

SB

185

HFIN

FILE

25-LS1616A
Luckhaupt
3/28/08

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Introduced:
Referred:

A RESOLUTION

1 Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State
2 Legislature, concerning Senate Bill No. 185, relating to the central registry of sex
3 offenders and child kidnappers and to the registration requirements for sex offenders
4 and child kidnappers.

5 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
7 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
8 changes to the title of a bill, are suspended in consideration of Senate Bill No. 185, relating to
9 the central registry of sex offenders and child kidnappers and to the registration requirements
10 for sex offenders and child kidnappers.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 6
Bill Version: CSSB 185(STA)
(S) Publish Date: 3/26/08

Identifier (file name): SB185-DOA-OPA-2-04-08 Dept. Affected: Administration
Title: "An Act relating to sex offenders and child kidnappers..." RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Sponsor: Senator Wielechowski
Requester: _____ Component Number: 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This bill expands the requirements for sex offender registration by adding the requirement of providing any electronic messaging address or internet identifier or any change in this information, and it amends the crime of failure to register as a sex offender or child kidnapper accordingly. While it is possible that this bill could have a fiscal impact on the agency by expanding the conduct that could trigger prosecution for failure to register as a sex offender, it cannot be predicted at this time. Therefore, OPA submits a zero fiscal note.

Prepared by: Joshua P. Fink, Director
Division: Office of Public Advocacy
Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone: 907-269-3501
Date/Time: 2/4/08, 12:00 p.m.
Date: 2/4/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSSB 185(STA)
(S) Publish Date: 3/3/08

Identifier (file name): SB185CS(STA)-DPS-R&I-02-28-08 Dept. Affected: Public Safety
Title: "An Act relating to sex offenders and child kidnappers." RDU: Statewide Support
Sponsor: Senator Wielechowski Component: Records & Identification
Requester: Senate Judiciary Committee Component Number: 1190

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual	42.0		42.0	42.0	42.0	42.0	42.0	42.0
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	42.0	0.0	42.0	42.0	42.0	42.0	42.0	42.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	42.0							
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	42.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This legislation requires sex offenders and child kidnappers to provide more extensive registration information than is currently required under AS 12.63.010 and consequently collected and maintained by the department.

Sex offender and child kidnapper registration information is entered into and maintained electronically in the state's central criminal history repository, the Alaska Public Safety Information Network (APSIN). Information is obtained from forms completed by offenders at initial registration, annual or quarterly verification, and upon a qualifying change in the offender's information. (Continued)

Prepared by: David Schade, Director
Division: Statewide Services
Approved by: Walt Monegan, Commissioner
Department of Public Safety

Phone: (907) 269-0202
Date/Time: 2/28/08 8:50 AM
Date: _____

FISCAL NOTE # 4

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. CSSB 185(STA)

ANALYSIS CONTINUATION

This legislation will require the department to revise its forms to include fields for offenders to report all Internet identifiers and addresses (e.g. email and instant messaging addresses) used by the offender. There is no fiscal impact anticipated as a result of making the forms revisions.

Significant new business logic would be needed to capture, manage, and interpret timeframes associated with various Internet identifiers. In addition to email and instant messaging addresses, Internet identifiers include any designations or monikers used for self-identification in Internet communications or postings on social networking sites (Facebook, MySpace, LinkedIn) and gaming (WoW, Second Life), potentially thousands per user, each with a variety of properties. Because the Internet is very dynamic with new services being created monthly (many of which quickly have millions of registrants) there will be an ongoing requirement to add new Internet identifiers and types to any database system that needs to track this information.

For the first year, considerable analysis, programming, and data entry changes in APSIN and the Sex Offender Registration (SOR) office's application will be necessary to add data fields for the entry of all Internet identifiers and addresses reported as being used by an offender. The programming changes and associated costs assume that the data is for the mainframe APSIN system and the SOR office application only. Changes to the public website display are not included nor are the cost of any reports. Costs are based on \$85 per hour.

Computation:

- Analysis during project: 80 hours
- Modify mainframe and screens (new screen for amount of data) and database to capture and store updates: 120 hours
- Mainframe database coordination and program moves: 40 hours
- Modify the migration process of mainframe data to the data warehouse: 40 hours
- Modify SOR office application to store and display the additional fields: up to 80 hours
- Final testing: 40 hours
- Initial operating costs: 95 hours

Ongoing operating costs (200 hours per year), additional storage, backup, and data management is estimated to cost \$42,000 annually.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 185(STA)
(S) Publish Date: 2/19/08

Identifier (file name): SB185-DOA-PDA-1-28-08 Dept. Affected: Administration
Title: "An Act relating to sex offenders and child kidnappers..." RDU: Legal and Advocacy Services
Sponsor: Senator Wielechowski Component: Public Defender Agency
Requester: _____ Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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	(Thousands of Dollars)						
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
FUND SOURCE							
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This bill amends the requirements for sex offense registration by adding the requirement of providing any electronic messaging address or internet identifier or any change in this information, and amends the crime of failure to register as a sex offender or child kidnapper accordingly. This bill is not expected to have a fiscal impact on the Agency.

Prepared by: Quinlan Steiner, Director
Division: Public Defender Agency
Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone: 907-334-4414
Date/Time: 1/28/08 11:00 AM
Date: 1/28/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB185HCSCS(FIN)-DOC-PM-4-9-08
() Publish Date: _____

Identifier (file name): SB185-DOC-OC-02-08-08 Dept. Affected: Corrections
Title: "An Act relating to sex offenders and child kidnappers" RDU: Population Management
Sponsor: Senators Wielechowski, Ellis, Elton, McGuire, Dyson Component: Statewide Probation & Parole
Requester: House Finance Component Number: 2826

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Personal Services	0.0	0.0	*	*	*	*	*
Travel	0.0	0.0	*	*	*	*	*
Contractual	0.0	0.0	*	*	*	*	*
Supplies	0.0	0.0	*	*	*	*	*
Equipment	0.0	0.0	*	*	*	*	*
Land & Structures	0.0	0.0	*	*	*	*	*
Grants & Claims	0.0	0.0	*	*	*	*	*
Miscellaneous	0.0	0.0	*	*	*	*	*
TOTAL OPERATING	0.0	0.0	*	*	*	*	*

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()						*	*
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	*	*	*	*	*
1003 GF Match	0.0	0.0	*	*	*	*	*
1004 GF	0.0	0.0	*	*	*	*	*
1005 GF/Program Receipts	0.0	0.0	*	*	*	*	*
1037 GF/Mental Health	0.0	0.0	*	*	*	*	*
Other Interagency Receipts	0.0	0.0	*	*	*	*	*
TOTAL	0.0	0.0	*	*	*	*	*

Estimate of any current year (FY2008) cost: 00

POSITIONS

Full-time	0	0	*	*	*	*	*
Part-time	0	0	*	*	*	*	*
Temporary	0	0	*	*	*	*	*

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation will have a fiscal impact on the Department of Corrections. A defendant convicted of a violation of AS 11.41.434 where the victim of the offense was under 14 years of age will be subject to electronic monitoring for the term of probation. Under AS 12.55.090(c) these offenders would be sentenced to probation up to 25 years.

Department of Corrections data shows there are 32 offenders currently convicted under AS 11.41.434 where the victim of the offense was under 14 years of age (calendar year 2002-2007). It is difficult for the department to determine if the statute would apply these offenders (Continued on Page 2)

Prepared by: Sharleen Griffin, Director
Division: Administrative Services
Approved by: Dwayne Peeples, Deputy Commissioner
Department of Corrections

Phone: (907) 465-3339
Date/Time: 4/9/08 8:15 AM
Date: 4/9/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. SB185HCSCS(FIN)-DOC-PM-4-9-08

ANALYSIS CONTINUATION

Offenders are classified under the department's system as Sexual Assault of a Minor in the 1st Degree and a flag has to be marked in the system if it is a minor under the age of 14.

These offenders would then be placed on Passive Global Positioning System (GPS) - Intensive Supervision Surveillance Program (ISSP) monitoring and would require the department to have one Adult Probation Officer per every twenty offenders. This supervision program is monitored by a computer and alarm system 24 hours a day, 7 days a week. The system contacts a probation officer if the offender goes into a prohibited area.

The department anticipates the earliest any of the offenders would be placed on probation is starting in FY 2010 and one probation officer would be required for every twenty offenders.

It is anticipated that electronic monitoring will be at the discretion of the Courts.

During the period of 2002 to 2007, 32 offenders were sentenced under AS 11.41.434 for an average length of sentence of 9.2 years. Assuming that the Courts would utilize the electronic option for 1/4 to 1/2 of the offenders, the Department of Corrections would request an Adult Probation Officer no earlier than 2012 or 2013.

The Department will evaluate the sentence of offenders under AS 11.41.434 and request appropriate funding to operate the program on an annual basis.

Below is a representative cost for operating this program for 20 offenders:

	<u>PASSIVE GPS (ISSP)</u>
<u>Ratio</u>	
Number of Probation Officers	1
Number of Offenders	20
 <u>Annual Costs- 1 Probation Officer</u>	
Personal Services	\$98,335.00
Travel	\$2,000.00
Services (exclude GPS)	\$11,700.00
Commodities*	\$13,100.00
TOTAL	<u>\$125,135.00</u>
<i>*Includes One Time Start Up Costs of \$10,700</i>	
 <u>Cost Per Offender / Per Day</u>	
GPS Monitoring Cost	\$6.25
Weekly Cost for 1 Offender	\$43.75
Annual Cost for 1 Offender	\$2,275.00
 <u>Annual Contractual Cost for GPS</u>	
Number of Offenders	20
Daily GPS Cost	\$6.25
Number of Days	365
TOTAL	<u>\$45,625.00</u>
 TOTAL ESTIMATED COST	 \$170,760.00

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: SB185HSCS(FIN)-LAW-CRIM-04-08-08
 Bill Version: HSCSSB185(FIN)
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: LAW
 Title An Act relating to sex offenders and child kidnappers. RDU Criminal
 Component Criminal Justice Litigation
 Sponsor SENATOR(S) WIELECHOWSKI
 Requester HOUSE FINANCE Component Number _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

SB 185 amends the crime of failure to register as a sex offender by providing that failure to submit an electronic address or a change of electronic address would be prohibited. The bill would allow a court to require a person convicted of a serious sexual assault to wear an ankle bracelet during the person's probationary period. The department does not expect a significant fiscal impact as a result of this bill.

Prepared by: Robert Meiners, Administrative Services Manager
 Division: Administrative Services Division
 Approved by: Takis Colborg, Attorney General
Department of Law

Phone: 907-465-5427
 Date/Time: 4/8/08 11:20 AM
 Date: 4/8/2008

Adopted
5/7/08

AMENDMENT 1

OFFERED IN THE HOUSE

TO: CS SB 185 (STA) (title am)

BY REPRESENTATIVE HAWKER

- 1 Page 3, line 26
- 2 Delete "belongs to"
- 3 Insert "has been registered by"

*Adopted
4/7/09*

AMENDMENT

2

OFFERED IN THE HOUSE

TO: CS SB 185 (STA) (title am)

BY REPRESENTATIVE HAWKER

- 1 Page 3, line 27 through page 4, line 1
- 2 Delete all material

*Amend to Amend
have apply to violators
Am #3 AS 11.41.410
Adopted 4/7/08*

*Mand 10 years
after that discretion
judge WITHDRAWN*

*Adopted
as amended
4/7/08*
AMENDMENT 3

25-LS0985\KA.1
Luckhaupt
3/29/08

OFFERED IN THE HOUSE

BY REPRESENTATIVE CHENAULT

TO: CSSB 185(STA)(title am)

1 Page 1, line 1, following "kidnappers":

2 Insert ", to penalties for certain sex offenders,"

3

4 Page 2, following line 4:

5 Insert a new bill section to read:

6 **** Sec. 2. AS 12.55.015 is amended by adding a new subsection to read:**

7 (j) In addition to penalties authorized by this section, the court shall order a
8 defendant convicted of a violation of AS 11.41.410 - 11.41.440 where the victim of
9 the offense was under 13 years of age to be subject to electronic monitoring for the
10 remainder of the person's life on the person's release from a correctional facility."

11

12 Renumber the following bill sections accordingly.

13

14 Page 4, line 4:

15 Delete "This Act applies"

16 Insert "Sections 1 and 3 - 5 of this Act apply"

17

18 Page 4, following line 7:

19 Insert a new subsection to read:

20 "(b) Section 2 of this Act applies to persons convicted of offenses committed on or
21 after the effective date of this Act."

22

23 Reletter the following subsection accordingly.

25-LS0985VKA.1

1

2 Page 4, line 9:

3 Delete "sec. 3"

4 Insert "sec. 4"

WITHDRAWN
4/7/08

Amendment #3 to Amendment #3 by Rep. Hawker

Monitoring period shall be a mandatory ten years following release from a correctional facility, and up to the remainder of person's life at discretion of the courts.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 8, 2008

SUBJECT: Amendment 3 incorporated in draft HCS CSSB 185(FIN)
(Work Order No. 25-LS0985L)

TO: Representative Kevin Meyer
Co-Chair of the House Finance Committee
Attn: Suzanne Cunningham

FROM: Gerald P. Luckhaupt *ERL*
Legislative Counsel

Enclosed is the draft HCS(FIN) you requested. I have two comments concerning Amendment 3 as adopted by the committee.

First, sec. 2 of the HCS(FIN) only applies to persons convicted of a violation of AS 11.41.410.¹ Applying this provision only to sexual assaults committed against children may not actually reach all the offenders that the committee may intend to reach, as most sexual offenses committed against children are prosecuted as sexual abuse of a minor and not as sexual assault.² It would appear to me that if the committee intended to apply this provision to offenders who commit sexual offenses against children that are unclassified felonies then AS 11.41.434, sexual abuse of a minor in the first degree, should also be included.

Second, the amendment changed the application of sec. 2 to children under the age of 14. Amendment 3 originally applied this new section to children under 13 years of age. The choice of 13 years of age was not arbitrarily selected but was based upon the age differentiation the legislature has previously made in the sexual abuse of a minor statutes. Typically, the legislature has separated out offenses based upon whether the victim was less than 13, less than 16 but at least 13 years of age, or at least 16 but less than 18 years of age. -to 13

¹ The committee removed the string citation that applied this new section to all sexual offenses. AS 11.41.410 is sexual assault in the first degree.

² Sexual abuse of a minor merely requires the state to prove that a offender was a certain age and the victim was a certain age and that a sexual act occurred. It is easier to prosecute than sexual assault which requires proof that a sexual act occurred and that the sexual act was without the consent of the victim.

Representative Kevin Meyer

April 8, 2008

Page 2

Finally, as a bit of reference to the committee, the maximum period of probation for a felony sex offense is 25 years³ with a mandatory period of probation of 15 years⁴ for an unclassified felony sex offense,⁵ following the offender's prison term imposed under AS 12.55.125(i). See AS 12.55.125(o).

GPL:ljw
08-214.ljw

Enclosure

³ See AS 12.55.090(e).

⁴ With an additional five year sentence of imprisonment suspended.

⁵ Sexual assault in the first degree, AS 11.41.41, and sexual abuse of a minor in the first degree, AS 11.41.434, are unclassified felony sex offenses.

*Adopted
4/7/08*

25-LS0985\KA.1
Luckhaupt
3/29/08

AMENDMENT

3 as Amended

OFFERED IN THE HOUSE

BY REPRESENTATIVE CHENAULT

TO: CSSB 185(STA)(title am)

1 Page 1, line 1, following "kidnappers":

2 Insert ", to penalties for certain sex offenders,"

3

4 Page 2, following line 4:

5 Insert a new bill section to read:

6 "* Sec. 2. AS 12.55.015 is amended by adding a new subsection to read:

7 (j) In addition to penalties authorized by this section, the court shall order a

8 defendant convicted of a violation of AS 11.41.410 ^[Delete] 1.41.440 where the victim of

9 the offense was under ¹⁴ 13 years of age to be subject to electronic monitoring for ^[up to] the

10 ~~remainder of the person's life~~ ^{The maximum length of probation} on the person's release from a correctional facility."

11

12 Renumber the following bill sections accordingly.

13

14 Page 4, line 4:

15 Delete "This Act applies"

16 Insert "Sections 1 and 3 - 5 of this Act apply"

17

18 Page 4, following line 7:

19 Insert a new subsection to read:

20 "(b) Section 2 of this Act applies to persons convicted of offenses committed on or

21 after the effective date of this Act."

22

23 Reletter the following subsection accordingly.

25-LS0985\KA.1

1

2 Page 4, line 9:

3 Delete "sec. 3"

4 Insert "sec. 4"

WITHDRAWN
4/7/08

AMENDMENT

4

OFFERED IN THE HOUSE

BY REPRESENTATIVE CHENAULT

TO: CSSB 185(STA)(title am)

1 Page 1, line 2, following "kidnappers;":

2 Insert "authorizing capital punishment for certain crimes committed against
3 children and authorizing the death penalty for those crimes; establishing sentencing
4 procedures for capital felonies; amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal
5 Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure;"

7 Page 1, following line 4:

8 Insert new bill sections to read:

9 ** Section 1. AS 05.15.140(b) is amended to read:

10 (b) In an application for a permit, a municipality or qualified organization
11 shall disclose the name and address of each person responsible for the operation of the
12 activity and whether any person named

13 (1) has been convicted of a violation of a law of this state that is, or a
14 law or ordinance of another state that would be if committed in this state, a capital or
15 [AN] unclassified felony described in AS 11, a Class A felony, extortion, or a
16 violation of a law or ordinance of this state or another jurisdiction that is a crime
17 involving theft or dishonesty or a violation of gambling laws; or

18 (2) has a prohibited financial interest, as defined in regulations adopted
19 by the department, in the operation of the activity.

20 * Sec. 2. AS 11.31.100(d) is amended to read:

21 (d) An attempt is

22 (1) an unclassified felony if the crime attempted is a capital felony
23 [MURDER IN THE FIRST DEGREE];

24 (2) a class A felony if the crime attempted is an unclassified felony

1 [OTHER THAN MURDER IN THE FIRST DEGREE];

2 (3) a class B felony if the crime attempted is a class A felony;

3 (4) a class C felony if the crime attempted is a class B felony;

4 (5) a class A misdemeanor if the crime attempted is a class C felony;

5 (6) a class B misdemeanor if the crime attempted is a class A or class
6 B misdemeanor.

7 * Sec. 3. AS 11.31.110(c) is amended to read:

8 (c) Solicitation is

9 (1) an unclassified felony if the crime solicited is a capital felony
10 [MURDER IN THE FIRST DEGREE];

11 (2) a class A felony if the crime solicited is an unclassified felony
12 [OTHER THAN MURDER IN THE FIRST DEGREE];

13 (3) a class B felony if the crime solicited is a class A felony;

14 (4) a class C felony if the crime solicited is a class B felony;

15 (5) a class A misdemeanor if the crime solicited is a class C felony;

16 (6) a class B misdemeanor if the crime solicited is a class A or class B
17 misdemeanor.

18 * Sec. 4. AS 11.31.120(h)(2) is amended to read:

19 (2) "serious felony offense" means an offense

20 (A) against the person under AS 11.41, punishable as a capital,
21 an unclassified, or a class A felony;

22 (B) involving controlled substances under AS 11.71,
23 punishable as an unclassified, a class A, or a class B felony;

24 (C) that is criminal mischief in the first degree under
25 AS 11.46.475; or

26 (D) that is terroristic threatening in the first degree under
27 AS 11.56.807.

28 * Sec. 5. AS 11.31.120(i) is amended to read:

29 (i) Conspiracy is

30 (1) an unclassified felony if the object of the conspiracy is a capital
31 felony [MURDER IN THE FIRST DEGREE];

1 (2) a class A felony if the object of the conspiracy is a crime
 2 punishable as an unclassified felony [OTHER THAN MURDER IN THE FIRST
 3 DEGREE];

4 (3) a class B felony if the object of the conspiracy is a crime
 5 punishable as a class A felony;

6 (4) a class C felony if the object of the conspiracy is a crime
 7 punishable as a class B felony.

8 * Sec. 6. AS 11.41.100(b) is amended to read:

9 (b) Murder in the first degree is a capital [AN UNCLASSIFIED] felony and
 10 is punishable as provided in AS 12.55.125(a) [AS 12.55].

11 * Sec. 7. AS 11.41.410(b) is amended to read:

12 (b) Except as provided in (c) of this section, sexual [SEXUAL] assault in
 13 the first degree is an unclassified felony and is punishable as provided in AS 12.55.

14 * Sec. 8. AS 11.41.410 is amended by adding a new subsection to read:

15 (c) Sexual assault in the first degree is a capital felony if the victim of the
 16 offense is less than 12 years of age."

17

18 Page 1, line 5:

19 Delete "Section 1"

20 Insert "Sec. 9"

21

22 Renumber the following bill sections accordingly.

23

24 Page 2, following line 4:

25 Insert new bill sections to read:

26 ** Sec. 10. AS 12.30.020(a) is amended to read:

27 (a) A person charged with an offense shall, at that person's first appearance
 28 before a judicial officer, be ordered released pending trial on the person's personal
 29 recognizance or upon the execution of an unsecured appearance bond in an amount
 30 specified by the judicial officer unless the offense is a capital felony, an unclassified
 31 felony, or a class A felony or unless the officer determines that the release of the

1 person will not reasonably assure the appearance of the person as required or will pose
2 a danger to the alleged victim, other persons, or the community. If the offense with
3 which a person is charged is a felony, on motion of the prosecuting attorney, the
4 judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that
5 release of the person on the person's personal recognizance or upon the execution of
6 an unsecured appearance bond will not reasonably assure the appearance of the person
7 or will pose a danger to the alleged victim, other persons, c the community.

8 * Sec. 11. AS 12.30.040(b) is amended to read:

9 (b) Notwithstanding the provisions of (a) of this section, a person may not be
10 released on bail either before sentencing or pending appeal if the person has been
11 convicted of an offense that is

12 (1) a capital felony, an unclassified felony, or a class A felony; or

13 (2) a class B or class C felony if the person has been previously
14 convicted of an offense in this state that is a capital felony, an unclassified felony, a
15 class A felony, or a violation of AS 11.41.260, 11.41.420 - 11.41.425, or 11.41.436 -
16 11.41.438 or of an offense in another jurisdiction with elements substantially similar
17 to an offense of this state described in this paragraph.

18 * Sec. 12. AS 12.47.110(b) is amended to read:

19 (b) On or before the expiration of the initial 90-day period of commitment, the
20 court shall conduct a hearing to determine whether or not the defendant remains
21 incompetent. If the court finds by a preponderance of the evidence that the defendant
22 remains incompetent, the court may recommit the defendant for a second period of 90
23 days. The court shall determine at the expiration of the second 90-day period whether
24 the defendant has become competent. If at the expiration of the second 90-day period
25 the court determines that the defendant continues to be incompetent to stand trial, the
26 charges against the defendant shall be dismissed without prejudice and continued
27 commitment of the defendant shall be governed by the provisions relating to civil
28 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a
29 crime involving force against a person and the court finds that the defendant presents a
30 substantial danger of physical injury to other persons and that there is a substantial
31 probability that the defendant will regain competency within a reasonable period of

1 time, in which case the court may extend the period of commitment for an additional
 2 six months. If the defendant remains incompetent at the expiration of the additional
 3 six-month period, the charges shall be dismissed without prejudice and either civil
 4 commitment proceedings shall be instituted or the court shall order the release of the
 5 defendant. If the defendant remains incompetent for five years after the charges have
 6 been dismissed under this subsection, the defendant may not be charged again for an
 7 offense arising out of the facts alleged in the original charges, except if the original
 8 charge is a class A felony, an [OR] unclassified felony, or a capital felony.

9 * Sec. 13. AS 12.55.025(i) is amended to read:

10 (i) Except as provided by AS 12.55.125(a)(3), 12.55.145(d), 12.55.155(t), and
 11 12.55.165, or in determining if a sentence of death should be imposed under
 12 AS 12.58, the preponderance of the evidence standard of proof applies to sentencing
 13 proceedings.

14 * Sec. 14. AS 12.55.125(a) is amended to read:

15 (a) A defendant convicted of murder in the first degree or murder of an unborn
 16 child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment
 17 of at least 20 years but not more than 99 years, or shall be sentenced to death. A
 18 defendant convicted of murder in the first degree, but not sentenced to death, shall
 19 be sentenced to a mandatory term of imprisonment of 99 years when

20 (1) the defendant is convicted of the murder of a uniformed or
 21 otherwise clearly identified peace officer, fire fighter, or correctional employee who
 22 was engaged in the performance of official duties at the time of the murder;

23 (2) the defendant has been previously convicted of

24 (A) murder in the first degree under AS 11.41.100 or former
 25 AS 11.15.010 or 11.15.020;

26 (B) murder in the second degree under AS 11.41.110 or former
 27 AS 11.15.030; or

28 (C) homicide under the laws of another jurisdiction when the
 29 offense of which the defendant was convicted contains elements similar to first
 30 degree murder under AS 11.41.100 or second degree murder under
 31 AS 11.41.110;

1 (3) the court finds by clear and convincing evidence that the defendant
2 subjected the murder victim to substantial physical torture;

3 (4) the defendant is convicted of the murder of and personally caused
4 the death of a person, other than a participant, during a robbery; or

5 (5) the court finds by clear and convincing evidence that the defendant
6 is a peace officer who used the officer's authority as a peace officer to facilitate the
7 murder.

8 * Sec. 15. AS 12.55.125(f) is amended to read:

9 (f) If a defendant is sentenced under (a) or (b) of this section,

10 (1) imprisonment for the prescribed minimum or mandatory term may
11 not be suspended under AS 12.55.080;

12 (2) imposition of sentence may not be suspended under AS 12.55.085;

13 (3) imprisonment for the prescribed minimum or mandatory term may
14 not be reduced, except as provided in (j) of this section;

15 **(4) a sentence of death may not be suspended under AS 12.55.080.**

16 * Sec. 16. AS 12.55.125(i) is amended to read:

17 (i) A defendant convicted of

18 (1) sexual assault in the first degree, sexual abuse of a minor in the
19 first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2)
20 may be sentenced to a definite term of imprisonment of not more than 99 years and
21 shall be sentenced to a definite term within the following presumptive ranges, subject
22 to adjustment as provided in AS 12.55.155 - 12.55.175 **or to death:**

23 (A) if the offense is a first felony conviction, the offense does
24 not involve circumstances described in (B) of this paragraph, and the victim
25 was

26 (i) less than 13 years of age, 25 to 35 years;

27 (ii) 13 years of age or older, 20 to 30 years;

28 (B) if the offense is a first felony conviction and the defendant
29 possessed a firearm, used a dangerous instrument, or caused serious physical
30 injury during the commission of the offense, 25 to 35 years;

31 (C) if the offense is a second felony conviction and does not

1 involve circumstances described in (D) of this paragraph, 30 to 40 years;

2 (D) if the offense is a second felony conviction and the
3 defendant has a prior conviction for a sexual felony, 35 to 45 years unless the
4 defendant is sentenced to death;

5 (E) if the offense is a third felony conviction and the defendant
6 is not subject to sentencing under (F) of this paragraph or (I) of this section, 40
7 to 60 years;

8 (F) if the offense is a third felony conviction, the defendant is
9 not subject to sentencing under (I) of this section, and the defendant has two
10 prior convictions for sexual felonies, 99 years unless the defendant is
11 sentenced to death;

12 (2) attempt, conspiracy, or solicitation to commit sexual assault in the
13 first degree, sexual abuse of a minor in the first degree, or promoting prostitution in
14 the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of
15 imprisonment of not more than 99 years and shall be sentenced to a definite term
16 within the following presumptive ranges, subject to adjustment as provided in
17 AS 12.55.155 - 12.55.175:

18 (A) if the offense is a first felony conviction, the offense does
19 not involve circumstances described in (B) of this paragraph, and the victim
20 was

21 (i) under 13 years of age, 20 to 30 years;

22 (ii) 13 years of age or older, 15 to 30 years;

23 (B) if the offense is a first felony conviction and the defendant
24 possessed a firearm, used a dangerous instrument, or caused serious physical
25 injury during the commission of the offense, 25 to 35 years;

26 (C) if the offense is a second felony conviction and does not
27 involve circumstances described in (D) of this paragraph, 25 to 35 years;

28 (D) if the offense is a second felony conviction and the
29 defendant has a prior conviction for a sexual felony, 30 to 40 years;

30 (E) if the offense is a third felony conviction, the offense does
31 not involve circumstances described in (F) of this paragraph, and the defendant

1 is not subject to sentencing under (D) of this section. 35 to 50 years;

2 (F) if the offense is a third felony conviction, the defendant is
3 not subject to sentencing under (I) of this section, and the defendant has two
4 prior convictions for sexual felonies, 99 years;

5 (3) sexual assault in the second degree, sexual abuse of a minor in the
6 second degree, unlawful exploitation of a minor, or distribution of child pornography
7 may be sentenced to a definite term of imprisonment of not more than 99 years and
8 shall be sentenced to a definite term within the following presumptive ranges, subject
9 to adjustment as provided in AS 12.55.155 - 12.55.175:

10 (A) if the offense is a first felony conviction, five to 15 years;

11 (B) if the offense is a second felony conviction and does not
12 involve circumstances described in (C) of this paragraph, 10 to 25 years;

13 (C) if the offense is a second felony conviction and the
14 defendant has a prior conviction for a sexual felony, 15 to 30 years;

15 (D) if the offense is a third felony conviction and does not
16 involve circumstances described in (E) of this paragraph, 20 to 35 years;

17 (E) if the offense is a third felony conviction and the defendant
18 has two prior convictions for sexual felonies, 99 years;

19 (4) sexual assault in the third degree, incest, indecent exposure in the
20 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to
21 commit sexual assault in the second degree, sexual abuse of a minor in the second
22 degree, unlawful exploitation of a minor, or distribution of child pornography, may be
23 sentenced to a definite term of imprisonment of not more than 99 years and shall be
24 sentenced to a definite term within the following presumptive ranges, subject to
25 adjustment as provided in AS 12.55.155 - 12.55.175:

26 (A) if the offense is a first felony conviction, two to 12 years;

27 (B) if the offense is a second felony conviction and does not
28 involve circumstances described in (C) of this paragraph, eight to 15 years;

29 (C) if the offense is a second felony conviction and the
30 defendant has a prior conviction for a sexual felony, 12 to 20 years;

31 (D) if the offense is a third felony conviction and does not

1 involve circumstances described in (E) of this paragraph, 15 to 25 years;

2 (E) if the offense is a third felony conviction and the defendant
3 has two prior convictions for sexual felonies, 99 years.

4 * Sec. 17. AS 12.55.125(f) is amended to read:

5 (f) Notwithstanding any other provision of law, a defendant convicted of a
6 capital, an unclassified, or a class A felony offense, and not sentenced to death or
7 subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to
8 a definite term of imprisonment of 99 years when the defendant has been previously
9 convicted of two or more most serious felonies. If a defendant is sentenced to a
10 definite term under this subsection,

11 (1) imprisonment for the prescribed definite term may not be
12 suspended under AS 12.55.080;

13 (2) imposition of sentence may not be suspended under AS 12.55.085;

14 (3) imprisonment for the prescribed definite term may not be reduced,
15 except as provided in (j) of this section.

16 * Sec. 18. AS 12.55.145(a) is amended to read:

17 (a) For purposes of considering prior convictions in imposing sentence under

18 (1) AS 12.55.125(c), (d), or (e),

19 (A) a prior conviction may not be considered if a period of 10
20 or more years has elapsed between the date of the defendant's unconditional
21 discharge on the immediately preceding offense and commission of the present
22 offense unless the prior conviction was for a capital, an unclassified, or a class
23 A felony;

24 (B) a conviction in this or another jurisdiction of an offense
25 having elements similar to those of a felony defined as such under Alaska law
26 at the time the offense was committed is considered a prior felony conviction;

27 (C) two or more convictions arising out of a single, continuous
28 criminal episode during which there was no substantial change in the nature of
29 the criminal objective are considered a single conviction unless the defendant
30 was sentenced to consecutive sentences for the crimes; offenses committed
31 while attempting to escape or avoid detection or apprehension after the

1 commission of another offense are not part of the same criminal episode or
2 objective;

3 (2) AS 12.55.125(l),

4 (A) a conviction in this or another jurisdiction of an offense
5 having elements similar to those of a most serious felony is considered a prior
6 most serious felony conviction;

7 (B) commission of and conviction for offenses relied on as
8 prior most serious felony offenses must occur in the following order:
9 conviction for the first offense must occur before commission of the second
10 offense, and conviction for the second offense must occur before commission
11 of the offense for which the defendant is being sentenced;

12 (3) AS 12.55.135(g),

13 (A) a prior conviction may not be considered if a period of five
14 or more years has elapsed between the date of the defendant's unconditional
15 discharge on the immediately preceding offense and commission of the present
16 offense unless the prior conviction was for a capital, an unclassified, or a class
17 A felony;

18 (B) a conviction in this or another jurisdiction of an offense
19 having elements similar to those of a crime against a person or a crime
20 involving domestic violence is considered a prior conviction;

21 (C) two or more convictions arising out of a single, continuous
22 criminal episode during which there was no substantial change in the nature of
23 the criminal objective are considered a single conviction unless the defendant
24 was sentenced to consecutive sentences for the crimes; offenses committed
25 while attempting to escape or avoid detection or apprehension after the
26 commission of another offense are not part of the same criminal episode or
27 objective;

28 (4) AS 12.55.125(i),

29 (A) a conviction in this or another jurisdiction of an offense
30 having elements similar to those of a sexual felony is a prior conviction for a
31 sexual felony;

1 (B) a felony conviction in another jurisdiction making it a
2 crime to commit any lewd and lascivious act upon a child under the age of 16
3 years, with the intent of arousing, appealing to, or gratifying the sexual desires
4 of the defendant or the victim is a prior conviction for a sexual felony;

5 (C) two or more convictions arising out of a single, continuous
6 criminal episode during which there was no substantial change in the nature of
7 the criminal objective are considered a single conviction unless the defendant
8 was sentenced to consecutive sentences for the crimes; offenses committed
9 while attempting to escape or avoid detection or apprehension after the
10 commission of another offense are not part of the same criminal episode or
11 objective.

12 * Sec. 19. AS 12.55.155(f) is amended to read:

13 (f) Under this section, if [IF] the state seeks to establish a factor in
14 aggravation at sentencing

15 (1) under (c)(7), (8), (12), (15), (19), (20), (21), or (31) of this section,
16 or if the defendant seeks to establish a factor in mitigation at sentencing, written notice
17 must be served on the opposing party and filed with the court not later than 10 days
18 before the date set for imposition of sentence; the factors in aggravation listed in this
19 paragraph and factors in mitigation must be established by clear and convincing
20 evidence before the court sitting without a jury; all findings must be set out with
21 specificity;

22 (2) other than one listed in (1) of this subsection, the factor shall be
23 presented to a trial jury under procedures set by the court, unless the defendant waives
24 trial by jury, stipulates to the existence of the factor, or consents to have the factor
25 proven under procedures set out in (1) of this subsection; a factor in aggravation
26 presented to a jury is established if proved beyond a reasonable doubt; written notice
27 of the intent to establish a factor in aggravation must be served on the defendant and
28 filed with the court

29 (A) 20 days before trial, or at another time specified by the
30 court;

31 (B) within 48 hours, or at a time specified by the court, if the

1 court instructs the jury about the option to return a verdict for a lesser included
2 offense; or

3 (C) five days before entering a plea that results in a finding of
4 guilt, or at another time specified by the court.

5 * Sec. 20. AS 12.55.185(10) is amended to read:

6 (10) "most serious felony" means

7 (A) arson in the first degree, promoting prostitution in the first
8 degree under AS 11.66.110(a)(2), or any capital, unclassified, or a class A
9 felony prescribed under AS 11.41; or

10 (B) an attempt, or conspiracy to commit, or criminal
11 solicitation under AS 11.31.110 of, a capital or an unclassified felony
12 prescribed under AS 11.41;

13 * Sec. 21. AS 12 is amended by adding a new chapter to read:

14 **Chapter 58. Capital Punishment.**

15 **Article 1. Imposition of Sentence.**

16 **Sec. 12.58.010. Sentencing procedure for a capital felony.** (a) If, after a trial
17 by jury, a defendant is convicted of a capital felony, the court shall conduct a separate
18 sentencing proceeding before the trial jury as soon as practicable. If a jury trial has
19 been waived or if the defendant has pled guilty, the sentencing proceeding shall be
20 held before a jury impaneled for the purpose.

21 (b) During the sentencing proceeding, evidence may be presented as to any
22 aggravating or mitigating factor that the court considers to have probative value,
23 regardless of the admissibility of the evidence under the rules of evidence. The
24 defendant shall have an opportunity to rebut hearsay evidence that is admitted. The
25 state and the defendant or the defendant's counsel shall be permitted to present oral
26 statements. This subsection does not authorize the introduction of evidence in
27 violation of the Constitution of the State of Alaska or the Constitution of the United
28 States.

29 (c) After hearing the evidence, the jury shall deliberate and recommend a
30 sentence to the court. The recommended sentence must include written findings of
31 whether the jury unanimously finds

1 (1) beyond a reasonable doubt that an aggravating factor or factors
2 exist to justify the death sentence;

3 (2) beyond a reasonable doubt that the aggravating factor or factors
4 outweigh any mitigating factors found to exist by a preponderance of the evidence;
5 and

6 (3) that the defendant should be sentenced to death.

7 **Sec. 12.58.020. Sentence imposition for capital felony.** (a) After considering
8 the evidence and the recommended sentence, the court shall enter a sentence of death
9 or a term of imprisonment in accordance with AS 12.55.125(a). The court may not
10 impose the death sentence unless the jury (1) finds beyond a reasonable doubt at least
11 one aggravating factor, (2) finds by a preponderance of the evidence that that factor or
12 those factors are not outweighed by any mitigating factors found to exist by a
13 preponderance of the evidence, and (3) recommends that the defendant be sentenced to
14 death. If the jury findings include an aggravating factor or factors that are not
15 outweighed by one or more of the mitigating factors and if the jury recommends a
16 sentence of death, the court shall sentence the defendant to death. If a sentence of
17 death is not recommended by the jury, the court shall sentence the defendant to a term
18 of imprisonment under AS 12.55.125(a).

19 (b) When the court enters a sentence of death, it shall state in writing the jury's
20 findings of

21 (1) aggravating factors that exist to justify the sentence; and

22 (2) mitigating factors considered but found insufficient to outweigh the
23 aggravating factors.

24 (c) A judgment of conviction for which a sentence of death is imposed is
25 subject to automatic review under AS 12.58.100.

26 **Sec. 12.58.030. Aggravating factors.** In determining whether to impose a
27 sentence of death, the following aggravating factors may be considered:

28 (1) the defendant's conduct caused the death of a child under 18 years
29 of age, the defendant, at the time of the offense, was at least two years older than the
30 child, and the defendant

31 (A) was kidnapping, assaulting, or sexually assaulting, or was

1 attempting to kidnap, assault, or sexually assault, the child; or

2 (B) had kidnapped, assaulted, or sexually assaulted the child; or

3 (2) the defendant sexually assaulted a child under 12 years of age and
4 the defendant has previously been convicted in this or another jurisdiction of sexual
5 assault or sexual abuse of a minor and the victim of the previous offense was less than
6 12 years of age.

7 **Sec. 12.58.040. Mitigating factors.** In determining whether to impose the
8 death sentence, all mitigating factors shall be considered, including, but not limited to,
9 the following:

10 (1) the defendant committed the offense under a degree of duress,
11 coercion, threat, or compulsion that was insufficient to constitute a defense but that
12 significantly affected the defendant's conduct;

13 (2) the conduct of a youthful defendant was substantially influenced by
14 a person more mature than the defendant;

15 (3) the defendant acted with serious provocation from the victim;

16 (4) the defendant assisted authorities to detect or apprehend other
17 persons who committed the offense with the defendant.

18 **Article 2. Sentence Review.**

19 **Sec. 12.58.100. Review of judgment of conviction of a capital felony.** (a) A
20 judgment of conviction of a capital felony for which a sentence of death is imposed
21 shall automatically be reviewed by the supreme court within 60 days after imposition
22 of the sentence. This time limit may be extended by the supreme court for good cause.
23 (b) A review under this section has priority over all other cases and the case shall be
24 heard in accordance with rules adopted by the supreme court. On review, the court
25 shall determine whether

26 (1) the sentence was imposed under the influence of passion, prejudice,
27 or other arbitrary factor;

28 (2) the evidence supports the finding of an aggravating factor under
29 AS 12.58.030 and whether the jury has properly considered mitigating factors under
30 AS 12.58.040;

31 (3) the sentence is excessive or disproportionate to the penalty imposed

1 in similar cases, considering both the crime and the defendant; and

2 (4) any other issue that the defendant may raise as a point on appeal.

3 (c) In its consideration of an automatic appeal under (a) and (b) of this section,
4 the supreme court

5 (1) may not require the defendant to file a notice of appeal unless the
6 defendant raises an issue as a point on appeal under (b)(4) of this section;

7 (2) may not require the defendant to pay a fee;

8 (3) shall designate the entire record of the proceedings before the
9 sentencing court as the record on appeal;

10 (4) shall prepare the transcript of the proceedings for the record on
11 appeal at public expense; and

12 (5) may not require the defendant to submit and file a brief unless the
13 defendant raises an issue as a point on appeal under (b)(4) of this section.

14 **Sec. 12.58.110. Issuance of death warrant.** If the supreme court upholds a
15 judgment of conviction and sentence of death, the court shall issue a death warrant that
16 specifies a date of execution. The specified date of execution must be not less than 30
17 days nor more than 60 days after the date of the warrant. The death warrant shall be
18 delivered to the commissioner of corrections.

19 **Article 3. Administration of the Death Penalty.**

20 **Sec. 12.58.200. Administration of the death penalty.** The commissioner shall
21 establish a procedure for the execution of a sentence of death ordered by the state
22 supreme court at the time and place legally appointed.

23 **Sec. 12.58.210. Execution under supreme court death warrant.** After
24 receiving a supreme court warrant issued under AS 12.58.110, the commissioner shall
25 specify the time and place of execution.

26 **Sec. 12.58.220. Manner of execution.** (a) The punishment of death shall be
27 inflicted by continuous, intravenous administration of a lethal dose of sodium
28 thiopental until death is pronounced by a licensed physician.

29 (b) A death sentence shall be carried out within a state correctional facility.

30 **Sec. 12.58.230. Return of death warrant.** After the execution, the
31 commissioner shall make a return upon the death warrant showing the time and place

1 in which the defendant was executed.

2 **Article 4. Stay of Execution.**

3 **Sec. 12.58.300. Incompetency or pregnancy of person sentenced to death.**

4 If, after a sentence of death is imposed, the commissioner has reason to believe that
5 the defendant has become incompetent to proceed with the execution or that the
6 defendant is pregnant, the commissioner shall immediately give written notice to the
7 court in which the sentence of death was imposed, the prosecuting attorney, and
8 counsel for the defendant. The execution of sentence shall be stayed pending further
9 order of the court.

10 **Sec. 12.58.310. Examination into competency.** (a) On receipt of notice under
11 AS 12.58.300 that the defendant is believed to be incompetent, the sentencing court
12 shall examine the mental condition of the defendant in the same manner as provided
13 for examining persons for competency to stand trial under AS 12.47.070.

14 (b) If the sentencing court finds that the defendant is incompetent, the court
15 shall immediately certify that finding to the supreme court and the commissioner and
16 shall enter an order for commitment in the same manner as provided for commitment
17 under AS 12.47.110.

18 (c) If the sentencing court finds that the defendant is competent, the court shall
19 immediately certify the finding to the supreme court and the commissioner. The
20 supreme court shall issue and deliver another warrant to the commissioner under
21 AS 12.58.110, together with a copy of the certified finding. Unless the sentencing
22 court's finding is appealed in accordance with applicable court rule, the warrant shall
23 specify a date of execution that is not less than 30 days nor more than 60 days after the
24 date of the warrant.

25 **Sec. 12.58.320. Disposition pending pregnancy.** (a) If the defendant is
26 pregnant, the sentencing court shall immediately certify that finding to the supreme
27 court and the commissioner. The supreme court shall issue an order staying the
28 execution of the sentence of death during the pregnancy.

29 (b) When the defendant is no longer pregnant, the sentencing court shall
30 immediately certify the finding to the supreme court and the commissioner. The
31 supreme court shall issue and deliver another warrant under AS 12.58.110, together

1 with a copy of the certified finding. Unless the sentencing court's finding is appealed
 2 under applicable court rule, the warrant shall specify a date of execution not less than
 3 30 days nor more than 60 days after the date of the warrant.

4 **Article 5. General Provisions.**

5 **Sec. 12.58.900. Definitions.** In this chapter,

- 6 (1) "commissioner" means the commissioner of corrections;
 7 (2) "department" means the Department of Corrections."
 8

9 Renumber the following bill sections accordingly.

10
 11 Page 4, following line 1:

12 Insert new bill sections to read:

13 *** Sec. 25.** AS 22.07.020(a) is amended to read:

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

16 (1) criminal prosecution, except prosecution for a capital felony for
 17 which a death sentence is imposed;

18 (2) post-conviction relief;

19 (3) matters under AS 47.12, including waiver of jurisdiction over a
 20 minor under AS 47.12.100;

21 (4) extradition;

22 (5) habeas corpus;

23 (6) probation and parole; and

24 (7) bail.

25 *** Sec. 26.** AS 22.07.020(b) is amended to read:

26 (b) Except as limited in AS 12.55.120 and in this subsection, the court of
 27 appeals has jurisdiction to hear appeals of unsuspended sentences of imprisonment
 28 exceeding two years for a felony offense or 120 days for a misdemeanor offense
 29 imposed by the superior court on the grounds that the sentence is excessive, or a
 30 sentence of any length on the grounds that it is too lenient. The court of appeals, in the
 31 exercise of this jurisdiction, may modify the sentence as provided by law and the state

1 constitution. The court of appeals does not have jurisdiction to hear appeals of
2 death sentences.

3 * Sec. 27. AS 47.12.030(a) is amended to read:

4 (a) When a minor who was at least 16 years of age at the time of the offense is
5 charged by complaint, information, or indictment with an offense specified in this
6 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense
7 for which the minor is charged or to any additional offenses joinable to it under the
8 applicable rules of court governing criminal procedure. The minor shall be charged,
9 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as
10 an adult. If the minor is convicted of an offense other than an offense specified in this
11 subsection, the minor may attempt to prove, by a preponderance of the evidence, that
12 the minor is amenable to treatment under this chapter. If the court finds that the minor
13 is amenable to treatment under this chapter, the minor shall be treated as though the
14 charges had been heard under this chapter, and the court shall order disposition of the
15 charges of which the minor is convicted under AS 47.12.120(b). The provisions of this
16 subsection apply when the minor is charged by complaint, information, or indictment
17 with an offense

18 (1) that is a capital felony, an unclassified felony, or a class A felony
19 and the felony is a crime against a person;

20 (2) of arson in the first degree;

21 (3) that is a class B felony and the felony is a crime against a person in
22 which the minor is alleged to have used a deadly weapon in the commission of the
23 offense and the minor was previously adjudicated as a delinquent or convicted as an
24 adult, in this or another jurisdiction, as a result of an offense that involved use of a
25 deadly weapon in the commission of a crime against a person or an offense in another
26 jurisdiction having elements substantially identical to those of a crime against a
27 person, and the previous offense was punishable as a felony; in this paragraph, "deadly
28 weapon" has the meaning given in AS 11.81.900(b); or

29 (4) that is misconduct involving weapons in the first degree under

30 (A) AS 11.61.190(a)(1); or

31 (B) AS 11.61.190(a)(2) when the firearm was discharged under

1 circumstances manifesting substantial and unjustifiable risk of physical injury
2 to a person.

3 * Sec. 28. AS 47.12.100(c) is amended to read:

4 (c) For purposes of making a determination under this section,

5 (1) the standard of proof is by a preponderance of the evidence; and

6 (2) the burden of proof that a minor is not amenable to treatment under
7 this chapter is on the state; however, if the petition filed under AS 47.12.040 seeking
8 to have the court declare a minor a delinquent is based on the minor's alleged
9 commission of an offense that is a capital felony, an unclassified felony, or a class A
10 felony and that is a crime against a person, the minor

11 (A) is rebuttably presumed not to be amenable to treatment
12 under this chapter; and

13 (B) has the burden of proof of showing that the minor is
14 amenable to treatment under this chapter.

15 * Sec. 29. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 APPLICABILITY TO CRIMINAL RULES. AS 12.58, added by sec. 21 of this Act,
18 has the effect of modifying the sentencing provisions of Rules 32, 32.1, and 32.3, Alaska
19 Rules of Criminal Procedure, by establishing exclusive procedures for imposition of death
20 sentence by a trial court and by authorizing automatic appeal of those sentences to the Alaska
21 Supreme Court.

22 * Sec. 30. The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 APPLICABILITY TO APPELLATE RULES. AS 12.58.100, added by sec. 21 of this
25 Act, has the effect of amending Rules 204, 209, 210, and 212, Alaska Rules of Appellate
26 Procedure, by establishing procedures and limitations on procedures relating to the filing and
27 disposition of appeals of sentences in cases in which the death penalty is imposed."

28

29 Renumber the following bill sections accordingly.

30

31 Page 4, line 4:

- 1 Delete "This Act applies"
- 2 Insert "Sections 9 and 22 - 24 of this Act apply"
- 3
- 4 Page 4, line 8:
- 5 Delete "sec. 1"
- 6 Insert "sec. 9"
- 7
- 8 Page 4, line 9:
- 9 Delete "sec. 3"
- 10 Insert "sec. 23"

#5 Adopted

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE CHENAULT

TO: HCS CS SB 185(FIN), Version 25-LS0985VL

- 1 Page 2, line 6
- 2 Delete "shal!"
- 3 Insert "may"
- 4
- 5 Page 2, line 7
- 6 After "AS 11.41.410"
- 7 Insert "or AS 11.41.434"
- 8
- 9 Page 2, line 8
- 10 Delete "14"
- 11 Insert "13"
- 12
- 13
- 14
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Grava Amend to FAIBS
Amend
leave @ 14
(delete 9-11)
11

Adopted

AMENDMENT

5

OFFERED IN THE HOUSE

BY REPRESENTATIVE CHENAULT

TO: HCS CS SB 185(FIN), Version 25-LS0985L

- 1 Page 2, line 6
- 2 Delete "shall"
- 3 Insert "may"
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- 9 Page 2, line 8
- 10 Delete "14"
- 11 Insert "13"
- 12
- 13
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3

Adopted

25-LS0985L
Luckhaupt
4/8/08

HOUSE CS FOR CS FOR SENATE BILL NO. 185(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS WIELECHOWSKI, Ellis, Elton, McGuire, Dyson, Olson, French
REPRESENTATIVE Doll

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the central registry of sex offenders and child kidnappers, to
2 penalties for certain sex offenders, and to the registration requirements for sex offenders
3 and child kidnappers; and providing for an effective date."

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

5 * Section 1. AS 11.56.840(a) is repealed and reenacted to read:

6 (a) A person commits the crime of failure to register as a sex offender or child
7 kidnapper in the second degree if the person fails, as required by AS 12.63.010, to

8 (1) register;

9 (2) file written notice of

10 (A) change of residence;

11 (B) change of mailing address;

12 (C) establishment of an electronic or messaging address or any
13 change to an electronic or messaging address; or

14 (D) establishment of an Internet communication identifier or

- 1 any change to an Internet communication identifier;
2 (3) file the annual or quarterly written verification; or
3 (4) supply accurate and complete information required to be submitted
4 under (1) - (3) of this subsection.

5 * Sec. 2. AS 12.55.015 is amended by adding a new subsection to read:

6 (j) In addition to penalties authorized by this section, the court shall order a
7 defendant convicted of a violation of AS 11.41.410 where the victim of the offense
8 was under 14 years of age to be subject to electronic monitoring up to the maximum
9 length of probation on the person's release from a correctional facility.

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

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

17 (1) complete a registration form that includes, at a minimum,

18 (A) the sex offender's or child kidnapper's name, address, place
19 of employment, and date of birth;

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

29 (C) all aliases used;

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

1 (E) the description, license numbers, and vehicle identification
2 numbers of motor vehicles the sex offender or child kidnapper has access to,
3 regardless of whether that access is regular or not;

4 (F) any identifying features of the sex offender or child
5 kidnapper;

6 (G) anticipated changes of address; [AND]

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

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

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 and to take the sex offender's or child kidnapper's photograph.

16 * Sec. 4. AS 12.63.010(c) is amended to read:

17 (c) If a sex offender or child kidnapper changes residence after having
18 registered under (a) of this section, the sex offender or child kidnapper shall provide
19 written notice of the change by the next working day following the change to the
20 Alaska state trooper post or municipal police department located nearest to the new
21 residence or, if the residence change is out of state, to the central registry. If a sex
22 offender or child kidnapper establishes or changes an electronic mail address,
23 instant messaging address, or other Internet communication identifier, the sex
24 offender or child kidnapper shall, by the next working day, notify the department
25 in writing of the changed or new address or identifier.

26 * Sec. 5. AS 18.65.087 is amended by adding a new subsection to read:

27 (i) Notwithstanding (b) of this section, the department may provide a method
28 for, or may participate in a federal program that allows, the public to submit an
29 electronic or messaging address or Internet identifier and receive a confirmation of
30 whether the address or identifier has been registered by a registered sex offender or
31 child kidnapper.

1 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 APPLICABILITY. (a) Sections 1 and 3 - 5 of this Act apply to persons convicted of
4 sex offenses or child kidnapping before, on, or after the effective date of this Act whose duty
5 to register as a sex offender or child kidnapper has not expired under AS 12.63.010(d)(1) on
6 the effective date of this Act.

7 (b) Section 2 of this Act applies to persons convicted of offenses committed on or
8 after the effective date of this Act.

9 (c) Notwithstanding AS 11.56.840(a), repealed and reenacted by sec. 1 of this Act,
10 and AS 12.63.010(c), amended by sec. 4 of this Act, a sex offender or child kidnapper whose
11 duty to register as a sex offender or child kidnapper arose

12 (1) on or before December 31, 2008, does not have to initially report
13 electronic or messaging addresses or Internet communication identifiers to the Department of
14 Public Safety until the date that the sex offender or child kidnapper's next annual, or quarterly
15 if applicable, written verification is due; after the initial report of addresses and identifiers is
16 due, the sex offender or child kidnapper shall report the establishment of an electronic or
17 messaging address, or any changes to those addresses, or the establishment of an Internet
18 communication identifier, or any change to an identifier, as required by AS 11.56.840 and
19 AS 12.63.010;

20 (2) on or after January 1, 2009, shall report electronic or messaging addresses
21 or Internet communication identifiers, and changes to addresses and identifiers, to the
22 Department of Public Safety as required by AS 12.63.010.

23 * Sec. 7. This Act takes effect January 1, 2009.

4/7/08

years
rescued

woman who is allegedly mentally deficient, 31 ALR3d 1227.

Consent as defense in prosecution for sodomy, 58 ALR3d 636.

Multiple instances of forcible intercourse involving same defendant and same victim as constituting multiple crimes of rape, 81 ALR3d 1228.

What constitutes offense of "sexual battery," 87 ALR3d 1250.

Constitutionality of rape laws limited to protection of females only, 99 ALR3d 129.

Validity and construction of statute defining crime of rape to include activity traditionally punishable as sodomy or the like, 3 ALR4th 1009.

Liability of parent for injury to unemancipated child caused by parent's negligence — modern cases, 6 ALR4th 1066.

Entrapment defense in sex offense prosecutions, 12 ALR4th 413.

Validity of sodomy statute, 20 ALR4th 1009.

Criminal responsibility of husband for rape, or assault to commit rape, on wife, 24 ALR4th 105.

Necessity for corroboration of victim's testimony in prosecution for sexual offense, 31 ALR4th 120.

Admissibility of expert testimony on rape trauma syndrome, 42 ALR4th 879.

Mental examination to determine competency or credibility of complainant in sexual offense prosecution, 45 ALR4th 310.

Conviction of rape or related sexual offenses on basis of intercourse accomplished under the pretext of or in the course of medical treatment, 65 ALR4th 1064.

Seizure or detention for purpose of committing rape, robbery, or similar offense as constituting separate crime of kidnapping, 39 ALR5th 283.

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Alaska

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Sec. 11.41.410. Sexual assault in the first degree. (a) A person commits the crime of sexual assault in the first degree if

(1) the offender engages in sexual penetration with another person without consent of that person;

(2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) the offender engages in sexual penetration with another person

(A) who the offender knows is mentally incapable; and

(B) who is in the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the state; or

(4) the offender engages in sexual penetration with a person who the offender knows

is unaware that a sexual act is being committed and

(A) the offender is a health care worker; and

(B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55, (§ 3 ch 166 SLA 1978; am § 8 ch 102 SLA 1980; am § 6 ch 143 SLA 1982; am § 10 ch 78 SLA 1983; am § 1 ch 96 SLA 1988; am § 7 ch 3 SLA 1990; am § 5 ch 79 SLA 1992; am § 3 ch 30 SLA 1996; am § 1 ch 61 SLA 1996)

Cross references. — For evidence of past sexual contact in trials of sexual assault in any degree or attempt to commit sexual assault in any degree, see AS 12.65.045.

Editor's notes. — From May 16 through September 8, 1998, The Department of Administration under AS 47.23 or by the Department of Health and Social Services* appeared where "the state" may appear in this section.

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 41, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

For legislative letter of intent relating to the amendments to this section by ch. 96, SLA 1988 (CSSB 545 Judiciary), see 1988 House Journal 3065.

NOTES TO DECISIONS

- 1. General Consideration.
- 2. Former Law
 - A. Generally
 - B. Age of Consent
 - C. Penetration

I. GENERAL CONSIDERATION.

History of first-degree sexual assault statute. See Reynolds's State, 661 P.2d 631 (Alaska Ct. App. 1983).

Constitutionality. — In order to prove a violation of AS 11.41.410(a)(1), the state must prove that the defendant knowingly engaged in sexual intercourse and recklessly disregarded the victim's lack of consent. Construed in this way, the statute does not

DAFF 127

ALASKA STATE LEGISLATURE

Session
State Capitol, Rm. 115
Juneau, AK 99801
(907) 465-2435
Fax: (907) 465-6615

Interim
716 W. 4th Ave, Ste. 540
Anchorage, AK 99501
(907) 269-0120
Fax: (907) 269-0122



Co-chair
Joint Armed Services Committee

Member
Resources Committee
Judiciary Committee
Transportation Committee

Senator_Bill_Wielechowski@legis.state.ak.us

SENATOR BILL WIELECHOWSKI

Senate Bill 185

"An Act relating to sex offenders and child kidnappers."

Sponsor Statement

Senate Bill 185 will help prevent online sexual predators from preying on children or anyone else by requiring convicted sex offenders and child kidnappers to register their e-mail addresses, instant messaging addresses and any other internet communication identifiers with the Alaska Department of Public Safety. Currently sex offenders in Alaska must register their home address and place of employment with the Department's publicly searchable online database. This would be another category of information to be added to that database. Requiring sex offenders to register their online identities gives parents, kids, and law enforcement a new and effective weapon to repel internet predators.

In the future, data generated under this bill may be used by internet service providers and internet security firms to prevent children from receiving messages from convicted sex offenders or warn parents of the sender's status. In order for these services to be developed, states must take the first step and make the data available.

The internet will likely never be a completely safe place, and parents need to take an active role in making sure their children use the internet responsibly. SB 185 merely gives us a new tool we can use to help protect our selves and our families.

I encourage you to support this legislation.

ALASKA STATE LEGISLATURE

Session
State Capitol, Rm. 115
Juneau, AK 99801
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Fax: (907) 269 0122



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The internet will likely never be a completely safe place, and parents need to take an active role in making sure their children use the internet responsibly. SB 185 merely gives us a new tool we can use to help protect our selves and our families.

I encourage you to support this legislation.

Representative Kevin Meyer
April 8, 2008
Page 2

Finally, as a bit of reference to the committee, the maximum period of probation for a felony sex offense is 25 years³ with a mandatory period of probation of 15 years⁴ for an unclassified felony sex offense,⁵ following the offender's prison term imposed under AS 12.55.125(i). See AS 12.55.125(o).

GPL:ljw
08-214.ljw

Enclosure

³ See AS 12.55.090(c).

⁴ With an additional five year sentence of imprisonment suspended.

⁵ Sexual assault in the first degree, AS 11.41.41, and sexual abuse of a minor in the first degree, AS 11.41.434, are unclassified felony sex offenses.

FAX COVER SHEET

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25-LS1616A
Luckhaupt
3/28/08

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Introduced:

Referred:

A RESOLUTION

1 Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State
2 Legislature, concerning Senate Bill No. 185, relating to the central registry of sex
3 offenders and child kidnappers and to the registration requirements for sex offenders
4 and child kidnappers.

5 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
7 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
8 changes to the title of a bill, are suspended in consideration of Senate Bill No. 185, relating to
9 the central registry of sex offenders and child kidnappers and to the registration requirements
10 for sex offenders and child kidnappers.

ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

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Valdez
Pres. Port of Valdez Chapter

January 24, 2008

Senator Bill Wielechowski
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator Wielechowski:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing SB 185, an act relating to sex offenders and child kidnappers.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 246106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Kelly Shover, Member
Wrangell
Pres. Wrangell Chapter

Scott McCumby, Member
Valdez
Pres. Port of Valdez Chapter

January 24, 2008

Senator Bill Wielechowski
Alaska State Senate
State Capitol
Juneau AK 99801-1182

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Sincerely,

Angella Long
State President

AK Senate Bipartisan Working Group

Cowdery Davis Ellis Elton French Green Hoffman Huggins Kookesh McGulre Olson Today is Jan. 23rd
Thomas Wielechowski Stedman Stevens



Alaska State Legislature



Senator Bill Wielechowski

Press Release • July 19, 2007

CONTACT: Senator.Bill.Wielechowski@legis.state.ak.us • Room 115 Capitol Bldg. • (907) 465-2435

Bill Prefiled for Upcoming Session Would Require Sex Offenders to Register e-mail Addresses

Helps Law Enforcement to Track Predators in Cyberspace

(ANCHORAGE) – A bill to help prevent online sexual predators from preying on children or anyone else is being prepared by Sen. Bill Wielechowski (D – Anchorage) for the 2008 legislative session. The bill requires convicted sexual offenders and child kidnappers to register their e-mail addresses, instant messaging addresses or any other Internet communication identifiers with the Alaska Department of Public Safety.

"The Internet has become a hunting ground for sex offenders and they're preying on our children," said Wielechowski. "Nationwide, one in five children have been sexually solicited online; and Alaska has the highest rate of internet use per capita."

The legislation also requires the sex offender or child kidnapper to notify the department in writing within five days of any changes to their e-mail address or identifier.

Arizona, Kentucky and Virginia already require sex offenders to register their e-mail addresses and at least a dozen other states are considering similar legislation. The popular networking site MySpace.com is on the record supporting this type of legislation.

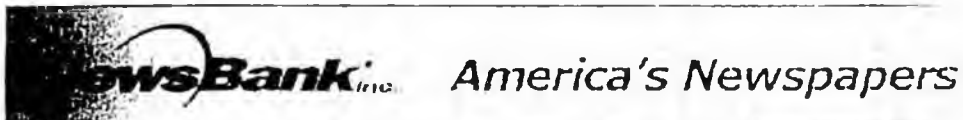
Senator Wielechowski has pre-filed this legislation for the upcoming 2008 session.

For more information, contact Senator Wielechowski at (907) 269-0120.

###

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SEXUAL PREDATORS RIDE THE INTERNET INTO HOMES ACROSS AMERICA

Seattle Post-Intelligencer - May 6, 1997

Author: VANESSA HO, P-I Reporter

When a Federal Way mother posed as a teenager online to catch her son's molester, she also put the spotlight on the problem of sexual predators finding victims on the Internet.

The Internet and online services offer instant access to the world, but authorities say that access has a price: It's an easy way for predators to enter the homes of teens and children, who think nothing of spending hours talking with strangers at their computer keyboards. Through the unreined world of chat rooms, predators lure children with promises of support, money and a new home, experts say. In some cases, they molest them, or exploit them with pornography; in other cases, teens run away to be with them.

"It's a systemic problem, it's very bad, and we in the FBI are taking it very seriously," said Larry Foust, spokesman for the FBI Baltimore division in Maryland, where an Internet-related abduction and murder of a child in 1993 prompted a national investigation into online pedophiles.

Investigators were shocked at how widespread the crimes were, Foust said. "And it was only the tip of the iceberg." So far, the investigation has resulted in 96 arrests for child pornography or for luring a child across state lines for illicit sex. There have been 89 convictions.

Foust said that in one case, two suspects not only lured children through the Internet and then molested them, but also took pictures of them to distribute online.

He said sexual predation on the Internet is worse than on the streets "because you can lock your door and stay inside, and they can still penetrate the sanctity of your house."

Millions of people use the Internet, and most do so with no problems, authorities say. But cases of online crimes serve as a reminders of danger:

In February, a man was arrested in California after communicating with a 13-year-old boy for three months and flying across the country to meet him for a sexual encounter.

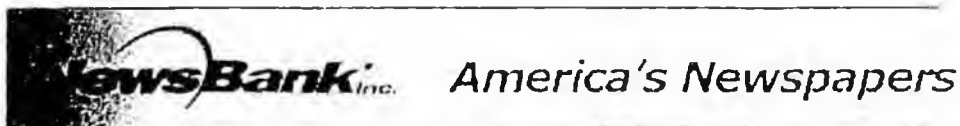
In December, a Connecticut man was arrested after talking online with a 13-year-old girl, sending her indecent material and driving 100 miles to meet her for sex.

Last month, a 14-year-old girl from suburban Rochester, N.Y., returned home after disappearing for four months with a 22-year-old Air Force deserter she met in a chat room devoted to vampire fantasies.

In 1995, Daniel Montgomery, a 15-year-old Maple Valley boy, ran away for two weeks to San Francisco to meet someone he met online.

The growing number of cases also illuminates hurdles facing police agencies, which often lack resources and money to investigate online crimes.

"We see that this is a growing problem, and it's something we'll be dealing with more and more," said Casey Johnson, a detective with the King County police Special Assault Unit. "The problem is money and bodies."



Cyber-stalking

News & Observer, The (Raleigh, NC) - July 30, 2007

Child predators didn't spring up from the fertile soil of the Internet. Physical and sexual abuse of children are age-old problems. But the Internet has brought a whole new aspect to child predation.

Computers in the home are ubiquitous. Kids easily master the machines, and they find the technology inviting. Meanwhile, adults who make it their business to become experts at stalking children have discovered social networking sites that are popular with young people. Using the sites, stalkers can zero in on kids from several states away, in relative anonymity, rather than from the bench near the swing set at the neighborhood park.

If there were any questions about the extent of the problem, good work by state Attorney General Roy Cooper has pried loose an answer. To combat predators, Cooper and attorneys general from several other states asked one of the more popular social sites, MySpace, to reveal the names of sex offenders who use the site. MySpace reluctantly complied in May, reporting about 7,000 offenders across the country on the site (245 of them were sex offenders registered in North Carolina).

The company updated its list last week. It now says that more than 29,000 offenders have MySpace profiles. And MySpace is just one of several social sites. Two years ago, a 34-year-old former Wake County sheriff's deputy posed as a 19-year-old N.C. State University student on several sites, including MySpace. Today he is in prison for persuading two Triangle boys he met online, ages 14 and 15, to have sex with him.

The attorneys general are pressing for better regulation of the networking sites, both by the companies that operate them and in state law. Cooper wants North Carolina legislators to require parental permission for youngsters to create a profile. He combines that effort with an educational campaign showing parents and teachers how kids can surf the Web safely.

Cooper also is pushing a bill that would require convicted sex offenders who create profiles to provide authorities with their e-mail addresses and all other on-line identifiers. As it stands now, offenders must tell the public where they live and when they move to a new neighborhood. But they can mask themselves as a teen on the Internet and prey on youngsters with impunity. The bill deserves approval.

Some lawyers and online companies complain that Cooper's efforts endanger the First Amendment rights of corporations. So far there's no overreaching on the attorney general's part.

At the same time, Internet companies need to design their sites with the vulnerability of youngsters in mind. Sexual crimes and violence against kids have exploded as the Internet has matured.

If foot-dragging lawmakers need help deciding whether to vote for Cooper's initiative, here's an aid: Put Internet firms on one side of the scale, and vulnerable youngsters at risk of being sexually assaulted or killed by predators on the other. Cooper's instincts are right.

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'THESE PREDATORS ARE NO LONGER ISOLATED'

Maine Sunday Telegram (Portland, ME) - October 11, 1998

Author: ERIC BLOM Staff Writer

The Internet has become a refuge for child molesters, a place to seek shelter from the social isolation and anger they often confront in real life.

Known molesters can be threatened by neighbors, featured on police handbills when they move into a neighborhood, harassed by fellow prisoners in jail, and isolated by watchful parents who tell children not to talk with strangers on the street. Online, predators are safe in the anonymity of made-up screen names. They can identify and target children at will. Pedophiles can share encouragement, support and advice with one another, describing child sexual abuse as pleasurable and natural, even beneficial to children.

"These predators are no longer isolated. They're part of a community on the Internet," said Colin Gabriel Hatcher, executive director of Cyberangels, a division of the Guardian Angels.

The most direct threat to children is online predation. Adults with a sexual interest in children can identify, contact and groom potential victims via the Internet.

No one is sure how common online predation has become. It's clearly involved in a small minority of all child sexual assaults.

Still, advocates for children say that online predation represents an entirely new kind of threat and poses risks that are difficult to address. The danger is growing as more children, and more adults with a sexual interest in children, go online.

"It has provided a whole new, additional venue for (predators) to operate," said Peter Banks, director of training for the National Center for Missing and Exploited Children. "Child molesters go where the children are, and the children are in cyberville."

Online predation also may be much more common than is generally recognized, he and other advocates for children said.

The anonymity of computer networks, the secretive nature of child sexual predators and the shame felt by many victims conspire to keep formal complaints down and the activity hidden.

"The number of people who are arrested is a very small number compared to the number of offenders out there," said Capt. Richard Wallikas of the Broome County (N.Y.) Sheriff's Department, which has an ongoing undercover operation online.

Banks agreed that police complaints are a poor measure of the problem.

"We don't fully understand, because of the nature of sexual victimization, how big a problem this is," Banks said. "Probably only one in 10 crimes gets reported."

Indeed, many of the incidents thus far have been discovered almost by accident.

For example, in July, Massachusetts police discovered that a 37-year-old Michigan man had met at least

two teen-age girls -- from Massachusetts and Georgia -- online and traveled to have sex with them. The man was caught after a sheriff's deputy saw a 16-year-old girl, chased by her father, running toward the man's car with a suitcase. The deputy became suspicious and accosted the driver.

Increasingly, online predation also is being detected through electronic undercover police operations.

Most recently, on Sept. 14, police arrested a Portland man on charges of distributing child pornography to an undercover police detective in New Hampshire. The Keene, N.H., detective was posing as a 14-year-old boy.

Michael Weeks, 23, allegedly sent the detective photos depicting boys involved in sex acts, said Portland Police Chief Michael Chitwood. Weeks also has been charged with molesting a 10-year-old Portland boy.

INFORMATION HIGHWAY

GETS THE WORD OUT

Direct contact between adult predators and children is not the only danger posed by online computer networks. Children also are threatened by the online communities that sexual predators are building on the Internet.

These burgeoning online pedophile networks indirectly threaten all children, not just those who use computers, said many advocates for children, federal police and social scientists.

Historically, shame and public condemnation have kept many pedophiles from assaulting children. Society uniformly condemns adult-child sex. Pedophiles seldom encounter other people who admit to a sexual desire for children, much less the illegal acts of raping, molesting or exploiting them.

"Traditionally, a good social control for pedophiles is condemnation," said Keith Durkin, a sociologist who has studied the use of online computers by pedophiles. "This has to be the most condemned form of human sexual behavior that there is."

The mainstream online community also condemns child molestation. Thousands of Web sites and forums have been established to fight the problem. Offenders' names are even being published on Web sites such as the one run by the Bangor Police Department.

However, in many other corners of the Internet, child molesters find advice and support that was not available to them prior to the growth of online computing.

"There's nothing to stop someone from advocating really horrible crimes against children" online, said Tracey O'Connell-Jay, executive director of WebWise Kids and the sister of a girl lured from home by an online predator in another state.

The Internet allows anyone to publish anything, of any length, for very little money. Freedom of speech is protected by the U.S. Constitution, even speech advocating child sexual abuse.

More than 8,000 sites on the World Wide Web encourage adults to have sex with children.

Some of these Web pages tell young people that they should never reveal their "secret" relationship with an adult. This is the opposite message from the one that child advocates say children need to hear. Other sites tell pedophiles how to locate school or playground addresses online before going away on vacation.

"These pages link to legitimate sites like Disney. Hello! If that doesn't raise red flags, I don't know what

will," said Debbie Mahoney, a California woman whose 12-year-old son was sexually assaulted by a man who later was charged with distributing child pornography online. Mahoney is founder of the advocacy group, Safeguarding Our Children -- United Mothers.

Newsgroups allow pedophiles from around the world to anonymously exchange messages of solace, share tips on how to lure children into sexual encounters and trade information on police strategies. Newsgroups are electronic bulletin boards where people from around the world post messages for others to read.

Durkin studied one such newsgroup in 1996 -- early in the growth of Internet popularity -- and found that it received about 200 new postings a month. He had no way to determine how many people read the postings without submitting their own messages.

Most of the people who posted articles admitted to being pedophiles. Many of their messages sought support from other newsgroup readers. A quarter of the users said they wanted to contact other pedophiles via telephone, mail, in-person meetings or electronic mail, Durkin found.

"Preferential child molesters who target boys have the capacity to victimize hundreds of young males," Durkin wrote in *Pedophiles in Cyberspace*, which is his article on the newsgroup. "If computer groups such as (this one) inspire only a few pedophiles to molest children, this would translate into hundreds -- even thousands -- of victims."

FINDING VALIDATION

FOR CRIMES, URGES

Other experts agree that propaganda advocating adult-child sex can increase the abuse of children.

"There's no crime in being a pedophile and suffering from those urges," said Douglas Rehman, a former Florida state police officer with extensive experience in online undercover operations.

"What you've got is people who have it under control before they get online and then they see there are all these other people with the same urges and interests."

Kenneth Lanning of the FBI Behavioral Science Unit explained the psychology behind this in his monograph, *Child Molesters: A Behavioral Analysis*.

Many child molesters, he wrote, "spend their lives attempting to convince themselves that they are not immoral, not sexual deviants, or not criminals."

"They prefer to believe that they are high-minded, loving individuals whose behavior is misunderstood or politically incorrect at this time in history," Lanning wrote.

The Internet has made it possible for many more pedophiles to receive that kind of validation for their crimes from groups such as the North American Man Boy Love Association, or NAMBLA, which advocates adult-child sex.

"A group like NAMBLA now has an audience beyond its mailing list," Durkin said.

Literature from NAMBLA -- along with child pornography -- was found in the car allegedly used to transport 10-year-old Jeffrey Curley's body to the Great Works River in Maine after his murder and subsequent sexual assault last autumn. Charges are pending against two men in that case. It is not yet clear whether the material allegedly found in their possession came from the Internet or through the mail.

Still, material like the propaganda and pornography found in their vehicle is widely available online. And that material helps reduce the social control of shunning and shame that keeps many pedophiles from acting on their sexual impulses.

"These people who were hiding under a rock someplace are actively out there communicating with each other" and with children, Mahoney said.

Memo: The graphic accompanying this article HOW TO PROTECT CHILDREN must be read on microfilm

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Section: FRONT

Page: 7A

Series: DANGER ONLINE Technology's threat to children

Record Number: 0002230511

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In the Federal Way case, the mother, posing as a teenager, received sexually explicit messages from the man and an offer to meet face-to-face and have sex. When the meeting was arranged last month, an undercover police officer arrested him. The man, Otis Fellows, pleaded guilty to a charge of second-degree child molestation, which stemmed from an incident in 1993. He faces sentencing on May 23.

Some online encounters between adults and children have resulted in heartache for parents, such as Kathy Newell of Eugene, Ore.

Last year, her 14-year-old daughter Channa befriended a 24-year-old woodworker in a chat room. A shaggy redhead who sometimes masqueraded as a medieval knight, the man came by to visit, and Newell said no way.

"I said, 'This girl is off-limits to you,' " she said. Her daughter didn't agree, and one morning last May, the man drove by Channa's high school, picked her up and disappeared.

"(Police) say she chose to go with him, but I say she was lured," Newell said.

At the National Center for Missing and Exploited Children, "online luring" makes up a small part of the center's overall cases, but the problems are increasing, said Gary Costello, director of the child exploitation unit at the Arlington, Va.-based center, a national clearinghouse for parents whose children have run away or were abducted.

This year, the center has received 11 reports of online luring, in which a child ran away after meeting an adult in cyberspace. Last year, the center handled seven such cases.

Although some teens have voluntarily left home, Costello treats them as children who were lured, as opposed to children who ran away.

"If someone came into the neighborhood, ended up talking to a child, befriending them, enticing them with promises of money and a better life, would you treat the case any differently?" he asked.

Parents should take a greater interest in their children's computer activities, Costello said. Often, when children spend hours alone on a computer, parents have no idea who they are meeting.

"Picture it like this: Would you let your 9- to 14-year-old go to the worst part of Seattle and walk the streets in the middle of the night?"

"That's what chat rooms are like, but the child can't see who is walking toward him," he said.

Johnson, the detective with the King County police Special Assault Unit, said online predators often target emotionally vulnerable children, who come from unstable families and have low self-esteem. So when an adult offers support, money and a new home, the child is at a disadvantage.

"When you get an adult who is methodically pulling a child out of his home, for whatever reasons, that's exploitation," he said.

Tips for parents

The National Center for Missing and Exploited Children offers these tips for parents to help children have safe cyber-chats.

Never give out personal information such as address, phone number or school name before verifying the receiver of the information.

Get to know the services your child uses. Learn how to log on. Find out what types of information the services offer and whether there are ways for parents to block out objectionable material.

Never allow a child to arrange a face-to-face meeting with another computer user without parental permission. Make sure the first meeting is in a public spot and be sure to accompany the child.

Never respond to messages or bulletin board items that are suggestive, obscene, belligerent, threatening or make you feel uncomfortable. If you receive one, forward a copy to your service provider.

More of the center's tips can be found at its site: <http://www.missingkids.org/childsafety.html>

Another helpful Web site is <http://www.yahooligans.com/docs/safety>

America Online offers members resources on how to report a violation in a chat room and what to do if a harassing message is received.

It also offers "parental controls" that restrict a child's access, with the caveat: "It's important to note that no system of controls makes up for good old-fashioned parental supervision."

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Adopted - Amended

25-LS0985\L
Luckhaupt
4/8/08

**HOUSE CS FOR CS FOR SENATE BILL NO. 185(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

**Sponsor(s): SENATORS WIELECHOWSKI, Ellis, Elton, McGuire, Dyson, Olson, French
REPRESENTATIVE Doll**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the central registry of sex offenders and child kidnappers, to
2 penalties for certain sex offenders, and to the registration requirements for sex offenders
3 and child kidnappers; and providing for an effective date."

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

5 * Section 1. AS 11.56.840(a) is repealed and reenacted to read:

6 (a) A person commits the crime of failure to register as a sex offender or child
7 kidnapper in the second degree if the person fails, as required by AS 12.63.010, to

8 (1) register;

9 (2) file written notice of

10 (A) change of residence;

11 (B) change of mailing address;

12 (C) establishment of an electronic or messaging address or any
13 change to an electronic or messaging address; or

14 (D) establishment of an Internet communication identifier or

- 1 any change to an Internet communication identifier;
- 2 (3) file the annual or quarterly written verification; or
- 3 (4) supply accurate and complete information required to be submitted
- 4 under (1) - (3) of this subsection.

11.41.434 m.c.

* Sec. 2. AS 12.55.015 is amended by adding a new subsection to read:

may m.c.

6 (j) In addition to penalties authorized by this section, the court shall order a
 7 defendant convicted of a violation of AS 11.41.410 where the victim of the offense
 8 was under 14 years of age to be subject to electronic monitoring up to the maximum
 9 length of probation on the person's release from a correctional facility.

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

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

17 (1) complete a registration form that includes, at a minimum,

18 (A) the sex offender's or child kidnapper's name, address, place
 19 of employment, and date of birth;

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

29 (C) all aliases used;

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

1 (E) the description, license numbers, and vehicle identification
2 numbers of motor vehicles the sex offender or child kidnapper has access to,
3 regardless of whether that access is regular or not;

4 (F) any identifying features of the sex offender or child
5 kidnapper;

6 (G) anticipated changes of address; [AND]

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

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

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 and to take the sex offender's or child kidnapper's photograph.

16 * Sec. 4. AS 12.63.010(c) is amended to read:

17 (c) If a sex offender or child kidnapper changes residence after having
18 registered under (a) of this section, the sex offender or child kidnapper shall provide
19 written notice of the change by the next working day following the change to the
20 Alaska state trooper post or municipal police department located nearest to the new
21 residence or, if the residence change is out of state, to the central registry. If a sex
22 offender or child kidnapper establishes or changes an electronic mail address,
23 instant messaging address, or other Internet communication identifier, the sex
24 offender or child kidnapper shall, by the next working day, notify the department
25 in writing of the changed or new address or identifier.

26 * Sec. 5. AS 18.65.087 is amended by adding a new subsection to read:

27 (i) Notwithstanding (b) of this section, the department may provide a method
28 for, or may participate in a federal program that allows, the public to submit an
29 electronic or messaging address or Internet identifier and receive a confirmation of
30 whether the address or identifier has been registered by a registered sex offender or
31 child kidnapper.

1 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 APPLICABILITY. (a) Sections 1 and 3 - 5 of this Act apply to persons convicted of
4 sex offenses or child kidnapping before, on, or after the effective date of this Act whose duty
5 to register as a sex offender or child kidnapper has not expired under AS 12.63.010(d)(1) on
6 the effective date of this Act.

7 (b) Section 2 of this Act applies to persons convicted of offenses committed on or
8 after the effective date of this Act.

9 (c) Notwithstanding AS 11.56.840(a), repealed and reenacted by sec. 1 of this Act,
10 and AS 12.63.010(c), amended by sec. 4 of this Act, a sex offender or child kidnapper whose
11 duty to register as a sex offender or child kidnapper arose

12 (1) on or before December 31, 2008, does not have to initially report
13 electronic or messaging addresses or Internet communication identifiers to the Department of
14 Public Safety until the date that the sex offender or child kidnapper's next annual, or quarterly
15 if applicable, written verification is due; after the initial report of addresses and identifiers is
16 due, the sex offender or child kidnapper shall report the establishment of an electronic or
17 messaging address, or any changes to those addresses, or the establishment of an Internet
18 communication identifier, or any change to an identifier, as required by AS 11.56.840 and
19 AS 12.63.010;

20 (2) on or after January 1, 2009, shall report electronic or messaging addresses
21 or Internet communication identifiers, and changes to addresses and identifiers, to the
22 Department of Public Safety as required by AS 12.63.010.

23 * Sec. 7. This Act takes effect January 1, 2009.