

**CS FOR SENATE BILL NO. 222(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND 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 crimes of harassment, distribution and possession of child**  
2 **pornography, and distribution of indecent material to a minor; relating to suspending**  
3 **imposition of sentence and conditions of probation or parole for human trafficking or**  
4 **for certain sex offenses; relating to aggravating factors in sentencing; relating to**  
5 **reporting of crimes; relating to administrative subpoenas for certain records involving**  
6 **exploitation of children; amending Rule 16, Alaska Rules of Criminal Procedure; and**  
7 **providing for an effective date."**

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

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

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

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

13 (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 11.61.118(a) is amended to read:

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

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

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

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

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

1 \* **Sec. 5.** AS 11.61.127(a) is amended to read:

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

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

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

17 \* **Sec. 7.** AS 11.61.127 is amended by adding new subsections to read:

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

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

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

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

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

30 \* **Sec. 8.** AS 11.61.128(a) is amended to read:

31 (a) A person commits the crime of [ELECTRONIC] distribution of indecent

1 material to minors if

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

5 (A) sexual penetration;

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

8 (C) masturbation;

9 (D) bestiality;

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

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

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

14 (3) either

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

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

18 \* **Sec. 9.** AS 11.61.128(c) is amended to read:

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

21 \* **Sec. 10.** AS 11.61.128(d) is amended to read:

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

26 \* **Sec. 11.** AS 11.61.128 is amended by adding a new subsection to read:

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

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

31 (2) a reasonable person would find that the material, taken as a whole,

1 lacks serious literary, artistic, educational, political, or scientific value for persons  
2 under 16 years of age; and

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

6 \* **Sec. 12.** AS 12.55.085(f) is amended to read:

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

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

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

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

21 \* **Sec. 13.** AS 12.55.100(e) is repealed and reenacted to read:

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

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

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

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

1 (2) if the defendant was convicted of a violation of AS 11.41.434 -  
2 11.41.455, AS 11.61.125 - 11.61.128, or a similar offense in another jurisdiction, the  
3 defendant may be required to refrain from

4 (A) using or creating an Internet site;

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

6 (C) possessing or using a computer.

7 \* **Sec. 14.** AS 12.55.155(c)(5) is amended to read:

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

13 \* **Sec. 15.** AS 12.55.155(c)(18) is amended to read:

14 (18) the offense was a felony

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

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

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

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

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

31 \* **Sec. 16.** AS 12.63.100(6) is amended to read:

1 (6) "sex offense" means

2 (A) a crime under AS 11.41.100(a)(3), or a similar law of  
3 another jurisdiction, in which the person committed or attempted to commit a  
4 sexual offense, or a similar offense under the laws of the other jurisdiction; in  
5 this subparagraph, "sexual offense" has the meaning given in  
6 AS 11.41.100(a)(3);

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

10 (i) sexual assault in the first degree;

11 (ii) sexual assault in the second degree;

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

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

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

16 (i) AS 11.41.410 - 11.41.438;

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

18 (iii) AS 11.41.450 - 11.41.458;

19 (iv) AS 11.41.460 if the indecent exposure is before a  
20 person under 16 years of age and the offender has a previous conviction  
21 for that offense;

22 (v) AS 11.61.125 - 11.61.128;

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

26 (vii) former AS 11.15.120, former 11.15.134, or assault  
27 with the intent to commit rape under former AS 11.15.160, former  
28 AS 11.40.110, or former 11.40.200; or

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

31 \* **Sec. 17.** AS 44.23 is amended by adding a new section to read:

1           **Sec. 44.23.080. Subpoena power of attorney general in cases involving use**  
2 **of an Internet service account in the exploitation of children.** (a) In an  
3 investigation of an offense under AS 11.41.452, 11.41.455, or AS 11.61.125 -  
4 11.61.128 and on reasonable cause to believe that an Internet service account has been  
5 used in the exploitation or attempted exploitation of children, the attorney general may  
6 issue in writing and cause to be served a subpoena requiring the production and  
7 testimony described in (b) of this section.

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

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

11                   (2) the address associated with the account;

12                   (3) local and long distance telephone connection records, including  
13 records of session times and durations for the account;

14                   (4) length of service, including service start date, and types of service  
15 used by the account;

16                   (5) the telephone or instrument number or other subscriber number or  
17 identifier, including any temporarily assigned network address for the account; and

18                   (6) the means and source of payment for the service, including a credit  
19 card or bank account number associated with the account.

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

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

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

31           (f) A subpoena issued under this section may be served as provided for service of  
32 subpoenas under Rule 45, Alaska Rules of Civil Procedure, or for service of process under

1 Rule 4, Alaska Rules of Civil Procedure.

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

6 \* **Sec. 18.** AS 44.41.020(c) is amended to read:

7 (c) The department shall establish, and may require state and local law  
8 enforcement agencies to use, standardized methods of collecting and recording law  
9 enforcement and crime statistics. At a minimum, the department shall require  
10 reporting from law enforcement agencies of each type of felony sexual offense  
11 proscribed in the state.

12 \* **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

14 DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of  
15 Criminal Procedure, is amended by adding a new paragraph to read:

16 (9) Restriction on Availability of Certain Material or Property.  
17 Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the  
18 defendant to copy, photograph, duplicate, or otherwise reproduce any property or  
19 material that may be illegal or prohibited under AS 11.41.455(a) or defined as "child  
20 pornography" under 18 U.S.C. 2256, provided the prosecution makes the property or  
21 material reasonably available to the defendant. Property or material shall be deemed to  
22 be made reasonably available to the defendant if the prosecution provides, at a  
23 prosecution or law enforcement facility, ample opportunity for inspection, viewing,  
24 and examination of the property or material by the defendant, the defendant's attorney,  
25 and any individual the defendant may seek to qualify to furnish expert testimony at  
26 trial.

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

29 APPLICABILITY. (a) Sections 1 - 16 of this Act apply to offenses committed on or  
30 after the effective date of this Act.

31 (b) Sections 17 and 19 of this Act apply to offenses committed before, on, or after the  
32 effective date of this Act.

1

\* **Sec. 21.** This Act takes effect July 1, 2010.