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## Senate Bill 323 Comparison

| Title of Offense  | State Law   | Current Bill Version  | Original Bill Version   |
|---|---|---|---|
| Distribution of Child Pornography   | Class C Felony<br>Requires Sex Offender Registration  | Class B Felony<br>Requires Sex Offender Reg.                                  | Class B Felony<br>Requires Sex Offender Reg.                                |
| Possession of Child Pornography   | Class A Misdemeanor<br>No Sex Offender Registration   | Class C Felony<br>Requires Sex Offender Reg.                                  | Class B Felony<br>Requires Sex Offender Reg.                                |
| Indecent Exposure in the First Degree<br>(If offender masturbates within the presence of a person under 16 years) | New Offense – Offender may be charged with AS 11.41.460, Indecent Exposure, Class B misdemeanor<br>No Sex Offender Registration | Class C Felony<br>Requires Sex Offender Reg.                                  | Class B Felony<br>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<br>No Sex Offender Registration  | Class A Misdemeanor<br>Sex Offender Registration for<br><b>Second Offense</b> | Class C Felony<br>Sex Offender Registration<br><b>for the first offense</b> |
| Indecent Exposure in the 2 <sup>nd</sup> Degree before a person 16 years or older                                 | Class B misdemeanor before an adult<br>No Sex Offender Registration   | Class B misdemeanor<br>No Sex Offender Registration                           | Class A Misdemeanor<br>Sex Offender Registration                            |

**Additional Changes to SB 323 made by the Senate**

- ◆ The Senate Finance Committee deleted language from current statute that allows 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.
- ◆ The Senate Finance Committee also amended the bill to take out the sex offender registration requirement for Indecent Exposure in the Second Degree before a person 16 years or older. Current law does not require sex offender registration for this offense.
- ◆ On the Senate Floor prima facie language was added for possession of child pornography. The bill now allows a presumption to be made that an offender intends to distribute if the offender possesses 100 or more items of child pornography. Language was also adopted to clarify that each piece of child pornography possessed by an offender is a separate violation.

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| Possession of Child Pornography   | Class A Misdemeanor<br>No Sex Offender Registration   | Class C Felony<br>Requires Sex Offender Reg.                                  | Class B Felony<br>Requires Sex Offender Reg.                                |
| Indecent Exposure in the First Degree<br>(If offender masturbates within the presence of a person under 16 years) | New Offense – Offender may be charged with AS 11.61.123, Indecent Viewing or Photography,<br>Class C Felony<br>No Sex Offender Registration | Class C Felony<br>Requires Sex Offender Reg.                                  | Class B Felony<br>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<br>No Sex Offender Registration  | Class A Misdemeanor<br>Sex Offender Registration for<br><b>Second Offense</b> | Class C Felony<br>Sex Offender Registration<br><b>for the first offense</b> |
| Indecent Exposure in the 2 <sup>nd</sup> Degree before a person 16 years or older                                 | Class B misdemeanor before an adult<br>No Sex Offender Registration   | Class B misdemeanor<br>No Sex Offender Registration                           | Class A Misdemeanor<br>Sex Offender Registration                            |

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- ◆ The Senate Finance Committee also amended the bill to take out the sex offender registration requirement for Indecent Exposure in the Second Degree before a person 16 years or older. Current law does not require sex offender registration for this offense.
- ◆ On the Senate Floor prima facie language was added for possession of child pornography. The bill now allows a presumption to be made that an offender intends to distribute if the offender possesses 100 or more items of child pornography. Language was also adopted to clarify that each piece of child pornography possessed by an offender is a separate violation.

# Alaska State Legislature

*During Interim: (June - Dec)*  
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*During Session: (Jan - May)*  
State Capitol  
Juneau, AK 99801-1182  
(907) 465-4993  
Fax (907) 465-3872

**Drue Pearce**

## Memorandum

**Date:** March 31, 1998

**To:** Representative Joe Green, Chairman  
House Judiciary Committee

**From:** Senator Drue Pearce 

**Re:** Request for Hearing for SB 323, An Act Relating to Sexual Offenses of a Minor

I respectfully request a Judiciary Committee hearing for SB 323 at your earliest convenience.

SB 323 will strengthen the penalties for sexual offenses against a child, such as: possession and distribution of child pornography, masturbation within the presence of a child, and mandatory sexual registration for each of these offenses.

This bill is one of many efforts to keep our children safe and healthy. I would appreciate your consideration to schedule this bill as soon as possible.

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**Drue Pearce**

## 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**

## 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.

*Kevin, this is for you, not the packets. I typed it up for Drew, & thought it would help you too.  
Krisley*

**SB 323 Bill Comparison with Current Law**

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| Indecent Exposure in the Second Degree before a person 16 years or older  | Class B misdemeanor before an adult   | Same as current penalty   | Class A misdemeanor  |

**Other Changes to SB 323 made in the Senate**

The Senate Finance Committee deleted language from current statute that would allow a teacher to petition the Professional Teaching Practices Commission for recertification after five years have elapsed after the person received an unconditional discharge for the conviction.

The Senate Finance Committee also amended the bill to take out the sex offender registration requirement for Indecent Exposure in the Second Degree before a person 16 years or older. Current law does not require sex offender registration for this offense.

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**Drue Pearce**

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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.



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

RECEIVED

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 that reads "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 907/278-9988

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



A United Way Agency

STANDING TOGETHER AGAINST RAPE

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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Pres. Aleutian Islands Chapter

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

March 26, 1998

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

# Eagle River man pleads guilty in child-porn case

By PATTY SULLIVAN  
Daily News Reporter

An Eagle River man accused of taking pictures of girls' feet and posting them on the Internet for profit pleaded guilty to some of the charges in U.S. District Court Friday.

In a deal with federal prosecutors, Melford Ray Willis pleaded guilty to wire fraud and possession of child pornography, in exchange for the dismissal of two counts of mail fraud and four counts of wire fraud.

Willis, an Air Force master sergeant who has worked as a financial adviser on Elmendorf Air Force Base, will be sentenced in March. His prison time will range from 27 to 33 months, said assistant U.S. attorney Retta-Rae Randall.

Neither he nor his federal public defender, Kevin McCoy, could be reached late Friday afternoon for comment.

Randall said the plea bargain avoids a costly trial. "It saves us the money of proceedings and bringing in the witnesses and experts, and of putting the victims through all of this," she said. The victims include 15 local children, she added.

Willis ran a photography business called Mel's Imaging out of his apartment at 11407 Heritage Court, where

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*The plea agreement states that Melford Ray Willis posted close-ups of girls' faces and feet on the Internet page of "The Young Foot Lover's Adoration Society."*

---

he took a series of photographs and videos of children last summer and fall.

According to the written plea agreement, Willis ran a newspaper advertisement requesting models, to be paid \$40 an hour. He met with parents of young girls, telling them the photographs would be used in a children's poetry book written in England. The parents attended the modeling sessions and signed release forms. Willis also videotaped the children, telling parents the video would capture shots his still camera missed.

The girls were clothed during the sessions but prosecutors said Willis captured footage of the girls' crotches and underwear when they adjusted their skirts.

The agreement states that Willis posted close-ups of the girls' faces and feet on the Internet page of "The Young Foot Lover's Adoration Society." The photos were used to advertise videotapes of the

children for \$50 each. The web site noted that there were many barefoot scenes and close-ups.

The original indictment said five men paid for the videos over the Internet, but in the agreement Willis admitted to just one customer. Willis received orders for the videos over his electronic mail address.

In connection with the child pornography charge, investigators found 7,000 pictures of children ages 3 to 16 on his computer hard drive, prosecutors said. None of them were taken during local photo sessions. Willis downloaded them from the Internet. More than 100 were pornographic, the agreement said.

nude

Note: more than 500 of the images found on Willis computer were deemed child pornography under federal standards, the other 8000 were photographs of nude juvenile females.

# Former UAF worker pleads innocent in child-porn case

The Associated Press

**FAIRBANKS** — A former University of Alaska Fairbanks employee has pleaded innocent in federal court to three felony counts of possessing child pornography.

William Tuttle, 47, is accused of downloading the pornography at his work station last summer while employed at the university.

Tuttle was not required to post \$5,000 in bail after his initial appearance Thursday before U.S. District Judge Harry Branson.

State prosecutors dropped their misdemeanor charges against Tuttle after he was indicted by the federal government last month. He also had pleaded innocent in that case.

Tuttle's lawyer, William Satterberg, claims university officials had no right to

search his client's computer or download images from computer discs that were kept in a filing cabinet.

Satterberg wanted the evidence thrown out when he was dealing with the case in state court, but Superior Court Judge Charles Pengilly disagreed and ruled that university officials had the right to monitor computer traffic.

Tuttle then asked the state Court of Appeals to overturn Pengilly's decision. But the appellate court dismissed the petition for review after the federal indictment came down.

Federal authorities were not aware of Tuttle until December, when investigator Lantz Dahlke of the Alaska State Troopers attended a conference in Anchorage.

One of the speakers was assistant U.S. attorney

Steven Skrocki, who discussed the application of federal statutes in child pornography cases.

Dahlke told Skrocki about the case.

In a December interview with the Fairbanks Daily News-Miner, Skrocki said his office would have taken the case originally but hadn't been contacted.

Tuttle faces up to 15 years in prison if convicted of the federal charges.

## UAF worker faces more porn charges

The former University of Alaska Fairbanks carpenter facing misdemeanor criminal charges in state court for possession of child pornography was indicted by a federal grand jury Wednesday on three federal felony charges stemming from the same incident. William Tuttle, 47, was arrested and fired this past summer after the pornography reportedly was found on his computer at work. Tuttle pleaded innocent to the state charges and maintains that he had logged on to the Internet during working hours to show co-workers that computer pornography is easily accessible. Under state law, possession of child pornography is punishable by up to a year in jail and a \$1,000 fine. Under federal law, the felony offense carries up to a five-year prison term and a fine of up to \$250,000 for each offense. Federal prosecutors said Tuttle had three computer Zip disks that contained multiple images of child pornography.

## Senate Passes Child Porn Bill

Possession of such materials would be fourth-degree felony under proposed law

By Peter Eichstaedt  
Journal Capitol Bureau

SANTA FE -- Possession of child pornography would be a felony under a bill passed Monday by the state Senate after three hours of debate.

Senate Bill 15, sponsored by Sen. Phil Maloof, D-Albuquerque, was approved first by a vote of 34 to 5. The bill now goes to the House.

The Senate rejected a number of amendments, including one to make possession of child pornography punishable by death, but adopted others to exclude "erotic clothed dancing" and viewing of child pornography on a computer screen.

As the bill stands, possession of child pornography would be a fourth-degree felony, punishable by a fine and up to 18 months in jail.

"I think it is long overdue," Maloof said of the bill.

Current law bans the production and distribution of child pornography, but not the possession of such material Maloof said.

New Mexico is one of only eight states that does not ban possession of such material, Maloof said. Police need the new law to help control such material, he said.

The bill bans possession of material that depicts sex acts or the simulation of sex acts if a person knows the subjects are under the age of 18.

Sen. Tim Jennings, D-Roswell, was among several senators who complained that because the bill included "simulation" of sex acts, it was too broadly written. Jennings said the bill apparently would ban the possession of a tape of the late Elvis Presley as a teen-ager shaking his hips.

Despite his concerns, Jennings attempted to make the crime subject to the death penalty.

"I think we should kill them," Jennings said. People who deal in child pornography cannot be rehabilitated, he said.

"You can't fix people who exploit children," Jennings said. "I don't want them around. What this does is solve a problem and solve it once and for all."

Sen. Joe Carraro, R-Albuquerque, agreed, saying that once a child is subjected to sexual exploitation that child's spirit and self-worth are killed. "What you've done is kill that child," he said.

Sen. Bill Davis, R-Albuquerque, said Jennings' proposal was out of line because it would make possession of pornography subject to a more stiff

penalty than production and distribution of it.

Jennings' amendment failed by vote of 14 in favor and 26 against.

The Senate also narrowly rejected, 19 to 20, an amendment by Sen. Manny Aragon, D-Albuquerque, to make "simulated" sex acts permissible and to reduce the penalty for possession to a misdemeanor rather than a felony.

Aragon complained that the bill was so broadly worded that legitimate films such as "Blue Lagoon," which is about a teen-age boy and girl shipwrecked on an island, could be banned.

Aragon said that most people have a good idea what is defined as child pornography but more specific definitions need to be put in the law.

Malooof argued that Aragon's amendment would tie the hands of law enforcement officials and make the law unenforceable. "This amendment really waters the bill down," Malooof said, before the amendment was killed.

Voting against the bill were Aragon and Sens. William Davis, R-Albuquerque; Michael Sanchez, D-Belen; Arthur Rodarte, D-Ojo Caliente; and Leonard Tsosie, D-Crownpoint.

Material from The Associated Press was used in this report.

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 4/29/98

ISSUE: Amend #1 - SB323

|                          | YEA | NAY | PRESENT |
|--------------------------|-----|-----|---------|
| Representative Rokeberg  |     | ✓   |         |
| Representative Porter    |     | ✓   |         |
| Representative James     |     | ✓   |         |
| Vice Chair Bunde         |     | ✓   |         |
| Representative Berkowitz | ✓   |     |         |
| Representative Croft     | ✓   |     |         |
| Chairman Green           |     | ✓   |         |
| <b>TOTALS:</b>           |     |     |         |

PASSED \_\_\_\_\_

FAILED ✓