

SB 35 –CRIMES; SEX CRIMES; SENTENCING; PAROLE SECTIONAL ANALYSIS

January 28, 2019

Summary: This legislation makes sexual abuse of a minor in the third degree a sexual felony if there is a six year age difference between the perpetrator and the victim. It also adds unwanted contact with semen to the definition of “sexual contact” thereby making this conduct a sex offense. The bill includes an enhanced sentencing structure for strangulation. It also clarifies how to count prior felonies when determining the appropriate sentencing range when sentencing a person for a sexual felony and requires out-of-state sex offenders to register in Alaska when they are present in the state. The bill makes indecent viewing or production of a picture of a person under the age of 16 and indecent production of an image of an adult a registerable sex offense. The bill creates the new crimes of enticement of a minor, repeatedly sending images of genitalia, and eliminates marriage as a defense to most acts of sexual assault. It also clarifies that a sex offender who is ineligible for a good time deduction from their sentence is also ineligible for discretionary parole.

Section 1: Legislative Intent and Findings

Expresses intent to overturn *Williams v. State*, 418 P.3d 870 (Alaska App. 2018) in regards to counting prior felonies when sentencing a person for a sexual felony and *State, Department of Public Safety v. Doe*, 425 P. 3d 115 (Alaska 2018) in regards to out-of-state sex offenders registering as a sex offender when they are present in Alaska.

Sections 2-3: Eliminates marriage as a defense to sexual assault in all cases except when both parties consent and it is the nature of the relationship that is criminalized (i.e. probation officer/probationer, peace officer/person in custody, Division of Juvenile Justice Officer/person 18 or 19 and under the jurisdiction of the Division of Juvenile Justice).

Sections 4-6: Removes the word “online” from the crime of “online enticement” criminalizing any enticement of a minor regardless of whether the enticement occurs “online.”

Section 7: Removes the word “semen” from the crime of harassment in the first degree to conform with change made in Section 13.

Section 8: Adds repeatedly sending unwanted images of genitalia to the crime of harassment in the second degree.

Section 9: Separates “production” from “viewing” in the crime of indecent viewing or production of a picture.

Section 10: Conforming amendment. Changes the word “photography” to “production of pictures.”

Section 11: Conforming amendment. Changes the word “photography” to “production of pictures.”

Section 12: Classification section. Makes viewing or production of a picture of a person under the age of 16 a class C felony (which will be sentenced as a sexual felony, see sec. 15). Production of a picture of an adult is also a class C felony. Viewing of a picture of an adult is a class A misdemeanor.

Section 13: Adds causing a victim to come into contact with semen to the definition of “sexual contact” making that conduct, when done without consent, a sexual felony.

Section 14: Creates an enhanced sentencing structure for assault in the second degree (strangulation is most often charged as assault in the second degree).

Section 15: Adds offense of enticement of a minor, sexual abuse of a minor in the third degree when there is a six year age difference between the perpetrator and the victim, and indecent viewing or production of a picture of a person under the age of 16 to the sexual felony sentencing statutes.

Section 16: Clarifies that any prior felony counts for the purposes of determining the presumptive sentencing range for a person being sentenced for a sexual felony.

Section 17: Conforming amendment: new crime of enticement of a minor clarified in the definition of “most serious felony.”

Section 18: Adds sexual abuse of a minor in the third degree when there is a six year age difference between the perpetrator and the victim, indecent viewing or production of an image of a person under the age of 16, and new crime of enticement of a minor to the definition of “sexual felony.”

Section 19: Adds a person who is required to register as a sex offender or child kidnapper in another jurisdiction to the definition of “sex offender or child kidnapper.”

Section 20: Adds indecent viewing or production of a picture of a person under the age of 16 or indecent production of a picture of an adult to the list of registerable sex offenses. Also adds requirement to register as a sex offender in Alaska if required to register under the laws of another state.

Section 21: Clarifies that a prisoner who is ineligible for a good time deduction from their sentence is also ineligible for discretionary parole.

Section 22: Repealer section.

Section 23: Applicability section.

Section 24: Effective date, July 1, 2019.