



HOUSE BILL 73

Relating to crimes; victims; child abuse and neglect

SECTIONAL ANALYSIS

Sections 1, 20 and 21 are designed to overturn the majority decision in *Collins v. State*, 287 P. 3d 791 (Alaska App. 2012). *Collins* used a mistaken interpretation of legislative intent to adopt lower standards for referring sex offenders to a three-judge sentencing panel. In 2006 the legislature adopted increased penalties for persons convicted of sexual felonies. The legislature adopted specific findings, among others, that sexual 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 sexual felonies, it did not intend that different standards be applied to referral of a case involving a sexual felony to a three-judge panel than for other felony offenses. **Section 1** adopts legislative findings and intent to address the *Collins* decision. **Sections 20 and 21** adopt new provisions to the law addressing the transfer of a case from the sentencing judge to a three-judge panel in a case involving a sexual felony. These three sections overturn the majority decision and endorse the dissent in *Collins v. State*, 287 P. 3d 791 (Alaska App. 2012).

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 sex trafficking and 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 and parole officer are defined; the definition of probation officer includes a person who supervises therapeutic court participants.

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 on in a juvenile facility. This conduct is a class A misdemeanor.

Section 7 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 8 allows the state to forfeit property of a patron of a prostitute if the property was used to institute, aid, or facilitate prostitution, or was received or derived from prostitution.

Section 9 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.

Section 10 allows the court the discretion, in releasing on bail a person in connection with a crime involving domestic violence, 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 Public Safety.

Section 11 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 12 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 13 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 13** also requires the defendant to make the request to admit this evidence at least five days before trial, unless the request is based on evidence that was not available to the defendant before the request was made.

Sections 14, 15, 43, and 44 strengthen the procedure for determining whether a witness who claims a Fifth Amendment right not to testify actually is entitled to constitutional protection and a grant of immunity from prosecution if the person testifies. The prosecution does not participate in the procedure to determine whether a person has a valid Fifth Amendment claim and should be awarded immunity from prosecution. The court in a closed hearing with the witness and counsel for the witness makes the decision. **Sections 14 and 15** require the court to personally interview the witness at this closed hearing; the testimony is privileged and cannot be used for any other purpose. The court must then make written findings of fact and conclusions of law in a sealed order. **Sections 43 and 44** amend Rule 216(a) and (b) to allow the state the right to an immediate appeal of the decision to the Court of Appeals.

Section 16 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 request for credit for that time may not be made after the sentencing hearing.

Section 17 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 request for credit for that time may not be made after the disposition hearing.

Section 18 makes a person convicted for sex trafficking ineligible for a suspended imposition of sentence.

Sections 19 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 20 and 21 – please refer to discussion at **Section 1**.

Section 22 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 sexual felonies, including sex trafficking in the first degree and online enticement of a minor.

Section 23 adds the felony of being a patron of a prostitute who is under 20 years of age in violation of AS 11.66.100 to those crimes that require registration as a sex offender. It also corrects a reference to the crime of sex trafficking in the first degree and the third degree.

Section 24 allows a court the discretion to include in a protective order for sexual assault or stalking (that is not a domestic violence protective order) an order that the respondent participate in an electronic monitoring by a global positioning device or similar technology if it meets guidelines adopted by the Department of Public Safety.

Sections 25 and 26 allow a court the discretion to include in a domestic violence protective order a provision requiring the respondent to participate in an electronic monitoring by a global positioning device or similar technology if it meets guidelines adopted by the Department of Public Safety.

Section 27 makes a conforming amendment to the warning on domestic violence protective orders. Certain violations of a domestic violence protective order 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. **Section 27** updates the warning to describe the maximum fine.

Section 28 adds to the definition of victim counseling centers to include victim counseling centers in military organizations. The effect of this change is to extend to privilege for confidential communications between a victim of sexual assault or domestic violence and their counselors to counseling organizations that provide services to victims on military bases.

Section 29 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 30, 40, and 41 strengthen and make more explicit statutes and court rules that require a court to consider the crime's impact 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 30** requires the Alaska Judicial Council to collect data on a judge's compliance with AS 12.55.025(a)(5), which requires a court in preparing the sentencing report to include information about the financial, emotional, and medical effects of the crime on the victim, and the victim's need for restitution. It also requires that the Council include data on a judge's compliance with these provisions in their recommendations regarding the judge's retention.

Section 31 provides that a person convicted of an unclassified or class A sexual felony is not eligible for mandatory parole (also called good time).

Sections 32 -- 35 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 another attorney in the Department of Law 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 36 adds to those 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.

Sections 37 and 38 add coaches to those persons who are required to report to authorities if the coach has reasonable cause to believe that a child has suffered harm from child abuse or neglect. Athletic coach is defined to include both paid and volunteer coaches.

Section 39 adopts a court rule that limits the publication of child pornography that is required 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 30**.

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.

Sections 43 and 44 – please refer to discussion at **Sections 14. and 15.**

Section 45 adopts applicability provisions.

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