

SB

222

<target><bill>SB 222</bill><subject>SB
222</subject><comm>SF26</comm></target>

STATE CAPITOL
PO Box 110001
Juneau, Alaska 99811-0001
907-465-3500
fax: 907-465-3532



550 West 7th Avenue #1700
Anchorage, Alaska 99501
907-269-7450
fax 907-269-7463
www.gov.alaska.gov
Governor@alaska.gov

Governor Sean Parnell
STATE OF ALASKA

January 15, 2010

The Honorable Gary Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens,

Under the authority of Art. III, Sec. 18, of the Alaska Constitution, I am transmitting a bill that provides Alaska law enforcement and other agencies the resources needed to prevent sexual assault and domestic violence crimes in Alaska. Sexual assault and domestic violence crimes destroy individuals and families, eroding the foundation of a just society. Alaska's challenge is to stop child pornography, sexual assault, and sexual abuse of minors in addition to ending the cycle of domestic violence.

Alaska's criminal laws concerning domestic violence, sexual assault, sexual abuse of a minor, and child pornography are strong. However, a few changes would improve prosecution of these offenses. The bill will adopt a class A misdemeanor for offensive touching that does not arise to sexual assault in the first, second, or third degree. It will also adopt a class C felony, the offense of knowingly accessing child pornography on a computer, and extend the prohibition of distributing indecent material to a minor to all forms of distribution.

The bill provides that a person convicted of human trafficking, possession, or distribution of child pornography may not be given a suspended imposition of sentence. It will specify conditions of probation for child predators that allow a court to forbid the defendant from using a computer or internet site, and prohibit contact with children.

The bill will give the courts more discretion in sentencing defendants. Specifically, it will allow a court to increase a person's sentence above the usual sentencing range if the defendant knew that the victim was particularly vulnerable as a result of having consumed alcohol or drugs. It will also allow an increased sentence if the crime is a felony and is committed against a person whom the offender is in a relationship of trust, such as dating or sexual relationship, or the offense involves a defendant who is 18 years of age or older and has sexual contact with a minor under 13 years of age.

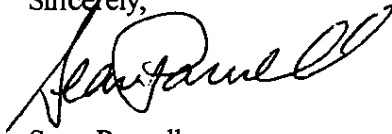
Sex offenders and child kidnappers required to register elsewhere should not be able to move to Alaska and avoid registration. The bill will make it mandatory for a registered sex offender or child kidnapper from another state to register in Alaska when the intention is to live in Alaska. This would apply even when Alaska does not have a substantive law that is similar to the crime the person committed.

The Honorable Gary Stevens
January 15, 2010
Page 2

Finally, the bill protects victims of child pornography from being victimized or traumatized by the pre-trial discovery process in a criminal prosecution. While it allows the pornographic material to be inspected by the defendant, defense counsel, and experts the defense may use, copying the material would be prohibited and required to remain in the possession of law enforcement.

I urge your prompt and favorable consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Parnell", written in a cursive style.

Sean Parnell
Governor

Enclosure

SENATE FINANCE COMMITTEE REPORT

DATE: 4/7/10

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered SENATE BILL NO. 222

SB 222 SEX OFFENSES; OFFENDER REGIS.; SENTENCING

"An Act relating to the crimes of harassment, possession of child pornography, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for certain sex offenses; relating to aggravating factors in sentencing; relating to registration as a sex offender or child kidnapper; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective date."

and recommends:

- be replaced with SCS or CS _____ ()
- adopt previous SCS or CS SB 222 (Jud)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

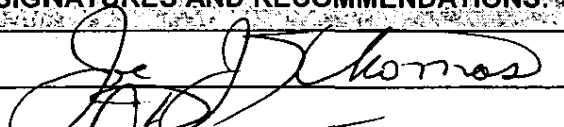



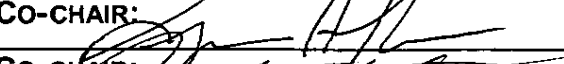

SENATE BILL:	
<input type="checkbox"/> Same Title	
<input checked="" type="checkbox"/> New Title	
<hr/>	
HOUSE BILL:	
<input type="checkbox"/> Same Title	
<input type="checkbox"/> Technical Title Change	
<input type="checkbox"/> New Title w/ SCR # _____	

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#
DPS	4/7/10	✓			

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#
DOA	12/31/10			✓	1
DOH	1/7/10	✓			2
ADM	12/31/10			✓	3
LAW	12/30/10			✓	4
Court	1/22/10			✓	5

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	THOMAS	✓			
	EGAN	✓			
	OLSON			X	
	ELLIS	✓			
CO-CHAIR: 			X		
CO-CHAIR: 		✓			

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 222
(S) Publish Date: 1/19/10

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

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							
-----------------------------	--	--	--	--	--	--	--

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 Phone 907 269-3504
Division: Office of Public Advocacy Date/Time 12/31/09, 4:30 p.m.
Approved by: Rachael Petro, Deputy Commissioner Date 12/31/2009
Department of Administration

FISCAL NOTE # 1

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. SB 222

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.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 222
(S) 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...."
Title: _____
Sponsor: Rules Committee
Requester: Governor
Dept. Affected: DOC
RDU: Administration & Support
Component: Office of the Commissioner
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 Peebles, Deputy Commissioner
Department of Corrections

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

FISCAL NOTE # 2

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. SB 222

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: SB 222
 (S) 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
 Component: Public Defender Agency
 Sponsor: Rules Committee
 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 # 3

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. SB 222

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: 4
 Bill Version: SB 222
 (S) 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							
-----------------------------	--	--	--	--	--	--	--

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 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: 5
 Bill Version: CSSB 222(JUD)
 (S) Publish Date: 4/7/10

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

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)

The court system does not anticipate any fiscal impact from the passage of SB 222.

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: CSSB222(JUD)
 () Publish Date: _____

Identifier (file name): CSSB222(JUD)-DPS-R&I-04-07-10 Dept. Affected: Public Safety
 Title: "An Act relating to the crimes of harassment, distribution, and possession of child pornography, and distribution of indecent materials..." RDU: Statewide Support
 Sponsor: Rules Committee Component: Records & Identification
 Requester: Senate Finance Committee Component Number: 1190

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	83.8		83.8	83.8	83.8	83.8	83.8
Travel	10.0		10.0	10.0	10.0	10.0	10.0
Contractual	25.8		5.8	5.8	5.8	5.8	5.8
Supplies	1.0		1.0	1.0	1.0	1.0	1.0
Equipment	2.9						
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	123.5	0.0	100.6	100.6	100.6	100.6	100.6

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	123.5		100.6	100.6	100.6	100.6	100.6
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	123.5	0.0	100.6	100.6	100.6	100.6	100.6

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time	1.0		1.0	1.0	1.0	1.0	1.0
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation amends AS 12.62.130 to require law enforcement agencies to report to the department data regarding each type of felony sex offense committed within that agency's jurisdiction.

Enactment of this legislation would necessitate the development of an enhanced reporting mechanism and data system to collect and track felony sex offenses so that the department can provide timely, accurate and meaningful statistics specific to those felony sex offenses defined under AS 12.63.100(6).

Because the mechanism currently being used to report uniform crime report information to the department does not include the data this legislation requires, an enhanced reporting mechanism that captures the data elements (cont.)

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

Phone: (907) 269-0202
 Date/Time: 4/7/10 3:28 PM
 Date: 4/7/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. CSSB222(JUD)

ANALYSIS CONTINUATION

(cont.) specific to felony sex offenses will be needed. To meet this requirement, the department proposes to create a secure electronic form for reporting felony sex offense data as well as a separate database to collect, store and report the information. Law enforcement agencies would complete the form online and submit it electronically to DPS through a secure Internet connection. Reports would be assigned and identified by a unique identifier which would be used to track felony sex offenses. It is envisioned that the electronic form would interface with the database and auto-populate the data. As an alternative, hardcopy forms would be completed by law enforcement and manually entered into the database by DPS personnel.

The one-time costs associated with development of the form, electronic interface and database are estimated to be \$20,000.

The department anticipates these additional data collection and analysis efforts will require one new full-time Criminal Justice Specialist position. This position would be responsible to:

- * Train, functionally test, and affirm the proficiency of state and local law enforcement agency personnel responsible for reporting data regarding each type of felony sex offense reported within that agency's jurisdiction;
- * Provide continuing training and technical assistance to law enforcement agencies across the state as needed;
- * Review, audit and validate the data reported for agency adherence to prescribed reporting standards including completeness, timeliness and accuracy;
- * Enter hardcopy reports into the database;
- * Track, or assist in tracking, each type of felony sex offense reported;
- * Identify data reporting and collection issues and determine appropriate action;
- * Ensure law enforcement agency compliance with reporting requirements;
- * Compile and distribute statistical information and reports to authorized/interested parties;
- * Assist in the compilation of an annual report concerning the number, nature and outcomes of felony sex offenses reported in the state.

SENATE BILL 222
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. The section adds an element requiring proof that the indecent material is harmful to minors.

Section 11 increases the penalty for distribution of indecent materials to minors to a class B felony if the offender was required to register as a sex offender at the time of the offense.

Section 12 defines the meaning of "harmful to minors". The definition reflects the contemporary law pertaining to the type of pornography which a state may regulate.

Section 13 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 13 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 14 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 15 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 16 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 17 amends AS 12.62.130, which requires criminal justice agencies to report crime data to the department of public safety to include the mandatory requirement that at a minimum the agencies must report data pertaining to sex offenses, or face possible loss of funding the agencies receive from the department.

Section 18 amends the definition of sex offenses under AS 12.63.100 to include individuals who are convicted of harassment under AS 11.61.118(a)(2) and have previously convicted of that offense.

Section 19 grants the Attorney General the power to issue subpoenas in connection with investigations of crimes relating to the exploitation or attempted exploitation of children. Upon a showing of reasonable cause to believe that an Internet service account was used in these crimes, the Attorney General would be authorized to issue a subpoena requiring the Internet service provider to disclose the name and address of the account holder and the length of service used by the account.

Section 20 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).

Section 21 adds a new section to the uncodified law of the State of Alaska, providing a statement of legislative intent regarding the applicable culpable mental state for the crime of failure to register as a sex offender.

Sections 22 and 23 include the applicability and effective date provisions.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 222
 (S) 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.

	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								
-----------------------------	--	--	--	--	--	--	--	--

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)

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. SB 222

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.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 222
 (S) 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...."
 Title: _____
 Dept. Affected: DOC
 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 # 2

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. SB 222

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: SB 222
 (S) 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	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	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 Phone 907 334-4414
 Division: Public Defender Agency Date/Time 12/31/2009, 4:00PM
 Approved by: Rachael Petro, Deputy Commissioner Date 12/31/2009
Department of Administration

FISCAL NOTE # 3

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. SB 222

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: 4
 Bill Version: SB 222
 (S) 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 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								
-----------------------------	--	--	--	--	--	--	--	--

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)

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: 5
 Bill Version: CSSB 222(JUD)
 (S) Publish Date: 4/7/10

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

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)

The court system does not anticipate any fiscal impact from the passage of SB 222.

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