

A M E N D M E N T # 12

OFFERED IN THE HOUSE

BY REPRESENTATIVE VANCE

TO: CSHB 358(JUD), Draft Version "U"

1 Page 1, line 1, following "deepfakes;":

2 Insert "relating to generated obscene child sexual abuse material;"

3

4 Page 1, following line 7:

5 Insert a new bill section to read:

6 **"* Sec. 2. AS 11.61 is amended by adding new sections to read:**

7 **Sec. 11.61.121. Distribution of generated obscene child sexual abuse**
8 **material. (a) A person commits the crime of distribution of generated obscene child**
9 **sexual abuse material if the person distributes in this state or advertises, promotes,**
10 **solicits, or offers to distribute in this state any material that is proscribed under**
11 **AS 11.61.122.**

12 (b) This section does not apply to acts that are an integral part of the
13 exhibition or performance of a motion picture if the acts are performed within the
14 scope of employment by a motion picture operator or projectionist employed by the
15 owner or manager of a theater or other place for the showing of motion pictures,
16 unless the motion picture operator or projectionist

17 (1) has a financial interest in the theater or place in which employed;
18 or

19 (2) causes the performance or motion picture to be performed or
20 exhibited without the consent of the manager or owner of the theater or other place of
21 showing.

22 (c) The possession of 100 or more films, audio, video, electronic, or
23 electromagnetic recordings, photographs, negatives, slides, books, newspapers,

1 magazines, or other materials, including a combination of these items totaling 100 or
2 more, is prima facie evidence of distribution and intent to distribute under (a) of this
3 section.

4 (d) In this section, "distribution" includes the following, whether or not for
5 monetary or other consideration: delivering, selling, renting, leasing, lending, giving,
6 circulating, exhibiting, presenting, providing, exchanging, placing on a computer
7 network or computer system, and providing billing collection, or other ancillary
8 services for or otherwise supporting these activities.

9 (e) Distribution of generated obscene child sexual abuse material is a
10 (1) class B felony; or
11 (2) class A felony if the person has been previously convicted of
12 distribution of generated obscene child sexual abuse material in this jurisdiction or a
13 similar crime in this or another jurisdiction.

14 **Sec. 11.61.122. Possession of generated obscene child sexual abuse
15 material.** (a) A person commits the crime of possession of generated obscene child
16 sexual abuse material if the person knowingly possesses or knowingly accesses on a
17 computer with intent to view any material that

18 (1) the average person, applying contemporary community standards,
19 would find, when considered as a whole, appeals to the prurient interest;

20 (2) depicts, in a patently offensive way, a child under 18 years of age
21 who, by manipulation, creation, or modification, appears to be engaged in conduct
22 described in AS 11.41.455(a); and

23 (3) when considered as a whole, lacks serious literary, artistic,
24 political, or scientific value.

25 (b) This section does not apply to an employee of an interactive computer
26 service, Internet service provider, cloud service provider, or telecommunications
27 network who, while acting in the scope of employment, possesses or accesses the
28 material described in (a) of this section solely to prevent, detect, report, or otherwise
29 respond to the production, generation, manipulation, or modification of the material.
30 In this subsection, "interactive computer service" has the meaning given in
31 AS 15.80.009.

(c) In this section, "computer" has the meaning given in AS 11.46.990.

(d) Possession of generated obscene child sexual abuse material is a class C
"

Renumber the following bill sections accordingly.

Page 2, following line 13:

Insert new bill sections to read:

** Sec. 5. AS 11.61.129(a) is amended to read:

(a) Property used to aid a violation of AS 11.61.121 - 11.61.128

[AS 11.61.123 - 11.61.128] or to aid the solicitation of, attempt to commit, or

conspiracy to commit a violation of **AS 11.61.121 - 11.61.128** [AS 11.61.123 - 11.61.128] may be forfeited to the state upon the conviction of the offender.

14.15.15.55.105(N) (a) (1) (b) (1) (c) (1) (d) (1) (e) (1) (f) (1) (g) (1) (h) (1) (i) (1) (j) (1) (k) (1) (l) (1) (m) (1) (n) (1) (o) (1) (p) (1) (q) (1) (r) (1) (s) (1) (t) (1) (u) (1) (v) (1) (w) (1) (x) (1) (y) (1) (z) (1)

* Sec. 6. AS 12.55.125(i) is amended to read:

(I) A defendant convicted of

(1) sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), sexual abuse of a minor in the first degree, unlawful exploitation of a minor under AS 11.41.455(c)(2), 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) sexual assault in the first degree under AS 11.41.410(a)(1)(B), unlawful exploitation of a minor under AS 11.41.455(c)(1), enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or solicitation to commit sexual assault in the first degree under AS 11.41.410(a)(1)(A), (2), (3), or (4), 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 prior convictions for sexual felonies, 99 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, enticement of a minor under AS 11.41.452(d), indecent exposure in the first degree under AS 11.41.458(b)(2), **distribution of generated obscene child sexual abuse material under AS 11.61.121(e)(2)**, distribution of child pornography under AS 11.61.125(e)(2), or attempt, conspiracy, or solicitation to commit sexual assault in the first degree under AS 11.41.410(a)(1)(B) 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, five to 15 years;

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

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

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

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

(4) sexual assault in the third degree, sexual abuse of a minor in the third degree under AS 11.41.438(c), incest, indecent exposure in the first degree under AS 11.41.458(b)(1), possession of generated obscene child sexual abuse material, distribution of generated obscene child sexual abuse material under AS 11.61.121(e)(1), indecent viewing or production of a picture under AS 11.61.123(f)(1) or (2), possession of child pornography, distribution of child pornography under AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of generated obscene child sexual abuse material, or distribution of child pornography, may be sentenced to a

1 definite term of imprisonment of not more than 99 years and shall be sentenced to a
2 definite term within the following presumptive ranges, subject to adjustment as
3 provided in AS 12.55.155 - 12.55.175:

4 (A) if the offense is a first felony conviction and does not
5 involve the circumstances described in (B) or (C) of this paragraph, two to 12
6 years;

7 (B) if the offense is a first felony conviction under
8 AS 11.61.121(e)(1) or 11.61.125(e)(1) [AS 11.61.125(e)(1)] and does not
9 involve circumstances described in (C) of this paragraph, four to 12 years;

10 (C) if the offense is a first felony conviction under
11 AS 11.61.121(e)(1) or 11.61.125(e)(1) [AS 11.61.125(e)(1),] and the
12 defendant hosted, created, or helped host or create a mechanism for multi-party
13 sharing or distribution of generated obscene child sexual abuse material or
14 child pornography, or received a financial benefit or had a financial interest in
15 a generated obscene child sexual abuse material or child pornography
16 sharing or distribution mechanism, six to 14 years;

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

19 (E) if the offense is a second felony conviction and the
20 defendant has a prior conviction for a sexual felony, 12 to 20 years;

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

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

25 * Sec. 7. AS 12.55.185(16) is amended to read:

26 (16) "sexual felony" means sexual assault in the first degree, sexual
27 abuse of a minor in the first degree, sex trafficking in the first degree, sexual assault in
28 the second degree, sexual abuse of a minor in the second degree, sexual abuse of a
29 minor in the third degree under AS 11.41.438(c), unlawful exploitation of a minor,
30 indecent viewing or production of a picture under AS 11.61.123(f)(1) or (2),
31 distribution of child pornography, distribution of generated obscene child sexual

1 abuse material, sexual assault in the third degree, incest, indecent exposure in the
2 first degree, possession of child pornography, possession of generated obscene child
3 sexual abuse material, enticement of a minor, and felony attempt, conspiracy, or
4 solicitation to commit those crimes;

5 * Sec. 8. AS 14.20.030(b) is amended to read:

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13 Renumber the following bill sections accordingly.

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15 Page 4, following line 12:

16 Insert new bill sections to read:

17 ~~"* Sec. 10. AS 28.15.046(c) is amended to read:~~

18 (c) The department may not issue a license under this section to an applicant

19 (1) who has been convicted of any of the following offenses:

20 (A) a violation, or an attempt, solicitation, or conspiracy to
21 commit a violation, of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320,
22 11.41.360 - 11.41.370, 11.41.410 - 11.41.470, or 11.41.500 - 11.41.530;

23 (B) a felony violation of endangering the welfare of a child in
24 the first degree under AS 11.51.100;

25 (C) felony indecent viewing or production of a picture under
26 AS 11.61.123;

27 (D) distribution of child pornography under AS 11.61.125;

(E) possession of child pornography under AS 11.61.127;

29 (F) distribution of indecent material to minors under
30 AS 11.61.128;

31 (G) felony prostitution under AS 11.66.100(e);

(H) sex trafficking in the first, second, or third degree under AS 11.66.110 - 11.66.130;

(I) a felony involving distribution of a controlled substance under AS 11.71 or imitation controlled substance under AS 11.73;

(J) a felony violation under AS 28.35.030(n) or 28.35.032(p);

(K) distribution of generated obscene child sexual abuse material under AS 11.61.121;

(L) possession of generated obscene child sexual abuse material under AS 11.61.122; or

(2) who has been convicted of any of the following offenses and less than two years have elapsed since the applicant's date of conviction for the offense:

(A) assault in the fourth degree under AS 11.41.230;

(B) reckless endangerment under AS 11.41.250;

(C) contributing to the delinquency of a minor under

(D) misdemeanor prostitution under AS 11.66.100(a)(2);

(E) a misdemeanor violation of endangering the welfare of a
st degree under AS 11.51.100.

* Sec. 11. AS 44.23.080(a) is amended to read:

(a) If there is reasonable cause to believe that an Internet service account has been used in connection with a violation of AS 11.41.452, 11.41.455, AS 11.61.121, 11.61.122, or 11.61.125 - 11.61.128 [OR AS 11.61.125 - 11.61.128], and that the identity, address, and other information about the account owner will assist in obtaining evidence that is relevant to the offense, a law enforcement officer may apply to the attorney general or the attorney general's designee for an administrative subpoena to obtain the business records of the Internet service provider located inside or outside of the state."

Renumber the following bill section accordingly.

Page 4, lines 15 - 17:

1 Delete all material and insert:

2 "APPLICABILITY. The following sections apply to offenses committed on or after
3 the effective date of this Act:

4 (1) AS 11.61.127(a), as amended by sec. 3 of this Act;
5 (2) AS 11.61.127(f), as amended by sec. 4 of this Act;
6 (3) AS 11.61.129(a), as amended by sec. 5 of this Act;
7 (4) AS 12.55.125(i), as amended by sec. 6 of this Act;
8 (5) AS 12.55.185(16), as amended by sec. 7 of this Act; and
9 (6) AS 14.20.030(b), as amended by sec. 8 of this Act."