

Chair, Judiciary  
Chair, Economic Development,  
Trade & Tourism  
Energy  
Military & Veteran Affairs  
Joint Armed Services  
1292 Sadler Way, Suite 324  
Fairbanks, Alaska 99701  
Phone: (907) 452-1088  
Fax: (907) 452-1146

## Alaska State Legislature House of Representatives



While in Session  
State Capitol, Room 118  
Juneau, Alaska 99801-1182  
(907) 465- 3004  
Fax: (907) 465-2070  
Toll Free: (877) 465-3004

Representative Jay Ramras  
District 10

### Sponsor Statement HB 98

**“An Act relating to minor consuming and repeat minor consuming; and providing for an effective date.”**

HB 98 fixes a problem that occurred with the enactment of HB 359, a bill that passed the House unanimously in the 25<sup>th</sup> Legislative Session. HB 359 originated due to the desire of Alaskan youths to join the military and not being able to do so due to probation restrictions from a minor consuming charge that may have occurred up to 5 years previously. Unfortunately, when the bill was drafted, it left a loop-hole in the repeat minor consuming law.

HB 98 fixes this loop-hole by referencing both suspended impositions of sentence under AS 04.16.050(b)(1) and a judgment of conviction under AS 04.16.050(b)(2).

This new language will now cover all repeat offenders, no matter how their previous minor consuming charges were adjudicated.

An amendment was added in the House Finance HB98 to also fix an issue as it relates to bootlegging. The new language will bring bootlegging penalties in line with felony DUI penalties.

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District 10**

## HB98 Sectional

- Sec. 1.** States that minor consuming is not a misdemeanor
- Sec. 2.** Incorporates AS 04.16.050(b) penalties under the repeat minor consuming statute.
- Sec. 3.** Conforming language for habitual minor consuming.
- Sec. 4.** Corrects the intent of the bootlegging statute, to bring penalties in line with felony DUIs.
- Sec 5.** Applicability language for section 4.
- Sec. 6.** Immediate effective date language.

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**Representative Jay Ramras**  
**District 10**

### HB98 – Explanation of Changes

A change from version A to version R, was made at the request of the Department of Law. Section 3 of the bill was added. Section 3 corrects AS 04.16.200(h), which deals with penalties for possession for sales or importation of liquor into areas that have chosen to establish local option laws. This amendment brings bootlegging penalties into compliance with felony DUI penalties.

A change was made on the House Floor to version R that resulted in version R.A. This amendment made it clear that Minor Consuming and Repeat Minor Consuming are not misdemeanor crimes.

**CS FOR HOUSE BILL NO. 98(FIN) am**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SIXTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Amended: 4/11/09**

**Offered: 4/3/09**

**Sponsor(s): REPRESENTATIVE RAMRAS**

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to minor consuming and repeat minor consuming; relating to penalties**  
2   **for violations of limitations on possessing, sending, shipping, transporting, or bringing**  
3   **alcoholic beverages to, soliciting or receiving orders for delivery of alcoholic beverages**  
4   **to, and the manufacture, sale, offer for sale, barter, traffic, or possession of alcoholic**  
5   **beverages in, a local option area; and providing for an effective date."**

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

7    \* **Section 1.** AS 04.16.050(b) is amended to read:

8           (b) A person who violates (a) of this section and who has not been previously  
9       convicted or received a suspended imposition of sentence under (1) of this subsection  
10      is guilty of minor consuming or in possession or control. Minor consuming or in  
11      possession or control is not a misdemeanor. Upon conviction in the district court,  
12      the court

13                                   (1) may grant a suspended imposition of sentence under AS 12.55.085

1 and place the person on probation for up to one year if the person has not been  
 2 convicted of a violation of this section previously; among the conditions of probation,  
 3 the court shall, with the consent of a community diversion panel, refer the person to  
 4 the panel, and require the person to comply with conditions set by the panel, including  
 5 counseling, education, treatment, community work, and payment of fees; in this  
 6 paragraph, "community diversion panel" means a youth court or other group selected  
 7 by the court to serve as a sentencing option for a person convicted under this section;  
 8 or

9 (2) shall impose a fine of at least \$200 but not more than \$600, shall  
 10 require the person to attend alcohol information school if the school is available, and  
 11 shall place the person on probation for up to one year under (e) of this section; the  
 12 court may suspend a portion of the fine imposed under this paragraph that exceeds  
 13 \$200 if the person is required to pay for education or treatment required under (e) of  
 14 this section.

15 \* Sec. 2. AS 04.16.050(c) is amended to read:

16 (c) A person is guilty of repeat minor consuming or in possession or control if  
 17 the person was previously granted a suspended imposition of sentence [PLACED  
 18 ON PROBATION] under (b)(1) of this section, has a prior conviction under (b)(2)  
 19 of this section, or has been previously convicted once, and the person violates (a) of  
 20 this section. Repeat minor consuming or in possession or control is not a  
 21 misdemeanor. Upon conviction in the district court, the court shall

22 (1) impose a fine of \$1,000 and require at least 48 hours of community  
 23 work;

24 (2) revoke the person's driver's license for three months;

25 (3) take possession of the person's driver's license; and

26 (4) suspend up to \$500 of the fine and place the person on probation  
 27 for up to one year under (e) of this section.

28 \* Sec. 3. AS 04.16.050(d) is amended to read:

29 (d) A person is guilty of habitual minor consuming or in possession or control  
 30 if the person has a prior conviction [WAS PLACED ON PROBATION] under (c) of  
 31 this section, or has been previously convicted two or more times [TWICE], and the

1 person violates (a) of this section. Habitual minor consuming or in possession or  
 2 control is a class B misdemeanor. Upon conviction, the court may impose an  
 3 appropriate period of imprisonment and fine and place the person on probation under  
 4 (e) of this section for one year, or until the person is 21 years of age, whichever is  
 5 later, and shall

6 (1) impose at least 96 hours of community work;

7 (2) revoke the person's driver's license for six months;

8 (3) within five working days, notify the agency responsible for the  
 9 administration of motor vehicle laws of the revocation; and

10 (4) take possession of the person's driver's license.

11 \* Sec. 4. AS 04.16.200(h) is amended to read:

12 (h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this  
 13 section, the court

14 (1) shall impose a fine of not less than \$10,000 and a minimum  
 15 sentence of imprisonment of

16 (A) 120 days if the person has not been previously convicted  
 17 [ONCE];

18 (B) 240 days if the person has been previously convicted once  
 19 [TWO TIMES];

20 (C) 360 days if the person has been previously convicted two  
 21 [THREE] or more times;

22 (2) may not

23 (A) suspend execution of sentence or grant probation except on  
 24 the condition that the person

25 (i) serve the minimum imprisonment under (1) of this  
 26 subsection; and

27 (ii) pay the minimum fine required under (1) of this  
 28 subsection; or

29 (B) suspend imposition of sentence.

30 \* Sec. 5. The uncoded law of the State of Alaska is amended by adding a new section to  
 31 read:

- 1           APPLICABILITY. AS 04.16.200(h), as amended by sec. 4 of this Act, applies to an  
2   offense occurring on or after the effective date of this Act. References to previous convictions  
3   in sec. 4 of this Act apply to convictions occurring before, on, or after the effective date of  
4   this Act.
- 5    \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

**CS FOR HOUSE BILL NO. 98(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SIXTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered: 4/3/09**

**Referred: Rules**

**Sponsor(s): REPRESENTATIVE RAMRAS**

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to minor consuming and repeat minor consuming; relating to penalties**  
2   **for violations of limitations on possessing, sending, shipping, transporting, or bringing**  
3   **alcoholic beverages to, soliciting or receiving orders for delivery of alcoholic beverages**  
4   **to, and the manufacture, sale, offer for sale, barter, traffic, or possession of alcoholic**  
5   **beverages in, a local option area; and providing for an effective date."**

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

7    \* **Section 1.** AS 04.16.050(c) is amended to read:

8           (c) A person is guilty of repeat minor consuming or in possession or control if  
9           the person was previously granted a suspended imposition of sentence [PLACED  
10           ON PROBATION] under (b)(1) of this section, has a prior conviction under (b)(2)  
11           of this section, or has been previously convicted once, and the person violates (a) of  
12           this section. Upon conviction in the district court, the court shall

13                   (1) impose a fine of \$1,000 and require at least 48 hours of community



1 work;

2 (2) revoke the person's driver's license for three months;

3 (3) take possession of the person's driver's license; and

4 (4) suspend up to \$500 of the fine and place the person on probation

5 for up to one year under (e) of this section.

6 \* **Sec. 2.** AS 04.16.050(d) is amended to read:

7 (d) A person is guilty of habitual minor consuming or in possession or control  
8 if the person has a prior conviction [WAS PLACED ON PROBATION] under (c) of  
9 this section, or has been previously convicted two or more times [TWICE], and the  
10 person violates (a) of this section. Habitual minor consuming or in possession or  
11 control is a class B misdemeanor. Upon conviction, the court may impose an  
12 appropriate period of imprisonment and fine and place the person on probation under  
13 (e) of this section for one year, or until the person is 21 years of age, whichever is  
14 later, and shall

15 (1) impose at least 96 hours of community work;

16 (2) revoke the person's driver's license for six months;

17 (3) within five working days, notify the agency responsible for the  
18 administration of motor vehicle laws of the revocation; and

19 (4) take possession of the person's driver's license.

20 \* **Sec. 3.** AS 04.16.200(h) is amended to read:

21 (h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this  
22 section, the court

23 (1) shall impose a fine of not less than \$10,000 and a minimum  
24 sentence of imprisonment of

25 (A) 120 days if the person has not been previously convicted  
26 [ONCE];

27 (B) 240 days if the person has been previously convicted once  
28 [TWO TIMES];

29 (C) 360 days if the person has been previously convicted two  
30 [THREE] or more times;

31 (2) may not

1 (A) suspend execution of sentence or grant probation except on  
2 the condition that the person

3 (i) serve the minimum imprisonment under (1) of this  
4 subsection; and

5 (ii) pay the minimum fine required under (1) of this  
6 subsection; or

7 (B) suspend imposition of sentence.

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

10 **APPLICABILITY.** AS 04.16.200(h), as amended by sec. 3 of this Act, applies to an  
11 offense occurring on or after the effective date of this Act. References to previous convictions  
12 in sec. 3 of this Act apply to convictions occurring before, on, or after the effective date of  
13 this Act.

14 \* **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

**HOUSE BILL NO. 98**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SIXTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE RAMRAS**

**Introduced: 1/28/09**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to minor consuming and repeat minor consuming; and providing for**  
2   **an effective date."**

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

4    \* **Section 1.** AS 04.16.050(c) is amended to read:

5           (c) A person is guilty of repeat minor consuming or in possession or control if  
6           the person was previously granted a suspended imposition of sentence [PLACED  
7           ON PROBATION] under (b)(1) of this section, has a prior conviction under (b)(2)  
8           of this section, or has been previously convicted once, and the person violates (a) of  
9           this section. Upon conviction in the district court, the court shall

- 10                   (1) impose a fine of \$1,000 and require at least 48 hours of community  
11           work;  
12                   (2) revoke the person's driver's license for three months;  
13                   (3) take possession of the person's driver's license; and  
14                   (4) suspend up to \$500 of the fine and place the person on probation

1 for up to one year under (e) of this section.

2 \* **Sec. 2.** AS 04.16.050(d) is amended to read:

3 (d) A person is guilty of habitual minor consuming or in possession or control  
4 if the person has a prior conviction [WAS PLACED ON PROBATION] under (c) of  
5 this section, or has been previously convicted two or more times [TWICE], and the  
6 person violates (a) of this section. Habitual minor consuming or in possession or  
7 control is a class B misdemeanor. Upon conviction, the court may impose an  
8 appropriate period of imprisonment and fine and place the person on probation under  
9 (e) of this section for one year, or until the person is 21 years of age, whichever is  
10 later, and shall

11 (1) impose at least 96 hours of community work;

12 (2) revoke the person's driver's license for six months;

13 (3) within five working days, notify the agency responsible for the  
14 administration of motor vehicle laws of the revocation; and

15 (4) take possession of the person's driver's license.

16 \* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

STATE OFFICE  
**ALASKA PEACE OFFICERS ASSOCIATION**

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Anchorage

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Pres. Wrangell Chapter

February 17, 2009

Representative Jay Ramras  
House of Representatives  
State Capitol  
Juneau AK 99801-1182

Dear Representative Ramras:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 98, an act relating to minor consuming and repeat minor consuming; and providing for an effective date.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long  
State President

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 98  
 (H) Publish Date: 2/4/09

Identifier (file name): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Minor Consuming RDU Alaska Court System  
 Component Trial Courts  
 Sponsor Representative Ramras Component Number \_\_\_\_\_  
 Requester \_\_\_\_\_

## Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
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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 Interagency Receipts							
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

## 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 HB 98.

Prepared by: Doug Wooliver, Administrative Attorney  
 Division: Alaska Court System  
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Attorney  
Alaska Court System

Phone 463-4750  
 Date/Time 01-28-09 @ 2:30 pm  
 Date 1/28/2009

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 98  
 (H) Publish Date: 2/4/09

Identifier (file name): HB098-LAW-CRIM-1-31-09 Dept. Affected: LAW  
 Title An Act relating to minor consuming and repeat minor consuming RDU CRIMINAL  
 Component Criminal Justice Litigation  
 Sponsor Representative Ramras  
 Requester Judiciary Component Number 2202

## Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Personal Services	0.0	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	0.0

<b>CAPITAL EXPENDITURES</b>								
-----------------------------	--	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>								
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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	0.0	0.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

## POSITIONS

Full-time								
Part-time								
Temporary								

## ANALYSIS: (Attach a separate page if necessary)

The bill would clarify the existing minor consuming statute regarding when a minor would be designated as a habitual offender. The Department of Law does not anticipate any fiscal impact from passage of this legislation.

Prepared by: Robert Meiners, Deputy Director  
 Division Administrative Services Division  
 Approved by: Talis Colberg, Attorney General  
Department of Law

Phone 907-465-5427  
 Date/Time 1/31/09 4:00 PM  
 Date 1/31/2009

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSHB 98(FIN)  
(H) Publish Date: 4/3/09

Identifier (file name): HB098-DPS-DET-02-02-09 Public Safety  
Title "An Act relating to minor consuming." RDU Alaska State Troopers  
Component AST Detachments  
Sponsor Representative Ramras  
Requester House Judiciary Component Number 2325

## Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
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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 Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: 0.0

## POSITIONS

Full-time							
Part-time							
Temporary							

## ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 04.16.050(c) and (d) by clarifying when a person is guilty of repeat, or habitual minor consuming or in possession or control.

Passage of this legislation will not increase the number of arrests made or cases referred for prosecution. This bill will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial Phone 907-247-4480  
Division Alaska State Troopers Date/Time 2/3/09 9:27 AM  
Approved by: Joseph Masters, Commissioner Date \_\_\_\_\_  
Department of Public Safety



# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: 4  
 Bill Version: CSHB 98(FIN) am  
 (S) Publish Date: 4/17/09

Identifier (file name): CSHB98(FIN)-DOC-OC-04-16-09 Dept. Affected: DOC  
 Title "An Act relating to limitations on possessing, sending, shipping RDU Administration & Support  
transporting, or bringing alcoholic beverages . . ." Component Office of the Commissioner  
 Sponsor Representative Ramras  
 Requester Governor Component Number 694

## Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	***	***	***	***	***	***	***
<b>CAPITAL EXPENDITURES</b>							
<b>CHANGE IN REVENUES ( )</b>							

## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	***	***	***	***	***	***	***

Estimate of any current year (FY2009) cost: \_\_\_\_\_

## POSITIONS

Full-time							
Part-time							
Temporary							

## ANALYSIS: *(Attach a separate page if necessary)*

The intent of section 4 within this bill is to reduce the illegal importation of alcohol with a subsequent reduction in other associated crimes, such as assault and domestic violence. Criminal justice professional opinions and anecdotal information link the majority of assault arrests and convictions to alcohol abuse.

While this legislation would increase the number of offenders incarcerated for bootlegging, locking up bootleggers, especially repeat offenders, could result in a decrease in the incarceration rate for alcohol-related assaults and other crimes. Although the fiscal impact is indeterminate, it is anticipated that the overall impact could be a net zero if not a reduction in the total number and cost of incarcerated offenders. Data is not available for the department to calculate the number of offenders that would be sentenced to the department's custody under this legislation.

Prepared by: Leslie Houston, Director  
 Division Administration and Support  
 Approved by: Dwayne Peeples, Deputy Commissioner  
Department of Corrections

Phone (907) 465-3339  
 Date/Time 4/16/09 8:41 AM  
 Date 4/16/2009

26th Legislature(2009-2010)

**Bill History/Action for 26th Legislature****BILL:** HB 98**SHORT TITLE:** ALCOHOL: MINOR  
CONSUMING/LOCAL OPTION**BILL VERSION:** CSHB 98(FIN) AM**CURRENT STATUS:** (S) JUD**STATUS DATE:** 04/17/09

THEN FIN

**SPONSOR(s):** REPRESENTATIVE(s) RAMRAS**HEARING:** (S) JUD Jan 25 1:30 PM BELTZ 105 (TSBldg) TELECONFERENCE

**TITLE:** "An Act relating to minor consuming and repeat minor consuming; relating to penalties for violations of limitations on possessing, sending, shipping, transporting, or bringing alcoholic beverages to, soliciting or receiving orders for delivery of alcoholic beverages to, and the manufacture, sale, offer for sale, barter, traffic, or possession of alcoholic beverages in, a local option area; and providing for an effective date."

<b>Bill Number:</b>	<input type="text"/>	<input type="button" value="Search Bills"/>	<input type="button" value="Next Bill"/>
<input type="button" value="Full Text"/>	<input type="button" value="Fiscal Notes"/>	<input type="button" value="Amendments"/>	<input type="button" value="Minutes"/>
<input type="button" value="Documents"/>			
<input type="button" value="Sponsor Statement"/>			
<input type="button" value="Display Committee Action with Bill History"/>			

Jrn-Date	Jrn-Page	Action
01/28/09	<u>0103</u>	(H) READ THE FIRST TIME - REFERRALS
01/28/09	<u>0103</u>	(H) JUD, FIN
02/04/09	<u>0156</u>	(H) JUD RPT 6DP
02/04/09	<u>0156</u>	(H) DP: LYNN, GRUENBERG, COGHILL, HOLMES, GATTO, RAMRAS
02/04/09	<u>0157</u>	(H) FN1: ZERO(CRT)
02/04/09	<u>0157</u>	(H) FN2: ZERO(LAW)
04/03/09	<u>0716</u>	(H) FIN RPT CS(FIN) NT 3DP 3NR 1AM
04/03/09	<u>0716</u>	(H) DP: KELLY, FOSTER, HAWKER
04/03/09	<u>0716</u>	(H) NR: CRAWFORD, SALMON, THOMAS
04/03/09	<u>0716</u>	(H) AM: GARA
04/03/09	<u>0717</u>	(H) FN1: ZERO(CRT)
04/03/09	<u>0717</u>	(H) FN2: ZERO(LAW)
04/03/09	<u>0717</u>	(H) FN3: ZERO(DPS)
04/11/09	<u>0895</u>	(H) RULES TO CALENDAR 4/11/2009
04/11/09	<u>0895</u>	(H) READ THE SECOND TIME
04/11/09	<u>0896</u>	(H) FIN CS ADOPTED UNAN CONSENT
04/11/09	<u>0896</u>	(H) AM NO 1 ADOPTED Y29 N9 E2
04/11/09	<u>0898</u>	(H) ADVANCED TO THIRD READING 4/13 CALENDAR
04/13/09	<u>0930</u>	(H) READ THE THIRD TIME CSHB 98(FIN) AM
04/13/09	<u>0931</u>	(H) PASSED Y40
04/13/09	<u>0931</u>	(H) EFFECTIVE DATE(S) SAME AS PASSAGE
04/13/09	<u>0941</u>	(H) TRANSMITTED TO (S)
04/13/09	<u>0941</u>	(H) VERSION: CSHB 98(FIN) AM
04/14/09	<u>0937</u>	(S) READ THE FIRST TIME - REFERRALS
04/14/09	<u>0937</u>	(S) CRA, JUD
04/17/09	<u>1016</u>	(S) CRA RPT 1DP 2NR
04/17/09	<u>1016</u>	(S) DP: MENARD
04/17/09	<u>1016</u>	(S) NR: OLSON, FRENCH
04/17/09	<u>1016</u>	(S) FN1: ZERO(CRT)
04/17/09	<u>1016</u>	(S) FN2: ZERO(LAW)

04/17/09 1016 (S) FN3: ZERO(DPS)  
04/17/09 1016 (S) FN4: INDETERMINATE(COR)  
04/17/09 1016 (S) REFERRED TO JUDICIARY  
04/17/09 1016 (S) FIN REFERRAL ADDED

Similar Subject Match or Exact Subject Match

ALCOHOL

COURTS

CRIMES

CRIMINAL PROCEDURE

MINORS

SENTENCING

UNORGANIZED BOROUGH

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Bill Number:

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✚ Sec. 04.16.050 Possession, control, or consumption by persons under the age of 21.

(a) A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051 (b).

(b) A person who violates (a) of this section and who has not been previously convicted or received a suspended imposition of sentence under (1) of this subsection is guilty of minor consuming or in possession or control. Upon conviction in the district court, the court

(1) may grant a suspended imposition of sentence under AS 12.55.085 and place the person on probation for up to one year if the person has not been convicted of a violation of this section previously; among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel, including counseling, education, treatment, community work, and payment of fees; in this paragraph, "community diversion panel" means a youth court or other group selected by the court to serve as a sentencing option for a person convicted under this section; or

(2) shall impose a fine of at least \$200 but not more than \$600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation for up to one year under (e) of this section; the court may suspend a portion of the fine imposed under this paragraph that exceeds \$200 if the person is required to pay for education or treatment required under (e) of this section.

(c) A person is guilty of repeat minor consuming or in possession or control if the person was placed on probation under (b)(1) of this section or has been previously convicted once, and the person violates (a) of this section. Upon conviction in the district court, the court shall

(1) impose a fine of \$1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to \$500 of the fine and place the person on probation for up to one year under (e) of this section.

(d) A person is guilty of habitual minor consuming or in possession or control if the person was placed on probation under (c) of this section, or has been previously convicted twice, and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (e) of this section for one year, or until the person is 21 years of age, whichever is later, and shall

(1) impose at least 96 hours of community work;

(2) revoke the person's driver's license for six months;

(3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and

(4) take possession of the person's driver's license.

(e) The court shall place a person sentenced under (b)(2), (c), or (d) of this section on probation for the appropriate period. The person may not refuse probation. The court may require the person to pay for and enroll in a juvenile alcohol safety action program, if one is available. The court shall impose the following conditions of probation:

(1) the person shall pay for and successfully complete any education or treatment recommended;

(2) the person may not consume inhalants or possess or consume controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);

(3) the person shall timely complete any community work ordered, as provided in (f) of this section; and

(4) other conditions the court considers appropriate.

(f) A person ordered to perform community work under this section shall perform the work within 120 days of the entry of judgment for a conviction. The court may expand the time period for up to 30 days upon a showing of good cause. The person shall submit verification of completion of community work to the clerk of court on a form provided by the court. If the verification is not provided within the time period required by this subsection, the court shall, within 30 days, schedule further proceedings in the case to determine whether a violation of probation has occurred.

(g) The treatment recommended by a juvenile alcohol safety action program for a person placed on probation under (e) of this section may include a period of inpatient treatment if the judgment specifies the maximum period of inpatient treatment authorized. A person who has been recommended for inpatient treatment may make a written request to the sentencing court for review of the referral. A person shall make a request for review within seven days after the recommendation and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(h) The juvenile alcohol safety action program to which a person is referred under this section shall inform the court or a minor's juvenile probation officer if the person fails to submit to evaluation or fails to complete successfully any education or treatment recommended. If the court finds that the person has failed to perform community work as ordered, to submit to evaluation, or to complete successfully the education or treatment recommended, the court may impose the suspended fine, and may impose any period of suspended incarceration. If the person was convicted under (c) or (d) of this section, the court shall revoke the person's driver's license for an additional six months beyond the revocation imposed under (c) or (d) of this section. A court revoking a person's driver's license under this subsection shall notify the agency responsible for the administration of motor vehicle laws of the revocation within five working days.

(i) When considering the financial resources of a minor for purposes of determining eligibility for court-appointed counsel under this section, the court shall consider the resources of both the defendant and the defendant's parent or guardian, unless the court finds good cause to treat the defendant's or the defendant's parent's or guardian's resources as being unavailable to the defendant.

(j) A driver's license revocation under this section is consecutive to a revocation imposed under another provision of law, but is concurrent with a revocation under another provision of law based on a prior conviction, adjudication of delinquency, or informal adjustment under AS 47.12.060.

(k) Notwithstanding (b), (c), and (e) of this section, a person sentenced under (b) or (c) of this section may make a motion to the court to terminate probation of that person before the end of the probationary period required under those subsections. The court may grant the motion if the court finds, by clear and convincing evidence, that

(1) the person completed any community work ordered under (f) of this section;

(2) the person has successfully completed any education or treatment program ordered by the court and, if required by the court, has either

(A) paid for the programs; or

(B) made a good faith effort to pay for the programs, agreed to have the debt reduced to a civil judgment, entered into a repayment plan with the provider or the state, and agreed that the civil judgment may be enforced in the manner provided for restitution and fines in AS 12.55.051;

(3) the person has either

(A) paid the fine; or

(B) made a good faith effort to pay the fine, agreed to have the remaining fine amount reduced to a civil judgment, entered into a plan with the state, and agreed that the civil judgment may be enforced in the manner provided for restitution and fines in AS 12.55.051; and

(4) the person has substantially complied with the other conditions of probation.

(l) In this section,

(1) "driver's license" has the meaning given in AS 28.90.990;

(2) "juvenile alcohol safety action program" means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37 if a program described in (A) of this paragraph is not available in the community in which the person resides; or

(C) a program or counseling approved by the court if a program or treatment described in (A) of this paragraph is not available in the community where the person resides;

(3) "previously convicted" means a conviction or an adjudication as a delinquent for a violation of AS 11.71, AS 28.35.030, 28.35.032, 28.35.280 - 28.35.290, or a law or ordinance in another jurisdiction with substantially similar elements.

❖ Sec. 04.16.180. Penalties for violation.

(a) Except as provided in AS 04.11.015, 04.11.150(g), AS 04.16.025, ~~04.16.050~~, 04.16.051, 04.16.200 - 04.16.210, and AS 04.21.065, a person who violates a provision of this title or a regulation adopted by the board is guilty, upon conviction, of a class A misdemeanor. Each violation is a separate offense.

(b) A suspension or revocation of a license ordered by the board under AS 04.11.370 (a)(4) and (5) shall be as follows:

(1) on first conviction the license of the premises involved may not be revoked, but may be suspended for not more than 45 days;

(2) on second conviction the license of the premises involved may not be revoked, but may be suspended for not more than 90 days;

(3) on third conviction the license of the premises involved may be suspended or revoked.

(c) In this section, the terms "second conviction" and "third conviction" include only convictions for violations that occur within five years of the first conviction. The terms refer to the cumulative number of convictions of a licensee of any combination of violations of the provisions of this title, regulations adopted under this title, or ordinances adopted under AS 04.21.010. The terms "second conviction" and "third conviction" include a conviction of the agent or employee of a licensee of a violation of a law, regulation, or ordinance if the conviction constitutes a ground for suspension or revocation under AS 04.11.370(a)(5).

(d) This section does not affect the authority of the board to suspend or revoke a license when the board determines that continuance of activities under a license would not be in the best interests of the public.



# STATE OF ALASKA

## DEPARTMENT OF LAW CRIMINAL DIVISION CENTRAL OFFICE

## SEAN PARNELL, GOVERNOR

**Mailing:** PO Box 110300  
Juneau, AK 99811-0300  
**Physical:** 123 4<sup>th</sup> Street, Ste 717  
Juneau, AK 99801  
**Phone:** (907) 465-3428  
**Fax:** (907) 465-4043

January 19, 2010

Senator Hollis French  
Chair, Senate Judiciary Committee  
Alaska State Capitol, Room 417  
Juneau, Alaska 99801

Re: Senate Bill 222 – relating to sexual offenses  
and domestic violence

Dear Senator French:

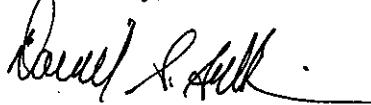
I am writing to respectfully request that you schedule Senate Bill 222 for a hearing in the Senate Judiciary Committee at your earliest convenience. SB 222 is one of several bills that the Governor has introduced to confront and help reduce the alarming and discouraging rate of sex offenses and crimes involving domestic violence in our state.

The bill makes important changes to several criminal laws. For example, it clarifies that accessing child pornography with and intent to view it is a crime. A recent court decision found that our statute requires more than viewing child pornography on a computer to be a crime. The bill responds to this decision. The bill also requires a person to register as a sex offender in our state if they are required to do so in another state. Alaska should not be a friendly destination to persons hoping to avoid sex offender registration by moving to our state.

A sectional analysis is attached that describes each provision of the bill.

Thank you for your consideration of this request.

Sincerely,



Daniel S. Sullivan  
Attorney General

DSS:ADC: sf



**SENATE BILL 222**  
**SEXUAL ASSAULT AND DOMESTIC VIOLENCE**  
**Sectional Analysis**

**Sections 1 and 2** correct an error made in 2007 when the legislature enacted AS 11.56.759, that adopted a class A misdemeanor if a sex offender violates specific conditions of probation or parole. One of the requirements of the crime is that the person have served the entire period of incarceration imposed for the crime. This is effective for probationers, but not for parolees, because a person is never on parole if he or she has served the entire period of incarceration. A member of the Parole Board brought this issue to our attention, because the statute has caused problems for the board in dealing with parolees. These sections remove parolees from the statute.

**Section 3** rewrites AS 11.56.840, failure to register as a sex offender in the second degree. Although the proposal is similar to current law, it removes the requirement that the state prove a culpable mental state for the conduct of not registering or otherwise filing the required notices and information. The state would still be required to prove that the person knew he or she was required to register and failed to do so. The section also adopts an affirmative defense that unforeseeable circumstances outside the control of the person prevented him or her from registering, and that the person contacted the Department of Public Safety immediately upon being able to do so.

**Section 4** would raise a form of harassment in the second degree (that is, with intent to harass or annoy another person, the person subjects the other person to offensive physical contact) to harassment in first degree if the offensive physical contact is by the offender touching the other person's genitals, anus, or female breast. Harassment in the first degree is a class A misdemeanor; the second degree offense is a class B misdemeanor. There have been prosecutions recently involving offensive touchings that occurred so quickly that the court concluded that the victim did not have time to convey lack of consent to the offender. The court reduced these charges from sexual assault to harassment in the second degree. This conduct is more serious than a class B misdemeanor; the bill would raise it to a class A misdemeanor.

**Sections 5, 6, and 7** address a problem with Alaska law prohibiting possession of child pornography that was raised by a recent decision of the Alaska Court of Appeals, *Worden v. State*, 213 P.3d 144 (Alaska App. 2009). *Worden* held that our current statute does not prohibit a person from viewing child pornography on a computer; rather, the statute requires that the person must also save it on the computer to be considered to possess it. In response to this decision, the bill adopts the federal approach. It prohibits possession of child pornography, and it also prohibits a person from knowingly accessing child pornography on a computer with the intent to view it.

The bill also proposes an affirmative defense that is similar to federal law. The affirmative defense would address a situation where a person finds child pornography on their computer, and did not obtain it themselves. The defense requires that there are three or less depictions, and the person, without showing the material to another person except law enforcement, destroys the depictions or contacts law enforcement and turns it over to them.

**Sections 8, 9, and 10** amend the crime that prohibits the electronic distribution of indecent material to minors by expanding the offense to prohibit any distribution of indecent material to minors.

**Section 11** adds the crimes of human trafficking in the first and second degrees, distribution of child pornography, possession of child pornography, and distribution of indecent materials to minors to the crimes that are not eligible for a suspended imposition of sentence.

Section 11 also includes an amendment that removes “substantially” when describing a crime in another jurisdiction that may be a predicate conviction that would disallow the use of a suspended imposition of sentence for other offenses. This conforms with other statutes that require that a predicate offense in another jurisdiction be only similar to an offense in Alaska. Examples include AS 12.55.145(a) (presumptive sentencing), AS 11.41.320(a)(5) (third degree assault), and AS 11.41.110(a)(5) (murder in the second degree).

**Section 12** adds to the conditions of probation that may be imposed on a person convicted of a sex offense. It gives the court discretion to order the person to submit e-mail addresses and other networking addresses to his or her probation officer, who would be required to give this information to the Troopers and to the local law enforcement agency. If the person was convicted of sexual abuse of a minor or an offense related to child pornography, it gives the court discretion to prohibit the person from using an Internet site, communicating with children under 16 years of age, or possessing or using a computer.

**Section 13** amends the aggravating factor at sentencing that allows the court to increase a sentence above the sentencing range if the defendant knew that the victim was particularly vulnerable. It does this by adding the consumption of alcohol or drugs as factors that might make a victim particularly vulnerable.

**Section 14** adds two new aggravating factors to the sentencing law. First, it allows the court to increase a sentence above the sentencing range for a crime against a person (AS 11.41) committed against a person that the defendant was dating or with whom the defendant has engaged in a sexual relationship. Second, it allows the court to increase the sentence if the defendant is convicted of sexual abuse of a minor in the second degree under AS 11.41.436(a)(2) (a person 16 years of age or older having sexual contact with a child under 13 years old), if the defendant is 18 years old or older.

**Section 15** adds a new provision to sex offender registration law that requires a person present in Alaska, who is convicted of an offense out of state that requires registration in that jurisdiction, to register in Alaska. This requirement would apply even if Alaska does not have a criminal provision similar to the crime in the other state that requires registration there.

**Section 16** amends Rule 16(b)(1)(A) by prohibiting the copying of child pornography as part of the discovery process in a criminal prosecution. It would allow defense counsel, the defendant, and defense experts to examine the material, but it must be kept in the custody and control of a law enforcement agency or the prosecuting authority. Federal law has a similar provision. 18 U.S.C.A. § 3509(m).

**Sections 17 and 18** include the applicability and effective date provisions.

**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:**

**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

1 indecent material to minors is a class C felony.

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

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

7 \* **Sec. 11.** AS 12.55.085(f) is amended to read:

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

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

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

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

22 \* **Sec. 12.** AS 12.55.100(e) is repealed and reenacted to read:

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

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

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

28 (B) may be required to provide each electronic mail address,  
29 instant messaging address, and other Internet communication identifier that the  
30 defendant uses to the defendant's probation officer; the probation officer shall  
31 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.



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213 P.3d 144

Alaska App., 2009.

May 22, 2009

Term **D**

213 P.3d 144

Court of Appeals of Alaska.  
Christopher J. WORDEN, Appellant,  
v.

STATE of Alaska, Appellee.

No. A-10005.

May 22, 2009.

Renee McFarland, Assistant Public Defender, and Quinlan  
Steiner, Public Defender, Anchorage, for Appellant.

Blair M. Christensen, Assistant Attorney General, Office of  
Special Prosecutions and Appeals, Anchorage, and Talis J.  
Colberg, Attorney General, Juneau, for Appellee.

Before: COATS, Chief Judge, and MANNHEIMER and BOLGER,  
Judges.

**OPINION**

COATS, Chief Judge.

After a jury trial, Christopher J. Worden was convicted of three counts of sexual abuse of a minor in the first degree,<sup>FN1</sup> six counts of sexual abuse of a minor in the second degree,<sup>FN2</sup> four counts of possession of child pornography,<sup>FN3</sup> and one count each of indecent exposure in the second degree<sup>FN4</sup> and unlawful exploitation of a minor.<sup>FN5</sup> Superior Court Judge Charles T. Huguelet sentenced Worden to a composite sentence of 37 years and 6 months' imprisonment with 21 years and 6 months suspended.

FN1. AS 11.41.434(a)(1).

FN2. AS 11.41.436(a)(2), (4).

FN3. AS 11.61.127.

FN4. AS 11.41.460(a).

FN5. AS 11.41.455(a)(6).

Worden appeals, arguing that Judge Huguelet erred in denying his motion to dismiss the indictment and in refusing to grant Worden's motion for a continuance when the State presented an expert witness without appropriate notice under Alaska Criminal Rule 16. Worden also argues that the evidence presented at trial was insufficient to support his conviction for possession of child pornography. Finally, Worden argues that Judge Huguelet imposed an excessive sentence.

We conclude that Judge Huguelet did not err in refusing to grant Worden's motion to dismiss the indictment and did not err in denying Worden's motion for a continuance. However, we conclude that the State did not present sufficient evidence to convict Worden of possession of child pornography. Because this latter decision affects Worden's sentence, we remand for resentencing and do not decide whether Worden's sentence was excessive.

*Factual background*

On May 27, 2002, Juanita Thirlwell was visiting her son and daughter-in-law, Gene and Shari Conner, and her grandchildren, including C.C. (age eleven) and S.B. (age nine) at their home in Kenai. Worden, a family friend, was also at the house. At some point, Worden, C.C., and S.B. went into another room to watch a movie. In a reflection in a window, Thirlwell saw Worden rubbing and squeezing S.B.'s buttocks and touching her vaginal area over her clothes. The next weekend, Thirlwell, Shari Conner, S.B., and C.C. reported the assault to the Kenai police.

On June 3, 2002, Kenai police officers interviewed Worden. Worden admitted to having engaged in some inappropriate conduct with C.C. and S.B. and was arrested. Worden's wife, Renee, gave the police permission to seize and search two computers from her home that Worden had used. Police department employee Virgil Gattenby conducted a forensic examination of the computers. He found multiple images of child pornography in the computer's cache files. Worden was indicted on numerous felony charges.

At trial, S.B. testified that Worden had touched her on her breasts, buttocks, and genital area numerous times, including the incident on May 27, 2002. She also stated that Worden digitally penetrated her vagina and anus, and made her masturbate him. C.C. testified that Worden had touched her buttocks and breasts on a few occasions. Worden was convicted and he now appeals.

*Worden's motion to dismiss the indictment*

Prior to trial, Worden moved to dismiss the indictment. Worden's motion was based on a factual inaccuracy. He argued that it was improper for Shari Conner, S.B.'s mother and C.C.'s stepmother, to sit on the grand jury panel that indicted him. In

its opposition, the State pointed out that, although Conner was a member of the grand jury venire which had been called to hear cases over a three-month period, she did not sit on the panel that indicted Worden. In denying Worden's motion to dismiss the indictment, Judge Huguelet noted that Conner was not on the panel that indicted Worden and that Worden had not presented "particularized circumstances establishing the likelihood of a significant influence on the grand jury as a whole." FN6

FN6. Judge Huguelet was quoting from *Patterson v. State*, 747 P.2d 535, 537 (Alaska App.1987).

On appeal, Worden argues that, at the grand jury proceeding, the State "should have conducted a more searching inquiry into the grand jury's ability to impartially and fairly assess [Conner's] testimony." But Worden concedes that he did not raise this issue in the trial court. He must therefore establish plain error. Because Worden never raised this issue in the trial court, there is simply no record to indicate whether the grand jurors might have been prejudiced by their association with Conner. Further, even if Worden had established prejudice and Judge Huguelet had granted the motion to dismiss the indictment, the State could have easily reindicted Worden because the case against him was strong. FN7 There is simply no basis to find plain error.

FN7. See *Gaona v. State*, 630 P.2d 534, 536-37 (Alaska App.1981).

*Worden's motion for a continuance*

Worden argues that the State called an expert witness at trial without giving him the notice required by Alaska Criminal Rule 16. Rule 16(b)(1)(B) requires the prosecutor to inform the defendant, no later than forty-five days before trial, of any expert witnesses the prosecutor is likely to call at trial. Among other things, the prosecutor is to furnish the defendant with "a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion." FN8

FN8. Alaska R.Crim. P. 16(b)(1)(B).

The witness in question was Virgil Gattenby. Gattenby worked at the Kenai Police Department as the communications supervisor. This job entailed running the 911 center, working as the system administrator, and occasionally doing computer forensics work. Gattenby was not a law enforcement officer but had previously been an information management officer in the military. In addition to maintaining computer networks for the Department of Defense, Gattenby's military experience included doing computer forensic analyses and testifying at court martials based on those analyses. Gattenby performed the computer forensic analysis on Worden's computer.

At trial, after the State asked Gattenby if he found child pornography on Worden's computer, Worden objected,



apparently because he believed that the State would be eliciting an expert opinion from Gattenby. After a mostly inaudible bench conference, Judge Huguelet stated: "I won't allow [Gattenby] to give any expert opinions."

Worden did not make any further objections during Gattenby's testimony. But after Gattenby testified, Worden argued that portions of Gattenby's testimony constituted expert testimony and that the State had violated Rule 16 by not giving notice that it was calling Gattenby as an expert witness. Worden asked Judge Huguelet to strike Gattenby's testimony or to grant the defense a continuance. Worden represented that if the State had given notice that Gattenby would be called to testify as an expert, he would have obtained his own expert to analyze the information presented by Gattenby and might have called the expert as a witness at trial.

Judge Huguelet observed that Gattenby had testified before the grand jury. He concluded that Worden had known about the nature of Gattenby's testimony and that he had copies of the exhibits that Gattenby had relied upon for a long time. Worden conceded that he had possessed this information "for years." But Worden's attorney argued that it was not his job to ask "the State to hurry up and get their expert notice in so they can convict my client."

Judge Huguelet denied Worden's motion for a continuance. He concluded that Worden was on notice of the type of testimony that Gattenby was going to give and the issues that would be raised by that testimony. This conclusion is supported by the record. Furthermore, when Worden moved for a continuance, he never gave any indication of how long of a continuance he would need or what he specifically intended to accomplish if the court granted the motion for a continuance. Accordingly, we conclude that Judge Huguelet did not abuse his discretion in denying Worden's motion for a continuance.

In addition, we find that Worden has waived this objection. When Worden initially objected to Gattenby's testimony, Judge Huguelet ruled that he would not allow Gattenby "to give any expert opinions." This ruling alerted Worden that if he believed that Gattenby was testifying as an expert during some portion of his testimony, Worden should object. Judge Huguelet's implication appeared to be that if Worden could show that Gattenby was giving expert testimony, Judge Huguelet would sustain Worden's objection. But Worden never objected on this ground during Gattenby's testimony. And he cross-examined Gattenby on several technical portions of his testimony. By his inaction, Worden has waived this objection.

*The State did not present sufficient evidence to convict Worden of possession of child pornography*

Gattenby testified that when he examined Worden's computer, he found images of child pornography that Worden had accessed and viewed on the Internet. Gattenby's testimony supported the conclusion that Worden had intentionally accessed the child-pornography sites because his examination showed that: (1) Worden had visited certain websites containing child pornography more than once, and (2) it would have taken Worden's computer several minutes to load the images, and the

images recovered had loaded completely.

But Gattenby testified that even though the images of child pornography were found amongst the cache files on the hard drive of Worden's computer, there was no indication that Worden had any intent to permanently store the images-his intent was simply to view the images on his computer screen for the time he was at a given website. Gattenby explained that when a person uses a computer to access a site on the Internet, the computer automatically stores the images from the web page in the browser cache. This enables the computer to load the web page more quickly when you revisit it, because data is accessed directly from the computer's hard drive rather than loading that data over the Internet. <sup>FN9</sup>

FN9. See *United States v. Romm*, 455 F.3d 990, 993 n. 1 (9th Cir.2006) ( "Most web browsers keep copies of all the web pages that you view ... so that the same images can be redisplayed quickly when you go back to them." (quoting Douglas Downing et al., *Dictionary of Computer and Internet Terms* 149 (Barron's 8th ed. 2003))); see also Ty E. Howard, *Don't Cache out Your Case: Prosecuting Child Pornography Possession Laws Based on Images Located in Temporary Internet Files*, 19 Berkeley Tech. L.J. 1227, 1229-30 (2004) (explaining basic operation and purpose of cache).

Most people do not know that these temporary internet files are being stored on their computer when they access the Internet.<sup>FN10</sup> A user would need a high level of computer knowledge to locate and access these images.<sup>FN11</sup> Computer forensic experts like Gattenby often use specialized software to access the cache files.<sup>FN12</sup>

FN10. See, e.g., *United States v. Kuchinski*, 469 F.3d 853, 862 & n. 24 (9th Cir.2006) (noting government expert's agreement with statement that "most sophisticated-or unsophisticated users don't even know [the cache files are] on their computer").

FN11. See Giannina Marin, *Possession of Child Pornography: Should You be Convicted When the Computer Cache does the Saving for You?*, 60 Fla. L.Rev. 1205, 1213-14 (2008) ("A user needs advanced computer skills to directly access files in the cache while the computer is offline.").

FN12. See, e.g., *Barton v. State*, 286 Ga.App. 49, 648 S.E.2d 660, 661 (2007) (where State's expert testified that "no one using the computer can retrieve information stored in the temporary internet file folders without special forensic software").

In the present case, the State did not present any evidence

that Worden had this specialized knowledge-that he was aware that images were stored in his computer's browser cache or that he might have the ability to access those images-at the time of the alleged offense. As Gattenby testified, the evidence supported the inference that Worden had viewed child pornography on certain websites at some point in the past. But there was no evidence that Worden knew that the images from these websites were being stored in his computer's cache or that he intended to save them on his computer.

The State's case, therefore, rested upon proof that Worden intentionally accessed and viewed images of child pornography over the Internet. But we conclude that AS 11.61.127, the Alaska Statute prohibiting the knowing possession of child pornography, does not criminalize merely viewing images of child pornography on a computer. The statute prohibits the "possession" of "material that visually or aurally depicts conduct [constituting child pornography]." <sup>FN13</sup> Another section of the statute provides that "[e]ach film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material" depicting child pornography that is knowingly possessed by the defendant constitutes a separate crime. <sup>FN14</sup>

FN13. AS 11.61.127(a).

FN14. AS 11.61.127(c).

It is questionable whether the act of possessing material encompasses viewing an image on a computer screen. If Worden had gone to a movie depicting child pornography, it could not be said that he possessed the child pornography depicted in the movie, even though it might be clear that he had intentionally set out to view those images. Interpreting the former version of the federal statute criminalizing the possession of child pornography, <sup>FN15</sup> which is similar to AS 11.61.127(c), federal courts have concluded that merely viewing child pornography on a computer, as opposed to saving it on the computer, was not prohibited by the statute. <sup>FN16</sup> The Court of Appeals for the Ninth Circuit interpreted the former federal statute to criminalize only the knowing possession of files on a hard drive or other computer storage device. <sup>FN17</sup> It follows that where a defendant is not aware of the existence of the cache files, he has not committed a crime.

FN15. Former 18 U.S.C. 2252A(a)(5)(B) (2006) (making it a crime to "knowingly possess[ ] any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been ... transported in interstate or foreign commerce by any means, including by computer"), *amended by* Enhancing the Effective Prosecution of Child Pornography Act of 2007, Pub.L. No. 110-358, Title II § 203(b), 122 Stat. 4001, 4003-04 (2008) (inserting "or knowingly accesses with intent to view" into the operative language of 18 U.S.C. 2252A(a)(5)(B)).

FN16. See, e.g., *United States v. Stulock*, 308 F.3d 922, 925 (8th Cir.2002) (noting with approval the district court's holding that "one cannot be guilty of possession for simply having viewed an image on a web site, thereby causing the image to be automatically stored in the browser's cache, without having purposely saved or downloaded the image").

FN17. *Kuchinski*, 469 F.3d at 863 ("[W]here a defendant lacks knowledge about the cache files, and concomitantly lacks access to and control over those files, it is not proper to charge him with possession and control of the child pornography images located in those files, without some other indication of dominion and control over the images."); *Romm*, 455 F.3d at 1000 ("[T]o possess the images in the cache, the defendant must, at a minimum, know that the unlawful images are stored on a disk or other tangible material in his possession.").

Some state courts have construed their statutes prohibiting the possession of child pornography to criminalize the use of a computer to access images of child pornography over the Internet.<sup>FN18</sup> But those states' statutes are much broader than AS 11.61.127.<sup>FN19</sup>

FN18. See, e.g., *Ward v. State*, 994 So.2d 293, 301-02 (Ala.Crim.App.2007); *Tecklenburg v. Superior Court*, 169 Cal.App.4th 1402, 87 Cal.Rptr.3d 460, 472-73 (2009); *Commonwealth v. Diodoro*, 932 A.2d 172, 174-75 (Pa.Super.2007), cert. granted, 595 Pa. 537, 939 A.2d 290 (2007).

FN19. See, e.g., *Cal.Penal Code* § 311.11 (West 2008) (criminalizing possession or control of "any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip," that depicts minors engaging in or simulating sexual conduct).

A basic rule of statutory construction "is that statutes imposing criminal liability should be construed narrowly." <sup>FN20</sup> Therefore, "[w]hen the scope of a criminal statute is unclear, courts should normally construe the statute against the government-that is, construe it so as to limit the scope of criminal liability." <sup>FN21</sup> At best, AS 11.61.127 is ambiguous as to whether it criminalizes viewing a digital image of child

pornography over the Internet. Because we must interpret the statute narrowly, we conclude that it does not prohibit viewing child pornography on a computer screen. Since this is the only conduct the State proved Worden knowingly engaged in, insufficient evidence existed to convict Worden of possession of child pornography.

FN20. State v. ABC Towing, 954 P.2d 575, 579 (Alaska App.1998).

FN21. Id.

#### *Conclusion*

We AFFIRM all of Worden's convictions except his convictions for possession of child pornography. Worden's convictions for possession of child pornography must be REVERSED and a judgment of acquittal must be issued. We do not decide whether Worden's sentence is excessive because Worden must be resentenced based on the reversal of his convictions for possession of child pornography.

The judgment of the superior court is AFFIRMED in part and REVERSED in part. The superior court shall resentence Worden within 90 days and transmit a copy of the judgment to this court. After the distribution of the amended judgment, Worden shall have 30 days to renew his sentence appeal. We retain jurisdiction.

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