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Radford
3/12/19

CS FOR SENATE BILL NO. 35(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to
2 sexual abuse of a minor in the third degree; relating to enticement of a minor; relating
3 to indecent exposure; relating to harassment in the first degree; relating to harassment
4 in the second degree; relating to indecent viewing or production of a picture; relating to
5 the distribution of child pornography; relating to assault in the second degree; relating
6 to sentencing; relating to prior convictions; relating to the definition of 'most serious
7 felony'; relating to the automated victim notification system; relating to the definition of
8 'sexual felony'; relating to the duty to register as a sex offender or child kidnapper;
9 relating to the definition of 'sex offense'; relating to eligibility for discretionary parole;
10 and providing for an effective date."

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

12 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

2 LEGISLATIVE FINDINGS AND INTENT FOR SECS. 16, 17, AND 24 OF THIS
3 ACT. (a) The legislature finds that the legislature did not intend, by enacting ch. 90, SLA
4 2003, and the legislature does not now intend by enacting this Act, to place a limitation on
5 which previous convictions may be considered when imposing a sentence under
6 AS 12.55.125(i), as amended by sec. 16 of this Act.

7 (b) It is the intent of the legislature that AS 12.55.145(a), as amended by sec. 17 of
8 this Act, overturn the decision of the Alaska Court of Appeals in Williams v. State, 418 P.3d
9 870 (Alaska Ct. App. 2018) to the extent that the decision held that, when imposing a
10 sentence under AS 12.55.125(i), as amended by sec. 16 of this Act, a prior felony conviction
11 should not be considered if 10 or more years has elapsed between the date of the defendant's
12 unconditional discharge on the immediately preceding offense and the date the defendant
13 committed the present offense unless the prior conviction was for an unclassified or class A
14 felony.

15 (c) It is the intent of the legislature that all prior felony convictions be considered
16 when imposing a sentence under AS 12.55.125(i), as amended by sec. 16 of this Act,
17 regardless of the amount of time that has passed since each conviction.

18 (d) The legislature finds that

19 (1) protecting the public from sex offenders serves a compelling governmental
20 interest, and that the release of certain information about sex offenders to public agencies and
21 the general public assists in protecting the public;

22 (2) a sex offender who is required to register as a sex offender in the state
23 where the person was convicted may relocate to this state for various reasons;

24 (3) the Alaska Supreme Court's narrow interpretation of the state's sex
25 offender registration requirements in its decision in State, Department of Public Safety v.
26 Doe, 425 P.3d 115 (Alaska 2018) hinders the state's ability to protect the public from sex
27 offenders who may come to this state in that it requires a person to register as a sex offender
28 in this state only if that person has been convicted of an offense that is similar to a sex offense
29 as defined in AS 12.63.100, as amended by sec. 24 of this Act.

30 (e) It is the intent of the legislature to overturn State, Department of Public Safety v.
31 Doe, 425 P.3d 115 (Alaska 2018) to the extent that the decision held that a sex offender

required to register in another jurisdiction is not required to register in the state unless the person's underlying conviction is similar to a sex offense as defined in AS 12.63.100, as amended by sec. 24 of this Act. Additionally, it is the intent of the legislature to give reciprocity to other jurisdictions and require a sex offender who is physically present in the state and is required to register as a sex offender in another jurisdiction to register as a sex offender in the state regardless of whether the person's underlying conviction is similar to a sex offense as defined in AS 12.63.100, as amended by sec. 24 of this Act.

* **Sec. 2.** AS 11.41.432(b) is amended to read:

(b) Except as provided in (d) [(a)] of this section, in a prosecution under **AS 11.41.410 - 11.41.427** [AS 11.41.410 OR 11.41.420], it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant.

* **Sec. 3.** AS 11.41.432 is amended by adding a new subsection to read:

(d) It is a defense to a crime charged under AS 11.41.425(a)(2) - (5) or 11.41.427 that the offender is married to the person and neither party has filed with the court for separation, divorce, or dissolution of the marriage.

* **Sec. 4.** AS 11.41.452(a) is amended to read:

(a) A person commits the crime of [ONLINE] enticement of a minor if the person, being 18 years of age or older, knowingly **communicates** [USES A COMPUTER TO COMMUNICATE] with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1) - (7) and

(1) the other person is a child under 16 years of age; or

(2) the person believes that the other person is a child under 16 years of age.

* **Sec. 5.** AS 11.41.452(d) is amended to read:

(d) Except as provided in (e) of this section, [ONLINE] enticement **of a minor** is a class B felony.

* **Sec. 6.** AS 11.41.452(e) is amended to read:

(e) **Enticement of a minor** [ONLINE ENTICEMENT] is a class A felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

* **Sec. 7.** AS 11.41.458(a) is amended to read:

(a) An offender commits the crime of indecent exposure in the first degree if the offender violates AS 11.41.460(a) [, THE OFFENSE OCCURS WITHIN THE OBSERVATION OF A PERSON UNDER 16 YEARS OF AGE,] and

(1) while committing the act constituting the offense, the offender knowingly masturbates; or

(2) **the offense occurs within the observation of a person under 16 years of age and** the offender has been previously convicted under

(A) this section;

(B) AS 11.41.460(a); or

(C) a law or ordinance of this or another jurisdiction with elements similar to a crime listed under (A) or (B) of this paragraph.

* **Sec. 8.** AS 11.61.120(a) is amended to read:

(a) A person commits the crime of harassment in the second degree if, with intent to harass or annoy another person, that person

(1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(3) makes repeated telephone calls at extremely inconvenient hours;

(4) makes an anonymous or obscene telephone call, an obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact;

(5) subjects another person to offensive physical contact;

(6) except as provided in AS 11.61.116, publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act; [OR]

(7) repeatedly sends or publishes an electronic communication that insults, taunts, challenges, or intimidates a person under 18 years of age in a manner that places the person in reasonable fear of physical injury; **or**

(8) under circumstances not proscribed under AS 11.41.455 or AS 11.61.125, repeatedly sends to another person, publishes, or distributes

electronic or printed photographs, pictures, or films that show the genitals of any person.

* **Sec. 9.** AS 11.61.123(a) is amended to read:

(a) A person commits the crime of indecent viewing or **production of a picture** [PHOTOGRAPHY] if, in the state, the person knowingly

(1) views, or **views** [PRODUCES] a picture of, the private exposure of the genitals, anus, or female breast of another person and the **viewing occurs** [VIEW OR PRODUCTION IS] without the knowledge or consent of

(A) [(1)] the parent or guardian of the person viewed, or who is shown in the picture, if the person [WHO IS] viewed or shown is under 16 years of age; and

(B) [(2)] the person viewed or shown in the picture, if the person viewed or shown is at least 13 years of age; **or**

(2) produces a picture of the private exposure of the genitals, anus, or female breast of another person and the production occurs without the knowledge or consent of

(A) the parent or guardian of the person shown in the picture if the person shown is under 16 years of age; and

(B) the person shown in the picture if the person shown is at least 13 years of age.

* **Sec. 10.** AS 11.61.123(c) is amended to read:

(c) This section does not apply to **the** viewing or **production of a picture** [PHOTOGRAPHY] conducted by a law enforcement agency for a law enforcement purpose.

* **Sec. 11.** AS 11.61.123(d) is amended to read:

(d) In a prosecution under this section, it is an affirmative defense that the viewing or **production of a picture** [PHOTOGRAPHY] was conducted as a security surveillance system, notice of the viewing or **production** [PHOTOGRAPHY] was posted, and any viewing or use of pictures produced is done only in the interest of crime prevention or prosecution.

* **Sec. 12.** AS 11.61.123(f) is amended to read:

(f) Indecent viewing or **production of a picture** [PHOTOGRAPHY] is a

(1) class **B** [C] felony if the person

(A) violates (a)(1) or (2) of this section and the person

viewed or shown in **the** [A] picture was, at the time of the viewing or production of the picture, a minor; **or**

(B) violates (a)(2) of this section and the person shown in

the picture was, at the time of the production of the picture, an adult;

(2) class A misdemeanor if the person **violates (a)(1) of this section**

and the person viewed or shown in a picture was, at the time of the viewing or production of the picture, an adult.

* **Sec. 13.** AS 11.61.125(e) is amended to read:

(e) Distribution of child pornography is a

(1) class B felony; or

(2) class A felony [IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF DISTRIBUTION OF CHILD PORNOGRAPHY IN THIS JURISDICTION OR A SIMILAR CRIME IN THIS OR ANOTHER JURISDICTION].

* **Sec. 14.** AS 12.55.015 is amended by adding a new subsection to read:

(l) In making a determination under (a)(12) of this section, there is a presumption that, unless the court finds on the record by a preponderance of the evidence that contact between a defendant and the victim of the offense is necessary, the court shall order the defendant to have no contact, either directly or indirectly, with the victim until the defendant is unconditionally discharged.

* **Sec. 15.** AS 12.55.125(d) is amended to read:

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) **or (5)** of this subsection, zero to two years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a

suspended imposition of sentence under AS 12.55.085;

(2) if the offense is a first felony conviction, the defendant violated AS 11.41.130, and the victim was

(A) a child under 16 years of age, two to four years; or

(B) was 16 years of age or older, one to three years;

(3) if the offense is a second felony conviction, two to five years;

(4) if the offense is a third felony conviction, four to 10 years;

(5) if the defendant violated AS 11.41.210(a)(1) and

(A) the offense is a first felony conviction, one to three years;

(B) the offense is a second felony conviction, four to seven years;

(C) the offense is a third felony conviction, six to 10 years.

* Sec. 16. AS 12.55.125(i) is amended to read:

(i) A defendant convicted of

(1) sexual assault in the first degree, sexual abuse of a minor in the first degree, or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) less than 13 years of age, 25 to 35 years;

(ii) 13 years of age or older, 20 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 years;

(D) if the offense is a second felony conviction and the

defendant has a prior conviction for a sexual felony, 35 to 45 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (I) of this section, 40 to 60 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(2) unlawful exploitation of a minor under AS 11.41.455(c)(2), [ONLINE] enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or solicitation to commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) under 13 years of age, 20 to 30 years;

(ii) 13 years of age or older, 15 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 25 to 35 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 30 to 40 years;

(E) if the offense is a third felony conviction, the offense does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (I) of this section, 35 to 50 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two

1 prior convictions for sexual felonies, 99 years;

2 (3) sexual assault in the second degree, sexual abuse of a minor in the
3 second degree, [ONLINE] enticement of a minor under AS 11.41.452(d), unlawful
4 exploitation of a minor under AS 11.41.455(c)(1), or distribution of child pornography
5 under **AS 11.61.125(e)** [AS 11.61.125(e)(2)] may be sentenced to a definite term of
6 imprisonment of not more than 99 years and shall be sentenced to a definite term
7 within the following presumptive ranges, subject to adjustment as provided in
8 AS 12.55.155 - 12.55.175:

9 (A) if the offense is a first felony conviction, five to 15 years;

10 (B) if the offense is a second felony conviction and does not
11 involve circumstances described in (C) of this paragraph, 10 to 25 years;

12 (C) if the offense is a second felony conviction and the
13 defendant has a prior conviction for a sexual felony, 15 to 30 years;

14 (D) if the offense is a third felony conviction and does not
15 involve circumstances described in (E) of this paragraph, 20 to 35 years;

16 (E) if the offense is a third felony conviction and the defendant
17 has two prior convictions for sexual felonies, 99 years;

18 (4) sexual assault in the third degree, **sexual abuse of a minor in the**
19 **third degree if the victim is at least six years younger than the offender,** incest,
20 indecent exposure in the first degree, **indecent viewing or production of a picture**
21 **under AS 11.61.123(f)(1)(A),** possession of child pornography, [DISTRIBUTION OF
22 CHILD PORNOGRAPHY UNDER AS 11.61.125(e)(1),] or attempt, conspiracy, or
23 solicitation to commit sexual assault in the second degree, sexual abuse of a minor in
24 the second degree, unlawful exploitation of a minor, or distribution of child
25 pornography, may be sentenced to a definite term of imprisonment of not more than
26 99 years and shall be sentenced to a definite term within the following presumptive
27 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

28 (A) if the offense is a first felony conviction, two to 12 years;

29 (B) if the offense is a second felony conviction and does not
30 involve circumstances described in (C) of this paragraph, eight to 15 years;

31 (C) if the offense is a second felony conviction and the

defendant has a prior conviction for a sexual felony, 12 to 20 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 15 to 25 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years.

* **Sec. 17.** AS 12.55.145(a) is amended to read:

(a) For purposes of considering prior convictions in imposing sentence under

(1) AS 12.55.125(c), (d), or (e),

(A) a prior conviction may not be considered if a period of 10 or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(2) AS 12.55.125(l),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a most serious felony is considered a prior most serious felony conviction;

(B) commission of and conviction for offenses relied on as prior most serious felony offenses must occur in the following order: conviction for the first offense must occur before commission of the second offense, and conviction for the second offense must occur before commission of the offense for which the defendant is being sentenced;

1 (3) AS 12.55.135(g),

2 (A) a prior conviction may not be considered if a period of five
3 or more years has elapsed between the date of the defendant's unconditional
4 discharge on the immediately preceding offense and commission of the present
5 offense unless the prior conviction was for an unclassified or class A felony;

6 (B) a conviction in this or another jurisdiction of an offense
7 having elements similar to those of a crime against a person or a crime
8 involving domestic violence is considered a prior conviction;

9 (C) two or more convictions arising out of a single, continuous
10 criminal episode during which there was no substantial change in the nature of
11 the criminal objective are considered a single conviction unless the defendant
12 was sentenced to consecutive sentences for the crimes; offenses committed
13 while attempting to escape or avoid detection or apprehension after the
14 commission of another offense are not part of the same criminal episode or
15 objective;

16 (4) AS 12.55.125(i),

17 (A) a conviction in this or another jurisdiction of an offense
18 having elements similar to those of a sexual felony is a prior conviction for a
19 sexual felony;

20 (B) a felony conviction in another jurisdiction making it a
21 crime to commit any lewd and lascivious act on [UPON] a child under the age
22 of 16 years, with the intent of arousing, appealing to, or gratifying the sexual
23 desires of the defendant or the victim is a prior conviction for a sexual felony;

24 (C) two or more convictions arising out of a single, continuous
25 criminal episode during which there was no substantial change in the nature of
26 the criminal objective are considered a single conviction unless the defendant
27 was sentenced to consecutive sentences for the crimes; offenses committed
28 while attempting to escape or avoid detection or apprehension after the
29 commission of another offense are not part of the same criminal episode or
30 objective;

31 **(D) a conviction in this or another jurisdiction of an offense**

having elements similar to the elements of a felony under state law at the time the offense was committed is considered a prior felony conviction;

(5) AS 12.55.135(a),

(A) a prior conviction may not be considered if a period of five or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony or misdemeanor defined as such under Alaska law at the time the offense was committed is considered a prior conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective.

* **Sec. 18.** AS 12.55.185(10) is amended to read:

(10) "most serious felony" means

(A) arson in the first degree, sex trafficking in the first degree under AS 11.66.110(a)(2), [ONLINE] enticement of a minor under AS 11.41.452(e), or any unclassified or class A felony prescribed under AS 11.41; or

(B) an attempt, or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified felony prescribed under AS 11.41;

* **Sec. 19.** AS 12.55.185(16) is amended to read:

(16) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, sex trafficking in the first degree, sexual assault in the second degree, sexual abuse of a minor in the second degree, **sexual abuse of a**

minor in the third degree, unlawful exploitation of a minor, indecent viewing or production of a picture under AS 11.61.123(f)(1)(A), distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, [ONLINE] enticement of a minor, and felony attempt, conspiracy, or solicitation to commit those crimes;

* **Sec. 20.** 12.61.050 is amended by adding a new subsection to read:

(c) Through the automated victim notification system established in (a) of this section, the Department of Corrections shall notify a victim of a sex offense as defined in AS 12.63.100 or a crime involving domestic violence as defined in AS 18.66.990 of the option to request a protective order under AS 18.65.850 or AS 18.66.100 and provide contact information for state victim resources. This notification must occur when the offender of the victim is released from incarceration or when the order under AS 12.55.015(l) expires, whichever is later.

* **Sec. 21.** AS 12.63.010(d) is amended to read:

(d) A sex offender or child kidnapper required to register

(1) for 15 years under (a) of this section and AS 12.63.020 [AS 12.63.020(a)(2)] shall, annually, during the term of a duty to register under AS 12.63.020, on a date set by the department at the time of the sex offender's or child kidnapper's initial registration, provide written verification to the department, in the manner required by the department, of the sex offender's or child kidnapper's address and notice of any changes to the information previously provided under (b)(1) of this section;

(2) for life under (a) of this section and AS 12.63.020 [AS 12.63.020(a)(1)] shall, not less than quarterly, on a date set by the department, provide written verification to the department, in the manner required by the department, of the sex offender's or child kidnapper's address and any changes to the information previously provided under (b)(1) of this section.

* **Sec. 22.** AS 12.63.020 is amended to read:

Sec. 12.63.020. Duration of sex offender or child kidnapper duty to register. (a) The duty of a sex offender or child kidnapper to comply with the requirements of AS 12.63.010 is as follows:

(1) for a sex offender or child kidnapper, as that term is defined in AS 12.63.100(6)(A), for each sex offense or child kidnapping, the duty

(A) [(1)] continues for the lifetime of a sex offender or child kidnapper convicted of

(i) [(A)] one aggravated sex offense; or

(ii) [(B)] two or more sex offenses, two or more child kidnappings, or one sex offense and one child kidnapping; for purposes of this section, a person convicted of indecent exposure before a person under 16 years of age under AS 11.41.460 more than two times has been convicted of two or more sex offenses;

(B) [(2)] ends 15 years following the sex offender's or child kidnapper's unconditional discharge from a conviction for a single sex offense that is not an aggravated sex offense or for a single child kidnapping if the sex offender or child kidnapper has supplied proof that is acceptable to the department of the unconditional discharge; the registration period under this **subparagraph**

(i) [PARAGRAPH (A)] is tolled for each year that a sex offender or child kidnapper [(i)] fails to comply with the requirements of this chapter **or** [(ii)] is incarcerated for the offense or kidnapping for which the offender or kidnapper is required to register or for any other offense;

(ii) [(B)] may include the time a sex offender or child kidnapper was absent from this state if the sex offender or child kidnapper has complied with any sex offender or child kidnapper registration requirements of the jurisdiction in which the offender or kidnapper was located and if the sex offender or child kidnapper provides the department with proof of the compliance while the sex offender or child kidnapper was absent from this state; and

(iii) [(C)] continues for a sex offender or child kidnapper who has not supplied proof acceptable to the department of the offender's or kidnapper's unconditional discharge for the sex

offense or child kidnapping requiring registration;

(2) for a sex offender or child kidnapper, as that term is defined in AS 12.63.100(6)(B), the duty continues for the period determined by the department under (b) of this section.

(b) The department shall adopt, by regulation,

(1) procedures to notify a sex offender or child kidnapper

(A) who, on the registration form under AS 12.63.010, lists a conviction for a sex offense or child kidnapping that is a violation of a former law of this state or a law of another jurisdiction, of the duration of the offender's or kidnapper's duty under (a) of this section for that sex offense or child kidnapping;

(B) as that term is defined in AS 12.63.100(6)(B), of the duration of the sex offender or child kidnapper's duty under (a) of this section; in adopting regulations under this subparagraph, the department shall

(i) consider the period of registration required in the other jurisdiction; and

(ii) provide for tolling of the registration period if the sex offender or child kidnapper fails to comply with the requirements of this chapter or is incarcerated;

(2) a requirement that an [. AS A PART OF THE REGULATIONS, THE DEPARTMENT SHALL REQUIRE THE] offender or kidnapper [TO] supply proof acceptable to the department of unconditional discharge and the date it occurred.

* Sec. 23. AS 12.63.100(6) is amended to read:

(6) "sex offender or child kidnapper" means

(A) a person convicted of a sex offense or child kidnapping in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999; or

(B) a person who is required to register as a sex offender or child kidnapper under the laws of another jurisdiction;

* Sec. 24. AS 12.63.100(7) is amended to read:

1 (7) "sex offense" means

2 (A) a crime under AS 11.41.100(a)(3), or a similar law of
3 another jurisdiction, in which the person committed or attempted to commit a
4 sexual offense, or a similar offense under the laws of the other jurisdiction; in
5 this subparagraph, "sexual offense" has the meaning given in
6 AS 11.41.100(a)(3);

7 (B) a crime under AS 11.41.110(a)(3), or a similar law of
8 another jurisdiction, in which the person committed or attempted to commit
9 one of the following crimes, or a similar law of another jurisdiction:

10 (i) sexual assault in the first degree;

11 (ii) sexual assault in the second degree;

12 (iii) sexual abuse of a minor in the first degree; or

13 (iv) sexual abuse of a minor in the second degree;

14 (C) a crime, or an attempt, solicitation, or conspiracy to commit
15 a crime, under the following statutes or a similar law of another jurisdiction:

16 (i) AS 11.41.410 - 11.41.438;

17 (ii) AS 11.41.440(a)(2);

18 (iii) AS 11.41.450 - 11.41.458;

19 (iv) AS 11.41.460 or AS 26.05.900(c) if the indecent
20 exposure is before a person under 16 years of age and the offender has
21 previously been convicted under AS 11.41.460 or AS 26.05.900(c);

22 (v) AS 11.61.125 - 11.61.128;

23 (vi) AS 11.66.110, 11.66.130(a)(2)(B), or
24 AS 26.05.900(b) if the person who was induced or caused to engage in
25 prostitution was under 20 years of age at the time of the offense;

26 (vii) former AS 11.15.120, former 11.15.134, or assault
27 with the intent to commit rape under former AS 11.15.160, former
28 AS 11.40.110, or former 11.40.200;

29 (viii) AS 11.61.118(a)(2) if the offender has a previous
30 conviction for that offense;

31 (ix) AS 11.66.100(a)(2) if the offender is subject to

punishment under AS 11.66.100(e);

(x) AS 26.05.890 if the person engaged in sexual penetration or sexual contact with the victim;

(xi) AS 26.05.890 if, at the time of the offense, the victim is under a duty to obey the lawful orders of the offender, regardless of whether the offender is in the direct chain of command over the victim;

(xii) AS 26.05.893 if the person engaged in sexual penetration or sexual contact with the victim;

(xiii) AS 26.05.900(a)(1) - (4) if the victim is under 18 years of age at the time of the offense; [OR]

(xiv) AS 26.05.900 if, at the time of the offense, the victim is under a duty to obey the lawful orders of the offender, regardless of whether the offender is in the direct chain of command over the victim; or

(xv) AS 11.61.123 if the offender is subject to punishment under AS 11.61.123(f)(1);

(D) an offense, or an attempt, solicitation, or conspiracy to commit an offense, under AS 26.05.935(b), or a similar law of another jurisdiction, if the member of the militia commits one of the following enumerated offenses punishable under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice):

(i) child pornography; or

(ii) pandering and prostitution if the person who is induced, enticed, caused, or procured to engage in a sexual act is under 20 years of age at the time of the offense; **or**

(E) an offense in which the person is required to register as a sex offender under the laws of another jurisdiction;

* **Sec. 25.** AS 33.16.090(a) is amended to read:

(a) A prisoner sentenced to an active term of imprisonment of at least 181 days may, in the discretion of the board, be released on discretionary parole if the

prisoner

(1) has served the amount of time specified under (b) of this section, except that

(A) a prisoner sentenced to one or more mandatory 99-year terms under AS 12.55.125(a) or one or more definite terms under AS 12.55.125(l) is not eligible for consideration for discretionary parole;

(B) a prisoner is not eligible for consideration **for** [OF] discretionary parole if made ineligible by order of a court under AS 12.55.115;

(C) a prisoner imprisoned under AS 12.55.086 is not eligible for discretionary parole unless the actual term of imprisonment is more than one year;

(D) a prisoner sentenced to a single term within or below a presumptive range under AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i) who has not been allowed by the three-judge panel under AS 12.55.175 to be considered for discretionary parole release is not eligible for consideration for discretionary parole;

(E) a prisoner who is ineligible for a good time deduction under AS 33.20.010(a)(3) and has not been allowed by the three-judge panel under AS 12.55.175 to be considered for discretionary parole release is not eligible for consideration for discretionary parole; or

(2) is at least 60 years of age, has served at least 10 years of a sentence for one or more crimes in a single judgment, and has not been convicted of an unclassified felony or a sexual felony as defined in AS 12.55.185.

* **Sec. 26.** AS 33.16.090(b) is amended to read:

(b) A prisoner eligible under (a)(1) of this section who is sentenced

(1) to a single sentence under AS 12.55.125(a) or (b) may not be released on discretionary parole until the prisoner has served the mandatory minimum term under AS 12.55.125(a) or (b), one-third of the active term of imprisonment imposed, or any term set under AS 12.55.115, whichever is greatest;

(2) [TO A SINGLE SENTENCE WITHIN OR BELOW A PRESUMPTIVE RANGE SET OUT IN AS 12.55.125(i)(1) AND (2), AND HAS

NOT BEEN ALLOWED BY THE THREE-JUDGE PANEL UNDER AS 12.55.175 TO BE CONSIDERED FOR DISCRETIONARY PAROLE RELEASE, MAY NOT BE RELEASED ON DISCRETIONARY PAROLE UNTIL THE PRISONER HAS SERVED THE TERM IMPOSED, LESS GOOD TIME EARNED UNDER AS 33.20.010;

(3)] to a single sentence under AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i) [AS 12.55.125(i)], and has been allowed by the three-judge panel under AS 12.55.175 to be considered for discretionary parole release during the second half of the sentence, may not be released on discretionary parole until

(A) the prisoner has served that portion of the active term of imprisonment required by the three-judge panel; and

(B) in addition to the factors set out in AS 33.16.100(a), the board determines that

(i) the prisoner has successfully completed all rehabilitation programs ordered by the three-judge panel that were made available to the prisoner; and

(ii) the prisoner would not constitute a danger to the public if released on parole;

(3) [(4)] to a single enhanced sentence under AS 12.55.155(a) that is above the applicable presumptive range may not be released on discretionary parole until the prisoner has served the greater of the following:

(A) an amount of time, less good time earned under AS 33.20.010, equal to the upper end of the presumptive range plus one-fourth of the amount of time above the presumptive range; or

(B) any term set under AS 12.55.115;

(4) [(5)] to a single sentence under any other provision of law may not be released on discretionary parole until the prisoner has served at least one-fourth of the active term of imprisonment, any mandatory minimum sentence imposed under any provision of law, or any term set under AS 12.55.115, whichever is greatest;

(5) [(6)] to concurrent sentences may not be released on discretionary parole until the prisoner has served the greatest of

(A) any mandatory minimum sentence or sentences imposed under any provision of law;

(B) any term set under AS 12.55.115; or

(C) the amount of time that is required to be served under (1) - (4) [(1) - (5)] of this subsection for the sentence imposed for the primary crime, had that been the only sentence imposed;

(6) [(7)] to consecutive or partially consecutive sentences may not be released on discretionary parole until the prisoner has served the greatest of

(A) the composite total of any mandatory minimum sentence or sentences imposed under any provision of law, including AS 12.55.127;

(B) any term set under AS 12.55.115; or

(C) the amount of time that is required to be served under (1) - (4) [(1) - (5)] of this subsection for the sentence imposed for the primary crime, had that been the only sentence imposed, plus one-quarter of the composite total of the active term of imprisonment imposed as consecutive or partially consecutive sentences imposed for all crimes other than the primary crime [;

(8) TO A SINGLE SENTENCE UNDER AS 12.55.125(i)(3) AND (4), AND HAS NOT BEEN ALLOWED BY THE THREE-JUDGE PANEL UNDER AS 12.55.175 TO BE CONSIDERED FOR DISCRETIONARY PAROLE RELEASE, MAY NOT BE RELEASED ON DISCRETIONARY PAROLE UNTIL THE PRISONER HAS SERVED, AFTER A DEDUCTION FOR GOOD TIME EARNED UNDER AS 33.20.010, ONE-HALF OF THE ACTIVE TERM OF IMPRISONMENT IMPOSED].

* **Sec. 27.** AS 44.19.647(a) is amended to read:

(a) The commission shall submit to the governor and the legislature an annual report. The report must include

(1) a description of its proceedings for the previous calendar year;

(2) a summary of savings and recommendations on how savings from criminal justice reform should be reinvested to reduce recidivism;

(3) performance metrics and outcomes from the recommendations the commission made in its December 2015 report, including recidivism rates, defined as

(A) the percentage of inmates who return to prison within three years after release, broken down by offense type and risk level; and

(B) the percentage of inmates who return to prison within three years after release for a new criminal conviction, broken down by offense type and risk level; [AND]

(4) recommendations for additional reforms, which may include recommendations for legislative and administrative action; **and**

(5) data reported by the Department of Law under AS 44.23.040.

* **Sec. 28.** AS 44.23.020 is amended by adding a new subsection to read:

(k) The attorney general, in consultation with the commissioner of public safety, shall

(1) develop a tool to track complaints regarding sex offenses by geographic location. The tracking system must include a means to identify the reason a complaint was not referred or was not prosecuted and, if applicable, the reason a plea agreement was made to an offense other than a sex offense;

(2) develop regulations and procedures for reporting felony sex offenses; and

(3) provide training to prosecutors and public safety officers regarding regulations and procedures established under (2) of this subsection.

* **Sec. 29.** AS 44.23.040 is amended by adding a new subsection to read:

(b) The Department of Law, in consultation with the Department of Public Safety, shall gather and report data on felony sex offenses to the Alaska Judicial Council. The data must include

(1) the number of felony sex offenses reported to the Department of Public Safety that were not referred for prosecution;

(2) the number of felony sex offenses referred for prosecution that were not prosecuted; and

(3) the number of felony sex offenses that resulted in a conviction for a crime other than a sex offense.

* **Sec. 30.** AS 47.17.020(e) is amended to read:

(e) The department shall immediately notify the nearest law enforcement

agency if the department

(1) concludes that the harm was caused by a person who is not responsible for the child's welfare;

(2) is unable to determine

(A) who caused the harm to the child; or

(B) whether the person who is believed to have caused the harm has responsibility for the child's welfare; or

(3) concludes that the report involves

(A) possible criminal conduct under AS 11.41.410 - 11.41.458, AS 11.61.120, or 11.61.123; or

(B) abuse or neglect that results in the need for medical treatment of the child.

* **Sec. 31.** AS 11.41.432(a)(2) and AS 11.61.125(e)(1) are repealed.

* **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) The following sections apply to offenses committed on or after the effective date of this Act:

- (1) AS 11.41.432(b), as amended by sec. 2 of this Act;
- (2) AS 11.41.452(a), as amended by sec. 4 of this Act;
- (3) AS 11.41.452(d), as amended by sec. 5 of this Act;
- (4) AS 11.41.452(e), as amended by sec. 6 of this Act;
- (5) AS 11.41.458(a), as amended by sec. 7 of this Act;
- (6) AS 11.61.120(a), as amended by sec. 8 of this Act;
- (7) AS 11.61.123(a), as amended by sec. 9 of this Act;
- (8) AS 11.61.123(f), as amended by sec. 12 of this Act;
- (9) AS 11.61.125(e), as amended by sec. 13 of this Act;
- (10) AS 12.55.015(l), enacted by sec. 14 of this Act;
- (11) AS 12.55.125(d), as amended by sec. 15 of this Act;
- (12) AS 12.55.125(i), as amended by sec. 16 of this Act;
- (13) AS 12.55.145(a), as amended by sec. 17 of this Act;
- (14) AS 12.55.185(10), as amended by sec. 18 of this Act;

1 (15) AS 12.55.185(16), as amended by sec. 19 of this Act.

2 (b) The following sections apply to the duty to register as a sex offender for offenses
3 committed on or after the effective date of this Act:

4 (1) AS 12.63.010(d), as amended by sec. 21 of this Act;

5 (2) AS 12.63.020, as amended by sec. 22 of this Act;

6 (3) AS 12.63.100(6), as amended by sec. 23 of this Act;

7 (4) AS 12.63.100(7), as amended by sec. 24 of this Act.

8 (c) AS 33.16.090(a), as amended by sec. 25 of this Act, and AS 33.16.090(b), as
9 amended by sec. 26 of this Act, apply to parole granted on or after the effective date of this
10 Act for conduct occurring on or after the effective date of this Act.

11 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 REVISOR'S INSTRUCTION. The revisor of statutes is requested to change the
14 heading of AS 11.61.123 from "Indecent viewing or photography" to "Indecent viewing or
15 production."

16 * **Sec. 34.** This Act takes effect July 1, 2019.