

ALASKA LEGISLATURE

1828

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: SB314
(S) Publish Date: 3/20/98

Revision Date _____ Dept. Affected DOT&PF
Title Municipal Feeder Vessel Authorities BRU Statewide Programs
Component Office of the Commissioner
Sponsor Torgerson, Pearce
Requester S TRA Component Serial No. 530

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	2.0	0.0	0.0	0.0	0.0	0.0
Contractual	18.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	20.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	20.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	20.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by Dennis Poshard, Special Assistant
Division Commissioners Office
Approved by *Danah L. Poshard* Commissioner
Agency Department of Transportation and Public Facilities

Phone 465-3900
Date 3/10/98
Date 3/10/98

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SB 314
-1

Fiscal Note Analysis

SB 314

March 9, 1998

"An Act relating to the Alaska marine highway system and to municipal feeder vessel authorities."

Analysis:

There are two sections in this bill that would cause increased expenditures for the Department.

Section 3 permits feeder vessel authorities to use state ferry terminal facilities. The Department would generate regulations regarding the use of such facilities. The cost for developing these regulations is estimated to be \$20,000. This is made up of public notice advertising expenses (\$12,000), Department of Law expenses (\$3,000), travel costs to hold public hearings (\$2,000), and miscellaneous expenses such as teleconferencing and printing (\$3,000). It is anticipated existing staff will carry out the regulation process, so no personal services costs are included.

Section 4 creates the feeder vessel authority grant fund. The Department would need to establish a system of prioritization and monitoring of these grants. Until there are a sufficient number of authorities established to compete for this grant funding, the costs to the Department for providing this service would be minimal. If the number of authorities substantially increases in future years, the cost of administering these grants could become significant.

SENATE FINANCE
COMMITTEE

Amendment Number: 1
Bill Number: SB 314
Sponsor: Torgerson Date: 7/31/13
Logged In By: J. Torgerson

A M E N D M E N T

OFFERED IN THE SENATE
TO: SB 314

BY SENATOR TORGERSON

- 1 Page 1, line 9, following "AS 29.35.750":
- 2 Insert "or **AS 29.35.605**"
- 3
- 4 Page 1, line 12, following "AS 29.35.750":
- 5 Insert "or **AS 29.35.605**"
- 6
- 7 Page 2, line 3, following "AS 29.35.750":
- 8 Insert "or **AS 29.35.605**"
- 9
- 10 Page 4, line 7, following "AS 29.35.750 - 29.35.770":
- 11 Insert "or **AS 29.35.605**"

SENATE FINANCE
COMMITTEE

Amendment Number: 1

Bill Number: SB 314

Sponsor: Torgerson Date: 7/11/11

Logged In By: J. Torgerson

A M E N D M E N T

OFFERED IN THE SENATE
TO: SB 314

BY SENATOR TORGERSON

- 1 Page 1, line 9, following "AS 29.35.750":
- 2 Insert "**or AS 29.35.605**"
- 3
- 4 Page 1, line 12, following "AS 29.35.750":
- 5 Insert "**or AS 29.35.605**"
- 6
- 7 Page 2, line 3, following "AS 29.35.750":
- 8 Insert "**or AS 29.35.605**"
- 9
- 10 Page 4, line 7, following "AS 29.35.750 - 29.35.770":
- 11 Insert "**or AS 29.35.605**"

SB

322

SFIN

FILE

FISCAL NOTE

No. 1
 Bill Version: SB 322
 (S) Publish Date: 2/25/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date: _____
 Title: An act relating to the Alaska children's dividend fund
 Sponsor: Senator Duncan
 Requestor: State Affairs

Department: Department of Revenue
 BRU: Revenue Operations
 Component: Treasury Division
 COMPONENT SERIAL NO. 121

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	116.0	42.8	40.0	47.6	52.8	58.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	116.0	42.8	40.0	47.6	52.8	58.3
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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 General Fund	116.0		(17.2)	(17.2)	(17.2)	(17.2)
1005 GF/Program Receipts						
1006 GF/Mental Health						
AK Children's Dividend Fund		42.8	57.2	64.8	70.0	75.5
TOTAL	116.0	42.8	40.0	47.6	52.8	58.3

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 See attached breakdown of costs.

Prepared by: Betty Martin, Comptroller Phone: 465-2352
 Division: Treasury Division, Department of Revenue Date: February 23, 1998
 Approved by Commissione Deborah Vogt, Deputy Commissioner Date: February 23, 1998
 Agency: Department of Revenue

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SB 322
Fiscal Note Analysis of Costs

	FY99	FY00	FY01	FY02	FY03	FY04
Cumulative Participants		5,000	10,000	15,000	18,000	21,000
Dividend amount		\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500
Funds added this fiscal year		\$ 7,500,000	\$ 15,000,000	\$ 22,500,000	\$ 27,000,000	\$ 31,500,000
Total funds during fiscal year		\$ 7,500,000	\$ 22,500,000	\$ 45,000,000	\$ 72,000,000	\$ 103,500,000
% allocated to externally managed equity accounts		35%	35%	35%	35%	35%
Direct Costs - Increase to budget						
Legal opinion and IRS ruling	100,000					
Printing costs for PFD application	16,000	16,000	16,000	16,000	16,000	15,000
External management fees (@ 1.5 basis points)		394	1,181	2,363	3,780	5,434
Postage (4 quarterly mailings @ 32 cents)		6,400	12,800	19,200	23,040	26,880
Start-up record keeping system		10,000				
Ongoing costs of record keeping system		10,000	10,000	10,000	10,000	10,000
Total direct costs	116,000	42,794	39,981	47,563	52,820	58,314
Allocation of Treasury costs for internal management -						
Will not increase budget - Change in Funding source only						
Personal Services (allocation includes personal services, audit, supplies, equipment and other overhead)			11,200	11,200	11,200	11,200
Custody contract allocation			6,000	6,000	6,000	6,000
Total Costs reallocated from GF to AK Children's Dividend Fund		-	17,200	17,200	17,200	17,200
Total funding from AK Children's Dividend Fund	GF in 1st yr	42,794	57,181	64,763	70,020	75,514
Equivalent basis point fee to participants		57.1	25.4	14.4	9.7	7.3

SB

323

HFIN

FILE

(1)

Date Referred to Committee: April 30, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/1/98

The FINANCE Committee considered:

CSSB 323(FIN) am

CS FOR SENATE BILL NO. 323(FIN) am

SEX OFFENSES & OFFENDER REGISTRATION

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

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

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) DOC

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

[] zero fiscal note(s)

[] zero fiscal note(s)

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

CHAIR'S SIGNATURE *Gene Therriault*

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CS SB 323 (FIN) am

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

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

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

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

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

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

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

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

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

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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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

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

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

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

FUND SOURCE:

(Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 3/11/98

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 323

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

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

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

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

LEGAL SERVICES

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

MEMORANDUM

May 7, 1998

SUBJECT: HCS CSHB 323(FIN)

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

FROM: Gerald P. Luckhaupt 
Legislative Counsel

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

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

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

GPL:glc
98-270.glc

Enclosure

adopted
NO OBJ

5/5/98 E
Conceptual

AMENDMENT

OFFERED IN THE HOUSE

by Representative Kelly / Berkowitz

TO: CSSB 323(FIN) am

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

NEW #2 ADD ^{new section} AS 11.61.127(a)

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

0-LS1553\F.a

CS FOR SENATE BILL NO. 323(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

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

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



2 (c) ^{knowing} Possession of child pornography is a class C felony [CLASS A
3 MISDEMEANOR].

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

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

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

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

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

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

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

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

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

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

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

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

1 AS 11.41.270;

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

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

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

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

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

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

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

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

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

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

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

28 (18) the offense was a felony

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (2) is unable to determine

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

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

18 (3) concludes that the report involves

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

20 [AS 11.41.410 - 11.41.455]; or

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

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

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

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

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

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

31 (iii) additional evidence is introduced to corroborate the

1 statement; and

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

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

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

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

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

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

5/6/98

NO OBJ

3

Amendment

1

2

3 OFFERED IN THE HOUSE

4 To: CSSB 323 (Fin)am

5

6 Page 5, line 26, following "11.41.460"

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

9

10 Page 6, line 12, following "11.41.460"

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

Alaska State Legislature



During Interim: (June - Dec)
716 West 4th Avenue, Suite 500
Anchorage, AK 99501-2133
(907) 258-8185
Fax (907) 258-0226

During Session: (Jan - May)
State Capitol
Juneau, AK 99801-1182
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Drue Pearce

SPONSOR STATEMENT

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

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

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

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

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

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

Alaska State Legislature

During Interim: (June - Dec)
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Drue Pearce

During Session: (Jan - May)
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Sectional Summary of SB 323 Child Sex Offenses and Offender Registration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 22: Provides an applicability section.

Section 23: Provides an immediate effective date.

Alaska State Legislature



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Drue Pearce

Senate Bill 323 Comparison to Current Law

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

Additional Provisions in SB 323

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



Rick Mystrom,
Mayor

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599

Telephone (907) 786-8500



Service since 1921

February 17, 1998

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

Dear Senator Pearce:

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

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

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

Thank you for bringing this legislation forward.

Sincerely,

Duane S. Udland
Chief of Police

DSU/ros

"To Serve and Protect"



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

UNIVERSITY OF ALASKA FAIRBANKS

Police Department

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

REC'D
MAR 09 1998

March 5, 1998

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

Dear Senator Pearce,

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

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

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

Sincerely,

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

Terry E. Vrabec
Chief of Police



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

Business 907/276-7279
24 Hour Crisis 907/276-7273
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RECEIVED

MAR 19 1998

March 9, 1998

Senator Drue Pearce
State Capitol
Room 518
Juneau, AK 99801

Dear Senator Pearce:

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

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

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

Sincerely,

Trisha Gentle
Executive Director

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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



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Pres. Prince of Wales Chapter

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

March 26, 1998

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

Dear Senator Pearce,

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

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

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

Once again, thank you for sponsoring this legislation.

Sincerely,

John Charbonneau
State President
Alaska Peace Officers Association

Net tracking leads to porn charges

The Associated Press

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX IV

STATE CHILD PORNOGRAPHY STATUTES

STATE & AGE OF MINORITY (under __)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
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(a)(1). Prohibits receipt for distribution. Class C Felony--1st offense Class B Felony-- subsequent offenses		NONE

STATE & AGE OF MINORITY (under)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
California 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).
Colorado 18 §18-6-403(2)(a)	18-6-403(3)(b.5). 1st offense: Class 1 Misdemeanor. Subsequent offenses: Class 4 Felony.	18-6-403(c) for commercial purposes. Class 3 Felony. Three or more identical copies creates presumption of commercial purpose. 18-6-403(4).	18-6-403(3)(a-b)	§19-3-304 Violation is class 3 misdemeanor
Connecticut 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
Delaware 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)	
District of Columbia 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 possession) Serious Misdemeanor		§728.12.1(permit to participate) Class C Felony §728.12.2 (promotes such material) Class D Felony	§728.14 Failure to report is a simple misdemeanor

STATE & AGE OF MINORITY (under ___)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
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
Maryland 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	
Massachu- setts 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)	
Michigan 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)
Minnesota 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)	
Mississippi 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	
Missouri 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
Montana 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
Nebraska 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)
Nevada 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
New Hampshire 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
New Jersey 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) (receipt) Class F Felony	NONE	§14-190.17(u)(1). Class H 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>Ohio</p> <p>18 §2907.01(M)</p> <p>Inference of Age §2907.321(B)(3) & 322(B)(3).</p> <p>Mistake of Age not a Defense §2907.321(B)(2) & 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>	<p>NONE</p>	<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>	<p>NONE</p>
<p>Oklahoma</p> <p>18 21 § 1021.2.</p>	<p>21 § 1021.2 Felony: 20 Years and/or \$25K</p>	<p>NONE</p>	<p>21 § 1021.2 Felony: 20 Years and/or \$25K</p>	<p>21 § 1021.4 (DTR)</p>
<p>Oregon</p> <p>18 § 163.665</p> <p>Mistake of Age Defense § 163.690.</p>	<p>§ 163.672 Class C Felony</p>	<p>§ 163.673(1)(b) Class B Felony § 163.684(1)(A)(a) (encouraging child sex abuse) Class B Felony</p>	<p>§ 163.673(a) Class B Felony § 163.670 Class A Felony § 163.684 Class B Felony</p>	<p>§ 163.693</p>
<p>Pennsylvania</p> <p>17 18 § 6312(B).</p>	<p>18 § 6312(D) 3rd Degree Felony</p>	<p>18 § 6312(C) 3rd Degree Felony</p>	<p>18 § 6312(B) 2nd Degree Felony</p>	<p>NONE</p>

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

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

STATE & AGE OF MINORITY (under __)	POSSESSION	POSSESSION WITH INTENT TO DISTRIBUTE	PRODUCTION, CREATION, PROMOTION, or KNOWING DUPLICATION	FILM PROCESSORS *Duty To Report
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(a)(i)(C) (employment of children under 16 for any business...injurious to the morals, health or safety of a child) No specific production statutes exist	NONE

SB

323

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/12/98

FURTHER: S/C 3/25/98

DATE TURNED
IN TO OFFICE: 25 March 98

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

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

and recommends:

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

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

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

NEW FISCAL NOTE(S):

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

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
→			
→			

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	48.4	48.4	48.4	48.4	48.4	48.4
TOTAL OPERATING	48.4	48.4	48.4	48.4	48.4	48.4

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

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

#2

Section 3 of this legislation would increase the penalty for one form of indecent exposure from a misdemeanor to a class B felony. The Dept. of Law estimates that three people would be convicted annually under the felony provision. The current average sentence served for a misdemeanor conviction of indecent exposure is 28 days. The Department of Law anticipates first time offenders convicted under the proposed felony provision would receive a sentence of 90 days, resulting in a net gain of 32 days to be served over the present misdemeanor penalty. The statewide average daily cost of incarceration is \$100.07 per day, per prisoner. In addition, the Dept. of Corrections is required to conduct a presentence investigation for all felony convictions and prepare a report for the court. The cost for a PSI is \$450.

3 prisoners X \$100.07 per day X 32 days = Annual cost of \$9,606
3 prisoners X \$450 per PSI = \$1350

Section 5 of this legislation increases the penalty for distribution of child pornography from a class C felony to a class B felony. The Department of Corrections is unable to estimate the impact of this section. Current data from the Dept. of Corrections does not indicate that anyone was charged and convicted for distribution of child pornography in 1996 or 1997. This section will have an impact due to the severity of the penalty increase which would go from a possible sentence of 5 years to a possible sentence of 10 years.

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

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

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

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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

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

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

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

CAPITAL EXPENDITURES	**	**	**	**	**	**
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CHANGE IN REVENUES ()	**	**	**	**	**	**
------------------------	----	----	----	----	----	----

FUND SOURCE:

(Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 3/11/98

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 323

*1

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

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

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

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

SENATE FINANCE
COMMITTEE

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

0-LS1553B.1
Luckhaupt ✓
3/21/98

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 323(JUD)

moved
BY SENATOR PEARCE
no objection / adopted

1 Page 4, lines 26 - 29:

2 Delete all material and insert:

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

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

CS FOR SENATE BILL NO. 323(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/12/98
Referred: Finance

Sponsor(s): SENATORS PEARCE, Taylor

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

1 (c) In this section, "sexual abuse" means an act committed by the defendant
 2 against the plaintiff maintaining the cause of action if the defendant's conduct would
 3 have violated a provision of AS 11.41.410 - 11.41.440 or 11.41.450 - 11.41.458
 4 [11.41.450 - 11.41.455], former AS 11.15.120, 11.15.134, or 11.15.160, or former
 5 AS 11.40.110 at the time it was committed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (18) the offense was a felony

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 agency if the department

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

16 responsible for the child's welfare;

17 (2) is unable to determine

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

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

20 has responsibility for the child's welfare; or

21 (3) concludes that the report involves

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

23 [AS 11.41.410 - 11.41.455]; or

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

25 treatment of the child

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

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

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

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

30 may be admitted into evidence before the grand jury if

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

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

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

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

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

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

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

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

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

SB

331

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 30, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/4/98

The FINANCE Committee considered:

CSSB 33(FIN)

CS FOR SENATE BILL NO. 331(FIN)

PROFESSIONAL COUNSELOR LICENSING

"An Act regulating licensed professional counselors; regulating use of the titles 'licensed professional counselor' and 'licensed counselor'; amending Rule 504(a)(3), Alaska Rules of Evidence; and providing for an effective date."

recommends it be replaced with the following committee substitute HCS CSSB 331(FIN) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) DCED, 3/23/98

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Ken Herrault</i>	Herrault			X	
<i>Elda Mulder</i>	Mulder			X	
<i>Ben Grussendorf</i>	Grussendorf	X			
<i>W. Kelly</i>	Kelly			X	
<i>David Davis</i>	Davis	X			
<i>David Davis</i>	Davis	X			
<i>W. Kohring</i>	Kohring		X		

CHAIR'S SIGNATURE *Ken Herrault*

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
 Bill Version: CSB 331 (HES)
 (S) Publish Date: 3-23-98

Revision Date: _____
 Title: An Act regulating licensed professional counselors;...
 Sponsor: Senate HES Committee by Request
 Requestor: Senate HES Committee

Department: Commerce and Economic Development
 BRU: Occupational Licensing
 Component: Operations
 COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	49.4	49.4	49.4	49.4	49.4	49.4
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	3.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	15.7					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	80.1	64.4	64.4	64.4	64.4	64.4
CAPITAL EXPENDITURES						
CHANGE IN REVENUES	144.5	0.0	128.8	0.0	128.8	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	80.1	64.4	64.4	64.4	64.4	64.4
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	80.1	64.4	64.4	64.4	64.4	64.4

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME	2	2	2	2	2	2
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SB 331 creates a five member Board of Professional Counselors to regulate use of the titles 'licensed professional counselor' and 'licensed counselor'. The department estimates there will be at least 250 applicants seeking licensure under this program. As a new regulatory program under centralized licensing (AS 08), the program will be subject to the self-sufficiency funding mandate through licensing fees under AS 08.01.065. An explanation of the costs shown are detailed on the attached page.

Prepared by: Jennifer Strickler, Administrative Manager
 Division: Occupational Licensing
 Approved by Commissioner: Deborah B. Sedwick
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 3/3/98
 Date: 3-4-98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO.: SB 331
#1

ANALYSIS: (Continued)

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS

Personal Services

- | | |
|--|------|
| 1 - Occupational Licensing Examiner I, Range 12, GGU,
PPT, 6-months | 20.3 |
| 1 - Investigator III, Range 18, GGU, PPT, 6 months | 29.1 |

Travel

- | | |
|---|-----|
| 4 - In-State Board meetings, assuming each meeting is held for two days
plus one day for travel. This cost is based on two Anchorage meetings,
one in Fairbanks, and one in Juneau. | 8.0 |
| - Out-of-State event to attend a national affiliate conference. | 1.0 |
| - Investigator travel. | 1.0 |

Contractual

Funding for communications, public notices, printing, postage, and other standard contractual costs. This funding *does not* include funding for legal services, expert witnesses or other miscellaneous case costs. 3.0

This fiscal note assumes that any examination costs will either be paid directly to a testing company or pass through with no additional costs to the State.

Supplies

Provides daily operating and desk top supplies to the program and new positions. 2.0

Equipment (one-time costs)

Provides one-time work station, furniture and equipment set-up for the new positions. 15.7

TOTAL: \$80.1

Revenue

The costs identified in this fiscal note represent Direct costs to the new licensing program.

Licensing programs in Occupational Licensing are mandated by AS 08.01.065 to support their costs through licensing fees. For example, 250 licensed professional counselors can anticipate to pay:

Direct biennial costs of:	\$144.5	plus,
Administrative Indirect cost:	<u>24.0</u>	(based on 0.68% indirect costs similar to a program with a comparable number of licensees)
Total Biennial Costs:	\$168.5	divided by 250 licensees
 Initial Biennial License Fee:	 \$674.00	

Following the initial biennial licensing period, licensing fees will be evaluated and set to reflect costs. If costs are reduced, fees will be adjusted to reflect the reduced costs. However, if costs increase because of enforcement or litigation, fees will be adjusted accordingly. Licensing boards *do not* receive general fund subsidies for their operations. The programs are 100% program-receipt funded.

0-LS1580P
Lauterbach
4/30/98

Adopted
5/4/98
PN

HOUSE CS FOR CS FOR SENATE BILL NO. 331()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE BY
REQUEST
A BILL

FOR AN ACT ENTITLED

1 "An Act regulating licensed professional counselors; regulating use of the titles
2 'licensed professional counselor' and 'licensed counselor'; amending Rule 504(a)(3),
3 Alaska Rules of Evidence; and providing for an effective date."

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

5 * Section 1. AS 08 is amended by adding a new chapter to read:

6 Chapter 29. Licensed Professional Counselors.

7 Article 1. Board of Professional Counselors.

8 Sec. 08.29.010. Board creation; membership. (a) There is established the
9 Board of Professional Counselors consisting of five members appointed by the
10 governor, one of whom is a public member and four of whom are licensed professional
11 counselors.

12 (b) In addition to the requirements for public members under AS 08.01.025,
13 the public member of the board may not

14 (1) ever have been a licensed professional counselor or employed in a

1 commercial or professional field related to counseling; or

2 (2) live in a household with a person who is or has been, or have an
3 immediate family member who is or has been, a licensed professional counselor or
4 employed in a commercial or professional field related to professional counseling; in
5 this paragraph, "immediate family member" means a parent, sibling, or child related
6 by blood, marriage, or adoption.

7 (c) Of the four counselor members of the board, at least one shall be employed
8 in the private sector and at least one shall be employed in the public sector.

9 **Sec. 08.29.020. Duties of the board.** (a) In addition to the duties specified
10 in AS 08.01, the board shall

11 (1) license professional counselors, establish criteria for supervisor
12 certification, and certify approved counselor supervisors under this chapter; the board
13 may provide for licensure in areas of counseling specialization;

14 (2) establish continuing education requirements for the renewal of a
15 license under this chapter;

16 (3) adopt, by regulation, a code of ethics that must be observed by
17 persons licensed under this chapter;

18 (4) establish education and training requirements that must be met
19 before a professional counselor can administer and use assessment instruments
20 described in AS 08.29.490(1)(C).

21 (b) The board may delegate to the Department of Commerce and Economic
22 Development, and the department may perform, a duty for which the board has
23 authority.

24 **Article 2. Licensing Requirements.**

25 **Sec. 08.29.100. Unlicensed use of title prohibited.** (a) A person who is not
26 licensed under this chapter may not

27 (1) profess to be a licensed professional counselor or a licensed
28 counselor; or

29 (2) make use of a title, words, letters, or abbreviations that may
30 reasonably be confused with the title of "licensed professional counselor" or "licensed
31 counselor."

1 (b) Violation of this section is a class B misdemeanor, except that a third or
2 subsequent conviction for violating this section is a class C felony.

3 **Sec. 08.29.110. Qualifications for licensure.** (a) The board shall issue a
4 professional counselor license to a person who applies for the license, submits the
5 required fee, submits two letters of recommendation from professional counselors who
6 are familiar with the applicant's practice of professional counseling, and presents
7 evidence satisfactory to the board that the person

8 (1) is at least 18 years of age;

9 (2) is not under investigation in this or another jurisdiction for an act
10 that would constitute a violation of this chapter;

11 (3) has passed a written examination as required by the board; the
12 board may provide that passing a nationally recognized examination for professional
13 counselors is sufficient to meet the examination requirement of this paragraph;

14 (4) has successfully completed either

15 (A) an earned doctoral degree in counseling or a related
16 professional field from a regionally accredited institution of higher education
17 approved by the board; or

18 (B) an earned master's degree in counseling or a related
19 professional field consisting of at least 48 semester hours and at least 12 other
20 graduate semester hours in counseling during or after earning the master's
21 degree, for a total of at least 60 hours; and

22 (5) has at least 3,000 hours of supervised experience in the practice of
23 professional counseling performed over a period of at least two years under the
24 supervision of a supervisor approved under AS 08.29.210, with at least 1,000 hours of
25 direct counseling with individuals, couples, families, or groups and at least 100 hours
26 of face-to-face supervision by a supervisor approved under AS 08.29.210 unless, under
27 regulations of the board, the board allows the supervision to be by telephonic or
28 electronic means because of the remote location of the counselor.

29 (b) The board may, in its regulations, specify the areas of study that must be
30 covered in order to meet the educational requirements of (a) of this section.

31 **Sec. 08.29.120. Licensure by credential.** (a) Except as provided in (b) of

1 this section, the board may issue a license under this chapter to a person who is
 2 licensed in another jurisdiction to practice professional counseling if the board finds
 3 that the other jurisdiction has substantially the same or higher licensure requirements
 4 as this state.

5 (b) The board may not license under this section a person who is under
 6 investigation in this or another jurisdiction for an act that would constitute a violation
 7 of this chapter until the investigation is complete and disciplinary sanctions, if any, are
 8 imposed and the person has complied with the sanctions.

9 **Sec. 08.29.13v. Licensure of foreign-educated applicants.** The board may
 10 issue a license under this chapter to a person who

11 (1) has completed a doctorate or master's degree educational program
 12 in counseling or a related professional field in a foreign college or university approved
 13 by the board;

14 (2) meets the requirements of AS 08.29.110 except for
 15 AS 08.29.110(a)(4); and

16 (3) demonstrates to the satisfaction of the board that the applicant's
 17 experience, command of the English language, and completed academic program meet
 18 the standards of a relevant academic program of an accredited educational institution
 19 in the United States.

20 **Sec. 08.29.140. License renewal.** Renewal of a license under this chapter may
 21 not be granted unless the licensee, within the 24 months immediately preceding the
 22 renewal date, has completed the continuing education requirements established by the
 23 board.

24 **Article 3. Miscellaneous Provisions.**

25 **Sec. 08.29.200. Confidentiality of communications.** (a) A person licensed
 26 under this chapter may not reveal to another person a communication made to the
 27 licensee by a client about a matter concerning which the client has employed the
 28 licensee in a professional capacity. This section does not apply to

29 (1) a communication to a potential victim, the family of a potential
 30 victim, law enforcement authorities, or other appropriate authorities concerning a clear
 31 and immediate probability of physical harm to the client, other individuals, or society;

1 (2) a case conference or case consultation with other mental health
2 professionals at which the patient is not identified;

3 (3) the release of information that the client in writing authorized the
4 licensee to reveal;

5 (4) information released to the board during the investigation of a
6 complaint or as part of a disciplinary or other proceeding; or

7 (5) situations where the rules of evidence applicable to the
8 psychotherapist-patient privilege allow the release of the information.

9 (b) Notwithstanding (a) of this section, a person licensed under this chapter
10 shall report incidents of

11 (1) child abuse or neglect as required by AS 47.17;

12 (2) harm or assaults suffered by an elderly person or disabled adult as
13 required by AS 47.24.

14 (c) Information obtained by the board under (a)(4) of this section is
15 confidential and is not a public record for purposes of AS 09.25.110 - 09.25.140.

16 **Sec. 08.29.210. Supervisor certification.** (a) The board shall approve and
17 certify a person as an approved counselor supervisor for the purposes of this chapter
18 if the person

19 (1) is licensed under this chapter as a professional counselor or is a
20 licensed clinical social worker, licensed marital and family therapist, licensed
21 psychologist, or licensed psychological associate;

22 (2) submits an application for certification and the appropriate fee;

23 (3) has five years of counseling experience;

24 (4) provides to the board for its approval or disapproval a statement
25 that details the person's supervision philosophy, orientation, and experience; and

26 (5) meets other criteria that may be established by the board in
27 regulations.

28 (b) Certification under (a) of this section remains in effect, without the need
29 for renewal of the certification, until the person's licensure as a professional counselor
30 is revoked, suspended, or otherwise lapses.

31 **Sec. 08.29.220. Disclosure statement.** A client may not be charged a fee for

1 professional counseling services unless, before the performance of the services, the
2 client was furnished a copy of a professional disclosure statement that contained

3 (1) the name, title, business address, and business telephone number of
4 the professional counselor;

5 (2) a description of the formal professional education of the
6 professional counselor, including the institutions attended and the degrees received
7 from them;

8 (3) the professional counselor's areas of specialization and the services
9 available;

10 (4) the professional counselor's fee schedule listed by type of service
11 or hourly rate;

12 (5) at the bottom of the first page of the statement, the following
13 sentence: "This information is required by the Board of Professional Counselors which
14 regulates all licensed professional counselors," followed by the name, address, and
15 telephone number of the board's office.

16 **Sec. 08.29.230. Limitation of practice.** Notwithstanding that a specific act
17 is within the definition of the "practice of professional counseling," a person licensed
18 under this chapter may not perform the act if the person lacks appropriate education
19 or training related to the act.

20 **Article 4. General Provisions.**

21 **Sec. 08.29.400. Grounds for denial of license or for disciplinary sanctions.**

22 The board may impose a disciplinary sanction under AS 08.01.075 on a person
23 licensed under this chapter or deny a license to a person when the board finds that the
24 person

25 (1) has an addiction to, or severe dependency on, alcohol or other drugs
26 that impairs the person's ability to engage safely in the practice of professional
27 counseling;

28 (2) has been convicted of a felony and has not been sufficiently
29 rehabilitated to merit the public trust;

30 (3) used fraud, deception, misrepresentation, or bribery in securing a
31 license under this chapter or in obtaining permission to take an examination required

1 under this chapter;

2 (4) is incompetent or has committed misconduct, fraud,
3 misrepresentation, or dishonesty in the performance of the functions of a licensed
4 professional counselor;

5 (5) violated, or assisted another individual to violate, a provision of this
6 chapter or a regulation adopted under this chapter;

7 (6) impersonated a person who holds a license under this chapter;

8 (7) has had a license to practice counseling revoked or suspended in
9 another jurisdiction upon grounds for which the license issued under this chapter could
10 be revoked or suspended; this paragraph does not apply to revocations or suspensions
11 for failure to pay a renewal fee in another jurisdiction;

12 (8) assisted another person who is not licensed under this chapter in an
13 attempt to represent the person to the public as a licensed professional counselor;

14 (9) was issued a license based on a material mistake of fact;

15 (10) used an advertisement or solicitation that is false, misleading, or
16 deceptive to the general public or the person to whom the advertisement was primarily
17 directed; or

18 (11) failed to respond within 30 days to a written communication from
19 the board concerning an investigation by the board or failed to make available to the
20 board a relevant record with respect to an investigation about the licensee's conduct
21 or background.

22 **Sec. 08.29.490. Definitions.** In this chapter,

23 (1) "practice of professional counseling" means, subject to (C) of this
24 paragraph, the application of principles, methods, or procedures of the counseling
25 profession to diagnose or treat, other than through the use of projective testing or
26 individually administered intelligence tests, mental and emotional disorders that are
27 referenced in the standard diagnostic nomenclature for individual, group, and
28 organizational therapy, whether cognitive, affective, or behavioral, within the context
29 of human relationships and systems; if otherwise within the scope of this paragraph,
30 "practice of professional counseling" includes

31 (A) the professional application of evaluation techniques,

1 treatments, and therapeutic services to individuals and groups for the purpose
2 of treating the emotional and mental disorders;

3 (B) an applied understanding of the dynamics of the individual
4 and of group interactions, along with the application of therapeutic and
5 counseling techniques for the purpose of resolving intrapersonal and
6 interpersonal conflict and changing perceptions, attitudes, and behaviors in the
7 area of human relationships; and

8 (C) consistent with regulations adopted by the board under
9 AS 08.29.020(a)(4), administration and use of appropriate assessment
10 instruments that measure or diagnose problems or dysfunctions within the
11 course of human growth and development as part of a counseling process or
12 in the development of a treatment plan;

13 (2) "supervision" means supervision in which the supervisor is available
14 to provide clinical oversight to the supervisee either in person or by a communication
15 device.

16 * Sec. 2. AS 08.01.010 is amended by adding a new paragraph to read:

17 (35) Board of Professional Counselors (AS 08.29.010).

18 * Sec. 3. AS 08.01.050(d) is amended to read:

19 (d) At the request of one of the following boards, the department may contract
20 with public agencies and private professional organizations to provide assistance and
21 treatment to persons licensed by the board who abuse alcohol, other drugs, or other
22 substances:

23 (1) Board of Clinical Social Work Examiners;

24 (2) Board of Dental Examiners;

25 (3) Board of Dispensing Opticians;

26 (4) State Medical Board;

27 (5) Board of Nursing;

28 (6) Board of Examiners in Optometry;

29 (7) Board of Pharmacy;

30 (8) State Physical Therapy and Occupational Therapy Board;

31 (9) Board of Professional Counselors;

- 1 (10) Board of Psychologist and Psychological Associate Examiners; and
2 (11) [(10)] Board of Veterinary Examiners.

3 * Sec. 4. AS 08.03.010(c) is amended by adding a new paragraph to read:

4 (21) Board of Professional Counselors (AS 08.29.010) -- June 30, 2002.

5 * Sec. 5. Rule 504(a)(3), Alaska Rules of Evidence, is amended to read:

6 (3) A psychotherapist is (A) a person authorized to practice medicine
7 in any state or nation, or reasonably believed by the patient to be so, while engaged
8 in the diagnosis or treatment of a mental or emotional condition, including alcohol or
9 drug addiction, (B) a person licensed or certified as a psychologist or psychological
10 examiner under the laws of any state or nation or reasonably believed by the patient
11 so to be, while similarly engaged, [OR] (C) a person licensed as a marital or family
12 therapist under the laws of a state or nation or reasonably believed by the patient so
13 to be, while similarly engaged, or (D) a person licensed as a professional counselor
14 under the laws of a state or nation, or reasonably believed by the patient so to be,
15 while similarly engaged.

16 * Sec. 6. TRANSITIONAL PROVISION. Notwithstanding this Act, the Board of
17 Professional Counselors shall issue a license under AS 08.29, enacted by sec. 1 of this Act,
18 to an applicant who

19 (1) applies by December 31, 1999;

20 (2) submits documentation that the applicant holds a master's or doctorate
21 degree in counseling or a related professional field;

22 (3) submits, on a form provided by the department, documentation from an
23 employer, a supervisor, or a professional peer that the applicant has practiced professional
24 counseling in the state for at least 24 months during the five years immediately preceding the
25 date of application;

26 (4) meets the requirements of AS 08.29.110(a)(1) and (2), enacted by sec. 1
27 of this Act, and is not subject to denial of a license under AS 08.29.400, enacted by sec. 1 of
28 this Act;

29 (5) submits two letters of recommendation from professional counselors who
30 are familiar with the applicant's work; and

31 (6) pays the required fee.

1 * **Sec. 7. REGULATIONS; INITIAL BOARD MEMBERSHIP.** (a) The Board of
2 Professional Counselors established under sec. 1 of this Act may proceed to adopt regulations
3 required to implement this Act, but the regulations may not take effect until the effective date
4 of the bill section being implemented by the regulations.

5 (b) Notwithstanding AS 08.29.010(a), enacted by sec. 1 of this Act, a counselor
6 appointed to the Board of Professional Counselors is not required to be a licensed professional
7 counselor until March 1, 2000, but must, at the time of appointment, meet the requirements
8 of AS 08.29.110(a)(1) and (4).

9 * **Sec. 8.** AS 08.29.010, enacted by sec. 1 of this Act, and secs. 2, 4, and 7 of this Act take
10 effect immediately under AS 01.10.070(c).

11 * **Sec. 9.** Section 6 of this Act takes effect January 1, 1999.

12 * **Sec. 10.** Except as provided in secs. 8 and 9 of this Act, this Act takes effect
13 March 1, 1999.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
 Bill Version: CSB 331 (HES)
 (S) Publish Date: 3-23-98

Revision Date: _____
 Title: An Act regulating licensed professional counselors;...

Department: Commerce and Economic Development
 BRU: Occupational Licensing
 Component: Operations

Sponsor: Senate HES Committee by Request
 Requestor: Senate HES Committee

COMPONENT SERIAL NO. 1844

(Thousands of Dollars)

Expenditures/Revenues	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
OPERATING EXPENDITURES						
PERSONAL SERVICES	49.4	49.4	49.4	49.4	49.4	49.4
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	3.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	15.7					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	80.1	64.4	64.4	64.4	64.4	64.4
CAPITAL EXPENDITURES						
CHANGE IN REVENUES	144.5	0.0	128.8	0.0	128.8	0.0

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	80.1	64.4	64.4	64.4	64.4	64.4
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	80.1	64.4	64.4	64.4	64.4	64.4

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
FULL-TIME						
PART-TIME	2	2	2	2	2	2
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SB 331 creates a five member Board of Professional Counselors to regulate use of the titles 'licensed professional counselor' and 'licensed counselor'. The department estimates there will be at least 250 applicants seeking licensure under this program. As a new regulatory program under centralized licensing (AS 08), the program will be subject to the self-sufficiency funding mandate through licensing fees under AS 08.01.065. An explanation of the costs shown are detailed on the attached page.

Prepared by: Jennifer Strickler, Administrative Manager
 Division: Occupational Licensing
 Approved by Commissioner: Deborah B. Sedwick
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 3/3/98
 Date: 3-7-98

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