

HOUSE BILL NO. 73

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/16/13

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the commencement of actions for felony sex trafficking and felony
2 human trafficking; relating to the crime of sexual assault; relating to the crime of
3 unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating
4 to the time in which to commence certain prosecutions; relating to release for violation
5 of a condition of release in connection with a crime involving domestic violence; relating
6 to interception of private communications for certain sex trafficking or human
7 trafficking offenses; relating to use of evidence of sexual conduct concerning victims of
8 certain crimes; relating to procedures for granting immunity to a witness in a criminal
9 proceeding; relating to consideration at sentencing of the effect of a crime on the victim;
10 relating to the time to make an application for credit for time served in detention in a
11 treatment program or while in other custody; relating to suspending imposition of
12 sentence for sex trafficking; relating to consecutive sentences for convictions of certain

1 crimes involving child pornography or indecent materials to minors; relating to the
2 referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual
3 felony' for sentencing and probation for conviction of certain crimes; relating to the
4 definition of "sex offense" regarding sex offender registration; relating to protective
5 orders for stalking and sexual assault and for a crime involving domestic violence;
6 relating to the definition of 'victim counseling centers' for disclosure of certain
7 communications concerning sexual assault or domestic violence; relating to violent
8 crimes compensation; relating to certain information in retention election of judges
9 concerning sentencing of persons convicted of felonies; relating to remission of sentences
10 for certain sexual felony offenders; relating to the subpoena power of the attorney
11 general in cases involving the use of an Internet service account; relating to reasonable
12 efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration;
13 relating to mandatory reporting by athletic coaches of child abuse or neglect; making
14 conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of
15 Criminal Procedure, Rule 404(b), Alaska Rules of Evidence, and Rule 216, Alaska Rules
16 of Appellate Procedure; and providing for an effective date."

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

18 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
19 to read:

20 LEGISLATIVE FINDINGS AND INTENT FOR SECS. 20 AND 21 OF THIS ACT.

21 (a) The legislature reaffirms the findings made by the letter of intent for ch. 14, SLA 2006,
22 shown at 2006 Senate Journal 2207 - 2214 (February 16).

23 (b) The legislature finds that in enacting ch. 14, SLA 2006, the legislature did not in
24 2006, and does not now, intend to create new or additional means for a defendant convicted of
25 a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel.

1 The legislature also did not in 2006, nor does it now, intend for a court to create new or
 2 additional means for a defendant convicted of a sexual felony and sentenced under
 3 AS 12.55.125(i) to obtain referral to a three-judge panel.

4 (c) It is the intent of the legislature that AS 12.55.165, as amended by sec. 20 of this
 5 Act, and AS 12.55.175, as amended by sec. 21 of this Act, to overturn the majority decision in
 6 *Collins v. State*, 287 P.3d 791 (Alaska 2012), and to endorse the dissenting opinion in the
 7 same case.

8 * **Sec. 2.** AS 09.10.065(a) is amended to read:

9 (a) A person may bring an action at any time for conduct that would have, at
 10 the time the conduct occurred, violated provisions of any of the following offenses:

- 11 (1) felony sexual abuse of a minor;
- 12 (2) felony sexual assault; [OR]
- 13 (3) unlawful exploitation of a minor;
- 14 **(4) felony sex trafficking; or**
- 15 **(5) felony human trafficking.**

16 * **Sec. 3.** AS 11.41.425(a) is amended to read:

17 (a) An offender commits the crime of sexual assault in the third degree if the
 18 offender

- 19 (1) engages in sexual contact with a person who the offender knows is
 - 20 (A) mentally incapable;
 - 21 (B) incapacitated; or
 - 22 (C) unaware that a sexual act is being committed;

23 (2) while employed in a state correctional facility or other placement
 24 designated by the commissioner of corrections for the custody and care of prisoners,
 25 engages in sexual penetration with a person who the offender knows is committed to
 26 the custody of the Department of Corrections to serve a term of imprisonment or
 27 period of temporary commitment;

28 (3) engages in sexual penetration with a person 18 or 19 years of age
 29 who the offender knows is committed to the custody of the Department of Health and
 30 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of
 31 the person; [OR]

1 (4) while employed in the state by a law enforcement agency as peace
 2 officer, or while acting as a peace officer in the state, engages in sexual penetration
 3 with a person with reckless disregard that the person is in the custody or the apparent
 4 custody of the offender, or is committed to the custody of a law enforcement agency;

5 (5) while employed by the state or a municipality as a probation
 6 officer or parole officer, or while acting as a probation officer or parole officer in
 7 the state, engages in sexual penetration with a person with reckless disregard that
 8 the person is on probation or parole; or

9 (6) while employed as a juvenile probation officer or as a juvenile
 10 facility staff, engages in sexual penetration with a person 18 or 19 years of age
 11 with reckless disregard that the person is committed to the custody or
 12 probationary supervision of the Department of Health and Social Services.

13 * **Sec. 4.** AS 11.41.425(b) is repealed and reenacted to read:

14 (b) In this section,

15 (1) "juvenile facility staff" means a person employed in a juvenile
 16 detention or treatment facility;

17 (2) "juvenile probation officer" means a person assigned to supervise
 18 another person 18 or 19 years of age who is committed to the probationary supervision
 19 of the Department of Health and Social Services;

20 (3) "parole officer" has the meaning given in AS 18.65.290;

21 (4) "peace officer" has the meaning given in AS 01.10.060;

22 (5) "probation officer" includes a person

23 (A) defined as a probation officer in AS 18.65.290; or

24 (B) who supervises a participant in a specialty court, including
 25 a therapeutic or wellness court addressing alcohol or drug use, a court
 26 addressing the needs of veterans, an adult or juvenile mental health court, a
 27 fetal alcohol spectrum court, or a family care or preservation court.

28 * **Sec. 5.** AS 11.41.427(a) is amended to read:

29 (a) An offender commits the crime of sexual assault in the fourth degree if

30 (1) while employed in a state correctional facility or other placement
 31 designated by the commissioner of corrections for the custody and care of prisoners,

1 the offender engages in sexual contact with a person who the offender knows is
 2 committed to the custody of the Department of Corrections to serve a term of
 3 imprisonment or period of temporary commitment;

4 (2) the offender engages in sexual contact with a person 18 or 19 years
 5 of age who the offender knows is committed to the custody of the Department of
 6 Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal
 7 guardian of the person; [OR]

8 (3) while employed in the state by a law enforcement agency as a
 9 peace officer, or while acting as a peace officer in the state, the offender engages in
 10 sexual contact with a person with reckless disregard that the person is in the custody or
 11 the apparent custody of the offender, or is committed to the custody of a law
 12 enforcement agency;

13 **(4) while employed by the state or a municipality as a probation**
 14 **officer or parole officer, or while acting as a probation officer or parole officer in**
 15 **the state, engages in sexual contact with a person with reckless disregard that the**
 16 **person is on probation or parole; or**

17 **(5) while employed as a juvenile probation officer or as a juvenile**
 18 **facility staff, engages in sexual contact with a person 18 or 19 years of age with**
 19 **reckless disregard that the person is committed to the custody or probationary**
 20 **supervision of the Department of Health and Social Services.**

21 * **Sec. 6.** AS 11.41.427(b) is repealed and reenacted to read:

22 (b) In this section,

23 (1) "juvenile facility staff" has the meaning given in AS 11.41.425;

24 (2) "juvenile probation officer" has the meaning given in
 25 AS 11.41.425;

26 (3) "parole officer" has the meaning given in AS 18.65.290;

27 (4) "peace officer" has the meaning given in AS 01.10.060;

28 (5) "probation officer" has the meaning given in AS 11.41.425.

29 * **Sec. 7.** AS 11.56.750(a) is amended to read:

30 (a) A person commits the crime of unlawful contact in the first degree if the
 31 person

1 (1) has been ordered not to contact a victim or witness of the offense
2 [AS]

3 (A) **as** part of a sentence imposed under AS 12.55.015; or

4 (B) **as** a condition of

5 (i) release under AS 12.30;

6 (ii) probation under AS 12.55.101; [OR]

7 (iii) parole under AS 33.16.150; **or**

8 **(C) while under official detention;** and

9 (2) either directly or indirectly, knowingly contacts or attempts to
10 contact the victim or witness in violation of the order.

11 * **Sec. 8.** AS 11.66.145 is amended to read:

12 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or
13 received or derived from, a violation of **AS 11.66.100(a)(2), 11.66.100(c),**
14 **[AS 11.66.100(c)]** or 11.66.110 - 11.66.135 shall be forfeited.

15 * **Sec. 9.** AS 12.10.010 is amended to read:

16 **Sec. 12.10.010. General time limitations.** (a) Prosecution for the following
17 offenses may be commenced at any time:

18 (1) murder;

19 (2) attempt, solicitation, or conspiracy to commit murder or hindering
20 the prosecution of murder;

21 (3) felony sexual abuse of a minor;

22 (4) sexual assault that is an unclassified, class A, or class B felony or a
23 violation of AS 11.41.425(a)(2) - **(6)** [(4)];

24 (5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458,
25 [AS 11.66.110 - 11.66.130,] or former AS 11.41.430, when committed against a
26 person who, at the time of the offense, was under 18 years of age;

27 (6) kidnapping;

28 **(7) distribution of child pornography in violation of AS 11.61.125;**

29 **(8) sex trafficking in violation of AS 11.66.110 - 11.66.130 that is an**
30 **unclassified, class A, or class B felony or that is committed against a person who,**
31 **at the time of the offense, was under 20 years of age;**

1 **(9) human trafficking in violation of AS 11.41.360 or 11.41.365.**

2 (b) Except as otherwise provided by law or in (a) of this section, a person may
3 not be prosecuted, tried, or punished for an offense unless the indictment is found or
4 the information or complaint is instituted not later than

5 (1) 10 years after the commission of a felony offense in violation of
6 **AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370], 11.41.425(a)(1), or 11.41.450 -
7 11.41.458; or

8 (2) five years after the commission of any other offense.

9 * **Sec. 10.** AS 12.30.027(a) is amended to read:

10 (a) Before ordering release before or after trial, or pending appeal, of a person
11 charged with or convicted of a crime involving domestic violence, the judicial officer
12 shall consider the safety of the victim or other household member. To protect the
13 victim, household member, other persons, and the community and to reasonably
14 assure the person's appearance, the judicial officer shall impose conditions required
15 under AS 12.30.011, and may impose any of the conditions authorized under
16 AS 12.30.011, any of the provisions of AS 18.66.100(c)(1) - (7), [AND] (11), **and**
17 **(17)**, and any other condition necessary to protect the victim, household member, other
18 persons, and the community, and to ensure the appearance of the person in court,
19 including ordering the person to refrain from the consumption of alcohol.

20 * **Sec. 11.** AS 12.30.027(e) is amended to read:

21 (e) A person arrested for a crime involving domestic violence **or for violation**
22 **of a condition of release in connection with a crime involving domestic violence**
23 may not be released from custody until the person has appeared in person before a
24 judicial officer or telephonically for arraignment.

25 * **Sec. 12.** AS 12.37.010 is amended to read:

26 **Sec. 12.37.010. Authorization to intercept communications.** The attorney
27 general, or a person designated in writing or by law to act for the attorney general,
28 may authorize, in writing, an ex parte application to a court of competent jurisdiction
29 for an order authorizing the interception of a private communication if the interception
30 may provide evidence of, or may assist in the apprehension of persons who have
31 committed, are committing, or are planning to commit, the following offenses:

- 1 (1) murder in the first or second degree under AS 11.41.100 -
 2 11.41.110;
 3 (2) kidnapping under AS 11.41.300; [OR]
 4 (3) a class A or unclassified felony drug offense under AS 11.71;
 5 **(4) sex trafficking in the first degree or second degree under**
 6 **AS 11.66.110 and 11.66.120; or**
 7 **(5) human trafficking in the first degree under AS 11.41.360.**

8 * **Sec. 13.** AS 12.45.045(a) is amended to read:

9 (a) In prosecutions for the crimes of sexual assault in any degree, sexual abuse
 10 of a minor in any degree, [OR] unlawful exploitation of a minor, or an attempt to
 11 commit any of these crimes, evidence of the complaining witness' [PREVIOUS]
 12 sexual conduct, **occurring either before or after the offense charged,** may not be
 13 admitted nor may reference be made to it in the presence of the jury except as
 14 provided in this section. When the defendant seeks to admit the evidence for any
 15 purpose, the defendant shall apply for an order of the court **not later than five days**
 16 [AT ANY TIME] before [OR DURING THE] trial [OR PRELIMINARY HEARING].
 17 **The defendant may apply for an order during trial if the request is based on**
 18 **evidence admitted at trial that was not available to the defendant before trial.**
 19 After the application is made, the court shall conduct a hearing in camera to determine
 20 the admissibility of the evidence. If the court finds that evidence offered by the
 21 defendant regarding the sexual conduct of the complaining witness is relevant, and
 22 that the probative value of the evidence offered is not outweighed by the probability
 23 that its admission will create undue prejudice, confusion of the issues, or unwarranted
 24 invasion of the privacy of the complaining witness, the court shall make an order
 25 stating what evidence may be introduced and the nature of the questions that may be
 26 permitted. The defendant may then offer evidence under the order of the court.

27 * **Sec. 14.** AS 12.50.101(g) is amended to read:

28 (g) At the hearing under (f) of this section, the attorney for the witness, in the
 29 form of a proffer, shall describe the testimony or other information that the witness
 30 claims is privileged. The proffer must include a description of how the testimony or
 31 other information could connect the witness with a crime. **The court shall conduct a**

1 **personal inquiry under oath of the witness concerning the facts giving rise to the**
2 **claim or claims of privilege in the proffer.** The proffer **and the testimony of the**
3 **witness are** [IS] privileged and inadmissible for any other purpose. If the proffer **and**
4 **the testimony establish** [ESTABLISHES] a factual basis that there is a real or
5 substantial danger that the testimony or other information to be compelled would
6 support a conviction or would furnish a link in the chain of evidence leading to
7 conviction for a crime, the court may find that the witness has a valid claim of
8 privilege.

9 * **Sec. 15.** AS 12.50.101 is amended by adding a new subsection to read:

10 (j) If the court finds after a hearing under (f) of this section and the personal
11 inquiry under (g) of this section, that the witness has a valid claim of privilege, the
12 court shall enter its findings of fact and conclusions of law in a sealed, written order
13 that explains the real or substantial danger that the proffer or testimony would support
14 a conviction or would furnish a link in the chain of evidence leading to conviction for
15 a crime. The attorney general may bring an immediate, interlocutory appeal of the
16 court's decision to the court of appeals. The court issuing the order appealed under this
17 section shall stay its proceeding while the appeal is pending.

18 * **Sec. 16.** AS 12.55.025 is amended by adding a new subsection to read:

19 (k) If a defendant intends to claim credit toward a sentence of imprisonment
20 for time spent in a treatment program as a condition of bail under AS 12.55.027 in
21 connection with the offense for which the defendant is being sentenced, the defendant
22 shall file notice with the court and the prosecuting authority 10 days before the
23 sentencing hearing. The notice shall include the number of days the defendant is
24 claiming. The defendant must prove by a preponderance of evidence that the
25 requirements of AS 12.55.027 are met before the credit may be awarded. A court may
26 not consider a request for credit made after the sentencing hearing.

27 * **Sec. 17.** AS 12.55.027 is amended by adding a new subsection to read:

28 (e) If a defendant intends to claim credit toward a sentence of imprisonment
29 for time spent in a treatment program either as a condition of probation or a condition
30 of bail release after a petition to revoke probation has been filed, the defendant shall
31 file notice with the court and the prosecuting authority 10 days before the disposition

1 hearing. The notice shall include the amount of time the defendant is claiming. The
2 defendant must prove that the credit claimed meets the requirements of this section by
3 a preponderance of evidence. A court may not consider a request for credit made after
4 the disposition hearing.

5 * **Sec. 18.** AS 12.55.085(f) is amended to read:

6 (f) The court may not suspend the imposition of sentence of a person who

7 (1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260
8 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, [OR]
9 AS 11.61.125 - 11.61.128, or AS 11.66.110 - 11.66.135;

10 (2) uses a firearm in the commission of the offense for which the
11 person is convicted; or

12 (3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony
13 and the person has one or more prior convictions for a misdemeanor violation of
14 AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction
15 having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a
16 felony in this state; for the purposes of this paragraph, a person shall be considered to
17 have a prior conviction even if that conviction has been set aside under (e) of this
18 section or under the equivalent provision of the laws of another jurisdiction.

19 * **Sec. 19.** AS 12.55.127 is amended by adding a new subsection to read:

20 (e) If the defendant is being sentenced for two or more crimes of distribution
21 of child pornography under AS 11.61.125, possession of child pornography under
22 AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a
23 consecutive term of imprisonment shall be imposed for some additional term of
24 imprisonment for each additional crime or each additional attempt or solicitation to
25 commit the offense.

26 * **Sec. 20.** AS 12.55.165 is amended by adding a new subsection to read:

27 (c) A court may not refer a case to a three-judge panel under (a) of this section
28 if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and the
29 request for the referral is based on the claim that the defendant, either singly or in
30 combination,

31 (1) has prospects for rehabilitation that are less than extraordinary;

1 (2) is a youthful offender; or

2 (3) does not have a history of unprosecuted, undocumented, or
3 undetected sexual offenses.

4 * **Sec. 21.** AS 12.55.175 is amended by adding a new subsection to read:

5 (f) A defendant being sentenced for a sexual felony under AS 12.55.125(i)
6 may not establish, nor may the three-judge panel find under (b) of this section or any
7 other provision of law, that manifest injustice would result from imposition of a
8 sentence within the presumptive range of law by a showing that the defendant, either
9 singly or in combination,

10 (1) has prospects for rehabilitation that are less than extraordinary;

11 (2) is a youthful offender; or

12 (3) does not have a history of unprosecuted, undocumented, or
13 undetected sexual offenses.

14 * **Sec. 22.** AS 12.55.185(16) is amended to read:

15 (16) "sexual felony" means sexual assault in the first degree, sexual
16 abuse of a minor in the first degree, **sex trafficking in the first degree**, sexual assault
17 in the second degree, sexual abuse of a minor in the second degree, unlawful
18 exploitation of a minor, distribution of child pornography, sexual assault in the third
19 degree, incest, indecent exposure in the first degree, possession of child pornography,
20 **online enticement of a minor**, and felony attempt, conspiracy, or solicitation to
21 commit those crimes;

22 * **Sec. 23.** AS 12.63.100(6) is amended to read:

23 (6) "sex offense" means

24 (A) a crime under AS 11.41.100(a)(3), or a similar law of
25 another jurisdiction, in which the person committed or attempted to commit a
26 sexual offense, or a similar offense under the laws of the other jurisdiction; in
27 this subparagraph, "sexual offense" has the meaning given in
28 AS 11.41.100(a)(3);

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

- 1 (i) sexual assault in the first degree;
 2 (ii) sexual assault in the second degree;
 3 (iii) sexual abuse of a minor in the first degree; or
 4 (iv) sexual abuse of a minor in the second degree; or
 5 (C) a crime, or an attempt, solicitation, or conspiracy to commit
 6 a crime, under the following statutes or a similar law of another jurisdiction:
 7 (i) AS 11.41.410 - 11.41.438;
 8 (ii) AS 11.41.440(a)(2);
 9 (iii) AS 11.41.450 - 11.41.458;
 10 (iv) AS 11.41.460 if the indecent exposure is before a
 11 person under 16 years of age and the offender has a previous conviction
 12 for that offense;
 13 (v) AS 11.61.125 - 11.61.128;
 14 (vi) AS 11.66.110 or 11.66.130(a)(2) if the person who
 15 was induced or caused to engage in prostitution was **under 20** [16 or
 16 17] years of age at the time of the offense;
 17 (vii) former AS 11.15.120, former 11.15.134, or assault
 18 with the intent to commit rape under former AS 11.15.160, former
 19 AS 11.40.110, or former 11.40.200; [OR]
 20 (viii) AS 11.61.118(a)(2) if the offender has a previous
 21 conviction for that offense; **or**
 22 **(ix) AS 11.66.100(a)(2) if the offender is subject to**
 23 **punishment under AS 11.66.100(c);**

24 * **Sec. 24.** AS 18.65.850(c) is amended to read:

- 25 (c) A protective order issued under this section may
 26 (1) prohibit the respondent from threatening to commit or committing
 27 stalking or sexual assault;
 28 (2) prohibit the respondent from telephoning, contacting, or otherwise
 29 communicating directly or indirectly with the petitioner or a designated household
 30 member of the petitioner specifically named by the court;
 31 (3) direct the respondent to stay away from the residence, school, or

1 place of employment of the petitioner, or any specified place frequented by the
 2 petitioner; however, the court may order the respondent to stay away from the
 3 respondent's own residence, school, or place of employment only if the respondent has
 4 been provided actual notice of the opportunity to appear and be heard on the petition;

5 **(4) order the respondent to participate in a monitoring program**
 6 **with a global positioning device or similar technological means that meet the**
 7 **guidelines for a monitoring program adopted by the Department of Public**
 8 **Safety;**

9 **(5)** order other relief the court determines to be necessary to protect the
 10 petitioner or the designated household member.

11 * **Sec. 25.** AS 18.66.100(b) is amended to read:

12 (b) When a petition for a protective order is filed, the court shall schedule a
 13 hearing and provide at least 10 days' notice to the respondent of the hearing and of the
 14 respondent's right to appear and be heard, either in person or by an attorney. If the
 15 court finds by a preponderance of evidence that the respondent has committed a crime
 16 involving domestic violence against the petitioner, regardless of whether the
 17 respondent appears at the hearing, the court may order any relief available under (c) of
 18 this section. The provisions of a protective order issued under

19 (1) (c)(1) of this section are effective until further order of the court;

20 (2) (c)(2) - **(17)** [(16)] of this section are effective for one year unless
 21 earlier dissolved by court order.

22 * **Sec. 26.** AS 18.66.100(c) is amended to read:

23 (c) A protective order under this section may

24 (1) prohibit the respondent from threatening to commit or committing
 25 domestic violence, stalking, or harassment;

26 (2) prohibit the respondent from telephoning, contacting, or otherwise
 27 communicating directly or indirectly with the petitioner;

28 (3) remove and exclude the respondent from the residence of the
 29 petitioner, regardless of ownership of the residence;

30 (4) direct the respondent to stay away from the residence, school, or
 31 place of employment of the petitioner or any specified place frequented by the

1 petitioner or any designated household member;

2 (5) prohibit the respondent from entering a propelled vehicle in the
3 possession of or occupied by the petitioner;

4 (6) prohibit the respondent from using or possessing a deadly weapon
5 if the court finds the respondent was in the actual possession of or used a weapon
6 during the commission of domestic violence;

7 (7) direct the respondent to surrender any firearm owned or possessed
8 by the respondent if the court finds that the respondent was in the actual possession of
9 or used a firearm during the commission of the domestic violence;

10 (8) request a peace officer to accompany the petitioner to the
11 petitioner's residence to ensure that the petitioner

12 (A) safely obtains possession of the petitioner's residence,
13 vehicle, or personal items; and

14 (B) is able to safely remove a vehicle or personal items from
15 the petitioner's residence;

16 (9) award temporary custody of a minor child to the petitioner and may
17 arrange for visitation with a minor child if the safety of the child and the petitioner can
18 be protected; if visitation is allowed, the court may order visitation under the
19 conditions provided in AS 25.20.061;

20 (10) give the petitioner possession and use of a vehicle and other
21 essential personal items, regardless of ownership of the items;

22 (11) prohibit the respondent from consuming controlled substances;

23 (12) require the respondent to pay support for the petitioner or a minor
24 child in the care of the petitioner if there is an independent legal obligation of the
25 respondent to support the petitioner or child;

26 (13) require the respondent to reimburse the petitioner or other person
27 for expenses associated with the domestic violence, including medical expenses,
28 counseling, shelter, and repair or replacement of damaged property;

29 (14) require the respondent to pay costs and fees incurred by the
30 petitioner in bringing the action under this chapter;

31 (15) order the respondent, at the respondent's expense, to participate in

1 (A) a program for the rehabilitation of perpetrators of domestic violence that meets the
 2 standards set by, and that is approved by, the Department of Corrections under
 3 AS 44.28.020(b), or (B) treatment for the abuse of alcohol or controlled substances, or
 4 both; a protective order under this section may not require a respondent to participate
 5 in a program for the rehabilitation of perpetrators of domestic violence unless the
 6 program meets the standards set by, and that is approved by, the Department of
 7 Corrections under AS 44.28.020(b);

8 (16) order other relief the court determines necessary to protect the
 9 petitioner or any household member;

10 **(17) order the respondent to participate in a monitoring program**
 11 **with a global positioning device or similar technological means that meet the**
 12 **guidelines for a monitoring program adopted by the Department of Public**
 13 **Safety.**

14 * **Sec. 27.** AS 18.66.130(d) is amended to read:

15 (d) In addition to other required information contained in a protective order,
 16 the order must include in bold face type the following statements:

17 (1) "Violation of this order may be a misdemeanor, punishable by up
 18 to one year of incarceration and up to a **\$10,000** [\$5,000] fine";

19 (2) "If you are ordered to have no contact with the petitioner or to stay
 20 away from the petitioner's residence, vehicle, or other place designated by the court,
 21 an invitation by the petitioner to have the prohibited contact or to be present at or enter
 22 the residence, vehicle, or other place does not in any way invalidate or nullify the
 23 order."

24 * **Sec. 28.** AS 18.66.250(5) is amended to read:

25 (5) "victim counseling center" means a private organization, **military**
 26 **organization,** or a local government agency that

27 (A) has as one of its primary purposes the provision of direct
 28 services to victims for trauma resulting from a sexual assault or domestic
 29 violence;

30 (B) is not affiliated with a law enforcement agency or a
 31 prosecutor's office; and

1 (C) is not on contract with the state to provide services under
2 AS 47;

3 * **Sec. 29.** AS 18.67.101 is amended to read:

4 **Sec. 18.67.101. Incidents and offenses to which this chapter applies.** The
5 board may order the payment of compensation in accordance with the provisions of
6 this chapter for personal injury or death that resulted from

7 (1) an attempt on the part of the applicant to prevent the commission of
8 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
9 officer to do so, or aiding a victim of crime; or

10 (2) the commission or attempt on the part of one other than the
11 applicant to commit any of the following offenses:

12 (A) murder in any degree;

13 (B) manslaughter;

14 (C) criminally negligent homicide;

15 (D) assault in any degree;

16 (E) kidnapping;

17 (F) sexual assault in any degree;

18 (G) sexual abuse of a minor;

19 (H) robbery in any degree;

20 (I) threats to do bodily harm;

21 (J) driving while under the influence of an alcoholic beverage,
22 inhalant, or controlled substance or another crime resulting from the operation
23 of a motor vehicle, boat, or airplane when the offender is under the influence
24 of an alcoholic beverage, inhalant, or controlled substance; [OR]

25 (K) arson in the first degree;

26 **(L) sex trafficking in violation of AS 11.66.110 or**
27 **11.66.130(b)(2);**

28 **(M) human trafficking in any degree; or**

29 **(N) unlawful exploitation of a minor.**

30 * **Sec. 30.** AS 22.10.150 is amended to read:

31 **Sec. 22.10.150. Approval or rejection.** Each superior court judge is subject to

1 approval or rejection as provided in AS 15 (Alaska Election Code). The judicial
 2 council shall conduct an evaluation of each judge before the retention election and
 3 shall provide to the public information about the judge and may provide a
 4 recommendation regarding retention or rejection. The information and any
 5 recommendation shall be made public at least 60 days before the retention election.
 6 **The information shall include data on the judge's compliance with**
 7 **AS 12.55.025(a)(5) when imposing sentence on persons convicted of a felony**
 8 **offense.** The judicial council shall also provide the information and any
 9 recommendation to the office of the lieutenant governor in time for publication in the
 10 election pamphlet under AS 15.58.050. If a majority of those voting on the question
 11 rejects the candidacy of a judge, the rejected judge may not for a period of four years
 12 thereafter be appointed to fill any vacancy in the supreme court, court of appeals,
 13 superior court, or district courts of the state.

14 * **Sec. 31.** AS 33.20.010(a) is amended to read:

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

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

23 (2) to a definite term under AS 12.55.125(l); or

24 (3) for a sexual felony under AS 12.55.125(i)

25 **(A)** and has one or more prior sexual felony convictions as
 26 determined under AS 12.55.145(a)(4); **or**

27 **(B) that is an unclassified or a class A felony.**

28 * **Sec. 32.** AS 44.23.080(a) is amended to read:

29 (a) If there is reasonable cause to believe that an Internet service account has
 30 been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125
 31 - 11.61.128, and that the identity, address, and other information about the account

1 owner will assist in obtaining evidence that is relevant to the offense, a law
 2 enforcement officer may apply to the attorney general **or the attorney general's**
 3 **designee** for an administrative subpoena to obtain the business records of the Internet
 4 service provider located inside or outside of the state.

5 * **Sec. 33.** AS 44.23.080(b) is amended to read:

6 (b) If an application meets the requirements of (a) of this section, the attorney
 7 general **or the attorney general's designee** may issue an administrative subpoena to
 8 the Internet service provider requiring the production of the following records:

9 (1) the name and other identifying information of the account holder;

10 (2) the address and physical location associated with the account;

11 (3) a description of the length of service, service start date, and types
 12 of service associated with the account.

13 * **Sec. 34.** AS 44.23.080(e) is amended to read:

14 (e) If the Internet service provider refuses to obey a subpoena issued under (b)
 15 of this section, the superior court may, upon application of the attorney general **or the**
 16 **attorney general's designee**, issue an order requiring the Internet service provider to
 17 appear at the office of the attorney general with the information described in the
 18 subpoena.

19 * **Sec. 35.** AS 44.23.080 is amended by adding a new subsection to read:

20 (i) For purposes of this section, the attorney general's designee must be an
 21 attorney employed by the Department of Law.

22 * **Sec. 36.** AS 47.10.086(c) is amended to read:

23 (c) The court may determine that reasonable efforts of the type described in
 24 (a) of this section are not required if the court has found by clear and convincing
 25 evidence that

26 (1) the parent or guardian has subjected the child to circumstances that
 27 pose a substantial risk to the child's health or safety; these circumstances include
 28 abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

29 (2) the parent or guardian has

30 (A) committed homicide under AS 11.41.100 - 11.41.130 of a
 31 parent of the child or of a child;

1 (B) aided or abetted, attempted, conspired, or solicited under
2 AS 11.16 or AS 11.31 to commit a homicide described in (A) of this
3 paragraph;

4 (C) committed an assault that is a felony under AS 11.41.200 -
5 11.41.220 and results in serious physical injury to a child; or

6 (D) committed the conduct described in (A) - (C) of this
7 paragraph that violated a law or ordinance of another jurisdiction having
8 elements similar to an offense described in (A) - (C) of this paragraph;

9 (3) the parent or guardian has, during the 12 months preceding the
10 permanency hearing, failed to comply with a court order to participate in family
11 support services;

12 (4) the department has conducted a reasonably diligent search over a
13 time period of at least three months for an unidentified or absent parent and has failed
14 to identify and locate the parent;

15 (5) the parent or guardian is the sole caregiver of the child and the
16 parent or guardian has a mental illness or mental deficiency of such nature and
17 duration that, according to the statement of a psychologist or physician, the parent or
18 guardian will be incapable of caring for the child without placing the child at
19 substantial risk of physical or mental injury even if the department were to provide
20 family support services to the parent or guardian for 12 months;

21 (6) the parent or guardian has previously been convicted of a crime
22 involving a child in this state or in another jurisdiction and, after the conviction, the
23 child was returned to the custody of the parent or guardian and later removed because
24 of an additional substantiated report of physical or sexual abuse by the parent or
25 guardian;

26 (7) a child has suffered substantial physical harm as the result of
27 abusive or neglectful conduct by the parent or guardian or by a person known by the
28 parent or guardian and the parent or guardian knew or reasonably should have known
29 that the person was abusing the child;

30 (8) the parental rights of the parent have been terminated with respect
31 to another child because of child abuse or neglect, the parent has not remedied the

1 conditions or conduct that led to the termination of parental rights, and the parent has
 2 demonstrated an inability to protect the child from substantial harm or the risk of
 3 substantial harm;

4 (9) the child has been removed from the child's home on at least two
 5 previous occasions, family support services were offered or provided to the parent or
 6 guardian at those times, and the parent or guardian has demonstrated an inability to
 7 protect the child from substantial harm or the risk of substantial harm; [OR]

8 (10) the parent or guardian is incarcerated and is unavailable to care
 9 for the child during a significant period of the child's minority, considering the child's
 10 age and need for care by an adult; or

11 **(11) the parent or guardian**

12 **(A) has committed sexual abuse against the child or another**
 13 **child of the parent or guardian; or**

14 **(B) is registered or required to register as a sex offender**
 15 **under AS 12.63.**

16 * **Sec. 37.** AS 47.17.020(a) is amended to read:

17 (a) The following persons who, in the performance of their occupational
 18 duties, [OR] with respect to (8) of this subsection, in the performance of their
 19 appointed duties, **or with respect to (9) of this subsection, in performance of their**
 20 **occupational or volunteer duties,** have reasonable cause to suspect that a child has
 21 suffered harm as a result of child abuse or neglect shall immediately report the harm to
 22 the nearest office of the department:

23 (1) practitioners of the healing arts;

24 (2) school teachers and school administrative staff members of public
 25 and private schools;

26 (3) peace officers and officers of the Department of Corrections;

27 (4) administrative officers of institutions;

28 (5) child care providers;

29 (6) paid employees of domestic violence and sexual assault programs,
 30 and crisis intervention and prevention programs as defined in AS 18.66.990;

31 (7) paid employees of an organization that provides counseling or

1 treatment to individuals seeking to control their use of drugs or alcohol;

2 (8) members of a child fatality review team established under
3 AS 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created
4 under AS 47.14.300;

5 **(9) athletic coaches.**

6 * **Sec. 38.** AS 47.17.290 is amended by adding a new paragraph to read:

7 (17) "athletic coach" includes a paid or a volunteer leader or assistant
8 of a sports team in a public or private school, public or private postsecondary
9 institution, or sponsored by a state municipality, or other local government
10 organization, or a sports team that receives public funding.

11 * **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of
14 Criminal Procedure, is amended by adding a new paragraph to read:

15 (9) Restriction on Availability of Certain Material or Property.
16 Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the
17 defendant to copy, photograph, duplicate, or otherwise reproduce any property or
18 material that may be illegal or prohibited under AS 11.41.455(a) or defined as "child
19 pornography" under 18 U.S.C. 2256, provided the prosecuting attorney makes the
20 property or material reasonably available for inspection by the defendant and defense
21 counsel. Property or material shall be considered to be made reasonably available to
22 the defendant or defense counsel if the prosecuting attorney provides, at a law
23 enforcement or prosecution facility, ample opportunity for inspection, viewing, and
24 examination of the property or material by the defendant, the defendant's attorney, and
25 any individual the defendant may seek to qualify to furnish expert testimony at trial. If
26 the defendant is not represented by counsel and demonstrates a need to view the
27 material, the court shall make arrangements for the defendant to be supervised while
28 viewing the material. If the defendant or the defendant's attorney identifies an expert
29 out of state who must view the material, the court shall make arrangements for the
30 court or the law enforcement agency that possesses it to send the material directly to
31 the expert.

1 * **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **DIRECT COURT RULE AMENDMENT.** Rule 32.1(b)(1), Alaska Rules of
4 Criminal Procedure, is amended to read:

5 (1) **Contents and Filing.** If the court directs the Department of
6 Corrections to prepare a presentence report, the report shall be filed with the court and
7 served on counsel at least 30 days before the sentencing hearing, or 30 days before the
8 presentencing hearing, if one is scheduled. The report shall contain all of the
9 defendant's prior criminal convictions and findings of delinquency and any other
10 information about the defendant's characteristics, financial condition, and the
11 circumstances affecting the defendant's behavior that may be helpful in fashioning the
12 defendant's sentence, a victim impact statement, and any other information required
13 by the judge. **The court may not accept a report that does not include a victim's**
14 **impact statement, unless the report explains the reason why the victim or the**
15 **victim's representative could not be interviewed.** The presentence report shall
16 comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

17 * **Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 **DIRECT COURT RULE AMENDMENT.** Rule 32.2(a), Alaska Rules of
20 Criminal Procedure, is amended to read:

21 (a) **Consideration of Victim's Statement.** If a victim as defined in
22 AS 12.55.185 prepares and submits a written statement, gives sworn testimony or
23 makes an unsworn oral presentation under AS 12.55.023, the court shall take the
24 content of the statement, testimony, or presentation into consideration when preparing
25 those elements of the sentencing report required by AS 12.55.025 that relate to the
26 effect of the offense on the victim, and when considering the need for restitution under
27 AS 12.55.045. **The court also shall take the content of the victim's impact**
28 **statement in the presentence report into consideration in preparing the**
29 **sentencing report required under AS 12.55.025.** The court also may take the content
30 of the statement, testimony, **victim's impact statement,** or presentation into
31 consideration for any other appropriate purpose.

1 * **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **DIRECT COURT RULE AMENDMENT.** Rule 404(b), Alaska Rules of
4 Evidence, is amended to read:

5 (b) Other Crimes, Wrongs, or Acts.

6 (1) Evidence of other crimes, wrongs, or acts is not admissible if the
7 sole purpose for offering the evidence is to prove the character of a person in order to
8 show that the person acted in conformity therewith. It is, however, admissible for
9 other purposes, including, but not limited to, proof of motive, opportunity, intent,
10 preparation, plan, knowledge, identity, or absence of mistake or accident.

11 (2) In a prosecution for a crime involving a physical or sexual assault
12 or abuse of a minor, evidence of other acts by the defendant toward the same or
13 another child is admissible if admission of the evidence is not precluded by another
14 rule of evidence and if the prior offenses

15 (i) [OCCURRED WITHIN THE 10 YEARS
16 PRECEDING THE DATE OF THE OFFENSE CHARGED;

17 (ii)] are similar to the offense charged; and

18 (ii) [(iii)] were committed upon persons similar to the
19 prosecuting witness.

20 (3) In a prosecution for a crime of sexual assault in any degree,
21 evidence of other sexual assaults or attempted sexual assaults by the defendant against
22 the same or another person is admissible if the defendant relies on a defense of
23 consent. In a prosecution for a crime of attempt to commit sexual assault in any
24 degree, evidence of other sexual assaults or attempted sexual assaults by the defendant
25 against the same or another person is admissible.

26 (4) In a prosecution for a crime involving domestic violence or of
27 interfering with a report of a crime involving domestic violence, evidence of other
28 crimes involving domestic violence by the defendant against the same or another
29 person or of interfering with a report of a crime involving domestic violence is
30 admissible. In this paragraph, "domestic violence" and "crime involving domestic
31 violence" have the meanings given in AS 18.66.990.

1 * **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **DIRECT COURT RULE AMENDMENT.** Rule 216(a), Alaska Rules of
4 Appellate Procedure, is amended to read:

5 (a) **Scope.** This rule applies to the following classes of appeals, and supersedes
6 the other appellate rules to the extent that they may be inconsistent with this rule:

7 (1) Extradition appeals;

8 (2) Peremptory challenge appeals;

9 **(3) Claim of privilege appeal under AS 12.50.101(g).**

10 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **DIRECT COURT RULE AMENDMENT.** Rule 216(b), Alaska Rules of
13 Appellate Procedure, is amended by adding a new paragraph to read:

14 (3) A "claim of privilege appeal" is an appeal by the State of Alaska
15 from a finding after a hearing under AS 12.50.101(g) that a witness has a valid claim
16 of privilege.

17 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 **APPLICABILITY.** (a) Sections 2 - 12, 18, 19, 23 - 27, and 31 - 36 of this Act apply to
20 offenses committed on or after the effective date of this Act.

21 (b) Sections 13 - 15, 20 - 22, 28, and 29 of this Act apply to offenses committed
22 before, on, or after the effective date of this Act.

23 (c) Section 16 of this Act applies to sentencing hearings on or after the effective date
24 of this Act.

25 (d) Section 17 of this Act applies to disposition hearings occurring in proceedings on
26 petitions to revoke probation filed on or after the effective date of this Act.

27 * **Sec. 46.** This Act takes effect July 1, 2013.