

SENATE BILL NO. 222

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/19/10

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crimes of harassment, possession of child pornography, and**
2 **distribution of indecent material to a minor; relating to suspending imposition of**
3 **sentence and conditions of probation or parole for certain sex offenses; relating to**
4 **aggravating factors in sentencing; relating to registration as a sex offender or child**
5 **kidnapper; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for**
6 **an effective date."**

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

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
13 of the sex offense; and

1 (3) [EITHER

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

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

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

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

11 * **Sec. 3.** AS 11.56.840 is repealed and reenacted to read:

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

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

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

17 and

18 (3) fails to

19 (A) register;

20 (B) file written notice of

21 (i) change of residence;

22 (ii) change of mailing address;

23 (iii) establishment of an electronic or messaging address

24 or any change to an electronic or messaging address; or

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

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

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

30 (b) The failure to register under (a)(3)(A) of this section or file or supply the
 31 written notices, verification, or other information required under (a)(3)(B) - (D) of this

1 section is conduct that does not require a culpable mental state.

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

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

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

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

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

14 (a) A person commits the crime of harassment in the first degree if the person
15 violates AS 11.61.120(a)(5) and the offensive physical contact is contact

16 (1) with human or animal blood, mucus, saliva, semen, urine, vomitus,
17 or feces; **or**

18 (2) by the person touching another person's genitals, anus, or
19 female breast, either directly or through clothing.

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

21 (a) A person commits the crime of possession of child pornography if the
22 person knowingly possesses **or knowingly accesses on a computer with intent to**
23 **view** any material that visually or aurally depicts conduct described in
24 AS 11.41.455(a) knowing that the production of the material involved the use of a
25 child under 18 years of age who engaged in the conduct. **In this subsection,**
26 **"computer" has the meaning given in AS 11.46.990.**

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

28 (c) Each film, audio, video, electronic, or electromagnetic recording,
29 photograph, negative, slide, book, newspaper, magazine, or other material that visually
30 or aurally depicts conduct described in AS 11.41.455(a) that is possessed **or accessed**
31 **in violation of (a) of this section** [BY A PERSON KNOWING THAT THE

1 PRODUCTION OF THE MATERIAL INVOLVED THE USE OF A CHILD
 2 UNDER 18 YEARS OF AGE THAT ENGAGED IN THE CONDUCT] is a separate
 3 violation of this section.

4 * **Sec. 7.** AS 11.61.127 is amended by adding a new subsection to read:

5 (e) In a prosecution for possession of child pornography under (a) of this
 6 section, it is an affirmative defense that the person

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

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

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

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

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

18 (A) sexual penetration;

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

21 (C) masturbation;

22 (D) bestiality;

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

25 (F) sexual masochism or sadism; and

26 (2) either

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

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

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

31 (c) Except as provided in (d) of this section, [ELECTRONIC] distribution of

indecent material to minors is a class C felony.

* **Sec. 10.** 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. 11.** 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. 12.** 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 these 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. 13.** 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. 14.** 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 11.41.436(a)(2) and the defendant is 18**
31 **years of age or older;**

1 * **Sec. 15.** 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;

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 **(D) a crime in another jurisdiction that requires the person**
31 **to register as a sex offender or child kidnapper in that jurisdiction;**

1 * **Sec. 16.** The uncoded law of the State of Alaska is amended by adding a new section to
2 read:

3 DIRECT COURT RULE AMENDMENT. Rule 16(b)(1)(A), Alaska Rules of
4 Criminal Procedure, is amended to read:

5 (1) Information within Possession or Control of Prosecuting Attorney.

6 (A) Except as is otherwise provided as to matters not subject to
7 disclosure and protective orders, the prosecuting attorney shall disclose the
8 following information within the prosecuting attorney's possession or control
9 to defense counsel and make available for inspection and copying:

10 (i) The names and addresses of persons known by the
11 government to have knowledge of relevant facts and their written or
12 recorded statements or summaries of statements;

13 (ii) Any written or recorded statements and summaries
14 of statements and the substance of any oral statements made by the
15 accused;

16 (iii) Any written or recorded statements and summaries
17 of statements and the substance of any oral statements made by a co-
18 defendant;

19 (iv) Any books, papers, documents, photographs or
20 tangible objects, which the prosecuting attorney intends to use in the
21 hearing or trial or which were obtained from or belong to the accused
22 **except for material prohibited under AS 11.41.455(a); material**
23 **prohibited under AS 11.41.455(a) may be inspected by defense**
24 **counsel, the defendant, and any expert the defense may use;**
25 **however, the material shall remain in the custody and control of a**
26 **law enforcement agency and the prosecuting attorney, and may not**
27 **be copied or otherwise duplicated by the defense or any other**
28 **person;** and

29 (v) Any record of prior criminal convictions of the
30 defendant and of persons whom the prosecuting attorney intends to call
31 as witnesses at the hearing or trial.

1 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **APPLICABILITY.** (a) Sections 1 - 15 of this Act apply to offenses committed on or
4 after the effective date of this Act.

5 (b) Section 16 of this Act applies to offenses committed before, on, or after the
6 effective date of this Act.

7 * **Sec. 18.** This Act takes effect July 1, 2010.