

**HB**

**188**

# ALASKA

## CIVIL LIBERTIES UNION

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An Affiliate of the American Civil Liberties Union  
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March 7, 1995

Rep. Brian Porter

The Honorable Brian Porter  
Chair -- House Judiciary Committee  
Alaska House of Representatives  
State Capitol Building, Room 118  
Juneau, AK 99801-1182

Re: House Bill 188

Dear Representative Porter:

I am writing to you on behalf of the Board of Directors and members of the Alaska Civil Liberties Union (AkCLU) to express concerns and suggest clarification regarding House Bill 188, "an act creating the crime of indecent viewing and photography."

As you may know, the AkCLU believes that the First Amendment protects the dissemination of all forms of communication. The AkCLU opposes on First Amendment grounds laws that restrict the production and distribution of any printed and visual materials, even when some of the producers of those materials are punishable under criminal law.

We oppose any attempt to make the private viewing of any material, however sexually explicit, a crime. It is unclear from the current wording of HB 188 whether the legislature is attempting to criminalize the viewing of material, or merely to criminalize the non-consensual viewing and photographing of a person's genitals or breasts. We oppose the first, but not the later.

A simple way to address this issue seems to be to insert the word "or" in place of the word "and" in two key places. For example:

INDECENT VIEWING OR [AND] PHOTOGRAPHY. (a) A person commits the crime of indecent viewing or [and] photography if, in the state, the person knowingly views or photographs the private exposure of the genitals, anus or female breast.

These simple changes should insure that the behavior of viewing a photograph of genitals is not punishable under this statute.

It is also unclear whether any and all viewing or photography of genitals of children under 13 is impermissible, or if any and all viewing and photography of children under the age of 13 is permissible. As written, the proposed Section 11.61.123(a)(1) and (2) seems to imply that a) no person may view or photograph the genitals of any child under the age of 16 without parental permission and b) if the child is between the ages of 13 and 16 it is also necessary to obtain the additional permission of the child.

The most confusing aspect of this bill, however, is how this statute would apply to a person who is under the age of 13 years old. For example, as it now stands, it would be perfectly legal for a parent to permit his or her child to be viewed or photographed if the child was under the age of 13, even if the child did not wish that. Another question to address is whether it is really the intent of the Legislature to make it a felony crime for a photographer to take pictures of a nude baby if the photographer failed to obtain parental permission in every situation? What if a photographer took a picture of a nude baby playing in the sand on a beach? Under this scenario, would the child "reasonably believe that his or her body part would not be viewed or photographed"?

The definitional section for "private exposure" requires a subjective interpretation ("that the person reasonably believed") in determining whether a violation of the statute has occurred. It is particularly difficult to determine the subjective intent of a child, especially a young child, who has not internalized society's values regarding nudity. This definitional situation could lead to vagueness problems if this bill were to become law.

Section 11.61.123(b) is also potentially problematic because it is overly broad. A person could be prosecuted for several different criminal offenses if he or she happened to see more than one body part. Let's assume, for the sake of argument, that a "Peeping Tom" looked through the key hole of a woman's bedroom and happened to see her completely naked. Should he really be prosecuted for four separate criminal offenses because he happened to see her genitals, her anus, and both of her breasts? Or if he happens to peep through the keyhole twice, is that two separate crimes as opposed to one, or is it really eight separate crimes? The AkCLU would suggest that the simplest way to alleviate this issue is to eliminate section (b) altogether.

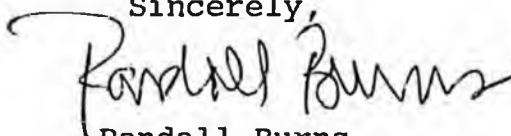
Finally, the AkCLU believes that the punishments for this new offense are too harsh. Indecent viewing or photographing is most similar to the crime of indecent exposure, which is punishable as a Class B misdemeanor, unless the person to whom one exposes himself or herself is under the age of 14, in which case it is a

Page Three -- Representative Brian Porter -- March 7, 1995

Class A misdemeanor. We would like to suggest that penalties similar to those for indecent exposure would more appropriately apply in this situation: make it a Class A misdemeanor if the person viewed or photographed is a child, and a Class B misdemeanor if it is an adult. The additional costs of prosecuting this crime as a felony, both in terms of police, the court system, and prosecutorial and public defender resources, do not justify prosecuting this crime as a felony.

For the above reasons, we suggest that the Committee look at some aspects of this bill before passing it into law. While we understand the underlying social concern which the legislature is attempting to address, we believe that this bill is too broad and could pose constitutional concerns. Please do not hesitate to contact this office if we can be of further assistance or if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Randall Burns". The signature is written in dark ink and is positioned above the typed name.

Randall Burns  
Executive Director

RCK:RPB

9-LS0720G  
Luckhaupt  
3/8/95

**CS FOR HOUSE BILL NO. 188(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES MACKIE, Porter, Phillips, Robinson, Navarre, Green, James, Kubina, Elton**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act creating the crime of indecent viewing or photography."**

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

3 **\* Section 1. AS 11.61 is amended by adding a new section to read:**

4           **Sec. 11.61.123. INDECENT VIEWING OR PHOTOGRAPHY. (a) A person**  
5 **commits the crime of indecent viewing or photography if, in the state, the person**  
6 **knowingly views, or produces a picture of, the private exposure of the genitals, anus,**  
7 **or female breast of another person and the view or production is without the**  
8 **knowledge or consent of**

9                   **(1) the parent or guardian of the person viewed, or who is shown in the**  
10 **picture, if the person who is viewed or shown is under 16 years of age; and**

11                   **(2) the person viewed or shown in the picture, if the person viewed or**  
12 **shown is at least 13 years of age.**

13                   **(b) Each viewing of a person, and each production of a picture of a person,**  
14 **whose genitals, anus, or female breast are viewed or are shown in a picture constitutes**  
15 **a separate violation of this section.**

1 (c) Indecent viewing or photography is a

2 (1) class C felony if the person viewed or shown in a picture was, at  
3 the time of the viewing or production of the picture, a minor;

4 (2) class A misdemeanor if the person viewed or shown in a picture  
5 was, at the time of the viewing or production of the picture, an adult.

6 (d) In a prosecution under this section, it is an affirmative defense that the  
7 viewing or photography was conducted as a security surveillance system, notice of the  
8 viewing or photography was posted, and any viewing or use of pictures produced is  
9 done only in the interest of crime prevention or prosecution.

10 (e) In this section,

11 (1) "picture" means a film, photograph, negative, slide, book,  
12 newspaper, or magazine, whether in print, electronic, magnetic, or digital format; and

13 (2) "private exposure" means that a person has exposed the person's  
14 body or part of the body in a place, and under circumstances, that the person  
15 reasonably believed would not result in the person's body or body parts being

16 (A) viewed by the defendant; or

17 (B) produced in a picture.

18 \* Sec. 2. APPLICABILITY. This Act applies to all offenses committed on or after the  
19 effective date of this Act.

9-LS0720F  
Luckhaupt  
3/1/95

CS FOR HOUSE BILL NO. 188(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES MACKIE, Porter, Phillips, Robinson, Navarre, Green, James, Kubina, Elton

A BILL

FOR AN ACT ENTITLED

1 "An Act creating the crime of indecent viewing and photography."

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

3 \* Section 1. AS 11.61 is amended by adding a new section to read:

4 Sec. 11.61.123. INDECENT VIEWING AND PHOTOGRAPHY. (a) A  
5 person commits the crime of indecent viewing and photography if, in the state, the  
6 person knowingly views, or produces a picture of, the private exposure of the genitals,  
7 anus, or female breast of another person and the view or production is without the  
8 knowledge or consent of

9 (1) the parent or guardian of the person viewed, or who is shown in the  
10 picture, if the person who is viewed or shown is under 16 years of age; and

11 (2) the person viewed or shown in the picture, if the person viewed or  
12 shown is at least 13 years of age.

13 (b) Each viewing of a person, and each production of a picture of a person  
14 whose genitals, anus, or female breast are viewed or are shown in a picture constitutes  
15 a separate violation of this section.

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2 (1) class C felony if the person viewed or shown in a picture was at  
3 the time of the viewing or production of the picture, a minor;

4 (2) class A misdemeanor if the person viewed or shown in a picture  
5 was at the time of the viewing or production of the picture, an adult.

6 (d) In a prosecution under this section, it is an affirmative defense that the  
7 viewing or photography was conducted as a security surveillance system and any  
8 viewing or use of pictures produced is done only in the interest of crime prevention  
9 or prosecution.

10 (e) In this section,

11 (1) "picture" means a film, photograph, negative, slide, book,  
12 newspaper, or magazine, whether in print, electronic, magnetic, or digital format; and

13 (2) "private exposure" means that a person has exposed the person's  
14 body or part of the body in a place, and under circumstances, that the person  
15 reasonably believed would not result in the person's body or body parts being

16 (A) viewed by the defendant; or

17 (B) produced in a picture.

18 \* Sec. 2. APPLICABILITY. This Act applies to all offenses committed on or after the  
19 effective date of this Act.

**HOUSE BILL NO. 188**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVES MACKIE, Porter, Phillips, Robinson, Navarre, Green, James, Kubina, Elton**

**Introduced: 2/20/95**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act creating the crime of indecent viewing and photography."**

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

3 **\* Section 1.** AS 11.61 is amended by adding a new section to read:

4           Sec. 11.61.123. **INDECENT VIEWING AND PHOTOGRAPHY.** (a) A  
5           person commits the crime of indecent viewing and photography if, in the state, the  
6           person knowingly views, or produces a picture of, the private exposure of the genitals,  
7           anus, or female breast of another person and the view or production is without the  
8           knowledge or consent of

9                       (1) the parent or guardian of the person viewed, or who is shown in the  
10                      picture, if the person who is viewed or shown is under 16 years of age; and

11                      (2) the person viewed or shown in the picture, if the person viewed or  
12                      shown is at least 13 years of age.

13                      (b) Each viewing of a person, and each production of a picture of a person  
14                      whose genitals, anus, or female breast are viewed or are shown in a picture constitutes  
15                      a separate violation of this section.

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(c) Indecent <sup>viewing</sup> photography is a

(1) class C felony if the person viewed or shown in a picture was at the time of the viewing or production of the picture, a minor;

(2) class A misdemeanor if the person viewed or shown in a picture was at the time of the viewing or production of the picture, an adult.

(d) In a prosecution under this section, it is an affirmative defense that the viewing was conducted as a security surveillance system if notice that security viewing is being conducted is posted prominently in the area viewed and the viewing is done by a person of the same sex as the person being viewed. <sup>and any viewing or use of pictures produced is done only in the furtherance of crime prevention or prosecution</sup>

(e) In this section,

(1) "picture" means a film, photograph, negative, slide, book, newspaper, or magazine, whether in print, electronic, or digital format; and

(2) "private exposure" means that a person has exposed <sup>magnetic</sup> the person's body or part of the body in a place, and under circumstances, that <sup>the person</sup> someone in the person's position would reasonably believe would not result in their being viewed, or <sup>parts being (A) viewed by the A, or (B) produced in a picture.</sup> in the production of a picture of the person.

\* Sec. 2. APPLICABILITY. This Act applies to all offenses committed on or after the effective date of this Act.

TESTIMONY ON HB 188  
HOUSE JUDICIARY COMMITTEE  
1:00 PM - MONDAY, FEBRUARY 27, 1995

My name is Morris Ververs. I am the Superintendent of the Klawock City School District. I would like to thank the Chairman and the Committee for the opportunity to share with you an outline of the events that began on January 30, of this year. These events led to our request for help from Representative Mackie and the subsequent drafting of HB 188.

On Monday, January 30 I responded to a student report of the eye of a camera being discovered in the ceiling of the girls locker room of our school gym. That investigation led to the discovery of a video system that allowed for live viewing and video taping from several angles within the girls locker room.

During the police and state trooper investigation, the school dealt with student, and staff reactions by providing as much information as we could without damaging the police investigation of the case. We also provided group counseling for students and staff dealing with violation of trust and violation of privacy issues. A parent meeting was also held to explain the unpleasant circumstances and to provide information on what our school was doing to cope with the circumstances of this event.

There was intense concern, stress, fear, anger and other elements of psychological pain being experienced by students, staff, parents and community. However, at no time during the early stages of this traumatic process was it known that this reprehensible act of indecent viewing and video taping was indeed not a violation of law.

The discovery of this fact was a shock to us as a school district and unbelievable to parents who relied on the law and the school district to provide some measure of legal accountability for the perpetrator of this act.

This led to our request of Representative Mackie to address this issue on behalf of our school district and of all school children in Alaska.

We believe that HB 188 addresses this issue completely and would ensure legal consequences for any act such as the one that occurred in our school. We urge your support of HB Bill 188 and again thank you for the opportunity to share our experience.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 188

- 1 Page 2, line 1, following "Indecent":
- 2       Insert "viewing and"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 188

- 1 Page 2, line 12, following "electronic,":
- 2       Insert "magnetic,"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 188

1 Page 2, line 14, following "that", through line 16:

2 Delete all material.

3 Insert "the person reasonably believed would not result in the person's body or body parts  
4 being

5 (A) viewed by the defendant; or

6 (B) produced in a picture."

Page 2, line 14: after "that" delete all material;  
Page 2, lines 15 and 16: delete all material and insert the following:

the person reasonably believed would not result  
in being viewed by the defendant or produced in  
a picture.

③ Security Surveillance

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 188

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act creating the crime of indecent viewing  
and photography." BRU: Prosecution  
 Component: All  
 Sponsor: Representative Mackie  
 Requester: Representative Mackie COMPONENT SERIAL NO. 0085-0090

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

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

This bill amends AS 11.61 to create the crime of indecent viewing and photography. Indecent photography would be a class C felony if the person viewed or shown in a picture was at the time of the viewing or production of the picture, a minor. Indecent photography would be a class A misdemeanor if the person viewed or shown in the picture at the time of viewing or production of the picture, an adult. The Department believes that only a small number of offenses will occur annually. Thus, fiscal note costs are not appropriate.

*Richard I. Peques*

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2/23/95  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/23/95  
 Agency: Department of Law

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# Alaska State Legislature

REPRESENTATIVE  
**JERRY MACKIE**



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## House of Representatives

### SPONSOR STATEMENT

ON

HB 188

HB 188 establishes the crime of indecent viewing and photography for anyone viewing, making a picture or video taping an individual's nakedness without their knowledge or consent. I introduced the bill in response to an incident that occurred recently in one of my schools which revealed a major loophole in the state's invasion of privacy laws. The incident was the inadvertent discovery by students of a hidden video surveillance system in the girls' locker room.

Following the discovery, the initial reaction of dismay rapidly changed to strong feelings of anger, betrayal, and embarrassment throughout the community. In all small communities, the school gymnasium and shower facilities are used by practically everyone in town. They are also used by many visitors from neighboring communities that come to participate in local events. So the hidden recording system had potential implications for a whole lot of people in the region, both students and adults.

Equally distressing was the revelation that neither the state's invasion of privacy laws nor the child pornography laws applied to the situation. Unauthorized, hidden photographic surveillance by itself is not prohibited, even if the unsuspecting person is naked. There is no foundation then to the public's expectation and trust that privacy exists and is protected especially in places like lavatories, bathrooms, and dressing rooms.

I introduced HB 188 to close this loop hole in our privacy laws so that there is a deterrent to the commission of indecent viewing and photographing in the future.

# Alaska State Legislature

REPRESENTATIVE  
**JERRY MACKIE**



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## House of Representatives

### SECTIONAL ANALYSIS

OF

HB 188

In Section 1, AS 11.61.123 is proposed which establishes the crime of indecent viewing and photography.

Subsection AS 11.61.123(a) defines the crime as knowingly viewing or photographing the private exposure of certain body parts of an individual without the consent or knowledge of that person. Additional conditions of consent or knowledge is required for persons under 16 years of age.

Subsection (b) provides that multiple viewings or pictures of an individual are to be treated as separate violations.

Subsection (c) establishes the severity of the crime as a class C felony when the victim is a minor and a class A misdemeanor when the victim is an adult.

Subsection (d) allows operation of certain security surveillance systems when notice is posted and viewing is by operators of the same sex.

Subsection (e) provides definitions for "picture" and "private exposure".

Bill section 2 ties the application of the new law to offenses committed on or after the Act's effective date.