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HOUSE BILL 359
SEX TRAFFICKING AND HUMAN TRAFFICKING
SECTIONAL ANALYSIS

The increased scrutiny of crimes related to promoting prostitution of children in Alaska has prompted the proposed change in terminology from promoting prostitution to sex trafficking. There are good reasons for this change. First, a child who is put into prostitution by an adult should be considered and described as a victim, not a prostitute. The change in terminology will encourage this change. Second, a majority of law enforcement officers now refer to the crime of promoting prostitution of children as sex trafficking. Changing Alaska law will facilitate better communication and understanding.

Sections 1, 2, 7 -- 11, 14, 17 – 19, and 21 -- 24 change the statutes prohibiting promoting prostitution to prohibiting sex trafficking. The elements of the offenses remain the same. These sections also make conforming amendments to other laws that currently refer to the crime of promoting prostitution so that they cross-reference sex trafficking.

Section 3 adds the crimes of human trafficking in the first degree and sex trafficking in the first degree to the felonies described as "serious felony offenses" in the state's conspiracy law, AS 11.21.120. This change would enable the state to investigate and potentially prosecute offenders who work with other people to plan and engage in human trafficking or sex trafficking.

Section 4 amends the crime of distribution of indecent materials to minors, AS 11.61.128. This proposed amendment is in response to the recent decision by a federal district court judge holding the current version of the statute to be unconstitutional in violation of the first amendment, because it applies to conduct that is constitutionally protected. In response to the decision that the current law is overbroad, the bill would require that the state prove the defendant intentionally distributed, or possessed with intent to distribute, harmful material to another person that the offender knows is under 16 years of age or believes is under 16 years of age.

Sections 5 and 6 raise the penalty for being a patron of a prostitute, if the prostitute is a minor under 18 years of age, from a class B misdemeanor to a class C felony. It also specifies the legislative intent that the age of the prostitute is a circumstance that does not require proof of a culpable mental state.

Section 12: Under current law, no corroboration is required of the testimony of an alleged victim in a prosecution for promoting prostitution (sex trafficking) in the first, second, and third

degrees. The bill adds the crime of promoting prostitution (sex trafficking) in the fourth degree to those crimes that do not require corroboration of the testimony of an alleged victim.

Section 13: Under current law property used to facilitate or derived from a crime of promoting prostitution (sex trafficking) is subject to forfeiture. The bill adds the crime of prostitution to these crimes. Under the bill property used to facilitate or derived from the crime of prostitution would be subject to forfeiture.

Section 15 corrects an error in AS 11.81.250(b). Under current law the crime of promoting prostitution (sex trafficking) in the first degree under AS 11.66.110(a)(2) – where the person promoted is a child – is an unclassified felony. The bill adds this offense to the other offenses described as unclassified felonies in Alaska law.

Section 16 allows the testimony of a witness in a hearing addressing the competency of a defendant for being tried for a crime by way of contemporaneous two-way video conference. It allows this testimony if the witness would be required to travel more that 50 miles to attend the hearing in person or if the witness lives in a place where people customarily travel by air to the court site.

Section 19, in addition to conforming the definition of most serious felony to the changes in the sex trafficking provisions, also corrects an omission in the definition of most serious felony by including online enticement of a minor in the definition.

Section 20 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. A person would be required to register for 15 years if convicted of one offense, and for life if convicted for two or more offenses.

Section 25 adopts Rule 38.3, Alaska Rules of Criminal Procedure, addressing the use of testimony by contemporaneous two-way video conference. It would allow this testimony if the parties agree to its use. If the parties do not agree, it would allow contemporaneous two-way video conference testimony if the court finds that its use is necessary to further an important public policy, the witness is unavailable, and the testimony is given under oath and is subject to cross-examination.

Section 26 addresses the applicability of the changes described above.

Section 27 is an instruction to the revisor of statutes regarding the heading of AS 11.66.110.

Section 28 provides for an effective date of July 1, 2012.