

ALASKA LEGISLATURE COMMITTEE FILES 1985-1988 88/2

4015 SJUD CHILD PROTECTION

88/2

Chris P. H. H. H. H. H.

MISSOURY

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and felony offenses involving distribution of controlled substance
it also includes a violation or attempted violation of the laws
another jurisdiction if the offense would have been one of the crimes
listed in this paragraph if committed in this state:

* Sec. 3. AS 12.62.035 is amended by adding a new subsection to read:

(f) In addition to the information for which disclosure
authorized under (a) of this section, the commission may disclose:
existence of an outstanding warrant for the arrest of the person
is the subject of the request if the warrant is for a crime that might
pose a risk of harm to a child.

* Sec. 4. AS 25.23.100(d) is amended to read:

(d) Except as provided in (g) and (i) of this section, an investigation shall be made by the department or any other qualified agent or person designated by the court to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor. The department shall request a state and national criminal record background check by the Department of Public Safety on each person who seeks to adopt a minor.

* Sec. 5. AS 47.35 is amended by adding a new section to read:

Sec. 47.35.058. INVESTIGATIONS OF PROSPECTIVE FOSTER HOMES. The department shall request a state and national criminal record check on each adult residing in a home before that home may be licensed as a foster home.

* Sec. 6. This Act takes effect immediately in accordance with AS 11.10.070(c).

*Assess what is
ISSUE Emergency license
upon WITHHOLDING
OF CRIM. HISTORY
CHECK.*

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal background checks; and
7 providing for an effective date."

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

9 * Section 1. AS 12.62.035(a) is amended to read:


10 (a) Notwithstanding any other provision of law, an interested
11 person [AS DEFINED IN (e) OF THIS SECTION] may request from the com-
12 mission records of all convictions of an individual for crimes that
13 might pose a risk of harm to a child if the individual [INVOLVING
14 CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND ANY SEX CRIMES OF A
15 PERSON WHO] holds or applies for a position in which the individual
16 [PERSON] has or would have supervisory or disciplinary power over a
17 minor. The commission shall authorize the disclosure of the informa-
18 tion to the requesting interested person and shall provide a copy of
19 the information to the individual [PERSON] who is the subject of the
20 request.

21 * Sec. 2. AS 12.62.035(e)(1) is repealed and reenacted to read:

22 (1) "crime that might pose a risk of harm to a child"
23 includes a violation or attempted violation of present or former
24 Alaska statutes regarding the offenses now designated as murder,
25 manslaughter, negligent homicide, assault, reckless endangerment,
26 kidnapping, [custodial interference], sexual assault, sexual abuse of a
27 minor, unlawful exploitation of a minor, incest, indecent exposure,
28 robbery, arson, endangering the welfare of a minor, [criminal nonsup-
29 port,] contributing to the delinquency of a minor, distribution of

1 child pornography, promoting prostitution. (driving while intoxicated,
2 and felony offenses involving distribution of controlled substances;
3 it also includes a violation or attempted violation of the laws of
4 another jurisdiction if the offense would have been one of the crimes
5 listed in this paragraph if committed in this state;

6 * Sec. 3. AS 12.62.035 is amended by adding a new subsection to read:

7 (f) In addition to the information for which disclosure is
8 authorized under (a) of this section, the commission may disclose the
9 existence of any outstanding warrants ^{CONVICTIONS THAT MIGHT POSE A RISK OF} for the arrest of the person who
10 is the subject of the request. 

11 * Sec. 4. AS 25.23.100(d) is amended to read:

12 (d) Except as provided in (g) and (i) of this section, an inves-
13 tigation shall be made by the department or any other qualified agency
14 or person designated by the court to inquire into the conditions and
15 antecedents of a minor sought to be adopted and of the petitioner for
16 the purpose of ascertaining whether the adoptive home is a suitable
17 home for the minor and whether the proposed adoption is in the best
18 interest of the minor. The department shall request a background
19 check by the Department of Public Safety under AS 47.35.065 on each
20 person who seeks to adopt a minor.

21 * Sec. 5. AS 47.35 is amended by adding a new section to read:

22 Sec. 47.35.065. BACKGROUND CHECK ON LICENSEES AND EMPLOYEES.

23 (a) The Department of Public Safety shall conduct background checks
24 on all persons licensed under this chapter and their employees and, as
25 requested by the Department of Health and Social Services under
26 AS 25.23.100, on a person who seeks to adopt a minor. The background
27 check shall consist of a ^{PERSONAL DATA} (demographic) check and a fingerprint check of
28 both state and national criminal records. The background check shall
29 be based on information gathered and submitted by the department.

1 Persons are subject to the background check as follows:

2 (1) persons currently licensed under this chapter and their
3 employees shall, before their next birthday, consent to the background
4 check and submit the appropriate information;

5 (2) future licensees or employees consent to the background
6 check by submitting the appropriate information, and may not be li-
7 censed or hired until the ^{demographic} ~~demographic~~ check is completed.

8 (b) A licensee or employee who has completed the background
9 check shall be issued a card indicating that a background check has
10 been conducted. The card is valid for two years.

11 (c) [The Department of Public Safety shall train the Department
12 of Health and Social Services' employees in the procedures necessary
13 to implement this section.] The cost of conducting the background
14 check shall be paid by the licensee ~~or employee~~ ^{or employee} except that an em-
15 ployee who consents to the background check and is not hired shall
16 receive a refund of one-half of the cost of the background check.]

17 (d) Information gathered under this section is confidential and
18 is not subject to public inspection and copying under AS 09.25.110 and
19 09.25.120. However, in accordance with department regulations, back-
20 ground reports may be used by appropriate governmental agencies with
21 licensing or child protection functions.

22 * Sec. 6. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).

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Original sponsor: Phillips

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 67 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to hearsay evidence in prosecutions
7 for certain sexual offenses; and amending Rule 6(r),
8 Alaska Rules of Criminal Procedure."

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

10 * Section 1. AS 12.40 is amended by adding a new section to read:

11 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL
12 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -
13 11.41.440 or 11.41.455, hearsay evidence of a statement, not otherwise
14 admissible, made by a child under the age of 10 ~~who is the victim of~~
15 ~~the offense describing the conduct establishing the offense~~ may be
16 admitted into evidence before the grand jury if

17 (1) the circumstances of the statement indicate its relia-
18 bility; and

19 (2) the child

20 (A) testifies at the grand jury proceeding; or

21 (B) is unavailable as a witness, the grand jury mem-
22 bers are informed of the reason for the child's unavailability,
23 and there is additional evidence introduced to corroborate the
24 statement.

25 (b) In this section,

26 (1) "statement" means an oral or written assertion or
27 nonverbal conduct if the nonverbal conduct is intended as an asser-
28 tion;

29 (2) "unavailable" means the child

1 (A) has a lack of memory of the subject matter of the
2 statement being offered;

3 (B) is unable to attend or testify at the hearing
4 because of death or a then existing physical or mental illness or
5 infirmity;

6 (C) is likely to suffer substantial psychological,
7 emotional, or physical harm if required to testify; or

8 ~~(D) is absent from the hearing and the proponent of~~
9 ~~the statement has been unable to procure the child's attendance~~
10 ~~by reasonable means.~~

11 *DOE TO CONDUCT*
12 (c) A child is not unavailable ~~under this section if the un-~~
13 ~~availability is due to the procurement or wrongdoing of the proponent~~
14 ~~of the statement to prevent the child from attending or testifying.~~
15 *of the*

16 * Sec. 2. AS 12.40.110, added by sec. 1 of this Act, has the effect of
17 amending Rule 6(r), Alaska Rules of Criminal Procedure, by making certain
18 hearsay evidence admissible in grand jury proceedings for certain sexual
19 offenses without requiring compelling justification.

20 *(D) IS ABSENT FROM THE HEARING AND THE*
21 *PROONENT OF THE STATEMENT HAS EXERCISED*
22 *REASONABLE DILIGENCE TO PROCURE THE*
23 *CHILD'S ATTENDANCE.*

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 30, 1985

SUBJECT: Sectional analysis of CSSB 243 (Judiciary)
(4/29/85 draft)

TO: Senator Pat Rodey
Chairman, Senate Judiciary Committee

FROM: Edward H. Hein *EH Hein*
Legislative Counsel

The bill title has been changed by adding "and dependent adults" to reflect changes in sections 24 and 25 affecting nursing home operators.

Section 1 renames the crime of "endangering the welfare of a minor" to be "endangering the welfare of a minor in the first degree"; expands coverage to include children under 13 years of age instead of 10 years of age as in current law; changes crime from intentionally deserting a child to knowingly exposing a child to risk of physical injury or sexual abuse.

Sec. 2 creates the crime of endangering the welfare of a minor in the second degree. Makes it a class A misdemeanor for a person caring for a child under 13 years of age to expose the child to a substantial risk of physical injury or sexual abuse or to injure the child by failing to provide necessary food, care, clothing, shelter, or medical attention. The person must act with at least criminal negligence.

Sec. 3 revises the child pornography distribution statute to specifically include the act of distributing in the state, and eliminates the requirement that distribution be for commercial consideration.

Sec. 4 defines "distribution" for purposes of the child pornography distribution statute to include all forms of distributing whether or not for monetary or other consideration.

Sec. 5 provides for a maximum five-year extension of the statute of limitations for prosecution of the following crimes in which the victim is under 16 years of age: promoting prostitution, former sexual abuse in the third degree, and former contributing to the delinquency of a minor by engaging in sexual contact with a child 13, 14, or 15 years of age. The current statute already covers sexual assault, sexual abuse of a minor, incest, unlawful exploitation of a minor, and indecent exposure. The general statute of limitations for all these crimes is five years. This section allows prosecution within one year after the crime is reported or within one year after the victim reaches age 16, whichever occurs first, but in no event more than 10 years after the crime occurred.

Sec. 6 restricts the introduction of evidence of a victim's past sexual conduct in preliminary hearings and trials of sexual abuse or unlawful exploitation of a minor; requires defendant to request admittance of evidence before the preliminary hearing or before the trial, unless unable to do so despite exercising "due diligence"; requires written order from court limiting evidence and questions.

Sec. 7 expands coverage of AS 47.10 provisions to include cases in which a child is in imminent and substantial danger of being sexually abused by a parent, guardian, or custodian or as a result of conditions created by them or of their inadequate supervision.

Sec. 8 requires that a predisposition report on a child be available to the child, parents, the guardian ad litem, and the attorneys within six days of the disposition hearing, rather than within 10 days.

Sec. 9 clarifies that the Department of Health and Social Services may take custody of a minor if the department determines that (1) the minor has been neglected by parents or guardians and is in need of immediate medical attention, (2) that the minor has been physically injured, sexually abused, sexually exploited, or maltreated by a person responsible for the minor's welfare and immediate removal from the minor's surroundings is necessary to protect the minor's life, or (3) that the minor has been sexually abused by a parent, guardian, or custodian or as a result of conditions they created or by their inadequate supervision and that immediate removal from the minor's surroundings is

necessary to protect the minor's life or to prevent further sexual abuse.

Sec. 10 provides that if the Department of Health and Social Services takes emergency custody of a minor, it must notify the court within 24 hours by filing a child in need of aid petition. If the minor is held in emergency custody less than 24 hours and no petition is filed with the court, the department must, within 24 hours after releasing the minor, file a report with the court explaining why the minor was taken into custody.

Sec. 11 adds a definition of "sexual abuse" for purposes of AS 47.10.

Sec. 12 Subsection (a) revises the list of persons required to report child abuse. The new list adds teachers and administrative staff members of private schools; adds "human services providers" as defined in section 23 of the bill, instead of only social workers; adds all "child care providers" as defined in section 23 of the bill, instead of only licensed day care providers and paid staff; adds custody investigators, employees and volunteers of domestic violence or sexual assault programs or crisis shelters, and guardians and conservators; deletes licensed foster care providers, which is included in "child care providers".

Subsection (b) specifies the procedure for reporting to the Department of Health and Social Services child abuse thought to be committed by a person responsible for the child's welfare, as defined in section 24 of the bill.

Subsection (c) specifies the procedure for reporting to the police child abuse committed by a person not responsible for the child's welfare or when the reporter is uncertain of who abused the child or whether the suspect is responsible for the child's welfare.

Subsection (d) revises existing AS 47.17.020(b) to conform with the other changes made by this section of the bill.

Sec. 13 requires photo processors to report to police film or other materials they process that constitutes child pornography. The processor must allow police to inspect the material and must give information about the source of the material.

Sec. 14 revises AS 47.17.025 to conform with the new reporting procedures established under section 12 of the bill. Under subsection (a), if child abuse reported to police was committed by a person responsible for the child's welfare, the police must inform the Department of Health and Social Services and the Department of Law. DHSS must investigate and provide a written report to the Department of Law within 72 hours. If the DHSS preliminary investigation reveals that the abuse was not caused by a family member, DHSS must so notify the Department of Law.

Subsection (b) specifies the information that must be included in the DHSS report.

Secs. 15 and 16 clarify that a "judicial" proceeding includes any civil or criminal proceeding.

Sec. 17 provides that photos, and if necessary, x-rays of a physically abused child may be taken without the permission of the parents, guardian, or custodian, and that any x-rays must be taken by a person licensed to do so.

Sec. 18 makes it a class B misdemeanor for a photo processor to fail to report child pornography to the police.

Sec. 19 allows the attorney general to seek an injunction or restraining order to keep a known child abuser from contact with a child not related to the abuser.

Sec. 20 redefines "child abuse or neglect" as "abuse". "neglect" is already separately defined. This change conforms with terminology used throughout AS 47.17. In addition, the new definition expands the concept of child abuse to include harm caused by person's not responsible for the child's welfare, as well as those who are responsible. Thus, "abuse" of a child is defined by the harm committed, regardless of who commits it. Who commits it will determine how the harm is reported and investigated.

Sec. 21 requires dental hygienists, nurse practitioners, physician's assistants, and psychological associates to report child abuse.

Sec. 22 expands the definition of "sexual exploitation", for purposes of reporting, to include inducing or employing a child to engage in prostitution and expands coverage to

Senator Pat Rodey
April 30, 1985
Page 5

include exploitation by persons not responsible for the child's welfare.

Sec. 23 adds new definitions for terms introduced in section 13 of the bill and for the term "person responsible for a child's welfare", which appears in several places in AS 47.17.

Sec. 24 increases the possible penalty for violation of AS 47.35 to a maximum 90 days' imprisonment and a maximum fine of \$1,000. Current law allows no imprisonment and a maximum fine of \$200.

Sec. 25 authorizes the Department of Health and Social Services to levy civil fines of up to \$200 per day for licensing violations under AS 47.35.

EHH:ojb
J14/062

B.2

Introduced: 1/18/85
Referred: Health, Education & Social
Services, Judiciary and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 88

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the protection of children; and
7 amending Rules 504, 505, and 506, Alaska Rules of
8 Evidence, and Rule 6(r), Alaska Rules of Criminal
9 Procedure."

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

11 * Section 1. AS 11.51.100 is amended to read:

12 Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST
13 DEGREE. (a) A person commits the crime of endangering the welfare of
14 a minor in the first degree if, being a parent, guardian, or other
15 person legally charged with the care of a child under 18 [10] years of
16 age, the person intentionally desert; the child in any place under
17 circumstances creating a substantial risk of physical injury to the
18 child. DEFINITIVE

19 (b) Endangering the welfare of a minor in the first degree is, a
20 class C felony.

21 * Sec. 2. AS 11.51 is amended by adding a new section to read:

22 Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND
23 DEGREE. (a) A person commits the crime of endangering the welfare of
24 a minor in the second degree if, being entrusted with the care of a
25 child under ¹³ 18 years of age, the person with criminal negligence

26 (1) exposes the child to circumstances creating a substan-
27 tial risk of physical injury or sexual abuse; or

28 (2) exposes the child to physical injury by failing to
29 provide the child with necessary food, care, clothing, shelter, or

Manning Parents

*FINDS TO PREVENT
GROSS DEVIATION*

1 medical attention.

2 (b) Endangering the welfare of a minor in the second degree is a
3 class A misdemeanor.

4 * Sec. 3. AS 11.61.125(a) is amended to read:

5 (a) A person commits the crime of distribution of child pornog-
6 raphy if the person brings or causes to be brought into the state for
7 sale or distribution, or in the state distributes, [sells, or exhibits]
8 to others [for commercial consideration,] or possesses ~~E~~ prepares, pub-
9 lishes, or prints ~~I~~ with intent to distribute, [sell, or exhibit] to
10 others [for commercial consideration,] any material that visually de-
11 picts conduct described under AS 11.41.455(a), knowing that the pro-
12 duction of the material involved the use of a child under 18 years of
13 age who engaged in the conduct.

14 * Sec. 4. AS 12.10.020(c) is amended to read:

15 (c) Even if the general time limitation has expired, a prose-
16 cution under AS 11.41.410 -- 11.41.460, AS 11.66.110 -- 11.66.130,
17 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense
18 committed against a person under the age of 16 may be commenced within
19 one year after the crime is reported to a peace officer or the person
20 reaches the age of 16, whichever occurs first. This subsection does
21 not extend the period of limitation by more than five years.

22 * Sec. 5. AS 12.40 is amended by adding a new section to read:

23 Sec. 12.40.055. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL
24 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 --
25 11.41.460, AS 11.66.110 -- 11.66.130, former AS 11.41.430, or former
26 AS 11.51.130(a)(4), hearsay evidence of a statement relating to the
27 offense, not otherwise admissible, made by a COMPLAINING WITNESS child under the age of 16 ~~13~~
28 may be admitted into evidence before the grand jury if

29 (1) the circumstances of the statement indicate its

1 reliability; and
2 (2) the child
3 (A) testifies at the grand jury proceeding; or
4 (B) is unavailable as a witness and there is some
5 additional evidence to corroborate the statement.

6 (b) In this section,

7 (1) "statement" means an oral or written assertion or
8 nonverbal conduct if the nonverbal conduct is intended as an asser-
9 tion;

10 (2) "unavailable" means that the child

11 (A) has a lack of memory of the subject matter of the
12 statement being offered;

13 (B) is unable to testify at the proceeding because of
14 death or then existing physical or mental illness or infirmity;

15 (C) is likely to suffer substantial psychological,
16 emotional, or physical harm if required to testify;

17 ~~(D) is declared incompetent to testify by the judge;~~

18 (E) is absent from the proceeding and the prosecution
19 has been unable, after reasonable efforts, to procure the child's
20 attendance.
21

22 * Sec. 6. AS 12.45.045 's amended to read:

23 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR
24 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)
25 In prosecutions [for the crimes [CRIME]] of sexual assault in any de-
26 gree [sexual abuse of a minor in any degree, or unlawful exploitation
27 of a minor.] or an attempt to commit any of these crimes [SEXUAL AS-
28 SAULT IN ANY DEGREE], evidence of the complaining witness' previous
29 sexual conduct may [SHALL] not be admitted nor reference made to it in

JUDICIAL DISCRETION AT TRIAL

DISCLOSURE TO THE COURT OF "UNAVAILABLE"

VIDEO IMAGE

HB 67 - 17-20 lines page 3

OK

1 the presence of the jury except as provided in this section. When the
2 defendant seeks to admit the evidence for any purpose, the defendant
3 may apply for an order of the court at any time before or during the
4 trial or preliminary hearing. After the application is made, the
5 court shall conduct a hearing in camera to determine the admissibility
6 of the evidence. If the court finds that evidence offered by the
7 defendant regarding the sexual conduct of the complaining witness is
8 relevant, and that the probative value of the evidence offered is not
9 outweighed by the probability that its admission will create undue
10 prejudice, confusion of the issues, or unwarranted invasion of the
11 privacy of the complaining witness, the court shall make an order
12 stating what evidence may be introduced and the nature of the ques-
13 tions which may [SHALL] be permitted. The defendant may then offer
14 evidence under the order of the court.

15 * Sec. 7. AS 12.62.035(a) is amended to read:

16 (a) Notwithstanding any other provision of law, an interested
17 person as defined in (e) of this section may request from the commis-
18 sion records of all convictions ^{of interest} for crimes that might pose a risk ^{Too Serious?} to a
19 child [INVOLVING (CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND ANY
20 SEX CRIMES) of a person ^{IF THE PERSON} who holds or applies for a position in which
21 the person has or would have supervisory or disciplinary power over a
22 minor. The commission shall authorize the disclosure of the informa-
23 tion to the requesting interested person and shall provide a copy of
24 the information to the person who is the subject of the request.

25 * Sec. 8. AS 12.62.035(e)(1) is repealed and reenacted to read:

26 (1) "crime that might pose a risk ^{of harm} to a child" includes a
27 violation or attempted violation of present or former Alaska statutes
28 regarding the offenses now designated as murder, manslaughter, negli-
29 gent homicide, assault, reckless endangerment, kidnapping, [custodial

1 interference, sexual assault, sexual abuse of a minor, unlawful ex-
2 ploitation of a minor, incest, indecent exposure, robbery, arson,
3 endangering the welfare of a minor, criminal nonsupport, contributing
4 to the delinquency of a minor, distribution of child pornography,
5 promoting prostitution, driving while intoxicated, and felony offenses
6 involving distribution of controlled substances; it also includes a
7 violation or attempted violation of the laws of another jurisdiction
8 if the offense would have been one of the crimes listed in this para-
9 graph if committed in this state;

10 * Sec. 9. AS 12.62.035 is amended by adding a new subsection to read:

11 (f) In addition to the information for which disclosure is
12 authorized under (a) of this section, the commission may disclose the
13 existence of any outstanding warrants for the arrest of the person who
14 is the subject of the request.

15 * Sec. 10. AS 29.43.110 is amended to read:

16 Sec. 29.43.110. PENALTY FOR VIOLATION OF CURFEW. The penalty
17 for violation of AS 29.43.100 -- 29.43.110 is as prescribed by the
18 curfew ordinance of the city, and a fine so paid must [SHALL] be paid
19 to the city when the violation takes place in the city. Otherwise the
20 fine must [SHALL] be paid to the state. However, the penalty may
21 [SHALL] not exceed a fine of \$300[, (OR IMPRISONMENT FOR UP TO 30 DAYS,
22 OR BOTH)].

23 * Sec. 11. AS 47.10.010(b) is amended to read:

24 (b) When a minor is accused of violating a traffic statute or
25 regulation, a traffic ordinance or regulation of an incorporated
26 municipality, a fish and game statute or regulation under AS 16, a
27 [OR] parks and recreation facilities statute or regulation under
28 AS 41.21, or a curfew ordinance of a city under AS 29.43.100 --
29 29.43.110, excepting a statute the violation of which is a felony, the

Judge
Turnkey
in Name
OUT

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1 procedure prescribed in AS 47.10.020 -- 47.10.090 may not be followed,
2 except that a parent, guardian or legal custodian shall be present at
3 all proceedings. The minor accused of a traffic offense, a fish and
4 game statute or regulation violation under AS 16, a [OR] parks and
5 recreational facilities violation under AS 41.21, or a curfew viola-
6 tion under AS 29.43.100 -- 29.43.110 must [SHALL] be charged, ^{HAND} prose-
7 cuted, and sentenced in a district court in the same manner as an
8 adult.

9 * Sec. 12. AS 47.10.081(c) is amended to read:

10 (c) The court shall inform the child, the child's parents and
11 the attorneys representing the parties and the guardian ad litem
12 the predisposition report will be available to them not less than
13 working [10] days before the disposition hearing.

14 * Sec. 13. AS 47.10.142(a) is amended to read:

15 (a) The Department of Health and Social Services may take emer-
16 gency custody of a minor upon discovering any of the following circum-
17 stances:

- 18 (1) the minor has been abandoned;
- 19 (2) the minor has been grossly neglected by the minor's
20 parents or guardian as "neglect" is defined in AS 47.17.070(5), so
21 that, in the determination of the department, immediate removal from
22 the minor's surroundings is, [IN THE DETERMINATION OF THE DEPARTMENT,]
23 necessary to protect the minor's life, or immediate medical attention
24 is necessary;
- 25 (3) the minor has been abused, as "abuse" is defined in
26 AS 47.17.070(1), so that immediate medical attention or immediate
27 removal from the minor's surroundings is necessary, in the determina-
28 tion of the department;
- 29 (4) the minor has been sexually abused under circumstances

30 DAYS TO INVESTIGATE
AND RECOMMEND - (20 DAYS)
10 TO APPROVE

that
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two

Frank General
Steps Bottom
LAW.

1 listed in AS 47.10.010(a)(2)(D).

2 * Sec. 14. AS 47.10.142(c) is amended to read:

3 (c) When a child is taken into custody under (a) or (b) of this
4 section, the department shall make reasonable efforts to immediately
5 [, AND IN NO EVENT MORE THAN 12 HOURS LATER UNLESS PREVENTED BY LACK
6 OF COMMUNICATION FACILITIES,] notify the parents or the person or
7 persons having custody of the child of this action. [AND THE COURT OF
8 THE ACTION AND FILE WITH THE COURT A PETITION ALLEGING THAT THE CHILD
9 IS A CHILD IN NEED OF AID.] Unless the department determines that
10 continued custody is not necessary to protect the child, the depart-
11 ment shall notify the court of the emergency custody by filing, within
12 24 hours after custody was assumed, excluding weekends or judicial
13 holidays, a petition alleging that the child is a child in need of
14 aid.

15 * Sec. 15. AS 47.10.290 is amended by adding a new paragraph to read:

16 (8) "sexual abuse" means

17 (A) conduct that would constitute a sexual offense
18 against a child under AS 11;

19 (B) the perpetrator's knowingly touching, directly or
20 through clothing, the genital area, groin, inner thighs, or
21 buttocks of a child, or causing a child to touch, directly or
22 through clothing, the genital area, groin, inner thighs, or
23 buttocks of the perpetrator or another; sexual abuse does not
24 include reasonable touching in the exercise of normal caretaker
25 responsibilities for a child or normal caretaker interactions
26 with a child or touching performed for the purpose of adminis-
27 tering a recognized and lawful form of treatment that is rea-
28 sonably adapted to promoting the physical or mental health of the
29 child; reasonable perceptions of the child that the touching is

*Don Edwards
Arch. A. 16.*

1 sexual in nature are relevant to the determination of whether the
2 touching is sexual abuse;

3 (C) exposing the genital area, anus, female breast,
4 groin, or buttocks of a child to the perpetrator or another for
5 the sexual gratification of the child, the perpetrator, or another,
6 or exposing the genital area, anus, female breast, groin or
7 buttocks of the perpetrator or another to a child for the sexual
8 gratification of the child, the perpetrator, or another; reason-
9 able perceptions of the child that the conduct is sexual in
10 nature are relevant to the determination of whether the conduct
11 is sexual abuse; or

12 (D) verbal statements to a child which express a
13 desire or intent to have sexual contact with the child or encour-
14 age the child to have sexual contact with the perpetrator or
15 another.

*covered
under AS 11*

16 * Sec. 16. AS 47.17.010 is amended to read:

17 Sec. 47.17.010. PURPOSE. In order to protect children whose
18 health and well-being may be adversely affected through the inflic-
19 tion, by other than accidental means, of harm through physical abuse,
20 mental injury, [OR] neglect, [OR] sexual abuse, or sexual exploita-
21 tion, the legislature requires the reporting of these cases by practi-
22 tioners of the healing arts and others to the appropriate public
23 authorities. It is the intent of the legislature that, as a result of
24 these reports, protective services will be made available in an effort
25 to prevent further harm to the child, to safeguard and enhance the
26 general well-being of the children in this state, and to preserve
27 family life whenever possible.

28 * Sec. 17. AS 47.17.020(a) is amended to read:

29 (a) The following persons who, in the performance of their

INTER-FAMILY - DIV FAMILIAR + YOUTH SVCS
NOW-FAMILY - LAW ENFORCEMENT

1 [PROFESSIONAL] duties, have cause to believe that a child has suffered
2 harm as a result of abuse or neglect shall immediately report the harm
3 to the nearest office of the department ~~of the department~~ LAW ENFORCEMENT AGENCY

4 (1) practitioners of the healing arts; Page 11, Line 27

5 (2) employees and volunteers of private and public schools
6 [SCHOOL TEACHERS AND SCHOOL ADMINISTRATIVE STAFF MEMBERS];

7 (3) human services providers [SOCIAL WORKERS]; PG. 17, Line 7

8 (4) peace officers, and officers of the Department of
9 Corrections;

10 (5) administrative officers of institutions;

11 (6) ~~child~~ [LICENSED DAY] care providers [AND PAID STAFF]; PG 12, Line 4

12 (7) counselors, including church counselors and therapists,
13 whether licensed or not; ~~whether licensed or not;~~

14 (8) court investigators;

15 (9) employees and volunteers of domestic violence programs
16 or crisis shelters;

17 (10) clergy when acting as counselor [LICENSED FOSTER CARE
18 PROVIDERS].

19 * ~~Sec. 18. AS 47.17 is amended by adding a new section to read:~~

20 Sec. 47.17.023. REPORTS TO LAW ENFORCEMENT AGENCIES. (a) If a
21 person listed in AS 47.17.020, in the performance of the person's
22 duties, has cause to believe that a child under the age of 18 has
23 suffered harm as a result of physical or mental injury, neglect,
24 sexual abuse, ^{OR} sexual exploitation, or maltreatment by an individual
25 not responsible for the child's welfare, such that the child's health
26 or welfare is harmed or threatened, the person shall immediately
27 report the harm to the nearest office of the department
law enforcement agency.

28 (b) A person who, in the course of processing or producing
29 visual or printed matter, either privately or commercially, has reason

INTO TITLE II

INCLUDE →

Time 11

to believe that the visual or printed matter submitted for processing or producing visually depicts a minor engaged in conduct described under AS 11.41.455(a) shall immediately report this to the nearest law enforcement agency. The person shall provide the law enforcement agency with all information known about the origin of the matter and the person who submitted it.

~~(c) If a person making a report under this section cannot reasonably contact the nearest ^{Department office.} law enforcement agency, and immediate action appears necessary for the well-being of the child, the person shall make the report to the nearest ^{LAW ENFORCEMENT AGENCY} office of the department. The department shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest law enforcement agency.~~

HARMFUL

* Sec. 19. AS 47.17.050 is amended to read:

Sec. 47.17.050. IMMUNITY. A person who, in good faith, makes a report under this chapter, or who participates in civil or criminal [JUDICIAL] proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability which might otherwise be incurred or imposed.

* Sec. 20. AS 47.17.060 is repealed and reenacted to read:

Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. In a civil or criminal proceeding related to a report under this chapter, no privilege is a ground for excluding evidence regarding a child's harm, or its cause, except (1) the attorney-client privilege; (2) the psychotherapist-patient privilege; and (3) the clergyman privilege, ^{if} the communication was made to the clergyman in furtherance of a religious practice and not for counseling purposes.

STATE v. WHEATON

Adding Civil or Criminal Immunity to old 060

* Sec. 21. AS ~~47.17.068~~ is amended to read:

Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person

Dow Edwards

CRIMINAL
DOWNSIDE TO
VIOLATION OF .069?
Child Abuse Reporting

DAY CARE
UNLICENSED

RESPONSIBILITY
OF THE WITNESS
4/15/17

1 required to file a report of abuse, [OR] neglect, or exploitation
2 under AS 47.17.020 or AS 47.17.023 who [WILFULLY OR] knowingly fails
3 or refuses to report as [THE HARM] required [UNDER AS 47.17.020] is
4 guilty of a class B misdemeanor.

5 * Sec. 22. AS 47.17 is amended by adding a new section to read:

6 Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney
7 general, ^{OR GUARDIAN AD LITEM} may bring an action to enjoin or limit a person from contact
8 with a child not related to the person if the person

- 9 (1) has sexually abused a child;
- 10 (2) has physically abused a child;
- 11 (3) has failed without lawful excuse to provide necessary
- 12 food, care, clothing, shelter, supervision, or medical attention for a
- 13 child entrusted to the care of the person; or
- 14 (4) otherwise constitutes a substantial danger to the
- 15 mental, emotional, or physical welfare of a child.

16 (b) The court may grant an order in whatever form is best suited
17 to protect children from harm based upon the facts of the case. This
18 section does not limit the authority of the attorney general or the
19 court to act to protect children.

20 * Sec. 23. AS 47.17.070(1) is amended to read:

21 (1) "child abuse or neglect" means the physical injury or
22 neglect, mental injury, sexual abuse, sexual exploitation, or mal-
23 treatment of a child under the age of 18 by a person who is responsi-
24 ble for the child's welfare under circumstances which indicate that
25 the child's health or welfare is harmed or threatened thereby;

26 * Sec. 24. AS 47.17.070(6) is amended to read:

27 (6) "practitioner of the healing arts" includes chiroprac-
28 tors, dentists, ^{DENTIST, NURSE, OPTICIAN} health aides, nurses, nurse practitioners, optome-
29 trists, osteopaths, physical therapists, physicians, physician's

1 assistants, psychiatrists, psychologists, religious healing practi-
2 tioners, and surgeons;

3 * Sec. 25. AS 47.17.070 is amended by adding new paragraphs to read:

4 (8) "child care provider" means an adult individual, or an
5 employee or volunteer of an organization, who provides care and super-
6 vision to a child not related to the caregiver;

7 (9) "human services provider" includes an individual human
8 services provider, and an employee or volunteer of a human services
9 organization, such as a social service, youth service, mental health,
10 or substance abuse agency, or a shelter for runaway or homeless youth;

11 (10) "mental injury" means an injury to the intellectual or
12 psychological capacity of a child as evidenced by an observable and
13 substantial impairment in the child's ability to function within a
14 normal range of performance and behavior, with due regard to the
15 child's culture;

16 (11) "organization" means a group or entity that provides
17 care and supervision to a child not related to the caregiver, and
18 includes a child care facility, pre-elementary school, head start
19 center, child foster home, residential child care facility, recreation
20 program, children's camp, and children's club.

21 * Sec. 26. AS 47.35.070 is amended to read:

22 Sec. 47.35.070. VIOLATIONS. (a) A person who violates a provi-
23 sion of AS 47.35 [47.35.010 -- 47.35.100] or a [RULE OR] regulation
24 adopted under AS 47.35 [47.35.010 -- 47.35.100] is guilty of a class B
25 misdemeanor[, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE
26 THAN \$200].

27 (b) The department may by regulation devise a system of civil
28 enforcement. The system may employ civil penalties not to exceed \$200
29 for each day during which one or more violations of a licensing

H. 1020

1 statute or licensing regulation occurs. The imposition of a civil
2 penalty does not prevent prosecution and sentence for a criminal
3 offense.

4 * Sec. 27. AS 12.40.050, added by sec. 5 of this Act, has the effect of
5 changing Rule 6(r), Alaska Rules of Criminal Procedure, by making certain
6 hearsay evidence admissible in grand jury proceedings for certain sexual
7 offenses without requiring compelling justification.

8 * Sec. 28. AS 47.17.060, as repealed and reenacted in sec. 20 of this
9 Act, has the effect of changing Rules 504, 505, and 506, Alaska Rules of
10 Evidence, by preventing the application in civil or criminal cases of the
11 privileges specified in those rules to evidence obtained through reports
12 made under AS 47.17.

CS HB 88

Sec. 9. AS 47.10.142(c) is amended to read:

(c) When a child is taken into custody under (a) or (b) of this section, the department shall immediately, and in no event more than 12 hours later unless prevented by lack of communication facilities, notify the parents or the person or persons having custody of the child. If the department determines that continued custody is necessary to protect the child, the department shall notify the court of the emergency custody by filing, within 24 hours after custody was assumed, a petition alleging that the child is a child in need of aid [AND THE COURT OF THE ACTION AND FILE WITH THE COURT A PETITION ALLEGING THAT THE CHILD IS A CHILD IN NEED OF AID].

scan to Liz Hickerson - 9000

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 1, 1985

SUBJECT: Child protection legislation package
TO: Sandra Schubert
FROM: Edward H. Hein *E.H.*
Legislative Counsel

The following is a list of the ideas from John Walsh's "Selected State Legislation" booklet that our discussion group has agreed to continue to consider for inclusion in the child protection legislation package. Page references are to Walsh's booklet. Item #15 is not from Walsh.

1. Missing child information center; clearinghouse; central registry; NCIC reporting -- pp. 1, 4, 7 - 8.
2. Unidentified bodies; central file of information to identify deceased persons; combine with missing persons information center; require use of NCIC; collect dental records and other information identifying missing children; require medical examiners and coroners to report descriptive information on dead persons who remain unidentified -- p. 3.
3. Eliminate waiting periods for investigation and dissemination of reports of missing children -- p. 3.
4. Reporting of child abuse & exploitation; check the list of persons required to report; include all persons, not just named occupations and professions; failure to report by general public should be limited to civil fines; who should reports be submitted to? -- pp. 9 - 11.
5. Requirement for prosecution to prove lack of consent and inquiry into past sexual experiences of child victims -- p. 17.
6. Mandatory sentences for sex-offenders -- p. 17.

70 -
7. Require child sex offenders to register with law enforcement agencies -- p. 18.

8. Allow hearsay statements of child victim or witness into evidence at trial and grand jury proceedings; insure reliability; judge must find that requiring testimony of child would impair child's emotional, psychological well-being; may be recent court opinions on this subject worthy of review -- p. 20.

9. Videotaping children's testimony; should this be expanded to cover grand jury? Constitutional issue of confrontation; major expense -- p. 20.
close circuit TV

10. Provide for education programs to teach prevention of child abductions; workshops for parents, teachers, and children to counteract stereotypes, train on child safety, and detect cases of abuse -- pp. 25 - 26.

11. Require schools to obtain school records, birth certificates, or other identifying documentation of new or transferring students; establish procedures for handling cases in which parent does not provide information; cover grades K - 12; procedure should include notifying missing children agencies; circulate lists of missing children among schools to compare with lists of enrolled students; note withdrawals of children from school and report to missing children agencies if no request received from new school for records within 15 days during school year, within 60 days during summer, or if child absent five consecutive days unaccountably; consider applying to foster home placement and home-based education -- pp. 27 - 28.

12. Require check of criminal history of employees, volunteers, foster and adoptive parents, and others who supervise or deal with children; consider whether old convictions (more than 7 - 10 years) of sex crimes should be released to inquiring party; review list of crimes included in HB 88 -- pp. 33 - 34.

Justice - not judicial assistance
13. Require in-service training for judges and others in criminal justice system on child abuse issues; check with court system for current practice -- p. 35.

14. Expand child pornography statute to cover lending, exchange, etc. without commercial consideration; consider banning possession in the home; enforcement considerations and

Sandra Schubert
March 3, 1985
Page 3

constitutional privacy issues raised; consider relationship to conspiracy legislation for enforcement -- p. 45.

15. Draft resolution to the Board of Education requesting establishment of parenting classes in high schools.

EHH:ojb
J12/048

Offered: 4/3/85
Referred: Judiciary

Original sponsor: Health, Education and
Social Services Committee

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 243 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the protection of children; and
7 amending Rules 504 and 505, Alaska Rules of Evi-
8 dence."

9

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

10

* Section 1. AS 11.51.100 is amended to read:

11

Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST

12

DEGREE. (a) A person commits the crime of endangering the welfare of

13

a minor in the first degree if, being a parent, guardian, or other

14

person legally charged with the care of a child under 13 [10] years of

15

age, the person intentionally deserts the child in any place under

16

circumstances creating a substantial risk of physical injury to the

17

child.

18

(b) Endangering the welfare of a minor in the first degree is a

19

class C felony.

20

* Sec. 2. AS 11.51 is amended by adding a new section to read:

21

Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND

22

DEGREE. (a) A person commits the crime of endangering the welfare of

23

a minor in the second degree if, being entrusted with the care of a

24

child under 13 years of age, the person with criminal negligence

25

(1) exposes the child to circumstances creating a substan-

26

tial risk of physical injury or sexual abuse; or

27

(2) exposes the child to physical injury by failing to

28

provide the child with necessary food, care, clothing, shelter, or

29

medical attention.

1 (b) Endangering the welfare of a minor in the second degree is a
2 class A misdemeanor.

3 * Sec. 3. AS 11.61.125(a) is amended to read:

4 (a) A person commits the crime of distribution of child pornog-
5 raphy if the person brings or causes to be brought into the state for
6 [SALE OR] distribution, or in the state distributes, or in the state
7 possesses, prepares, publishes, or prints with intent to distribute,
8 [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any mater-
9 ial that visually depicts conduct described in [UNDER] AS 11.41.-
10 455(a), knowing that the production of the material involved the use
11 of a child under 18 years of age who engaged in the conduct.

12 * Sec. 4. AS 11.61.125 is amended by adding a new subsection to read:

13 (d) In this section, "distribution" includes delivering, sell-
14 ing, renting, leasing, lending, giving, circulating, exhibiting,
15 presenting, providing, and exchanging, whether or not for monetary or
16 other consideration.

17 * Sec. 5. AS 12.10.020(c) is amended to read:

18 (c) Even if the general time limitation has expired, a prose-
19 cution under AS 11.41.410 - 11.41.460, AS 11.66.110 - 11.66.130,
20 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense
21 committed against a person under the age of 16 may be commenced within
22 one year after the crime is reported to a peace officer or the person
23 reaches the age of 16, whichever occurs first. This subsection does
24 not extend the period of limitation by more than five years.

25 * Sec. 6. AS 12.45.045(a) is amended to read:

26 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR
27 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)
28 In prosecutions for the crimes [CRIME] of sexual assault in any de-
29 gree, sexual abuse of a minor in any degree, or unlawful exploitation

1 of a minor, or an attempt to commit any of these crimes [SEXUAL AS-
2 SAULT IN ANY DEGREE], evidence of the complaining witness' previous
3 sexual conduct may [SHALL] not be admitted nor reference made to it in
4 the presence of the jury except as provided in this section. When the
5 defendant seeks to admit the evidence for any purpose, the defendant
6 may apply for an order of the court at any time before or during the
7 trial or preliminary hearing. After the application is made, the
8 court shall conduct a hearing in camera to determine the admissibility
9 of the evidence. If the court finds that evidence offered by the
10 defendant regarding the sexual conduct of the complaining witness
11 relevant, and that the probative value of the evidence offered is not
12 outweighed by the probability that its admission will create undue
13 prejudice, confusion of the issues, or unwarranted invasion of the
14 privacy of the complaining witness, the court shall make an order
15 stating what evidence may be introduced and the nature of the ques-
16 tions that may [WHICH SHALL] be permitted. The defendant may then
17 offer evidence under the order of the court.

18 * Sec. 7. AS 47.10.081(c) is amended to read:

19 (c) The court shall inform the child, the child's parents, [AND]
20 the attorneys representing the parties, and the guardian ad litem that
21 the predisposition report will be available to them not less than six
22 working [10] days before the disposition hearing.

23 * Sec. 8. AS 47.10.142(a) is repealed and reenacted to read:

24 (a) The Department of Health and Social Services may take emer-
25 gency custody of a minor upon discovering any of the following circum-
26 stances:

27 (1) the minor has been abandoned;

28 (2) the minor has been grossly neglected by the minor's
29 parents or guardian as "neglect" is defined in AS 47.17.070(5), and

1 the department determines that immediate removal from the minor's
2 surroundings is necessary to protect the minor's life or that immedi-
3 ate medical attention is necessary;

4 (3) the minor has been abused by a person responsible for
5 the minor's welfare, as "abuse" is defined in AS 47.17.070(1), and the
6 department determines that immediate removal from the minor's
7 surroundings is necessary to protect the minor's life or that immedi-
8 ate medical attention is necessary;

9 (4) the minor has been sexually abused under circumstances
10 listed in AS 47.10.010(a)(2)(D).

11 * Sec. 9. AS 47.10.142(c) is amended to read:

12 (c) When a child is taken into custody under (a) or (b) of this
13 section, the department shall immediately, and in no event more than
14 12 hours later unless prevented by lack of communication facilities,
15 notify the parents or the person or persons having custody of the
16 child. If the department determines that continued custody is neces-
17 sary to protect the child, the department shall notify the court of
18 the emergency custody by filing, within 24 hours after custody was
19 assumed [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-
20 tion alleging that the child is a child in need of aid.

21 * Sec. 10. AS 47.10.290 is amended by adding a new paragraph to read:

22 (8) "sexual abuse" means

23 (A) conduct against a child that would constitute a
24 sexual offense under AS 11;

25 (B) the perpetrator's knowingly touching, directly or
26 through clothing, the genital area, groin, inner thighs, or
27 buttocks of a child, or causing a child to touch, directly or
28 through clothing, the genital area, groin, inner thighs, or
29 buttocks of the perpetrator or another; sexual abuse does not

1 include reasonable touching in the exercise of normal caretaker
2 responsibilities for a child or normal caretaker interactions
3 with a child or touching performed for the purpose of adminis-
4 tering a recognized and lawful form of treatment that is rea-
5 sonably adapted to promoting the physical or mental health of the
6 child;

7 (C) exposing the genital area, anus, breast, groin, or
8 buttocks of a child to the perpetrator or another for the sexual
9 gratification of the child, the perpetrator, or another, or
10 exposing the genital area, anus, breast, groin or buttocks of the
11 perpetrator or another to a child for the sexual gratification of
12 the child, the perpetrator, or another; or

13 (D) statements to a child that express a desire or
14 intent to have sexual contact or sexual penetration with the
15 child or encourage the child to have sexual contact or sexual
16 penetration with the perpetrator or another.

17 * Sec. 11. AS 47.17.010 is amended to read:

18 Sec. 47.17.010. PURPOSE. In order to protect children whose
19 health and well-being may be adversely affected through the inflic-
20 tion, by other than accidental means, of harm through physical injury,
21 [ABUSE OR] neglect, [OR] sexual abuse, or sexual exploitation, the
22 legislature requires the reporting of these cases by practitioners of
23 the healing arts and others to the appropriate public authorities. It
24 is the intent of the legislature that, as a result of these reports,
25 protective services will be made available in an effort to prevent
26 further harm to the child, to safeguard and enhance the general well-
27 being of the children in this state, and to preserve family life
28 whenever preserving it is in the best interests of the child [POS-
29 SIBLE].

1 * Sec. 12. AS 47.17.020 is repealed and reenacted to read:

2 Sec. 47.17.020. REPORTING OF CHILD ABUSE OR NEGLECT. (a) The
3 following persons are required to report abuse or neglect of a child
4 as required in (b) and (c) of this section:

- 5 (1) practitioners of the healing arts;
- 6 (2) employees and volunteers of private and public schools;
- 7 (3) human services providers;
- 8 (4) peace officers, and officers of the Department of
9 Corrections;
- 10 (5) administrative officers of institutions;
- 11 (6) child care providers;
- 12 (7) counselors;
- 13 (8) court investigators;
- 14 (9) employees and volunteers of domestic violence programs,
15 sexual assault programs, or crisis shelters;
- 16 (10) guardians and conservators.

17 (b) A person listed in (a) of this section, who in the perfor-
18 mance of the person's occupational duties has cause to believe that a
19 child has suffered harm as a result of abuse or neglect by a person
20 responsible for the child's welfare, shall promptly report the harm to
21 the nearest office of the department. If the person making a report
22 of harm under this subsection cannot reasonably contact the nearest
23 office of the department and immediate action is necessary for the
24 well-being of the child, the person shall make the report to a peace
25 officer. The peace officer shall take immediate action to protect the
26 child and shall, at the earliest opportunity, notify the nearest
27 office of the department.

28 (c) A person listed in (a) of this section, who in the perfor-
29 mance of the person's occupational duties has cause to believe that a

1 child has suffered harm as a result of abuse or neglect, shall prompt-
2 ly report the harm to the nearest law enforcement agency if the person
3 making the report (1) has cause to believe that the harm was caused by
4 a person who is not responsible for the child's welfare; or (2) is
5 unable to determine (A) who caused the harm to the child; or (B)
6 whether the person who is believed to have caused the harm has respon-
7 sibility for the child's welfare. If a person making a report under
8 this subsection cannot reasonably contact the nearest law enforcement
9 agency, and immediate action appears necessary for the well-being of
10 the child, the person shall make the report to the nearest office of
11 the department. The department shall take immediate action to protect
12 the child and shall, at the earliest opportunity, notify the nearest
13 law enforcement agency.

14 (d) This section does not prohibit the named persons from re-
15 porting cases that have come to their attention in their nonoccupa-
16 tional capacities, nor does it prohibit any other person from report-
17 ing a child's harm that the person has cause to believe is a result of
18 abuse or neglect. These reports shall be made to the nearest office
19 of the department or to the nearest law enforcement agency in the
20 manner set out in (b) and (c) of this section.

21 * Sec. 13. AS 47.17 is amended by adding a new section to read:

22 Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person
23 who, in the course of processing or producing visual or printed mat-
24 ter, either privately or commercially, has reason to believe that the
25 matter visually depicts a minor engaged in conduct described in
26 AS 11.41.455(a) shall promptly report this to the nearest law enforce-
27 ment agency. The person shall allow law enforcement agents access to
28 the material and provide the law enforcement agency with all
29 information known about the origin of the matter.

1 * Sec. 14. AS 47.17.025 is repealed and reenacted to read:

2 Sec. 47.17.025. DUTIES OF PUBLIC AUTHORITIES. (a) After re-
3 ceiving a report of harm to a child resulting from abuse or neglect by
4 a person responsible for the child's welfare, a law enforcement agency
5 shall immediately notify the Department of Health and Social Services
6 and the Department of Law. The Department of Health and Social Ser-
7 vices shall investigate the report and, within 72 hours after receiv-
8 ing the report, shall provide a written report of its investigation to
9 the Department of Law for review. If after a preliminary investiga-
10 tion the Department of Health and Social Services determines that the
11 harm was not caused by a member of the child's family, the department
12 shall so notify the Department of Law.

13 (b) A report of harm to a child from abuse or neglect required
14 from the department by this section must include:

15 (1) the names and addresses of the child and the child's
16 parents or other persons responsible for the child's care, if known;

17 (2) the age and sex of the child;

18 (3) the nature and extent of the harm to the child;

19 (4) the name and age and address of the person known or
20 believed to be responsible for the harm to the child, if known;

21 (5) information that the department believes may be helpful
22 in establishing the identity of the person believed to have caused the
23 harm to the child.

24 * Sec. 15. AS 47.17.040(b) is amended to read:

25 (b) Investigation reports and reports of harm filed under this
26 chapter are considered confidential and are not subject to public
27 inspection and copying under AS 09.25.110 and 09.25.120. However, in
28 accordance with department regulations, investigation reports may be
29 used by appropriate governmental agencies with child-protection

1 functions, inside and outside the state [ALASKA], in connection with
2 investigations or civil or criminal [JUDICIAL] proceedings involving
3 [CHILD] abuse, neglect, or child custody. A person, not acting in
4 accordance with department regulations, who makes public information
5 contained in confidential reports is guilty of a misdemeanor.

6 * Sec. 16. AS 47.17.050 is amended to read:

7 Sec. 47.17.050. IMMUNITY. A person who, in good faith, makes a
8 report under this chapter, or who participates in civil or criminal
9 [JUDICIAL] proceedings related to the submission of reports under this
10 chapter, is immune from any civil or criminal liability that [WHICH]
11 might otherwise be incurred or imposed.

12 * Sec. 17. AS 47.17.060 is repealed and reenacted to read:

13 Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. In a civil or criminal
14 proceeding related to a report under this chapter, no privilege is a
15 ground for excluding evidence regarding a child's harm, or its cause,
16 except

- 17 (1) the attorney-client privilege;
18 (2) the psychotherapist-patient privilege; and
19 (3) the clergyman's privilege.

20 * Sec. 18. AS 47.17.064 is repealed and reenacted to read:

21 Sec. 47.17.064. PHOTOGRAPHS AND X-RAYS. The department or a
22 practitioner of the healing arts may, without the permission of the
23 parents, guardian, or custodian, take the following actions with
24 regard to a child believed to have suffered physical harm as a result
25 of abuse or neglect:

26 (1) take or have taken photographs of the areas of trauma
27 visible on the child; and

28 (2) if medically indicated, have a radiological examination
29 of the child performed by a person who is licensed to administer a

1 radiological examination.

2 * Sec. 19. AS 47.17.068 is repealed and reenacted to read:

3 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person
4 who knowingly fails or refuses to report as required under AS 47.17.-
5 020 or 47.17.023 is guilty of a class B misdemeanor.

6 * Sec. 20. AS 47.17 is amended by adding a new section to read:

7 Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney
8 general may bring an action to enjoin or limit a person from contact
9 with a child not related to the person if the person

10 (1) has sexually abused a child;

11 (2) has physically abused a child;

12 (3) has failed without lawful excuse to provide necessary
13 food, care, clothing, shelter, supervision, or medical attention for a
14 child entrusted to the care of the person; or

15 (4) otherwise constitutes a substantial danger to the
16 mental, emotional, or physical welfare of a child.

17 (b) The court may grant an order in the form that is best suited
18 to protect a child from harm based upon the facts of the case. This
19 section does not limit the authority of the attorney general or the
20 court to act to protect a child.

21 * Sec. 21. AS 47.17.070(1) is amended to read:

22 (1) "[CHILD] abuse [OR NEGLECT]" means [THE] physical
23 injury [OR NEGLECT], sexual abuse, sexual exploitation, or maltreat-
24 ment of a child [UNDER THE AGE OF 18 BY A PERSON WHO IS RESPONSIBLE
25 FOR THE CHILD'S WELFARE] under circumstances that [WHICH] indicate
26 that the child's health or welfare is harmed or threatened thereby;

27 * Sec. 22. AS 47.17.070(6) is amended to read:

28 (6) "practitioner of the healing arts" includes chiroprac-
29 tors, dental hygienists, dentists, health aides, nurses, nurse

1 practitioners, optometrists, osteopaths, physical therapists, physi-
2 cians, physician's assistants, psychiatrists, psychologists, psycho-
3 logical associates, religious healing practitioners, and surgeons;

4 * Sec. 23. AS 47.17.070(7) is repealed and reenacted to read:

5 (7) "sexual exploitation" means

6 (A) permitting, encouraging, inducing, or employing a
7 child to engage in prostitution or in the promotion of prosti-
8 tution as set out in AS 11.66.100 - 11.66.150; or

9 (B) engaging in conduct described in AS 11.41.455;

10 * Sec. 24. AS 47.17.070 is amended by adding new paragraphs to read:

11 (8) "child care provider" means an adult individual, or an
12 employee or volunteer of an organization, who provides care and super-
13 vision to a child;

14 (9) "human services provider" includes an individual human
15 services provider, and an employee or volunteer of a human services
16 organization, such as a social service, youth service, mental health,
17 or substance abuse agency, or a shelter for runaway or homeless youth;

18 (10) "organization" means a group or entity that provides
19 care and supervision to a child not related to the caregiver, and
20 includes a child care facility, pre-elementary school, head start
21 center, child foster home, residential child care facility, recreation
22 program, children's camp, and children's club;

23 (11) "person responsible for the child's welfare" means the
24 child's parent, guardian, foster parent, a person responsible for the
25 child's care at the time of the alleged abuse or neglect, or a person
26 responsible for the child's welfare in a public or private residential
27 agency or institution.

28 * Sec. 25. AS 47.35.070 is amended to read:

29 Sec. 47.35.070. VIOLATIONS. A person who violates a provision

1 of this chapter [AS 47.35.010 - 47.35.100] or a regulation adopted
2 under this chapter [AS 47.35.010 - 47.35.100] is guilty of a class B
3 misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE
4 THAN \$200].

5 * Sec. 26. AS 47.35.070 is amended by adding a new subsection to read:

6 (b) The department may by regulation devise a system of civil
7 enforcement. The system may employ civil penalties not to exceed \$200
8 for each day during which one or more violations of a licensing stat-
9 ute or licensing regulation occurs. The imposition of a civil penalty
10 does not prevent prosecution and sentence for a criminal offense.

11 * Sec. 27. AS 47.17.060, as repealed and reenacted in sec. 17 of this
12 Act, has the effect of changing Rules 504 and 505, Alaska Rules of Evi-
13 dence, by preventing the application in civil or criminal cases of certain
14 privileges specified in those rules to evidence obtained through reports
15 made under AS 47.17.

MEMORANDUM

TO: Senator Rodey
FROM: Kevin K. Bruce
DATE: March 11, 1985
RE: "An Act relating to criminal files of the
Department of Public Safety."

The intent of this bill is to clarify the power of the Department of Public Safety in requiring standard forms and schedules of local law enforcement agencies reporting criminal activity. At the same time, the bill mandates that the department adopt regulations in this area, thereby allowing public input into the process.

The impetus for this legislation arose from the department's desire to establish an effective missing person's unit within the Division of State Troopers. Under current law, the department did not feel tht sufficient authority was given to compel local law enforcement to file missing persons reports in a uniform manner.

This legislation is designed to complement the child protection package that is currently being assembled.

14-0863
Hein
3/8/85✓

1 IN THE SENATE

BY RODEY

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal files of the Department
7 of Public Safety."

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

9 * Section 1. AS 18.65.060 is amended to read:

10 Sec. 18.65.060. PEACE OFFICERS TO COOPERATE. (a) All peace
11 officers in the state or any municipality or subdivision shall
12 cooperate with the Department of Public Safety in creating and
13 maintaining its files. The department may develop and require the use
14 of [, AND ALL INFORMATION SHALL BE CLASSIFIED UPON] standard forms and
15 schedules for the reporting of information for its files. The files
16 shall be kept available for the detection of crime and the
17 identification of criminals. Criminal justice information collected
18 and maintained under this section is subject to the provisions of AS
19 12.62.

20 (b) The Department of Public Safety shall [MAY] adopt
21 regulations necessary to carry out the purposes of this section [;
22 HOWEVER, REGULATIONS PROPOSED BY THE DEPARTMENT SHALL BE SUBMITTED TO
23 THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE ON THE DAY THE
24 HOUSE CONVENES. THE LEGISLATURE HAS 60 DAYS OF A REGULAR SESSION, OR
25 A FULL SESSION IF OF SHORTER DURATION TO DISAPPROVE THE PROPOSED
26 REGULATIONS. UNLESS DISAPPROVED BY A SPECIAL CONCURRENT RESOLUTION
27 INTRODUCED IN EITHER HOUSE, CONCURRED IN BY A MAJORITY OF THE MEMBERS
28 OF THE LEGISLATURE IN JOINT SESSION, THE REGULATIONS BECOME EFFECTIVE
29 AT A DATE TO BE DESIGNATED BY THE DEPARTMENT].

CHILD AND FAMILY PROTECTION

SB 3
(HB 67)

HEARSAY EVIDENCE

SB 3 would allow hearsay evidence to be admitted at grand jury in prosecutions for sexual assault in the first and second degrees, sexual abuse of a minor in the first, second, third and fourth degrees, and unlawful exploitation of a minor. The child must be under the age of 10, and the child must either testify before the grand jury or be unavailable as defined in the bill.

SB 8

SCHOOL CURRICULA

SB 8 would urge expansion of existing health curricula to include the identification and prevention of child abuse, child abduction, neglect, sexual abuse, and domestic violence.

SB 21
#5

BACKGROUND CHECKS

SB 21 would expand the type of convictions that may be released to include all crimes that might pose a risk to children (as defined in the bill), and allow the release of outstanding warrants for these crimes. It would require a criminal record check on foster parents and persons seeking to adopt minors.

SB 27 COMMUNITY TRAINING

SB 27 would provide funds to the Council on Domestic Violence and Sexual Assault to train teams of community professionals.

SB 28 REPORTING INCIDENTS OF ABUSE

SB 28 would require training of state employees required to report on the recognition and report of child abuse, and would require school districts to devote half of an inservice day to training teachers and administrators on the reporting law.

SB 86
(HB 19)

MISSING CHILDREN

SB 86 would require that reports of missing or runaway children be taken immediately and within 24 hours entered into both the State (APSIN) and FBI (NCIC) computer systems. The bill would disallow housing of runaway or missing minors in jail facilities, and require that the legal custodian be immediately notified if the minor is taken into protective custody by the State.

SB 143
(HB 88)

"THE OMNIBUS BILL"

SB 143 would make several changes to existing civil and criminal laws, and is intended to enhance the State's ability to protect children. (See sectional analysis.)

SCR 3 SCHOOL TEACHER BACKGROUND CHECKS

HCR 2

SCR 3 would urge local school districts to implement background checks on all school district employees who come into contact with children.

O - S. Hess 3/25/85

SJR
SCR 3
~~SCR 3~~
~~SCR 3~~

MINK CARTON Resolution

SB 29
SB 1

AMENDING DOMESTIC VIOLENCE STATUTES

OK

Hein/Cook
3/14/85

MIKE MARSH

EVIDENCE Rule 804

Original sponsor: Phillips

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

SB 3

CS FOR HOUSE BILL NO. ~~67~~ (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to hearsay evidence in prosecutions
7 for certain sexual offenses; and amending Rule 6(r),
8 Alaska Rules of Criminal Procedure."

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

10 * Section 1. AS 12.40 is amended by adding a new section to read:

11 Sec. 12.40.110. HEARSAY EVIDENCE IN PROSECUTIONS FOR SEXUAL
12 OFFENSES. (a) In a prosecution for an offense under AS 11.41.410 -
13 11.41.440 or 11.41.455, hearsay evidence of a statement related to the
14 offense, not otherwise admissible, made by a child under the age of 10
15 may be admitted into evidence before the grand jury if

16 (1) the circumstances of the statement indicate its relia-
17 bility; and

18 (2) the child

19 (A) testifies at the grand jury proceeding; or

20 (B) is unavailable as a witness, the grand jury mem-
21 bers are informed of the reason for the child's unavailability,
22 and there is additional evidence introduced to corroborate the
23 statement.

24 (b) In this section,

25 (1) "statement" means an oral or written assertion or
26 nonverbal conduct if the nonverbal conduct is intended as an asser-
27 tion;

28 (2) "unavailable" means the child

29 (A) has a lack of memory of the subject matter of the

1 statement being offered;

2 (B) is unable to attend or testify at the hearing
3 because of death or a then existing physical or mental illness or
4 infirmity;

5 (C) is likely to suffer substantial psychological,
6 emotional, or physical harm if required to testify; or

7 (D) is absent from the hearing and beyo the juris-
8 diction of the court to compel appearance and the proponent of
9 the statement has exercised reasonable diligence in attempting to
10 procure the child's attendance.

11 (c) A child is not unavailable under this section if the un-
12 availability is due to the procurement or wrongdoing of the proponent
13 of the statement to prevent the child from attending or testifying.

14 * Sec. 2. AS 12.40.110, added by sec. 1 of this Act, has the effect of
15 amending Rule 6(r), Alaska Rules of Criminal Procedure, by making certain
16 hearsay evidence admissible in grand jury proceedings for certain sexual
17 offenses without requiring compelling justification.
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Offered: 2/1/85
Referred: Health, Education and
Social Services

Original sponsors: Kerttula, Sturgulewski,
Halford, et al

1 IN THE SENATE BY THE HEALTH, EDUCATION, AND SOCIAL SERVICES COMMIT
2 CS FOR SENATE BILL NO. 8 (HESS)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to a personal safety curriculum in
7 public schools."

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

9 * Section 1. AS 14.30.360 is amended to read:

10 Sec. 14.30.360. CURRICULUM. (a) Each district in the state
11 public school system shall be encouraged to initiate and conduct a
12 program in health education for kindergarten through grade 12. The
13 program should include instruction in physical health and personal
14 safety including alcohol and drug abuse education, cardiopulmonary
15 resuscitation (CPR), early cancer prevention and detection, dental
16 health, family health, environmental health, the identification and
17 prevention of child abuse. ^{CHILD ABDUCTION} neglect, sexual abuse and domestic
18 violence, and appropriate use of health services.

19 (b) The state board shall establish by regulation guidelines for
20 a health and personal safety education program. Personal safety
guidelines are to be developed in consultation with the Council on
Domestic Violence and Sexual Assault. Upon request, the Department
21 of Education ^{and the Council on Social Services} shall provide technical assistance to
22 school districts in the development of personal safety curriculum.

23 A school health education specialist posi-
24 tion shall be established and funded in the department to coordinate
25 the program statewide. Adequate funds to enable curriculum and re-
26 source development, adequate consultation to school districts, and a
27 program of teacher training in health and personal safety education
28 shall be provided.

HESS - MOVED OUT - 3/25/85

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 ~~CS SB~~ HOUSE BILL NO. 21 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal background checks; and
7 providing for an effective date."

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

9 * Section 1. AS 12.62.035(a) is amended to read:

10 (a) Notwithstanding any other provision of law, an interested
11 person [as defined in (e) of this section] may request from the commis-
12 sion records of all convictions of an individual for crimes that might
13 pose a risk of harm to a child if the individual [INVOLVING CONTRIBUT-
14 ING TO THE DELINQUENCY OF A MINOR AND ANY SEX CRIMES OF A PERSON WHO]
15 holds or applies for a position in which the individual [PERSON] has
16 or would have supervisory or disciplinary power over a minor. The
17 commission shall authorize the disclosure of the information to the
18 requesting interested person and shall provide a copy of the informa-
19 tion to the individual [PERSON] who is the subject of the request.

20 * Sec. 2. AS 12.62.035(e)(1) is repealed and reenacted to read:

21 (1) "crime that might pose a risk of harm to a child"
22 includes a violation or attempted violation of present or former
23 Alaska statutes regarding the offenses now designated as murder,
24 manslaughter, negligent homicide, assault, reckless endangerment,
25 kidnapping, sexual assault, sexual abuse of a minor, unlawful ex-
26 ploitation of a minor, incest, indecent exposure, robbery, arson,
27 endangering the welfare of a minor, contributing to the delinquency of
28 a minor, distribution of child pornography, promoting prostitution,
29 and felony offenses involving distribution of controlled substances;

1 it also includes a violation or attempted violation of the laws of
2 another jurisdiction if the offense would have been one of the crimes
3 listed in this paragraph if committed in this state;

4 * Sec. 3. AS 12.62.035 is amended by adding a new subsection to read:

5 (f) In addition to the information for which disclosure is
6 authorized under (a) of this section, the commission may disclose the
7 existence of an outstanding warrant for the arrest of the person who
8 is the subject of the request if the warrant is for a crime that might
9 pose a risk of harm to a child.

10 * Sec. 4. AS 25.23.100(d) is amended to read:

11 (d) Except as provided in (g) and (i) of this section, an inves-
12 tigation shall be made by the department or any other qualified agency
13 or person designated by the court to inquire into the conditions and
14 antecedents of a minor sought to be adopted and of the petitioner for
15 the purpose of ascertaining whether the adoptive home is a suitable
16 home for the minor and whether the proposed adoption is in the best
17 interest of the minor. The department shall request a background
18 check by the Department of Public Safety under AS 47.35.065 on each
19 person who seeks to adopt a minor. + foster

20 * Sec. 5. AS 47.35 is amended by adding a new section to read:

21 ~~Sec. 47.35.065. BACKGROUND CHECKS. (a) The Department of~~
22 ~~Public Safety shall conduct background checks on all persons licensed~~
23 ~~under this chapter and their employees and, as requested by the~~
24 ~~Department of Health and Social Services under AS 25.23.100(d), on a~~
25 ~~person who seeks to adopt a minor. The background check shall consist~~
26 ~~of an identity check for purposes of investigating criminal history~~
27 ~~and a fingerprint check of both state and national criminal records.~~
28 ~~The background check shall be based on information gathered and sub-~~
29 ~~mitted by the department. Persons are subject to the background check~~

1 as follows:

2 (1) persons currently licensed under this chapter and their
3 employees shall, before their next birthday, consent to the background
4 check and submit the appropriate information;

5 (2) persons applying for licenses under this chapter or
6 applying for employment by a licensee consent to the background check
7 by submitting the appropriate information and may not be licensed or
8 hired until the check is completed;

9 (3) persons seeking to adopt minors consent to the back-
10 ground check by submitting the appropriate information.

11 (b) The cost of conducting the background check on a person
12 shall be paid by that person. A person for whom the check has been
13 completed shall be issued a card indicating that a background check
14 has been conducted. The card is valid for two years.

15 (c) Information gathered under this section is confidential and
16 is not subject to public inspection and copying under AS 09.25.110 and
17 09.25.120. However, in accordance with department regulations, back-
18 ground reports may be used by appropriate governmental agencies with
19 licensing or child protection functions.

20 * Sec. 6. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

Funding Information
General Fund \$235,900
Other Funds - 0 -
\$235,900

1 IN THE SENATE

BY FAIKS

2 SENATE BILL NO. 27

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Depart-
7 ment of Public Safety, Council on Domestic Violence
8 and Sexual Assault, for a training program on the
9 prevention, intervention, investigation and treatment
10 of sexual and physical abuse of minors; and providing
11 for an effective date."

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

13 * Section 1. The sum of \$235,900 is appropriated from the general fund
14 to the Department of Public Safety, Council on Domestic Violence and Sexual
15 Assault, for a program under AS 18.66.050 to train teams of community
16 professionals, including but not limited to law enforcement officials,
17 prosecuting attorneys, victim advocates, social workers, teachers and
18 medical personnel on the prevention, intervention, investigation and treat-
19 ment of sexual and physical abuse of minors.

20 * Sec. 2. The unexpended and unobligated portion of the appropriation
21 made by this Act lapses into the general fund June 30, 1986.

22 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).

Offered: 2/1/85
Referred: Finance

Original sponsors: Faiks, Sturgulewski,
Halford, et al

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 28 (HESS) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to training state employees, and
7 certain employees of the districts of the state
8 public school system on the recognition and reporting
9 of child abuse and neglect."

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

11 * Section 1. AS 47.17 is amended by adding a new section to read:

12

Sec. 47.17.022. TRAINING. (a) A person employed by the state

13

who is required under AS 47.17 to report abuse or neglect of children
14 shall receive training on the recognition and reporting of child abuse
15 and neglect.

16

(b) Each department of the state that employs persons required
17 to report abuse or neglect of children shall provide

18

(1) initial training required by this section to each new
19 employee during the employee's first six months of employment, and to
20 any existing employee who has not received equivalent training; and

21

(2) appropriate in-service training required by this sec-
22 tion as determined by the department.

23

(c) Each department that must comply with (b) of this section
24 shall develop a training curriculum that acquaints its employees with

25

(1) laws relating to child abuse and neglect;

26

(2) techniques for recognition and detection of child abuse
27 and neglect;

28

(3) agencies and organizations within the state that offer
29 aid or shelter to victims and the families of victims of child abuse

enrollment procedure

Original sponsors: ~~Phillips, Goll
and Larsen~~

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

SB 86

2 CS FOR ~~HOUSE BILL NO. 19~~ (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to runaway and missing minors."

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

8 * Section 1. AS 47.10.140(e) is amended to read:

9 (e) Except for temporary detention pending a detention hearing
10 [OR TEMPORARY DETENTION UNDER (f) OF THIS SECTION], a minor may [NOT]
11 be detained only [EXCEPT] by court order.

12 * Sec. 2. AS 47.10 is amended by adding a new section to read:

13 Sec. 47.10.141. RUNAWAY AND MISSING MINORS. (a) Upon receiving
14 a request to locate a minor evading the minor's legal custodian or
15 otherwise missing, a law enforcement agency shall make reasonable
16 efforts to locate the minor and shall immediately complete a missing
17 person's report containing information necessary for the identifica-
18 tion of the minor. As soon as practicable, but not later than 24
19 hours after completing the report, the agency shall transmit the
20 report for entry into the Alaska Public Safety Information Network and
21 the National Crime Information Center computer system. As soon as
22 practicable, but not later than 24 hours after the agency learns that
23 the minor has been located, it shall request that the Department of
24 Public Safety and the Federal Bureau of Investigation remove the
25 information from the computer systems.

26 (b) A peace officer shall take into protective custody a minor
27 described in (a) of this section if the minor is not otherwise subject
28 to arrest or detention. The peace officer shall honor the minor's
29 preference to either (1) return the minor to the legal custodian or

1 or neglect; and

2 (4) procedures for required notification of suspected abuse
3 or neglect.

4 (d) Each department that must comply with (b) of this section
5 shall file a current copy of its training curriculum and materials,
6 with the Council on Domestic Violence and Sexual Assault. Any depart-
7 ment may seek the technical assistance of the council or the Depart-
8 ment of Health and Social Services in the development of its training
9 program.

10 (e) The districts of the state public school system shall devote
11 at least one-half day of existing in-service training time to train
12 school teachers and school administrative staff members on the recog-
13 nition and reporting of child abuse and neglect.

enrollment procedure

Original sponsors: Phillips, Goll
and Larsen

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

SB 86

2 CS FOR ~~HOUSE BILL NO. 19~~ (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to runaway and missing minors."

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

8 * Section 1. AS 47.10.140(e) is amended to read:

9 (e) Except for temporary detention pending a detention hearing
10 [OR TEMPORARY DETENTION UNDER (f) OF THIS SECTION], a minor may [NOT]
11 be detained only [EXCEPT] by court order.

12 * Sec. 2. AS 47.10 is amended by adding a new section to read:

13 Sec. 47.10.141. RUNAWAY AND MISSING MINORS. (a) Upon receiving
14 a request to locate a minor evading the minor's legal custodian or
15 otherwise missing, a law enforcement agency shall make reasonable
16 efforts to locate the minor and shall immediately complete a missing
17 person's report containing information necessary for the identifica-
18 tion of the minor. As soon as practicable, but not later than 24
19 hours after completing the report, the agency shall transmit the
20 report for entry into the Alaska Public Safety Information Network and
21 the National Crime Information Center computer system. As soon as
22 practicable, but not later than 24 hours after the agency learns that
23 the minor has been located, it shall request that the Department of
24 Public Safety and the Federal Bureau of Investigation remove the
25 information from the computer systems.

26 (b) A peace officer shall take into protective custody a minor
27 described in (a) of this section if the minor is not otherwise subject
28 to arrest or detention. The peace officer shall honor the minor's
29 preference to either (1) return the minor to the legal custodian or

1 (2) take the minor to an office specified by the Department of Health
2 and Social Services or a facility or contract agency of the depart
3 ment. If an office specified by the department or a facility o
4 contract agency of the department does not exist in the community, th
5 officer shall take the minor to another suitable location and promptl
6 notify the department. A minor under protective custody may not b
7 housed in a jail or other detention facility. Immediately upon takin
8 a minor into protective custody the officer shall advise the mino
9 orally and in writing of the right to social services under AS 47.10.

10 (142(b), and, if known, the officer shall advise the legal custodia
11 that the minor has been taken into protective custody.

12 * Sec. 3. AS 47.10.140(f) and (g) are repealed.
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1 change

Hein/Cook
3/15/85.

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

SB143

2 CS FOR ~~HOUSE~~ ~~BILL NO. 88~~ (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the protection of children."

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

8 * Section 1. AS 11.51.100 is amended to read:

9 Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST
10 DEGREE. (a) A person commits the crime of endangering the welfare of
11 a minor in the first degree if, being a parent, guardian, or other
12 person legally charged with the care of a child under 13 [10] years of
13 age, the person intentionally deserts the child in any place under
14 circumstances creating a substantial risk of physical injury to the
15 child.

16 (b) Endangering the welfare of a minor in the first degree is a
17 class C felony.

18 * Sec. 2. AS 11.51 is amended by adding a new section to read:

19 Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND
20 DEGREE. (a) A person commits the crime of endangering the welfare of
21 a minor in the second degree if, being entrusted with the care of a
22 child under 13 years of age, the person with criminal negligence

23 (1) exposes the child to circumstances creating a substan-
24 tial risk of physical injury or sexual abuse; or

25 (2) exposes the child to physical injury by failing to
26 provide the child with necessary food, care, clothing, shelter, or
27 medical attention.

28 (b) Endangering the welfare of a minor in the second degree is a
29 class A misdemeanor.

1 * Sec. 3. AS 11.61.125(a) is amended to read:

2 (a) A person commits the crime of distribution of child pornog-
3 raphy if the person brings or causes to be brought into the state for
4 [SALE OR] distribution, or in the state distributes, or in the state
5 possesses, prepares, publishes, or prints with intent to distribute,
6 [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any mater-
7 ial that visually depicts conduct described in [UNDER] AS 11.41.-
8 455(a), knowing that the production of the material involved the use
9 of a child under 18 years of age who engaged in the conduct.

10 * Sec. 4. AS 11.61.125 is amended by adding a new subsection to read:

11 (d) In this section, "distribution" includes delivering, sell-
12 ing, renting, leasing, lending, giving, circulating, exhibiting,
13 presenting, providing, and exchanging, whether or not for monetary or
14 other consideration.

15 * Sec. 5. AS 12.10.020(c) is amended to read:

16 (c) Even if the general time limitation has expired, a prose-
17 cution under AS 11.41.410 - 11.41.460, AS 11.66.110 - 11.66.130,
18 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense
19 committed against a person under the age of 16 may be commenced within
20 one year after the crime is reported to a peace officer or the person
21 reaches the age of 16, whichever occurs first. This subsection does
22 not extend the period of limitation by more than five years.

23 * Sec: 6. AS 12.45.045(a) is amended to read:

24 Sec. 12.45.045. EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS FOR
25 SEXUAL OFFENSES [OF RAPE AND ASSAULT WITH INTENT TO COMMIT RAPE]. (a)
26 In prosecutions for the crimes [CRIME] of sexual assault in any de-
27 gree, sexual abuse of a minor in any degree, or unlawful exploitation
28 of a minor, or an attempt to commit any of these crimes [SEXUAL AS-
29 SAULT IN ANY DEGREE], evidence of the complaining witness' previous

47.10.010(D)

ADD

// IMMEDIATE AND SUBSTANTIAL
RISK THAT THE CHILD
WILL BE SEXUALLY ABUSED //

JURISDICTIONAL PROBLEM - COURT CAN'T
REMOVE CHILDREN IN SEXUAL ABUSE INSTANCES

1 sexual conduct may [SHALL] not be admitted nor reference made to it in
2 the presence of the jury except as provided in this section. When the
3 defendant seeks to admit the evidence for any purpose, the defendant
4 may apply for an order of the court at any time before or during the
5 trial or preliminary hearing. After the application is made, the
6 court shall conduct a hearing in camera to determine the admissibility
7 of the evidence. If the court finds that evidence offered by the
8 defendant regarding the sexual conduct of the complaining witness is
9 relevant, and that the probative value of the evidence offered is not
10 outweighed by the probability that its admission will create undue
11 prejudice, confusion of the issues, or unwarranted invasion of the
12 privacy of the complaining witness, the court shall make an order
13 stating what evidence may be introduced and the nature of the ques-
14 tions that may [WHICH SHALL] be permitted. The defendant may then
15 offer evidence under the order of the court.

16 * Sec. 7. AS 47.10.081(c) is amended to read:

17 (c) The court shall inform the child, the child's parents, [AND]
18 the attorneys representing the parties, and the guardian ad litem that
19 the predisposition report will be available to them not less than six
20 working [10] days before the disposition hearing.

21 * Sec. 8. AS 47.10.142(a) is repealed and reenacted to read:

22 (a) The Department of Health and Social Services may take emer-
23 gency custody of a minor upon discovering any of the following circum-
24 stances:

25 (1) the minor has been abandoned;

26 (2) the minor has been grossly neglected by the minor's
27 parents or guardian as "neglect" is defined in AS 47.17.070(5), and
28 the department determines that immediate removal from the minor's
29 surroundings is necessary to protect the minor's life or that

1 immediate medical attention is necessary;

2 (3) the minor has been abused by a person responsible for
3 the child's welfare , as "abuse" is defined in AS 47.17.070(1), and
4 the department determines that immediate removal from the minor's
5 surroundings is necessary to protect the minor's life or that immedi-
6 ate medical attention is necessary.

7 * Sec. 9. AS 47.10.142(c) is amended to read:

8 (c) When a child is taken into custody under (a) or (b, of this
9 section, the department shall immediately, and in no event more than
10 12 hours later unless prevented by lack of communication facilities,
11 notify the parents or the person or persons having custody of the
12 child. If the department determines that continued custody is neces-
13 sary to protect the child, the department shall notify the court of
14 the emergency custody by filing, within 24 hours after custody was
15 assumed [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-
16 tion alleging that the child is a child in need of aid.

17 * Sec. 10. AS 47.10.290 is amended by adding a new paragraph to read:

18 (8) "sexual abuse" means

19 (A) conduct against a child that would constitute a
20 sexual offense under AS 11;

21 (B) the perpetrator's knowingly touching, directly or
22 through clothing, the genital area, groin, inner thighs, or
23 buttocks of a child, or causing a child to touch, directly or
24 through clothing, the genital area, groin, inner thighs, or
25 buttocks of the perpetrator or another; sexual abuse does not
26 include reasonable touching in the exercise of normal caretaker
27 responsibilities for a child or normal caretaker interactions
28 with a child or touching performed for the purpose of adminis-
29 tering a recognized and lawful form of treatment that is

1 reasonably adapted to promoting the physical or mental health of
2 the child;

3 (C) exposing the genital area, anus, breast, groin, or
4 buttocks of a child to the perpetrator or another for the sexual
5 gratification of the child, the perpetrator, or another, or
6 exposing the genital area, anus, breast, groin or buttocks of the
7 perpetrator or another to a child for the sexual gratification of
8 the child, the perpetrator, or another; or

9 (D) statements to a child that express a desire or
10 intent to have sexual contact or sexual penetration with the
11 child or encourage the child to have sexual contact or sexual
12 penetration with the perpetrator or another.

13 * Sec. 11. AS 47.17.010 is amended to read:

14 Sec. 47.17.010. PURPOSE. In order to protect children whose
15 health and well-being may be adversely affected through the inflic-
16 tion, by other than accidental means, of harm through physical abuse,
17 [OR] neglect, [OR] sexual abuse, or sexual exploitation, the legisla-
18 ture requires the reporting of these cases by practitioners of the
19 healing arts and others to the appropriate public authorities. It is
20 the intent of the legislature that, as a result of these reports,
21 protective services will be made available in an effort to prevent
22 further harm to the child, to safeguard and enhance the general well-
23 being of the children in this state, and to preserve family life
24 whenever preserving it is in the best interests of the child [POS-
25 SIBLE].

26 * Sec. 12. AS 47.17.020 is repealed and reenacted to read:

27 Sec. 47.17.020. REPORTING OF CHILD ABUSE OR NEGLECT. (a) The
28 following persons are required to report abuse or neglect of a child
29 as required in (b) and (c) of this section:

- 1 (1) practitioners of the healing arts;
- 2 (2) employees and volunteers of private and public schools;
- 3 (3) human services providers;
- 4 (4) peace officers, and officers of the Department of
- 5 Corrections;
- 6 (5) administrative officers of institutions;
- 7 (6) child care providers;
- 8 (7) counselors, including church counselors and therapists,
- 9 whether licensed or not;
- 10 (8) court investigators;
- 11 (9) employees and volunteers of domestic violence programs,
- 12 sexual assault programs, or crisis shelters.

13 (b) A person listed in (a) of this section, who in the perfor-
14 mance of the person's occupational duties has cause to believe that a
15 child has suffered harm as a result of abuse or neglect by a person
16 responsible for the child's welfare, shall promptly report the harm to
17 the nearest office of the department. If the person making a report
18 of harm under this subsection cannot reasonably contact the nearest
19 office of the department and immediate action is necessary for the
20 well-being of the child, the person shall make the report to a peace
21 officer. The peace officer shall take immediate action to protect the
22 child and shall, at the earliest opportunity, notify the nearest
23 office of the department.

24 (c) A person listed in (a) of this section, who in the perfor-
25 mance of the person's occupational duties has cause to believe that a
26 child has suffered harm as a result of abuse or neglect, shall prompt-
27 ly report the harm to the nearest law enforcement agency if the person
28 making the report (1) has cause to believe that the harm was caused by
29 a person who is not responsible for the child's welfare; or (2) is

1 unable to determine (A) who caused the harm to the child; or (B)
2 whether the person who is believed to have caused the harm has respon-
3 sibility for the child's welfare. If a person making a report under
4 this subsection cannot reasonably contact the nearest law enforcement
5 agency, and immediate action appears necessary for the well-being of
6 the child, the person shall make the report to the nearest office of
7 the department. The department shall take immediate action to protect
8 the child and shall, at the earliest opportunity, notify the nearest
9 law enforcement agency.

10 (d) This section does not prohibit the named persons from re-
11 porting cases that have come to their attention in their nonoccupa-
12 tional capacities, nor does it prohibit any other person from report-
13 ing a child's harm that the person has cause to believe is a result of
14 abuse or neglect. These reports shall be made to the nearest office
15 of the department or to the nearest law enforcement agency in the
16 manner set out in (b) and (c) of this section.

17 * Sec. 13. AS 47.17 is amended by adding a new section to read:

18 Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person
19 who, in the course of processing or producing visual or printed
20 matter, either privately or commercially, has reason to believe that
21 the matter visually depicts a minor engaged in conduct described in
22 AS 11.41.455(a) shall promptly report this to the nearest law enforce-
23 ment agency. The person shall provide copies of the material to the
24 law enforcement agency along with all information known about the
25 origin of the matter.

26 * Sec. 14. AS 47.17.025 is repealed and reenacted to read:

27 Sec. 47.17.025. DUTIES OF PUBLIC AUTHORITIES. (a) After re-
28 ceiving a report of harm to a child resulting from abuse or neglect by
29 a person responsible for the child's welfare, a law enforcement agency

1 shall immediately notify the Department of Health and Social Services
2 and the Department of Law. The Department of Health and Social Ser-
3 vices shall investigate the report and, within 72 hours after receiv-
4 ing the report, shall provide a written report of its investigation to
5 the Department of Law for review. If after a preliminary investiga-
6 tion the Department of Health and Social Services determines that the
7 harm was not caused by a member of the child's family, the department
8 shall so notify the Department of Law.

9 (b) A report of harm to a child from abuse or neglect required
10 from the department by this section must include:

11 (1) the names and addresses of the child and the child's
12 parents or other persons responsible for the child's care, if known;

13 (2) the age and sex of the child;

14 (3) the nature and extent of the harm to the child;

15 (4) the name and age and address of the person known or
16 believed to be responsible for the harm to the child, if known;

17 (5) information that the department believes may be helpful
18 in establishing the identity of the person believed to have caused the
19 harm to the child.

20 * Sec. 15. AS 47.17.040(b) is amended to read:

21 (b) Investigation reports and reports of harm filed under this
22 chapter are considered confidential and are not subject to public
23 inspection and copying under AS 09.25.110 and 09.25.120. However, in
24 accordance with department regulations, investigation reports may be
25 used by appropriate governmental agencies with child-protection func-
26 tions, inside and outside the state [ALASKA], in connection with
27 investigations or civil or criminal [JUDICIAL] proceedings involving
28 [CHILD] abuse, neglect, or child custody. A person, not acting in
29 accordance with department regulations, who makes public information

1 contained in confidential reports is guilty of a misdemeanor.

2 * Sec. 16. AS 47.17.050 is amended to read:

3 Sec. 47.17.050. IMMUNITY. A person who, in good faith, makes a
4 report under this chapter, or who participates in civil or criminal
5 [JUDICIAL] proceedings related to the submission of reports under this
6 chapter, is immune from any civil or criminal liability that [WHICH]
7 might otherwise be incurred or imposed.

8 * Sec. 17. AS 47.17.060 is amended to read:

9 Sec. 47.17.060. EVIDENCE NOT PRIVILEGED. Neither the physi-
10 cian-patient nor the husband-wife privilege is a ground for excluding
11 evidence regarding a child's harm, or its cause, in a civil or crimi-
12 nal [JUDICIAL] proceeding related to a report made under this chapter.

13 * Sec. 18. AS 47.17.064 is repealed and reenacted to read:

14 Sec. 47.17.064. PHOTOGRAPHS AND X-RAYS. The department or a
15 practitioner of the healing arts may, without the permission of the
16 parents, ^{CUSTODIAN OR GUARDIAN} take the following actions with regard to a child believed to
17 have suffered physical harm as a result of abuse or neglect. ~~by a~~
18 ^{person} ~~person, responsible for the child's welfare.~~

19 (1) take or have taken photographs of the areas of trauma
20 visible on the child; and

21 (2) if medically indicated, have a radiological examination
22 of the child performed by a person who is licensed to administer a
23 radiological examination.

24 * Sec. 19. AS 47.17.068 is repealed and reenacted to read:

25 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person
26 who knowingly fails or refuses to report as required under AS 47.17.-
27 020 or 47.17.023 is guilty of a class B misdemeanor.

28 * Sec. 20. AS 47.17 is amended by adding a new section to read:

29 Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney

1 general may bring an action to enjoin or limit a person from contact
2 with a child not related to the person if the person

3 (1) has sexually abused a child;

4 (2) has physically abused a child;

5 (3) has failed without lawful excuse to provide necessary
6 food, care, clothing, shelter, supervision, or medical attention for a
7 child entrusted to the care of the person; or

8 (4) otherwise constitutes a substantial danger to the
9 mental, emotional, or physical welfare of a child.

10 (b) The court may grant an order in the form that is best suited
11 to protect a child from harm based upon the facts of the case. This
12 section does not limit the authority of the attorney general or the
13 court to act to protect a child.

14 * Sec. 21. AS 47.17.070(1) is amended to read:

15 (1) "[CHILD] abuse [OR NEGLECT]" means nonaccidental [THE]
16 physical injury [OR NEGLECT], sexual abuse, sexual exploitation, or
17 maltreatment of a child [UNDER THE AGE OF 18 BY A PERSON WHO IS RE-
18 SPONSIBLE FOR THE CHILD'S WELFARE] under circumstances that [WHICH]
19 indicate that the child's health or welfare is harmed or threatened
20 thereby;

21 * Sec. 22. AS 47.17.070(6) is amended to read:

22 (6) "practitioner of the healing arts" includes chiroprac-
23 tors, dental hygienists, dentists, health aides, nurses, nurse practi-
24 tioners, optometrists, osteopaths, physical therapists, physicians,
25 physician's assistants, psychiatrists, psychologists, psychological
26 associates, religious healing practitioners, and surgeons;

27 * Sec. 23. AS 47.17.070(7) is repealed and reenacted to read:

28 (7) "sexual exploitation" means

29 (A) permitting, encouraging, inducing, or employing a

1 child to engage in prostitution or in the promotion of prosti-
2 tution as set out in AS 11.66.100 - 11.66.150; or

3 (B) engaging in conduct described in AS 11.41.455;

4 * Sec. 24. AS 47.17.070 is amended by adding new paragraphs to read:

5 (8) "child care provider" means an adult individual, or an
6 employee or volunteer of an organization, who provides care and super-
7 vision to a child;

8 (9) "human services provider" includes an individual human
9 services provider, and an employee or volunteer of a human services
10 organization, such as a social service, youth service, mental health,
11 or substance abuse agency, or a shelter for runaway or homeless youth;

12 (10) "organization" means a group or entity that provides
13 care and supervision to a child not related to the caregiver, and
14 includes a child care facility, pre-elementary school, head start
15 center, child foster home, residential child care facility, recreation
16 program, children's camp, and children's club.

17 * Sec. 25. AS 47.35.070 is amended to read:

18 Sec. 47.35.070. VIOLATIONS. A person who violates a provision
19 of this chapter [AS 47.35.010 - 47.35.100] or a regulation adopted
20 under this chapter [AS 47.35.010 - 47.35.100] is guilty of a class B
21 misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE
22 THAN \$200].

23 * Sec. 26. AS 47.35.070 is amended by adding a new subsection to read:

24 (b) The department may by regulation devise a system of civil
25 enforcement. The system may employ civil penalties not to exceed \$200
26 for each day during which one or more violations of a licensing stat-
27 ute or licensing regulation occurs. The imposition of a civil penalty
28 does not prevent prosecution and sentence for a criminal offense.

Introduced: 1/23/85
Referred: Health, Education & Social Services
and Judiciary

1 IN THE SENATE

BY DEVRIES

2

SENATE CONCURRENT RESOLUTION NO. 3

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

Relating to background checks on school

6

district employees who come into contact

7

with children.

8

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

WHEREAS sexual abuse of minors is a serious and widespread problem;

10

and

11

WHEREAS existing law permits employers of individuals having contact

12

with children to obtain certain information on convictions of these indi-

13

viduals relating to sex crimes (AS 12.62.035);

14

BE IT RESOLVED by the Alaska State Legislature that local school

15

districts are encouraged to implement appropriate background checks on all

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school district employees who come into contact with children.

Original sponsor: Health, Education and
Social Services Committee

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IN THE SENATE

BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 243 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the protection of children and
dependent adults."

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

* Section 1. AS 11.51.100 is amended to read:

Sec. 11.51.100. ENDANGERING THE WELFARE OF A MINOR IN THE FIRST DEGREE. (a) A person commits the crime of endangering the welfare of a minor in the first degree if, being a parent, guardian, or other person legally charged with the care of a child under 13 [10] years of age, the person knowingly exposes [INTENTIONALLY DESERTS] the child [IN ANY PLACE UNDER] circumstances creating a substantial risk of physical injury to or sexual abuse of the child.

(b) Endangering the welfare of a minor in the first degree is a class C felony.

* Sec. 2. AS 11.51 is amended by adding a new section to read:

Sec. 11.51.110. ENDANGERING THE WELFARE OF A MINOR IN THE SECOND DEGREE. (a) A person commits the crime of endangering the welfare of a minor in the second degree if, being entrusted with the care of a child under 13 years of age, the person with criminal negligence

(1) exposes the child to circumstances creating a substantial risk of physical injury or sexual abuse; or

(2) exposes the child to physical injury by failing to provide the child with necessary food, care, clothing, shelter, or medical attention.

(b) Endangering the welfare of a minor in the second degree is a class C felony.

1
2 class A misdemeanor.

3 * Sec. 3. AS 11.61.125(a) is amended to read:

4 (a) A person commits the crime of distribution of child pornog-
5 raphy if the person brings or causes to be brought into the state for
6 [SALE OR] distribution, or in the state distributes, or in the state
7 possesses, prepares, publishes, or prints with intent to distribute,
8 [SELL, OR EXHIBIT TO OTHERS FOR COMMERCIAL CONSIDERATION,] any mater-
9 ial that visually depicts conduct described in [UNDER] AS 11.41.-
10 455(a), knowing that the production of the material involved the use
11 of a child under 18 years of age who engaged in the conduct.

12 * Sec. 4. AS 11.61.125 is amended by adding a new subsection to read:

13 (d) In this section, "distribution" includes delivering, sell-
14 ing, renting, leasing, lending, giving, circulating, exhibiting,
15 presenting, providing, and exchanging, whether or not for monetary or
16 other consideration.

17 * Sec. 5. AS 12.10.020(c) is amended to read:

18 (c) Even if the general time limitation has expired, a prose-
19 cution under AS 11.41.410 - 11.41.460, AS 11.66.110 - 11.66.130,
20 former AS 11.41.430, or former AS 11.51.130(a)(4), for an offense
21 committed against a person under the age of 16 may be commenced within
22 one year after the crime is reported to a peace officer or the person
23 reaches the age of 16, whichever occurs first. This subsection does
24 not extend the period of limitation by more than five years.

25 * Sec. 6. AS 12.45.045(a) is repealed and reenacted to read:

26 (a) In prosecutions for the crimes of sexual assault in any de-
27 gree, sexual abuse of a minor in any degree, or unlawful exploitation
28 of a minor, or an attempt to commit any of these crimes, evidence of
29 the complaining witness' previous sexual conduct may not be admitted
nor reference made to it in the presence of the jury except as

1 provided in this section. A defendant who seeks to admit the evidence
2 for any purpose shall apply for an order of the court before the trial
3 if the evidence is sought to be introduced at trial or before the
4 preliminary hearing if the evidence is sought to be introduced at the
5 preliminary hearing, unless the defendant demonstrates that the
6 defendant, despite exercising due diligence, was unable to apply
7 before the trial or preliminary hearing. After the application is
8 made, the court shall conduct a hearing in camera to determine the
9 admissibility of the evidence. If the court finds that evidence
10 offered by the defendant regarding the sexual conduct of the complain-
11 ing witness is relevant, and that the probative value of the evidence
12 offered is not outweighed by the probability that its admission will
13 create undue prejudice, confusion of the issues, or unwarranted inva-
14 sion of the privacy of the complaining witness, the court shall issue
15 a written order stating what evidence may be introduced and the nature
16 of the questions that may be permitted. The defendant may then offer
17 evidence under the order of the court.
18

19 * Sec. 7. AS 47.10.010(a) is amended to read:

20 (a) Proceedings relating to a minor under 18 years of age resid-
21 ing or found in the state are governed by this chapter, except as
22 otherwise provided in this chapter, when the court finds the minor

23 (1) to be a delinquent minor as a result of violating a
24 criminal law of the state or of a municipality of the state; or

25 (2) to be a child in need of aid as a result of

26 (A) the child being habitually absent from home or
27 refusing to accept available care, or having no parent, guardian,
28 custodian or relative caring or willing to provide care, includ-
29 ing physical abandonment by

(i) both parents,

1
2 (ii) the surviving parent, or

3 (iii) one parent if the other parent's rights and
4 responsibilities have been terminated under AS 47.10.080 or
5 voluntarily relinquished;

6 (B) the child being in need of medical treatment to
7 cure, alleviate, or prevent substantial physical harm, or mental
8 harm as evidenced by failure to thrive, severe anxiety, depres-
9 sion, withdrawal, or untoward aggressive behavior or hostility
10 toward others, and the child's parents are unwilling to provide
11 the medical treatment;

12 (C) the child having suffered substantial physical
13 harm or if there is an imminent and substantial risk that the
14 child will suffer such harm as a result of the actions done by or
15 conditions created by the child's parent, guardian or custodian
16 or the failure of the parent, guardian or custodian adequately to
17 supervise the child;

18 (D) the child having been, or being in imminent and
19 substantial danger of being, sexually abused either by the
20 child's parent, guardian or custodian, or as a result of con-
21 ditions created by the child's parent, guardian or custodian, or
22 by the failure of the parent, guardian or custodian adequately to
23 supervise the child;

24 (E) the child committing delinquent acts as a result
25 of pressure, guidance, or approval from the child's parents,
26 guardian or custodian;

27 (F) the child having suffered substantial physical
28 abuse or neglect as a result of conditions created by the child's
29 parent, guardian or custodian.

* Sec. 8. AS 47.10.081(c) is amended to read:

1
2 (c) The court shall inform the child, the child's parents, [AND]
3 the attorneys representing the parties, and the guardian ad litem that
4 the predisposition report will be available to them not less than six
5 working [10] days before the disposition hearing.

6 * Sec. 9. AS 47.10.142(a) is repealed and reenacted to read:

7 (a) The Department of Health and Social Services may take emer-
8 gency custody of a minor upon discovering any of the following circum-
9 stances:

10 (1) the minor has been abandoned;

11 (2) the minor has been grossly neglected by the minor's
12 parents or guardian as "neglect" is defined in AS 47.17.070(5), and
13 the department determines that immediate removal from the minor's
14 surroundings is necessary to protect the minor's life or that immedi-
15 ate medical attention is necessary;

16 (3) the minor has been abused by a person responsible for
17 the minor's welfare, as "abuse" is defined in AS 47.17.070(1), and the
18 department determines that immediate removal from the minor's sur-
19 roundings is necessary to protect the minor's life or that immediate
20 medical attention is necessary;

21 (4) the minor has been sexually abused under circumstances
22 listed in AS 47.10.010(a)(2)(D) and the department determines that
23 immediate removal from the minor's surroundings is necessary to pro-
24 tect the minor from further sexual abuse.

25 * Sec. 10. AS 47.10.142(c) is amended to read:

26 (c) When a child is taken into custody under (a) or (b) of this
27 section, the department shall immediately, and in no event more than
28 12 hours later unless prevented by lack of communication facilities,
29 notify the parents or the person or persons having custody of the
child. If the department determines that continued custody is

1
2 necessary to protect the child, the department shall notify the court
3 of the emergency custody by filing, within 24 hours after custody was
4 assumed, [AND THE COURT OF THE ACTION AND FILE WITH THE COURT] a peti-
5 tion alleging that the child is a child in need of aid. If the de-
6 partment releases the child within ~~24~~ hours after taking the child
7 into custody and does not file a child in need of aid petition the
8 department shall, within 24 hours after releasing the child, file with
9 the court a report explaining why the child was taken into custody.

10 * Sec. 11. AS 47.10.290 is amended by adding a new paragraph to read:

11 (8) "sexual abuse" means

12 (A) conduct against a child that would constitute a
13 sexual offense under AS 11;

14 (B) the perpetrator's knowingly touching, directly or
15 through clothing, the genital area, groin, inner thighs, or
16 buttocks of a child, or causing a child to touch, directly or
17 through clothing, the genital area, groin, inner thighs, or
18 buttocks of the perpetrator or another; sexual abuse does not
19 include reasonable touching in the exercise of normal caretaker
20 responsibilities for a child or normal caretaker interactions
21 with a child or touching performed for the purpose of adminis-
22 tering a recognized and lawful form of treatment that is rea-
23 sonably adapted to promoting the physical or mental health of the
24 child; reasonable perceptions of the child that the touching is
25 sexual in nature are relevant to the determination of whether the
26 touching is sexual abuse;

27 (C) exposing the genital area, anus, breast, groin, or
28 buttocks of a child to the perpetrator or another for the sexual
29 gratification of the child, the perpetrator, or another, or
exposing the genital area, anus, breast, groin or buttocks of the

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2 perpetrator or another to a child for the sexual gratification of
3 the child, the perpetrator, or another; reasonable perceptions of
4 the child that the exposure is sexual in nature are relevant to
5 the determination of whether the exposure is sexual abuse; or

6 (D) statements to a child that express a desire or
7 intent to have sexual contact or sexual penetration with the
8 child or encourage the child to have sexual contact or sexual
9 penetration with the perpetrator or another.

10 *OLD Sec 12
PURPOSE DELETED*

* Sec. 12. AS 47.17.020 is repealed and reenacted to read:

11 Sec. 47.17.020. REPORTING OF CHILD ABUSE OR NEGLECT. (a) The
12 following persons are required to report abuse or neglect of a child
13 as required in (b) and (c) of this section:

- 14 (1) practitioners of the healing arts;
- 15 (2) teachers and administrative staff members of private
16 and public schools;
- 17 (3) human services providers;
- 18 (4) peace officers, and officers of the Department of
19 Corrections;
- 20 (5) administrative officers of institutions;
- 21 (6) child care providers;
- 22 (7) custody investigators; *COUNSELORS*
- 23 (8) employees and volunteers of domestic violence programs,
24 sexual assault programs, or crisis shelters;
- 25 (9) guardians and conservators.

26 (b) A person listed in (a) of this section, who in the perfor-
27 mance of the person's occupational duties has cause to believe that a
28 child has suffered harm as a result of abuse or neglect by a person
29 responsible for the child's welfare, shall promptly report the harm to
the nearest office of the department. If the person making a report

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2 of harm under this subsection cannot reasonably contact the nearest
3 office of the department and immediate action is necessary for the
4 well-being of the child, the person shall make the report to a peace
5 officer. The peace officer shall take immediate action to protect the
6 child and shall, at the earliest opportunity, notify the nearest
7 office of the department.

8 (c) A person listed in (a) of this section, who in the perfor-
9 mance of the person's occupational duties has cause to believe that a
10 child has suffered harm as a result of abuse or neglect, shall prompt-
11 ly report the harm to the nearest law enforcement agency if the person
12 making the report (1) has cause to believe that the harm was caused by
13 a person who is not responsible for the child's welfare; or (2) is
14 unable to determine (A) who caused the harm to the child; or (B)
15 whether the person who is believed to have caused the harm has respon-
16 sibility for the child's welfare. If a person making a report under
17 this subsection cannot reasonably contact the nearest law enforcement
18 agency, and immediate action appears necessary for the well-being of
19 the child, the person shall make the report to the nearest office of
20 the department. The department shall take immediate action to protect
21 the child and shall, at the earliest opportunity, notify the nearest
22 law enforcement agency.

23 (d) This section does not prohibit the named persons from re-
24 porting cases that have come to their attention in their nonoccupa-
25 tional capacities, nor does it prohibit any other person from report-
26 ing a child's harm that the person has cause to believe is a result of
27 abuse or neglect. These reports shall be made to the nearest office
28 of the department or to the nearest law enforcement agency in the
29 manner set out in (b) and (c) of this section.

* Sec. 13. AS 47.17 is amended by adding a new section to read:

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Sec. 47.17.023. REPORTS REGARDING CHILD PORNOGRAPHY. A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reason to believe that the matter visually depicts a minor engaged in conduct described in AS 11.41.455(a) shall promptly report this to the nearest law enforcement agency. The person shall allow law enforcement agents access to the material and provide the law enforcement agency with all information known about the origin of the matter.

* Sec. 14. AS 47.17.025 is repealed and reenacted to read:

Sec. 47.17.025. DUTIES OF PUBLIC AUTHORITIES. (a) After receiving a report of harm to a child resulting from abuse or neglect by a person responsible for the child's welfare, a law enforcement agency shall immediately notify the Department of Health and Social Services and the Department of Law. The Department of Health and Social Services shall investigate the report and, within 72 hours after receiving the report, shall provide a written report of its investigation to the Department of Law for review. If after a preliminary investigation the Department of Health and Social Services determines that the harm was not caused by a member of the child's family, the department shall so notify the Department of Law.

(b) A report of harm to a child from abuse or neglect required from the department by this section must include:

- (1) the names and addresses of the child and the child's parents or other persons responsible for the child's care, if known;
- (2) the age and sex of the child;
- (3) the nature and extent of the harm to the child;
- (4) the name and age and address of the person known or believed to be responsible for the harm to the child, if known;
- (5) information that the department believes may be helpful

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2 in establishing the identity of the person believed to have caused the
3 harm to the child.

4 * Sec. 15. AS 47.17.040(b) is amended to read:

5 (b) Investigation reports and reports of harm filed under this
6 chapter are considered confidential and are not subject to public
7 inspection and copying under AS 09.25.110 and 09.25.120. However, in
8 accordance with department regulations, investigation reports may be
9 used by appropriate governmental agencies with child-protection func-
10 tions, inside and outside the state [ALASKA], in connection with
11 investigations or civil or criminal [JUDICIAL] proceedings involving
12 [CHILD] abuse, neglect, or child custody. A person, not acting in
13 accordance with department regulations, who makes public information
14 contained in confidential reports is guilty of a misdemeanor.

15 * Sec. 16. AS 47.17.050 is amended to read:

16 Sec. 47.17.050. IMMUNITY. A person who, in good faith, makes a
17 report under this chapter, or who participates in civil or criminal
18 [JUDICIAL] proceedings related to the submission of reports under this
19 chapter, is immune from any civil or criminal liability that [WHICH]
20 might otherwise be incurred or imposed.

21 * Sec. 17. AS 47.17.064 is repealed and reenacted to read:

22 Sec. 47.17.064. PHOTOGRAPHS AND X-RAYS. The department or a
23 practitioner of the healing arts may, without the permission of the
24 parents, guardian, or custodian, take the following actions with
25 regard to a child believed to have suffered physical harm as a result
26 of abuse or neglect:

27 (1) take or have taken photographs of the areas of trauma
28 visible on the child; and

29 (2) if medically indicated, have a radiological examination
of the child performed by a person who is licensed to administer a

1 radiological examination.

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3 * Sec. 18. AS 47.17.068 is repealed and reenacted to read:

4 Sec. 47.17.068. PENALTY FOR FAILURE TO REPORT. A person
5 who knowingly fails or refuses to report as required under AS 47.17.-
6 020 or 47.17.023 is guilty of a class B misdemeanor.

7 * Sec. 19. AS 47.17 is amended by adding a new section to read:

8 Sec. 47.17.069. PROTECTIVE INJUNCTIONS. (a) The attorney
9 general may bring an action to enjoin or limit a person from contact
10 with a child not related to the person if the person

11 (1) has sexually abused a child;

12 (2) has physically abused a child;

13 (3) has failed without lawful excuse to provide necessary
14 food, care, clothing, shelter, supervision, or medical attention for a
15 child entrusted to the care of the person; or

16 (4) otherwise constitutes a substantial danger to the
17 mental, emotional, or physical welfare of a child.

18 (b) The court may grant an order in the form that is best suited
19 to protect a child from harm based upon the facts of the case. This
20 section does not limit the authority of the attorney general or the
21 court to act to protect a child.

22 * Sec. 20. AS 47.17.070(1) is amended to read:

23 (1) "[CHILD] abuse [OR NEGLECT]" means [THE] physical
24 injury [OR NEGLECT], sexual abuse, sexual exploitation, or maltreat-
25 ment of a child [UNDER THE AGE OF 18 BY A PERSON WHO IS RESPONSIBLE
26 FOR THE CHILD'S WELFARE] under circumstances that [WHICH] indicate
27 that the child's health or welfare is harmed or threatened thereby;

28 * Sec. 21. AS 47.17.070(6) is amended to read:

29 (6) "practitioner of the healing arts" includes chiroprac-
tors, dental hygienists, dentists, health aides, nurses, nurse

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2 practitioners, optometrists, osteopaths, physical therapists, physi-
3 cians, physician's assistants, psychiatrists, psychologists, psycho-
4 logical associates, religious healing practitioners, and surgeons;

5 * Sec. 22. AS 47.17.070(7) is repealed and reenacted to read:

6 (7) "sexual exploitation" means

7 (A) permitting, encouraging, inducing, or employing a
8 child to engage in prostitution or in the promotion of prosti-
9 tution as set out in AS 11.66.100 - 11.66.150; or

10 (B) engaging in conduct described in AS 11.41.455;

11 * Sec. 23. AS 47.17.070 is amended by adding new paragraphs to read:

12 (8) "child care provider" means an adult individual, or an
13 employee or volunteer of an organization, who provides care and super-
14 vision to a child;

15 (9) "human services provider" includes an individual human
16 services provider, a social worker, and an employee or volunteer of a
17 human services organization, such as a social service, youth service,
18 mental health, or substance abuse agency, or a shelter for runaway or
19 homeless youth;

20 (10) "organization" means a group or entity that provides
21 care and supervision to a child not related to the caregiver, and
22 includes a child care facility, pre-elementary school, head start
23 center, child foster home, residential child care facility, recreation
24 program, children's camp, and children's club;

25 (11) "person responsible for the child's welfare" means the
26 child's parent, guardian, foster parent, a person responsible for the
27 child's care at the time of the alleged abuse or neglect, or a person
28 responsible for the child's welfare in a public or private residential
29 agency or institution.

* Sec. 24. AS 47.35.070 is amended to read:

1 Sec. 47.35.070. VIOLATIONS. A person who violates a provision
2 of this chapter [AS 47.35.010 - 47.35.100] or a regulation adopted
3 under this chapter [AS 47.35.010 - 47.35.100] is guilty of a class B
4 misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE
5 THAN \$200].

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7 * Sec. 25. AS 47.35.070 is amended by adding a new subsection to read:

8 (b) The department may by regulation devise a system of civil
9 enforcement. The system may employ civil penalties not to exceed \$200
10 for each day during which one or more violations of a licensing stat-
11 ute or licensing regulation occurs. The imposition of a civil penalty
12 does not prevent prosecution and sentence for a criminal offense.
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For complete report see:
LLIB 8500250

AN INCIDENCE STUDY OF INCEST IN JUNEAU



AWARE

CSSB 243 (HESS), Relating to the protection of children

SECTION-BY-SECTION ANALYSIS

Section 1

Under existing AS 11.51.100, endangering the welfare of a minor, it is class C felony offense for a parent or guardian to intentionally desert a child under circumstances which place the child in substantial danger of injury. Section 1 of this bill adds "in the first degree" to the title of the existing crime (sec. 2, below, adds a "second degree" form of the crime), and expands the law's coverage to children under the age of 13 (rather than under age 10).

Section 2

This section creates a new class A misdemeanor crime: endangering the welfare of a minor in the second degree. A person commits this crime if he has been entrusted with the care of a child under 13 and either: (1) negligently exposes the child to circumstances creating a substantial risk of injury or abuse, or (2) negligently exposes the child to physical injury by failing to provide the child with necessary care, food, shelter, or medical attention.

Sections 3 and 4

Under AS 11.61.125, enacted in 1983, it is a class C felony offense to bring child pornography (visual depictions of children engaged in sex acts) into the state for sale or distribution. The law also prohibits possession or publication of such material with intent to sell it. As presently written, however, AS 11.61.125 does not explicitly prohibit the sale of child pornography. Section 3 strengthens existing law, by explicitly prohibiting sale, and further, prohibits sale and distribution whether or not for commercial consideration.

Section 5

AS 12.10.020(c), enacted in 1983, extended the general five-year statute of limitations for sex crimes against children. Under certain circumstances, a crime of this nature can be prosecuted up to 10 years after it was committed. This extension was adopted because, under the prior law, the five-year limitation period often expired before the child victim became old enough to report the assault. This was especially true when the victim was a very young child. Section 4 of this bill amends the language of AS 12.10.020 to include prostitution related offenses among those offenses to which the extension applies. The amended language also includes offenses committed under sections of the criminal code that were repealed when the laws relating to sexual offenses against children were revised in 1983.

Section 6

AS 12.45.045, which limits the introduction in a sexual assault trial of evidence of the victim's previous sexual conduct, was adopted in 1978 as part of the new criminal code. Virtually all states have adopted some version of such a "rape shield" statute. The statute is designed to protect the sexual assault victim from unwarranted invasion into her private life. As originally adopted in the new criminal code, serious sexual offenses against children were included in the general sexual assault statutes. The protections included in AS 12.45.045 thus applied in child abuse cases as well as adult rape cases.

In 1983 the criminal laws regarding sexual offenses against children were revised; most sexual offenses against children are now called "sexual abuse of a minor" in one of four degrees. Unfortunately, the language of AS 12.45.045 was not altered to reflect the new designation for sexual crimes against children. Section 6 of this bill amends the statute to make it clear that the protections accorded to adult victims of a sexual assault apply to child victims as well.

Section 7

Under AS 47.10.081, before a juvenile court may "dispose of" (sentence) a delinquent minor, all parties must receive a predisposition report. This report is prepared by a DFYS worker. Section 12 amends AS 47.10.081(c) to provide that the report must be provided to all parties six (rather than 10) working days before the hearing.

The present 10-day requirement presents considerable practical problems, and often requires a delay in the disposition proceedings. In delinquency dispositions where there are 30 or less calendar days between adjudication and disposition, investigating probation officers may have fewer working days to complete their investigation and prepare the disposition report than the parties have to review the document prior to court. The ten day requirement also eliminates any possibility of a practical effort to reduce the total time between adjudication and disposition for those children detained during that process. The present "10-day rule" has resulted in lengthening periods of detention because additional time is necessary to complete predisposition investigations and disposition hearings must be postponed.

Section 8

This section would change the standard for assuming emergency custody in neglect cases to conform to the same standard used in abuse cases. It would thus allow earlier emergency intervention to protect neglected children. It would also allow assumption of custody of neglected children who need immediate medical attention rather than requiring that their life be endangered.

Section 9

Section 9 allows DFYS discretion in filing petitions when emergency custody has been assumed in situations that do not require continued protective custody or DFYS involvement. These instances constitute a small percentage of the emergency custody cases, and involve situations in which a primary or temporary caretaker has allowed the child to wander off and the child is discovered by parties who do not know the family. Under current law, in order to provide temporary shelter for the child until parents are located, DFYS must assume emergency custody. A request to dismiss is often filed with the petition in these situations, and the petition is filed only because the present statute appears to require it. This section eliminates the need for this unnecessary paperwork.

Section 10

Section 10 defines the term "sexual abuse" for purposes of civil child in need of aid (CINA) proceedings under AS 47. Although the term "sexual abuse" is now used in AS 47, it is not defined. The proposed definition would prevent constitutional challenges to the state's assumption of jurisdiction over children who are sexually abused by their parents.

To allow DFYS intervention in all cases of suspected sexual abuse, the definition is quite broad. It includes all sexual conduct which is also a crime. Other forms of inappropriate touching are also included, but conduct reasonably necessary for normal caretaker or medical responsibilities is excluded.

Section 11

AS 47.17.010 is a statement of legislative intent that protective services should be provided to child victims of abuse and neglect to prevent further harm to the child, enhance the general well-being of children, and preserve family life. Section 11 clarifies that family life should be preserved whenever it is in the best interests of the child to do so.

Section 12

This section revises and expands existing law requiring persons in certain professions to report to DFYS suspected abuse of a child by a parent or other caretaker. Under existing law, a significant number of persons who regularly have access to information that a child has suffered harm as the result of abuse or neglect by a caretaker are not required to report that information. The revised statute focuses upon those individuals who regularly have contact with a child, or a child's family, and are therefore in a position to gain knowledge of child abuse and neglect. These changes are needed to insure that all children abused or neglected by caretakers come to the attention of DFYS.

Under present law, persons in the categories listed in AS 47.17.020 are required to report suspected child abuse or neglect only if the abuse or neglect is caused by or attributable to the actions of a person "responsible for the child's welfare." Thus, harm caused by a person not related to the child or residing in the child's home need not be reported to DFYS.

Section 12 adds a new provision to the statutes: reports to law enforcement agencies. If a person listed in AS 47.17.020 (the general reporting statute) has reason to believe that a child has suffered harm as a result of injury, neglect, or exploitation by someone other than a family member or caretaker, the person must report that harm to a law enforcement officer (rather than DFYS). The law should require that all instances of abuse or neglect be reported to the authorities, not just intrafamily abuse. All children should be protected under the law, without regard to the identity of the perpetrator or the relationship to the child victim.

If the person reporting the abuse is not aware of the perpetrator's relationship to the victim, Section 12 allows a report to be made to either DFYS or a law enforcement officer.

Section 13

Section 13 requires film processors to report suspected cases of child pornography to law enforcement authorities for investigation. Several other states have such a requirement. On at least one occasion in the past, an Alaska man who photographed a young child engaged in sex acts with him was apprehended as a result of a similar reporting requirement in another state. A person who knowingly fails to make a report as required in this section is guilty of a class B misdemeanor under AS 47.17.068 (see sec. 21, below).

Section 14

The current scope of DFYS services does not extend beyond intra-family offenses. Section 14 clarifies that if, after a preliminary investigation, DFYS determines that the harm was not caused by a family member, the report shall be turned over to a local law enforcement officer.

Section 15 - 17

Sections 15, 16 and 17 amend the confidentiality, immunity, and privileged evidence provisions in existing AS 47.17 to make it clear that the applicability of these provisions applies to both civil and criminal proceedings. This clarification is necessary as a result of the appellate court's decision in State v. R.H. and Wetherhorn, 683 P.2d