

ALABAMA LEGISLATIVE JOURNAL, 2003-2004 80/2

11844 SENATE JUDICIARY



**Alaska State
Legislature
Senator Hollis
French
Senator Albert
Kookesh**

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FOR IMMEDIATE RELEASE · February 28, 2005

***French, Kookesh File Bills to Protect Children
Legislation outlaws Internet victimization, seeks admissibility of interviews***

JUNEAU – Sens. Hollis French, D-Anchorage, and Albert Kookesh, D-Angoon, introduced a package of bills today to protect children from crime and its effects.

Two of the bills, Senate Bills 118 and 119, make it a crime to entice minors on the Internet and to send them indecent material electronically..

“These bills will help provide a ‘safety Net’ for Alaska’s children,” said Senator French. “No parent should have to live in fear that a child will receive pornography by e-mail or be lured into a dangerous relationship by a predator. SB 118 and SB 119 will help Alaska’s police and prosecutors bring an end to these terrible acts.”

A third bill in the package, Senate Bill 117, makes recorded statements of victims under 16 admissible in court if they were conducted under certain conditions. These “forensic interviews,” which are conducted in child advocacy centers around the state, are now admissible only if the child victim contradicts his or her earlier statement or cannot remember the event.

“Alaska’s rate of child sexual abuse is among the highest in the nation. We know that the Internet is playing an increasing role in child victimization here as well as around the globe,” said Senator Kookesh. “These bills will help protect Alaska’s children and bring swifter justice for them.”

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PRESS ADVISORY: On Tuesday, March 1, Detective Kevin Vandegriff, Special Assault Unit, Anchorage Police Department, and Michelle Monts, Program Manager, S.A.F.E. Child Advocacy Center in Juneau, will join Senators French and Kookesh at a press availability to discuss the legislation and its impact on child victims. The press availability will be in the Beltz Room at 10:30 a.m.###



**Alaska State
Legislature
House and Senate
Democrats**

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FOR IMMEDIATE RELEASE · March 1, 2005

Police Officer, Interviewer Support Child Protection Bills

Package by French, Kookesh aims at Internet, statements

JUNEAU -- Detective Kevin Vandegriff of the Anchorage Police Department's crimes against children unit, and Michelle Monts, a forensic interviewer and program manager with Juneau's child advocacy center, appeared Tuesday at a Senate Democrats' press conference to endorse a package of child protection bills sponsored by Sen. Hollis French, D-Anchorage, and Sen. Albert Kookesh, D-Angoon.

Two of the bills, Senate Bills 118 and 119, make it a crime to entice minors on the Internet and to send them indecent material electronically. The third bill in the package, Senate Bill 117, makes recorded statements of victims under 16 admissible in court if they were conducted under certain conditions. These "forensic interviews," which are conducted in child advocacy centers around the state, are now admissible only if the child victim contradicts his or her earlier statement or cannot remember the event.

Vandegriff spoke about sexual predation on the Internet.

MP3 actuality: http://akdemocrats.org/Audio/030105_sexpredator1.mp3

He also described his own experiences posing as a minor in a training class in Seattle.

MP3 actuality: http://akdemocrats.org/Audio/030105_sexpredator2.mp3

He also described the effects of predators sending pornography to minors electronically.

MP3 actuality: http://akdemocrats.org/Audio/030105_sexpredator3.mp3

Monts spoke to the reasons for allowing statements made to forensic interviewers to be introduced into evidence.

MP3 actuality: http://akdemocrats.org/Audio/030105_sexpredator4.mp3



Sen. French's introduction
3 minutes - Mpeg4 - 5 MBytes



Michelle Monts' statement
3 minutes - Mpeg4 - 5 MBytes

The bills, introduced Monday, are currently in the Senate Judiciary Committee.

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Putting Alaskans First - Moving Alaska Forward 2005

Sen. Bettye Davis, Sen. Johnny Ellis, Sen. Kim Elton, Sen. Hollis French, Sen. Gretchen Guess, Sen. Lyman Hoffman, Sen. Albert Kookesh, Sen. Donny Olson, Rep. Ethan Berkowitz, Rep. Sharon Cissna, Rep. Harry Crawford, Rep. Eric Croft, Rep. Les Gara, Rep. Berta Gardner, Rep. Max Gruenberg, Rep. David Guttenberg, Rep. Reggie Joule, Rep. Mary Kapsner, Rep. Beth Kertula, Rep. Carl Moses, Rep. Woodie Salmon

SB

119

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/28/05

FURTHER: Finance

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

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 119

SB 119 BAN ONLINE DIST. OF PORNOGRAPHY TO MINORS

"An Act relating to dissemination of indecent material to minors."

and recommends:

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

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____



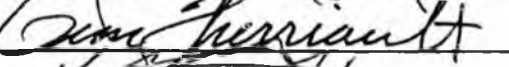

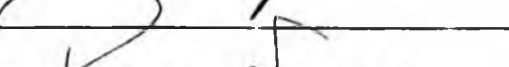
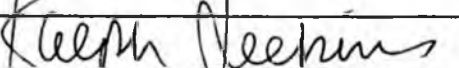
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	x			
	✓			
	✓			
	✓			
				
CHAIR: 	✓			

ALASKA STATE LEGISLATURE



SENATOR HOLLIS FRENCH

SB 119 – OUTLAWING ELECTRONIC DISTRIBUTION OF INDECENT MATERIAL TO MINORS

Sponsor Statement

SB 119 will make electronic distribution of indecent materials, i.e., pornography, to minors a felony under Alaska law. This bill, along with SB 118, will help provide a “safety net” to help protect Alaska’s children from sexual predators.

Online victimization, which includes sexual enticement/solicitation, unwanted exposure to sexual material, and harassment, is one of the worst byproducts of the age of the Internet. Alaska, being the most “wired” state in the country, offers a particularly rich target for cyberpredators. Alaska also ranks among the highest in its rate of sexual abuse of children, and unfortunately many of these cases begin through contacts made via Internet chat rooms.

A key element in many of these seductions is breaking down a child’s sense of what is “normal” or “right” by exposing the child to pornographic images. SB 119 will give the Alaska law enforcement community a new tool to help fight this type of child victimization.

Please join me in supporting SB 119 and taking another step in making Alaska a safer place for children.

March 3, 2005

AMENDMENT # 1

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: SB 119

- 1 Page 1, line 6, following "person":
- 2 Insert ", being 18 years of age or older,"
- 3
- 4 Page 1, line 7:
- 5 Delete "(1)"

AMENDMENT #2

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: SB 119

- 1 Page 1, lines 7 - 8:
- 2 Delete "or other device capable of electronic communication"

SENATE BILL NO. 119

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY SENATORS FRENCH, Kookesh, Bunde, Dyson, Huggins, Seekins, Wilken, Davis, Elton, Ellis, Green, Olson, Stedman, Cowdery, Guess, Therriault

Introduced: 2/28/05
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to dissemination of indecent material to minors."

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

3 * Section 1. AS 11.61 is amended by adding a new section to read:

4 Sec. 11.61.128. Electronic distribution of indecent material to minors. (a)

5 A person commits the crime of electronic distribution of indecent material to minors if
6 the person ^{#1} ~~knows~~ ^{as known}

7 (1) distributes by computer ~~or other device capable of electronic~~
8 ~~communication~~ any material that depicts an act described in AS 11.41.455(a)(1) - (7)

9 to a person the offender believes to be a person under 16 years of age.

10 (b) In this section, it is not a defense that the victim was not actually under 16
11 years of age.

12 (c) Except as provided in (d) of this section, electronic distribution of indecent
13 material to minors is a class C felony.

14 (d) Electronic distribution of indecent material to minors is a class B felony if
15 the defendant was, at the time of the offense, required to register as a sex offender or

2
#4
2/28/05

1 child kidnapper under AS 12.63 or a similar law of another jurisdiction.

2 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. This Act applies to offenses occurring on or after the effective
5 date of this Act.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 119
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title: "An act relating to dissemination of indecent RDU: Institutional Facilities
material to minors." Component: Institution Director's Office
 Sponsor: Senators French, Kookesh, Bunde, Dyson, Huggins,
 Requester: Judiciary, Finance Component No: 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

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)

Due to the very small number of potential criminal cases, the Department of Corrections does not anticipate a significant fiscal impact with the passage of this legislation.

Prepared by: Sharleen Griffin, Acting Director Phone 465-4641
 Division: Administrative Services Date/Time: 3/10/05 7:00 AM
 Approved by: Portia C. K. Parker, Deputy Commissioner Date: 3/10/2005
 Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 119
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An Act relating to dissemination of RDU: Legal and Advocacy Services
indecent materials to minors. Component: Public Defender Agency
 Sponsor: Senators French, Kookesh
 Requester: Senate Judiciary Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)
 This bill should have minimal fiscal impact on the operations of the Public Defender Agency. The Agency does not expect to handle a significant number of these new offenses.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division: Public Defender Agency Date/Time 3/8/05 2:06 PM
 Approved by: Michael Tibbles, Deputy Commissioner Date 3/8/2005
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 119
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Ban Online Dist. of Pornography to Minors BRU Alaska Court System
Component Trial Courts
Sponsor Senator French
Requester _____ Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of SB 119.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
Division: Alaska Court System Date/Time 3/7/05 11:24 AM
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 3/7/2005
Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB119-DPS-AST-3-9-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title: "An Act relating to dissemination of indecent material
to minors." RDU: Alaska State Troopers
 Component: AST Detachments
 Sponsor: Senator French
 Requester: _____ Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill adds a new section that will prohibit a person from distributing by computer or similar device, material that depicts sexual acts described in AS 11.41.455, to a person who the offender believes is under 16 years of age. It is not a defense in this crime that the victim was not actually under 16 years of age. The bill specifies that a violation under this new section is a class C Felony unless the person committing the offense is at the time a person required to be a registered sex offender or child kidnapper which would then raise the penalty to a class B Felony.

Passage of this bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Lieutenant Todd Sharp Phone 907-465-3223
 Division: Alaska State Troopers Date/Time 3/9/05 3:56 PM
 Approved by: Commissioner William Tandeske Date 3/9/2005
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB119-LAW-CDCO-3-9-
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to dissemination of indecent RDU CRIMINAL
materials to minors." Component Criminal Justice Litigation
 Sponsor Senator French Component No. _____
 Requester Senate Judiciary

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill adds a new section under AS 11.61 (Offenses Against Public Order) prohibiting the electronic distribution of indecent material to minors. Indecent material is defined in the bill as materials depicting acts defined as unlawful exploitation of a minor as spelled out in AS 11.41.455(a)(1) - (7). The bill applies to distribution of indecent materials by a defendant to persons under the age of 16 or whom the defendant believed to be under the age of 16. The bill makes the offense a class C felony unless, at the time of the offense, the defendant was required to register as a sex offender of child kidnapper, in which case the offense would be a class B felony.

The Department of Law does not anticipate many cases will be prosecuted as a result of passage of this legislation and estimate no fiscal impact as a result.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 3/9/05 5:02 PM
 Approved by: K. Daughhete for Scott Nordstran, J., Acting Attorney General Date 3/9/2005
 Agency Department of Law

**Online Victimization:
A Report on the Nation's Youth**

BY THE CRIMES AGAINST CHILDREN RESEARCH CENTER

DAVID FINKELHOR
KIMBERLY J. MITCHELL
JANIS WOLAK

JUNE 2000

FUNDED BY THE U.S. CONGRESS THROUGH A GRANT TO THE
NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

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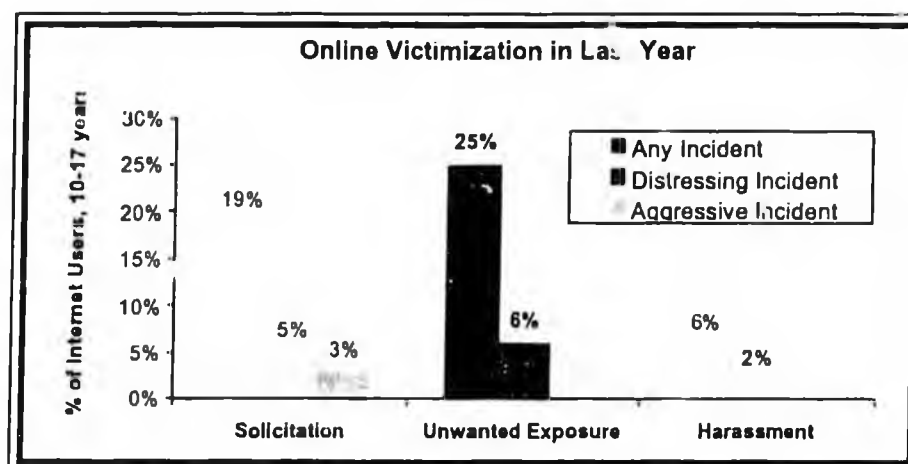
2. Unwanted Exposure to Sexual Material

While it is easy to access pornography on the Internet, what makes the Internet appear particularly risky to many parents is the impression that young people can encounter pornography there inadvertently. It is common to hear stories about children researching school reports or looking up movie stars and finding themselves subjected to offensive depictions or descriptions.

In this part of the survey, we were interested in **unwanted** exposures to sexual material, those that occurred when the youth were not looking for or expecting sexual material. We were interested in material that came up while doing searches online and surfing the world wide web, as well as material that might have appeared when a youth was opening E-mail or clicking on message links. In this section on sexual material, we focus on unwanted exposure to **pictorial images of naked people or people having sex**.

A quarter (25%) of the youth had at least one unwanted exposure to sexual pictures in the last year. (See Figure 2-1 with incidence rates for unwanted exposure to sexual material emphasized.) Seventy-one per cent of these exposures occurred while the youth was searching or surfing the Internet, and 28% happened while opening E-mail or clicking on links in E-mail or Instant Messages.

Figure 2-1



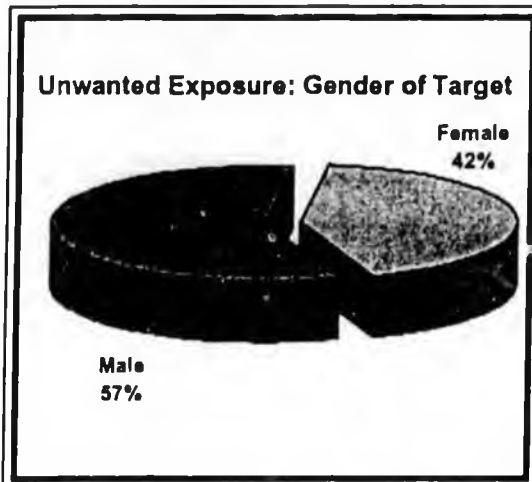
Exposure to sexual material, even when unwanted, is not necessarily upsetting to people. So we have designated a category of **distressing exposures** in which the youth said they found the exposure very or extremely upsetting. Six per cent of regular Internet users said they had a distressing exposure to unwanted sexual pictures on the Internet in the last year.

Which youth had the unwanted exposures?

- Boys outnumbered girls slightly (57% to 42%). (See Figure 2-2.)
- More than 60% of the unwanted exposures occurred to youth 15 years of age or older. (See Figure 2-3.)
- 7% of the unwanted exposures were to 11 and 12 year old youth.
- None of the 10 year olds reported unwanted exposures.

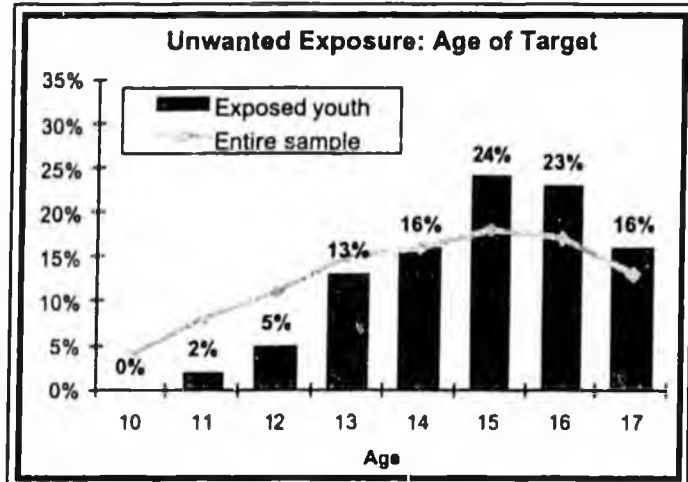
The somewhat greater exposure of boys to unwanted sexual material may reflect the reality that boys tend to allow their curiosity to draw them closer to such encounters. But the relatively small difference should not be over-emphasized. Approximately a quarter of both boys and girls had such exposures. Boys were slightly more likely than girls to say the exposure was distressing.

Figure 2-2



Note: Adds to less than 100% due to rounding and/or missing data.

Figure 2-3



Note: Adds to less than 100% due to rounding and/or missing data.

What was the content and source of the unwanted exposure?

- 94% of the images were of naked persons
- 38% showed people having sex
- 8% involved violence, in addition to nudity and/or sex
- Most of the unwanted exposures (67%) happened at home, but 15% happened at school, and 3% happened in libraries

Unfortunately, we do not know how many of the exposures involved child pornography. Important as this question is, we had decided that our youth respondents could not be reliable informants about the ages of individuals appearing in the pictures they viewed.

For the youth who encountered the material while surfing, it came up as a result of

- Searches (47%)
- Misspelled addresses (17%)
- Links in web sites (17%)

For youth who encountered the material through E-mail

- 63% of unwanted exposures came to an address used solely by the youth
- In 93% of instances, the sender was unknown to the youth

In 17% of all incidents of unwanted exposure, the youth said they did know the site was X-rated before entering. (These were all encounters described as unwanted or unexpected.) This group of episodes was not distinguishable in any fashion from the other 83% of episodes, including the likelihood of

being distressing. Almost half of these incidents (48%) were disclosed to parents. It is not clear to what extent it was some curiosity or just navigational naivete that resulted in the opening of the sites despite prior knowledge of the illicit content.

Pornography sites are also sometimes programmed to make them difficult to exit. In fact, in some sites the exit buttons take a viewer into other sexually explicit sites. In 26% of the incidents where sexual material was encountered while surfing, youth reported they were brought to another sex site when they tried to exit the site they were in. This happened in one third of distressing incidents encountered while surfing.

Testimony From Youth

- An 11-year-old boy and a friend were searching for game sites. They typed in "fun.com," and a pornography site came up.
- A 15-year-old boy looking for information about his family's car typed "escort" into a search engine, and a site about an escort service came up.
- Another 15-year-old boy came across a bestiality site while he was writing a paper about wolves for school. He saw a picture of a woman having sex with a wolf.
- A 16-year-old girl came upon a pornography site when she mistyped "teen.com." She typed "teen" instead.
- A 13-year-old boy who loved wrestling got an E-mail message with a subject line that said it was about wrestling. When he opened the message, it contained pornography.
- A 12-year-old girl received an E-mail message with a subject line that said "Free Beanie Babies." When she opened it, she saw a picture of naked people.

How did the youth respond to the exposure?

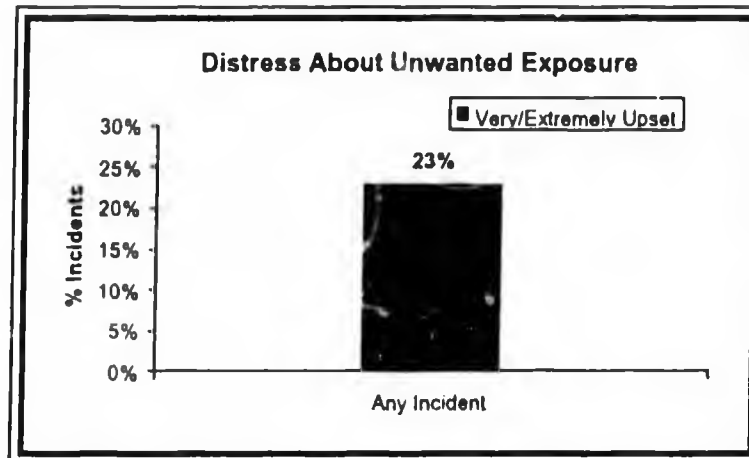
- Parents were told in 39% of the episodes.
- Youth disclosed to no one in 44% of incidents.
- In a few cases authorities were notified, most frequently a teacher or school official (3% of incidents), and Internet service providers (3%). None of these incidents were reported to a law-enforcement agency.
- Only 2% of youth who encountered sexual material while surfing said they returned later to the site of the exposure. None of the youth with distressing exposures who encountered the material while surfing returned to the site.

The fact that so many youth did not mention their exposure to anyone, even a friend, even to laugh or talk about it as an adventure, is noteworthy. It probably reflects some degree of guilt or embarrassment on the part of many youth. It might be healthier and helpful to youth if they were talking about it more.

How did the exposure affect the youth?

- 23% of youth who reported exposure incidents were very or extremely upset by the exposure. This amounts to 6% of the youth we interviewed. (See Figure 2-4.)
- 20% of youth were very or extremely embarrassed.
- 20% reported at least one symptom of stress.

Figure 2-4



Summary

Unwanted exposure to sexual material does appear to be widespread, occurring to a quarter of all youth who used the Internet regularly in the last year. While it is not a new thing for young people to be exposed to sexual material, the degree of sudden and unexpected exposure in an unwanted fashion may be an experience made much more common by the widespread use of the Internet. Such exposure occurs primarily to the group age 15 and older, but some youth as young as 11 had experiences to report. Even in the older group, the exposure does not merely evoke laughs or mild discomfort. About a quarter of the exposed youth, or 6% of all regular Internet users said they were very or extremely upset by an exposure. As with sexual solicitations, most exposure incidents, even the distressing ones, do not get reported to adults or authorities, although a proportion of these are disclosed to friends and siblings.

The experiences conform readily to anecdotal accounts from both youth and adult users. Unwanted exposures mostly occur when doing Internet searches, misspelling addresses, or clicking on links. More than a third of the imagery was of sexual acts, rather than simply naked people, and 8% involved some violence in addition to nudity and/or sex.

From a social-scientific view, the issues about youth exposure to unwanted sexual material are difficult to evaluate, in part, because there is almost no prior research on the matter. No one knows the effects of such exposure. The research on exposure to advertising and media violence makes it clear that media exposure can have effects. Media can affect attitudes, engender fears, and model behaviors (both pro and antisocial).

Previous research on exposure to pornography is not relevant to the many issues of concern here. That research has been done with adults and is based on an assumption of voluntary exposure. The present survey shows that in the case of unwanted exposure there are strong negative, subjective feelings for

certain youth and certain youth who manifest symptoms of stress. We do not know how long these feelings or symptoms last or what ramifications they have, but they should mobilize our concern. Questions that should be of particular interest and need attention for future investigation are

- Do any of youth so exposed have full-fledged, clinical-level traumatic reactions or other highly disturbed reactions?
- Is there any influence, traumatic or otherwise, on developing attitudes and feelings about sex?
- Do youth who have experienced unwanted exposure relate to future Internet sexual material in different ways — either more avoidant or more attracted?
- Do Internet exposures to sexual material figure negatively in family dynamics, creating conflicts or barriers in any way?

Nonetheless, for many people, the issues about youth exposure are even more basic than its effects. Whatever the effects, they would argue that people in general and young people in particular have a right to be free from unwanted intrusion of sexual material in a public forum such as the Internet. On this point, some of the constitutional debate about the Internet has concerned what kind of forum the Internet is. Is it a forum like a bookstore, where if it is signposted, people can readily stay away from the sexually explicit material if they so choose, or more like a television channel, where people are much more captive of the material that is projected at them? Clearly, the Internet has aspects of both. But the present research does suggest that, in its current form, it is not simple for those who want to avoid sexual material on the Internet to do so.

Internet Dangers

Parent's Safety Guide

Youth Safety Guide

Safety Tools

Harms of Porn

How Porn Harms Kids

Science of Porn

Teen Testimonials

Just Harmless Fun

Centerfold Syndrome

Pattern of Addiction

Higher Ground

Addiction Resources

Resources for Family

Child Sexual Abuse

Report a Cybercrime

Big Cheese Sites

Donna Rice Hughes

Kids Online

Public Policy Updates

MouseClick Maze (home)



How Pornography Harms Children



Excerpted in part from Kids Online: Protecting Your Children In Cyberspace
by Donna Rice Hughes (Revell, September 1998)

While there are many ways that pornography harms children, I want to assure you that every child who views pornography will not necessarily be affected and, at worst, traumatized in the same way. The effects of pornography are progressive and addictive for many people. Just as every person who takes a drink does not automatically become an alcoholic, every child who is exposed to pornography does not automatically become a sexual deviant or sex addict. However, since pornography has a new door to the home, school, and library through the Internet, it is important for us to look at the many ways that pornography can potentially harm our children.

Exposure to Pornography Threatens to Make Children Victims of Sexual Violence

The Internet has proven a useful tool for pedophiles and sexual predators as they distribute child pornography, engage in sexually explicit conversations with children, and seek victims in chat rooms. The more pornography these individuals access, the higher the risk of their acting out what they see, including sexual assault, rape, and child molestation.

- **Pornography's Relationship to Rape and Sexual Violence**
According to one study, early exposure (under fourteen years of age) to pornography is related to greater involvement in deviant sexual practice, particularly rape. Slightly more than one-third of the child molesters and rapists in this study claimed to have at least occasionally been incited to commit an offense by exposure to pornography. Among the child molesters incited, the study reported that 53 percent of them deliberately used the stimuli of pornography as they prepared to offend. '

The habitual consumption of pornography can result in a diminished satisfaction with mild forms of pornography and a correspondingly strong desire for more deviant and violent material."

- **Pornography's Relationship to Child Molestation**

In a study of convicted child molesters, 77 percent of those who molested boys and 87 percent of those who molested girls admitted to the habitual use of pornography in the commission of their crimes.¹³ Besides stimulating the perpetrator, pornography facilitates child molestation in several ways. For example, pedophiles use pornographic photos to demonstrate to their victims what they want them to do. They also use them to arouse a child or to lower a child's inhibitions and communicate to the unsuspecting child that a particular sexual activity is okay: "This person is enjoying it; so will you."

Exposure to Pornography Frequently Results in Sexual Illnesses, Unplanned Pregnancies, and Sexual Addiction

As more and more children are exposed not only to soft-core pornography, but also to explicit deviant sexual material, they are learning an extremely dangerous message from pornographers: *Sex without responsibility is acceptable and desirable*. Because pornography encourages sexual expression without responsibility, it endangers children's health.

One of the grimmer consequences of adult-like sexual activity among children has been a steady increase in the extent to which youth are afflicted with venereal disease.¹⁴ In the United States about one in four sexually experienced teenagers acquires a sexually transmitted disease (STD) every year, resulting in three million cases of teenage STDs. Infectious syphilis rates have more than doubled among teenagers since the mid-1980s. More children contract sexually transmitted diseases each year than all the victims of polio in its eleven-year epidemic, 1942-1953.¹⁵

Another obvious result of children involved in adult sexual activity is the increased rate of pregnancy among teenagers.

Research has shown that "males who are exposed to a great deal of erotica before the age of 14 are more sexually active and engage in more varied sexual behaviors as adults than is true for males not so exposed."¹⁶ One study reveals that among 932 sex addicts, 90 percent of the men and 77 percent of the women reported that pornography was significant to their addiction.¹⁷

Exposure to Pornography May Incite Children to Act Out Sexually against Other Children

Children often imitate what they've seen, read, or heard. Studies suggest that exposure to pornography can prompt kids to act out sexually against younger, smaller, and more vulnerable children. Experts in the field of childhood sexual abuse report that any

premature sexual activity in children always suggests two possible stimulants: experience and exposure. This means that the sexually deviant child may have been molested or simply exposed to sexuality through pornography.^{viii}

In a study of six hundred American males and females of junior high school age and above, researcher Dr. Jennings Bryant found that 91 percent of the males and 82 percent of the females admitted having been exposed to X-rated, hard-core pornography. Over 66 percent of the males and 40 percent of the females reported wanting to try out some of the sexual behaviors they had witnessed. And among high schoolers, 31 percent of the males and 18 percent of the females admitted actually *doing* some of the things they had seen in the pornography within a few days after exposure.^{ix}

Exposure to Pornography Shapes Attitudes and Values

Most of us caring, responsible parents want to instill in our children our own personal values about relationships, sex, intimacy, love, and marriage. Unfortunately, the powerful irresponsible messages of pornography may be educating our children on these very important life issues. Just as thirty-second commercials can influence whether or not we choose one popular soft drink over another, exposure to pornography shapes our attitudes and values and, often, our behavior.

Photographs, videos, magazines, virtual games, and Internet pornography that depict rape and the dehumanization of females in sexual scenes constitute powerful but deforming tools of sex education. The danger to children stems at least partly from the disturbing changes in attitude that are facilitated by pornography. Replicated studies⁴ have demonstrated that exposure to significant amounts of increasingly graphic forms of pornography has a dramatic effect on how adult consumers view women, sexual abuse, sexual relationships, and sex in general. These studies are virtually unanimous in their conclusions: When male subjects were exposed to as little as six weeks' worth of standard hard-core pornography, they:

- developed an increased sexual callousness toward women
- began to trivialize rape as a criminal offense or no longer considered it a crime at all
- developed distorted perceptions about sexuality
- developed an appetite for more deviant, bizarre, or violent types of pornography (normal sex no longer seemed to do the job)
- devalued the importance of monogamy and lacked confidence in marriage as either a viable or lasting institution

- viewed nonmonogamous relationships as normal and natural behavior^{xi}

Exposure to Pornography Interferes with a Child's Development and Identity

During certain critical periods of childhood, a child's brain is being programmed for sexual orientation. During this period, the mind appears to be developing a "hardwire" for what the person will be aroused by or attracted to. Exposure to healthy sexual norms and attitudes during this critical period can result in the child developing a healthy sexual orientation. In contrast, if there is exposure to pornography during this period, sexual deviance may become imprinted on the child's "hard drive" and become a permanent part of his or her sexual orientation.^{xii}

Psychologist Dr. Victor Cline's findings suggest that memories of experiences that occurred at times of emotional arousal (which could include sexual arousal) are imprinted on the brain by epinephrine, an adrenal gland hormone, and are difficult to erase. (This may partly explain pornography's addicting effect.) Viewing pornography can potentially condition some viewers to have recurring sexual fantasies during which they masturbate. Later they may be tempted to act out the fantasies as sexual advances.

Sexual identity develops gradually through childhood and adolescence. In fact, children generally do not have a *natural* sexual capacity until between the ages of ten and twelve. As they grow up, children are especially susceptible to influences affecting their development. Information about sex in most homes and schools, comes, presumably, in age-appropriate incremental stages based on what parents, educators, physicians, and social scientists have learned about child development. But pornography short-circuits and/or distorts the normal personality development process and supplies misinformation about a child's sexuality, sense of self, and body that leaves the child confused, changed, and damaged.^{xiii}

Pornography often introduces children prematurely to sexual sensations that they are developmentally unprepared to contend with. This awareness of sexual sensation can be confusing and overstimulating for children.

The sexual excitement and eventual release obtained through pornography are mood altering. For example, if a young boy's early stimulus was pornographic photographs, he can be conditioned to become aroused through photographs. Once this pairing is rewarded a number of times, it is likely to become permanent.^{xiv} The result is that it becomes difficult for the individual to experience sexual satisfaction

apart from pornographic images.

Most of us find it difficult to talk to our children about sex in general, let alone the harmful effects of pornography, as graphically described in this chapter. We want to protect the innocence and purity of childhood for as long as possible.

ⁱ W. L. Marshall, "The Use of Sexually Explicit Stimuli by Rapists, Child Molesters, and Nonoffenders," *The Journal of Sex Research* 25, no. 2 (May 1988): 267-88.

ⁱⁱ See H.J. Eysenck, "Robustness of Experimental Support for the General Theory of Desensitization," in Neil M. Malamuth and Edward Donnerstein, eds., *Pornography and Sexual Aggression* (Orlando, Florida: Academic Press, 1984), 314. D. Zillmann, "Effects of Prolonged Consumption of Pornography," in *Pornography: Research Advances and Policy Considerations*, eds. D. Zillman and J. Bryant (Hillsdale, N.J.: Erlbaum, 1989), 129.

ⁱⁱⁱ *Take Action Manual* (Washington, D.C.: Enough is Enough, 1995-96), 9.

^{iv} Neil Postman, *The Disappearance of Childhood* (New York: Vintage, 1994), 137.

^v Tom Minnery, *Pornography: A Human Tragedy* (Wheaton: Tyndale House).

^{vi} K.E. Davis and G.N. Braucht, *Exposure to Pornography, Character and Sexual Deviance*, Technical Reports of the Commission on Obscenity and Pornography (1970), 7.

^{vii} Patrick Carnes, *Don't Call It Love: Recovery from Sexual Addictions* (New York: Bantam, 1991).

^{viii} Stephen J. Kavanagh, *Protecting Children in Cyberspace* (Springfield, VA: Behavioral Psychotherapy Center, 1997), 58-59.

^{ix} Victor B. Cline, *Pornography's Effects on Adults and Children* (New York: Morality in Media, 1990), 11.

^x Edward Donnerstein, "Ordinances to Add Pornography to Discrimination against Women," statement at Public Hearing of Minneapolis City Council Session (12 December 1983). See also Luis T. Garcia, "Exposure to Pornography and Attitudes about Women and Rape: A Correlative Study," *AG* 22 (1986), 382-83. This study found "subjects with a greater degree of exposure to violent sexual materials tended to believe that: (a) women are responsible for preventing their own rape, (b) rapists should not be severely punished, and (c) women should not resist a rape attack. In addition, researchers found that exposure to violent sexual material correlated significantly with the belief that rapists are normal. See also Zillman, "Effects of Prolonged Consumption," 129, and N. Malamuth and J. Centi, 129-37. "Study...results consistently showed a relationship between one's reported likelihood to rape and responses associated with convicted rapists such as sexual arousal to rape stimuli, callous attitudes toward rape, beliefs in the rape myths, and hostility towards women."

^{xi} Cline, *Pornography's Effects*, 8.

^{xii} Kavanagh, *Protecting Children in Cyberspace*, 58-59.

^{xiii} Interview with Ann Burgess, professor of nursing, University of Pennsylvania, 15 January 1997. "Pornography - Victims and Perpetrators," Symposium on Media Violence & Pornography, Proceedings Resource Book and Research Guide, ed. D. Scott (1984).

^{xiv} Jerry Bergman, Ph.D., "The Influence of Pornography on Sexual Development: Three Case Histories," *Family Therapy* IX, no. 3 (1982): 265.



**Alaska State
Legislature**
Senator Hollis
French
Senator Albert
Kookesh

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FOR IMMEDIATE RELEASE · February 28, 2005

French, Kookesh File Bills to Protect Children
Legislation outlaws Internet victimization, seeks admissibility of interviews

JUNEAU – Sens. Hollis French, D-Anchorage, and Albert Kookesh, D-Angoon, introduced a package of bills today to protect children from crime and its effects.

Two of the bills, Senate Bills 118 and 119, make it a crime to entice minors on the Internet and to send them indecent material electronically..

“These bills will help provide a ‘safety Net’ for Alaska’s children,” said Senator French. “No parent should have to live in fear that a child will receive pornography by e-mail or be lured into a dangerous relationship by a predator. SB 118 and SB 119 will help Alaska’s police and prosecutors bring an end to these terrible acts.”

A third bill in the package, Senate Bill 117, makes recorded statements of victims under 16 admissible in court if they were conducted under certain conditions. These “forensic interviews,” which are conducted in child advocacy centers around the state, are now admissible only if the child victim contradicts his or her earlier statement or cannot remember the event.

“Alaska’s rate of child sexual abuse is among the highest in the nation. We know that the Internet is playing an increasing role in child victimization here as well as around the globe,” said Senator Kookesh. “These bills will help protect Alaska’s children and bring swifter justice for them.”

#####

PRESS ADVISORY: On Tuesday, March 1, Detective Kevin Vandegriff, Special Assault Unit, Anchorage Police Department, and Michelle Monts, Program Manager, S.A.F.E. Child Advocacy Center in Juneau, will join Senators French and Kookesh at a press availability to discuss the legislation and its impact on child victims. The press availability will be in the Beltz Room at 10:30 a.m.###



**Alaska State
Legislature**
House and Senate
Democrats

WEB: <http://www.akdemocrats.org/>
CONTACT: Mike Doogan, Press Secretary
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EMAIL: press@akdemocrats.org

FOR IMMEDIATE RELEASE · March 1, 2005

Police Officer, Interviewer Support Child Protection Bills

Package by French, Kookesh aims at Internet, statements

JUNEAU -- Detective Kevin Vandegriff of the Anchorage Police Department's crimes against children unit, and Michelle Monts, a forensic interviewer and program manager with Juneau's child advocacy center, appeared Tuesday at a Senate Democrats' press conference to endorse a package of child protection bills sponsored by Sen. Hollis French, D-Anchorage, and Sen. Albert Kookesh, D-Angoon.

Two of the bills, Senate Bills 118 and 119, make it a crime to entice minors on the Internet and to send them indecent material electronically. The third bill in the package, Senate Bill 117, makes recorded statements of victims under 16 admissible in court if they were conducted under certain conditions. These "forensic interviews," which are conducted in child advocacy centers around the state, are now admissible only if the child victim contradicts his or her earlier statement or cannot remember the event.

Vandegriff spoke about sexual predation on the Internet.

MP3 actuality: http://akdemocrats.org/Audio/030105_sexpredator1.mp3

He also described his own experiences posing as a minor in a training class in Seattle.

MP3 actuality: http://akdemocrats.org/Audio/030105_sexpredator2.mp3

He also described the effects of predators sending pornography to minors electronically.

MP3 actuality: http://akdemocrats.org/Audio/030105_sexpredator3.mp3

Monts spoke to the reasons for allowing statements made to forensic interviewers to be introduced into evidence.

MP3 actuality: http://akdemocrats.org/Audio/030105_sexpredator4.mp3



Sen. French's introduction
3 minutes - Mpeg4 - 5 MBytes



Michelle Monts' statement
3 minutes - Mpeg4 - 5 MBytes

The bills, introduced Monday, are currently in the Senate Judiciary Committee.

###

Putting Alaskans First · Moving Alaska Forward 2005

Sen. Bettye Davis, Sen. Johnny Ellis, Sen. Kim Elton, Sen. Hollis French, Sen. Gretchen Guess, Sen. Lyman Hoffman, Sen. Albert Kookesh, Sen. Donny Olson, Rep. Ethan Berkowitz, Rep. Sharon Cissna, Rep. Harry Crawford, Rep. Eric Croft, Rep. Les Gara, Rep. Berta Gardner, Rep. Max Gruenberg, Rep. David Guttenberg, Rep. Reggie Joule, Rep. Mary Kapsner, Rep. Beth Kerttula, Rep. Carl Moses, Rep. Woodie Salmon

SB

125

SENATE COMMITTEE REPORT

DATE: 4/14/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 125

SB 125 LICENSING MEDICAL OR CARE FACILITIES

"An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date."

and recommends:

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

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____


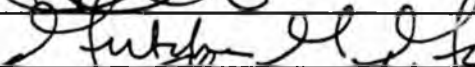
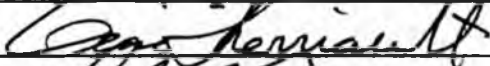
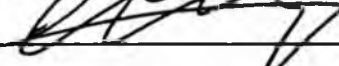
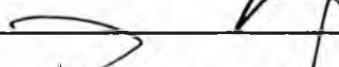
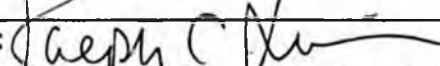
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
			X	
			X	
			✓	
			X	
				
CHAIR: 	✓			

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

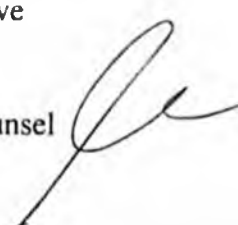
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 3, 2005

SUBJECT: Amendments to SB 125 (CS SB 125 (JUD))

TO: Senator Ralph Seekins, Chair
Senate Judiciary Committee
Attn: Brian Hove

FROM: Jean Mischel
Legislative Counsel 

Enclosed is the Judiciary CS you requested on fairly short notice that incorporates an amendment that was previously unreviewed by this office. The amendment raises some questions that should be addressed.

The amendment creates a new section at AS 47.05.350 and deletes part of an immunity provision that was at AS 47.32.160 in the bill. AS 47.32.090, as amended in the bill, contains a cross-reference to the "old" immunity provision at AS 47.32.160. Do you intend for the "new" immunity provision to be cross-referenced there as well?

The same question is raised for a cross-reference at AS 47.33.070 in the bill.

In addition, the wording of the amendment, as it pertains to the new immunity provision at AS 47.05.350, is ambiguous. I have interpreted the modifying language relating to regulations adopted by the department to apply to the information received and provided, not to the reasonable reliance. If this interpretation is not correct, let me know.

Finally, as discussed by telephone this morning, we have revised the repealer to avoid the repeal, as stated in the amendment, of the entire licensing definition in AS 25.27.244.

JMM:jad
05-248.jad

Enclosure

04/28/05
9:14 AM

Amendment to CSSB 125 (JUD) (version I)

Page 4, line 15 through page 5, line 28:

Delete all material.

Reorder bill sections accordingly.

Page 8, line 15 through page 9, line 30:

Delete all material.

Reorder bill sections accordingly.

Page 13, line 31, following "jurisdiction":

Insert "or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction"

Page 15, line 23, following "jurisdiction":

Insert "or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction"

Page 17, following line 20:

Insert "**Sec. 47.05.350. Immunity.** An entity or individual service provider that obtains information about an employee under a criminal history check under AS 47.05.310 may use that information only as provided in regulations adopted by the department under AS 47.05.320. However, if that entity or individual service provider reasonably relies on that information in denying employment for an individual selected for hire as an employee, including during a period of provisional employment, the entity or individual service provider is not liable in an action brought by the individual based on the employment determination resulting from the information."

#1
adopted

1.a

adopted

04/28/05
9:14 AM

Page 33, line 20:

Delete "applies"

Insert "and AS 44.62.330 – 44.62.630 apply"

Page 34, lines 9 - 15:

Delete all material.

Page 39, line 22, following "to", through line 30:

Delete all material and insert "assisted living homes as defined in AS 47.32.900."

Page 42, following line 9:

Insert a new bill section to read:

"*Sec. 43. AS 14.43.148(h)(1)(B)(iii) is repealed."

Renumber the following bill sections accordingly.

Page 42, following line 16:

Insert a new bill section to read:

"* Sec. 46. AS 25.27.244(s)(2) is repealed."



PUBLIC HEALTH

**PROTECTING AND PROMOTING THE
HEALTH OF ALL ALASKANS**

CSSB 125 (JUD), a Bill to Consolidate DHSS Licensing, Certification and Background Check Functions

Dr. Richard Mandsager, M.D.

Director, Division of Public Health

Alaska Department of Health and Social Services

4/28/2005

Amendment 2 to to CSSB 125(JUD)
24-GS1016\I
4/28/05

- | | |
|--|---|
| 1) Conforming technical amendment to delete Sec. 6 per Leg. Legal review | ➤ Page 4 line 15 through page 5, line 28 |
| 2) Conforming amendment making the document internally consistent per Leg. Legal review | ➤ Page 8 line 15 through Page 9 line 30 |
| 3) Conforming technical amendment making Article 3 internally consistent regarding medical assistance fraud | ➤ Page 13 line 31, following "jurisdiction" |
| 4) Conforming technical amendment making Article 3 internally consistent regarding medical assistance fraud | ➤ Page 15 line 23, following "jurisdiction" |
| 5) Conforming amendment to move immunity provision from AS 47.32 (licensing) to as 47.05 (background check/registry) | ➤ Page 17, following line 26 |
| 6) Clarifies that the administrative procedures act applies | ➤ Page 33 line 20 |

Amendment 2 to to CSSB 125(JUD)
24-GS1016\”I”
4/28/05

- 7) Conforming amendment to move immunity provision from AS 47.32 (licensing) to as 47.05 (background check/registry) ➤ Page 34 lines 9 – 15
- 8) Conforming technical amendment for definition of assisted living home in AS 47.33 ➤ Page 39 line 22 following “to” through line 30
- 9) Conforming amendment per Leg. Legal review ➤ Page 42 following line 9 insert new Sec. 43
- 10) Conforming amendment making the document internally consistent per Leg. Legal review ➤ Page 42 following line 16 insert new section 46

#1

Page 4, following line 14:

Insert a new bill section to read:

“* Sec. 6 AS 14.43.148(h)(1) is amended to read:

(1) "license"

(A) means, except as provided in (B) of this paragraph, a license, certificate, permit, registration, or other authorization that, at the time of issuance, will be valid for more than 150 days and that may be acquired from a state agency to perform an occupation, including the following:

- (i) license relating to boxing or wrestling under AS 05.10;
- (ii) authorization to perform an occupation regulated under AS 08;
- (iii) teacher certificate under AS 14.20;
- (iv) authorization under AS 18.08 to perform emergency medical services;
- (v) asbestos worker certification under AS 18.31;
- (vi) boiler operator's license under AS 18.60.395;
- (vii) certificate of fitness under AS 18.62;
- (viii) hazardous painting certification under AS 18.63;
- (ix) certification as a municipal correctional, correctional, probation, or parole officer under AS 18.65.245;
- (x) security guard license under AS 18.65.400 - 18.65.490;

(xi) license relating to insurance under AS 21.27;

(xii) employment agency permit under AS 23.15.330 -
23.15.520;

(xiii) registration as a broker-dealer, an agent, a state
investment adviser, or an investment adviser representative under
AS 45.55.030;

(xiv) certification as a pesticide applicator under AS
46.03.320;

(xv) certification as a storage tank worker or contractor under
AS 46.03.375;

(xvi) certification as a water and wastewater works operator
under AS 46.30; and

(B) does not include

(i) a commercial fishing license under AS 16.05.480,
including a crewmember fishing license;

(ii) a vessel license issued under AS 16.05.490 or 16.05.530;

(iii) a license issued to a child care facility under AS 47.32
[AS 47.35];

(iv) a business license issued under AS 43.70;

(v) an entry permit or interim-use permit issued under AS
16.43; or

(vi) a driver's license issued under AS 28.15;"

Page 21, line 30, following "AS 47.32.010(b)":

Insert ", as defined by regulation"

Page 23, line 31, following "(c)", through page 24, line 1:

Delete all material and insert "The issuance of a license by the department does not obligate the department to place or maintain an individual in an entity, through an entity, or to support the entity financially."

Page 37, line 11, following "care":

Insert "or rehabilitative services"

Page 40, line 24:

Delete all material.

Renumber the following bill sections accordingly.

Page 41, line 4:

Delete "47.33.420,"

Page 41, line 31:

Delete "SEC. 20"

Insert "SECS. 20 AND 36"

Page 42, line 1"

Delete "sec. 20"

Insert "secs. 20 and 36"

Page 42, line 3:

Delete "sec. 20"

Insert "secs. 20 and 36"

Page 42, line 10:

Delete "sec. 20"

Insert "secs. 20 and 36"

Page 42, line 15:

Delete "sec. 20"

Insert "secs. 20 and 36"

Page 46, line 10:

Delete all material.

Renumber the following bill sections accordingly.

Page 35, line 2
delete "or" on line 3
(iii) Insert "offers personal assistance;" on
number (iii) to (iv)

Summary of Changes, CSSB 125(JUD)
Amendment 1 to Work Draft 24-GS1016\Y 4/23/05

- Adds DHSS as the administrative hearing entity for hearings related to centralized registry. ➤ Pg 8 LL 20 -- 22
- Adds "volunteers" as an entry type of the registry. ➤ Pg 14 L 24 and Pg 15 L 9
- Adds "decisions" to the types of findings that can result in an entry in the registry. ➤ Pg 14 L 26
- ✓• Adds "medical assistance fraud" as a condition for entry on the registry. ➤ Pg 14 LL 30 – 31
- ✓• Adds new subsections to require reporting to the department of any allegations of neglect, abuse or exploitation in the last ten years, or any court findings of these conditions. ➤ Pg 15 LL 10 – 18
- ✓• Defines the central registry as a confidential document with limited access. ➤ Pg 15 LL 26 – 30
- ✓• Adds immunity protections for people who report abuse, neglect or exploitation. ➤ Pg 15 L 31 and Pg 16 LL 1 - 6
- ✓• Clarifies individuals associated with the term "entities". ➤ Pg 16 LL 21 - 22
- Everything else relates to renumbering. ➤ All the rest

Summary of Changes, CSSB 125(JUD)
Amendment 2 to Work Draft 24-GS1016\Y 4/23/05

- Clarifies the ability of municipalities to request the authority to regulate child care facility licensing under home rule powers.

➤ Pg 23 LL 22 – 30

Proposed Changes to CSSB 125(JUD)
NEW Amendment 3 to Work Draft 24-GS1016\Y 4/23/05

- Conforming technical amendment ➤ Page 4 following line 14

- Assures policies and procedures relating to licensure and operation are established and defined in regulation ➤ Page 21 line 30, following "AS 47.32.010(b)"

- Delete current language and insert a new subsection (c) to clarify the distinction between the department's responsibilities re: issuing a license to an entity versus its obligation to provide financial support to an entity ➤ Page 23 line 31 through Page 24 line 1

- Assures the definition of "nursing facility" specifically includes rehabilitative services for injured, disabled or sick persons ➤ Page 37 line 11

- All other amendments are either conforming technical amendments or relate to section renumbering ➤ All the rest

24-GS1016Y
Mischel
4/21/05

CS FOR SENATE BILL NO. 125(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the licensing, regulation, enforcement, and appeal rights of
2 ambulatory surgical centers, assisted living homes, child care facilities, child placement
3 agencies, foster homes, free-standing birth centers, home health agencies, hospices or
4 agencies providing hospice services or operating hospice programs, hospitals,
5 intermediate care facilities for the mentally retarded, maternity homes, nursing
6 facilities, residential child care facilities, residential psychiatric treatment centers,
7 runaway shelters, and rural health clinics; relating to possession of a firearm at licensed
8 entities and facilities; relating to criminal history requirements, and a registry,
9 regarding certain licenses, certifications, approvals, and authorizations by the
10 Department of Health and Social Services; making conforming amendments; and
11 providing for an effective date."

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

1 * Section 1. AS 09.55.560(1) is amended to read:

2 (1) "health care provider" means an acupuncturist licensed under
3 AS 08.06; an audiologist or speech-language pathologist licensed under AS 08.11; a
4 chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a
5 dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
6 optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an
7 optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a
8 physical therapist or occupational therapist licensed under AS 08.84; a physician or
9 physician assistant licensed under AS 08.64; a podiatrist; a psychologist and a
10 psychological associate licensed under AS 08.86; a hospital as defined in
11 AS 47.32.900 [AS 18.20.130], including a governmentally owned or operated
12 hospital; an employee of a health care provider acting within the course and scope of
13 employment; an ambulatory surgical facility and other organizations whose primary
14 purpose is the delivery of health care, including a health maintenance organization,
15 individual practice association, integrated delivery system, preferred provider
16 organization or arrangement, and a physical hospital organization;

17 * Sec. 2. AS 09.65.095(b)(2) is amended to read:

18 (2) "hospital" means a hospital as defined in AS 47.32.900
19 [AS 18.20.130], including a governmentally owned or operated hospital.

20 * Sec. 3. AS 09.65.096(d)(2) is amended to read:

21 (2) "hospital" has the meaning given in AS 47.32.900 [AS 18.20.130]
22 and includes a governmentally owned or operated hospital;

23 * Sec. 4. AS 11.61.195(a) is amended to read:

24 (a) A person commits the crime of misconduct involving weapons in the
25 second degree if the person knowingly

26 (1) possesses a firearm during the commission of an offense under
27 AS 11.71.010 - 11.71.040;

28 (2) violates AS 11.61.200(a)(1) and is within the grounds of or on a
29 parking lot immediately adjacent to

30 (A) a public or private preschool, elementary, junior high, or
31 secondary school without the permission of the chief administrative officer of

1 the school or district or the designee of the chief administrative officer; or

2 (B) an entity [A CENTER], other than a private residence,
3 licensed as a child care facility under AS 47.32 [AS 47.33 OR AS 47.35] or
4 recognized by the federal government for the care of children; or

5 (3) discharges a firearm at or in the direction of

6 (A) a building with reckless disregard for a risk of physical
7 injury to a person; or

8 (B) a dwelling.

9 * Sec. 5. AS 11.61.220(a) is amended to read:

10 (a) A person commits the crime of misconduct involving weapons in the fifth
11 degree if the person

12 (1) is 21 years of age or older and knowingly possesses a deadly
13 weapon, other than an ordinary pocket knife or a defensive weapon,

14 (A) that is concealed on the person, and, when contacted by a
15 peace officer, the person fails to

16 (i) immediately inform the peace officer of that
17 possession; or

18 (ii) allow the peace officer to secure the deadly weapon,
19 or fails to secure the weapon at the direction of the peace officer,
20 during the duration of the contact;

21 (B) that is concealed on the person within the residence of
22 another person unless the person has first obtained the express permission of
23 an adult residing there to bring a concealed deadly weapon within the
24 residence;

25 (2) knowingly possesses a loaded firearm on the person in any place
26 where intoxicating liquor is sold for consumption on the premises;

27 (3) being an unemancipated minor under 16 years of age, possesses a
28 firearm without the consent of a parent or guardian of the minor;

29 (4) knowingly possesses a firearm

30 (A) within the grounds of or on a parking lot immediately
31 adjacent to an entity [A CENTER], other than a private residence, licensed as

1 a child care facility under AS 47.32 [AS 47.33 OR AS 47.35] or recognized
2 by the federal government for the care of children, except that a person 21
3 years of age or older may possess an unloaded firearm in the trunk of a
4 motor vehicle or encased in a closed container of a motor vehicle;

5 (B) within a

6 (i) courtroom or office of the Alaska Court System; or

7 (ii) courthouse that is occupied only by the Alaska
8 Court System and other justice-related agencies; or

9 (C) within a domestic violence or sexual assault shelter that
10 receives funding from the state;

11 (5) possesses or transports a switchblade or a gravity knife; or

12 (6) is less than 21 years of age and knowingly possesses a deadly
13 weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed
14 on the person.

15 * Sec. 6. AS 18.07.031(b) is amended to read:

16 (b) Notwithstanding the expenditure threshold in (a) of this section, a person
17 may not convert a building or part of a building to a nursing home that requires
18 licensure as a nursing facility under AS 47.32 [AS 18.20.020] unless authorized
19 under the terms of a certificate of need issued by the department.

20 * Sec. 7. AS 18.20.130 is amended to read:

21 **Sec. 18.20.130. Definitions.** In AS 18.20.075 - 18.20.130 [AS 18.20.010 -
22 18.20.130],

23 (1) "department" means the Department of Health and Social Services;

24 (2) "governmental unit" means the state, a municipality, or other
25 political subdivision, or a department, division, board, or other agency of any of them;

26 (3) "hospital" means an institution or establishment, public or private,
27 devoted primarily to providing diagnosis, treatment, or care over a continuous period
28 of 24 hours each day for two or more nonrelated individuals suffering from illness,
29 physical or mental disease, injury or deformity, or any other condition for which
30 medical or surgical services would be appropriate.

31 * Sec. 8. AS 18.20.310(a) is amended to read:

1 (a) If the department finds that a nursing facility, or a partner, officer, director,
2 owner of five percent or more of the nursing facility's assets, or managing employee of
3 the nursing facility substantially failed or refused to comply with AS 08.68.340 -
4 08.68.390, AS 08.70, AS 18.20.075 - 18.20.085 [AS 18.20.010 - 18.20.130],
5 AS 47.07, or with a regulation adopted under any of those statutes, or, for a nursing
6 facility that provides Medicaid services under AS 47.07, failed or refused to comply
7 with the Medicaid requirements of 42 U.S.C. 1396r (Title XIX of the Social Security
8 Act, as amended) or a regulation adopted under that statute, the department may take
9 the following actions:

10 (1) ban the admission of new residents to the nursing facility;

11 (2) as provided in AS 18.20.320, deny payment under AS 47.07 and
12 AS 47.25.120 - 47.25.300 for any Medicaid or general relief-medical resident admitted
13 to the nursing facility after notice by the department of denial of payment; residents
14 who are eligible for Medicaid or general relief-medical are not responsible for
15 payment when the department takes action under this paragraph;

16 (3) assess a civil fine in accordance with AS 18.20.340;

17 (4) suspend or terminate the nursing facility's participation in the
18 Medicaid program;

19 (5) suspend, revoke, or refuse to renew the nursing facility's license
20 issued under this chapter;

21 (6) seek an appointment of temporary administration as provided in
22 AS 18.20.360 or of a receiver under AS 18.20.370;

23 (7) in case of an emergency, seek an order from the court either to
24 close the nursing facility or to transfer residents from that facility, or both.

25 * Sec. 9. AS 18.23.070(3) is amended to read:

26 (3) "health care provider" means an acupuncturist licensed under
27 AS 08.06; a chiropractor licensed under AS 08.20; a dental hygienist licensed under
28 AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a
29 dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72;
30 a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist
31 licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a

1 psychologist and a psychological associate licensed under AS 08.86; a hospital as
2 defined in AS 47.32.900 [AS 18.20.130], including a governmentally owned or
3 operated hospital; and an employee of a health care provider acting within the course
4 and scope of employment;

5 * Sec. 10. AS 18.26.220 is amended to read:

6 **Sec. 18.26.220. Facility compliance with health and safety laws and**
7 **licensing requirements.** A medical facility constructed, acquired, improved,
8 financed, or otherwise under the provisions of this chapter and all actions of the
9 authority are subject to AS 18.07, AS 47.32 [AS 18.20], and any other present or
10 future state licensing requirements for the facilities or services provided under this
11 chapter. A medical facility issued a certificate of need under sec. 4, ch. 275, SLA
12 1976, by virtue of being in existence or under construction before July 1, 1976, must
13 fully meet the requirements of AS 18.07 in order to be eligible for funding under this
14 chapter.

15 * Sec. 11. AS 18.50.950(4) is amended to read:

16 (4) "child adoption agency" means a child adoption agency licensed as
17 a child placement agency under AS 47.32 or former AS 47.35;

18 * Sec. 12. AS 21.86.030(c) is amended to read:

19 (c) Nothing in this section relieves a health maintenance organization that
20 wishes to exercise the power described in (a)(1) of this section from the requirements
21 of

22 (1) AS 18.07, regarding obtaining a certificate of need;

23 (2) AS 47.32 [AS 18.20], regarding regulation of hospitals; and

24 (3) other statutes applicable to hospitals or other health care facilities.

25 * Sec. 13. AS 25.23.185(c) is amended to read:

26 (c) A child adoption agency licensed under former AS 47.35 and a child
27 placement agency licensed under AS 47.32 shall maintain records of the information
28 required to be furnished to the court under this section or under regulations of the
29 commissioner implementing this section. If a child adoption agency or child
30 placement agency ceases to place persons for adoption, it shall transfer its records to
31 the commissioner.

1 * Sec. 14. AS 25.27.244(s)(2) is amended to read:

2 (2) "license"

3 (A) means, except as provided in (B) of this paragraph, a
4 license, certificate, permit, registration, or other authorization that, at the time
5 of issuance, will be valid for more than 150 days and that may be acquired
6 from a state agency to perform an occupation, including the following:

7 (i) license relating to boxing or wrestling under
8 AS 05 10;

9 (ii) authorization to perform an occupation regulated
10 under AS 08;

11 (iii) teacher certificate under AS 14.20;

12 (iv) authorization under AS 18.08 to perform
13 emergency medical services;

14 (v) asbestos worker certification under AS 18.31;

15 (vi) boiler operator's license under AS 18.60.395;

16 (vii) certificate of fitness under AS 18.62;

17 (viii) hazardous painting certification under AS 18.63;

18 (ix) security guard license under AS 18.65.400 -
19 18.65.490;

20 (x) license relating to insurance under AS 21.27;

21 (xi) employment agency permit under AS 23.15.330 -
22 23.15.520;

23 (xii) registration as a broker-dealer, an agent, a state
24 investment adviser, or an investment adviser representative under
25 AS 45.55.030;

26 (xiii) certification as a pesticide applicator under
27 AS 46.03.320;

28 (xiv) certification as a storage tank worker or contractor
29 under AS 46.03.375;

30 (xv) certification as a water and wastewater works
31 operator under AS 46.30;

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(xvi) commercial crewmember fishing license under AS 16.05.480 other than an entry permit or interim-use permit under AS 16.43;

(xvii) fish transporter permit under AS 16.05.671;

(xviii) sport fishing operator license under AS 16.40.260;

(xix) sport fishing guide license under AS 16.40.270;

(B) does not include

(i) a vessel license issued under AS 16.05.490 or 16.05.530;

(ii) a license issued to a child care facility under AS 47.32 [AS 47.35];

(iii) a business license issued under AS 43.70;

(iv) an entry permit or interim-use permit issued under AS 16.43; or

(v) a driver's license issued under AS 28.15;

* Sec. 15. AS 37.05.146(c)(67) is amended to read:

(67) fees received by the Department of Health and Social Services under AS 47.32 [AS 47.33.910 FOR LICENSING ASSISTED LIVING HOMES];

* Sec. 16. AS 44.62.330(a) is amended by adding a new paragraph to read:

(45) Department of Health and Social Services relating to the centralized registry under AS 47.05.330 - 47.05.390.

* Sec. 17. AS 44.64.030(a) is amended by adding a new paragraph to read:

(36) AS 47.32 (licensing by the Department of Health and Social Services).

* Sec. 18. AS 47.05.010 is amended to read:

Sec. 47.05.010. Duties of department. The Department of Health and Social Services shall

(1) administer adult public assistance, the Alaska temporary assistance program, and all other assistance programs, and receive and spend money made available to it;

1 (2) adopt regulations necessary for the conduct of its business and for
2 carrying out federal and state laws granting adult public assistance, temporary cash
3 assistance, diversion payments, or self-sufficiency services for needy families under
4 the Alaska temporary assistance program, and other assistance;

5 (3) establish minimum standards for personnel employed by the
6 department and adopt necessary regulations to maintain those standards;

7 (4) require those bonds and undertakings from persons employed by it
8 which in its judgment are necessary, and pay the premiums on them;

9 (5) cooperate with the federal government in matters of mutual
10 concern pertaining to adult public assistance, the Alaska temporary assistance
11 program, and other forms of public assistance;

12 (6) make the reports, in the form and containing the information, that
13 the federal government from time to time requires;

14 (7) cooperate with the federal government, its agencies or
15 instrumentalities in establishing, extending, and strengthening services for the
16 protection and care of homeless, dependent, and neglected children in danger of
17 becoming delinquent, and receive and expend funds available to the department by the
18 federal government, the state or its political subdivisions for that purpose;

19 (8) cooperate with the federal government in adopting state plans to
20 make the state eligible for federal matching in appropriate categories of assistance, and
21 in all matters of mutual concern, including adoption of the methods of administration
22 that are found by the federal government to be necessary for the efficient operation of
23 welfare programs;

24 (9) adopt regulations, not inconsistent with law, defining need,
25 prescribing the conditions of eligibility for assistance, and establishing standards for
26 determining the amount of assistance that an eligible person is entitled to receive; the
27 amount of the assistance is sufficient when, added to all other income and resources
28 available to an individual, it provides the individual with a reasonable subsistence
29 compatible with health and well-being; an individual who meets the requirements for
30 eligibility for assistance shall be granted the assistance promptly upon application for
31 it;

1 (10) grant to a person claiming or receiving assistance and who is
2 aggrieved because of the department's action or failure to act, reasonable notice and an
3 opportunity for a fair hearing by the department, and the department shall adopt
4 regulations relative to this;

5 (11) enter into reciprocal agreements with other states relative to
6 public assistance, welfare services, and institutional care that are considered advisable;

7 (12) establish the requirements of residence for public assistance,
8 welfare services, and institutional care that are considered advisable, subject to the
9 limitations of other laws of the state, or law or regulation imposed as conditions for
10 federal financial participation;

11 (13) establish the divisions and local offices that are considered
12 necessary or expedient to carry out a duty or authority assigned to it and appoint and
13 employ the assistants and personnel that are necessary to carry on the work of the
14 divisions and offices, and fix the compensation of the assistants or employees except
15 that a person engaged in business as a retail vendor of general merchandise, or a
16 member of the immediate family of a person who is so engaged, may not serve as an
17 acting, temporary or permanent local agent of the department, unless the
18 commissioner of health and social services certifies in writing to the governor, with
19 relation to a particular community, that no other qualified person is available in the
20 community to serve as local welfare agent; for the purposes of this paragraph, a
21 "member of the immediate family" includes a spouse, child, parent, brother, sister,
22 parent-in-law, brother-in-law or sister-in-law;

23 (14) provide education and health-related services and referrals
24 designed to reduce the number of out-of-wedlock pregnancies and the number of
25 induced pregnancy terminations in the state;

26 (15) investigate reports of abuse, neglect, or misappropriation of
27 property by certified nurse aides in facilities licensed by the department under
28 AS 47.32 [AS 18.20].

29 * Sec. 19. AS 47.05.055(a) is amended to read:

30 (a) If the department has reason to believe that a certified nurse aide employed
31 in a facility licensed by the department under AS 47.32 as a hospital or nursing

1 home [AS 18.20] has committed abuse, neglect, or misappropriation of property in
2 connection with the person's duties as a certified nurse aide at the facility, the
3 department shall investigate the matter. The department shall conduct proceedings to
4 determine whether [IF] a finding of abuse, neglect, or misappropriation of property
5 should be made. These proceedings shall be conducted under AS 44.62.330 -
6 44.62.630. A finding under this subsection that a certified nurse aide has committed
7 abuse, neglect, or misappropriation of property shall be reported by the department to
8 the Board of Nursing.

9 * Sec. 20. AS 47.05 is amended by adding new sections to read:

10 **Article 3. Criminal History; Registry.**

11 **Sec. 47.05.300. Applicability.** (a) The provisions of AS 47.05.310 -
12 47.05.390 apply to any individual or entity that is required by statute or regulation to
13 be licensed or certified by the department or that is eligible to receive payments, in
14 whole or in part, from the department to provide for the health, safety, and welfare of
15 persons who are served by the programs administered by the department.

16 (b) Those individual service providers subject to AS 47.05.310 - 47.05.390
17 under (a) of this section include

18 (1) public home care providers described in AS 47.05.017;

19 (2) providers of home and community-based waiver services financed
20 under AS 47.07.030(c); and

21 (3) case managers to coordinate community mental health services
22 under AS 47.30.530.

23 **Sec. 47.05.310. Criminal history; criminal history check; compliance.** (a)
24 If an individual has been charged with, convicted of, found not guilty by reason of
25 insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the
26 standards for licensure or certification established by the department by regulation,
27 that individual may not own an entity, or be an officer, director, partner, member, or
28 principal of the business organization that owns an entity. In addition, an entity may
29 not

30 (1) allow that individual to operate the entity;

31 (2) hire or retain that individual at the entity as an employee.

1 independent contractor, or volunteer of the entity;

2 (3) allow that individual to reside in the entity if not a recipient of
3 services; or

4 (4) allow that individual to be present in the entity if the individual
5 would have regular contact with individuals who receive services from the entity,
6 unless that individual is a family member of or visitor of an individual who receives
7 services from the entity.

8 (b) The department may not issue or renew a license or a certification for an
9 entity that is in violation of (a) of this section or that would be in violation based on
10 the information received as part of the application process.

11 (c) The department may not issue or renew a license or certification for an
12 entity if an individual is applying for a license, license renewal, certification, or
13 certification renewal for the entity and that

14 (1) individual has been found by a court or agency of this or another
15 jurisdiction to have neglected, abused, or exploited a child or vulnerable adult under
16 AS 47.10, AS 47.24, or AS 47.62 or a substantially similar provision in another
17 jurisdiction; or

18 (2) individual's name appears on the centralized registry established
19 under AS 47.05.330 or a similar registry of this state or another jurisdiction.

20 (d) An entity shall provide to the department a release of information
21 authorization for a criminal history check for an individual who is not a recipient of
22 services from the entity and, after the entity has been issued a license, license renewal,
23 certification, or certification renewal by the department,

24 (1) who intends to become an owner of the entity, or an officer,
25 director, partner, member, or principal of the business organization that owns the
26 entity;

27 (2) whom the entity intends to hire or retain as the operator of the
28 entity's business;

29 (3) whom the entity intends to hire or retain as an employee,
30 independent contractor, or volunteer of the entity; or

31 (4) who will be present in the entity or at the places of operation of

1 entity, and would have regular contact with individuals who receive services from the
2 entity, but who is not a family member or visitor of an individual who receives
3 services from the entity.

4 (e) An individual for whom a release of information authorization has been
5 provided to the department shall submit the individual's fingerprints to the department,
6 with the fee established under AS 12.62.160, for a report of criminal justice
7 information under AS 12.62 and for submission by the Department of Public Safety to
8 the Federal Bureau of Investigation for a national criminal history record check. The
9 Department of Public Safety shall provide the report of criminal justice information
10 and the results of the national criminal history record check to the department for its
11 use in considering an application for a license, license renewal, certification, or
12 certification renewal, or in considering other approval or selection regarding an entity,
13 for compliance with the standards established in this section. For purposes of
14 obtaining access to criminal justice information maintained by the Department of
15 Public Safety under AS 12.62, the department is a criminal justice agency conducting
16 a criminal justice activity. The department may waive the requirement for fingerprint
17 submission if an individual is unable to provide fingerprints due to a medical or
18 physical condition that is documented by a licensed physician.

19 (f) The provisions of this section do not apply if the department grants an
20 exception from a requirement of (a) - (e) of this section under a regulation adopted by
21 the department.

22 (g) The department shall adopt regulations listing those criminal offenses that
23 are inconsistent with the standards for licensure or certification by the department.

24 (h) An individual service provider is subject to the provisions of (a) - (g) of
25 this section as if the individual service provider were an entity subject to those
26 provisions.

27 (i) For purposes of (b) and (c) of this section, in place of nonissuance or
28 nonrenewal of a license or certification, an entity or individual service provider that is
29 not required to be licensed or certified by the department or a person wishing to
30 become an entity or individual service provider that is not required to be licensed or
31 certified by the department is instead ineligible to receive a payment, in whole or in

1 part, from the department to provide for the health, safety, and welfare of persons who
2 are served by the programs administered by the department if the entity, individual
3 service provider, or person

4 (1) is in violation of (a) of this section or would be in violation based
5 on information received by the department as part of an application, approval, or
6 selection process;

7 (2) has been found by a court or agency of this or another jurisdiction
8 to have neglected, abused, or exploited a child or vulnerable adult under AS 47.10,
9 AS 47.24, or AS 47.62 or a substantially similar provision in another jurisdiction; or

10 (3) appears on the centralized registry established under AS 47.05.330
11 or a similar registry of this state or another jurisdiction.

12 **Sec. 47.05.320. Criminal history use standards.** The department shall by
13 regulation establish standards for the consideration and use by the department, an
14 entity, or an individual service provider of the criminal history of an individual
15 obtained under AS 47.05.310.

16 **Sec. 47.05.330. Centralized registry.** (a) The department shall by regulation
17 provide for a centralized registry to facilitate the licensing or certification of entities
18 and individual service providers, the authorization of payments to entities or
19 individual service providers by the department, and the employment of individuals by
20 entities and individual service providers.

21 (b) Except for the name of each victim being redacted before the information
22 is placed on the registry, the registry shall consist of the following information for an
23 entity or individual service provider, an applicant on behalf of an entity or individual
24 service provider, or an employee or volunteer of an entity or individual service
25 provider:

26 (1) decisions, orders, judgments, and adjudications finding that the
27 applicant, employee, or volunteer committed

28 (A) abuse, neglect, or exploitation under AS 47.10, AS 47.24,
29 AS 47.62, or a substantially similar provision in another jurisdiction; or

30 (B) medical assistance fraud under AS 47.05.210 or a
31 substantially similar provision in another jurisdiction;

1 (2) orders under a state statute or a substantially similar provision in
2 another jurisdiction that a license or certification of the entity or individual service
3 provider to provide services related to the health, safety, and welfare of persons was
4 denied, suspended, revoked, or conditioned.

5 (c) As a condition for applying for licensure or certification of an entity or
6 individual service provider, or for payment to an entity or individual service provider
7 by the department, an applicant must agree to submit timely to the registry the
8 information required under this section relating to the entity, any individual, the
9 applicant, employees, and volunteers of the entity or individual service provider.

10 (d) Within 24 hours of a court decision, order, judgment, or adjudication that
11 an entity, individual service provider, or employee or volunteer of an entity or
12 individual service provider committed an act listed under (b) of this section, the entity,
13 individual service provider, or employee or volunteer of an entity or individual service
14 provider shall report the court action to the department.

15 (e) Within 24 hours of receiving notice of an allegation that an employee,
16 volunteer, or former employee or volunteer of an entity or individual service provider
17 committed an act listed under (b) of this section within the past 10 years, the entity or
18 individual service provider shall report the allegation to the department.

19 (f) The department shall prescribe by regulation the form or format by which
20 an applicant shall submit required information to the registry.

21 (g) Notwithstanding any contrary provision of law, the department may also
22 submit information described in this section to the registry. An entity or individual
23 that is exempt from department licensure or certification and that does not receive
24 money from the department for its services may voluntarily submit information
25 described in this section to the department for placement in the registry.

26 (h) Information contained in the registry is confidential and is not subject to
27 public inspection and copying under AS 40.25.110 - 40.25.125. However, information
28 contained in the registry may be released to entities, individual service providers, and
29 governmental agencies authorized and in a manner provided under this section and
30 regulations adopted under this section.

31 (i) A person is presumed to be acting in good faith and is immune from civil

1 and criminal liability if the person

2 (1) makes a report of medical assistance fraud, abuse, neglect, or
3 exploitation;

4 (2) submits information to the registry; or

5 (3) fails to hire or retain an employee or volunteer because the
6 employee or volunteer is included in the registry.

7 (j) A person about whom information is placed in the registry may request the
8 department to delete or modify the information to correct inaccuracies. The
9 department shall investigate the request and make necessary deletions or
10 modifications.

11 **Sec. 47.05.340. Regulations.** The department shall adopt regulations to
12 implement AS 47.05.300 - 47.05.390.

13 **Sec. 47.05.390. Definitions.** In AS 47.05.300 - 47.05.390, unless the context
14 otherwise requires,

15 (1) "criminal history records" has the meaning given in AS 12.64.010;

16 (2) "criminal justice activity" has the meaning given in AS 12.62.900;

17 (3) "criminal justice agency" has the meaning given in AS 12.62.900;

18 (4) "criminal justice information" has the meaning given in
19 AS 12.62.900;

20 (5) "department" means the Department of Health and Social Services;

21 (6) "entity" means an entity listed in AS 47.32.010(b) and includes an
22 owner, officer, director, member or partner of the entity;

23 (7) "individual service provider" means an individual described in
24 AS 47.05.300(a), and includes those listed in AS 47.05.300(b);

25 (8) "license" includes a provisional license.

26 * **Sec. 21.** AS 47.10.141(b) is amended to read:

27 (b) A peace officer shall take into protective custody a minor described in (a)
28 of this section if the minor is not otherwise subject to arrest or detention. Unless (c) of
29 this section applies, when a peace officer takes a minor into protective custody under
30 this subsection,

31 (1) the peace officer shall

1 (A) return the minor to the minor's parent or guardian at the
2 parent's or guardian's residence if the residence is in the same community
3 where the minor was found and if the minor's parent or guardian consents to
4 the return, except that the officer may not use this option if the officer has
5 reasonable cause to believe that the minor has experienced physical or sexual
6 abuse in the parent's or guardian's household;

7 (B) take the minor to a nearby location agreed to by the minor's
8 parent or guardian if the parent or guardian does not consent to return of the
9 minor under (A) of this paragraph and the officer does not have reasonable
10 cause to believe that the minor has experienced physical or sexual abuse in the
11 parent's or guardian's household; or

12 (C) if disposition of the minor is not made under (A) or (B) of
13 this paragraph, take the minor to

14 (i) an office specified by the Department of Health and
15 Social Services;

16 (ii) a program for runaway minors licensed by the
17 department under AS 47.10.310;

18 (iii) a shelter for runaways that has a permit from the
19 department under AS 47.32 [AS 47.35.085] that agrees to shelter the
20 minor;

21 (iv) a facility or contract agency of the department; or

22 (v) another suitable location and promptly notify the
23 department if an office specified by the department, a licensed program
24 for runaway minors, a shelter for runaways that will accept the minor,
25 or a facility or contract agency of the department does not exist in the
26 community;

27 (2) if the peace officer plans to take the minor to an office, program,
28 shelter, or facility under (1)(C) of this subsection, the peace officer shall give the
29 highest priority to taking the minor to an office, program, shelter, or facility that is
30 semi-secure;

31 (3) a minor under protective custody may not be housed in a jail or

1 other detention facility but may be housed in a semi-secure portion of an office,
2 program, shelter, or other facility under (1) (C) of this subsection;

3 (4) the peace officer, immediately upon taking a minor into protective
4 custody, shall

5 (A) advise the minor of available mediation services and of the
6 right to social services under AS 47.10.142(b); and

7 (B) if the identity of the minor's parent or guardian is known,
8 advise the minor's parent or guardian that the minor has been taken into
9 protective custody and that counseling services for the minor's parent or
10 guardian and the minor's household may be available under AS 47.10.142(b).

11 * Sec. 22. AS 47.10.392 is amended to read:

12 **Sec. 47.10.392. Certificate required.** A private residence may not be held
13 out publicly as a shelter for runaway minors unless the residence

14 (1) is designated a shelter for runaways by a corporation that is
15 licensed to make the designation under AS 47.32 [AS 47.35.085]; and

16 (2) has a valid permit from the department signifying that designation.

17 * Sec. 23. AS 47.10.399(2) is amended to read:

18 (2) "shelter for runaways" or "shelter for runaway minors" means a
19 private residence whose legal occupant agrees to shelter, with or without
20 compensation, a runaway minor accepted into the residence by the legal occupant and
21 that

22 (A) is not simultaneously licensed under AS 47.10.310 as a
23 program for runaway minors;

24 (B) has been designated a shelter for runaways by a corporation
25 licensed for that purpose under AS 47.32 [AS 47.35.085]; and

26 (C) has a permit issued by the department under AS 47.32
27 [AS 47.35.085].

28 * Sec. 24. AS 47.10.990(10) is amended to read:

29 (10) "foster care" means care provided by a person or household under
30 a foster home license required under AS 47.32 [AS 47.35.015];

31 * Sec. 25. AS 47.10.990(24) is amended to read:

1 (24) "secure residential psychiatric treatment center" has the meaning
2 given "residential psychiatric treatment center" in AS 47.32.900 [AS 47.35.900].

3 * Sec. 26. AS 47.12.990(14) is amended to read:

4 (14) "secure residential psychiatric treatment center" has the meaning
5 given "residential psychiatric treatment center" in AS 47.32.900; [AS 47.35.900.]

6 * Sec. 27. AS 47.24.013(a) is amended to read:

7 (a) If a report received under AS 47.24.010 regards the abandonment,
8 exploitation, abuse, neglect, or self-neglect of a vulnerable adult who is 60 years of
9 age or older that is alleged to have been committed by or to have resulted from the
10 negligence of the staff or a volunteer of an out-of-home care facility, including a
11 facility licensed under AS 47.32 [AS 18.20], in which the vulnerable adult resides, the
12 department shall transfer the report for investigation to the long term care ombudsman
13 under AS 47.62.015.

14 * Sec. 28. AS 47.24.017(d) is amended to read:

15 (d) If the protective services under this section include the placement of a
16 vulnerable adult in an assisted living home at the state's expense, the minimum daily
17 reimbursement rate to the assisted living home for the vulnerable adult is \$70. The
18 department may, under its regulations, provide for a daily rate higher than \$70 if the
19 additional care provided to the vulnerable adult in the assisted living home justifies the
20 additional reimbursement. In this subsection, "assisted living home" means an assisted
21 living home licensed under AS 47.32 [AS 47.33].

22 * Sec. 29. AS 47.25.071(b) is amended to read:

23 (b) To qualify for a grant under (a) or (d) of this section, the child care facility
24 must

25 (1) be currently licensed under AS 47.32 [AS 47.35] and applicable
26 municipal licensing requirements;

27 (2) participate in the day care assistance program under AS 47.25.001 -
28 47.25.095; and

29 (3) provide care under a payment system as provided in (g) of this
30 section.

31 * Sec. 30. AS 47.25.095(2) is amended to read:

1 (2) "child care facility" means an establishment licensed as a child
2 care facility under AS 47.32 [AS 47.35], including day care centers, family day care
3 homes, and schools for preschool age children, that provides care for children not
4 related by blood, marriage, or legal adoption to the owner, operator, or manager of the
5 facility;

6 * Sec. 31. AS 47.25.095(4) is amended to read:

7 (4) "day care facility" means a center or home licensed in accordance
8 with the provisions of AS 47.32 as a child care facility [AS 47.35] or recognized by
9 the federal government for the care of children;

10 * Sec. 32. AS 47.25.195(f)(1) is amended to read:

11 (1) "assisted living home" means an assisted living home licensed
12 under AS 47.32 [AS 47.33];

13 * Sec. 33. AS 47.30.915(5) is amended to read:

14 (5) "evaluation facility" means a health care facility that has been
15 designated or is operated by the department to perform the evaluations described in
16 AS 47.30.660 - 47.30.915, or a medical facility licensed under AS 47.32
17 [AS 18.20.020] or operated by the federal government;

18 * Sec. 34. AS 47.31.100(4) is amended to read:

19 (4) "evaluation facility" means a health care facility that has been
20 designated by the department to perform the evaluations described in AS 47.30.670 -
21 47.30.915, including a facility licensed under AS 47.32 [AS 18.20.020] or operated by
22 the federal government;

23 * Sec. 35. AS 47 is amended by adding a new chapter to read:

24 **Chapter 32. Centralized Licensing and Related Administrative Procedures.**

25 **Sec. 47.32.010. Purpose and applicability.** (a) The purpose of this chapter
26 is to establish centralized licensing and related administrative procedures for the
27 delivery of services in this state by the entities listed in (b) of this section. These
28 procedures are intended to promote safe and appropriate services by setting standards
29 for licensure that will reduce predictable risk; improve quality of care; foster
30 individual and patient rights; and otherwise advance public health, safety, and welfare.

31 (b) This chapter and regulations adopted under this chapter apply to the

1 following entities:

- 2 (1) ambulatory surgical centers;
- 3 (2) assisted living homes;
- 4 (3) child care facilities;
- 5 (4) child placement agencies;
- 6 (5) foster homes;
- 7 (6) free-standing birth centers;
- 8 (7) home health agencies;
- 9 (8) hospices, or agencies providing hospice services or operating
- 10 hospice programs;
- 11 (9) hospitals;
- 12 (10) intermediate care facilities for the mentally retarded;
- 13 (11) maternity homes;
- 14 (12) nursing facilities;
- 15 (13) residential child care facilities;
- 16 (14) residential psychiatric treatment centers;
- 17 (15) rural health clinics;
- 18 (16) runaway shelters.

19 **Sec. 47.32.020. Requirement to obtain a license.** (a) An entity may not
20 operate a facility described in AS 47.32.010(b) without first obtaining a license under
21 this chapter unless the entity is exempt under regulations adopted under AS 47.32.030.

22 (b) If an entity encompasses more than one type of activity listed in
23 AS 47.32.010(b), the entity shall apply for and receive a separate license under this
24 chapter before operating that type of activity unless exempt under regulations adopted
25 under AS 47.32.030.

26 **Sec. 47.32.030. Powers of the department; delegation to municipality.** (a)
27 The department may

- 28 (1) administer and enforce the provisions of this chapter;
- 29 (2) coordinate and develop policies, programs, and planning related to
- 30 licensure and operation of entities listed in AS 47.32.010(b);
- 31 (3) adopt regulations necessary to carry out the purposes of this

1 chapter, including regulations that

2 (A) establish fees for licensing of each type of entity listed in
3 AS 47.32.010(b);

4 (B) impose requirements for licensure, including standards for
5 license renewal, that are in addition to the requirements of this chapter or of
6 any other applicable state or federal statute or regulation;

7 (C) impose requirements and standards on licensed entities that
8 are in addition to those imposed by this chapter or by any other applicable state
9 or federal statute or regulation, including

10 (i) requirements and standards necessary for an entity or
11 the state to receive money from the department from any source,
12 including federal money;

13 (ii) record-keeping requirements;

14 (iii) reporting requirements; and

15 (iv) requirements and standards regarding health, safety,
16 and sanitation;

17 (D) provide for waivers, variances, and exemptions from the
18 requirements of this chapter, including the requirement to obtain a license, if
19 the department finds it necessary for the efficient administration of this
20 chapter; and

21 (E) establish requirements for the operation of entities licensed
22 under this chapter;

23 (4) investigate

24 (A) entities described in AS 47.32.010(b);

25 (B) applicants for licensure, including individuals named in an
26 application; and

27 (C) other persons that the department has reason to believe are
28 operating an entity required to be licensed under this chapter, or are residing or
29 working in an entity for which licensure has been sought under this chapter;
30 this subparagraph does not apply to persons receiving services from an entity
31 for which licensure has been sought under this chapter;

1 (5) inspect and monitor licensed entities for compliance with this
2 chapter, regulations adopted under this chapter, and any other applicable statutes or
3 regulations;

4 (6) enter into contracts and agreements necessary to carry out the
5 functions, powers, and duties of the department under this chapter;

6 (7) enter into agreements with private entities, municipalities, and
7 individuals to investigate and make recommendations to the department regarding the
8 licensure and monitoring of entities under this chapter;

9 (8) require an individual who is or will be operating an entity to
10 complete training related to the operation of the entity;

11 (9) waive the application requirements for an entity seeking licensure
12 if the entity submits documentation verifying that it

13 (A) has a license issued by an organization or other agency that
14 has licensing authority under state or federal law if the standards for that
15 licensure are approved by the department under this chapter or regulations
16 adopted under this chapter;

17 (B) has accreditation from a nationally recognized organization
18 if the standards for that accreditation are equal to or more stringent than the
19 standards for licensure under this chapter or regulations adopted under this
20 chapter; or

21 (C) is an entity that federal law does not require to be licensed.

22 (b) The department shall delegate the department's authority to regulate child
23 care facilities to a municipality that has adopted an ordinance providing for child care
24 licensing under home rule powers under AS 29.10.010 or as authorized under
25 AS 29.35.200 - 29.35.210. The department shall make the delegation described in this
26 subsection within 90 days after receiving a written request from the municipality to
27 delegate the authority. A municipality receiving a delegation under this subsection
28 may adopt additional requirements for child care facilities operating within the
29 boundaries of the municipality if the requirements meet or exceed the requirements
30 under state law.

31 (c) Nothing in this chapter obligates the department to provide financial

1 support to an entity licensed under this chapter.

2 **Sec. 47.32.040. Application for license.** A person shall apply to the
3 department for a license under this chapter. The application must be made to the
4 department on a form provided by the department or in a format approved by the
5 department, and must be accompanied by

6 (1) any fee established by regulation; and

7 (2) documents and information required by regulation.

8 **Sec. 47.32.050. Provisional license; biennial license.** (a) The department
9 may issue a provisional license to an entity for which application is made under
10 AS 47.32.040 if, after inspection and investigation, the department determines that the
11 application and the entity meet the requirements of this chapter, regulations adopted
12 under this chapter, and any other applicable statutes or regulations. A provisional
13 license is valid for a period not to exceed one year, except that the department may
14 extend a provisional license for one additional period not to exceed one year.

15 (b) Before expiration of a provisional license issued under (a) of this section,
16 the department shall inspect and investigate the entity to determine whether the entity
17 is operating in compliance with this chapter, regulations adopted under this chapter,
18 and any other applicable statutes or regulations. After inspection and investigation
19 under this subsection and before expiration of a provisional license, the department
20 shall issue a biennial license for the entity if the department finds that

21 (1) the entity meets the requirements for biennial licensure established
22 in this chapter, regulations adopted under this chapter, and other applicable statutes
23 and regulations;

24 (2) a ground for nonrenewal of a license does not exist; and

25 (3) any applicable fee has been paid.

26 (c) The department may place one or more conditions on a provisional or
27 biennial license issued under this section in order to further the purposes of this
28 chapter.

29 **Sec. 47.32.060. License renewal.** (a) At least 90 days before expiration of a
30 biennial license, a licensed entity that intends to remain licensed shall submit an
31 application for renewal of the license on a form provided by the department or in a

1 format approved by the department, accompanied by

2 (1) all documents and information identified in regulation as being
3 required for renewal of the license; and

4 (2) any fee established by regulation.

5 (b) Before expiration of a biennial license, the department or its representative
6 may inspect an entity that is the subject of a renewal application to determine whether
7 the entity is operating in compliance with this chapter, regulations adopted under this
8 chapter, and other applicable statutes or regulations. After any inspection and
9 investigation under this subsection and before expiration of the biennial license, the
10 department shall renew a biennial license if the department finds that

11 (1) the licensed entity meets the requirements for renewal;

12 (2) a ground for nonrenewal of a license does not exist; and

13 (3) any applicable fee has been paid.

14 (c) If an application for renewal of a license is submitted but the department is
15 unable to complete its review of the application before the expiration of the biennial
16 license, the license is automatically extended for six months or until the department
17 completes its review and either approves or denies the application, whichever occurs
18 earlier.

19 (d) The department may place one or more conditions on a renewed license
20 issued under this section to further the purposes of this section.

21 (e) The department shall adopt regulations establishing the grounds for
22 nonrenewal of a license for purposes of AS 47.32.050 and this section.

23 **Sec. 47.32.070. Denial of or conditions on license.** (a) If the department
24 denies an application for or places conditions on a provisional or biennial license or
25 license renewal, the department shall provide the applicant or entity with a notice of
26 the action by certified mail. The notice must contain a written statement of the reason
27 for the action and information about requesting a hearing under (b) of this section.

28 (b) An applicant or entity that receives a notice of action under (a) of this
29 section may appeal the department's decision by requesting a hearing within 15 days
30 after receipt of the notice. The appeal must be on a form provided by the department
31 or in a format approved by the department.

1 **Sec. 47.32.080. Posting of license; license not transferable.** (a) A license
2 issued under this chapter shall be posted in a conspicuous place on the licensed
3 premises. Any notice of a variance issued by the department shall be posted near the
4 license.

5 (b) A license issued under this chapter is not transferable unless authorized by
6 the department.

7 **Sec. 47.32.090. Complaints and investigation.** (a) A person who believes
8 that an entity has violated an applicable statute or regulation or a condition of a license
9 issued under this chapter may file a verbal or written complaint with the department.

10 (b) The department may investigate a complaint filed under this section. The
11 department may decline to investigate a complaint if the department reasonably
12 concludes and documents that the complaint is without merit based on information
13 available to the department at the time of the complaint. The department may
14 consolidate complaints if the department concludes that a single investigation would
15 further the efficient administration of this chapter.

16 (c) A licensed entity may not take retaliatory action against a person who files
17 a complaint. Except as provided in AS 47.32.160 a complainant against whom a
18 retaliatory action has been taken may recover treble damages in a civil action upon a
19 showing that the action was taken in retaliation for the filing of a complaint.

20 **Sec. 47.32.100. Cooperation with investigation.** An entity shall cooperate
21 with an investigation initiated by the department. An investigated entity shall

22 (1) permit representatives of the department to inspect the entity;
23 review records, including files of individuals who received services from the entity;
24 interview staff; and interview individuals receiving services from the entity; and

25 (2) upon request, provide the department with information and
26 documentation regarding compliance with applicable statutes and regulations.

27 **Sec. 47.32.110. Right of access and inspection.** (a) A designated agent or
28 employee of the department shall have right of access to an entity

29 (1) to determine whether an application for licensure or renewal is
30 appropriate;

31 (2) to conduct a complaint investigation;

- 1 (3) to conduct a standard inspection;
2 (4) to inspect documents, including personnel records, accounts, the
3 building, or the premises;
4 (5) to interview staff or residents; or
5 (6) if the department has reasonable cause to believe that the entity is
6 operating in violation of this chapter or the regulations adopted under this chapter.

7 (b) If an entity denies access, the department may petition the court for an
8 order permitting access, or the department may seek to revoke the entity's license
9 under AS 47.32.140.

10 (c) Upon petition of the department and after a hearing held upon reasonable
11 notice to the entity, the court shall issue an order to an officer or employee of the
12 department authorizing the officer or employee to enter for any of the purposes
13 described in (a) of this section.

14 **Sec. 47.32.120. Report.** (a) Within 10 working days after completing an
15 investigation or inspection under AS 47.32.090 - 47.32.110, the department shall
16 prepare a report of the results of the investigation or inspection and mail a copy of the
17 report to the entity. The report shall include a description of

18 (1) any violation, including a citation to each statute or regulation that
19 has been violated; and

20 (2) any enforcement action the department intends to take under
21 AS 47.32.130 or 47.32.140.

22 (b) An entity that receives a copy of a report under this section may submit a
23 written response to the report to the department. The department may require an entity
24 to submit a response to a report received under this section.

25 (c) Within 14 days after the entity receives a copy of the report under this
26 section, upon request of the complainant, the department shall provide a copy of the
27 report to the complainant.

28 **Sec. 47.32.130. Enforcement action: immediate revocation or suspension.**

29 (a) If the department's report of investigation or inspection under AS 47.32.120
30 concludes that the department has reasonable cause to believe that a violation of an
31 applicable statute or regulation has occurred that presents an immediate danger to the

1 health, safety, or welfare of an individual receiving services from the entity, the
2 department, without an administrative hearing and without providing an opportunity to
3 cure or correct the violation, may immediately revoke or suspend the entity's license
4 or, if the entity is not licensed under this chapter, may revoke the entity's ability to
5 become licensed under this chapter or to provide services as an entity exempted under
6 this chapter. A suspension or revocation under this subsection takes effect
7 immediately upon initial notice to the entity from the department, is in addition to any
8 enforcement action under AS 47.32.140, and continues until a final determination
9 under (c) of this section or AS 47.32.150.

10 (b) Notice under this section shall be provided as follows:

11 (1) the department shall provide initial notice to the entity at the time
12 the department determines that an immediate suspension or revocation is required;
13 initial notice may be oral, except that, if an entity representative is not present at the
14 entity, the department shall post written notice on the front door of the entity; the
15 initial notice must provide information regarding the entity's appeal rights;

16 (2) the department shall provide formal written notice to the entity
17 within 14 working days after the immediate revocation or suspension decision; formal
18 written notice must include

19 (A) a copy of the department's report under AS 47.32.120, a
20 statement of the entity's right to submit a written response to the report, and
21 any department requirement that the entity submit a written response to the
22 report;

23 (B) a description of any enforcement action the department
24 intends to take under AS 47.32.140(d) or (f); and

25 (C) information regarding the entity's appeal rights.

26 (c) An entity to which a notice has been provided under this section may
27 appeal the department's decision to impose the enforcement action, including an
28 enforcement action the department intends to take under AS 47.32.140(d) or (f), by
29 filing a written request for a hearing, on a form provided by the department, within 15
30 days after receipt of the notice. If a hearing is not timely requested under this
31 subsection, the department's notice constitutes a final administrative order for which

1 the department may seek the court's assistance in enforcing.

2 **Sec. 47.32.140. Enforcement actions.** (a) If the department's report of
3 investigation or inspection under AS 47.32.120 concludes that the department has
4 reasonable cause to believe that a violation of an applicable statute or regulation has
5 occurred, the department shall provide notice to the entity of the violation and an
6 opportunity to cure the violation within a reasonable time specified by the department.
7 The notice must include a copy of the department's report under AS 47.32.120, a
8 statement that the entity may submit a written response to the report, any department
9 requirement that the entity submit a written response to the report, a description of any
10 enforcement action the department intends to take under (d) or (f) of this section, and
11 information regarding the entity's appeal rights.

12 (b) An entity receiving a notice under (a) of this section, or a notice under
13 AS 47.32.130(b)(2) that contains the information specified in AS 47.32.130(b)(2)(B),
14 shall submit a plan of correction to the department for approval. Once it has cured its
15 violations, the entity shall submit to the department an allegation of compliance.
16 Upon receipt of the allegation of compliance, the department may conduct a follow-up
17 investigation or inspection to determine compliance. The department may take one or
18 more enforcement actions under (d) and (f) of this section regardless of whether the
19 entity achieves compliance under this subsection.

20 (c) If the department believes that an entity has not voluntarily corrected the
21 violation or entered into a plan of correction with the approval of the department, the
22 department may require that the entity participate in a plan of correction under
23 regulations of the department. Once the entity has cured its violations, it shall submit
24 to the department an allegation of compliance. Upon receipt of the allegation of
25 compliance, the department may conduct a follow-up investigation or inspection to
26 determine compliance. The department may take one or more enforcement actions
27 under (d) and (f) of this section regardless of whether the entity achieves compliance
28 under this subsection.

29 (d) The department may take one or more of the following enforcement
30 actions under this section:

31 (1) delivery of a warning notice to the licensed entity and to any

1 additional person who was the subject of the investigation or inspection;

2 (2) modification of the term or scope of the entity's existing license,
3 including changing a biennial license to a provisional license or adding a condition to
4 the license;

5 (3) suspension of the entity's operations for a period of time set by the
6 department;

7 (4) suspension of or a ban on the entity's provision of services to
8 individuals not already receiving services from the entity for a period of time set by
9 the department;

10 (5) nonrenewal of the entity's license;

11 (6) revocation of the entity's license or, if the entity is not licensed
12 under this chapter, revocation of the entity's ability to become licensed under this
13 chapter;

14 (7) issuance of an order requiring closure, immediate or otherwise, of
15 the entity regardless of whether the entity is licensed or unlicensed;

16 (8) denial of payments under AS 47.07 for the entity's provision of
17 services to an individual not already receiving services from the entity;

18 (9) assumption of either temporary or permanent management of the
19 entity or pursuit of a court-ordered receiver for the entity;

20 (10) reduction of the number of individuals receiving services from the
21 entity under the license;

22 (11) imposition of a penalty authorized under law;

23 (12) inclusion in the registry established under AS 47.05.330;

24 (13) requirement that the entity prepare and submit a plan of
25 correction.

26 (e) The department may not take action under (d)(9) of this section unless the
27 commissioner has reasonable cause to believe that continued management by the
28 entity while the entity is attempting to cure a violation would be injurious to the
29 health, safety, or welfare of an individual who is receiving a service from the entity.

30 (f) In addition to any other enforcement actions the department may take
31 under this section, the department may assess a civil fine against an entity for a

1 violation of an applicable statute or regulation, taking into account the type and size of
2 the entity and the type and severity of the violation. A fine assessed under this
3 subsection may not exceed \$2,500 a day for each day of violation for a continuing
4 violation or \$25,000 for a single violation.

5 (g) An entity to which a notice has been provided under this section regarding
6 an enforcement action under (d) or (f) of this section may appeal the department's
7 decision to impose the enforcement action by filing a written request for a hearing, on
8 a form provided by the department, within 15 days after receipt of the notice of the
9 enforcement action.

10 (h) An enforcement action under (d) or (f) of this section may not be imposed
11 until

12 (1) the time period for requesting a hearing under AS 47.32.130(c) or
13 under (g) of this section, as applicable, has passed without a hearing being requested;
14 or

15 (2) a final agency decision has been issued following a hearing
16 requested under AS 47.32.130(c) or under (g) of this section, as applicable.

17 (i) If a hearing is not timely requested under AS 47.32.130(c) or under (g) of
18 this section, as applicable, the department's notice regarding an enforcement action
19 under (d) or (f) of this section constitutes a final administrative order. The department
20 may seek the court's assistance in enforcing the final administrative order.

21 (j) An entity against which an enforcement action under (d) or (f) of this
22 section has been taken may not apply for a license or license renewal until after the
23 time period set by the department in its final administrative order under
24 AS 47.32.130(c), this section, or AS 47.32.150, as applicable. If a time period has not
25 been set, a final administrative order against the entity has the effect of a permanent
26 revocation and the entity may not apply for a license or license renewal. If the
27 ownership, control, or management of an entity changes, the department may allow
28 the entity to seek licensure if the entity submits documents showing the change.

29 (k) Assessment of a civil fine under this section does not preclude imposition
30 of a criminal penalty under AS 47.32.170.

31 **Sec. 47.32.150. Hearings.** (a) Upon receipt of a timely request for a hearing

1 by an entity regarding an enforcement action under AS 47.32.130(a) or
2 47.32.140(d)(3), (5), (6), (7), or (9), the department shall request the chief
3 administrative law judge appointed under AS 44.64.020 to appoint an administrative
4 law judge employed or retained by the office of administrative hearings to preside
5 over a hearing conducted under this section. AS 44.64.060 applies to the hearing.

6 (b) Upon receipt of a timely request for a hearing by an entity regarding an
7 enforcement action under AS 47.32.070 or 47.32.140(d)(1), (2), (4), (8), (10), (11),
8 (12), or (13), the department shall conduct a hearing in front of an officer appointed by
9 the commissioner. A hearing under this subsection may be conducted on the record,
10 in an informal manner, and shall not be conducted under AS 44.62 or AS 44.64. The
11 appointed hearing officer may be a state employee.

12 (c) The decision following a hearing conducted under (a) or (b) of this section
13 constitutes a final agency administrative order.

14 (d) A hearing conducted under this section shall take place within 120 days
15 after the department's receipt of the request for hearing. A hearing may be held on an
16 expedited basis upon a showing of good cause. An expedited hearing shall be held
17 within 60 days after the department's receipt of the request for a hearing.

18 **Sec. 47.32.160. Immunity.** (a) The department, its employees, and its agents
19 are not liable for civil damages as a result of an act or omission in the licensure
20 process, the monitoring of a licensed entity, or any activities under this chapter.

21 (b) A volunteer who works for a hospice program licensed under this chapter
22 is not liable for damages for personal injury, wrongful death, or property damage for
23 an act or omission committed in the course of hospice-related duties unless the act or
24 omission constitutes gross negligence, recklessness, or intentional misconduct.

25 (c) An entity that obtains information about an employee under a criminal
26 history check under AS 47.50.310 may use that information only as provided in
27 regulations adopted by the department under AS 47.05.320. However, if that entity
28 reasonably relies on that information in denying employment for an individual
29 selected for hire as an employee, including during a period of provisional
30 employment, the entity is not liable in an action brought by the individual based on the
31 employment determination resulting from the information.