

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 223
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY SENATORS GUESS, Davis

Introduced: 1/11/06

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to sexual abuse of a minor and to sex offenders and child kidnapers;**
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 felony conviction and**
28 **the defendant is not subject to sentencing under (v) of this**
29 **subparagraph, 35 to 99 years;**

30 **(iv) if the offense is a third felony conviction and the**
31 **defendant is not subject to sentencing under (v) of this**

1 **subparagraph or (I) of this section, 40 to 99 years;**

2 **(v) if the offense is a second or greater felony**
 3 **conviction and the defendant has a prior conviction for a sexual**
 4 **felony, 99 years;**

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

6 **(A)** assault in the first degree [OR SEXUAL ABUSE OF A
 7 MINOR IN THE FIRST DEGREE] may be sentenced to a definite term of
 8 imprisonment of not more than 30 years and shall be sentenced to a definite
 9 term within the following presumptive ranges, subject to adjustment as
 10 provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

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

31 **(B) abuse of a minor in the first degree may be sentenced to**

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

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

7 (ii) if the offense is a first felony conviction, and the
 8 defendant possessed a firearm, used a dangerous instrument, or
 9 caused serious physical injury during the commission of the
 10 offense, 15 to 30 years;

11 (iii) if the offense is a second felony conviction and
 12 the defendant is not subject to sentencing under (v) of this
 13 subparagraph, 15 to 30 years;

14 (iv) if the offense is a third felony conviction and the
 15 defendant is not subject to sentencing under (v) of this
 16 subparagraph or (l) of this section, 20 to 35 years;

17 (v) if the offense is a second or greater felony
 18 conviction and the defendant has a prior conviction for a sexual
 19 felony, 25 to 99 years;

20 (3) sexual

21 (A) assault in the second degree, [SEXUAL ABUSE OF A
 22 MINOR IN THE SECOND DEGREE,] unlawful exploitation of a minor, or
 23 distribution of child pornography may be sentenced to a definite term of
 24 imprisonment of not more than 20 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, two to
 28 four years;

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

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

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

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

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

14 **(i) if the offense is a first felony conviction, 10 to 20**
 15 **years;**

16 **(ii) if the offense is a second felony conviction and**
 17 **the defendant is not subject to sentencing under (iv) of this**
 18 **subparagraph, 13 to 25 years;**

19 **(iii) if the offense is a third felony conviction and the**
 20 **defendant is not subject to sentencing under (iv) of this**
 21 **subparagraph, 17 to 30 years;**

22 **(iv) if the offense is a second or greater felony**
 23 **conviction and the defendant has a prior conviction for a sexual**
 24 **felony, 25 to 99 years;**

25 (4) sexual

26 **(A)** assault in the third degree, incest, indecent exposure in the
 27 first degree, possession of child pornography, or attempt, conspiracy, or
 28 solicitation to commit sexual assault in the second degree, sexual abuse of a
 29 minor in the second degree, unlawful exploitation of a minor, or distribution of
 30 child pornography, may be sentenced to a definite term of imprisonment of not
 31 more than 10 years and shall be sentenced to a definite term within the

1 following presumptive ranges, subject to adjustment as provided in
2 AS 12.55.155 - 12.55.175:

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

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

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

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

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

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

21 **(i) if the offense is a first felony conviction, five to 10**
22 **years;**

23 **(ii) if the offense is a second felony conviction and**
24 **the defendant is not subject to sentencing under (iv) of this**
25 **subparagraph, seven to 15 years;**

26 **(iii) if the offense is a third felony conviction and the**
27 **defendant is not subject to sentencing under (iv) of this**
28 **subparagraph, nine to 20 years;**

29 **(iv) if the offense is a second or greater felony**
30 **conviction and the defendant has a prior conviction for a sexual**
31 **felony, 10 to 25 years.**

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

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

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

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

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

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

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

30 (6) "sex offense" means

31 (A) a crime under AS 11.41.100(a)(3), or a similar law of

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

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

8 (i) sexual assault in the first degree;

9 (ii) sexual assault in the second degree;

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

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

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

14 (i) AS 11.41.410 - 11.41.438;

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

16 (iii) AS 11.41.450 - 11.41.458;

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

20 (v) AS 11.61.125 or 11.61.127;

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

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

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

28 (d) Notwithstanding (a) of this section, informed consent that meets the
 29 requirements of (a) - (c) of this section is not required in the case of a medical
 30 emergency or if the pregnancy is the result of sexual assault under AS 11.41.410 -
 31 11.41.427, sexual abuse of a minor under **AS 11.41.434 - 11.41.438** [AS 11.41.434 -

1 11.41.440], incest under AS 11.41.450, or an offense under a law of another
 2 jurisdiction with elements similar to one of these offences. In this subsection, "medical
 3 emergency" means a condition that, on the basis of a physician's good faith clinical
 4 judgment, so complicates the medical condition of a pregnant woman that

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

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

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

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

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

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

16 (1) sexual abuse of a minor in any degree under AS 11.41.434 -
 17 11.41.438 [AS 11.41.434 - 11.41.440];

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

19 (3) incest under AS 11.41.450;

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

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

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

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

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

28 (9) indecent exposure in the first or second degree under AS 11.41.458
 29 or 11.41.460.

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

31 (a) Notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner

1 convicted of an offense against the state or a political subdivision of the state and
 2 sentenced to a term of imprisonment that exceeds three days is entitled to a deduction
 3 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner
 4 follows the rules of the correctional facility in which the prisoner is confined. A
 5 prisoner is not eligible for a good time deduction if the prisoner has been sentenced

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

8 (2) to a definite term under AS 12.55.125(l); [OR]

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

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

12 * **Sec. 17.** AS 11.41.440 is repealed.

13 * **Sec. 18.** This Act takes effect immediately under AS 01.10.070(c).