

HB

298

Representative Jay Ramras
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Chair, Economic
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House District 10

House of Representatives

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover:

From: Jane W. Pierson

Date: February 9, 2010

Re: Amendments to HB298

Jerry,

Today, we passed HB298 out of HJUD. Please make the following amendments and go final.

Amendment #1 - A.7

Amendment #2 - A.8

Amendment #4 - A.15

Amendment #7 - A.14

Amendment #19 - A.20

Conceptual Amendment Page 8, Line 24 Change "expert" to "experts"

Amendment #12 - A.3 as amended P.1, L.12 after prosecution insert "or law enforcement

Amendment #15 - A.24 as amended P. 2, L.6 after "petition" delete "the district" and insert "any court of competent jurisdiction"

Amendment #16 - A.26

If you need any more info, please call.

Thank you!

Representative_Jay_Ramras@legis.state.ak.us

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 298

1 Page 1, line 1, following "harassment,":

2 Insert "**distribution and**"

3

4 Page 3, following line 19:

5 Insert a new bill section to read:

6 **** Sec. 5 AS 11.61.125(a) is amended to read:**

7 (a) A person commits the crime of distribution of child pornography if the
8 person distributes in this state or advertises, promotes, solicits, or offers to
9 distribute in this state [BRINGS OR CAUSES TO BE BROUGHT INTO THE
10 STATE FOR DISTRIBUTION, OR IN THE STATE DISTRIBUTES, OR IN THE
11 STATE POSSESSES, PREPARES, PUBLISHES, OR PRINTS WITH INTENT TO
12 DISTRIBUTE,] any material that is proscribed under AS 11.61.127 [VISUALLY
13 OR AURALLY DEPICTS CONDUCT DESCRIBED IN AS 11.41.455(a),
14 KNOWING THAT THE PRODUCTION OF THE MATERIAL INVOLVED THE
15 USE OF A CHILD UNDER 18 YEARS OF AGE WHO ENGAGED IN THE
16 CONDUCT]."

17

18 Renumber the following bill sections accordingly.

19

20 Page 3, lines 21 - 26:

21 Delete all material and insert:

22 "(a) A person commits the crime of possession of child pornography if the
23 person knowingly possesses or knowingly accesses on a computer with intent to

1 view any material that visually [OR AURALLY] depicts conduct described in
2 AS 11.41.455(a) knowing that the

3 (1) production of the material involved the use of a child under 18
4 years of age who engaged in the conduct or a depiction of a part of an actual child
5 under 18 years of age who, by manipulation, creation, or modification, appears to
6 be engaged in the conduct; or

7 (2) material appears to include a child under 18 years of age
8 engaging in the conduct."

9
10 Page 4, line 4:

11 Delete "a new subsection"

12 Insert "new subsections"

13
14 Page 4, line 5:

15 Delete "for possession of child pornography"

16
17 Page 4, following line 11:

18 Insert new subsections to read:

19 "(f) In this section,

20 (1) "appears to include a child" means that the material appears to
21 include, or conveys the impression that it includes, a person who is under 18 years of
22 age and the material was not created using a depiction of any part of an actual child
23 under 18 years of age, and

24 (A) the average individual, applying contemporary community
25 standards, would find that the depiction, taken as a whole, appeals to the
26 prurient interest; and

27 (B) a reasonable person would find that the depiction, taken as
28 a whole, lacks serious literary, artistic, political, or scientific value;

29 (2) "computer" has the meaning given in AS 11.46.990.

30 (g) In a prosecution under (a) of this section, the prosecution is not required to
31 prove the identity of a minor depicted or that the defendant knew the identity of a

1 minor depicted."

2

3 Page 9, line 3:

4 Delete "Sections 1-15"

5 Insert "Sections 1-16"

6

7 Page 9, line 5:

8 Delete "Section 16"

9 Insert "Section 17"

The CHRISTIAN SCIENCE
MONITOR

Ban upheld on offering child porn

The Supreme Court allows a 2003 law dealing with 'virtual' child porn that some thought was too broad.

By Warren Richey Staff writer of The Christian Science Monitor
posted May 20, 2008 at 12:00 am EDT

Washington —

The US Supreme Court has upheld an effort by Congress to make it illegal to offer or promote child pornography — even when the photographs being offered or promoted don't really exist or involve real children.

In a 7-to-2 decision announced on Monday, the high court said the law was a constitutional effort by Congress to protect innocent children from a thriving form of abuse.

The majority justices upheld the law even though it restricted certain kinds of speech that critics said must be protected by the First Amendment.

Instead, the high court said Congress had struck the correct balance in passing the anti-child-pornography law.

"We hold that offers to provide or requests to obtain child pornography are categorically excluded from the First Amendment," writes Justice Antonin Scalia for the majority.

The PROTECT Act of 2003 is an attempt to shut down a flourishing trade in child pornography over the Internet. It seeks to do it not only by barring the exchange of pictures depicting children in sexually explicit poses, but also by outlawing any attempt to convince another person that offered pictures are of real child pornography involving real children.

In effect, the law makes it illegal to try to dupe other would-be consumers of child pornography into thinking that they are about to receive actual child pornography. The activity is illegal even if the photographs do not involve actual child pornography. In addition, such pandering is illegal even if the photographs don't exist.

The majority justices said the statute was not too broad or too vague to pass constitutional muster.

The law "punishes speech seeking to conclude illegal transactions," Justice Scalia said in a statement from the bench. "Such speech does not get First Amendment protection."

He adds, in the opinion: "Offers to give or receive what it is unlawful to possess have no social value and thus, like obscenity, enjoy no First Amendment protection."

His opinion was joined by Chief Justice John Roberts and Justices John Paul Stevens, Anthony Kennedy, Clarence Thomas, Stephen Breyer, and Samuel Alito.

Justices David Souter and Ruth Bader Ginsburg dissented. Justice Souter writes that prior Supreme Court rulings established that only pornographic photographs of actual children may be prohibited and that virtual child pornography retains First Amendment protections.

Justices Souter and Ginsburg said the 2003 PROTECT Act violates free-speech protections by allowing a new pandering prohibition aimed at suppressing otherwise protected speech. In other words, if virtual child pornography is protected by the First Amendment, how could an attempt to pander virtual child pornography be illegal?

"Just six years ago the court struck down a statute outlawing particular material merely represented to be child pornography, but not necessarily depicting actual children," Souter writes. "The court is going against the grain of pervasive First Amendment doctrine that tolerates speech restriction not on mere general tendencies of expression, or the private understandings of speakers or listeners, but only after a critical assessment of practical consequences."

The decision comes in the case of Michael Williams of Key Largo, Fla. Mr. Williams was arrested in May 2004 after an encounter with an undercover agent in an adult chat room on the Internet.

He logged into the chat room and posted a message that he had "good" photographs of his 2-year-old daughter that he wished to swap for similar photos. An undercover federal agent responded and engaged Williams in a private Web chat. The agent identified himself as a 30-year-old mother with a 10-year-old daughter.

Williams and the undercover agent swapped photos. The children depicted in the photos were clothed and were not engaged in sexually explicit activities.

According to court documents, Williams tried to get the undercover agent to provide a more sexually explicit photograph. When it did not arrive, Williams posted a warning message in the chat room that the undercover agent was a cop. The undercover agent responded in a chat room message accusing Williams of being a cop.

In response to the accusation that he was an undercover cop, Williams posted a hyperlink to seven sexually explicit photographs of children ages 5 to 15.

Four days later, federal agents executed a search warrant for Williams's trailer in Key Largo. They discovered 22 computer images of children engaged in various forms of sexual activity. They also discovered that Williams lived alone and did not have a 2-year-old daughter.

Williams was charged with possession of child pornography. But federal prosecutors also charged him with violating the federal child-pornography pandering law for his Internet encounter with the undercover agent.

Williams agreed to plead guilty to both charges, but he reserved the right to appeal the pandering conviction. His lawyers said he shouldn't be held criminally liable for false claims made in an adult chat room.

The 11th US Circuit Court of Appeals in Atlanta agreed with Williams and reversed the pandering conviction.

In overturning the appeals court, the high court said, "The Eleventh Circuit believed it a constitutional difficulty that no child pornography need exist to trigger the statute. In its view, the fact that the statute could punish a 'braggart, exaggerator, or outright liar' rendered it unconstitutional."

The decision continues: "That seems to us a strange constitutional calculus."

Scalia said the 11 Circuit's reading of the law would forbid the government from punishing fraudulent offers to provide illegal products. "We see no logic in that position; if anything, such statements are doubly excluded from the First Amendment," he writes.

Responding to Souter's dissent, Scalia says the high court's holding does not overrule a 2002 decision in a case called *Ashcroft v. Free Speech Coalition*.

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 298

BY REPRESENTATIVE GRUENBERG

1 Page 2, line 30, through page 3, line 1:

2 Delete all material.

3

4 Reletter the following subsections accordingly.

5

6 Page 8, following line 31:

7 Insert a new bill section to read:

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

10 LEGISLATIVE STATEMENT CONCERNING CULPABLE MENTAL STATE. In
11 AS 11.56.840(a), as repealed and reenacted by sec. 3 of this Act, the only culpable mental
12 state required to be proven by the prosecution is the "knowing" requirement in paragraph (2)
13 of that subsection. No other culpable mental state needs to be proven for the other elements of
14 that offense."

15

16 Renumber the following bill sections accordingly.

17

18 Page 9, line 3:

19 Delete "Sections 1 - 15"

20 Insert "Sections 1 - 15 and 17"

AMENDMENT

By Rep. RAMRAS

OFFERED IN THE HOUSE

TO: HB 298

1 Page 3, lines 14 - 19:

2 Delete all material and insert:

3 "(a) A person commits the crime of harassment in the first degree if

4 (1) the person violates AS 11.61.120(a)(5) and the offensive physical
5 contact is contact with human or animal blood, mucus, saliva, semen, urine, vomitus,
6 or feces; or

7 (2) under circumstances not proscribed under AS 11.41.434 -
8 11.41.440, the person violates AS 11.61.120(a)(5) and the offensive physical
9 contact is contact by the person touching another person's genitals, anus, or
10 female breast, either directly or through clothing."

AMENDMENT

By: Rep. RAUZA

OFFERED IN THE HOUSE
TO: HB 298

1 Page 6, lines 30 - 31:

2 Delete all material and insert:

3 "(E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128
4 and the defendant was 10 or more years older than the victim;"

AMENDMENT

By: Rep. Rauraw

OFFERED IN THE HOUSE
TO: HB 298

1 Page 6, following line 31:

2 Insert a new bill section to read:

3 **** Sec. 15.** AS 12.63.020 is amended by adding a new subsection to read:

4 (c) A person required to register under AS 12.63.010 for a conviction in
5 another jurisdiction that is not similar to an offense in this state shall register for a
6 period described in

7 (1) (a)(2) of this section if the person has been convicted of only one
8 offense;

9 (2) (a)(1) of this section if the person has been convicted of two or
10 more offenses for which the person is required to register in another jurisdiction."

11

12 Renumber the following bill sections accordingly.

13

14 Page 9, line 3:

15 Delete "Sections 1 - 15"

16 Insert "Sections 1 - 16"

17

18 Page 9, line 5:

19 Delete "Section 16"

20 Insert "Section 17"

AMENDMENT

*Passed
AS AMENDED*

OFFERED IN THE HOUSE
TO: HB 298

BY REPRESENTATIVE HOLMES

1 Page 8, lines 3 - 31:

2 Delete all material and insert:

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

5 (9) Restriction on Availability of Certain Material or Property.

6 Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the
7 defendant to copy, photograph, duplicate, or otherwise reproduce any property or
8 material that may be illegal or prohibited under AS 11.41.455(a) or defined as "child
9 pornography" under 18 U.S.C. 2256, provided the prosecution makes the property or
10 material reasonably available to the defendant. Property or material shall be deemed to

11 be made reasonably available to the defendant if the prosecution provides, at a
* 12 prosecution facility ^{or law enforcement}, ample opportunity for inspection, viewing, and examination of the
13 property or material by the defendant, the defendant's attorney, and any individual the
14 defendant may seek to qualify to furnish expert testimony at trial."

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 298

1 Page 1, line 5, following "**kidnapper;**":

2 Insert "**relating to administrative subpoenas for certain records involving**
3 **exploitation of children;**"

4
5 Page 7, following line 31:

6 Insert a new bill section to read:

7 **"* Sec. 16.** AS 44.23 is amended by adding a new section to read:

8 **Sec. 44.23.080. Subpoena power of attorney general in cases involving use**
9 **of an Internet service account in the exploitation of children.** (a) In an
10 investigation of an offense under AS 11.41.452, 11.41.455, or AS 11.61.125 -
11 11.61.128 and on reasonable cause to believe that an Internet service account has been
12 used in the exploitation or attempted exploitation of children, the attorney general may
13 issue in writing and cause to be served a subpoena requiring the production and
14 testimony described in (b) of this section.

15 (b) A person receiving a subpoena under (a) of this section shall disclose, for
16 the account that is the subject of the subpoena,

17 (1) the name of the person holding the account;

18 (2) the address associated with the account;

19 (3) local and long distance telephone connection records,
20 including records of session times and durations for the account;

21 (4) length of service, including service start date, and types of
22 service used by the account;

23 (5) the telephone or instrument number or other subscriber

1 number or identifier, including any temporarily assigned network address for
2 the account; and

3 (6) the means and source of payment for the service, including
4 a credit card or bank account number associated with the account.

5 (c) At any time before the return date specified on the subpoena, the subpoenaed
6 person may petition ^(ANY COURT OF COMPETENT JURISDICTION) the district court for the judicial district in which the person resides or
7 does business for an order modifying or setting aside the subpoena or for an order sealing
8 the court record.

9 (d) A subpoena under this section must describe the objects required to be
10 produced and must prescribe a return date with a reasonable period of time within which
11 the objects must be assembled and produced.

12 (e) If no case or proceeding arises from the production of records or other
13 documents under this section within a reasonable time after those records or documents
14 are produced, the attorney general shall either destroy the records and documents or return
15 them to the person who produced them.

16 (f) A subpoena issued under this section may be served as provided for service of
17 subpoenas under Rule 45, Alaska Rules of Civil Procedure, or for service of process under
18 Rule 4, Alaska Rules of Civil Procedure.

19 (g) Except as provided in this section, any information, records, or data reported
20 or obtained under a subpoena under this section shall remain confidential and may not be
21 disclosed unless the disclosure occurs in connection with a criminal case related to the
22 subpoenaed materials."
23

24 Renumber the following bill sections accordingly.

25
26 Page 9, line 5:

27 Delete "Section 16 of this Act applies"

28 Insert "Sections 16 and 17 of this Act apply"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: HB 298

1 Page 4, line 25:

2 Delete "and"

3 Insert "[AND]"

4

5 Page 4, line 26, following "(2)":

6 Insert "the material is harmful to minors; and

7 (3)"

8

9 Page 5, following line 6:

10 Insert a new bill section to read:

11 "** Sec. 11. AS 11.61.128 is amended by adding a new subsection to read:

12 (e) In this section, "harmful to minors" means

13 (1) the average individual, applying contemporary community
14 standards, would find that the material, taken as a whole, appeals to the prurient
15 interest in sex for persons under 16 years of age;

16 (2) a reasonable person would find that the material, taken as a whole,
17 lacks serious literary, artistic, educational, political, or scientific value for persons
18 under 16 years of age; and

19 (3) the material depicts actual or simulated conduct in a way that is
20 patently offensive to the prevailing standards in the adult community as a whole with
21 respect to what is suitable for persons under 16 years of age."

22

23 Renumber the following bill sections accordingly.

1

2 Page 9, line 3:

3 Delete "Sections 1 - 15"

4 Insert "Sections 1 - 16"

5

6 Page 9, line 5:

7 Delete "Section 16"

8 Insert "Section 17"

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL,
GOVERNOR

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Juneau, AK 99811-0300
Physical: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
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January 19, 2010

Representative Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 298 - relating to
sexual assault and domestic violence

Dear Chairman Ramras:

I am writing to respectfully request that you schedule House Bill 298 for a hearing in the House Judiciary Committee at your earliest convenience. HB 298 is one of several bills that the Governor has introduced to confront and help reduce the alarming and discouraging rate of sex offenses and crimes involving domestic violence in our state.

The bill makes important changes to several criminal laws. For example, it clarifies that accessing child pornography with the intent to view it is a crime. A recent court decision found that our statute requires more than viewing child pornography on a computer to be a crime under the current statute. The bill also requires a person to register as a sex offender in our state if required to do so in another state. Alaska should not be a friendly destination to persons hoping to avoid sex offender registration by moving to our state.

A sectional analysis is attached that describes each provision of the bill.

Thank you for your consideration of this request.

Sincerely,



Daniel S. Sullivan
Attorney General

DSS:ADC: sf

HOUSE BILL 298
SEXUAL ASSAULT AND DOMESTIC VIOLENCE
Sectional Analysis

Sections 1 and 2 correct an error made in 2007 when the legislature enacted AS 11.56.759, that adopted a class A misdemeanor if a sex offender violates specific conditions of probation or parole. One of the requirements of the crime is that the person have served the entire period of incarceration imposed for the crime. This is effective for probationers, but not for parolees, because a person is never on parole if he or she has served the entire period of incarceration. A member of the Parole Board brought this issue to our attention, because the statute has caused problems for the board in dealing with parolees. These sections remove parolees from the statute.

Section 3 rewrites AS 11.56.840, failure to register as a sex offender in the second degree. Although the proposal is similar to current law, it removes the requirement that the state prove a culpable mental state for the conduct of not registering or otherwise filing the required notices and information. The state would still be required to prove that the person knew he or she was required to register and failed to do so. The section also adopts an affirmative defense that unforeseeable circumstances outside the control of the person prevented him or her from registering, and that the person contacted the Department of Public Safety immediately upon being able to do so.

Section 4 would raise a form of harassment in the second degree (that is, with intent to harass or annoy another person, the person subjects the other person to offensive physical contact) to harassment in first degree if the offensive physical contact is by the offender touching the other person's genitals, anus, or female breast. Harassment in the first degree is a class A misdemeanor; the second degree offense is a class B misdemeanor. There have been prosecutions recently involving offensive touchings that occurred so quickly that the court concluded that the victim did not have time to convey lack of consent to the offender. The court reduced these charges from sexual assault to harassment in the second degree. This conduct is more serious than a class B misdemeanor; the bill would raise it to a class A misdemeanor.

Sections 5, 6, and 7 address a problem with Alaska law prohibiting possession of child pornography that was raised by a recent decision of the Alaska Court of Appeals, *Worden v. State*, 213 P.3d 144 (Alaska App. 2009). *Worden* held that our current statute does not prohibit a person from viewing child pornography on a computer; rather, the statute requires that the person must also save it on the computer to be considered to possess it. In response to this decision, the bill adopts the federal approach. It prohibits possession of child pornography, and it also prohibits a person from knowingly accessing child pornography on a computer with the intent to view it.

The bill also proposes an affirmative defense that is similar to federal law. The affirmative defense would address a situation where a person finds child pornography on their computer, and did not obtain it themselves. The defense requires that there are three or less depictions, and the person, without showing the material to another person except law enforcement, destroys the depictions or contacts law enforcement and turns it over to them.

Sections 8, 9, and 10 amend the crime that prohibits the electronic distribution of indecent material to minors by expanding the offense to prohibit any distribution of indecent material to minors.

Section 11 adds the crimes of human trafficking in the first and second degrees, distribution of child pornography, possession of child pornography, and distribution of indecent materials to minors to the crimes that are not eligible for a suspended imposition of sentence.

Section 11 also includes an amendment that removes “substantially” when describing a crime in another jurisdiction that may be a predicate conviction that would disallow the use of a suspended imposition of sentence for other offenses. This conforms with other statutes that require that a predicate offense in another jurisdiction be only similar to an offense in Alaska. Examples include AS 12.55.145(a) (presumptive sentencing), AS 11.41.320(a)(5) (third degree assault), and AS 11.41.110(a)(5) (murder in the second degree).

Section 12 adds to the conditions of probation that may be imposed on a person convicted of a sex offense. It gives the court discretion to order the person to submit e-mail addresses and other networking addresses to his or her probation officer, who would be required to give this information to the Troopers and to the local law enforcement agency. If the person was convicted of sexual abuse of a minor or an offense related to child pornography, it gives the court discretion to prohibit the person from using an Internet site, communicating with children under 16 years of age, or possessing or using a computer.

Section 13 amends the aggravating factor at sentencing that allows the court to increase a sentence above the sentencing range if the defendant knew that the victim was particularly vulnerable. It does this by adding the consumption of alcohol or drugs as factors that might make a victim particularly vulnerable.

Section 14 adds two new aggravating factors to the sentencing law. First, it allows the court to increase a sentence above the sentencing range for a crime against a person (AS 11.41) committed against a person that the defendant was dating or with whom the defendant has engaged in a sexual relationship. Second, it allows the court to increase the sentence if the defendant is convicted of sexual abuse of a minor in the second degree under AS 11.41.436(a)(2) (a person 16 years of age or older having sexual contact with a child under 13 years old), if the defendant is 18 years old or older.

Section 15 adds a new provision to sex offender registration law that requires a person present in Alaska, who is convicted of an offense out of state that requires registration in that jurisdiction, to register in Alaska. This requirement would apply even if Alaska does not have a criminal provision similar to the crime in the other state that requires registration there.

Section 16 amends Rule 16(b)(1)(A) by prohibiting the copying of child pornography as part of the discovery process in a criminal prosecution. It would allow defense counsel, the defendant, and defense experts to examine the material, but it must be kept in the custody and control of a law enforcement agency or the prosecuting authority. Federal law has a similar provision. 18 U.S.C.A. § 3509(m).

Sections 17 and 18 include the applicability and effective date provisions.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB298-ACS 01-22-10
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: _____
 Title Sex Offenses; Offender Registration; Sentencing RDU Alaska Court System
 Component Trial Courts
 Sponsor House Rules
 Requester Governor Component Number _____

Expenditures/Revenues - (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
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	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
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	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 298.

Prepared by: Doug Wooliver, Administrative Attorney
 Division: Alaska Court System
 Approved by: Doug Wooliver for Christine Johnson, Administrative Director
Alaska Court System

Phone 907-463-4750
 Date/Time 01-22-10 @ 8:30 am
 Date 1/22/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: _____
 () Publish Date: _____

Identifier (file name): HB298-DPS-R&I-01-22-10
 Title: "An Act relating to the crimes of sexual assault..."
 Dept. Affected: Public Safety
 RDU: Statewide Support
 Component: Records & Identification
 Sponsor: Rules Committee
 Requester: Governor
 Component Number: 1190

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services	99.2							
Travel	5.0							
Contractual	5.8							
Supplies	1.0							
Equipment	2.9							
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	113.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	113.9							
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	113.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time	1.0							
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation would require a person who is required to register as a sex offender or child kidnapper in another jurisdiction to register in Alaska even if there is no substantive law in Alaska that is similar to the offense the person was convicted of.

For sex offender registration purposes, "jurisdiction" is defined at 13 AAC 09.900(a)(5) and includes the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the U.S. Virgin Islands, and federally-recognized Indian tribes that have elected to function as a registration jurisdiction. Each jurisdiction has its own distinct laws pertaining to the registration of sex offenders, including which offenses require registration and the length of time an offender is required to register. (cont.)

Prepared by: David Schade
 Division: Statewide Services
 Approved by: Joe Masters
Commissioner

Phone (907) 269-0202
 Date/Time 1/22/2010
 Date 1/22/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 298

ANALYSIS CONTINUATION

For the department's Records & Identification unit to continue to accomplish a core service of providing public access to current information regarding sex offenders in Alaska, the determination that a person must register as a sex offender or child kidnapper in Alaska because of their requirement to register in another jurisdiction must be made timely and must be based on information that has been validated.

Considerable research and analysis of the criminal history background of persons with sex offense convictions outside of Alaska would be required to determine whether the offense of conviction is a registerable offense under the current laws of that jurisdiction and whether or not the person is subject to that jurisdiction's registration requirements. Coordination with the jurisdiction's sex offender central registry would need to occur to obtain source documents and other relevant information on the person.

Additionally, the department would need to continually monitor the status of registration laws and legal cases affecting sex offender registration in all jurisdictions to ensure a person required to register in Alaska under proposed AS 12.63.100(6)(D) continued to be subject to the registration requirements of the jurisdiction that their offense was committed in.

The department anticipates that these additional efforts will require one new full-time Criminal Justice Planner position. This position would be responsible to review and evaluate offender records with out-of-state sex offense convictions to determine the requirement to register under proposed AS 12.63.100(6)(D), to coordinate with other jurisdictions' sex offender central registry offices, and to monitor sex offender registration laws in other jurisdictions and any changes for possible impact to currently registered offenders.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HB 298
 (H) Publish Date: 1/19/10

Identifier (file name): "Act relating to crimes of sexual assault, possession of child pornography, and distribution of indecent material to a minor...." Dept. Affected: DOC
 Title: of child pornography, and distribution of indecent material to a minor...." RDU: Administration & Support
 Component: Office of the Commissioner
 Sponsor: Rules Committee
 Requester: Governor Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	77.1	103.0	128.9	154.8	180.7	
Travel	0.0	0.0	1.5	2.0	2.5	3.0	3.5	
Contractual	0.0	0.0	50.4	67.3	84.2	101.2	118.1	
Supplies	0.0	0.0	7.9	10.6	13.3	15.9	18.6	
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	136.9	182.9	228.9	274.9	320.9	
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
CHANGE IN REVENUES ()	0.0	0.0	136.9	182.9	228.9	274.9	320.9	

FUND SOURCE (Thousands of Dollars)

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	136.9	182.9	228.9	274.9	320.9
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	136.9	182.9	228.9	274.9	320.9

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time	0.0	0.00	0	0	0	0	0
Part-time	0.0	0	0	0	0	0	0
Temporary	0.0	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill will have the effect of increasing the number of prisoners the Department of Corrections (DOC) will have to house beginning in Fiscal Year 2012. These approximate costs are based on the average number of new convictions or remands per year and the average estimated sentences associated with each change in the draft legislation. DOC will track the impact and could potentially request additional funding based on actual impacts.

Continued on page 2

Prepared by: Leslie Houston, Director
 Division: Administration and Support
 Approved by: Dwayne Peeples, Deputy Commissioner
Department of Corrections

Phone: (907) 465-3339
 Date/Time: 1/7/10 8:30 AM
 Date: 1/7/2010

FISCAL NOTE #4

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 298

ANALYSIS CONTINUATION

This bill specifically adds a number of new crimes, expands existing crimes, and enhances sentences for existing crimes:

- Sections 1 and 2 remove parolees from the statute. This change should have little to no fiscal impact.
- Section 3 changes the elements for failure to register as a Sex Offender or child kidnapper in the second degree. It is estimated this will generate 3 new convictions per year carrying an average 2 month sentence.
- Section 4 raises a form of harassment in the second degree to harassment in the first degree if the offensive physical contact is by the offender touching the other person's genitals, anus, or female breast. The change from a Class B misdemeanor to a Class A misdemeanor is estimated to generate 18 convictions per year that carry an average 30 day sentence.
- Sections 5, 6, and 7 address a problem with current Alaska law prohibiting possession of child pornography. This amendment prohibits possession of child pornography, and also prohibits a person from knowingly accessing child pornography on a computer with the intent to view. We anticipate a relatively low number of new convictions and a possible increase in remands. Convictions would generate an estimated average 4 year sentence. The actual impact will be closely tracked by DOC.
- Section 8, 9, and 10 changes the elements of distribution of indecent material to minors to include any distribution in addition to electronic distribution. Because most of these cases are by computer, the impact on DOC is small and is included in Sections 5-6-7.
- Section 11 prohibits the suspension of sentences for human trafficking and possession of child pornography. DOC will track the actual impact.
- Section 12 adds discretionary probation conditions for Sex Offenders providing available electronic mail addresses and prohibiting internet use, communication with children, and possession or use of a computer. DOC believes this will have minimal impact above the number of remands that occur each year for such violations, however, we will track any impact this change to the bill may have.
- Section 13 adds as a sentencing aggravator adding the incapacity of a victim by alcohol or drugs. Due to a lack of data, the DOC is unable to assess an impact. The impact will be closely tracked.
- Section 14 adds two sentencing aggravators in a sex offense: first, to increase a sentence for a crime against a person committed against a person that the defendant was dating or with whom the defendant has engaged a sexual relationship; second, the sentence is increased if the defendant is 18 or over and is convicted of sexual abuse of a minor in the second degree under AS 11.41.436(a). Due to a lack of data, the DOC is unable to assess an impact. The impact will be closely tracked.
- Section 15 expands the definition of sex offense for sex offender registration to include sex offenses committed in other states where a person must register as a Sex Offender or child kidnapper. There are too many factors involved to determine a fiscal impact. DOC will track the actual impact.
- Section 16 amends criminal discovery restriction regarding child pornography. This represents no fiscal impact for DOC.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 298
 (H) Publish Date: 1/19/10

Identifier (file name): 0859 -Law-Crim-12-30-09 Dept. Affected: Law
 Title An Act relating to the crimes of sexual assault, possession RDU Criminal
of child pornography and distribution of indecent material to a minor. Component Criminal Justice Litigation
 Sponsor Rules
 Requester Governor Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES							
Personal Services							
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 ()							
-------------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Interagency Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adopts a class A misdemeanor for offensive touching that does not arise to sexual assault in the first, second or third degree. The bill adopts a class C felony for a person who knowingly accesses child pornography on a computer. The bill extends the prohibition of distributing indecent material to a minor to all forms of distribution. The bill provides that a person convicted of human trafficking or possession or distribution of child pornography may not be given a suspended imposition of sentence, and imposes certain restrictions on defendants.

Prepared by: Eileen Donahue, Division Operations Manager
 Division Administrative Services
 Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone (907)465-5427
 Date/Time 12/30/09 12:00 AM
 Date 12/30/2009

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 298
 (H) Publish Date: 1/19/10

Identifier (file name): 0859-DOA-PDA-12-31-09 Dept. Affected: Administration
 Title: An Act relating to the crimes of sexual assault, RDU: Legal and Advocacy Services
 Sponsor: Rules Committee Component: Public Defender Agency
 Requester: Governor Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
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								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
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 (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

See attached page

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

Phone 907 334-4414
 Date/Time 12/31/2009, 4:00PM
 Date 12/31/2009

FISCAL NOTE #2

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 298

ANALYSIS CONTINUATION

The bill will create a new misdemeanor crime of harassment for touching another person without consent. Additionally, the bill will eliminate the mens rea element associated with circumstances under which someone fails to register as a sex offender.

This bill will also change the procedures for defense access to evidence in child pornography cases. Under the proposed change to Criminal Rule 16, the evidence that forms the basis of such charges must remain in the custody and control of a law enforcement agency and the prosecuting attorney, and no copies can be made. This could result in additional costs associated with the logistics of reviewing and evaluating evidence.

The agency does not predict a significant fiscal impact as a result of the proposed statute. Accordingly, the agency submits a zero fiscal note.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 298
 (H) Publish Date: 1/19/10

Identifier (file name): 0859-DOA-OPA-12-31-09 Dept. Affected: DOA
 Title An Act relating to the crimes of sexual assault, possession RDU Legal and Advocacy Services
of child pornography and . . . Component Office of Public Advocacy
 Sponsor _____
 Requester Governor Component Number 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Personal Services							
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							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
-------------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
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 (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill makes additions and changes to a number of criminal statutes and discovery procedures associated with sex offenses and child pornography prosecutions. Some of these changes could have a fiscal impact on the agency although it is not anticipated to be significant. Therefore, the agency has submitted a zero fiscal note.

Analysis continued on the second page.

Prepared by: Rachel Levitt, Director
 Division Office of Public Advocacy
 Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907 269-3504
 Date/Time 12/31/09, 4:30 p.m.
 Date 12/31/2009

FISCAL NOTE #1

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 298

ANALYSIS CONTINUATION

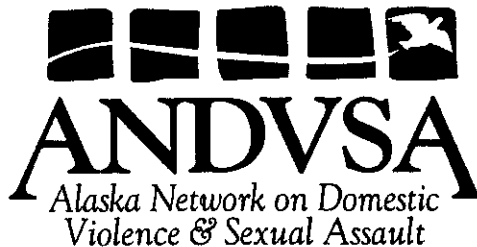
The bill will create a new misdemeanor crime of harassment for touching another person's genitals, anus or female breast, directly or through clothing. Additionally, the bill will eliminate the mens rea element associated with circumstances under which someone fails to register as a sex offender. These changes could increase prosecutions and litigation associated with failure to register as a sex offender and child pornography cases.

This bill will also change the procedures for defense access to evidence in child pornography cases. Under the proposed change to Criminal Rule 16, the evidence that forms the basis of such charges must remain in the custody and control of a law enforcement agency and the prosecuting attorney, and no copies can be made. This could result in additional costs associated with the logistics of the defense reviewing and testing evidence. For example, in a child pornography case any experts hired to review evidence would have to be paid for time involved with traveling and reviewing evidence where it is being held by the prosecutor or police agency, and facilities will have to be made available for evidence review and testing.

The agency does not predict a significant fiscal impact as a result of the proposed statute. Accordingly, the agency submits a zero fiscal note.

Main Office

130 Seward St #209
Juneau, Alaska 99801
Phone: (907) 586-3650
Fax: (907) 463-4493
www.andvsa.org



Pro Bono Office

PO Box 6631
Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907)747-7547

Governor Sean Parnell
Alaska State Capitol Building
Third Floor
Juneau, AK 99801

Dear Governor Parnell,

On behalf of the Network's 18 member programs that provide services to victims and survivors of domestic and sexual violence, we thank you for bringing forth HB 298. HB 298 will provide for more offender accountability and will send a clear message that sexual assaults against Alaskans will not be tolerated.

This bill will close many loopholes that currently exist in Alaska law and no longer provide offenders with an escape mechanism from prosecution. For example, by making it a crime to knowingly access child pornography with the intent to view it, the cyber crimes investigators will now have the ability to bring charges against perpetrators that previously could avoid the law simply by not downloading these images or "possessing" them.

Finally, we know from our work that most sexual assaults occur between people that know each other or are engaged in a relationship. Our statutes currently proscribe harsh penalties for violating familial trust relationships and other caretaker relationships, but not for intimate partner violence, which is equally betraying. Allowing judges to enhance sentencing penalties through an aggravating factor when perpetrators betray the trust in these relationships and sexually assault their intimate partners will send a clear message that when you betray any trust relationship you will be held accountable.

The Network thanks you Governor in bringing forth this legislation which is a first step in reducing the rates of sexual assault in Alaska.

Sincerely

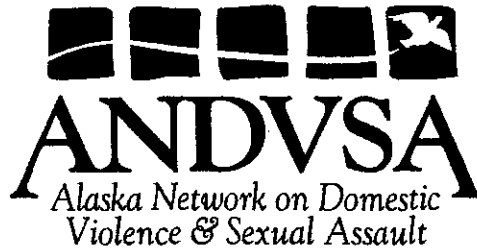
Peggy Brown, Executive Director

cc: Lisa Mariotti, Policy Director

Member Programs

Anchorage AWAIC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFE
Fairbanks IAC Homer SPHH Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRCC
Kotzebue MFCC Nome BSWG Seward SCS Sitka SAFV Unalaska USAFV Valdez AVV

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Comparative Statistics
Alaska and States with Similar Populations & Rural/Urban Characteristics
 Source: FBI's Uniform Crime Report: 2008

State	Total Population	# of Forcible Rapes*	Rate per 100,000 inhabitants
Alaska	686,293	441	64.3
Wyoming	532,668	180	44.8
N. Dakota	641,481	232	36.2
Montana	967,440	294	30.4
Vermont	621,270	127	20.4

Comparative Statistics
Alaska and States with Significantly Larger Populations & Different Rural/Urban Characteristics
 Source: FBI's Uniform Crime Report: 2008

State	Total Population	# of Forcible Rapes*	Rate per 100,000 inhabitants
Alaska	686,293	441	64.3
Texas	24,326,974	8014	32.9
California	36,756,666	8903	24.2
New York	19,490,297	2801	14.4

* **Forcible Rape** is defined as: "the carnal knowledge of a female and against her will."
 Source: Uniform Crime Report. Available at: <http://www.fbi.gov/ucr/ucr.htm>. Note: these statistics exclude statutory rape, sexual assaults against males, and sexual assaults against children. Therefore, many of Alaska's statutory crimes are not reflected in these statistics. Also of note, these are only crimes reported to law enforcement and does not include many local jurisdictions in Alaska or those individuals who choose not to report.

Member Programs
 Anchorage AWAIC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFE
 Fairbanks IAC Homer SPHH Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRCC
 Kotzebue MFCC Nome BSWG Seward SCS Sitka SAFV Unalaska USAFV Valdez AVV

Standing Together Against Rape

1057 W. Fireweed Lane, Suite 230

Anchorage, AK 99503

(907) 276-7279

Fiscal Year 2009 Advocacy Review

Gender	Numbers
Males	211
Females	962
Unknown	34
Total	1,207

Age Group	Numbers
0-5	113
6-12	173
13-18	139
19-24	165
25-54	564
55-64	38
65-79	2
80-up	0
Unknown	13
Total	1,207

Race/Ethnicity	Numbers
Alaska Native	332
American Indian	15
Asian	10
African American	52
Hispanic/Latino	56
White/Caucasian	541
Pacific Islander	24
Multi Racial	113
Unknown	64
Total	1,207

- ★ STAR responded to **265** adult forensic interviews and exams as part of the Sexual Assault Response Team.
- ★ STAR responded to **100** medical center visits to support victims of sexual assault (not reporting to law enforcement).
- ★ STAR responded to **593** child sexual assault interviews and assessments.
- ★ An average of **3** emergent cases of sexual assault a day.
- ★ STAR answered **2142** crisis line calls.
- ★ STAR attended **127** court hearing and provided over 200 legal advocacy services.

Fairbanks shelter program – IAC Interior Alaska Center for non-violent Living

Clients Served (Unduplicated) – 902 (this does not include anonymous call received on our crisis line which is around 350 per year)

Female – 788

Male - 114

African American -	63
Alaska Native -	250
Asian	21
Hispanic or Latino -	29
Hawaiian/Pacific -	4
Caucasian	463
Unknown	72

Age	
0 – 17	209
18-24	100
25 -59	544
60 +	13

During 2009 advocacy was needed at 118 adult SART responses at the hospital and 159 child sexual assault at Stevie's Place. – In 2008 there were 81 adult SART and 144 child sexual assaults -

Our shelter nights for the last 5 years

FY09 – 19,205 (96% increase from 05)
FY08 – 14,391
FY07 – 12,736 (moved into larger shelter)
FY06 – 8,522 (this year we limited our intake and had a waiting list due to overcrowding)
FY05 – 9,756



February 1, 2010

AMERICAN CIVIL
LIBERTIES UNION OF
ALASKA
1057 W. Fireweed, Suite 207
Anchorage, AK 99503
(907) 258-0044
(907) 258-0288 (fax)
WWW.AKCLU.ORG

The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

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NOELANI KAMAHELE, Anchorage
STUDENT ADVISORS

Re: **House Bill 298**
Constitutional Issues

Chair Ramras:

Thank you for the opportunity to submit written testimony regarding House Bill 298. The ACLU of Alaska represents thousands of Alaskans who are concerned with constitutional rights and civil liberties protected under the United States and Alaska Constitutions. From that perspective, we have several concerns with the proposed legislation.

**Section 16 Proposed Amendments to
Rule 16 of the Rules of Criminal Procedure**

Section Sixteen of the Bill proposes changes to the rules of criminal procedure that violate the state and federal constitutional rights to a fair trial and to effective representation, and would result in lengthy and costly litigation. The Section proposes that, where evidence in a criminal trial constitutes child pornography, the evidence should be revealed to defendants, defense attorneys, and defense experts only at a state facility, such as a police station or District Attorney's office. While protecting the privacy of the victims of child pornography production is an important interest, the proposed changes to the Rules of Criminal Procedure unnecessarily restrict the rights of the accused.

In some cases relating to child pornography, the use of a technological expert is invaluable. Defendants are entitled to establish that the images at issues are

not child pornography, were planted on the drive by another party, do not represent real children, or were altered in some way. The computer source files would require review at length by an expert witness. Being required to work at a local police department or District Attorney's office would make the work of these experts essentially impossible. Moreover, the analysis of hard drives and other media would likely require unique analysis programs which would require examining the images on the expert's own computers. The proposed rule amendment would effectively deprive defendants of the effective use of expert testimony, which would be a key defense resource in these cases.

Even where the use of an expert is unnecessary, the defense attorney may need to review the files at length, to determine if some of the images in fact represent adults, for instance, or whether some of them are duplicate images. Many of these cases involve hundreds or thousands of images. Requiring defense attorneys to do their work at times and places convenient to the state is unnecessarily restrictive.

A case from Washington State perfectly illustrates why the proposed rule would result in lengthy and expensive litigation which would ultimately result in the overturning of the statute. In *State v. Boyd*, the prosecution in a child pornography case sought and obtained a protective order from the court which only permitted the defense to view the evidence at a state facility. 158 P.3d 54 (Wash. 2007). The Supreme Court of Washington ruled that the Rules of Evidence, the Fifth Amendment right to a fair trial, and the Sixth Amendment right to effective representation by counsel all required that the protective order be struck down and the defendant be granted a new trial, because the defendant could not be adequately represented nor fairly tried under the order.

The important privacy of needs of victims can be protected without the measures laid out in Section 16. For example, the *Boyd* court upheld an order requiring the defense to keep "mirror image" hard drives of evidence under lock and key, to use firewall software on any computer viewing images that was connected to the internet, making the attorney personally and professionally responsible for any unauthorized release of the images, and allowing state experts to verify the complete eradication of the images after the conclusion of the case.

The power of a court to issue a protective order in a particular case already exists and needs no augmentation by the legislature. An order issued after consideration of the unique facts of an individual case is far more likely to survive appellate review than a blanket rule set down by the legislature.

Section 16 of H.B. 298 violates the state and federal constitutional rights to a fair trial and to effective representation. We recommend the Bill be revised so that the courts would be permitted to manage the disclosure of evidence on a case-by-case basis, rather than by instituting a blanket rule that would invite litigation.

///

Section 15 Requirement for Registration of Sex Offenders from Other Jurisdictions

Section 15 proposes to expand the list of those required to register as sex offenders to include anyone required to register in another jurisdiction. The ACLU of Alaska has numerous objections to this amendment.

The Alaska Supreme Court ruled in *Doe v. State* that those convicted of sex offenses in Alaska before the enactment of the sex offender registry statutes in 1994 could not be required to register, as the statute would otherwise violate the *ex post facto* provision of the State Constitution. 189 P.3d 999 (Alaska 2008). In many other jurisdictions, the state courts have not declared their state sex offender statutes to offend their own *ex post facto* rules. The Alaska *ex post facto* provision may prohibit mandatory registration for those convicted of offenses in another state prior to 1994. A final determination would need to be made by the Alaska Supreme Court, likely after lengthy litigation, and potentially overturning many convictions.

The proposed amendment in Section 15 also usurps the State's own policy making decisions. In Alaska, for instance, the legislature has set the age of consent at sixteen. This amendment would nullify the legislature's judgment and require someone convicted of having sex with a 17-year-old in another state to report to the Department of Public Safety and face incarceration should he fail to report on time. Should he end up incarcerated, the people of the state of Alaska will be paying \$44,000 a year to incarcerate someone as a consequence for committing an underlying act which would not even be a crime in Alaska.

The current state of the law in Alaska is that anyone convicted under appropriate Alaska statutes or similar statutes in another state, such as rape, sexual assault, etc., must register in Alaska. Section 15 would therefore expand the registry not to the most culpable and the most dangerous, but to those convicted of designated sex offenses that lie outside the most dangerous sex offenses: particularly, those convicted of having sex with 16 or 17 year olds; those convicted of prostitution offenses; and those convicted of some other minor offenses, like indecent exposure. These offenders are not particularly more likely to commit the rapes and molestations that the registry is designed to protect Alaskans from.

Generally, registries have been ineffective in preventing crime. A Rutgers University study showed that the New Jersey sex offender registry had "no demonstrable effect in reducing sexual re-offenses." The study also showed the enactment of the law had no effect on the number of victims of sex offenses, no effect on how long those convicted of sex offenses remained arrest-free, and no effect on the type of sex offenses committed. The legislature should look for proven, effective methods of preventing sex offenses. The proposed expansion of the sex offender registry in HB 298 is not a means to do this.

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**Section Three – Eliminating the Mental State
Requirement of the Failure to Register Statute**

Subsection (b) of Section Three of the Bill eliminates any mental state requirement, or *mens rea*, for the offense of failure to register, which means that a person who accidentally or in good faith neglects to complete the registration requirement every three months could still be found guilty of the offense. Subsection (c) creates an affirmative defense that registration became impossible because of an unforeseen circumstance and that the individual orally registered with the Department of Public Safety as soon as possible.

Generally, the criminal law requires “not only the doing of some act by the person to be held liable, but also the existence of a guilty mind during the commission of the act.” *Speidel v. State*, 460 P.2d 77, 80 (Alaska 1969). The Alaska courts have held that, for major felonies, a mental state requirement is mandatory, while some minor offenses, such as hunting or public health related offenses, may be strict liability offenses without a mental state requirement. *Speidel*, 460 P.2d 77 (holding that the statute declaring the failure to return a car to be a crime, regardless of mental state, violated due process); *see also* *State v. Guest*, 583 P.2d 836 (Alaska 1978); *State v. Fremgen*, 914 P.2d 1244 (Alaska 1996).

In some cases, the courts have avoided declaring a statute unconstitutional by creating a mental state requirement where a statute has no provision for mental state but no language stating that no mental state requirement exists. *Kimoktoak v. State*, 584 P.2d 25 (Alaska 1978); *Alex v. State*, 484 P.2d 677 (Alaska 1971). With an explicit statement that no mental state is required in Section Three, the courts will not be able to avoid the constitutional conflict and may rule the statute unconstitutional.

Of note, as well, are the unique conditions here in Alaska. Many registered sex offenders live off the road system and in remote villages in which mail service gets interrupted, travel and telecommunications are irregular, and weather could keep an offender from being able to comply. Placing the burden on the defendant to prove his innocence reverses our legal tradition and the traditional balance of powers between the defense and the prosecution. The elimination of the mental state requirement and the substitution of a restrictive affirmative defense makes Section Three subject to attack under the Alaska constitution.

Conclusion

We hope that the Judiciary Committee will note these constitutional infirmities in Sections Three, Fifteen, and Sixteen of House Bill 298 and consider amending them or eliminating them from the Bill to avoid these concerns.

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House Judiciary Committee
ACLU of Alaska Analysis of H.B. 298
February 1, 2010
Page 5

While the ACLU of Alaska takes very seriously the need to address the epidemic of sexual assault in Alaska, these sections are not well-crafted to vindicate the state's purposes. The sections we have identified present substantial Constitutional problems and will likely entangle the state in litigation, should H.B. 298 pass as currently written.

Thank you again for the opportunity to share our concerns. And please feel free to contact the undersigned should you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "J. A. Mittman", with a long horizontal flourish extending to the right.

Jeffrey Mittman
Executive Director
ACLU of Alaska

THE MEDIA COALITION INC

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Memorandum in Opposition to Alaska House Bill 298

DAMIAN HORVATH
Executive Director

American Booksellers
Foundation for Free
Expression

Association of American
Publishers, Inc.

Comic Book Legal
Defense Fund

Entertainment Consumers
Association

Entertainment Merchants
Association

Electronic Software
Association

Freedom to Read
Foundation

Independent Book
Publishers Association

Magazine Publishers of
America, Inc.

Motion Picture
Association of America
Inc.

National Association of
Retail Merchandise

Recording Industry
Association of America
Inc.

Chair
Chris Finan
American Booksellers
Foundation for Free
Expression

Immediate Past Chair
Sean Devlin Bersell
Entertainment Merchants
Association

General Counsel
Michael A. Bamberger
Sonnenschein Nath &
Rosenthal LLP

The members of Media Coalition believe that both House Bill 298 and existing Alaska statute 11.61.128(a) violates the First Amendment rights of producers and retailers and their customers. The trade associations and other organizations who comprise Media Coalition have many members throughout the country including Alaska: book and magazine publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers.

AS 11.61.128(a) bars the distribution by a computer of any "indecent material" by an adult to anyone under 16 years old or someone the adult believes is under 16 years old. "Indecent material" is defined to include any depiction of actual or simulated sexual penetration, lewd touching or exhibition of the genitals, anus, or female breast, masturbation, sexual masochism or sadism. H.B. 298 would expand the existing law would broaden it to apply to any type of distribution rather than merely by computer.

Speech is protected unless the Supreme Court tells us otherwise. As the Court said in *Free Speech Coalition v. Ashcroft*, "As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear. The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity and pornography produced with children." 535 U.S.234, 241 (2002). Unless speech falls into one of these limited categories or is otherwise tied to an illegal act such as luring or enticing a minor, there is no basis for the government to bar access to make such material illegal.

The restriction on "indecent materials" in the present law and in this bill, without a connection to an otherwise illegal act such as luring or enticing a minor, is almost certainly unconstitutionally overbroad. While minors do not enjoy the protection of the First Amendment to the same extent as adults, the U.S. Supreme Court has ruled that "minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected material to them." *Erznoznick v. City of Jacksonville*, 422 U.S. 212-13 (1975). Governments may restrict minors' access to some sexually explicit speech but it is a narrow range of material determined by a specific test. Merely containing sexual content is not enough to make a book, movie, magazine or sound recording illegal. In the case of *Ginsberg v. New York*, 390 U.S. 629 (1968), the U.S. Supreme Court established a three-part test for determining whether material is "harmful to

The Media Coalition is a trade association that defends the First Amendment rights of publishers, booksellers, librarians, recording, motion picture and video games producers, and recording, video, and video game retailers and consumers in the United States.

minors" and may therefore be banned for sale to minors. The material deemed illegal for minors by AS 11.61.128(a) and H.B. 298 does not include any of the three prong test from *Ginsberg* and would criminalize a far broader range of material than is allowed under the First Amendment. A recent law enacted in Illinois barred the sale of video games with sexual content but without the third prong of the *Ginsberg* test. The law was permanently enjoined by the U.S. District Court and the ruling was heartily affirmed by the Seventh Circuit Court of Appeals. *ESA v. Blagojevich*, 469 F.3d 642 (7th Cir. 2006) *aff'g* 404 F. Supp. 2d 1051 (N.D. Ill. 2005).

The existing law's application of these restrictions to Internet communication is almost certainly unconstitutional even if it was limited to material that could be restricted as "harmful to minors" under the three-prong test in *Ginsberg*. This treats material on the Internet as if there were no difference between a computer transmission and a book or magazine. But cyberspace is not like a bookstore. There is no way to know whether the person receiving the "harmful" material is a minor or an adult. As a result, the effect of banning the computer dissemination of material "harmful to minors" is to force a provider, whether a publisher or an on-line carrier, to deny access to both minors and adults, depriving adults of their First Amendment rights. The U.S. Supreme Court has already declared unconstitutional two federal laws that restrict the availability of matter inappropriate for minors on the Internet. *Reno v. ACLU*, 117 S.Ct. 2329 (1997); *Ashcroft v. ACLU*, 534 F.2d 181 (3d Cir 2008), cert. den. 129 Sup. Ct. 1032 (2009). Similar state laws banning sexual speech for minors on the Internet have been ruled unconstitutional. See, *PSINet v. Chapman*, 63 F.3d 227 (4th Cir. 2004); *ABFFE v. Dean*, 342 F.3d 96 (2nd Cir 2003); *Cyberspace Communications, Inc. v. Engler*, 238 F.3d 420 (6th Cir. 2000); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999); *Southeast Booksellers v. McMasters* 282 F. Supp 2d 1180 (D.S.C. 2003); *American Libraries Ass'n v. Pataki* 969 F. Supp. 160 (S.D. 1997); *ACLU v. Goddard*, Civ No. 00-0505 TUC AM (D. Ariz. 2002). The only exceptions to these decisions have been laws that were limited to speech illegal for minors that were intended to be communicated to a person the speaker has specific, rather than general, knowledge is a minor. However, such laws might still be unconstitutional as a violation of the Commerce Clause of the U.S. Constitution. In addition to First Amendment deficiencies, the courts have also ruled that these state laws violate the Commerce Clause, which reserves to Congress the regulation of interstate commerce and prevents a state from imposing laws extraterritorially.

Passage of this bill could prove costly. If a court declares it unconstitutional, there is a good possibility that the state will be ordered to pay the plaintiffs' attorneys' fees. In the successful challenge to the Illinois legislation, the state agreed to pay to the plaintiffs more than \$500,000.

If you would like to discuss further our position on this bill, please contact David Horowitz at 212-587-4025 #11 or at horowitz@mediacoalition.org.

Again, we ask you to please protect the First Amendment rights of all the people of Alaska and reconsider the existing law and this legislation.

Strategic Plan to End the Epidemic of Sexual Assault and Domestic Violence

PURPOSE

Within a decade, end the epidemic of sexual assault and domestic violence and make Alaska the national leader in fighting these scourges

STRATEGIC OBJECTIVES

1. Break the cycle of abuse using a comprehensive public education and prevention campaign to promote a culture of respect that does not tolerate violence against women and children.
2. Deter, segregate, and treat sex offenders so they pose no risk of harm to women and children.
3. Establish a law enforcement presence in every community that desires one to improve public safety.
4. Increase victim service so more have a safe place to go and the services they need to heal.
5. Coordinate and streamline efforts among all stakeholders to more effectively combat violence against women and children.

GUIDING PRINCIPLES

- A culture of responsibility – the answers and resources cannot come from government alone
- Community ownership over solutions
- Partnership between NGOs and state, local, federal, and tribal organizations
- Culturally tailored programs
- Youth leadership in developing and executing programs
- Support only programs with proven effectiveness
- Use metrics to measure success

SUPPORTING GOALS

- Heighten public awareness of the problem
- Make violence against women and children culturally unacceptable
- Evaluate, develop, and implement prevention programs and continue to support programs with proven effectiveness
- Enact legislation that will enhance public safety
- Increase the proportion of incidents reported and suspects arrested, prosecuted, and punished
- Lower recidivism levels
- Make law enforcement more responsive through training
- Ensure shelter beds or safe houses are available to every woman and child in need
- Link victims to medical care, legal services, and opportunities to establish independence from abusive relationships

CRIME STATISTICS

- The Alaska per capita rape rate is the worst in the nation -- two and half times the national average. *Source: Alaska Network on Domestic Violence and Sexual Assault, 2006 Annual Report: Working in Alaska Communities for Safety, Justice, Advocacy and Education (2006).*
- Rape is a greater percentage of all violent crimes reported in Alaska than it is nationally, at 12% of all violent crime in Alaska compared to 6% of violent crime in the United States. *Source: Alaska Senate Judiciary Committee's Report and Recommendations: Reducing Sexual Assault in Alaska (2009).*
- The Alaska per capita child sexual assault rate is also the worst in the nation -- almost six times the national average. *Source: Alaska Network on Domestic Violence and Sexual Assault, 2006 Annual Report: Working in Alaska Communities for Safety, Justice, Advocacy and Education (2006).*
- Outside of Anchorage, 55% of sexual assault victims are under the age of 15; 30% are between 13 and 15 years old and 25% of victims are between 6 and 12 years old. *Source: Studies by Alaska State Troopers and Anchorage Police Department, compiled by UAA Justice Center (2009).*

- Alaska has the highest rate per capita of men murdering women. *Source: Alaska Network on Domestic Violence and Sexual Assault, 2006 Annual Report: Working in Alaska Communities for Safety, Justice, Advocacy and Education (2006).*
- In nearly one-quarter of sexual assault cases the victim was incapacitated due to alcohol or drug use. *Source: Alaska Sexual Assault Nurse Examiner Study, Reprinted in Andre Rosay, Sexual Assault in Alaska: Slide Show Presentation to Alaska State Legislature Senate Judiciary Committee (August 2009), available at <http://justice.uaa.alaska.edu/vaw/2009-08.jc-vaw-sexualassault.pdf>.*
- Two-thirds of domestic violence victims reported that alcohol had been a factor. *Source: U.S. Department of Justice, Bureau of Justice Statistics, Crime Characteristics: Summary Findings (2009), available at http://www.ojp.usdoj.gov/bjs/cvict_c.htm.*
- Boys who witness domestic violence are twice as likely to abuse their own partners and children when they become adults. *Source: Strauss, Gelles, and Smith, Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families (1990).*
- Villages with law enforcement presence have a 40% lower rate of serious injury caused by an assault compared to villages without local law enforcement. *Source: Wood and Gruenwald, Local Alcohol Prohibition, Police Presence and Serious Injury in Isolated Alaska Native Villages (2006).*

IMPLEMENTATION

I. BREAK THE CYCLE OF ABUSE USING A COMPREHENSIVE EDUCATION AND PREVENTION CAMPAIGN TO PROMOTE A CULTURE OF RESPECT THAT DOES NOT TOLERATE VIOLENCE AGAINST WOMEN AND CHILDREN

A. Statewide Education Efforts

Rationale: All members of society must consider violence against women and children unacceptable, and all must believe it is something that can be stopped. Schools, media, and high-profile public engagements can be used to transmit the message that sexual assault and domestic violence are intolerable in our society and that every individual and group must identify its role in combating these problems.

1. Develop, coordinate, and broadcast public service announcements. For example, the Governor, DPS, LAW, and CDVSA have coordinated with the Alaska Network on Domestic Violence and Sexual Assault to launch the "Real Alaskan Men Choose Respect Campaign."

2. Cabinet members engage in public outreach to raise awareness and change attitudes about sexual assault and domestic violence. For example, the Governor held a major press event to highlight the epidemic. The Attorney General has discussed the epidemic in speeches and has been interviewed by reporters and talk show hosts. Commissioner Masters frequently speaks throughout the state about the Governor's initiative and the epidemic.
3. Develop partnerships with Native organizations to work together on prevention solutions. An excellent example is CDVSA's Tribal and State forums, which seek to devise programs and strategies to break the cycle of violence.

B. Locally-Targeted Education Efforts

Rationale: There is a growing realization that to reduce violence against women and children we need to prevent violence before it occurs rather than intervening after lives are shattered. To do this we must develop a prevention strategy seeking to bring about change in individuals, relationships, communities, and society. Cultural change is most effective from the ground up and requires a coordinated effort among local communities, nonprofits, and government.

1. Work with tribal, non-profit and religious organizations to raise awareness of the problem, especially among youth, and stigmatize violence against women and children. Under the legislature's guidance, CDVSA is in the process of developing and implementing a plan to "promote education and programs to prevent future incidents of domestic violence and sexual assault." And, as discussed in more detail below, the Governor's budget requests the creation of a DV/SA coordinator. Part of the coordinator's portfolio will be to take a leading role in these outreach efforts.
2. Cultivate youth leaders through schools and community groups and incorporate youth leaders in developing primary prevention strategies. For example, CDVSA partners with the Alaska Network on Domestic Violence and Sexual Assault on developing prevention programs for schools and youth.

II. DETER, SEGREGATE, AND TREAT OFFENDERS SO THEY POSE NO RISK OF HARM TO WOMEN AND CHILDREN

A. Enact Legislative Changes To Protect Alaskans

Rationale: Alaska needs tough laws in the nation to send a message that violence against women and children will not be tolerated and to ensure that offenders no longer pose a risk to others, either because they are behind bars or because they have been rehabilitated. Although the Alaska legislature has already enacted stringent laws, more can be done to punish offenders and protect victims.

1. Toughen penalties for crimes of sexual assault by making it an aggravating factor if the defendant sexually assaulted the victim while knowing the person was vulnerable due to use of alcohol or drugs. More specifically, the Governor has sponsored SB 222 and HB 298 to make it an aggravating factor if the defendant was convicted of any crime and the defendant knew that the victim was vulnerable due to use of alcohol or drugs.
2. Expand laws to protect children from online sexual predators. The Governor has sponsored SB 222 and HB 298, which prohibit suspended imposition of sentences for people convicted of human trafficking, possession or distribution of child pornography, and distribution of indecent materials to minors; these bills make it against the law not just to possess child pornography but also to access it on a computer with the intention of viewing it; and they empower courts to prohibit sex offenders, in cases involving children, from using a computer or communicating with children under 16 years old.
3. Enhance protection and processing of DNA and other forensic evidence to ensure the actual perpetrator is held accountable. To help accomplish this goal, the Governor has sponsored HB 317 and SB 241 would adopt standards for evidence retention and post-conviction DNA testing. The Senate Judiciary Committee Report found that proper examination of DNR evidence is critical to sexual assault prosecutions and that the backlog in getting the evidence processed is causing significant delays in prosecuting cases.
4. Close loopholes that allow convicted sex offenders from other states to escape registering in Alaska (if they are registered as sex offenders in other states, they must register here, even if the sex crime they were convicted of does not have an exact equivalent in Alaska). SB 222 and HB 298 accomplish this goal.

5. Modify the bail statutes to protect the victims of the crime and the general public. The Governor will soon introduce a Bail Bill that seeks to accomplish this goal. Under this bill, a person charged with serious crimes, like a sexual assault felony or a defendant charged with domestic violence who has been convicted of domestic violence within the five preceding years, would have burden of proof to establish that his or her release would not be dangerous to the victim or the public, and would assure the person's appearance in certain cases. Currently, the State has the burden to make this showing.

B. Improve Prosecution

Rationale: Bringing offenders to justice deters future violent acts and sends a strong message that violence against women and children is unacceptable. While most prosecutions result in guilty pleas or convictions, increasing the rates at which incidents are reported and referred for prosecution will help us hold more offenders accountable. Creating a law enforcement presence in every community will also deter violence, increase reporting rates, and improve evidence collection necessary for more and more successful prosecutions.

1. The Governor's budget requests \$75 million for a new crime lab to help us process the evidence needed to win convictions in sexual assault cases and \$92.8K for a forensic scientist at the crime lab
2. Department of Law has issued specific SA/DV prosecution policies and guidelines for sexual assault and domestic violence cases
3. Prosecutors are being trained in tough plea negotiations and the Governor's budget seeks an additional \$75K for additional training.
4. The Department of Law has hired a cybercrimes prosecutor to prosecute child pornography.
5. DPS has reorganized its Computer and Financial Crimes Unit so that investigators can focus solely on computer crimes against children.
6. The Governor's budget requests \$2.3 million in General Funds to make permanent 17 prosecutor and victim-witness paralegal positions at the Department of Law, which were previously funded on an interim basis through federal grants.
7. The Governor's budget requests \$656,000 in General Funds to make permanent DPS's cold case unit, which had been funded by federal grant money.

8. To ensure forensic evidence is gathered the Governor's budget requests \$12.3K for 350 pediatric sexual assault kits and \$150K for SART exams. The Senate Judiciary Committee report found that when victims receive a medical forensic exam, it more than doubled the likelihood that the case was accepted for prosecution.

C. Reduce Recidivism Rates

Rationale: The majority of batterers return to their families, and the cycle of violence continues unbroken. It is in the state's interest to reduce recidivism. Otherwise, victims will continue to be harmed and offenders will continue to be arrested and imprisoned at the state's expense. Programs to reduce recidivism will help heal families and save the state money in the long run.

1. DOC is working collaboratively with DPS's VPSO program to provide effective supervision for probationers and parolees in rural communities.
2. The Criminal Justice Working Group is reviewing ways to improve DOC's prisoner re-entry programs, including after-care programs for substance abuse treatment, halfway house beds, mental health clinicians in correctional facilities, re-entry case workers, and coordination among stakeholders.
3. The Criminal Justice Working Group is reviewing reforms to the probation system to reduce recidivism rates by imposing swift punishments for probation violations. According to the Senate Judiciary Committee Report, nationally 45% of prisoners serving time for rape or sexual assault committed their crime while on probation or parole.

III. ESTABLISH A LAW ENFORCEMENT PRESENCE IN EVERY COMMUNITY THAT DESIRES ONE

A. Add 150 More VPSO Positions Over the Next Ten Years

Establishing a law enforcement presence in every village that desires one will prevent offenses from happening and facilitate investigation and prosecution for the offenses that do occur. UAA Justice Center studies show that in villages where a VPSO was available, rates of serious assault declined 40% and a case was over three times more likely to be prosecuted. But increasing the number of VPSO positions alone will not suffice. Local communities must collaborate by identifying qualified candidates, providing VPSO facilities, and supporting VPSOs' efforts.

1. The Governor's budget requests adding 15 VPSOs per year (at cost of \$1.26 million annually) for 10 years so that every community of a certain size that desires a VPSO shall have one if the community puts forward a qualified individual. The Governor's budget also requests a merit increase (at a cost of \$129.9K) for VPSOs and an increase in the VPSO COLA (at a cost of \$93.9K). The Senate Judiciary Committee Report also recommends that the State hire more VPSOs because the Committee found that it will likely increase prosecution and conviction and because law enforcement presence has been shown to lower the rates of serious assault.
2. To secure housing for VPSOs, the Governor's budget requests \$1 million for VPSO housing grants and loans in AHFC programs.

B. Hire Additional Investigators for Sexual Assault Investigations

Rationale: Maintaining VPSOs in rural communities will increase safety and ensure incidents of violence are investigated promptly. However, in many cases additional resources will be required to investigate, collect evidence, and prepare cases for referral to prosecutors. By hiring troopers specifically trained to investigate sexual assault and domestic violence incidents, we will maximize the number of incidents that result in convictions, ultimately deterring future offenders.

1. The Governor's budget requests three additional Trooper DV/SA investigators at a cost of \$500K.
2. Use AARA (JAG stimulus) to hire 8 DV/SA investigators. Three of the investigators will be hired by municipal governments to work AST multijurisdictional task forces.

IV. ENSURE VICTIMS HAVE A SAFE PLACE TO GO AND THE SERVICES THEY NEED TO HEAL

A. Increase Availability of Civil Legal Services for Victims

Rationale: A study conducted by economists found that increased provision of legal services for victims of domestic violence contributes to the decline of domestic violence rates. Civil legal services offer victims help with practical matters – like protective orders, custody disputes, and child support – that give victims options and increase their safety over the long term.

1. The Governor's budget requests an additional CINA attorney (at a cost of \$200K) to remove children from violent homes.

2. Strengthen domestic violence pro bono representation by increasing number and skill of volunteer attorneys and expand number of victim advocates. To accomplish this goal, LAW has held over a dozen meetings with legal service providers, victim advocates, and the court system to find ways to increase legal representation for victims. LAW will continue to work closely with all stakeholders to make sure victims seeking protective orders are represented.
3. Obtain commitments from leading Alaska law firms to devote a certain number of hours every month to pro bono legal work on behalf of victims of domestic violence and sexual assault. The Attorney General has begun an outreach effort to the legal community to meet this goal.

B. Increase Shelter Capacity to Meet Needs of Battered Women

Rationale: The ability to leave a dangerous situation and have a safe place to stay will reduce the number of violent incidents. Further, counseling services provided by shelters inform victims of their rights and options to escape abusive relationships. Increasing facilities and training staff will enhance shelters' ability to provide these crucial functions.

1. Provide an additional \$381,000 to increase the capacity of shelters – increasing the number of beds, training, and services available to victims, so that they can escape abusive situations.

V. COORDINATE AND STREAMLINE EFFORTS AMONG STAKEHOLDERS

A. Create a Domestic Violence and Sexual Assault Coordinator To Establish Partnership Among Agencies and Federal, Tribal, and Non-Profit Stakeholders on Efforts To Combat DV/SA

Rationale: Efforts to address the problems of domestic violence and sexual assault exist, but more can be done to coordinate between government agencies, tribes, NGOs, and other stakeholders to improve and streamline these efforts. A coordinator would be the necessary link between these stakeholders, would identify and cultivate new resources, and would keep sustained focus on the issue.

1. The Governor's budget requests \$200K to create a new coordinator position that will oversee this comprehensive plan to end the epidemic of DV/SA. More specifically, the coordinator will establish partnership and form work groups with NGOs, tribal entities, and federal agencies to maximize effectiveness and minimize duplication in efforts to combat domestic violence and sexual assault.

2. The coordinator will consult with stakeholders to develop and implement additional programs to carry out the Governor's initiative.
3. The coordinator will improve the state's existing programs and efforts as they relate to domestic violence and sexual assault, including prosecution, corrections, provision of services to victims, and education.
4. The coordinator will work with CDVSA, DPS, and the UAA Justice Center (or other research organizations) in establishing studies and research necessary for baseline data to measure success and fully understand the extent of victimization in Alaska. This action is consistent with the Senate Judiciary Committee's recommendation set out in its recent Report and Recommendations.

Addendum: Budget

The budget pieces of the plan at this point in time include all the efforts that were in the base budget for FY 10, i.e., funding for DPS, LAW, CDVSA, sex offender treatment in DOC and in DHSS for juveniles, etc. **PLUS** new increments of:

- \$200k Child Protection Attorney in Kenai
- \$2.2 million Prosecutors and staff who work primarily on sexual assault and domestic violence cases. Making these positions permanent and funding them with state dollars. We cannot afford to lose these resources.
- \$200k SA / DV Coordinator
- \$656.5k Cold case unit – Critical unit to solving homicides, many of which involve domestic violence and sexual assault. We cannot afford to lose these resources.
- \$150k Sexual assault exam costs
- \$75k SA / DV Prevention training
- \$500k 3 SA / DV investigators at DPS
- \$381.9k Shelters
- \$651.4k Replace reduced PFD felon funds for CDVSA
- \$12.3k 350 pediatric sexual assault kits
- \$92.8k Forensic scientist at the crime lab
- \$129.9k Merit increases for VPSO positions
- \$93.9k VPSO COLA
- \$1.261.5 15 new VPSO's
- \$75 million Crime Lab
- \$1.0 million VPSO housing loans and grants
- \$86k New and improved crime lab equipment

Addendum: Recent Actions Taken To End the DV/SA Epidemic

- CDVSA has devised a strategic plan to develop prevention programs
- The Network, in collaboration with the State, has launched a PSA campaign
- To devise metrics that will measure the initiatives outcomes, cabinet members have met with the United Way and the Mental Health Trust; LAW is working on forming a committee to monitor the initiatives impact on DV and SA rates
- DPS has received ARRA funding for five investigators in ABI and three municipal investigators for multi-jurisdictional task force and is in the process of hiring
- LAW has hired a new cybercrime prosecutor
- DPS has reorganized its Computer and Financial Crimes Unit so that investigators can focus solely on computer crimes against children
- The Criminal Justice Working Group is reviewing ways to reduce recidivism through improved prisoner re-entry services and by imposing swift and consistent penalties for probation violations
- The Attorney General has discussed the DV/SA epidemic at speeches, has conducted several radio interviews, and has been interviewed by editorial boards and reporters
- CDVSA has acquired \$290K in the FY10 budget for research and studies; the Governor's requested budget seeks \$290K for CDVSA's operating budget to continue funding for research and studies
- The Attorney General and Commissioner Masters have met with DOJ officials to raise awareness and secure funding for programs

Addendum: Proposed Legislation

I. Changes In Crimes and Sentences Involving Sexual Assault and Domestic Violence

- This bill would make 5 important changes to our current laws:
 1. Prohibit suspended imposition of sentences for people convicted of human trafficking, possession or distribution of child pornography, and distribution of indecent materials to minors.
 2. Make it against the law not just to possess child pornography but also to access it on a computer with the intention of viewing it.
 3. Courts could prohibit sex offenders, in cases involving children, from using a computer or communicating with children under 16 years old.
 4. Sentences for sex offenses could be increased through new "aggravating factors," including the defendant's knowledge that the victim had consumed drugs or alcohol, or a previous dating relationship with the victim.
 5. Anyone required to register as a sex offender in another state would have to register in Alaska.

II. A Revision of Bail Laws

- A comprehensive review of our bail statutes has not occurred since the 1960s; reorganization and updating of this law is overdue.
- Although the substantive provisions are generally similar to current law, there are some differences.
- Under this bill, a person charged with serious crimes, like a sexual assault felony or a defendant charged with domestic violence who has been convicted of domestic violence within the five preceding years, would have burden of proof to establish that his or her release would not be dangerous to the victim or the public, and would assure the person's appearance in certain cases.
- Currently, the State has the burden to make this showing

- The bill also provides that once convicted of sex-related felonies, perpetrators could not be released pending sentencing or an appeal.

III. Specific Procedures for Post-Conviction DNA Testing

- This bill is prompted by the State's victory in the *Osborne* case.
- The bill adopts new requirements for preservation of evidence and biological material in certain cases by all law enforcement agencies in the state.
- It also adopts a procedure for a person convicted of a felony against a person to apply for post-conviction DNA testing.
- More specifically, the bill requires municipal police departments, courts and state agencies to retain DNA evidence for post-conviction testing and cold case prosecution.

IV. The Alaska Scientific Crime Detection Laboratory in Anchorage

- The state would issue \$75 million in certificates of participation for the lab in order to effectively conduct examinations of evidence and expedite the processing of a large backlog of evidence in criminal cases. Using certificates of participation spreads the cost out over time so that both this generation of Alaskans and the next will help pay for this important facility and reap its benefits.
- Over 50% of submitted cases to the Crime Lab are DV/SA related
- The new lab will DPS to bring in cutting edge technologies and DNA techniques

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December 5, 2009

EDITORIAL: Shameful epidemic
Gov. Parnell issues challenge to legislators and all Alaskans

Anchorage Daily News

Gov. Sean Parnell is right: Alaska's rate of rape and domestic violence is an epidemic that demands stronger action across multiple fronts. He's offering legislators and all Alaskans a comprehensive way of attacking this scourge. Legislators and the rest of us should all take him up on his challenge to join the fight. The governor recognizes that it will take more than just the usual promise to "get tough" on offenders by hitting them with stiffer sentences. If you are throwing a perpetrator in jail, it's too late for the victim. Gov. Parnell wants to do more to prevent this kind of violence and protect those who are at risk.

For starters, he wants to change the social attitudes that feed this epidemic. As a society, we need to say, no, it's not OK to lose control and abuse a spouse or child. No, domestic violence is not merely a private matter for families to deal with.

Just as MADD made drunk driving socially unacceptable, our society needs to make clear we won't tolerate abuse of women and children. The "Choose Respect" ad campaign is a promising way to start changing these backward attitudes.

Gov. Parnell also wants to make sure those who are at risk can get shelter and legal protection when they need it. One innovative idea in his plan is to recruit lawyers who will offer free advice on how to get and enforce restraining orders, deal with the criminal justice system and find other help in the community. More village public safety officers in the Bush will help, too. As Gov. Parnell realizes, villages without any on-site law enforcement are places where rape and domestic violence can flourish. With more VPSOs, victims are more likely to report crimes and offenders are more likely to be convicted.

The most expensive item on the governor's list is the new state crime lab, which is already designed and ready to go. The current tiny, outdated lab limits the state's ability to process evidence, especially DNA evidence that can help solve sex crimes. Whether paid for in cash or with bonds, the new lab is a sound investment in a safer Alaska.

Lower profile parts of the governor's plan will help as well. He wants to fix legal technicalities that allow some out-of-state sex offenders to avoid registering when they move here. He will make sure there are no plea bargains that let sex offenders avoid registering. He wants to hire one person whose job it is to ask, every day, what state government should be doing to help stop rape and domestic violence.

One area that probably needs more attention in the governor's plan is the role alcohol plays in rape and domestic

violence, among both victims and perpetrators. In many cases, the most basic way victims can protect themselves is by not getting drunk. Offenders are often drunk as well, and the alcohol releases their inhibitions, so stronger efforts to end alcohol abuse will pay dividends in crime prevention.

Gov. Parnell's plan won't be cheap, but to his credit, the fiscally conservative governor is willing to put the necessary money behind it. No amount of government programs can turn Alaska into a peaceful paradise where these shameful crimes magically vanish. But we simply should not tolerate the fact that Alaska leads the nation in rape and domestic violence. If Gov. Parnell's initiative can bring Alaska's rates for these crimes down to the national average, that would be real progress.

BOTTOM LINE: Gov. Parnell has a good plan to fight this scourge in Alaska.

---- INDEX REFERENCES ----

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services and the person damages the financial reputation of the other person. "Financial reputation" is defined to mean a person's ability to obtain a loan, open a credit or financial institution account, obtain property or services on credit, or creditworthiness in a credit report. Phillips was charged and convicted of a number of theft and related offenses including criminal impersonation of Sturm and Roberts. Sturm testified that his credit report had a number of bad marks on it due to Phillips' passing of forged bad checks on Sturm's account. The Alaska Court of Appeals found that this was sufficient to show damage to financial reputation. Roberts, though, testified that he did not know if Phillips' actions in forging and negotiating bad checks on his account (those checks had been turned over to collection agencies) had any effect on his credit report and that he had continued to bank without problem, had not attempted to take out any loans and did not know if his credit or ability to obtain credit had been adversely affected. The court found that without any evidence of damage to Roberts' financial reputation that Phillips' conviction for criminal impersonation of Roberts had to be reversed.

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Phillips v. State, 211 P.3d 1148 (Alaska App. 2009).

Legislative review is recommended to determine if the definition of "financial reputation" should be amended or if damage should be presumed when certain negative effects, such as referrals to collection agencies, are suffered by the victim.

AS 11.61.127

MERE VIEWING OF CHILD PORNOGRAPHY ON THE INTERNET DOES NOT AMOUNT TO POSSESSION OF CHILD PORNOGRAPHY.

Worden was convicted of possession of child pornography when child pornography images were found in his browser cache. No evidence was introduced that Worden made any attempt to store the images or otherwise knew that his browser stored the images in a cache or that Worden's intent was anything other than to simply view the images on a computer screen while he was at a website. The Alaska Court of Appeals found that AS 11.61.127 proscribes the possession of child pornography and that the mere viewing of child pornography on a computer did not amount to possession.

Worden v. State, 213 P.3d 144 (Alaska App. 2009).

Legislative review is recommended if the legislature desires to proscribe the viewing of child pornography without a person actually undertaking any effort to possess it.

AS 11.71.060

CHALLENGE TO RECRIMINALIZATION OF SMALL AMOUNTS OF MARIJUANA NOT RIPE FOR DECISION.

"In June 2006 the Alaska Legislature amended AS 11.71.060(a) to prohibit the possession of less than one ounce of marijuana. The American Civil Liberties Union of Alaska and two anonymous individuals ... sued for declaratory and injunctive relief. They argued that section .060 as amended conflicts with the privacy clause of the Alaska Constitution, as interpreted in *Ravin v. State* [537 P.2d 494 (Alaska 1975)], to the extent that it criminalizes possession of small amounts of marijuana in the home by adults for personal use." The trial court found that the amended AS 11.71.060 was unconstitutional under *Ravin* and the state appealed. The Alaska Supreme Court ruled that the issue was not ripe for adjudication as "it does not arise from an actual prosecution brought under the amended statute." A decision on the constitutionality of AS 11.71.060 and whether *Ravin* precludes the state from proscribing the use of small amounts of marijuana by an adult in their own home must arise from an actual criminal prosecution.

State v. American Civil Liberties Union, 204 P.3d 364 (Alaska 2009).

The viability of AS 11.71.060 as applied to the possession of marijuana by an adult in their own home remains in question as *Ravin v. State* is still the law of Alaska until overruled or reinterpreted by the Alaska Supreme Court. Under this decision, any review must wait until someone is prosecuted for a violation of AS 11.71.060 and that person challenges that prosecution on privacy grounds.

AS 12.55.025(c)

NO CREDIT FOR TIME SERVED UNDER AS 12.55.025(C) FOR RESIDENTIAL TREATMENT WHILE ON PAROLE.

Triplett was convicted of felony driving while intoxicated and sentenced to a period of incarceration. After serving a period of incarceration, Triplett was granted discretionary parole and

- (1) the number of applications made under AS 12.37.010 — 12.37.130;
- (2) the number of orders entered by the court;
- (3) the effective period of time for which each interception was authorized;
- (4) the number of, and duration of the authorized interception period specified in, any extension orders;
- (5) the offenses in connection with which the communications were sought;
- (6) the names and titles of the applicants;
- (7) the number of indictments or other charges resulting from each application;
- (8) the offenses that each indictment or other charge relates to; and
- (9) the disposition of each indictment or other charge. (§ 1 ch 61 SLA 1993)

Article 2. Pen Registers and Trap Devices.

Section

200. Authorization to use pen registers and trap devices

Sec. 12.37.200. Authorization to use pen registers and trap devices. Upon application by a peace officer made in conformity with any provision of federal law authorizing such an application, a court may issue an order authorizing or concerning the use of a pen register or a trap device as permitted under federal law. (§ 1 ch 61 SLA 1993)

Article 3. Communications in Electronic Storage.

Section

300. Authorization for access to and use of communications in electronic storage

Sec. 12.37.300. Authorization for access to and use of communications in electronic storage. Upon application by a peace officer made in conformity with any provision of federal law authorizing such an application, a court may issue an order authorizing or concerning access to and disclosure or use of communications in electronic storage as permitted under federal law. (§ 1 ch 61 SLA 1993)

Article 4. Police Use of Body Wires.

Section

400. Police use of body wire

Sec. 12.37.400. Police use of body wire. (a) A peace officer may intercept an oral communication by use of an electronic, mechanical, or other eavesdropping device that is concealed on or carried on the person of the peace officer and that transmits that oral communication by means of radio to a receiving unit that is monitored by other peace officers, if

- (1) the interception and monitoring occurs
 - (A) during the investigation of a crime or the arrest of a person for a crime; and
 - (B) for the purpose of ensuring the safety of the peace officer conducting the investigation or making the arrest;
- (2) the peace officer intercepting the conversation is a party to the oral communication and has consented to the interception; and
- (3) the communication intercepted is not recorded.

(b) A peace officer monitoring a receiving unit under (a) of this section, or any other person intercepting an oral communication transmitted under (a) of this section, is not competent to testify in a criminal proceeding involving a party to the oral communication about the contents of the oral communication that was intercepted or the fact that the communication occurred. (§ 3 ch 64 SLA 1999)

