ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
5701 HOUSE HEALTH, EDUCATION & SOCIAL SERVICES

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105

Sign of the Times—Drug-Free N.J.

Brand new blue and white signs are springing up all across the state. They are unlike any other signs in the country. "Drug-Free School Zone," they proclaim. These signs have generated a great deal of discussion, and have raised a number of questions. What is a "drug-free school zone?" What is hoped to be accomplished by posting signs?

Designed to heighten public awareness regarding New Jersey's tough new drug laws, the signs were posted to raise precisely this type of question, while simultaneously alerting the public to the existence of "drug-free school zones."

Under the new law, the Comprehensive Drug Reform Act of 1987, which became effective on July 9, 1987, drug-free school zones extend 1,000 feet in all directions from the outer boundaries of every elementary and secondary school in the state. The zones are not limited to public schools, but include private and parochial schools as well. The law now provides that anyone distributing drugs within those school zones faces enhanced punishment. Specifically, a dealer who operates in a school zone is subject to a minimum mandatory term of three years imprisonment with no possibility of parole.

The goal of law enforcement is to move drug sales and possession at least 1,000 feet outside of all the schools in the state. This will give the new drug education, general education and new drug coordinators in our schools over the next generation a chance to win the war which law enforcement cannot win alone. The creation of drug-free zones around the more than 2,400 schools is a realistic and achievable goal.

The especially tough punishment for drug-free school zone offenders is not restricted to dealers alone. A person, juvenile or adult, who uses or possesses an illicit drug within a school zone faces a mandatory 100 hours of community service. This is in addition to the $500 penalty which will be returned to the community for drug education and prevention, and the mandatory revocation or postponement of a driving license for at least six months and up to two years.

The drug-free school zone component of New Jersey's Comprehensive Drug Reform Act is not without its share of controversy. No innovative law ever is. It has been suggested that by providing enhanced punishment for school zone offenders, we may simply be encouraging dealers to set up shop just outside the school zone boundaries and that it would be better to simply post signs proclaiming a drug-free New Jersey. These are fair propositions which require a candid response.

We know that despite our best efforts, the war on drugs cannot be won overnight. A drug-free New Jersey—not a warning on signs—is our ultimate and long range goal. Tough laws alone cannot achieve that goal. But we *can* take immediate steps to rid schools and the adjacent areas of drug trafficking.

With the help of the education community, a drug-free school zone is a goal which is enforceable, is realistic, and by Dec. 31, 1988 our 14-month implementation plan of this new law should be in full swing.

This does not mean that we plan to tolerate or ignore drug offenses occurring outside of school zones. It merely means that we are setting realistic goals. Our new law provides tough punishment for all offenders, and New Jersey now has a mandatory arrest policy throughout the state. But we have directed many of our limited resources and efforts specifically to patrolling school zones. The question then becomes, why focus on schools?

Our new law recognizes that if we are ultimately to win the so-called "war" on drugs, success will depend on reducing the demand for illicit substances. This, in turn, will depend on the new education programs being utilized in our schools. Designed to teach our young people how and why they should "say no," these programs will actuate a fundamental reversal of society's tolerance of drug use. New Jersey's new penal law recognizes as much. It also recognizes that our schools will serve as one of the primary mediums for achieving this long-range objective.

We must therefore be certain that schools and the areas around them are safe havens for children, not marketplaces for drug dealers or users. By vigorously enforcing our drug-free school zone plan, law enforcement will fulfill part of its vital role in promoting critically important demand reduction initiatives. Almost one-third of children try drugs before the 9th and 10th grade and about two-thirds by the time they finish high school.

Our children are entitled to an environment which is conducive to education, free of drugs and where drug trafficking activities will not be tolerated. Children should not be able to look out their classroom window and see a drug deal taking place. They should not be able to find used "crack" vials littered around school playgrounds. They should not be propositioned to buy or use drugs while walking to school or inside school buildings.

Therefore, we must, as an absolute priority, do everything we can to keep innocent children as far away from the drug culture for as much of the day as possible. This gives our new K-12 drug coordinated curriculum program and new drug coordinators and counselors a chance to do their jobs.

The reason for creating drug-free school zones is thus apparent: We intend to push the drug pushers away from children, who are the most vulnerable and impressionable of drug victims. We want to make drugs less available to our children, and force them to go to greater lengths to complete illicit transactions. We want to make it harder for dealers to get to our children.

Some students, of course, especially those who are already regular users or who are drug dependent, will follow the dealers to their new locations. It's our belief, however, that with this comprehensive coordinated approach the next generation and the older children not yet involved will not follow the drug dealer and will have the tools to know "how" and "why" to say no.

The new signs, in turn, evidence our resolve to vigorously enforce this new law which is among the toughest in the nation. Knowledge of where the drug-free school zones are and what a violation means will speed the process of achieving our goal of "getting the user and the pusher 1,001 feet away from schools." The signs remind everyone that the drug problem is pervasive, that no community has been spared, and more importantly, that the zones exist and we intend to make our schools drug-free. They will also serve to remind us to be vigilant at all times. We hope, in this regard, that law abiding citizens will help us to achieve this goal by calling the police whenever they see illegal drug activities within these "drug-free school zones."

These new signs are not, and were never meant to be, the answer to our drug problem. Rather, they are a very small but highly visible part of a much larger, comprehensive program designed to address both the supply and demand sides of this deadly problem.

Some may argue that these signs are empty symbols, without meaning or impact. Rest assured, however, that there will be many disbelieving drug predators sitting in prison who will have three long years to contemplate the symbolism. More importantly, more than one million children of the next generation will have a better chance to grow up drug free and be the best they can be.

The plans and tools are in place but only the local community, with the involvement of town governments, police departments, local educators and citizens, can really make our goal for the next generation of children a reality.

CARY EDWARDS
Attorney General of New Jersey

Attorney General Edwards was assisted in the writing of this article by Ron Susswein in the Division of Criminal Justice, Department of Law and Public Safety.

Message from the Office of Attorney General is published by the New Jersey Department of Law and Public Safety, CN 080, Hughes Justice Complex, Trenton, NJ 08625.

NJ Department of Law and Public Safety/Office of Attorney General: Division of Alcoholic Beverage Control • Civil Rights • Consumer Affairs • Criminal Justice • Gaming Enforcement • Highway Traffic Safety • Law • Motor Vehicles • Racing • State Police. Other agencies: Commission on Missing Persons • Executive Commission on Ethical Standards • Election Law Enforcement Commission • State Law Enforcement Planning Agency • State Athletic Control Board • Violent Crimes Compensation Board.

SB

355

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

SB 355

H HESS 3/20/90

H HESS 3/29/90

HOUSE COMMITTEE REPORT

(7)
Date Referred: January 31, 1990 FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 3/29/90

The HESS Committee considered: CSSB 355(JUD)am

CS SB NO. 355 (Jud) am SEX OFFENSES BY TEACHERS/SCHOOL EMPLOYEES
"An Act relating to crimes involving sexual penetration or sexual contact with minors, including situations where the adult occupies a position of special trust in relation to the minor; defining 'legal guardian' for certain crimes; and relating to the issuance to, and revocation of teaching certificates of, persons convicted of certain crimes involving a minor."

RECOMMENDATIONS:

[ ] be replaced with _____ [ ] the same title [ ] a new title

[ ] have attached amendment(s)

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact_____

[ ] zero fiscal note_____

[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal note(s) _____

[3] zero fiscal note(s) 1/24/90 Corr./Ind/Educa

[ ] zero fn/analysis _____

SIGNING DO PASS:

J E Ellis

Kent Grusendorf

Bob Jackson

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
W Turner S.		*	

J E Ellis

Chairman's Signature

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3867

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 16, 1990

SUBJECT: Amendments to CSSB 355 (Jud) am

TO: Representative Johnny Ellis
Attn: Jim Nordlund

FROM: John B. Gaguine
Legislative Counsel

Enclosed is one amendment you requested to CSSB 355 am S (the "Satch Carlson bill") based on the grand jury report. This amendment is the one imposing a reporting requirement to the Professional Teaching Practices Commission (PTPC) by law enforcement officers and social workers. (I added the social worker requirement because it seemed appropriate and consistent with AS 47.17.) There is, however, a major problem with this amendment. As you see, it necessitates a title change, which under the Uniform Rules cannot be done without a resolution. If you wish, I can prepare such a resolution, or I can redo the amendment as a new bill.

I did not draft the other amendment recommended, relating to the PTPC notifying other state teacher licensing authorities about revocations for sexual misconduct, because the authority already exists. I happened to see on the news last night that the PTPC revoked Carlson's certificate, and notified all the other states. So I called the PTPC to see what their authority to do that was. They pointed me to a regulation, 4 AAC 12.095(b), which requires the Department of Education to "provide to all other state departments of education notice of revocation or suspension of a certification." I think that this regulation, which apparently was overlooked by the grand jury, meets the grand jury's desires. Of course, if you still want legislation on this matter, I will be happy to draft it.

If I may be of further assistance, please advise.

JBG:pl
WKP3/047
Enclosure

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 355 (Judiciary) am

Page 1, line 10:

Delete "and"

Page 1, line 13, following "minor":

Insert "; and requiring law enforcement officers and social workers to report to the Professional Teaching Practices Commission information concerning sexual misconduct by teachers"

Page 5, following line 16:

Insert a new bill section to read:

"* Sec. 9. AS 47.17 is amended by adding a new section to read:

Sec. 47.17.021. REQUIRED REPORTING OF TEACHER MISCONDUCT. (a) A law enforcement officer or a social worker in the state shall disclose to the Professional Teaching Practices Commission information that the person has acquired in the performance of the person's professional duties and that gives the person reason to believe that a teacher in the state has engaged in conduct with a minor violating AS 11.41.434 - 11.41.438, 11.41.455, or 11.41.460. The report required under this subsection is in addition to the report required under AS 47.17.020.

(b) This section does not prohibit law enforcement officers and

social workers from reporting cases that have come to their attention in their nonoccupational capacities, nor does it prohibit any other person from reporting the information set out in (a) of this section."

Renumber the following bill section accordingly.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs,

GORDON C. CARLSON

Defendant

Case No.3AN-S89-7443 Cr.

MEMORANDUM DECISION AND ORDER

The defendant is an Anchorage high school teacher charged with two counts of Sexual Abuse of a Minor in the First Degree under AS 11.41.434(a)(2)(A) and one count of Sexual Abuse of a Minor in the Second Degree under 11.41.436(a)(3)(A) with a 17 year old female student. Both statutes prohibit a person 18 years of age or older from engaging in sexual penetration and contact with a person who is under 18 years old and who "is entrusted to the offender's care by authority of law."

The defendant moved to dismiss, asserting that the statutes do not apply to a high school teacher-17 year old student relationship. Alternatively, the defendant argues that even if the statutes are applicable, they are void for vagueness. The state opposes the motion to dismiss, arguing that the statutes are applicable because of the special legal relationship between high school teachers and students. The state also asserts that the statutes are not void for vagueness.

The language, "entrusted to the offender's care by authority of law," is not defined in the statutes, and the meaning of the phrase is not clear on the face of the statutes. The defendant argues that the language should be construed narrowly to refer to a guardian-ward relationship. The state argues for a broader definition that would encompass a variety of relationships, including teacher and student.

The goal of statutory interpretation is to give effect to legislative intent, with due regard for the meaning the statutory language conveys to others. Tesoro Alaska Petroleum Co. v. Kenai Pipeline Co., 746 P.2d 896 (Alaska 1987). Legislative intent is generally found in the statutory language, but where the language is vague or ambiguous, the intent must be derived by applying rules of construction.

A traditional rule of construction is that vague or ambiguous criminal statutes should be read narrowly in favor of the defendant and against the state. Kuvaas v. State, 696 P.2d 684 (Alaska App. 1985); State v. R.H., 683 P.2d 269 Alaska App. 1984). The court believes that construing the disputed language narrowly to refer to a guardian-ward relationship would be consistent with this rule of construction. This conclusion is further supported by several other considerations.

In construing statutes, courts may also resort to legislative history. City and Borough of Sitka v. I.B.E.W., Local Union 1547, 653 P.2d 332 (Alaska 1982). The Alaska Senate considered identical language in an earlier statute in 1978. See former AS 11.41.410. The Senate commented that the statute

was intended to prohibit an offender from having sexual contact with a minor "under 18 who is entrusted to his care by authority of law (i.e., ward) or who is his son or daughter." 1978 Alaska Senate Journal, Supplement No.47, at 23. The Senate's use of the language, "i.e., ward" is instructive. The abbreviation, "i.e." stands for the Latin "id est," meaning "that is" or "that is to say." Black's Law Dictionary (5th Ed. 1979). This can be distinguished from the abbreviation, "e.g.," which generally means "for example." In using the language, "i.e., ward," the Senate apparently meant to limit application of the statute to wards.

The state's argument for a broad construction of the term "ward", based on the Model Penal Code, is not persuasive. Under the state's theory, the statutes could be applied to a variety of individuals, such as camp supervisors. The court believes that the term "ward" should be given its more traditional legal meaning. For example, in Title 13 of the Alaska Statutes, which covers decedent's estates, guardianships and trusts, "ward" is defined as "a person for whom a guardian has been appointed." AS 13.25.005(10). A "guardian," according to that section, is one who possesses the duties and powers set forth in AS 13.26.150(c), or one whose powers and duties have been specified by court order. A high school teacher does not fall within either category. Such a traditional construction is also consistent with the rule that vague statutes should be read narrowly in favor of the defendant. It is also consistent with the usage employed by the Alaska Supreme Court in discussing the

guardian-ward relationship. In Johnson v. Johnson, 544 P.2d 65 (Alaska 1975) the court stated that general guardians are "entrusted with the general care and supervision" of a ward or a ward's estate.

Another applicable rule of statutory construction is the doctrine of ejusdem generis, which means "of the same kind, class, or nature." Black's Law Dictionary (5th Ed. 1979). Under this doctrine, where general words are closely followed or preceeded by specific words, the general words are regarded as referring to the same type or kind of thing as the specific words. State v. First National Bank of Anchorage, 660 P.2d 406 (Alaska 1982). In both statutes, the disputed language is followed in the same subsection with the phrase, "the offender's son or daughter, including an illegitimate or adopted child, or a stepchild." This language is specific, since it refers to a clearly defined group of people. The more general language, "entrusted to the offender's care by authority of law," should be construed as referring to the same type of relationship as the specific language. A guardian-ward relationship is very similar to the family relationships specified in the statutes. On the other hand, a teacher-student relationship is substantially different. Therefore, it appears that the legislature did not intend the general phrase to apply to a teacher-student relationship.

Had the legislature intended these statutes to apply to teachers, it could have said so in precise language. Other statutes use the specific term "teacher" when they are intended

to apply to teachers. For example, AS 11.81.430 provides several justifications for the use of physical force against another person. Subsection (a)(1) is directed toward "a parent, guardian or other person entrusted with the care and supervision of a child." Subsection (a)(2) is directed specifically at "a teacher." The court also notes the proposed legislation amending AS 11.41.434 by making it specifically applicable to "high school" personnel and "students." These examples clearly indicate the ability of the legislature to use precise terminology when it intends to refer to teachers.

Even if the legislature intended the statutes to apply to teachers, this court concludes that the language used is unconstitutionally vague. In order to survive a vagueness challenge, a statute "must give adequate notice to the ordinary citizen of what is prohibited." Stock v. State, 526 P.2d 3 (Alaska 1974). An ordinary citizen reading the statutes here would not have adequate notice of what conduct is prohibited.

Another concern in analysis of vagueness problems "is whether the statute gives undue discretion to prosecuting authorities in determining what constitutes the crime." Stock v. State, 526 P.2d 3 (Alaska 1974). Where imprecise statutes have invited arbitrary application "so that there has been a history or a strong likelihood of uneven application," they have been held unconstitutionally vague. Id. The defendant's affidavits provide evidence that the statutes have been applied unevenly in the past. The court need not decide this allegation, since it is sufficient if a "strong likelihood" of arbitrary

enforcement exists. In this case, the possibility of uneven enforcement is sufficiently great, that the statute should be declared unconstitutionally vague.

Where the legislature does not clearly define the scope of a statute's coverage, the prosecution has unfettered discretion to apply the statute to whomever it desires. No matter how distasteful or undesirable certain alleged conduct may appear to the state or the public, the courts cannot permit the prosecution to assume this legislative responsibility. The state should not have the discretion whether or not to charge an individual teacher with an unclassified felony, carrying a maximum penalty of 30 years in prison with a presumptive sentence of 8 years, based on a statute which on its face does not clearly apply to teachers. Considering the level of influence a music teacher is likely to exercise over a 17 year old female student, such a result would seem illogical when one considers that an adult offender engaging in sexual penetration of a 13 year old generally commits only a class B felony, with no presumptive sentence. AS 11.41.436(c)(1). Certainly a 13 year old generally would be more susceptible to influence than a 17 year old high school student.

In summary, the court concludes that the statutes in question do not apply to prohibit sexual activity between a high school teacher and a 17 year old student. Alternatively, even if the legislature did intend the statutes to apply, the statutes are unconstitutionally vague.

It is, therefore, ORDERED that the defendant's motion to dismiss indictment is GRANTED.

Dated this 18 day of January, 1990 at Anchorage, Alaska.

Karl S. Johnstone,
Superior Court Judge

SEX OFFENSES: CSSB 355 (Judiciary)

By Age of Offender and Classification of Felony

DESCRIPTION OF OFFENSE	Any Age	18 Or Older	16 Or Older
Victim: Under 13 **Relationship:** None	**Penetration:** Unclass. **Contact:** B felony		
Victim: 13, 14, 15 + 3 yrs younger **Relationship:** None			**Penetration:** B felony **Contact:** C felony
Victim: Under 16 **Relationship:** Same household & offender in position of authority		**Penetration:** Unclass. **Contact:** B felony	
Victim: Under 16 **Relationship:** "Position of special trust"**		**Penetration:** Unclass. **Contact:** B felony	
Victim: 16 or 17 + 3 yrs younger **Relationship:** "Position of special trust"**		**Penetration:** B felony **Contact:** C felony	
Victim: Under 18 **Relationship:** Parent or "legal guardian"*		**Penetration:** Unclass. **Contact:** B felony	
Victim: Any Age **Relationship:** Ancestor, descendant, brother, sister, uncle, aunt, nephew, niece		**Penetration:** C felony	
Victim: Any Age **Relationship:** None	**Pen./No Consent:** Unc. **Con./No Consent:** B		

* "Legal guardian" means a person who is under a duty to exercise general supervision over a minor as a result of a court order, statute, or regulation, and includes foster parents and staff members and other employees of group homes or youth correctional facilities where a child is placed as a result of court order or person of the Division of Family and Youth Services.

** "Position of special trust" means a youth leader, [redacted] scout leader, athletic manager, coach, teacher, counselor, school administrator, religious leader, [redacted] police officer, probation officer, guardian ad litem, babysitter, or substantially similar position.

SEX OFFENSES: EXISTING LAW

By Age of Offender and Classification of Felony

DESCRIPTION OF OFFENSE	Any Age	18 Or Older	16 Or Older
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Victim: Under 16 **Relationship:** Same household & offender in position of authority		**Penetration:** Unclass. **Contact:** B felony	
Victim: Under 16 **Relationship:** Temporarily entrusted to offender's care		**Penetration:** Unclass. **Contact:** B felony	
Victim: Under 18 **Relationship:** Entrusted to offender's care by authority of law		**Penetration:** Unclass. **Contact:** B felony	
Victim: Under 18 **Relationship:** Son or daughter (all kinds)		**Penetration:** Unclass. **Contact:** B felony	
Victim: Any Age **Relationship:** Ancestor, descendant, brother, sister, uncle, aunt, nephew, niece		**Penetration:** C felony	
Victim: Any Age **Relationship:** None	**Pen./No Consent:** Unc. **Con./No Consent:** B		

Senate Letter of Intent
(amended)

for

CSSB 355 (Judiciary)

The changes to AS 11.41.434(a) are intended to clarify the meaning of two terms used in existing law -- "entrusted to the offender's care by authority of law" and "temporarily entrusted to the offender's care." The amendments are needed as a result of a recent Anchorage case, State v. Carlson, 3AN-S89-7443 Cr., in which the superior court concluded that the term "entrusted to the offender's care by authority of law" did not apply to teachers, and that if the legislature intended the language to apply to persons other than legal guardians, the statute was unconstitutionally vague. The term "temporarily entrusted to the offender's care" is replaced as well, in order to avoid litigating whether that term is unconstitutionally vague.

The amendments make it an unclassified felony to have sexual penetration (and a B felony to have sexual contact) with a person under 16 where the offender occupies a "position of special trust" in relation to the victim. In addition, where the offender occupies a "position of special trust" in relation to the victim, it is a B felony to have sexual penetration (and a C felony to have sexual contact) with a 16- or 17-year-old person who is at least three years younger than the offender.

A "position of special trust" is a position that could enable an offender to exercise undue influence over the victim. The definition includes a list of positions that fall within the law. The definition is intended to include all persons covered under the current law making it a crime to have sexual penetration or contact with a person under age 16 who is "temporarily entrusted to the offender's care," and to broaden the definition to include other persons who are in a position that could enable them to exercise undue influence over children. Persons other than those specifically listed are included within the definition only if they are in a position substantially similar to a position specifically included in the definition.

For example, the definition includes the term "babysitter." Positions substantially similar to "babysitter" include a person who is temporarily caring for a minor while the minor's parents are out of town, or an adult who takes a minor along on a camping trip, or an adult who allows a minor to sleep in the adult's home overnight as the guest of the adult's own child. Others examples of positions that

Senate Judiciary Letter of Intent

Commentary to CSSB 355 (Jud)

The changes to AS 11.41.434(a) are intended to clarify the meaning of two terms used in existing law -- "entrusted to the offender's care by authority of law" and "temporarily entrusted to the offender's care." The amendments are needed as a result of a recent Anchorage case, State v. Carlson, 3AN-S89-7443 Cr., in which the superior court concluded that the term "entrusted to the offender's care by authority of law" did not apply to teachers, and that if the legislature intended the language to apply to persons other than legal guardians, the statute was unconstitutionally vague. The term "temporarily entrusted to the offender's care" is replaced as well, in order to avoid litigating whether that term is unconstitutionally vague.

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CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Senate Letter of Intent
(amended)

for

CSSB 355 (Judiciary)

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are substantially similar to those specifically listed within the definition are parents who volunteer to work with children in schools or youth groups. These adults are in positions substantially similar to youth leaders, and scout leaders.

The nature of an adult's position of special trust determines the duration of the prohibition against sexual relations between the adult and child. The relationship of special trust between a child and the child's teacher or youth leader continues even during the intervals between classes or formal meetings of the youth group, because there is an expectation of future, ongoing (albeit intermittent) contact between the adult and the child in the context of the relationship of special trust. On the other hand, an adult who volunteers to chaperon a single school dance does not thereby create an open-ended relationship of special trust with all the students who attend the dance; rather, that relationship is limited to the dance and the time before and after the dance when students are arriving and going home.

Employers and job supervisors were specifically not included within the definition of "position of special trust."

The amendments also make it an unclassified felony for a natural parent, stepparent, adopted parent, or legal guardian to engage in sexual penetration (and a B felony to engage in sexual contact) with a person under the age of 18. The penalties are the same as provided under current law for these categories of persons; the amendment is necessary as a result of removing the language "entrusted to the offender's care by authority of law" from the statute. The definition of "legal guardian" specifically includes foster parents and staff members and other employees of group homes or youth correctional facilities where a child is placed as a result of court order or action of the Division of Family and Youth Services.

Senate adopted 1/29/90.

Senate Judiciary Letter of Intent

Commentary to CSSB 355 (Jud)

The changes to AS 11.11.434(a) are intended to clarify the meaning of two terms used in existing law -- "entrusted to the offender's care by authority of law" and "temporarily entrusted to the offender's care." The amendments are needed as a result of a recent Anchorage case, State v. Carlson, 3AN-S89-7443 Cr., in which the superior court concluded that the term "entrusted to the offender's care by authority of law" did not apply to teachers, and that if the legislature intended the language to apply to persons other than legal guardians, the statute was unconstitutionally vague. The term "temporarily entrusted to the offender's care" is replaced as well, in order to avoid litigating whether that term is unconstitutionally vague.

The amendments make it an unclassified felony to have sexual penetration (and a B felony to have sexual contact) with a person under 16 where the offender occupies a "position of special trust" in relation to the victim. In addition, where the offender occupies a "position of special trust" in relation to the victim, it is a B felony to have sexual penetration (and a C felony to have sexual contact) with a 16- or 17-year-old person who is at least three years younger than the offender.

A "position of special trust" is a position that could enable an offender to exercise undue influence over the victim. The definition includes a list of positions that fall within the law. The definition is intended to include all persons covered under the current law making it a crime to have sexual penetration or contact with a person under age 16 who is "temporarily entrusted to the offender's care," and to broaden the definition to include other persons who are in a position that could enable them to exercise undue influence over children. Persons other than those specifically listed are included within the definition only if they are in a position substantially similar to a position specifically included in the definition.

For example, the definition includes the term "babysitter." Positions substantially similar to "babysitter" include a person who is temporarily caring for a minor while the minor's parents are out of town, or an adult who takes a minor along on a camping trip, or an adult who allows a minor to sleep in the adult's home overnight as the guest of the adult's own child. Other examples of positions that are substantially similar to those specifically listed within the definition are parents who volunteer to work with children in schools or youth groups. These adults are in positions substantially similar to youth leaders, recreational leaders, and scout leaders.

The nature of an adult's position of special trust determines the duration of the prohibition against sexual relations between the adult and child. The relationship of special trust between a child and the child's teacher or youth leader continues even during the intervals between classes or formal meetings of the youth group, because there is an expectation of future, ongoing (albeit intermittent) contact between the adult and the child in the context of the relationship of special trust. On the other hand, an adult who volunteers to chaperon a single school dance does not thereby create an open-ended relationship of special trust with all the students who attend the dance; rather, that relationship is limited to the dance and the time before and after the dance when students are arriving and going home.

Employers and job supervisors were specifically not included within the definition of "position of special trust."

The amendments also make it an unclassified felony for a natural parent, stepparent, adopted parent, or legal guardian to engage in sexual penetration (and a B felony to engage in sexual contact) with a person under the age of 18. The penalties are the same as provided under current law for these categories of persons; the amendment is necessary as a result of removing the language "entrusted to the offender's care by authority of law" from the statute. The definition of "legal guardian" specifically includes foster parents and staff members and other employees of group homes or youth correctional facilities where a child is placed as a result of court order or action of the Division of Family and Youth Services.

Alaska State Legislature
Senate

Official Business

P.O. BOX V
State Capitol
Juneau, Alaska 99811

January 25, 1990

MEMORANDUM

TO: All Senators

FROM: Senator Jan Faiks
Senator Paul Fischer

SUBJECT: SB 355 "An Act relating to sexual offenses against children."

SB 355 is before the Senate for consideration today. The Senate Judiciary Committee has held several hearings on this legislation, and recommends that it be replaced with a Judiciary Committee substitute. Members will find attached to this memo a sectional analysis of the substitute.

SB 355 was introduced in response to the indictment brought against an Anchorage teacher for allegedly having sex with a 17 year old student. The teacher was charged with first degree sexual abuse of a minor, an unclassified felony. Under Alaska law, the age of consent is generally 16. However, the law also provides that an adult may not have sex with a 16 or 17 year old if the minor was entrusted to the adult's care "by authority of law." In the Anchorage case, the Department of Law argued that students are placed in a teacher's care by authority of law, making 18 the age of consent for teacher-student sex. The teacher argued that this law only applies to legal guardians and other persons similarly situated. While the Judiciary Committee was considering SB 355, Judge Johnstone dismissed the charges against the teacher, ruling that the statute did not prohibit teachers from having sex with 16 and 17 year old students.

Working closely with the Department of Law, the Judiciary Committee drafted a substitute that closes this loophole in the law. In addition, the bill criminalizes sex between a minor and any adult in a "position of special trust." The committee believes that certain adults, in addition to teachers, are in a position to manipulate 16 and 17 year old minors. These include youth leaders, recreational leaders, scout leaders, athletic managers, coaches, counselors, school

administrators, religious leaders, practitioners of the healing arts, police officers, probation officers, guardians ad litem, babysitters, and substantially similar positions. Accordingly, adults in these categories are prohibited from having sex with minors who are 16 and 17 years old and at least three years younger than the offender. A letter of intent serves to clarify the bill, and provide the kind of guidance to the courts that is obviously missing from the current law.

In addition, the bill imposes a lifetime prohibition on the possession of a teaching certificate on any adult convicted of certain crimes, including sexual abuse of a minor, sexual exploitation of a minor, and indecent exposure to a minor. Five years after a person has completed any jail sentence, probation or parole imposed as a result of the conviction, the person may petition the Professional Teaching Practices Commission for relief from the ban. The PTPC must consider the underlying nature of the crime, as well as any rehabilitation that might have occurred in ruling on the petition.

In drafting this substitute, the Judiciary Committee took care to balance the rights of adults against the need to protect our children. The bill reflects the values of a majority of Alaskans, and provides guidance to the public and to the courts on what activity is simply unacceptable. We urge your support for this essential piece of legislation.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the Grand Jury for the Third Judicial District at Anchorage for the Term of Proceedings Commencing in January, 1990.

PART I OF THE GRAND JURY INVESTIGATION CONCERNING REPORTING OF SEXUAL ABUSE OF SCHOOL CHILDREN

March 5, 1990

TABLE OF CONTENTS

PREAMBLE

Since January 24, 1990, the Grand Jury has investigated the conduct of public organizations and individuals in response to a complaint of sexual misconduct against Mr. Gordon C. Carlson, formerly a teacher with the Anchorage School District. The Grand Jury has also considered evidence of other cases from the Anchorage area, and from other areas of Alaska, which raise related issues of public concern.

The Grand Jury has met for a total of 22 days, has heard testimony from 71 separate witnesses, and has received 120 exhibits, comprising several thousand pages of printed and written material.

The evidence heard by the Grand Jury shows that existing statutes, regulations, policies and procedures governing the reporting and investigation of sexual abuse and sexual exploitation of school children are inadequate to protect those children. The findings of this Grand Jury should apply not only to sexual abuse and sexual exploitation of school children, but to all children and all types of child abuse and neglect. The Grand Jury finds that public safety and welfare will best be served by an immediate report to the public recommending changes in these existing rules. The Grand Jury also finds that it has both the right and duty to make such a report under Article I, Section 8 of the Alaska Constitution.

The Grand Jury is aware that Criminal Rule 6.1 contemplates delay in publication of its report to allow review and possible litigation by persons who believe they are unjustly criticized. To avoid this delay, the Grand Jury has chosen to issue its report in separate parts. Part I identifies specific deficiencies in current statutes, regulations, policies and procedures relating to the reporting and investigation of sexual misconduct with school children. It also contains recommendations for changing these rules. Subsequent parts of this report will address other issues.

No criticism of any identifiable person is intended in Part I. The Grand Jury believes that all interested parties will agree that the matters contained in Part I should be shared with the public immediately so that recommendations in this area of vital public concern may be reviewed, debated and implemented without delay.

PART I

A. OBJECTIVES OF REPORTING RULES.

The Grand Jury believes that school children may be harmed by adults or other children who exploit them for personal sexual gratification. Consequently, the primary objective of all rules in this area must be to prevent this potentially harmful conduct, whether it occurs in school, at home, or elsewhere in the community. Effective rules must therefore provide for the earliest possible identification of sexual offenders so that they may be denied access to their victims, and to other potential victims in the future. It is equally important that such rules encourage early identification of actual victims, so that they may receive appropriate counselling or other treatment to remedy the harm they have suffered. This is necessary whether or not the offender is ever specifically identified or disciplined.

The Grand Jury finds that these considerations require rules that mandate EARLY REPORTING.

Other important interests must also be accommodated. The Grand Jury has received expert testimony that children who are victims of sexual misconduct will most often initially deny that such misconduct has occurred, or will minimize its frequency and seriousness. The Grand Jury recognizes that teachers, school nurses, and school administrators who deal regularly with children may have the ability, due to their training and experience, to quickly recognize when a child is

troubled. However, these professionals do not necessarily have the specific training required to elicit from the child reliable and detailed information concerning sexual offenses. Nor can these professionals be expected to have training in the legal rules of investigation or interrogation necessary to gain evidence from victims or suspected offenders that would be admissible in court. The state's Division of Family and Youth Services (DFYS) has personnel specifically trained to question children about sexual offenses. Law enforcement agencies such as the Anchorage Police Department (APD) and the Alaska State Troopers (AST) have officers trained in the investigation of sexual offenses against children, and are required by law to do so.

The Grand Jury finds that effective reporting rules must therefore clearly state that ALL INVESTIGATION OF THESE MATTERS IS THE RESPONSIBILITY OF DFYS AND LAW ENFORCEMENT AGENCIES.

The Grand Jury has heard testimony that school personnel have provided valuable assistance and cooperation to DFYS and law enforcement agencies in past cases of suspected sexual abuse of school children. This assistance has materially aided in the efficient resolution of such cases. The Grand Jury believes that most teaching professionals and administrators have both a personal and professional interest in continuing to assist whenever possible.

Therefore, the Grand Jury believes that effective

reporting rules should require SCHOOL PERSONNEL TO COOPERATE WITH INVESTIGATING AGENCIES, AND SHOULD PROTECT THESE PERSONNEL.

The child who may have been victimized must be protected from public exposure. The alleged offender must be protected from damage to his or to her personal or professional reputation due to public disclosure of unfounded complaints. Persons who report must be assured that their identities will be kept confidential if possible, and informed if that is not possible.

The Grand Jury finds that reporting rules should MAINTAIN THE MAXIMUM CONFIDENTIALITY CONSISTENT WITH EFFECTIVE INVESTIGATION.

Parents have a right to be and should be informed that their children may have been victimized by others, and to be kept informed of what action is being taken by investigating agencies. The employer of a suspected offender may have a right and duty to remove that person from a position of access to children while investigation is in progress, and to terminate employment of that person if accusations are proven true. Labor agreements which protect a suspected offender from unwarranted employment action must be considered. However, labor agreements should not be allowed to impede a child abuse investigation. Public licensing authorities charged with responsibility to grant or revoke certificates of professionals suspected of sexual misconduct must be given sufficient information to act.

The Grand Jury finds that reporting rules should

REQUIRE TIMELY SHARING OF INFORMATION WITH THOSE HAVING A LEGITIMATE NEED FOR IT.

B. EXISTING REPORTING RULES AND RECOMMENDATIONS.

1. Alaska Statutes. The Grand Jury finds that the provisions of AS 47.17.020 -.070, as presently written, do not effectively implement the purposes stated in AS 47.17.010 in the area of sexual misconduct with school children.

(a) "Cause to believe". This term is not defined in the reporting statutes. While it may have a particular meaning to those trained in the law, and may even designate a particular level of information sufficient to support enforcement in most situations, it could be confusing and inexact to a person faced with a decision to report or to delay reporting until more information becomes available. The absence of a readily available definition could also lead to a claim or belief that one charged with reporting must investigate the truth or falsity of information to a particular degree of personal belief before reporting it.

(b) "Child abuse or neglect." This term is defined in AS 47.17.070. However, as regards sexual misconduct, it is possible to interpret the existing definitions to mean that only criminal acts are reportable. It is also possible to read the definitions to require or permit reporting of sexual misconduct that is not otherwise criminal. Confusion about what conduct is reportable could cause nonreporting or permit delay while an investigation is conducted to establish evidence of violation of

a particular criminal statute before a report is made. While the existing definitions may permit enforcement, clarification would make the statutes more effective.

Specific definitions will limit or remove the uncertainties of individual judgment. Persons who might otherwise be tempted to avoid or delay reporting due to conflicting personal or professional concerns will have such temptations removed. Specific definitions will help clarify that reporting is the individual responsibility of the person who first receives sufficient information. This will prevent passing reporting responsibility to supervisors or to groups, which could cause reports to be delayed or miscoordinated. The Grand Jury also believes that specific definitions in the statutes themselves will increase public confidence that reports will be timely made. It should also remove possible causes of mistrust between those who must report and those to whom such reports must be made.

Therefore, the Grand Jury RECOMMENDS that the legislature amend the reporting statutes to specifically define the terms "cause to believe" and "child abuse and neglect."

Consistent with its belief that the earliest possible reporting is desireable, the Grand Jury FURTHER RECOMMENDS that the legislature define "cause to believe" so that reports will be made with the least amount of information consistent with practical investigation and due process requirements.

The Grand Jury MAKES NO RECOMMENDATION on what types

of sexual misconduct should be made criminal, or reportable if noncriminal, believing such decisions best left to the legislature's discretion.

(c) "Person responsible for the child's welfare." This phrase, included in the definition of "child abuse and neglect" found in AS 47.17.070, could be interpreted to exclude school teachers of 17 year-old high school students under the theory that, since such students are not required by law to attend school beyond their 16th birthdays, teachers of such students are not "legally" responsible for their welfare. Such an interpretation would mean that a teacher who engaged in sex with one of his or her 17 year-old students would not be reported. If the legislature intends that such conduct by teachers should be reported, this definition should be modified to specifically cover teachers of students between 16 and 18 years of age.

The Grand Jury therefore RECOMMENDS that the legislature amend the definition of "person responsible for the child's welfare" in AS 47.17.070(8) to clarify legislative intent.

(d) "Immediately." The Grand Jury believes that this term in AS 47.17.020 is sufficiently clear to achieve its purpose.

(e) Persons required to report. The Grand Jury finds that, if AS 47.17.020 is to be effective in requiring early reporting, this definition should be amended to specifically

state that the individual first receiving sufficient information must immediately report, and that this responsibility is not discharged by passing the information to a supervisor or administrator within the same organization.

The Grand Jury RECOMMENDS that the legislature amend this section of AS 47.17.020 as shown above.

(f) Training. AS 47.17.022 does not appear to apply to local school district personnel who are charged with the duty to report. The Grand Jury has received evidence leading it to believe that such personnel would benefit from more structured and more frequent training on their specific rights and responsibilities under the reporting statutes.

The Grand Jury therefore RECOMMENDS that the legislature include all local public and private, primary and secondary school personnel under AS 47.17.022.

The Grand Jury FURTHER RECOMMENDS that this training be provided on an annual basis.

(g) Confidentiality. AS 47.17.040 does not appear to permit DFYS or law enforcement agencies to share some critical investigative information with non-offending parents or with school district employers or potential employers, or with professional licensing agencies such as the Professional Teaching Practices Commission (PTPC). The Grand Jury believes that strictly controlled sharing of some of this information with persons and organizations such as those mentioned, but who might not be "governmental agencies with child-protection

functions," should be legitimized if possible. The Grand Jury believes that such sharing would improve cooperation among parents of victims, employers of suspected sexual offenders, investigating agencies and professional licensing agencies. From evidence it has heard, the Grand Jury believes that inability to share such information could cause competition for the exclusive right to possess and use it for legitimate but narrow purposes, resulting in delayed reporting and diminished cooperation.

The Grand Jury RECOMMENDS that the legislature amend AS 47.17.040 to permit sharing of critical investigative information with a limited number of persons or organizations that have a legitimate need for it.

(h) Immunity. Whether or not AS 47.17.050, as a matter of law, provides civil and criminal immunity to those who delay reporting but eventually report, the Grand Jury believes that any uncertainty is harmful to the overall reporting scheme. The Grand Jury further believes that the statute should state that it will protect from liability a person who non-maliciously reports information that does not amount to "cause to believe," or who mistakenly but non-maliciously reports potentially harmful conduct that does not constitute "child abuse or neglect." The Grand Jury finds that clarification of these areas will encourage reporting.

The Grand Jury RECOMMENDS that the legislature amend this statute to clarify the protection it provides to potential

reporters.

2. Alaska Administrative Code. The Grand Jury has been advised that the Alaska Administrative Code (AAC) has recently been amended to specifically provide that sexual activity between teachers and students is a violation of the Code of Ethics and Teaching Standards (20 AAC 10.020). The Grand Jury has also been advised that all certificated personnel subject to that code are now required to report such sexual activity to the Professional Teaching Practices Commission (PTPC), which has the authority to revoke or suspend teacher certification in this state for violation of the code. From testimony it has received, the Grand Jury believes that required mandatory reporting of such activity is in the best interests of the public and will be welcomed by teachers who are justifiably proud of their profession and its high ethical standards. The Grand Jury further believes that a mandatory reporting requirement will materially assist the PTPC to perform its duties, and will benefit school districts both in Alaska and in other states where offending teachers might seek employment.

However, the Grand Jury has also been advised that there is currently no statute or regulation requiring or clearly permitting law enforcement personnel to provide information about sexual misconduct between teachers and their minor students to the PTPC.

Therefore, the Grand Jury RECOMMENDS that the legislature enact legislation requiring that law enforcement

personnel report to the PTPC information concerning sexual misconduct by teachers that is in violation of the Code of Ethics and Teaching Standards, and clearly defining individual rights, responsibilities, and immunities in this regard.

The Grand Jury FURTHER RECOMMENDS that the legislature provide by statute or regulation that the PTPC automatically share information concerning teachers disciplined for such violations with school districts in Alaska, and with teacher licensing authorities in other states.

The Grand Jury FURTHER RECOMMENDS that the legislature provide adequate funding for the PTPC to carry out its increased responsibilities.

3. Anchorage School District (ASD) Policies and Procedures.

The Grand Jury finds that existing ASD policies concerning reporting of sexual abuse of school children merely restate current statutes in that area. Consequently, these policies suffer from the same deficiencies as do the statutes.

From the evidence received by the Grand Jury, it appears that there are a few written procedures currently available to educators or administrators in ASD secondary schools. While personnel in primary schools have more written procedures in place dealing with the area of sexual misconduct against students, even these do not clearly establish a single standard method for reporting, but may be interpreted to require

different procedures depending on whether the alleged offender is or is not an ASD employee.

The Grand Jury believes that, regardless whether state statutes in this area are clarified, specific written policies and procedures must be distributed to all educators and administrators having a duty to report sexual misconduct against school children. In the absence of such written guidance, school personnel may have felt and may continue to feel dependent upon verbal interpretations and instructions from their supervisors in determining their own reporting responsibilities. This may have contributed to past uncertainty and anxiety among teachers and administrators concerning what information is reportable, when, to whom and by whom, which complaints should be handled as disciplinary or personnel matters and which are reportable as "child abuse and neglect." The Grand Jury believes that the absence of written procedures may also have, and may continue to cause uncertainty within the schools, within DFYS and other state agencies, among law enforcement officers, among parents, and within the community as to what is being reported, to whom, when, and for what purpose.

The Grand Jury has received testimony indicating that the Anchorage School District has already begun to develop new policies and procedures in this important area.

However, the Grand Jury finds that each group and public organization having a legitimate interest in the success of new reporting policies and procedures must participate in

formulating them, and that these groups and organizations should share joint responsibility for their approval.

Therefore, the Grand Jury RECOMMENDS that the Anchorage School Board, a public body directly responsible to the community, appoint one of its members to chair a committee charged with the responsibility to develop comprehensive, workable policies and procedures covering the entire area of reporting and investigation of sexual misconduct against school children. The recommendations of this committee should be submitted to the school board for approval and implementation.

The Grand Jury FURTHER RECOMMENDS that this committee be made up of the following persons:

One teacher currently teaching in a primary school.

One teacher currently teaching secondary students.

One parent of a primary school student.

One parent of a secondary school student.

One local high school student.

One school nurse.

One intake worker from DFYS.

One local Assistant Attorney General who regularly handles child protection cases.
One local Assistant District Attorney who regularly prosecutes sexual offenses against children.

One ASD administrator who regularly handles labor relations.

One representative of the Anchorage Education Association.

One representative of Standing Together Against Rape (STAR) or a similar victim advocacy organization.

One investigator from the Anchorage Police Department who regularly handles investigation of sexual crimes against children.

One investigator from the Alaska State Troopers who also regularly does investigations of sexual crimes against children.

One community representative who has no connection with any of the other represented agencies and who currently has no children in Anchorage schools.

4. Statewide Policies and Procedures.

The Grand Jury has heard evidence that there are currently no standard policies and procedures guaranteeing a unified response by state agencies, local law enforcement authorities, and educators throughout Alaska to the problems associated with child abuse and neglect. The Grand Jury believes that this lack of standardization has unnecessarily frustrated effective cooperation in several cases. The Grand Jury further believes that standardized statewide policies and procedures will eliminate wasteful and divisive inconsistencies in training, reporting, and investigation practices.

Therefore the Grand Jury RECOMMENDS that the Governor of the State of Alaska immediately charge the Commissioner of the Department of Education, the Commissioner of the Department of Health and Social Services, the Commissioner of the Department of Public Safety, and the Attorney General with the joint

responsibility to develop standard interdepartmental policies and procedures integrating the state's response to the problems posed by child abuse and neglect.

The Grand Jury FURTHER RECOMMENDS that these policies and procedures clearly define the roles and responsibilities of each state agency and local official having child protection functions, and mandate uniform annual training throughout the state on these policies and procedures.

The Grand Jury FURTHER RECOMMENDS that these policies and procedures be published in a manual similar to the "Inter-Ministry Child Abuse Handbook" developed by the Province of British Columbia, and that this manual be distributed as a uniform training manual for the entire state.

A copy of the British Columbia manual, which has been received by the Grand Jury as Exhibit 112, is appended to this report.

5. Division of Family and Youth Services (DFYS).

Testimony received by the Grand Jury indicates that implementation of its recommendations will lead to increased reporting of child abuse and neglect, requiring more trained DFYS personnel than are currently available.

Therefore, the Grand Jury RECOMMENDS that DFYS be adequately funded for this increase by the legislature.

C. CONCLUSION OF PART I.

The Grand Jury believes that all members of this community have an interest in the protection of school children from sexual misconduct by others, and in the protection of all of children from all forms of abuse and neglect. The Grand Jury further believes that non-adversarial cooperation among all persons and agencies dealing with these children is essential and is possible, regardless of disputes on other issues.

The Grand Jury REQUESTS that Part I of its report be immediately made available to the public, and be specifically sent to the Governor of the State of Alaska, the President of the Alaska Senate, the Speaker of the Alaska House of Representatives, and to each of the public organizations mentioned herein.

DATED at Anchorage, Alaska, this 5th day of March, 1990.

Respectfully submitted,

Emily McKenzie
Grand Jury Foreperson

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 355 (JUD)(s)
PUBLISH DATE: 1/24/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to sexual offenses against children."
Sponsor: Senator Fischer
Requestor:

Agency Affected: Department of Corrections
BRU:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This legislation would have minimal, if any, impact on the Department of Corrections.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Phone: 465-3376
Division: Administrative Services
Date: 01-12-90

Approved by Commissioner: Dennis Humphrey-Barnett
Date: 01-12-90
Agency: Department of Corrections

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Changes in CS SB 355 (Jud) have no fiscal impact. This fiscal note is appropriate.

cc

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 355 (JUD)(b)
PUBLISH DATE: 1/24/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: Sexual offenses against children
Sponsor: Fischer
Requestor: Senate Judiciary

Agency Affected: Education
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

) Changes in CS SB 355 (Jud) have no fiscal impact. This fiscal note is appropriate. CJC

Prepared by: Mary Hakala
Division: Commissioner's Office
Phone: 465-2800
Date: 1/16/90

Approved by Commissioner: William G. Demmert
Agency: Education
Date: 1/16/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 355 (JUD) (C)
PUBLISH DATE: 1/24/90

FISCAL NOTE

REQUEST:

Revision Date: January 24, 1990
Title: "An Act relating to... sexual pentration ... contact with minors..."
Sponsor: Senate Judiciary
Requestor: Senate Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director — Phone: 465-3672
Division: Administrative Services — Date: January 24, 1990

Richard L. Pegues /FOR/

Approved by Commissioner: Douglas B. Baily, Attorney General — Date: January 24, 1990
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 355 (JUD)

The Committee Substitute for SB 355 makes the following changes to AS 11.41 and AS 14.20.

Section 1 makes it an unclassified felony (up to 30 years with an eight year presumptive sentence) for a person "in a position of special trust with the victim" to engage in sexual penetration with a minor under the age of 16.

Section 2 makes it a class B felony (up to ten years) for a person in a position of special trust with the victim to engage in sexual penetration with a 16 or 17 year old who is at least three years younger that the offender, or to engage in sexual contact (touching the genitals, buttocks or female breasts) with a minor under the age of 16.

Section 3 makes it a class C felony (up to five years) for a person in a position of special trust to engage in sexual contact with a 16 or 17 year old who is at least three years younger than the offender.

Section 4 defines "position of special trust" as youth leaders, recreational leaders, scout leaders, athletic managers, coaches, teachers, counselors, school administrators, religious leaders, practitioners of the healing arts, police officers, probation officers, guardians ad litem, babysitters, and substantially similar positions.

Sections 5, 6, and 7 provide that a person convicted of a sex offense against minors is barred for life from teaching; however, the person may petition the PTPC for a certificate five years after their unconditional discharge from the conviction (i.e. five years after they have completed any sentence including years spent on parole). PTPC must consider the underlying nature of the crime as well as any rehabilitation that might have occurred in deciding whether or not to grant the certificate.

The changes to AS 11.41.434(a) are intended to clarify the meaning of two terms used in existing law -- "entrusted to the offender's care by authority of law" and "temporarily entrusted to the offender's care." The amendments are needed as a result of a recent Anchorage case, State v. Carlson, 3AN-S89-7443 Cr., in which the superior court concluded that the term "entrusted to the offender's care by authority of law" did not apply to teachers, and that if the legislature intended the language to apply to persons other than legal guardians, the statute was unconstitutionally vague. The term "temporarily entrusted to the offender's care" is replaced as well, in order to avoid litigating whether that term is unconstitutionally vague. Until the court's decision in State v. Carlson, it was the department's view the existing law already addressed these offenses. Consequently, there should not be a fiscal impact for the Department of Law.

ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS
326 Fourth Street • Suite 408 • Juneau, Alaska 99801 • (907) 586-9702

RESOLUTION 89-90-5A
SEXUAL MISCONDUCT OF EDUCATORS

The Alaska Association of School Administrators requests the Alaska Legislature to support efforts to reduce sexual misconduct of educators.

WHEREAS, the problem of sexual abuse and sexual exploitation of children is a national problem on the rise, and

WHEREAS, there is also an increase on the national level in the number of reports involving sexual abuse and exploitation of students by educators, and

WHEREAS, the education profession believes that any sexual conduct between an educator and a student is in violation of professional standards, and

WHEREAS, various gaps exist in the law permitting an educator, who has been convicted of sexual abuse and /or has had a certificate revoked due to sexual conduct with a student, to move to another state for purposes of obtaining an educational position, and

NOW, THEREFORE, BE IT RESOLVED, that the Alaska Association of School Administrators supports all efforts to minimize the risk of a sex offender from being hired by any school district, and to that end supports SB 355.

BE IT FURTHER RESOLVED, that the Alaska Association of School Administrators supports all efforts to minimize the possibility of sexually abusive educators remaining in their positions, and to that end supports efforts by the Department of Education and the Professional Teaching Practices Commission to establish reporting requirements in situations where an educator has knowledge that sexual misconduct involving an educator has occurred.

Opinion

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The Fischer proposal would apply to the likes of recreation leaders, probation workers and counselors. By extension, it seems likely that it would apply to a private employer in certain cases, such as if a student is employed as part of a school-sponsored work-study program. It even covers licensed hearing aid dealers, as The Associated Press pointed out.

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This bill would add the threat of a five-year sentence or a $50,000 fine.

The goal of Senate Bill 355 is worthwhile. The question is whether it goes too far in a good cause. The Alaska Legislature should be willing to take enough time to be sure that this approach is the best approach before proceeding.

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(b) Except as provided in (a) of this section, in a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant. (§ 4 ch 96 SLA 1988; am § 27 ch 50 SLA 1989)

Effect of amendments. — The 1989 amendment, May 27, 1989, designated the provisions of this section as subsection (a) and added subsection (b).

Legislative history reports. — For an analysis of the 1989 amendment to this section, see Senate-House Joint Journal Supplement No. 10, May 5, 1989, p. 5, under "Sec. 27."

Sec. 11.41.434. Sexual abuse of a minor in the first degree. (a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;

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(A) is entrusted to the offender's care by authority of law; or

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(A) residing as a member of the social unit in the same household as the offender and the offender is in a position of authority over the victim; or

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(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 2 ch 78 SLA 1983; am § 3 ch 66 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 28, 1988, in subsection (a), added paragraph (3), and made related stylistic changes.

Legislative history reports. — For House letter of intent on ch. 66, SLA 1988 (CSHB 237 (Judi), which amended this section, see 1988 House Journal 2330-2337.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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ASSOCIATION OF ALASKA SCHOOL BOARDS
316 W. 11th St. • Juneau, Alaska 99801-1510 • (907) 586-1083

Position Paper
SB 355– Sexual Offenses Against Children

The Association of Alaska School Boards (AASB) strongly supports SB 355 regarding sexual offenses against children, and urges passage of SB 355.

AASB is committed to the safety and well-being of all Alaska's students regardless of age. The absence of laws defining sexual contact by school district employees and volunteers needs to be addressed.

The recent public outcry against sexual abuse in the school environment has eroded public confidence in the schools. This bill carries two important messages: Sexual abuse will not be tolerated in public schools, and sexual offenders will be eliminated from the teaching pool. The public, who entrust their children in the hands of our public schools, need assurances that their kids will be safe while attending school.

Opinion

A sudden legislative passion for outlawing sex between teen-agers and teachers has struck in Alaska and in Washington. In both states, the effective goal is to raise the age of consent from 16 to 18.

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NOTES TO DECISIONS

Editor's notes. — Some of the cases cited in the notes below were decided under former AS 11.15.134. Some were also decided under former AS 11.41.410(a)(4), which provided that a person 18 years of age or older who engaged in sexual penetration with another person under 18 years of age who was entrusted to his care by authority of law or was his child committed sexual assault in the first degree.

For cases construing former rape statute, see AS 11.41.410, Notes to Decisions, analysis line II.

State's authority to control sexual conduct of children. — Although juveniles may have certain rights to sexual privacy, the state may nevertheless exercise control over the sexual conduct of children beyond the scope of its authority to control adults. Anderson v. State, 562 P.2d 351 (Alaska 1977).

Where juveniles have certain rights to privacy and to express their own autonomy, the state's interest in the well-being of its children may justify legislation that could not properly be applied to adults. Anderson v. State, 562 P.2d 351 (Alaska 1977).

As to constitutionality of former statute making lewd and lascivious acts toward children a crime, see Anderson v. State, 562 P.2d 351 (Alaska 1977).

Physical conduct punished under former statute. — See Anderson v. State, 562 P.2d 351 (Alaska 1977); Smiloff v. State, 579 P.2d 28 (Alaska 1978).

Former section prohibited fellatio. — See Anderson v. State, 562 P.2d 351 (Alaska 1977).

Consent is not at issue. — The state may forbid an adult to have fellatio with a child under the statutorily prescribed age regardless of whether the child consents to the act. Anderson v. State, 562 P.2d 351 (Alaska 1977).

Intrusion into genitals. — Cunnilingus and fellatio do not require an intrusion into the genitals. Murray v. State, 770 P.2d 1131 (Alaska Ct. App. 1989).

Victim's statement held admissible under hearsay exception. — The victim's statement to a prosecution witness, made two or three days after the incident, that the victim's father came into her bed while she was undressed and "did something wrong" was admissible under the first-complaint hearsay exception. Nusunginya v. State, 730 P.2d 172 (Alaska Ct. App. 1986).

Victim's identification of accused. — Prosecution could properly present to the grand jury a child abuse victim's statements identifying the accused which the victim made during her medical treatment, where, even if the testimony did not fall within the medical diagnosis exception to the hearsay rule, the victim's inability to testify before the grand jury constituted "compelling justification" for presenting hearsay evidence under Criminal Rule 6(r). State v. Nollner, 749 P.2d 905 (Alaska Ct. App. 1988).

Mental examination of victim. — Defendants' convictions of sexual abuse of a minor in the first degree and sexual abuse of a minor in the second degree were reversed, where the trial court denied defendants' request for a mental examination of the victims after a psychologist's testimony had placed the children's psychological characteristics in controversy. Anderson v. State, 749 P.2d 369 (Alaska Ct. App. 1988).

Trial court did not abuse its discretion in denying defendant's motion for a psychiatric evaluation of the victim, where the corroborating evidence against him was relatively slight and he failed to establish some specific ground for concluding that the victim suffered from psychological or emotional problems that might affect her veracity or have a direct bearing on some other material issue. Daniels v. State, 767 P.2d 1163 (Alaska Ct. App. 1989).

Testimony as to typical child abuser traits. — Admission of a state trooper's testimony regarding the characteristics of a typical child sexual abuser, at defendant's trial for sexual abuse of a minor, was sufficiently prejudicial to warrant reversal of his conviction. Haakanson v. State, 760 P.2d 1030 (Alaska Ct. App. 1988).

Testimony as to victim's prior consistent statements. — Admission of testimony concerning a sexual abuse victim's prior consistent statements was reversible error, where some of the witnesses testified before the victim had even taken the stand and been impeached, and another witness was allowed to express her personal belief in the truth of the accusations that the victim made against defendant. Thompson v. State, 770 P.2d 990 (Alaska Ct. App. 1989).

Leeway in charging time of offense. — The state must be given considerable leeway in charging t
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Sexual offenses performed as part of one continuous assault. — Where defendant was convicted on separate sexual abuse counts alleging fellatio and masturbation, his conviction on the masturbation count was vacated in view of evidence showing that defendant could have performed the acts of fellatio and masturbation together as part of one continuous assault. Clifton v. State, 758 P.2d 1279 (Alaska Ct. App. 1988).

Two acts of sexual contact performed as part of a single transaction with a single incident of sexual penetration permit but one conviction for the most serious contact, i.e., the sexual penetration. Johnson v. State, 762 P.2d 493 (Alaska Ct. App. 1988).

Record ambiguous as to whether separate counts part of single incident. — Separate sexual abuse counts alleging genital contact and digital penetration of the victim merged, where the record was ambiguous as to whether the counts arose at the same time and as a single incident, or whether two separate incidents occurred, and defendant could be sentenced on only one of the two charges. Horton v. State, 758 P.2d 628 (Alaska Ct. App. 1988).

Evidence of prior assault held admissible. — Evidence that defendant had been convicted of sexually assaulting the same victim two years prior to the alleged indictment was admissible because it indicated a significant sexual desire for the specific victim, thus supplying persuasive circumstantial evidence that he had sexually assaulted the victim. Patterson v. State, 732 P.2d 1102 (Alaska Ct. App. 1987).

Exclusion of evidence of victim's involvement in a sexual assault on another child deprived defendant of his constitutional right to confront the witnesses against him, where his defense was based on the premise that the victim fabricated her accusation in retaliation for defendant's attempt to oust her from her foster home for sexual misconduct. Daniels v. State, 767 P.2d 1163 (Alaska Ct. App. 1989).

Motion for judgment of acquittal denied. — Trial court properly denied defendant's motion for a judgment of acquittal and submitted his case to the jury, where the evidence was sufficient to allow fair-minded jurors to differ on the issue of his guilt. Daniels v. State, 767 P.2d 1163 (Alaska Ct. App. 1989).

Convictions under former law reversed. — Convictions under former AS 11.15.134, former AS 11.41.410(a)(4) and former AS 11.41.430(a)(2) were reversed where extensive evidence of prior consistent statements was admitted at trial without any determination of its actual probative value and before any charge of recent fabrication or improper motive or influence was made against the victim. Nitz v. State, 720 P.2d 55 (Alaska Ct. App. 1986).

Convictions for lewd and lascivious acts toward children under former AS 11.15.134(a) and for rape under former AS 11.15.120(a) were reversed where evidence admitted concerning alleged "assaults on victims other than those in the case at hand was improper propensity evidence; neither intent nor identity were at issue, and the acts did not constitute an admissible common scheme or plan or prove facts in dispute. Bolden v. State, 720 P.2d 957 (Alaska 1986).

Admissibility of evidence of false charges previously made by alleged victim. — Extrinsic evidence that an alleged victim of sexual abuse had previously made false charges of sexual assault is permitted where the defendant who wishes to use the evidence obtains a preliminary ruling from the trial court that it is admissible. Covington v. State, 703 P.2d 436 (Alaska Ct. App. 1985).

Mitigating factors. — In prosecution for first-degree sexual assault, defendant's familiarity with his victim (his 12-year old daughter) was not a mitigating factor. Hodges v. State, 660 P.2d 1203 (Alaska Ct. App. 1983).

Sentence under former AS 11.15.134 upheld. — See Noble v. State, 552 P.2d 142 (Alaska 1976); Buchanan v. State, 554 P.2d 1153 (Alaska 1976); Morgan v. State, 598 P.2d 952 (Alaska 1979); Baker v. State, 602 P.2d 787 (Alaska 1979); Alvarado v. State, 626 P.2d 582 (Alaska 1981).

Sentence upheld. — See Horton v. State, 758 P.2d 628 (Alaska Ct. App. 1988).

Sentence of eight-year presumptive term for first degree sexual abuse of a minor and concurrent sentences of three years for two counts of second-degree sexual abuse of a minor to run concurrently with the eight-year term were upheld. The defendant's continued efforts to pa-

tify his conduct as "sex education" and his only limited acceptance and understanding of the grave risks of psychological damage to children that his conduct presented led the court of appeals to conclude the trial judge was not clearly erroneous in concluding that the mitigating factor of conduct among the least serious in the definition of the offense was not established by clear and convincing evidence. S.B. v. State, 706 P.2d 695 (Alaska Ct. App. 1985); Bynum v. State, 708 P.2d 1293 (Alaska Ct. App. 1985).

Imposition of presumptive sentence of eight years for a first felony offender convicted of having sexual relations with his stepdaughter over five years was upheld; rejection of a proposed mitigating factor, that the offense was committed under some degree of compulsion, was proper. Bynum v. State, 708 P.2d 1293 (Alaska Ct. App. 1985).

A sentence of eight years with two years suspended was affirmed, where there was evidence of defendant's knowledge that his victim had previously been sexually abused, his persistent approaches to the victim, his fleeing the jurisdiction to avoid apprehension, and his unwillingness or inability to concede responsibility. Gnegy v. State, 729 P.2d 895 (Alaska Ct. App. 1986).

It was not manifestly unjust to impose a five-year presumptive term upon defendant's conviction of attempted sexual assault of a minor, and he was not automatically entitled as a matter of law to have his case referred to a three-judge panel for sentencing. Aveoganna v. State, 757 P.2d 75 (Alaska Ct. App. 1988).

Sentence for assault upheld. — In prosecution of defendant with no prior criminal record on two counts of first-degree sexual assault of his 12-year old daughter, sentence of two consecutive eight-year terms with five years suspended was not excessive. Hodges v. State, 660 P.2d 1203 (Alaska Ct. App. 1983).

In light of the substantial duration of defendant's sexual abuse of his stepdaughter (three years), his failure to learn from the earlier discovery of his prior offenses, his disregard of a court order that he avoid contact with the victim, and his total failure to take any meaningful step toward rehabilitation, 10-year sentence with four years suspended was not excessive for conviction of first-degree sexual assault. Langton v. State, 662 P.2d 954 (Alaska Ct. App. 1983).

Where there is evidence from which the trial court could infer that a sentence of incarceration would have destroyed a viable family and cause long-term psychological damage to the victim, sentence under former AS 11.41.410(a)(4) involving no incarceration is not too lenient. State v. Morris, 680 P.2d 1190 (Alaska Ct. App. 1984).

A sentence of eight years with three years suspended, upon defendant's conviction on one count of sexual abuse of a minor in the first degree, was affirmed, where, although the abuse occurred over a period of two or three years and involved his step-daughter, evidence of his potential for rehabilitation was found to be compelling. State v. Ridgway, 750 P.2d 362 (Alaska Ct. App. 1988).

A sentence of three concurrent eight-year presumptive terms upon defendant's conviction of three counts of sexual abuse of a minor in the first degree was affirmed, where, according to the evidence, the abuse included digital and penile sexual penetration, as well as oral sexual contact, and there may have been as many as fifty separate incidents of sexual abuse. Winther v. State, 749 P.2d 1356 (Alaska Ct. App. 1988).

Sentence under AS 11.15.134 held excessive. — See Qualle v. State, 652 P.2d 481 (Alaska Ct. App. 1982).

Sentence for assault held excessive. — Sentence of 20 years imprisonment for first-degree sexual assault of two-year old child was excessive and case was remanded for resentencing not to exceed 120 years. Langton v. State, 662 P.2d 954 (Alaska Ct. App. 1983).

Sentence for assault held too lenient. — Suspended five-year sentence for first-degree sexual assault of defendant's four-year old son was disapproved as too lenient, with a 90-day to three-year sentence suggested. Langton v. State, 662 P.2d 954 (Alaska Ct. App. 1983).

Sentence under former AS 11.41.410(a)(4) for assault held too lenient. — See State v. Rushing, 680 P.2d 500 (Alaska Ct. App. 1984); State v. Woods, 680 P.2d 1195 (Alaska Ct. App. 1984).

Given a series of nine assaults of a stepdaughter by a stepfather, substantial evidence that intercourse was accomplished without consent, and the fact that the victim has left the defendant's home, a sentence of one year of incarceration under former AS 11.41.410(a)(4) was disapproved and a sentence of at least three

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2d 513 (Alaska Ct. App. 1984).

Remand for resentencing for conviction under former law. — See State v.
ovington, 711 P.2d 1183 (Alaska Ct.
App. 1985).

Sentence clearly mistaken. — A sentence of 24 years with four years suspended, upon conviction of three counts of sexual abuse of a minor in the first degree, was clearly mistaken, where the trial court did not address the 10- to 15-year benchmark established in prior decisions concerning aggravated cases of sexual assault, and nothing in the record established that a sentence in excess of 15 years was necessary to protect the public. Closter v. State, 747 P.2d 548 (Alaska Ct. App. 1987).

A sentence of 20 years with five years suspended for a first felony offender, for sexual abuse of a minor in the first degree, was clearly mistaken, where the offense did not involve multiple acts with multiple victims or a prior felony record. Zackar v. State, 761 P.2d 1015 (Alaska Ct. App. 1988).

Sentence of 15 years with five years suspended was clearly mistaken, where defendant was a first felony offender with an otherwise good record. Lawrence v. State, 764 P.2d 318 (Alaska Ct. App. 1988).

Composite term of sixty years upon conviction of two counts of sexual abuse of a minor in the first degree was clearly mistaken, and the case was remanded for imposition of a total sentence not to exceed sixty years with ten years suspended, where the sentencing court's reliance upon the seriousness of defendant's prior murder conviction placed inordinate and disproportionate weight on a single aggravating factor. Murray v. State, 770 P.2d 1131 (Alaska Ct. App. 1989).

Remand for resentencing. — See Lewis v. State, 706 P.2d 715 (Alaska Ct. App. 1985); Bodine v. State, 737 P.2d 1072 (Alaska Ct. App. 1987); Howell v. State, 758 P.2d 103 (Alaska Ct. App. 1988).

Conditions of probation. — Conditions of probation restricting defendant from unauthorized contact with his daughter and with other girls under 18 years of age were not vague or unduly restrictive of his constitutionally protected right to freedom of association. Nitz v. State, 745 P.2d 1379 (Alaska Ct. App. 1987).

Applied in Seymore v. State, 655 P.2d 786 (Alaska Ct. App. 1982); Juelson v. State, 758 P.2d 1294 (Alaska Ct. App. 1988); Allen v. State, 769 P.2d 457 (Alaska Ct. App. 1989).

Cited in Higgs v. State, 676 P.2d 610 (Alaska Ct. App. 1984); Benboe v. State, 698 P.2d 1230 (Alaska Ct. App. 1985); Dancer v. State, 715 P.2d 1174 (Alaska Ct. App. 1986); James v. State, 739 P.2d 1314 (Alaska Ct. App. 1987); Patterson v. State, 747 P.2d 535 (Alaska Ct. App. 1987); Kirby v. State, 748 P.2d 757 (Alaska Ct. App. 1987); Jager v. State, 748 P.2d 1172 (Alaska Ct. App. 1988); James v. State, 754 P.2d 1336 (Alaska Ct. App. 1988).

Sec. 11.41.436. Sexual abuse of a minor in the second degree. (a) An offender commits the crime of sexual abuse of a minor in the second degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild;

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) — (6); or

(5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and the victim at the time of the offense is

(A) residing as a member of the social unit in the same household as the offender and the offender is in a position of authority over the victim; or

(B) temporarily entrusted to the offender's care.

(b) Sexual abuse of a minor in the second degree is a class B felony. (§ 2 ch 78 SLA 1983; am § 4 ch 66 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 28, 1988, in subsection (a), added paragraph (5), and made related stylistic changes.

Legislative history reports. — For House letter of intent on ch. 66, SLA 1988 (CSHB 237 (Jud)), which amended this section, see 1988 House Journal 2330-2337.

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

No culpable mental state required. — Under the current statutory definition of "sexual contact," the offense of sexual abuse of a minor in the second degree may properly be established by evidence proving knowing conduct within the scope of AS 11.81.900(b)(52)(A); no secondary culpable mental state need be established with respect to surrounding circumstances. Van Meter v. State, 743 P.2d 385 (Alaska Ct. App. 1987).

Burden of proving exclusions. — If some evidence of justification is advanced in the record, the state must bear the additional burden of establishing that the defendant's conduct did not fall within the exclusions of AS 11.81.900(b)(52)(B). Van Meter v. State, 743 P.2d 385 (Alaska Ct. App. 1987).

Evidence of prior assault held admissible. — Evidence that defendant had been convicted of sexually assaulting the same victim two years prior to the alleged indictment was admissible because it indicated a significant sexual desire for the specific victim, thus supplying persuasive circumstantial evidence that he had sexually assaulted the victim. Patterson v. State, 732 P.2d 1102 (Alaska Ct. App. 1987).

Mental examination of victim. — Defendants' convictions of sexual abuse of a minor in the first degree and sexual abuse of a minor in the second degree were reversed, where the trial court denied defendants' request for a mental examination of the victims after a psychologist's testimony had placed the children's psychological characteristics in controversy. Anderson v. State, 749 P.2d 369 (Alaska Ct. App. 1988).

Testimony as to typical child abuser traits. — Admission of a state trooper's testimony regarding the characteristics of a typical child sexual abuser, at defendant's trial for sexual abuse of a minor, was sufficiently prejudicial to warrant reversal of his conviction. Haakanson v. State, 760 P.2d 1030 (Alaska Ct. App. 1988).

Testimony as to victim's prior consistent statements. — Admission of testimony concerning a sexual abuse victim's prior consistent statements was reversible error, where some of the witnesses testified before the victim had even taken the stand and been impeached, and another witness was allowed to express her personal belief in the truth of the accusations that the victim made against defendant. Thompson v. State, 750 P.2d 900 (Alaska Ct. App. 1988).

Admissibility of evidence. — See Van

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Meter v. State, 743 P.2d 385 (Alaska Ct. App. 1987).

Evidence held inadmissible. — See Van Meter v. State, 743 P.2d 385 (Alaska Ct. App. 1987).

Acts performed as part of single incident. — Two acts of sexual contact performed as part of a single transaction with a single incident of sexual penetration permit but one conviction for the most serious contact, i.e., the sexual penetration. Johnson v. State, 762 P.2d 493 (Alaska Ct. App. 1988).

Admission of an investigator's statements concerning defendant's sexual fantasies and orientation, at defendant's trial for attempted sexual abuse of a minor in the second degree, was harmless error, where the evidence against defendant was substantial and defendant's attorney demonstrated the irrelevance of the statements on cross-examination. Stevens v. State, 748 P.2d 771 (Alaska Ct. App. 1988).

Conviction reversed where evidence of prior incident between victim and defendant improperly admitted. — See Johnson v. State, 730 P.2d 175 (Alaska Ct. App. 1986).

Lesser included offenses. — Trial court properly treated the crime of contributing to the delinquency of a minor as a lesser included offense of attempted sexual abuse of a minor in the second degree, where defendant, by encouraging an eight-year-old girl to have sexual contact with him, encouraged her to engage in conduct prohibited by law. Sullivan v. State, 766 P.2d 51 (Alaska Ct. App. 1988).

Conviction of attempted sexual abuse reversed. — Defendant's conviction of attempted sexual abuse of a minor in the second degree was reversed, where evidence showing that he wrote notes to an eight-year-old girl asking her to be his girlfriend and to kiss him established only that he engaged in preparatory conduct and not that he took a substantial step toward sexual contact with the girl. Sullivan v. State, 766 P.2d 51 (Alaska Ct. App. 1988).

Imposition of direct no-contact orders. — Where defendant pleads nolo contendere to a charge of sexual abuse of a minor, the superior court has no authority — statutory or inherent — to impose a direct no-contact order against defendant as part of the punishment for the offense. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987) (not determining if superior court's general authority to enter injunctions empowers it to enter no-contact order as an independent equitable requirement).

Sentence upheld. — See Bartholomew v. State, 720 P.2d 51 (Alaska Ct. App. 1986); Goodman v. State, 756 P.2d 913 (Alaska Ct. App. 1988).

Sentence of eight-year presumptive term for first-degree sexual abuse of a minor and concurrent sentences of three years for two counts of second-degree sexual abuse of a minor to run concurrently with the eight-year term were upheld. The defendant's continued efforts to justify his conduct as "sex education" and his only limited acceptance and understanding of the grave risks of psychological damage to children that his conduct presented led the court of appeals to conclude the trial judge was not clearly erroneous in concluding that the mitigating factor of conduct among the least serious in the definition of the offense was not established by clear and convincing evidence. S.B. v. State, 706 P.2d 695 (Alaska Ct. App. 1985).

Sentencing goals of general deterrence and community condemnation cannot, in themselves, support the imposition of a maximum 10-year term for a first offender convicted of a class B felony, such as sexual assault of a minor. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987).

Sentence held excessive. — See Whitlow v. State, 719 P.2d 267 (Alaska Ct. App. 1986).

Where a defendant who pleaded nolo contendere to a charge of sexual abuse of a minor was undeniably dishonest and abused the trust inherent in his role as the victim's karate instructor, but there was no evidence of any assaultive conduct or of any physical or psychological coercion or intimidation and the victim was 15 years old, the upper age limit included in the definition of the offense of second degree sexual abuse, the absence of any prior conviction precluded the court of appeals from predicting with any degree of confidence that the defendant was in fact incapable of rehabilitation and could not be deterred. The sentencing court's abandonment of rehabilitation and personal deterrence as sentencing goals was not warranted; its imposition of a maximum sentence was clearly mistaken, and the case was remanded for imposition of a sentence of not more than 10 years with four years suspended. Skrepich v. State, 740 P.2d 950 (Alaska Ct. App. 1987).

Applied in Hughes v. State, 761 P.2d [illegible]

(Alaska Ct. App. 1984); Olp v. State, 738 P.2d 1117 (Alaska Ct. App. 1987); Horton v. State, 758 P.2d 628 (Alaska Ct. App. 1988); Juelson v. State, 758 P.2d 1294 (Alaska Ct. App. 1988).

Cited in Smith v. State, 745 P.2d 1375 (Alaska Ct. App. 1987); Patterson v. State, 747 P.2d 535 (Alaska Ct. App. 1987); Jager v. State, 748 P.2d 1172 (Alaska Ct. App. 1988); Foster v. State, 751 P.2d 1383 (Alaska Ct. App. 1988); Russell v. State, 752 P.2d 1022 (Alaska Ct. App. 1988); Lahmeyer v. State, 765 P.2d 985 (Alaska Ct. App. 1988); Allen v. State, 769 P.2d 457 (Alaska Ct. App. 1989).

Sec. 11.41.438. Sexual abuse of a minor in the third degree. (a) An offender commits the crime of sexual abuse of a minor in the third degree if, being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the third degree is a class C felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Cited in State v. Ridgway, 750 P.2d 362 (Alaska Ct. App. 1988).

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree. (a) An offender commits the crime of sexual abuse of a minor in the fourth degree if, being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 9 ch 102 SLA 1980; am § 3 ch 78 SLA 1983)

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Specific intent crime. — Sexual abuse of a minor is a specific intent crime. J.E.C. v. State, 681 P.2d 1358 (Alaska Ct. App. 1984).

Instructions. — The trial court erred in its instructions regarding the mens rea required for sexual abuse of a minor under former AS 11.41.440(a)(2) and contributing to the delinquency of a minor under former AS 11.51.130(a)(1). Flink v. State, 681 P.2d 325 (Alaska Ct. App. 1984).

Although the trial court erred in refusing to give defendant's proposed instruction that he had to have a specific intent to arouse or gratify his or the child's sexual desires in order to be convicted of violating former AS 11.41.440(a)(2), this error was harmless beyond reasonable doubt where the jury was told that defendant had to knowingly engage in sexual contact with the child. J.E.C. v. State, 681 P.2d 1358 (Alaska Ct. App. 1984).

Probationary sentence. — Although a probationary sentence may properly be used when a first offender is convicted of a class C felony involving sexual abuse of a child, such a sentence will be appropriate only if mitigating circumstances exist and the offender is a promising candidate for

er v. State, 748 P.2d 1172 App. 1988); Foster v. State, 383 (Alaska Ct. App. 1988); State, 732 P.2d 1022 (Alaska 1987); Lahmeyer v. State, 765 Alaska Ct. App. 1988); Allen v. P.2d 457 (Alaska Ct. App.

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rehabilitation through probationary supervision. State v. Coats, 669 P.2d 1329 (Alaska Ct. App. 1983).

Conviction under pre-1983 section upheld. — See Moor v. State, 709 P.2d 495 (Alaska Ct. App. 1985).

Conviction and sentence under pre-1983 section upheld. — See Depp v. State, 686 P.2d 732 (Alaska Ct. App. 1984).

Conviction reversed. — Conviction under the pre-1983 version of this section was reversed where the jury was not properly instructed regarding the culpable mental state for the crime. Potts v. State, 732 P.2d 595 (Alaska Ct. App. 1985).

Remand in light of Flink v. State. — Case involving a non-jury trial under this section as it read before 1981 was remanded for application of the specific intent standard that the defendant acted with the specific intent to achieve his own sexual arousal or the sexual arousal of the victim. Colgan v. State, 711 P.2d 543 (Alaska Ct. App. 1985).

Applied in Goulden v. State, 656 P.2d 1215 (Alaska Ct. App. 1983); Hugo v. State, 676 P.2d 610 (Alaska Ct. App. 1984).

Cited in Stores v. State, 625 P.2d 829 (Alaska 1980); Hodges v. State, 690 P.2d 1203 (Alaska Ct. App. 1984); State v. R.H., 693 P.2d 269 (Alaska Ct. App. 1984); Kizaire v. State, 715 P.2d 272 (Alaska Ct. App. 1986); Agwiak v. State, 730 P.2d 846 (Alaska Ct. App. 1986).

Collateral references. — Civil liability for carnal knowledge with actual consent of girl under age of consent. 45 ALR 780, 79 ALR 1339.

Assault with intent to ravish or rape consenting female under age of consent. 41 ALR 599.

Parent or person in loco parentis, liability for rape of minor child. 19 ALR3d 460.

Assault with intent to commit unnatural sex act upon minor as affected by latter's consent. 63 ALR2d 718.

Applicability of rape statute covering children of a specified age, with respect to a child who has passed the anniversary date of such age. 73 ALR3d 871.

Sec. 11.41.443. Spousal relationship no defense. [Repealed, § 61 ch 50 SLA 1989. For current law, see AS 11.41.432(b).]

Sec. 11.41.445. General provisions. (a) In a prosecution under AS 11.41.434 — 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless the offense was committed without the consent of the victim.

(b) In a prosecution under AS 11.41.410 — 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be that age or older, unless the victim was under 13 years of age at the time of the alleged offense. (§ 3 ch 166 SLA 1978; am § 2 ch 44 SLA 1985)

Effect of amendments. — The [illegible] amendment rewrote subsection (a).

NOTES TO DECISIONS

Applied in Jager v. State, 748 P.2d 1172 (Alaska Ct. App. 1988).

Sec. 11.41.450. Incest. (a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

(1) an ancestor or descendant of the whole or half blood;

(2) a brother or sister of the whole or half blood; or

(3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Death of defendant abated prosecution under former section. Hartwell v. State, 423 P.2d 282 (Alaska 1967). (Decided under former AS 11.40.110.)

Cited in Theodore v. State, 692 P.2d 987 (Alaska Ct. App. 1985).

Collateral references. — Aiding and abetting offense of incest by one not related to party, 5 ALR 784, 74 ALR 1110, 131 ALR 1522.

Relationship created by adoption as within statute regarding incest, 151 ALR 1146.

Consent as element of incest, 36 ALR2d 1299.

Sexual intercourse between persons related by half blood, 72 ALR2d 706.

Prosecutrix as accomplice or victim, 74 ALR2d 703.

Rape, incest as included within charge of, 76 ALR2d 144.

Sec. 11.41.455. Unlawful exploitation of a minor. (a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct listed in (1) — (6) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

(1) sexual penetration;

(2) the lewd touching of another person's genitals, anus, or breast;

(3) the lewd touching by another person of the child's genitals, anus, or breast;

(4) masturbation;

(5) bestiality; or

(6) the lewd exhibition of the child's genitals.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is

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intended to be used in producing a live performance, film, photograph, negative, slide, book, newspaper, magazine, or other printed material that visually depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 57 SLA 1983)

Cross references. — For crime of distribution of child pornography, see AS 11.61.125.

NOTES TO DECISIONS

Conviction and sentence upheld. — See Depp v. State, 686 P.2d 712 (Alaska Ct. App. 1984).

Applied in Qualle v. State, 652 P.2d 481 (Alaska Ct. App. 1982).

Cited in Lawrence v. State, 764 P.2d 318 (Alaska Ct. App. 1988).

Sec. 11.41.460. Indecent exposure. (a) An offender commits the crime of indecent exposure if the offender intentionally exposes the offender's genitals to another person with reckless disregard for the offensive, insulting, or frightening effect the act may have on that person.

(b) Indecent exposure before a person under 16 years of age is a class A misdemeanor. Indecent exposure before a person 16 years of age or older is a class B misdemeanor. (§ 4 ch 78 SLA 1983)

Sec. 11.41.470. Definitions. For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

(1) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct and physically unable to express unwillingness to act;

(2) "mentally incapable" means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person's conduct, including the potential for harm to that person;

(3) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;

(4) "without consent" means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

(B) is incapacitated as a result of an act of the defendant. (§ 3 ch 166 SLA 1978; am § 5 ch 78 SLA 1983; am § 5 ch 96 SLA 1988; am § 28 ch 50 SLA 1989)

Revisor's notes. — Reorganized in 1988 to alphabetize the defined terms.

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

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM

TO: Representative Johnny Ellis
Chair, House HESS Committee
Representative Max Gruenberg
Representative Peter Goll
Co-Chairs, House Judiciary Committee

DATE: Feb. 9, 1990

FROM: Representative Fran Ulmer

SUBJ: SB 355

It has come to my attention that the bill you are considering, relating to sexual conduct between youth and adults who exercise authority over them, may contain an inconsistency with regard to teachers. It is my understanding that the bill, as passed by the Senate, would create a criminal offense for all of the adult categories listed, but would further create a professional limitation for teachers, but only teachers. If certification of a teacher is to be permanently removed as a result of this conduct, I wonder if the same rationale doesn't apply to the other professionals that are listed. The bill should be consistent: either deal with just the criminal conduct and specify the criminal penalty or have the certification standards reviewed for the various groups and require their licensing boards to consider this conduct for purposes of retaining a license for professional purposes.

This issue was brought to my attention by a retired teacher in Juneau, and I believe his concerns should be considered as the committee reviews this bill.

FU/bvh

District 4B - - Juneau
PO Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

SB
358

STATE OF ALASKA
THE LEGISLATURE

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

SB 358

H HESS	1/12/90
H HESS	1/18/90
H HESS	1/20/90
H HESS	1/23/90

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 19, 1990 FURTHER REFERRALS:

JUDICIARY
FINANCE

Date of Committee Action: 4/23/90

The HESS Committee considered: CSSSSB 358(FINANCE)

CS SS SENATE BILL NO. 358 (Fin) FINGERPRINTING OF MINORS

"An Act relating to fingerprinting of minors; and providing for an effective date."

RECOMMENDATIONS:
[X] be replaced with HCSCSSSB 358 [X] the same title
[ ] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
2 [X] fiscal note(s) 3/14/90 2/23/90 DPS.
[ ] zero fiscal note(s) _____
[X] zero fn/analysis 3/14/90 DHSS

SIGNING DO PASS:

J. Ellis
Cheri Davis
Mark Boyer
Bev Woodward

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
Pat Greenhaw		—	

J. Ellis
Chairman's Signature

Alaska State Legislature

Senator Paul Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269

State Senate

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3791

Jim/Nina

MEMORANDUM

TO: Representatives Johnny Ellis, Chairmen
House Health, Education and Social Services
Committee

FROM: Senator Paul Fischer PF

SUBJECT: CSSS Senate Bill 358(Finance)
(fingerprinting of minors)

DATE: March 28, 1990

I would like to respectfully request that the above referenced bill be considered by the House Health, Education and Social Services Committee at the earliest possible time.

As you are aware this entire issue is of major concern to the various law enforcement agencies across the state.

In 1988, the legislature addressed this matter in debth, eventually passing compromise legislation that could be supported by the affected state agencies involved as well as provide a meaningful aid which was desired by law enforcement. However, it soon became evident to several of us in the legislature that the statute that was enacted in 1988 had never been implemented, thus the reason for the reintroduction of this legislation. As you know similar legislation was introduced on the House side by Representative Donley (HB 486) and is presently in your committee.

The Departments of Law and Public Safety are in full support of the legislation which passed the Senate . The Law Enforcement Coalition also supports the Senate version. This coalition is made up of members of the Alaska Association of Chiefs of Police, Alaska Peace Officers Association, and the Federal Bureau of Investigation National Academy Associates.

I am hopeful that we can pass Senate Bill 358, prior to adjournment, in order to complete the job we started in 1988.

Your consideration is appreciated.

PAF/sgn

Alaska Association of Chiefs of Police

Alaska Peace Officers Association, Inc.

Federal Bureau of Investigation National Academy Associates

Position Statement from The Law Enforcement Coalition Concerning Legislative Proposals before the Sixteenth Alaska Legislature January 1990

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Secretary/Treasurer
Willow
495-6413

FOREWORD

This is the third year that the Coalition, consisting of the Alaska Peace Officers Association, Inc., the Alaska Association of Chiefs of Police, and the F.B.I. National Academy Associates, have jointly identified what we feel are the two top priorities involving legislation affecting public safety statewide.

During the last legislative session the limiting of Municipal liability imposed by the Busby decision was passed into law in the form of SB 66. We feel that was a significant accomplishment and appreciate the support of the Sixteenth Alaska Legislature. We are very satisfied that our concerns were heard by the members who met with us.

The other two priorities listed in our Statement last session were **Indemnification of Government Employees** and **Fingerprinting of Minors**. We feel these two issues are critical as they continue to affect the jobs police officers are able to do for their communities.

We strongly urge that you support these issues. The interests of every citizen in the State is affected. We strive for ever increasing professionalism throughout our ranks and we ask that the legislature continue to support us by passing laws which enable us to better serve the people of Alaska.

There are other bills being introduced this session which we intend to support. Recriminalization of marijuana continues to receive our support and urging. We are working for and will support legislation in favor of conspiracy, retirement reforms for peace officers in various fields, and possession of a deadly weapon during a violation of a domestic violence writ. We anticipate there will be other bills we support and favor and we always look forward to sharing our concerns.

Thank you for your interest. We extend to you an invitation to call or meet with any member of the Executive Boards for the Coalition. The officers are listed at the end of our Statement.

FINGERPRINTING OF MINORS

In 1988, Alaska State Statute 47.10.097 (Fingerprinting of Minors) was passed by the Legislature. This allows an officer to fingerprint a minor who is 16 years of age or older for entry into, or reference to, the Alaska Automated Fingerprint System (hereafter referred to as AAFIS) without a court order if the minor is convicted of, or adjudicated a delinquent for an offense that is a felony. However, we believe that the statute does not go far enough in that it does not allow for fingerprints to be taken, referenced, or entered into the AAFIS without a court order if the minor is only in custody and has not yet been adjudicated or convicted of a crime. This is what wish to have amended.

Fingerprints are a primary tool for detection in many areas of criminal investigation. We believe, in the case of juveniles, a tremendous psychological deterrent to future criminal conduct. Statistics show that over the last 13 year period, juveniles constituted over 50% of the arrest rate for crimes such as burglary, larceny/theft, motor vehicle theft, and arson.

The "Coalition" believes that the true percentage of juvenile perpetrators is actually much higher. Detection, apprehension, and the rehabilitation process could advance much faster should law enforcement have access to fingerprint files of previously arrested youth between the ages of 14 and 17. We stress the rehabilitation process in this position statement as we strongly believe that the longer a juvenile is allowed to go undetected the more his or her conduct has been reinforced. This would, thereby, substantially diminish rehabilitation into productive adulthood.

The "Coalition" again urges the Legislature to pass into law a statute which would enable law enforcement to solve and prevent more crimes and ultimately better protect our citizens. We urge the Legislature to amend the 1988 statute to include the following:

1. A law enforcement officer may fingerprint and photograph any juvenile 14-17 years of age who has been arrested for any offense for which a person 18 years and older can be arrested, and

2. fingerprints taken from an arrested juvenile may then be entered and stored into AAFIS.

It is important to note that the Supreme Court of Alaska in 1987 removed the provisions governing the restrictions of fingerprinting and the photographing of minors from the "Children's Rules". After this ruling, the Attorney General's office recommended in a letter to the Youth Bureau of the Anchorage Police Department that they should, as a matter of policy, commence fingerprinting and photographing juveniles under the same conditions as for adults. They even included polygraphing arrested juveniles when necessary, however that is not what is of primary concern to us in this position statement.

The Supreme Court had given law enforcement the latitude they needed to protect the victims, as well as create the foundation for rehabilitation of those particular juveniles. We now ask that the Legislature assist in this same vein by considering the above recommendations.

A major concern from detractors of this proposal is that juveniles arrested for various crimes are too young to have realized the consequences of their mistakes. They conclude that by simple virture of their age they should not then be subjected to fingerprinting and supposedly stigmatized for life. It must be countered that other than to certified law enforcement agencies, there is no access to juvenile files and that even access by other law enforcement agencies is extremely restricted. It is therefore our contention that this particular argument against juvenile fingerprinting is simply unwarranted and not a concern to the juvenile unless he or she becomes an habitual offender.

Unfortunately, it is a sad commentary of our present day society that an increasing number of crimes are being committed by juveniles. However, law enforcement needs to be able to use all the tools at their disposal to address and confront this growing problem and we are asking for your assistance in considering this important proposal.

customer's demand to resolve a complaint.

Company won't budge? Haunted by a question or complaint? Write the Troubleshooter, P.O. Box 149001, Anchorage, 99514-9001, or call 257-4343. Please include work and home phone numbers and photocopies of correspondence. Individual answers are not possible due to volume. Published letters will be edited.

Senate committee delays

The Associated Press

JUNEAU — A Senate committee vote on legislation that would ban flag desecration in Alaska was postponed Thursday because of a judge's ruling that the new federal flag-desecration law was unconstitutional.

The Senate Judiciary Committee had planned to approve the flag bill and send it on its
But the comm
Jan Faiks, sai
look at the ne
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Faiks, R-Ancn
District Jud

Anchorage Daily News 2/23/90 E3

Police arrest suspect in Safeway stabbing

By MARILEE ENGE
Daily News reporter

Anchorage police on Thursday arrested a man suspected of stabbing two Safeway employees earlier this week after identifying him through the state's fingerprint computer.

Mike Troy White, 27, was charged with attempted murder and two counts of first-degree assault for the Monday morning stabbings. He was booked into Cook Inlet Pre-Trial Facility on $100,000 bail.

Employees of the University Center Safeway store saw a man shoplift some cigarettes about 6 a.m. Monday, police said. When Donald Tomlinson and Dustin Prince tried to stop the man at the door, he pulled a hunting knife and stabbed them.

Tomlinson was knifed in the back and underwent surgery at Providence Hospital. He was in stable condition there on Thursday. Price was treated for a leg wound and released.

Investigators took a fingerprint from the scene, ran it through the computer and came up with White's name. Then they pulled a photograph of him from state records and showed a photo line-up to witnesses, who identified him, said police spokesman Sgt. Walt Monegan.

Thursday, police found White at the Eagle Crest, a men's half-way house and residence hotel on Ninth Avenue. They surrounded the building and arrested him inside about 6 p.m.

465-4322

February 23, 1990

The Honorable Jan Faiks
Chairwoman
Senate Judiciary Committee
P.O. Box V
Juneau, AK 99811

RE: CS SSSB 358 (JUD), "An Act Relating to Fingerprinting of Minors"

Dear Senator Faiks:

At the Senate Judiciary Committee meeting yesterday regarding SB 358, some questions were raised by committee members, and I was asked to provide some additional information.

In response to the question regarding the number of juveniles arrested for criminal offenses in Alaska, I am enclosing a summary of those numbers for calendar years 1987 and 1988. These numbers are based upon Uniform Crime Report (UCR) data reported to the Department of Public Safety (DPS) by 24 police agencies; we estimate that about 85 percent of the state's population is served by these 24 agencies.

As you may recall from the testimony given yesterday, the Alaska Automated Fingerprint Identification System (AAFIS) works in the following manner: A set of fingerprints taken from an arrested offender is entered into the computer, and compared with latent prints ("unknowns") collected from crime scenes. The computer searches the entire data base, and provides a list of prints that are possible matches ("hits"), with the most likely matches listed first. The AAFIS operator then pulls and physically compares the original fingerprint card with the latent prints. A positive identification is based only on an actual comparison of the original prints.

As you know, the committee substitute adopted by the Judiciary Committee would allow the fingerprinting of juveniles aged 14 or older who are arrested for criminal offenses. A question was raised regarding the usefulness of fingerprints

Faiks

taken from offenders aged 14 and 15 given that these offenders will continue to grow, and the size of their fingers will therefore change over time. I have spoken with Mr. Peter Davis, Supervisor of the DPS Records and Identification Section, and Mr. John Sauve, Supervisor of AAFIS, regarding this matter. They have informed me that our present AAFIS is accurate to "plus or minus 18 percent of growth." Beyond 18 percent there is a loss of accuracy in the computer's ability to detect a match. This loss of accuracy is in direct proportion to the quality of the original print. (Some latent prints collected at crime scenes are partial or somewhat smudged.) This loss of accuracy may mean that an actual match may not be detected; it would not result in an incorrect "match."

Based on our experience, and that of other law enforcement agencies with Automated Fingerprint Identification Systems (AFIS), we believe that the fingerprints of virtually all 14- and 15-year-olds would be within 18 percent of the size of the person's adult fingerprint. The San Francisco Police Department has included the fingerprints of juvenile offenders in its AFIS since 1984. They have informed us that the slight difference in size between juvenile and adult prints has not presented a problem in obtaining matches in their system. [Here in Alaska from 1984 through 1989 the fingerprints of 124 persons arrested for the first time as adults were matched with unidentified latent fingerprints taken from the scenes of unsolved crimes which were committed when the arrestee was a juvenile.] We believe very strongly that the ability to obtain and enter into AAFIS the fingerprints of 14- and 15-year-old juveniles arrested for criminal offenses would be of tremendous assistance in solving crimes in Alaska.

I would like to emphasize a point made during yesterday's hearing. Fingerprint records maintained in AAFIS are entirely separate from criminal history records, which are contained in the Alaska Public Safety Information Network (APSIN). [The presence of a person's fingerprints in AAFIS does not mean that a person has a criminal record.] For example, AAFIS contains thousands of fingerprints submitted by persons seeking employment in or certification for certain fields, such as school bus drivers, teachers, law enforcement officers, and security guards, to name a few. Under AS 44.41.020, any person who wishes to do so may submit his or her fingerprints, or those of their minor children, for inclusion in AAFIS.

I hope this letter answers the questions raised by committee members yesterday. Please let me know if I can provide any further information.

Sincerely,

Gayle A. Horetski
Deputy Commissioner

Enclosure: a/s

cc: The Honorable Pat Rodey
Vice-Chairman
Senate Judiciary Committee

The Honorable Rick Halford
Senate Judiciary Committee

The Honorable Drue Pearce
Senate Judiciary Committee

The Honorable Mike Szymanski
Senate Judiciary Committee

JUVENILE ARRESTS *

	1987	%	1988	%	87/88	%
Major Felonies**						
Total Arrests	990		1,100		2,090	
Juveniles	96	9.7%	97	9%	193	9%
Burglary						
Total Arrests	1,041		960		2,001	
Juveniles	475	46%	509	53%	984	49%
Larceny						
Total Arrests	4,934		4,398		9,332	
Juveniles	1,754	36%	1,624	37%	3,378	36%
Motor Vehicle Theft						
Total Arrests	331		481		812	
Juveniles	166	50%	214	44%	380	47%

Grand Totals	14,235 Arrests	
Juveniles	4,935	35%

* Data obtained from 24 police agencies submitting Uniform Crime Reports (about 85% of Alaska's population is served by these 24 police agencies)

** Major Felonies - Combined figures for Murder, Manslaughter, Rape, Robbery and Aggravated Assault

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SSSB 358(D)
PUBLISH DATE: 2/23/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Fingerprinting of Minors

Agency Affected: Public Safety
BRU: Alaska State Troopers

Sponsor: Senators Fischer & Kelly
Requestor: Senate Judiciary

Component: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	17.6	17.6	17.6	17.6	17.6	17.6
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	17.6	17.6	17.6	17.6	17.6	17.6

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	17.6	17.6	17.6	17.6	17.6	17.6
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	17.6	17.6	17.6	17.6	17.6	17.6

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
This fiscal note is based upon the estimate of having State Troopers fingerprinting 1,500 juveniles per year. Each fingerprinting process will involve approximately 20 minutes for a total of approximately 500 hours per year. This equates to about 3 months of Trooper time statewide. The costs included on the fiscal note are based upon an average State Trooper position cost for three months. This would be a range 76, Step D.

Prepared by: Francis C. Allan
Division: Alaska State Troopers

Phone: 269-5691
Date: 02/08/90

2/8/90

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 2-9-90

Page 1 of 1