

SENATE BILL NO. 168

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/27/20

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to notice provided to victims regarding petitions for removal from a
2 registry that is published on the Internet; relating to the duration of the duty to register
3 as a sex offender or child kidnapper; relating to petitions for removal from a registry
4 that is published on the Internet; relating to the definitions of 'tier I sex offense,' 'tier II
5 sex offense or child kidnapping,' and 'tier III sex offense or child kidnapping'; amending
6 the definition of 'sex offense'; relating to the jurisdiction of the Court of Appeals;
7 establishing Rule 35.3, Alaska Rules of Criminal Procedure; and providing for an
8 effective date."

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

10 * **Section 1.** AS 12.61.010(a) is amended to read:

11 (a) Victims of crimes have the following rights:

12 (1) the right to be present during any proceeding in

1 (A) the prosecution and sentencing of a defendant if the
2 defendant has the right to be present, including being present during testimony
3 even if the victim is likely to be called as a witness;

4 (B) the adjudication of a minor as provided under
5 AS 47.12.110;

6 (2) the right to be notified by the appropriate law enforcement agency
7 or the prosecuting attorney of any request for a continuance that may substantially
8 delay the prosecution and of the date of trial, sentencing, including a proceeding
9 before a three-judge panel under AS 12.55.175, an appeal, and any hearing in which
10 the defendant's release from custody is considered;

11 (3) the right to be notified that a sentencing hearing or a court
12 proceeding to which the victim has been subpoenaed will not occur as scheduled;

13 (4) the right to receive protection from harm and threats of harm
14 arising out of cooperation with law enforcement and prosecution efforts and to be
15 provided with information as to the protection available;

16 (5) the right to be notified of the procedure to be followed to apply for
17 and receive any compensation under AS 18.67;

18 (6) at the request of the prosecution or a law enforcement agency, the
19 right to cooperate with the criminal justice process without loss of pay and other
20 employee benefits except as authorized by AS 12.61.017 and without interference in
21 any form by the employer of the victim of crime;

22 (7) the right to obtain access to immediate medical assistance and not
23 to be detained for an unreasonable length of time by a law enforcement agency before
24 having medical assistance administered; however, an employee of the law
25 enforcement agency may, if necessary, accompany the person to a medical facility to
26 question the person about the criminal incident if the questioning does not hinder the
27 administration of medical assistance;

28 (8) the right to make a written or oral statement for use in preparation
29 of the presentence report of a felony defendant;

30 (9) the right to appear personally at the defendant's sentencing hearing
31 to present a written statement and to give sworn testimony or an unsworn oral

1 presentation;

2 (10) the right to be informed by the prosecuting attorney, at any time
3 after the defendant's conviction, about the complete record of the defendant's
4 convictions;

5 (11) the right to notice under AS 12.47.095 concerning the status of the
6 defendant found not guilty by reason of insanity;

7 (12) the right to notice under AS 33.16.087 of a hearing concerning
8 special medical parole of the defendant;

9 (13) the right to notice under AS 33.16.120 of a hearing to consider or
10 review discretionary parole of the defendant;

11 (14) the right to notice under AS 33.30.013 of the release or escape of
12 the defendant; [AND]

13 (15) the right to be notified orally and in writing of and receive
14 information about the office of victims' rights from the law enforcement officer
15 initially investigating the crime and from the prosecuting attorney assigned to the
16 offense; at a minimum, the information provided must include the address, telephone
17 number, and Internet address of the office of victims' rights; this paragraph

18 (A) applies only to victims of felonies and to victims of class A
19 misdemeanors if the class A misdemeanor is a crime involving domestic
20 violence or a crime against a person under AS 11.41; if the victim is an
21 unemancipated minor, the law enforcement officer and the prosecuting
22 attorney shall also provide the notice required by this paragraph to the parent
23 or guardian of the minor;

24 (B) is satisfied if, at the time of initial contact with the crime
25 victim, the investigating officer and prosecuting attorney each give each crime
26 victim a brochure or other written material prepared by the office of victims'
27 rights and provided to law enforcement agencies for that purpose; **and**

28 **(16) the right to notice of a hearing under AS 12.63.035 concerning**
29 **a sex offender or child kidnapper's petition for removal from a registry that is**
30 **published on the Internet.**

31 * Sec. 2. AS 12.61.015(a) is amended to read:

1 (a) If a victim of a felony, a sex offense as defined in AS 12.63.100, or a crime
 2 involving domestic violence requests, the prosecuting attorney shall make a reasonable
 3 effort to

4 (1) confer with the person against whom the offense has been
 5 perpetrated about that person's testimony before the defendant's trial;

6 (2) in a manner reasonably calculated to give prompt actual notice,
 7 notify the victim

8 (A) of the defendant's conviction and the crimes of which the
 9 defendant was convicted;

10 (B) of the victim's right in a case that is a felony to make a
 11 written or oral statement for use in preparation of the defendant's presentence
 12 report, and of the victim's right to appear personally at the defendant's
 13 sentencing hearing to present a written statement and to give sworn testimony
 14 or an unsworn oral presentation;

15 (C) of the address and telephone number of the office that will
 16 prepare the presentence report; and

17 (D) of the time and place of the sentencing proceeding; **and**

18 **(E) when a petition is filed under AS 12.63.035 and of the**
 19 **victim's right to appear at the hearing under AS 12.63.035, present a**
 20 **written statement, and give sworn testimony or an unsworn oral**
 21 **presentation;**

22 (3) notify the victim in writing of the final disposition of the case
 23 within 30 days after final disposition of the case;

24 (4) confer with the victim or the victim's legal guardian concerning a
 25 proposed plea agreement before entering into the plea agreement to ask the victim or
 26 the victim's legal guardian whether the victim is in agreement with the proposed plea
 27 agreement; the prosecuting attorney shall record whether the victim or the victim's
 28 legal guardian is in agreement with the proposed plea agreement;

29 (5) inform the victim of a pending motion that may substantially delay
 30 the prosecution and inform the court of the victim's position on the motion; in this
 31 paragraph, a "substantial delay" is

- (A) for a misdemeanor, a delay of one month or longer;
- (B) for a felony, a delay of two months or longer; and
- (C) for an appeal, a delay of six months or longer.

* **Sec. 3.** AS 12.63.010(b) is amended to read:

(b) A sex offender or child kidnapper required to register under (a) of this section shall register with the Department of Corrections if the sex offender or child kidnapper is incarcerated or in person at the Alaska state trooper post or municipal police department located nearest to where the sex offender or child kidnapper resides at the time of registration. To fulfill the registration requirement, the sex offender or child kidnapper shall

(1) complete a registration form that includes **the following information, if applicable:** [, AT A MINIMUM,]

(A) the sex offender's or child kidnapper's name, **mailing and physical** address, **school address, telephone numbers used by the sex offender or child kidnapper, social security number, passport information,** place of employment, **job title,** and date of birth;

(B) each conviction for a sex offense or child kidnapping for which the duty to register has not terminated under AS 12.63.020, the date of the sex offense or child kidnapping convictions, the place and court of the sex offense or child kidnapping convictions, and whether the sex offender or child kidnapper has been unconditionally discharged from the conviction for a sex offense or child kidnapping and the date of the unconditional discharge; if the sex offender or child kidnapper asserts that the offender or kidnapper has been unconditionally discharged, the offender or kidnapper shall supply proof of that discharge acceptable to the department;

(C) all aliases used;

(D) the sex offender's or child kidnapper's driver's license number;

(E) the description, license numbers, and vehicle identification numbers of motor vehicles, **including watercraft, aircraft, motorcycles, and recreational vehicles** the sex offender or child kidnapper has access to,

1 regardless of whether that access is regular or not;

2 (F) any identifying features of the sex offender or child
3 kidnapper;

4 (G) anticipated changes of address **and any temporary**
5 **lodging used by the sex offender or child kidnapper;**

6 (H) a statement concerning whether the offender or kidnapper
7 has had treatment for a mental abnormality or personality disorder since the
8 date of conviction for an offense requiring registration under this chapter; and

9 (I) each electronic mail address, instant messaging address, and
10 other Internet communication identifier used by the sex offender or child
11 kidnapper;

12 **(J) professional licensing information;**

13 (2) allow the Alaska state troopers, Department of Corrections, or
14 municipal police to take a complete set of the sex offender's or child kidnapper's
15 fingerprints, **palm prints**, and to take the sex offender's or child kidnapper's
16 photograph.

17 * **Sec. 4.** AS 12.63.010(d) is amended to read:

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

19 (1) for **10 years or** 15 years under (a) of this section and AS 12.63.020
20 shall, annually, during the term of a duty to register under AS 12.63.020, on a date set
21 by the department at the time of the sex offender's or child kidnapper's initial
22 registration, provide written verification to the department, in the manner required by
23 the department, of the **information provided under (b)(1) of this section** [SEX
24 OFFENDER'S OR CHILD KIDNAPPER'S ADDRESS] and notice of any changes to
25 the information previously provided under (b)(1) of this section;

26 (2) for life under (a) of this section and AS 12.63.020 shall, not less
27 than quarterly, on a date set by the department, provide written verification to the
28 department, in the manner required by the department, of the **information provided**
29 **under (b)(1) of this section** [SEX OFFENDER'S OR CHILD KIDNAPPER'S
30 ADDRESS] and **notice of** any changes to the information previously provided under
31 (b)(1) of this section.

1 * **Sec. 5.** AS 12.63.010 is amended by adding new subsections to read:

2 (g) If a sex offender or child kidnapper plans to leave the state after having
3 registered under (a) of this section, the sex offender or child kidnapper shall provide
4 written notice to the department of the plan to leave the state at least seven calendar
5 days before leaving the state. If a sex offender or child kidnapper plans to leave the
6 state because of international travel after having registered under (a) of this section,
7 the sex offender or child kidnapper shall provide written notice to the department of
8 the plan for international travel at least 21 calendar days before leaving the state for
9 international travel.

10 (h) If a sex offender or child kidnapper is away from the address provided to
11 the department under (b)(1)(A) of this section for seven days or more, the sex offender
12 or child kidnapper must notify the department in writing of the address being used by
13 the sex offender or child kidnapper while away from the residence provided under
14 (b)(1)(A) of this section.

15 * **Sec. 6.** AS 12.63.020(a) is amended to read:

16 (a) The duty of a sex offender or child kidnapper to comply with the
17 requirements of AS 12.63.010 is as follows:

18 (1) for a sex offender or child kidnapper, as that term is defined in
19 AS 12.63.100(6)(A), for each sex offense or child kidnapping, the duty

20 (A) continues for the lifetime of a sex offender or child
21 kidnapper convicted of **a tier III sex offense or child kidnapping**

22 [(i) ONE AGGRAVATED SEX OFFENSE; OR

23 (ii) TWO OR MORE SEX OFFENSES, TWO OR
24 MORE CHILD KIDNAPPINGS, OR ONE SEX OFFENSE AND ONE
25 CHILD KIDNAPPING; FOR PURPOSES OF THIS SECTION, A
26 PERSON CONVICTED OF INDECENT EXPOSURE BEFORE A
27 PERSON UNDER 16 YEARS OF AGE UNDER AS 11.41.460 MORE
28 THAN TWO TIMES HAS BEEN CONVICTED OF TWO OR MORE
29 SEX OFFENSES];

30 (B) ends 15 years following the sex offender's or child
31 kidnapper's unconditional discharge from a conviction for a **tier II sex offense**

1 **or child kidnapping;**

2 **(C) ends 10 years following the sex offender's unconditional**
 3 **discharge from a conviction for a tier I sex offense** [SINGLE SEX
 4 OFFENSE THAT IS NOT AN AGGRAVATED SEX OFFENSE OR FOR A
 5 SINGLE CHILD KIDNAPPING IF THE SEX OFFENDER OR CHILD
 6 KIDNAPPER HAS SUPPLIED PROOF THAT IS ACCEPTABLE TO THE
 7 DEPARTMENT OF THE UNCONDITIONAL DISCHARGE; THE
 8 REGISTRATION PERIOD UNDER THIS SUBPARAGRAPH

9 (i) IS TOLLED FOR EACH YEAR THAT A SEX
 10 OFFENDER OR CHILD KIDNAPPER FAILS TO COMPLY WITH
 11 THE REQUIREMENTS OF THIS CHAPTER OR IS
 12 INCARCERATED FOR THE OFFENSE OR KIDNAPPING FOR
 13 WHICH THE OFFENDER OR KIDNAPPER IS REQUIRED TO
 14 REGISTER OR FOR ANY OTHER OFFENSE;

15 (ii) MAY INCLUDE THE TIME A SEX OFFENDER
 16 OR CHILD KIDNAPPER WAS ABSENT FROM THIS STATE IF
 17 THE SEX OFFENDER OR CHILD KIDNAPPER HAS COMPLIED
 18 WITH ANY SEX OFFENDER OR CHILD KIDNAPPER
 19 REGISTRATION REQUIREMENTS OF THE JURISDICTION IN
 20 WHICH THE OFFENDER OR KIDNAPPER WAS LOCATED AND
 21 IF THE SEX OFFENDER OR CHILD KIDNAPPER PROVIDES THE
 22 DEPARTMENT WITH PROOF OF THE COMPLIANCE WHILE
 23 THE SEX OFFENDER OR CHILD KIDNAPPER WAS ABSENT
 24 FROM THIS STATE; AND

25 (iii) CONTINUES FOR A SEX OFFENDER OR
 26 CHILD KIDNAPPER WHO HAS NOT SUPPLIED PROOF
 27 ACCEPTABLE TO THE DEPARTMENT OF THE OFFENDER'S OR
 28 KIDNAPPER'S UNCONDITIONAL DISCHARGE FOR THE SEX
 29 OFFENSE OR CHILD KIDNAPPING REQUIRING
 30 REGISTRATION];

31 (2) for a sex offender or child kidnapper, as that term is defined in

AS 12.63.100(6)(B), the duty continues for the period determined by the department under (b) of this section.

* **Sec. 7.** AS 12.63.020 is amended by adding a new subsection to read:

(c) The registration period under this section

(1) is tolled during the period

(A) of noncompliance, if the sex offender or child kidnapper has failed to comply with the requirements of this chapter;

(B) that the sex offender or child kidnapper is incarcerated for the offense or kidnapping for which the sex offender or child kidnapper is required to register or for any other offense;

(2) may include the time a sex offender or child kidnapper was absent from this state if the sex offender or child kidnapper has complied with any sex offender or child kidnapper registration requirements of the jurisdiction in which the sex offender or child kidnapper was located and if the sex offender or child kidnapper provides the department with proof of the compliance while the sex offender or child kidnapper was absent from this state; and

(3) continues for a sex offender or child kidnapper who has not supplied proof acceptable to the department of the sex offender's or child kidnapper's unconditional discharge for the sex offense or child kidnapping requiring registration.

* **Sec. 8.** AS 12.63 is amended by adding a new section to read:

Sec. 12.63.035. Removal from a registry that is published on the Internet.

(a) A sex offender or child kidnapper who has been unconditionally discharged may petition the court to be removed from a registry that is published on the Internet if

(1) the sex offender or child kidnapper has successfully completed all treatment programs ordered by the court or required by the parole board;

(2) the sex offender or child kidnapper has, within the previous year, been assessed as low-risk by a treatment provider approved by the Department of Corrections under AS 44.28.020, at the sex offender or child kidnapper's expense;

(3) the sex offender or child kidnapper since being convicted of the sex offense or child kidnapping, has not been convicted of a crime, or an attempt, solicitation, or conspiracy to commit a crime under the following statutes or a similar

1 law of another jurisdiction:

2 (A) a crime against a person under AS 11.41;

3 (B) a violation by a sex offender of condition of probation
4 under AS 11.56.759;

5 (C) sending an explicit image of a minor under AS 11.61.116;

6 (D) cruelty to animals under AS 11.61.140;

7 (E) misconduct involving weapons under AS 11.61.190 –
8 11.61.250;

9 (F) a sex offense or child kidnapping as defined in
10 AS 12.63.100; or

11 (G) a crime of domestic violence under AS 18.66.990;

12 (4) for a sex offender or child kidnapper convicted of a tier III sex
13 offense or child kidnapping, the sex offender or child kidnapper has not been
14 convicted of failure to register as a sex offender or child kidnapper under
15 AS 11.56.835 or 11.56.840 or a similar law in another jurisdiction for the previous 15
16 years excluding the period before the sex offender or child kidnapper's unconditional
17 discharge;

18 (5) for a sex offender or child kidnapper convicted of a tier II sex
19 offense or child kidnapping, the sex offender or child kidnapper has not been
20 convicted of failure to register as a sex offender or child kidnapper under
21 AS 11.56.835 or 11.56.840 or a similar law in another jurisdiction for the previous 10
22 years excluding the period before the sex offender or child kidnapper's unconditional
23 discharge;

24 (6) for a sex offender or child kidnapper convicted of a tier I sex
25 offense, the sex offender or child kidnapper has not been convicted of failure to
26 register as a sex offender or child kidnapper under AS 11.56.835 or 11.56.840 or a
27 similar law in another jurisdiction for the previous five years excluding the period
28 before the sex offender or child kidnapper's unconditional discharge.

29 (b) The court may order that a sex offender or child kidnapper be removed
30 from a registry that is published on the Internet if the court finds by clear and
31 convincing evidence that

1 (1) the sex offender or child kidnapper has satisfied the requirements
2 of (a) of this section;

3 (2) the sex offender or child kidnapper is unlikely to commit another
4 sex offense or child kidnapping; and

5 (3) continued registration on a registry that is published on the Internet
6 is not necessary for the protection of the public.

7 (c) A sex offender or child kidnapper petitioning for removal from a registry
8 that is published on the Internet must prove all factual assertions by clear and
9 convincing evidence.

10 (d) If the court denies the petition filed under (a) of this section, the sex
11 offender or child kidnapper may not petition the court again under this section for two
12 years from the date of the denial.

13 (e) If the court orders that a sex offender or child kidnapper be removed from
14 a registry that is published on the Internet under (b) of this section, the Department of
15 Public Safety shall remove the sex offender or child kidnapper from a registry that is
16 published on the Internet.

17 (f) Nothing in this section relieves a sex offender or child kidnapper of the
18 duty to comply with the registration requirements under AS 12.63.010 for the periods
19 specified in AS 12.63.020.

20 (g) If the court determines that the sex offender or child kidnapper is indigent,
21 the court may require the Department of Corrections to bear all or a portion of the cost
22 of the assessment required under (a)(2) of this section. If the court requires the
23 Department of Corrections to bear a portion of the costs of the assessment required
24 under (a)(2) of this section, the sex offender or child kidnapper shall bear the
25 remaining costs of the assessment.

26 (h) A victim may submit to the court a written statement that the victim
27 believes is relevant to the decision of whether to remove a sex offender or child
28 kidnapper from a registry that is published on the Internet and may give sworn
29 testimony or make an unsworn oral presentation to the court at the hearing under this
30 section. If there are numerous victims, the court may reasonably limit the number of
31 victims who may give sworn testimony or make an unsworn oral presentation during

1 the hearing.

2 * **Sec. 9.** AS 12.63.100(7) is amended to read:

3 (7) "sex offense" means

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

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

12 (i) sexual assault in the first degree;

13 (ii) sexual assault in the second degree;

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

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

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

18 (i) AS 11.41.410 - 11.41.438;

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

20 (iii) AS 11.41.450 - 11.41.458;

21 (iv) AS 11.41.460 or AS 26.05.900(c) if the indecent
22 exposure is before a person under 16 years of age and the offender has
23 previously been convicted under AS 11.41.460 or AS 26.05.900(c);

24 (v) AS 11.61.125 - 11.61.128;

25 (vi) AS 11.66.110, 11.66.130(a)(2)(B), or
26 AS 26.05.900(b) if the person who was induced or caused to engage in
27 prostitution was under 20 years of age at the time of the offense;

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

31 (viii) AS 11.61.118(a)(2) if the offender has a previous

conviction for that offense;

(ix) AS 11.66.100(a)(2) if the offender is subject to punishment under AS 11.66.100(e);

(x) AS 26.05.890 if the person engaged in sexual penetration or sexual contact with the victim;

(xi) AS 26.05.890 if, at the time of the offense, the victim is under a duty to obey the lawful orders of the offender, regardless of whether the offender is in the direct chain of command over the victim;

(xii) AS 26.05.893 if the person engaged in sexual penetration or sexual contact with the victim;

(xiii) AS 26.05.900(a)(1) - (4) if the victim is under 18 years of age at the time of the offense;

(xiv) AS 26.05.900 if, at the time of the offense, the victim is under a duty to obey the lawful orders of the offender, regardless of whether the offender is in the direct chain of command over the victim; or

(xv) AS 11.61.123 if the offender is subject to punishment under AS 11.61.123(f)(1) or (2); **or**

(xvi) AS 11.61.140(a)(6) or (7);

(D) an offense, or an attempt, solicitation, or conspiracy to commit an offense, under AS 26.05.935(b), or a similar law of another jurisdiction, if the member of the militia commits one of the following enumerated offenses punishable under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice):

(i) child pornography; or

(ii) pandering and prostitution if the person who is induced, enticed, caused, or procured to engage in a sexual act is under 20 years of age at the time of the offense; or

(E) an offense in which the person is required to register as a sex offender under the laws of another jurisdiction;

1 * **Sec. 10.** AS 12.63.100 is amended by adding new paragraphs to read:

2 (10) "registry that is published on the Internet" means a website
3 operated by the Department of Public Safety in which information is made publically
4 available about sex offenders and child kidnappers; "registry that is published on the
5 Internet" does not include information provided by sex offenders and child kidnappers
6 under AS 12.63.010 that is not published on the Internet;

7 (11) "tier I sex offense" means an offense, or an attempt, solicitation,
8 or conspiracy to commit one of the following crimes, or a similar crime under the laws
9 of another jurisdiction:

10 (A) a class A misdemeanor sex offense;

11 (B) possession of child pornography under AS 11.61.127;

12 (C) an offense under AS 26.05.935(b) if the member of the
13 militia commits one of the following enumerated offenses punishable under
14 Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice):

15 (i) child pornography; or

16 (ii) pandering and prostitution if the person who is
17 induced, enticed, caused, or procured to engage in a sexual act is under
18 20 years of age at the time of the offense;

19 (12) "tier II sex offense or child kidnapping" means

20 (A) an offense, or an attempt, solicitation, or conspiracy to
21 commit an offense that is a class B felony sex offense or class C felony sex
22 offense under this or a similar law of another jurisdiction that is not a tier I sex
23 offense or tier III sex offense or child kidnapping;

24 (B) an offense, or an attempt, solicitation, or conspiracy to
25 commit child kidnapping as defined in (2) of this section, that is not a tier III
26 sex offense or child kidnapping, or a similar law of another jurisdiction; or

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

30 (i) AS 26.05.890 that is not a tier III sex offense or
31 child kidnapping;

(ii) AS 26.05.893 that is not a tier III sex offense or child kidnapping;

(iii) AS 26.05.900(a)(1) - (4) if the victim is under 18 years of age at the time of the offense; or

(iv) AS 26.05.900 if, at the time of the offense, the victim is under a duty to obey the lawful orders of the offender, regardless of whether the offender is in the direct chain of command over the victim;

(13) "tier III sex offense or child kidnapping" means

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

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

(i) sexual assault in the first degree under AS 11.41.410;

(ii) sexual assault in the second degree under AS 11.41.420;

(iii) sexual abuse of a minor in the first degree under AS 11.41.434; or

(iv) sexual abuse of a minor in the second degree under AS 11.41.436;

(C) an offense, or an attempt, solicitation, or conspiracy to commit any of the following crimes, or a similar law of another jurisdiction or a similar provision under a former law of this state:

(i) sexual assault in the first degree under AS 11.41.410;

(ii) sexual assault in the second degree under AS 11.41.420, if, in the course of or in furtherance of the offense, the victim suffers serious physical injury;

(iii) sexual abuse of a minor in the first degree under AS 11.41.434; or

(iv) sexual abuse of a minor in the second degree under AS 11.41.436 if, in the course of or in furtherance of the offense, the victim suffers serious physical injury or the victim is under 13 years of age;

(D) an offense, or an attempt, solicitation, or conspiracy to commit an offense under AS 11.41.300, or a similar law of another jurisdiction, if the person is not a relative of the victim and the victim was under 13 years of age at the time of the offense;

(E) two or more convictions for a tier I sex offense, two or more convictions for a tier II sex offense or child kidnapping, or one conviction for a tier I sex offense and one conviction for a tier II sex offense or child kidnapping;

(F) an offense, or an attempt, solicitation, or conspiracy to commit an offense, under

(i) AS 26.05.890, or a similar law of another jurisdiction, if the person engaged in or attempted to engage in sexual penetration; or

(ii) AS 26.05.893, or a similar law of another jurisdiction, if the prohibited sexual activity in which the member of the militia engaged or attempted to engage is sexual penetration.

(14) "serious physical injury" has the meaning given in AS 11.81.900.

* **Sec. 11.** AS 18.65.087(d) is amended to read:

(d) The Department of Public Safety

(1) shall adopt regulations to

(A) allow a sex offender or child kidnapper to review sex offender or child kidnapper registration information that refers to that sex

offender or child kidnapper, and if the sex offender or child kidnapper believes the information is inaccurate or incomplete, to request the department to correct the information; if the department finds the information is inaccurate or incomplete, the department shall correct or supplement the information;

(B) ensure the appropriate circulation to law enforcement agencies of information contained in the central registry;

(C) ensure the anonymity of members of the public who request information under this section;

(2) shall provide to the Department of Corrections and municipal police departments the forms and directions necessary to allow sex offenders and child kidnappers to comply with AS 12.63.010;

(3) may adopt regulations to establish fees to be charged for registration under AS 12.63.010 and for information requests; the fee for registration shall be based upon the actual costs of performing the registration and maintaining the central registry but may not be set at a level whereby registration is discouraged; the fee for an information request may not be greater than \$10;

(4) shall remove from the central registry of sex offenders and child kidnappers under this section information about a sex offender or child kidnapper required to register under AS 12.63.020(a)(1)(B) and (C) at the end of the sex offender's or child kidnapper's duty to register if the offender or kidnapper has not been convicted of another sex offense or child kidnapping and the offender or kidnapper has supplied proof of unconditional discharge acceptable to the department; in this paragraph, "sex offense" and "child kidnapping" have the meanings given in AS 12.63.100.

* **Sec. 12.** AS 18.85.100 is amended by adding a new subsection to read:

(h) An indigent person is entitled to representation under (a) and (b) of this section for purposes of petitioning the court for removal from a registry that is published on the Internet under AS 12.63.035.

* **Sec. 13.** AS 22.07.020(a) is amended to read:

(a) The court of appeals has appellate jurisdiction in actions and proceedings commenced in the superior court involving

- 1 (1) criminal prosecution;
- 2 (2) post-conviction relief;
- 3 (3) matters under AS 47.12, including waiver of jurisdiction over a
- 4 minor under AS 47.12.100;
- 5 (4) extradition;
- 6 (5) habeas corpus;
- 7 (6) probation and parole; [AND]
- 8 (7) bail; and
- 9 (8) removal from a registry that is published on the Internet under
- 10 AS 12.63.035.

11 * **Sec. 14.** AS 44.28.020 is amended by adding a new subsection to read:

12 (d) The department shall adopt standards, by regulation, for the administration

13 of risk assessments for sex offenders and child kidnappers.

14 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to

15 read:

16 DIRECT COURT RULE AMENDMENT. Rule 35.3, Alaska Rules of

17 Criminal Procedure, is amended by adding a new section to read:

18 **Rule 35.3. Procedure for Removal from a Registry that is Published on the**

19 **Internet.** (a) **Scope and Criteria.** A sex offender or child kidnapper who has been

20 unconditionally discharged may petition the court to be removed from a registry that is

21 published on the Internet if

22 (1) the sex offender or child kidnapper has successfully completed all

23 treatment programs ordered by the court or required by the parole board;

24 (2) the sex offender or child kidnapper has, within the previous year,

25 been assessed as low-risk by a treatment provider approved by the Department of

26 Corrections under AS 44.28.020, at the sex offender or child kidnapper's expense;

27 (3) the sex offender or child kidnapper since being incarcerated for the

28 sex offense or child kidnapping, has not been convicted of

29 (A) a crime against a person under AS 11.41;

30 (B) a violation by sex offender of condition of probation under

31 AS 11.56.759;

(C) sending an explicit image of a minor under AS 11.61.116;

(D) cruelty to animals under AS 11.61.140;

(E) misconduct involving weapons under AS 11.61.190 -
11.61.250;

(F) a sex offense or child kidnapping as defined in
AS 12.63.100; or

(G) a crime of domestic violence under AS 18.66.990;

(4) for a sex offender or child kidnapper convicted of a tier III sex offense or child kidnapping, the sex offender or child kidnapper has not been convicted of failure to register as a sex offender or child kidnapper under AS 11.56.835 or 11.56.840 or a similar law in another jurisdiction for the previous 15 years excluding the period before the sex offender or child kidnapper's unconditional discharge;

(5) for a sex offender or child kidnapper convicted of a tier II sex offense or child kidnapping, the sex offender or child kidnapper has not been convicted of failure to register as a sex offender or child kidnapper under AS 11.56.835 or 11.56.840 or a similar law in another jurisdiction for the previous 10 years excluding the period before the sex offender or child kidnapper's unconditional discharge;

(6) for a sex offender or child kidnapper convicted of a tier I sex offense, the sex offender or child kidnapper has not been convicted of failure to register as a sex offender or child kidnapper under AS 11.56.835 or 11.56.840 or a similar law in another jurisdiction for the previous five years excluding the period before the sex offender or child kidnapper's unconditional discharge.

(b) **Commencement of Proceedings-Filing-Service.** A proceeding is commenced by filing a petition with the clerk at the court location where the underlying conviction was filed. The clerk shall open a new file for the petition, promptly bring it to the attention of the court and give a copy to the state.

(c) **Petition-Contents.** The petition shall (1) identify the proceedings in which the petitioner was convicted; and (2) articulate that the petitioner meets the criteria in (a) of this rule. Affidavits, records, or other evidence supporting the assertions in the

petition shall be attached to the petition or the petition shall recite why they are not attached. The application shall identify any previous petitions for removal from a registry that is published on the Internet.

(d) Indigent Applicant.

(1) If the applicant is indigent, filing fees must be paid under the provisions of AS 09.19, and counsel shall be appointed consistent with AS 18.85.100 to represent the applicant.

(2) Within 60 days of an attorney's appointment on behalf of an indigent applicant, the attorney shall file with the court and serve on the state a statement that the litigation will proceed on the claims alleged in the petition filed by the petitioner or an amended or supplemental petition.

(e) Pleadings and Judgment on Pleadings.

(1) The state shall file an answer or a motion within 45 days of service of an original, amended, or supplemental petition filed by counsel or by a petitioner who elects to proceed without counsel, or of a notice of intent to proceed on the original application under (d)(2) of this rule. The petitioner shall have 30 days to file an opposition, and the state shall have 15 days to file a reply. The motion, opposition, and reply may be supported by affidavit. At any time prior to entry of judgment, the court may grant leave to withdraw the petition. The court may make appropriate orders for amendment of the petition or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering a pro se petition, the court shall consider substance and disregard defects of form, but a pro se petitioner will be held to the same burden of proof and persuasion as a petitioner proceeding with counsel. If the petition is not accompanied by a record showing that the criteria in (a) of this rule are satisfied, the state may file with its answer the record or portions thereof that are material to proving or disproving the criteria in (a) of this rule.

(2) If it appears to the court that the petitioner is not entitled to relief, the court shall indicate to the parties its intention to dismiss the petition and its reasons for so doing. The petitioner and the state shall be given an opportunity to reply to the proposed dismissal. If the petitioner files a response and the court finds that the

petition does not meet the criteria in (a) of this rule, or if the petitioner does not file a response, the court shall order the petition dismissed. If the court finds that the petition presents a colorable claim, the court may grant leave to file an amended petition or direct that the proceedings otherwise continue.

(3) Subject to (f) of this rule, the court may grant a motion by either party for summary disposition of the petition when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

(f) **Required Findings and Burden of Proof.** The court may order the sex offender or child kidnapper be removed from a registry that is published on the Internet if the court finds by clear and convincing evidence that

(1) the sex offender or child kidnapper has satisfied the requirements of (a) of this rule;

(2) the sex offender or child kidnapper is unlikely to commit another sex offense or child kidnapping; and

(3) continued registration on a registry that is published on the Internet is not necessary for the protection of the public.

(g) **Hearing-Evidence-Order.** A petition regarding a conviction that occurred in the state shall be heard in the court in which the underlying criminal case was heard. The petition may be heard before any judge of that court, but if the sentencing judge is available, the case shall initially be assigned to that judge. A petition regarding a conviction that occurred outside the state shall be heard in the court nearest to where the sex offender or child kidnapper resides and may be heard before any judge of that court. An electronic recording of the proceeding shall be made. All rules and statutes applicable in civil proceedings, including pretrial and discovery procedures, are available to the parties except that Civil Rule 26(a)(1) - (4) does not apply to proceedings for removal from a registry that is published on the Internet. The court may receive proof by affidavits, depositions, oral testimony, or other evidence. Unless otherwise required by statute or the constitution, the petitioner bears the burden of proving all factual assertions by clear and convincing evidence. The court shall make

specific findings of fact and state expressly its conclusions of law as outlined in (d) of this rule. The order made by the court is a final judgment.

(h) **Expedited Consideration.** A petitioner may move for expedited consideration of the petition for removal from a registry that is published on the Internet. The motion must comply with Civil Rule 77(g).

* **Sec. 16.** The uncoded law of the State of Alaska enacted in sec. 142(c), ch. 4, FSSLA 2019, is amended to read:

(c) The following sections apply to the duty to register as a sex offender for offenses committed before, on, or after the effective date of those sections:

(1) AS 12.63.010(d), as amended by sec. 82 of this Act;

(2) AS 12.63.020, as amended by sec. 83 of this Act;

(3) AS 12.63.100(6), as amended by sec. 84 of this Act;

(4) AS 12.63.100(7), as amended by sec. 85 of this Act.

* **Sec. 17.** AS 12.63.100(1) is repealed.

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

APPLICABILITY. (a) AS 12.61.010(a), as amended by sec. 1 of this Act, and AS 12.61.015(a), as amended by sec. 2 of this Act, apply to petitions filed and hearings held under AS 12.63.035, enacted by sec. 8 of this Act, for offenses committed before, on, or after the effective date of this Act.

(b) Except as otherwise provided in this Act, the following sections apply to the duty to register as a sex offender or child kidnapper for offenses committed before, on, or after the effective date of this Act:

(1) AS 12.63.010(b), as amended by sec. 3 of this Act;

(2) AS 12.63.010(d), as amended by sec. 4 of this Act;

(3) AS 12.63.010(g) and (h), enacted by sec. 5 of this Act;

(4) AS 12.63.020(a), as amended by sec. 6 of this Act;

(5) AS 12.63.100(11) – (13), enacted by sec. 10 of this Act.

(c) AS 12.63.020(c)(1)(A), enacted by sec. 7 of this Act, applies to the tolling of the duty to register as a sex offender or child kidnapper on or after the effective date of this Act for determinations of noncompliance made by the court on or after the effective date of this

1 Act.

2 (d) AS 12.63.020(c)(1)(B), (2), and (3), enacted by sec. 7 of this Act, apply to the
3 tolling of or continuation of the duty to register as a sex offender or child kidnapper on or
4 after the effective date of this Act as determined by the Department of Public Safety on or
5 after the effective date of this Act.

6 (e) AS 12.63.035, enacted by sec. 8 of this Act, and AS 18.85.100(h), enacted by sec.
7 12 of this Act, and Rule 35.3, Alaska Rules of Criminal Procedure, enacted by sec. 15 of this
8 Act, apply to petitions filed on or after the effective date of this Act regarding the duty to
9 register as a sex offender or child kidnapper for offenses committed before, on, or after the
10 effective date of this Act.

11 (f) AS 22.07.020(a), as amended by sec. 13 of this Act, applies to appeals filed on or
12 after the effective date of this Act regarding the duty to register as a sex offender or child
13 kidnapper, imposed before, on, or after the effective date of this Act.

14 (g) Nothing in AS 12.63.020(a), as amended by sec. 6 of this Act, or in
15 AS 12.63.020(c), enacted by sec. 7 of this Act, may be construed as invalidating a decision of
16 the Department of Public Safety to toll the period of registration, or continue the period of
17 registration under AS 12.63 before the effective date of this Act.

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

20 **CONDITIONAL EFFECT.** Section 15 of this Act takes effect only if sec. 15 of this
21 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
22 Constitution of the State of Alaska.

23 * **Sec. 20.** This Act takes effect July 1, 2020.