

CS FOR HOUSE BILL NO. 73(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/28/13

Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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 in a**
5 **prosecution for stalking or a crime involving domestic violence or for violation of a**
6 **condition of release in connection with a crime involving domestic violence; relating to**
7 **interception of private communications for certain sex trafficking or human trafficking**
8 **offenses; relating to use of evidence of sexual conduct concerning victims of certain**
9 **crimes; 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 a treatment**
11 **program or while in other custody; relating to suspending imposition of sentence for sex**
12 **trafficking; relating to consecutive sentences for convictions of certain crimes involving**

child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of certain crimes; relating to the definition of 'sex offense' regarding sex offender registration; relating to the definition of 'victim counseling centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to the rights of certain victims of sexual assault, sexual abuse of a minor, or incest to obtain legal and equitable remedies for injuries arising from the conduct of a perpetrator; relating to the definition of 'sexual assault' for the purpose of adoption and the termination of parental rights in certain proceedings; relating to remission of sentences for certain sexual felony offenders; relating to forms for sexual assault, stalking, and domestic violence protective orders; relating to the subpoena power of the attorney general in cases involving the use of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, and Rules 404(a) and (b), Alaska Rules of Evidence; and providing for an effective date."

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

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

LEGISLATIVE FINDINGS AND INTENT FOR SECS. 21 AND 22 OF THIS ACT.

(a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA

2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

(b) The legislature finds that

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

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

(c) It is the intent of the legislature in AS 12.55.165, as amended by sec. 21 of this Act, and AS 12.55.175, as amended by sec. 22 of this Act, to overturn the majority decision in *Collins v. State*, 287 P.3d 791 (Alaska App. 2012), and to endorse the dissenting opinion in the same case.

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

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

(1) felony sexual abuse of a minor;

(2) felony sexual assault; [OR]

(3) unlawful exploitation of a minor;

(4) felony sex trafficking; or

(5) felony human trafficking.

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

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

(1) engages in sexual contact with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

(2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to

the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

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

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

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

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

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

(b) In this section,

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

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

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

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

(5) "probation officer" includes a

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

(B) person who supervises a participant in a specialty court,

including a therapeutic or wellness court addressing alcohol or drug use, a court addressing the needs of veterans, an adult or juvenile mental health court, a fetal alcohol spectrum disorder court, or a family care or preservation court.

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

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

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

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

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

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

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

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

(b) In this section,

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

(2) "juvenile probation officer" has the meaning given in AS

1 11.41.425;

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

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

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

5 * **Sec. 7.** AS 11.41.432(a) is amended to read:

6 (a) It is a defense to a crime charged under AS 11.41.410(a)(3),
7 11.41.420(a)(2), 11.41.420(a)(3), [OR] 11.41.425, or 11.41.427 that the offender is

8 (1) mentally incapable; or

9 (2) married to the person and neither party has filed with the court for a
10 separation, divorce, or dissolution of the marriage.

11 * **Sec. 8.** AS 11.41.432 is amended by adding a new subsection to read:

12 (c) It is an affirmative defense to a crime charged under AS 11.41.425(a)(5) or
13 11.41.427(a)(4) that the offender and the person on probation or parole had, before the
14 person was placed on probation or parole, a dating relationship or a sexual
15 relationship, and the relationship continued until the date of the alleged offense.

16 * **Sec. 9.** AS 11.56.750(a) is amended to read:

17 (a) A person commits the crime of unlawful contact in the first degree if the
18 person

19 (1) has been ordered

20 (A) by the court not to contact a victim or witness of the
21 offense

22 (i) as [(A)] part of a sentence imposed under AS
23 12.55.015;

24 (ii) as [OR (B)] a condition of [(i)] release under AS
25 12.30 or [; (ii)] probation under AS 12.55.101; or

26 (iii) while under official detention; or

27 (B) as a condition of parole not to contact a victim or
28 witness of the offense under AS 33.16.150 [PAROLE UNDER AS
29 33.16.150]; and

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

1 * **Sec. 10.** AS 11.66.145 is amended to read:

2 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or
 3 received or derived from, a violation of **AS 11.66.100 - 11.66.135 may** [AS
 4 11.66.100(c) OR 11.66.110 - 11.66.135 SHALL] be forfeited **at sentencing.**

5 * **Sec. 11.** AS 12.10.010 is amended to read:

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

- 8 (1) murder;
- 9 (2) attempt, solicitation, or conspiracy to commit murder or hindering
 10 the prosecution of murder;
- 11 (3) felony sexual abuse of a minor;
- 12 (4) sexual assault that is an unclassified, class A, or class B felony or a
 13 violation of AS 11.41.425(a)(2) - (4);
- 14 (5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458, AS
 15 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person
 16 who, at the time of the offense, was under 18 years of age;
- 17 (6) kidnapping;
- 18 **(7) distribution of child pornography in violation of AS 11.61.125;**
- 19 **(8) sex trafficking in violation of AS 11.66.110 - 11.66.130 that is an**
 20 **unclassified, class A, or class B felony or that is committed against a person who,**
 21 **at the time of the offense, was under 20 years of age;**
- 22 **(9) human trafficking in violation of AS 11.41.360 or 11.41.365.**

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

- 26 (1) 10 years after the commission of a felony offense in violation of
 27 **AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370], 11.41.425(a)(1),
 28 **11.41.425(a)(5), 11.41.425(a)(6),** or 11.41.450 - 11.41.458; or
- 29 (2) five years after the commission of any other offense.

30 * **Sec. 12.** AS 12.30.016(e) is amended to read:

31 (e) In a prosecution charging the crime of stalking that is not a crime involving

domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting, in any manner, including by telephone or electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior;

(4) participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety.

* Sec. 13. AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the judicial officer shall consider the safety of the victim or other household member. To protect the victim, household member, other persons, and the community and to reasonably **ensure** [ASSURE] the person's appearance, the judicial officer

(1) shall impose conditions required under AS 12.30.011;

(2) [, AND] may impose any of the conditions authorized under AS 12.30.011;

(3) may impose [,] any of the provisions of AS 18.66.100(c)(1) - (7) and (11);

(4) may order the person to participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety; [,] and

(5) may impose any other condition necessary to protect the victim, household member, other persons, and the community, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

1 * **Sec. 14.** AS 12.30.027(e) is amended to read:

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

6 * **Sec. 15.** AS 12.37.010 is amended to read:

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

13 (1) murder in the first or second degree under AS 11.41.100 -
 14 11.41.110;

15 (2) kidnapping under AS 11.41.300; [OR]

16 (3) a class A or unclassified felony drug offense under AS 11.71;

17 **(4) sex trafficking in the first or second degree under AS 11.66.110**
 18 **and 11.66.120; or**

19 **(5) human trafficking in the first degree under AS 11.41.360.**

20 * **Sec. 16.** AS 12.45.045(a) is amended to read:

21 (a) In prosecutions for the crimes of sexual assault in any degree, sexual abuse
 22 of a minor in any degree, [OR] unlawful exploitation of a minor, or an attempt to
 23 commit any of these crimes, evidence of the [COMPLAINING WITNESS'
 24 PREVIOUS] sexual conduct **of the complaining witness, occurring either before or**
 25 **after the offense charged,** may not be admitted nor may reference be made to it in the
 26 presence of the jury except as provided in this section. When the defendant seeks to
 27 admit the evidence for any purpose, the defendant shall apply for an order of the court
 28 **not later than five days** [AT ANY TIME] before [OR DURING THE] trial **or at a**
 29 **later time as the court may, for good cause, permit. The defendant may, for good**
 30 **cause shown, apply for an order during trial if the request is based on**
 31 **information learned after the deadline or during the trial** [OR PRELIMINARY

HEARING]. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, the court shall make an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

*** Sec. 17.** AS 12.55.025 is amended by adding new subsections to read:

(k) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail in connection with an offense for which the defendant is being sentenced, the defendant shall file notice with the court and the prosecutor 10 days before the sentencing hearing. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except as provided in (l) of this section, except for good cause, a court may not consider a request for credit made under this subsection more than 90 days after the sentencing hearing.

(l) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail while pending appeal, the defendant shall file notice with the court and the prosecutor not later than 90 days after return of the case to the trial court following appeal. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except for good cause, the court may not consider a request for credit made under this subsection after the deadline.

*** Sec. 18.** AS 12.55.027 is amended by adding a new subsection to read:

(e) If a defendant intends to claim credit toward a sentence of imprisonment for time spent in a treatment program either as a condition of probation or as a condition of bail release after a petition to revoke probation has been filed, the

defendant shall file notice with the court and the prosecutor 10 days before the disposition hearing. The notice shall include the amount of time the defendant is claiming. The defendant must prove by a preponderance of the evidence that the credit claimed meets the requirements of this section. A court may not consider, except for good cause, a request for credit made under this subsection more than 90 days after the disposition hearing.

* **Sec. 19.** AS 12.55.085(f) is amended to read:

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

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

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

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

* **Sec. 20.** AS 12.55.127 is amended by adding a new subsection to read:

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

* **Sec. 21.** AS 12.55.165 is amended by adding a new subsection to read:

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

1 in combination, has

2 (1) prospects for rehabilitation that are less than extraordinary; or

3 (2) a history free of unprosecuted, undocumented, or undetected sexual
4 offenses.

5 * **Sec. 22.** AS 12.55.175 is amended by adding a new subsection to read:

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

11 (1) prospects for rehabilitation that are less than extraordinary; or

12 (2) a history free of unprosecuted, undocumented, or undetected sexual
13 offenses.

14 * **Sec. 23.** 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. 24.** 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 AS
28 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:

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

* **Sec. 25.** AS 18.65.865(b) is amended to read:

(b) The Alaska Court System shall prepare forms for petitions and protective orders and instructions for their use by a person seeking a protective order under AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. Filing fees may not be charged in any action seeking only the relief provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the following warning in boldface type: "Violation of this order may be a misdemeanor,

1 punishable by up to one year of incarceration and a fine of up to **\$10,000** [\$5,000]."

2 * **Sec. 26.** AS 18.66.130(d) is amended to read:

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

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

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

12 * **Sec. 27.** AS 18.66.250(5) is amended to read:

13 (5) "victim counseling center" means a private organization, **an**
14 **organization operated by or contracted by a branch of the armed forces of the**
15 **United States,** or a local government agency that

16 (A) has, as one of its primary purposes, the provision of direct
17 services to victims for trauma resulting from a sexual assault or domestic
18 violence;

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

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

23 * **Sec. 28.** AS 18.67.101 is amended to read:

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

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

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

- (A) murder in any degree;
- (B) manslaughter;
- (C) criminally negligent homicide;
- (D) assault in any degree;
- (E) kidnapping;
- (F) sexual assault in any degree;
- (G) sexual abuse of a minor;
- (H) robbery in any degree;
- (I) threats to do bodily harm;
- (J) driving while under the influence of an alcoholic beverage, inhalant, or controlled substance or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is under the influence of an alcoholic beverage, inhalant, or controlled substance; [OR]
- (K) arson in the first degree;
- (L) sex trafficking in violation of AS 11.66.110 or 11.66.130(a)(2);**
- (M) human trafficking in any degree; or**
- (N) unlawful exploitation of a minor.**

* **Sec. 29.** AS 22.10.150 is amended to read:

Sec. 22.10.150. Approval or rejection. Each superior court judge is subject to approval or rejection as provided in AS 15 (Alaska Election Code). The judicial council shall conduct an evaluation of each judge before the retention election and shall provide to the public information about the judge and may provide a recommendation regarding retention or rejection. The information and any recommendation shall be made public at least 60 days before the retention election. **The information shall include the judge's consideration of victims when imposing sentence on persons convicted of felony offenses where the offenses involve victims.** The judicial council shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.58.050. If a majority of those voting on the question rejects the candidacy of a judge, the rejected judge may not for a period of four years

thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior court, or district courts of the state.

* **Sec. 30.** AS 25.23.180(i) is amended to read:

(i) Proceedings for the termination of parental rights on the grounds set out in (c)(3) of this section do not affect the rights of a victim of **sexual assault**, sexual abuse of a minor, or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct.

* **Sec. 31.** AS 25.23.240(10) is amended to read:

(10) "sexual assault" means a sexual offense defined in **AS 11.41.410 - 11.41.427** [AS 11.41.410 OR 11.41.420];

* **Sec. 32.** AS 33.20.010(a) is amended to read:

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

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

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

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

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

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

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

(a) If there is reasonable cause to believe that an Internet service account has been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other information about the account owner will assist in obtaining evidence that is relevant to the offense, a law enforcement officer may apply to the attorney general **or the attorney general's designee** for an administrative subpoena to obtain the business records of the Internet

1 service provider located inside or outside of the state.

2 * **Sec. 34.** AS 44.23.080(b) is amended to read:

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

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

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

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

10 * **Sec. 35.** AS 44.23.080(e) is amended to read:

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

16 * **Sec. 36.** AS 44.23.080 is amended by adding a new subsection to read:

17 (i) For purposes of this section, the attorney general's designee may be the
18 deputy attorney general of the division of the Department of Law that has
19 responsibility for civil cases or the division of the Department of Law that has
20 responsibility for criminal cases.

21 * **Sec. 37.** AS 47.10.086(c) is amended to read:

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

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

28 (2) the parent or guardian has

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

31 (B) aided or abetted, attempted, conspired, or solicited under

1 AS 11.16 or AS 11.31 to commit a homicide described in (A) of this
2 paragraph;

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

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

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

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

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

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

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

29 (8) the parental rights of the parent have been terminated with respect
30 to another child because of child abuse or neglect, the parent has not remedied the
31 conditions or conduct that led to the termination of parental rights, and the parent has

1 demonstrated an inability to protect the child from substantial harm or the risk of
2 substantial harm;

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

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

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

11 **(A) has sexually abused the child or another child of the**
12 **parent or guardian; or**

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

15 * **Sec. 38.** AS 47.17.020(a) is amended to read:

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

21 (1) practitioners of the healing arts;

22 (2) school teachers and school administrative staff members of public
23 and private schools;

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

25 (4) administrative officers of institutions;

26 (5) child care providers;

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

29 (7) paid employees of an organization that provides counseling or
30 treatment to individuals seeking to control their use of drugs or alcohol;

31 (8) members of a child fatality review team established under AS

12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created under AS 47.14.300;

(9) athletic coaches.

* **Sec. 39.** AS 47.17.290 is amended by adding a new paragraph to read:

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

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

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

(9) Restriction on Availability of Certain Material. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any material prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the prosecuting attorney makes the material reasonably available for inspection by the defendant and defense counsel. The material shall be considered to be made reasonably available to the defendant or defense counsel if the prosecuting attorney provides, at a law enforcement or prosecution facility, ample opportunity for inspection, viewing, and examination of the material by the defendant and the defendant's attorney. If the defendant is not represented by counsel and demonstrates a need to view the material, the court shall make arrangements for the defendant to be supervised while viewing the material. If the defendant or the defendant's attorney identifies an expert who must view the material, the court shall make arrangements for the court or the law enforcement agency that possesses it to send the material directly to the expert.

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

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

(1) Contents and Filing. If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. **If the crime involved a victim, the court may not accept a report that does not include a victim's impact statement, unless the report explains the reason why the victim or the victim's representative could not be interviewed.**

The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

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

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

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

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

DIRECT COURT RULE AMENDMENT. Rule 404(b)(2), Alaska Rules of

1 Evidence, is amended to read:

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

6 (i) [OCCURRED WITHIN THE 10 YEARS
7 PRECEDING THE DATE OF THE OFFENSE CHARGED;

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

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

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

13 INDIRECT COURT RULE AMENDMENT. AS 12.45.045(a), as amended by sec. 16
14 of this Act, has the effect of amending Rule 404(a), Alaska Rules of Evidence, by providing,
15 with some exceptions, that a defendant must request admission of certain evidence about the
16 complaining witness five days before trial and by applying the rule to the conduct of the
17 complaining witness after the alleged offense.

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

20 APPLICABILITY. (a) Sections 2 - 15, 19, 20, 24, and 32 of this Act apply to offenses
21 committed on or after the effective date of this Act.

22 (b) Sections 16, 21 - 23, 27, and 28 of this Act apply to offenses committed before,
23 on, or after the effective date of this Act.

24 (c) Section 17 of this Act applies to sentencing hearings occurring on or after the
25 effective date of this Act.

26 (d) Section 18 of this Act applies to disposition hearings occurring in proceedings on
27 petitions to revoke probation filed on or after the effective date of this Act.

28 * **Sec. 46.** The uncoded law of the State of Alaska is amended by adding a new section to
29 read:

30 CONDITIONAL EFFECT. Section 16 of this Act, amending AS 12.45.045(a), takes
31 effect only if sec. 44 of this Act receives the two-thirds majority vote of each house required

- 1 by art. IV, sec. 15, Constitution of the State of Alaska.
- 2 * **Sec. 47.** This Act takes effect July 1, 2013.