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CS FOR SENATE BILL 22 (JUD)

Sectional Analysis

Sections 1, 21 and 22 are intended to overturn the majority decision in *Collins v. State,* 287 P. 3d 791 (Alaska App. 2012). *Collins* used a mistaken interpretation of legislative intent regarding standards for referring sex offenders to a three-judge sentencing panel. In 2006 the legislature adopted increased penalties for persons convicted of sex felonies. The legislature adopted specific findings, among others, that sex felons are difficult to treat, are much more likely than other felons to reoffend, that many sex offenders begin victimizing others when the offender is relatively young (between 12 and 16 years of age), and that these crimes cause serious harm to victims, particularly to young girls. When the legislature raised the sentencing ranges for sex felonies, it did not intend that different standards be applied to referral of a case involving a sex felony to a three-judge panel than for other felony offenses. **Section 1** adopts legislative findings and intent to address the *Collins* decision. **Sections 21 and 22** adopt new provisions to address the transfer of a case from the sentencing judge to a three-judge panel in a case involving a sex felony. These three sections overturn the majority decision and endorse the dissent in *Collins.*

Section 2 allows a person to bring a civil action at any time against a perpetrator for damages based on injuries resulting from the crimes of felony sex trafficking and felony human trafficking.

Sections 3 and 4 amend the crime of sexual assault in the third degree to prohibit a probation or parole officer from engaging in sexual penetration with a person on probation or parole. This is similar to the law prohibiting a police officer or a correctional officer from this conduct with a person in the officer's custody. The terms probation officer and parole officer are defined. The definition of probation officer includes a person who supervises therapeutic court participants.

These sections also prohibit a juvenile probation officer or juvenile facility staff from engaging in sexual penetration with an 18 or 19 year old on juvenile probation or in a juvenile facility. This conduct is a class C felony.

Sections 5 and 6 amend the crime of sexual assault in the fourth degree to prohibit a probation or parole officer from engaging in sexual contact with a person on probation or parole. They also prohibit a juvenile probation officer or juvenile facility staff from engaging in sexual contact with an 18 or 19 year old on probation/or in a juvenile facility. This conduct is a class A misdemeanor.

Section 7 adds a defense to the prohibition of a probation or parole officer from engaging in sexual contact with a probationer or parolee that the offender and the person were married. This applies to the crime of sexual assault in the fourth degree. It also adds the defense that the offender was mentally incapable to the crime of sexual assault in the fourth degree.

Section 8 adopts an affirmative defense to the prohibition of a parole or probation officer from engaging in sexual penetration or sexual contact with a parolee or probationer. The affirmative defense is that the officer and the person on probation or parole had a preexisting dating or sexual relationship before the alleged offense that continued until the alleged offense.

Section 9 fills a gap in the law that prohibits a person ordered by a court not to contact a victim or witness as part of a sentence or a condition of release. It prohibits a defendant who has been ordered by the court not to contact a victim or witness, but who has not been released from jail, to refrain from contacting the victim or witness. This conduct is a class A misdemeanor.

Section 10 allows the state to request forfeiture of property of a patron of a prostitute or the prostitute if the property was used to institute, aid, or facilitate prostitution, or was received or derived from prostitution. It makes the forfeiture discretionary with the court and requires the defendant to be convicted before the property may be forfeited.

Section 11 allows the state to prosecute a person for distribution of child pornography, felony sex trafficking, and human trafficking at any time without regard to the time elapsed from the commission of the crime.

Sections 12 and 13 allow the court the discretion, in releasing on bail a person in connection with a crime involving domestic violence or stalking, to require the defendant to participate in electronic monitoring by a global positioning device or similar technology if it meets guidelines adopted by the Department of Corrections in consultation with the Department of Public Safety.

Section 14 requires that a person arrested for a violation of a condition of release in connection with a domestic violence crime appear before a judge in person or by telephone before release from custody.

Section 15 authorizes the attorney general to make a written application to a court for an order allowing interception of the private communications of a person that may provide evidence that the person is committing or planning to commit sex trafficking in the first or second degree, or human trafficking in the first degree. Sex trafficking and human trafficking are crimes that would require cooperation among perpetrators. Interception of the communications of a person under these circumstances would facilitate the investigation of these crimes.

Section 16 expands the protection of a victim of sexual assault, sexual abuse of a minor, and unlawful exploitation of minor by excluding evidence of the victim's sexual conduct both before and after the person was victimized. Current law provides this protection for evidence of sexual conduct before the offense charged. This rule is commonly referred to as the rape shield law, and the purpose is to exclude evidence of the victim's private sexual conduct unless the proponent has a valid evidentiary reason for its admission. **Section 16** also requires the defendant to make the request to admit this evidence at least five days before trial, unless the request is based on information learned after the deadline or otherwise for good cause.

Section 17 requires a defendant claiming credit for time spent in a treatment program as a condition of bail release to file written notice 10 days before the sentencing hearing on that offense. The notice must include the number of days the person is claiming. A court may not consider a request for credit made more than 90 days after the deadline except for good cause. **Section 17** also requires a person to make a request for credit for time spent in a treatment program pending appeal within 90 days after the case is returned to the trial court following appeal. A court may not consider a request for credit after the deadline except for good cause.

Section 18 requires a defendant claiming credit for time spent in a treatment program as a condition of probation or a condition of bail release in connection with a petition to revoke probation to file notice of the request 10 days before the disposition hearing on the petition. The notice must include the number of requested days of credit. A court may not consider a request for credit made more than 90 days after the deadline except for good cause.

Section 19 makes a person convicted of sex trafficking ineligible for a suspended imposition of sentence.

Sections 20 requires the court in sentencing a person convicted of two or more crimes of distribution of child pornography, possession of child pornography, or distribution of indecent material to minors to give some consecutive time for each crime or attempted or solicited crime for which the defendant is being sentenced.

Sections 21 and 22 – please refer to discussion at **Section 1.**

Section 23 corrects an error in the definition of sexual felony by including the crimes of sex trafficking in the first degree and online enticement of a minor in the definition. The term is used in AS 12.55.125(i), which adopts higher sentencing ranges for most sex felonies, including sex trafficking in the first degree and online enticement of a minor.

Section 24 adds the felony of being a patron of a prostitute who is under 18 years of age in violation of AS 11.66.100 to those crimes that require registration as a sex offender, if the patron is 18 years or older and at least three years older than the prostitute. It also corrects a reference to the crime of sex trafficking in the first degree and the third degree in the sex offender law.

Sections 25 and **26** make conforming amendments to the warning on sexual assault, stalking, and domestic violence protective orders. Certain violations of these protective orders are a class A misdemeanor under AS 11.56.740. The maximum fine for a class A misdemeanor has been raised to $10,000 under AS 12.55.035. **Sections 25** and **26** update the warning to describe the maximum fine under current law.

Section 27 adds to the definition of victim counseling centers to include victim counseling centers operated by or contracted by a branch of the armed forces of the United States. The effect of this change is to extend the privilege for confidential communications between a victim of sexual assault or domestic violence and their counselors to counseling organizations that provide services to victims connected with the military.

Section 28 amends the law addressing persons who are eligible for violent crimes compensation to include victims of sex trafficking, human trafficking, and unlawful exploitation of a minor.

Sections 29, 40, and 41 strengthen and make more explicit statutes and court rules that require a court to consider the impact of the crime on the victim. **Section 40** requires the presentence report to include a victim impact statement or an explanation of why the victim or victim's representative could not be interviewed. **Section 41** requires the court to take the victim's impact statement into account when preparing the sentencing report and for other purposes. **Section 29** requires the Alaska Judicial Council to include information about a judge's consideration of victims when imposing sentence in a felony case with other information about the judge in connection with a retention election.

Section 30 provides that a person convicted of an unclassified or class A sexual felony is not eligible for mandatory parole (also called good time).

Sections 31 -- 34 address the procedure for a law enforcement officer to obtain an administrative subpoena for the business records of an Internet service provider. These subpoenas may be issued in the investigation of the crimes of online enticement of a minor, unlawful exploitation of a minor, distribution of child pornography, possession of child pornography, and distribution of indecent material to a minor. The amendments allow the attorney general to designate the deputy attorney general for the civil division or the criminal division to evaluate applications for the subpoena, in addition to the attorney general. The investigation of these cases often requires a prompt response to a request for a subpoena, and having two attorneys who may approve them will assist law enforcement in their investigations.

Section 35 adds to the circumstances that allow a court to decide that reasonable efforts by the Office of Children's Services to reunite a child who is in an out-of-home placement with the child's family are not required. It provides that the court may make this determination if it finds by clear and convincing evidence that the parent or guardian has committed sexual abuse against the child or another child of the parent or guardian, or that the parent or guardian is registered or required to register as a sex offender or child kidnapper.

Sections 36, 37, and 38 add athletic coaches to the persons who are required to report to authorities if the person has reasonable cause to believe that a child has suffered harm from child abuse or neglect. Athletic coach is defined to include paid leaders and their assistants and volunteer leaders of sports teams.

A volunteer coach would only be required to report if the coach volunteers more than four hours a week for four consecutive weeks or more than 20 hours in a one month period; has been trained in identifying child abuse and neglect; and has signed a form that acknowledges that the volunteer coach is required to report abuse or neglect.

Section 39 adopts a court rule that limits the publication of child pornography that occurs during the discovery process in a prosecution for unlawful exploitation of a minor. Because every viewing of child pornography is an additional harm to the victim, this section requires the defendant and the defendant's attorney to view the material where it is stored. If a defendant is not represented, it requires the court to arrange for the defendant to be supervised while viewing the material. If the defendant requests that an expert witness out of state view the material, it requires the court to arrange to send the material directly to the expert.

Sections 40 and 41 – please refer to discussion at **Section 29**.

Section 42 amends Rule 404(b)(2)(i), Alaska Rules of Evidence. Under Rule 404, evidence of the defendant's prior bad acts is generally not admissible. There are several exceptions to this rule. Evidence in the prosecution of a physical or sexual assault or abuse of a minor that describes other similar acts by the defendant toward the same victim or other similar victims may be admissible. Current law, however, limits the admissible evidence to acts committed within 10 years preceding the date of the currently charged crime. **Section 42** removes this time limitation. Other exceptions to the general rule, for example, sexual assault and domestic violence prosecutions, do not limit the use of prior acts to those committed within 10 years of the current offense. Further, the 10 year limit is problematic because a person convicted of a crime against a child may have been incarcerated for a significant period for the previous offense. The question of whether the prior act occurred too far in the past is then left to the judge to determine under the circumstances of the case.

Section 43 notes that the proposed amendments to the rape shield law would have the effect of changing a court rule.

Section 44 adopts applicability provisions.

Section 45 notes that the changes in the rape shield protection in **Section 16** of the bill requires two-thirds majority vote in each house because it is an indirect court rule change.

Section 46 provides an effective date of July 1, 2013.