

CS FOR SENATE BILL NO. 218(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 1/25/06

Referred: Finance

Sponsor(s): SENATORS BUNDE, Guess, Dyson, Elton, Kookesh, Green, Olson, Hoffman

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to sex offenders; relating to reporting of sex offenders and child**
2 **kidnappers; relating to periodic polygraph examinations for sex offenders released on**
3 **probation or parole; relating to sexual abuse of a minor; relating to sentencing for sex**
4 **offenders and habitual criminals; and providing for an effective date."**

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

6 *** Section 1.** AS 11.41.436(a) is amended to read:

7 (a) An offender commits the crime of sexual abuse of a minor in the second
8 degree if,

9 (1) being 16 years of age or older, the offender engages in sexual
10 penetration with a person who is 13, 14, or 15 years of age and at least three years
11 younger than the offender, or aids, induces, causes, or encourages a person who is 13,
12 14, or 15 years of age and at least three years younger than the offender to engage in
13 sexual penetration with another person;

14 (2) being 16 years of age or older, the offender engages in sexual

1 contact with a person who is under 13 years of age or aids, induces, causes, or
 2 encourages a person under 13 years of age to engage in sexual contact with another
 3 person;

4 (3) being 18 years of age or older, the offender engages in sexual
 5 contact with a person who is under 18 years of age, and the offender is the victim's
 6 natural parent, stepparent, adopted parent, or legal guardian;

7 (4) being 16 years of age or older, the offender aids, induces, causes,
 8 or encourages a person who is under 16 years of age to engage in conduct described in
 9 AS 11.41.455(a)(2) - (6); [OR]

10 (5) being 18 years of age or older, the offender engages in sexual
 11 contact with a person who is under 16 years of age, and

12 (A) the victim at the time of the offense is residing in the same
 13 household as the offender and the offender has authority over the victim; or

14 (B) the offender occupies a position of authority in relation to
 15 the victim;

16 **(6) being 18 years of age or older, the offender engages in sexual**
 17 **penetration with a person who is 16 or 17 years of age and at least three years**
 18 **younger than the offender, and the offender occupies a position of authority in**
 19 **relation to the victim; or**

20 **(7) being under 16 years of age, the offender engages in sexual**
 21 **penetration with a person who is under 13 years of age and at least three years**
 22 **younger than the offender.**

23 * **Sec. 2.** AS 11.56 is amended by adding a new section to read:

24 **Sec. 11.56.767. Failure to report sex offender or child kidnapper.** (a) A
 25 person commits the crime of failure to report a sex offender or child kidnapper if the
 26 person

27 (1) recklessly disregards the fact that a sex offender or child kidnapper
 28 has not complied with the requirements of AS 11.56.840; and

29 (2) knowingly fails to report the location of that sex offender or child
 30 kidnapper to the Department of Public Safety.

31 (b) Failure to report a sex offender or child kidnapper is a class C felony.

1 * **Sec. 3.** AS 12.55.100 is amended by adding a new subsection to read:

2 (e) While on probation and as a condition of probation for a sex offense, the
3 defendant shall be required to submit to regular periodic polygraph examinations. In
4 this subsection, "sex offense" has the meaning given in AS 12.63.100.

5 * **Sec. 4.** AS 12.55.125(i) is amended to read:

6 (i) A defendant convicted of

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

11 (A) if the offense is a first felony conviction, ~~[AND]~~ does not
12 involve circumstances described in (B) of this paragraph, **and the victim was**

13 **(i) less than 13 years of age, 25 to 30 years;**

14 **(ii) 13 years of age or older, 20 to 30** [EIGHT TO 12]

15 years;

16 (B) if the offense is a first felony conviction and the defendant
17 possessed a firearm, used a dangerous instrument, or caused serious physical
18 injury during the commission of the offense, **25 to 35** [12 TO 16] years;

19 (C) if the offense is a second felony conviction and does not
20 involve circumstances described in (D) of this paragraph, **30 to 40** [15 TO 20]
21 years;

22 (D) if the offense is a second felony conviction and the
23 defendant has a prior conviction for a sexual felony, **35 to 45** [20 TO 30]
24 years;

25 (E) if the offense is a third felony conviction and the defendant
26 is not subject to sentencing under (F) of this paragraph or (I) of this section, **40**
27 **to 60** [25 TO 35] years;

28 (F) if the offense is a third felony conviction, the defendant is
29 not subject to sentencing under (I) of this section, and the defendant has two
30 prior convictions for sexual felonies, **99** [30 TO 40] years;

31 (2) attempt, conspiracy, or solicitation to commit sexual assault in the

1 first degree or sexual abuse of a minor in the first degree may be sentenced to a
 2 definite term of imprisonment of not more than **99** [30] years and shall be sentenced to
 3 a definite term within the following presumptive ranges, subject to adjustment as
 4 provided in AS 12.55.155 - 12.55.175:

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

7 **(i) under 13 years of age, 20 to 25 years;**

8 **(ii) 13 years of age or older, 15 to 25** [FIVE TO
 9 EIGHT] years;

10 (B) if the offense is a first felony conviction, and the defendant
 11 possessed a firearm, used a dangerous instrument, or caused serious physical
 12 injury during the commission of the offense, **25 to 35** [10 TO 14] years;

13 (C) if the offense is a second felony conviction and does not
 14 involve circumstances described in (D) of this paragraph, **25 to 35** [12 TO 16]
 15 years;

16 (D) if the offense is a second felony conviction and the
 17 defendant has a prior conviction for a sexual felony, **30 to 40** [15 TO 20]
 18 years;

19 (E) if the offense is a third felony conviction, does not involve
 20 circumstances described in (F) of this paragraph, and the defendant is not
 21 subject to sentencing under (I) of this section, **35 to 50** [15 TO 25] years;

22 (F) if the offense is a third felony conviction, the defendant is
 23 not subject to sentencing under (I) of this section, and the defendant has two
 24 prior convictions for sexual felonies, **99** [20 TO 30] years;

25 (3) sexual assault in the second degree, sexual abuse of a minor in the
 26 second degree, unlawful exploitation of a minor, or distribution of child pornography
 27 may be sentenced to a definite term of imprisonment of not more than **99** [20] years
 28 and shall be sentenced to a definite term within the following presumptive ranges,
 29 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

30 (A) if the offense is a first felony conviction, **10 to 15** [TWO
 31 TO FOUR] years;

1 (B) if the offense is a second felony conviction and does not
 2 involve circumstances described in (C) of this paragraph, **10 to 25** [FIVE TO
 3 EIGHT] years;

4 (C) if the offense is a second felony conviction and the
 5 defendant has a prior conviction for a sexual felony, **15 to 30** [10 TO 14]
 6 years;

7 (D) if the offense is a third felony conviction and does not
 8 involve circumstances described in (E) of this paragraph, **20 to 35** [10 TO 14]
 9 years;

10 (E) if the offense is a third felony conviction and the defendant
 11 has two prior convictions for sexual felonies, **99** [15 TO 20] years;

12 (4) sexual assault in the third degree, incest, indecent exposure in the
 13 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to
 14 commit sexual assault in the second degree, sexual abuse of a minor in the second
 15 degree, unlawful exploitation of a minor, or distribution of child pornography, may be
 16 sentenced to a definite term of imprisonment of not more than **99** [10] years and shall
 17 be sentenced to a definite term within the following presumptive ranges, subject to
 18 adjustment as provided in AS 12.55.155 - 12.55.175:

19 (A) if the offense is a first felony conviction, **three to 12** [ONE
 20 TO TWO] years;

21 (B) if the offense is a second felony conviction and does not
 22 involve circumstances described in (C) of this paragraph, **eight to 15** [TWO
 23 TO FIVE] years;

24 (C) if the offense is a second felony conviction and the
 25 defendant has a prior conviction for a sexual felony, **12 to 20** [THREE TO
 26 SIX] years;

27 (D) if the offense is a third felony conviction and does not
 28 involve circumstances described in (E) of this paragraph, **15 to 25** [THREE TO
 29 SIX] years;

30 (E) if the offense is a third felony conviction and the defendant
 31 has two prior convictions for sexual felonies, **99** [SIX TO 10] years.

1 * **Sec. 5.** AS 12.55.125(j) is amended to read:

2 (j) A defendant sentenced to a (1) mandatory term of imprisonment of 99
3 years under (a) of this section may apply once for a modification or reduction of
4 sentence under the Alaska Rules of Criminal Procedure after serving one-half of the
5 mandatory term without consideration of good time earned under AS 33.20.010, or (2)
6 definite term of imprisonment under (l) of this section may apply once for a
7 modification or reduction of sentence under the Alaska Rules of Criminal Procedure
8 after serving [THE GREATER OF (A)] one-half of the definite term [OR (B) 30
9 YEARS]. A defendant may not file and a court may not entertain more than one
10 motion for modification or reduction of a sentence subject to this subsection,
11 regardless of whether or not the court granted or denied a previous motion.

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

13 (l) Notwithstanding any other provision of law, a defendant convicted of an
14 unclassified or class A felony offense, and not subject to a mandatory 99-year
15 sentence under (a) of this section, shall be sentenced to a definite term of
16 imprisonment of [AT LEAST 40 YEARS BUT NOT MORE THAN] 99 years when
17 the defendant has been previously convicted of two or more most serious felonies
18 [AND THE PROSECUTING ATTORNEY HAS FILED A NOTICE OF INTENT TO
19 SEEK A DEFINITE SENTENCE UNDER THIS SUBSECTION AT THE TIME
20 THE DEFENDANT WAS ARRAIGNED IN SUPERIOR COURT]. If a defendant is
21 sentenced to a definite term under this subsection,

22 (1) imprisonment for the prescribed definite term may not be
23 suspended under AS 12.55.080;

24 (2) imposition of sentence may not be suspended under AS 12.55.085;

25 (3) imprisonment for the prescribed definite term may not be reduced,
26 except as provided in (j) of this section.

27 * **Sec. 7.** AS 12.55.125 is amended by adding a new subsection to read:

28 (o) In addition to the sentence imposed under (i) of this section on a defendant
29 convicted of a sexual offense, the court shall impose a period of probation of (1) 10
30 years if the defendant was convicted of an unclassified or class A felony, or (2) five
31 years if the defendant was convicted of a class B or class C felony. The period of

1 probation is in addition to any sentence received under (i) of this section and may not
2 be suspended or reduced. Upon a defendant's release from confinement in a
3 correctional facility, the defendant is subject to this probation requirement and shall
4 submit and comply with the terms and requirements of the probation.

5 * **Sec. 8.** AS 33.16.150(a) is amended to read:

6 (a) As a condition of parole, a prisoner released on special medical,
7 discretionary, or mandatory parole

8 (1) shall obey all state, federal, or local laws or ordinances, and any
9 court orders applicable to the parolee;

10 (2) shall make diligent efforts to maintain steady employment or meet
11 family obligations;

12 (3) shall, if involved in education, counseling, training, or treatment,
13 continue in the program unless granted permission from the parole officer assigned to
14 the parolee to discontinue the program;

15 (4) shall report

16 (A) upon release to the parole officer assigned to the parolee;

17 (B) at other times, and in the manner, prescribed by the board
18 or the parole officer assigned to the parolee;

19 (5) shall reside at a stated place and not change that residence without
20 notifying, and receiving permission from, the parole officer assigned to the parolee;

21 (6) shall remain within stated geographic limits unless written
22 permission to depart from the stated limits is granted the parolee;

23 (7) may not use, possess, handle, purchase, give, distribute, or
24 administer a controlled substance as defined in AS 11.71.900 or under federal law or a
25 drug for which a prescription is required under state or federal law without a
26 prescription from a licensed medical professional to the parolee;

27 (8) may not possess or control a firearm; in this paragraph, "firearm"
28 has the meaning given in AS 11.81.900;

29 (9) may not enter into an agreement or other arrangement with a law
30 enforcement agency or officer that will place the parolee in the position of violating a
31 law or parole condition without the prior approval of the board;

1 (10) may not contact or correspond with anyone confined in a
2 correctional facility of any type serving any term of imprisonment or a felon without
3 the permission of the parole officer assigned to a parolee;

4 (11) shall agree to waive extradition from any state or territory of the
5 United States and to not contest efforts to return the parolee to the state;

6 (12) shall provide a blood sample, an oral sample, or both, when
7 requested by a health care professional acting on behalf of the state to provide the
8 sample or samples, or an oral sample when requested by a juvenile or adult
9 correctional, probation, or parole officer, or a peace officer, if the prisoner is being
10 released after a conviction of an offense requiring the state to collect the sample or
11 samples for the deoxyribonucleic acid identification system under AS 44.41.035;

12 **(13) from a conviction for a sex offense shall submit to regular**
13 **periodic polygraph examinations; in this paragraph, "sex offense" has the**
14 **meaning given in AS 12.63.100.**

15 * **Sec. 9.** AS 11.41.438(a)(2) and 11.41.438(a)(3) are repealed.

16 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 **APPLICABILITY.** Sections 1, 2, 4 - 7, and 9 of this Act apply to offenses committed
19 on or after the effective date of this section. References to prior offenses or convictions in
20 secs. 4 and 6 of this Act include offenses committed before, on, or after the effective date of
21 this section.

22 * **Sec. 11.** Sections 3 and 8 of this Act take effect July 1, 2007.

23 * **Sec. 12.** Except as provided in sec. 11 of this Act, this Act takes effect immediately under
24 AS 01.10.070(c).