years of age and at
16 least three years younger than the offender, and the offender occupies
17 a position of special trust in relation to the victim.

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

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

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

24 (2) being 18 years of age or older, the offender engages in
25 sexual contact with a person who is 16 or 17 years of age and at least
26 three years younger than the offender, and the offender occupies a
27 position of special trust in relation to the victim.

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

29 (5) "legal guardian" means a person who is under a duty to

1 exercise general supervision over a minor as a result of a court
2 order, statute, or regulation, and includes foster parents and staff
3 members and other employees of group homes or youth correctional
4 facilities where a child is placed as a result of a court order or the
5 action of the division of family and youth services;

6 (6) "position of special trust" means a youth leader,
7 recreational leader, scout leader, athletic manager, coach, teacher,
8 counselor, school administrator, religious leader, ^{doctor, nurse, psychologist} ~~practitioner of the~~
9 ~~healing arts~~ police officer, probation officer, guardian ad litem,
10 babysitter, or a substantially similar position; in this paragraph,
11 "practitioner of the healing arts" has the meaning given in AS 47.17.-
12 070.

13 * Sec. 5. AS 14.20.020(a) is amended to read:

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

17 * Sec. 6. AS 14.20.020 is amended by adding a new subsection to read:

18 (f) Except as otherwise provided in this subsection, the depart-
19 ment may not issue a teacher certificate to a person who has been
20 convicted of a crime involving a minor under AS 11.41.434 - 11.41.438,
21 11.41.455, or 11.41.460, or under a law in another jurisdiction with
22 elements substantially similar to an offense described in AS 11.41.-
23 434 - 11.41.438, 11.41.455, or 11.41.460. When five years have
24 elapsed after a person has received an unconditional discharge for a
25 conviction of a crime listed in this subsection, the person may peti-
26 tion the department to issue the certificate in spite of the convic-
27 tion if the person otherwise satisfies the requirements for the cer-
28 tificate. When deciding whether to grant or deny the petition, the
29 department shall consider the nature of the particular crime, whether

1 and to what extent the person has been rehabilitated, and the other
2 factors that the department determines are significant.

3 * Sec. 7. AS 14.20.030 is amended by adding a new subsection to read:

4 (b) The commissioner or the Professional Teaching Practices
5 Commission shall revoke for life the certificate of a person who has
6 been convicted of a crime involving a minor under AS 11.41.434 -
7 11.41.438, 11.41.455, or 11.41.460, or under a law in another juris-
8 diction with elements substantially similar to an offense described in
9 AS 11.41.434 - 11.41.438, 11.41.455, or 11.41.460. When five years
10 have elapsed after the person has received an unconditional discharge
11 for the conviction, the person may petition the commission for re-
12 certification. When deciding whether to grant or deny the petition,
13 the commission shall consider the nature of the particular crime,
14 whether and to what extent the person has been rehabilitated, and the
15 other factors that the commission determines are significant.

16 * Sec. 8. AS 14.20.215 is amended by adding a new paragraph to read:

17 (7) "unconditional discharge" has the meaning given in
18 AS 12.55.185.

19 * Sec. 9. AS 14.20.020(f), as enacted by sec. 6 of this Act, and
20 AS 14.20.030(b), as enacted by sec. 7 of this Act, do not apply when the
21 crime occurred before the effective date of this Act.

6-1663E✓
Bannister
1/17/90

DRAFT

Original sponsor(s): SEN. FISCHER

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 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 making it a crime for an adult to engage in
7 sexual penetration or sexual contact with a minor if
8 the adult occupies a position of special trust in re-
9 lation to the minor; making it a crime for an adult
10 to engage in sexual penetration or sexual contact
11 with a minor if the adult is the minor's natural
12 parent, stepparent, adopted parent, or legal guard-
13 ian; deleting language that prohibits an adult from
14 engaging in sexual penetration or sexual contact with
15 a minor when the minor is entrusted to the offender's
16 care by authority of law; prohibiting the issuance of
17 a teaching certificate for certain listed crimes
18 involving a minor; requiring the revocation for life
19 of a teaching certificate for certain listed crimes
20 involving a minor, but allowing the person to be
21 recertified under certain circumstances."

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

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

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

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

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

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

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

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

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

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

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

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

19 (1) being 18 years of age or older, the offender engages in
20 sexual penetration with a person who is under 18 years of age, and the
21 offender occupies a position of special trust in relation to the
22 victim;

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

29 (3) [(2)] being 16 years of age or older, the offender

1 engages in sexual contact with a person who is under 13 years of age
 2 or aids, induces, causes, or encourages a person under 13 years of age
 3 to engage in sexual contact with another person;

4 (4) [(3)] being 18 years of age or older, the offender
 5 engages in sexual contact with a person who is under 18 years of age,
 6 and the offender is the victim's natural parent, stepparent, adopted
 7 parent, or legal guardian [WHO

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

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

12 (5) [(4)] being 16 years of age or older, the offender
 13 aids, induces, causes, or encourages a person who is under 16 years of
 14 age to engage in conduct described in AS 11.41.455(a)(2) - (6); or

15 (6) [(5)] being 18 years of age or older, the offender
 16 engages in sexual contact with a person who is under 16 years of age,
 17 and the victim at the time of the offense is

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

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

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

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

25 (1) being 18 years of age or older, the offender engages in
 26 sexual contact with a person who is under 18 years of age, and the
 27 offender occupies a position of special trust in relation to the
 28 victim; or

29 (2) being 16 years of age or older, the offender engages in

1 sexual contact with a person who is 13, 14, or 15 years of age and at
2 least three years younger than the offender.

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

4 (5) "position of special trust" means a position that could
5 enable a person to exercise undue influence over the victim, including
6 the position occupied by a youth leader, recreational leader, athletic
7 manager, coach, teacher, counselor, religious leader, doctor, police
8 officer, foster parent, scout leader, school administrator, or a
9 substantially similar position.

10 * Sec. 5. AS 14.20.020(a) is amended to read:

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

14 * Sec. 6. AS 14.20.020 is amended by adding a new subsection to read:

15 (f) The department may not issue a teacher certificate to a
16 person who has been convicted of a crime involving a minor under
17 AS 11.41.434 - 11.41.438, 11.41.455, or 11.41.460, or under a law in
18 another jurisdiction with elements substantially similar to an offense
19 described in AS 11.41.434 - 11.41.438, 11.41.455, or 11.41.460.

20 * Sec. 7. AS 14.20.030 is amended by adding a new subsection to read:

21 (b) The commissioner or the Professional Teaching Practices
22 Commission shall revoke for life the certificate of a person who has
23 been convicted of a crime involving a minor under AS 11.41.434 -
24 11.41.438, 11.41.455, or 11.41.460, or under a law in another juris-
25 diction with elements substantially similar to an offense described in
26 AS 11.41.434 - 11.41.438, 11.41.455, or 11.41.460. When five years
27 have elapsed after the person has received an unconditional discharge
28 for the conviction, the person may petition the commission for re-
29 certification. When deciding whether to grant or deny the petition,

1 the commission shall consider the nature of the particular crime,
2 whether and to what extent the person has been rehabilitated, and the
3 other factors that the commission determines are significant. In this
4 subsection, "unconditional discharge" has the meaning given in AS 12.-
5 55.185.

6 * Sec. 8. AS 14.20.020(f), as enacted by sec. 6 of this Act, and
7 AS 14.20.030(b), as enacted by sec. 7 of this Act, do not apply when the
8 crime occurred before the effective date of this Act.
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6-1663E✓
Bannister
1/ 23/90

Original sponsor(s): SEN. FISCHER

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 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 making it a crime for an adult to engage in
7 sexual penetration or sexual contact with a 16 or 17
8 year-old if the minor is at least three years younger
9 than the adult and the adult occupies a position of
10 special trust in relation to the minor; making it a
11 crime for an adult to engage in sexual penetration or
12 sexual contact with a minor if the adult is the
13 minor's natural parent, stepparent, adopted parent,
14 or legal guardian; deleting language that prohibits
15 an adult from engaging in sexual penetration or
16 sexual contact with a minor when the minor is en-
17 trusted to the offender's care by authority of law;
18 prohibiting an adult from engaging in sexual pene-
19 tration or sexual contact with a minor under 16 if
20 the minor resides in the same household as the adult
21 and the adult is in a position of authority over the
22 victim, or if the offender occupies a position of
23 special trust in relation to the minor; defining
24 'legal guardian' for certain crimes; prohibiting the
25 issuance of a teaching certificate for certain listed
26 crimes involving a minor but allowing the issuance of
27 the certificate in spite of the conviction under
28 certain circumstances; requiring the revocation for
29 life of a teaching certificate for certain listed

1 crimes involving a minor, but allowing the person to
2 be recertified under certain circumstances."

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

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

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

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

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

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

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

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

21 (A) the victim at the time of the offense is [(A)]
22 residing [AS A MEMBER OF THE SOCIAL UNIT] in the same household
23 as the offender and the offender is in a position of authority
24 over the victim; or

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

28 * Sec. 2. 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

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

29 (B) the offender occupies a position of special trust

1 in relation to the victim; or [TEMPORARILY ENTRUSTED TO THE
2 OFFENDER'S CARE]

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

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

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

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

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

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

18 (5) "legal guardian" means a person who is under a duty to
19 exercise general supervision over a minor as a result of a court
20 order, statute, or regulation, and includes foster parents; *

21 (6) "position of special trust" means a youth leader,
22 recreational leader, scout leader, athletic manager, coach, teacher,
23 counselor, school administrator, religious leader, ~~doctor,~~ ^{health care provider} ~~psycholo-~~
24 ^{gist} ~~gist~~, police officer, probation officer, guardian ad litem, babysit-
25 ter, or a substantially similar position.

26 * Sec. 5. AS 14.20.020(a) is amended to read:

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

1 * Sec. 6. AS 14.20.020 is amended by adding a new subsection to read:

2 (f) Except as otherwise provided in this subsection, the depart-
3 ment may not issue a teacher certificate to a person who has been
4 convicted of a crime involving a minor under AS 11.41.434 - 11.41.438,
5 11.41.455, or 11.41.460, or under a law in another jurisdiction with
6 elements substantially similar to an offense described in AS 11.41.-
7 434 - 11.41.438, 11.41.455, or 11.41.460. When five years have
8 elapsed after a person has received an unconditional discharge for a
9 conviction of a crime listed in this subsection, the person may peti-
10 tion the department to issue the certificate in spite of the convic-
11 tion if the person otherwise satisfies the requirements for the cer-
12 tificate. When deciding whether to grant or deny the petition, the
13 department shall consider the nature of the particular crime, whether
14 and to what extent the person has been rehabilitated, and the other
15 factors that the department determines are significant.

16 * Sec. 7. AS 14.20.030 is amended by adding a new subsection to read:

17 (b) The commissioner or the Professional Teaching Practices
18 Commission shall revoke for life the certificate of a person who has
19 been convicted of a crime involving a minor under AS 11.41.434 -
20 11.41.438, 11.41.455, or 11.41.460, or under a law in another juris-
21 diction with elements substantially similar to an offense described in
22 AS 11.41.434 - 11.41.438, 11.41.455, or 11.41.460. When five years
23 have elapsed after the person has received an unconditional discharge
24 for the conviction, the person may petition the commission for re-
25 certification. When deciding whether to grant or deny the petition,
26 the commission shall consider the nature of the particular crime,
27 whether and to what extent the person has been rehabilitated, and the
28 other factors that the commission determines are significant.

29 * Sec. 8. AS 14.20.215 is amended by adding a new paragraph to read:

1 (7) "unconditional discharge" has the meaning given in
2 AS 12.55.185.

3 * Sec. 9. AS 14.20.020(f), as enacted by sec. 6 of this Act, and
4 AS 14.20.030(b), as enacted by sec. 7 of this Act, do not apply when the
5 crime occurred before the effective date of this Act.
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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						
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REVENUE						
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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)

Prepared by: Marv 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: _____
Title: An Act relating to sexual offenses against children by teachers ...
Sponsor: Senator Fischer
Requestor: Judiciary

Agency Affected: Public Safety
BRU: Counsel on Domestic Violence and Sexual Assault
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER/PROG RCPT	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill is not expected to have any fiscal impact on the Department of Public Safety.

Prepared by: Barbara Miklos, Executive Director
Division: Council on Domestic Violence and Sexual Assault
Approved by Commissioner: D.A.H. Arthur English
Agency: Department of Public Safety

Phone: 465-4356
Date: 1/12/90
Date: 1-16-90
Page 1 of 1

Pub
1/16/90

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: A11

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						
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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 / Date: January 24, 1990
Agency: Douglas B. Baily, Attorney General
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-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. 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.

FISCAL NOTE

REQUEST:

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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 Phone: 465-3376
 Division: Administrative Services Date: 01-12-90

Approved by Commissioner Susan H. Henshrey-Barnett Date: 01-12-90
 Agency: Department of Corrections

Distribution (by preparer):

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

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Education
 Title: Sexual offenses against children BRU: _____
 Sponsor: Fischer Components: _____
 Requestor: Senate Judiciary

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						
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REVENUE						
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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 (Jul) have no fiscal impact. This fiscal note is appropriate. *CAC*

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)

Senators move quickly on teacher-sex bill

By BRIAN S. AKRE
The Associated Press

JUNEAU — Legislation to close the loophole that made it legal for an Anchorage high school teacher to have sex with a student is on the fast track to a vote on the Senate floor.

Senate leaders said the legislation, approved Tuesday by the Senate Judiciary Committee, will come before the full Senate within a week.

The swift handling is in response to last week's dismissal of criminal charges against former teacher and newspaper columnist Gordon "Sateh" Carlson. A judge found Carlson's sexual relations with a 17-year-old student did not violate state law.

The bill goes far beyond student-teacher sex, however. As amended by the committee, it also would outlaw sexual relations between high-school age youths and their coaches, counselors,



school administrators, religious leaders, police or probation officers, recreation or youth leaders, health-care workers, parents and anyone else "in a special position of trust."

It even covers licensed hearing-aid dealers.

The committee defended the wide net the bill would cast over adults who have sex with teen-agers, saying it's needed to address the issues raised in the Carlson case.

"We don't think we've reached too far," said Sen. Jan Faiks, R-Anchorage, the committee chairwoman. "We

think we were very, very specific. We wrote a very detailed law. That's unusual for around here."

Senate Bill 355, as originally introduced by Sen. Paul Fischer, R-Soldotna, dealt only with sex between 16- and 17-year-old students and anyone working with them in a school setting. The general age of consent in Alaska is 16. Sex with youths under that age already is illegal.

At the urging of the state Law Department, the committee expanded the bill to involve others who have a "special trust relationship" with teen-agers.

That relationship covers a wide variety of circumstances. For example, parents who allow their child's friend to spend the weekend or join them on a vacation would come under the bill's provisions, said Laurie Otto, an assistant attorney general.

The amended bill makes

sex with a 16- or 17-year-old student a felony only if the adult is at least three years older than the student. That's aimed at avoiding prosecution of incidents in which, for example, a 19-year-old teacher's aide has consensual sex with a 17-year-old cheerleader.

The committee also provided for lighter penalties than Fischer, who would have made sexual intercourse with a 16- or 17-year-old student punishable by up to 30 years in prison and a \$75,000 fine. The committee's version makes it punishable by up to 10 years in prison and a \$50,000 fine.

Sexual contact other than intercourse, such as fondling, would be punishable by up to five years in prison and a \$50,000 fine under the committee's bill.

Under Fischer's version, teachers convicted under the law would be banned from teaching for life. The amended bill would also impose a

lifetime ban, but would give teachers a chance to regain their right to work in the classroom.

A convicted teacher could reapply for a teaching certificate with the state Professional Teaching Practices Commission five years after completing all terms of the sentence, including parole.

That provision was endorsed Tuesday by Bob Cooksey, lobbyist for the National Education Association-Alaska. Cooksey, however, suggested the legislation may be more than is needed.

"The whole movement is an overreaction to what happened in Anchorage," he said.

Sen. Drue Pearce, R-Anchorage, said the committee was acting in response to public pressure.

The Senate will debate this bill more than most when it reaches the floor, Pearce predicted.

METRO

W E D N E S D A Y

SECTION C Jan. 24, 1990

D.A. won't pursue teacher's case

By SHEILA TOOMEY
Daily News reporter

Former teacher Gordon "Satch" Carlson is off the hook. A court order dismissing felony sex abuse charges against him for his affair with a 17-year-old student will not be appealed to a higher court, the Anchorage District Attorney said Tuesday.

District Attorney Dwayne McConnell's decision means the charges against Carlson cannot be reinstated.

Superior Court Judge Karl Johnstone ruled last week that state statutes do not outlaw sex between a

■ IN JUNEAU: Lawmakers move fast to pass bill against teacher-student sex. C-3

teacher and a student above the age of consent, which in Alaska is 16. The legislature is now in the process of amending the law to raise the age of consent to 18 when a teacher is involved.

"The discretion of a Superior Court judge in interpretation of the statutes is wide-ranging," McConnell said.

"The likelihood of overturning (Johnstone's) decision, though I disagree with

it, is unlikely."

Carlson was forced to retire last August and indicted by a grand jury in November on three counts of child sexual abuse. He was accused of having sex with a female student on Bartlett High School grounds during the 1989 winter semester. Prosecutors cited a law raising the age of consent to 18 when a teen-ager is entrusted by law to an adult's care.

The statute in question had previously been used only against foster parents and employees in institutions where teens are com-

mitted by court order.

Carlson's attorney, Jeff Feldman, successfully argued that the law was never meant to apply to teachers and had previously been rejected by McConnell himself for use against a teacher.

Feldman said Tuesday he is pleased the fight is over, but disputed McConnell.

A trial court judge actually has no discretion in such cases, Feldman said. "Mr McConnell's comment reflects the same peculiar legal reasoning that gave rise to this case in the first place."

McConnell also mentioned the pending changes in the

law as a reason for not appealing Johnstone's decision.

"It is clear from this case that the vast majority of Alaskans believe that sexual activity by a teacher with a student should be criminalized conduct," McConnell said. "This case has clearly been the focal point to ensure that this type of behavior will result in criminal sanctions in the future and will no longer be a loophole through which a teacher or other people in similar positions of authority can prey upon young, impressionable men and women."



Daily News file photo
of "Satch" Carlson

NEIGHBORS LOSE BATTLE AGAINST 'GOD'S GARDEN'



City's battles flare up

Chapter 20. Teachers and School Officials.

Article

1. Teacher Certification (§§ 14.20.010 — 14.20.040)
2. Employment and Tenure (§§ 14.20.095 — 14.20.215)
3. Salary Scales (§ 14.20.220)
4. Sabbatical Leave (§§ 14.20.280 — 14.20.350)
5. Professional Teaching Practices Act (§§ 14.20.370 — 14.20.510)
6. Negotiation and Mediation (§§ 14.20.550 — 14.20.610)
7. Interstate Agreement on Qualification of Educational Personnel (§§ 14.20.620 — 14.20.650)

Article 1. Teacher Certification.

Section

10. Teacher certificate required
20. Requirements for issuance of certificate

Section

30. Causes for revocation and suspension
40. Applicability of the Administrative Procedure Act

Collateral references. — 68 An. Jur. 2d Schools, §§ 128-143.
78 C.J.S. Schools and School Districts, §§ 154-182.

Matters proper for consideration in appointment of teachers. 94 ALR 1484.

Tests of moral character of fitness as requisite to issuance of teacher's license or certificate. 96 ALR2d 536.

Bias of members of license revocation board. 97 ALR2d 1210.

Actionability of statements imputing inefficiency or lack of qualification to public school teacher 40 ALR3d 490.

Self-defense or defense of another as justification, in dismissal proceedings, for use or threat of use of force against student. 37 ALR4th 842.

Sec. 14.20.010. Teacher certificate required. A person may not be employed as a teacher in the public schools of the state unless that person possesses a valid teacher certificate except that a person who has made application to the department for a teacher certificate or renewal of a teacher certificate which has not been acted upon by the department may be employed as a teacher in the public schools of the state until the department has taken action on the application, but in no case may employment without a certificate last longer than three months. (§ 37-5-3 ACLA 1949; am § 9 ch 98 SLA 1966; am § 1 ch 165 SLA 1976)

Sec. 14.20.020. Requirements for issuance of certificate.

(a) The department shall issue a teacher certificate to every person who meets the requirements in (b) and (c) of this section.

(b) A person is not eligible for a teacher certificate unless that person has received at least a baccalaureate degree from an institution of higher education accredited by a recognized regional accrediting association or approved by the commissioner. However, this subsection is not applicable to

(1) persons employed in the state public school system on September 1, 1962;

(2) persons issued an emergency certificate during a situation which, in the judgment of the commissioner, requires the temporary issuance of a certificate to a person not otherwise qualified.

(c) The board may establish by regulation additional requirements for the issuance of certificates, including the fees to be charged for each certificate.

(d) The board may by regulation establish various classes of certificates.

(e) The commissioner of administration shall separately account for teacher certification fees that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this section and to support the activities of the Professional Teaching Practices Commission under AS 14.20.460, 14.20.470, and 14.20.500. (§ 37-5-4 ACLA 1949; am § 1 ch 76 SLA 1962; am § 10 ch 98 SLA 1966; am §§ 13, 14 ch 32 SLA 1971; am §§ 19, 20 ch 138 SLA 1986)

Effect of amendments. — The 1986 amendment added "including the fees to be charged for each certificate" at the end of subsection (c) and added subsection (e).

Sec. 14.20.030. Causes for revocation and suspension. The commissioner or the Professional Teaching Practices Commission may revoke or suspend a certificate only for the following reasons:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

(3) substantial noncompliance with the school laws of the state or the regulations of the department; or

(4) upon a determination by the Professional Teaching Practices Commission that there has been a violation of ethical or professional standards or contractual obligations. (§ 11 ch 98 SLA 1966; am § 1 ch 9 SLA 1975, am § 1 ch 103 SLA 1976)

NOTES TO DECISIONS

Quoted in *Watts v. Seward School Bd.*,
Sup. Ct. Op. No. 380 (File No. 427), 421
P.2d 586 (1966).

Collateral references. — Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal. 72 ALR 283.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence. 136 ALR 1154.

Validity of governmental requirement of oath of allegiance or loyalty as applied to college curators. 18 ALR2d 303.

Rejection of public school teacher because of disloyalty. 27 ALR2d 487.

Assertion of immunity as ground for discharge of teacher. 44 ALR2d 799.

Wearing of religious garb by public school teachers. 60 ALR2d 300.

Tests of moral character of fitness as requisite to issuance of teacher's license or certificate. 96 ALR2d 536.

Revocation of teacher's certificate for moral unfitness. 97 ALR2d 827.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public school teacher. 4 ALR3d 1090.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate. 47 ALR3d 754.

Dismissal of, or disciplinary action against, public school teachers for violation of regulation as to dress or personal appearance of teachers. 58 ALR3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 ALR3d 19.

Sec. 14.20.040. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to all proceedings under AS 14.20.030, and revocations and suspensions are final and reviewable in accordance with AS 44.62.560 — 44.62.570. (§ 12 ch 98 SLA 1966; am § 2 ch 9 SLA 1975)

Sec. 14.20.090. Revocation of certificates. [Repealed, § 59 ch 98 SLA 1966.]

Article 2. Employment and Tenure.

Section

- 95. Right to comment and criticize not to be restricted
- 97. Duty-free time
- 100. Unlawful to require statement of religious or political affiliation
- 110. Penalty for violation of AS 14.20.100
- 120. Statement of qualifications
- 130. Employment of teachers and administrators
- 140. Notification of nonretention
- 145. Automatic re-employment
- 147. Transfer or absorption of attendance area or federal agency school
- 148. Intradistrict teacher reassignments

Section

- 150. Acquisition of tenure rights
- 155. Effect of tenure rights
- 158. Continued contract provisions
- 160. Loss of tenure rights
- 165. Restoration of tenure rights
- 170. Dismissal
- 175. Nonretention
- 180. Procedure and hearing upon notice of dismissal or nonretention
- 205. Judicial review
- 210. Authority of school board or department to adopt bylaws
- 215. Definitions

Collateral references. — 68 Am. Jur. 2d Schools, §§ 138-143, 149-214.

78 C.J.S. Schools and School Districts, §§ 154-217.

Extent of power of school district to provide for the comfort and convenience of

teachers and pupils. 7 ALR 791; 52 ALR 249.

Teacher as an officer whose right may be tested by quo warranto. 30 ALR 1423.

Status of teacher as an officer or employee. 75 ALR 1352.

Sec. 11.41.430. Sexual assault in the third degree. [Repealed, § 10 ch 78 SLA 1983. For current law, see AS 11.41.420(a)(2).]

Sec. 11.41.432. Defenses. (a) It is a defense to a crime charged under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), or 11.41.425 that the offender is

(1) mentally incapable; or

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

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

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

Legislative history reports. — For an

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

Sec. 11.41.434. Sexual abuse of a minor in the first degree.

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

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

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age and who
(A) is entrusted to the offender's care by authority of law; or
(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild; or

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

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

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

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

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

Legislative history reports. — For

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

Victim's statement held admissible under hearsay exception. — The victim's statement to a prosecution witness, made two or three days after the incident, that the victim's father came into her bed while she was undressed and "did something wrong" was admissible under the first-complaint hearsay exception. *Nusunginya v. State*, 730 P.2d 172 (Alaska Ct. App. 1986).

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

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

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

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

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

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

leeway in charging the time that sexual activity with a minor occurred. *Horton v. State*, 758 P.2d 628 (Alaska Ct. App. 1988).

Sexual offenses performed as part of one continuous assault. — Where defendant was convicted on separate sexual abuse counts alleging fellatio and masturbation, his conviction on the masturbation count was vacated in view of evidence showing that defendant could have performed the acts of fellatio and masturbation together as part of one continuous assault. *Clifton v. State*, 758 P.2d 1279 (Alaska Ct. App. 1988).

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

Record ambiguous as to whether separate counts part of single incident. — Separate sexual abuse counts alleging genital contact and digital penetration of the victim merged, where the record was ambiguous as to whether the counts arose at the same time and as a single incident, or whether two separate incidents occurred, and defendant could be sentenced on only one of the two charges. *Horton v. State*, 758 P.2d 628 (Alaska Ct. App. 1988).

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

Exclusion of evidence of victim's involvement in a sexual assault on another child deprived defendant of his constitutional right to confront the witnesses against him, where his defense was based on the premise that the victim fabricated her accusation in retaliation for defendant's attempt to oust her from her foster home for sexual misconduct. *Daniels v. State*, 767 P.2d 1163 (Alaska Ct. App. 1989).

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

minded jurors to differ on the issue of his guilt. *Daniels v. State*, 767 P.2d 1163 (Alaska Ct. App. 1989).

Convictions under former law reversed. — Convictions under former AS 11.15.134, former AS 11.41.410(a)(4) and former AS 11.41.410(a)(2) were reversed where extensive evidence of prior consistent statements was admitted at trial without any determination of its actual probative value and before any charge of recent fabrication or improper motive or influence was made against the victim. *Nitz v. State*, 720 P.2d 55 (Alaska Ct. App. 1986).

Convictions for lewd and lascivious acts toward children under former AS 11.15.134(a) and for rape under former AS 11.15.120(a) were reversed where evidence admitted concerning alleged assaults on victims other than those in the case at hand was improper propensity evidence; neither intent nor identity were at issue, and the acts did not constitute an admissible common scheme or plan or prove facts in dispute. *Bulden v. State*, 720 P.2d 957 (Alaska 1986).

Admissibility of evidence of false charges previously made by alleged victim. — Extrinsic evidence that an alleged victim of sexual abuse had previously made false charges of sexual assault is permitted where the defendant who wishes to use the evidence obtains a preliminary ruling from the trial court that it is admissible. *Covington v. State*, 703 P.2d 436 (Alaska Ct. App. 1985).

Mitigating factors. — In prosecution for first-degree sexual assault, defendant's familiarity with his victim (his 12-year old daughter) was not a mitigating factor. *Hodges v. State*, 660 P.2d 1203 (Alaska Ct. App. 1983).

Sentence under former AS 11.15.134 upheld. — See *Noble v. State*, 552 P.2d 142 (Alaska 1976); *Buchanan v. State*, 554 P.2d 1153 (Alaska 1976); *Morgan v. State*, 598 P.2d 952 (Alaska 1979); *Baker v. State*, 602 P.2d 797 (Alaska 1979); *Alvarado v. State*, 626 P.2d 582 (Alaska 1981).

Sentence upheld. — See *Horton v. State*, 758 P.2d 628 (Alaska Ct. App. 1988).

Sentence of eight-year presumptive term for first-degree sexual abuse of a minor and concurrent sentences of three years for two counts of second-degree sexual abuse of a minor to run concurrently with the eight-year term were upheld. The defendant's continued efforts to jus-

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

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

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

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

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

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

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

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

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

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

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

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

Sentence under former AS 11.41.410(a)(4) for assault held too lenient. — See *State v. Rushing*, 680 P.2d 500 (Alaska Ct. App. 1984); *State v. Woods*, 680 P.2d 1195 (Alaska Ct. App. 1984).

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

years recommended. *State v. Couey*, 680 P.2d 513 (Alaska Ct. App. 1984).

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

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

A sentence of 20 years with five years suspended for a first felony offender, for sexual abuse of a minor in the first degree, was clearly mistaken, where the offense did not involve multiple acts with multiple victims or a prior felony record. *Zackar v. State*, 751 P.2d 1015 (Alaska Ct. App. 1988).

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

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

sixty years with ten years suspended, where the sentencing court's reliance upon the seriousness of defendant's prior murder conviction placed inordinate and disproportionate weight on a single aggravating factor. *Murray v. State*, 710 P.2d 1131 (Alaska Ct. App. 1989).

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

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

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

Cited in *Higgs v. State*, 676 P.2d 610 (Alaska Ct. App. 1984); *Benhoe v. State*, 698 P.2d 1230 (Alaska Ct. App. 1985); *Dancer v. State*, 715 P.2d 1174 (Alaska Ct. App. 1986); *James v. State*, 739 P.2d 1314 (Alaska Ct. App. 1987); *Patterson v. State*, 747 P.2d 535 (Alaska Ct. App. 1987); *Kirby v. State*, 748 P.2d 757 (Alaska Ct. App. 1987); *Jager v. State*, 748 P.2d 1172 (Alaska Ct. App. 1988); *James v. State*, 754 P.2d 1336 (Alaska Ct. App. 1988).

Sec. 11.41.436. Sexual abuse of a minor in the second degree.
(a) An offender commits the crime of sexual abuse of a minor in the second degree if

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

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

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

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

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

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

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

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

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

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

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

Legislative history reports. — For

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

Admissibility of evidence. — See *Van*

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

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

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

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

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

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

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

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

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

Sentence upheld. — See *Bartholomew v. State*, 720 P.2d 54 (Alaska Ct. App. 1986); *Goodman v. State*, 756 P.2d 918 (Alaska Ct. App. 1988).

Sentence of eight-year presumptive term for first-degree sexual abuse of a minor and concurrent sentences of three years for two counts of second-degree sexual abuse of a minor to run concurrently with the eight-year term were upheld. The defendant's continued efforts to justify his conduct as "sex education" and his only limited acceptance and understanding of the grave risks of psychological damage to children that his conduct presented led the court of appeals to conclude the trial judge was not clearly erroneous in concluding that the mitigating factor of conduct among the least serious in the definition of the offense was not established by clear and convincing evidence. *S.B. v. State*, 706 P.2d 695 (Alaska Ct. App. 1985).

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

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

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

Applied in *Higgs v. State*, 676 P.2d 610

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

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

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

Sec. 11.41.438. Sexual abuse of a minor in the third degree.

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

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

NOTES TO DECISIONS

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

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

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree.

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

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

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

plement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

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

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

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

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

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

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

NOTES TO DECISIONS

Applied in *Jager v. State*, 748 P.2d 1172 (Alaska Ct. App. 1988).

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

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

NOTES TO DECISIONS

Death of defendant abated prosecution under former section. *Hartwell v. State*, 423 P.2d 282 (Alaska 1967). (Decided under former AS 11.40.110.)

Cited in *Theodore v. State*, 692 P.2d 987 (Alaska Ct. App. 1985).

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

Relationship created by adoption as within statute regarding incest, 151 ALR 1146.

Consent as element of incest, 36 ALR2d 129.

Sexual intercourse between persons related by half blood, 72 ALR2d 703.

Prosecutrix as accomplice or victim, 74 ALR2d 705.

Rape, incest as included within charge of, 76 ALR2d 484.

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

(4) "without consent" means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

(B) is incapacitated as a result of an act of the defendant. (§ 3 ch 166 SLA 1978; am § 5 ch 78 SLA 1983; am § 5 ch 96 SLA 1988; am § 28 ch 50 SLA 1989)

Revisor's notes. — Reorganized in 1988 to alphabetize the defined terms.

Cross references. — For definition of terms used in this title, see AS 11.81.900.

(51) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, including cable, subscription, or pay television or other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, and the supplying of equipment for use;

(52) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child; or

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated;

(53) "sexual penetration" means

(A) genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body;

(B) but "sexual penetration" does not include acts performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated;

(C) each party to any of the acts defined as "sexual penetration" is considered to be engaged in sexual penetration;

(54) "solicits" includes "commands";

(55) "threat" means a menace, however communicated, to engage in conduct described in AS 11.41.520(a)(1) — (7) but under AS 11.41.520(a)(1) includes all threats to inflict physical injury on anyone;

(56) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violation is not entitled

(A) to a trial by jury; or

(B) to have a public defender or other counsel appointed at public expense to represent the person;

(57) "voluntary act" means a bodily movement performed consciously as a result of effort and determination, and includes the possession of property if the defendant was aware of the physical posses-

which the credit is being granted. (Eff. 5/30/71; Register 38, am 10/4/73, Register 47; am 8/12/82, Register 83; am 6/9/85, Register 94; am 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.010
AS 14.20.040

Editor's notes. — A copy of the publications listed in 4 AAC 12.100(1) may be obtained from the Coordinator, Teacher Education and Certification, Department of Education, P.O. Box F, Juneau, Alaska

99811. Prior regulations, 1967 — 69 Edition, Revised, continue in effect for the life of certificates issued prior to May 15, 1971.

CHAPTER 15. ALLOWANCES FOR PROFESSIONAL PERSONNEL

Section	Section
10. (Repealed)	40. Sick leave
20. Creditable teaching experience	900. Definitions
30. (Repealed)	

4 AAC 15.010. SALARIES: GENERAL. Repealed 1/22/81.

4 AAC 15.020. CREDITABLE TEACHING EXPERIENCE. (a) Certificated teachers serving a school term of 140 instructional days or more shall be credited with a year of teaching service.

(b) Fractional years of teaching, either through teaching full days under a contract for less than a full term, or through teaching part of a day under a full-term contract, or part of an instructional day under a contract of less than a full term may be converted to full school terms to determine creditable service. No part-time teaching may be credited for placement on the district salary schedule unless the terms for the part-time teaching are specifically stated in the contract.

(c) Teaching days less than a full instructional day shall be given a fractional value. This value times the number of days actually taught shall give the number of equivalent instructional days.

(d) Repealed 1/22/81.

(e) No creditable year may be counted until July 1, following the completion of the creditable year.

(f) The provisions of (b) — (d) of this section are not retroactive and become effective July 1, 1971.

(g) For salary purposes, credit shall be given for military service in cases where the teacher's actual service in Alaska has been interrupted and the teacher immediately returns to teaching in an Alaska public school upon completion of such service. One year of creditable service shall be granted for each year of military service up to a maximum of five years. (In effect before 7/28/59; am 6/9/61, Register 3; am

4 AAC 12.900. DEFINITIONS. As used in this chapter

(1) "approved programs" means those offered by regionally accredited teacher training institutions that have been determined to meet the program standards set out in

(A) Standards for State Approval of Teacher Education, published by the National Association of State Directors of Teacher Education and Certification, 1981 edition; or

(B) Standards for the Accreditation of Teacher Education published by the National Council for Accreditation of Teacher Education, 1983 edition;

(2) "credit" means credit granted by an institution of higher education accredited by the Northwest Association of Secondary and Higher Schools or its counterpart in other regions;

(3) "satisfactory service" means service by a teacher currently on tenure, or service which has been recommended as satisfactory by one or more superintendents, principals and/or supervisors under which the teacher has served during the past five years;

(4) "special services area" means school nurse, social workers, speech therapist, psychologist, librarian, and other areas as approved by the State Board of Education;

(5) "nonacademic credit" means credit granted by the commissioner of education for travel, institutes, and workshops, which may be applied toward renewal of certificates;

(6) "standard certificate" for the purposes of AS 14.20 means any regular certificate based on a baccalaureate or higher degree.

(7) "Alaska studies" means study of the environment, indigenous and immigrant residents, and institutions of Alaska, with specific study of the social, economic, and political history of Alaska and the educational institutions and laws that affect the people of Alaska;

(8) "multicultural education" means the study of the meaning of culture, and the relationship and influences between culture and education, with specific study of the teaching, administration, and effectiveness of schooling as they relate to multicultural student populations;

(9) "crosscultural communications" means an interdisciplinary examination of communication and language in a crosscultural educational situation, with specific study of the language, literacy, and interethnic communication of children, and cultures, in Alaska;

(10) "continuing education unit" means a credit awarded for at least 15 contact hours of participation in an organized continuing education experience by a regionally accredited institution of higher education, or by an organization that has been approved for the granting of continuing education credit by the national organization that represents the field of study or professional membership in

(g) The commissioner may, for good cause shown, waive a requirement imposed by this chapter for renewal of a certificate. (Eff. 1/28/66, Register 40; am 9/6/66, Register 25; am 5/30/71, Register 38; am 8/30/75, Register 55; am 11/14/80, Register 76; am 1/28/82, Register 81; am 8/30/84, Register 91; am 6/13/87, Register 101; am 2/24/88, Register 105)

Authority: AS 14.07.060
AS 14.20.010
AS 14.20.020

4 AAC 12.090. PRIOR COMMITMENTS. Nothing in these rules will abrogate certification commitments which were in existence prior to the effective date of these regulations. (Eff. 5/30/71, Register 38)

Authority: AS 14.20.010
AS 14.20.020

4 AAC 12.095. POST REVOCATION OR SUSPENSION PROCEDURE. (a) A person whose certificate, issued under 4 AAC 12, has been revoked or suspended shall deliver the certificate to the department within 30 days after notification of revocation or suspension.

(b) The department shall provide to all other state departments of education notice of revocation or suspension of a certification and of conviction of a certificate holder for a crime involving moral turpitude. (Eff. 3/30/84, Register 89; am 8/30/86, Register 99)

Authority: AS 14.07.060
AS 14.20.030

4 AAC 12.115. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. A certificate denial, as well as a revocation or suspension, is final and reviewable in the manner provided by AS 44.62.560 — 44.62.570. (Eff. 8/30/86, Register 99)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.120. CURRENT ADDRESS. The holder of a certificate issued under 4 AAC 12 shall maintain a current, valid mailing address on file with the Department of Education at all times. The latest mailing address on file for the holder of a current, lapsed, suspended, or revoked certificate is the address for official communications, notifications, or service of legal process. (Eff. 8/30/86, Register 99)

Authority: AS 14.07.060
AS 14.20.020

(2) the plan is defined in terms of credit hours or the equivalent of credit hours, and consists of at least six semester hours of work;

(3) the applicant provides verification, in writing, from the institution that approved the plan, that the applicant has completed the plan.

(b) A plan for an applicant renewing a certificate for the first time must meet the coursework requirements of 4 AAC 12.075(b). (Eff. 4/9/87, Register 1'2)

Authority: AS 14.07.060
AS 14.20.020(c)

4 AAC 12.080. GENERAL PROVISIONS. (a) Institutes and workshops may be accepted for renewal of certificates under the following conditions:

(1) prior to attending workshop or institute, the applicant may apply to the commissioner requesting approval for certificate renewal purposes;

(2) upon receipt of the application the commissioner shall notify the applicant of the number of hours of nonacademic credit to be granted for the proposed workshop or institute;

(3) if approved, evidence of satisfactory completion must be submitted by the instructor or workshop leader to the certification supervisor.

(b) For the certification purposes, satisfactory teaching experience must have been completed in a state approved or accredited school.

(c) Partial years of experience will be prorated toward experience requirements for certification.

(d) Expired Certificates. An expired certificate may be reinstated within one calendar year of the expiration date by completion of the renewal credits required for renewal by 4 AAC 12.075. After one calendar year, the applicant must meet the requirements for issuance of a new certificate at the time of the new application.

(e) A person employed as a chief school administrator must possess, or be eligible to possess, an administrative certificate issued under 4 AAC 12.030, with an endorsement as superintendent issued under 4 AAC 12.060, except that the endorsement is not required if the person's administrative certificate is issued under 4 AAC 12.030(e).

(f) Semester credits required for renewal of a certificate under 4 AAC 12.050(b) and 4 AAC 12.075 must be earned from

(1) the University of Alaska;

(2) an institution authorized to operate in the state by the Alaska Commission on Postsecondary Education; or

(3) an institution of higher education accredited by the Northwest Association of Secondary and Higher Schools (or its counterpart in other regions).

(3) Type III, Student Teacher: This letter of authorization will, in the discretion of the commissioner, be issued to a student teacher when assigned to a public school for the purpose of completing a course in practice teaching. The fee will be waived for student teachers. (Eff. 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.075. REGULAR, ADMINISTRATIVE, AND SPECIAL SERVICES CERTIFICATE RENEWAL REQUIREMENTS. (a) A certificate issued under 4 AAC 12.020 — 4 AAC 12.040 may be renewed any number of times by presenting six semester hours of credit, or their equivalent as determined by the department, earned during the life of the certificate. At least three of the six semester hours must be upper division or graduate credit. Up to three semester hours may be continuing education units, correspondence credits from an accredited institution, or, with prior written approval of the commissioner, nonacademic credit.

(b) An applicant for renewal for the first time of a certificate that was issued after the effective date of this section, who had not completed three semester hours in Alaska studies and three semester hours in multicultural education before issuance of the certificate, must complete three semester hours in each of those areas before renewal of the certificate. Completion of the multicultural education requirement may be used to meet the six-semester-hour requirement of (a) of this section. Completion of the Alaska studies requirement must be in addition to the six semester hours required by (a) of this section.

(c) For a certificate issued under 4 AAC 12.040 with an endorsement in speech, language, or hearing, the multicultural education requirement of (b) of this section may be satisfied by completion of three semester hours in crosscultural communications. (Eff. 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020(c)

4 AAC 12.077. PROFESSIONAL DEVELOPMENT PLAN. (a) Notwithstanding 4 AAC 12.075, a certificate issued under 4 AAC 12.020 — 4 AAC 12.040 may be renewed any number of times by implementing and completing a professional development plan during the life of the expiring certificate, if

(1) the plan permitted by this section is approved in writing by the department head or dean of an approved teacher education program, and is signed by a notary public, before its implementation;

4 AAC 12.060. ENDORSEMENTS. (a) Each certificate will be endorsed indicating the area(s) in which each applicant is qualified.

(b) Endorsements are based on

- (1) the preparing institution's recommendation; or
- (2) repealed 8/30/84.

(c) For the "vocational" endorsement, the applicant must also submit evidence of two years' successful work experience related to the vocational area which was outside the field of education.

(d) For the "school psychology" endorsement, the applicant must possess a masters or higher degree and be recommended for endorsement in school psychology by an institution whose school psychology program has been accredited by the National Council for Accreditation of Teacher Education or approved by the American Psychological Association.

(e) For the "speech," "language," or "hearing" endorsement, the applicant must possess a master's or higher degree and be recommended for the endorsement by an institution whose program has been accredited by the National Council for Accreditation of Teacher Education or approved by the American Speech-Language-Hearing Association. (Eff. 5/30/71, Register 38; am 8/30/75, Register 55; am 3/28/82, Register 81; am 8/30/84, Register 91; am 6/28/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020

Editor's notes. — The "vocational" endorsement, which is referred to in subsection (c), is required of persons teaching vocational education courses under the provisions of a memorandum of agreement between the Division of Vocational Education and individual school districts.

4 AAC 12.070. LETTER OF AUTHORIZATION. (a) A letter of authorization, valid to the end of the school year in which it is issued, may be issued to applicants who do not qualify for regular, special services, vocational trade, or administrative certificates.

(b) A letter of authorization will be issued only at the request of the school board through the chief school administrator.

(c) The fee for a letter of authorization is \$10.

(d) Types of Letters of Authorization.

(1) Type I, Recognized Expert: This letter of authorization will be issued only for areas of specialization for which there is usually no formal preparation in an institution of higher learning.

(2) Type II, Emergency: This letter of authorization will, in the discretion of the commissioner, be granted in an extreme emergency, to an applicant who does not meet the requirements of a regular certificate and only at the request of the school board through the chief school administrator certifying that a regularly certificated person is not available.

(In effect before 7/28/59; am 6/9/61, Register 3; am 4/4/63, Register 10; am 1/28/66, Register 20; am 9/8/66, Register 24; am 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.055. EARLY CHILDHOOD EDUCATION CERTIFICATE (Type E). (a) The department will issue an Early Childhood Associate I certificate, valid for five years, to an applicant who has

(1) completed a 30-credit university or college early-childhood education program that requires at least 400 hours of supervised practicum experience; or

(2) obtained a valid Child Development Associate (CDA) award from the Bank Street College of Education.

(b) The department will issue an Early Childhood Associate II certificate, valid for five years, to an applicant who

(1) has completed an approved associate degree program in early childhood education; and

(2) has obtained an Early Childhood Associate I certificate.

(c) Possession of an Early Childhood Education certificate does not qualify the holder to be assigned as a regular (Type A) classroom teacher.

(d) Early Childhood Associate I and Early Childhood Associate II certificates may be renewed upon submission of evidence of completion of six semester hours of credit in early childhood education, or related field, and, for the Early Childhood Associate I certificate, the renewal of a Child Development Associate, if applicable. (Eff. 3/30/84, Register 89)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.057. UNIVERSITY **CERTIFICATE (Type U).** (a) The department will issue a university certificate, valid for five years, to an applicant who is employed in a teaching position in an approved teacher training program in Alaska who

(1) is eligible to possess a Type certificate; or

(2) has been approved for the university certificate by the teacher training program.

(b) A university certificate may be renewed any number of times upon evidence of satisfactory completion of 50 clock hours of K-12 teaching during the life of the certificate. (Eff. 4/19/87, Register 102)

Authority: AS 14.07.060
AS 14.20.010
AS 14.20.020

ment was issued. (Eff. 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55; am 3/28/82, Register 81; am 9/30/83, Register 87; am 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.042. TEMPORARY CERTIFICATE. A temporary certificate, valid for one year, will be issued to an applicant who

(1) meets all application requirements for certification under 4 AAC 12.020, 4 AAC 12.030, or 4 AAC 12.040, except the requirement that the applicant earn six semester hours of credit within the five years immediately preceding the application;

(2) provides evidence of satisfactory service during at least three of the five years immediately preceding the application;

(3) has never possessed a certificate issued under this chapter; and

(4) has an earned doctorate from an accredited institution.
(Eff. 9/30/83, Register 87; am 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.010
AS 14.20.020

4 AAC 12.045. PROFESSIONAL CERTIFICATE. Repealed 8/30/86.

4 AAC 12.050. VOCATIONAL TRADES CERTIFICATE (Type D). (a) A vocational trades certificate, valid for two years, shall be issued to an applicant who

(1) repealed 8/30/75;

(2) has completed four or more calendar years of full-time work experience in a trade or vocational pursuit, for which not more than two years of formal training (trade school or technical institute) may be substituted; and

(3) has letters of recommendation from one or more training agencies or supervisors of the trade experience stating the experience has been satisfactory; and

(4) has proof of employment in his trade or vocational area for a school district or nonpublic school.

(b) A vocational trades certificate may be renewed any number of times upon submission of evidence of completion of three semester hours of credit or additional training and/or work experience acceptable to the commissioner, and evidence of satisfactory service obtained during the life of the certificate.

(c) The fee for a vocational trades certificate is \$10.

classroom experience or other related experience in the field of education, as well as other demonstrated strengths.

(f) A certificate issued under (e) of this section is valid only in the district that requested issuance of the certificate, is valid only for employment as the chief school administrator of that district, and expires if the holder ceases employment as the chief school administrator of that district. (In effect before 7/28/59; am 6/9/61, Register 3; am 4/4/63, Register 10; am 1/28/66, Register 20; am 9/8/66, Register 24; am 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55; am 9/30/83, Register 87; am 8/30/84, Register 91; am 8/30/86, Register 99; am 4/9/87, Register 102; am 6/13/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.040. SPECIAL SERVICES CERTIFICATE (Type C). (a) A special services certificate, valid for five years, may be issued to an applicant who has completed a program in a special service area, has a bachelor's or higher degree, and is recommended by the preparing institution.

(1) Repealed 8/30/75.

(2) Repealed 8/30/75.

(b) Except as otherwise provided by 4 AAC 12.042 the applicant must have earned at least six semester hours of credit within the five years immediately preceding application.

(c) Repealed 4/9/87.

(d) A special services certificate does not qualify the holder to be assigned as a regular classroom teacher.

(e) Repealed 4/9/87.

(f) Notwithstanding 4 AAC 12.075, a special services certificate endorsed in "school psychology" may be renewed any number of times if an applicant provides evidence of

(1) satisfactory service obtained during the life of the certificate; and

(2) completion of a minimum of 90 contact hours in the areas of assessment, evaluation, intervention, program planning, program development, or staff or program administration in

(A) accredited college or university course work;

(B) workshops, seminars, or institutes;

(C) school district or university sponsored in-service training programs;

(D) college training; or

(E) workshop or seminar teaching.

(g) A certificate or endorsement in "school psychology" issued before the effective date of (f) of this section may be renewed once subject to the requirements in effect at the time the certificate or endorse-

Authority: AS 14.07.060 AS 14.20.020
AS 14.20.010 AS 14.20.030

4 AAC 12.020. REGULAR CERTIFICATE (Type A). (a) The regular certificate, valid for five years, shall be issued to an applicant who

(1) has completed a teacher education program approved by the Alaska State Board of Education, has a bachelor's degree, and is recommended by the preparing institution; or

(2) has completed a comparable program in another state and is recommended by the preparing institution or the certifying state agency.

(b) Except as otherwise provided by 4 AAC 12.042, the applicant must have earned at least six semester hours of credit within the five years immediately preceding application.

(c) Repealed 4/9/87.

(d) Repealed 4/9/87.

(In effect before 7/28/59; am 6/9/61, Register 3; am 4/4/63, Register 10; am 1/28/66, Register 20; am 9/8/66, Register 24; am 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55; am 9/30/83, Register 87; am 8/30/86, Register 99; am 4/9/87, Register 102)

Authority: AS 14.07.060
AS 14.20.020

4 AAC 12.030. ADMINISTRATIVE CERTIFICATE (Type B). (a) The administrative certificate, valid for five years, shall be issued to an applicant who

(1) has completed an approved program in school administration, has a master's or higher degree, is recommended by the preparing institution or the certifying state agency, and has three years of satisfactory teaching experience on a regular certificate; or

(2) repealed 8/30/84;

(3) repealed 8/30/75;

(b) Except as otherwise provided by 4 AAC 12.042, the applicant must have earned at least six semester hours of credit within the five years immediately preceding application.

(c) Repealed 4/9/87.

(d) Repealed 4/9/87.

(e) Upon written request of a district school board, an administrative certificate may be issued to an applicant who does not meet all of the requirements of (a) and (b) of this section if

(1) the applicant has at least a master's degree from an accredited institution; and

(2) the state Board of Education determines that the applicant is qualified on the basis of the applicant's educational background.

(b) The following shall be submitted by teachers in applying for a certificate:

- (1) completed application; must be notarized;
- (2) an official transcript of all college work;
- (3) certificate fee.

(c) Transcripts and other required documents shall become a part of the teacher's permanent records and shall remain on file with the Department of Education.

(d) Certificates shall be dated as of the date the completed application, transcripts, experience , and fee are received, and shall remain effective until the expiration date indicated on the certificate.

(e) Neither the state nor a district school board shall pay a salary to any teacher who has not obtained a valid Alaska teaching certificate.

(f) Nonpublic schools which employ noncertificated teachers shall not be approved by the state, or if approved, shall be dropped from the register of approved schools.

(g) Certificate fees are \$60 except as otherwise noted.

(h) The fee for endorsement is \$10.

(i) An applicant for a certificate shall, on the application, disclose a suspension or revocation of a certificate by this or another state. A teacher who has been issued a certificate by this state shall immediately notify the department of suspension or revocation of a certificate issued by another state. Failure to inform the department of a suspension or revocation as required by this subsection may result in denial or revocation of a certificate.

(j) The fee for each duplicate certificate is five dollars.

(k) Any misrepresentation or willful omission of information on a certification application may result in denial or revocation of the certificate.

(l) The department may deny a certificate to an applicant who has committed an act of immorality, which is defined as:

- (1) child abuse or molestation;
- (2) sexual abuse of a minor;
- (3) contributing to the delinquency of a minor;
- (4) rape or sexual assault;
- (5) a criminal act resulting in personal injury or destruction of property;
- (6) misconduct involving a controlled substance in the first through the fifth degree; or
- (7) any other act involving moral turpitude.

(In effect before 7/28/59; am 4/4/63, Register 10; am 1/28/66, Register 20; am 4/17/67, Register 24; repealed and reenacted 5/30/71, Register 38; am 10/4/73, Register 47; am 8/30/75, Register 55; am 3/30/84, Register 89; am 8/30/84, Register 91; am 7/11/86, Register 99; am 8/30/86, Register 99; am 11/27/86, Register 100; am 2/20/87, Register 101)

4 AAC 09.130. SCHOOL DISTRICT AUDIT. A district must submit the annual audit of the district's operating fund for the fiscal year to the commissioner no later than October 1 of the succeeding fiscal year. (Eff. 5/24/81, Register 78; am 1/15/87, Register 101)

Authority: AS 14.14.050 AS 14.17.190
AS 14.17.081 AS 14.17.200

4 AAC 09.140. AUDIT REVIEW. Repealed 1/15/87.

4 AAC 09.150. REQUEST FOR WAIVER. Repealed 1/15/87.

4 AAC 09.160. FUND BALANCE. (a) Eligible reserves in the year-end fund balance in a school's operating fund may be only in the following categories:

- (1) encumbrances,
- (2) inventory,
- (3) prepaid expenses including fuel,
- (4) retirement incentive program, and
- (5) self-insurance.

(b) Other uses of a school's balance must be listed under the unreserved portion of the fund balance as "designations". (Eff. 12/13/87, Register 104)

Authority: AS 14.17.082
AS 14.17.200

CHAPTER 12. CERTIFICATION OF PROFESSIONAL PERSONNEL

Section

10. Certification of teachers
20. Regular certificate (Type A)
30. Administrative certificate (Type B)
40. Special services certificate (Type C)
42. Temporary certificate
45. (Repealed)
50. Vocational trades certificate (Type D)
55. Early childhood education certificate (Type E)
57. University certificate (Type U)
60. Endorsements
70. Letter of authorization

Section

75. Regular, administrative, and special services certificate renewal requirements
77. Professional development plan
80. General provisions
90. Prior commitments
95. Post revocation or suspension procedure
115. Applicability of the Administrative Procedure Act
120. Current address
900. Definitions

4 AAC 12.010. CERTIFICATION OF TEACHERS. (a) All teachers in public and state approved nonpublic schools shall be at least 18 years of age and shall obtain an Alaska teacher's certificate unless they are participating in an approved exchange program.

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		