

SB

22

<TARGET><BILL>SB 22</BILL><SUBJECT>SB
22</SUBJECT><COMM>HFIN28</COMM></TARGET>

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 22
Fiscal Note Number 2
(S) Publish Date 1/16/13

Identifier (file name) 0587-DPS-R&I-01-11-13 Dept. Affected Public Safety
Title Sex Trafficking and DVSA Crimes Appropriation Statewide Support
Allocation Criminal Records and Identification
Sponsor Rules by Request of the Governor
Requester Governor OMB Component Number 1190

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
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 (FY13) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

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

Not applicable, initial version.

Prepared by Kelly Howell, Special Assistant to the Commissioner
Division Office of the Commissioner
Approved by Joseph A. Masters, Commissioner
Department of Public Safety

Phone (907) 269-5591
Date/Time 1/11/13 3:30 PM
Date 1/11/2013

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 22

Analysis

This bill as currently proposed would have no fiscal impact to the Division of Statewide Services, Sex Offender/Child Kidnapper Registration unit.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 22
Fiscal Note Number 5 **CORRECTED**
(S) Publish Date 1/17/13

Identifier (file name) 0587-DOA-OPA-1-14-13 Dept. Affected Administration
Title An act relating to sex trafficking and DVSA crimes Appropriation Legal and Advocacy Services
Allocation Office of Public Advocacy
Sponsor Rules by Request of the Governor
Requester Governor OMB Component Number 43

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES								
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 (FY13) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

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

Not applicable, initial version.

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

Phone 907-269-3504
Date/Time 1/10/13 3:10 PM
Date 1/14/2013

FISCAL NOTE ANALYSIS #5 **CORRECTED**

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 22

Analysis

The Office of Public Advocacy believes that the proposed bill will result in more jury trials as well as more pre and post trial litigation. The representation of individuals charged with sex offenses is expensive and often involves significant investigation and expert analysis. However, the Office of Public Advocacy cannot reliably predict the number of new cases that will be brought under these provisions or the extent that costs may be increased for litigation of criminal cases based on these changes and therefore, submits an indeterminate fiscal note.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 22
 Fiscal Note Number 7
 (S) Publish Date 1/16/13

Identifier (file name) LL0587-DHSS-FLSW-01-14-13 Dept. Affected Health and Social Services
 Title Relating to DVSA and Trafficking crimes Appropriation Children's Services
 Allocation Front Line Social Workers
 Sponsor Rules Committee by Request of the Governor
 Requester Governor OMB Component Number 2305

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
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 (FY13) operating costs** 0.0 (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY14) costs** 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

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

Not applicable, initial version.

Prepared by Christy Lawton, Director
 Division Office of Children's Services
 Approved by William Streur, Commissioner
Department of Health & Social Services

Phone 907-451-2096
 Date/Time 1/14/13 2:00 PM
 Date 1/14/2013

FISCAL NOTE ANALYSIS #7

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 22

Analysis

LL0587 has zero fiscal impact on DHSS. This bill will align Alaska State law with Federal CAPTA Reauthorization Act of 2010 laws. Under the current Alaska statute, OCS is obligated to provide and document reunification efforts for all children. However, Federal law provides provisions that assure that the State does not require reunification of a surviving child with a parent who has been found by a court of law to be unable or unfit to parent.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 22(FIN)
Fiscal Note Number: 8
(S) Publish Date: 3/28/13

Identifier: SB22CS(JUD)-DOA-PDA-3-04-13
Title: CRIMES; VICTIMS; CHILD ABUSE AND
NEGLECT
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Public Defender Agency
OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
OPERATING EXPENDITURES	***	***	***	***	***	***	***
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	***	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	***	***	***	***	***	***

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Quinlan Steiner	Phone:	(907)334-4414
Division	Public Defender Agency	Date:	03/04/2013 12:12 AM
Approved By:	Curtis Thayer, Deputy Commissioner	Date:	03/04/13
	Department of Administration		

FISCAL NOTE ANALYSIS #8

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22(FIN)

Analysis

The bill expresses legislative intent regarding referral to three-judge panels; stating that there was no intent to create new or additional means for persons convicted of sexual felonies to obtain referrals to a three-judge panel. The bill also limits referrals to three-judge panels for persons convicted of sexual felonies and prohibits courts from suspending the imposition of sentence for a person convicted of a sex trafficking offense.

The bill makes several modifications to current crimes as follows: adds sections to the crimes of third and fourth degree sexual assault to include provisions relating to acts engaged in by probation and parole officers; the crime of first degree unlawful contact is modified to include the prohibition of contact with protected parties while a defendant is "under official detention"; expands the forfeiture requirement in prostitution cases to all patrons of prostitutes—not just those guilty of felony offenses; modifies the statute of limitations in relating to certain offenses; adds limitations on the release of detainees for "for violation of a condition of release in connection with a crime involving domestic violence" and adds multiple provisions regarding the use of GPS monitoring in cases involving domestic violence; and makes amendments to the statute governing wire taps; changes both the procedures and law governing admissibility of a complaining witness's sexual history in trials for sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, or an attempt to commit any of these offenses.

The bill requires the court to impose additional imprisonment for multiple acts of distribution of child pornography, possession of child pornography, or distribution of indecent material to minors; amends the definition of "sex offense" to include felony-level prostitution and expands the definition of a "sexual felony"; changes requirements regarding what the Alaska Judicial Council must include in its published election retention information; amends the current rules regarding the use of subpoenas; decreases the obligations of DCS where the parent has been found to have committed a registration offense; "good time" credit is eliminated for those prisoners convicted of an unclassified or class A sexual felony; and strict time limits are set regarding applications for jail credit for time spent in a treatment program and modifications to the burden of proof for these applications.

The Alaska Public Defender Agency believes that the proposed bill will result in more jury trials as well as more pre and post trial litigation. The representation of individuals charged with sex offenses is expensive and often involves significant investigation and expert analysis. However, the Agency cannot reliably predict the number of new cases that will be brought under these provisions or the extent that costs may be increased for litigation of criminal cases based on these changes and therefore, submits an indeterminate fiscal note.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 22(FIN)
Fiscal Note Number: 9
(S) Publish Date: 3/28/13

Identifier: SB022CS(JUD)-LAW-CRIM-03-06-13
Title: CRIMES; VICTIMS; CHILD ABUSE AND
NEGLECT
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: (S) Finance

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
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 (Operating Only)

None								
Total	0.0	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 (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

This fiscal note reflects the most recent committee substitute.

Prepared By:	<u>Loretta Withington, Division Operations Manager</u>	Phone:	<u>(907)465-5427</u>
Division	<u>Administrative Services</u>	Date:	<u>03/06/2013 12:00 AM</u>
Approved By:	<u>Michael C. Geraghty, Attorney General</u>	Date:	<u>03/06/13</u>
	<u>Department of Law</u>		

FISCAL NOTE ANALYSIS #9

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22(FIN)

Analysis

The bill, while in part addressing sex trafficking and human trafficking specifically, also strengthens the law in several other areas including protection for victims of sexual assault and domestic violence. It also makes changes in the law of criminal procedure. The bill would adopt criminal penalties for probation and parole officers who engage in sexual penetration or sexual contact with persons on probation or parole. It makes changes in the statute of limitations for sex trafficking and human trafficking. It adopts a time limit within which to bring a claim of credit for time served against a sentence. It requires athletic coaches to report to authorities if the coach has reasonable cause to suspect that a child has been abused or neglected. It allows the court to decide that the Office of Children's Services need not make reasonable efforts to reunite a child with the child's family if the parent or guardian has committed sexual abuse against the child or another child of the parent or guardian, or if the parent or guardian is registered or required to register as a sex offender.

The bill would also require a defendant arrested for a violation of a condition of release in connection with a domestic violence crime to be held in custody until a court has the opportunity to determine whether the defendant should be released again and on what conditions.

The bill would allow a person to bring a civil action at any time that is based on conduct by a defendant that is felony sex trafficking or felony human trafficking or stalking.

Additionally, the bill would give a court the authority to order a defendant to be monitored by GPS or similar technology as a condition of bail release in a matter charging a domestic violence crime or stalking.

The committee substitute removes the possibility of a GPS order in connection with a civil protective order. It amends the forfeiture provision for sex trafficking to make the forfeiture discretionary with the court and only after a conviction.

The original bill would overturn *Collins v. State*, 287 P. 3d 791 (Alaska App . 2012). The committee substitute would do so, too, but the committee substitute would not specifically address the issue of the youth of the offender.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 22(FIN)
Fiscal Note Number: 10
(S) Publish Date: 3/28/13

Identifier: SB022CS(JUD)-DOC-OC-03-04-2013
Title: CRIMES; VICTIMS; CHILD ABUSE AND
NEGLECT
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: Senate Judiciary Committee

Department: Department of Corrections
Appropriation: Administration and Support
Allocation: Office of the Commissioner
OMB Component Number: 694

Expenditures/Revenues

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

(Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	***	***	***	***	***	***	***
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	***	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	***	***	***	***	***	***

Positions

Full-time							
Part-time							
Temporary							

Change In Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Updated to reflect amended sections in the Senate Judiciary Committee Substitute which require program development by DOC.

Prepared By: Kevin Worley, Director
Division: Department of Corrections - Administrative Services
Approved By: Leslie Houston, Deputy Commissioner
Department of Corrections

Phone: (907)465-4641
Date: 03/04/2013 08:00 AM
Date: 03/04/13

FISCAL NOTE ANALYSIS #10

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22(FIN)

Analysis

This bill adds probation and parole officers to the crime of sexual assault in the 3rd and 4th degrees if they engage in certain sexual conduct with their probationers or parolees. This addition to AS 11.41.425(a) and AS 11.41.427(a) will have no fiscal impact on the Department of Corrections (DOC).

In addition, this bill does not allow a person to contact a victim or witness if they are under official detention or if they have been ordered not to contact the victim or witness as a condition of parole. This section will have no fiscal impact on DOC.

The bill also requires a person who has been arrested for a violation of a condition of release associated with a crime of domestic violence to appear before a judge before they can be released. This does not present a measureable adjustment to current DOC practices and will not have a fiscal impact on the Department.

Further, the bill sets limits on the amount of time a defendant has to request credit for time served in a treatment facility. This will have no fiscal impact on the Department.

The bill also removes the statute of limitations on distribution of child pornography, sex trafficking (unclassified, class A, or perpetrated against someone who is under the age of 20), and human trafficking. The current statute of limitations for these crimes is ten years. The number of prosecutions that this change will allow is minimal and this section will have no fiscal impact on DOC.

The bill requires DOC, in consultation with the Department of Public Safety, to develop a monitoring program for people who are out on bail for stalking or domestic violence which includes a Global Positioning device or similar technology. The development of this program will not have a fiscal impact on DOC. However, costs will be incurred by the implementation of such a program.

Additionally, the bill disallows a suspended imposition of sentence for sex trafficking crimes. Currently, suspended impositions of sentences are not used in such convictions and, therefore, this section will have no fiscal impact on DOC.

The bill also requires defendants who have been convicted of more than one count of possession or distribution of child pornography to serve some consecutive time for each count. "Some consecutive time" could be as little as one additional day. Over the past 4 years, the average number of counts a person has been convicted of for these offenses has ranged from 1 to 10. Additional time for convictions within this count range would not have a fiscal impact on DOC.

The bill heightens the importance of victim's impact statements by requiring that they be included in presentence reports unless it can be explained why the victim could not be interviewed. This is consistent with current DOC practices and will have no fiscal impact on the Department.

FISCAL NOTE ANALYSIS #10

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22(FIN)

Analysis Continued

The bill also disallows good time for those who have committed a sexual felony (unclassified or class A). Good time is time that can be deducted from a person's sentence if they follow the rules of the correctional facility where they are being housed. Good time is fluid and based on many different factors which can have a pronounced effect on a person's sentence. Currently, all offenses eligible for good time may receive a 33% reduction in sentence length. However, there are many aggravating circumstances which may prevent the full application of good time. The total time that each offender serves is calculated on an individual basis. The Department is unable to quantify the amount of additional time that this will add to each offender's sentence, but will closely monitor the future fiscal impacts of this legislation.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSSB 22(FIN)
Fiscal Note Number: 11
(S) Publish Date: 3/28/13

Identifier: CSSB022(JUD)-DPS-DET-03-04-13
Title: CRIMES; VICTIMS; CHILD ABUSE AND
NEGLECT
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: Senate Judiciary

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
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 (Operating Only)

None							
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 (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

The Senate Judiciary committee substitute for SB 22 amends the sections of the bill that had initially resulted in the fiscal impact to the Division of Alaska State Troopers.

Prepared By:	Kelly Howell, Special Assistant to the Commissioner	Phone:	(907)465-4336
Division	Office of the Commissioner	Date:	03/04/2013 10:56 AM
Approved By:	Joseph A. Masters, Commissioner	Date:	03/04/13
	Department of Public Safety		

FISCAL NOTE ANALYSIS #11

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22(FIN)

Analysis

The committee substitute for SB 22 removes the GPS monitoring requirement from under the purview of the Department of Public Safety (DPS) to the Department of Corrections (DOC) and specifies that the guidelines for the monitoring program will be developed by DOC in consultation with DPS.

There is no fiscal impact associated with the consultation in developing the monitoring program guidelines with DOC, and because implementation of the monitoring program was moved from DPS to DOC there is no longer a fiscal impact to the Division of Alaska State Troopers.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version CSSB 22(FIN)
Fiscal Note Number 12
(S) Publish Date 3/28/13

Identifier (file name) CSSB022(JUD)-ACS-TRC-3-12-13 Dept. Affected Alaska Court System
Title Relating to Crimes, Victims, Child Abuse, and Neglect Appropriation Trial Courts
Allocation _____
Sponsor Rules by Request of the Governor
Requester Governor OMB Component Number 768

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	***	***	***	***	***	***	***	***
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 (FY13) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

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

Senate Judiciary Committee substitute

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 3/12/13 1:00 PM
Date 3/12/2013

FISCAL NOTE ANALYSIS #12

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22(FIN)

Analysis

Expanded crime definitions: The Senate Judiciary Committee Substitute for Senate Bill 22, among other changes, extends the civil and criminal statutes of limitations for felony sex trafficking, human trafficking, and child pornography cases (sec. 2 and 11), categorizes certain conduct by probation and parole officers as sexual assaults (sec. 3 -8), expands the definition of unlawful contact in the first degree (sec. 9), provides that certain property used by patrons of prostitutes may be forfeited (sec. 10), and expands the definitions of "sexual felony" and "sexual offense" (sec. 23-24). The Department of Law has not predicted the number of additional new case filings that will result from these changes. The court therefore concludes that the effect of these changes on the court system is indeterminate.

Considering victims: Section 29 of CSSB 22 requires the Alaska Judicial Council to provide information to the public before a judge's retention election about a judge's consideration of victims when sentencing felony defendants, if the offense involved a victim. The court system does not anticipate a fiscal impact from this section of the bill.

Sections 40 and 41 of the bill also concern the court's consideration of victims in sentencing. The direct rule changes will not result in a fiscal impact to the court.

Applications for expanding investigations: Section 15 of CSSB 22 allows the attorney general to apply to the court for authorization to intercept communications for certain human and sex trafficking investigations. This is likely to increase the number of applications to the court for these orders. The court cannot predict the number of these applications that will result from this change, but does not expect the number to be large and therefore does not expect a significant fiscal impact from the change in this section.

Three-judge panels: Sections 1, 21, and 22 of the bill intend to overturn *Collins v. State*, 287 P.3d 791 (Alaska App. 2012). The court will not experience any fiscal impact from this change.

Domestic violence: CSSB 22 also allows a judicial officer to order a person charged with or convicted of a crime involving domestic violence or stalking to participate in a GPS monitoring program (sec. 12-13). Protective orders must contain a specific warning that the penalty for violation could be up to \$10,000 (sec. 25-26). These revisions will have no fiscal impact on the court.

Section 14 of the bill requires persons arrested for violation of a condition of release that was imposed in connection with a crime of domestic violence to appear before a judicial officer for arraignment before being released from custody. This will not have a financial impact on the court system since arrested persons are arraigned by judicial officers now, and whether the person is in custody or out of custody when he or she is arraigned is not significantly fiscally different for the court system.

Procedural changes and requirements: Other sections of the bill change the process for admitting particular evidence of a sexual assault victim's past history (sec. 16 and 43), change the process for a defendant being sentenced to claim credit for time spent in treatment (sec. 17-18), disallow a suspended imposition of sentence for sex trafficking crimes (sec. 19), require the judge to impose some consecutive term of imprisonment for multiple child pornography crimes (sec. 20), allow the court to determine that reasonable efforts towards family reunification are not required if the parent has committed sexual abuse against his or

FISCAL NOTE ANALYSIS #12

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22(FIN)

Analysis Continued

her child or is a sex offender (sec. 35), change the court rule on discovery of certain child pornography materials (sec. 39), and remove the time restriction in the evidence rule concerning admissibility of certain prior acts (sec. 42). Implementing these changes will not result in a fiscal impact on the court system.

Provisions with no direct impact: Finally, certain sections of SB 22 do not impact the court's day-to-day operations, and therefore have no fiscal impact on the court system. They clarify definitions (sec. 27-), allow the Violent Crimes Compensation Board to compensate victims of human and sex trafficking and exploitation of minors (sec. 28), make certain prisoners ineligible for "good time" deductions (sec. 30), alter certain procedures concerning administrative subpoenas from the attorney general (sec. 31-34), and make certain persons mandatory reporters of suspected harm to a child (sec. 36-38).

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version CSSB 22(JUD)
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) CSSB 22 (JUD) - AJC 3-12-13 Dept. Affected Alaska Court System
 Title An Act relating to sex trafficking and DVSA crimes Appropriation Judicial Council
 Allocation Judicial Council
 Sponsor Rules by Request of the Governor
 Requester Governor OMB Component Number 771

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	FY19
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)						
		FY14	FY15	FY16	FY17	FY18	FY19	
1002	Federal Receipts							
1003	GF Match							
1004	GF	0.0	0.0	0.0	0.0	0.0	0.0	
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 (FY13) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

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

Senate Judiciary Committee substitute

Prepared by Larry Cohn, Executive Director
 Division Alaska Judicial Council
 Approved by Larry Cohn, Executive Director
Alaska Judicial Council

Phone 279-2526 Ext. 1
 Date/Time 3/18/13 9:00 AM
 Date 3/18/2013

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22(JUD)

Analysis

Section 29 of CSSB 22 requires the Alaska Judicial Council to provide information to the public before a judge's retention election about a judge's consideration of victims when sentencing felony defendants, if the offense involved a victim. The Council does not anticipate a fiscal impact from this section of the bill.

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning Senate Bill No. 22, relating to the commencement of actions for**
3 **felony sex trafficking and felony human trafficking; relating to the crime of sexual**
4 **assault; relating to the crime of unlawful contact; relating to forfeiture for certain**
5 **crimes involving prostitution; relating to the time in which to commence certain**
6 **prosecutions; relating to release in a prosecution for stalking or a crime involving**
7 **domestic violence or for violation of a condition of release in connection with a crime**
8 **involving domestic violence; relating to interception of private communications for**
9 **certain sex trafficking or human trafficking offenses; relating to use of evidence of**
10 **sexual conduct concerning victims of certain crimes; relating to consideration at**
11 **sentencing of the effect of a crime on the victim; relating to the time to make an**
12 **application for credit for time served in a treatment program or while in other custody;**
13 **relating to suspending imposition of sentence for sex trafficking; relating to consecutive**

1 sentences for convictions of certain crimes involving child pornography or indecent
2 materials to minors; relating to the referral of sexual felonies to a three-judge panel;
3 relating to the definition of "sexual felony" for sentencing and probation for conviction
4 of certain crimes; relating to the definition of "sex offense" regarding sex offender
5 registration; relating to the definition of "victim counseling centers" for disclosure of
6 certain communications concerning sexual assault or domestic violence; relating to
7 violent crimes compensation; relating to certain information in retention election of
8 judges concerning sentencing of persons convicted of felonies; relating to remission of
9 sentences for certain sexual felony offenders; relating to forms for sexual assault,
10 stalking, and domestic violence protective orders; relating to the subpoena power of the
11 attorney general in cases involving the use of an Internet service account; relating to
12 reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender
13 registration; relating to mandatory reporting by athletic coaches of child abuse or
14 neglect; making conforming amendments; and amending Rules 16, 32.1(b)(1), and
15 32.2(a), Alaska Rules of Criminal Procedure, and Rules 404(a) and (b), Alaska Rules of
16 Evidence.

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

18 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
19 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
20 changes to the title of a bill, are suspended in consideration of Senate Bill No. 22, relating to
21 the commencement of actions for felony sex trafficking and felony human trafficking; relating
22 to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture
23 for certain crimes involving prostitution; relating to the time in which to commence certain
24 prosecutions; relating to release in a prosecution for stalking or a crime involving domestic
25 violence or for violation of a condition of release in connection with a crime involving

1 domestic violence; relating to interception of private communications for certain sex
2 trafficking or human trafficking offenses; relating to use of evidence of sexual conduct
3 concerning victims of certain crimes; relating to consideration at sentencing of the effect of a
4 crime on the victim; relating to the time to make an application for credit for time served in a
5 treatment program or while in other custody; relating to suspending imposition of sentence for
6 sex trafficking; relating to consecutive sentences for convictions of certain crimes involving
7 child pornography or indecent materials to minors; relating to the referral of sexual felonies to
8 a three-judge panel; relating to the definition of "sexual felony" for sentencing and probation
9 for conviction of certain crimes; relating to the definition of "sex offense" regarding sex
10 offender registration; relating to the definition of "victim counseling centers" for disclosure of
11 certain communications concerning sexual assault or domestic violence; relating to violent
12 crimes compensation; relating to certain information in retention election of judges
13 concerning sentencing of persons convicted of felonies; relating to remission of sentences for
14 certain sexual felony offenders; relating to forms for sexual assault, stalking, and domestic
15 violence protective orders; relating to the subpoena power of the attorney general in cases
16 involving the use of an Internet service account; relating to reasonable efforts in child-in-
17 need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory
18 reporting by athletic coaches of child abuse or neglect; making conforming amendments; and
19 amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, and Rules
20 404(a) and (b), Alaska Rules of Evidence.

HOUSE CS FOR CS FOR SENATE BILL NO. 22(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the commencement of actions for felony sex trafficking and felony**
2 **human trafficking; relating to the crime of sexual assault; relating to the crime of**
3 **unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating**
4 **to the time in which to commence certain prosecutions; relating to release in a**
5 **prosecution for stalking or a crime involving domestic violence or for violation of a**
6 **condition of release in connection with a crime involving domestic violence; relating to**
7 **interception of private communications for certain sex trafficking or human trafficking**
8 **offenses; relating to use of evidence of sexual conduct concerning victims of certain**
9 **crimes; relating to consideration at sentencing of the effect of a crime on the victim;**
10 **relating to the time to make an application for credit for time served in a treatment**
11 **program or while in other custody; relating to suspending imposition of sentence for sex**
12 **trafficking; relating to consecutive sentences for convictions of certain crimes involving**

1 child pornography or indecent materials to minors; relating to the referral of sexual
2 felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing
3 and probation for conviction of certain crimes; relating to the definition of 'sex offense'
4 regarding sex offender registration; relating to the definition of 'victim counseling
5 centers' for disclosure of certain communications concerning sexual assault or domestic
6 violence; relating to violent crimes compensation; relating to certain information in
7 retention election of judges concerning sentencing of persons convicted of felonies;
8 relating to the rights of certain victims of sexual assault to obtain legal and equitable
9 remedies for injuries arising from the conduct of a perpetrator; relating to the definition
10 of 'sexual assault' for the purpose of adoption and the termination of parental rights in
11 certain proceedings; relating to remission of sentences for certain sexual felony
12 offenders; relating to forms for sexual assault, stalking, and domestic violence protective
13 orders; relating to the subpoena power of the attorney general in cases involving the use
14 of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases
15 involving sexual abuse or sex offender registration; relating to mandatory reporting by
16 athletic coaches of child abuse or neglect; making conforming amendments; amending
17 Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, and Rules 404(a)
18 and (b), Alaska Rules of Evidence; and providing for an effective date."

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

20 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
21 to read:

22 **LEGISLATIVE FINDINGS AND INTENT FOR SECS. 22 AND 23 OF THIS ACT.**

23 (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA
24 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

25 (b) The legislature finds that

1 (1) in 2006, the legislature did not intend, by enacting ch. 14, SLA 2006, and
 2 the legislature does not now intend to create new or additional means for a defendant
 3 convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-
 4 judge panel;

5 (2) the legislature did not, in 2006, intend nor does the legislature now intend
 6 for a court to create new or additional means for a defendant convicted of a sexual felony and
 7 sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel.

8 (c) It is the intent of the legislature in AS 12.55.165, as amended by sec. 22 of this
 9 Act, and AS 12.55.175, as amended by sec. 23 of this Act, to overturn the majority decision in
 10 Collins v. State, 287 P.3d 791 (Alaska App. 2012), and to endorse the dissenting opinion in
 11 the same case.

12 * **Sec. 2.** AS 09.10.065(a) is amended to read:

13 (a) A person may bring an action at any time for conduct that would have, at
 14 the time the conduct occurred, violated provisions of any of the following offenses:

- 15 (1) felony sexual abuse of a minor;
- 16 (2) felony sexual assault; [OR]
- 17 (3) unlawful exploitation of a minor;
- 18 **(4) felony sex trafficking; or**
- 19 **(5) felony human trafficking.**

20 * **Sec. 3.** AS 11.41.425(a) is amended to read:

21 (a) An offender commits the crime of sexual assault in the third degree if the
 22 offender

- 23 (1) engages in sexual contact with a person who the offender knows is
 - 24 (A) mentally incapable;
 - 25 (B) incapacitated; or
 - 26 (C) unaware that a sexual act is being committed;
- 27 (2) while employed in a state correctional facility or other placement
 28 designated by the commissioner of corrections for the custody and care of prisoners,
 29 engages in sexual penetration with a person who the offender knows is committed to
 30 the custody of the Department of Corrections to serve a term of imprisonment or
 31 period of temporary commitment;

1 (3) engages in sexual penetration with a person 18 or 19 years of age
 2 who the offender knows is committed to the custody of the Department of Health and
 3 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of
 4 the person; [OR]

5 (4) while employed in the state by a law enforcement agency as a
 6 peace officer, or while acting as a peace officer in the state, engages in sexual
 7 penetration with a person with reckless disregard that the person is in the custody or
 8 the apparent custody of the offender, or is committed to the custody of a law
 9 enforcement agency;

10 **(5) while employed by the state or a municipality of the state as a**
 11 **probation officer or parole officer, or while acting as a probation officer or**
 12 **parole officer in the state, engages in sexual penetration with a person with**
 13 **reckless disregard that the person is on probation or parole; or**

14 **(6) while employed as a juvenile probation officer or as a juvenile**
 15 **facility staff, engages in sexual penetration with a person 18 or 19 years of age**
 16 **with reckless disregard that the person is committed to the custody or**
 17 **probationary supervision of the Department of Health and Social Services.**

18 * Sec. 4. AS 11.41.425(b) is repealed and reenacted to read:

19 (b) In this section,

20 (1) "juvenile facility staff" means a person employed in a juvenile
 21 detention or treatment facility;

22 (2) "juvenile probation officer" means a person assigned to supervise
 23 another person 18 or 19 years of age who is committed to the probationary supervision
 24 of the Department of Health and Social Services;

25 (3) "parole officer" has the meaning given in AS 18.65.290;

26 (4) "peace officer" has the meaning given in AS 01.10.060;

27 (5) "probation officer" includes a

28 (A) probation officer as defined in AS 18.65.290; or

29 (B) person who supervises a participant in a specialty court,
 30 including a therapeutic or wellness court addressing alcohol or drug use, a
 31 court addressing the needs of veterans, an adult or juvenile mental health court,

1 a fetal alcohol spectrum disorder court, or a family care or preservation court.

2 * Sec. 5. AS 11.41.427(a) is amended to read:

3 (a) An offender commits the crime of sexual assault in the fourth degree if

4 (1) while employed in a state correctional facility or other placement
5 designated by the commissioner of corrections for the custody and care of prisoners,
6 the offender engages in sexual contact with a person who the offender knows is
7 committed to the custody of the Department of Corrections to serve a term of
8 imprisonment or period of temporary commitment;

9 (2) the offender engages in sexual contact with a person 18 or 19 years
10 of age who the offender knows is committed to the custody of the Department of
11 Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal
12 guardian of the person; [OR]

13 (3) while employed in the state by a law enforcement agency as a
14 peace officer, or while acting as a peace officer in the state, the offender engages in
15 sexual contact with a person with reckless disregard that the person is in the custody or
16 the apparent custody of the offender, or is committed to the custody of a law
17 enforcement agency;

18 (4) while employed by the state or a municipality of the state as a
19 probation officer or parole officer, or while acting as a probation officer or
20 parole officer in the state, engages in sexual contact with a person with reckless
21 disregard that the person is on probation or parole; or

22 (5) while employed as a juvenile probation officer or as a juvenile
23 facility staff, engages in sexual contact with a person 18 or 19 years of age with
24 reckless disregard that the person is committed to the custody or probationary
25 supervision of the Department of Health and Social Services.

26 * Sec. 6. AS 11.41.427(b) is repealed and reenacted to read:

27 (b) In this section,

28 (1) "juvenile facility staff" has the meaning given in AS 11.41.425;

29 (2) "juvenile probation officer" has the meaning given in
30 AS 11.41.425;

31 (3) "parole officer" has the meaning given in AS 18.65.290;

1 (4) "peace officer" has the meaning given in AS 01.10.060;

2 (5) "probation officer" has the meaning given in AS 11.41.425.

3 * **Sec. 7.** AS 11.41.432(a) is amended to read:

4 (a) It is a defense to a crime charged under AS 11.41.410(a)(3),
5 11.41.420(a)(2), 11.41.420(a)(3), [OR] 11.41.425, or 11.41.427 that the offender is

6 (1) mentally incapable; or

7 (2) married to the person and neither party has filed with the court for a
8 separation, divorce, or dissolution of the marriage.

9 * **Sec. 8.** AS 11.41.432 is amended by adding a new subsection to read:

10 (c) It is an affirmative defense to a crime charged under AS 11.41.425(a)(5) or
11 11.41.427(a)(4) that the offender and the person on probation or parole had, before the
12 person was placed on probation or parole, a dating relationship or a sexual
13 relationship, and the relationship continued until the date of the alleged offense.

14 * **Sec. 9.** AS 11.56.750(a) is amended to read:

15 (a) A person commits the crime of unlawful contact in the first degree if the
16 person

17 (1) has been ordered

18 (A) by the court not to contact a victim or witness of the
19 offense

20 (i) as [(A)] part of a sentence imposed under
21 AS 12.55.015;

22 (ii) as [OR (B)] a condition of [(i)] release under
23 AS 12.30 or [; (ii)] probation under AS 12.55.101; or

24 (iii) while under official detention; or

25 (B) as a condition of parole not to contact a victim or
26 witness of the offense under AS 33.16.150 [PAROLE UNDER
27 AS 33.16.150]; and

28 (2) either directly or indirectly, knowingly contacts or attempts to
29 contact the victim or witness in violation of the order.

30 * **Sec. 10.** AS 11.66.145 is amended to read:

31 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or

1 received or derived from, a violation of AS 11.66.100(c) or 11.66.110 - 11.66.135
2 may [SHALL] be forfeited at sentencing.

3 * **Sec. 11.** AS 12.10.010 is amended to read:

4 **Sec. 12.10.010. General time limitations.** (a) Prosecution for the following
5 offenses may be commenced at any time:

6 (1) murder;

7 (2) attempt, solicitation, or conspiracy to commit murder or hindering
8 the prosecution of murder;

9 (3) felony sexual abuse of a minor;

10 (4) sexual assault that is an unclassified, class A, or class B felony or a
11 violation of AS 11.41.425(a)(2) - (4);

12 (5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458,
13 AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person
14 who, at the time of the offense, was under 18 years of age;

15 (6) kidnapping;

16 (7) distribution of child pornography in violation of AS 11.61.125;

17 (8) sex trafficking in violation of AS 11.66.110 - 11.66.130 that is an
18 unclassified, class A, or class B felony or that is committed against a person who,
19 at the time of the offense, was under 20 years of age;

20 (9) human trafficking in violation of AS 11.41.360 or 11.41.365.

21 (b) Except as otherwise provided by law or in (a) of this section, a person may
22 not be prosecuted, tried, or punished for an offense unless the indictment is found or
23 the information or complaint is instituted not later than

24 (1) 10 years after the commission of a felony offense in violation of
25 AS 11.41.120 - 11.41.330 [AS 11.41.120 - 11.41.370], 11.41.425(a)(1),
26 11.41.425(a)(5), 11.41.425(a)(6), or 11.41.450 - 11.41.458; or

27 (2) five years after the commission of any other offense.

28 * **Sec. 12.** AS 12.30.016(e) is amended to read:

29 (e) In a prosecution charging the crime of stalking that is not a crime involving
30 domestic violence, a judicial officer may order the person to

31 (1) follow the provisions of any protective order to which the person is

1 respondent;

2 (2) refrain from contacting, in any manner, including by telephone or
3 electronic communication, the victim;

4 (3) engage in counseling; if available in the community, the judicial
5 officer shall require that counseling ordered include counseling about alternatives to
6 aggressive behavior;

7 **(4) participate in a monitoring program with a global positioning**
8 **device or similar technological means that meets guidelines for a monitoring**
9 **program adopted by the Department of Corrections in consultation with the**
10 **Department of Public Safety.**

11 * Sec. 13. AS 12.30.027(a) is amended to read:

12 (a) Before ordering release before or after trial, or pending appeal, of a person
13 charged with or convicted of a crime involving domestic violence, the judicial officer
14 shall consider the safety of the victim or other household member. To protect the
15 victim, household member, other persons, and the community and to reasonably
16 **ensure** [ASSURE] the person's appearance, the judicial officer

17 **(1)** shall impose conditions required under AS 12.30.011;

18 **(2)** [, AND] may impose any of the conditions authorized under
19 AS 12.30.011;

20 **(3) may impose** [,] any of the provisions of AS 18.66.100(c)(1) - (7)
21 and (11);

22 **(4) may order the person to participate in a monitoring program**
23 **with a global positioning device or similar technological means that meets**
24 **guidelines for a monitoring program adopted by the Department of Corrections**
25 **in consultation with the Department of Public Safety; [,] and**

26 **(5) may impose** any other condition necessary to protect the victim,
27 household member, other persons, and the community, and to ensure the appearance
28 of the person in court, including ordering the person to refrain from the consumption
29 of alcohol.

30 * Sec. 14. AS 12.30.027(e) is amended to read:

31 (e) A person arrested for a crime involving domestic violence **or for violation**

1 of a condition of release in connection with a crime involving domestic violence
 2 may not be released from custody until the person has appeared in person before a
 3 judicial officer or telephonically for arraignment.

4 * **Sec. 15.** AS 12.37.010 is amended to read:

5 **Sec. 12.37.010. Authorization to intercept communications.** The attorney
 6 general, or a person designated in writing or by law to act for the attorney general,
 7 may authorize, in writing, an ex parte application to a court of competent jurisdiction
 8 for an order authorizing the interception of a private communication if the interception
 9 may provide evidence of, or may assist in the apprehension of persons who have
 10 committed, are committing, or are planning to commit, the following offenses:

11 (1) murder in the first or second degree under AS 11.41.100 -
 12 11.41.110;

13 (2) kidnapping under AS 11.41.300; [OR]

14 (3) a class A or unclassified felony drug offense under AS 11.71;

15 (4) sex trafficking in the first or second degree under AS 11.66.110
 16 and 11.66.120; or

17 (5) human trafficking in the first degree under AS 11.41.360.

18 * **Sec. 16.** AS 12.45.045(a) is amended to read:

19 (a) In prosecutions for the crimes of sexual assault in any degree, sexual abuse
 20 of a minor in any degree, [OR] unlawful exploitation of a minor, or an attempt to
 21 commit any of these crimes, evidence of the [COMPLAINING WITNESS'
 22 PREVIOUS] sexual conduct of the complaining witness, occurring either before or
 23 after the offense charged, may not be admitted nor may reference be made to it in the
 24 presence of the jury except as provided in this section. When the defendant seeks to
 25 admit the evidence for any purpose, the defendant shall apply for an order of the court
 26 not later than five days [AT ANY TIME] before [OR DURING THE] trial or at a
 27 later time as the court may, for good cause, permit. The defendant may, for good
 28 cause shown, apply for an order during trial if the request is based on
 29 information learned after the deadline or during the trial [OR PRELIMINARY
 30 HEARING]. After the application is made, the court shall conduct a hearing in camera
 31 to determine the admissibility of the evidence. If the court finds that evidence offered

1 by the defendant regarding the sexual conduct of the complaining witness is relevant,
 2 and that the probative value of the evidence offered is not outweighed by the
 3 probability that its admission will create undue prejudice, confusion of the issues, or
 4 unwarranted invasion of the privacy of the complaining witness, the court shall make
 5 an order stating what evidence may be introduced and the nature of the questions that
 6 may be permitted. The defendant may then offer evidence under the order of the court.

7 * **Sec. 17.** AS 12.55.023(a) is amended to read:

8 (a) If a victim requests, the prosecuting attorney shall provide the victim,
 9 before the sentencing hearing, with a copy of the following portions of the presentence
 10 report:

11 (1) the summary of the offense prepared by the Department of
 12 Corrections;

13 (2) the defendant's version of the offense;

14 (3) all statements and summaries of statements of the victim; [AND]

15 (4) the sentence recommendation of the Department of Corrections;

16 **and**

17 **(5) letters of support submitted to the court for consideration.**

18 * **Sec. 18.** AS 12.55.025 is amended by adding new subsections to read:

19 (k) If a defendant intends to claim credit under AS 12.55.027 toward a
 20 sentence of imprisonment for time spent in a treatment program as a condition of bail
 21 in connection with an offense for which the defendant is being sentenced, the
 22 defendant shall file notice with the court and the prosecutor 10 days before the
 23 sentencing hearing. The notice shall include the number of days the defendant is
 24 claiming. The defendant must prove by a preponderance of evidence that the
 25 requirements of AS 12.55.027 are met before credit may be awarded. Except as
 26 provided in (l) of this section, except for good cause, a court may not consider a
 27 request for credit made under this subsection more than 90 days after the sentencing
 28 hearing.

29 (l) If a defendant intends to claim credit under AS 12.55.027 toward a
 30 sentence of imprisonment for time spent in a treatment program as a condition of bail
 31 while pending appeal, the defendant shall file notice with the court and the prosecutor

1 not later than 90 days after return of the case to the trial court following appeal. The
 2 notice shall include the number of days the defendant is claiming. The defendant must
 3 prove by a preponderance of evidence that the requirements of AS 12.55.027 are met
 4 before credit may be awarded. Except for good cause, the court may not consider a
 5 request for credit made under this subsection after the deadline.

6 * **Sec. 19.** AS 12.55.027 is amended by adding a new subsection to read:

7 (e) If a defendant intends to claim credit toward a sentence of imprisonment
 8 for time spent in a treatment program either as a condition of probation or as a
 9 condition of bail release after a petition to revoke probation has been filed, the
 10 defendant shall file notice with the court and the prosecutor 10 days before the
 11 disposition hearing. The notice shall include the amount of time the defendant is
 12 claiming. The defendant must prove by a preponderance of the evidence that the credit
 13 claimed meets the requirements of this section. A court may not consider, except for
 14 good cause, a request for credit made under this subsection more than 90 days after the
 15 disposition hearing.

16 * **Sec. 20.** AS 12.55.085(f) is amended to read:

17 (f) The court may not suspend the imposition of sentence of a person who

18 (1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260
 19 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, [OR]
 20 AS 11.61.125 - 11.61.128, or AS 11.66.110 - 11.66.135;

21 (2) uses a firearm in the commission of the offense for which the
 22 person is convicted; or

23 (3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony
 24 and the person has one or more prior convictions for a misdemeanor violation of
 25 AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction
 26 having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a
 27 felony in this state; for the purposes of this paragraph, a person shall be considered to
 28 have a prior conviction even if that conviction has been set aside under (e) of this
 29 section or under the equivalent provision of the laws of another jurisdiction.

30 * **Sec. 21.** AS 12.55.127 is amended by adding a new subsection to read:

31 (e) If the defendant is being sentenced for two or more crimes of distribution

1 of child pornography under AS 11.61.125, possession of child pornography under
 2 AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a
 3 consecutive term of imprisonment shall be imposed for some additional term of
 4 imprisonment for each additional crime or each additional attempt or solicitation to
 5 commit the offense.

6 * **Sec. 22.** AS 12.55.165 is amended by adding a new subsection to read:

7 (c) A court may not refer a case to a three-judge panel under (a) of this section
 8 if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and the
 9 request for the referral is based solely on the claim that the defendant, either singly or
 10 in combination, has

11 (1) prospects for rehabilitation that are less than extraordinary; or

12 (2) a history free of unprosecuted, undocumented, or undetected sexual
 13 offenses.

14 * **Sec. 23.** AS 12.55.175 is amended by adding a new subsection to read:

15 (f) A defendant being sentenced for a sexual felony under AS 12.55.125(i)
 16 may not establish, nor may the three-judge panel find under (b) of this section or any
 17 other provision of law, that manifest injustice would result from imposition of a
 18 sentence within the presumptive range based solely on the claim that the defendant,
 19 either singly or in combination, has

20 (1) prospects for rehabilitation that are less than extraordinary; or

21 (2) a history free of unprosecuted, undocumented, or undetected sexual
 22 offenses.

23 * **Sec. 24.** AS 12.55.185(16) is amended to read:

24 (16) "sexual felony" means sexual assault in the first degree, sexual
 25 abuse of a minor in the first degree, sex trafficking in the first degree, sexual assault
 26 in the second degree, sexual abuse of a minor in the second degree, unlawful
 27 exploitation of a minor, distribution of child pornography, sexual assault in the third
 28 degree, incest, indecent exposure in the first degree, possession of child pornography,
 29 online enticement of a minor, and felony attempt, conspiracy, or solicitation to
 30 commit those crimes;

31 * **Sec. 25.** AS 12.63.100(6) is amended to read:

1 (6) "sex offense" means

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

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

10 (i) sexual assault in the first degree;

11 (ii) sexual assault in the second degree;

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

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

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

16 (i) AS 11.41.410 - 11.41.438;

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

18 (iii) AS 11.41.450 - 11.41.458;

19 (iv) AS 11.41.460 if the indecent exposure is before a
20 person under 16 years of age and the offender has a previous conviction
21 for that offense;

22 (v) AS 11.61.125 - 11.61.128;

23 (vi) AS 11.66.110 or 11.66.130(a)(2) if the person who
24 was induced or caused to engage in prostitution was under 20 [16 OR
25 17] years of age at the time of the offense;

26 (vii) former AS 11.15.120, former 11.15.134, or assault
27 with the intent to commit rape under former AS 11.15.160, former
28 AS 11.40.110, or former 11.40.200; [OR]

29 (viii) AS 11.61.118(a)(2) if the offender has a previous
30 conviction for that offense; or

31 (ix) AS 11.66.100(a)(2) if the offender is subject to

punishment under AS 11.66.100(c);

1
2 * **Sec. 26.** AS 18.65.865(b) is amended to read:

3 (b) The Alaska Court System shall prepare forms for petitions and protective
4 orders and instructions for their use by a person seeking a protective order under
5 AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil
6 Procedure, except that information on the forms may be filled in by legible
7 handwriting. Filing fees may not be charged in any action seeking only the relief
8 provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the
9 following warning in boldface type: "Violation of this order may be a misdemeanor,
10 punishable by up to one year of incarceration and a fine of up to **\$10,000** [\$5,000]."

11 * **Sec. 27.** AS 18.66.130(d) is amended to read:

12 (d) In addition to other required information contained in a protective order,
13 the order must include in bold face type the following statements:

14 (1) "Violation of this order may be a misdemeanor, punishable by up
15 to one year of incarceration and up to a **\$10,000** [\$5,000] fine";

16 (2) "If you are ordered to have no contact with the petitioner or to stay
17 away from the petitioner's residence, vehicle, or other place designated by the court,
18 an invitation by the petitioner to have the prohibited contact or to be present at or enter
19 the residence, vehicle, or other place does not in any way invalidate or nullify the
20 order."

21 * **Sec. 28.** AS 18.66.250(5) is amended to read:

22 (5) "victim counseling center" means a private organization, **an**
23 **organization operated by or contracted by a branch of the armed forces of the**
24 **United States,** or a local government agency that

25 (A) has, as one of its primary purposes, the provision of direct
26 services to victims for trauma resulting from a sexual assault or domestic
27 violence;

28 (B) is not affiliated with a law enforcement agency or a
29 prosecutor's office; and

30 (C) is not on contract with the state to provide services under
31 AS 47;

1 * **Sec. 29.** AS 18.67.101 is amended to read:

2 **Sec. 18.67.101. Incidents and offenses to which this chapter applies.** The
3 board may order the payment of compensation in accordance with the provisions of
4 this chapter for personal injury or death that resulted from

5 (1) an attempt on the part of the applicant to prevent the commission of
6 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
7 officer to do so, or aiding a victim of crime; or

8 (2) the commission or attempt on the part of one other than the
9 applicant to commit any of the following offenses:

10 (A) murder in any degree;

11 (B) manslaughter;

12 (C) criminally negligent homicide;

13 (D) assault in any degree;

14 (E) kidnapping;

15 (F) sexual assault in any degree;

16 (G) sexual abuse of a minor;

17 (H) robbery in any degree;

18 (I) threats to do bodily harm;

19 (J) driving while under the influence of an alcoholic beverage,
20 inhalant, or controlled substance or another crime resulting from the operation
21 of a motor vehicle, boat, or airplane when the offender is under the influence
22 of an alcoholic beverage, inhalant, or controlled substance; [OR]

23 (K) arson in the first degree;

24 (L) sex trafficking in violation of AS 11.66.110 or
25 11.66.130(a)(2);

26 (M) human trafficking in any degree; or

27 (N) unlawful exploitation of a minor.

28 * **Sec. 30.** AS 22.10.150 is amended to read:

29 **Sec. 22.10.150. Approval or rejection.** Each superior court judge is subject to
30 approval or rejection as provided in AS 15 (Alaska Election Code). The judicial
31 council shall conduct an evaluation of each judge before the retention election and

1 shall provide to the public information about the judge and may provide a
 2 recommendation regarding retention or rejection. The information and any
 3 recommendation shall be made public at least 60 days before the retention election.

4 **The information shall include the judge's consideration of victims when imposing**
 5 **sentence on persons convicted of felony offenses where the offenses involve**
 6 **victims.** The judicial council shall also provide the information and any
 7 recommendation to the office of the lieutenant governor in time for publication in the
 8 election pamphlet under AS 15.58.050. If a majority of those voting on the question
 9 rejects the candidacy of a judge, the rejected judge may not for a period of four years
 10 thereafter be appointed to fill any vacancy in the supreme court, court of appeals,
 11 superior court, or district courts of the state.

12 * **Sec. 31.** AS 25.23.180(i) is amended to read:

13 (i) Proceedings for the termination of parental rights on the grounds set out in
 14 (c)(3) of this section do not affect the rights of a victim of **sexual assault**, sexual abuse
 15 of a minor, or incest to obtain legal and equitable civil remedies for all injuries and
 16 damages arising out of the perpetrator's conduct.

17 * **Sec. 32.** AS 25.23.240(10) is amended to read:

18 (10) "sexual assault" means a sexual offense defined in **AS 11.41.410 -**
 19 **11.41.427** [AS 11.41.410 OR 11.41.420];

20 * **Sec. 33.** AS 33.20.010(a) is amended to read:

21 (a) Notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner
 22 convicted of an offense against the state or a political subdivision of the state and
 23 sentenced to a term of imprisonment that exceeds three days is entitled to a deduction
 24 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner
 25 follows the rules of the correctional facility in which the prisoner is confined. A
 26 prisoner is not eligible for a good time deduction if the prisoner has been sentenced

27 (1) to a mandatory 99-year term of imprisonment under
 28 AS 12.55.125(a) after June 27, 1996;

29 (2) to a definite term under AS 12.55.125(l); or

30 (3) for a sexual felony under AS 12.55.125(i)

31 **(A)** and has one or more prior sexual felony convictions as

1 determined under AS 12.55.145(a)(4); or

2 (B) that is an unclassified or a class A felony.

3 * **Sec. 34.** AS 44.23.080(a) is amended to read:

4 (a) If there is reasonable cause to believe that an Internet service account has
5 been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125
6 - 11.61.128, and that the identity, address, and other information about the account
7 owner will assist in obtaining evidence that is relevant to the offense, a law
8 enforcement officer may apply to the attorney general or the attorney general's
9 designee for an administrative subpoena to obtain the business records of the Internet
10 service provider located inside or outside of the state.

11 * **Sec. 35.** AS 44.23.080(b) is amended to read:

12 (b) If an application meets the requirements of (a) of this section, the attorney
13 general or the attorney general's designee may issue an administrative subpoena to
14 the Internet service provider requiring the production of the following records:

- 15 (1) the name and other identifying information of the account holder;
16 (2) the address and physical location associated with the account;
17 (3) a description of the length of service, service start date, and types
18 of service associated with the account.

19 * **Sec. 36.** AS 44.23.080(e) is amended to read:

20 (e) If the Internet service provider refuses to obey a subpoena issued under (b)
21 of this section, the superior court may, upon application of the attorney general or the
22 attorney general's designee, issue an order requiring the Internet service provider to
23 appear at the office of the attorney general with the information described in the
24 subpoena.

25 * **Sec. 37.** AS 44.23.080 is amended by adding a new subsection to read:

26 (i) For purposes of this section, the attorney general's designee may be the
27 deputy attorney general of the division of the Department of Law that has
28 responsibility for civil cases or the division of the Department of Law that has
29 responsibility for criminal cases.

30 * **Sec. 38.** AS 47.10.086(c) is amended to read:

31 (c) The court may determine that reasonable efforts of the type described in

1 (a) of this section are not required if the court has found by clear and convincing
2 evidence that

3 (1) the parent or guardian has subjected the child to circumstances that
4 pose a substantial risk to the child's health or safety; these circumstances include
5 abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

6 (2) the parent or guardian has

7 (A) committed homicide under AS 11.41.100 - 11.41.130 of a
8 parent of the child or of a child;

9 (B) aided or abetted, attempted, conspired, or solicited under
10 AS 11.16 or AS 11.31 to commit a homicide described in (A) of this
11 paragraph;

12 (C) committed an assault that is a felony under AS 11.41.200 -
13 11.41.220 and results in serious physical injury to a child; or

14 (D) committed the conduct described in (A) - (C) of this
15 paragraph that violated a law or ordinance of another jurisdiction having
16 elements similar to an offense described in (A) - (C) of this paragraph;

17 (3) the parent or guardian has, during the 12 months preceding the
18 permanency hearing, failed to comply with a court order to participate in family
19 support services;

20 (4) the department has conducted a reasonably diligent search over a
21 time period of at least three months for an unidentified or absent parent and has failed
22 to identify and locate the parent;

23 (5) the parent or guardian is the sole caregiver of the child and the
24 parent or guardian has a mental illness or mental deficiency of such nature and
25 duration that, according to the statement of a psychologist or physician, the parent or
26 guardian will be incapable of caring for the child without placing the child at
27 substantial risk of physical or mental injury even if the department were to provide
28 family support services to the parent or guardian for 12 months;

29 (6) the parent or guardian has previously been convicted of a crime
30 involving a child in this state or in another jurisdiction and, after the conviction, the
31 child was returned to the custody of the parent or guardian and later removed because

1 of an additional substantiated report of physical or sexual abuse by the parent or
2 guardian;

3 (7) a child has suffered substantial physical harm as the result of
4 abusive or neglectful conduct by the parent or guardian or by a person known by the
5 parent or guardian and the parent or guardian knew or reasonably should have known
6 that the person was abusing the child;

7 (8) the parental rights of the parent have been terminated with respect
8 to another child because of child abuse or neglect, the parent has not remedied the
9 conditions or conduct that led to the termination of parental rights, and the parent has
10 demonstrated an inability to protect the child from substantial harm or the risk of
11 substantial harm;

12 (9) the child has been removed from the child's home on at least two
13 previous occasions, family support services were offered or provided to the parent or
14 guardian at those times, and the parent or guardian has demonstrated an inability to
15 protect the child from substantial harm or the risk of substantial harm; [OR]

16 (10) the parent or guardian is incarcerated and is unavailable to care
17 for the child during a significant period of the child's minority, considering the child's
18 age and need for care by an adult; or

19 **(11) the parent or guardian**

20 **(A) has sexually abused the child or another child of the**
21 **parent or guardian; or**

22 **(B) is registered or required to register as a sex offender or**
23 **child kidnapper under AS 12.63.**

24 * Sec. 39. AS 47.17.020(a) is amended to read:

25 (a) The following persons who, in the performance of their occupational
26 duties, or with respect to (8) of this subsection, in the performance of their appointed
27 duties, have reasonable cause to suspect that a child has suffered harm as a result of
28 child abuse or neglect shall immediately report the harm to the nearest office of the
29 department:

30 (1) practitioners of the healing arts;

31 (2) school teachers and school administrative staff members, **including**

1 **athletic coaches**, of public and private schools;

2 (3) peace officers and officers of the Department of Corrections;

3 (4) administrative officers of institutions;

4 (5) child care providers;

5 (6) paid employees of domestic violence and sexual assault programs,
6 and crisis intervention and prevention programs as defined in AS 18.66.990;

7 (7) paid employees of an organization that provides counseling or
8 treatment to individuals seeking to control their use of drugs or alcohol;

9 (8) members of a child fatality review team established under
10 AS 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created
11 under AS 47.14.300.

12 * **Sec. 40.** AS 47.17.290 is amended by adding a new paragraph to read:

13 (17) "athletic coach" includes a paid leader or assistant of a sports
14 team.

15 * **Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

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

19 (9) Restriction on Availability of Certain Material. Notwithstanding
20 (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy,
21 photograph, duplicate, or otherwise reproduce any material prohibited under
22 AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the
23 prosecuting attorney makes the material reasonably available for inspection by the
24 defendant and defense counsel. The material shall be considered to be made
25 reasonably available to the defendant or defense counsel if the prosecuting attorney
26 provides, at a law enforcement or prosecution facility, ample opportunity for
27 inspection, viewing, and examination of the material by the defendant and the
28 defendant's attorney. If the defendant is not represented by counsel and demonstrates a
29 need to view the material, the court shall make arrangements for the defendant to be
30 supervised while viewing the material. If the defendant or the defendant's attorney
31 identifies an expert who must view the material, the court shall make arrangements for

1 the court or the law enforcement agency that possesses it to send the material directly
2 to the expert.

3 * **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 DIRECT COURT RULE AMENDMENT. Rule 32.1(b)(1), Alaska Rules of
6 Criminal Procedure, is amended to read:

7 (1) Contents and Filing. If the court directs the Department of
8 Corrections to prepare a presentence report, the report shall be filed with the court and
9 served on counsel at least 30 days before the sentencing hearing, or 30 days before the
10 presentencing hearing, if one is scheduled. The report shall contain all of the
11 defendant's prior criminal convictions and findings of delinquency and any other
12 information about the defendant's characteristics, financial condition, and the
13 circumstances affecting the defendant's behavior that may be helpful in fashioning the
14 defendant's sentence, a victim impact statement, and any other information required by
15 the judge. **If the crime involved a victim, the court may not accept a report that**
16 **does not include a victim's impact statement, unless the report explains the**
17 **reason why the victim or the victim's representative could not be interviewed.**

18 The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 -
19 12.61.150 and AS 12.55.022.

20 * **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 DIRECT COURT RULE AMENDMENT. Rule 32.2(a), Alaska Rules of
23 Criminal Procedure, is amended to read:

24 (a) **Consideration of Victim's Statement.** If a victim as defined in
25 AS 12.55.185 prepares and submits a written statement, gives sworn testimony or
26 makes an unsworn oral presentation under AS 12.55.023, the court shall take the
27 content of the statement, testimony, or presentation into consideration when preparing
28 those elements of the sentencing report required by AS 12.55.025 that relate to the
29 effect of the offense on the victim, and when considering the need for restitution under
30 AS 12.55.045. **The court shall also take the content of the victim's impact**
31 **statement in the presentence report into consideration in preparing the**

1 sentencing report required under AS 12.55.025. The court also may take the content
 2 of the statement, testimony, victim's impact statement, or presentation into
 3 consideration for any other appropriate purpose.

4 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
 5 read:

6 DIRECT COURT RULE AMENDMENT. Rule 404(b)(2), Alaska Rules of
 7 Evidence, is amended to read:

8 (2) In a prosecution for a crime involving a physical or sexual assault
 9 or abuse of a minor, evidence of other acts by the defendant toward the same or
 10 another child is admissible if admission of the evidence is not precluded by another
 11 rule of evidence and if the prior offenses

12 (i) [OCCURRED WITHIN THE 10 YEARS
 13 PRECEDING THE DATE OF THE OFFENSE CHARGED;

14 (ii)] are similar to the offense charged; and

15 (ii) [(iii)] were committed upon persons similar to the
 16 prosecuting witness.

17 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
 18 read:

19 INDIRECT COURT RULE AMENDMENT. AS 12.45.045(a), as amended by sec. 16
 20 of this Act, has the effect of amending Rule 404(a), Alaska Rules of Evidence, by providing,
 21 with some exceptions, that a defendant must request admission of certain evidence about the
 22 complaining witness five days before trial and by applying the rule to the conduct of the
 23 complaining witness after the alleged offense.

24 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 APPLICABILITY. (a) Sections 2 - 15, 20, 21, 25, and 33 of this Act apply to offenses
 27 committed on or after the effective date of this Act.

28 (b) Sections 16, 22 - 24, 28, and 29 of this Act apply to offenses committed before,
 29 on, or after the effective date of this Act.

30 (c) Section 18 of this Act applies to sentencing hearings occurring on or after the
 31 effective date of this Act.

1 (d) Section 19 of this Act applies to disposition hearings occurring in proceedings on
2 petitions to revoke probation filed on or after the effective date of this Act.

3 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **CONDITIONAL EFFECT.** Section 16 of this Act, amending AS 12.45.045(a), takes
6 effect only if sec. 45 of this Act receives the two-thirds majority vote of each house required
7 by art. IV, sec. 15, Constitution of the State of Alaska.

8 * **Sec. 48.** This Act takes effect July 1, 2013.

28-LS0789\A
Strasbaugh
4/8/13

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Introduced:
Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning Senate Bill No. 22, relating to the commencement of actions for**
3 **felony sex trafficking and felony human trafficking; relating to the crime of sexual**
4 **assault; relating to the crime of unlawful contact; relating to forfeiture for certain**
5 **crimes involving prostitution; relating to the time in which to commence certain**
6 **prosecutions; relating to release in a prosecution for stalking or a crime involving**
7 **domestic violence or for violation of a condition of release in connection with a crime**
8 **involving domestic violence; relating to interception of private communications for**
9 **certain sex trafficking or human trafficking offenses; relating to use of evidence of**
10 **sexual conduct concerning victims of certain crimes; relating to consideration at**
11 **sentencing of the effect of a crime on the victim; relating to the time to make an**
12 **application for credit for time served in a treatment program or while in other custody;**
13 **relating to suspending imposition of sentence for sex trafficking; relating to consecutive**

1 sentences for convictions of certain crimes involving child pornography or indecent
2 materials to minors; relating to the referral of sexual felonies to a three-judge panel;
3 relating to the definition of "sexual felony" for sentencing and probation for conviction
4 of certain crimes; relating to the definition of "sex offense" regarding sex offender
5 registration; relating to the definition of "victim counseling centers" for disclosure of
6 certain communications concerning sexual assault or domestic violence; relating to
7 violent crimes compensation; relating to certain information in retention election of
8 judges concerning sentencing of persons convicted of felonies; relating to remission of
9 sentences for certain sexual felony offenders; relating to forms for sexual assault,
10 stalking, and domestic violence protective orders; relating to the subpoena power of the
11 attorney general in cases involving the use of an Internet service account; relating to
12 reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender
13 registration; relating to mandatory reporting by athletic coaches of child abuse or
14 neglect; making conforming amendments; and amending Rules 16, 32.1(b)(1), and
15 32.2(a), Alaska Rules of Criminal Procedure, and Rules 404(a) and (b), Alaska Rules of
16 Evidence.

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

18 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
19 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
20 changes to the title of a bill, are suspended in consideration of Senate Bill No. 22, relating to
21 the commencement of actions for felony sex trafficking and felony human trafficking; relating
22 to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture
23 for certain crimes involving prostitution; relating to the time in which to commence certain
24 prosecutions; relating to release in a prosecution for stalking or a crime involving domestic
25 violence or for violation of a condition of release in connection with a crime involving

1 domestic violence; relating to interception of private communications for certain sex
2 trafficking or human trafficking offenses; relating to use of evidence of sexual conduct
3 concerning victims of certain crimes; relating to consideration at sentencing of the effect of a
4 crime on the victim; relating to the time to make an application for credit for time served in a
5 treatment program or while in other custody; relating to suspending imposition of sentence for
6 sex trafficking; relating to consecutive sentences for convictions of certain crimes involving
7 child pornography or indecent materials to minors; relating to the referral of sexual felonies to
8 a three-judge panel; relating to the definition of "sexual felony" for sentencing and probation
9 for conviction of certain crimes; relating to the definition of "sex offense" regarding sex
10 offender registration; relating to the definition of "victim counseling centers" for disclosure of
11 certain communications concerning sexual assault or domestic violence; relating to violent
12 crimes compensation; relating to certain information in retention election of judges
13 concerning sentencing of persons convicted of felonies; relating to remission of sentences for
14 certain sexual felony offenders; relating to forms for sexual assault, stalking, and domestic
15 violence protective orders; relating to the subpoena power of the attorney general in cases
16 involving the use of an Internet service account; relating to reasonable efforts in child-in-
17 need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory
18 reporting by athletic coaches of child abuse or neglect; making conforming amendments; and
19 amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, and Rules
20 404(a) and (b), Alaska Rules of Evidence.

adopted 4.11.13

28-GS1587/R
Strasbaugh
4/10/13

**HOUSE CS FOR CS FOR SENATE BILL NO. 22(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the commencement of actions for felony sex trafficking and felony**
2 **human trafficking; relating to the crime of sexual assault; relating to the crime of**
3 **unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating**
4 **to the time in which to commence certain prosecutions; relating to release in a**
5 **prosecution for stalking or a crime involving domestic violence or for violation of a**
6 **condition of release in connection with a crime involving domestic violence; relating to**
7 **interception of private communications for certain sex trafficking or human trafficking**
8 **offenses; relating to use of evidence of sexual conduct concerning victims of certain**
9 **crimes; relating to consideration at sentencing of the effect of a crime on the victim;**
10 **relating to the time to make an application for credit for time served in a treatment**
11 **program or while in other custody; relating to suspending imposition of sentence for sex**
12 **trafficking; relating to consecutive sentences for convictions of certain crimes involving**

1 child pornography or indecent materials to minors; relating to the referral of sexual
2 felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing
3 and probation for conviction of certain crimes; relating to the definition of 'sex offense'
4 regarding sex offender registration; relating to the definition of 'victim counseling
5 centers' for disclosure of certain communications concerning sexual assault or domestic
6 violence; relating to violent crimes compensation; relating to certain information in
7 retention election of judges concerning sentencing of persons convicted of felonies;
8 relating to the rights of certain victims of sexual assault to obtain legal and equitable
9 remedies for injuries arising from the conduct of a perpetrator; relating to the definition
10 of 'sexual assault' for the purpose of adoption and the termination of parental rights in
11 certain proceedings; relating to remission of sentences for certain sexual felony
12 offenders; relating to forms for sexual assault, stalking, and domestic violence protective
13 orders; relating to the subpoena power of the attorney general in cases involving the use
14 of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases
15 involving sexual abuse or sex offender registration; relating to mandatory reporting by
16 athletic coaches of child abuse or neglect; making conforming amendments; amending
17 Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, and Rules 404(a)
18 and (b), Alaska Rules of Evidence; and providing for an effective date."

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

20 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
21 to read:

22 **LEGISLATIVE FINDINGS AND INTENT FOR SECS. 22 AND 23 OF THIS ACT.**

23 (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA
24 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

25 (b) The legislature finds that

1 (1) in 2006, the legislature did not intend, by enacting ch. 14, SLA 2006, and
2 the legislature does not now intend to create new or additional means for a defendant
3 convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-
4 judge panel;

5 (2) the legislature did not, in 2006, intend nor does the legislature now intend
6 for a court to create new or additional means for a defendant convicted of a sexual felony and
7 sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel.

8 (c) It is the intent of the legislature in AS 12.55.165, as amended by sec. 22 of this
9 Act, and AS 12.55.175, as amended by sec. 23 of this Act, to overturn the majority decision in
10 Collins v. State, 287 P.3d 791 (Alaska App. 2012), and to endorse the dissenting opinion in
11 the same case.

12 * Sec. 2. AS 09.10.065(a) is amended to read:

13 (a) A person may bring an action at any time for conduct that would have, at
14 the time the conduct occurred, violated provisions of any of the following offenses:

- 15 (1) felony sexual abuse of a minor;
- 16 (2) felony sexual assault; [OR]
- 17 (3) unlawful exploitation of a minor;
- 18 **(4) felony sex trafficking; or**
- 19 **(5) felony human trafficking.**

20 * Sec. 3. AS 11.41.425(a) is amended to read:

21 (a) An offender commits the crime of sexual assault in the third degree if the
22 offender

- 23 (1) engages in sexual contact with a person who the offender knows is
24 (A) mentally incapable;
25 (B) incapacitated; or
26 (C) unaware that a sexual act is being committed;
- 27 (2) while employed in a state correctional facility or other placement
28 designated by the commissioner of corrections for the custody and care of prisoners,
29 engages in sexual penetration with a person who the offender knows is committed to
30 the custody of the Department of Corrections to serve a term of imprisonment or
31 period of temporary commitment;

1 (3) engages in sexual penetration with a person 18 or 19 years of age
2 who the offender knows is committed to the custody of the Department of Health and
3 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of
4 the person; [OR]

5 (4) while employed in the state by a law enforcement agency as a
6 peace officer, or while acting as a peace officer in the state, engages in sexual
7 penetration with a person with reckless disregard that the person is in the custody or
8 the apparent custody of the offender, or is committed to the custody of a law
9 enforcement agency;

10 (5) while employed by the state or a municipality of the state as a
11 probation officer or parole officer, or while acting as a probation officer or
12 parole officer in the state, engages in sexual penetration with a person with
13 reckless disregard that the person is on probation or parole; or

14 (6) while employed as a juvenile probation officer or as a juvenile
15 facility staff, engages in sexual penetration with a person 18 or 19 years of age
16 with reckless disregard that the person is committed to the custody or
17 probationary supervision of the Department of Health and Social Services.

18 * Sec. 4. AS 11.41.425(b) is repealed and reenacted to read:

19 (b) In this section,

20 (1) "juvenile facility staff" means a person employed in a juvenile
21 detention or treatment facility;

22 (2) "juvenile probation officer" means a person assigned to supervise
23 another person 18 or 19 years of age who is committed to the probationary supervision
24 of the Department of Health and Social Services;

25 (3) "parole officer" has the meaning given in AS 18.65.290;

26 (4) "peace officer" has the meaning given in AS 01.10.060;

27 (5) "probation officer" includes a

28 (A) probation officer as defined in AS 18.65.290; or

29 (B) person who supervises a participant in a specialty court,
30 including a therapeutic or wellness court addressing alcohol or drug use, a
31 court addressing the needs of veterans, an adult or juvenile mental health court,

1 a fetal alcohol spectrum disorder court, or a family care or preservation court.

2 * Sec. 5. AS 11.41.427(a) is amended to read:

3 (a) An offender commits the crime of sexual assault in the fourth degree if

4 (1) while employed in a state correctional facility or other placement
5 designated by the commissioner of corrections for the custody and care of prisoners,
6 the offender engages in sexual contact with a person who the offender knows is
7 committed to the custody of the Department of Corrections to serve a term of
8 imprisonment or period of temporary commitment;

9 (2) the offender engages in sexual contact with a person 18 or 19 years
10 of age who the offender knows is committed to the custody of the Department of
11 Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal
12 guardian of the person; [OR]

13 (3) while employed in the state by a law enforcement agency as a
14 peace officer, or while acting as a peace officer in the state, the offender engages in
15 sexual contact with a person with reckless disregard that the person is in the custody or
16 the apparent custody of the offender, or is committed to the custody of a law
17 enforcement agency;

18 **(4) while employed by the state or a municipality of the state as a**
19 **probation officer or parole officer, or while acting as a probation officer or**
20 **parole officer in the state, engages in sexual contact with a person with reckless**
21 **disregard that the person is on probation or parole; or**

22 **(5) while employed as a juvenile probation officer or as a juvenile**
23 **facility staff, engages in sexual contact with a person 18 or 19 years of age with**
24 **reckless disregard that the person is committed to the custody or probationary**
25 **supervision of the Department of Health and Social Services.**

26 * Sec. 6. AS 11.41.427(b) is repealed and reenacted to read:

27 (b) In this section,

28 (1) "juvenile facility staff" has the meaning given in AS 11.41.425;

29 (2) "juvenile probation officer" has the meaning given in
30 AS 11.41.425;

31 (3) "parole officer" has the meaning given in AS 18.65.290;

1 (4) "peace officer" has the meaning given in AS 01.10.060;

2 (5) "probation officer" has the meaning given in AS 11.41.425.

3 * **Sec. 7.** AS 11.41.432(a) is amended to read:

4 (a) It is a defense to a crime charged under AS 11.41.410(a)(3),
5 11.41.420(a)(2), 11.41.420(a)(3), [OR] 11.41.425, or 11.41.427 that the offender is

6 (1) mentally incapable; or

7 (2) married to the person and neither party has filed with the court for a
8 separation, divorce, or dissolution of the marriage.

9 * **Sec. 8.** AS 11.41.432 is amended by adding a new subsection to read:

10 (c) It is an affirmative defense to a crime charged under AS 11.41.425(a)(5) or
11 11.41.427(a)(4) that the offender and the person on probation or parole had, before the
12 person was placed on probation or parole, a dating relationship or a sexual
13 relationship, and the relationship continued until the date of the alleged offense.

14 * **Sec. 9.** AS 11.56.750(a) is amended to read:

15 (a) A person commits the crime of unlawful contact in the first degree if the
16 person

17 (1) has been ordered

18 (A) by the court not to contact a victim or witness of the
19 offense

20 (i) as [(A)] part of a sentence imposed under
21 AS 12.55.015;

22 (ii) as [OR (B)] a condition of [(i)] release under
23 AS 12.30 or [; (ii)] probation under AS 12.55.101; or

24 (iii) while under official detention; or

25 (B) as a condition of parole not to contact a victim or
26 witness of the offense under AS 33.16.150 [PAROLE UNDER
27 AS 33.16.150]; and

28 (2) either directly or indirectly, knowingly contacts or attempts to
29 contact the victim or witness in violation of the order.

30 * **Sec. 10.** AS 11.66.145 is amended to read:

31 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or

1 received or derived from, a violation of AS 11.66.100(c) or 11.66.110 - 11.66.135
2 may [SHALL] be forfeited at sentencing.

3 * Sec. 11. AS 12.10.010 is amended to read:

4 **Sec. 12.10.010. General time limitations.** (a) Prosecution for the following
5 offenses may be commenced at any time:

- 6 (1) murder;
- 7 (2) attempt, solicitation, or conspiracy to commit murder or hindering
8 the prosecution of murder;
- 9 (3) felony sexual abuse of a minor;
- 10 (4) sexual assault that is an unclassified, class A, or class B felony or a
11 violation of AS 11.41.425(a)(2) - (4);
- 12 (5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458,
13 AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person
14 who, at the time of the offense, was under 18 years of age;
- 15 (6) kidnapping;
- 16 (7) distribution of child pornography in violation of AS 11.61.125;
- 17 (8) sex trafficking in violation of AS 11.66.110 - 11.66.130 that is an
18 unclassified, class A, or class B felony or that is committed against a person who,
19 at the time of the offense, was under 20 years of age;
- 20 (9) human trafficking in violation of AS 11.41.360 or 11.41.365.

21 (b) Except as otherwise provided by law or in (a) of this section, a person may
22 not be prosecuted, tried, or punished for an offense unless the indictment is found or
23 the information or complaint is instituted not later than

- 24 (1) 10 years after the commission of a felony offense in violation of
25 AS 11.41.120 - 11.41.330 [AS 11.41.120 - 11.41.370], 11.41.425(a)(1),
26 11.41.425(a)(5), 11.41.425(a)(6), or 11.41.450 - 11.41.458; or
- 27 (2) five years after the commission of any other offense.

28 * Sec. 12. AS 12.30.016(e) is amended to read:

29 (e) In a prosecution charging the crime of stalking that is not a crime involving
30 domestic violence, a judicial officer may order the person to

- 31 (1) follow the provisions of any protective order to which the person is

1 respondent;

2 (2) refrain from contacting, in any manner, including by telephone or
3 electronic communication, the victim;

4 (3) engage in counseling; if available in the community, the judicial
5 officer shall require that counseling ordered include counseling about alternatives to
6 aggressive behavior;

7 (4) participate in a monitoring program with a global positioning
8 device or similar technological means that meets guidelines for a monitoring
9 program adopted by the Department of Corrections in consultation with the
10 Department of Public Safety.

11 * Sec. 13. AS 12.30.027(a) is amended to read:

12 (a) Before ordering release before or after trial, or pending appeal, of a person
13 charged with or convicted of a crime involving domestic violence, the judicial officer
14 shall consider the safety of the victim or other household member. To protect the
15 victim, household member, other persons, and the community and to reasonably
16 ensure [ASSURE] the person's appearance, the judicial officer

17 (1) shall impose conditions required under AS 12.30.011;

18 (2) [, AND] may impose any of the conditions authorized under
19 AS 12.30.011;

20 (3) may impose [,] any of the provisions of AS 18.66.100(c)(1) - (7)
21 and (11);

22 (4) may order the person to participate in a monitoring program
23 with a global positioning device or similar technological means that meets
24 guidelines for a monitoring program adopted by the Department of Corrections
25 in consultation with the Department of Public Safety; [,] and

26 (5) may impose any other condition necessary to protect the victim,
27 household member, other persons, and the community, and to ensure the appearance
28 of the person in court, including ordering the person to refrain from the consumption
29 of alcohol.

30 * Sec. 14. AS 12.30.027(e) is amended to read:

31 (e) A person arrested for a crime involving domestic violence or for violation

1 of a condition of release in connection with a crime involving domestic violence
2 may not be released from custody until the person has appeared in person before a
3 judicial officer or telephonically for arraignment.

4 * **Sec. 15.** AS 12.37.010 is amended to read:

5 **Sec. 12.37.010. Authorization to intercept communications.** The attorney
6 general, or a person designated in writing or by law to act for the attorney general,
7 may authorize, in writing, an ex parte application to a court of competent jurisdiction
8 for an order authorizing the interception of a private communication if the interception
9 may provide evidence of, or may assist in the apprehension of persons who have
10 committed, are committing, or are planning to commit, the following offenses:

11 (1) murder in the first or second degree under AS 11.41.100 -
12 11.41.110;

13 (2) kidnapping under AS 11.41.300; [OR]

14 (3) a class A or unclassified felony drug offense under AS 11.71;

15 (4) sex trafficking in the first or second degree under AS 11.66.110
16 and 11.66.120; or

17 (5) human trafficking in the first degree under AS 11.41.360.

18 * **Sec. 16.** AS 12.45.045(a) is amended to read:

19 (a) In prosecutions for the crimes of sexual assault in any degree, sexual abuse
20 of a minor in any degree, [OR] unlawful exploitation of a minor, or an attempt to
21 commit any of these crimes, evidence of the [COMPLAINING WITNESS'
22 PREVIOUS] sexual conduct of the complaining witness, occurring either before or
23 after the offense charged, may not be admitted nor may reference be made to it in the
24 presence of the jury except as provided in this section. When the defendant seeks to
25 admit the evidence for any purpose, the defendant shall apply for an order of the court
26 not later than five days [AT ANY TIME] before [OR DURING THE] trial or at a
27 later time as the court may, for good cause, permit. The defendant may, for good
28 cause shown, apply for an order during trial if the request is based on
29 information learned after the deadline or during the trial [OR PRELIMINARY
30 HEARING]. After the application is made, the court shall conduct a hearing in camera
31 to determine the admissibility of the evidence. If the court finds that evidence offered

1 by the defendant regarding the sexual conduct of the complaining witness is relevant,
2 and that the probative value of the evidence offered is not outweighed by the
3 probability that its admission will create undue prejudice, confusion of the issues, or
4 unwarranted invasion of the privacy of the complaining witness, the court shall make
5 an order stating what evidence may be introduced and the nature of the questions that
6 may be permitted. The defendant may then offer evidence under the order of the court.

7 * **Sec. 17.** AS 12.55.023(a) is amended to read:

8 (a) If a victim requests, the prosecuting attorney shall provide the victim,
9 before the sentencing hearing, with a copy of the following portions of the presentence
10 report:

11 (1) the summary of the offense prepared by the Department of
12 Corrections;

13 (2) the defendant's version of the offense;

14 (3) all statements and summaries of statements of the victim; [AND]

15 (4) the sentence recommendation of the Department of Corrections;

16 **and**

17 **(5) letters of support submitted to the court for consideration.**

18 * **Sec. 18.** AS 12.55.025 is amended by adding new subsections to read:

19 (k) If a defendant intends to claim credit under AS 12.55.027 toward a
20 sentence of imprisonment for time spent in a treatment program as a condition of bail
21 in connection with an offense for which the defendant is being sentenced, the
22 defendant shall file notice with the court and the prosecutor 10 days before the
23 sentencing hearing. The notice shall include the number of days the defendant is
24 claiming. The defendant must prove by a preponderance of evidence that the
25 requirements of AS 12.55.027 are met before credit may be awarded. Except as
26 provided in (l) of this section, except for good cause, a court may not consider a
27 request for credit made under this subsection more than 90 days after the sentencing
28 hearing.

29 (l) If a defendant intends to claim credit under AS 12.55.027 toward a
30 sentence of imprisonment for time spent in a treatment program as a condition of bail
31 while pending appeal, the defendant shall file notice with the court and the prosecutor

1 not later than 90 days after return of the case to the trial court following appeal. The
2 notice shall include the number of days the defendant is claiming. The defendant must
3 prove by a preponderance of evidence that the requirements of AS 12.55.027 are met
4 before credit may be awarded. Except for good cause, the court may not consider a
5 request for credit made under this subsection after the deadline.

6 * **Sec. 19.** AS 12.55.027 is amended by adding a new subsection to read:

7 (e) If a defendant intends to claim credit toward a sentence of imprisonment
8 for time spent in a treatment program either as a condition of probation or as a
9 condition of bail release after a petition to revoke probation has been filed, the
10 defendant shall file notice with the court and the prosecutor 10 days before the
11 disposition hearing. The notice shall include the amount of time the defendant is
12 claiming. The defendant must prove by a preponderance of the evidence that the credit
13 claimed meets the requirements of this section. A court may not consider, except for
14 good cause, a request for credit made under this subsection more than 90 days after the
15 disposition hearing.

16 * **Sec. 20.** AS 12.55.085(f) is amended to read:

17 (f) The court may not suspend the imposition of sentence of a person who

18 (1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260
19 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, [OR]
20 AS 11.61.125 - 11.61.128, or AS 11.66.110 - 11.66.135;

21 (2) uses a firearm in the commission of the offense for which the
22 person is convicted; or

23 (3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony
24 and the person has one or more prior convictions for a misdemeanor violation of
25 AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction
26 having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a
27 felony in this state; for the purposes of this paragraph, a person shall be considered to
28 have a prior conviction even if that conviction has been set aside under (e) of this
29 section or under the equivalent provision of the laws of another jurisdiction.

30 * **Sec. 21.** AS 12.55.127 is amended by adding a new subsection to read:

31 (e) If the defendant is being sentenced for two or more crimes of distribution

1 of child pornography under AS 11.61.125, possession of child pornography under
2 AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a
3 consecutive term of imprisonment shall be imposed for some additional term of
4 imprisonment for each additional crime or each additional attempt or solicitation to
5 commit the offense.

6 * Sec. 22. AS 12.55.165 is amended by adding a new subsection to read:

7 (c) A court may not refer a case to a three-judge panel under (a) of this section
8 if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and the
9 request for the referral is based solely on the claim that the defendant, either singly or
10 in combination, has

11 (1) prospects for rehabilitation that are less than extraordinary; or

12 (2) a history free of unprosecuted, undocumented, or undetected sexual
13 offenses.

14 * Sec. 23. AS 12.55.175 is amended by adding a new subsection to read:

15 (f) A defendant being sentenced for a sexual felony under AS 12.55.125(i)
16 may not establish, nor may the three-judge panel find under (b) of this section or any
17 other provision of law, that manifest injustice would result from imposition of a
18 sentence within the presumptive range based solely on the claim that the defendant,
19 either singly or in combination, has

20 (1) prospects for rehabilitation that are less than extraordinary; or

21 (2) a history free of unprosecuted, undocumented, or undetected sexual
22 offenses.

23 * Sec. 24. AS 12.55.185(16) is amended to read:

24 (16) "sexual felony" means sexual assault in the first degree, sexual
25 abuse of a minor in the first degree, sex trafficking in the first degree, sexual assault
26 in the second degree, sexual abuse of a minor in the second degree, unlawful
27 exploitation of a minor, distribution of child pornography, sexual assault in the third
28 degree, incest, indecent exposure in the first degree, possession of child pornography,
29 online enticement of a minor, and felony attempt, conspiracy, or solicitation to
30 commit those crimes;

31 * Sec. 25. AS 12.63.100(6) is amended to read:

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(6) "sex offense" means

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

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

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

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

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

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

(i) AS 11.41.410 - 11.41.438;

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

(iii) AS 11.41.450 - 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 - 11.61.128;

(vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was under 20 [16 OR 17] years of age at the time of the offense;

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200; [OR]

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense; or

(ix) AS 11.66.100(a)(2) if the offender is subject to

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punishment under AS 11.66.100(c);

* Sec. 26. AS 18.65.865(b) is amended to read:

(b) The Alaska Court System shall prepare forms for petitions and protective orders and instructions for their use by a person seeking a protective order under AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. Filing fees may not be charged in any action seeking only the relief provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the following warning in boldface type: "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and a fine of up to **\$10,000** [\$5,000]."

* Sec. 27. AS 18.66.130(d) is amended to read:

(d) In addition to other required information contained in a protective order, the order must include in bold face type the following statements:

(1) "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and up to a **\$10,000** [\$5,000] fine";

(2) "If you are ordered to have no contact with the petitioner or to stay away from the petitioner's residence, vehicle, or other place designated by the court, an invitation by the petitioner to have the prohibited contact or to be present at or enter the residence, vehicle, or other place does not in any way invalidate or nullify the order."

* Sec. 28. AS 18.66.250(5) is amended to read:

(5) "victim counseling center" means a private organization, **an organization operated by or contracted by a branch of the armed forces of the United States,** or a local government agency that

(A) has, as one of its primary purposes, the provision of direct services to victims for trauma resulting from a sexual assault or domestic violence;

(B) is not affiliated with a law enforcement agency or a prosecutor's office; and

(C) is not on contract with the state to provide services under AS 47;

1 * **Sec. 29.** AS 18.67.101 is amended to read:

2 **Sec. 18.67.101. Incidents and offenses to which this chapter applies.** The
3 board may order the payment of compensation in accordance with the provisions of
4 this chapter for personal injury or death that resulted from

5 (1) an attempt on the part of the applicant to prevent the commission of
6 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
7 officer to do so, or aiding a victim of crime; or

8 (2) the commission or attempt on the part of one other than the
9 applicant to commit any of the following offenses:

10 (A) murder in any degree;

11 (B) manslaughter;

12 (C) criminally negligent homicide;

13 (D) assault in any degree;

14 (E) kidnapping;

15 (F) sexual assault in any degree;

16 (G) sexual abuse of a minor;

17 (H) robbery in any degree;

18 (I) threats to do bodily harm;

19 (J) driving while under the influence of an alcoholic beverage,
20 inhalant, or controlled substance or another crime resulting from the operation
21 of a motor vehicle, boat, or airplane when the offender is under the influence
22 of an alcoholic beverage, inhalant, or controlled substance; [OR]

23 (K) arson in the first degree;

24 (L) sex trafficking in violation of AS 11.66.110 or

25 11.66.130(a)(2);

26 (M) human trafficking in any degree; or

27 (N) unlawful exploitation of a minor.

28 * **Sec. 30.** AS 22.10.150 is amended to read:

29 **Sec. 22.10.150. Approval or rejection.** Each superior court judge is subject to
30 approval or rejection as provided in AS 15 (Alaska Election Code). The judicial
31 council shall conduct an evaluation of each judge before the retention election and

1 shall provide to the public information about the judge and may provide a
2 recommendation regarding retention or rejection. The information and any
3 recommendation shall be made public at least 60 days before the retention election.

4 The information shall include the judge's consideration of victims when imposing
5 sentence on persons convicted of felony offenses where the offenses involve
6 victims. The judicial council shall also provide the information and any
7 recommendation to the office of the lieutenant governor in time for publication in the
8 election pamphlet under AS 15.58.050. If a majority of those voting on the question
9 rejects the candidacy of a judge, the rejected judge may not for a period of four years
10 thereafter be appointed to fill any vacancy in the supreme court, court of appeals,
11 superior court, or district courts of the state.

12 * Sec. 31. AS 25.23.180(i) is amended to read:

13 (i) Proceedings for the termination of parental rights on the grounds set out in
14 (c)(3) of this section do not affect the rights of a victim of sexual assault, sexual abuse
15 of a minor, or incest to obtain legal and equitable civil remedies for all injuries and
16 damages arising out of the perpetrator's conduct.

17 * Sec. 32. AS 25.23.240(10) is amended to read:

18 (10) "sexual assault" means a sexual offense defined in AS 11.41.410 -
19 11.41.427 [AS 11.41.410 OR 11.41.420];

20 * Sec. 33. AS 33.20.010(a) is amended to read:

21 (a) Notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner
22 convicted of an offense against the state or a political subdivision of the state and
23 sentenced to a term of imprisonment that exceeds three days is entitled to a deduction
24 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner
25 follows the rules of the correctional facility in which the prisoner is confined. A
26 prisoner is not eligible for a good time deduction if the prisoner has been sentenced

27 (1) to a mandatory 99-year term of imprisonment under
28 AS 12.55.125(a) after June 27, 1996;

29 (2) to a definite term under AS 12.55.125(l); or

30 (3) for a sexual felony under AS 12.55.125(i)

31 (A) and has one or more prior sexual felony convictions as

1 determined under AS 12.55.145(a)(4); or

2 **(B) that is an unclassified or a class A felony.**

3 * **Sec. 34.** AS 44.23.080(a) is amended to read:

4 (a) If there is reasonable cause to believe that an Internet service account has
5 been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125
6 - 11.61.128, and that the identity, address, and other information about the account
7 owner will assist in obtaining evidence that is relevant to the offense, a law
8 enforcement officer may apply to the attorney general **or the attorney general's**
9 **designee** for an administrative subpoena to obtain the business records of the Internet
10 service provider located inside or outside of the state.

11 * **Sec. 35.** AS 44.23.080(b) is amended to read:

12 (b) If an application meets the requirements of (a) of this section, the attorney
13 general **or the attorney general's designee** may issue an administrative subpoena to
14 the Internet service provider requiring the production of the following records:

- 15 (1) the name and other identifying information of the account holder;
16 (2) the address and physical location associated with the account;
17 (3) a description of the length of service, service start date, and types
18 of service associated with the account.

19 * **Sec. 36.** AS 44.23.080(e) is amended to read:

20 (e) If the Internet service provider refuses to obey a subpoena issued under (b)
21 of this section, the superior court may, upon application of the attorney general **or the**
22 **attorney general's designee**, issue an order requiring the Internet service provider to
23 appear at the office of the attorney general with the information described in the
24 subpoena.

25 * **Sec. 37.** AS 44.23.080 is amended by adding a new subsection to read:

26 (i) For purposes of this section, the attorney general's designee may be the
27 deputy attorney general of the division of the Department of Law that has
28 responsibility for civil cases or the division of the Department of Law that has
29 responsibility for criminal cases.

30 * **Sec. 38.** AS 47.10.086(c) is amended to read:

31 (c) The court may determine that reasonable efforts of the type described in

1 (a) of this section are not required if the court has found by clear and convincing
2 evidence that

3 (1) the parent or guardian has subjected the child to circumstances that
4 pose a substantial risk to the child's health or safety; these circumstances include
5 abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

6 (2) the parent or guardian has

7 (A) committed homicide under AS 11.41.100 - 11.41.130 of a
8 parent of the child or of a child;

9 (B) aided or abetted, attempted, conspired, or solicited under
10 AS 11.16 or AS 11.31 to commit a homicide described in (A) of this
11 paragraph;

12 (C) committed an assault that is a felony under AS 11.41.200 -
13 11.41.220 and results in serious physical injury to a child; or

14 (D) committed the conduct described in (A) - (C) of this
15 paragraph that violated a law or ordinance of another jurisdiction having
16 elements similar to an offense described in (A) - (C) of this paragraph;

17 (3) the parent or guardian has, during the 12 months preceding the
18 permanency hearing, failed to comply with a court order to participate in family
19 support services;

20 (4) the department has conducted a reasonably diligent search over a
21 time period of at least three months for an unidentified or absent parent and has failed
22 to identify and locate the parent;

23 (5) the parent or guardian is the sole caregiver of the child and the
24 parent or guardian has a mental illness or mental deficiency of such nature and
25 duration that, according to the statement of a psychologist or physician, the parent or
26 guardian will be incapable of caring for the child without placing the child at
27 substantial risk of physical or mental injury even if the department were to provide
28 family support services to the parent or guardian for 12 months;

29 (6) the parent or guardian has previously been convicted of a crime
30 involving a child in this state or in another jurisdiction and, after the conviction, the
31 child was returned to the custody of the parent or guardian and later removed because

1 of an additional substantiated report of physical or sexual abuse by the parent or
2 guardian;

3 (7) a child has suffered substantial physical harm as the result of
4 abusive or neglectful conduct by the parent or guardian or by a person known by the
5 parent or guardian and the parent or guardian knew or reasonably should have known
6 that the person was abusing the child;

7 (8) the parental rights of the parent have been terminated with respect
8 to another child because of child abuse or neglect, the parent has not remedied the
9 conditions or conduct that led to the termination of parental rights, and the parent has
10 demonstrated an inability to protect the child from substantial harm or the risk of
11 substantial harm;

12 (9) the child has been removed from the child's home on at least two
13 previous occasions, family support services were offered or provided to the parent or
14 guardian at those times, and the parent or guardian has demonstrated an inability to
15 protect the child from substantial harm or the risk of substantial harm; [OR]

16 (10) the parent or guardian is incarcerated and is unavailable to care
17 for the child during a significant period of the child's minority, considering the child's
18 age and need for care by an adult; or

19 **(11) the parent or guardian**

20 **(A) has sexually abused the child or another child of the**
21 **parent or guardian; or**

22 **(B) is registered or required to register as a sex offender or**
23 **child kidnapper under AS 12.63.**

24 * **Sec. 39.** AS 47.17.020(a) is amended to read:

25 (a) The following persons who, in the performance of their occupational
26 duties, or with respect to (8) of this subsection, in the performance of their appointed
27 duties, have reasonable cause to suspect that a child has suffered harm as a result of
28 child abuse or neglect shall immediately report the harm to the nearest office of the
29 department:

30 (1) practitioners of the healing arts;

31 (2) school teachers and school administrative staff members of public

1 and private schools;

2 (3) peace officers and officers of the Department of Corrections;

3 (4) administrative officers of institutions;

4 (5) child care providers;

5 (6) paid employees of domestic violence and sexual assault programs,
6 and crisis intervention and prevention programs as defined in AS 18.66.990;

7 (7) paid employees of an organization that provides counseling or
8 treatment to individuals seeking to control their use of drugs or alcohol;

9 (8) members of a child fatality review team established under
10 AS 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created
11 under AS 47.14.300;

12 **(9) athletic coaches.**

13 * **Sec. 40.** AS 47.17.290 is amended by adding a new paragraph to read:

14 (17) "athletic coach" includes a paid leader or assistant of a sports team
15 in a public or private school, in a public or private postsecondary institution, or
16 sponsored by a municipality of the state or other local government organization, or of
17 a sports team that receives public funding.

18 * **Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

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

22 (9) Restriction on Availability of Certain Material. Notwithstanding
23 (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy,
24 photograph, duplicate, or otherwise reproduce any material prohibited under
25 AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the
26 prosecuting attorney makes the material reasonably available for inspection by the
27 defendant and defense counsel. The material shall be considered to be made
28 reasonably available to the defendant or defense counsel if the prosecuting attorney
29 provides, at a law enforcement or prosecution facility, ample opportunity for
30 inspection, viewing, and examination of the material by the defendant and the
31 defendant's attorney. If the defendant is not represented by counsel and demonstrates a

1 need to view the material, the court shall make arrangements for the defendant to be
2 supervised while viewing the material. If the defendant or the defendant's attorney
3 identifies an expert who must view the material, the court shall make arrangements for
4 the court or the law enforcement agency that possesses it to send the material directly
5 to the expert.

6 * Sec. 42. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 DIRECT COURT RULE AMENDMENT. Rule 32.1(b)(1), Alaska Rules of
9 Criminal Procedure, is amended to read:

10 (1) Contents and Filing. If the court directs the Department of
11 Corrections to prepare a presentence report, the report shall be filed with the court and
12 served on counsel at least 30 days before the sentencing hearing, or 30 days before the
13 presentencing hearing, if one is scheduled. The report shall contain all of the
14 defendant's prior criminal convictions and findings of delinquency and any other
15 information about the defendant's characteristics, financial condition, and the
16 circumstances affecting the defendant's behavior that may be helpful in fashioning the
17 defendant's sentence, a victim impact statement, and any other information required by
18 the judge. **If the crime involved a victim, the court may not accept a report that**
19 **does not include a victim's impact statement, unless the report explains the**
20 **reason why the victim or the victim's representative could not be interviewed.**

21 The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 -
22 12.61.150 and AS 12.55.022.

23 * Sec. 43. The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 DIRECT COURT RULE AMENDMENT. Rule 32.2(a), Alaska Rules of
26 Criminal Procedure, is amended to read:

27 (a) **Consideration of Victim's Statement.** If a victim as defined in
28 AS 12.55.185 prepares and submits a written statement, gives sworn testimony or
29 makes an unsworn oral presentation under AS 12.55.023, the court shall take the
30 content of the statement, testimony, or presentation into consideration when preparing
31 those elements of the sentencing report required by AS 12.55.025 that relate to the

1 effect of the offense on the victim, and when considering the need for restitution under
2 AS 12.55.045. The court shall also take the content of the victim's impact
3 statement in the presentence report into consideration in preparing the
4 sentencing report required under AS 12.55.025. The court also may take the content
5 of the statement, testimony, victim's impact statement, or presentation into
6 consideration for any other appropriate purpose.

7 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 DIRECT COURT RULE AMENDMENT. Rule 404(b)(2), Alaska Rules of
10 Evidence, is amended to read:

11 (2) In a prosecution for a crime involving a physical or sexual assault
12 or abuse of a minor, evidence of other acts by the defendant toward the same or
13 another child is admissible if admission of the evidence is not precluded by another
14 rule of evidence and if the prior offenses

15 (i) [OCCURRED WITHIN THE 10 YEARS
16 PRECEDING THE DATE OF THE OFFENSE CHARGED;

17 (ii)] are similar to the offense charged; and

18 (ii) [(iii)] were committed upon persons similar to the
19 prosecuting witness.

20 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 INDIRECT COURT RULE AMENDMENT. AS 12.45.045(a), as amended by sec. 16
23 of this Act, has the effect of amending Rule 404(a), Alaska Rules of Evidence, by providing,
24 with some exceptions, that a defendant must request admission of certain evidence about the
25 complaining witness five days before trial and by applying the rule to the conduct of the
26 complaining witness after the alleged offense.

27 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 APPLICABILITY. (a) Sections 2 - 15, 20, 21, 25, and 33 of this Act apply to offenses
30 committed on or after the effective date of this Act.

31 (b) Sections 16, 22 - 24, 28, and 29 of this Act apply to offenses committed before,

1 on, or after the effective date of this Act.

2 (c) Section 18 of this Act applies to sentencing hearings occurring on or after the
3 effective date of this Act.

4 (d) Section 19 of this Act applies to disposition hearings occurring in proceedings on
5 petitions to revoke probation filed on or after the effective date of this Act.

6 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 **CONDITIONAL EFFECT.** Section 16 of this Act, amending AS 12.45.045(a), takes
9 effect only if sec. 45 of this Act receives the two-thirds majority vote of each house required
10 by art. IV, sec. 15, Constitution of the State of Alaska.

11 * **Sec. 48.** This Act takes effect July 1, 2013.

170107201 7.11.13

Gave

Murray

28-GS1587Y.4
Gardner/Strasbaugh
4/4/13

AMENDMENT #1

OFFERED IN THE HOUSE

TO: CSSB 22(FIN)

- 1 Page 19, line 8, following "members":
- 2 Insert ", including athletic coaches,"
- 3
- 4 Page 19, lines 19 - 20:
- 5 Delete "i
- 6 (9) athletic coaches"
- 7
- 8 Page 19, line 22, following "team":
- 9 Insert "."
- 10
- 11 Page 19, lines 23 - 25:
- 12 Delete all material.

Dist By NEUMAN RE: SB 22

SB 218 Sex Offenders/Sentencing/Abuse Reports

Letter of Intent offered by sponsors Senator Bunde and Senator Guess. (statistics appear to be referenced from several national studies). Taken from Senate Floor session on 2-16-2006:

The Purposes And Rationale Underlying The Increase In Sentencing Ranges For Felony Sex Crimes In Alaska

Senate Bill 218 adopts longer sentences for, and closer supervision of, convicted sex offenders. These changes are appropriate in light of the following:

- (1) Statistical studies about sexual assault and abuse in America, and more specifically, in Alaska;
- (2) The growing body of knowledge about the actual number of victims per sex offender and the resistance of sex offenders to rehabilitative treatment;
- (3) The purposes of criminal sentencing set out in AS 12.55.005 and *Chaney v. State*, 447 P.2d 441 (Alaska 1970);
- (4) The principles of penal administration set out Article I, section 12 of the Alaska Constitution that gives precedence to protection of the public and community condemnation; and
- (5) The rights of crime victims under Article I, section 24, of the Alaska Constitution.

Sexual assault and abuse in Alaska can be classified as a plague.

- Alaska has been ranked number one in the nation for 22 out of the last 29 years for sexual assault and abuse.
- Alaska has been number one in the nation for sexual assault since 1995. In addition, Alaska has never been ranked below number five in the nation for sexual assaults per capita (forcible rapes per 100,000 residents) since 1976, when data collection began.
- The State currently has approximately 2.5 times the national average for sexual assault.
- Alaska has about 4,300 registered sex offenders in our Alaskan communities.
 - Even with startlingly high sex offense rates, sexual abuse and assault are still largely unreported crimes (only 16 percent of victims report the assault); and arrest rates are also low (only 27 percent of reported sex crimes result in an arrest).
 - Therefore we can assume, the actual number of sex offenders in Alaska is significantly higher than 4,300 individuals.

Institutional treatment programs (cognitive-behavioral, relapse prevention and behavioral) provided to sex offenders both in other states and in Alaska have not proven to be particularly effective.

- Offenders who served time for sexual assault were four times as likely as those convicted of other crimes to be re-arrested for a new sexual assault.
- The more prior arrests an offender has, the greater their likelihood for being re-arrested for another sex crime.

- Forty-three percent of sex offenders re-offend within three years.
- Currently, 78.5 percent of sex offenders have at least one prior arrest and average 4.5 prior arrests.
- In Alaska, the statistics are even more startling:
 - of the 927 convicted sex offenders in custody on January 24, 2006, 93 percent have at least one prior arrest
 - the average number of arrests per sex offender is 11.75; and more than 41 percent have been arrested ten or more times.
- Sex offenders average 110 victims and 318 offenses before being caught.
- Sex offenders admitted to 3.5 times the number of victims and 4.5 times the number of offenses when given a polygraph exam as compared to questioning without a polygraph.
- Offenders under polygraph examination also report an earlier age when they began offending than was previously known.
- Sex offenders go undetected for an average of 16 years, which explains how they can have so many victims.
 - It also suggests that offenders begin raping when they are relatively young, and indeed the average age of onset of the criminal sexual behavior for offenders is between 12 and 16 years.
 - Early detection and intervention in sex offenses committed by juveniles may be one promising way of addressing sex crimes generally, especially in the future.
 - However, sex offenses committed by juveniles are a topic that is beyond the scope of Senate Bill 218, which deals with the immediate plague facing Alaska involving adult sex offenders.

The Alaska appellate courts have sometimes questioned whether decisions by the legislature in setting presumptive sentences were intended to achieve the results they did; in some instances the courts have reduced the presumptive sentence to avoid "anomalous" results.

- In the case of sentence ranges imposed by Senate Bill 218, the result of greatly increased sentences are, indeed, intended. The increased sentences in Senate Bill 218 are in recognition that the harm and severity of injury caused by sex offenses has been greatly under-recognized by the criminal justice system.
- Sex offenses are crimes of violence and much like domestic violence they are about power and control.
- The victims are typically vulnerable due to their age, incapacity or the offender's position of authority.

Sex offenses against young victims are particularly heinous and the sentences in Senate Bill 218 reflect the increased seriousness of choosing a young victim by increasing the sentencing ranges for the most serious offenses committed against victims less than 13 years of age.

- In drafting Senate Bill 218, the conduct covered by each category of offense was carefully examined.
- Reclassification of conduct was considered, and for some offenses implemented.
- The sentencing ranges contained in Senate Bill 218 reflect the legislature's view of the appropriate sentence for the cases involving the conduct described by the particular statute. The ranges are large enough to accommodate the wide-ranging types of conduct contained within these statutes - particularly in the B and C felony range.

In Senate Bill 218, the low end of the range for the most serious sex offenses is higher than the mandatory minimum or low end of presumptive sentences for some crimes that result in death. This is intentional and not anomalous.

- Sex offenses cause great harm to victims, their families and to the entire community.
- Death has always been seen as the greatest harm that could be inflicted by an offender. But death can be caused by reckless conduct. Sex offenses are not reckless - they are at the very least knowing, and often intentional.

The proportionality of the sentences imposed by Senate Bill 218 to other offenses in our criminal code was considered. The severity of the sentences in comparison to other crimes was intentional.

- The "prior criminal history of the defendant and the likelihood of rehabilitation" is another recognized consideration in sentencing.
- The sentence ranges in Senate Bill 218 start at increasingly higher levels when an offender has a prior record of both non-sex related felonies and sexual felonies. This change takes into account the decreased potential for rehabilitation with each successive conviction. It also recognizes the lack of effective treatment for most sex offenders.

The "need to confine the defendant to prevent further harm to the public" is a factor also considered by Senate Bill 218.

- The evidence that sex offenders have multiple victims and often do not respond to treatment supports the need for confinement to protect the public.
- Another sentencing consideration is "the circumstances of the offense and the extent to which the offense harmed the victim or abuse and assault suffer from the effects of the crime for years.
- When sexually abused boys are not treated, it makes it more likely they will be involved in committing crimes, suicide, drug use and continued sexual abuse. Young girls who are sexually assaulted are more likely to abuse alcohol and drugs and are six times more likely to develop psychiatric disorders and 13 times more likely to attempt suicide.

Although judges must take into account "the circumstances of the offense and the extent to which the offense harmed the victim" on a case-by-case basis in determining the specific

sentence within a statutory range, in setting those ranges the legislature must take into account the harm to victims generally, and the extent which sex crimes impact the community as a whole.

With the latter criteria and in light of the aforementioned statistics, we the Alaska State Legislature find sentences for sex offenses should be increased significantly.

- The effect of sex offenses on the victim, and the victim's family, is enormous. But the effect on the fabric of society is no less important to consider in setting sentence ranges. In many places in Alaska, women are afraid to walk alone in their neighborhoods at night, or to let their children go to the park or the mall, because of fear that they too may become a victim.

The estimated financial costs to society are also significant.

- In 2003, 521 victims reported sexual assault in Alaska.
- The National Institute of Justice estimates that the average cost of caring for each victim is \$86,500; thus every year Alaska spends about \$45 million on sexual assault victims.

"The effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct" is also a consideration.

- The failure of treatment in rehabilitating most sex offenders provides little hope that longer sentences will deter future crimes.
- However, some categories of sex offenses, such as the teacher or coach who may be tempted to take advantage of a student, are more likely to be deterred by the threat of a long jail term.

For most offenders the hope for deterrence in Senate Bill 218 is provided by the increased probation periods and the use of the polygraph while on probation or parole.

- The polygraph will help to provide an early warning system during supervision that will put the probation or parole officer on notice that corrective action is necessary due to signs of deception or offending behavior.
- The use of the polygraph should prevent at least some future victimization from occurring.
- "Community condemnation," "reaffirmation of societal norms," and "restoration of the victim and the community" are the other recognized sentencing factors.

There has been a public outcry recently over the failure of our criminal justice system to provide for the protection of the public from sex offenders.

- The community particularly condemns offenses against children.
- The increased sentences of Senate Bill 218 send the message to offenders and society: this behavior will not be tolerated nor accepted.
- The community has good reason to be shocked at the sobering statistics relating to sex offenses in Alaska, and to be outraged at the conduct underlying those offenses.

Senate Bill 218 sets forth a sentencing scheme that sets a higher presumptive range, particularly for young victims.

- Although every sex crime is heinous, the community particularly condemns those who prey on very young victims. Additionally, as indicated above, offenders who target young victims are more likely to re-offend.
- The increased sentences for offenders with young victims recognize these important sentencing factors – community condemnation, reaffirmation of societal norms and prospects for rehabilitation.

Finally, in enacting Senate Bill 218, it is recognized that there may be the "exceptional" case or circumstance that cries out for mercy.

- The criminal justice system often weeds these cases out in the referral and plea bargaining process.
- However, by application of existing statutory mitigating factors under AS 12.55.155, or by referral to the three-judge panel "safety net" under AS 12.55.175, the courts of Alaska will be able to avoid manifestly unjust sentences in appropriate cases.
- At the same time, the citizens of Alaska will benefit from the increase in safety achieved by longer incarceration of sex offenders followed by enhanced supervision using the polygraph.

Letter of Intent references

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5. Sex Offender Treatment Evaluation Project Report (SOTEP), January 2005
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7. Alaska Department of Corrections, Research Section, January 2006
8. Ahlmeyer, Heil, McKee, and English "The Impact of Polygraph on Admissions of Crossover Offending Behavior in Adult Sexual Offenses", *Sexual Abuse: A Journal of Research and Treatment*, 12(2): 123-138, 2000
9. Wilcox and Sosnowski "Polygraph examination of British sexual offenders: A pilot study on sexual history disclosure testing", *Journal of Sexual Aggression*, 11(1), 3-25: 2005
10. *New v. State*, 714 P.2d 378 (Alaska 1986); *Pruett v. State*, 742 P.2d 257 (Alaska App. 1987); *Smith v. State*, 28 P.3d 323 (Alaska App. 2001 AS 12.55.005(1))
11. AS 12.55.125 (b)
12. AS 12.55.005(2) and Chaney
13. AS 12.55.005(3)
14. AS 12.55.005(4)
15. Holmes, University of Pennsylvania School of Medicine
16. Rape in America: Report to the Nation, 1992
17. The National Institute of Justice
18. AS 12.55.005(5)
19. AS 12.55.005(6) and (7)



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Justice for Native Children Project



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Representative Bill Stoltze
House Finance Committee
Juneau, Alaska

RE: HB 22

Dear Representative Stoltze,

I testified regarding SB 22 when it was in the Senate, but was unavailable when your Finance Committee was reviewing the bill. I am a member of the Alaska Children's Justice Act Task Force which is an appointed committee <http://dhss.alaska.gov/ocs/Pages/childrensjustice/default.aspx> and also the Alaska Maternal Infant/Child Death Review Team. I have been involved in providing training for "mandatory reporters of child abuse" in Alaska for many years in my role as a child victim advocate.

The Alaska Children's Justice Act Task Force developed a CD which is **FREE** and available to anyone who works with children in Alaska – whether a volunteer or paid position. This CD is also available online at <http://dhss.alaska.gov/ocs/Pages/childrensjustice/mandatoryreporting.aspx> and includes handouts and training materials.

I continue to be concerned by the challenges that have been raised to the language which would require individuals who work with children in any capacity to be required to report concerns about the safety of children. It is hard for me to comprehend how those trusted by parents/caregivers with the safety of children could hear or witness concerns about a child's safety and not want someone to help the child. Fortunately there are several groups who have voluntarily educated themselves because they take the trust of children seriously even though they are not required by law to do so. These include many of the churches in Alaska, volunteer EMS and fire fighters.

As an advocate for children for more than 30 years, I feel very strongly that there are certain individuals who are in positions of responsibility where children (up to age 18) look to them for support, safety and guidance. These people *who children have a reason to trust* should be required to report known or suspected child abuse. These are the people **who children tell** about abuse - children tell people who they think will help to stop the abuse. We must honor the trust of our children and make sure these individuals are trained to respond and to report child abuse!

I urge you and your colleagues to require anyone who is in a paid position with responsibility, control or authority over children to receive the minimum training provided by the CD already available free in Alaska.

Sincerely,

Diane Payne, Director
Justice for Native Children

From: Carpeneti, R Anne D (LAW) <anne.carpeneti@alaska.gov>
Sent: Monday, April 08, 2013 9:44 AM
To: Helen Phillips; Rep. Bill Stoltze
Subject: SB 22 -- Training for mandatory reporters

Helen – Rep. Stoltze asked at the last hearing the name of the person who testified that training for mandatory (or for that matter, voluntary) reporters in the Senate Judiciary Committee.

Diane Payne, Director of Justice for the Native Children Center, testifies that she does training work for persons required to report if there is reason to believe that a child has been abused or neglected.

I spoke with her on the telephone this morning. She said that there is a free training CD available on the OCS (Office of Children's Services) website for persons who are mandatory reporters. It takes about half an hour to complete the training according to Ms. Payne.

Thank you.
Annie Carpeneti



ALASKA SCHOOL ACTIVITIES ASSOCIATION

4048 Laurel Street Suite 203 Anchorage, AK 99508 • PHONE: 907-563-3723 • FAX: 907-561-0720

April 5, 2013

House Finance Committee
Alaska State Legislature

Re: CS for Senate Bill 22

Dear Committee Members:

It is my understanding that the House Finance Committee will be hearing SB 22 in the near future. ASAA supports passage of the bill.

Alaska School Activities Association (ASAA) is the governing body of high school interscholastic sports and activities in Alaska. Over 200 high schools hold membership in ASAA and agree to follow a common set of standards for participation. ASAA sponsors a coach's education program.

There are currently more than 2,000 coaches in Alaska who work on a regular basis with school students and others in community club programs. It is not unusual for students to hold their coaches in high esteem and to confide in them. Thus, many coaches have a special relationship with their team members, frequently closer than a classroom teacher has with her/his students. Since a student may confide in a coach when he or she will not confide in other adults, it makes sense to include coaches in the list of those required to report suspected child abuse or neglect. This adds another layer of protection for our most vulnerable Alaskans without placing an undue burden on coaches or schools.

I applaud Governor Parnell for proposing this legislation.

Please feel free to contact me at 907-563-3723 if I can provide additional information.

Respectfully,

A handwritten signature in black ink, appearing to read 'Gary Matthews', with a long horizontal flourish extending to the right.

Gary Matthews
Executive Director
Alaska School Activities Association, Inc.



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Corrections

Office of the Commissioner

802 Third Street, Suite 212
Douglas, Alaska 99824
Main 907 465 4652
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April 4, 2013

The Honorable Bill Stoltze, Co-chair
The Honorable Alan Austerman, Co-Chair
House Finance Committee
State Capitol, Rm 519
Juneau, Alaska 99824

Dear Representatives Stoltze and Austerman:

At the April 3, 2013 hearing on SB 22, Representative Gara asked a question about how good time is applied to inmate sentences. Good time is time that can be deducted from a person's sentence if they follow the rules of the correctional facility where they are housed. Good time is fluid and based on many different factors which can have a pronounced effect on a person's sentence.

Anyone sentenced to a term of imprisonment that exceeds three days is eligible for a good time reduction of 33%. While this applies to most sentences, there are instances which will not allow for the application of good time. Good time may not be applied to:

- Anyone sentenced to a 99-year term of imprisonment under AS 12.55.125(a); or to a definite term of imprisonment under AS 12.55.125(l);
- Anyone convicted of a sex offense and who has been previously convicted of a sexual felony in this or any other jurisdiction;
- Anyone who is sentenced on or after July 15, 2004, and has previously served time that was not in a correctional facility does not get credit for the time previously served;
- Anyone incarcerated for contempt or for failure to pay a court-ordered fine or restitution;
- Anyone serving time in a treatment program, private residence, or under electronic monitoring.

Additionally, good time may be taken when a person violates the rules of the institution where they are incarcerated. The reduction in good time for punitive reasons typically does not amount to all of the good time that the person would have been eligible for and depends upon the nature

of the rule violation. A person may have their good time restored if they do not receive further infractions for a specified period of time.

If you have any further questions please do not hesitate to contact my office.

Sincerely,

Handwritten signature of Joseph Schmidt in black ink, appearing as a stylized cursive script.

Joseph Schmidt

Commissioner

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Supreme Court of Alaska.
John DOE, Appellant,
v.
STATE of Alaska, DEPARTMENT OF PUBLIC
SAFETY, Appellee.

No. S-10338.
June 11, 2004.

Background: Defendant, who was convicted of sex offense and had his conviction set aside, filed for injunctive and declaratory relief, alleging that enforcing sex offender registration requirement under Alaska Sex Offender Registration Act (ASORA) against him violated his constitutional rights. The Superior Court, Fourth Judicial District, Fairbanks, Richard D. Savell, J., granted summary judgment to defendant. Department of Public Safety appealed. The Supreme Court remanded Department's appeal for reconsideration. On remand, the Superior Court, Fourth Judicial District, Fairbanks, Richard D. Savell, J., vacated earlier judgment, denied summary judgment to defendant, and granted summary judgment to Department. Defendant appealed.

Holdings: The Supreme Court, Eastaugh, J., held that:

- (1) application of Alaska Sex Offender Registration Act (ASORA) to defendant violated state constitution's guarantee of due process, and
- (2) state failed to demonstrate compelling governmental interest as required to justify restriction of fundamental liberty and procedural interests of defendant, overruling *Patterson v. State*, 985 P.2d 1007.

Reversed and remanded.

Matthews, J., filed concurring opinion.

West Headnotes

[1] Appeal and Error 30 ↪893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate
Court
30k893(1) k. In General. Most
Cited Cases

The Supreme Court reviews de novo questions of law, including issues of statutory interpretation.

[2] Constitutional Law 92 ↪961

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional
Questions
92VI(C)I In General
92k960 Judicial Authority and Duty in
General
92k961 k. In General. Most Cited
Cases

(Formerly 92k45)

The Supreme Court applies its independent judgment in deciding whether a statute violates state constitution.

[3] Courts 106 ↪97(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling
or as Precedents
106k97 Decisions of United States
Courts as Authority in State Courts
106k97(1) k. In General. Most
Cited Cases

State courts are not necessarily bound by the United States Supreme Court's decisions when they consider issues of state constitutional law.

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[4] Constitutional Law 92 ↪ 961

92 Constitutional Law
 92VI Enforcement of Constitutional Provisions
 92VI(C) Determination of Constitutional Questions
 92VI(C)1 In General
 92k960 Judicial Authority and Duty in General
 92k961 k. In General. Most Cited Cases
 (Formerly 92k45)
 Supreme Court is final authority on whether state statute violates state constitution.

[5] Constitutional Law 92 ↪ 3847

92 Constitutional Law
 92XXVII Due Process
 92XXVII(A) In General
 92k3847 k. Relationship to Other Constitutions. Most Cited Cases
 (Formerly 92k251)
 Federal law does not preclude state constitution from providing more rigorous protections for due process rights of residents of state. U.S.C.A. Const.Amend. 14.

[6] Courts 106 ↪ 97(5)

106 Courts
 106II Establishment, Organization, and Procedure
 106II(G) Rules of Decision
 106k88 Previous Decisions as Controlling or as Precedents
 106k97 Decisions of United States Courts as Authority in State Courts
 106k97(5) k. Construction of Federal Constitution, Statutes, and Treaties. Most Cited Cases
 When the Alaska Supreme Court interprets a provision in the state constitution, it is not bound by the United States Supreme Court's interpretation of corresponding provision in federal constitution.

[7] Constitutional Law 92 ↪ 1079

92 Constitutional Law
 92VII Constitutional Rights in General
 92VII(B) Particular Constitutional Rights
 92k1079 k. Personal Liberty. Most Cited Cases
 (Formerly 92k83(1))
 When state encroaches on fundamental aspects of right to liberty, it must demonstrate a compelling government interest and absence of a less restrictive means to advance that interest.

[8] Sentencing and Punishment 350H ↪ 1804

350H Sentencing and Punishment
 350HIX Probation and Related Dispositions
 350HIX(A) In General
 350Hk1803 Suspension of Sentence
 350Hk1804 k. In General. Most Cited Cases
 Ordinarily, when a judge opts to order a suspended sentence the judge has evaluated defendant's background and offense and decided defendant deserves a chance to show that he or she has "reformed" and therefore should be rewarded with a clean record; one of the purposes of the set-aside statute is to provide defendants with an incentive to meet conditions of their probation. AS 12.55.085.

[9] Constitutional Law 92 ↪ 1245

92 Constitutional Law
 92XI Right to Privacy
 92XI(B) Particular Issues and Applications
 92k1237 Sex and Procreation
 92k1245 k. Sex Offenders. Most Cited Cases
 (Formerly 92k83(1))

Sentencing and Punishment 350H ↪ 1809

350H Sentencing and Punishment
 350HIX Probation and Related Dispositions
 350HIX(A) In General
 350Hk1803 Suspension of Sentence
 350Hk1809 k. Effect of Suspension.

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Most Cited Cases

Defendant, who was convicted of sex offense and had his conviction set aside after probationary period expired without imposition of sentence, had fundamental right to be let alone with respect to conviction that was set aside; defendant was granted suspended imposition of sentence (SIS), after he satisfied conditions, confirming court's prior findings that he was unlikely to reoffend, set-aside created settled expectation that state would not subsequently use conviction that was set aside as basis for imposing brand-new affirmative burdens on defendant, and findings and set-aside conferred on defendant fundamental right to be let alone. AS 12.55.085.

[10] Sentencing and Punishment 350H ↪1953

350H Sentencing and Punishment

350HIX Probation and Related Dispositions

350HIX(F) Disposition of Offender

350Hk1953 k. Discharge of Probationer.

Most Cited Cases

An order setting aside a conviction reflects a substantial showing of rehabilitation.

[11] Constitutional Law 92 ↪4343

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)15 Mental Health

92k4341 Sexually Dangerous Persons;

Sex Offenders

92k4343 k. Classification and Registration; Restrictions and Obligations. Most Cited Cases

(Formerly 92k253(4))

Mental Health 257A ↪433(2)

257A Mental Health

257AIV Disabilities and Privileges of Mentally Disordered Persons

257AIV(E) Crimes

257Ak433 Constitutional and Statutory Provisions

257Ak433(2) k. Sex Offenders. Most Cited Cases

Application of Alaska Sex Offender Registration Act (ASORA), which required persons convicted of sex offenses to register with state, to defendant, whose conviction for sex offense was set aside before ASORA became effective, violated state constitution's guarantee of due process; ASORA compelled affirmative post-discharge conduct under threat of prosecution, conviction, since set aside, was event that triggered duties, requirement impaired defendant's post-set-aside freedom to be let alone, and thus, it violated defendant's liberty interests to require him to register under ASORA. Const. Art. I, § 6; AS 12.55.085(e).

[12] Constitutional Law 92 ↪4343

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)15 Mental Health

92k4341 Sexually Dangerous Persons; Sex Offenders

92k4343 k. Classification and Registration; Restrictions and Obligations. Most Cited Cases

(Formerly 92k253(4))

Mental Health 257A ↪433(2)

257A Mental Health

257AIV Disabilities and Privileges of Mentally Disordered Persons

257AIV(E) Crimes

257Ak433 Constitutional and Statutory Provisions

257Ak433(2) k. Sex Offenders. Most Cited Cases

State failed to demonstrate compelling governmental interest as required to justify restriction of fundamental liberty and procedural interests of defendant, whose conviction for sex offense was set

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aside, by requiring defendant to comply with Alaska Sex Offender Registration Act (ASORA), which became effective after defendant's conviction was set aside; absent likelihood defendant would commit new sex offenses, there was no compelling government interest in requiring defendant to comply with ASORA, and given ASORA's burden on defendant's liberty interests and its interference with his settled expectations, guarantee of due process prevented state from requiring defendant to satisfy ASORA; overruling *Patterson v. State*, 985 P.2d 1007. Const. Art. 1, § 6; AS 12.55.085.

[13] Sentencing and Punishment 350H ↪ 1953

350H Sentencing and Punishment
350HIX Probation and Related Dispositions
350HIX(F) Disposition of Offender
350Hk1953 k. Discharge of Probationer.
Most Cited Cases

Although a set-aside order does not erase reality of former conviction, or entitle defendant to proclaim his innocence, it does bar state from using conviction or underlying misconduct as grounds for compelling defendant to act as though he remains convicted, has never been rehabilitated, and continues to pose a public danger. AS 12.55.085.

*399 Andrew Harrington, Fairbanks, for Appellant.

Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

Before: FABE, Chief Justice, MATTHEWS, EASTAUGH, and BRYNER, Justices.

OPINION

EASTAUGH, Justice.

I. INTRODUCTION

This appeal presents a discrete question left unanswered by the United States Supreme Court in its recent decision rejecting a constitutional challenge to Alaska's sex offender registration statute. After

he was convicted of a sex offense, John Doe ^{FN1} received a suspended imposition of sentence (SIS), subject to satisfying specified conditions. When Doe's probationary period expired without imposition of sentence, the superior court set aside his conviction under authority of AS 12.55.085(e). The Alaska Sex Offender Registration Act (ASORA) ^{FN2} became effective soon after the court set aside Doe's conviction. ASORA requires persons convicted of sex offenses to register with the state and to provide and periodically update *400 detailed personal information that the state then publishes on the Internet. We conclude that applying ASORA to a person whose conviction was set aside before ASORA became specifically applicable to convictions that were set aside violates the Alaska Constitution's guarantee of due process. We therefore remand for entry of an order enjoining the state from publishing Doe's personal information and requiring it to return all information Doe provided when he registered under protest.

FN1. "John Doe" is a pseudonym.

FN2. AS 12.63.010-.100.

II. FACTS AND PROCEEDINGS

John Doe was found guilty after a bench trial on two counts of child sexual abuse for offenses he committed in 1987. He appeared before the superior court for sentencing in 1989. The court entered an order suspending the imposition of sentence, conditioned on Doe serving probation for three years, spending ninety days at a halfway house, completing 200 hours of community work service, and receiving mental health counseling. After one count was later dismissed, the superior court entered a "corrected modified order" on the remaining count in May 1991. The 1991 order again granted Doe a suspended imposition of sentence (SIS). So far as we can determine from the record, the state did not object to the 1991 SIS. In April 1994, as Doe's period of probation was expiring, the Alaska Department of Law gave the superior court written notice that the state did not oppose setting aside Doe's conviction; the superior court then entered a

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“discharge order.” The discharge order observed that the period of probation had expired without imposition of sentence and that Doe was “entitled to be discharged” under AS 12.55.085(d) and Alaska Rule of Criminal Procedure 35.2; it consequently ordered that the “[j]udgment of conviction is hereby set aside.”^{FN3}

FN3. AS 12.55.085 gives courts authority to suspend the imposition of sentence. At Doe's 1989 sentencing hearing, Superior Court Judge pro tem. Jane F. Kauvar, reading a passage in the presentence report to say that Doe had been offered an SIS before trial, announced an intention to consider an SIS. A 1988 amendment to AS 12.55.085 prohibited suspending the imposition of sentences of persons convicted of certain crimes, including sex offenses. Ch. 36, § 2, SLA 1988 (codified as AS 12.55.085(f)). The court reasoned that it was appropriate to give Doe an SIS because there would have been no question about Doe's eligibility for an SIS for his 1987 offense had he been sentenced earlier, before the amendment took effect. The prosecutor brought the amendment to the court's attention, but did not unequivocally argue that an SIS would be illegal. After the court granted the SIS, the prosecutor raised no objection. The state did not appeal the SIS. After Doe's probation expired in 1994, the state filed its written non-opposition to setting aside the conviction and did not argue that the 1988 amendment prevented the court from setting Doe's conviction aside.

The legislature enacted the Alaska Sex Offender Registration Act (ASORA) in May 1994.^{FN4} ASORA became effective August 10, *401 1994.^{FN5} It requires sex offenders present in Alaska to register with the Alaska Department of Corrections, local police, or the Alaska State Troopers and to provide and update specified personal information.

^{FN6} The act requires the Alaska Department of Public Safety to make most of that information available to the public.^{FN7} All fifty states and the District of Columbia have some form of sex offender registration act.^{FN8} These statutes are commonly known as “Megan's Laws” after Megan Kanka, a seven-year-old New Jersey girl who was sexually assaulted and murdered in 1994 by a neighbor who had two prior convictions for sex offenses against children.^{FN9}

FN4. Ch. 41, § 4, SLA 1994 (codified as AS 12.63.010). Following amendment in 1999, ASORA defines “sex offender” as follows: “ ‘sex offender or child kidnaper’ means a person convicted of a sex offense or child kidnapping in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999.” AS 12.63.100(5).

ASORA defines “sex offense” as follows:

(6) “sex offense” means

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

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

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first

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degree; or

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

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

(i) AS 11.41.410–11.41.438;

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

(iii) AS 11.41.450–11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 or 11.61.127;

(vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense; or

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

AS 12.63.100(6).

FN5. Ch. 41, SLA 1994.

FN6. AS 12.63.010.

FN7. AS 18.65.087.

FN8. Wayne A. Logan, *Liberty Interests in the Preventive State: Procedural Due Process and Sex Offender Community Notification Laws*, 89 J.CRIM. L. & CRIMINOLOGY 1167, 1172 (1999). In 1994 the United States Congress enacted the Jacob

Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071 (1994 & 2003). This legislation obligated every state to enact a sex offender registration program at least meeting minimum guidelines specified by the United States Attorney General or forfeit ten percent of a federal funding grant for law enforcement. 42 U.S.C. § 14071(g)(2)(A).

FN9. See *Smith v. Doe*, 538 U.S. 84, 89, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003); Logan, *supra* note 8, at 1172.

ASORA requires each registrant to provide extensive personal information: name, address, and place of employment; the crime triggering the duty to register and the date and place of the conviction; all aliases used; a description of any personal identifying features; driver's license number; a description and the license plate number and vehicle identification number of any vehicles the registrant drives or has access to; anticipated address changes; and information about any psychological treatment received.^{FN10} Registrants must also allow themselves to be photographed and fingerprinted.^{FN11} Registrants must update their information if it changes.^{FN12} A registrant's fingerprints, driver's license number, anticipated address changes, and psychological treatment history are kept confidential.^{FN13} The remaining information is made available to the general public through a central registry maintained by the Alaska Department of Public Safety and posted on the Internet.^{FN14}

FN10. AS 12.63.010(b)(1)(A)-(H).

FN11. AS 12.63.010(b)(2).

FN12. AS 12.63.010(d)(1).

FN13. AS 18.65.087(b).

FN14. See Alaska Dept. of Public Safety, *Sex Offender Registration Central Re-*

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gistry, at ht-
tp://www.dps.state.ak.us/nSorcr/asp/.

The Department of Public Safety promulgated a regulation in 1995 defining "conviction" for purposes of ASORA to include findings of guilt by a court "whether or not the judgment was thereafter set aside under AS 12.55.085." ^{FN15} In 1999 the legislature amended ASORA's statutory definition of "conviction" to include judgments that had been set aside under AS 12.55.085.^{FN16} The state argues that ASORA applies to Doe. We assume, per the state's assertion, that it does.

FN15. 13 Alaska Administrative Code (AAC) 09.900(a)(2) (1996) (am.11/3/99).

FN16. Chapter 54, section 15, SLA 1999, codified as AS 12.63.100(3), provides:

"conviction" means that an adult, or a juvenile charged as an adult under AS 47.12 or a similar procedure in another jurisdiction, has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty but mentally ill by a court or jury, of a sex offense or child kidnapping regardless of whether the judgment was set aside under AS 12.55.085 or a similar procedure in another jurisdiction or was the subject of a pardon or other executive clemency; "conviction" does not include a judgment that has been reversed or vacated by a court.

Doe did not initially register when ASORA was enacted in 1994. He registered under protest in November 1997 after a letter from the state told him that ASORA required him to register and warned him of the criminal *402 consequences for failing to register.^{FN17} A week after he registered, Doe filed for injunctive and declaratory relief, alleging that enforcing the registration requirement against him violated his constitutional rights and that the Department of Public Safety did not have

the authority to promulgate the regulation defining "conviction" to include convictions that were set aside.^{FN18}

FN17. See AS 11.56.840 (defining failure to register under ASORA as class A misdemeanor). Class A misdemeanors are punishable by up to one year in jail and by a fine up to \$10,000. See AS 12.55.135(a), .035(b)(5).

FN18. AS 18.65.087 authorizes the department to maintain a central registry of all sex offenders required to register and to promulgate and adopt regulations necessary to effectuate ASORA's purpose. As noted above, the legislature in 1999 redefined "conviction" to include a "judgment ... set aside under AS 12.55.085 ." AS 12.63.100(3) (1999).

Superior Court Judge Richard D. Savell granted Doe a temporary restraining order that precluded the Department of Public Safety from publicizing his registration information; the court also allowed Doe to prosecute his lawsuit under a pseudonym. The superior court ultimately granted summary judgment to Doe, ruling that the department had overstepped the scope of its authority in defining "conviction" to include convictions that had been set aside. The superior court held that the legislature did not clearly indicate its intention to include "set-asides" in ASORA's registration requirement, and that the department's inclusion of set-asides therefore exceeded the department's authority to promulgate regulations effectuating ASORA's purpose.

The Department of Public Safety appealed these rulings to this court. We ordered the appeal stayed while the Alaska Court of Appeals considered in another case whether the department had authority to adopt 13 AAC 09.900(a)(2). The court of appeals ultimately concluded in that case, *State v. Otness*, that the regulation was valid because it was "consistent with the legislative purpose to pro-

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tect the public.”^{FN19}

FN19. *State v. Otness*, 986 P.2d 890, 892 (Alaska App.1999).

Given the court of appeals's decision in *Otness*, we remanded the department's appeal in Doe's case to the superior court for reconsideration. Judge Savell ultimately vacated his earlier judgment, denied summary judgment to Doe, and granted summary judgment to the department. The superior court based its decision on *Otness* and *Patterson v. State*.^{FN20} In *Patterson*, the court of appeals considered and rejected a sex offender's challenge to ASORA's constitutionality, holding that ASORA did not violate state or federal constitutional ex post facto, double jeopardy, due process, or equal protection provisions, or Alaska's constitutional guarantee of the right to privacy.^{FN21} Applying *Patterson*, the superior court in Doe's case rejected all of Doe's constitutional claims and upheld ASORA as applied to Doe.

FN20. *Patterson v. State*, 985 P.2d 1007 (Alaska App.1999).

FN21. *Id.* at 1011–18.

Doe appeals.

III. DISCUSSION

A. Standard of Review

[1][2] We review de novo questions of law, including issues of statutory interpretation.^{FN22} We apply our independent judgment in deciding whether a statute violates the Alaska Constitution.^{FN23}

FN22. *Boone v. Gipson*, 920 P.2d 746, 748 (Alaska 1996).

FN23. *Todd v. State*, 917 P.2d 674, 677 (Alaska 1996).

B. Decisions of the United States Supreme Court and the Ninth Circuit Rejecting Federal Challenges to the Alaska and Connecticut Sex Of-

fender Registration Acts Do Not Resolve the Issue Presented Here.

Before discussing Doe's state constitutional arguments, we address the effect of two recent decisions of the United States Supreme Court rejecting federal constitutional challenges to the sex offender registration *403 statutes of Alaska and Connecticut.^{FN24} Doe's case differs from the Supreme Court's cases in an important respect: the superior court granted Doe an SIS and set aside his conviction before ASORA became effective. Those cases did not require the Supreme Court to decide the question before us: whether applying ASORA to Doe would violate his due process rights given that he satisfied the conditions of the SIS and the trial court set aside his conviction before ASORA became specifically applicable to convictions that were set aside.

FN24. *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003); *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003).

Smith v. Doe resolved a federal constitutional challenge to the Alaska Sex Offender Registration Act.^{FN25} The United States Court of Appeals for the Ninth Circuit had held that ASORA violated the ex post facto clause of the United States Constitution.^{FN26} Holding on certiorari that it did not, the Supreme Court reversed and remanded to the Ninth Circuit for consideration of the registrant's remaining federal constitutional arguments.^{FN27} We are not bound here by the Court's decision upholding the Alaska statute, because it decided only that ASORA did not violate the federal ex post facto clause. It did not turn on the state due process concepts that control our analysis in this appeal.

FN25. *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003). The “Doe” in the case now before us is not one of the two “Does” in *Smith*.

FN26. *Doe v. Otte*, 259 F.3d 979 (9th

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Cir.2001).

FN27. *Smith*, 538 U.S. at 106, 123 S.Ct. 1140.

Connecticut Department of Public Safety v. Doe, decided the same day, rejected a federal procedural due process challenge to Connecticut's sex offender registration act.^{FN28} The United States Court of Appeals for the Second Circuit had held that the Federal Constitution's guarantee of procedural due process required Connecticut to provide a convicted sex offender with an individualized hearing on the issue of his dangerousness before requiring him to register.^{FN29} The Supreme Court reversed, holding that the federal right of procedural due process did not require an individualized hearing on that issue.^{FN30}

FN28. *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003).

FN29. *Doe v. Dep't of Pub. Safety ex rel. Lee*, 271 F.3d 38, 62 (2d Cir.2001).

FN30. *Connecticut Dep't of Pub. Safety*, 538 U.S. at 7-8, 123 S.Ct. 1160.

A recent Ninth Circuit decision, *Doe v. Tandeske*, also upheld ASORA against federal due process challenges.^{FN31} *Tandeske* is the Ninth Circuit's decision on remand of *Smith v. Doe*.^{FN32} Relying on *Connecticut Department of Public Safety*, the Ninth Circuit held that ASORA does not deprive convicted sex offenders of the federal right to procedural due process.^{FN33} Likewise, the Ninth Circuit determined that *Smith* precluded it from concluding that ASORA violates rights to substantive due process under the Federal Constitution.^{FN34} *Tandeske*, like *Smith* and *Connecticut Department of Public Safety*, did not address the narrow issue presented here. *Tandeske* concerned two convicted sex offenders who had served sentences of incarceration for their crimes.^{FN35} Unlike *Doe*'s situation, it appears that the impositions of their

sentences were not suspended and that their convictions had not been set aside before ASORA was enacted and became effective. Thus the case did not decide whether applying ASORA to a person whose conviction has been set aside violates due process.

FN31. *Doe v. Tandeske*, 361 F.3d 594 (9th Cir.2004) (per curiam).

FN32. *Doe v. Otte*, 259 F.3d 979 (9th Cir.2001), was the Ninth Circuit's first decision considering the claims of two "Doe" parties, neither of whom is the "Doe" in the case we decide today. On certiorari, the case became *Smith v. Doe*, 538 U.S. 84, 123 S.Ct. 1140, 155 L.Ed.2d 164. On remand, the case became *Doe v. Tandeske*, 361 F.3d 594.

FN33. *Tandeske*, 361 F.3d at 596 (citing *Connecticut Dep't of Pub. Safety*, 538 U.S. at 7-8, 123 S.Ct. 1160).

FN34. *Id.* at 597 (citing *Smith*, 538 U.S. at 102, 123 S.Ct. 1140).

FN35. *Doe v. Otte*, 259 F.3d at 983.

*404 C. ASORA Violates Doe's Due Process Rights Under the Alaska Constitution.

Doe advances various grounds for his contention that ASORA cannot constitutionally be applied to him. He argues that ASORA deprives him of liberty and violates the Alaska Constitution's guarantee of due process. He also argues that applying ASORA to him violates the prohibitions against ex post facto laws and double jeopardy, denies him equal protection, infringes on the doctrine of separation of powers, and interferes with the Alaska Constitution's guarantee of a right to privacy. The state contests each of these claims.

Doe contends in essence that applying ASORA to him violates his fundamental right to be free from significant, new affirmative burdens resulting from his conviction even though a court set aside that conviction before the statute was enacted.

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Doe's arguments encompass the grounds on which we rule and squarely raise the question of the legitimacy of the government's interference with his fundamental interests in liberty and fair procedural treatment.

[3][4][5][6] State courts are not necessarily bound by the United States Supreme Court's decisions when they consider issues of state constitutional law.^{FN36} Only the Supreme Court's decisions on issues of federal law, including issues arising under the Federal Constitution, bind the state courts' consideration of those issues. The Alaska Supreme Court is the final authority on whether an Alaska statute violates the Alaska Constitution.^{FN37} Doe's appeal involves Alaska's constitutional guarantee of due process. The Federal Constitution protects the due process rights of all Americans. But federal law does not preclude the Alaska Constitution from providing more rigorous protections for the due process rights of Alaskans.^{FN38} When we interpret a provision in the Alaska Constitution, we are not bound by the United States Supreme Court's interpretation of the corresponding provision in the Federal Constitution.^{FN39} We may not undermine the minimum protections established by the United States Supreme Court's interpretations of the Federal Constitution. But we have repeatedly explained that

FN36. See *Mullaney v. Wilbur*, 421 U.S. 684, 691, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975) (“[S]tate courts are the ultimate expositors of state law.”).

FN37. See *Michigan v. Long*, 463 U.S. 1032, 1041, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983) (“[W]e will not review judgments of state courts that rest on adequate and independent state grounds.”); *Stephan v. State*, 711 P.2d 1156, 1160 (Alaska 1985).

FN38. *Stephan*, 711 P.2d at 1160 (“[W]e construe Alaska's constitutional provision ... as affording rights beyond those guaran-

teed by the United States Constitution.”); *Burnor v. State*, 829 P.2d 837, 839 (Alaska App.1992).

FN39. *Todd v. State*, 917 P.2d 674, 681 (Alaska 1996) (“This court is free to interpret the state constitutional provision as it sees fit, so long as the interpretation does not undermine the minimum protections established by the United States Supreme Court in decisions interpreting the federal constitution.”); *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274, 280-81 (Alaska 1994) (explaining that although free exercise of religion clauses of Alaska and United States Constitutions are identical, this court is not bound by United States Supreme Court interpretation of federal free exercise clause and instead this court “may provide greater protection to the free exercise of religion under the state constitution than is now provided under the United States Constitution”); *Blue v. State*, 558 P.2d 636, 641 (Alaska 1977) (“[T]he Alaska Supreme Court is not limited by decisions of the United States Supreme Court or by the United States Constitution when interpreting its state constitution.”); *Bush v. Reid*, 516 P.2d 1215, 1219-20 (Alaska 1973); *Baker v. City of Fairbanks*, 471 P.2d 386, 402 n. 26 (Alaska 1970); *Roberts v. State*, 458 P.2d 340, 342 (Alaska 1969).

we are free, and we are under a duty, to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage.^[FN40]

FN40. *Baker*, 471 P.2d at 401; see also *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 967 (Alaska 1997)

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("[O]ur articulation of the protection of reproductive rights under Alaska's constitution may be broader than the minimum set by the federal constitution."); *Shagloak v. State*, 597 P.2d 142, 145 n. 14 (Alaska 1979) ("A state supreme court is not limited by the decisions of the United States Supreme Court or by the federal constitution when interpreting the provisions of the state constitution, since the latter may have broader safeguards than the minimum federal standards."); *Lemon v. State*, 514 P.2d 1151, 1154 n. 5 (Alaska 1973) (explaining that this court may adopt own interpretations of Alaska Constitution as long as it meets minimum standards set by United States Supreme Court interpretations of Federal Constitution).

*405 The Supreme Court's two recent decisions dealing with state registration statutes exclusively concerned federal constitutional challenges.

[7] We have often recognized the importance of personal liberty under our constitution. "[A]t the core of this concept is the notion of total personal immunity from governmental control."^{FN41} The right is not absolute; its limits depend on a balance of interests that varies with the importance of the right infringed.^{FN42} When the state encroaches on fundamental aspects of the right to liberty, it must demonstrate a compelling government interest and the absence of a less restrictive means to advance that interest.^{FN43}

FN41. *Breese v. Smith*, 501 P.2d 159, 168 (Alaska 1972).

FN42. *Sampson v. State*, 31 P.3d 88, 91 (Alaska 2001).

FN43. *Id.* (citing *Valley Hosp. Ass'n*, 948 P.2d at 969; *Ravin v. State*, 537 P.2d 494, 497-98 (Alaska 1975)).

1. The meaning and effect of setting aside a con-

viction

Doe argues that because the superior court set aside his conviction before ASORA was enacted, the state cannot now force him to register and divulge new, private information. To evaluate his argument and the importance of the liberty interest at stake, we must consider the meaning and effect of setting aside a conviction.

When Doe was convicted, the superior court suspended the imposition of his sentence, subject to several conditions. Doe met those conditions. After Doe's probationary period expired without imposition of sentence, the superior court, with the state's consent, entered a judgment setting aside his conviction.

Alaska Statute 12.55.085 governs the suspended imposition of sentences and conviction set-asides.^{FN44} It grants a trial judge discretion to suspend, in the interest of justice, the imposition of a sentence and place the defendant on probation.^{FN45} If the defendant satisfies the terms and conditions of the probation without incident, "the court may set aside the conviction and issue to the person a certificate to that effect."^{FN46} Such measures are typically reserved for low-risk, first-time offenders,^{FN47} a description the superior court found fit Doe when it suspended imposition of his sentence.^{FN48}

FN44. AS 12.55.085(a) provides, in pertinent part:

[I]f it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be served, the court may, in its discretion, suspend the imposition of the sentence ... upon the terms and conditions that the court determines, and shall place the person on probation, under the charge and supervision of the probation officer....

FN45. AS 12.55.085(a).

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FN46. AS 12.55.085(e). No known legislative history explains the origins of "set aside." Alaska Criminal Rule 35.2 implements AS 12.55.085(e).

FN47. See *Wickham v. State*, 844 P.2d 1140, 1143 (Alaska App.1993).

FN48. At the 1989 SIS hearing, the superior court said:

I feel very comfortable in saying that I think it is a minimal offense, because of the fact that even by [the victim's] worst allegation, it was a brief incident... I'd say that it is mitigated by the fact that I think you are not somebody who otherwise commits offenses.... I think that your basic personality, of wanting to do what's right, and not wanting to do what's wrong, ... will keep you from getting back in this position.... I still think that your basic personality, and your basic lack of interest ... in little boys will keep you—I think it was situational. I really do believe ... it happened, but I believe it was situational. I think it was at a time—one of the times in your life when you were not as stable, you were moving. You didn't have anybody you were close to at the time. You didn't have a serious relationship at that time, and I think those things have changed since when this incident happened, and I think that with the stability offered by all the people here in the back of the courtroom, and your wife and daughter, I hope you will not be back in this situation, but I do feel at the particular time that this happened that you were not in as good a frame a mind as you are now. I think there is a high probability of successful rehabilitation, of you as a non-criminal member of society, because you've never been a particularly criminal member, other than this brief moment. As far as

the necessity of isolation to prevent criminal conduct from you, I think that's fairly low. I don't think whether you are in jail or you're out of jail that there [are] kids on the street that are particularly in danger of you coming up and doing something to them.

*406 A conviction that has been set aside is not a "conviction" in situations in which a sentence is increased or a crime is defined by a prior conviction.^{FN49} A conviction that was set aside is not a "prior conviction" within the meaning of AS 12.55.125 and .145 (if sufficient time has elapsed), which describe the proper use of prior convictions in sentencing.^{FN50} Moreover, a person with a conviction that was set aside has an affirmative defense in some repeat offender situations. For example, AS 11.61.200 (misconduct involving weapons in the third degree) punishes a person "who knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony," but provides an affirmative defense to prosecution if "the underlying conviction upon which the action is based has been set aside under AS 12.55.085."^{FN51} A conviction that was set aside may not be used to impeach a witness for having been convicted of a crime under Alaska Rule of Evidence 609(d)(2).^{FN52}

FN49. See, e.g., AS 11.46.130(a)(6) (defining theft in second degree as occurring when person commits theft under AS 11.46.100 and "the value of the property is \$50 or more but less than \$500 and within the preceding five years the *person has been convicted and sentenced* [for another crime of theft] on two or more separate occasions in this or another jurisdiction" (emphasis added)).

FN50. *Barrett v. State*, 772 P.2d 559, 575 (Alaska App.1989).

FN51. AS 11.61.200(a)(1), (b)(1)(B).

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FN52. *Wickham v. State*, 844 P.2d 1140, 1144 (Alaska App.1993).

[8] In *State v. Mekiana* we discussed the purpose of suspending imposition of sentence and setting aside a conviction:

Ordinarily, when a judge opts to order a suspended sentence the judge has evaluated the defendant's background and offense and decided the defendant deserves a chance to show that he or she has "reformed" and therefore should be rewarded with a clean record. One of the purposes of the set-aside statute is to provide defendants with an incentive to meet the conditions of their probation.^{FN53}

FN53. *State v. Mekiana*, 726 P.2d 189, 193 (Alaska 1986).

The Alaska Court of Appeals has also considered the meaning of a set-aside under AS 12.55.085. In *Wickham v. State* it said that a set-aside order "reflect[s] a substantial showing of rehabilitation."^{FN54} The court of appeals wrote there that "it seems virtually inconceivable that a set-aside would ever be justified in the face of substantial evidence establishing that an offender had not actually been reformed."^{FN55} It concluded that a conviction that has been set aside cannot be used to impeach a witness at trial.^{FN56} In his dissent in *State v. Otness*, Chief Judge Coats observed that after defendants completed conditions of suspended imposition of sentence, "they could reasonably conclude that their criminal conviction was part of their past, and that, if they continued to be law abiding citizens, they had a good chance of not suffering any disabilities because of this prior prosecution."^{FN57}

FN54. *Wickham v. State*, 844 P.2d 1140, 1144 (Alaska App.1993).

FN55. *Id.* at 1143.

FN56. *Id.* at 1144.

FN57. *State v. Otness*, 986 P.2d 890, 894 (Alaska App.1999) (Coats, C.J., dissenting).

But as the state observes, other decisions of this court indicate that the meaning of "set aside" is not as clear as Doe claims. We have recognized that "while the collateral consequences of a set aside conviction should be limited, records of a set aside conviction can be used in certain circumstances."^{FN58} For example, prior convictions that were set aside may be treated as aggravating factors when sentence is imposed for a subsequent crime; AS 12.55.155(c)(8) and (c)(21) allow a *407 sentencing judge to consider a defendant's prior criminal history.^{FN59}

FN58. *Spenard Action Comm. v. Lot 3, Block 1, Evergreen Subdiv.*, 902 P.2d 766, 779 n. 23 (Alaska 1995).

FN59. See *Petersen v. State*, 930 P.2d 414, 437 (Alaska App.1996); *Larson v. State*, 688 P.2d 592, 597 (Alaska App.1984); see also *Journey v. State*, 895 P.2d 955, 959 (Alaska 1995).

AS 12.55.155 provides, in pertinent part:

(c) The following factors shall be considered by the sentencing court and may aggravate the presumptive terms set out in AS 12.55.125:

....

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior.

....

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in

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nature to the offense for which the defendant is being sentenced under this section.

Further, we have held that setting aside a conviction does not expunge the conviction from an offender's criminal record.^{FN60} Both the conviction and the judgment setting it aside consequently remain in the public record. Members of the public, such as potential employers inquiring into a job applicant's criminal record, can learn of the existence of a conviction that has been set aside.^{FN61} They can do this by researching court records or by requiring a person applying for employment or housing to divulge the fact of a prior conviction even if it has been set aside.

FN60. *Journey*, 895 P.2d at 959 (holding that granting set-aside does not require expunction of criminal record and noting that conviction that was set aside can be used in limited circumstances, such as to increase sentence for subsequent crime).

FN61. *Id.*

An offender's public record normally does not include information about events or circumstances post-dating the order granting the set-aside. The public record will normally include at least some description of the conduct that resulted in the conviction and the circumstances that justified the set-aside.^{FN62} In our experience, the public record of an offender who receives a set-aside contains little of the information that ASORA makes public.^{FN63}

FN62. Any information contained in a presentence report is, by rule, confidential. Alaska R.Crim. P. 32.1(b)(3).

FN63. We summarized in Part II the information ASORA makes public.

A conviction that was set aside therefore has some lingering consequences. But these consequences are relatively limited, and are foreseeable to a set-aside candidate. They follow naturally

from the original conviction and are not inconsistent with the findings that justify a set-aside or with the set-aside order itself.

Moreover, the offender has some ability to limit public interest in the information because it is often the offender's post-set-aside elective conduct (e.g., applying for a job) that potentially requires him or her to disclose adverse information already in the public record. The defendant can limit the risk he will have to disclose this information by limiting his application choices or withdrawing applications when asked to disclose.

As we will see, the effects and consequences of ASORA are much different.

2. Liberty and procedural interests arising from the findings and Doe's set-aside

[9][10] Suspending the imposition of sentence requires that there be "circumstances in mitigation of the punishment, or that the ends of justice will be served."^{FN64} An order setting aside a conviction reflects a substantial showing of rehabilitation.^{FN65} The superior court twice carefully considered Doe's circumstances, in 1989 and 1991, when it suspended imposition of sentence. It determined that Doe's offense was not serious and that he did not pose a risk to the community. When the superior court set aside Doe's conviction in 1994, it issued him a certificate that stated that "the defendant is discharged by the court without imposition of sentence" and that "[j]udgment of conviction is hereby set aside." The set-aside thus rewarded Doe for satisfying the obligations imposed on him by the superior court, based on the confirmation that he did not pose a threat of reoffending.

FN64. AS 12.55.085(a).

FN65. *Wickham v. State*, 844 P.2d 1140, 1144 (Alaska App.1993).

*408 As Doe's opening brief cogently argues, a set-aside recipient "has already had to demonstrate that he does not fall in [the] category of high risk

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for a reoffense”:

The core legislative finding underlying enactment of the original Registration Act itself is that “sex offenders pose a high risk of reoffending after release from custody,” section 1, ch. 41, SLA 1994. For individuals with set-asides, the court has already made a two-step longitudinal assessment of the likelihood of a reoffense. The court in making the initial determination to suspend imposition of sentence “has evaluated the individual’s background and offense and decided the defendant deserves a chance to show that he or she has ‘reformed’ and therefore should be rewarded with a clean record.” The offender, following a jail term if the court chooses to require it, is then put on probation for an extended period (in John Doe’s case, nearly five years) to give the authorities ample opportunity to monitor his “risk of reoffending following release from custody.” The court thus has had the chance to check the accuracy of its earlier prediction; if there has been a violation of the conditions of probation, then the conviction will not be set aside. Thus, any individual who has been given a set-aside has already had to demonstrate that he does not fall into that category of high risk for a reoffense.

(Footnotes omitted.)

Doe’s set-aside was consequently founded on judicial findings that he presented no significant risk to the community. These findings, with respect to his 1987 conduct and his conviction, were final and unchallenged. With respect to his responsibilities flowing from his conviction, they preclude subsequent reconsideration whether he posed a significant risk of committing the same offense again.

Further, the findings resulted in the superior court’s entry of the set-aside order. This was a final and unappealed judicial act.

Doe’s opportunity to have his conviction set aside if he satisfied the conditions the superior court imposed was a crucial element of the order

suspending the imposition of his sentence. After he satisfied the conditions,^{FN66} confirming the court’s prior findings that he was unlikely to reoffend, the set-aside created a settled expectation that the state would not subsequently use the conviction that was set aside as a basis for imposing brand-new affirmative burdens on him. The now-confirmed findings and set-aside conferred on Doe a fundamental right to be let alone with respect to the conviction that was being set aside.^{FN67}

FN66. Even before Doe satisfied the conditions, a reasonable reliance interest was created by the entry of the order suspending imposition of the sentence taken together with Doe’s undertaking to satisfy the conditions.

FN67. *Breese*, 501 P.2d at 168.

After the court set aside his conviction, Doe no longer had the status of a convicted person.^{FN68} There may be unresolved questions about the full effect of setting aside a conviction. But, at a minimum, the status of a person whose conviction has been set aside differs greatly from that of a person whose conviction has not been set aside, because the set-aside recipient has now been placed in the category of persons expressly or implicitly found to pose little threat of committing new crimes.

FN68. When ASORA was enacted in 1994, it did not state that it applies to persons whose convictions were set aside. The Department of Public Safety promulgated a regulation in 1995 defining “conviction” to apply to convictions that had been set aside. 13 AAC 09.900(a)(2). In 1999 the legislature amended ASORA to the same effect. Ch. 54, § 15, SLA 1999. *See supra* note 16.

The SIS findings and 1994 set-aside clearly give rise to interests in liberty and fair procedural treatment that merit constitutional protection.

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3. ASORA's effect on Doe's liberty and procedural interests

[11] Even though the lives of set-aside recipients may be subject to adverse, and even significant, consequences arising from the fact of their former convictions, these consequences are not inconsistent with their settled expectations and do not obviously affect their liberty interests.

*409 In comparison, ASORA very significantly and directly affects the lives of set-aside recipients. The ways and extent it does so differ greatly from the lingering consequences a conviction that was set aside may continue to have. The effects of ASORA arise from four features of the statute. First, it imposes on offenders an affirmative duty to register with law enforcement agencies.^{FN69} Second, it requires offenders to disclose extensive personal information, much of which the government would not otherwise have, and much of which is not public.^{FN70} Third, it requires offenders to keep their information current for at least fifteen years or the rest of their lives, depending on the offense.^{FN71} This period often exceeds both the sentences actually received by some classes of offender, and the duration of any non-custodial supervision. Fourth, it requires the state to maintain a public registry of most of the disclosed information.^{FN72}

FN69. AS 12.63.010.

FN70. *Id.*

FN71. AS 12.63.020.

FN72. AS 18.65.087.

These features derive from the assumption that persons convicted of sex offenses pose a significant danger of committing new sex offenses.^{FN73} This general assumption is fundamentally inconsistent with the individualized findings of fact a court makes before setting aside a particular offender's conviction. These findings are a judicial determination that the particular offender does not pose significant danger of reoffending. This determination as

to a particular offender is inconsistent with treating him as if he belongs to a class that poses a danger of committing new sex offenses.

FN73. Ch. 41, § 1, SLA 1994.

Therefore, applying ASORA to an offender whose conviction has been set aside inherently conflicts with the judicial proceedings that resulted in the set-aside. Applying ASORA to the set-aside recipient therefore also defeats the offender's settled expectations that legitimately arise from the findings and the set-aside adjudication. Moreover, applying ASORA to Doe also defeats his settled expectations because his conviction was set aside even before ASORA was enacted or became effective.

Imposing ASORA's affirmative duties on Doe effectively reclassifies his status from that of a person who received a judgment setting aside his conviction to that of a convicted offender whose conviction still stands. Offenders who are granted a set-aside order have been placed in the category of people who have been individually found by courts not to pose a danger to society. ASORA indiscriminately groups those people with persons who are presumed to pose a future danger. This general finding of dangerousness is inconsistent with the particularized case-by-case judicial findings made when individual defendants are granted SIS, before their convictions are ultimately set aside.

The burdens imposed by ASORA differ dramatically from those lingering consequences that survive a set-aside. ASORA imposes mandatory duties even if the defendant does not engage in new elective conduct. It imposes these duties because the defendant is physically present in the state, not because he has applied for employment, housing, or some government benefit. These burdens include affirmative duties to do things (register, disclose, and update information), not merely refrain from doing things (committing no new crimes). The duties are significant and intrusive, because they compel offenders to contact law enforcement agencies

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and register even if they have committed no new offense, and to disclose private information, much of it for public dissemination. They are also intrusive in their duration. Failure to comply exposes the offender to criminal sanctions.^{FN74} ASORA thus treats probationers and parolees subject to continued state supervision. In short, it treats them as though they did not satisfy their SIS conditions, as though courts did not *410 expressly or implicitly find that they were not dangerous, as though their convictions were not set aside, and as though they had not been ordered discharged after their convictions were set aside.

FN74. AS 11.56.840 (defining failure to register under ASORA as class A misdemeanor). Class A misdemeanors are punishable by up to one year in jail and by a fine up to \$10,000. See AS 12.55.135(a), .035(b)(5).

There is also a significant difference between a public record that continues to memorialize a conviction after it is set aside and a state-sponsored Internet site that displays the information ASORA requires. The difference is not merely that the state has improved access to public information it had a legitimate right to gather at the time a defendant was convicted. The difference instead lies in the extent and nature of information to be divulged and the offender's duty to keep it updated. To advance ASORA's purposes effectively, the registry must include enough information to enable the public to reduce the danger registrants are assumed to pose. ASORA therefore requires a sex offender to disclose and update extensive personal information. Much of this information was not otherwise available to the public or the state when the conviction was set aside and much would not otherwise be presently available to either the public or the state. Most of the information about Doe that was to have been published in the ASORA registry was not in the public record when Doe was convicted or when the court set aside his conviction and ordered him

discharged.

Because ASORA compels affirmative post-discharge conduct under threat of prosecution, because this conduct is equivalent to that often required by criminal judgments, because this sort of conduct could not be compelled absent a criminal adjudication or its equivalent, because the conviction (since set aside) is the event that triggers these duties, and because the requirement impairs one's post-set-aside freedom to be let alone, we conclude that it violates Doe's liberty interests^{FN75} to require him to register under ASORA after the court found that Doe had satisfied the requirements of his SIS and was entitled to a set-aside, and then set aside his conviction, all before ASORA was enacted.

FN75. See, e.g., *Smith v. State. Dep't of Corr.*, 872 P.2d 1218, 1222 (Alaska 1994) (finding liberty interest in "right to be free from inappropriate conditions of parole—those which unduly interfere with a parolee's personal and property rights").

We also conclude that the potentially destructive practical consequences that flow from registration and widespread governmental distribution of disclosed information establish the gravity of this violation. Several sex offenders on the registry filed affidavits in support of Doe in this litigation stating that they had lost their jobs, been forced to move their residences, and received threats of violence since the establishment of the registry, even though their convictions had always been a matter of public record. Outside Alaska, there have been incidents of suicide by, and vigilantism against, offenders on state registries,^{FN76} and offenders listed on registries often have unique difficulties locating places to reside and work. Offenders are sometimes subjected to protests and group actions designed to force them out of their jobs and homes.^{FN77} Courts have also noted *411 these serious adverse consequences.^{FN78}

FN76. See Logan, *supra* note 8, at 1176 n.

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45 (citing Robert Hanley, *Shots Fired at the House of a Rapist*, N.Y. TIMES, June 17, 1998, at B1 (vigilantism); Todd S. Purdum, *Death of Sex Offender is Tied to Megan's Law*, N.Y. TIMES, July 9, 1998, at A16 (suicide); *Convicted Rapist Is Shot At*, N.Y. TIMES, July 1, 1998, at B1 (vigilantism); *Suicide is Recalled as Maine Revisits Megan's Law*, WASH. POST, Feb. 17, 1998, at A2 (suicide)).

FN77. One commentator has noted several examples of this, citing:

John T. McQuiston, *Sex Offender Is Suing His Neighbors Over Protests*, N.Y. TIMES, June 20, 1997, at B1 (describing rallies staged to protest registrant's presence, throwing of brick through his car window, and harassing calls to his employer); Lisa Sink, *Long After Release Date, Man Still Lives in Prison*, MILWAUKEE J. SENTINEL, June 1, 1999, at 1 (describing inability of registrant to find residence fifteen months after date of mandatory release); *Convicted Child Molester Loses Job*, L.A. DAILY NEWS, Jan. 16, 1997, at N10 (describing how registrant was forced from his job); *Parents Protest to Oust Molester from Community: Neighbors Collect Signatures on Petitions*, SACRAMENTO BEE, July 8, 1997, at B3 (recounting neighborhood's efforts to drive out registrant); cf. Henry Gottlieb, *Fighting a Local Ban on Sex Criminals*, NAT'L L.J., May 17, 1999, at A7 (discussing lawsuit filed by homeowner against homeowners' association bylaw that bars residency to registrants).

Logan, *supra* note 8, at 1176 n. 45.

FN78. *Doe v. Pataki*, 120 F.3d 1263, 1279 (2d Cir.1997) (noting registration "has had unfortunate consequences for many subject

to its operation"); *E.B. v. Verniero*, 119 F.3d 1077, 1088-90 (3d Cir.1997) (describing incidents of harassment in New Jersey, Washington, and Oregon); *Russell v. Gregoire*, 124 F.3d 1079, 1092 (9th Cir.1997) (observing that "[n]otification may well subject offenders to humiliation, public opprobrium, ostracism, and the loss of job opportunities").

In short, we hold that applying ASORA to Doe burdens his fundamental liberty interests and right to procedural fairness arising out of the set-aside granted him in 1994, such that the state must establish a compelling governmental interest.

4. Whether the state's interest in applying the statute to pre-ASORA set-aside recipients is compelling

[12] Having determined that application of ASORA burdens Doe's fundamental liberty and procedural interests, we must decide whether the state has demonstrated a compelling governmental interest in restricting those interests.^{FN79} We are mindful that before a person's conviction for a sex offense can be set aside, he or she necessarily must have been convicted of that offense. When the legislature enacted ASORA, it found that "sex offenders pose a high risk of reoffending after release from custody."^{FN80}

FN79. *Sampson v. State*, 31 P.3d 88, 91 (Alaska 2001).

FN80. Ch. 41, § 1, SLA 1994.

[13] Because a lawfully entered set-aside order marks the termination of a formal judicial proceeding between the state and the defendant, it operates as a final judgment: it establishes the parties' mutual rights and obligations, and it binds both parties to its terms. Although a set-aside order does not erase the reality of the former conviction, or entitle the defendant to proclaim his innocence,^{FN81} it does bar the state from using the conviction or the underlying misconduct as grounds for compelling the de-

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defendant to act as though he remains convicted, has never been rehabilitated, and continues to pose a public danger.^{FN82}

FN81. See *Journey v. State*, 895 P.2d 955, 959 (Alaska 1995).

FN82. Implicitly recognizing that a set-aside order reflects more on the defendant's success in complying with the rehabilitative efforts required by the conditions of his SIS than it does on his innocence of the underlying misconduct, we have held that a set-aside does not prohibit the state from allowing public access to records documenting the defendant's original conviction and underlying offense. See *Journey*, 895 P.2d at 959. Nor does a set-aside order preclude the state from considering a former conviction and the underlying conduct to be relevant information when imposing new criminal or civil sanctions for a new offense that clouds the earlier finding of rehabilitation. See *Larson v. State*, 688 P.2d 592, 597 (Alaska App.1984) (concluding that prior conviction that was set aside does not trigger higher presumptive term for later offense, but conviction that was set aside and related facts may be considered as aggravating factors).

Once final, then, a set-aside order operates as a binding, case-specific determination that the charges underlying the conviction that was set aside no longer support an inference of public danger. A defendant who earns and receives a final set-aside order can reasonably expect that this determination will be honored by the state and given effect. A defendant who has satisfied his SIS conditions and whose conviction was set aside by a final order entered before ASORA became specifically applicable to convictions that have been set aside has an enforceable procedural right in the set-aside order's meaning and terms. The state therefore may not alter or ignore them without heeding the requirements of procedural fairness traditionally imposed on a

party constrained by a judgment: prior notice, an opportunity to cross-examine and defend, and a case-specific showing of compelling circumstances warranting relief from the judgment.^{FN83}

FN83. These requirements are rooted in the constitution's due process clause and inhere in a final judgment. These requirements consequently limit state action with respect to the subject of that judgment regardless of whether the state acts through its executive or legislative branch. We recognize that the legislature has broad authority to take *prospective* action redefining the availability and effects of SISs and set-aside orders. But Doe's SIS conviction and set-aside order both predated the date when ASORA became specifically applicable to convictions that were set aside. It is therefore not necessary to decide in this case whether these requirements would apply to an offender who was granted an SIS conviction before that date, but whose conviction was set aside after that date. We express no view on this issue. To the extent that *Patterson v. State*, 985 P.2d 1007, 1017 (Alaska App.1999), is inconsistent with our holding here or might be read as resolving the issue we leave open above, it is overruled.

Because Doe's conviction and set-aside order both predated the effective dates of both the 1995 regulation and the 1999 amendment which redefined "conviction" to include convictions that were set aside, it is not necessary in this case to consider whether the regulation was valid.

*412 There is no legitimate reason to think that Doe presents such a danger that the state's post-set-aside interference with his liberty interests is justified. Absent the likelihood Doe will commit new sex offenses, there is no compelling government interest in requiring Doe to do the things AS-

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ORA demands. Given ASORA's burden on Doe's liberty interests and its interference with his settled expectations, we conclude that the Alaska Constitution's guarantee of due process prevents the state from contradicting the judgment of the superior court and requiring Doe to satisfy ASORA.

Because we decide that applying ASORA to Doe violates his due process rights, we do not reach Doe's other arguments.^{FN84}

FN84. We limit our holding to set-aside recipients whose SISs were entered under AS 12.55.085 or statutes of other jurisdictions whose provisions also require a substantial showing of rehabilitation. See *Wickham v. State*, 844 P.2d 1140 (Alaska App.1993) (noting federal cases applying Federal Rule of Evidence 609(c) that turn on whether state's set-aside procedures require affirmative finding of defendant's rehabilitation).

IV. CONCLUSION

Because applying ASORA to a person whose conviction was set aside under AS 12.55.085 before ASORA became specifically applicable to convictions that were set aside unconstitutionally interferes with the individual's liberty interests and because the state has failed to establish that this application is justified by a compelling governmental interest, we REVERSE the judgment that upheld ASORA as applied to Doe and REMAND for entry of an order enjoining the state from publishing Doe's registration information and requiring the state to return all information Doe provided when he registered under protest.

MATTHEWS, Justice, concurring.

CARPENETI, Justice, not participating.

MATTHEWS, Justice, concurring.

My primary reasons for reversing the decision of the superior court can be summarized as follows. The SIS program offers a promise to participating defendants that in most respects they will not be treated as convicted criminals. Defendants can ac-

cept this offer by complying with the conditions imposed by the program. When so accepted, the program creates a legally protected interest. The ASORA registration requirement treats those who have had their convictions set aside under the program as convicted criminals, and does so in a particularly invasive and socially and economically disabling way. It thus substantially breaches the bargain implicit in the SIS program. This is fundamentally unfair and violates the state constitutional guarantee of due process. The opinion of the court encompasses this rationale and I join in it.

It seems useful to discuss briefly the issue of the time parameters of the cases to which this rationale applies. Clearly it does not apply to judgments suspending the imposition of sentences entered after ASORA was explicitly made applicable to convictions set aside under the SIS program.^{FN1} The defendants in this category have notice when they begin to participate in the program that they will not be exempt from registration. There is thus no breach of a state promise and no special element of unfairness. Just as clearly, cases in which set-asides occurred before ASORA was explicitly made applicable to SIS cases should be held to be exempt from registration. In such cases defendants gave full performance in reliance on the state's promise, and a set-aside was entered. I *413 believe that this rationale also should apply to cases where defendants have fully or substantially performed the conditions imposed on them by the program before ASORA was made applicable to SIS cases, even if the set-aside order was entered after that time. The important thing in such cases is that the defendants have acted with the justified expectation that in most respects they will be treated as though they were never convicted. It would be as unfair to apply ASORA to them as to defendants whose convictions were set aside before ASORA was made applicable to SIS cases. A similar rationale might apply where a guilty or nolo plea was entered as a plea bargain contemplating the use of the SIS program. If such a plea were entered before ASORA applied to SIS cases, the detrimental reli-

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(Cite as: 92 P.3d 398)

ance inherent in the plea could be sufficient to support an exemption from registration even if much of the probation were served after ASORA applied. Many of the views expressed in this paragraph are not encompassed in the opinion of the court. I discuss them only because they may be of some use in defining and deciding issues that will arise as to how to apply the precedent that is established today.

FN1. ASORA was first made applicable to SIS convictions by a regulation promulgated in 1995. The effective date of this regulation thus will be the critical date governing the application of the precedent established by the opinion of the court assuming the regulation was authorized and validly promulgated.

Alaska,2004.
Doe v. State, Dept. of Public Safety
92 P.3d 398

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Department of Public Safety

COUNCIL ON DOMESTIC VIOLENCE &
SEXUAL ASSAULT
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The Honorable Bill Stoltze and Alan Austerman, Finance Co-Chairs
Members of the House Finance Committee
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

April 3, 2013

Dear Representatives Stoltze and Austerman:

I apologize for not being available when called to give testimony on SB 22 earlier this afternoon. I was listening on my cell phone and was disconnected at one point. I dialed back in but failed to hear you. Thank you for the opportunity to provide written testimony.

The bill documents for SB 22 include a memo from me to Senator Coghill dated February 22nd. I also submitted a letter regarding HB 73 to Representative Keller dated March 22nd which is the basis for my remarks today.

The Council appreciates the work that has been and is being done on the Crime Bill. I'd like to address two areas covered in the bill: 1) overturning the Collins decision and 2) amending the crime of sexual assault in the 3rd degree to include a probation or parole officer who with reckless disregard to a person's status as a probationer or parolee engages in sexual penetration with that person.

I reviewed the reports and research cited in the 24th Legislature's letter of intent (February 16, 2006 Senate Journal beginning on page 2207) when they extended the sentences for sexual assault crimes and I think it is important that at least some of the statistics be recorded in the legislative record for SB 22. The Legislature saw studies reporting nationally 78.5% of sex offenders had at least 1 prior arrest and average 4.5 prior arrests before being incarcerated. In Alaska, of the 927 convicted sex offenders in custody on January 24, 2006, 93% had at least 1 prior arrest; the average number of arrests per sex offender was 11.75. Another study reported that sex offenders average 110 victims and 318 offenses before being caught. When I read that study, I looked to see if maybe that number had dropped since 2006. Unfortunately, it has risen. According to an August 2012 report by the National Council of Missing and Exploited Children, the average number of children molested by 1 predator before that person is caught is 117. Extending the sentences for those convicted of sexual assault crimes was the right thing to do. Convicted sex offenders should be held to at least the same standard as other convicted felons when determining whether or not their sentences can be appealed to a three-judge panel—extraordinary prospects for rehabilitation—not the lower standard of ordinary prospects.

When questions were raised about certain conduct of probation/parole officers being included in the crime of sexual assault in the third degree, I decided to look at the duties and responsibilities of probation and parole officers. I found a code of Ethics to which probation and parole officers are expected to comply through the American Probation and Parole Association or the Federal Probation and Pretrial Officers Association or the Alaska Correctional, Probation and Parole Officer Code of Ethics. The ethical standards may be found at the following sites:

The American Probation and Parole Association

http://www.appa-net.org/eweb/DynamicPage.aspx?WebCode=IA_CodeEthics

Federal Probation and Pretrial Officers Association

<http://www.fppoa.org/code-of-ethics>

Alaska Correctional, Probation and Parole Officer Code of Ethics

<http://www.touchngo.com/lglcntr/akstats/aac/title13/chapter085/section230.htm>

Each of these codes recognizes that probation and parole officers hold high public trust in ensuring offenders follow conditions of release and ensuring they know there are consequences to reoffending. Each of these codes mention the officer, because of the position, is held to a high standard of moral conduct. A section of the Alaska code of ethics states: The correctional, probation or parole officer will not engage in *undue familiarity* with inmates, probationers, or parolees. Another sentence in the Alaska code states: I will not use my official position to secure privileges or advantages for myself.

People who want to become probation or parole officers must agree to adhere to one or more of these ethical codes. Clearly, engaging in sexual penetration with reckless disregard to the other person's status as a probationer or parolee is acting outside of their professional ethics.

The thought behind making this behavior a crime is not to "catch" a probation or parole officer who unknowingly develops a relationship with someone on probation or parole. Nor to criminalize behavior between persons who were married prior to one of them being placed on probation or parole.

Rather, there are people who use their power and authority to intimidate, coerce and force others to bend to the authority figure's will. That is who should be held criminally liable for engaging in sexual penetration with a probationer or parolee. Using the implied or expressed threat of returning someone to prison if he or she does not submit to a sexual act is reprehensible and deserves community condemnation.

I encourage the committee to consider the possibility that those on probation or parole may be more vulnerable to sexual assault because of the situation in which they find themselves and because of the few bad actors in positions of authority who will try to take advantage of the situation. I am confident that the overwhelming numbers of people who choose to dedicate their lives to assisting those who have been incarcerated or convicted of criminal activity to successfully reintegrate into our communities believe in and hold true to their ethical standards. Probation or parole officers who choose not to do so should know there are serious consequences to that abuse of power.

Thank you to committee members for working to provide the best possible protections for victims of sexual violence, trafficking, domestic violence and stalking.

Sincerely,

Lauree Morton

Lauree Morton
Executive Director



ALASKA STATE LEGISLATURE
HOUSE FINANCE COMMITTEE

State Capitol, Room 519

Rep. Alan Austerman, Co-Chair

Rep. Bill Stoltze, Co-Chair

Wednesday, April 3, 2013

1:30PM

Agenda:

SB 22-CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

Governor - Department of Law -

Amendments 1 Holmes & 2 Thompson

90 Anne Carpeneti, Assistant Attorney General, Legal Services Section-
Juneau, Criminal Division, Department of Law

Richard Svobodny, Deputy Attorney General, Criminal Division,
Department of Law

Public Testimony open



April 3, 2013

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The Honorable Alan Austerman, Co-Chair
The Honorable Bill Stolze, Co-Chair
The Honorable Mark Neuman, Vice-Chair
House Finance Committee
Alaska State House of Representatives
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Juneau, AK 99801

via email:

Rep.Alan.Austerman@akleg.gov

Rep.Bill.Stolze@akleg.gov

Rep.Mark.Neuman@akleg.gov

**Re: Senate Bill 22 – Omnibus Crime Bill
Constitutional Concerns**

Co-Chair Austerman, Co-Chair Stolze, Vice-Chair Neuman:

Thank you for the opportunity to provide written testimony with respect to the Committee Substitutive (Finance) for Senate Bill 22, the Omnibus Crime Bill. We are available to work with the Committee on any questions that may arise.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that regard, below is our constitutional analysis of the proposed legislation.

The Backdrop of the Bill: Criminal Justice in Alaska

Operating the criminal justice system is rapidly becoming one of the most expensive functions of the state of Alaska. Virtually the entire budgets of the

Department of Corrections and the Department of Public Safety – for which the governor is requesting \$327 million and \$208 million this year – go exclusively to managing the massive security apparatus of the state of Alaska. Large portions of the Department of Law’s budget, the Department of Administration’s budget, and the Court System’s budget go to managing the costs associated with prosecuting criminal cases. The indirect costs of the criminal justice system to the state, such as by the increased filings of Child in Need of Aid cases when parents are incarcerated, are difficult to calculate.

The imposition of enormous drains on the economic resources of the state is often the result of proposed statutory revisions, such as are set forth in CS for SB 22 (FIN). Fiscal notes prepared by many affected state agencies list the costs as “undetermined,” because no one knows exactly how much each provision of the law will cost.

However, reasonable educated guesses could be made regarding the costs. For instance, would eliminate the grant of good time to prisoners convicted of a class A or unclassified sex offense. Individuals convicted of an unclassified sex offense must be sentenced to at least 20 years, but may be sentenced to as many as 99 years. AS 12.55.125(i)(1). Individuals convicted of a Class A sex offense must be sentenced to at least 15 years, but may be sentenced to as many as 99 years. AS 12.55.125(i)(2). In 1999, 15 people were sentenced for an unclassified sex offense.¹ Due to the interim changes in the law, all of them would have been sentenced to serve at least 20 years, if sentenced today. If CS for SB 22 (FIN) passes, none of them would be eligible for mandatory parole on the basis of good time.

Assuming – and this is likely an underestimation – that about 15 people are convicted of unclassified sex offenses every year, and assuming – and this is also likely an underestimation – that they are all sentenced to the mandatory minimum sentence, that means that at least 300 person-years of incarceration are handed down each year for unclassified sex offenses. If unclassified sex offenders become ineligible for mandatory parole, they will likely serve 100 person-years more in custody, because the “good time” deduction is usually about one-third of the sentence. Each person-year of incarceration costs the state about \$48,000. So, just excluding “good time” credit for unclassified sex offenders could cost the state about \$5 million dollars in correctional costs for fifteen people. And each year, more offenders will be incarcerated for longer; by 2025, this bill have imposed on the state at least \$53 million in incarceration costs to manage 165 people.

The same thing will be true of Class A felony sex offenders. In 1999, 10 people were sentenced for Class A felony sex offenses.² Now, they would each be sentenced to a mandatory minimum

¹ Alaska Judicial Council, Alaska Felony Process: 1999, Table C-1 at <http://www.aic.state.ak.us/reports/Fel99FullReport.pdf>.

² *Id.*

of 15 years; roughly, 150 person-years of sentences would be passed on this category of prisoners each year. Eliminating good time credit will tend to impose an extra 50 person-years of incarceration for Class A sex offenses each year, or roughly \$2.5 million worth of incarceration costs for managing 10 people. These are very rough, likely very conservative estimates based on old data. But it is better to start framing the costs of our correctional policy in terms of some roughly estimated numbers rather than just declaring the costs to be “undetermined,” and putting a zero down on the bottom line.

Every year, there is a new omnibus crime bill. Every year, increases in grading of offenses are proposed; more mandatory minimums are proposed; and more limitations on means to manage our prison populations are imposed. Rarely if ever do these changes to our criminal justice policies reflect any systemic consideration of how much punishment is enough. Every year, we incrementally expand the scope of the criminal laws and criminal penalties without reference to any study or determination about what is happening on the ground in Alaska. And these incremental changes impose millions and millions of dollars in future liabilities to be paid for by our children and grandchildren.

The governor’s FY2004 budget for the Department of Corrections was \$178 million; this year, it is \$327 million, a growth of 83% in 10 years. But that budget line doesn’t tell the full story, because the costs of many of the most expensive policies won’t be fully realized for years to come. At some point, we will not be able to afford to build roads, bridges, and schools, because we will need the money to build another and another prison.

In the 21st century, the Legislature has access to the best criminal justice studies, and can look at what other states are doing to manage correctional costs in a way that defends public safety. The consensus opinion from almost any serious review of Alaska criminal justice policy indicates that more focus should be put on preventing crime, treating the causes of crime, enabling the smooth re-entry into society of those leaving prison, and preventing recidivism of those who have previously offended. The Governor’s office appears to be focusing solely on a state policy that reflects misunderstanding and rejection of the basic concepts reflected in criminology studies.

More and longer incarceration doesn’t solve any crime problem; over-incarceration may actually pose a threat to public safety. John Dillinger was first arrested for robbing a grocery store of \$50; after spending years in the Indiana state prison system, where he learned the fine points of how to rob a bank, his prison experiences helped turn him into career criminal. Today, in California, we see a state whose policies of mass incarceration facilitated the creation of statewide prison gangs. Those prison gangs tended to become street gangs on the outside, creating a framework for organized crime throughout the state.

CS for SB 22 (FIN) also appears to ignore the basic statistics on recidivism. Sex offenses are extremely serious crimes and deserve to be met with a stern response from the state. However, sex offenders are also the *least likely*, among all offenders, to be rearrested or to commit another

offense.³ Despite this extensively documented phenomenon, this bill would continue a long-standing policy of singling out sex offenders for mandatory minimum sentences and parole exclusions far beyond what is necessary to control those who have previously committed sex offenses.

Our founding fathers experienced the harsh hand of criminal investigations and prosecutions under the hand of Great Britain. Because of their experiences, they knew that the criminal justice apparatus was the most likely way for a government to deny the people their rights and liberty. Four of the ten amendments in the Bill of Rights are aimed in large part at limiting the criminal justice system. We should not casually ignore the hazards to our collective liberty in an ever-snowballing criminal justice system.

Sectional Analysis

Section 1, 21, 22: Three-Judge Sentencing Panels in Certain Sex Offense Cases

As discussed above, the apparent conclusion in 2006 that “sex offenders usually have committed multiple sex offenses by the time they are caught, that they often do not respond to rehabilitative treatment, and that they therefore cannot be safely released into society” should be seriously questioned in light of Judicial Council’s recidivism study, showing that sex offenders were the least likely to be rearrested or to reoffend. *Collins v. State*, 287 P.3d 791, 796 (Alaska App. 2012). Certainly, *some* sex offenders may be repeat offenders who are particularly dangerous; however, painting *all* sex offenders with the same broad brush will tend to mask those who are truly dangerous and unnecessarily punish those least likely to reoffend. At minimum, it makes sense to allow three-judge panels to serve as a safety valve and to consider deviations from the presumptive sentencing range where individual facts dictate. None of the legislative findings show instances where the public safety has been jeopardized by these three-judge panels. Alaska judges are fit to make these determinations.

Categorically, the research strongly supports the notion that the ordinary sex offender is less likely to reoffend than other offenders. Several Alaska-specific studies have been conducted on sex offenders. A comprehensive study of *all felons* by the Alaska Judicial Council found that sex offenders were least likely to reoffend among *all categories* of felons.⁴ Another UAA study

³ Alaska Judicial Council, *Criminal Recidivism in Alaska*, at 4, available at <http://www.ajc.state.ak.us/reports/1-07CriminalRecidivism.pdf>; *id.* at 8; *id.* at 12.

⁴ *Id.* at 4 (2007) (showing that 39% of sex offenders were re-arrested in the time frame of the study, compared to 67% of property offenders, 61% of driving offenders, 60% of violent offenders, and 52% of drug offenders); *id.* at 8 (finding that sex offenders were the least likely among all felons studied to be re-arrested for the same type of crime as their original conviction).

found that several categories of Alaskan sex offenders were less likely to reoffend than a control group of non-sex offenders.⁵ “The myth of the incorrigible sex offender, all but guaranteed to reoffend, has been largely refuted. A study by the Alaska Justice Statistical Analysis Center of sex offenders released from Alaska corrections facilities in 2001 found that non-sex offenders were more likely to be rearrested than sex offenders.”⁶

Nationwide, studies bear out the notion that sex offenders as a whole are those least likely to reoffend. A 2003 U.S. Department of Justice survey of 9600 sex offenders released in 1994 found that the overall re-arrest rate for sex offenders was 43%, while the overall re-arrest rate for non-sex offenders was 68%.⁷ That study also found that sex offenders were less likely to be re-arrested for a felony than non-sex offenders.⁸

A 2012 U.S. Department of Justice study recently found that the creation of the New Jersey sex offender registry had absolutely no effect on the likelihood that sex offenders would reoffend.⁹

Sex offenders, the seemingly worst of the worst among criminal offenders today, are commonly, *albeit incorrectly*, assumed to be highly recidivistic, as well as specialists, engaged in sex offending only. Despite the fact that our legal responses to sex offenders, primarily sex offender registration and notification (SORN), are based on assumptions that those who commit sex crimes have no control over their sexual impulses and will repeat their crimes again, relatively little research has found support for such beliefs.¹⁰

⁵ Anthony M. Mander *et al.*, *Sex Offender Treatment Program: Initial Recidivism Study: Executive Summary*, Fig. 1, available at <http://justice.uaa.alaska.edu/research/1990/9419sotp/9602sotp.html> (showing treated sex offenders had the longest “survival rate” without reoffending, followed by unmotivated, untreated offenders; motivated, untreated offenders; and, last, the control group of non-sex offenders); see also Deborah Periman, *Sex Offender Registries and Notification Programs*, 4 UAA Justice Center Research Overview, at 2 (2009) (“The majority of sex offenders do not reoffend, and when they do commit another crime it is not usually a sexual offense or crime of violence.”), available at <http://justice.uaa.alaska.edu/occasionalpapers/op02.asora.pdf>.

⁶ Deborah Periman, *Revisiting Alaska's Sex Offender Registration and Public Notification Statute*, 25 UAA JUSTICE FORUM (Spring/Summer 2008), available at http://justice.uaa.alaska.edu/forum/25/1-2springsummer2008/c_asora.html.

⁷ Patrick A. Langan *et al.*, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994*, at 2 (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/rsorp94.pdf>.

⁸ *Id.*

⁹ Richard Tewksbury *et al.*, Bureau of Justice Statistics, *Final Report on Sex Offenders: Recidivism and Collateral Consequences*, at 10-11, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/238060.pdf>.

¹⁰ *Id.* at 1 (emphasis added).

The overall findings of the New Jersey study showed that recidivism rates were comparatively low for sex offenders as a whole.¹¹ “Research on the offending patterns of incarcerated sex offenders and probationers, however, typically finds that recidivism rates for sex offenders are relatively low and vary across different sex offender types.”¹²

Studies, both in Alaska and from national authorities, show decisively that sex offenders are among the offenders least likely to re-offend and least likely to be re-arrested. The legislature should decline, in light of the scientific evidence, to affirm statements about the likelihood of re-offense from sex offenders against the weight of the scientific consensus.

Sections 2 & 11: Expanding the List of Offenses Without a Statute of Limitations

Section 2 would remove any statute of limitation for *civil actions* arising out of a claim of felony sex trafficking or felony human trafficking. Section 11 would remove any statute of limitations for *criminal prosecutions* for certain sex trafficking offenses, human trafficking offenses, newly created sex offenses, and child pornography offenses.

Nothing about the legislative record makes clear why these offenses are singled out for special treatment. Nor is there a common thread that links them all. Many of the listed offenses do not require that the victim be underage. For instance, AS 11.66.120 makes “advertis[ing] . . . travel that includes commercial sexual conduct as enticement for the travel” a Class B felony. Under the bill, not only would it be a crime to advertise for a travel package including a visit to a legal brothel in Nevada, one could be prosecuted for this offense at any point until one dies, even if the charges are brought 50 years after an advertisement is published.

Statutes of limitations on criminal charges serve an important purpose. Such statutes recognize that witness move, grow old, forget, and die. They recognize that it grows harder and harder to mount a successful defense to criminal charges as those charges grown stale. Statutes of limitations tend to preserve the reliability of and public trust in criminal proceedings. They also encourage prosecutors to focus their efforts on the most serious crimes.

¹¹ *Id.* at 10 (“The non-sex offenders, on average, were re-arrested significantly more frequently post-release compared to the sex offenders.”); *id.* (“94.7% of the sex offenders are identified as low-risk compared to less than 75% of the non-sex offenders.”).

¹² Lisa L. Sample & Timothy Bray, *Are Sex Offenders Different? An Examination of Rearrest Patterns*, 17 CRIMINAL JUSTICE POLICY REVIEW 83, 97 (Mar. 2006), available at <http://constitutionaldefense.org/wp-content/uploads/2009/12/51-21.pdf>.

Exceptions to the statute of limitations may be appropriate in some cases. For some offenses, like murder, the crime is so serious that many people believe the danger in letting such offenses go unprosecuted is worse than the hazard posed by trial on stale evidence. For other offenses, such as sex crimes against children who may be unable to report abuse or to participate effectively in a prosecution, the statute of limitations is extended or eliminated.

However, there is enormous hazard in slowly adding every offense in the book to the list of offenses exempted from the statute of limitations, regardless of the offense's seriousness or circumstances making prompt prosecution difficult. Adding B felonies and offenses unrelated to the minority of the victim to this list of crimes exempt from statutes of limitations merely multiplies the already enormous number of opportunities for criminal prosecutions in Alaska.

Some might defend Section 11 by stating that prosecutors will use their discretion only to bring the most important cases and will not prosecute stale cases of dubious value. One might point to many recent cases, including the Ted Stevens prosecution, to question whether prosecutorial discretion and supposed lack of bias should be relied upon as a defense of our liberties. However, Section 2, which deals with *civil* statutes of limitations, raises similar concerns, unmitigated by any of the benefits that might inhere in prosecutorial discretion.

A party bringing a claim for monetary damages is by definition biased, and that party has little incentive to ignore old, stale claims. Allowing a party to bring private claims unrestricted by any statute of limitations will allow that party to wait until the most opportune time to file the complaint. A claimant could simply wait until the best witness for the defendant has died and file suit then. Since defending oneself from even frivolous litigation entails a certain amount of cost, opening the door to all manner of litigation for all of one's life exposes ordinary people to the duty to defend themselves indefinitely against all manner of tort claims. If a claimant chooses not to file a case in some reasonable interval, for reasons unrelated to minority or disability, why should the state facilitate the delay of proceedings in a way which is harmful to justice and the truth-finding purpose of the courts?

As a side note, our concerns about the endless extension of time in which to file criminal and civil complaints are particularly heightened with regard to the human trafficking laws, which we criticized as poorly drafted last year. The human trafficking law criminalizes, among other acts, "induc[ing] another person to engage in sexual conduct . . . or labor . . . by deception." AS 11.41.360(a). This open-ended statute leaves ordinary dishonesty in sexual relations subject to prosecution, like lovers who falsely state they'll be faithful to their partners or who misrepresent how many prior sexual partners they've had. It also allows felony punishment for misleading statements from an employer.

This year, the original error in the human trafficking bill is compounded by opening employers to endless litigation on labor cases and private sexual partners open to endless litigation on any matter arising from allegedly false representation to their partners. These problems serve only to make the implications of a badly written law worse.

Sections 3, 4, 5, 6, 7, and 8: Sexual Contact with Supervisees by Probation/Parole Officers

The ACLU of Alaska generally supports the aims of Sections 3, 4, 5, 6, 7, and 8 of the bill. Sexual misconduct by adult and juvenile probation and parole officers poses a serious risk to vulnerable individuals in the state's care. Probation and parole officers have great authority in determining whether a probationer or parolee is detained. Probation and parole officers should know that sexual contact with a probationer or parolee is not tolerated and subject to penalty. While most officers will fulfill their role professionally, the officer who wishes to abuse his authority should be strongly deterred from doing so.

Section 19: Removing Sex Trafficking Offenses from the List of Offenses Eligible for Suspended Imposition of Sentence

Suspended Imposition of Sentence is virtually the only statutory diversionary program for criminal charges in Alaska. While many of the offenses described in AS 11.66.110-135 are very serious, some are less so. AS 11.66.130 could be read broadly to allow prosecution of minor participants in prostitution operations, as it criminalizes "conduct that institutes, aids, or facilitates a prostitution enterprise." One could read AS 11.66.130 so broadly as to criminalize all sorts of acts by the victims of sex trafficking. If a victim of sex trafficking answers the phone at a massage parlor and puts a note in the calendar book, she has "aid[ed] or facilitate[d] prostitution" in some sense. Does that make her no longer a victim? No, but it does make her a felon under Alaska law.

The first thing most sex trafficking advocates say is to stop prosecuting the victims. As long as victims are subject to prosecution, it will be difficult for them to seek protection. Section 18, by sweeping a lot of dissimilar conduct into the same basket, would bar merciful treatment to those who were merely minor participants in the criminal operation or who were generally the victims of the operation. Section 18 should be rewritten to exclude the suspended imposition of sentence for offenses under AS 11.66.110 and 11.66.120 only.

Section 30: Expanding the List of Offenses Not Eligible for Good Time

We have already discussed this proposed expansion in our review of the general criminal justice backdrop of this bill. We incarcerate an ever expanding number of prisoners, for longer and longer times, and often less and less serious reasons. The effect on our prisons has been striking. This section would eliminate unclassified and Class A sex offenses from good time calculations. Along with the previously discussed financial problems, this section could impose some significant non-monetary problems. One reason for having "good time" rewards is to encourage good behavior from prisoners. As we are increasing the number of prisoners in custody, do we really want to house a lot of prisoners on long sentences with no incentive to behave? This

proposal puts correctional officers at risk by eliminating any incentive towards good behavior. It is bad correctional policy and bad public safety policy. The correctional officers in Alaska institutions deserve serious enactments from this body, not bills that put them in harm's way.

Section 34: Defining the Attorney General's Designee

The legislature previously authorized the Attorney General to sign administrative subpoenas for information about an Alaskan's use of the internet. Allowing a prosecutor to write his own search warrants for private information is a stunning expansion of unilateral prosecutorial power, unreviewed by any judge. In order to limit the potential for abuse, that power should be held by as few people as possible. CS for SB 22 (FIN) would allow an Attorney General's designee to issue those subpoenas as well.

Section 34 states that "the attorney general's designee *may be*" the Deputy Attorney General for the civil or criminal units of the Department of Law. Unfortunately, the terms "may be" do not clearly *limit* the designees with authority to issue those subpoenas only to those two attorneys, although we believe that was the legislative intent. To ensure the law is clear, the section should be rephrased to clarify that an attorney general's designee *may only be* a Deputy Attorney General.

If the Attorney General could designate the authority to demand internet records to anyone he chose, the subpoena power could be abused without adequate oversight. While we do not support expanding the already enormous grant of prosecutorial authority, we certainly believe that power should be carefully limited in scope.

Section 38: Restriction on Access to Evidence in Criminal Cases

This section would prohibit any release of evidence to defense counsel that constitutes child pornography. Absent from the record is evidence of child pornography being misused by defense attorneys. Careful restrictions on how a defense attorney may use the evidence or how and when he may show the evidence to his client might be appropriate. Forcing defense attorneys to view the primary piece of evidence in a case at the convenience of the state, in a police station or prosecutor's office, does not comport with basic due process or effective assistance of counsel. Careful review of the evidence is simply not possible in a prosecutor's office.

The rule could also present substantial difficulty for attorneys located at a distance from the prosecutor's office designated by the state; an attorney in Fairbanks can't be expected to travel to Barrow just to look at evidence (or vice versa). While the rule would allow review of the evidence by an *out-of-state* expert, it would still require an in-state expert to appear in person at the prosecutor's office, which would also create significant difficulties for the in-state expert if he lived in a different city from the prosecution or the defense.

Further, some experts may be retained for the purposes of showing that the defendant did not or could not have knowingly put the file in question on the hard drive in question. Managing electronic evidence may require running diagnostics or specific programs on the data, a process impossible on someone else's computer in the middle of the prosecutorial office. Only by conveying a full copy of the evidence to the defense can a person be adequately represented in such cases.

Section 39: Rejecting Pre-Sentence Reports Without Victim Impact Statements

Allowing victim impact statements may be helpful and appropriate at sentencing hearings. However, the problem with the proposed rule amendment is that it does not explain what should happen if the statements are not included. The rule says merely that the entire pre-sentence report should be rejected. Should the sentencing then proceed without *any* pre-sentence report? Should the Court simply discard all the existing research and information? Should the defendant – who may be waiting in custody – continue to await sentencing until an acceptable pre-sentence report is filed? If so, how long must he wait?

It seems counter-productive to reject the whole pre-sentence report in the absence of a victim-impact statement. The Alaska Constitution already guarantees the right to “be present at all criminal or juvenile proceedings where the accused has the right to be present [and] the right to be allowed to be heard, upon request, at sentencing.” Alaska Const., Art. I, Sec. 24. The prosecution, the Department of Corrections, and the Office of Victim Services ought to be actively involved in consulting with the victim at sentencing. The victim also has a right to “timely disposition of the case following the arrest of the accused.” *Id.*

A simpler solution might go as follows. Under existing criminal rules, the presentence report must be filed with the court 30 days prior to the sentencing date. Instead of *rejecting* the report, the legislature could state that, if a presentence report lacks a victim impact statement, the Court should notify the victim and the Office of Victim's Rights by mail of the date of sentencing and invite the victim to appear. The victim would then be able to appear in person at the sentencing, as contemplated by the constitution. The 30-day window should permit adequate notice to issue.

Conclusion

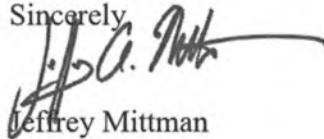
We hope that the House Finance Committee will note our concerns with the proposed language in CS for SB 22 (FIN).

While the ACLU of Alaska does not contest the State's ability and duty to pass laws to protect public safety, as drafted, many provisions in CS for SB 22 (FIN) are poorly tailored to advancing the cause of public safety and would come at substantial fiscal and personal costs to the community as a whole.

Please feel free to contact the undersigned should you require any additional information. Again, we are happy to reply to any questions that may arise either through written or verbal testimony, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Representative Mia Costello, Rep.Mia.Costello@akleg.gov
Representative Bryce Edgmon, Rep.Bryce.Edgmon@akleg.gov
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Department of Law

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CS for SENATE BILL 22(FIN)

Highlights

- Prohibits a probation or parole officer from engaging in sexual penetration with a person on probation or parole. There is a marriage defense and an affirmative defense for a preexisting relationship. This conduct would be a class C felony.
- Prohibits a probation or parole officer from engaging in sexual contact with a person on probation or parole. There is a marriage defense and an affirmative defense for a preexisting relationship. This conduct would be a class A misdemeanor.
- Allows prosecution of the crimes of distribution of child pornography, felony sex trafficking, and felony human trafficking at any time without regard to the time elapsed from the commission of the crime. It also allows a civil action based on the crimes of felony sex trafficking and felony human trafficking at any time.
- Strengthens the law requiring judges to consider the impact of the crime on the victim at sentencing.
- Allows a court, in considering bail release of a person charged with a domestic violence crime or stalking, to require the defendant to submit to electronic monitoring by GPS or similar technology under guidelines to be adopted by the Department of Corrections in cooperation with the Department of Public Safety.
- Allows the Attorney General to request permission from a court for law enforcement to conduct wiretapping in an investigation of felony sex trafficking and felony human trafficking.
- Adopts deadlines for claiming credit for time spent in a treatment facility in connection with bail release, while a conviction is appealed, or in connection with a petition to revoke probation.
- Reverses a recent decision by the Alaska Court of Appeals that misinterprets legislative intent regarding referral to a three-judge panel for sentencing of a felony sex offender.
- Requires paid athletic coaches to report to authorities if there is reasonable cause to believe that a child has been abused or neglected.

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Governor Sean Parnell
STATE OF ALASKA

January 15, 2013

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

Dear President Huggins,

We remain dedicated to ending the epidemic of domestic violence and sexual assault in Alaska and building on our shared successes of the past three legislative sessions to ensure safe homes and strong families in our state. To those ends, I am transmitting a bill under the authority of Article III, Section 18 of the Alaska Constitution, relating to crimes associated with domestic violence, sexual assault, and trafficking.

Measures within this bill provide stronger protections for victims and survivors, strengthen penalties on the demand side of sex trafficking, strengthen law enforcement investigative tools to track down and prosecute perpetrators, and create tougher sentencing provisions.

Stronger Protections for Victims and Survivors

To protect victims of domestic violence and sexual assault from further trauma, this legislation will authorize the court to order GPS tracking devices on perpetrators with protective orders to further provide for the safety of the victim when warranted. It will restrict offenders from obtaining graphic forensic evidence of victims, clarify that probation and parole officers may not engage in sexual conduct with a person under their supervision, and restrict offenders in custody from contacting a victim. In cases where a domestic violence offender violates conditions of release, we will mandate an in-person appearance before a judge prior to their release, as they present a more serious risk to the victim and the public. And for those victims that have yet to seek justice, the statute of limitations for crimes of felony sex trafficking and human trafficking have been removed.

To protect children from further danger and abuse, the bill would allow the Department of Health and Social Services to petition a court to discontinue the department's obligation to engage in reunification efforts with parents or guardians who have committed sexual abuse against the child or who are required to register as a sex offender, thereby freeing up limited resources to make reunification efforts in other cases.

COMMITTEE COPY

SENATE BILL NO. 22

Strengthen Penalties on the Demand Side of Sex Trafficking

This legislation will require “johns” who prey on young people to register as sex offenders. We will mandate the forfeiture of property used in these crimes, and expand the definition of “sexual felony” to include online enticement of a minor and sex trafficking, so these crimes can be used as prior convictions in sentencing.

Investigative Tools

The bill allows the attorney general to request the court to authorize interception of private conversations in connection with sex trafficking. Currently, this investigative authority exists in cases of murder, kidnapping, or serious drug offenses. Sex trafficking and human trafficking are serious crimes that commonly would be carried out by coordination among perpetrators. Allowing for this investigative tool would help identify offenders and protect victims of these crimes.

Sentencing

To further strengthen sentencing provisions, the bill would also require that a defendant who is being sentenced for two or more crimes involving child pornography and similar offenses be sentenced to some consecutive term for each crime for which the person is being sentenced. Even a small amount of consecutive time for each crime gives closure to victims and justice to the public. Additionally, the bill would ensure that a prisoner is not eligible for good time release if the prisoner has committed an unclassified or a Class A sexual felony.

The bill also addresses a decision of the Alaska Court of Appeals, *Collins v. State*, 287 P.3d 791 (Alaska 2012). A majority, in my view, misinterpreted the legislative history for increased sentencing ranges for sexual felonies by holding that the history indicated lower standards for referral of sexual felonies to a three-judge panel. The bill corrects that interpretation.

I urge your support of this important legislation to enhance the safety of Alaskans.

Sincerely,



Sean Parnell
Governor

Enclosure

CS FOR SENATE BILL 22 (FIN)

Sectional Analysis

Sections 1, 21 and 22 are intended to overturn the majority decision in *Collins v. State*, 287 P. 3d 791 (Alaska App. 2012). *Collins* used a mistaken interpretation of legislative intent regarding standards for referring sex offenders to a three-judge sentencing panel. In 2006 the legislature adopted increased penalties for persons convicted of sex felonies. The legislature adopted specific findings, among others, that sex felons are difficult to treat, are much more likely than other felons to reoffend, that many sex offenders begin victimizing others when the offender is relatively young (between 12 and 16 years of age), and that these crimes cause serious harm to victims, particularly to young girls. When the legislature raised the sentencing ranges for sex felonies, it did not intend that different standards be applied to referral of a case involving a sex felony to a three-judge panel than for other felony offenses. **Section 1** adopts legislative findings and intent to address the *Collins* decision. **Sections 21 and 22** adopt new provisions to address the transfer of a case from the sentencing judge to a three-judge panel in a case involving a sex felony. These three sections overturn the majority decision and endorse the dissent in *Collins*.

Section 2 allows a person to bring a civil action at any time against a perpetrator for damages based on injuries resulting from the crimes of felony sex trafficking and felony human trafficking.

Sections 3 and 4 amend the crime of sexual assault in the third degree to prohibit a probation or parole officer from engaging in sexual penetration with a person on probation or parole. This is similar to the law prohibiting a police officer or a correctional officer from this conduct with a person in the officer's custody. The terms probation officer and parole officer are defined. The definition of probation officer includes a person who supervises therapeutic court participants.

These sections also prohibit a juvenile probation officer or juvenile facility staff from engaging in sexual penetration with an 18 or 19 year old on juvenile probation or in a juvenile facility. This conduct is a class C felony.

Sections 5 and 6 amend the crime of sexual assault in the fourth degree to prohibit a probation or parole officer from engaging in sexual contact with a person on probation or parole. They also prohibit a juvenile probation officer or juvenile facility staff from engaging in sexual contact with an 18 or 19 year old on probation/or in a juvenile facility. This conduct is a class A misdemeanor.

Section 7 adds a defense to the prohibition of a probation or parole officer from engaging in sexual contact with a probationer or parolee that the offender and the person were married. This applies to the crime of sexual assault in the fourth degree.

Section 8 adopts an affirmative defense to the prohibition of a parole or probation officer from engaging in sexual penetration or sexual contact with a parolee or probationer. The affirmative defense is that the officer and the person on probation or parole had a preexisting dating or sexual relationship before the alleged offense that continued until the alleged offense.

Section 9 fills a gap in the law that prohibits a person ordered by a court not to contact a victim or witness as part of a sentence or a condition of release. It prohibits a defendant who has been ordered by the court not to contact a victim or witness, but who has not been released from jail, to refrain from contacting the victim or witness. This conduct is a class A misdemeanor.

Section 10 allows the state to request forfeiture of property of a patron of a prostitute or the prostitute if the property was used to institute, aid, or facilitate prostitution, or was received or derived from prostitution. It makes the forfeiture discretionary with the court and requires the defendant to be convicted before the property may be forfeited.

Section 11 allows the state to prosecute a person for distribution of child pornography, felony sex trafficking, and human trafficking at any time without regard to the time elapsed from the commission of the crime.

Sections 12 and 13 allow the court the discretion, in releasing on bail a person in connection with a crime involving domestic violence or stalking, to require the defendant to participate in electronic monitoring by a global positioning device or similar technology if it meets guidelines adopted by the Department of Corrections in consultation with the Department of Public Safety.

Section 14 requires that a person arrested for a violation of a condition of release in connection with a domestic violence crime appear before a judge in person or by telephone before release from custody.

Section 15 authorizes the attorney general to make a written application to a court for an order allowing interception of the private communications of a person that may provide evidence that the person is committing or planning to commit sex trafficking in the first or second degree, or human trafficking in the first degree. Sex trafficking and human trafficking are crimes that would require cooperation among perpetrators. Interception of the communications of a person under these circumstances would facilitate the investigation of these crimes.

Section 16 expands the protection of a victim of sexual assault, sexual abuse of a minor, and unlawful exploitation of minor by excluding evidence of the victim's sexual conduct both before and after the person was victimized. Current law provides this protection for evidence of sexual conduct before the offense charged. This rule is commonly referred to as the rape shield law, and the purpose is to exclude evidence of the victim's private sexual conduct unless the proponent has a valid evidentiary reason for its admission. **Section 16** also requires the defendant to make the request to admit this evidence at least five days before trial, unless the request is based on information learned after the deadline or otherwise for good cause.

Section 17 requires a defendant claiming credit for time spent in a treatment program as a condition of bail release to file written notice 10 days before the sentencing hearing on that offense. The notice must include the number of days the person is claiming. A court may not consider a request for credit made more than 90 days after the deadline except for good cause. **Section 17** also requires a person to make a request for credit for time spent in a treatment program pending appeal within 90 days after the case is returned to the trial court following appeal. A court may not consider a request for credit after the deadline except for good cause.

Section 18 requires a defendant claiming credit for time spent in a treatment program as a condition of probation or a condition of bail release in connection with a petition to revoke probation to file notice of the request 10 days before the disposition hearing on the petition. The notice must include the number of requested days of credit. A court may not consider a request for credit made more than 90 days after the deadline except for good cause.

Section 19 makes a person convicted of sex trafficking ineligible for a suspended imposition of sentence.

Sections 20 requires the court in sentencing a person convicted of two or more crimes of distribution of child pornography, possession of child pornography, or distribution of indecent material to minors to give some consecutive time for each crime or attempted or solicited crime for which the defendant is being sentenced.

Sections 21 and 22 – please refer to discussion at **Section 1**.

Section 23 corrects an error in the definition of sexual felony by including the crimes of sex trafficking in the first degree and online enticement of a minor in the definition. The term is used in AS 12.55.125(i), which adopts higher sentencing ranges for most sex felonies, including sex trafficking in the first degree and online enticement of a minor.

Section 24 adds the felony of being a patron of a prostitute who is under 18 years of age in violation of AS 11.66.100 to those crimes that require registration as a sex offender, if the patron is 18 years or older and at least three years older than the prostitute. It also corrects a reference to the crime of sex trafficking in the first degree and the third degree in the sex offender law.

Sections 25 and 26 make conforming amendments to the warning on sexual assault, stalking, and domestic violence protective orders. Certain violations of these protective orders are a class A misdemeanor under AS 11.56.740. The maximum fine for a class A misdemeanor has been raised to \$10,000 under AS 12.55.035. **Sections 25 and 26** update the warning to describe the maximum fine under current law.

Section 27 adds to the definition of victim counseling centers to include victim counseling centers operated by or contracted by a branch of the armed forces of the United States. The effect of this change is to extend the privilege for confidential communications between a victim of sexual assault or domestic violence and their counselors to counseling organizations that provide services to victims connected with the military.

Section 28 amends the law addressing persons who are eligible for violent crimes compensation to include victims of sex trafficking, human trafficking, and unlawful exploitation of a minor.

Sections 29, 39, and 40 strengthen and make more explicit statutes and court rules that require a court to consider the impact of the crime on the victim. **Section 39** requires the presentence report to include a victim impact statement or an explanation of why the victim or victim's representative could not be interviewed. **Section 40** requires the court to take the victim's impact statement into account when preparing the sentencing report and for other purposes. **Section 29** requires the Alaska Judicial Council to include information about a judge's consideration of victims when imposing sentence in a felony case with other information about the judge in connection with a retention election.

Section 30 provides that a person convicted of an unclassified or class A sexual felony is not eligible for mandatory parole (also called good time).

Sections 31 -- 34 address the procedure for a law enforcement officer to obtain an administrative subpoena for the business records of an Internet service provider. These subpoenas may be issued in the investigation of the crimes of online enticement of a minor, unlawful exploitation of a minor, distribution of child pornography, possession of child pornography, and distribution of indecent material to a minor. The amendments allow the attorney general to designate the deputy attorney general for the civil division or the criminal division to evaluate applications for the subpoena, in addition to the attorney general. The investigation of these cases often requires a prompt response to a request for a subpoena, and having two attorneys who may approve them will assist law enforcement in their investigations.

Section 35 adds to the circumstances that allow a court to decide that reasonable efforts by the Office of Children's Services to reunite a child who is in an out-of-home placement with the child's family are not required. It provides that the court may make this determination if it finds by clear and convincing evidence that the parent or guardian has committed sexual abuse against the child or another child of the parent or guardian, or that the parent or guardian is registered or required to register as a sex offender or child kidnapper.

Sections 36 and 37 add athletic coaches to the persons who are required to report to authorities if the person has reasonable cause to believe that a child has suffered harm from child abuse or neglect. Athletic coach is defined in **Section 37** to include paid leaders of a sports team and their assistants.

Section 38 adopts a court rule that limits the publication of child pornography that occurs during the discovery process in a prosecution for unlawful exploitation of a minor. Because every viewing of child pornography is an additional harm to the victim, this section requires the defendant and the defendant's attorney to view the material where it is stored. If a defendant is not represented, it requires the court to arrange for the defendant to be supervised while viewing the material. If the defendant requests that an expert witness out of state view the material, it requires the court to arrange to send the material directly to the expert.

Sections 39 and 40 – please refer to discussion at **Section 29**.

Section 41 amends Rule 404(b)(2)(i), Alaska Rules of Evidence. Under Rule 404, evidence of the defendant's prior bad acts is generally not admissible. There are several exceptions to this rule. Evidence in the prosecution of a physical or sexual assault or abuse of a minor that describes other similar acts by the defendant toward the same victim or other similar victims may be admissible. Current law, however, limits the admissible evidence to acts committed within 10 years preceding the date of the currently charged crime. **Section 41** removes this time limitation. Other exceptions to the general rule, for example, sexual assault and domestic violence prosecutions, do not limit the use of prior acts to those committed within 10 years of the current offense. Further, the 10

year limit is problematic because a person convicted of a crime against a child may have been incarcerated for a significant period for the previous offense. The question of whether the prior act occurred too far in the past is then left to the judge to determine under the circumstances of the case.

Section 42 notes that the proposed amendments to the rape shield law would have the effect of changing a court rule.

Section 43 adopts applicability provisions.

Section 44 notes that the changes in the rape shield protection in **Section 16** of the bill requires two-thirds majority vote in each house because it is an indirect court rule change.

Section 45 provides an effective date of July 1, 2013.

CSHB 73(JUD) and CSSB 22(FIN)

Comparison

CSHB 73(JUD) and CSSB 22(FIN) are essentially the same, but with two exceptions:

- CSHB 73(JUD) added two sections (30 and 31) which make conforming amendments to the law that provides a savings clause in our adoption code. In that code, a victim of sexual abuse or incest that becomes pregnant as a result of the crime may initiate proceedings to terminate the parental rights of the perpetrator. If they do so, the law “saves” other remedies for them against the perpetrator. The legislature neglected to specifically include victims of sexual abuse in the savings clause. The additions specify that victims of sexual assault are protected, too.
- Both bills amend Rule 16(b), Alaska Rules of Criminal Procedure, by limiting the copying and distribution of child pornography that is attendant on the discovery process in a criminal prosecution. CSHB 73(JUD) allows the court to make arrangements to send the materials to experts both in and outside the state for examination. CSSB 22(FIN) would only allow the material to be sent to an expert out of state.



Alaska Children's
Justice Act Task Force

March 22, 2013

Richard Bloomquist,
Coordinator

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Marsha Tandeske, Co-Chair
Lt. Craig Allen
Shannon Baergen
Cathy Baldwin-Johnson MD
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The Honorable Governor Sean Parnell
PO Box 110830
Juneau, Alaska 99801-0830

Re: CSSB 22 (JUD)

Dear Governor Parnell,

The Alaska Children's Justice Act Task Force respectfully submits this letter of support for the passage of CSSB 22 (JUD), the current version of the Governor's Crime Bill.

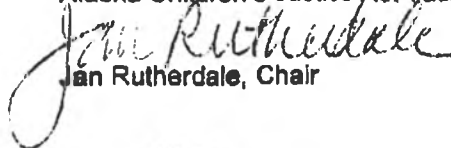
The genesis of the Alaska Children's Justice Act Task Force (CJA) is the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101) and the Victims of Crime Act (42 U.S.C. 10601). The CJA was founded in 2002 and is federally mandated and funded. The 20 members of the task force are from across the State of Alaska and include representatives from the fields of medicine, law, child protection, juvenile justice, tribes, and education. Our mission is to: *Identify areas where improvement is needed in the statewide response to child maltreatment, particularly child sexual abuse, make recommendations, and take actions to improve the system.*

Many of the sections contained within CSSB 22 (JUD) are consistent with the mission of CJA, that is, they will improve the system response to child maltreatment and protect Alaska's children. We particularly support the sections regarding sentencing, unlawful contact between perpetrators and victims, and changes to the mandatory reporter statutes and Evidence Rule 404. Attached to this letter is an outline of the specific sections of CSSB 22 (JUD) the CJA supports, with an explanation of why the CJA believes the section will protect children. While we do not address all sections of the governor's bill, please understand this is not because we oppose or don't support those sections but because they are outside our charge.

Thank-you very much for your consideration. If we can be of assistance or a resource for you please feel free to contact us.

Sincerely,

Alaska Children's Justice Act Task Force


Jan Rutherford, Chair

Our Mission: Identify areas where improvement is needed in the statewide response to child maltreatment, particularly child sexual abuse, make recommendations, and take actions to improve the system.



Alaska Children's
Justice Act Task Force

Sectional support of CSSB 22 (JUD)
Attachment to letter of March 22, 2013

Sections 1 and 21-22: These sections clarify the legislature's intent with regard to referrals to three judge panels for sentencing for sexual felonies. These sections hold offenders accountable and prevent further abuse by that offender. We hope these sentences will assure victim safety and deter potential offenders.

Section 9: This section provides that incarcerated persons who have not been to trial or sentenced who contact their victim may be charged with the present crime of unlawful contact. Often in sexual abuse cases the perpetrator will contact the victim from the jail. While threats can be prosecuted under present law, these contacts are not direct threats and may seem benign or even appropriate. For example, the contact might be a card or letter from the perpetrator to the child victim expressing "how much daddy loves you", or "how much daddy can't wait to see you again". These contacts can be quite upsetting, frightening, confusing, and/or intimidating to a child victim.

Section 20 and 31-34: Section 20 provides that persons who are convicted of multiple counts of distribution or possession of child pornography must have some part of the sentence for each count be consecutive to other counts. Sections 31-34 assist law enforcement and the Attorney General to more effectively investigate child pornography. Children whose images are contained on child abuse images are victims for life as the abuse images forever circulate within the virtual universe of the internet. These sections expand the tools law enforcement has available to investigate and intervene in the continuing possession and distribution of the images. Additionally, requiring some consecutive sentencing for possession and distribution of child abuse images, in some small part, reflects the severity of the continuing, perpetual harm to the victims.

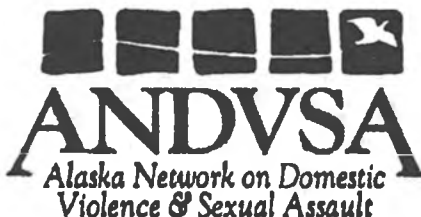
Section 35: This section provides, in the context of Title 47 child protection cases, more protection for children whose parent has sexually abused a child or required to register as a sex offender.

Sections 36-38: These sections modify the mandatory reporter statute to include athletic coaches. The CJA strongly supports this added protection to children.

Section 42: This section amends Evidence Rule 404 to eliminate the look-back requirement for prior bad acts of sexual abuse. At present prosecutors may only seek to introduce prior acts of sexual abuse which have occurred within 10 years of the prior offense. This would permit the court and jury to consider older offenses.

Our Mission: Identify areas where improvement is needed in the statewide response to child maltreatment, particularly child sexual abuse, make recommendations, and take actions to improve the system.

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Fax: (907) 747-7547

March 22, 2013

Honorable Sean Parnell
State Capitol – 3rd Floor
Juneau, AK 99811

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 CSSB 22 (JUD) – Crimes; Victims; Child Abuse and Neglect.

Several substantive changes in the bill will help improve victim safety. In particular, the provision closing a gap in the unlawful contact statute – this will cease what has become a common pattern in domestic violence cases whereby abusers who are awaiting release from detention repeatedly contact and harass victims and other witnesses. In addition, we strongly support the provision prohibiting sexual penetration and sexual contact by probation-, parole-, and juvenile probation officers and facility staff with those over whom they have direct supervision. Finally, we strongly support removing the civil statute of limitations from the crimes of sex trafficking and human trafficking. There should be no time limit placed on a victim's right to seek justice from those who profit from trafficking Alaska women, men and children.

We also support moving the GPS monitoring provisions into the criminal statutes and look forward to working with the Department of Public Safety and the Department of Corrections in developing guidelines to insure victim safety and insure victim consent is obtained prior to any judge ordering GPS monitoring which, by its nature, requires victims to disclose the safe locations of themselves and their children.

The majority of the remaining provisions in the bill are criminal law and procedure changes that we believe will provide our allied partners in law enforcement and prosecution with the tools they need to insure that perpetrators of these crimes are held accountable and victims obtain the justice they deserve. In particular, we support removing the statute of limitations for prosecuting the crimes of sex trafficking, human trafficking and distribution of child pornography, requiring an abuser to appear before a judicial officer prior to being released after a violation of a condition of release and expanding the rape shield provisions.

Thank you for bringing forth SB 22.

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 SPFH Juneau AWARE Kenai LeShore Center Ketchikan WISH Kodiak KWRCC
Kotzebue MFCC Nome BSWG Seward SCS Sitka SAFV Unalaska USAFV Valdez AVV



Crisis Center · Community Services Center · Transitional Living

Senators Meyer and Kelly, Co-Chairs of the Senate Finance Committee
Alaska State Capital
Juneau, Alaska 99801

March 21, 2013

Dear Senator Meyer and Senator Kelly,

Over the last several years, Covenant House Alaska (CHA) has seen distressing trends in the deliberate and devastating trafficking of our youth. CHA served nearly 6,000 individual youth throughout four main programs (emergency shelter, workforce development and street outreach and two transitional living programs). Our staff reported seeing at least one case of human (primarily sex) trafficking per month, although the crime is often hidden and underreported among our kids. CHA estimates that the rate of trafficking activities our kids endure is actually much higher.

As a result, CHA strongly supports SB 22 and the anti-trafficking provisions within the bill. During the 2012 Legislative Session, The Alaska State Legislature passed a bill aimed at holding traffickers accountable and ensured the victim status of individuals caught in this horrific crime. SB 22 now holds the demand side of trafficking accountable. Often overlooked, the "johns" who purchase sex are a critical aspect of why the crime flourishes. "Johns" are not only breaking the law, they are empowering and supporting the practice of modern-day sex slavery whose victims are often the most vulnerable among us.

Traffickers specifically target the population CHA aims to protect: impoverished youth who have histories of sexual and physical abuse and extremely limited family and financial resources. They target those they can easily trap; youth who are coming out of the foster care system, are homeless or otherwise alone and if missing, will go "undetected" by their community. Youth are then re-traumatized after surviving childhood marked by abuse. It is for these reasons, that the crime of the "Johns" is particularly severe.

SB 22 contains additional valuable changes to state law. It removes the statute of limitations for sex trafficking. It also protects child victims of sexual abuse from endless reunification efforts when the abuser is their parent and instead encourages finding a safe, permanent placement. SB 22 also clarifies the intent of past legislation penalizing sexual abuse and assault to ensure offenders serve the time set out in sentencing guidelines.

As a provider of services in our community, CHA is the "boots on the ground" for homeless kids. It is with this perspective and expertise that we offer our support of SB 22. Thank you for your consideration.

Sincerely,


Alison Kear

Alaska Women's Lobby

P.O. Box 20891, Juneau, AK 99802-0891
AWL@akwomenslobby.org ~ www.akwomenslobby.org

Letter of Support HB 73
CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT
February 2013

The Alaska Women's Lobby is a statewide grassroots organization dedicated to advancing the right of women, children and families. The Women's Lobby appreciates the Governor's work to strengthen laws that protect domestic violence and sexual assault victims and hold offenders of these crimes accountable for their actions.

We specifically support adding to the crime of sexual assault in the third degree the egregious action of a probation or parole officer engaging in sexual penetration with a person who is on probation or parole. A probation or parole officer has authority both real and implied over a person on probation or parole and as such cannot have a consensual sexual encounter with a probationer or parolee.

Probation and parole officers must exhibit professionalism whether on or off duty. When acting in an official capacity, they must not compromise the trust of the public. The Federal Probation Officers Association, the American Probation and Parole Association and Alaska's own Code of Ethics all include recognition of the office as a symbol of public faith and requires the officer to accept it as a public trust. They also ask the officer to conduct his/her personal life with decorum, neither accepting nor granting favors in connection with the office and requires officers to put loyalty to moral principles above personal consideration. Alaska's code further requires officers to not engage in undue familiarity with probationers or parolees. It is clear that people who choose to enter the probation/parole profession do so knowing they are called to keep a strict code of proper conduct and are held to high standards.

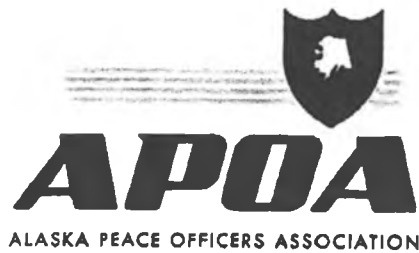
Whether or not the probationer or parolee is under the specific supervision of an officer, they know that any officer has the authority to report misconduct/violations of their probation or parole conditions and can revoke probation or parole. It seems obvious that a person would believe he or she had to comply with a request of a sexual nature or suffer more consequences.

Adding probation or parole officers engaging in sexual penetration with a person who is on probation or parole to the crime of sexual assault in the third degree sends a strong message to everyone; Alaskans expect those we entrust with upholding the law and assisting offenders to successfully re-enter our communities to be true to their professional code of ethics, to be role-models and to conduct themselves accordingly.

AWL Statewide Steering Committee

Defending and advancing the rights and needs of women, children, and families in Alaska.

Statewide Steering Committee: Jayne Andreen, Elizabeth Belknap, Nancy Courtney,
Larae Jones, Jordan Nigro, Taber Rehbaum, Karl Robinson, Shannen Vargas
Lobbyist: Garen Robinson



Business Manager

Katie Bell
Anchorage

February 12, 2013

**Board of Directors
Officers**

John Lucking, Jr., President
Soldotna

The Honorable Sean Parnell
Governor, State of Alaska
State Capitol Building
PO Box 110001
Juneau, AK 99811-0001

Kris Sell, Vice President
Juneau

Angella Lang, Past President
Wasilla

Dear Governor Parnell:

Marilyn Bailey, Secretary-Treasurer
Anchorage

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for your dedication to the interests of our State. We are grateful for your efforts to further companion bills HB 73 and SB 22.

Directors

John Waldron, President
Aleutian Islands Chapter
Unalaska

The APOA Executive Board's Legislative Committee reviewed this proposed legislation and decided to unanimously support these bills in their entirety.

Michele Logan, President
Anchorage Chapter
Anchorage

Steve Hall, President
Capital City Chapter
Juneau

Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to help with the passage of this bill.

Brad Johnson, President
Fairtest North Chapter
Fairbanks

Mark Pearson, President
Kenai Peninsula Chapter
Kenai

Sincerely,

Kevin Brew, President
Mat-Su Chapter
Wasilla

John Lucking, Jr.
State President

Theda LaLonde, President
Wrangell Chapter
Wrangell

PO Box 240106
Anchorage AK 99524

t 907 277 0515
f 907 272 5355

Making A Difference In The Last Frontier





Alaska Association of Chiefs of Police

February 2, 2013

The Honorable Sean Parnell
Governor, State of Alaska
State Capitol Building
PO Box 110001
Juneau, AK 99811-0001

Dear Governor Parnell:

In my capacity as President of the Alaska Association of Chiefs of Police, I am writing to express our unequivocal support of your Omnibus Crime Bill, introduced as House Bill 73 and Senate Bill 22. Our Association is comprised of more than 100 law enforcement executives from all across Alaska, and we feel this year's Crime Bill will provide us with important tools in the battle to seek justice for victims of sexual assault, domestic violence and human trafficking.

You should be proud of a well crafted piece of legislation which, if passed, shall do much to protect vulnerable individuals in our state and to hold accountable those who prey upon them. Thank you for your strong commitment to the public's safety.

We would be pleased to work with your staff to insure that HB 73 and SB 22 are passed, and encourage you to contact our Executive Director, Kalie Klaysmat, at 907-394-5426 or by email at kalie.klaysmat@aacop.org should there be some way we can be of assistance in that regard. Again, thank you for your dedication and service to the people of the State of Alaska.

Respectfully,

A handwritten signature in black ink, appearing to read "Tom Clemons".

Chief Tom Clemons, President



2013 Alaska Dashboard

Key Issues Impacting

Domestic Violence and Sexual Assault in Alaska

What is the 2013 Dashboard?

The 2013 Alaska Dashboard is a broad overview of population indicators on key issues impacting domestic violence and sexual assault in Alaska. The Dashboard looks at reported incidents, service utilization, protective factors, offender accountability and victimization survey results since the beginning of Governor Parnell's *Choose Respect* Initiative to date. The Dashboard will be published each year through the life of the Initiative.

This is the Dashboard's second year of publication. While it is too early to conduct an in depth analysis on the data or predict trends, it is not too early to think about how we can change these numbers.

We encourage you to go beyond the numbers by reading through the indicator definitions to better understand what is being reviewed. The progress column is not meant to be a comment on the *rate* of domestic violence and sexual assault in Alaska, rather it is meant to comment on whether or not progress at turning the curve is being made at a satisfactory pace. Discuss what you see with your family, neighbors, friends, co-workers. How can *you* make a difference?

Each of the numbers in the Dashboard represents a life affected by these crimes. The level of domestic violence, sexual assault and sexual abuse of minors in our state remains unacceptably high--any amount of domestic violence or sexual assault is too much.

Join Us!

We hope you will join us in our efforts to increase victim safety and hold offenders accountable for their actions. Call your local victim service provider to learn about your community's efforts to Choose Respect or visit the *Choose Respect* website at <http://gov.alaska.gov/parnell/priorities/public-safety/choose-respect.html> to find ways to get involved.

For more information contact:

Council on Domestic Violence and Sexual Assault, (907) 465-4356 ph
bahiyvih.parish@alaska.gov or lauree.morton@alaska.gov



2013 Alaska Dashboard

Key Issues Impacting

Domestic Violence and Sexual Assault in Alaska

Reports of harm, utilization of services, and reports to law enforcement are much lower than actual incident rates. As the stigma of reporting violence lessens and as victim safety increases, those experiencing violence will be more likely to report and seek help, causing some of these indicators to increase over time. Estimates based on self-disclosures to survey questions may also be lower than actual victimization rates.

Key Population Indicators for Alaska	Starting AK Data	Current AK Data	Percent Change	Progress
Childhood Exposure to Domestic Violence				
1. Percent of adults exposed to intimate partner violence of parent (BRFSS)	19.1%	19.2%	+1%	○
2. Percent of mothers whose 3 year old child saw violence or physical abuse (CUBS)	4.0%	6.6%	+65%	●
Child and Youth Victimization				
3. Percent of students experiencing physical dating violence in past year (YRBS)	13.3%	12.0%	-10%	●
4. Percent of students experiencing sexual violence in lifetime (YRBS)	10.1%	9.2%	-9%	●
Reports of Harm (Child and Youth)				
5. Rate of reported child abuse and neglect per 10,000 (US DHHS)	190.1	153.6	-19%	●
6. Rate of reported child sexual maltreatment per 10,000 (OCS)	5.8	6.3	+9%	○
Adult and Elder Victimization				
7. Percent of women experiencing physical intimate partner violence in past year (AVS)	9.4%	N/A	N/A	○
8. Percent of women experiencing sexual violence in past year (AVS)	4.3%	N/A	N/A	○
9. Percent of pregnant women experiencing intimate partner physical abuse (PRAMS)	3.6%	4.0%	+11%	●
Reports of Harm (Adult and Elder)				
10. Number of vulnerable adults reporting abuse or neglect (APS)	176	167	-5%	○
11. Number of vulnerable elders reporting abuse or neglect (APS)	73	85	+16%	●
Primary Prevention and Protective Factors				
12. Percent of pregnant women whose health provider talked to them about DV (PRAMS)	60.0%	61.3%	+2%	○
13. Percent of students comfortable seeking help from 3 or more adults (YRBS)	44.6%	43.8%	-2%	○
14. Percent of schools implementing Fourth R healthy relationship curriculum (DEED)	9.7%	18.1%	+87%	●
15. Percent of students who feel connected to their school (SCCS)	38%	40%	+5%	○
Reports to Law Enforcement				
16. Rate of forcible rape reported to law enforcement per 10,000 (UCR)	7.3	5.8	-21%	○
17. Number of domestic violence related homicides reported to law enforcement (DPS)	5	10	+100%	●
18. Number of elderly victims reporting DV-related sexual/physical assaults to AST (DPS)	176	153	-13%	●
Utilization of Services				
19. Rate of children evaluated by child advocacy centers per 10,000 (ACA)	81.9	95.7	+17%	●
20. Rate of adults utilizing services for domestic violence per 10,000 (CDVSA)	81.6	83.1	+2%	○
21. Rate of children with adults in domestic violence services per 10,000 (CDVSA)	72.8	75.0	+3%	○
22. Rate of adults utilizing services for sexual assault per 10,000 (CDVSA)	20.5	20.8	+1%	○
23. Rate of youth utilizing services for domestic violence per 10,000 (CDVSA)	20.1	26.9	+34%	●
24. Rate of youth utilizing services for sexual assault per 10,000 (CDVSA)	39.2	27.8	-29%	○
Offender Accountability				
25. Percent of reported forcible rapes resulting in an arrest (DPS)	24.3%	27.0%	+11%	●
26. Rate of juveniles referred for sex offenses per 10,000 (DJJ)	13.6	11.5	-15%	○
27. Rate of juveniles referred for a DV-related assault per 10,000 (DJJ)	38.5	39.2	+2%	○
28. Number of sexual assault cases accepted for prosecution (DOL)	111	133	+20%	●
29. Percent of accepted sexual assault cases with a conviction (DOL)	63.0%	64.6%	+3%	○
30. Number of sexual abuse of minor cases accepted for prosecution (DOL)	109	146	+34%	●
31. Percent of accepted sexual abuse of minor cases with a conviction (DOL)	84.4%	65.0%	-23%	●
32. Number of domestic violence cases accepted for prosecution (DOL)	2617	3191	+22%	●
33. Percent of accepted domestic violence cases with a conviction (DOL)	73.8%	74.8%	+1%	○

Progress: ● Progress Satisfactory ○ Progress Uncertain ⊕ Progress Needs Improvement

Percent change is relative to starting data. See definition on page 3. Percent changes may or may not be statistically significant.

Definitions for each population indicator and dates for current and starting data are found starting on page 4.

Alaska Dashboard, January 2013. State of Alaska, Council on Domestic Violence and Sexual Assault, <http://dps.alaska.gov/cdvsa/>.

2013 Alaska Dashboard

Key Issues Impacting Domestic Violence and Sexual Assault in Alaska

National Comparisons

National data for comparison purposes is only available for a few of the population indicators on the Alaska dashboard for key issues impacting domestic violence and sexual assault in Alaska. Few of the data sources on the Alaska dashboard are available nationally or in other states. When they are available, data is rarely directly comparable. In particular, different states have different definitions for domestic violence and sexual assault. Listed below are the few indicators that are directly comparable to national data.

Key Population Indicators for Alaska	Starting U.S. Data	Current U.S. Data	Starting AK Data	Current AK Data
Child and Youth Victimization				
3. Percent of students experiencing physical dating violence in past year (YRBS)	9.9%	9.5%	13.3%	12.0%
4. Percent of students experiencing sexual violence in lifetime (YRBS)	7.8%	8.0%	10.1%	9.2%
Reports of Harm (Child and Youth)				
5. Rate of reported child abuse and neglect per 10,000 (US DHHS)	93.0	91.5	190.1	153.6
Reports to Law Enforcement				
16. Rate of forcible rape reported to law enforcement per 10,000 (UCR)	2.9	2.7	7.3	5.8

Percent of students experiencing physical dating violence in the past year (YRBS)

In 2011 (current AK data), the percentage of Alaska high school students experiencing physical dating violence in the past year was 12.0%, compared to 9.5% of high school students in the U.S. The percentage of high school students experiencing physical dating violence in the past year was 1.3 times higher in Alaska than in the U.S. However Alaska has made more progress than the U.S. since the starting year; between 2009 and 2011, the percent of students experiencing physical dating violence decreased in the US by 4%, and it decreased in Alaska by 10%.

Percent of students experiencing sexual violence in lifetime (YRBS)

In 2011 (current AK data), the percentage of Alaska high school students experiencing sexual violence in their lifetime was 9.2%, compared to 8.0% of high school students in the U.S. The percentage of high school students experiencing sexual violence in their lifetime was 1.2 times higher in Alaska than in the U.S. However since the starting year, Alaska has made progress while the U.S. has not; between 2009 and 2011, the percent of students experiencing sexual violence in their lifetime increased in the US by 3% while it decreased in Alaska by 9%.

Rate of reported child abuse and neglect per 10,000 (US DHHS)

In 2011 (current AK data), the rate of reported and substantiated child abuse and neglect was 153.6 per 10,000 children (ages 0 to 17) in Alaska, compared to 91.5 per 10,000 children in the U.S. The Alaska rate was 1.7 times higher than the U.S. rate. Rates of reporting in the U.S. have remained steady since the starting year, 2009, but Alaska levels have decreased by 19%.

Rate of forcible rape reported to law enforcement per 10,000 (UCR)

In 2011 (current AK data), the rate of forcible rape reported to law enforcement was 5.8 per 10,000 in Alaska, compared to 2.7 per 10,000 in the U.S. The Alaska rate was 2.1 times higher than the U.S. rate. Comparisons are uncertain because the drop in Alaska's current data may be due to data collection errors in one region.

Forthcoming Indicators

Reports to Law Enforcement	
1.	Number of sexual assaults reported to law enforcement (DPS)
2.	Number of sexual abuses of minors reported to law enforcement (DPS)
Offender Accountability	
3.	Percent of juvenile sex offenders who recidivate (DJJ)
4.	Percent of adult sex offenders who recidivate (DOC)

2013 Alaska Dashboard

Key Issues Impacting Domestic Violence and Sexual Assault in Alaska

Percent Change

Percent change is the increase or decrease in the current Alaska data relative to the start date, most of which is pre-Initiative data. Percent change is not an absolute difference in percent. For example, indicator #2 has increased from 4.0% to 6.6%. The absolute difference in percent is 2.6, but the percent change from the starting to the current Alaska data is +65%, because 2.6 is 65% of the starting Alaska data. ** Percent changes may or may not be statistically significant since some change randomly occurs from year to year.

$$\text{Percent Change is } \frac{\text{Current AK data} - \text{Starting AK data}}{\text{Starting AK data}} \times 100$$

Dashboard Indicator Definitions

Childhood Exposure to Domestic Violence

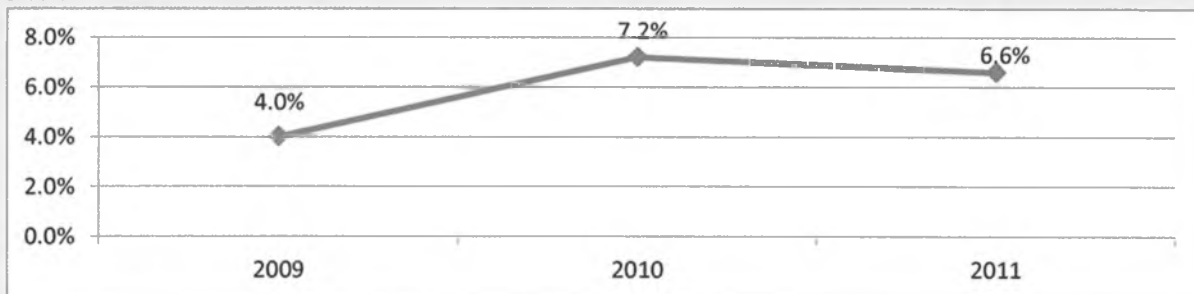
1. Percent of adults exposed to intimate partner violence of parent

Behavioral Risk Factor Surveillance System (BRFSS). Approximately every third year, 2,500 adults in Alaska are asked "As a child, did you ever see or hear one of your parents or guardians being hit, slapped, punched, shoved, kicked or otherwise physically hurt by their spouse or partner?" Most current Alaska data is from 2009 and starting Alaska data is from 2006.

Progress is uncertain ○ because the data has not changed significantly. New data is expected after 2013.

2. Percent of mothers whose 3 year old child saw violence or physical abuse

Childhood Understanding Behaviors Survey (CUBS). Each year, over 1,000 mothers of three year old children are asked "Has your child ever experienced seeing violence or physical abuse in person?" Most current Alaska data is from 2011 and starting Alaska data is from 2009.



Progress needs improvement ● because while there has been a small decline from the previous year, the violence exposure levels appear to be greater than they had been in 2009.

[Return to Dashboard](#)

Child and Youth Victimization

3. Percent of students experiencing physical dating violence in past year

Youth Risk Behavior Survey (YRBS). Every two years, over 1,000 students in traditional high schools are asked "During the past 12 months, did your boyfriend or girlfriend ever hit, slap, or physically hurt you on purpose?" Most current Alaska data is from 2011 and starting Alaska data is from 2009.

Progress is satisfactory ● because current data has decreased by 10%. New data is expected after 2013.

4. Percent of students experiencing sexual violence in lifetime

Youth Risk Behavior Survey (YRBS). Every two years, over 1,000 students in traditional high schools are asked "Have you ever been physically forced to have sexual intercourse when you did not want to?" Most current Alaska data is from 2011 and starting Alaska data is from 2009.

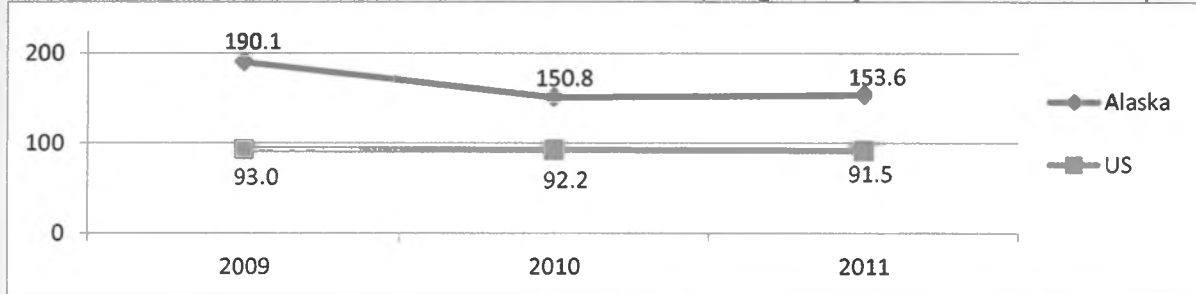
Progress is satisfactory ● because current data has decreased by 9%. New data is expected after 2013.

[Return to Dashboard](#)

Reports of Harm (Child and Youth)

5. Rate of reported child abuse and neglect per 10,000

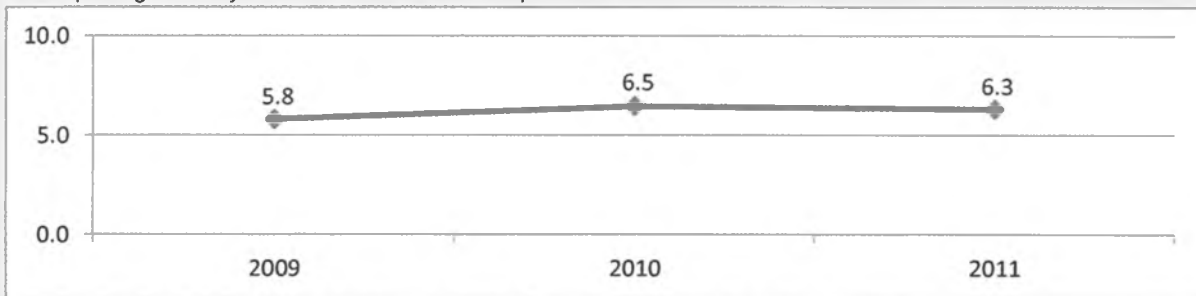
US Department of Health and Human Services (US DHHS). Rate of unique victims of reported and substantiated child abuse and neglect per 10,000 children ages 0-17. Child abuse and neglect is defined as any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act which presents and imminent risk of serious harm. Most current Alaska data is from 2011 and starting Alaska data is from 2009. For the purpose of the dashboard, this indicator is not used to measure rates of victimization. It is used to measure rates of substantiated reports of harm. Initiative efforts should lead to increased reporting so every child in need of aid can be protected.



Progress is unsatisfactory because substantiated reporting has decreased significantly since 2009.

6. Rate of reported child sexual maltreatment per 10,000

Office of Children's Services (OCS). Rate of non-duplicated children per 10,000 (ages 0-17) that are referred to the Office of Children's Services for substantiated incidents of sexual maltreatment. Sexual maltreatment includes sexual abuse (sexual assault, sexual abuse of a minor, incest, online enticement of a minor, unlawful exploitation of a minor, indecent exposure), sexual exploitation (allowing, permitting, or encouraging child prostitution), and prostitution or promoting prostitution. Most current Alaska data is from 2011 and starting Alaska data is from 2009. For the purpose of the dashboard, this indicator is not used to measure rates of victimization. It is used to measure rates of substantiated reports of harm. Initiative efforts should lead to increased reporting so every child in need of aid can be protected.



Progress is uncertain because the indicator has not changed significantly in the last 2 years.

[Return to Dashboard](#)

Adult and Elder Victimization

7. Percent of women experiencing physical intimate partner violence in past year

Alaska Victimization Survey (AVS). In 2010, over 800 adult women were asked if in the past year, an intimate partner (a) "Made threats to physically harm you?" (b) "Slapped you?" (c) "Pushed or shoved you?" (d) "Hit you with a fist or something hard?" (e) "Kicked you?" (f) "Hurt you by pulling your hair?" (g) "Slammed you against something?" (h) "Tried to hurt you by choking or suffocating you?" (i) "Beaten you?" (j) "Burned you on purpose?" or (k) "Used a knife or gun on you?" Starting Alaska data is from 2010.

Progress is uncertain because data currently exists for only one point in time. New data will be available after the survey is replicated in 2015.

8. Percent of women experiencing sexual violence in past year

Alaska Victimization Survey (AVS). In 2010, over 800 adult women were asked "When you were drunk, high, drugged, or passed out and unable to consent" in the past year, has anyone (a) "Had vaginal sex with you?" (b) "Made you receive anal sex?" (c) "Made you perform oral sex?" or (d) "Made you receive oral sex?" and has anyone in the past year "used physical force or threats to physically harm you to" (a) "Make you have vaginal sex" (b) "Make you receive anal sex?" (c) "Make you perform oral sex?" (d) "Make you receive oral sex?" (e) "Put their fingers or an object in your vagina or anus?" or (f) "Try to have vaginal, oral, or anal sex with you, but sex did not happen?" Starting Alaska data is from 2010.

Progress is uncertain because data currently exists for only one point in time. New data will be available after the survey is replicated in 2015.

9. Percent of pregnant women experiencing intimate partner physical abuse

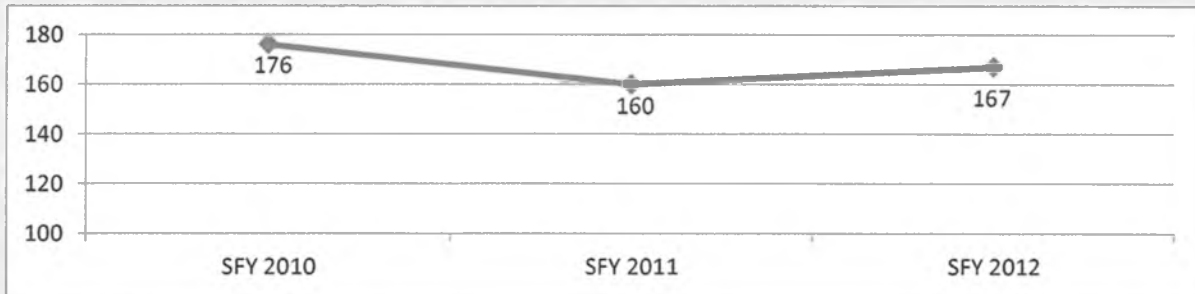
Pregnancy Risk Assessment Monitoring System (PRAMS). Each year, one of every six women who delivered a live-born infant is asked "During your most recent pregnancy, did your husband or partner push, hit, slap, kick, choke, or physically hurt you in any other way?" Most current Alaska data is from 2010 and starting Alaska data is from 2009.

Progress is unsatisfactory because the indicator has increased. Satisfactory progress would cause this indicator to decrease.

Reports of Harm (Adult and Elder)

10. Number of vulnerable adults reporting abuse or neglect

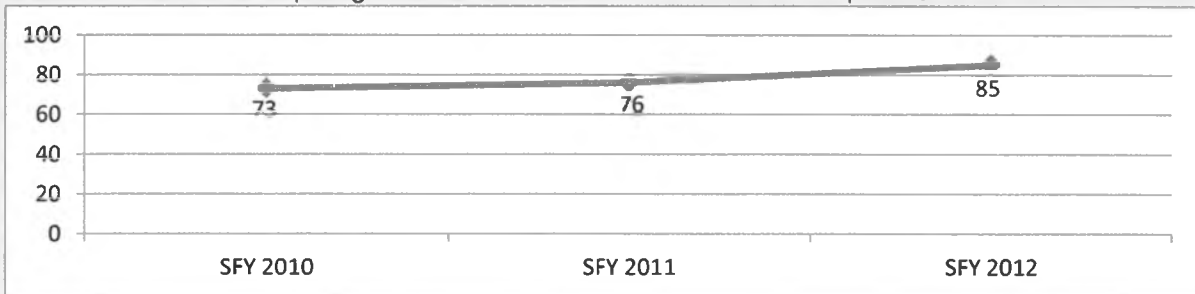
Adult Protective Services (APS). Number of vulnerable adults with a substantiated allegation of abuse or neglect reported to Adult Protective Services during the fiscal year, which was also closed during the fiscal year. Vulnerable adults are people 18 years of age or older who, because of physical or mental impairment, are unable to meet their own needs or to seek help without assistance. Abuse includes the willful, intentional, or reckless nonaccidental, and nontherapeutic infliction of physical pain, injury, or mental distress; or sexual assault in the first or second degree. Neglect includes the intentional failure by a caregiver to provide essential care or services necessary to maintain the physical and mental health of the vulnerable adult (self-neglect is not included). Most current Alaska data is from state fiscal year 2012 and starting Alaska data is from state fiscal year 2010. For the purpose of the dashboard, this indicator is not used to measure rates of victimization. It is used to measure rates of substantiated reports of harm. Initiative efforts should lead to increased reporting so each vulnerable adult in need of aid can be protected.



Progress is uncertain ○ because data does not show a clear trend. Satisfactory progress would see this indicator increase, signifying an increase in reporting.

11. Number of vulnerable elders reporting abuse or neglect

Adult Protective Services (APS). Number of vulnerable elders with a substantiated allegation of abuse or neglect reported to Adult Protective Services during the fiscal year, which was also closed during the fiscal year. Vulnerable elders are people 65 years of age or older who, because of physical or mental impairment, are unable to meet their own needs or to seek help without assistance. Abuse includes the willful, intentional, or reckless nonaccidental, and nontherapeutic infliction of physical pain, injury, or mental distress; or sexual assault in the first or second degree. Neglect includes the intentional failure by a caregiver to provide essential care or services necessary to maintain the physical and mental health of the vulnerable adult (self-neglect is not included). Most current Alaska data is from 2012 and starting Alaska data is from 2010. For the purpose of the dashboard, this indicator is not used to measure rates of victimization. It is used to measure rates of substantiated reports of harm. Initiative efforts should lead to increased reporting so each vulnerable elder in need of aid can be protected.



Progress is satisfactory ● because there is an increase in reporting.

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Primary Prevention and Protective Factors

Primary prevention includes approaches before violence has occurred to prevent initial perpetration or victimization

12. Percent of pregnant women whose health provider talked to them about DV

Pregnancy Risk Assessment Monitoring System (PRAMS). Each year, one of every six women who delivered a live-born infant is asked "During any of your prenatal care visits, did a doctor, nurse, or other health care worker talk with you about physical abuse to women by their husbands or partners?" Most current Alaska data is from 2010 and starting Alaska data is from 2009.

Progress is uncertain ○ because the indicator has not changed significantly. Satisfactory progress would cause this indicator to increase.

13. Percent of students comfortable seeking help from 3 or more adults

Youth Risk Behavior Survey (YRBS). Every two years, over 1,000 students in traditional high schools are asked "Besides your parents, how many adults would you feel comfortable seeking help from if you had an important question affecting your life?" Most current Alaska data is from 2011 and starting Alaska data is from 2009.

Progress is uncertain ○ because the indicator has not changed significantly. New data is expected after 2013.

[Return to Dashboard](#)

14. Percent of schools implementing Fourth R healthy relationship curriculum

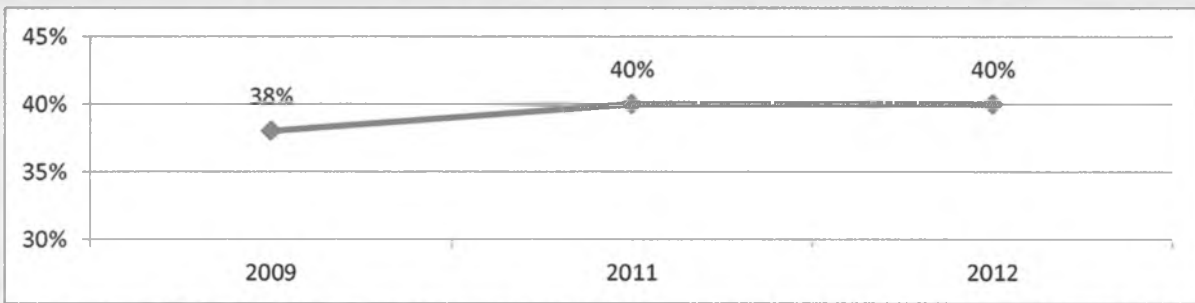
Department of Education & Early Development (DEED). Percentage of public secondary schools that have teachers trained in the Fourth R healthy relationship curriculum. Secondary schools include public high schools, middle schools, and alternative schools. Most current Alaska data is from state fiscal year 2013 and starting Alaska data is from state fiscal year 2011.



Progress is satisfactory ● because this indicator is increasing steadily.

15. Percent of students connected to their school

School Climate and Connected Survey (SCCS). Each year, an average of 28,000 5th – 12th grade students statewide participate in the SCCS. The "connection to school" indicator is comprised of affirmative responses to the following ten questions: a) There is at least one adult at this school who I feel comfortable talking to about things that are bothering me; b) At school, there is a teacher or some other adult who will miss me when I'm absent; c) Teachers here are nice people; d) I ask for help from my teachers or others when I need it; e) It is important to me to help others at my school; f) I try hard to do well in school; g) I get along well with other students; h) My teachers treat me with respect; i) Students here treat me with respect; j) I have given up on school (reverse coded). The most current data is from 2012, and starting data is from 2009.



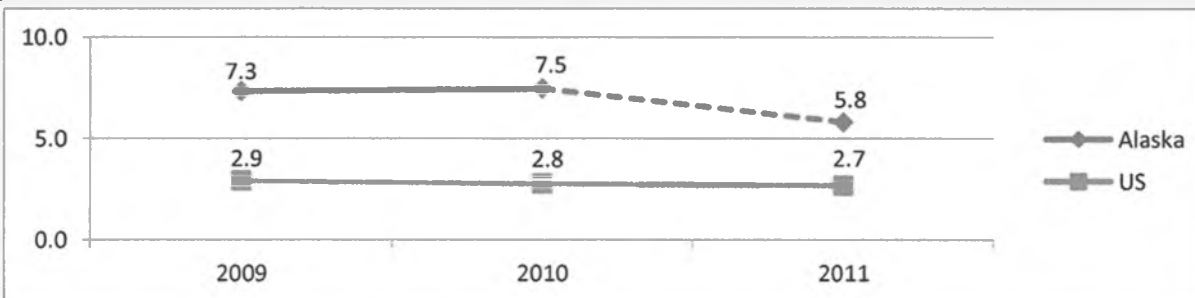
Progress is uncertain ○ because the indicator has not changed in the last year. Satisfactory progress would cause this indicator to increase.

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Reports to Law Enforcement

16. Rate of forcible rape reported to law enforcement per 10,000

Uniform Crime Reports (UCR). Rate of forcible rape reported to most law enforcement agencies in Alaska per 10,000 population. Forcible rape is defined as the carnal knowledge of a female forcibly and against her will. Attempted forcible rapes are included, regardless of the age of the victim. Statutory offenses (no force used – victim under age of consent) are excluded. To obtain rates per 100,000, multiply the rates per 10,000 by 10. Most current Alaska data is from 2011 and starting Alaska data is from 2009.

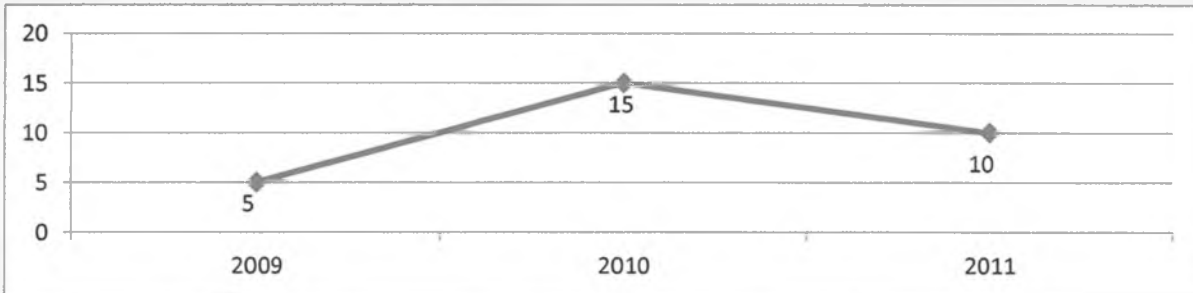


Progress is uncertain ○ because the significant drop in reporting in the last year may be due to data collection errors in one region.

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17. Number of domestic violence related homicides reported to law enforcement

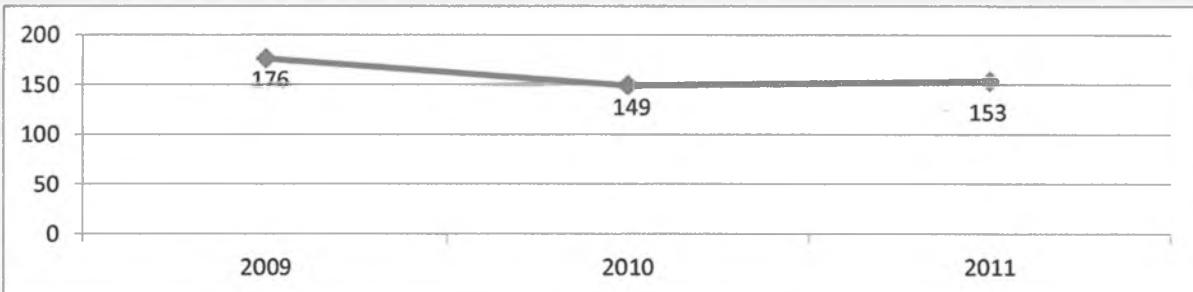
Alaska Department of Public Safety (DPS). Number of homicides (willful nonnegligent killings) known to law enforcement that occurred in Alaska where the homicide was committed by a household member against another household member. Household members include adults or minors who are current or former spouses, who live together or who have lived together, who are dating or who have dated, who are engaged in or who have engaged in a sexual relationship, who are related to each other up to the fourth degree of consanguinity, who are related or formerly related by marriage, who have a child of the relationship. Household members also include children of a person in any of these relationships. In some cases, the relationship of the victim to the offender is unknown. These cases are not included in the number of domestic violence related homicides. Most current data is from 2011 and starting Alaska data is from 2009.



Progress is unsatisfactory because the indicator is substantially higher than the starting year.

18. Number of elderly victims reporting DV-related sexual/physical assaults to AST

Alaska Department of Public Safety (DPS). Number of elderly victims (age 60 or older) who reported an assault involving domestic violence or a sexual assault involving domestic violence to Alaska State Troopers. This is the unduplicated count of victims, not the count of offenses or cases. In addition, each victim is counted only once per year. This number does not include offenses reported to local or municipal police departments. This number also does not include other domestic violence offenses (other crimes against the person, burglary, criminal trespass, arson or criminally negligent burning, criminal mischief, terrorist threatening, violating a protective order, and harassment). Crimes are domestic violence related if they occur between household members (i.e., adults or minors who are current or former spouses, who live together or who have lived together, who are dating or who have dated, who are engaged in or who have engaged in a sexual relationship, who are related to each other up to the fourth degree of consanguinity, or who are related or formerly related by marriage; persons who have a child of the relationship; and minor children of a person in any of these relationships). Most current data is from 2011 and starting Alaska data is from 2009.



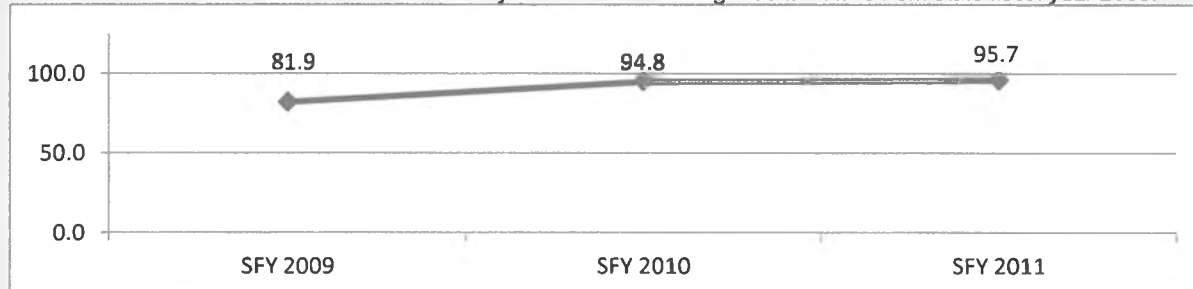
Progress is unsatisfactory because reporting has decreased significantly since 2009.

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Utilization of Services

19. Rate of children evaluated by child advocacy centers per 10,000

Alaska Children's Alliance (ACA). Number of children evaluated at a child advocacy center (duplicated count) per 10,000 children ages 0-17. Children are evaluated at child advocacy centers for allegations of child sexual abuse or assault, child physical abuse, drug endangerment, witnessing violent events in the home where they are present, and neglect or medical failure to thrive. Most current Alaska data is from state fiscal year 2011 and starting Alaska data is from state fiscal year 2009.

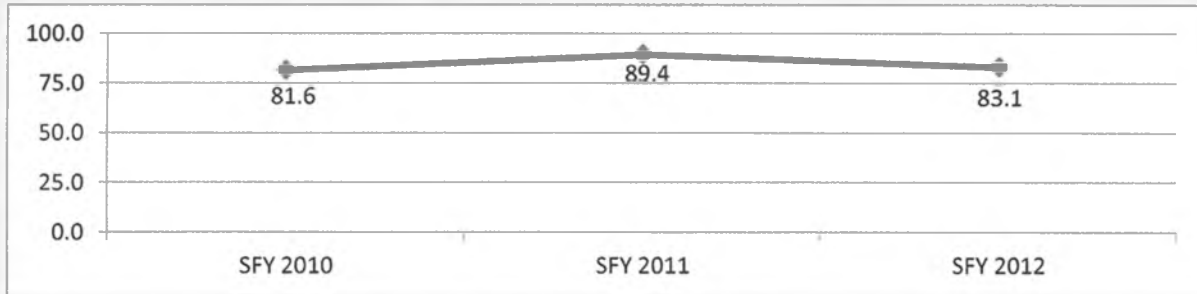


Progress is satisfactory because reporting has increased significantly since 2009.

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20. Rate of adults utilizing services for domestic violence per 10,000

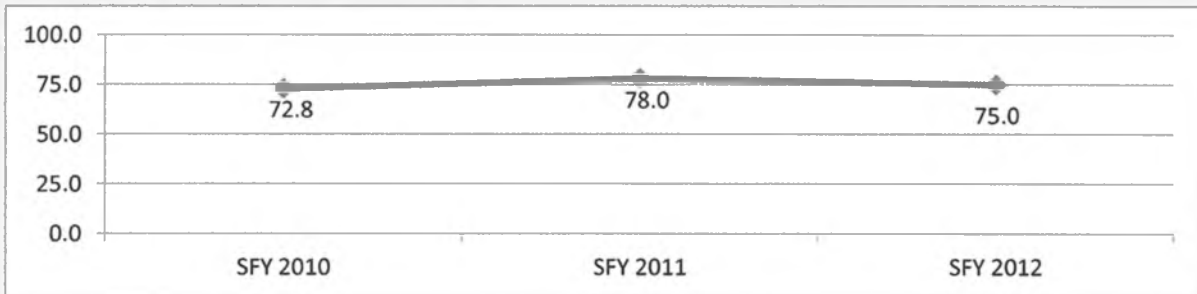
Council on Domestic Violence and Sexual Assault (CDVSA). Number of unduplicated adults per 10,000 adults (age 18 and older) who utilized services from a CDVSA-funded domestic violence and sexual assault service agency, and who were recorded at that agency as being a primary victim of domestic violence. Primary victims are adults who are directly harmed, either physically or emotionally, by the actions of another. Domestic violence is defined as any pattern of coercive behavior that is used by one person to gain power and control over a current or former intimate partner. Domestic violence includes dating violence, which is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the program participant. Most current Alaska data is from state fiscal year 2012 and starting Alaska data is from state fiscal year 2010.



Progress is uncertain ○ because data does not show a clear trend. Satisfactory progress would see this indicator increase, signifying an increase in service provision.

21. Rate of children with adults in domestic violence services per 10,000

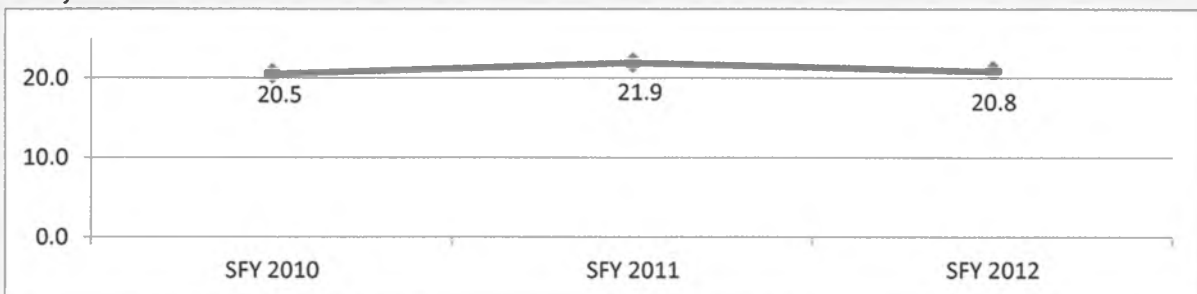
Council on Domestic Violence and Sexual Assault (CDVSA). Number of unduplicated minors per 10,000 minors (ages 0-17) who utilized services from a CDVSA-funded domestic violence or sexual assault service agency, and who were recorded as being a secondary victim of domestic violence. Secondary victims are minors beyond the immediate victim who have been affected by the repercussions of an event or events. These may include child witnesses who although not the direct target of abuse, have been affected. This number does not include minors who were primary victims of domestic violence (even if they were also secondary victims). Domestic violence is defined as any pattern of coercive behavior that is used by one person to gain power and control over a current or former intimate partner. Domestic violence includes dating violence, which is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the program participant. Most current Alaska data is from state fiscal year 2012 and starting Alaska data is from state fiscal year 2010.



Progress is uncertain ○ because the indicator has not changed significantly. Satisfactory progress would see this indicator increase, signifying an increase in service provision.

22. Rate of adults utilizing services for sexual assault per 10,000

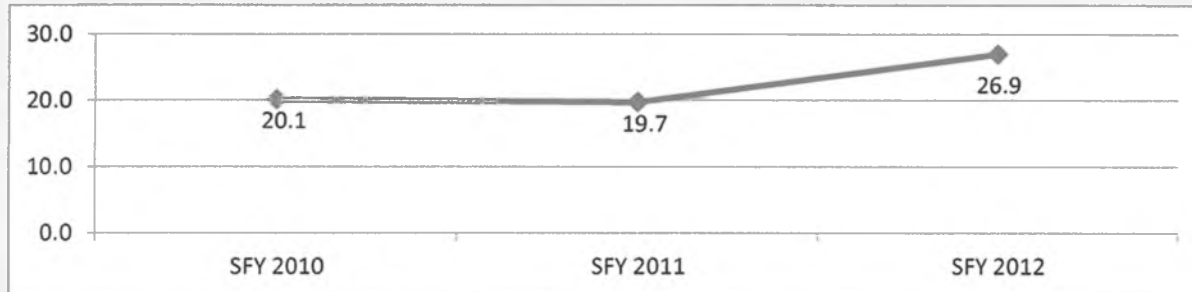
Council on Domestic Violence and Sexual Assault (CDVSA). Number of unduplicated adults per 10,000 adults (age 18 and older) who utilized services from a CDVSA-funded domestic violence and sexual assault service agency, and who were recorded at that agency as being primary victims of sexual assault. Primary victims are adults who are directly harmed, either physically or emotionally, by the actions of another. Sexual assault includes both assaults committed by offenders who are strangers to the program participants and assaults committed by offenders who are known to, related by blood or marriage to, or in a dating relationship with the program participant. Most current Alaska data is from state fiscal year 2012 and starting Alaska data is from state fiscal year 2010.



Progress is uncertain ○ because the indicator has not changed significantly. Satisfactory progress would see this indicator increase, signifying an increase in service provision.

23. Rate of youth utilizing services for domestic violence per 10,000

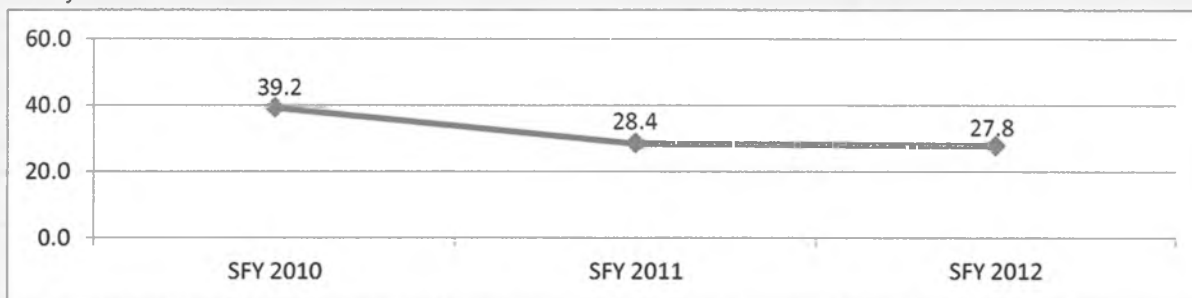
Council on Domestic Violence and Sexual Assault (CDVSA). Number of unduplicated youth per 10,000 youth (ages 12-17) who utilized services from a CDVSA-funded domestic violence and sexual assault service agency, and who were recorded at that agency as being a primary victim of domestic violence. Primary victims are youth who are directly harmed, either physically or emotionally, by the actions of another. Domestic violence is defined as any pattern of coercive behavior that is used by one person to gain power and control over a current or former intimate partner. Domestic violence includes dating violence, which is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the program participant. Most current Alaska data is from state fiscal year 2012 and starting Alaska data is from state fiscal year 2010.



Progress is satisfactory ● because there is an increase in service provision.

24. Rate of youth utilizing services for sexual assault per 10,000

Council on Domestic Violence and Sexual Assault (CDVSA). Number of unduplicated youth per 10,000 youth (ages 12-17) who utilized services from a CDVSA-funded domestic violence and sexual assault service agency, and who were recorded at that agency as being primary victims of sexual assault. Primary victims are youth who are directly harmed, either physically or emotionally, by the actions of another. Sexual assault includes both assaults committed by offenders who are strangers to the program participants and assaults committed by offenders who are known to, related by blood or marriage to, or in a dating relationship with the program participant. Most current Alaska data is from state fiscal year 2012 and starting Alaska data is from state fiscal year 2010.



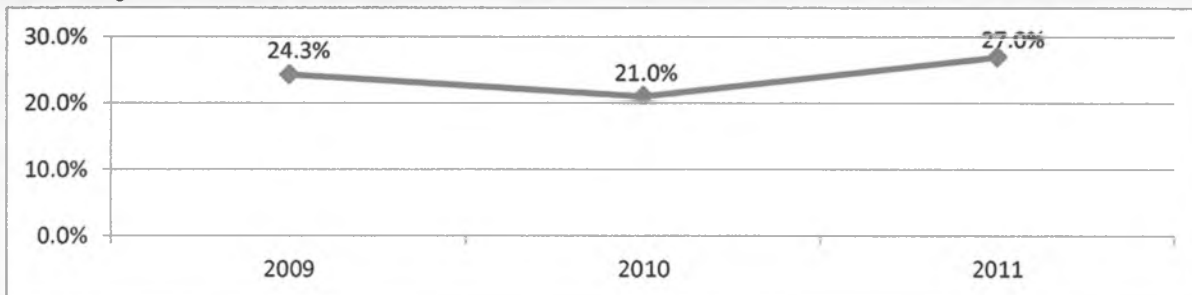
Progress is unsatisfactory ● because the rate of youth utilizing services has decreased significantly from 2010.

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Offender Accountability

25. Percent of reported forcible rapes resulting in an arrest

Alaska Department of Public Safety (Crime Reported in Alaska). Number of offenses cleared by arrest or exceptional means per actual offenses reported or known to law enforcement. Unfounded complaints are excluded. Most current Alaska data is from 2011 and starting Alaska data is from 2009.

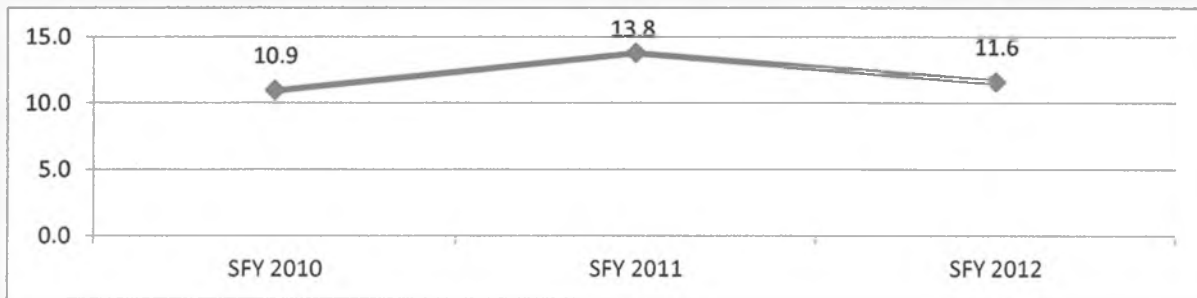


Progress is satisfactory ● because there is a significant increase in the last year.

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26. Rate of juveniles referred for sex offenses per 10,000

Alaska Division of Juvenile Justice (DJJ). Rate of non-duplicated juveniles per 10,000 (ages 11-17) that are referred to the Alaska Division of Juvenile Justice for sexual assault in the first to fourth degree or sexual abuse of a minor in the first to fourth degree. Most current Alaska data is from state fiscal year 2012 and starting Alaska data is from state fiscal year 2009.



Progress is uncertain ○ because while the current rate is higher than the starting year, it is a significant decrease from last year's rate of 13.8

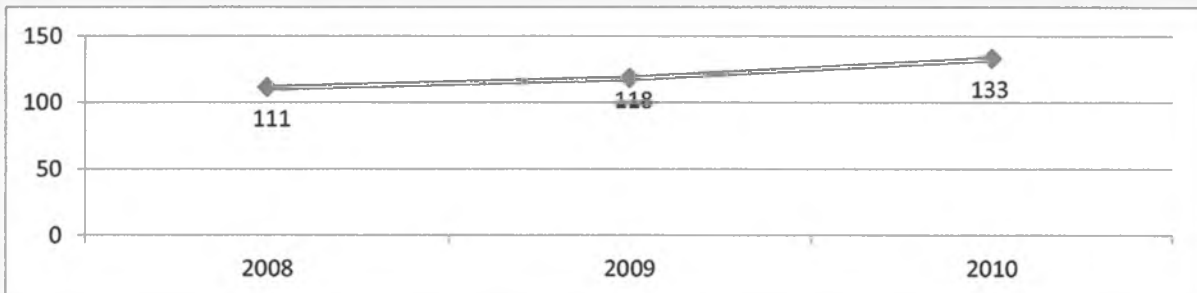
27. Rate of juveniles referred for a DV-related assault per 10,000

Alaska Division of Juvenile Justice (DJJ). Rate of non-duplicated juveniles per 10,000 (ages 11-17) that are referred to the Alaska Division of Juvenile Justice for domestic violence related assault in the first to fourth degree. An assault is domestic violence related if it occurred between household members (i.e., minors who are current or former spouses, who live together or who have lived together, who are dating or who have dated, who are engaged in or who have engaged in a sexual relationship, who are related to each other up to the fourth degree of consanguinity, or who are related or formerly related by marriage; persons who have a child of the relationship; and minor children of a person in any of these relationships). Most current Alaska data is for fiscal year 2012. The earliest data available, from fiscal year 2011, were extrapolated from data ranging from 2/23/11 to 6/30/11. These data were not collected prior to 2/23/11.

Progress is uncertain ○ because the indicator has not changed significantly in the last year.

28. Number of sexual assault cases accepted for prosecution

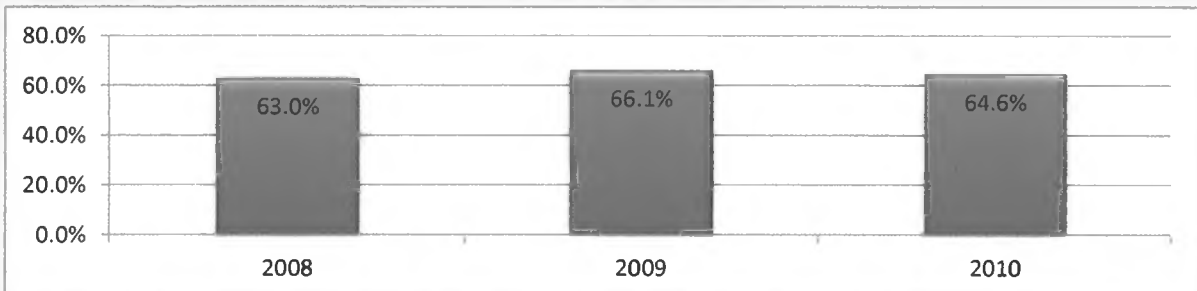
Alaska Department of Law (DOL). Number of cases referred to the Alaska Department of Law that were accepted for prosecution with a sexual assault charge in the first, second, third, or fourth degree. A case is accepted for prosecution when the district attorney's office, after reviewing the file and evidence, determines that there is sufficient credible evidence to convict a specific person of the particular crime. Most current Alaska data is from 2010 and starting Alaska data is from 2008.



Progress is satisfactory ● because the number of cases accepted has increased by 22 since 2008.

29. Percent of accepted sexual assault cases with a conviction

Alaska Department of Law (DOL). Percent of sexual assault cases accepted for prosecution that resulted in a conviction. Percentage is based on the number of cases accepted for prosecution with a sexual assault charge in the first, second, third, or fourth degree. A conviction is an accepted charge resulting in a finding of guilt (on any charge). A finding of guilt can occur through plea bargaining or being found guilty beyond a reasonable doubt by either a judge or jury. Most current Alaska data is from 2010 and starting Alaska data is from 2008. Data across years are not directly comparable because recent cases are more likely to be pending prosecution at the time of the data retrieval than older cases.

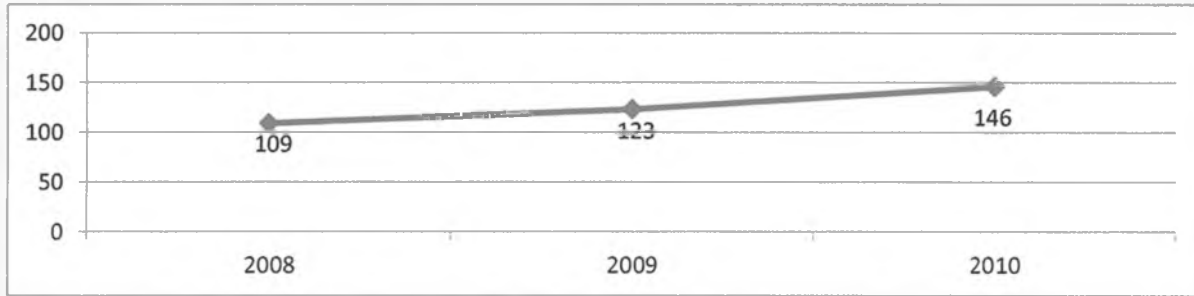


Progress is uncertain ○ because the indicator has not changed significantly in the last year, and there is no clear trend.

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30. Number of sexual abuse of minor cases accepted for prosecution

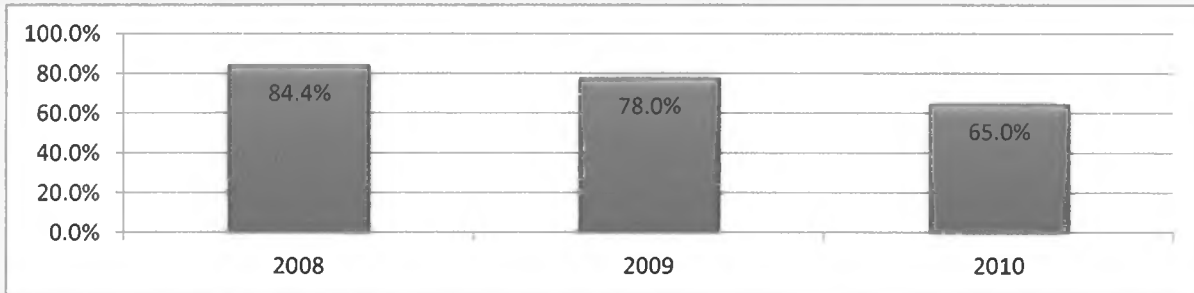
Alaska Department of Law (DOL). Number of cases referred to the Alaska Department of Law that were accepted for prosecution with a sexual abuse of a minor charge in the first, second, third, or fourth degree. A case is accepted for prosecution when the district attorney's office, after reviewing the file and evidence, determines that there is sufficient credible evidence to convict a specific person of the particular crime. Most current Alaska data is from 2010 and starting Alaska data is from 2008.



Progress is satisfactory ● because this indicator has increased steadily since 2008.

31. Percent of accepted sexual abuse of minor cases with a conviction

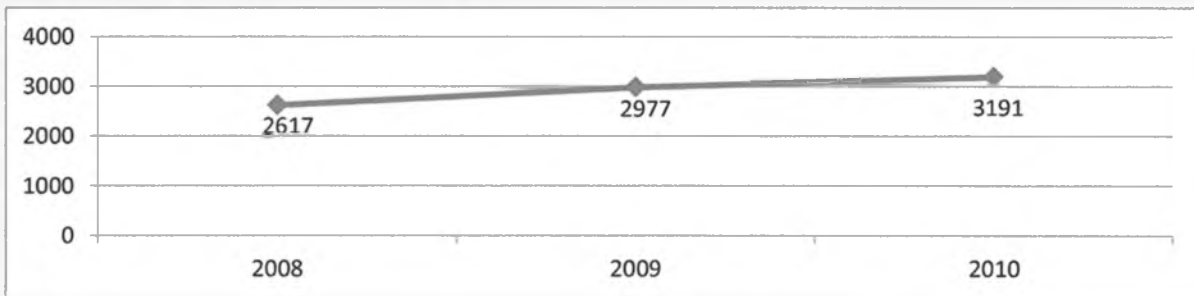
Alaska Department of Law (DOL). Percent of sexual abuse of minor cases accepted for prosecution that resulted in a conviction. Percentage is based on the number of cases accepted for prosecution with a sexual abuse of a minor charge in the first, second, third, or fourth degree. A conviction is an accepted charge resulting in a finding of guilt (on any charge). A finding of guilt can occur through plea bargaining or being found guilty beyond a reasonable doubt by either a judge or jury. Most current Alaska data is from 2010 and starting Alaska data is from 2008. Data across years is not directly comparable because recent cases are more likely to be pending prosecution at the time of the data retrieval than older cases.



Progress is unsatisfactory ● because the number of convictions was 23% less than the convictions in the 2008 data.

32. Number of domestic violence cases accepted for prosecution

Alaska Department of Law (DOL). Number of cases referred to the Alaska Department of Law that were accepted for prosecution with an assault charge in the first, second, third, or fourth degree involving domestic violence. Most current Alaska data is from 2010 and starting Alaska data is from 2008.

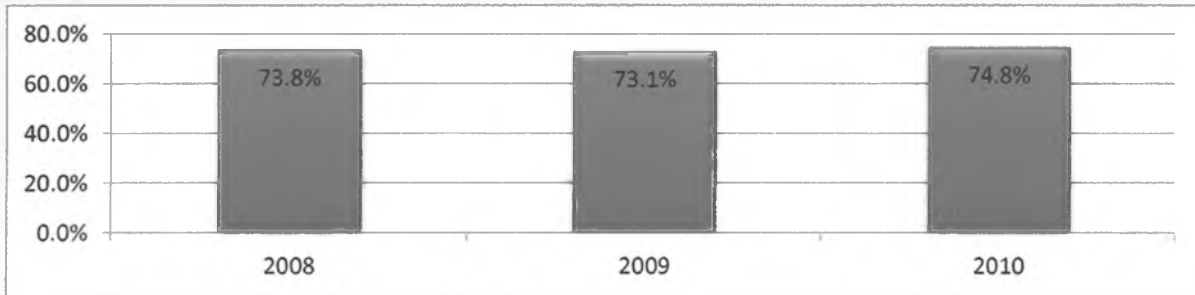


Progress is satisfactory ● because the number of accepted referrals has increased by 22% from 2008.

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33. Percent of accepted domestic violence cases with a conviction

Alaska Department of Law (DOL). Percent of assault cases involving domestic violence accepted for prosecution that resulted in a conviction, which may or may not be a domestic violence assault conviction. Percentage is based on the number of cases accepted for prosecution with an assault charge in the first, second, third, or fourth degree involving domestic violence. Most current Alaska data is from 2010 and starting Alaska data is from 2008. Data across years is not directly comparable because recent cases are more likely to be pending prosecution at the time of the data retrieval than older cases.



Progress is uncertain because the indicator has not changed significantly.

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AMENDMENT #1

OFFERED IN THE HOUSE
TO: CSSB 22(FIN)

BY REPRESENTATIVE HOLMES &
Representative Thompson

- 1 Page 20, line 12:
- 2 Delete "outside the state"

AMENDMENT #2

OFFERED IN THE HOUSE
TO: CSSB 22(FIN)

BY REPRESENTATIVE THOMPSON ♀
Rep. Holmes

- 1 Page 6, lines 28 - 29:
- 2 Delete "AS 11.66.100 - 11.66.135 may [AS 11.66.100(c) OR 11.66.110 - 11.66.135
- 3 SHALL]:
- 4 Insert "AS 11.66.100(c) or 11.66.110 - 11.66.135 may [SHALL]"