

**SB**

**323**

**HFIN**

**FILE**

(1)

Date Referred to Committee: April 30, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/1/98

The FINANCE Committee considered:

CSSB 323(FIN) am

CS FOR SENATE BILL NO. 323(FIN) am

SEX OFFENSES & OFFENDER REGISTRATION

"An Act relating to sexual offenses, to those who commit sexual offenses, and to registration of sex offenders; amending Rule 6(r)(2), Alaska Rules of Criminal Procedure; and providing for an effective date."

recommends it be replaced with the following committee substitute HCS CS SB 323 (FIN) [X] the same title [ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee [ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) DOC

[X] fiscal note(s) DGA 3/12/98

[ ] zero fiscal note(s)

[ ] zero fiscal note(s)

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Therriault</i>	Therriault	X			
<i>Eldon Mulder</i>	Mulder	X			
<i>Terry Martin</i>	Martin	X			
<i>Vic Kohring</i>	Kohring	X			
<i>J. Davies</i>	J. Davies	X			
<i>Jim Grussendorf</i>	Grussendorf	X			

CHAIR'S SIGNATURE *Gene Therriault*

# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. CS SB 323 (FIN) am**

Revision Date (Note if correction) 05/06/98 Dept. Affected Corrections  
 Title An Act relating to sexual offenses, to those who BRU Administration and Operations  
commit sexual offenses, and to registration of sex offenders... Component ALL  
 Sponsor Senator Pearce  
 Requester Senate Judiciary Component Serial No. #0694

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

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	81.6	81.6	81.6	81.6	81.6	81.6
<b>TOTAL OPERATING</b>	<b>81.6</b>	<b>81.6</b>	<b>81.6</b>	<b>81.6</b>	<b>81.6</b>	<b>81.6</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	81.6	81.6	81.6	81.6	81.6	81.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>81.6</b>	<b>81.6</b>	<b>81.6</b>	<b>81.6</b>	<b>81.6</b>	<b>81.6</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Please see attached analysis.

Prepared by Bruce Richards  
 Division Commissioner's Office  
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh*  
 Agency Department of Corrections

Phone 465-3307  
 Date 5/5/98  
 Date 5/5/98

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FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION  
DEPARTMENT OF CORRECTIONS

BILL NO. CS SB 323 (FIN)am  
PAGE 2 of 2  
DATE 5/6/98

Section 3 of this legislation would increase the penalty for one form of indecent exposure from a misdemeanor to a class C felony. The Dept. of Law estimates that three people would be convicted annually under the felony provision. The current average sentence served for a misdemeanor conviction of indecent exposure is 28 days. It is estimated that first time offenders convicted under the proposed felony provision would receive a sentence of 60 days, resulting in a net gain of 20 days to be served over the present misdemeanor penalty. The statewide average daily cost of incarceration is \$100.07 per day, per prisoner. In addition, the Dept. of Corrections is required to conduct a presentence investigation for all felony convictions and prepare a report for the court. The cost for a PSI is \$450.

3 prisoners X \$100.07 per day X 20 days = Annual cost of \$6,004

3 prisoners X \$450 per PSI = \$1350

Section 5 of this legislation increases the penalty for distribution of child pornography from a class C felony to a class B felony. It is anticipated that a conviction of distribution of child pornography will be extremely rare and therefore no fiscal impact is projected for section 5.

Section 6 of this legislation increases the penalties from a class A misdemeanor to a class C felony for possession of child pornography. It is estimated by the Dept. of Corrections, in consultation with Officer Clinkart of the APD that approximately three (3) offenders a year will be sentenced to 365 days each. With the subtraction of statutory good time, each offender will serve 243 days.

3 prisoners X \$100.07 per day X 243 days = \$72,950

3 prisoners X \$450 per PSI = \$1,350

Total annualized cost for SB 323 is \$81,654

FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 1  
Bill Version: SB 323  
(S) Publish Date: 3/12/98

Revision Date: \_\_\_\_\_  
Title: "An Act relating to sexual offenders"  
Sponsor: Senator Pearce  
Requestor: (S) JUD

Department Affected: Administration  
BRJ: Legal and Advocacy Services  
Component: Public Defender Agency  
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ( )	**	**	**	**	**	**

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara K. Brink, Director  
Division: Public Defender Agency

Phone: (907) 264-4414  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

Date: 3/11/98

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 323

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill creates a new Class C felony offense crime of indecent exposure in the first degree if a person knowingly masturbates within the observation of a person under 16 years of age. Indecent exposure in the second degree, which encompasses knowingly exposing one's genitals to another person with reckless disregard for the offensive, insulting or frightening effect the act may have on that person remains a Class A misdemeanor. In conjunction with this distinction in the crime of indecent exposure, the bill changes many statutes with regard to felony indecent exposure. It removes the statute of limitations for prosecution, it requires mandatory arrest by a peace officer for allegations of bail release violation, it allows for the admission of hearsay evidence before the grand jury under the same circumstances as other sex crimes, it requires consecutive sentences for conviction of felony indecent exposure, it includes it as a crime for which an aggravator can be found if there is a history of similar behavior. It also includes both felony and misdemeanor indecent exposure and possession of child pornography as new defined "sex crimes" for which a person will have to register as sex offender. It precludes a person convicted of any kind of indecent exposure from being licensed as a school bus driver for 20 years and requires the Department of Health and Social Services to immediately notify law enforcement if they suspect felony level indecent exposure.

The bill also raises the crime of distribution of child pornography from a C felony to a B felony and the crime of possession of child pornography from an A misdemeanor to a B felony.

While the bill therefore greatly increases the potential penalties faced and the repercussions for these sex crimes, it is difficult to predict fiscal impact. The Department of Law has estimated that last year 35 cases of indecent exposure were prosecuted and of those, only 10 would have been prosecuted as felonies. There are currently only 2 people facing charges on possession of child pornography within the correctional system. Therefore, it was difficult to assess the impact in number of cases that would be added to the list of felony crimes prosecuted by the state. Of course, felony crimes are the most time and labor-intensive of the cases appointed to the Public Defender Agency and as the penalty increases, the likelihood of proceeding to trial also increases. It is anticipated there will be fiscal impact, but at this time it is impossible to quantify.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

May 7, 1998

**SUBJECT:** HCS CSHB 323(FIN)

**TO:** Representative Mark Hanley  
House Finance Committee  
Attn: Shar Smith

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

Enclosed is the HCS(FIN) you requested. I have one comment about the committee substitute. In section 7 of the HCS the committee amended AS 11.61.127(a) to add the word "knowingly." I understand there was some discussion as to whether this change was needed or not so that there would be a mental state for the offense of possession of child pornography. The addition of "knowingly" is not necessary and is not consistent with proper drafting in the Alaska Criminal Code, AS 11. AS 11.61.610(b) provides that when a "provision of law defining an offense does not prescribe a culpable mental state, the culpable mental state that must be proved with respect to (1) conduct is "knowingly." AS 11.61.127 provides that:

[a] person commits the crime of possession of child pornography if the person possesses any material that visually or aurally depicts conduct described in AS 11.41.455(a) knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

The proscription in the statute relates to conduct ("if the person possesses"), therefore AS 11.61.610(b) applies here and supplies the requisite mental state of "knowingly." See, e.g., *Johnson v. State*, 739 P.2d 781 (Alaska App. 1987). This is consistent with how the Alaska Criminal Code was originally developed by the legislature and with how the legislature has for the most part acted in enacting statutes in AS 11 since then.

GPL:glc  
98-270.glc

Enclosure

adopted  
NO OBJ

5/5/98 E  
Conceptual

B /

AMENDMENT

OFFERED IN THE HOUSE

by Representative Kelly / Berkowitz

TO: CSSB 323(FIN) am

- 1 Page 2, line 18, preceding "exposes":
- 2 Delete "~~knowingly~~"
- 3 Insert "~~intentionally~~"
- 4 Page 2, line 18, following "genitals":
- 5 Insert "in the presence of [TO]"
- 6 Page 2, line 20, preceding ".":
- 7 Delete "on that person"

NEW #2 ADD <sup>new section</sup> AS 11.61.127(a)

# (3) adopted nlo  
# (2) pg 3 ~~line 2~~ - ~~rescind - withdrawn~~ - adopted  
# (1) amendment #1 - adopted

0-LS1553\F.a

**CS FOR SENATE BILL NO. 323(FIN) am**

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

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE FINANCE COMMITTEE**

Amended: 3/30/98  
Offered: 3/25/98

Sponsor(s): SENATORS PEARCE, Taylor, Lincoln, Kelly, Donley, Miller, Green

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to sexual offenses, to those who commit sexual offenses, and to  
2 registration of sex offenders; amending Rule 6(r)(2), Alaska Rules of Criminal  
3 Procedure; and providing for an effective date."

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

5 \* Section 1. AS 09.10.060(c) is amended to read:

6 (c) A person who was the victim of sexual abuse may not maintain an action  
7 for recovery of damages against the perpetrator of the act or acts of sexual abuse based  
8 on the perpetrator's intentional conduct for an injury or condition suffered as a result  
9 of the sexual abuse unless the action is commenced within three years. In this  
10 subsection, "sexual abuse" means an act committed by the defendant against the  
11 plaintiff maintaining the cause of action if the defendant's conduct would have violated  
12 a provision of AS 11.41.410 - 11.41.440 or 11.41.450 - 11.41.458 [11.41.450 -  
13 11.41.455] at the time it was committed.

14 \* Sec. 2. AS 09.55.650(c) is amended to read:

1 (c) In this section, "sexual abuse" means an act committed by the defendant  
2 against the plaintiff maintaining the cause of action if the defendant's conduct would  
3 have violated a provision of AS 11.41.410 - 11.41.440 or 11.41.450 - 11.41.458  
4 11.41.450 - 11.41.458 former AS 11.15.120, 11.15.134, or 11.15.160, or former  
5 AS 11.40.110 at the time it was committed.

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

7 **Sec. 11.41.458. Indecent exposure in the first degree.** (a) An offender  
8 commits the crime of indecent exposure in the first degree if

9 (1) the offender violates AS 11.41.460(a);

10 (2) while committing the act constituting the offense, the offender  
11 knowingly masturbates; and

12 (3) the offense occurs within the observation of a person under 16 years  
13 of age.

14 (b) Indecent exposure in the first degree is a class C felony.

15 \* Sec. 4. AS 11.41.460 is amended to read:

16 **Sec. 11.41.460. Indecent exposure in the second degree.** (a) An offender  
17 commits the crime of indecent exposure in the second degree if the offender  
18 knowingly [INTENTIONALLY] exposes the offender's genitals to another person with  
19 reckless disregard for the offensive, insulting, or frightening effect the act may have  
20 on that person.

21 (b) Indecent exposure in the second degree before a person under 16 years  
22 of age is a class A misdemeanor. Indecent exposure in the second degree before a  
23 person 16 years of age or older is a class B misdemeanor.

24 \* Sec. 5. AS 11.61.125(c) is amended to read:

25 (c) Distribution of child pornography is a class B [CLASS C] felony.

26 \* Sec. 6. AS 11.61.125 is amended by adding a new subsection to read:

27 (e) The possession of 100 or more films, audio, video, electronic, or  
28 electromagnetic recordings, photographs, negatives, slides, books, newspapers,  
29 magazines, or other materials, including a combination of these items totaling 100 or  
30 more, is prima facie evidence of distribution and intent to distribute under (a) of this  
31 section.

1 \* Sec. 7. AS 11.61.127(c) is amended to read:

→ 2 (c) <sup>knowing</sup> Possession of child pornography is a class C felony [CLASS A  
3 MISDEMEANOR].

4 \* Sec. 8. AS 11.61.127 is amended by adding a new subsection to read:

5 (d) Each film, audio, video, electronic, or electromagnetic recording,  
6 photograph, negative, slide, book, newspaper, magazine, or other material that visually  
7 or aurally depicts conduct described in AS 11.41.455(a) that is possessed by a person  
8 knowing that the production of the material involved the use of a child under 18 years  
9 of age that engaged in the conduct is a separate violation of this section.

10 \* Sec. 9. AS 12.10.020(c) is amended to read:

11 (c) Even if the general time limitation has expired, a prosecution under  
12 AS 11.41.410 - 11.41.458 [AS 11.41.410 - 11.41.455], AS 11.66.110 - 11.66.130, or  
13 former AS 11.41.430, for an offense committed against a person under the age of 18,  
14 may be commenced at any time.

15 \* Sec. 10. AS 12.25.030(b) is amended to read:

16 (b) In addition to the authority granted by (a) of this section, a peace officer  
17 (1) shall make an arrest under the circumstances described in  
18 AS 18.65.530;

19 (2) without a warrant may arrest a person if the officer has probable  
20 cause to believe the person has, either in or outside the presence of the officer,

21 (A) committed a crime involving domestic violence, whether the  
22 crime is a felony or a misdemeanor; in this subparagraph, "crime involving  
23 domestic violence" has the meaning given in AS 18.66.990;

24 (B) committed the crime of violating a protective order in  
25 violation of AS 11.56.740; or

26 (C) violated a condition of release imposed under AS 12.30.025  
27 or 12.30.027;

28 (3) without a warrant may arrest a person when the peace officer has  
29 reasonable cause for believing that the person has

30 (A) committed a crime under or violated conditions imposed as  
31 part of the person's release before trial on misdemeanor charges brought under

1 AS 11.41.270;

2 (B) violated AS 04.16.050 or an ordinance with similar  
3 elements; however, unless there is a lawful reason for further detention, a  
4 person who is under the age of 18 and who has been arrested for violating  
5 AS 04.16.050 or an ordinance with similar elements shall be cited for the  
6 offense and released to the person's parent, guardian, or legal custodian; or

7 (C) violated conditions imposed as part of the person's release  
8 before trial on felony charges brought under AS 11.41.410 - 11.41.458  
9 [AS 11.41.410 - 11.41.455].

10 \* Sec. 11. AS 12.40.110(a) is amended to read:

11 (a) In a prosecution for an offense under AS 11.41.410 - 11.41.458  
12 [AS 11.41.410 - 11.41.440 OR 11.41.455], hearsay evidence of a statement related to  
13 the offense, not otherwise admissible, made by a child who is the victim of the offense  
14 may be admitted into evidence before the grand jury if

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

16 (2) the child is under 10 years of age when the hearsay evidence is  
17 sought to be admitted;

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

19 (4) the child testifies at the grand jury proceeding or the child will be  
20 available to testify at trial.

21 \* Sec. 12. AS 12.55.025(h) is amended to read:

22 (h) If the defendant has been convicted of two or more crimes under  
23 AS 11.41.200 - 11.41.250 or 11.41.410 - 11.41.458 [11.41.410 - 11.41.455] in which  
24 the victim or victims of the crimes were minors and the judgment on any of the  
25 convictions has not been entered, the court shall impose some consecutive period of  
26 imprisonment for each conviction.

27 \* Sec. 13. AS 12.55.155(c)(18) is amended to read:

28 (18) the offense was a felony

29 (A) specified in AS 11.41 and was committed against a spouse,  
30 a former spouse, or a member of the social unit comprised of those living  
31 together in the same dwelling as the defendant; or

1 (B) specified in AS 11.41.410 - 11.41.458 [AS 11.41.410 -  
 2 11.41.455] and the defendant has engaged in the same or other conduct  
 3 prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or  
 4 another victim;

5 \* Sec. 14. AS 12.63.020(a) is amended to read:

6 (a) The duty of a sex offender to comply with the requirements of  
 7 AS 12.63.010 for each sex offense

8 (1) continues for the lifetime of a sex offender convicted of two or  
 9 more sex offenses; for purposes of this section, a person convicted of indecent  
 10 exposure before a person under 16 years of age under AS 11.41.460 more than  
 11 two times has been convicted of two or more sex offenses;

12 (2) ends 15 years following the sex offender's unconditional discharge  
 13 from a conviction for a single sex offense.

14 \* Sec. 15. AS 12.63.100(3) is amended to read:

15 (3) "sex offense" means a crime, or an attempt to commit a crime,  
 16 under AS 11.41.410 - 11.41.438, 11.41.450 - 11.41.458. 11.41.460 if the indecent  
 17 exposure is before a person under 16 years of age if the offender has a previous  
 18 conviction for that offense [11.41.450, 11.41.455], AS 11.61.125, 11.61.127,  
 19 AS 11.66.110, former AS 11.15.120 or 11.15.134, or former AS 11.40.110 or  
 20 11.40.200, or a similar law in another jurisdiction;

21 \* Sec. 16. AS 14.20.020(f) is amended to read:

22 (f) The [EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,  
 23 THE] department may not issue a teacher certificate to a person who has been  
 24 convicted of a crime involving a minor under AS 11.41.410 - 11.41.460 [AS 11.41.434  
 25 - 11.41.440, 11.41.455, OR 11.41.460], or under a law in another jurisdiction with  
 26 elements substantially similar to an offense described in AS 11.41.410 - 11.41.460  
 27 [AS 11.41.434 - 11.41.440, 11.41.455, OR 11.41.460. WHEN FIVE YEARS HAVE  
 28 ELAPSED AFTER A PERSON HAS RECEIVED AN UNCONDITIONAL  
 29 DISCHARGE FOR A CONVICTION OF A CRIME LISTED IN THIS  
 30 SUBSECTION, THE PERSON MAY PETITION THE DEPARTMENT TO ISSUE  
 31 THE CERTIFICATE IN SPITE OF THE CONVICTION IF THE PERSON

1 OTHERWISE SATISFIES THE REQUIREMENTS FOR THE CERTIFICATE.  
 2 WHEN DECIDING WHETHER TO GRANT OR DENY THE PETITION, THE  
 3 DEPARTMENT SHALL CONSIDER THE NATURE OF THE PARTICULAR  
 4 CRIME, WHETHER AND TO WHAT EXTENT THE PERSON HAS BEEN  
 5 REHABILITATED, AND THE OTHER FACTORS THAT THE DEPARTMENT  
 6 DETERMINES ARE SIGNIFICANT].

7 \* Sec. 17. AS 14.20.030(b) is amended to read:

8 (b) The commissioner or the Professional Teaching Practices Commission shall  
 9 revoke for life the certificate of a person who has been convicted of a crime involving  
 10 a minor under AS 11.41.410 - 11.41.460 [AS 11.41.434 - 11.41.440, 11.41.455, OR  
 11 11.41.460], or under a law in another jurisdiction with elements substantially similar  
 12 to an offense described in AS 11.41.410 - 11.41.460 [AS 11.41.434 - 11.41.440,  
 13 11.41.455, OR 11.41.460. WHEN FIVE YEARS HAVE ELAPSED AFTER THE  
 14 PERSON HAS RECEIVED AN UNCONDITIONAL DISCHARGE FOR THE  
 15 CONVICTION, THE PERSON MAY PETITION THE COMMISSION FOR  
 16 RECERTIFICATION. WHEN DECIDING WHETHER TO GRANT OR DENY THE  
 17 PETITION, THE COMMISSION SHALL CONSIDER THE NATURE OF THE  
 18 PARTICULAR CRIME, WHETHER AND TO WHAT EXTENT THE PERSON HAS  
 19 BEEN REHABILITATED, AND THE OTHER FACTORS THAT THE  
 20 COMMISSION DETERMINES ARE SIGNIFICANT].

21 \* Sec. 18. AS 28.15.046(c) is amended to read:

22 (c) The department may not issue a license under this section to an applicant  
 23 who has been convicted of any of the following offenses within 20 years of the time  
 24 of application:

- 25 (1) sexual abuse of a minor in any degree under AS 11.41.434 -  
 26 11.41.440;  
 27 (2) sexual assault in any degree under AS 11.41.410 - 11.41.425  
 28 [AS 11.41.410 OR 11.41.420];  
 29 (3) incest under AS 11.41.450;  
 30 (4) unlawful exploitation of a minor under AS 11.41.455;  
 31 (5) contributing to the delinquency of a minor under AS 11.51.130;

1 (6) a felony involving possession of a controlled or imitation controlled  
2 substance under AS 11.71 or AS 11.73;

3 (7) a felony or misdemeanor involving distribution of a controlled or  
4 imitation controlled substance under AS 11.71 or AS 11.73;

5 (8) promoting prostitution in the first or second degree under  
6 AS 11.66.110 or 11.66.120;

7 (9) indecent exposure in the first or second degree under  
8 AS 11.41.458 or AS 11.41.460.

9 \* Sec. 19. AS 47.17.020(e) is amended to read:

10 (e) The department shall immediately notify the nearest law enforcement  
11 agency if the department

12 (1) concludes that the harm was caused by a person who is not  
13 responsible for the child's welfare;

14 (2) is unable to determine

15 (A) who caused the harm to the child; or

16 (B) whether the person who is believed to have caused the harm  
17 has responsibility for the child's welfare; or

18 (3) concludes that the report involves

19 (A) possible criminal conduct under AS 11.41.410 - 11.41.458

20 [AS 11.41.410 - 11.41.455]; or

21 (B) abuse or neglect that results in the need for medical  
22 treatment of the child

23 \* Sec. 20. Rule 6(r)(2), Alaska Rules of Criminal Procedure, is amended to read:

24 (2) In a prosecution for an offense under AS 11.41.410 - 11.41.458

25 [AS 11.41.410 - 11.41.440 OR 11.41.455], hearsay evidence of a statement related to  
26 the offense, not otherwise admissible, made by a child who is the victim of the offense  
27 may be admitted into evidence before the grand jury if

28 (i) the circumstances of the statement indicate its reliability;

29 (ii) the child is under 10 years of age when the hearsay  
30 evidence is sought to be admitted;

31 (iii) additional evidence is introduced to corroborate the

1 statement; and

2 (iv) the child testifies at the grand jury proceeding or the child  
3 will be available to testify at trial.

4 \* **Sec. 21. APPLICABILITY OF SECTIONS 14 AND 15.** (a) Except as otherwise  
5 provided in this subsection, a sex offender with only one conviction for a sex offense that is  
6 a violation of AS 11.41.460 or AS 11.61.127 who has been unconditionally discharged from  
7 that sex offense before July 1, 1984, is not required to register under or otherwise comply with  
8 AS 12.63. A sex offender who has been unconditionally discharged from a sex offense that  
9 is a violation of AS 11.41.460 or AS 11.61.127 on or after July 1, 1984, but before the  
10 effective date of this Act, shall register under and otherwise comply with AS 12.63 by July 1,  
11 1998. A sex offender with two or more convictions for a sex offense or more than two  
12 convictions of AS 11.41.460 before a person under 16 years of age before the effective date  
13 of this Act, regardless of whether the sex offender was unconditionally released from the sex  
14 offenses before, on, or after July 1, 1984, who was not required to register under sec. 12, ch.  
15 41, SLA 1994, shall register under and otherwise comply with AS 12.63 by July 1, 1998.

16 (b) A conviction for a sex offense before the effective date of this Act is a sex offense  
17 for purpose of the duration of registration requirement of AS 12.63.020(a).

18 (c) In this section, "sex offender" and "sex offense" have the meanings given by  
19 AS 12.63.100, as amended by sec. 15 of this Act.

20 \* **Sec. 22. APPLICABILITY OF SECTIONS 3 - 8.** Sections 3 - 8 of this Act apply to  
21 offenses committed on or after the effective date of this Act.

22 \* **Sec. 23.** This Act takes effect immediately under AS 01.10.070(c).

5/6/98

NO OBJ

# 3

Amendment

1

2

3 OFFERED IN THE HOUSE

4 To: CSSB 323 (Fin)am

5

6 Page 5, line 26, following "11.41.460"

7 Insert: ". or that is an attempt, solicitation, or conspiracy to commit a crime described in  
8 this subsection or a law or ordinance in another jurisdiction with similar elements."

9

10 Page 6, line 12, following "11.41.460"

11 Insert: ". or that is an attempt, solicitation, or conspiracy to commit a crime described in  
12 this subsection or a law or ordinance in another jurisdiction with similar elements."

# Alaska State Legislature



*During Interim: (June - Dec)*  
716 West 4th Avenue, Suite 500  
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*During Session: (Jan - May)*  
State Capitol  
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**Drue Pearce**

## SPONSOR STATEMENT

### SB 323: An Act Relating to Sexual Offenses and Sex Registration

The use of children in the production of sexually explicit material, including photographs, films, videos, and computer images is a form of sexual abuse that can result in physical or psychological harm to the children involved. Individuals who utilize children as sexual objects or are sexually attracted to children often seek out and collect sexually explicit materials for their own sexual gratification. Access to the Internet has become one of the preferred methods of distributing and collecting child pornographic materials; several investigations across the country have revealed thousands of pieces of child pornography in the hands of child pornographers. Congress passed the Child Pornography Prevention Act of 1996 and several states are taking action to strengthen their pornography laws.

The Alaska penalty for distribution of child pornography, a class C felony, is not more than five years. Law enforcement officers are encountering problems in trying to prove distribution. Offenders are often charged with or plead down to possession of child pornography, a class A misdemeanor offense with a penalty of not more than one year in prison, unless the offender is convicted of more than one count and receives a consecutive sentence. SB 323 increases the offense for possession of child pornography to a class C felony, and the offense for distribution to a class B felony offense, punishable by not more than 10 years in prison.

SB 323 also creates the offense of indecent exposure in the first degree if the offender knowingly masturbates within the observation of a person under 16 years of age. This crime will be a Class C felony offense. The bill makes the existing offense of indecent exposure, indecent exposure in the 2<sup>nd</sup> degree. The penalty for this offense is a class A misdemeanor when committed before a person under 16 years of age, and a class B misdemeanor when committed before a person 16 years or older.

SB 323 requires sex offender registration for the offenses of indecent exposure in the first degree, indecent exposure in the second degree if committed before a minor under the age of 16 for the second offense, and possession of child pornography. Currently, only offenders who are convicted for distribution of child pornography are required to register.

The existence and distribution of child pornographic images creates the potential for many types of harm in the community and presents a clear and present danger to all children. Strengthening the penalties for these crimes sends a clear message that the degradation and exploitation of our children will not be tolerated. Agencies in support of SB 323 include the Department of Public Safety, the Alaska Peace Officers Association, the Anchorage Police Department, UAF Police, and STAR.

# Alaska State Legislature

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## Sectional Summary of SB 323 Child Sex Offenses and Offender Registration

**Section 1:** Adds indecent exposure in the first degree to the list of offenses covered by this limitation of actions provision.

**Section 2:** Adds indecent exposure in the first degree to the definition of sexual abuse regarding this tolling provision for youthful victims of sexual abuse.

**Section 3:** Creates the new offense of indecent exposure in the first degree, committed when a person violates AS 41.460 (indecent exposure in the second degree) by knowingly masturbating within the observation of a person under 16 years of age. This offense is a class C felony.

**Section 4:** Makes the existing offense of indecent exposure, indecent exposure in the second degree and reduces the mental state required to commit the offense from intentionally to knowingly.

**Section 5:** Increases the penalty for distribution of child pornography to a class B felony from a class C felony.

**Section 6:** Adds language to the bill that the possession of 100 or more pieces of child pornographic material is prima facie evidence of distribution.

**Section 7:** Increases the penalty for possession of child pornography to a class C felony from a class A misdemeanor.

**Section 8:** Clarifies language that each piece of child pornographic material that is possessed by a person is a separate violation.

**Section 9:** Provides that a prosecution for indecent exposure in the first degree may be commenced at any time.

**Section 10:** Allows a peace officer to arrest without a warrant a person the officer has reasonable cause to believe has violated the conditions of the person's release before trial on a charge of indecent exposure in the first degree.

**Section 11:** Allows the use of hearsay testimony before the grand jury when the offense in indecent exposure in the first degree and a child under 10 years of age is the victim of the offense.

Section 12: Requires a sentencing court to impose some period of consecutive sentence when the defendant has two or more previous convictions for various sex offenses, including indecent exposure in the first degree, committed against minors.

Section 13: Provides an aggravating factor for a person convicted of indecent exposure in the first degree with previous sexual offense convictions.

Section 14 and 15: Adds indecent exposure in the first degree, the second offense of indecent exposure in the second degree if committed before a person under 16 years of age, and possession of child pornography to the list of sex offenses requiring sex offender registration.

Section 16 and 17: Adds the offenses of incest and indecent exposure in the first and second degrees to the list of offenses that disqualify a person from receiving or holding a teaching certificate. Disqualifies a person from teacher certification who has been convicted of certain offenses involving a minor after the person received an unconditional discharge for the conviction.

Section 18: Adds the offenses of sexual assault in the third degree and indecent exposure in the first and second degrees to the list of offenses disqualifying a person from being a school bus driver.

Section 19: Requires Department of Health and Social Services to notify the nearest law enforcement when the department receives a report that a child may have been a victim of indecent exposure in the first degree.

Section 20: Amends Alaska Rule of Criminal Procedure 5 to correspond to the change made in section 11 of the bill.

Section 21: Provides an applicability section necessary to cover the new offenders required to register as sex offenders under sec. 12 of the bill.

Section 22: Provides an applicability section.

Section 23: Provides an immediate effective date.

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**Drue Pearce**

## Senate Bill 323 Comparison to Current Law

Title of Offense	State Law	CSSB 323(FIN) am
Distribution of Child Pornography	Class C Felony Requires Sex Offender Registration	Class B Felony Requires Sex Offender Reg.
Possession of Child Pornography	Class A Misdemeanor No Sex Offender Registration	Class C Felony Requires Sex Offender Reg.
Indecent Exposure in the First Degree (If offender masturbates within the presence of a person under 16 years)	Offender would be charged with Indecent Exposure, Class A Misdemeanor No Sex Offender Registration	Class C Felony Requires Sex Offender Reg.
Indecent Exposure in the 2 <sup>nd</sup> Degree before a child under 16 years of age.	Class A Misdemeanor before a minor No Sex Offender Registration	Class A Misdemeanor Sex Offender Registration for <b>Second Offense</b>
Indecent Exposure in the 2 <sup>nd</sup> Degree before a person 16 years or older	Class B misdemeanor before an adult No Sex Offender Registration	Class B misdemeanor No Sex Offender Registration

### Additional Provisions in SB 323

- ◆ SB 323 deletes language from current statute that would allow a teacher to petition the Professional Teaching Practices Commission for re-certification after five years have elapsed after the person received an unconditional discharge for the conviction.
- ◆ SB 323 adds language to the bill that the possession of 100 or more pieces of child pornographic material is prima facie evidence of distribution, clarifies that each piece of child pornography possessed by an offender is a separate violation.
- ◆ SB 323 adds the crime of Indecent Exposure in the First Degree to several statute citations relating to sexual offenses of a minor. This crime was added at the recommendation of Legislative Legal.



Rick Mystrom,  
Mayor

# ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599

Telephone (907) 786-8500



Service since 1921

February 17, 1998

Senator Drue Pearce  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Dear Senator Pearce:

This letter is written in support of your efforts to strengthen the state's child pornography laws through Senate Bill 323. The current laws fall far short of protecting children in light of the new technologies available to anyone with a computer.

Typically, crimes against children involve, or at least begin with simple possession of these materials. Those who now receive sentences of less than one year for possession of child pornography have little chance to rehabilitate. Those who distribute are obviously actively involved in victimizing children, and deserving of stronger penalties.

Mandatory registration of these sex offenders is also a major step in the right direction. This will allow law enforcement to track all potential abusers and serve as a warning to others who might take advantage of Alaska's children.

Thank you for bringing this legislation forward.

Sincerely,

Duane S. Udland  
Chief of Police

DSU/ros

"To Serve and Protect"



Terry E. Vrabec, Chief  
Confidential Fax (907) 474-1971

**UNIVERSITY OF ALASKA FAIRBANKS**

**Police Department**

PO Box 755560 • Fairbanks, Alaska 99775-5560  
(907) 474-6200 • Fax (907) 474-5555

REC'D  
MAR 09 1998

March 5, 1998

Senator Drue Pearce  
Alaska State Legislature  
State capitol (MS 3100)  
Juneau, Alaska 99801-1182

Dear Senator Pearce,

I recently received some information from the Legislative Affairs Agency in reference to Senate Bill 323. I was very interested in this bill for our agency along with several other law enforcement agencies, have been working some related criminal cases that this bill will effect.

In some of our cases we feel that stronger laws might be a better deterrent to prevent future occurrences. I also think that we would be sending a message that we are not going to allow these type of violations to occur without serious punishment.

It is my understanding that you have received support of this bill from Chief Udland out of Anchorage. I agree with him on the issue of registering these sex offenders. This will also help us track individuals who have been convicted. I support your efforts on this bill and would gladly provide more information if necessary. Thank you for your help.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terry Vrabec".

Terry E. Vrabec  
Chief of Police



1057 W. Fireweed Ln, Suite 230  
Anchorage, Alaska 99503

Business 907/276-7279  
24 Hour Crisis 907/276-7273  
Toll Free 1-800-478-8999  
Fax 907/278-9983  
TTY 907/278-9983

RECEIVED

MAR 19 1998

March 9, 1998

Senator Drue Pearce  
State Capitol  
Room 518  
Juneau, AK 99801

Dear Senator Pearce:

This letter is in support of Senate Bill 323. We are pleased to see that you are bringing attention to cases of indecent exposure and child pornography, and working to raise penalties for those crimes.

STAR provides crucial crisis intervention to victims of sexual assault and abuse. This includes child victims as well as adults that are touched by these devastating crimes. Although specific cases are not available due to confidentiality, I can say that masturbating in front of a minor has been an issue that we have addressed at STAR in the last year. Raising penalties for committing this act would no doubt assist law enforcement and the criminal justice system in supporting victims.

Thank you again for sponsoring this legislation. Please feel free to contact our office for further information about this or any other issue related to sexual assault.

Sincerely,

Trisha Gentle  
Executive Director

STATE OFFICE  
**ALASKA PEACE OFFICERS ASSOCIATION**

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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John Lucking, Jr., Member  
Unalaska  
Pres. Aleutian Islands Chapter

March 26, 1998

Senator Drue Pearce  
Alaska State Legislature  
State Capital  
Juneau, Alaska 99801-1182

Dear Senator Pearce,

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing SB-323 relating to increasing penalties for possession and distribution of child pornography.

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse this legislation.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Once again, thank you for sponsoring this legislation.

Sincerely,

John Charbonneau  
State President  
Alaska Peace Officers Association

## Net tracking leads to porn charges

The Associated Press

FAIRBANKS — A carpenter at the University of Alaska Fairbanks physical plant has been charged with four counts of misdemeanor child pornography possession.

A university-installed Internet tracking system showed that William Tuttle, 47, was accessing the pornographic sites at his computer work station, authorities said.

Tuttle, a 25-year employee and a 1981 UAF graduate, was placed on paid administrative leave shortly after the allegations surfaced last month, UAF spokeswoman Debra Damron said.

Under state law, possession of child pornography is punishable by up to one year in jail and a \$1,000 fine.

Dean Tabor, network manager for the physical plant, had just received a 30-day demonstration copy of the software program Internet Manager, a tracking program designed for large companies.

Tabor said he thought, "It's free, what the heck," and hooked it up.

A few days later, the program picked up questionable sites viewed by someone using Tuttle's ID, Tabor said. The program tracks words or phrases contained in adult viewing.

Tuttle's supervisors looked at his files and found at least four copies of child pornographic images that had been downloaded at his work station, the court complaint said.

Tuttle did not return a telephone call Monday from the Fairbanks Daily News-Miner.

The physical plant director at the time, John Phillips, who since has retired, approved use of the program to ensure that employees were not using university equipment for personal benefit, maintenance supervisor Luke Hopkins said.

"If someone is spending time doing personal things on the Net, you have no way of knowing that," Hopkins said. "We were actually looking to see how this program worked."

The University of Alaska does not have tracking programs in place at either the UAF campus or in the statewide system, Damron said.

## APPENDIX IV

### STATE CHILD PORNOGRAPHY STATUTES

STATE & AGE OF MINORITY (under __)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
<b>Alabama</b>  17  Inference of age. §13A-12-193.	§13A-12-192(b) Class C Felony	§13A-12-192(a) three or more copies of the same material is prima facie evidence of intent. Class B Felony	§13A-12-197 Class A Felony	
<b>Alaska</b>  18 §11.61.127	§11.61.127 Class A Misdemeanor	§11.61.125 Class C Felony	§11.41.455: Exploitation - Class B Felony. §11.61.125: Distribution- Class C Felony	§47.17.023 Class B Misdemeanor
<b>Arizona</b>  18 with enhanced penalty under 15  Inference of age. §13-3555.	§13-3553.A.2 Class 2 Felony	NONE	§§13-3552 & 13-3553	§13-3553(A)(1) Class 2 Felony
<b>Arkansas</b>  16	§ 5-27-304(a)(2) Class C Felony-- 1st offense. Class B Felony-- subsequent offenses.	§ 5-27-304(a)(1). Prohibits receipt for distribution. Class C Felony--1st offense Class B Felony-- subsequent offenses		NONE

STATE & AGE OF MINORITY (under )	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
<b>California</b> Penal Code  18	§311.11(a) 1st offense= Public Offense(1yr/ \$2,500) Subsequent offenses= felonies(2, 4, or 6yrs)	§311.1: non- commercial, obscene CP to anyone = misdemeanor. §311.2(b): commercial, obscene CP to anyone = felony. §311.2(c): CP to adults = misdemeanor. Subsequent offense = Felony. §311.2(d): CP to minors = felony.	§311.4 production  §311.1, §311.2, §311.3 (knowingly develop, duplicate, print, or exchange). Innocent film processors not liable.	Duty if observes a depiction of a child under 14 engaged in an act of sexual conduct. §11166(c)-(f).
<b>Colorado</b>  18 §18-6-403(2)(a)	18-6-403(3)(b.5). 1st offense: Class 1 Misdemeanor. Subsequent offenses: Class 4 Felony.	18-6-403(c) for commercial purposes. Class 3 Felony. Three or more identical copies creates presumption of commercial purpose. 18-6-403(4).	18-6-403(3)(a-b)	§19-3-304 Violation is class 3 misdemeanor
<b>Connecticut</b> Penal Code  16  Mistake of age defense. §53a- 196(c).	NONE	NONE.  [Importing CP is a Class C felony. §53a - 196c]	§53a-196a-b. Employing/ Promoting a minor in an <i>obscene</i> performance.	NONE
<b>Delaware</b> Title 11  18	§1111 Class A Misdemeanor (1yr/ \$2,300)	§1109 Receives for the purpose of distribution. 1st offense: Class D Felony. Subsequent offenses: Class B Felony.	§1108. Class B Felony. (at least 2 yrs, and up to 20 yrs)	
<b>District of Columbia</b>  16 §22-2011(2)	NONE	NONE	§22-2012 Felony. \$5000/10 years max - 1st offense \$15000/20 years max - subsequent offense.	NONE

STATE & AGE OF MINORITY (under __)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
<b>Florida</b>  18	§ 827.071(5) 3rd Degree Felony	§827-071(4) 2nd Degree Felony Possession of three or more identical copies creates presumption of intent to promote.	§827.071(2)-(3) 2nd Degree Felony	NONE
<b>Georgia</b>  18 §16-12-100	§16-12- 100(b)(8); g(2) Misdemeanor	§16-12-100(b)(5) Felony	§16-12-100(h)(1-5) §16-12-100(b)(	§16-12-100(c)- immunity if done in good faith Failure to report is a misdemeanor.
<b>Hawaii</b>  16 §707-750(2)	NONE	NONE	§707-750 Class A Felony §707-751 Class C Felony	NONE
<b>Idaho</b>  18 §18-1507	§ 18-1507A Felony(5yrs/\$5,0 00)	§18-1507 Three or more creates presumption of commercial purpose.	§18-1506(1)(c) Felony (up to 15yrs). §18-1507(3)(n-b) §44-1306 Misdemeanor	
<b>Illinois</b> Chapter 720  18 §5/11-20.1	5/11-20.1(a)(6); Class 4 Felony	5/11- 20.1(a)(2); ; Class 3 Felony. Possession of more than one of the same item creates a presumption of intent to disseminate. 5/11-20.1(b)(4)	5/11-20.1(3)-(5), (7)	5/11-20.2. Failure to report is a business offense (\$1,000).
<b>Indiana</b>  16/18	§35-42-4-4(c); (16yrs) Class A misdemeanor	NONE	§35-42-4-4 (18yrs) Class D Felony. If committed using a computer network, it is a Class C Felony.	
<b>Iowa</b>  18	§728.12.3 (purchase or possession) Serious Misdemeanor		§728.12.1(permit to participate) Class C Felony §728.12.2 (promotes such material) Class D Felony	§728.14 Failure to report is a simple misdemeanor

STATE & AGE OF MINORITY (under ___)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
<b>Kansas</b> 16 §21-3516(a)(2)	§21-3516(a)(2) and (c); level 5 person felony	NONE	§21-3516(a)(4) Level 5 Person Felony	NONE
<b>Kentucky</b> 18, and higher penalty if under 16	§531.335; Class A Misdemeanor	§531.340(1)(c)(4); Class D felony Possession of more than one unit of the same material creates rebuttable presumption of intent to distribute. §531.340(2).	§531.320 Class C Felony if under 18; Class B Felony if under 16; Class A if minor was injured. §531.350 1st offense: Class A Misdemeanor; Subsequent: Class C Felony. §341.360 (advertising). Class A Misdemeanor.	
<b>Louisiana</b> 17 §81.1.A.(3)	§81.1.A.(3) *Penalty is up to \$10,000 and imprisoned at hard labor for not less than 2 yrs or more than ten years, without parole. . .	§81.1.A.(3) & §81.1.C: three or more is prima facie evidence of intent to sell.  *Same Penalty for all child pornography crimes.	§81.1.A.(1,2,4)	None specifically for film processors. §14:403 places a duty on all people to report child abuse.
<b>Maine</b> Title 17  18--possession. w/ intent to distribute, and production. §2921.  14 - mere possession. §2924.2.	§2924(2) Felony First offense is Class D crime. Subsequent offense is Class C crimes.	§2923.1 Class C crime; subsequent offense is Class B crime.  §2923.2: possession of 10 or more raises presumption of intent to disseminate	§2922.1 Class B crime (minimum of 5 years); Subsequent conviction is Class A Crime.	NONE

STATE & AGE OF MINORITY (under __)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
<b>Maryland</b>  16--mere possession 18--possession with intent to distribute, and production	Art. 27 §419B Misdemeanor  Subsequent offense has increased penalty.	Art. 27 419A(d) Felony  Subsequent offense has increased penalty.	Art. 27 §419A(b, c, d) Felony	
<b>Massachu- setts</b>  18 §272.29A(a).	NONIS	272 § 29B Felony(min. of \$10,000 and/or min. of 10 years)	29A Felony(min. of \$10,000 and/or min. of 10 years)  29B(b) (dissemination)	
<b>Michigan</b>  18 §28.342a(1)	§28.342a(4) Misdemeanor	§28.342a(3) (prohibits <i>receipt</i> with intent to distribute)	§28.342a(2), and §28.342a(3) Felony	§28.342a(6) (No Duty, but grants immunity if reported)
<b>Minnesota</b>  18 §617.246.1(b).	§617.247.4 Gross Misdemeanor		§617.246.2 Felony §617.245.2 (Liable to minor for damngcs w/ 6-yr. SOL) §617.246.3 and §617.247.3 (dissemination)	
<b>Mississippi</b>  18 §97-5-31(a).	97-5-33(5) Felony	§97-5-33(4) (prohibits <i>receipt</i> with intent to distribute)	§97-5-33(2) §97-5-33(1) Felony	
<b>Missouri</b>  18 §573.010(1), (6).	§573.037 Class A Misdemeanor Subsequent offense is Class D Felony	§ 573.035.1(2) Class D Felony	§573.025 Class B Felony §573.035 Class D Felony	§ 568.110 (DTR) Class B Misdemeanor (if minor under 17)

STATE & AGE OF MINORITY (under __)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
<b>Montana</b>  18, (increased penalty if under 16) eff. 7/1/97 §45-5-625(2)(b).	§45-5-625(1)(e) Max Penalty up to 10 yrs or \$10K	§45-5-625(1)(g) Max Penalty up to life, 100 years, or \$10K	§45-5-625(1) Max Penalty up to life, 100 years, or \$10K	NONE
<b>Nebraska</b>  18 for participant; 16 for portrayed observer §28-1463.02(1)	§28-813.01 Class II Misdemeanor	§28-1463.05 Class IV Felony	§28-1463.03 Class III Felony; Subsequent offense is Class II Felony, subject to max of 50 yrs (§28-1463.04)	§ 28-813.02 (No Duty, but grants immunity if reported)
<b>Nevada</b>  16 for participant §200.730. 18 for observer, §201.259. 14 for lewd acts §201.230.	§200.730 Gross Misdemeanor; Subsequent offense is Felony	§200.720 ("promote" includes possession with intent to distribute) Category A Felony (min term of 15 yrs - Penalties in §200.750)	§200.710 §200.720 Category A Felony (min term of 15 yrs - Penalties in §200.750)	NONE
<b>New Hampshire</b>  16 §649-A:2.1.	§ 649-A:3.III(a) Misdemeanor	§ 649-A:3.I(d) Class B Felony; Subsequent Offenses: Class A Felony	§649-A:3.I(n)-(c) Class B Felony; Subsequent Offenses: Class A Felony	NONE
<b>New Jersey</b>  16 §2C:24-4.b(1) appears under 16 §2C:24-4.b(6)	§ 2C:24-4.b(5)(b) Crime of the 4th Degree	§ 2C:24-4.b(5)(a) (prohibits receipt with intent to distribute) Crime of the 2nd Degree	§2C:24-4.b(3)-(5a) Crime of the 2nd Degree	NONE

STATE & AGE OF MINORITY (under ___)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
<b>New Mexico</b>  18 §32-1-3.A and §30-6A-3. Increased penalty if under 13.	NONE	§ 30-6A-3.A 3rd Degree Felony	§30-6A-3.B 3rd Degree Felony (2nd Degree Felony if child under age 13) §30-6A-3.C 2nd Degree Felony	NONE
<b>New York</b>  16 §263.00  Proof of Age §263.25.  Mistake of Age Defense §263.20.	§263.11 (obscene sexual performance) Class B Felony §263.16 (sexual performance) Class E Felony	NONE	§ 263.10 (obscene sexual performance) Class D Felony § 263.15 (sexual performance) Class D Felony §263.05 Class C Felony	NONE
<b>North Carolina</b>  Not Married and Under 18;  Inference of Age: §§14-190.17A(b) & 14-190.17(b).	§ 14-190.17A Class J Felony.  §14-190.17(a)(2) (receipt) Class F Felony	NONE	§14-190.17(u)(1). Class H Felony. §14-190.16. Class E Felony.	NONE
<b>North Dakota</b>  18 Proof of Age §12.1-27.2-06.  Mistake of Age Defense. §12.1-27.2-05.	§ 12.1-27.2-04.1 Class A Misdemeanor; Subsequent Offense Class C Felony	NONE	§12.1-27.2-03 (obscene sexual performance) Class B Felony §12.1-27.2-04 (sexual performance) Class C Felony §12.1-27.2-02 Class B Felony	NONE

STATE & AGE OF MINORITY (under ___)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
<b>Ohio</b>  18 §2907.01(M)  Inference of Age §2907.321(B)(3) & 322(B)(3).  Mistake of Age <u>not</u> a Defense §2907.321(B)(2) & 322(B)(2).	§2907.321(A)(5) (obscene material) 4th Degree Felony; Subsequent Offense is a 3rd Degree Felony.  § 2907.322(A)(5) (sexually explicit material) 5th Degree Felony Subsequent offense is a 4th Degree Felony.  § 2907.323(A)(3) (nudity) 5th Degree Felony. Subsequent offense is a 4th Degree Felony.	NONE	§2907.321(A) (obscene material) 2nd Degree Felony.  §2907.322 (A) (1996) (sexually explicit material), 2nd Degree Felony.  §2907.323(A)(1)-(2) (nudity) 2nd Degree Felony.	NONE
<b>Oklahoma</b>  18 21 § 1021.2.	21 § 1021.2 Felony: 20 Years and/or \$25K	NONE	21 § 1021.2 Felony: 20 Years and/or \$25K	21 § 1021.4 (DTR)
<b>Oregon</b>  18 § 163.665  Mistake of Age Defense § 163.690.	§ 163.672 Class C Felony	§ 163.673(1)(b) Class B Felony § 163.684(1)(A)(a) (encouraging child sex abuse) Class B Felony	§ 163.673(a) Class B Felony § 163.670 Class A Felony § 163.684 Class B Felony	§ 163.693
<b>Pennsylvania</b>  17 18 § 6312(B).	18 § 6312(D) 3rd Degree Felony	18 § 6312(C) 3rd Degree Felony	18 § 6312(B) 2nd Degree Felony	NONE

STATE & AGE OF MINORITY (under __)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
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Rhode Island 18	NONE	NONE	NONE	NONE
South Carolina 18 No Mistake of Age Defense. §16-15-405(c). Inference of Age. §16-15-410(B).	§16-15-410(A) Felony (max 5 years)	§16-15-405(A)(2) (receipt with intent to distribute) Felony (min 2 years)	§16-15-405(A)(1) Felony (min 2 years) §16-15-335 Felony (max 5 years)	§ 16-3-850
South Dakota 18--possession 16--production	§22-22-23.1 Class I Misdemeanor	NONE	§22-22-23 Class 4 Felony	NONE
Tennessee 18 §39-17-1002(3). Inference of age. §§39-17-1004-1005.	§39-17-1003(a) Class B Felony	§39-17-1004(a)(1) & (b)(1) Class C Felony; and if obscene, is a Class B Felony	§39-17-1005 Class B Felony §39-17-902(b) Class E Felony (min \$10K fine) §39-17-1004 Class C Felony; and if obscene is a Class B Felony	NONE
Texas 18 §43.25. Mistake of Age allowed. §43.25(f).	Penal Code §43.26(a) 3rd Degree Felony	§43.26(c) 3rd Degree Felony (possession of 6 or more creates presumption of intention to promote)	§43.25(b) 2nd Degree Felony. §43.25(d) 3rd Degree Felony.	NONE

STATE & AGE OF MINORITY (under ___)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
Utah  18 §76-5a-2(4)	§76-5a-3(1)(a) 2nd Degree Felony	§76-5a-3(1)(a) 2nd Degree Felony	§76-5a-3(1)(a) 2nd Degree Felony	NONE
Vermont  16 §§2821(1) & 2801(1).  Mistake of Age Defense. §§2805, 2822(b) & 2824(b)(3).  Inference of Age. §2826.	NONE	NONE	§2822, §2823 §2824 1st Offense up to 10 yrs. + \$20K fine; Subsequent Offense min of 1-15yrs, up to \$50K fine	NONE
Virginia  18 §18.2-374.  Presumption of minority. §18.2- 374.1.D.	§18.2-374.1:1 Class 3 Misdemeanor; Subsequent Offense: Class 1 Misdemeanor	18.2-374.1.B.4 Class 4 Felony	§18.374.1.B Class 5 Felony	NONE
Washington  16 §9.68A.011(1).	§9.68A.070 Class C Felony	9.68A.050 Class C Felony	§9.68A.050 Class C Felony §9.68A.060 (sending, bringing into state) Class C Felony	§ 9.68A.080 Gross Misdemeanor
West Virginia  18 §61-8C-1(a).	§61-8C-3-- Felony §61-8D-6-- possession by parent or guardian	NONE	§61-8C-2 Felony	NONE

STATE & AGE OF MINORITY (under __)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
<b>Wisconsin</b>  18 §948.01(1).  Mistake of Age Defense. §948.05.	§948.12 Class E Felony	§ 948.05(1)(c) Class C Felony	§948.05 Class C Felony	NONE
<b>Wyoming</b>  18 §14-3-202.	NONE	NONE §6-4-302 prohibits the possession of <i>obscenity</i> with intent to distribute	§27-6-114(a)(i)(C) (employment of children under 16 for any business...injurious to the morals, health or safety of a child) No specific production statutes exist	NONE