

CS FOR HOUSE BILL NO. 90(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/16/07

Referred: Finance

Sponsor(s): REPRESENTATIVES SAMUELS AND STOLTZE, Hawker, Dahlstrom, Lynn, Ramras

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to credit toward service of a sentence of imprisonment; relating to
2 violation of probation and parole conditions by sex offenders; relating to bail; relating to
3 distribution of certain materials to minors; relating to time limitations for prosecution of
4 certain crimes; relating to sex offender registration; relating to the maximum time for
5 probation; relating to certain post-conviction relief applications; relating to good time;
6 and providing for an effective date."

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

8 * **Section 1.** AS 11.56 is amended by adding a new section to read:

9 **Sec. 11.56.759. Violation by sex offender of condition of probation or**
10 **parole.** (a) A person commits the crime of violation by sex offender of condition of
11 probation or parole if the person

12 (1) is on probation or parole for conviction of a sex offense;

13 (2) has served the entire term of incarceration imposed for conviction

1 of the sex offense; and

2 (3) either

3 (A) violates a condition of probation imposed under
4 AS 12.55.100(a)(5), (a)(6), or (e), 12.55.101(a)(1), or any other condition
5 imposed by the court that the court finds to be specifically related to the
6 defendant's offense; or

7 (B) violates a condition of parole imposed under
8 AS 33.16.150(a)(3), (a)(4), (a)(6), (a)(13), (b)(4), (b)(11), or (f).

9 (b) In this section, "sex offense" has the meaning given in AS 12.63.100.

10 (c) Violation by sex offender of condition of probation or parole is a class A
11 misdemeanor.

12 * **Sec. 2.** AS 11.61.128(a) is amended to read:

13 (a) A person commits the crime of electronic distribution of indecent material
14 to minors if

15 (1) the person, being 18 years of age or older, knowingly distributes to
16 another person by computer any material that depicts **the following actual or**
17 **simulated conduct:**

18 (A) **sexual penetration;**

19 (B) **the lewd touching of a person's genitals, anus, or female**
20 **breast;**

21 (C) **masturbation;**

22 (D) **bestiality;**

23 (E) **the lewd exhibition of a person's genitals, anus, or**
24 **female breast; or**

25 (F) **sexual masochism or sadism;** [AN ACT DESCRIBED IN
26 AS 11.41.455(a)(1) - (7)] and

27 (2) **either** [1]

28 (A) the other person is a child under 16 years of age; or

29 (B) [(2)] the person believes that the other person is a child
30 under 16 years of age.

31 * **Sec. 3.** AS 11.61.129(a) is amended to read:

1 (a) Property used to aid a violation of **AS 11.61.123 - 11.61.128**
 2 [AS 11.61.123 - 11.61.127] or to aid the solicitation of, attempt to commit, or
 3 conspiracy to commit a violation of **AS 11.61.123 - 11.61.128** [AS 11.61.123 -
 4 11.61.127] may be forfeited to the state upon the conviction of the offender.

5 * **Sec. 4.** AS 12.10.010(a) is amended to read:

6 (a) Prosecution for the following offenses may be commenced at any time:

7 (1) murder;

8 (2) **attempt, solicitation, or conspiracy to commit murder or**
 9 **hindering the prosecution of murder;**

10 (3) felony sexual abuse of a minor;

11 (4) [(3)] sexual assault that is an unclassified, class A, or class B
 12 felony or a violation of AS 11.41.425(a)(2) or (3);

13 (5) [(4)] a violation of AS 11.41.425, 11.41.427, 11.41.450 -
 14 11.41.458, AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed
 15 against a person who, at the time of the offense, was under 18 years of age.

16 * **Sec. 5.** AS 12.30.020(j) is amended to read:

17 (j) If a person remains in custody after review of conditions by a judicial
 18 officer under (f) of this section, a subsequent review of conditions may be held at the
 19 request of the person. Unless the prosecuting authority stipulates otherwise **or a**
 20 **defendant has been incarcerated for a period equal to the maximum sentence for**
 21 **the most serious charge for which the defendant is being held,** a judicial officer
 22 may not schedule a bail review hearing under this subsection unless

23 (1) the person provides to the court and the prosecuting authority a
 24 written statement that **new** information not considered at the previous review will be
 25 presented; **the statement must include** [AND INCLUDES] a description of the
 26 [NEW] information **and the reason the information was not presented at a**
 27 **previous hearing; in this paragraph, "new information" does not include**

28 **(A) the inability to post the required bail;**

29 **(B) information that the defendant knew about but did not**
 30 **present at a previous bail review hearing;**

31 (2) the prosecuting authority has at least 48 hours' notice before the

1 time set for the review requested under this subsection; and

2 (3) at least seven days [48 HOURS] have elapsed between the
3 previous review and the time set for the review requested under this subsection.

4 * **Sec. 6.** AS 12.55 is amended by adding a new section to read:

5 **Sec. 12.55.027. Credit for time spent toward service of a sentence of**
6 **imprisonment.** (a) A court may grant a defendant credit toward a sentence of
7 imprisonment for time spent in a treatment program only as provided in this section.

8 (b) A court may grant a defendant one day of credit toward a sentence of
9 imprisonment for each full day the defendant resided in the facility of a treatment
10 program and observed the rules of the treatment program and the facility if

11 (1) the court finds that the treatment program meets the standards
12 described in (c) of this section;

13 (2) before the defendant entered the treatment program, the court
14 ordered the defendant to reside in the facility of the treatment program and participate
15 in the treatment program as a condition of bail release or a condition of probation; and

16 (3) the court has received a written report from the director of the
17 program that

18 (A) states that the defendant has participated in the treatment
19 plan prescribed for the defendant and has complied with the requirements of
20 the plan; and

21 (B) sets out the number of full days the defendant resided in the
22 facility of the treatment program and observed the rules of the treatment
23 program and facility.

24 (c) To qualify for credit against a sentence of imprisonment for time spent in a
25 treatment program, the treatment program and the facility of the treatment program
26 must impose substantial restrictions on a person's liberty that are equivalent to
27 incarceration, including the requirement that a participant in the program

28 (1) must live in a residential facility operated by the program;

29 (2) must be confined at all times to the grounds of the facility or be in
30 the physical custody of an employee of the facility, except for court appearances or
31 meetings with counsel, unless the person is at work or traveling to or from work as

1 required by the treatment program and as approved by the court for credit;

2 (3) is subject to disciplinary sanctions by the program if the participant
3 violates rules of the program and facility; sanctions must be in writing and available
4 for court review; and

5 (4) is subject to immediate arrest, without warrant, if the participant
6 leaves the facility without permission.

7 (d) A court may not grant credit against a sentence of imprisonment for time
8 spent in a private residence or under electronic monitoring.

9 * **Sec. 7.** AS 12.55.090(c) is amended to read:

10 (c) The period of probation, together with any extension, may not exceed

11 **(1) 25 years for a felony sex offense; or**

12 **(2) 10 years for any other offense.**

13 * **Sec. 8.** AS 12.63.100(6) is amended to read:

14 (6) "sex offense" means

15 (A) a crime under AS 11.41.100(a)(3), or a similar law of
16 another jurisdiction, in which the person committed or attempted to commit a
17 sexual offense, or a similar offense under the laws of the other jurisdiction; in
18 this subparagraph, "sexual offense" has the meaning given in
19 AS 11.41.100(a)(3);

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

23 (i) sexual assault in the first degree;

24 (ii) sexual assault in the second degree;

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

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

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

29 (i) AS 11.41.410 - 11.41.438;

30 (ii) AS 11.41.440(a)(2);

31 (iii) AS 11.41.450 - 11.41.458;

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

4 (v) AS 11.61.125 - 11.61.128 [AS 11.61.125 OR
 5 11.61.127];

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

9 (vii) former AS 11.15.120, former 11.15.134, or assault
 10 with the intent to commit rape under former AS 11.15.160, former
 11 AS 11.40.110, or former 11.40.200;

12 * **Sec. 9.** AS 12.72 is amended by adding a new section to read:

13 **Sec. 12.72.025. Applications based on claim of ineffective assistance of**
 14 **counsel.** An application may not be brought under AS 12.72.010 or the Alaska Rules
 15 of Criminal Procedure if it is based on a claim that the assistance the applicant's
 16 attorney provided in a prior application under AS 12.72.010 or the Alaska Rules of
 17 Criminal Procedure was ineffective, unless it is filed within one year after the court's
 18 decision on the prior application is final under the Alaska Rules of Appellate
 19 Procedure.

20 * **Sec. 10.** AS 33.20.010 is amended by adding a new subsection to read:

21 (c) A prisoner may not be awarded a good time deduction under (a) of this
 22 section for any period spent in a treatment program, in a private residence, or while
 23 under electronic monitoring.

24 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding new sections to
 25 read:

26 APPLICABILITY. (a) AS 12.55.027, enacted by sec. 6 of this Act, applies to credit
 27 for time served for a sentence imposed on or after the effective date of this Act, regardless of
 28 when the criminal act was committed.

29 (b) AS 11.56.759, enacted by sec. 1 of this Act, and the amendments to
 30 AS 11.61.128(a) and AS 12.10.010(a) made by secs. 2 and 4 of this Act apply to acts
 31 committed on or after the effective date of this Act.

1 (c) AS 12.72.025, enacted by sec. 9 of this Act, applies to offenses committed before,
2 on, or after the effective date of this Act. A person whose application for post-conviction
3 relief was denied before the effective date of this Act, has until July 1, 2008, to file a claim
4 described in AS 12.72.025.

5 * **Sec. 12.** This Act takes effect July 1, 2007.