



LAWS OF ALASKA

2010

Source

CSSB 222(JUD)(ct rule fld H)

Chapter No.

AN ACT

Relating to the crimes of harassment, distribution and possession of child pornography, failure to register as a sex offender or child kidnapper, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for human trafficking or for certain sex offenses; relating to aggravating factors in sentencing; relating to reporting of crimes; relating to administrative subpoenas for certain records involving exploitation of children; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to the crimes of harassment, distribution and possession of child pornography, failure
2 to register as a sex offender or child kidnapper, and distribution of indecent material to a
3 minor; relating to suspending imposition of sentence and conditions of probation or parole for
4 human trafficking or for certain sex offenses; relating to aggravating factors in sentencing;
5 relating to reporting of crimes; relating to administrative subpoenas for certain records
6 involving exploitation of children; and providing for an effective date.

7

8 * **Section 1.** AS 11.56.759(a) is amended to read:

9 (a) A person commits the crime of violation by sex offender of condition of
10 probation [OR PAROLE] if the person

11 (1) is on probation [OR PAROLE] for conviction of a sex offense;

12 (2) has served the entire term of incarceration imposed for conviction

1 of the sex offense; and

2 (3) [EITHER

3 (A)] violates a condition of probation imposed under
4 AS 12.55.100(a)(5), (a)(6), or (e), 12.55.101(a)(1), or any other condition
5 imposed by the court that the court finds to be specifically related to the
6 defendant's offense [; OR

7 (B) VIOLATES A CONDITION OF PAROLE IMPOSED
8 UNDER AS 33.16.150(a)(3), (a)(4), (a)(6), (a)(13), (b)(4), (b)(11), OR (f)].

9 * **Sec. 2.** AS 11.56.759(c) is amended to read:

10 (c) Violation by sex offender of condition of probation [OR PAROLE] is a
11 class A misdemeanor.

12 * **Sec. 3.** AS 11.56.840 is repealed and reenacted to read:

13 **Sec. 11.56.840. Failure to register as a sex offender or child kidnapper in**
14 **the second degree.** (a) A person commits the crime of failure to register as a sex
15 offender or child kidnapper in the second degree if the person

16 (1) is required to register under AS 12.63.010;

17 (2) knows that the person is required to register under AS 12.63.010;

18 and

19 (3) fails to

20 (A) register;

21 (B) file written notice of

22 (i) change of residence;

23 (ii) change of mailing address;

24 (iii) establishment of an electronic or messaging address
25 or any change to an electronic or messaging address; or

26 (iv) establishment of an Internet communication
27 identifier or any change to an Internet communication identifier;

28 (C) file the annual or quarterly written verification; or

29 (D) supply accurate and complete information required to be
30 submitted under this paragraph.

31 (b) In a prosecution for failure to register as a sex offender or child kidnapper

1 in the second degree under (a) of this section, it is an affirmative defense that

2 (1) unforeseeable circumstances, outside the control of the person,
3 prevented the person from registering under (a)(3)(A) of this section or filing or
4 supplying the written notices, verification, and other information required under
5 (a)(3)(B) - (D) of this section; and

6 (2) the person contacted the Department of Public Safety orally and in
7 writing immediately upon being able to perform the requirements described in this
8 section.

9 (c) Failure to register as a sex offender or child kidnapper in the second degree
10 is a class A misdemeanor.

11 * **Sec. 4.** AS 11.61.118(a) is amended to read:

12 (a) A person commits the crime of harassment in the first degree if

13 (1) the person violates AS 11.61.120(a)(5) and the offensive physical
14 contact is contact with human or animal blood, mucus, saliva, semen, urine, vomitus,
15 or feces; or

16 (2) under circumstances not proscribed under AS 11.41.434 -
17 11.41.440, the person violates AS 11.61.120(a)(5) and the offensive physical
18 contact is contact by the person touching through clothing another person's
19 genitals, buttocks, or female breast.

20 * **Sec. 5.** AS 11.61.125(a) is amended to read:

21 (a) A person commits the crime of distribution of child pornography if the
22 person distributes in this state or advertises, promotes, solicits, or offers to
23 distribute in this state [BRINGS OR CAUSES TO BE BROUGHT INTO THE
24 STATE FOR DISTRIBUTION, OR IN THE STATE DISTRIBUTES, OR IN THE
25 STATE POSSESSES, PREPARES, PUBLISHES, OR PRINTS WITH INTENT TO
26 DISTRIBUTE,] any material that is proscribed under AS 11.61.127 [VISUALLY
27 OR AURALLY DEPICTS CONDUCT DESCRIBED IN AS 11.41.455(a),
28 KNOWING THAT THE PRODUCTION OF THE MATERIAL INVOLVED THE
29 USE OF A CHILD UNDER 18 YEARS OF AGE WHO ENGAGED IN THE
30 CONDUCT].

31 * **Sec. 6.** AS 11.61.127(a) is amended to read:

1 (a) A person commits the crime of possession of child pornography if the
2 person knowingly possesses **or knowingly accesses on a computer with intent to**
3 **view** any material that visually [OR AURALLY] depicts conduct described in
4 AS 11.41.455(a) knowing that the production of the material involved the use of a
5 child under 18 years of age who engaged in the conduct **or a depiction of a part of an**
6 **actual child under 18 years of age who, by manipulation, creation, or**
7 **modification, appears to be engaged in the conduct.**

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

9 (c) Each film, audio, video, electronic, or electromagnetic recording,
10 photograph, negative, slide, book, newspaper, magazine, or other material that visually
11 or aurally depicts conduct described in AS 11.41.455(a) that is possessed **or accessed**
12 **in violation of (a) of this section** [BY A PERSON KNOWING THAT THE
13 PRODUCTION OF THE MATERIAL INVOLVED THE USE OF A CHILD
14 UNDER 18 YEARS OF AGE THAT ENGAGED IN THE CONDUCT] is a separate
15 violation of this section.

16 * **Sec. 8.** AS 11.61.127 is amended by adding new subsections to read:

17 (e) In a prosecution under (a) of this section, it is an affirmative defense that
18 the person

19 (1) possessed or accessed fewer than three depictions described in (a)
20 of this section; and

21 (2) without allowing any person other than a law enforcement agency
22 to view the depictions, either took reasonable steps to destroy the depictions, or
23 reported the matter to a law enforcement agency and allowed the agency access to the
24 depictions.

25 (f) In this section, "computer" has the meaning given in AS 11.46.990.

26 (g) In a prosecution under (a) of this section, the prosecution is not required to
27 prove the identity of a minor depicted or that the defendant knew the identity of a
28 minor depicted.

29 * **Sec. 9.** AS 11.61.128(a) is amended to read:

30 (a) A person commits the crime of [ELECTRONIC] distribution of indecent
31 material to minors if

1 (1) the person, being 18 years of age or older, knowingly distributes to
2 another person [BY COMPUTER] any material that depicts the following actual or
3 simulated conduct:

4 (A) sexual penetration;

5 (B) the lewd touching of a person's genitals, anus, or female
6 breast;

7 (C) masturbation;

8 (D) bestiality;

9 (E) the lewd exhibition of a person's genitals, anus, or female
10 breast; or

11 (F) sexual masochism or sadism; [AND]

12 (2) **the material is harmful to minors; and**

13 **(3)** either

14 (A) the other person is a child under 16 years of age; or

15 (B) the person believes that the other person is a child under 16
16 years of age.

17 * **Sec. 10.** AS 11.61.128(c) is amended to read:

18 (c) Except as provided in (d) of this section, [ELECTRONIC] distribution of
19 indecent material to minors is a class C felony.

20 * **Sec. 11.** AS 11.61.128(d) is amended to read:

21 (d) **Distribution** [ELECTRONIC DISTRIBUTION] of indecent material to
22 minors is a class B felony if the defendant was, at the time of the offense, required to
23 register as a sex offender or child kidnapper under AS 12.63 or a similar law of
24 another jurisdiction.

25 * **Sec. 12.** AS 11.61.128 is amended by adding a new subsection to read:

26 (e) In this section, "harmful to minors" means

27 (1) the average individual, applying contemporary community
28 standards, would find that the material, taken as a whole, appeals to the prurient
29 interest in sex for persons under 16 years of age;

30 (2) a reasonable person would find that the material, taken as a whole,
31 lacks serious literary, artistic, educational, political, or scientific value for persons

1 under 16 years of age; and

2 (3) the material depicts actual or simulated conduct in a way that is
3 patently offensive to the prevailing standards in the adult community as a whole with
4 respect to what is suitable for persons under 16 years of age.

5 * **Sec. 13.** AS 12.55.085(f) is amended to read:

6 (f) The court may not suspend the imposition of sentence of a person who

7 (1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260
8 - 11.41.320, **11.41.360 - 11.41.370**, 11.41.410 - 11.41.530, [OR] AS 11.46.400, **or**
9 **AS 11.61.125 - 11.61.128**;

10 (2) uses a firearm in the commission of the offense for which the
11 person is convicted; or

12 (3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony
13 and the person has one or more prior convictions for a misdemeanor violation of
14 AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction
15 having [SUBSTANTIALLY] similar elements to an offense defined as a misdemeanor
16 in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person
17 shall be considered to have a prior conviction even if that conviction has been set aside
18 under (e) of this section or under the equivalent provision of the laws of another
19 jurisdiction.

20 * **Sec. 14.** AS 12.55.100(e) is repealed and reenacted to read:

21 (e) In addition to other conditions imposed on the defendant, while on
22 probation and as a condition of probation

23 (1) for a sex offense, as described in AS 12.63.100, the defendant

24 (A) shall be required to submit to regular periodic polygraph
25 examinations;

26 (B) may be required to provide each electronic mail address,
27 instant messaging address, and other Internet communication identifier that the
28 defendant uses to the defendant's probation officer; the probation officer shall
29 forward those addresses and identifiers to the Alaska state troopers and to the
30 local law enforcement agency;

31 (2) if the defendant was convicted of a violation of AS 11.41.434 -

1 11.41.455, AS 11.61.125 - 11.61.128, or a similar offense in another jurisdiction, the
2 defendant may be required to refrain from

3 (A) using or creating an Internet site;

4 (B) communicating with children under 16 years of age; or

5 (C) possessing or using a computer.

6 * **Sec. 15.** AS 12.55.155(c)(5) is amended to read:

7 (5) the defendant knew or reasonably should have known that the
8 victim of the offense was particularly vulnerable or incapable of resistance due to
9 advanced age, disability, ill health, homelessness, **consumption of alcohol or drugs,**
10 or extreme youth or was for any other reason substantially incapable of exercising
11 normal physical or mental powers of resistance;

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

13 (18) the offense was a felony

14 (A) specified in AS 11.41 and was committed against a spouse,
15 a former spouse, or a member of the social unit made up of those living
16 together in the same dwelling as the defendant;

17 (B) specified in AS 11.41.410 - 11.41.458 and the defendant
18 has engaged in the same or other conduct prohibited by a provision of
19 AS 11.41.410 - 11.41.460 involving the same or another victim; [OR]

20 (C) specified in AS 11.41 that is a crime involving domestic
21 violence and was committed in the physical presence or hearing of a child
22 under 16 years of age who was, at the time of the offense, living within the
23 residence of the victim, the residence of the perpetrator, or the residence where
24 the crime involving domestic violence occurred;

25 **(D) specified in AS 11.41 and was committed against a**
26 **person with whom the defendant has a dating relationship or with whom**
27 **the defendant has engaged in a sexual relationship; or**

28 **(E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128**
29 **and the defendant was 10 or more years older than the victim;**

30 * **Sec. 17.** AS 12.62.130 is amended to read:

31 **Sec. 12.62.130. Reporting of uniform crime information.** A criminal justice

1 agency shall submit to the department, at the time, in the manner, and in the form
2 specified by the department, data regarding crimes committed within that agency's
3 jurisdiction. **At a minimum, the department shall require a criminal justice**
4 **agency to report each felony sex offense committed in the agency's jurisdiction.**
5 **The department may withhold grant funding to a criminal justice agency that**
6 **fails to report data as required by this section.** The department shall compile, and
7 provide to the governor and the attorney general, an annual report concerning the
8 number and nature of criminal offenses committed, the disposition of the offenses, and
9 any other data the commissioner finds appropriate relating to the method, frequency,
10 cause, and prevention of crime. **In this section, "sex offense" has the meaning given**
11 **in AS 12.63.100.**

12 * **Sec. 18.** AS 12.63.100(6) is amended to read:

13 (6) "sex offense" means

14 (A) a crime under AS 11.41.100(a)(3), or a similar law of
15 another jurisdiction, in which the person committed or attempted to commit a
16 sexual offense, or a similar offense under the laws of the other jurisdiction; in
17 this subparagraph, "sexual offense" has the meaning given in
18 AS 11.41.100(a)(3);

19 (B) a crime under AS 11.41.110(a)(3), or a similar law of
20 another jurisdiction, in which the person committed or attempted to commit
21 one of the following crimes, or a similar law of another jurisdiction:

22 (i) sexual assault in the first degree;

23 (ii) sexual assault in the second degree;

24 (iii) sexual abuse of a minor in the first degree; or

25 (iv) sexual abuse of a minor in the second degree; **or**

26 (C) a crime, or an attempt, solicitation, or conspiracy to commit
27 a crime, under the following statutes or a similar law of another jurisdiction:

28 (i) AS 11.41.410 - 11.41.438;

29 (ii) AS 11.41.440(a)(2);

30 (iii) AS 11.41.450 - 11.41.458;

31 (iv) AS 11.41.460 if the indecent exposure is before a

1 person under 16 years of age and the offender has a previous conviction
2 for that offense;

3 (v) AS 11.61.125 - 11.61.128;

4 (vi) AS 11.66.110 or 11.66.130(a)(2) if the person who
5 was induced or caused to engage in prostitution was 16 or 17 years of
6 age at the time of the offense; [OR]

7 (vii) former AS 11.15.120, former 11.15.134, or assault
8 with the intent to commit rape under former AS 11.15.160, former
9 AS 11.40.110, or former 11.40.200; or

10 (viii) AS 11.61.118(a)(2) if the offender has a
11 previous conviction for that offense;

12 * **Sec. 19.** AS 44.23 is amended by adding a new section to read:

13 **Sec. 44.23.080. Subpoena power of attorney general in cases involving use**
14 **of an Internet service account in the exploitation of children.** (a) In an
15 investigation of an offense under AS 11.41.452, 11.41.455, or AS 11.61.125 -
16 11.61.128 and on reasonable cause to believe that an Internet service account has been
17 used in the exploitation or attempted exploitation of children, the attorney general may
18 issue in writing and cause to be served a subpoena requiring the production and
19 testimony described in (b) of this section.

20 (b) A person receiving a subpoena under (a) of this section shall disclose, for
21 the account that is the subject of the subpoena,

22 (1) the name of the person holding the account;

23 (2) the address and physical location associated with the account; and

24 (3) length of service, including service start date, and types of service
25 used by the account.

26 (c) At any time before the return date specified on the subpoena, the subpoenaed
27 person may petition a court of competent jurisdiction for the judicial district in which the
28 person resides or does business for an order modifying or setting aside the subpoena or for
29 an order sealing the court record.

30 (d) A subpoena under this section must describe the objects required to be
31 produced and must prescribe a return date with a reasonable period of time within which

1 the objects must be assembled and produced.

2 (e) If no case or proceeding arises from the production of records or other
3 documents under this section within a reasonable time after those records or documents
4 are produced, the attorney general shall either destroy the records and documents or return
5 them to the person who produced them.

6 (f) A subpoena issued under this section may be served as provided for service of
7 subpoenas under Rule 45, Alaska Rules of Civil Procedure, or for service of process under
8 Rule 4, Alaska Rules of Civil Procedure.

9 (g) Except as provided in this section, any information, records, or data reported
10 or obtained under a subpoena under this section shall remain confidential and may not be
11 disclosed unless the disclosure occurs in connection with a criminal case related to the
12 subpoenaed materials.

13 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 LEGISLATIVE STATEMENT CONCERNING CULPABLE MENTAL STATE. In
16 AS 11.56.840(a), as repealed and reenacted by sec. 3 of this Act, the only culpable mental
17 state required to be proven by the prosecution is the "knowing" requirement in paragraph (2)
18 of that subsection. No other culpable mental state needs to be proven for the other elements of
19 that offense.

20 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 APPLICABILITY. (a) Sections 1 - 16 and 18 of this Act apply to offenses committed
23 on or after the effective date of this Act.

24 (b) Section 19 of this Act applies to offenses committed before, on, or after the
25 effective date of this Act.

26 * **Sec. 22.** This Act takes effect July 1, 2010.