

**SB**

**323**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/12/98

FURTHER: S/C 3/25/98

DATE TURNED  
IN TO OFFICE: 25 March 98

Finance Committee considered **SENATE BILL NO. 323**

"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."

and recommends:

- be replaced with        CS 323 (FIN)
- adopt previous        CS        (      )
- attached amendment(s)
- adopt Letter of Intent by        Committee
- further referral to the        Committee

**Senate Bill:**

- same title
- new title
- House Bill:**
- same title
- technical title
- new: SCR#

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
Co-Chair: <i>[Signature]</i>	✓	Co-Chair: <i>[Signature]</i>			
Co-Chair: <i>[Signature]</i>	✓	Co-Chair: <i>[Signature]</i>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
#1 DoA, Public Defenders	3/11/98		*
#2 Corrections	3/10/98		48.4

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
→			
→			

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 2  
Bill Version: SB323  
(S) Publish Date: 3/12/98

Revision Date (Note if correction) \_\_\_\_\_ 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	48.4	48.4	48.4	48.4	48.4	48.4
<b>TOTAL OPERATING</b>	<b>48.4</b>	<b>48.4</b>	<b>48.4</b>	<b>48.4</b>	<b>48.4</b>	<b>48.4</b>

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 CF	48.4	48.4	48.4	48.4	48.4	48.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>48.4</b>	<b>48.4</b>	<b>48.4</b>	<b>48.4</b>	<b>48.4</b>	<b>48.4</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Phone 465-3307  
Date 3/10/98  
Date 3/10/98

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FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION  
DEPARTMENT OF CORRECTIONS

BILL NO. SB 323  
PAGE 2 of 2  
DATE 3/10/98

#2

Section 3 of this legislation would increase the penalty for one form of indecent exposure from a misdemeanor to a class B 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. The Department of Law anticipates first time offenders convicted under the proposed felony provision would receive a sentence of 90 days, resulting in a net gain of 32 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 32 days = Annual cost of \$9,606  
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. The Department of Corrections is unable to estimate the impact of this section. Current data from the Dept. of Corrections does not indicate that anyone was charged and convicted for distribution of child pornography in 1996 or 1997. This section will have an impact due to the severity of the penalty increase which would go from a possible sentence of 5 years to a possible sentence of 10 years.

Section 6 of this legislation increases the penalties for possession of child pornography from a class A misdemeanor to a class B felony. The Dept. of Corrections estimates two prisoners a year will be convicted of possession of child pornography. It is estimated they will be sentenced to 365 days in prison, or 243 days actual time served after statutory good time is subtracted. Of the 243 days, 60 days are subtracted for the sentence that would be served under the current statute.

2 prisoners X \$100.07 per day 183 days = \$36,625  
2 prisoners X \$450 per PSI = \$900

Total annualized cost for Senate Bill 323 is \$48,481

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  
BRU: 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	**	**	**	**	**	**
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CHANGE IN REVENUES ( )	**	**	**	**	**	**
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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

\*1

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.

SENATE FINANCE  
COMMITTEE

Amendment Number: 1  
Bill Number: SB 323  
Sponsor: Pearce Date: 3/23/98  
Logged In By: Mindy

0-LS1553B.1  
Luckhaupt ✓  
3/21/98

A M E N D M E N T

OFFERED IN THE SENATE  
TO: CSSB 323(JUD)

*moved*  
BY SENATOR PEARCE  
*no objection / adopted*

1 Page 4, lines 26 - 29:

2 Delete all material and insert:

3 "(3) "sex offense" means a crime, or an attempt to commit a crime,  
4 under AS 11.41.410 - 11.41.438, 11.41.450 - 11.41.458, 11.41.460 if the indecent  
5 exposure is before a person under 16 years of age [11.41.450, 11.41.455],  
6 AS 11.61.125, 11.61.127, AS 11.66.110, former AS 11.15.120 or 11.15.134, or former  
7 AS 11.40.110 or 11.40.200, or a similar law in another jurisdiction;"

amend #2 conceptual  
Sec # 13 & #14 dwellers  
teachers for return to  
classroom - move Sen.  
Pearce  
no objection - adopted

**CS FOR SENATE BILL NO. 323(JUD)**

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

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

Offered: 3/12/98  
Referred: Finance

Sponsor(s): SENATORS PEARCE, Taylor

**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 - 11.41.455], 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 B 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 C felony [CLASS A MISDEMEANOR]. Indecent exposure in the  
 23 second degree before a person 16 years of age or older is a class A [CLASS B]  
 24 misdemeanor.

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

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

27 \* Sec. 6. AS 11.61.127(c) is amended to read:

28 (c) Possession of child pornography is a class B felony [CLASS A  
 29 MISDEMEANOR].

30 \* Sec. 7. AS 12.10.020(c) is amended to read:

31 (c) Even if the general time limitation has expired, a prosecution under

1        AS 11.41.410 - 11.41.458 [AS 11.41.410 - 11.41.455], AS 11.66.110 - 11.66.130, or  
 2        former AS 11.41.430, for an offense committed against a person under the age of 18,  
 3        may be commenced at any time.

4        \* Sec. 8. AS 12.25.030(b) is amended to read:

5                (b) In addition to the authority granted by (a) of this section, a peace officer

6                        (1) shall make an arrest under the circumstances described in  
 7        AS 18.65.530;

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

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

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

15                      (C) violated a condition of release imposed under AS 12.30.025  
 16        or 12.30.027;

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

19                      (A) committed a crime under or violated conditions imposed as  
 20        part of the person's release before trial on misdemeanor charges brought under  
 21        AS 11.41.270.

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

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

30        \* Sec. 9. AS 12.40.110(a) is amended to read:

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

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

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

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

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

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

10 \* Sec. 10. AS 12.55.025(h) is amended to read:

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

16 \* Sec. 11. AS 12.55.155(c)(18) is amended to read:

17 (18) the offense was a felony

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

21 (B) specified in AS 11.41.410 - 11.41.458 [AS 11.41.410 -  
 22 11.41.455] and the defendant has engaged in the same or other conduct  
 23 prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or  
 24 another victim;

25 \* Sec. 12. AS 12.63.100(3) is amended to read:

26 (3) "sex offense" means a crime, or an attempt to commit a crime,  
 27 under AS 11.41.410 - 11.41.438, 11.41.450 - 11.41.460, [11.41.450, 11.41.455,]  
 28 AS 11.61.125, 11.61.127, AS 11.66.110, former AS 11.15.120 or 11.15.134, or former  
 29 AS 11.40.110 or 11.40.200, or a similar law in another jurisdiction;

30 \* Sec. 13. AS 14.20.020(f) is amended to read:

31 (f) Except as otherwise provided in this subsection, the department may not

1 issue a teacher certificate to a person who has been convicted of a crime involving a  
 2 minor under AS 11.41.410 - 11.41.460 [AS 11.41.434 - 11.41.440, 11.41.455, OR  
 3 11.41.460], or under a law in another jurisdiction with elements substantially similar  
 4 to an offense described in AS 11.41.410 - 11.41.460 [AS 11.41.434 - 11.41.440,  
 5 11.41.455, OR 11.41.460]. When five years have elapsed after a person has received  
 6 an unconditional discharge for a conviction of a crime listed in this subsection, the  
 7 person may petition the department to issue the certificate in spite of the conviction  
 8 if the person otherwise satisfies the requirements for the certificate. When deciding  
 9 whether to grant or deny the petition, the department shall consider the nature of the  
 10 particular crime, whether and to what extent the person has been rehabilitated, and the  
 11 other factors that the department determines are significant.

12 \* Sec. 14. AS 14.20.030(b) is amended to read:

13 (b) The commissioner or the Professional Teaching Practices Commission shall  
 14 revoke for life the certificate of a person who has been convicted of a crime involving  
 15 a minor under AS 11.41.410 - 11.41.460 [AS 11.41.434 - 11.41.440, 11.41.455, OR  
 16 11.41.460], or under a law in another jurisdiction with elements substantially similar  
 17 to an offense described in AS 11.41.410 - 11.41.460 [AS 11.41.434 - 11.41.440,  
 18 11.41.455, OR 11.41.460]. When five years have elapsed after the person has received  
 19 an unconditional discharge for the conviction, the person may petition the commission  
 20 for recertification. When deciding whether to grant or deny the petition, the  
 21 commission shall consider the nature of the particular crime, whether and to what  
 22 extent the person has been rehabilitated, and the other factors that the commission  
 23 determines are significant.

24 \* Sec. 15. AS 28.15.046(c) is amended to read:

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

28 (1) sexual abuse of a minor in any degree under AS 11.41.434 -  
 29 11.41.440;

30 (2) sexual assault in any degree under AS 11.41.410 - 11.41.425  
 31 [AS 11.41.410 OR 11.41.420];

- 1 (3) incest under AS 11.41.450;
- 2 (4) unlawful exploitation of a minor under AS 11.41.455;
- 3 (5) contributing to the delinquency of a minor under AS 11.51.130;
- 4 (6) a felony involving possession of a controlled or imitation controlled
- 5 substance under AS 11.71 or AS 11.73;
- 6 (7) a felony or misdemeanor involving distribution of a controlled or
- 7 imitation controlled substance under AS 11.71 or AS 11.73;
- 8 (8) promoting prostitution in the first or second degree under
- 9 AS 11.66.110 or 11.66.120;
- 10 (9) indecent exposure in the first or second degree under
- 11 AS 11.41.458 or AS 11.41.460.

12 \* Sec. 16. AS 47.17.020(e) is amended to read:

13 (e) The department shall immediately notify the nearest law enforcement

14 agency if the department

15 (1) concludes that the harm was caused by a person who is not

16 responsible for the child's welfare;

17 (2) is unable to determine

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

19 (B) whether the person who is believed to have caused the harm

20 has responsibility for the child's welfare; or

21 (3) concludes that the report involves

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

23 [AS 11.41.410 - 11.41.455]; or

24 (B) abuse or neglect that results in the need for medical

25 treatment of the child

26 \* Sec. 17. Rule 6(r)(2), Alaska Rules of Criminal Procedure, is amended to read:

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

28 [AS 11.41.410 - 11.41.440 OR 11.41.455], hearsay evidence of a statement related to

29 the offense, not otherwise admissible, made by a child who is the victim of the offense

30 may be admitted into evidence before the grand jury if

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

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

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

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

7 \* **Sec. 18. APPLICABILITY OF SECTION 12.** (a) A sex offender with only one  
8 conviction for a sex offense that is a violation of AS 11.41.460 or AS 11.61.127 who has been  
9 unconditionally discharged from that sex offense before July 1, 1984, is not required to  
10 register under or otherwise comply with AS 12.63. A sex offender who has been  
11 unconditionally discharged from a sex offense that is a violation of AS 11.41.460 or  
12 AS 11.61.127 on or after July 1, 1984, but before the effective date of this Act, shall register  
13 under and otherwise comply with AS 12.63 by July 1, 1998. A sex offender with two or more  
14 convictions for a sex offense before the effective date of this Act, regardless of whether the  
15 sex offender was unconditionally released from the sex offense before, on, or after July 1,  
16 1984, who was not required to register under sec. 12, ch. 41, SLA 1994, shall register under  
17 and otherwise comply with AS 12.63 by July 1, 1998.

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

20 (c) In this section, "sex offender" and "sex offense" have the meanings given by  
21 AS 12.63.100, as amended by sec. 12 of this Act.

22 \* **Sec. 19. APPLICABILITY OF SECTIONS 3 - 6.** Sections 3 - 6 of this Act apply to  
23 offenses committed on or after the effective date of this Act.

24 \* **Sec. 20.** This Act takes effect immediately under AS 01.10.070(c).