

HB

359

<TARGET><BILL>HB 359</BILL><SUBJECT>HB
359</SUBJECT><COMM>HFIN27</COMM></TARGET>

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 21, 2012

FURTHER REFERRALS:

Date of Committee Action: 4/2/12

The FINANCE Committee considered:

HB 359

HOUSE BILL NO. 359

"An Act relating to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of furnishing indecent material to minors, the crime of online enticement of a minor, the crime of prostitution, and the crime of sex trafficking; relating to forfeiture of property used in prostitution offenses; relating to sex offender registration; relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal Procedure; and providing for an effective date."

HB 359-SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE

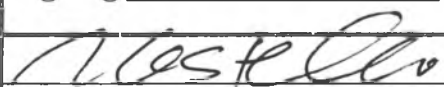
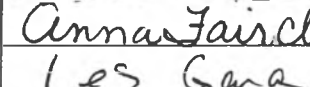
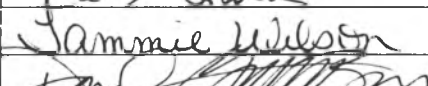
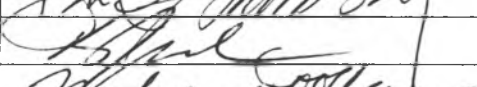
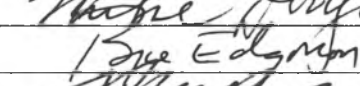
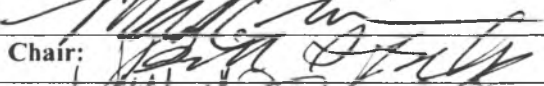


Recommends it be replaced with [] HCS or [] CS for HB 359 (FIN)
 For Senate Bills with new title: [] Technical Title [] New Title: HCR [] Same Title [] New Title

- [] attach amendments
- [] add new referral to _____ Committee
- [] Letter of Intent _____ Committee

- List of Abbrev for Depts.:
- ADM
 - CED
 - COR
 - CRT
 - EED
 - DEC
 - DFG
 - GOV
 - DHS
 - LWF
 - LAW
 - LEG
 - MVA
 - DNR
 - DPS
 - REV
 - DOT
 - UA

<u>NEW FISCAL NOTES</u>				
*FN# is assigned by Chief Clerk's Office				
*FN#	List by Dept(s):	Fiscal	Indet.	Zero
	ADM			✓
	DPS			✓
	COR		✓	
	ADM			✓
	LAW			✓
	DPS			✓

<u>PREVIOUS FISCAL NOTES</u>				
FN#	List by Dept(s):	Fiscal	Indet.	Zero
8	CRT		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	COSTELLO	✓			
Anna Fairclough	FAIRCLOUGH	✓			
	Gara	✓			
Jammie Wilson	J Wilson			✓	
	DOOGAN	✓			
	DOOGAN			✓	
	Edgmon	✓			
	WILSON	✓			
Chair: 	Stall	✓			
Chair: 	Vroman	✓			

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version HB359
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) HB359CS(FIN)-DOA-OPA-3-21-12 Dept. Affected Administration
Title Sex Crimes; Testimony by Video Conference Appropriation Legal and Advocacy Services
Allocation Office of Public Advocacy
Sponsor Rules by Request of the Governor
Requester House Finance OMB Component Number 43

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Update for committee substitute

Prepared by Richard Allen, Director
Division Office of Public Advocacy
Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907-269-3504
Date/Time 3/21/12 10:02 AM
Date 3/21/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. HB359

Analysis

This bill relates to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of furnishing indecent material to minors, the crime of online enticement of a minor, the crime of prostitution, and the crime of sex trafficking; relating to forfeiture of property used in prostitution offenses; relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal Procedure, and providing for an effective date.

This bill changes the language used to describe conduct "promoting prostitution" to the phrase, "sex trafficking," prohibits the intentional distribution of indecent material to persons known or believed to be less than 16 years of age, and prohibits possession with the intention to distribute indecent material to persons known or believed to be less than 16 years of age. This bill includes "online enticement of a minor in the definition of "most serious felony." The bill also creates the crimes of: conspiracy to commit human trafficking, a class B felony which carries a sentence of up to 10 years imprisonment, and conspiracy to commit sex trafficking, a class A felony which carries a sentence of up to 20 years imprisonment.

Additionally, this bill amends Rule 38 of the Alaska Rules of Criminal Procedure by adding a new section that allows for testimony using two-way video conferencing. The bill also specifies that video conference testimony is allowed for witnesses whose testimony is used to determine competency of the defendant under this section, where the witness would be required to travel more than 50 miles to court, or where air travel to court is customary.

This bill will result in increases in felony cases and more complex sentencing for certain felonies. The Office of Public Advocacy does not have a reliable method for determining how many more persons may be charged. However, OPA is not anticipating a significant impact to the current case load or fiscal cost increase with the passage of the legislation. The Office of Public Advocacy will monitor for a future potential fiscal impact. Therefore, at this time, a zero impact fiscal note is submitted.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version HB359
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) CSHB359(JUD)-DPS-R&I-03-21-12 Dept. Affected Public Safety
Title SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE Appropriation Statewide Support
Allocation Records & Identification
Sponsor Rules by Request of the Governor
Requester House Finance Committee OMB Component Number 1190

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							
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Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note was changed to zero based on changes made by the committee substitute.

Prepared by David Schade, Director
Division Division of Statewide Services
Approved by Joseph A. Masters, Commissioner
Department of Public Safety

Phone (907) 269-0202
Date/Time 3/21/12 5:32 AM
Date 3/21/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. HB359

Analysis

This bill as currently proposed would have no fiscal impact to the Division of Statewide Services.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

cost # codes

Bill Version

CSHB 359(JUD)

Fiscal Note Number

Publish Date

Identifier (file name) CSHB359(JUD)-DOC-OC-03-20-2012

Dept. Affected

DOC

Title "An Act relating to conspiracy to commit human

Appropriation

Admin & Support

trafficking in the first degree or sex trafficking in the first degr

Allocation

Commissioner's Office

Sponsor

Rules by Request of the Governor

Requester

(H) FIN

OMB Component Number

694

Expenditures/Revenues

(Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	**	**	**	**	**	**	**

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		**	**	**	**	**	**

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

The fiscal note analysis reflects changes made in HJUD.

Prepared by Leslie Houston, Director
Division Department of Corrections - Administrative Services
Approved by Joseph D. Schmidt, Commissioner
Department of Corrections

Phone 907-465-3339
Date/Time 3/20/12 12:45 PM
Date 3/20/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSHB 359(JUD)

Analysis

This bill adds human trafficking in the first degree and sex trafficking in the first degree to the conspiracy statutes (AS 11.31.120). A person convicted of this new crime would be subject to punishment for a Class B felony. The maximum sentence for a Class B felony is five years. The average daily cost of care in a DOC facility is \$134.90. Therefore, one individual convicted of conspiring to commit sex trafficking in the first degree could potentially cost the Department of Corrections \$246,192.50 with a five year sentence.

The bill also raises the penalty for being a patron of a prostitute, if the prostitute is a minor under 18 years of age, from a class B misdemeanor to a class C felony. The maximum sentence for a class B misdemeanor is 90 days. The maximum sentence for a class C felony is 5 years. The difference in days from a class B misdemeanor and a class C felony is 1,735 days. The average daily cost of care is \$134.90. Therefore, the cost of this elevated crime and increased sentence for one individual could potentially be \$234,051.50.

In the past five years, DOC has seen an average of 2.4 convictions for promoting prostitution (sex trafficking). However, DOC does not have any historical data on conspiracy to commit sex or human trafficking, as this would be a new crime if this legislation were to pass. Therefore, DOC is currently unable to quantify the overall fiscal impacts of the passage of this legislation.

The Department will closely monitor the potential future fiscal impacts should this legislation pass.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSHB359
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) HB359CS(FIN)-DOA-PDA-3-21-12 Dept. Affected Administration
 Title Sex Crimes; Testimony by Video Conference Appropriation Legal and Advocacy Services
 Allocation Public Defender Agency
 Sponsor Rules by Request of the Governor
 Requester House finance OMB Component Number 1631

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY13	FY14	FY15	FY16	FY17
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time						
Part-time						
Temporary						

CHANGE IN REVENUES

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Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

New sections related to SO registration have been deleted and will substantially reduce the likelihood of a fiscal impact.

Prepared by Quinlan Steiner Phone 907-334-4414
 Division Public Defender Agency Date/Time 3/21/12 11:04 AM
 Approved by John Cramer, Deputy Commissioner Date 3/21/2012
Department of Administration

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSHB359

Analysis

This bill changes the language used to describe conduct "promoting prostitution" to the phrase "sex trafficking," prohibits the intentional distribution of indecent material to persons known or believed to be less than 16 years of age, and prohibits possession with the intention to distribute indecent material to persons known or believed to be less than 16 years of age. This bill includes "online enticement of a minor in the definition of "most serious felony." The bill also creates the crimes of: conspiracy to commit human trafficking, a class B felony which carries a sentence of up to 10 years imprisonment, and conspiracy to commit sex trafficking, a class A felony which carries a sentence of up to 20 years imprisonment.

Additionally, this bill amends Rule 38 of the Alaska Rules of Criminal Procedure by adding a new section that allows for testimony using two-way video conferencing. The bill also specifies that video conference testimony is allowed for witnesses whose testimony is used to determine competency of the defendant under this section where air travel to court is customary.

This bill will result in more complex sentencing for certain felonies. Although this tends to increase the cost of processing cases, this bill is not expected to impact a significant number of cases. The Agency, therefore, submits a zero fiscal note.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

cost # codes

Bill Version

HB 359

Fiscal Note Number

Publish Date

Identifier (file name) HB359-LAW-CRIM-03-21-12
Title An Act relating to conspiracy to commit human trafficking
in the first degree or sex trafficking in the first degree...

Dept. Affected Law
Appropriation Criminal
Allocation Criminal Justice Litigation

Sponsor Rules
Requester (H) FIN

OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Update to fiscal analysis.

Prepared by Eileen Donahue, Division Operations Manager
Division Administrative Services
Approved by Michael C. Geraghty, Attorney General
Department of Law

Phone 465-5427
Date/Time 3/21/12 9:05AM
Date 3/21/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. HB 359

Analysis

The bill changes the description of the crime of promoting prostitution under AS 11.66.110 – 11.66.135 from promoting prostitution in the first, second, third, and fourth degrees to sex trafficking in the first, second, third, and fourth degrees.

It adds the crimes of human trafficking in the first degree and sex trafficking in the first degree to the definition of “serious felony offense” under the conspiracy law.

The bill amends the crime of distribution of indecent materials to minors under AS 11.61.128 in response to the judicial decision that the current law is unconstitutional due to over breadth by requiring the prosecution to prove that the offender intentionally distributed, or possessed with the intent to distribute, harmful material to another person that the offender knows is under 16 years of age or believes is under 16 years of age.

It adopts a procedure for contemporaneous two-way videoconference in criminal trials where the court finds that it is necessary to further an important public policy, that the witness is unavailable, and the testimony is given under oath and subject to cross-examination. The bill would also allow contemporaneous two-way videoconference testimony in hearings addressing the competency of a defendant to be tried for criminal charges if the witness resides 50 or more miles away from the place of the hearing or the customary travel to the site of the hearing is by air.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version HB359
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) CSHB359(JUD)-DPS-AST-03-21-12 Dept. Affected Public Safety
 Title SEX CRIMES; TESTIMONY BY VIDEO CONFERENCE Appropriation Alaska State Troopers
 Allocation AST Detachments
 Sponsor Rules by Request of the Governor
 Requester House Finance Committee OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note was updated to reflect the current bill version.

Prepared by Lt. Rodney Dial
 Division Alaska State Troopers
 Approved by Joseph A. Masters, Commissioner
Department of Public Safety

Phone (907) 247-4480
 Date/Time 3/21/12 5:38 AM
 Date 3/21/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. HB359

Analysis

This bill as currently proposed would have no fiscal impact to the Division of Alaska State Troopers.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSHB 359(JUD)
 Fiscal Note Number 8
 Publish Date 3/21/12 (H)

Identifier (file name) HB359-ACS-TRC-2-28-2012 Dept. Affected Alaska Court System
 Title Human trafficking; furnishing indecent material to minors; video conferencing Appropriation Trial Courts
 Sponsor Rules Allocation _____
 Requester Request of the Governor OMB Component Number 768

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		***	***	***	***	***	***

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							
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Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version

Prepared by Nancy Meade, General Counsel
 Division Alaska Court System
 Approved by Nancy Meade for Christine Johnson, Administrative Director
Alaska Court System

Phone 907-463-4736
 Date/Time 2/28/2012 1:00 p.m.
 Date 2/28/2012

FISCAL NOTE #8

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSHB 359(JUD)

Analysis

House Bill 359 changes the crimes of prostitution in the first, second, third and fourth degrees to sex trafficking, and adds the crimes of human trafficking and sex trafficking in the first degree to the definition of "serious felony offense" under the conspiracy law. These changes have no fiscal impact on the court system.

The bill also amends the crime of distribution of indecent materials to minors (AS 11.61.128(a)) by requiring intent and knowledge as elements of the crime, it creates new crimes, and it requires persons with a sex offense in another jurisdiction to register as a sex offender in Alaska. These changes could have the effect of changing the number and types of criminal cases that are filed with and handled by the court system. However, the number of cases filed under AS 11.61.128(a) in FY 2011 was low, and the court expects that it would handle any additional cases under this bill in the normal course, without any fiscal impact. The court will monitor the cases filed under the revised statutes to determine whether the bill does cause a significant change, but a fiscal impact from those revisions is not expected.

In addition, Section 25 of House Bill 359 adds a Rule of Criminal Procedure that allows for two-way videoconferencing for witness testimony in criminal trials when the parties agree or when the court authorizes it because it is found to be necessary to further an important public policy, the witness is not available, and the testimony is given under oath and subject to cross-examination. Similarly, Section 16 adds a new subsection to AS 12.47.100 allowing the testimony of witnesses in competency hearings to be presented by two-way videoconferencing in certain circumstances.

The court does not view this bill as requiring installation of high-quality, high-definition videoconferencing cameras, televisions, and speakers in courtrooms, and therefore is not basing its fiscal note on the high cost of that undertaking. Still, the bill may result in the increased costs associated with the increased use of "webcams" for the video testimony of witnesses, such as the costs of software and, possibly, access to increased bandwidth. The court cannot accurately determine how many trials and competency hearings might include testimony by videoconferencing under this bill, and therefore submits an indeterminate fiscal note.

CS FOR HOUSE BILL NO. 359(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to conspiracy to commit human trafficking in the first degree or sex**
2 **trafficking in the first degree; relating to the crime of distribution of indecent material**
3 **to minors, the crime of online enticement of a minor, the crime of prostitution, and the**
4 **crime of sex trafficking; relating to forfeiture of property used in prostitution offenses;**
5 **relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal**
6 **Procedure; and providing for an effective date."**

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

8 *** Section 1.** AS 04.06.110 is amended to read:

9 **Sec. 04.06.110. Peace officer powers.** The director and the persons employed
10 for the administration and enforcement of this title may, with the concurrence of the
11 commissioner of public safety, exercise the powers of peace officers when those
12 powers are specifically granted by the board. Powers granted by the board under this
13 section may be exercised only when necessary for the enforcement of the criminally

1 punishable provisions of this title, regulations of the board, and other criminally
 2 punishable laws and regulations, including investigation of violations of laws against
 3 prostitution and sex trafficking [PROMOTING PROSTITUTION] described in
 4 AS 11.66.100 - 11.66.135 [AS 11.66.100 - 11.66.130] and laws against gambling,
 5 promoting gambling, and related offenses described in AS 11.66.200 - 11.66.280.

6 * **Sec. 2.** AS 04.11.370(a) is amended to read:

7 (a) A license or permit shall be suspended or revoked if the board finds

8 (1) misrepresentation of a material fact on an application made under
 9 this title or a regulation adopted under this title;

10 (2) continuation of the manufacture, sale, or service of alcoholic
 11 beverages by the licensee or permittee would be contrary to the best interests of the
 12 public;

13 (3) failure on the part of the licensee to correct a defect that constitutes
 14 a violation of this title, a condition or restriction imposed by the board, a regulation
 15 adopted under this title, or other laws after receipt of notice issued by the board or its
 16 agent;

17 (4) conviction of a licensee of a violation of this title, a regulation
 18 adopted under this title, or an ordinance adopted under AS 04.21.010;

19 (5) conviction of an agent or employee of a licensee of a violation of
 20 this title, a regulation adopted under this title, or an ordinance adopted under
 21 AS 04.21.010, if the licensee is found by the board to have either knowingly allowed
 22 the violation or to have recklessly or with criminal negligence failed to act in
 23 accordance with the duty prescribed under AS 04.21.030 with the result that the agent
 24 or employee violates a law, regulation, or ordinance;

25 (6) failure of the licensee to comply with the public health, fire, or
 26 safety laws and regulations in the state;

27 (7) use of the licensed premises as a resort for illegal possessors or
 28 users of narcotics, prostitutes, or sex traffickers [PROMOTERS OF
 29 PROSTITUTION]; in addition to any other legally competent evidence, the character
 30 of the premises may be proved by the general reputation of the premises in the
 31 community as a resort for illegal possessors or users of narcotics, prostitutes, or sex

1 **traffickers** [PROMOTERS OF PROSTITUTION];

2 (8) occurrence of illegal gambling within the limits of the licensed
3 premises;

4 (9) the licensee permitted a public offense involving moral turpitude to
5 occur on the licensed premises;

6 (10) violation by a licensee of this title, a condition or restriction
7 imposed by the board, a regulation adopted under this title, or an ordinance adopted
8 under AS 04.21.010; or

9 (11) violation by an agent or employee of a licensee of a provision of
10 this title, a condition or restriction imposed by the board, a regulation adopted under
11 this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the
12 board to have either knowingly allowed the violation or to have recklessly or with
13 criminal negligence failed to act in accordance with the duty prescribed under
14 AS 04.21.030 with the result that the agent or employee violates the law, condition or
15 restriction, regulation, or ordinance.

16 * **Sec. 3.** AS 11.31.120(h)(2) is amended to read:

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

18 (A) against the person under AS 11.41, punishable as an
19 unclassified or class A felony;

20 (B) involving controlled substances under AS 11.71,
21 punishable as an unclassified, class A, or class B felony;

22 (C) that is criminal mischief in the first degree under
23 AS 11.46.475; [OR]

24 (D) that is terroristic threatening in the first degree under
25 AS 11.56.807;

26 **(E) that is human trafficking in the first degree under**
27 **AS 11.41.360; or**

28 **(F) that is sex trafficking in the first degree under**
29 **AS 11.66.110.**

30 * **Sec. 4.** AS 11.61.128(a) is amended to read:

31 (a) A person commits the crime of distribution of indecent material to minors

1 if

2 (1) the person, being 18 years of age or older, intentionally
 3 [KNOWINGLY] distributes or possesses with intent to distribute any material
 4 described in (2) and (3) of this subsection to either

5 (A) a child that the person knows is under 16 years of age;

6 or

7 (B) another person that the person believes is a child under
 8 16 years of age;

9 (2) the person knows that the material [TO ANOTHER PERSON
 10 ANY MATERIAL THAT] depicts the following actual or simulated conduct:

11 (A) sexual penetration;

12 (B) the lewd touching of a person's genitals, anus, or female
 13 breast;

14 (C) masturbation;

15 (D) bestiality;

16 (E) the lewd exhibition of a person's genitals, anus, or female
 17 breast; or

18 (F) sexual masochism or sadism; and

19 (3) [(2)] the material is harmful to minors [; AND

20 (3) EITHER

21 (A) THE OTHER PERSON IS A CHILD UNDER 16 YEARS
 22 OF AGE; OR

23 (B) THE PERSON BELIEVES THAT THE OTHER PERSON
 24 IS A CHILD UNDER 16 YEARS OF AGE].

25 * Sec. 5. AS 11.66.100(b) is amended to read:

26 (b) Except as provided in (c) of this section, prostitution
 27 [PROSTITUTION] is a class B misdemeanor.

28 * Sec. 6. AS 11.66.100 is amended by adding new subsections to read:

29 (c) Prostitution is a class C felony if

30 (1) the defendant violates (a) of this section as a patron of a prostitute;

31 (2) the prostitute is under 18 years of age; and

1 (3) the defendant is over 18 years of age and at least three years older
2 than the prostitute.

3 (d) In a prosecution under (c) of this section, it is an affirmative defense that,
4 at the time of the alleged offense, the defendant

5 (1) reasonably believed the prostitute to be 18 years of age or older;
6 and

7 (2) undertook reasonable measures to verify that the prostitute was 18
8 years of age or older.

9 * **Sec. 7.** AS 11.66.110(a) is amended to read:

10 (a) A person commits the crime of sex trafficking [PROMOTING
11 PROSTITUTION] in the first degree if the person

12 (1) induces or causes a person to engage in prostitution through the use
13 of force;

14 (2) as other than a patron of a prostitute, induces or causes a person
15 under 20 [18] years of age to engage in prostitution; or

16 (3) induces or causes a person in that person's legal custody to engage
17 in prostitution.

18 * **Sec. 8.** AS 11.66.110(c) is amended to read:

19 (c) Except as provided in (d) of this section, sex trafficking [PROMOTING
20 PROSTITUTION] in the first degree is a class A felony.

21 * **Sec. 9.** AS 11.66.120 is amended to read:

22 **Sec. 11.66.120. Sex trafficking [PROMOTING PROSTITUTION] in the**
23 **second degree.** (a) A person commits the crime of sex trafficking [PROMOTING
24 PROSTITUTION] in the second degree if the person

25 (1) manages, supervises, controls, or owns, either alone or in
26 association with others, a prostitution enterprise other than a place of prostitution;

27 (2) procures or solicits a patron for a prostitute; or

28 (3) offers, sells, advertises, promotes, or facilitates travel that includes
29 commercial sexual conduct as enticement for the travel; in this paragraph,
30 "commercial sexual conduct" means sexual conduct for which anything of value is
31 given or received by any person.

1 (b) **Sex trafficking** [PROMOTING PROSTITUTION] in the second degree is
 2 a class B felony.

3 * **Sec. 10.** AS 11.66.130 is amended to read:

4 **Sec. 11.66.130. Sex trafficking [PROMOTING PROSTITUTION] in the**
 5 **third degree.** (a) A person commits the crime of **sex trafficking** [PROMOTING
 6 PROSTITUTION] in the third degree if, with intent to promote prostitution, the
 7 person

8 (1) manages, supervises, controls, or owns, either alone or in
 9 association with others, a place of prostitution;

10 (2) as other than a patron of a prostitute, induces or causes a person 18
 11 years of age or older to engage in prostitution;

12 (3) as other than a prostitute receiving compensation for personally
 13 rendered prostitution services, receives or agrees to receive money or other property
 14 **under** [PURSUANT TO] an agreement or understanding that the money or other
 15 property is derived from prostitution; or

16 (4) engages in conduct that institutes, aids, or facilitates a prostitution
 17 enterprise.

18 (b) **Sex trafficking** [PROMOTING PROSTITUTION] in the third degree is a
 19 class C felony.

20 * **Sec. 11.** AS 11.66.135 is amended to read:

21 **Sec. 11.66.135. Sex trafficking [PROMOTING PROSTITUTION] in the**
 22 **fourth degree.** (a) A person commits the crime of **sex trafficking** [PROMOTING
 23 PROSTITUTION] in the fourth degree if the person engages in conduct that institutes,
 24 aids, or facilitates prostitution under circumstances not proscribed under
 25 AS 11.66.130(a)(4).

26 (b) **Sex trafficking** [PROMOTING PROSTITUTION] in the fourth degree is
 27 a class A misdemeanor.

28 * **Sec. 12.** AS 11.66.140 is amended to read:

29 **Sec. 11.66.140. Corroboration of certain testimony not required.** In a
 30 prosecution under **AS 11.66.110 - 11.66.135** [AS 11.66.110 - 11.66.130], it is not
 31 necessary that the testimony of the person whose prostitution is alleged to have been

1 compelled or promoted be corroborated by the testimony of any other witness or by
2 documentary or other types of evidence.

3 * **Sec. 13.** AS 11.66.145 is amended to read:

4 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or
5 received or derived from, a violation of AS 11.66.100(c) or 11.66.110 - 11.66.135
6 [AS 11.66.110 - 11.66.135] shall be forfeited.

7 * **Sec. 14.** AS 11.81.250(a) is amended to read:

8 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
9 title, except murder in the first and second degree, attempted murder in the first
10 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
11 in the first degree, murder of an unborn child, sexual assault in the first degree, sexual
12 abuse of a minor in the first degree, misconduct involving a controlled substance in the
13 first degree, sex trafficking [PROMOTING PROSTITUTION] in the first degree
14 under AS 11.66.110(a)(2), and kidnapping, are classified on the basis of their
15 seriousness, according to the type of injury characteristically caused or risked by
16 commission of the offense and the culpability of the offender. Except for murder in the
17 first and second degree, attempted murder in the first degree, solicitation to commit
18 murder in the first degree, conspiracy to commit murder in the first degree, murder of
19 an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first
20 degree, misconduct involving a controlled substance in the first degree, sex
21 trafficking [PROMOTING PROSTITUTION] in the first degree under
22 AS 11.66.110(a)(2), and kidnapping, the offenses in this title are classified into the
23 following categories:

24 (1) class A felonies, which characteristically involve conduct resulting
25 in serious physical injury or a substantial risk of serious physical injury to a person;

26 (2) class B felonies, which characteristically involve conduct resulting
27 in less severe violence against a person than class A felonies, aggravated offenses
28 against property interests, or aggravated offenses against public administration or
29 order;

30 (3) class C felonies, which characteristically involve conduct serious
31 enough to deserve felony classification but not serious enough to be classified as A or

1 B felonies;

2 (4) class A misdemeanors, which characteristically involve less severe
3 violence against a person, less serious offenses against property interests, less serious
4 offenses against public administration or order, or less serious offenses against public
5 health and decency than felonies;

6 (5) class B misdemeanors, which characteristically involve a minor
7 risk of physical injury to a person, minor offenses against property interests, minor
8 offenses against public administration or order, or minor offenses against public health
9 and decency;

10 (6) violations, which characteristically involve conduct inappropriate
11 to an orderly society but which do not denote criminality in their commission.

12 * **Sec. 15.** AS 11.81.250(b) is amended to read:

13 (b) The classification of each felony defined in this title, except murder in the
14 first and second degree, attempted murder in the first degree, solicitation to commit
15 murder in the first degree, conspiracy to commit murder in the first degree, murder of
16 an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first
17 degree, misconduct involving a controlled substance in the first degree, sex
18 trafficking in the first degree under AS 11.66.110(a)(2), and kidnapping, is
19 designated in the section defining it. A felony under the [ALASKA] law of this state
20 defined outside this title for which no penalty is specifically provided is a class C
21 felony.

22 * **Sec. 16.** AS 12.47.100 is amended by adding a new subsection to read:

23 (h) In a hearing to determine competency under this section, the court may, at
24 the court's discretion, allow a witness, including a psychiatrist or psychologist who
25 examined the defendant, to testify concerning the competency of the defendant by
26 contemporaneous two-way video conference if the witness is in a place from which
27 people customarily travel by air to the court, and the procedure allows the parties a fair
28 opportunity to examine the witness. The video conference technician shall be the only
29 person in the presence of the witness unless the court, at the court's discretion,
30 determines that another person may be present. Any person present with the witness
31 must be identified on the record. In this subsection, "contemporaneous two-way video

1 conference"

2 (1) means a conference among people at different places by means of
3 transmitted audio and video signals;

4 (2) includes all communication technologies that allow people at two
5 or more places to interact by two-way video and audio transmissions simultaneously.

6 * **Sec. 17.** AS 12.55.035(b) is amended to read:

7 (b) Upon conviction of an offense, a defendant who is not an organization may
8 be sentenced to pay, unless otherwise specified in the provision of law defining the
9 offense, a fine of not [NO] more than

10 (1) \$500,000 for murder in the first or second degree, attempted
11 murder in the first degree, murder of an unborn child, sexual assault in the first degree,
12 sexual abuse of a minor in the first degree, kidnapping, sex trafficking
13 [PROMOTING PROSTITUTION] in the first degree under AS 11.66.110(a)(2), or
14 misconduct involving a controlled substance in the first degree;

15 (2) \$250,000 for a class A felony;

16 (3) \$100,000 for a class B felony;

17 (4) \$50,000 for a class C felony;

18 (5) \$10,000 for a class A misdemeanor;

19 (6) \$2,000 for a class B misdemeanor;

20 (7) \$500 for a violation.

21 * **Sec. 18.** AS 12.55.125(i) is amended to read:

22 (i) A defendant convicted of

23 (1) sexual assault in the first degree, sexual abuse of a minor in the
24 first degree, or sex trafficking [PROMOTING PROSTITUTION] in the first degree
25 under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not
26 more than 99 years and shall be sentenced to a definite term within the following
27 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

5 (C) if the offense is a second felony conviction and does not
6 involve circumstances described in (D) of this paragraph, 30 to 40 years;

7 (D) if the offense is a second felony conviction and the
8 defendant has a prior conviction for a sexual felony, 35 to 45 years;

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

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

15 (2) unlawful exploitation of a minor under AS 11.41.455(c)(2), online
16 enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or solicitation to
17 commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or
18 **sex trafficking** [PROMOTING PROSTITUTION] in the first degree under
19 AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more
20 than 99 years and shall be sentenced to a definite term within the following
21 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

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

3 (E) if the offense is a third felony conviction, the offense does
4 not involve circumstances described in (F) of this paragraph, and the defendant
5 is not subject to sentencing under (I) of this section, 35 to 50 years;

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

9 (3) sexual assault in the second degree, sexual abuse of a minor in the
10 second degree, online enticement of a minor under AS 11.41.452(d), unlawful
11 exploitation of a minor under AS 11.41.455(c)(1), or distribution of child pornography
12 under AS 11.61.125(e)(2) may be sentenced to a definite term of imprisonment of not
13 more than 99 years and shall be sentenced to a definite term within the following
14 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

24 (4) sexual assault in the third degree, incest, indecent exposure in the
25 first degree, possession of child pornography, distribution of child pornography under
26 AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to commit sexual assault in
27 the second degree, sexual abuse of a minor in the second degree, unlawful exploitation
28 of a minor, or distribution of child pornography, may be sentenced to a definite term
29 of imprisonment of not more than 99 years and shall be sentenced to a definite term
30 within the following presumptive ranges, subject to adjustment as provided in
31 AS 12.55.155 - 12.55.175:

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

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

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

6 (D) if the offense is a third felony conviction and does not
7 involve circumstances described in (E) of this paragraph, 15 to 25 years;

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

10 * **Sec. 19.** AS 12.55.185(10) is amended to read:

11 (10) "most serious felony" means

12 (A) arson in the first degree, sex trafficking [PROMOTING
13 PROSTITUTION] in the first degree under AS 11.66.110(a)(2), online
14 enticement of a minor under AS 11.41.452(e), or any unclassified or class A
15 felony prescribed under AS 11.41; or

16 (B) an attempt, or conspiracy to commit, or criminal
17 solicitation under AS 11.31.110 of, an unclassified felony prescribed under
18 AS 11.41;

19 * **Sec. 20.** AS 15.80.010(9) is amended to read:

20 (9) "felony involving moral turpitude" includes those crimes that are
21 immoral or wrong in themselves such as murder, manslaughter, assault, sexual assault,
22 sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion,
23 coercion, kidnapping, incest, arson, burglary, theft, forgery, criminal possession of a
24 forgery device, offering a false instrument for recording, scheme to defraud, falsifying
25 business records, commercial bribe receiving, commercial bribery, bribery, receiving a
26 bribe, perjury, perjury by inconsistent statements, endangering the welfare of a minor,
27 escape, promoting contraband, interference with official proceedings, receiving a bribe
28 by a witness or a juror, jury tampering, misconduct by a juror, tampering with physical
29 evidence, hindering prosecution, terroristic threatening, riot, criminal possession of
30 explosives, unlawful furnishing of explosives, sex trafficking [PROMOTING
31 PROSTITUTION], criminal mischief, misconduct involving a controlled substance or

1 an imitation controlled substance, permitting an escape, promoting gambling,
 2 possession of gambling records, distribution of child pornography, and possession of
 3 child pornography;

4 * **Sec. 21.** AS 28.15.046(c) is amended to read:

5 (c) The department may not issue a license under this section to an applicant
 6 who has been convicted of any of the following offenses within 20 years of the time of
 7 application:

- 8 (1) sexual abuse of a minor in any degree under AS 11.41.434 -
 9 11.41.440;
- 10 (2) sexual assault in any degree under AS 11.41.410 - 11.41.425;
- 11 (3) incest under AS 11.41.450;
- 12 (4) unlawful exploitation of a minor under AS 11.41.455;
- 13 (5) contributing to the delinquency of a minor under AS 11.51.130;
- 14 (6) a felony involving possession of a controlled or imitation
 15 controlled substance under AS 11.71 or AS 11.73;
- 16 (7) a felony or misdemeanor involving distribution of a controlled or
 17 imitation controlled substance under AS 11.71 or AS 11.73;
- 18 (8) sex trafficking [PROMOTING PROSTITUTION] in the first or
 19 second degree under AS 11.66.110 or 11.66.120;
- 20 (9) indecent exposure in the first or second degree under AS 11.41.458
 21 or 11.41.460.

22 * **Sec. 22.** AS 47.12.110(d) is amended to read:

23 (d) Notwithstanding (a) of this section, a court hearing on a petition seeking
 24 the adjudication of a minor as a delinquent shall be open to the public, except as
 25 prohibited or limited by order of the court, if

26 (1) the department files with the court a motion asking the court to
 27 open the hearing to the public, and the petition seeking adjudication of the minor as a
 28 delinquent is based on

29 (A) the minor's alleged commission of an offense, and the
 30 minor has knowingly failed to comply with all the terms and conditions
 31 required of the minor by the department or imposed on the minor in a court

1 order entered under AS 47.12.040(a)(2) or 47.12.120;

2 (B) the minor's alleged commission of

3 (i) a crime against a person that is punishable as a
4 felony;

5 (ii) a crime in which the minor employed a deadly
6 weapon, as that term is defined in AS 11.81.900(b), in committing the
7 crime;

8 (iii) arson under AS 11.46.400 - 11.46.410;

9 (iv) burglary under AS 11.46.300;

10 (v) distribution of child pornography under
11 AS 11.61.125;

12 (vi) sex trafficking [PROMOTING PROSTITUTION]
13 in the first degree under AS 11.66.110; or

14 (vii) misconduct involving a controlled substance under
15 AS 11.71 involving the delivery of a controlled substance or the
16 possession of a controlled substance with intent to deliver, other than
17 an offense under AS 11.71.040 or 11.71.050; or

18 (C) the minor's alleged commission of a felony and the minor
19 was 16 years of age or older at the time of commission of the offense when the
20 minor has previously been convicted or adjudicated a delinquent minor based
21 on the minor's commission of an offense that is a felony; or

22 (2) the minor agrees to a public hearing on the petition seeking
23 adjudication of the minor as a delinquent.

24 * **Sec. 23.** AS 47.12.315(a) is amended to read:

25 (a) Notwithstanding AS 47.12.310, when an agency takes action under
26 AS 47.12.040(a)(1) to adjust a matter, or when, under AS 47.12.040(a)(2), the court
27 directs the agency to adjust the matter, the agency

28 (1) shall, for a minor who is at least 13 years of age at the time of
29 commission of the offense, disclose to the public the name of the minor, the name or
30 names of the parent, parents, or guardian of the minor, the action required by the
31 agency to be taken by the minor under AS 47.12.060 to adjust the matter, and

1 information about the offense exclusive of information that identifies the victim of the
 2 offense, if the minor was, under AS 47.12.020, previously alleged to be a delinquent
 3 minor on the basis of the minor's commission of at least one offense and, on the basis
 4 of that allegation, a state agency has, under AS 47.12.040(a), been asked to make a
 5 preliminary inquiry to determine if any action on that matter is appropriate, and, if the
 6 minor is alleged to be a delinquent minor on the basis of the minor's commission of
 7 another offense, exercise of agency jurisdiction is based on the minor's alleged
 8 commission of that other offense, and that other offense is one of the following:

9 (A) a crime against a person that is punishable as a felony;

10 (B) a crime in which the minor employed a deadly weapon, as
 11 that term is defined in AS 11.81.900(b), in committing the crime;

12 (C) arson under AS 11.46.400 - 11.46.410;

13 (D) burglary under AS 11.46.300;

14 (E) distribution of child pornography under AS 11.61.125;

15 (F) sex trafficking [PROMOTING PROSTITUTION] in the
 16 first degree under AS 11.66.110; or

17 (G) misconduct involving a controlled substance under
 18 AS 11.71 involving the delivery of a controlled substance or the possession of
 19 a controlled substance with intent to deliver, other than an offense under
 20 AS 11.71.040 or 11.71.050; and

21 (2) may, for a minor who is at least 13 years of age at the time of
 22 commission of the offense, disclose to the public the name of the minor, the name or
 23 names of the parent, parents, or guardian of the minor, the action required by the
 24 agency to be taken by the minor under AS 47.12.060 to adjust the matter, and
 25 information about the offense exclusive of information that identifies the victim of the
 26 offense if the minor has knowingly failed to comply with all terms and conditions
 27 required of the minor by the agency to adjust the matter under AS 47.12.060(b).

28 * **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

30 DIRECT COURT RULE AMENDMENT. The Alaska Rules of Criminal
 31 Procedure are amended by adding a new section to read:

1 **Rule 38.3. Video Conference Testimony. (a) In General.** In every trial, the
2 testimony of witnesses shall be taken in open court, unless otherwise provided by
3 statute or rule.

4 **(b) Testimony by Video Conference.** The parties may agree to take
5 testimony from a witness by contemporaneous two-way video conference presented in
6 open court. Absent the parties' agreement, the court may, at the court's discretion,
7 authorize the contemporaneous two-way video conference testimony at trial of a
8 witness only if

9 (1) the requesting party establishes that testimony by two-way video
10 conference is necessary to further an important public policy;

11 (2) the requesting party establishes that the witness is unavailable; and

12 (3) the testimony is given under oath and subject to cross-examination.

13 **(c) Procedures for Taking Video Conference Testimony.** If the trial court
14 authorizes video conference testimony under (b) of this rule, it shall determine the
15 procedures for taking the contemporaneous two-way video conference testimony. The
16 parties, the court, the trier of fact, and the public must be able to see and hear the
17 witness; and the witness must see and hear the courtroom proceedings, including the
18 defendant, as if the witness were sitting in the courtroom's witness stand. The video
19 conference technician shall be the only person in the presence of the witness unless the
20 court, at the court's discretion, determines that another person may be present. Any
21 person present with the witness must be identified.

22 **(d) Definitions.**

23 (1) **Contemporaneous Two-Way Video Conference.** Contemporaneous
24 two-way video conference means a conference among people at different places by
25 means of transmitted audio and video signals. It includes all communication
26 technologies that allow two or more places to interact by two-way video and audio
27 transmissions simultaneously.

28 (2) **Unavailable.** In this rule, a witness is unavailable if

29 (A) by clear and convincing evidence the court finds under
30 Rule 804(a)(4) or (5), Alaska Rules of Evidence, or Rule 15(e)(4), Alaska
31 Rules of Criminal Procedure, that the witness is unavailable;

1 (B) by clear and convincing evidence the court finds that under
2 the circumstances the witness is unavailable; or

3 (C) the parties agree that the witness is unavailable.

4 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICABILITY. (a) Sections 1, 2, 7 - 11, 14, and 17 - 23 of this Act apply to
7 offenses committed before, on, or after the effective date of the Act.

8 (b) Sections 3 - 6, 12, 13, 16, and 24 of this Act apply to offenses committed on or
9 after the effective date of this Act.

10 * **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
13 heading of AS 11.66.110 from "Promoting prostitution in the first degree" to "Sex trafficking
14 in the first degree."

15 * **Sec. 27.** This Act takes effect July 1, 2012.

4/2/12

Adopted

AMENDMENT #1

OFFERED IN THE HOUSE FINANCE COMMITTEE

REPRESENTATIVE LES GARA

TO: CSHB 359, Version GH2627\B

- 1 Page 5, line 15:
- 2 After "under" delete "18"
- 3 After "under" insert "20"

4/2/12
WITHDRAWN

AMENDMENT #2

OFFERED IN THE HOUSE FINANCE COMMITTEE

REPRESENTATIVE LES GARA

TO: CSHB 359, Version GH2627\B

- 1 Page 8, lines 22-31; and page 9, lines 1-5:
- 2 Delete Sec. 16
- 3
- 4 Page 15, lines 28-31; page 16, lines 1-31; and page 17, lines 1-3:
- 5 Delete Sec. 24

CS FOR HOUSE BILL NO. 359(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to conspiracy to commit human trafficking in the first degree or sex**
2 **trafficking in the first degree; relating to the crime of distribution of indecent material**
3 **to minors, the crime of online enticement of a minor, the crime of prostitution, and the**
4 **crime of sex trafficking; relating to forfeiture of property used in prostitution offenses;**
5 **relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal**
6 **Procedure; and providing for an effective date."**

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

8 *** Section 1.** AS 04.06.110 is amended to read:

9 **Sec. 04.06.110. Peace officer powers.** The director and the persons employed
10 for the administration and enforcement of this title may, with the concurrence of the
11 commissioner of public safety, exercise the powers of peace officers when those
12 powers are specifically granted by the board. Powers granted by the board under this
13 section may be exercised only when necessary for the enforcement of the criminally

1 punishable provisions of this title, regulations of the board, and other criminally
 2 punishable laws and regulations, including investigation of violations of laws against
 3 prostitution and sex trafficking [PROMOTING PROSTITUTION] described in
 4 AS 11.66.100 - 11.66.135 [AS 11.66.100 - 11.66.130] and laws against gambling,
 5 promoting gambling, and related offenses described in AS 11.66.200 - 11.66.280.

6 * **Sec. 2.** AS 04.11.370(a) is amended to read:

7 (a) A license or permit shall be suspended or revoked if the board finds

8 (1) misrepresentation of a material fact on an application made under
 9 this title or a regulation adopted under this title;

10 (2) continuation of the manufacture, sale, or service of alcoholic
 11 beverages by the licensee or permittee would be contrary to the best interests of the
 12 public;

13 (3) failure on the part of the licensee to correct a defect that constitutes
 14 a violation of this title, a condition or restriction imposed by the board, a regulation
 15 adopted under this title, or other laws after receipt of notice issued by the board or its
 16 agent;

17 (4) conviction of a licensee of a violation of this title, a regulation
 18 adopted under this title, or an ordinance adopted under AS 04.21.010;

19 (5) conviction of an agent or employee of a licensee of a violation of
 20 this title, a regulation adopted under this title, or an ordinance adopted under
 21 AS 04.21.010, if the licensee is found by the board to have either knowingly allowed
 22 the violation or to have recklessly or with criminal negligence failed to act in
 23 accordance with the duty prescribed under AS 04.21.030 with the result that the agent
 24 or employee violates a law, regulation, or ordinance;

25 (6) failure of the licensee to comply with the public health, fire, or
 26 safety laws and regulations in the state;

27 (7) use of the licensed premises as a resort for illegal possessors or
 28 users of narcotics, prostitutes, or sex traffickers [PROMOTERS OF
 29 PROSTITUTION]; in addition to any other legally competent evidence, the character
 30 of the premises may be proved by the general reputation of the premises in the
 31 community as a resort for illegal possessors or users of narcotics, prostitutes, or sex

traffickers [PROMOTERS OF PROSTITUTION];

(8) occurrence of illegal gambling within the limits of the licensed premises;

(9) the licensee permitted a public offense involving moral turpitude to occur on the licensed premises;

(10) violation by a licensee of this title, a condition or restriction imposed by the board, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010; or

(11) violation by an agent or employee of a licensee of a provision of this title, a condition or restriction imposed by the board, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the board to have either knowingly allowed the violation or to have recklessly or with criminal negligence failed to act in accordance with the duty prescribed under AS 04.21.030 with the result that the agent or employee violates the law, condition or restriction, regulation, or ordinance.

* **Sec. 3.** AS 11.31.120(h)(2) is amended to read:

(2) "serious felony offense" means an offense

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

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

(C) that is criminal mischief in the first degree under AS 11.46.475; [OR]

(D) that is terroristic threatening in the first degree under AS 11.56.807;

(E) that is human trafficking in the first degree under AS 11.41.360; or

(F) that is sex trafficking in the first degree under AS 11.66.110.

* **Sec. 4.** AS 11.61.128(a) is amended to read:

(a) A person commits the crime of distribution of indecent material to minors

1 if

2 (1) the person, being 18 years of age or older, intentionally
3 [KNOWINGLY] distributes or possesses with intent to distribute any material
4 described in (2) and (3) of this subsection to either

5 (A) a child that the person knows is under 16 years of age;

6 or

7 (B) another person that the person believes is a child under
8 16 years of age;

9 (2) the person knows that the material [TO ANOTHER PERSON
10 ANY MATERIAL THAT] depicts the following actual or simulated conduct:

11 (A) sexual penetration;

12 (B) the lewd touching of a person's genitals, anus, or female
13 breast;

14 (C) masturbation;

15 (D) bestiality;

16 (E) the lewd exhibition of a person's genitals, anus, or female
17 breast; or

18 (F) sexual masochism or sadism; and

19 (3) [(2)] the material is harmful to minors [; AND

20 (3) EITHER

21 (A) THE OTHER PERSON IS A CHILD UNDER 16 YEARS
22 OF AGE; OR

23 (B) THE PERSON BELIEVES THAT THE OTHER PERSON
24 IS A CHILD UNDER 16 YEARS OF AGE].

25 * **Sec. 5.** AS 11.66.100(b) is amended to read:

26 (b) Except as provided in (c) of this section, prostitution

27 [PROSTITUTION] is a class B misdemeanor.

28 * **Sec. 6.** AS 11.66.100 is amended by adding new subsections to read:

29 (c) Prostitution is a class C felony if

30 (1) the defendant violates (a) of this section as a patron of a prostitute;

31 (2) the prostitute is under 18 years of age; and

1 (3) the defendant is over 18 years of age and at least three years older
2 than the prostitute.

3 (d) In a prosecution under (c) of this section, it is an affirmative defense that,
4 at the time of the alleged offense, the defendant

5 (1) reasonably believed the prostitute to be 18 years of age or older;
6 and

7 (2) undertook reasonable measures to verify that the prostitute was 18
8 years of age or older.

9 * **Sec. 7.** AS 11.66.110(a) is amended to read:

10 (a) A person commits the crime of sex trafficking [PROMOTING
11 PROSTITUTION] in the first degree if the person

12 (1) induces or causes a person to engage in prostitution through the use
13 of force;

14 (2) as other than a patron of a prostitute, induces or causes a person
15 under 18 years of age to engage in prostitution; or

16 (3) induces or causes a person in that person's legal custody to engage
17 in prostitution.

18 * **Sec. 8.** AS 11.66.110(c) is amended to read:

19 (c) Except as provided in (d) of this section, sex trafficking [PROMOTING
20 PROSTITUTION] in the first degree is a class A felony.

21 * **Sec. 9.** AS 11.66.120 is amended to read:

22 **Sec. 11.66.120. Sex trafficking [PROMOTING PROSTITUTION] in the**
23 **second degree.** (a) A person commits the crime of sex trafficking [PROMOTING
24 PROSTITUTION] in the second degree if the person

25 (1) manages, supervises, controls, or owns, either alone or in
26 association with others, a prostitution enterprise other than a place of prostitution;

27 (2) procures or solicits a patron for a prostitute; or

28 (3) offers, sells, advertises, promotes, or facilitates travel that includes
29 commercial sexual conduct as enticement for the travel; in this paragraph,
30 "commercial sexual conduct" means sexual conduct for which anything of value is
31 given or received by any person.

1 (b) Sex trafficking [PROMOTING PROSTITUTION] in the second degree is
2 a class B felony.

3 * **Sec. 10.** AS 11.66.130 is amended to read:

4 **Sec. 11.66.130. Sex trafficking [PROMOTING PROSTITUTION] in the**
5 **third degree.** (a) A person commits the crime of sex trafficking [PROMOTING
6 PROSTITUTION] in the third degree if, with intent to promote prostitution, the
7 person

8 (1) manages, supervises, controls, or owns, either alone or in
9 association with others, a place of prostitution;

10 (2) as other than a patron of a prostitute, induces or causes a person 18
11 years of age or older to engage in prostitution;

12 (3) as other than a prostitute receiving compensation for personally
13 rendered prostitution services, receives or agrees to receive money or other property
14 under [PURSUANT TO] an agreement or understanding that the money or other
15 property is derived from prostitution; or

16 (4) engages in conduct that institutes, aids, or facilitates a prostitution
17 enterprise.

18 (b) Sex trafficking [PROMOTING PROSTITUTION] in the third degree is a
19 class C felony.

20 * **Sec. 11.** AS 11.66.135 is amended to read:

21 **Sec. 11.66.135. Sex trafficking [PROMOTING PROSTITUTION] in the**
22 **fourth degree.** (a) A person commits the crime of sex trafficking [PROMOTING
23 PROSTITUTION] in the fourth degree if the person engages in conduct that institutes,
24 aids, or facilitates prostitution under circumstances not proscribed under
25 AS 11.66.130(a)(4).

26 (b) Sex trafficking [PROMOTING PROSTITUTION] in the fourth degree is
27 a class A misdemeanor.

28 * **Sec. 12.** AS 11.66.140 is amended to read:

29 **Sec. 11.66.140. Corroboration of certain testimony not required.** In a
30 prosecution under AS 11.66.110 - 11.66.135 [AS 11.66.110 - 11.66.130], it is not
31 necessary that the testimony of the person whose prostitution is alleged to have been

1 compelled or promoted be corroborated by the testimony of any other witness or by
2 documentary or other types of evidence.

3 * **Sec. 13.** AS 11.66.145 is amended to read:

4 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or
5 received or derived from, a violation of AS 11.66.100(c) or 11.66.110 - 11.66.135
6 [AS 11.66.110 - 11.66.135] shall be forfeited.

7 * **Sec. 14.** AS 11.81.250(a) is amended to read:

8 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
9 title, except murder in the first and second degree, attempted murder in the first
10 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
11 in the first degree, murder of an unborn child, sexual assault in the first degree, sexual
12 abuse of a minor in the first degree, misconduct involving a controlled substance in the
13 first degree, sex trafficking [PROMOTING PROSTITUTION] in the first degree
14 under AS 11.66.110(a)(2), and kidnapping, are classified on the basis of their
15 seriousness, according to the type of injury characteristically caused or risked by
16 commission of the offense and the culpability of the offender. Except for murder in the
17 first and second degree, attempted murder in the first degree, solicitation to commit
18 murder in the first degree, conspiracy to commit murder in the first degree, murder of
19 an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first
20 degree, misconduct involving a controlled substance in the first degree, sex
21 trafficking [PROMOTING PROSTITUTION] in the first degree under
22 AS 11.66.110(a)(2), and kidnapping, the offenses in this title are classified into the
23 following categories:

24 (1) class A felonies, which characteristically involve conduct resulting
25 in serious physical injury or a substantial risk of serious physical injury to a person;

26 (2) class B felonies, which characteristically involve conduct resulting
27 in less severe violence against a person than class A felonies, aggravated offenses
28 against property interests, or aggravated offenses against public administration or
29 order;

30 (3) class C felonies, which characteristically involve conduct serious
31 enough to deserve felony classification but not serious enough to be classified as A or

1 B felonies;

2 (4) class A misdemeanors, which characteristically involve less severe
3 violence against a person, less serious offenses against property interests, less serious
4 offenses against public administration or order, or less serious offenses against public
5 health and decency than felonies;

6 (5) class B misdemeanors, which characteristically involve a minor
7 risk of physical injury to a person, minor offenses against property interests, minor
8 offenses against public administration or order, or minor offenses against public health
9 and decency;

10 (6) violations, which characteristically involve conduct inappropriate
11 to an orderly society but which do not denote criminality in their commission.

12 * **Sec. 15.** AS 11.81.250(b) is amended to read:

13 (b) The classification of each felony defined in this title, except murder in the
14 first and second degree, attempted murder in the first degree, solicitation to commit
15 murder in the first degree, conspiracy to commit murder in the first degree, murder of
16 an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first
17 degree, misconduct involving a controlled substance in the first degree, sex
18 trafficking in the first degree under AS 11.66.110(a)(2), and kidnapping, is
19 designated in the section defining it. A felony under the [ALASKA] law of this state
20 defined outside this title for which no penalty is specifically provided is a class C
21 felony.

22 * **Sec. 16.** AS 12.47.100 is amended by adding a new subsection to read:

23 (h) In a hearing to determine competency under this section, the court may, at
24 the court's discretion, allow a witness, including a psychiatrist or psychologist who
25 examined the defendant, to testify concerning the competency of the defendant by
26 contemporaneous two-way video conference if the witness is in a place from which
27 people customarily travel by air to the court, and the procedure allows the parties a fair
28 opportunity to examine the witness. The video conference technician shall be the only
29 person in the presence of the witness unless the court, at the court's discretion,
30 determines that another person may be present. Any person present with the witness
31 must be identified on the record. In this subsection, "contemporaneous two-way video

1 conference"

2 (1) means a conference among people at different places by means of
3 transmitted audio and video signals;

4 (2) includes all communication technologies that allow people at two
5 or more places to interact by two-way video and audio transmissions simultaneously.

6 * **Sec. 17.** AS 12.55.035(b) is amended to read:

7 (b) Upon conviction of an offense, a defendant who is not an organization may
8 be sentenced to pay, unless otherwise specified in the provision of law defining the
9 offense, a fine of **not** [NO] more than

10 (1) \$500,000 for murder in the first or second degree, attempted
11 murder in the first degree, murder of an unborn child, sexual assault in the first degree,
12 sexual abuse of a minor in the first degree, kidnapping, **sex trafficking**
13 [PROMOTING PROSTITUTION] in the first degree under AS 11.66.110(a)(2), or
14 misconduct involving a controlled substance in the first degree;

15 (2) \$250,000 for a class A felony;

16 (3) \$100,000 for a class B felony;

17 (4) \$50,000 for a class C felony;

18 (5) \$10,000 for a class A misdemeanor;

19 (6) \$2,000 for a class B misdemeanor;

20 (7) \$500 for a violation.

21 * **Sec. 18.** AS 12.55.125(i) is amended to read:

22 (i) A defendant convicted of

23 (1) sexual assault in the first degree, sexual abuse of a minor in the
24 first degree, or **sex trafficking** [PROMOTING PROSTITUTION] in the first degree
25 under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not
26 more than 99 years and shall be sentenced to a definite term within the following
27 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

5 (C) if the offense is a second felony conviction and does not
6 involve circumstances described in (D) of this paragraph, 30 to 40 years;

7 (D) if the offense is a second felony conviction and the
8 defendant has a prior conviction for a sexual felony, 35 to 45 years;

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

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

15 (2) unlawful exploitation of a minor under AS 11.41.455(c)(2), online
16 enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or solicitation to
17 commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or
18 sex trafficking [PROMOTING PROSTITUTION] in the first degree under
19 AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more
20 than 99 years and shall be sentenced to a definite term within the following
21 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

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

3 (E) if the offense is a third felony conviction, the offense does
4 not involve circumstances described in (F) of this paragraph, and the defendant
5 is not subject to sentencing under (I) of this section, 35 to 50 years;

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

9 (3) sexual assault in the second degree, sexual abuse of a minor in the
10 second degree, online enticement of a minor under AS 11.41.452(d), unlawful
11 exploitation of a minor under AS 11.41.455(c)(1), or distribution of child pornography
12 under AS 11.61.125(e)(2) may be sentenced to a definite term of imprisonment of not
13 more than 99 years and shall be sentenced to a definite term within the following
14 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

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

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

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

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

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

24 (4) sexual assault in the third degree, incest, indecent exposure in the
25 first degree, possession of child pornography, distribution of child pornography under
26 AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to commit sexual assault in
27 the second degree, sexual abuse of a minor in the second degree, unlawful exploitation
28 of a minor, or distribution of child pornography, may be sentenced to a definite term
29 of imprisonment of not more than 99 years and shall be sentenced to a definite term
30 within the following presumptive ranges, subject to adjustment as provided in
31 AS 12.55.155 - 12.55.175:

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

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

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

6 (D) if the offense is a third felony conviction and does not
7 involve circumstances described in (E) of this paragraph, 15 to 25 years;

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

10 * **Sec. 19.** AS 12.55.185(10) is amended to read:

11 (10) "most serious felony" means

12 (A) arson in the first degree, sex trafficking [PROMOTING
13 PROSTITUTION] in the first degree under AS 11.66.110(a)(2), online
14 enticement of a minor under AS 11.41.452(e), or any unclassified or class A
15 felony prescribed under AS 11.41; or

16 (B) an attempt, or conspiracy to commit, or criminal
17 solicitation under AS 11.31.110 of, an unclassified felony prescribed under
18 AS 11.41;

19 * **Sec. 20.** AS 15.80.010(9) is amended to read:

20 (9) "felony involving moral turpitude" includes those crimes that are
21 immoral or wrong in themselves such as murder, manslaughter, assault, sexual assault,
22 sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion,
23 coercion, kidnapping, incest, arson, burglary, theft, forgery, criminal possession of a
24 forgery device, offering a false instrument for recording, scheme to defraud, falsifying
25 business records, commercial bribe receiving, commercial bribery, bribery, receiving a
26 bribe, perjury, perjury by inconsistent statements, endangering the welfare of a minor,
27 escape, promoting contraband, interference with official proceedings, receiving a bribe
28 by a witness or a juror, jury tampering, misconduct by a juror, tampering with physical
29 evidence, hindering prosecution, terroristic threatening, riot, criminal possession of
30 explosives, unlawful furnishing of explosives, sex trafficking [PROMOTING
31 PROSTITUTION], criminal mischief, misconduct involving a controlled substance or

1 an imitation controlled substance, permitting an escape, promoting gambling,
 2 possession of gambling records, distribution of child pornography, and possession of
 3 child pornography;

4 * **Sec. 21.** AS 28.15.046(c) is amended to read:

5 (c) The department may not issue a license under this section to an applicant
 6 who has been convicted of any of the following offenses within 20 years of the time of
 7 application:

- 8 (1) sexual abuse of a minor in any degree under AS 11.41.434 -
 9 11.41.440;
- 10 (2) sexual assault in any degree under AS 11.41.410 - 11.41.425;
- 11 (3) incest under AS 11.41.450;
- 12 (4) unlawful exploitation of a minor under AS 11.41.455;
- 13 (5) contributing to the delinquency of a minor under AS 11.51.130;
- 14 (6) a felony involving possession of a controlled or imitation
 15 controlled substance under AS 11.71 or AS 11.73;
- 16 (7) a felony or misdemeanor involving distribution of a controlled or
 17 imitation controlled substance under AS 11.71 or AS 11.73;
- 18 (8) sex trafficking [PROMOTING PROSTITUTION] in the first or
 19 second degree under AS 11.66.110 or 11.66.120;
- 20 (9) indecent exposure in the first or second degree under AS 11.41.458
 21 or 11.41.460.

22 * **Sec. 22.** AS 47.12.110(d) is amended to read:

23 (d) Notwithstanding (a) of this section, a court hearing on a petition seeking
 24 the adjudication of a minor as a delinquent shall be open to the public, except as
 25 prohibited or limited by order of the court, if

26 (1) the department files with the court a motion asking the court to
 27 open the hearing to the public, and the petition seeking adjudication of the minor as a
 28 delinquent is based on

29 (A) the minor's alleged commission of an offense, and the
 30 minor has knowingly failed to comply with all the terms and conditions
 31 required of the minor by the department or imposed on the minor in a court

1 order entered under AS 47.12.040(a)(2) or 47.12.120;

2 (B) the minor's alleged commission of

3 (i) a crime against a person that is punishable as a
4 felony;

5 (ii) a crime in which the minor employed a deadly
6 weapon, as that term is defined in AS 11.81.900(b), in committing the
7 crime;

8 (iii) arson under AS 11.46.400 - 11.46.410;

9 (iv) burglary under AS 11.46.300;

10 (v) distribution of child pornography under
11 AS 11.61.125;

12 (vi) sex trafficking [PROMOTING PROSTITUTION]
13 in the first degree under AS 11.66.110; or

14 (vii) misconduct involving a controlled substance under
15 AS 11.71 involving the delivery of a controlled substance or the
16 possession of a controlled substance with intent to deliver, other than
17 an offense under AS 11.71.040 or 11.71.050; or

18 (C) the minor's alleged commission of a felony and the minor
19 was 16 years of age or older at the time of commission of the offense when the
20 minor has previously been convicted or adjudicated a delinquent minor based
21 on the minor's commission of an offense that is a felony; or

22 (2) the minor agrees to a public hearing on the petition seeking
23 adjudication of the minor as a delinquent.

24 * Sec. 23. AS 47.12.315(a) is amended to read:

25 (a) Notwithstanding AS 47.12.310, when an agency takes action under
26 AS 47.12.040(a)(1) to adjust a matter, or when, under AS 47.12.040(a)(2), the court
27 directs the agency to adjust the matter, the agency

28 (1) shall, for a minor who is at least 13 years of age at the time of
29 commission of the offense, disclose to the public the name of the minor, the name or
30 names of the parent, parents, or guardian of the minor, the action required by the
31 agency to be taken by the minor under AS 47.12.060 to adjust the matter, and

1 information about the offense exclusive of information that identifies the victim of the
 2 offense, if the minor was, under AS 47.12.020, previously alleged to be a delinquent
 3 minor on the basis of the minor's commission of at least one offense and, on the basis
 4 of that allegation, a state agency has, under AS 47.12.040(a), been asked to make a
 5 preliminary inquiry to determine if any action on that matter is appropriate, and, if the
 6 minor is alleged to be a delinquent minor on the basis of the minor's commission of
 7 another offense, exercise of agency jurisdiction is based on the minor's alleged
 8 commission of that other offense, and that other offense is one of the following:

9 (A) a crime against a person that is punishable as a felony;

10 (B) a crime in which the minor employed a deadly weapon, as
 11 that term is defined in AS 11.81.900(b), in committing the crime;

12 (C) arson under AS 11.46.400 - 11.46.410;

13 (D) burglary under AS 11.46.300;

14 (E) distribution of child pornography under AS 11.61.125;

15 (F) sex trafficking [PROMOTING PROSTITUTION] in the
 16 first degree under AS 11.66.110; or

17 (G) misconduct involving a controlled substance under
 18 AS 11.71 involving the delivery of a controlled substance or the possession of
 19 a controlled substance with intent to deliver, other than an offense under
 20 AS 11.71.040 or 11.71.050; and

21 (2) may, for a minor who is at least 13 years of age at the time of
 22 commission of the offense, disclose to the public the name of the minor, the name or
 23 names of the parent, parents, or guardian of the minor, the action required by the
 24 agency to be taken by the minor under AS 47.12.060 to adjust the matter, and
 25 information about the offense exclusive of information that identifies the victim of the
 26 offense if the minor has knowingly failed to comply with all terms and conditions
 27 required of the minor by the agency to adjust the matter under AS 47.12.060(b).

28 * Sec. 24. The uncoded law of the State of Alaska is amended by adding a new section to
 29 read:

30 DIRECT COURT RULE AMENDMENT. The Alaska Rules of Criminal
 31 Procedure are amended by adding a new section to read:

1 **Rule 38.3. Video Conference Testimony. (a) In General.** In every trial, the
2 testimony of witnesses shall be taken in open court, unless otherwise provided by
3 statute or rule.

4 **(b) Testimony by Video Conference.** The parties may agree to take
5 testimony from a witness by contemporaneous two-way video conference presented in
6 open court. Absent the parties' agreement, the court may, at the court's discretion,
7 authorize the contemporaneous two-way video conference testimony at trial of a
8 witness only if

9 (1) the requesting party establishes that testimony by two-way video
10 conference is necessary to further an important public policy;

11 (2) the requesting party establishes that the witness is unavailable; and

12 (3) the testimony is given under oath and subject to cross-examination.

13 **(c) Procedures for Taking Video Conference Testimony.** If the trial court
14 authorizes video conference testimony under (b) of this rule, it shall determine the
15 procedures for taking the contemporaneous two-way video conference testimony. The
16 parties, the court, the trier of fact, and the public must be able to see and hear the
17 witness; and the witness must see and hear the courtroom proceedings, including the
18 defendant, as if the witness were sitting in the courtroom's witness stand. The video
19 conference technician shall be the only person in the presence of the witness unless the
20 court, at the court's discretion, determines that another person may be present. Any
21 person present with the witness must be identified.

22 **(d) Definitions.**

23 (1) **Contemporaneous Two-Way Video Conference.** Contemporaneous
24 two-way video conference means a conference among people at different places by
25 means of transmitted audio and video signals. It includes all communication
26 technologies that allow two or more places to interact by two-way video and audio
27 transmissions simultaneously.

28 (2) **Unavailable.** In this rule, a witness is unavailable if

29 (A) by clear and convincing evidence the court finds under
30 Rule 804(a)(4) or (5), Alaska Rules of Evidence, or Rule 15(e)(4), Alaska
31 Rules of Criminal Procedure, that the witness is unavailable;

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(B) by clear and convincing evidence the court finds that under the circumstances the witness is unavailable; or

(C) the parties agree that the witness is unavailable.

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 1, 2, 7 - 11, 14, and 17 - 23 of this Act apply to offenses committed before, on, or after the effective date of the Act.

(b) Sections 3 - 6, 12, 13, 16, and 24 of this Act apply to offenses committed on or after the effective date of this Act.

* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the heading of AS 11.66.110 from "Promoting prostitution in the first degree" to "Sex trafficking in the first degree."

* **Sec. 27.** This Act takes effect July 1, 2012.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSHB 359(JUD)
 Fiscal Note Number 7
 (H) Publish Date 3/21/12

Identifier (file name) CS HB 359 (JUD) Dept. Affected Public Safety
 Title Sex Crimes; Testimony by Video Conference Appropriation Statewide Support
 Allocation Records & Identification
 Sponsor Rules by Request of the Governor
 Requester House Judiciary Committee OMB Component Number 1190

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

CS HB 359 (JUD) deletes Sec. 20 of the original bill.

Prepared by Melanie Lesh, Legislative Aide
 Division House Judiciary Committee
 Approved by Representative Carl Gatto, Chair
House Judiciary Committee

Phone 907-465-4990
 Date/Time 3/14/12 12:00 AM
 Date 3/14/2012

FISCAL NOTE #7

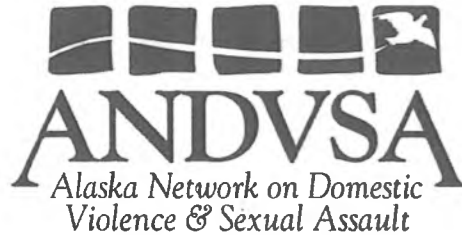
STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. CSHB 359(JUD)

Analysis

There is no additional cost resulting from the passage of House Bill 359.

Main Office
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Juneau, Alaska 99801
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Fax: (907) 463-4493
www.andvsa.org



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

April 2, 2012

Honorable Sean Parnell
P.O. Box 110001
State Capitol
Juneau, AK 99811

Re: HB 359 – Sex Crimes, Videotaped Testimony

Dear Governor Parnell:

On behalf of our eighteen member programs that provide direct services to victims of sexual assault and domestic violence in communities throughout Alaska, we are writing in support of HB 359 – Sex Crimes, Video Testimony.

The terminology changes from promoting prostitution to sex trafficking makes a profound policy statement that places focus for these crimes on the perpetrators and not the victims. Sex traffickers deliberately prey on the most vulnerable individuals and often homeless youth in our state. We applaud and appreciate attention to a victim-centered approach to addressing the crime of sex trafficking in Alaska.

We also support adding sex trafficking to our conspiracy laws, increasing the penalty for patronizing a prostitute when the prostitute is a minor and insuring that offenders are held accountable for the sexual exploitation of minors. This is a reasonable change in our laws and provides an affirmative defense to ensure that the true perpetrators are captured under this provision.

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



Dan Sullivan, Mayor

ANCHORAGE POLICE DEPARTMENT

4501 Elmore Road • Anchorage, Alaska 99507-1599
Telephone (907) 786-8500



Service since 1921

The Honorable Sean Parnell
Governor
Alaska State Capitol
Juneau, AK 99801

Dear Governor Parnell:

I am writing you to state the support of the Anchorage Police Department for the passage of House Bill 359, which enhances the state's Sex Trafficking laws. As you well know, this measure would protect Alaska's children by increasing the seriousness of many sex related acts that may be perpetrated against them, and by improving the ability of police and prosecutors to apprehend and convict sexual predators.

APD Vice Sergeant Kathy Lacey, our resident expert in these matters, recently testified in support of this bill. She did so at my direction, and was specifically authorized to speak on behalf of the APD on this matter. I should add that Mayor Sullivan is aware of our position, and has indicated his approval as well.

We agree with your Choose Respect program, and believe that combating interpersonal violence must be a priority for state and municipal government, and of our citizens. Children may have been underrepresented somewhat in this effort up until now. Among its other accomplishments, HB 359 corrects this condition.

Thank you for your work in advancing this bill. Please let us know what else we can do to assist in its passage.

Sincerely,

Mark T. Mew
Chief of Police



ph
907 793.3600
fx
907 793.3602
web
CITCI.org

March 27, 2012

The Honorable Sean Parnell
Governor
State of Alaska
State Capitol Building
Juneau, AK 99811-0001

Dear Governor Parnell:

Exploitation of Alaska's youth and vulnerable women is of grave concern, especially in the area of sex/human trafficking. Cook Inlet Tribal Council (CITC) applauds your initiative to update and increase penalties for the prosecution of individuals who conspire to commit human trafficking.

House Bill 359/Senate Bill 218, An Act relating to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of distribution of indecent material to minors, the crime of online enticement of a minor, the crime of prostitution, and the crime of sex trafficking; etc., will send a strong signal to those who take advantage of Alaska's youth and will also serve to deter perpetrators in committing these criminal activities.

Vulnerable youth – those who are homeless, abused, runaways, lacking healthy family structure – are so often the victims and targeted for sex trafficking. They are often preyed upon and easily trapped by having no place else to go. This is particularly true for young people and women who leave the village to come to Anchorage. And it is important to recognize, as your bill does, that the victims are not committing the crime of prostitution, but are rather victims of the sex trafficker.

Thank you for your efforts to advance stronger penalties against sex trafficking and for acknowledging the need to protect those who are forced into selling their bodies. CITC supports your work in the deterrence of the tragic crime of sex trafficking and hopes that this will prevent continued abuse of our young in this criminal activity.

Sincerely,

A handwritten signature in black ink that reads 'Kristin English, CEO for G. O'Neill'.

Gloria O'Neill
President/CEO

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

DEPARTMENT OF ADMINISTRATION

VIOLENT CRIMES COMPENSATION BOARD

P.O. BOX 110230
JUNEAU, ALASKA 99811-0230
PHONE: (907) 465-3040
TOLL FREE: 1-800-764-3040
FAX: (907) 465-2379

March 23, 2012

Honorable Governor Sean Parnell
P.O. Box 110001
State Capitol
Juneau, Alaska 99811

Re: House Bill, No. 359: Sex Crimes

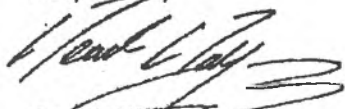
Dear Governor Parnell,

I write on behalf of the Violent Crimes Compensation Board to thank you for introducing House Bill 359 and to express the Board's full support. The proposed legislation is extremely welcome, and reflects a victim-centered approach to the serious issue of sex trafficking.

Over the course of the last few years, the Board has seen 23 claims stemming from trafficking investigations, and has paid out over \$150,000 in compensation or assistance to trafficking victims. This compensation has been in the form of payment for mental health counseling, and for drug and alcohol treatment programs, as well as for medical expenses, and assistance in relocation to a safer environment. None of these claims were for victims who were trafficked to Alaska. They were Alaskan residents who were the victims of sex trafficking within Alaska.

As Board members, we have seen the terrible results of sex trafficking on the lives of young women and their families. Very often these victims are young vulnerable native women, including minors, who have left their villages and come to Anchorage, only to find themselves homeless and alone. These young women and girls are specifically targeted by predatory sex traffickers; often they are given enticements in the form of clothing, and offered a place to stay, but are then abused, beaten, sexually assaulted, deliberately addicted to controlled substances and alcohol and then prostituted out to make money for their abusers. These victims should not be labeled with the actions of those who exploit them.

Respectfully submitted



Gerard Godfrey
Chair, Violent Crimes Compensation Board

OFFICE OF THE GOVERNOR
JUNEAU, ALASKA
MAR 27 2012



March 26, 2012

The Honorable Sean Parnell
Office of the Governor
State Capitol, Third Floor
Juneau, AK 99801-1182

Dear Governor Parnell,

On behalf of the Mary Magdalene Home Alaska (MMHA) Board of Directors, I am submitting this letter in support of House Bill 359, sex trafficking and video conferencing. MMHA is a private, faith-based nonprofit operating since 1995 whose mission is to support and assist women who are working to escape a life of sexual exploitation and prostitution.

We know from experience many women entered this life as a youth. National statistics suggest that the average age of entry into prostitution is early to mid teens. Homeless and vulnerable youth are ensnared by pimps, working prostitutes, drug addicts and other predators. Some youth are taught to turn tricks by their mothers or mothers' pimps. Many were repeatedly sexually assaulted, even since toddlerhood, and came to realize that their bodies were a tool and they should learn to use it for their own advantage. They know no other life and see no other way to survive.

We support the intent of the bill to change the language of discourse and legal action from promoting prostitution to sex trafficking, facilitating the broader understanding that the overwhelming majority of children placed into prostitution are not there by choice, but because they perceive no other choice. We support the increased penalties for patrons of prostitution, as patrons need to understand and be accountable for their role in the sexual exploitation of others. We support including sex trafficking in the first degree as a "serious felony offense" enabling prosecution of trafficking offenders.

We thank you for your transmission of this bill and look forward to its prompt passage.

Sincerely,

A handwritten signature in cursive script that reads "Alice Myers".

Alice Myers
Treasurer, Board of Directors
Mary Magdalene Home Alaska



**Covenant
House
Alaska**

Crisis Center • Community Services Center • Transitional Living

Governor Sean Parnell
State Capital Building
Juneau, AK

March 22, 2012

Dear Governor Sean Parnell,

Thank you for introduction of House Bill 359: *"An Act relating to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of furnishing indecent material to minors, the crime of online enticement of a minor, the crime of prostitution, and the crime of sex trafficking; relating to forfeiture of property used in prostitution offenses; relating to sex offender registration; relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal Procedure; and providing for an effective date."* The bill includes a number of provisions that specifically protect the youth we serve.

Covenant House provides basic necessities (shelter, food, clothing and healthcare) and wrap around services (transitional living and educational, vocational and life skills assistance) to homeless and runaway youth in Alaska. Although located in Anchorage, we serve youth from all over Alaska. In FY2011, we served over 4,000 individual youth and nearly 40% of our kids are Alaska Native.

HB 359 seeks to update and improve Alaska's sex/human trafficking statutes and allows for more aggressive prosecution of individuals engaged in the exploitation of youth. CHA shelters and provides services to victims of sex trafficking every single day. Sex trafficking is a highly prevalent, but mostly invisible crime. CHA youth are particularly vulnerable to trafficking activities because of their lack of strong support systems, history of abuse (46% of CHA girls report sexual abuse and 33% of our youth have been in foster care) and their desperate need for essentials like shelter and food.

HB 359 clarifies the victim status of children and youth caught in organized human trafficking and updates the language we use to describe this crime. It holds the perpetrators providing the demand for sex trafficking accountable and adds trafficking to currently existing conspiracy statutes.

The actions of traffickers are deliberate and cruel. Traffickers target some of the most vulnerable individuals in Alaska: unaccompanied homeless youth, abused children and children in foster care because these are often the most invisible individuals as well. Victims are coerced, emotionally and physically, and often remained trapped by "pimps" for years. Trafficking is crime of calculated torture and HB 359 addresses it as so, infusing severe penalties into statute for perpetrators in Alaska. Please do not hesitate to contact me for questions. Thank you.

Sincerely,

Deirdre A. Cronin
Executive Director

March 26, 2012

Governor Sean Parnell
ALASKA STATE CAPITAL BUILDING, Third Floor
PO Box 110001
Juneau, AK 99811-0001

Dear Governor Parnell,

I've read your Bill (HB 359) that includes "sex trafficking" into Alaska law and greatly appreciate what you've done about this horrendous crime. Now we must hope that our legislature will do what is right and pass your recommendations and severely punish the real criminals; the pimps, traffickers, facilitators and anyone else who profits from human trafficking and provide the much needed help for victims.

As a 35 year citizen of Alaska, and part of the faith community, I am greatly concerned about this issue. I've attended several schools and conferences with YWAM (Youth With A Mission) in San Francisco, Costa Rica and Amsterdam addressing the problem of human trafficking, particularly as it pertains to the sexual exploitation of minors. I am passionate about this problem and support HB 359.

Sincerely,

A handwritten signature in cursive script that reads "Dolly Caswell". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Dolly Caswell
PO Box 771677
Eagle River, AK 99577
(907) 694-7366 home
(907) 240-2259 cell dollycaswell@gmail.com

March 23rd, 2012

Dear Governor Parnell,

I write to you in support of HB 359 today and appreciate your efforts to make the beautiful State of Alaska a safer place for children and women. I have a very strong opinion about the growing trend in the State of Alaska as it relates to the trafficking of women and children for sexual crimes. I continue to serve on the Violent Crimes Compensation Board for the State of Alaska and there is an alarming increase in the number of women with children in other states being brought to Alaska to become victims of repeated sexual abuse inclusive of the woman, her children, and sometimes the dog. I feel very strongly that offenders that force children into sexual human trafficking should have in the State of Alaska a sentence of a definite term of imprisonment of not more than 99 years and a definite termed sentenced for any human sex trafficking offense against a child younger than the age of 18. In the State of Alaska we are currently seeing an alarming increase in HIV, syphilis, and gonorrhea sexually transmitted diseases. These offenders usually entice large numbers of women and children into their prostitution human sex trafficking rings by promising them phones, video games, money, drugs, alcohol, and then subsequently keep these victims drugged and beaten in order to force the victims to continue to prostitute themselves for the monetary gains of these offenders. I think 99 years is not long enough for these offenders as often times we see the same offender and leaders of such organized groups of women and children sex trafficking continue the same criminal behavior once the sentence is completed. I see in the trauma resuscitation rooms at the hospital women and children that are often times beaten until unrecognizable, infected with lifelong sexually transmitted diseases, and sometimes even dead on arrival. Thank you for allowing me to participate in this effort. If any questions please email me or you may contact me directly at 907-244-1689.

Thanks again,

Regina Chennault, M.D.

3/21/12



March 21, 2012

AMERICAN CIVIL LIBERTIES UNION OF ALASKA FOUNDATION
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Anchorage, AK 99503
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(907) 258-0288 (fax)
WWW.AKCLU.ORG

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TONY STRONG, Juneau

ZACH FICK, Anchorage
EMMA HILL, Anchorage
STUDENT ADVISORS

The Honorable Bill Stoltze, Co-Chair
The Honorable Bill Thomas, Co-Chair
House Finance Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801

via email: [Representative Bill Stoltze@legis.state.ak.us](mailto:Representative_Bill_Stoltze@legis.state.ak.us)
[Representative Bill Thomas@legis.state.ak.us](mailto:Representative_Bill_Thomas@legis.state.ak.us)

Re: HB 359: Video Testimony and Sex Offender Registration
ACLU Review of Legal Issues

Dear Co-Chairs Stoltze and Thomas:

Thank you for the opportunity to provide written testimony with respect to House Bill 359, which — amongst other provisions — permits judicial testimony by video conference.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout Alaska who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. In that context, we wish to advise you of constitutional and policy issues with sections 16 and 24 of this proposed legislation, and the expense the state is likely to incur in defending against multiple litigations, which would be avoided with careful redrafting of the bill.

Section 16 Unconstitutionally Violates the Confrontation Clauses

If enacted, Section 16 of HB 359 would permit, in the context of determining if a criminal defendant is mentally competent to stand trial, a witness, “including the psychiatrist or psychologist who examined the defendant,” who “is in a place from which people customarily travel by air to the court,”

to “testify concerning the competency of the defendant by contemporaneous two-way video conference[.]” **A court would likely rule that this provision violates the Confrontation Clauses of the federal and Alaska Constitutions.** U.S. Const. Amend. VI (“In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him”); Alaska Const. Art. I, § 11 (“In all criminal prosecutions, the accused shall have the right . . . to be confronted with the witnesses against him”). **Passage – as drafted – would almost certainly result in individual challenges by criminal defendants, entangling the state in unnecessary litigation, as well as opening the state to a facial constitutional challenge.**

The federal Confrontation Clause’s “right to confront one’s accusers is a concept that dates back to Roman times.” *Crawford v. Washington*, 541 U.S. 36, 43 (2004). It is a “bedrock procedural guarantee” that “applies to both federal and state prosecutions.” *Id.* at 42; see *Lemon v. State*, 514 P.2d 1151 (Alaska 1973).

This essential right serves four purposes: first, it “insures that the witness will give his statements under oath [by] impressing him with the seriousness of the matter,” *Maryland v. Craig*, 497 U.S. 836, 846 (1990) (internal quotation omitted); second, it “ensur[es] that evidence admitted against an accused is reliable” by “forc[ing] the witness to submit to cross-examination, the greatest legal engine ever invented for the discovery of truth,” *id.* (internal quotation omitted); third, it “permits the jury . . . to observe the demeanor of the witness in making his statement, thus aiding the jury in assessing his credibility,” *id.* (internal quotation omitted); and fourth, it has a “strong symbolic purpose” of assuring everyone that the prosecution is fair, *id.* at 847. Confrontation “may confound and undo the false accuser, or reveal the child coached by a malevolent adult.” *Id.* at 846–47 (internal quotation omitted).

Face-to-face confrontation is “the core of the values furthered by the Confrontation Clause,” *id.* at 847 (internal quotation omitted) and “[t]he prosecution *must* produce . . . witnesses . . . against the defendant,” *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 129 S. Ct. 2527, 2534 (2009) (emphasis in original). The face-to-face confrontation may be denied only if, after a fact-based, “case-specific” inquiry, *Craig*, 497 U.S. at 855, a court determines that “denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured,” *id.* at 850.

The “necessary to further an important public policy” prong is not easily satisfied. While juvenile victims of sexual violence may be exempted from personally confronting the accused, the denial of face-to-face confrontation is only justified if “it is the presence of the defendant that causes the trauma.” *Id.* at 856. But, the desire to have the child witness avoid “courtroom trauma generally” is insufficient to deny face-to-face confrontation “because the child could be permitted to testify in less intimidating surroundings, albeit with the defendant present.” *Id.* And, the court must determine that “the emotional distress . . . is more than *de minimis*, *i.e.*, more than mere nervousness or excitement or some reluctance to testify.” *Id.* (internal quotation omitted);

Blume v. State, 797 P.2d 664, 674 (Alaska Ct. App. 1990). Simple need for a witness's testimony,¹ expediency,² efficiency,³ security,⁴ "convenience and cost-saving,"⁵ and a desire not to leave a severely ill, elderly spouse's side⁶ do not satisfy *Craig's* important public policy test nor justify avoiding face-to-face in-person confrontation.⁷

While no court has squarely addressed if "the [federal] Confrontation Clause applies to pretrial competency hearings," *United States v. Hamilton*, 107 F.3d 499, 504 (7th Cir. 1997), such as those in Alaska Stat. § 12.47.100, an Alaska court might hold that the federal and state Confrontation Clauses do. West Virginia holds that a defendant is entitled to face-to-face confrontation in pretrial hearings to determine whether to transfer his case from juvenile to criminal court, *State v. Gary F.*, 432 S.E.2d 793, 800 (W. Va. 1993), and Pennsylvania applies the Confrontation Clauses to pretrial suppression hearings, *Commonwealth v. Atkinson*, 987 A.2d 743, 746 (Pa. Super. Ct. 2009).

A competency hearing is an important part of a criminal prosecution, on which vital interests — whether a defendant will be tried and punished — turn. In light of its gravity, constitutional protections that exist during the criminal trial, such as the Fifth Amendment's freedom from self-incrimination⁸ and the Sixth Amendment's right to counsel,⁹ equally apply to competency hearings. *Estelle v. Smith*, 451 U.S. 454, 468–69 (1981).¹⁰ The hearsay rule also applies: hearsay testimony is constitutionally insufficient to find a defendant competent. *Pate v. Robinson*, 383 U.S. 375, 383–84 (1966).

¹ *United States v. Yates*, 438 F.3d 1307, 1316 (11th Cir. 2006) (en banc).

² *Id.*

³ *Commonwealth v. Atkinson*, 987 A.2d 743, 750 (Pa. Super. Ct. 2009).

⁴ *Id.*

⁵ *Id.* at 751.

⁶ *Bush v. State*, 193 P.3d 203, 216 (Wyo. 2008).

⁷ In *Melendez-Diaz*, the U.S. Supreme Court directly faced a request to "relax the requirements of the Confrontation Clause to accommodate the 'necessities of trial and the adversary process.'" *Melendez-Diaz*, 129 S. Ct. at 2540. The Court rejected this proposal because "[i]t is not clear whence we would derive the authority to do so. The Confrontation Clause may make the prosecution of criminals more burdensome, but that is equally true of the right to trial by jury and the privilege against self-incrimination. The Confrontation Clause — like those other constitutional provisions — is binding, and we may not disregard it at our convenience." *Id.* "It is a truism that constitutional protections have costs." *Coy v. Iowa*, 487 U.S. 1012, 1020 (1988).

⁸ U.S. Const. Amend. V ("No person . . . shall be compelled in any criminal case to be a witness against himself").

⁹ U.S. Const. Amend. VI ("In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defense.").

¹⁰ Upon review of the oral testimony at the March 19, 2012 hearing before the House Judiciary Committee, there was some confusion whether these specific constitutional protections apply. They do.

A competency hearing is “assuredly . . . a phase of the adversary system” and the conducting psychologist or psychiatrist is not a “perso[n] acting solely in [the defendant’s] interest.” *Estelle*, 451 U.S. at 467 (internal quotations omitted and first alteration in original). In light of its significance, the touchstone of a court’s inquiry would be the Confrontation Clauses’ purpose in a competency hearing.

A competency hearing is “critically important,” *see Gary F.*, 432 S.E.2d at 801, and “an adversarial proceeding and a critical stage in a criminal proceeding . . . at which substantive rights may be preserved or lost,” *Atkinson*, 987 A.2d at 747 (internal quotation omitted). Indeed, the competency hearing is how the court determines if a “defendant is unable to understand the proceedings against [him] or to assist in [his] own defense,” and if not, the defendant “may not be tried, convicted, or sentenced for the commission of a crime so long as the incompetency exists.” Alaska Stat. § 12.47.100(a). The court decides this issue through an adversarial process and “[t]he party raising the issue of competency bears the burden of proving the defendant is incompetent by a preponderance of the evidence.” *Id.* at § 12.47.100(c).

The court bases its decision on the testimony of “at least one qualified psychiatrist or psychologist,” *id.* at § 12.47.100(b), but the scientific expertise of the witness does not affect the Confrontation Clause analysis. “The prosecution *must* produce . . . witnesses . . . against the defendant,” *Melendez-Diaz*, 129 S. Ct. at 2534 (emphasis in original), even if the witnesses are scientists offering forensic analysis. “Confrontation is one means of assuring accurate forensic analysis. . . . Confrontation is designed to weed out not only the fraudulent analyst, but the incompetent one as well.” *Id.* at 2536–37. “[T]here is not a third category of witnesses, helpful to the prosecution, but somehow immune from confrontation.” *Id.* at 2534.¹¹ The importance of a pretrial competency hearing, with an adversarial process to determine critical rights, likely requires the full protections of the Confrontation Clauses.

This is particularly true because unlike other pretrial proceedings, such as a probable cause hearing, the competency determination is a terminal one that the court will not re-exam absent new evidence. While a defendant who loses a probable cause hearing is able to challenge the substance of that determination — is there sufficient reason to believe that he committed the crime — in the trial’s reasonable doubt inquiry, a defendant cannot reopen a finding of competence.

The importance and finality of a competency hearing explain why hearsay testimony cannot establish a finding of competence. *Pate*, 383 U.S. at 383–84. For such critical question, courts must base their determinations on evidence that is testable by cross-examination. The reasons that underpin the non-hearsay requirement — establishing the evidence’s accuracy and reliability by effective cross-examination — also support the need for in-person confrontation.

¹¹ The two categories of witnesses are “those against the defendant and those in his favor. The prosecution *must* produce the former; the defendant *may* call the latter.” *Melendez-Diaz*, 129 S. Ct. at 2534 (emphasis in original).

In conducting its inquiry of Section 16, which avoids this in-person confrontation, an Alaska court will rely on the *Craig* test. *Blume*, 797 P.2d at 674; *Reutter v. State*, 886 P.2d 1298, 1307 (Alaska Ct. App. 1994) (using *Craig* to evaluate Alaska Stat. § 12.45.046, which allows child victims to testify via closed-circuit television).¹² Using the *Craig* test, the Eight and Eleventh federal circuits determined “[t]he simple truth is that confrontation through a video monitor is not the same as physical face-to-face confrontation. . . . the two are not constitutionally equivalent.” *United States v. Yates*, 438 F.3d 1307, 1315 (11th Cir. 2006) (en banc). The Confrontation Clause “is most certainly compromised when the confrontation occurs though an electronic medium. Indeed, no court that has considered the question has found otherwise[.]” *Id.* “The virtual ‘confrontations’ offered by closed-circuit television systems fall short of the face-to-face standard because they do not provide the same truth-inducing effect.” *United States v. Bordeaux*, 400 F.3d 548, 554 (8th Cir. 2005).

Given (1) the criticism of two-way video testimony and (2) that the supposed benefits of Section 16, such as cost-savings, convenience, and efficiency, do not rise to an “important public policy,” a court would likely conclude that Section 16 violates the federal and Alaska Confrontation Clauses. This is especially true because the Alaska Supreme Court has expressly reserved its ability to interpret the Alaska Confrontation Clause more broadly than the federal one, *Lemon*, 514 P.2d at 1154 n.5,¹³ and because it has “the authority and, when necessary, duty to construe the provisions of the Alaska Constitution to provide greater protections than those arising out of the identical federal clauses,” *Doe v. State*, 189 P.3d 999, 1005 (Alaska 2008).

This conclusion is even more inexorable given the Alaska Supreme Court’s long-standing recognition that one of the “vital interests” of the Confrontation Clauses is to “enable[] the defendant to demonstrate to the jury the witnesses’ demeanor when confronted by the defendant so that the inherent veracity of the witness is displayed in the crucible of the courtroom,” *Lemon*, 514 P.2d at 1153, and that testimony via video may alter “impressions of the witness’ demeanor and credibility,” *Stores v. State*, 625 P.2d 820, 828 (Alaska 1980).¹⁴

¹² The Sixth, Eighth, Ninth, Tenth, and Eleventh federal circuits apply the *Craig* test to evaluate two-way video conference testimony. *Yates*, 438 F.3d at 1313 (listing cases).

¹³ The supreme courts of Illinois and Pennsylvania each interpreted their state Confrontation Clause more broadly than the federal one and each concluded that their state Clauses prohibit testimony by closed-circuit television. *People v. Fitzpatrick*, 633 N.E.2d 685, 688 (Ill. 1994); *Commonwealth v. Ludwig*, 594 A.2d 281, 281–82 (Pa. 1991).

¹⁴ Video testimony causes the “most serious . . . [e]vidence distortion . . . because the picture conveyed may influence a juror’s feelings about guilt or believability. . . . Variations in lens or angle, may result in failure to convey subtle nuances, including changes in witness demeanor such as a nervous twitch or paling and blushing in response to an important question . . . Furthermore, the camera itself is selective of what it relates to the viewer. Transmission of valuable first impressions may be impossible, and off-camera evidence is necessarily excluded while the focus is on another part of the body or another witness.” *Stores*, 625 P.2d at 828 n.25.

Even if a court did not completely overturn Section 16, that Section “must be construed to incorporate the requirements of *Craig*.” *Reutter*, 886 P.2d at 1307. *Craig* would require that a court permit video testimony only if it “is necessary to further an important public policy,” *Craig*, 497 U.S. at 850, which, as noted above, does not include efficiency, speed, convenience, or cost-savings. At best, Section 16 would be functionally overturned because it would be the rare situation when the need for video testimony in a competency hearing satisfied *Craig*.¹⁵

Section 24 Should Be Improved to Enhance Witnesses’ Reliability and to Strengthen Its Constitutionality

Section 24’s proposed addition to the Alaska Rules of Criminal Procedure tracks *Craig* and so it is likely secure from federal constitutional challenge.¹⁶ It should, however, be altered to enhance witnesses’ reliability and to further buttress its presumed constitutionality.

Craig and other courts note that the Confrontation Clause increases witnesses’ reliability by exposing witness coaching. *E.g. Craig*, 497 U.S. at 847 (face-to-face confrontation may “reveal the child coached by a malevolent adult”) (internal quotations omitted).

Given that witnesses who testify via video are more able to be coached (because someone in the video room, rather than in the courtroom, with the witness, may more easily coach him) and any coaching is harder to detect, the House Judiciary Committee amended the Rule and established a default of having just the video technician in the room with the witness, but permitting the court, in its discretion, to allow others to be present with him. To further caution against coaching, the Committee should also add a provision that a second camera should transmit to the courtroom a live feed of what the witness sees.¹⁷

Conclusion

We hope that the Finance Committee will recognize that these are just some of the problems with House Bill 359, in that it impermissibly deprives Alaskans of their constitutional rights. Passage – as currently drafted – would almost certainly result in individual challenges by criminal

¹⁵ This analysis focused on Section 16’s unconstitutionality, but the Committee should also consider practical problems with video testimony, such as the difficulties of having the witness physically use and interact with exhibits, counsel, and the court.

¹⁶ Alaska courts could conclude, however, that the Rule violates the Alaska Confrontation Clause. *Lemon*, 514 P.2d at 1154 n.5

¹⁷ Not all coaching is intentional or malicious. Spectators may innocently influence testimony through their facial expressions and body language. Permitting the court, counsel, and the defendant to see what the witness sees enables them to notice and check that behavior.

defendants, entangling the state in unnecessary litigation, as well as opening the state to a facial constitutional challenge.

Thank you again for letting us share our concerns. Please feel free to contact the undersigned should you have any questions or seek additional information.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Representative Anna Fairclough, Vice Chair;
[Representative Anna Fairclough@legis.state.ak.us](mailto:Representative_Anna_Fairclough@legis.state.ak.us)
Representative Mia Costello, [Representative Mia Costello@legis.state.ak.us](mailto:Representative_Mia_Costello@legis.state.ak.us)
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CSHB 359(JUD)
SEX TRAFFICKING AND VIDEO CONFERENCING
SECTIONAL ANALYSIS

The increased scrutiny of crimes related to promoting prostitution of children in Alaska has prompted the proposed change in terminology from promoting prostitution to sex trafficking. There are good reasons for this change. First, a child who is put into prostitution by an adult should be considered and described as a victim, not a prostitute. The change in terminology will encourage this change. Second, a majority of law enforcement officers now refer to the crime of promoting prostitution as sex trafficking. Changing Alaska law will facilitate better communication and understanding.

Sections 1, 2, 7 -- 11, 14, and 17 – 23 change the name of AS 11.66.110 – 11.66.145, that prohibit promoting prostitution to sex trafficking. The elements of the offenses remain the same. These sections also make conforming amendments to other laws that currently refer to the crime of promoting prostitution so that they cross-reference sex trafficking.

Section 3 adds the crimes of human trafficking in the first degree and sex trafficking in the first degree to the felonies described as “serious felony offenses” in the state’s conspiracy law, AS 11.21.120. This change would enable the state to investigate and prosecute offenders who work with other people to plan and engage in human trafficking or sex trafficking.

Section 4 amends the crime of distribution of indecent materials to minors, AS 11.61.128. This proposed amendment is in response to the recent decision by a federal district court judge holding the current version of the statute to be unconstitutional in violation of the first amendment, because it applies to conduct that is constitutionally protected. In response to the decision that the current law is overbroad, the bill would require that the state prove the defendant intentionally distributed, or possessed with intent to distribute, harmful material to another person that the offender knows is under 16 years of age or believes is under 16 years of age.

Sections 5 and 6 raise the penalty for being a patron of a prostitute, if the prostitute is a minor under 18 years of age, the patron is 18 years of age or older and at least three years older than the prostitute, from a class B misdemeanor to a class C felony. For the C felony, it provides an affirmative defense if the patron reasonably believed the prostitute to be 18 years of age or older and undertook reasonable measures to verify that the prostitute was 18 years of age or older.

Section 12: Under current law, no corroboration is required of the testimony of an alleged victim in a prosecution for promoting prostitution (sex trafficking) in the first, second, and third degrees. The bill adds the crime of promoting prostitution (sex trafficking) in the fourth degree to those crimes that do not require corroboration of the testimony of an alleged victim.

Section 13: Under current law property used to facilitate or derived from a crime of promoting prostitution (sex trafficking) is subject to forfeiture. The bill adds the crime of

prostitution to these crimes. Under the bill property used to facilitate or derived from the crime of prostitution would be subject to forfeiture.

Section 15 corrects an error in AS 11.81.250(b). Under current law the crime of promoting prostitution (sex trafficking) in the first degree under AS 11.66.110(a)(2) – where the person promoted is a child – is an unclassified felony. The bill adds this offense to the other offenses described as unclassified felonies in Alaska law.

Section 16 allows the testimony of a witness in a hearing addressing the competency of a defendant for being tried for a crime by way of contemporaneous two-way video conference. It allows this form of testimony if the witness is in a place where people customarily travel by air to the court site and the procedure allows for a fair opportunity to examine the witness.

Section 19, in addition to conforming the definition of most serious felony to the changes in the sex trafficking provisions, corrects an omission in the definition of most serious felony by including online enticement of a minor in the definition.

Section 24 adopts Rule 38.3, Alaska Rules of Criminal Procedure, addressing the use of testimony by contemporaneous two-way video conference. It would allow this testimony if the parties agree to its use. If the parties do not agree, it would allow contemporaneous two-way video conference testimony if the court finds that its use is necessary to further an important public policy, the witness is unavailable, and the testimony is given under oath and is subject to cross-examination.

Section 25 addresses the applicability of the changes described above.

Section 26 is an instruction to the revisor of statutes regarding the heading of AS 11.66.110.

Section 27 provides for an effective date of July 1, 2012.

Prepared by Department of Law

HB 359

AMENDMENTS TO HB 359 BY HOUSE JUDICIARY

March 20, 2012

Amendments to Original Bill (prior to version M)

Page 1, line 5, following "prostitution offenses;":
Delete "**relating to sex offender registration**"

Page 4, line 29 through Page 5, line 3:
Delete all material and insert:
"(c) Prostitution is a class C felony if
 (1) the defendant violates (a) of this section as a patron of a prostitution;
 (2) the prostitute is under 18 years of age; and
 (3) the defendant is over 18 years of age and at least three years older than the prostitute.
(d) In a prosecution under (c) of this section, it is an affirmative defense that, at the time of the alleged offense, the defendant
 (1) reasonably believed the prostitute to be 18 years of age or older; and
 (2) undertook reasonable measures to verify that the prostitute was 18 years of age or older."

Page 6, lines 8-9, following "other property":
Delete "[PURSUANT TO]"
Insert "**under**"

Page 8, line 18, following "the court may"
Insert ", at the court's discretion,"

Page 8, line 19, following "allow":
Delete "the testimony of"

Page 8, lines 21-32, following "if the witness"
Delete "would be required to travel more than 50 miles to the court or lives in a place from which people customarily travel by air to the court."
Insert "is in a place from which people customarily travel by air to the court and the procedure allows the parties a fair opportunity to examine the witness. The video conference technician shall be the only person in the presence of the witness unless the court, at the court's discretion, determines that another person may be present. Any person present with the witness must be identified on the record."

Page 9, line 1, following "a fine of":
Delete "[NO]"
Insert "**not**"

Page 12, line 11 through Page 13, line 12:
Delete all material

Page 16, line 31, following "the court may"
Insert ", at the court's discretion,"

Page 17, line 1, following "testimony":
Insert "at trial"

Page 17, line 1, following "witness":
Insert "only"

Page 17, lines 11-15, following "stand.":
Delete all material and insert:
"The video conference technician shall be the only person in the presence of the witness unless the court, at the court's discretion, determines that another person may be present. Any person present with the witness must be identified."

Page 17, line 31, following "14,":
Delete "17 - 19, 21 - 24, and 27"
Insert "and 17-23"

Page 18, line 2, following "16,":
Delete "20, and 25"
Insert "and 24"

Note: These changes were all incorporated into a new draft CS version M. The changes included changing section numbers, since Section 20 was deleted entirely.

Amendments to Version M (adopted March 19, 2012)

Page 4, lines 9-10:
Delete "**material is** [TO ANOTHER PERSON ANY] material that **the person knows**"
Insert "**person knows that the material** [TO ANOTHER PERSON ANY MATERIAL THAT]"

Page 7, line 5:
Delete "**AS 11.66.100 – 11.66.135**"
Insert "**AS 11.66.100(c) and 11.66.110 – 11.66.135**"

Page 8, line 27 (conceptual amendment), following "court":
Insert ", "

Page 12, line 14, following "minor":
Insert "**under AS 11.41.452(e)**"

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Governor Sean Parnell STATE OF ALASKA

February 21, 2012

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault,

As we continue our efforts to combat crime to ensure safe homes and strong families in Alaska, I am transmitting a bill under the authority of Article III, Section 18 of the Alaska Constitution relating to conspiracy to commit human trafficking in the first degree or sex trafficking in the first degree; relating to the crime of furnishing indecent material to minors, the crime of online enticement of a minor, and the crime of sex trafficking; relating to forfeiture of property used in prostitution offenses; relating to sex offender registration; relating to testimony by videoconference; and adding Rule 38.3, Alaska Rules of Criminal Procedure.

Alaska law imposes the most severe penalty, an unclassified felony, for persons who exploit children by inducing them to engage in prostitution. It is also a Class A felony for a person to force another adult to engage in prostitution. The law also prohibits other conduct that encourages or allows for promotion of prostitution.

When children are victimized in Alaska, they should not be labeled with the actions of the offender who solicits sex, organizes its sale, and exploits children. This bill changes the terminology for the crime by describing the offender's conduct as sex trafficking rather than promoting prostitution.

Traffickers prey on the most vulnerable in our society – young girls and boys who may have tragically experienced varying levels of physical and sexual abuse and are often homeless. The most frequent entry age into prostitution for girls is 12 to 14 years old. We believe that any child engaged in prostitution (under the age of 18) is being trafficked, and thus, is victim of a severe and serious crime rather than a prostitute.

The crimes of sex trafficking and human trafficking are serious offenses which violate the most basic human rights and deprive victims of every shred of personal freedom. These crimes are often perpetrated by offenders working together. Cooperating to encourage victims to come to the state for illegal activity, or to induce children to engage in prostitution makes the ultimate offenses, human trafficking or sex trafficking, more likely to occur. To address this likelihood, the bill would add human trafficking in the first degree and sex trafficking in the first degree to the crimes defined as serious felony offenses for purposes of our conspiracy law.

The Honorable Mike Chenault
February 21, 2012
Page 2

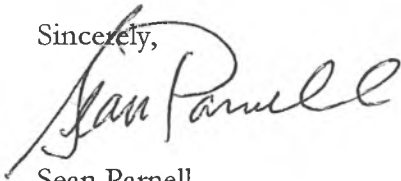
The bill also would address the recent court decision holding that AS 11.61.128, which prohibits distribution of indecent materials to minors, is unconstitutionally overbroad. The bill would change the statute to require the State to prove that the offender intentionally distributed, or possessed with the intent to distribute, harmful material to another person that the offender knew was under 16 years of age or believed was under 16 years of age.

The bill strengthens the sex offender registration law by requiring people who are considered sex offenders in other states to register in this state, if they relocate to Alaska.

The bill allows for video conference testimony in a criminal trial in limited circumstances; that is, when the witness is unavailable, the testimony is given under oath and subject to cross-examination, and use of the technology is necessary to further an important public policy. The bill also would allow two-way contemporaneous video conference testimony in hearings addressing the competency of a defendant to be tried for a crime.

I urge your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in black ink that reads "Sean Parnell". The signature is written in a cursive, flowing style with a large initial "S".

Sean Parnell
Governor

Enclosure