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**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 2/16/98

FURTHER: Finance

Date of 5-Day Notice: 3-5-98  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 3-12-98

Judiciary 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 FOR SB 323 ( JUD )
- 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>	X		
<i>[Signature]</i>	✓	<i>[Signature]</i>	X		
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department      Date      Zero      Fiscal

SB #	ADMIN. PUBLIC DEF.	3-11-98	✓	***
SB #	CORRECTIONS	3-10-98		48.4

CS FN  
Forthcoming

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

Department      Date      Zero      Fiscal


APPROPRIATE

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 2  
Bill Version: SB 323  
(S) Publish Date: 3/12/98

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

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

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF	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 <u>Bruce Richards</u>	Phone <u>465-3307</u>
Division <u>Commissioner's Office</u>	Date <u>3/10/98</u>
Approved by Commissioner Margaret M. Pugh <u>Margaret M. Pugh</u>	Date <u>3/10/98</u>
Agency <u>Department of Corrections</u>	

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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

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

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.

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:  
Referred:

Sponsor(s): SENATOR PEARCE

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 11.65.110, 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).

# Alaska State Legislature



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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 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 offenses for possession and distribution of child pornography to class B felony offenses, 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, making it the offense of a Class B 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 increased to a class C felony when committed before a person under 16 years of age, and a class A 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 and second degree, and the possession of child pornography. Currently, only offenders who distribute 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. SB 323 is intended to help protect our children by inhibiting the creation and distribution of child pornography. Strengthening the penalties for these crimes sends a clear message that the degradation and exploitation of our children will not be tolerated.

# 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

*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.

"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 05 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

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 323

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 GF	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 Phone 465-3307  
 Division Commissioner's Office Date 3/10/98  
 Approved by Commissioner Margaret M. Pugh Margaret M. Pugh Date 3/10/98  
 Agency Department of Corrections

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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

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



Rick Mjstrom,  
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

# 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.

## 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
Alabama  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	
Alaska  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
Arizona  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
Arkansas  16	§ 5-27-304(a)(2) Class C Felony-- 1st offense. Class B Felony-- subsequent offenses.	§ 5-27-304(u)(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)(u)	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
Florida  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
Georgia  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.
Hawaii  16 §707-750(2)	NONE	NONE	§707-750 Class A Felony §707-751 Class C Felony	NONE
Idaho  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	
Illinois 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).
Indiana  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.	
Iowa  18	§728.12.3 (purchase or possess) 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
Kansas  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
Kentucky  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.	
Louisiana  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.
Maine 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>Massachusetts</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 receipt 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 damages 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 receipt 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
New Mexico  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
New York  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
North Carolina  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) ( <i>recepti</i> ) Class F Felony	NONE	§14-190.17(u)(1). Class F Felony. §14-190.16. Class E Felony.	NONE
North Dakota  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
<p><b>Ohio</b></p> <p>18 §2907.01(M)</p> <p>Inference of Age §2907.321(B)(3) &amp; 322(B)(3).</p> <p>Mistake of Age not a Defense §2907.321(B)(2) &amp; 322(B)(2).</p>	<p>§2907.321(A)(5) (obscene material) 4th Degree Felony; Subsequent Offense is a 3rd Degree Felony.</p> <p>§ 2907.322(A)(5) (sexually explicit material) 5th Degree Felony Subsequent offense is a 4th Degree Felony.</p> <p>§ 2907.323(A)(3) (nudity) 5th Degree Felony. Subsequent offense is a 4th Degree Felony.</p>	NONE	<p>§2907.321(A) (obscene material) 2nd Degree Felony.</p> <p>§2907.322 (A) (1996) (sexually explicit material), 2nd Degree Felony.</p> <p>§2907.323(A)(1)-(2) (nudity) 2nd Degree Felony.</p>	NONE
<p><b>Oklahoma</b></p> <p>18 21 §1021.2.</p>	21 § 1021.2 Felony: 20 Years and/or \$25K	NONE	21 § 1021.2 Felony: 20 Years and/or \$25K	21 § 1021.4 (LTR)
<p><b>Oregon</b></p> <p>18 §163.665</p> <p>Mistake of Age Defense §163.690.</p>	§ 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
<p><b>Pennsylvania</b></p> <p>17 18 §6312(B).</p>	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
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
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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.J.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
Wisconsin  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
Wyoming  18 §14-3-202.	NONE	NONE §6-4-302 prohibits the possession of <i>obscenity</i> with intent to distribute	§27-6-114(n)(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

## 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.

Maloof 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," Maloof 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.

## Ontario County Man Who Transmitted Child Porn Nets Jail Time

Wednesday, December 17, 1997

Attorney General Dennis C. Vacco announced that an Ontario County man who transmitted pornographic images of children over the Internet was sentenced today to 30 days in jail and 5 years probation.

Martin Dano, 35, of West Bloomfield, was arrested last August by investigators from Attorney General Vacco's office and the New York State Police and charged with sending and receiving child pornography via America Online.

In October, Dano pleaded guilty to a single count of Possession of a Sexual Performance by a Child, a class "E" felony.

In addition to the jail sentence, Ontario County Court Judge James R. Harvey ordered Dano to pay a \$1,000 fine and required him to register as a sex offender under Megan's Law.

Judge Harvey, who today Dano had used the Internet for "despicable purposes," furthermore ordered Dano to stay away from children under 17 years of age, and to undergo sex counseling.

"Martin Dano and others who trade in these graphic images create and perpetuate the demand for child pornography, one of the vilest forms of child abuse," said Attorney General Vacco.

"Judge Harvey's decision to sentence Martin Dano to jail time sends a clear message to others on the Internet that the degradation and exploitation of children will not be tolerated," Attorney General Vacco continued.

The first Ontario County man nabbed in Attorney General Vacco's sting, called "Operation Rip Cord," Dano is also the first in the state to be sentenced to jail.

"I strongly urge other judges around the state to follow Judge Harvey's lead and dole out even stiffer sentences to those who trade in child pornography," said Attorney General Vacco.

"Operation Rip Cord," based in Attorney General Vacco's Buffalo office, is already credited with being the nation's largest and most successful on-line kiddie porn investigation.

The 20-month investigation has identified over 120 individuals who are suspected of sending child pornography over the Internet, resulting in at least fourteen arrests in New York, plus dozens of prosecution referrals to other law enforcement agencies across the United States and abroad.

"Employing traditional undercover tactics combined with state-of-the-art technology, my investigators have tapped into the child pornographers' on-line chat rooms, where graphic images are brazenly traded," explained Attorney General Vacco, who was recently named chairman of a nationwide task force to combat child porn.

"As the father of two young boys myself, these pornographic images are too disturbing to describe," Attorney General Vacco said. "In fact, one of my investigators became so upset over one particularly vile image that he ripped the computer's cord from the wall -- and that's how 'Operation Rip Cord' got its name."

# LEGAL SERVICES

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## MEMORANDUM

February 24, 1998

**SUBJECT:** Sectional Summary of SB 323

**TO:** Senator Drue Pearce  
Attn: Kristy Tibbles

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

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill adds indecent exposure in the first degree to the list of offenses covered by this limitation of actions provision.

Section 2 of the bill 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 of the bill creates the new offense of indecent exposure in the first degree,<sup>1</sup> 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.

Section 4 of the bill 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<sup>2</sup> to knowingly.<sup>3</sup>

Section 5 of the bill increases the penalty for distribution of child pornography to a class B felony from a class C felony.

Section 6 of the bill increases the penalty for possession of child pornography to a class B penalty from a class A misdemeanor.

### Section 6 of the bill

<sup>1</sup>A class B felony.

<sup>2</sup>"Intentionally" is defined at AS 11.81.900(a)(1).

<sup>3</sup>"Knowingly" is defined at AS 11.81.900(a)(2).

Section 7 of the bill provides that a prosecution for indecent exposure in the first degree may be commenced at any time.

Section 8 of the bill 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 9 of the bill 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 10 of the bill 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 11 of the bill provides an aggravating factor for a person convicted of indecent exposure in the first degree with previous sexual offense convictions.

Section 12 of the bill adds indecent exposure in the first and second degree and possession of child pornography to the list of sex offenses requiring sex offender registration.

Sections 13 and 14 of the bill adds the offenses of incest and indecent exposure in the first degree to the list of offenses that disqualify a person from receiving or holding a teaching certificate.

Section 15 of the bill 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 16 of the bill 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 17 of the bill amends Alaska Rule of Criminal Procedure 5 to correspond to the change made in sec. 9 of the bill.

Section 18 of the bill provides an applicability section necessary to cover the new offenders required to register as sex offenders under sec. 12 of the bill.

Section 19 of the bill provides an applicability section.

Section 20 of the bill provides an immediate effective date.