

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: 4/7/10

Referred: Finance

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, failure to register as a sex offender or child kidnapper, and distribution of**
3 **indecent material to a minor; relating to suspending imposition of sentence and**
4 **conditions of probation or parole for human trafficking or for certain sex offenses;**
5 **relating to aggravating factors in sentencing; relating to reporting of crimes; relating to**
6 **administrative subpoenas for certain records involving exploitation of children;**
7 **amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective**
8 **date."**

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

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

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

- 1 (1) is on probation [OR PAROLE] for conviction of a sex offense;
 2 (2) has served the entire term of incarceration imposed for conviction
 3 of the sex offense; and
 4 (3) [EITHER
 5 (A)] violates a condition of probation imposed under
 6 AS 12.55.100(a)(5), (a)(6), or (e), 12.55.101(a)(1), or any other condition
 7 imposed by the court that the court finds to be specifically related to the
 8 defendant's offense [; OR
 9 (B) VIOLATES A CONDITION OF PAROLE IMPOSED
 10 UNDER AS 33.16.150(a)(3), (a)(4), (a)(6), (a)(13), (b)(4), (b)(11), OR (f)].

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

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

14 * **Sec. 3.** AS 11.56.840 is repealed and reenacted to read:

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

- 18 (1) is required to register under AS 12.63.010;
 19 (2) knows that the person is required to register under AS 12.63.010;
 20 and
 21 (3) fails to
 22 (A) register;
 23 (B) file written notice of
 24 (i) change of residence;
 25 (ii) change of mailing address;
 26 (iii) establishment of an electronic or messaging address
 27 or any change to an electronic or messaging address; or
 28 (iv) establishment of an Internet communication
 29 identifier or any change to an Internet communication identifier;
 30 (C) file the annual or quarterly written verification; or
 31 (D) supply accurate and complete information required to be

submitted under this paragraph.

(b) In a prosecution for failure to register as a sex offender in the second degree under (a) of this section, it is an affirmative defense that

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

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

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

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

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

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

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

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

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

CONDUCT].

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) sexual penetration;

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

(C) masturbation;

(D) bestiality;

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

(F) sexual masochism or sadism; [AND]

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

(3) either

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

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

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

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

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

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

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

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

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

(2) a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, educational, political, or scientific value for persons under 16 years of age; and

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

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

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

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

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

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

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

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

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

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

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

1 local law enforcement agency;

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

5 (A) using or creating an Internet site;

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

7 (C) possessing or using a computer.

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

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

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

15 (18) the offense was a felony

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

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

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

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

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

1 * **Sec. 17.** AS 12.63.100(6) is amended to read:

2 (6) "sex offense" means

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

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

11 (i) sexual assault in the first degree;

12 (ii) sexual assault in the second degree;

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

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

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

17 (i) AS 11.41.410 - 11.41.438;

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

19 (iii) AS 11.41.450 - 11.41.458;

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

23 (v) AS 11.61.125 - 11.61.128;

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

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

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

1 * **Sec. 18.** AS 12.62.130 is amended to read:

2 **Sec. 12.62.130. Reporting of uniform crime information.** A criminal justice
3 agency shall submit to the department, at the time, in the manner, and in the form
4 specified by the department, data regarding crimes committed within that agency's
5 jurisdiction. At a minimum, the department shall require a criminal justice
6 agency to report each felony sex offense committed in the agency's jurisdiction.
7 The department may withhold grant funding to a criminal justice agency that
8 fails to report data as required by this section. The department shall compile, and
9 provide to the governor and the attorney general, an annual report concerning the
10 number and nature of criminal offenses committed, the disposition of the offenses, and
11 any other data the commissioner finds appropriate relating to the method, frequency,
12 cause, and prevention of crime. In this section, "sex offense" has the meaning given
13 in AS 12.63.100.

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

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

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

24 (1) the name of the person holding the account;
25 (2) the address and physical location associated with the account; and
26 (3) length of service, including service start date, and types of service
27 used by the account.

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

32 (d) A subpoena under this section must describe the objects required to be

1 produced and must prescribe a return date with a reasonable period of time within which
2 the objects must be assembled and produced.

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

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

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

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

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

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

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

31 LEGISLATIVE STATEMENT CONCERNING CULPABLE MENTAL STATE. In
32 AS 11.56.840(a), as repealed and reenacted by sec. 3 of this Act, the only culpable mental

1 state required to be proven by the prosecution is the "knowing" requirement in paragraph (2)
2 of that subsection. No other culpable mental state needs to be proven for the other elements of
3 that offense.

4 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICABILITY. (a) Sections 1 - 17 of this Act apply to offenses committed on or
7 after the effective date of this Act.

8 (b) Sections 19 and 20 of this Act apply to offenses committed before, on, or after the
9 effective date of this Act.

10 * **Sec. 23.** This Act takes effect July 1, 2010.