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## SB 218 Sex Offenders/Sentencing/Abuse Reports

Letter of Intent offered by sponsors Senator Bunde and Senator Guess. (statistics appear to be referenced from several national studies). Taken from Senate Floor session on 2-16-2006:

### The Purposes And Rationale Underlying The Increase In Sentencing Ranges For Felony Sex Crimes In Alaska

Senate Bill 218 adopts longer sentences for, and closer supervision of, convicted sex offenders. These changes are appropriate in light of the following:

- (1) Statistical studies about sexual assault and abuse in America, and more specifically, in Alaska;
- (2) The growing body of knowledge about the actual number of victims per sex offender and the resistance of sex offenders to rehabilitative treatment;
- (3) The purposes of criminal sentencing set out in AS 12.55.005 and *Chaney v. State*, 447 P.2d 441 (Alaska 1970);
- (4) The principles of penal administration set out Article I, section 12 of the Alaska Constitution that gives precedence to protection of the public and community condemnation; and
- (5) The rights of crime victims under Article I, section 24, of the Alaska Constitution.

Sexual assault and abuse in Alaska can be classified as a plague.

- Alaska has been ranked number one in the nation for 22 out of the last 29 years for sexual assault and abuse.
- Alaska has been number one in the nation for sexual assault since 1995. In addition, Alaska has never been ranked below number five in the nation for sexual assaults per capita (forcible rapes per 100,000 residents) since 1976, when data collection began.
- The State currently has approximately 2.5 times the national average for sexual assault.
- Alaska has about 4,300 registered sex offenders in our Alaskan communities.
  - Even with startlingly high sex offense rates, sexual abuse and assault are still largely unreported crimes (only 16 percent of victims report the assault); and arrest rates are also low (only 27 percent of reported sex crimes result in an arrest).
  - Therefore we can assume, the actual number of sex offenders in Alaska is significantly higher than 4,300 individuals.

Institutional treatment programs (cognitive-behavioral, relapse prevention and behavioral) provided to sex offenders both in other states and in Alaska have not proven to be particularly effective.

- Offenders who served time for sexual assault were four times as likely as those convicted of other crimes to be re-arrested for a new sexual assault.
- The more prior arrests an offender has, the greater their likelihood for being re-arrested for another sex crime.

- Forty-three percent of sex offenders re-offend within three years.
- Currently, 78.5 percent of sex offenders have at least one prior arrest and average 4.5 prior arrests.
- In Alaska, the statistics are even more startling:
  - of the 927 convicted sex offenders in custody on January 24, 2006, 93 percent have at least one prior arrest
  - the average number of arrests per sex offender is 11.75; and more than 41 percent have been arrested ten or more times.
- Sex offenders average 110 victims and 318 offenses before being caught.
- Sex offenders admitted to 3.5 times the number of victims and 4.5 times the number of offenses when given a polygraph exam as compared to questioning without a polygraph.
- Offenders under polygraph examination also report an earlier age when they began offending than was previously known.
- Sex offenders go undetected for an average of 16 years, which explains how they can have so many victims.
  - It also suggests that offenders begin raping when they are relatively young, and indeed the average age of onset of the criminal sexual behavior for offenders is between 12 and 16 years.
  - Early detection and intervention in sex offenses committed by juveniles may be one promising way of addressing sex crimes generally, especially in the future.
  - However, sex offenses committed by juveniles are a topic that is beyond the scope of Senate Bill 218, which deals with the immediate plague facing Alaska involving adult sex offenders.

The Alaska appellate courts have sometimes questioned whether decisions by the legislature in setting presumptive sentences were intended to achieve the results they did; in some instances the courts have reduced the presumptive sentence to avoid "anomalous" results.

- In the case of sentence ranges imposed by Senate Bill 218, the result of greatly increased sentences are, indeed, intended. The increased sentences in Senate Bill 218 are in recognition that the harm and severity of injury caused by sex offenses has been greatly under-recognized by the criminal justice system.
- Sex offenses are crimes of violence and much like domestic violence they are about power and control.
- The victims are typically vulnerable due to their age, incapacity or the offender's position of authority.

Sex offenses against young victims are particularly heinous and the sentences in Senate Bill 218 reflect the increased seriousness of choosing a young victim by increasing the sentencing ranges for the most serious offenses committed against victims less than 13 years of age.

- In drafting Senate Bill 218, the conduct covered by each category of offense was carefully examined.
- Reclassification of conduct was considered, and for some offenses implemented.
- The sentencing ranges contained in Senate Bill 218 reflect the legislature's view of the appropriate sentence for the cases involving the conduct described by the particular statute. The ranges are large enough to accommodate the wide-ranging types of conduct contained within these statutes - particularly in the B and C felony range.

In Senate Bill 218, the low end of the range for the most serious sex offenses is higher than the mandatory minimum or low end of presumptive sentences for some crimes that result in death. This is intentional and not anomalous.

- Sex offenses cause great harm to victims, their families and to the entire community.
- Death has always been seen as the greatest harm that could be inflicted by an offender. But death can be caused by reckless conduct. Sex offenses are not reckless - they are at the very least knowing, and often intentional.

The proportionality of the sentences imposed by Senate Bill 218 to other offenses in our criminal code was considered. The severity of the sentences in comparison to other crimes was intentional.

- The "prior criminal history of the defendant and the likelihood of rehabilitation" is another recognized consideration in sentencing.
- The sentence ranges in Senate Bill 218 start at increasingly higher levels when an offender has a prior record of both non-sex related felonies and sexual felonies. This change takes into account the decreased potential for rehabilitation with each successive conviction. It also recognizes the lack of effective treatment for most sex offenders.

The "need to confine the defendant to prevent further harm to the public" is a factor also considered by Senate Bill 218.

- The evidence that sex offenders have multiple victims and often do not respond to treatment supports the need for confinement to protect the public.
- Another sentencing consideration is "the circumstances of the offense and the extent to which the offense harmed the victim or abuse and assault suffer from the effects of the crime for years.
- When sexually abused boys are not treated, it makes it more likely they will be involved in committing crimes, suicide, drug use and continued sexual abuse. Young girls who are sexually assaulted are more likely to abuse alcohol and drugs and are six times more likely to develop psychiatric disorders and 13 times more likely to attempt suicide.

Although judges must take into account "the circumstances of the offense and the extent to which the offense harmed the victim" on a case-by-case basis in determining the specific

sentence within a statutory range, in setting those ranges the legislature must take into account the harm to victims generally, and the extent which sex crimes impact the community as a whole.

With the latter criteria and in light of the aforementioned statistics, we the Alaska State Legislature find sentences for sex offenses should be increased significantly.

- The effect of sex offenses on the victim, and the victim's family, is enormous. But the effect on the fabric of society is no less important to consider in setting sentence ranges. In many places in Alaska, women are afraid to walk alone in their neighborhoods at night, or to let their children go to the park or the mall, because of fear that they too may become a victim.

The estimated financial costs to society are also significant.

- In 2003, 521 victims reported sexual assault in Alaska.
- The National Institute of Justice estimates that the average cost of caring for each victim is \$86,500; thus every year Alaska spends about \$45 million on sexual assault victims.

"The effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct" is also a consideration.

- The failure of treatment in rehabilitating most sex offenders provides little hope that longer sentences will deter future crimes.
- However, some categories of sex offenses, such as the teacher or coach who may be tempted to take advantage of a student, are more likely to be deterred by the threat of a long jail term.

For most offenders the hope for deterrence in Senate Bill 218 is provided by the increased probation periods and the use of the polygraph while on probation or parole.

- The polygraph will help to provide an early warning system during supervision that will put the probation or parole officer on notice that corrective action is necessary due to signs of deception or offending behavior.
- The use of the polygraph should prevent at least some future victimization from occurring.
- "Community condemnation," "reaffirmation of societal norms," and "restoration of the victim and the community" are the other recognized sentencing factors.

There has been a public outcry recently over the failure of our criminal justice system to provide for the protection of the public from sex offenders.

- The community particularly condemns offenses against children.
- The increased sentences of Senate Bill 218 send the message to offenders and society: this behavior will not be tolerated nor accepted.
- The community has good reason to be shocked at the sobering statistics relating to sex offenses in Alaska, and to be outraged at the conduct underlying those offenses.

Senate Bill 218 sets forth a sentencing scheme that sets a higher presumptive range, particularly for young victims.

- Although every sex crime is heinous, the community particularly condemns those who prey on very young victims. Additionally, as indicated above, offenders who target young victims are more likely to re-offend.
- The increased sentences for offenders with young victims recognize these important sentencing factors – community condemnation, reaffirmation of societal norms and prospects for rehabilitation.

Finally, in enacting Senate Bill 218, it is recognized that there may be the "exceptional" case or circumstance that cries out for mercy.

- The criminal justice system often weeds these cases out in the referral and plea bargaining process.
- However, by application of existing statutory mitigating factors under AS 12.55.155, or by referral to the three-judge panel "safety net" under AS 12.55.175, the courts of Alaska will be able to avoid manifestly unjust sentences in appropriate cases.
- At the same time, the citizens of Alaska will benefit from the increase in safety achieved by longer incarceration of sex offenders followed by enhanced supervision using the polygraph.

Letter of Intent references

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