

**SENATE BILL NO. 223**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

**BY SENATORS GUESS, Davis**

**Introduced: 1/9/06**

**Referred: Health, Education and Social Services, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to sexual abuse of a minor and to sex offenders and child kidnappers;**  
2 **and providing for an effective date."**

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

4 **\* Section 1.** AS 09.55.650(c) is amended to read:

5 (c) In this section, "sexual abuse" means an act committed by the defendant  
6 against the plaintiff maintaining the cause of action if the defendant's conduct would  
7 have violated a provision of **AS 11.41.410 - 11.41.438** [AS 11.41.410 - 11.41.440] or  
8 11.41.450 - 11.41.458, former AS 11.15.120, 11.15.134, or 11.15.160, [OR] former  
9 AS 11.40.110, **or former AS 11.41.440** at the time it was committed.

10 **\* Sec. 2.** AS 11.41.436(a) is amended to read:

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

13 (1) being 16 years of age or older, the offender engages in sexual  
14 penetration with a person who is 13, 14, or 15 years of age and at least three years

1 younger than the offender, or aids, induces, causes or encourages a person who is 13,  
2 14, or 15 years of age and at least three years younger than the offender to engage in  
3 sexual penetration with another person;

4 (2) being 16 years of age or older, the offender engages in sexual  
5 contact with a person who is under 13 years of age or aids, induces, causes, or  
6 encourages a person under 13 years of age to engage in sexual contact with another  
7 person;

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

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

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

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

18 (B) the offender occupies a position of authority in relation to  
19 the victim;

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

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

27 \* **Sec. 3.** AS 11.41.438(a) is amended to read:

28 (a) An offender commits the crime of sexual abuse of a minor in the third  
29 degree if,

30 (1) being 16 years of age or older, the offender engages in sexual  
31 contact with a person who is 13, 14, or 15 years of age and at least three years younger

1 than the offender;

2 (2) being 18 years of age or older, the offender engages in sexual  
3 **contact** [PENETRATION] with a person who is 16 or 17 years of age and at least  
4 three years younger than the offender, and the offender occupies a position of  
5 authority in relation to the victim; or

6 (3) being under 16 years of age, the offender engages in sexual **contact**  
7 [PENETRATION] with a person who is under 13 years of age and at least three years  
8 younger than the offender.

9 \* **Sec. 4.** AS 11.41.445 is amended to read:

10 **Sec. 11.41.445. General provisions.** (a) In a prosecution under **AS 11.41.434 -**  
11 **11.41.438** [AS 11.41.434 - 11.41.440] it is an affirmative defense that, at the time of  
12 the alleged offense, the victim was the legal spouse of the defendant unless the offense  
13 was committed without the consent of the victim.

14 (b) In a prosecution under **AS 11.41.434 - 11.41.438** [AS 11.41.410 -  
15 11.41.440], whenever a provision of law defining an offense depends upon a victim's  
16 being under a certain age, it is an affirmative defense that, at the time of the alleged  
17 offense, the defendant

18 (1) reasonably believed the victim to be that age or older; and

19 (2) undertook reasonable measures to verify that the victim was that  
20 age or older.

21 \* **Sec. 5.** AS 11.56 is amended by adding a new section to read:

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

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

27 (2) fails to report the location of that sex offender or child kidnapper to  
28 the Department of Public Safety.

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

30 \* **Sec. 6.** AS 11.56.835(b) is amended to read:

31 (b) In a prosecution under (a)(2) of this section, the fact that the defendant, for

1 a period of at least one year, failed to register as **or report as required for** a sex  
 2 offender or child kidnapper, failed to file the annual or quarterly written verification,  
 3 or changed the sex offender's or child kidnapper's address and did not file the required  
 4 notice of change of address, is prima facie evidence that the defendant intended to  
 5 escape detection or identification and, by escaping detection or identification, to  
 6 facilitate the person's commission of a sex offense or child kidnapping.

7 \* **Sec. 7.** AS 11.56.835(d) is amended to read:

8 (d) Failure to register as a sex offender or child kidnapper in the first degree is  
 9 a class **B** [C] felony.

10 \* **Sec. 8.** AS 11.56.840 is amended to read:

11 **Sec. 11.56.840. Failure to register as a sex offender or child kidnapper in**  
 12 **the second degree.** (a) A person commits the crime of failure to register as a sex  
 13 offender or child kidnapper in the second degree if the person knowingly fails to (1)  
 14 register **or report**, (2) file the written notice of change of address, (3) file the annual  
 15 or quarterly written verification, or (4) supply all of the information required to be  
 16 submitted under (1) - (3) of this subsection, as required in AS 12.63.010.

17 (b) Failure to register as a sex offender or child kidnapper in the second degree  
 18 is a class **C felony** [A MISDEMEANOR].

19 \* **Sec. 9.** AS 12.55.125(i) is amended to read:

20 (i) A defendant convicted of

21 (1) sexual

22 **(A)** assault in the first degree [OR SEXUAL ABUSE OF A  
 23 MINOR IN THE FIRST DEGREE] may be sentenced to a definite term of  
 24 imprisonment of not more than 99 years and shall be sentenced to a definite  
 25 term within the following presumptive ranges, subject to adjustment as  
 26 provided in AS 12.55.155 - 12.55.175:

27 **(i)** [(A)] if the offense is a first felony conviction and  
 28 does not involve circumstances described in **(ii)** [(B)] of this  
 29 **subparagraph** [PARAGRAPH], eight to 12 years;

30 **(ii)** [(B)] if the offense is a first felony conviction and  
 31 the defendant possessed a firearm, used a dangerous instrument, or

1 caused serious physical injury during the commission of the offense, 12  
2 to 16 years;

3 (iii) [(C)] if the offense is a second felony conviction  
4 and does not involve circumstances described in (iv) [(D)] of this  
5 **subparagraph** [PARAGRAPH], 15 to 20 years;

6 (iv) [(D)] if the offense is a second felony conviction  
7 and the defendant has a prior conviction for a sexual felony, 20 to 30  
8 years;

9 (v) [(E)] if the offense is a third felony conviction and  
10 the defendant is not subject to sentencing under (vi) [(F)] of this  
11 **subparagraph** [PARAGRAPH] or (I) of this section, 25 to 35 years;

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

15 **(B) abuse of a minor in the first degree may be sentenced to**  
16 **a definite term of imprisonment of not more than 99 years and shall be**  
17 **sentenced to a definite term within the following presumptive ranges,**  
18 **subject to adjustment as provided in AS 12.55.155 - 12.55.175, or to the**  
19 **definite term specified:**

20 **(i) if the offense is a first felony conviction and does**  
21 **not involve circumstances described in (ii) of this subparagraph, 25**  
22 **to 99 years;**

23 **(ii) if the offense is a first felony conviction and the**  
24 **defendant possessed a firearm, used a dangerous instrument, or**  
25 **caused serious physical injury during the commission of the**  
26 **offense, 35 to 99 years;**

27 **(iii) if the offense is a second or greater felony**  
28 **conviction, 99 years;**

29 (2) attempt, conspiracy, or solicitation to commit sexual

30 **(A)** assault in the first degree [OR SEXUAL ABUSE OF A  
31 MINOR IN THE FIRST DEGREE] may be sentenced to a definite term of

1 imprisonment of not more than 30 years and shall be sentenced to a definite  
 2 term within the following presumptive ranges, subject to adjustment as  
 3 provided in AS 12.55.155 - 12.55.175:

4 **(i)** [(A)] if the offense is a first felony conviction and  
 5 does not involve circumstances described in **(ii)** [(B)] of this  
 6 **subparagraph** [PARAGRAPH], five to eight years;

7 **(ii)** [(B)] if the offense is a first felony conviction, and  
 8 the defendant possessed a firearm, used a dangerous instrument, or  
 9 caused serious physical injury during the commission of the offense, 10  
 10 to 14 years;

11 **(iii)** [(C)] if the offense is a second felony conviction  
 12 and does not involve circumstances described in **(iv)** [(D)] of this  
 13 **subparagraph** [PARAGRAPH], 12 to 16 years;

14 **(iv)** [(D)] if the offense is a second felony conviction  
 15 and the defendant has a prior conviction for a sexual felony, 15 to 20  
 16 years;

17 **(v)** [(E)] if the offense is a third felony conviction, does  
 18 not involve circumstances described in **(vi)** [(F)] of this **subparagraph**  
 19 [PARAGRAPH], and the defendant is not subject to sentencing under  
 20 (I) of this section, 15 to 25 years;

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

24 **(B) abuse of a minor in the first degree may be sentenced to**  
 25 **a definite term of imprisonment of not more than 99 years and shall be**  
 26 **sentenced to a definite term within the following presumptive ranges,**  
 27 **subject to adjustment as provided in AS 12.55.155 - 12.55.175:**

28 **(i) if the offense is a first felony conviction and does**  
 29 **not involve circumstances described in (ii) of this subparagraph, 10**  
 30 **to 20 years;**

31 **(ii) if the offense is a first felony conviction, and the**

1 **defendant possessed a firearm, used a dangerous instrument, or**  
 2 **caused serious physical injury during the commission of the**  
 3 **offense, 15 to 30 years;**

4 **(iii) if the offense is a second or greater felony**  
 5 **conviction, 25 to 99 years;**

6 (3) sexual

7 **(A)** assault in the second degree, [SEXUAL ABUSE OF A  
 8 MINOR IN THE SECOND DEGREE,] unlawful exploitation of a minor, or  
 9 distribution of child pornography may be sentenced to a definite term of  
 10 imprisonment of not more than 20 years and shall be sentenced to a definite  
 11 term within the following presumptive ranges, subject to adjustment as  
 12 provided in AS 12.55.155 - 12.55.175:

13 **(i)** [(A)] if the offense is a first felony conviction, two to  
 14 four years;

15 **(ii)** [(B)] if the offense is a second felony conviction  
 16 and does not involve circumstances described in **(iii)** [(C)] of this  
 17 **subparagraph** [PARAGRAPH], five to eight years;

18 **(iii)** [(C)] if the offense is a second felony conviction  
 19 and the defendant has a prior conviction for a sexual felony, 10 to 14  
 20 years;

21 **(iv)** [(D)] if the offense is a third felony conviction and  
 22 does not involve circumstances described in **(v)** [(E)] of this  
 23 **subparagraph** [PARAGRAPH], 10 to 14 years;

24 **(v)** [(E)] if the offense is a third felony conviction and  
 25 the defendant has two prior convictions for sexual felonies, 15 to 20  
 26 years;

27 **(B) abuse of a minor in the second degree may be sentenced**  
 28 **to a definite term of imprisonment of not more than 99 years and shall be**  
 29 **sentenced to a definite term within the following presumptive ranges,**  
 30 **subject to adjustment as provided in AS 12.55.155 - 12.55.175:**

31 **(i) if the offense is a first felony conviction, 10 to 20**

1                   years;

2                                   (ii) if the offense is a second or greater felony  
 3                   conviction, 25 to 99 years;

4                   (4) sexual

5                                   (A) assault in the third degree, incest, indecent exposure in the  
 6                   first degree, possession of child pornography, or attempt, conspiracy, or  
 7                   solicitation to commit sexual assault in the second degree, sexual abuse of a  
 8                   minor in the second degree, unlawful exploitation of a minor, or distribution of  
 9                   child pornography, may be sentenced to a definite term of imprisonment of not  
 10                  more than 10 years and shall be sentenced to a definite term within the  
 11                  following presumptive ranges, subject to adjustment as provided in  
 12                  AS 12.55.155 - 12.55.175:

13                                   (i) [(A)] if the offense is a first felony conviction, one to  
 14                  two years;

15                                   (ii) [(B)] if the offense is a second felony conviction  
 16                  and does not involve circumstances described in (iii) [(C)] of this  
 17                  subparagraph [PARAGRAPH], two to five years;

18                                   (iii) [(C)] if the offense is a second felony conviction  
 19                  and the defendant has a prior conviction for a sexual felony, three to six  
 20                  years;

21                                   (iv) [(D)] if the offense is a third felony conviction and  
 22                  does not involve circumstances described in (v) [(E)] of this  
 23                  subparagraph [PARAGRAPH], three to six years;

24                                   (v) [(E)] if the offense is a third felony conviction and  
 25                  the defendant has two prior convictions for sexual felonies, six to 10  
 26                  years;

27                                   (B) abuse of a minor in the third degree may be sentenced  
 28                  to a definite term of imprisonment of not more than 25 years and shall be  
 29                  sentenced to a definite term within the following presumptive ranges,  
 30                  subject to adjustment as provided in AS 12.55.155 - 12.55.175:

31                                   (i) if the offense is a first felony conviction, five to 10

1                   years;

2                                   (ii) if the offense is a second or greater felony  
 3                   conviction, 10 to 25 years.

4 \* **Sec. 10.** AS 12.55.125 is amended by adding a new subsection to read:

5                   (o) In addition to the sentence imposed under (i) of this section on a defendant  
 6 convicted of sexual abuse of a minor in the first, second, or third degree, or attempt,  
 7 conspiracy, or solicitation to commit sexual abuse of a minor in the first or second  
 8 degree, the court shall impose a period of probation that continues for the remainder of  
 9 the natural life of the defendant. If a defendant is released from confinement in a  
 10 correctional facility, the defendant is subject to this probation requirement and shall  
 11 submit and comply with the terms and requirements of the probation, which must  
 12 include intensive monitoring of the defendant under requirements set by the  
 13 Department of Corrections.

14 \* **Sec. 11.** AS 12.63.010(d) is amended to read:

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

16                                   (1) for 15 years under (a) of this section and AS 12.63.020(a)(2) shall,  
 17 every six months [ANNUALLY], during the term of a duty to register under  
 18 AS 12.63.020, on a date set by the department at the time of the sex offender's or child  
 19 kidnapper's initial registration, report in person to the Alaska state trooper post or  
 20 municipal police department located nearest to the sex offender's or child  
 21 kidnapper's residence and shall provide quarterly written verification to the  
 22 department, in the manner required by the department, of the sex offender's or child  
 23 kidnapper's address and notice of any changes to the information previously provided  
 24 under (b)(1) of this section;

25                                   (2) for life under (a) of this section and AS 12.63.020(a)(1) shall, not  
 26 less than every six months, report in person to the Alaska state trooper post or  
 27 municipal police department located nearest to the sex offender's or child  
 28 kidnapper's residence and shall quarterly, on a date set by the department, provide  
 29 written verification to the department, in the manner required by the department, of the  
 30 sex offender's or child kidnapper's address and any changes to the information  
 31 previously provided under (b)(1) of this section.

1 \* **Sec. 12.** AS 12.63.100(6) is amended to read:

2 (6) "sex offense" means

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

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

11 (i) sexual assault in the first degree;

12 (ii) sexual assault in the second degree;

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

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

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

17 (i) AS 11.41.410 - 11.41.438;

18 (ii) **former** AS 11.41.440(a)(2);

19 (iii) AS 11.41.450 - 11.41.458;

20 (iv) AS 11.41.460 if the indecent exposure is before a  
21 person under 16 years of age and the offender has a previous conviction  
22 for that offense;

23 (v) AS 11.61.125 or 11.61.127;

24 (vi) AS 11.66.110 or 11.66.130(a)(2) if the person who  
25 was induced or caused to engage in prostitution was 16 or 17 years of  
26 age at the time of the offense; or

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

30 \* **Sec. 13.** AS 18.16.060(d) is amended to read:

31 (d) Notwithstanding (a) of this section, informed consent that meets the

1 requirements of (a) - (c) of this section is not required in the case of a medical  
 2 emergency or if the pregnancy is the result of sexual assault under AS 11.41.410 -  
 3 11.41.427, sexual abuse of a minor under AS 11.41.434 - 11.41.438 [AS 11.41.434 -  
 4 11.41.440], incest under AS 11.41.450, or an offense under a law of another  
 5 jurisdiction with elements similar to one of these offences. In this subsection, "medical  
 6 emergency" means a condition that, on the basis of a physician's good faith clinical  
 7 judgment, so complicates the medical condition of a pregnant woman that

8 (1) the immediate termination of the woman's pregnancy is necessary  
 9 to avert the woman's death; or

10 (2) a delay in providing an abortion will create serious risk of  
 11 substantial and irreversible impairment of a major bodily function of the woman.

12 \* **Sec. 14.** AS 25.23.240(9) is amended to read:

13 (9) "sexual abuse of a minor" means a sexual offense defined in  
 14 AS 11.41.434, 11.41.436, or 11.41.438 [, OR 11.41.440];

15 \* **Sec. 15.** AS 28.15.046(c) is amended to read:

16 (c) The department may not issue a license under this section to an applicant  
 17 who has been convicted of any of the following offenses within 20 years of the time of  
 18 application:

19 (1) sexual abuse of a minor in any degree under AS 11.41.434 -  
 20 11.41.438 [AS 11.41.434 - 11.41.440];

21 (2) sexual assault in any degree under AS 11.41.410 - 11.41.425;

22 (3) incest under AS 11.41.450;

23 (4) unlawful exploitation of a minor under AS 11.41.455;

24 (5) contributing to the delinquency of a minor under AS 11.51.130;

25 (6) a felony involving possession of a controlled or imitation  
 26 controlled substance under AS 11.71 or AS 11.73;

27 (7) a felony or misdemeanor involving distribution of a controlled or  
 28 imitation controlled substance under AS 11.71 or AS 11.73;

29 (8) promoting prostitution in the first or second degree under  
 30 AS 11.66.110 or 11.66.120;

31 (9) indecent exposure in the first or second degree under AS 11.41.458

1 or 11.41.460.

2 \* **Sec. 16.** AS 33.20.010(a) is amended to read:

3 (a) Notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner  
4 convicted of an offense against the state or a political subdivision of the state and  
5 sentenced to a term of imprisonment that exceeds three days is entitled to a deduction  
6 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner  
7 follows the rules of the correctional facility in which the prisoner is confined. A  
8 prisoner is not eligible for a good time deduction if the prisoner has been sentenced

9 (1) to a mandatory 99-year term of imprisonment under  
10 AS 12.55.125(a) after June 27, 1996;

11 (2) to a definite term under AS 12.55.125(j); [OR]

12 (3) for a sexual felony under AS 12.55.125(i) and has one or more  
13 prior sexual felony convictions as determined under AS 12.55.145(a)(4); **or**

14 **(4) for sexual abuse of a minor in any degree.**

15 \* **Sec. 17.** AS 11.41.440 is repealed.

16 \* **Sec. 18.** This Act takes effect July 1, 2006.