

HB

32

22-LS0270\C
Luckhaupt
3/7/01

Adopted

CS FOR HOUSE BILL NO. 32()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES HAYES, McGuire, Guess, Murkowski

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the forfeiture of property used to possess or distribute child
2 pornography, to commit indecent viewing or photography, to commit a sex offense, or to
3 solicit the commission of, attempt to commit, or conspire to commit possession or
4 distribution of child pornography, indecent viewing or photography, or a sexual
5 offense."

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

7 * **Section 1.** AS 11.41 is amended by adding a new section to read:

8 **Sec. 11.41.468. Forfeiture of property used in sexual offense.** (a) Property
9 used to aid a violation of AS 11.41.410 - 11.41.470 or to aid the solicitation of,
10 attempt to commit, or conspiracy to commit a violation of AS 11.41.410 - 11.41.470
11 may be forfeited to the state upon the conviction of the offender.

12 (b) In this section, "property" means computer equipment,
13 telecommunications equipment, photography equipment, video or audio equipment,

1 books, magazines, photographs, videotapes, audiotapes, and any equipment or device,
2 regardless of format or technology employed, that can be used to store, create, modify,
3 receive, transmit, or distribute digital or analog information, including images, motion
4 pictures, and sounds.

5 * **Sec. 2.** AS 11.61 is amended by adding a new section to read:

6 **Sec. 11.61.129. Forfeiture of property used in indecent viewing or**
7 **photography or child pornography.** (a) Property used to aid a violation of
8 AS 11.61.123 - 11.61.127 or to aid the solicitation of, attempt to commit, or
9 conspiracy to commit a violation of AS 11.61.123 - 11.61.127 may be forfeited to the
10 state upon the conviction of the offender.

11 (b) In this section, "property" has the meaning given in AS 11.41.468.

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

7 * **Section 1.** AS 11.41 is amended by adding a new section to read:

8 **Sec. 11.41.468. Forfeiture of property used in sexual offense.** Property,
9 other than real property, that contributes directly and materially to a violation of
10 AS 11.41.410 - 11.41.470 or to the solicitation of, attempt to commit, or conspiracy to
11 commit a violation of AS 11.41.410 - 11.41.470 may be forfeited to the state upon the
12 conviction of the offender.

13 * **Sec. 2.** AS 11.61 is amended by adding a new section to read:

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2 photography or child pornography. Property, other than real property, that
3 contributes directly and materially to a violation of AS 11.61.123 - 11.61.127 or to the
4 solicitation of, attempt to commit, or conspiracy to commit a violation of
5 AS 11.61.123 - 11.61.127 may be forfeited to the state upon the conviction of the
6 offender.

Amend #1

Line 9. p1

Line 1 p2

delete "used to aid"

insert

" other than real property,
that contributes directly
and materially to "

2.21.01

Not formally offered

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 32
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DPS
Title: Sex Crime and Pornography Forfeitures BRU: Alaska State Troopers
Sponsor: Representative Hayes Component: AST-Detachments
Requester: House Judiciary Component Number: 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-------------------------------|------------|------------|------------|------------|------------|------------|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to have a fiscal impact.

Prepared by: Lt. Steve Dunnagan Phone (907)269-4532
Division: Alaska State Troopers Date/Time 2/16/01 12:00 AM
Approved by: Commissioner Glenn G. Godfrey Date 2/16/01
Agency: Department of Public Safety

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 32

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Sex Crime and Pornography Forfeitures BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Joe Hayes
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| 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 (Specify Type) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of HB 32.

Prepared by: Douglas Wooliver *[Signature]* Phone 463-4750
 Division Alaska Court System Date/Time 2/15/01 12:46 p.m.
 Approved by: Stephanie Cole *[Signature]* Date 2/15/01
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

House Committees

Labor & Commerce
Military & Veterans Affairs
State Affairs
Regulation Review

Alaska State Legislature Representative Joe Hayes

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(907) 465-3466 / Fax: 465-2937

Sponsor Statement

HB 32, Sex Crimes and Pornography Forfeitures

As the use of computers and the Internet expands so too do crimes involving the use of these technologies. One area of particular concern is sex crimes against children. Adults prone to abusing children will use the Internet to solicit a minor for sex or to set up a meeting with a child in order to rape or abuse the child. Further, many people, who are inclined to distribute or view child pornography, are now using their computers to do so. These are new technologies and the state still has relatively few tools for dealing with criminals using these technologies. HB32 provides us with another tool to use in combating sexual predators.

Across the country and at the federal level there are forfeiture laws in place. Several other states already have laws on the books specifically relating to the forfeiture of computers used in sex crimes. The use of computers in sex crimes is a national problem. As more and more states pass forfeiture legislation it is becoming increasingly obvious that this is a useful and valuable tool in the fight against computer crimes.

HB32 would make it possible for the police to stay on top of this rapidly changing industry without spending more state dollars. Advances in computer technologies seem to happen on a daily basis. New technology can often "outwit" last year's model, leaving the police at a large disadvantage in their attempt to curb crimes committed with the aid of the newest technology. In order for the police to combat computer and Internet crimes effectively it is imperative that they be constantly provided with new hardware.

Under AS 12.55.015 (c) the court may award forfeited property or a percentage of it to any municipal law enforcement agency involved in the arrest or conviction of the defendant. This would allow the courts to pass on seized property to the police so that the police can stay up to date with available technology in a cost-effective manner.

HB 32 is designed to help protect our children in a twofold manner: 1) forfeiture is a proven tool in the fight against crime, and 2) the forfeited property can be given to our local law enforcement agencies in order to help make sure that they have the necessary tools to protect our children. I ask for your support in passing this legislation.

District 30

representative_joe_hayes@legis.state.ak.us

House Committees


Labor & Commerce
Military & Veterans Affairs
State Affairs
Regulation Review

Alaska State Legislature
**Representative
Joe Hayes**

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Memorandum

To: Representative Rokeberg, Chair House Judiciary Committee
From: Representative Joe Hayes 
Date: February 6, 2001
Re: Sectional Analysis, HB32

Section 1. Adds a new section that authorizes forfeiture of property used to aide in the commission of a sexual offense under AS 11.41.410 – 11.41.470 including inchoate forms of those sexual offenses.

Section 2. Adds a new section that authorizes forfeiture of property used to aide in the commission of indecent photography or child pornography under AS 11.61.123 – 11.61.127 including inchoate forms of those offenses.

whereabouts and the child's whereabouts hidden from his wife and the authorities; this conduct was sufficient to constitute that actus reus of the offense of custodial interference: the keeping of the child with no legal right to do so. *Strother v. State*, 891 P.2d 214 (Alaska Ct. App. 1995).

Protracted period. — See note under same catchline, AS 11.41.320, *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Sec. 11.41.370. Definitions. In AS 11.41.300 — 11.41.370, unless the context requires otherwise,

(1) "lawful custodian" means a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another;

(2) "relative" means a parent, stepparent, ancestor, descendant, sibling, uncle, or aunt, including a relative of the same degree through marriage or adoption;

(3) "restrain" means to restrict a person's movements unlawfully and without consent, so as to interfere substantially with the person's liberty by moving the person from one place to another or by confining the person either in the place where the restriction commences or in a place to which the person has been moved; a restraint is "without consent" if it is accomplished

(A) by acquiescence of the restrained person, if the restrained person is under 16 years of age or is incompetent and the restrained person's lawful custodian has not acquiesced in the movement or confinement; or

(B) by force, threat, or deception. (§ 3 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

NOTES TO DECISIONS

Restraint by deception. — The jury could have concluded that defendant had secured victim's presence in his van through deception — by luring her with false promises of information concerning a child custody dispute — thereby committing an act of restraint. *State v. McDonald*, 872 P.2d 627 (Alaska Ct. App. 1994).

Defense that victim was defendant's relative. — The new criminal code, which states in AS 11.41.300(b)(1) that it is an affirmative defense that defendant was a relative of the victim, provides for a

broader exemption from the kidnapping statute than the absolute exemption for the abduction of a minor by his parent under former AS 11.15.260. *Crump v. State*, 625 P.2d 857 (Alaska 1981).

Quoted in *Alam v. State*, 793 P.2d 1081 (Alaska Ct. App. 1990).

Stated in *Strother v. State*, 891 P.2d 214 (Alaska Ct. App. 1995).

Cited in *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Article 4. Sexual Offenses.

Section

- 410. Sexual assault in the first degree
- 420. Sexual assault in the second degree
- 425. Sexual assault in the third degree
- 427. Sexual assault in the fourth degree
- 432. Defenses
- 434. Sexual abuse of a minor in the first degree
- 436. Sexual abuse of a minor in the second degree
- 438. Sexual abuse of a minor in the third degree

Section

- 440. Sexual abuse of a minor in the fourth degree
- 445. General provisions
- 450. Incest
- 455. Unlawful exploitation of a minor
- 458. Indecent exposure in the first degree
- 460. Indecent exposure in the second degree
- 470. Definitions

Cross references. — For provisions concerning evidence and procedure in certain sexual offense cases, see AS 12.45.045 and 12.45.046.

For authority of court to order a defendant to submit to a blood test when sexual penetration is an element of the offense, see AS 18.15.300.

NOTES TO DECISIONS

Origin. — The Alaska Revised Code provisions defining sexual offenses are based on a proposed

Michigan Code. *Reynolds v. State*, 664 P.2d 621 (Alaska Ct. App. 1983).

Prohibiting suspension against the granting of sentence applies to persons to commit one of the sex

Collateral references §§ 1-12; 65 Am. Jur. 2d, R 2d, Sodomy, § 1 et seq.

42 C.J.S., Incest, §§ 1-1 97; 75 C.J.S., Rape, § 1 et et seq.

Anthony Morosco, *The Sex Crimes* (Matthew Be Entrapment to commit 1194.

Incest as included with 484.

Criminal responsibility assault to commit rape, (ALR4th 105.

Fraud or impersonation Impotency as defense t rape, or assault with inter 1351.

Rape or similar offense woman who is allegedly r 1227.

Consent as defense in ALR3d 636.

Multiple instances of f same defendant and sam multiple crimes of rape, 81 A

What constitutes offe ALR3d 1250.

Sec. 11.41.410. § crime of sexual assa

(1) the offender e that person;

(2) the offender a consent of that pers

(3) the offender e

(A) who the offen

(B) who is in the

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(A) the offender i

(B) the offense te

(b) Sexual assau

provided in AS 12.5

1982; am § 10 ch 7

ch 79 SLA 1992; an

Cross references. — conduct in trials of sex attempt to commit sexu AS 12.45.045.

Effect of amendme

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

Effect of amendments. — The 1991 amendment, effective September 16, 1991, deleted paragraph (a)(6) and made related stylistic changes.

NOTES TO DECISIONS

Proof of caller's intent to harass or annoy required. — Paragraph (a)(4) does not punish speech simply because it is anonymous. While the anonymity of the caller is itself a circumstance raising discomfort and fear in the receiver of the call, nevertheless the statute requires proof of an additional element: that the caller's purpose was to annoy or harass the other person. *McKillop v. State*, 857 P.2d 358 (Alaska Ct. App. 1993).

Only calls without legitimate purpose prohibited. — When paragraph (a)(4) of this section is read in conjunction with AS 11.81.900(a)(1) (intentionality), the statute is theoretically broad enough to punish political speech or other legitimate communication upon proof that one of the speaker's subsidiary motives was to annoy the listener. Because the scope of the statute is potentially so broad, paragraph (a)(4) of this section must be interpreted to prohibit telephone calls only when the call has no legitimate communicative purpose, when the caller's speech is devoid of

any substantive information, and the caller's sole intention is to annoy or harass the recipient. *McKillop v. State*, 857 P.2d 358 (Alaska Ct. App. 1993).

Failure to disclose identity makes call anonymous. — The defendant's telephone calls were anonymous even though he disclosed his motel's telephone number and his room number, because he failed to disclose his identity. *McKillop v. State*, 857 P.2d 358 (Alaska Ct. App. 1993).

For case construing former AS 11.45.035 relating to illegal use of telephones, see *Anniskette v. State*, 489 P.2d 1012 (Alaska 1971).

Quoted in *Allen v. State*, 759 P.2d 541 (Alaska Ct. App. 1988).

Cited in *Brower v. State*, 728 P.2d 645 (Alaska Ct. App. 1986); *Royster v. State*, 800 P.2d 944 (Alaska Ct. App. 1990); *Petersen v. State*, 930 P.2d 414 (Alaska Ct. App. 1996); *Jacko v. State*, 981 P.2d 1075 (Alaska Ct. App. 1999).

Collateral references. — Misuse of telephones as disorderly conduct, 97 ALR2d 504; 95 ALR3d 411.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass, 95 ALR3d 411.

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state, 37 ALR4th 852.

Sec. 11.61.123. Indecent viewing or photography. (a) A person commits the crime of indecent viewing or photography if, in the state, the person knowingly views, or produces a picture of, the private exposure of the genitals, anus, or female breast of another person and the view or production is without the knowledge or consent of

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

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

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

(c) This section does not apply to viewing or photography conducted by a law enforcement agency for a law enforcement purpose.

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

(e) In this section,

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

(2) "private exposure" means that a person has exposed the person's body or part of the body in a place, and under circumstances, that the person reasonably believed would not result in the person's body or body parts being (A) viewed by the defendant; or (B) produced in a picture; "private exposure" does not include the exposure of a person's body or body parts in a law enforcement facility, correctional facility, designated treatment

ed. *Anniskette v. State*,

ch prohibited under
: statute, see *Anniskette*
ka 1971).

ing public officer. —
language nor constitu-
tion as including within
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1012 (Alaska 1971).
nally offended by defen-
t render the defendant's
v. State, 489 P.2d 1012

able cause to arrest
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(Alaska Ct. App. 1990).
t order to seize prop-
in forcibly resisting state
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825 P.2d 909 (Alaska Ct.

mer AS 11.40.080, pro-
nd exhibition, see E.L.L.
a 1977).
te, 703 P.2d 415 (Alaska
ate, 718 P.2d 160 (Alaska
v. State, 754 P.2d 757

765 P.2d 982 (Alaska Ct.
ity of Kodiak, 2 P.3d 78

g statutes or ordinances
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lerly conduct, 14 ALR4th

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am § 10 ch 61 SLA

facility, or a juvenile detention facility; in this paragraph, "correctional facility" has the meaning given in AS 33.30.901, "designated treatment facility" has the meaning given in AS 47.30.915, and "juvenile detention facility" has the meaning given in AS 47.12.990.

(f) Indecent viewing or photography is a

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

(2) class A misdemeanor if the person viewed or shown in a picture was, at the time of the viewing or production of the picture, an adult. (§ 1 ch 29 SLA 1995; am § 5 ch 33 SLA 1999)

Revisor's notes. — Subsection (f) was enacted as (c) and subsections (c)-(e) were enacted as (d)-(f), respectively. Relettered in 1995.

Effect of amendments. — The 1999 amendment, effective May 28, 1999, made a section reference substitution at the end of paragraph (e)(2).

Effective dates. — Section 1, ch. 29, SLA 1995, which enacted this section, took effect on August 13, 1995.

Editor's notes. — Under § 2, ch. 29, SLA 1995, this section "applies to all offenses committed on or after August 13, 1995."

Sec. 11.61.125. Distribution of child pornography. (a) A person commits the crime of distribution of child pornography if the person brings or causes to be brought into the state for distribution, or in the state distributes, or in the state possesses, prepares, publishes, or prints with intent to distribute, any material that visually or aurally depicts conduct described in AS 11.41.455(a), knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

(b) This section does not apply to acts that are an integral part of the exhibition or performance of a motion picture if the acts are performed within the scope of employment by a motion picture operator or projectionist employed by the owner or manager of a theater or other place for the showing of motion pictures, unless the motion picture operator or projectionist

(1) has a financial interest in the theater or place in which employed; or

(2) causes the performance or motion picture to be performed or exhibited without the consent of the manager or owner of the theater or other place of showing.

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

(d) In this section, "distribution" includes delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, exchanging, and placing on a computer network or computer system, whether or not for monetary or other consideration.

(e) Distribution of child pornography is a class B felony. (§ 2 ch 57 SLA 1983; am §§ 1, 2 ch 39 SLA 1985; am § 4 ch 161 SLA 1990; am §§ 5, 6 ch 81 SLA 1998; am § 15 ch 65 SLA 2000)

Revisor's notes. — Subsection (c) was enacted as (e). Relettered in 1998, at which time former (c) was relettered as (e).

Cross references. — For crime of unlawful exploitation of a minor, see AS 11.41.455.

For applicability provisions relating to the 2000 amendment of (d) of this section by sec. 15, ch. 65, SLA 2000, see sec. 18, ch. 65, SLA 2000 in the 2000 Temporary & Special Acts.

Effect of amendments. — The 1985 amendment in subsection (a) deleted "sale or" preceding "distribution" and "sell, or exhibit to others for commercial consideration" preceding "any material," inserted "in the state distributes, or," and substituted "in" for

"under" following "conduct described"; and added subsection (d).

The 1990 amendment inserted "or aurally" in subsection (a).

The 1998 amendment, effective June 11, 1998, substituted "class B felony" for "class C felony" in subsection (e) and added subsection (c).

The 2000 amendment, effective May 23, 2000, inserted "and placing on a computer network or computer system" in subsection (d).

Editor's notes. — Section 23, ch. 81, SLA 1998 provides that the 1998 enactment of subsection (c) and the 1998 amendment to subsection (e) "apply to offenses committed on or after June 11, 1998."

Cited in *Harris v. State*, App. 1990; *Rowe v. Bu*, Alaska 1994).

Collateral reference of statutes and of performance by child, 42

Sec. 11.61.127. 1 of possession of child visually or aurally production of the m in the conduct.

(b) This section c the course of a sex o AS 33.30.011(a)(5).

(c) Each film, a negative, slide, bo depicts conduct des the production of t engaged in the con

(d) Possession of 70 SLA 1995; am §

Revisor's notes. — § (d). Relettered in 1998, relettered as (d).

Effect of amendmen effective September 3, 1 substitution in subsecti

The 1998 amendment sserted "knowingly" in "class C felony" for "clas

Sec. 11.61.130. misconduct involv

(1) except as aut removes, conceals,

(2) the person er

(3) the person de

(b) Misconduct i

Collateral referenc Bodies, §§ 47-50.

25A C.J.S., Dead Bod Immunity from liabil dead body in operation mental unit or agency, :

Sec. 11.61.140. animals if the pers

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described"; and added sub-

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r "class C felony" in subsec-

tion (c).
effective May 23, 2000, in-
computer network or com-

tion 23, ch. 81, SLA 1998
ctment of subsection (c) and
subsection (e) "apply to of-
ter June 11, 1998."

NOTES TO DECISIONS

Cited in *Harris v. State*, 790 P.2d 1379 (Alaska Ct. App. 1990); *Rowe v. Burton*, 884 F. Supp. 1372 (D. Alaska 1994).

Collateral references. — Validity and construction of statutes and ordinances regulating sexual performance by child, 42 ALR5th 291.

Sec. 11.61.127. Possession of child pornography. (a) A person commits the crime of possession of child pornography if the person knowingly possesses any material that visually or aurally depicts conduct described in AS 11.41.455(a) knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

(b) This section does not apply to persons providing plethysmograph assessments in the course of a sex offender treatment program that meets the minimum standards under AS 33.30.011(a)(5).

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

(d) Possession of child pornography is a class C felony. (§ 1 ch 51 SLA 1994; am § 1 ch 70 SLA 1995; am §§ 7, 8, 9 ch 81 SLA 1998)

Revisor's notes. — Subsection (c) was enacted as (d). Relettered in 1998, at which time former (c) was relettered as (d).

Effect of amendments. — The 1995 amendment, effective September 3, 1995, made a section reference substitution in subsection (b).

The 1998 amendment, effective June 11, 1998, inserted "knowingly" in subsection (a); substituted "class C felony" for "class A misdemeanor" in subsec-

tion (d); and added subsection (c).

Effective dates. — Section 1, ch. 51, SLA 1994, which enacted this section, took effect on August 21, 1994.

Editor's notes. — Section 23, ch. 81, SLA 1998 provides that the 1998 amendments to subsections (a) and (d) and the 1998 enactment of subsection (c) "apply to offenses committed on or after June 11, 1998."

Sec. 11.61.130. Misconduct involving a corpse. (a) A person commits the crime of misconduct involving a corpse if

(1) except as authorized by law or in an emergency, the person intentionally disinters, removes, conceals, or mutilates a corpse;

(2) the person engages in sexual penetration of a corpse; or

(3) the person detains a corpse for a debt or demand or upon a lien or charge.

(b) Misconduct involving a corpse is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 22 Am. Jur. 2d, Dead Bodies, §§ 47-50.

25A C.J.S., Dead Bodies, §§ 8(2)-8(4).

Immunity from liability for unlawful treatment of dead body in operation of hospital by state or governmental unit or agency, 25 ALR2d 244.

Liability in damages for withholding corpse from relatives, 48 ALR3d 240.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 ALR3d 1071.

Sec. 11.61.140. Cruelty to animals. (a) A person commits the crime of cruelty to animals if the person

(1) knowingly inflicts severe physical pain or prolonged suffering on an animal;

(2) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;

(3) kills an animal by the use of a decompression chamber.

FORFEITURE IS REASONABLE, AND IT WORKS

Stefan D. Cassella*

Asset forfeiture has become one of the most powerful and important tools that federal law enforcement can employ against all manner of criminals and criminal organizations -- from drug dealers to terrorists to white collar criminals who prey on the vulnerable for financial gain. Derived from the ancient practice of forfeiting vessels and contraband in Customs and Admiralty cases, forfeiture statutes are now found throughout the federal criminal code.

Why do forfeiture?

Federal law enforcement agencies use the forfeiture laws for a variety of reasons, both time-honored and new. Like the statutes the First Congress enacted in 1789, the modern laws allow the government to seize contraband -- property that is simply unlawful to possess, like illegal drugs, unregistered machine guns, pornographic materials, smuggled goods and counterfeit money.

Forfeiture is also used to abate nuisances and to take the instrumentalities of crime out of circulation. For example, if drug dealers are using a "crack house" to sell drugs to children as they pass by on the way to school, the building is a danger to the health and safety of the neighborhood. Under the forfeiture laws, we can shut it down. If a boat or truck is being used to smuggle illegal aliens across the border, we can forfeit the vessel or vehicle to prevent its use time and again for the same purpose. The same is true for an airplane used to fly cocaine from Peru into Southern California, or a printing press used to mint phony \$100 bills.

The government also uses forfeiture to take the profit out of crime, and to return property to victims. No one has the right to retain the money gained from bribery, extortion, illegal gambling, or drug dealing. With the forfeiture laws, we can separate the criminal from his profits -- and any property traceable to it -- thus removing the incentive others may have to commit similar crimes tomorrow. And if the crime is one that has victims -- like carjacking or fraud -- we can use the forfeiture laws to recover the property and restore it to the owners far more effectively than the restitution statutes permit.

Finally, forfeiture undeniably provides both a deterrent against crime and as a measure of punishment for the criminal. Many criminals fear the loss of their vacation homes, fancy cars, businesses and bloated bank accounts far more than the prospect of a jail sentence. In fact, in many cases, prosecution and incarceration are not needed to achieve the ends of justice. Not every criminal act must be answered with the slam of the jail cell door. Sometimes, return of the property to the victim and forfeiture of the means by which the crime was committed will suffice to ensure that the community is compensated and protected and the criminal is punished.

The parade of horrors

The expansion of forfeiture into all of these areas has, of course, been controversial. When laws that were designed to seize pirate ships from privateers are applied, over the course of a decade, to the seizure of homes, cars, businesses and bank accounts, there are a lot of issues to sort out. How do we protect innocent property owners? What procedures afford due process? When does forfeiture go too far, in violation of the Excessive Fines Clause of the Eighth Amendment? The ten forfeiture cases that the Supreme Court has had on its docket in the past five terms are part of this sorting out process. There are certain to be more; and Congress will need to pass legislation to fill in many of the loopholes.

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An informed debate on these issues is welcome. The debate is not informed, however, if it is muddled by the misconceptions and plain old-fashioned misstatements that seem to pop up in every article critical of asset forfeiture. Roger Pilon's article, containing the usual parade of horrors, is a good example.

Once again we are told that forfeiture is based on an absurd legal "fiction" that the property is guilty of the crime, which implies that property can be forfeited without proof that a crime was committed by a real live person. We're told that the government can seize property "almost at will," i.e. without due process, and that innocent people find the process so unfair that they walk away from their property without filing claims. And we're told that even when they do file claims, innocent owners just don't have any rights. Let's see if we can't inject a little truth and understanding into the debate on these points.

The legal "fiction"

There are three types of forfeiture under federal law: administrative forfeiture, civil judicial forfeiture, and criminal forfeiture. An administrative forfeiture is essentially a default proceeding. It occurs when property is seized and no one files a claim contesting the forfeiture. By definition, all administrative forfeitures are uncontested. Between 80 (eighty) and 85 (eighty-five) percent of all forfeitures handled by the Department of Justice fall into this category.

If someone does file a claim to the property, the government has a choice (assuming Congress has provided both options by statute). It can file a civil complaint against the property in district court, thus commencing a civil judicial forfeiture; or it can include a forfeiture count in the indictment in a criminal case, which sets the stage for a criminal forfeiture. In 1995, the Justice Department began aggressively training criminal prosecutors in the use of the forfeiture laws, so that now more than half of all contested forfeitures are criminal forfeitures.

Just because a forfeiture is handled administratively or civilly, of course, doesn't mean that there isn't a related criminal case. In all forfeiture cases there must be proof that a crime was committed by someone. In fact, in more than eighty percent of all forfeitures, including administrative and civil forfeitures, there is a parallel arrest and/or criminal prosecution. There wouldn't have been such a wail and cry about forfeiture constituting a violation of the Double Jeopardy Clause a few years ago if that weren't so. (Between the Ninth Circuit's decision in *United States v. \$405,089.23* in 1994 and the Supreme Court's decision putting the double jeopardy issue to rest in *United States v. Ursery*, thousands of federal prisoners filed post-conviction actions alleging that their criminal conviction and the civil forfeiture of their property constituted double jeopardy.)

The legal "fiction" that the property is "guilty" of the crime is simply a shorthand for the way a civil forfeiture case is styled: *United States v. \$405,089.23*, *United States v. 92 Buena Vista Ave.*, and so forth. In legal parlance, the property in such a case is the "defendant." But property doesn't commit crimes; people do. If there isn't proof that a person committed a crime, there is no forfeiture. If our normally verbose legal system styled its civil forfeiture cases to set forth the full legal theory, this would be obvious. The above cases, for example, might have been called *United States v. \$405,089.23 in Proceeds Earned by Charles Arlt From Selling Methamphetamine*; or *United States v. A Residence at 92 Buena Vista Ave. Purchased with Drug Proceeds that Joseph Brenna, a Drug Dealer, Gave to His Girlfriend*.

In short, forfeiture is a way of reaching the property involved in a crime, but the focus is on the crime, without which there can be no forfeiture.

Why do civil forfeiture?

If all forfeitures involve the commission of a crime, and the vast majority involve an arrest or prosecution, why does the government use civil forfeiture at all? It is not, as many contend, because it is necessarily easier. To the contrary, the easiest way to forfeit a criminal defendant's property in many cases is not to file a separate civil action, but to present the forfeiture issue to the same jury that just convicted the defendant in the criminal case. But sometimes, criminal forfeiture isn't available or doesn't make sense.

Take the administrative forfeiture cases for example. There is no point in including a criminal forfeiture count in an indictment and presenting the issue to a jury if the defendant is not going to contest the forfeiture. If a defendant facing criminal conviction for drug trafficking thinks it pointless to contest the forfeiture of the cash seized from him as drug proceeds at the time of his arrest, it is equally pointless to clutter the indictment with a forfeiture count when administrative forfeiture will answer.

What about the contested forfeitures that are done civilly? The reasons for this are many. First, while there are over 100 civil forfeiture statutes, there are relatively few criminal forfeiture statutes. Drug proceeds can be forfeited either civilly or criminally, for example, but firearms, gambling proceeds, vehicles used to smuggle illegal aliens, and counterfeiting paraphernalia can only be forfeited civilly. See 28 U.S.C. §2461(a). This is a problem Congress needs to fix.

Second, criminal forfeiture requires a federal conviction for the crime giving rise to the forfeiture. If the defendant is dead or is a fugitive, there can be no prosecution and therefore no criminal forfeiture. If the defendant was prosecuted in a State case, the federal forfeiture has to be civil, because there is no federal prosecution for the criminal offense. And if the defendant is prosecuted for one crime, but the property was involved in a related but separate crime, the forfeiture has to be civil, because the criminal forfeiture is limited to the offense of conviction. For example, drug proceeds seized from a defendant at the time of his arrest must be forfeited civilly if the defendant is charged with possession of drugs with intent to distribute, because such money was necessarily the proceeds of an earlier drug deal, not the one for which the defendant is actually prosecuted.

Third, and perhaps most important, criminal forfeiture is limited to the property of the defendant. If the defendant uses someone else's property to commit the crime, criminal forfeiture accomplishes nothing. Only civil forfeiture will reach the property. For example, if a drug dealer uses an airplane to smuggle drugs into California, the government has an interest in seizing and forfeiting the plane. But suppose the only person arrested and prosecuted is the pilot. If he owns the plane outright, criminal forfeiture is the way to go. But if the plane is owned by a corporation, or a third-party in South America, or by the pilot jointly with his spouse, criminal forfeiture is pointless.

The same is true if we want to forfeit a crack house. We can prosecute the tenants in the building until the cows come home, but we will never be able to forfeit the building criminally if the tenants don't own it. If the building belongs to a slumlord who allowed his property to be turned into a crack house, we need civil forfeiture to shut it down.

Due Process

Whatever the reasons why civil forfeiture is essential to federal law enforcement, it goes without saying that the process must be fair. All property owners -- whether they be criminal defendants or third parties -- are entitled to due process of law. Mr. Pilon contends that due process is lacking. He says that the government can seize property "almost at will," that officials can "seize property, real or personal, without notice or hearing," and that innocent parties find the system so daunting that they abandon their property without filing a claim. On all points, he is greatly mistaken.

Seizures of property for forfeiture are governed by the same rules that govern seizure of property for evidence — the search and seizure requirements of the Fourth Amendment. See *United States v. Lasanta*, 978 F.2d 1300 (2d Cir. 1992). If federal agents want to seize property for forfeiture, they have to get a warrant, unless one of the recognized exceptions to the Fourth Amendment applies, like when cash is found in plain view in a vehicle that can be driven away, and there is probable cause to believe it's drug proceeds, or when property is found during a search incident to a lawful arrest. In fact, in many instances, forfeiture seizures are more limited than their evidentiary counterparts. See 18 U.S.C. §981(b) (2) (in money laundering cases, warrantless seizures are authorized during searches incident to arrest, but not in other exigent circumstances).

In real property cases, the rules are still more restrictive. In *United States v. James Daniel Good Property*, 114 S. Ct. 492 (1993), the Supreme Court held that real property may not be seized at all, even with a warrant based on a showing of probable cause, until the property owner has been given notice and an opportunity to be heard. In short, in real property cases, the Due Process Clause of the Fifth Amendment requires the government to give property owners more "process" than is due under the Fourth Amendment.

Moreover, seizing the property isn't the end of the process; it's only the beginning. If someone wants to contest a forfeiture he has a right to file a claim, thereby forcing the government to file a civil or criminal forfeiture action in federal court. If the case is civil, the claimant has all the rights that attend normal civil litigation, including the right to discovery and the right to a trial by jury. Finally, the forfeiture verdict must be based on a preponderance of the admissible evidence, not the probable cause evidence that was sufficient for the seizure.

Of course, any system can be improved. The Justice Department has proposed legislation to make the government carry the burden of proof in civil forfeiture cases. We also have suggested making it easier for people to file claims in forfeiture cases by extending the filing deadlines, and we have proposed a remedy for those whose property is damaged in government custody. (The Justice Department's legislative proposal and supporting testimony are published in the record of the Hearing on the Civil Asset Forfeiture Reform Act, H.R. 1916, House Committee on the Judiciary, 104th Congress, 2d Sess., Serial No. 94, July 22, 1996.) But it is preposterous to say that property owners are denied due process under current law.

The Uncontested Forfeitures

What should we make of the fact that so many forfeitures are uncontested? The critics, of course, see this as evidence that innocent property owners are walking away from their property without filing a claim because the procedures are unfair. But the opposite is far more likely. Four out of five forfeitures are uncontested because in most cases the evidence is so overwhelming that contesting the forfeiture would be pointless. A defendant charged with smuggling illegal aliens, for example, might see little advantage in contesting the forfeiture of the truck he was driving when he was arrested and the aliens were found. Remember, eighty percent of all forfeitures involve a parallel arrest or prosecution. There are cases in which the defendant is in court anyway, has counsel, and yet most of the time does not object to the forfeiture.

Certainly, there are still due process issues to be worked out. One of the most nettlesome involves the current flood of post-conviction pleadings being filed by federal prisoners who contend that they didn't contest forfeiture actions because they didn't receive proper notice. See e.g. *United States v. Clark*, 84 F.3d 378 (10th Cir. 1996). Most commonly, the prisoners complain that the government sent the notice to the wrong jail or to a home address when the government knew that the person was incarcerated. Criminals have due process rights just like everyone else, so the government must find a way to provide

notice of forfeiture actions to persons being held in jail. But these are hardly cases that involve innocent claimants not filing claims because the procedures are stacked against them.

Innocent Owners

In his discussion of *Bennis v. Michigan*, Mr. Pilon makes a persuasive argument that the Constitution does not adequately protect innocent owners in civil forfeiture cases. It is an argument, however, that has little relevance to federal forfeiture law.

Bennis, it must be remembered, was a State case. Michigan, apparently, does not provide statutory protection for innocent owners, and the Supreme Court held that no such protection is required by the Due Process Clause. Fair enough. But the fact that the Constitution doesn't protect innocent owners doesn't mean that the legislature cannot do so. In fact, Congress has included an innocent owner defense in virtually all of the most widely used federal forfeiture statutes. For example, the drug statutes, 21 U.S.C. §881(a)(4) and (7), say that neither vehicles nor real property, respectively, may be forfeited if they were used to commit a crime without the knowledge or consent of the owner.

Mr. Pilon's claim that "hotels and apartment buildings are today forfeited when their owners are unable to prevent drug transactions in them" is just plain wrong. Even a property owner who "knows" that his property is being used for an illegal purpose is protected from forfeiture if he shows that he took all reasonable steps to prevent the activity. See *United States v. 141st Street Corp.*, 911 F.2d 870, 877-78 (2nd Cir. 1990) (landlord who knew building was being used for drug trafficking had opportunity to show he did not consent to such use), cert. denied, 111 S. Ct. 1017 (1991); *United States v. Parcel of Real Property Known as 6109 Grubb Road*, 886 F.2d 618, 626 (3rd Cir. 1989) (wife who knew of husband's use of residence for drug trafficking had opportunity to show she did not consent to such use); *United States v. One Parcel of Real Estate at 1012 Germantown Road*, 963 F.2d 1496 (11th Cir. 1992).

For example, the owner of a residential hotel doesn't have to put a stop to drug transactions on his property; he just has to do what a reasonable owner would do to try to stop it, like call the police, evict tenants convicted of committing drug crimes on the premises, and install security devices like locks and adequate lighting. See *United States v. All Right, Title and Interest (Kenmore Hotel)*, 77 F.3d 648 (2d Cir. 1996).

What Congress Can Do

A key provision in the Justice Department's legislative proposal would codify this concept and thus extend the innocent owner defense to all federal forfeiture statutes. In addition to the other due process reforms discussed above, this would go a long way toward making sure that the forfeiture laws are up to date and protect the rights of all property owners. But there is more that Congress can do to enhance the forfeiture laws.

First, the criminal forfeiture statutes should be revised to make sure the government can use them in all cases where it's appropriate to do so. Criminal forfeiture should be available wherever civil forfeiture is authorized. The government also needs better tools to enforce criminal forfeiture judgments against convicted defendants, and needs to be able to restrain property subject to forfeiture, including substitute assets, pre-trial, to make sure that the assets are still around once the defendant is convicted.

Also, there is no rhyme or reason to the current forfeiture laws regarding the forfeiture of criminal proceeds. We can forfeit proceeds in drug cases, but not in fraud cases; we can forfeit the money paid to a "bag man" in a money laundering case, but not the money paid to a "hit man" in a murder-for-hire

case. All criminal proceeds should be subject to forfeiture, and the term "proceeds" should be defined to mean gross proceeds, not net profits. It is absurd that some courts have allowed heroin traffickers to deduct their overhead expenses from the amount of proceeds subject to forfeiture. See *United States v. McCarroll*, 1996 U.S. Dist. LEXIS 8975 (N.D. Ill. Jun. 19, 1996).

In these and many other ways, the forfeiture laws can be improved both to protect the rights of property owners and to allow the government to make full use of this dramatically successful law enforcement tool. Congress has that opportunity this year. If we can avoid the misstatements and misconceptions that serve only to polarize the debate, law enforcement, defense attorneys and legislators can work together to produce a genuinely comprehensive and effective body of laws to make forfeiture work for all of us.

**Stefan D. Cassella is the Assistant Chief, Asset Forfeiture and Money Laundering Section U.S. Department of Justice. The opinions expressed in this article are solely those of the author and do not necessarily reflect the views or policies of the Department of Justice.*

Two Eielson airmen held on sex abuse charges

November 12, 1999

The Associated Press

SOLDOTNA—Two Eielson airmen have been charged with sexual abuse of a minor after allegedly spending a night in a Soldotna hotel room with two underaged girls they met on the Internet.

The suspects, Eielson Air Force Base airmen Angel R. Berrios, 25, and Jeremy Nguyen, 20, were indicted Friday on three counts each of sexual abuse of a minor.

Kenai Superior Court Judge Jonathan Link issued an arrest warrant for the men Tuesday. They were to be held on \$10,000 cash bail.

Neither had been arrested by Wednesday evening, according to Eielson spokesman Master Sgt. Christopher Shock. Much of the base was closed for the Veterans Day holiday Thursday and Shock did not immediately return a phone call seeking comment.

In addition to the abuse charges, the men were indicted on two misdemeanor charges each of furnishing alcohol to a minor.

Nguyen apparently struck up a relationship over the Internet with one of the girls, possibly through a chat room, said Soldotna Police Chief Shirley Warner, who investigated the case.

The two then talked on the telephone and made arrangements to meet at Soldotna's King Salmon Motel over Labor Day weekend, Warner said. Police say Nguyen and Berrios spent the night of Sept. 4 with the girls.

Warner said she could not comment further about the computers that were used or how the men hooked up with the girls over the Internet.

"Since chat rooms have become available, I think this kind of thing happens," she said. "I don't think it's anything new."

Warner said the recent indictments might serve as a wake-up call to families.

"I think this is a case where the information needs to get out to parents that this type of thing happens, so they can provide a safeguard to protect their kids," Warner said.

The indictments came about after the girls' parents started asking questions, Warner said. "We did have some parents who were on the ball and had a suspicion that things were going on and gave us the call," she said.



Fort Wainwright man charged with sex crimes

January 30, 2000

By Staff report

A Fairbanks grand jury this past week indicted a Fort Wainwright man on charges that he sexually assaulted a teenage girl in North Pole.



Miguel Duque, 36, was indicted on charges of sexual abuse of a minor in the second degree, sexual abuse of a minor in the third degree, second degree sexual assault, and third-degree sexual assault.

Duque had apparently met a friend of the girl's in an Internet chat room, where he went by the name Macdaddy, Alaska State Troopers said.

In October he allegedly drove the girls either to a gravel pit or to the end of a road in North Pole, where he supplied them with alcohol, troopers said. One of the charges alleges that the girl was intoxicated at the time of the assault.

Troopers had thought the man's name might have been "Mike," and they had been looking for him over the past three months. They discovered his identity with the help of tips that came in after they distributed the man's description to the media earlier this month.



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Man charged with sex abuse of teen

Saturday August 28, 1999

Staff report

Alaska State Troopers arrested a man Friday morning on charges that he simulated having sex with a teen-age girl and photographed the act to send over the Internet, according to court documents.

Richard L. Oehrig, 44, has been charged with six felonies, including three counts of sexual abuse of a minor, unlawful exploitation, distributing child pornography and witness tampering.

Troopers said they found nude photographs of the girl on Oehrig's computer, discs and digital camera. He is also accused of soliciting her to have sex with him at his North Pole home. The acts allegedly occurred between January and July.

In one picture -- for which Oehrig allegedly wanted the girl to pose so he could send it to someone over the Internet -- it looks as if he is having intercourse with her, according to court documents. The victim told investigators that although their genitals were touching for that photograph, there was no penetration.

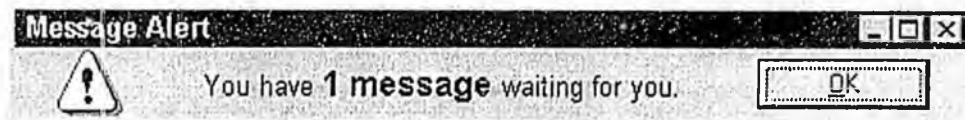
As the case was being investigated, Oehrig allegedly sent a computer note to the victim Aug. 16 telling her to stick to an initial account of what happened: "They don't have a thing unless you change your story."

He also threatened that if she told the truth "all hell breaks loose" and "everyone will suffer," according to court documents.

Oehrig was arrested about 11 a.m. in North Pole. Troopers had requested a warrant because he reportedly asked for a leave of absence from work and was considering leaving the state.

Bail is set at \$50,000, according to Fairbanks Correctional Center staff.

Troopers continue to investigate the case with help from a University of Alaska Fairbanks officer who specializes in Internet crime, according to court documents and UAF police.



Internet service worker charged with sex abuse

June 30, 2000

By BETH IPSEN
Staff Writer

A worker for a local Internet service provider has been indicted on charges of sexual abuse of two 15-year-old girls he met through an Internet chat room.

A 15-member grand jury decided the evidence was sufficient to charge Robert "Shawn" Christian, 22, with three counts of sexual abuse of a minor. The indictment was issued June 21.

Christian, a systems administrator at MosquitoNet, is charged with using the Internet and chat rooms to meet underage females to initiate sexual relationships.

The investigation arose when the sister of the second alleged victim went to police claiming her underage sister and Christian had sex the day before, said Detective Randy Coffey of the Fairbanks Police Department.

The second victim told her sister that she and her boyfriend, Christian, had been meeting every day at lunch for "hugging and kissing" before they had sex May 18, according to the sister's testimony in search warrants.

The first two counts arose later after an investigation, Coffey said. Those charges come from incidents involving a girl Christian allegedly contacted on the Internet when he was still living in Arizona, he said. Christian, now a University of Alaska Fairbanks student, later met the girl and her family when he vacationed in Alaska, Coffey said.

The family then invited Christian to live with them for almost six months in 1997 and 1998 while "he got on his feet in Fairbanks," he said.

Christian was 19 years old at the time he allegedly had a relationship involving sex with the first victim, Coffey said. Police are researching whether he had sexual relationships with minors in Arizona.

"We believe he has made contact with other girls over the Internet," Coffey said. "We're trying to contact them now. We're requesting if anybody has any knowledge to get ahead of us."

Police, with the assistance of an interagency computer crime task force, have seized several computers and countless computer discs and files. However, they're still trying to determine where all the contacts originated, said police Sgt. Dan Hoffman.

"Some of his work on computers seem to be routed through home," he said.

MosquitoNet President Bill St. Pierre said he was surprised by the charges. Christian



has worked for the company about 18 months, he said.

"He's been a real good employee, he's a good guy," St. Pierre said. "I hope there's some confusion here that can be cleared up."

Christian didn't return telephone calls Thursday.

If found guilty of the felony charges, Christian could face up to 10 years in prison for each count, according to the District Attorney's office.

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Wife turns in spouse for child pornography

October 15, 2000

ANCHORAGE--An Anchorage man was arrested after police say his new wife found electronic mail messages suggestive of child pornography on his computer.

Ronald Becker, 37, was arrested Thursday. He was charged with 21 counts related to child pornography. One of the counts, distribution of child pornography, is a felony punishable by up to 10 years in prison. The other 20 counts are for possession.

Police said Becker had 5,000 computer disks and CDs at his home containing sexual images of children.

Becker's wife became suspicious because he was spending an inordinate amount of money. She began nosing around their house and found the suggestive e-mails on his computer, police said.

The woman met her future husband on-line in February and married him a few months later. She went to police in September to report his behavior and they obtained a search warrant.

Becker frequented chat rooms where he posed as a 15-year-old boy, police said.

Becker was convicted of indecent assault involving minors in Pennsylvania in 1992, according to charging documents. The charge was a misdemeanor. He was put on probation and ordered to perform 200 hours of community service.

Becker was being held at the Cook Inlet Pre-Trial Facility.

Bethel Air Terminal holds grand opening

BETHEL--The former Mark Air Terminal in Bethel re-opened Saturday with a new name and a new look.

About 300 people gathered for the opening of the Bethel Air Terminal, said Dwight Lefner, whose company purchased the facility from the state last December.

Pen Air, Frontier Airlines and mail carrier Bel Air moved into the terminal earlier this year. Reeve Aleutian Airways moved into the newly-renovated building Friday.

The 21-thousand-square-foot terminal has been vacant for over three years. Lefner said he's invested \$300,000 in the building. But he said the investment promises to be a good one because passenger service and mail volume is increasing every year.

The renovated building also has a store, a restaurant and an espresso bar.

"We have overhauled completely," said Lefner, owner of Lefner Investments who has lived in Bethel for 32 years. "We are just leasing space and seeing what



happens."

Lefner said he expects a barber shop to move into the building soon.

The state took over the facility after Mark Air filed for bankruptcy.



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Any evidence which tends to establish contemporary community standards of appeal to prurient interest or of customary limits of candor in the description or representation of nudity, sex or excretion, or which bears upon the question of significant literary, artistic, political, educational, or scientific value shall, subject to the provisions of the Evidence Code, be admissible when offered by either the prosecution or by the defense.

312.3. (a) Matter that depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct as defined in Section 311.4 and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to this section.

(b) An action to forfeit matter described in subdivision (a) may be brought by the Attorney General, the district attorney, county counsel, or the city attorney. Proceedings shall be initiated by a petition of forfeiture filed in the superior court of the county in which the matter is located.

(c) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds. The notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. All notices shall set forth the time within which a claim of interest in the property seized is required to be filed.

(d) (1) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, county counsel, or city attorney, as appropriate.

(2) If, at the end of the time set forth in paragraph (1), an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).

(e) The burden is on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture pursuant to this section.

(f) It is not necessary to seek or obtain a criminal conviction prior to the entry of an order for the destruction of matter pursuant to this section. Any matter described in subdivision (a) that is in the possession of any city, county, city and county, or state official or agency, including found property, or property obtained as the result of a case in which no trial was had or that has been disposed of by way of dismissal or otherwise than by way of conviction may be ordered destroyed.

(g) A court order for destruction of matter described in subdivision (a) may be carried out by a police or sheriff's department or by the Department of Justice. The court order shall specify the agency responsible for the destruction.

(h) As used in this section, "matter" means any book, magazine,

newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials. "Matter" also means any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner any film or filmstrip.

(i) This section does not apply to a depiction of a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.

(j) It is a defense in any forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.

312.5. If any phrase, clause, sentence, section or provision of this chapter or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other phrase, clause, sentence, section, provision or application of this chapter, which can be given effect without the invalid phrase, clause, sentence, section, provision or application and to this end the provisions of this chapter are declared to be severable.

312.6. (a) It does not constitute a violation of this chapter for a person or entity solely to provide access or connection to or from a facility, system, or network over which that person or entity has no control, including related capabilities that are incidental to providing access or connection. This subdivision does not apply to an individual or entity that is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing, or knowing distribution of communications that violate this chapter.

(b) An employer is not liable under this chapter for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

(c) It is a defense to prosecution under this chapter and in any civil action that may be instituted based on a violation of this chapter that a person has taken reasonable, effective, and appropriate actions in good faith to restrict or prevent the transmission of, or access to, a communication specified in this chapter.

312.7. Nothing in this chapter shall be construed to apply to interstate services or to any other activities or actions for which states are prohibited from imposing liability pursuant to Paragraph (4) of subsection (g) of Section 223 of Title 47 of the United States Code.

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THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

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750.145d Use of internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions.

Sec. 145d. (1) A person shall not use the internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose of doing any of the following: (a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a, 145c, 157c, 349, 350, 520b, 520c, 520d, 520e, or 520g, or section 5 of 1978 PA 33, MCL 722.675, in which the victim or intended victim is a minor or is believed by that person to be a minor.

(b) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 411h or 411i.

(c) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under chapter XXXIII or section 327, 327a, 328, or 411a(2).

(2) A person who violates this section is guilty of a crime as follows: (a) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of less than 1 year, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(b) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 1 year or more but less than 2 years, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(c) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 2 years or more but less than 4 years, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(d) If the underlying crime is a felony with a maximum term of imprisonment of 4 years or more but less than 10 years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.

(e) If the underlying crime is a felony punishable by a maximum term of imprisonment of 10 years or more but less than 15 years, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(f) If the underlying crime is a felony punishable by a maximum term of imprisonment of 15 years or more or for life, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.

(3) The court may order that a term of imprisonment imposed under this section be served consecutively to any term of imprisonment imposed for conviction of the underlying offense.

(4) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.

(5) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

(6) A violation or attempted violation of this section occurs if the communication originates in this state, is intended to terminate in this state, or is intended to terminate with a person who is in this state.

(7) A violation or attempted violation of this section may be prosecuted in any jurisdiction in which the communication originated or terminated.

(8) The court may order a person convicted of violating this section to reimburse this state or a local unit of government of this state for expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

(9) As used in this section: (a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory

functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(f) "Internet" means that term as defined in section 230 of title II of the communications act of 1934, chapter 652, 110 Stat. 137, 47 U.S.C. 230.

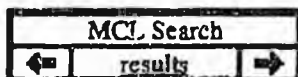
(g) "Minor" means an individual who is less than 18 years of age.

History: Add. 1999, Act 32, Eff. Aug. 1, 1999 ;--Am. 1999, Act 235, Eff. 10, 2000 ;--Am. 2000, Act 185, Eff. Sept. 18, 2000 .

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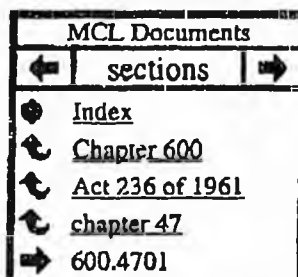


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REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961



600.4701 Definitions.

Sec. 4701. As used in this chapter: (a) "Crime" means committing, attempting to commit, conspiring to commit, or soliciting another person to commit any of the following offenses in connection with which the forfeiture of property is sought: (i) A violation of part 111 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11101 to 324.11152.

(ii) A violation of part 121 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.12101 to 324.12117.

(iii) A violation of section 4, 5, or 7 of the medicaid false claim act, 1977 PA 72, MCL 400.604, 400.605, and 400.607.

(iv) A violation of section 2 or 3 of the Michigan antitrust reform act, 1984 PA 274, MCL 445.772 and 445.773.

(v) A violation described in section 409 of the uniform securities act, 1964 PA 265, MCL 451.809.

(vi) A violation of section 5 or 7 of 1978 PA 33, MCL 722.675 and 722.677.

(vii) A violation of section 49, 75, 94, 95, 96, 100, 104, 105, 106, 110, 112, 117, 118, 119, 120, 121, 124, 145c, 145d, 157q, 157r, 174, 175, 176, 180, 181, 182, 213, 214, 218, 219a, 224, 248, 249, 250, 251, 252, 253, 254, 255, 263, 264, 271, 272, 273, 274, 300, 356, 357, 357a, 359, 360, 529, 530, 531, 535, 540c, or 540g of the Michigan penal code, 1931 PA 328, MCL 750.49, 750.75, 750.94, 750.95, 750.96, 750.100, 750.104, 750.105, 750.106, 750.110, 750.112, 750.117, 750.118, 750.119, 750.120, 750.121, 750.124, 750.145c, 750.145d, 750.157q, 750.157r, 750.174, 750.175, 750.176, 750.180, 750.181, 750.182, 750.213, 750.214, 750.218, 750.219a, 750.224, 750.248, 750.249, 750.250, 750.251, 750.252, 750.253, 750.254, 750.255, 750.263, 750.264, 750.271, 750.272, 750.273, 750.274, 750.300, 750.356, 750.357, 750.357a, 750.359, 750.360, 750.529, 750.530, 750.531, 750.535, 750.540c, and 750.540g.

(viii) A violation of 1979 PA 53, MCL 752.791 to 752.797.

(b) "Instrumentality of a crime" means any property, other than real property, the use of which contributes directly and materially to the commission of a crime.

(c) "Person" means an individual, corporation, partnership, or other business entity, or an unincorporated or voluntary association.

(d) "Proceeds of a crime" means any property obtained through the commission of a crime, including any appreciation in the value of the property.

(e) "Security interest" means any interest in real or personal property that secures payment or performance of an obligation.

(f) "Substituted proceeds of a crime" means any property obtained or any gain realized by the sale or exchange of proceeds of a crime.

History: Add. 1988, Act 104, Eff. June 1, 1988 ;--Am. 1993, Act 245, Eff. Apr. 1, 1994 ;--Am. 1995, Act 229, Eff. Jan. 1, 1996 ;--Am. 1996, Act 327, Eff. Apr. 1, 1997 ;--Am. 1997, Act 156, Eff. Mar. 1, 1998 ;--Am. 1998, Act 141, Eff. Sept. 1, 1998 ;--Am. 1998, Act 547, Eff. Mar. 23, 1999 ;--Am. 2000, Act 184, Eff. Sept. 18, 2000 .

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VIRGINIA

[summary](#) | [pdf](#)

CHAPTER 659

An Act to amend and reenact §§ 18.2-374.1:1, 18.2-374.2, 18.2-374.3 and 19.2-298.1 of the Code of Virginia, relating to child pornography and indecent liberties with children; penalties; forfeiture.

[H 1760]

Approved March 28, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-374.1:1, 18.2-374.2, 18.2-374.3 and 19.2-298.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-374.1:1. Possession of child pornography; penalty.

A. Any person who knowingly possesses any sexually explicit visual material utilizing or having as a subject a person less than eighteen years of age shall be guilty of a Class ~~3~~1 misdemeanor. However, no prosecution for possession of material prohibited by this section shall lie where the prohibited material comes into the possession of the person charged from a law-enforcement officer or law-enforcement agency.

B. The provisions of this section shall not apply to any such material which is possessed for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial or other proper purpose by a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, ~~prosecutor~~ attorney, judge, or other person having a proper interest in the material.

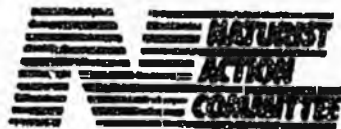
C. All sexually explicit visual material which utilizes or has as a subject a person less than eighteen years of age shall be subject to lawful seizure and forfeiture pursuant to § 18.2-374.2.

D. Any person convicted of a second or subsequent offense under this section shall be guilty of a Class 6 felony.

§ 18.2-374.2. Seizure and forfeiture of property used in connection with production of sexually explicit items involving children.

All audio and visual equipment, electronic equipment, devices and other personal property used in connection with the production, *distribution, publication, sale, possession with intent to distribute* or making of sexually explicit visual material having a person less than eighteen years of age as a subject shall be subject to lawful seizure by a law-enforcement officer and shall be subject to forfeiture to the Commonwealth pursuant to *Chapter 22* (§ 19.2-369 et seq.) of *Title 19.2* by order of the court in which a conviction under § 18.2-374.1 is obtained. Notwithstanding the provisions of § 19.2-381, the court shall dispose of the forfeited property as it deems proper, including awarding the property to a state agency for lawful purposes. If the property is disposed of by sale, the court shall provide that the proceeds be paid into the Literary Fund.

A forfeiture under this section shall not extinguish the rights of any person without knowledge of the illegal use of the property who (i) is the lawful owner or (ii) has a valid and perfected lien on the *property*.



P.O. Box 132 Oshkosh, WI 54903 TEL (512) 282-6621 FAX (512) 282-2503 www.naturistsociety.com/NAC

VIA FAX

February 21, 2001

Hon. Norman Rokeberg
 Chairman, House Judiciary Committee
 State Capitol, room 118
 Juneau, Alaska 99801

FEB 21 2001

regarding: House Bill 32

Dear Chairman Rokeberg:

The Naturist Action Committee (NAC) is the political arm of The Naturist Society (TNS), a membership organization that represents the interests of many thousands of naturists across North America, including many in the state of Alaska. The Naturist Action Committee is strongly opposed to House Bill 32, which will be considered today by the Judiciary Committee of the Alaska House of Representatives.

Naturists are skinny dippers and nude sunbathers who believe there is nothing shameful about the unclothed human body. Naturism is a non-sexual family oriented activity that includes children and adults. It is a formal name for an activity that has been an informal tradition in Alaska and elsewhere for years and years.

House Bill 32 represents itself as addressing sex criminals. However, in its present form, it would clearly punish skinny dippers as well, allowing the forfeiture of "property used to aid" the commission of the non-sexual activity of skinny dipping and other instances of mere nudity that are absent sexual context. The Naturist Action Committee, on behalf of the membership of TNS, strongly opposes House Bill 32 in its present form on the simple grounds that by adding the forfeiture of property as a punishment for skinny dipping, the punishment no longer fits the crime.

Please consider the following table, which summarizes the sections addressed by HB 32 in Chapter 11.41 of the Alaska Statutes:

| | | |
|-----------|--|------------------------|
| 11.41.410 | Sexual assault in the first degree | felony, unclassified |
| 11.41.420 | Sexual assault in the second degree | felony, class B |
| 11.41.425 | Sexual assault in the third degree | felony, class C |
| 11.41.427 | Sexual assault in the fourth degree | misdemeanor, class A |
| 11.41.434 | Sexual abuse of a minor, first degree | felony, unclassified |
| 11.41.436 | Sexual abuse of a minor, second degree | felony, class B |
| 11.41.438 | Sexual abuse of a minor, third degree | felony, class C |
| 11.41.440 | Sexual abuse of a minor, fourth degree | misdemeanor, class A |
| 11.41.445 | Incest | felony, class C |
| 11.41.455 | Unlawful exploitation of a minor | felony, class B |
| 11.41.458 | Indecent exposure, first degree | felony, class C |
| 11.41.460 | Indecent exposure, second degree | misdemeanor, class B * |

* class A only if in the presence of a person under 18 years of age

Hon. Norman Rokeberg
 February 21, 2001
 page 2

Of the dozen sections of Chapter 11.41 identified by HB 32 as candidates for forfeitures, only 11.41.460 does not describe activity with sexual content. In a list dominated by felonies, the base offense of section 11.41.460 is a class B misdemeanor, described by the term "reckless," but not by the term "sexual."

Tossing skinny dipping, nude sunbathing and other non-sexual nudity into the mix with the genuine sexual offenses for which property forfeiture would be allowed would surely make very bad law for the State of Alaska. If HB 32 were to be passed into law, naturists would have no choice other than to challenge it in court. We ask you to report HB 32 unfavorably from the committee.

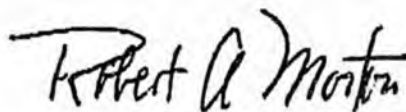
As an alternative, we suggest that the bill be amended to exclude section 11.41.460, Indecent exposure in the second degree. Such a revision could be accomplished by a simple committee amendment affecting only two lines on page 1 of the bill, as follows:

- 07 * Section 1. AS 11.41 is amended by adding a new section to read:
- 08 Sec. 11.41.468. Forfeiture of property used in sexual offense. Property
- 09 used to aid a violation of AS 11.41.410 - ~~11.41.470~~ 11.41.458 or to aid the solicitation of,
- 10 attempt to commit, or conspiracy to commit a violation of AS 11.41.410 - ~~11.41.470~~ 11.41.458
- 11 may be forfeited to the state upon the conviction of the offender.

The effect of such an amendment would be to place the emphasis of HB 32 where it was originally intended to be, while avoiding a disproportionate penalty on a clearly non-sexual activity.

On behalf of naturists throughout Alaska and elsewhere, I thank you in advance for your thoughtful consideration.

Respectfully,
Naturist Action Committee



Robert A. Morton
 Chairman & Executive Director

cc: Hon. Scott Ogan, Vice Chair
 Hon. Ethan Berkowitz
 Hon. John Coghill
 Hon. Jeannette James
 Hon. Albert Kookesh
 Hon. Kevin Meyer

Hon. Joe Hayes, sponsor
 Hon. Gretchen Guess, co-sponsor
 Hon. Lesil McGuire, co-sponsor
 Hon. Lisa Murkowski, co-sponsor